



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 175

Licensing: Financial product advisers—Conduct and disclosure

Chapter 7—Financial services and markets

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From 5 July 2007, this document may be referred to as Regulatory Guide 175 (RG 175) or Policy Statement 175 (PS 175). Paragraphs in this document may be referred to by their regulatory guide number (e.g. RG 175.1) or their policy statement number (e.g. PS 175.1).

What this guide is about

RG 175.1 This guide considers how certain conduct and disclosure obligations in Pt 7.7 of the *Corporations Act 2001* (Corporations Act) apply to the provision of financial product advice to retail clients.

RG 175.2 This guide sets out our policy for administering the law on:

A providing financial product advice

see RG 175.7–RG 175.29

B preparing and providing a Financial Services Guide (FSG)

see RG 175.30–RG 175.79

- C preparing and providing suitable personal advice
see RG 175.80–RG 175.119
- D preparing and providing a Statement of Advice (SOA)
see RG 175.120–RG 175.165
- E preparing and providing a Statement of Additional Advice (SOAA)
see RG 175.166A–RG 175.166W

RG 175.3 In this guide, we do not consider or provide guidance on the full range of conduct and disclosure obligations imposed by Pt 7.7. This guide does not generally cover:

- (a) Pt 7.7 obligations as far as they may apply to classes of financial service other than financial product advice (such as the FSG requirements as they apply to dealing);
- (b) laws in detail (other than Pt 7.7) that may be relevant to the provision of retail financial product advice;
- (c) financial product advice provided to non-retail (wholesale) clients; or
- (d) the product disclosure obligations in Pt 7.9.

RG 175.4 This guide should be read in conjunction with the guides we have issued on how we administer the licensing regime, in particular Regulatory Guide 36 *Licensing: Financial product advice and dealing* (RG 36). We suggest you also consider:

- (a) Regulatory Guide 164 *Licensing: Organisational capacities* (RG 164);
- (b) Regulatory Guide 167 *Licensing: Discretionary powers* (RG 167);
- (c) Regulatory Guide 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)* (RG 168);
- (d) Regulatory Guide 181 *Licensing: Managing conflicts of interest* (RG 181);
- (e) Regulatory Guide 182 *Dollar disclosure* (RG 182); and
- (f) Regulatory Guide 183 *Approval of financial services sector codes of conduct* (RG 183).

RG 175.5 We will continue to monitor and review the provision of advice across all industry sectors to determine whether the objectives of Pt 7.7 could be promoted through further ASIC policy or guidance. We may rely on various sources of information including:

- (a) monitoring consumer complaints;

- (b) further consultation with industry and consumer representatives; and
- (c) further consumer research or projects with industry or consumer representatives.

RG 175.6 We will pay particular attention to whether consumers are being provided with clear, concise and effective disclosure that satisfies their information needs, and whether they are being provided with personal advice that is appropriate.

Important note: This guide was first published on 26 June 2003. It has been amended to reflect changes made to the Corporations Act by the *Financial Services Reform Amendment Act 2003*, Corporations Regulations, ASIC policy and instruments issued before 1 May 2007, and to provide some clarifications. Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements. This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act applies to you.

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A Providing financial product advice

What this section is about

RG 175.7 Part 7.7 of the Corporations Act requires providing entities to comply with certain conduct and disclosure obligations when providing financial product advice to retail clients. These conduct and disclosure obligations vary depending on whether the advice is personal advice or general advice.

Note 1: Part 7.7 applies to the provision of all financial services. However, this guide generally considers Pt 7.7 only in relation to the provision of financial product advice.

Note 2: Part 7.7 applies once a providing entity (or where the providing entity is an authorised representative, the authorising licensee) obtains an Australian financial services (AFS) licence.

RG 175.8 The policy in this section considers the difference between personal advice and general advice

see RG 175.11–RG 175.12 and RG 175.14–RG 175.18.

RG 175.9 This section also explains:

(a) the meaning of the key concepts ‘providing entity’, ‘financial product advice’ and ‘retail client’

see RG 175.19–RG 175.21

(b) the obligations that apply under Pt 7.7 to the provision of general advice and personal advice

see RG 175.22–RG 175.23

(c) the other obligations that may apply under the law to the provision of financial product advice

see RG 175.24–RG 175.29.

RG 175.10 This section tells you how we will administer the law. Providing entities must determine and comply with their legal obligations, including those arising under Pt 7.7.

Our policy

What is the difference between general advice and personal advice?

RG 175.11 In administering the law, we will take into account all the circumstances when considering whether advice is personal advice or general advice under s766B(3)(b), including all of the following:

- (a) Did the adviser offer to provide personal advice (e.g. in an FSG or other material given to the client before the advice was provided)?
- (b) Does the adviser have an existing relationship with the client where personal advice is regularly provided to the client?
- (c) Did the client request personal advice (including requesting advice as to what decision the client should make)?
- (d) Did the adviser request information about the client's relevant personal circumstances?
- (e) Was the advice directed towards a named client or readily identifiable client or clients?
- (f) Does the advice contain or was it accompanied by a general advice warning made for the purposes of s949A?
- (g) Does the advice appear on its face to be tailored to the client's relevant personal circumstances (e.g. does it refer to information or assumptions specific to the client)?

Note 1: This is not an exhaustive list of all relevant circumstances. None of these circumstances alone determines whether advice is general or personal advice. The presence of any one circumstance does not necessarily mean that advice is personal advice or general advice.

Note 2: While giving a general advice warning to the client is a relevant circumstance, it is not determinative and does not necessarily mean that general advice (rather than personal advice) has in fact been given to that client.

RG 175.12 If an adviser receives or possesses information about the client's relevant personal circumstances this does not, by itself, mean that any advice given to that client is necessarily personal advice. This is because the test for whether financial product advice is personal or general advice is not dependent on whether the adviser merely *possesses* information about the client's personal circumstances.

RG 175.12A Whether such advice is personal advice will generally depend on whether the adviser has *considered* (or whether a reasonable person might expect the adviser to have considered) that information in providing the advice e.g. has the adviser considered one or more of the

person’s objectives, financial situation and needs or would a reasonable person *expect* them to have considered these: s766B(3). For further information, see Information Release [IR 05/45] *ASIC provides guidance about giving general financial product advice*.

Note: For example, if the adviser requests personal information solely for the purpose of calculating the cost of the product to the client, the subsequent provision of advice to that client will not necessarily be personal advice.

Underlying principles

RG 175.13 Part 7.7 imposes obligations on providing entities that are designed to ensure that retail clients receive professional and reliable advice about financial products. These obligations vary depending on whether the advice is personal advice or general advice. All the circumstances need to be taken into account to determine whether advice is personal advice or general advice.

Explanations

What is the difference between general advice and personal advice?

RG 175.14 All financial product advice is either general advice or personal advice. Under the Corporations Act, personal advice has particular characteristics. The table below sets out the definitions of personal and general advice.

Personal advice	General advice
<p>Financial product advice given or directed to a person (including by electronic means) in circumstances where:</p> <p>(a) the provider of the advice has considered one or more of the client’s objectives, financial situation and needs; or</p> <p>(b) a reasonable person might expect the provider of the advice to have considered one or more of those matters (s766B(3)).</p>	<p>All other financial product advice: s766B(4).</p>

RG 175.15 An adviser need not consider all aspects of the client’s relevant personal circumstances (e.g. the client’s objectives, financial situation and needs) for the advice to be personal advice. It is enough that either:

- (a) at least one aspect of the client’s relevant personal circumstances was *actually* considered; or

- (b) regardless of whether they were in fact considered, a reasonable person might *expect* the adviser to have considered at least one aspect of the client's relevant personal circumstances (s766B(3)).

RG 175.16 Whether the adviser has considered at least one aspect of the client's relevant personal circumstances depends on what the adviser *actually* considered (i.e. took into account or had regard to) in the process of preparing and giving the advice.

RG 175.17 Whether or not a reasonable person might *expect* the adviser to have considered at least one aspect of the client's relevant personal circumstances looks beyond what the adviser *actually* considered in the process of preparing and giving the advice to what a reasonable person might expect the adviser to have considered. It requires a consideration of all the circumstances around the provision of the advice, including, but not limited to, those set out in RG 175.11.

RG 175.18 Advice may be personal advice even where:

- (a) the advice is not given during a face-to-face meeting (e.g. where advice is given by telephone, in writing or by electronic means);
- (b) the adviser has not had direct contact with the client (e.g. where the advice is based on information supplied by a third person);
- (c) the adviser is permitted to give advice on only one financial product or on a very limited range of financial products. However, in this case the application of the suitability obligations applying to the advice will vary (see Section C);
- (d) the advice is given in a seminar;
- (e) the person to whom the advice is given or directed is not a natural person (e.g. where the client is a body corporate); or
- (f) the adviser did not (subjectively) intend to provide personal advice.

Key concepts

Who is the 'providing entity'?

RG 175.19 The Pt 7.7 obligations apply to 'providing entities'. A providing entity may be a licensee or an authorised representative. Representatives that are not *authorised representatives* are not providing entities. Where a licensee provides financial product advice (e.g. through one of its employees), the licensee is the providing entity. Where an authorised representative provides financial product advice, the authorised representative is the providing entity.

Note 1: See 'Key terms' for the definition of 'authorised representative'. We maintain a register of authorised representatives of licensees: see our website at www.asic.gov.au.

Note 2: Where an authorised representative is the providing entity, the authorising licensee has an overriding duty to ensure that the advice is provided in compliance with the law, including Pt 7.7. This is because the authorising licensee is obliged to take reasonable steps to ensure that its representatives comply with financial services laws (as defined in s761A), which includes the FSG, suitability and SOA obligations: see in particular s912A, 945A, 952H and 953B. The licensee will generally be subject to potential civil and criminal liability for any breach of the Pt 7.7 provisions by the authorised representative. This is in addition to any action that may be taken directly against the authorised representative.

What is ‘financial product advice’?

RG 175.20 A recommendation or a statement of opinion, or a report of either of those things, constitutes financial product advice if:

- (a) it is, or could reasonably be regarded as being, intended to influence a person or persons in making a decision about a particular financial product or class of financial products, or an interest in a particular financial product or class of financial products (s766B); and
- (b) it is not exempted from being a financial service (e.g. where reg 7.1.29 applies).

Note: For a discussion of the meaning of financial product advice, see Regulatory Guide 36 *Licensing: Financial product advice and dealing* (RG 36).

Who is a ‘retail client’?

RG 175.21 The meaning of ‘retail client’ depends on:

- (a) the type of financial product the advice relates to; and
- (b) the nature of the client (s761G).

The table below shows how this works in different situations.

General insurance	<p>The person to whom the advice is provided is a <i>retail client</i> if the financial product to which the advice relates is prescribed under s761G(5)(b) (including regulations made for the purposes of that paragraph) and:</p> <ul style="list-style-type: none"> (a) the client is a natural person; or (b) the product is or would be used in connection with a small business (s761G(5) and (12)). <p>Note: General insurance products prescribed under s761G(5)(b) are motor vehicle, home building, home contents, sickness and accident, consumer credit, travel, personal and domestic property insurance, and medical indemnity insurance.</p>
Superannuation	The person to whom the advice is provided is

or retirement savings account (RSA)	generally a <i>retail client</i> unless s761G(6)(c) applies.
Other products	The person to whom the advice is provided is a <i>retail client</i> unless: <ul style="list-style-type: none"> (a) the price for the provision of the product or the value of the product is above the prescribed amount (s761G(7)(a) and reg 7.1.18–7.1.26); (b) the advice is provided for use in connection with a business that is not a small business (s761G(12)); (c) the client has net assets or net income in excess of the prescribed amounts (s761G(7)(c) and reg 7.1.28, 7.6.02AB and 7.6.02AC); or (d) the client is a professional investor (e.g. a licensee or APRA-regulated body) (s761G(7)(d) and reg 7.6.02E).

What obligations apply under Pt 7.7 to the provision of personal advice and general advice?

RG 175.22 The following table sets out the key obligations on the providing entity under Pt 7.7 for the provision of personal advice and general advice to retail clients.

Key obligation	Does it apply to personal advice?	Does it apply to general advice?
Prepare and provide an FSG: see Section B	Yes	Yes
Ensure that a general advice warning is given to the client (s949A): see RG 175.23	No	Yes
Prepare and provide suitable personal advice: see Section C	Yes	No
Where it is the case, warn the client that the personal advice is based on incomplete or inaccurate information (s945B): see RG 175.109	Yes	No
Prepare and provide an SOA: see Section D	Yes	No

Note: There are some exemptions from the requirement to provide an FSG (see RG 175.61–RG 175.63), give a general advice warning (see reg 7.7.20) and provide an SOA (see RG 175.151 and RG 175.163–RG 175.165).

RG 175.23 Under s949A, whenever general advice is provided to a retail client, the providing entity must warn the client that:

- (a) the advice has been prepared without taking into account the client's objectives, financial situation or needs;
- (b) the client should therefore consider the appropriateness of the advice, in the light of their own objectives, financial situation or needs, before acting on the advice; and
- (c) if the advice relates to the acquisition or possible acquisition of a particular financial product, the client should obtain a copy of and consider the Product Disclosure Statement (PDS) for that product before making any decision.

Note 1: We have granted relief to simplify the warning where oral general advice is provided to a retail client. Under the relief, a warning only needs to be given once in any telephone conversation or face-to-face meeting where general advice is provided to a retail client. See Class Order [CO 05/1195] *Simplified warning for oral general advice* and Information Release [IR 05/61] *ASIC announces simpler warnings for oral general advice*.

Note 2: We have granted conditional relief so that no general advice warning is required where a product issuer gives general financial product advice in advertisements in the media or on billboards or posters. Instead, product issuers only need to include a statement in their advertisement that a person should consider whether the financial product is appropriate for them and comply with the advertising requirements in s1081A or 734: see Class Order [CO 05/835] *General advice in advertising* and Information Release [IR 05/47] *ASIC grants relief for advertising by product issuers*.

What other obligations apply under the law to the provision of financial product advice?

RG 175.24 Other sections of the Corporations Act apart from Pt 7.7 may also apply to the provision of financial product advice, such as Div 2 of Pt 7.10 dealing with prohibited conduct relating to financial products and financial services. Advisers must also avoid contravening the *Australian Securities and Investments Commission Act 2001* (ASIC Act) when providing advice (e.g. s12DA, which prohibits misleading or deceptive conduct). Part 7.9 of the Corporations Act imposes obligations on the provision of PDSs and Short-Form PDSs.

RG 175.25 Advisers should be aware that common law obligations might also apply to the provision of advice. Depending on the context in which the advice is given, these obligations may include a duty to:

- (a) disclose any conflicts of interest that may affect the advice they provide; and

Note: Licensees are subject to a statutory obligation to manage conflicts of interest under s912A(1)(aa). For guidance on compliance with the statutory obligation, see RG 181).

- (b) adopt due care, diligence and competence in preparing advice.

RG 175.26 A failure to comply with any of the obligations relating to the provision of advice (including common law obligations) may mean, among other things, that the licensee has failed to comply with its obligation to act ‘efficiently, honestly and fairly’: s912A(1)(a).

RG 175.27 A failure to comply with any of the licensee’s obligations may give ASIC grounds for exercising our administrative powers to revoke or suspend a licence after a hearing: s915C.

RG 175.28 A banning order may be issued against a person (whether or not they are a licensee, and whether they are an individual or a body corporate), including where the person has contravened a financial services law (as defined in s761A), which includes (but is not limited to) Pt 7.7 and the ASIC Act.

RG 175.29 Where financial services (including financial product advice) are provided to retail clients, there is an implied warranty under the ASIC Act that:

- (a) the financial services will be rendered with due care and skill; and
- (b) where the purpose for which the financial services are being obtained is made known, the financial services will be reasonably fit for that purpose (s12ED, ASIC Act).

B Preparing and providing a Financial Services Guide (FSG)

What this section is about

RG 175.30 A Financial Services Guide (FSG) is a document that helps retail clients decide whether to obtain financial services from the providing entity.

RG 175.31 Retail clients may receive a number of different documents for a financial product transaction (e.g. buying a financial product). Each document has its own purpose and relates to a different stage of the transaction process, which can be characterised, from the client's perspective, as:

- (a) what financial service am I getting? (disclosure is in an FSG);
- (b) what advice am I getting? (disclosure is in an SOA) if it is personal advice: see Section D);
- (c) what financial product am I buying? (disclosure is in a PDS or Short-Form PDS, except where the product is a security, such as a share or debenture).

Note 1: For more information on how the three disclosure documents interact, see Schedules 1 and 2 to RG 168.

Note 2: PDSs are regulated under Pt 7.9. This guide does not contain guidance on PDSs. For guidance on PDSs, see RG 168. Short-Form PDSs are regulated under Schedule 10BA of the Corporations Regulations. This guide does not contain guidance on Short-Form PDSs.

RG 175.32 The obligation to prepare and provide an FSG applies to both general advice and personal advice. It also applies where other types of financial service are provided. This guide generally considers the FSG requirements only as they relate to the provision of financial product advice.

RG 175.33 The policy in this section considers:

- (a) the information about remuneration, commissions and other benefits that must be included in the FSG

see RG 175.37–RG 175.41 and RG 175.50–RG 175.55

- (b) the FSG record-keeping obligations we will impose on licensees

see RG 175.42 and RG 175.56–RG 175.57A

- (c) the relief we have given from the FSG obligations to secondary service providers

see RG 175.42A–RG 175.42B and RG 175.57B–[PS175.57C .

RG 175.34 This section also explains:

(a) when you must provide an FSG

see RG 175.58–RG 175.65

(b) how you must provide an FSG

see RG 175.66–RG 175.68

(c) when you can combine an FSG with a PDS

see RG 175.68A–RG 175.68C

(d) what you must include in an FSG

see RG 175.69–RG 175.73

(e) what other requirements apply to FSGs

see RG 175.74–RG 175.78.

RG 175.35 This section tells you how we will administer the law. Providing entities must determine and comply with their legal obligations, including those arising under Pt 7.7.

Our policy

RG 175.36 Deleted.

What information about remuneration, commissions and other benefits must be included in the FSG?

RG 175.37 Subject to RG 175.40, the amount of remuneration, commission or other benefits attributable to the financial services provided by the providing entity that is to be paid to the providing entity and other persons specified in s942B(2)(e) or 942C(2)(f) must be stated in the FSG where this can be ascertained at the time the FSG is given to the client: see reg 7.7.04(3) and 7.7.07(3). Whether this can be ascertained depends on the circumstances.

RG 175.38 Where it is not possible to ascertain an amount of remuneration, commission or other benefit ('benefit') payable to a particular person that is attributable to the financial services provided by the providing entity, then the information required to be stated in the FSG will depend on whether the providing entity reasonably believes that personal advice will be or is likely to be provided to the client: see reg 7.7.04(3) and (4) and 7.7.07(3) and (4). For further details about the requirements that apply to the disclosure of the

amount remuneration, commission or other benefit in a FSG, see RG 175.50–RG 175.55.

RG 175.39 Ranges, rates, comparisons, simple tables and formulas should normally be included in the FSG to ensure that the information is presented in a clear, concise and effective manner. To comply with the law it is insufficient to merely state in the FSG that a benefit will or may be received and that clients can ask for further details to be provided.

RG 175.40 We will not administer the law as if it generally requires the disclosure of the actual amount, range or rate of the annual salary of the providing entity (or other persons specified in s942B(2)(e) or 942C(2)(f)) in the FSG. Rather, it will generally be sufficient if the FSG discloses the fact that an annual salary is paid, together with a general description of the factors (if any) that will influence its amount.

RG 175.41 Remuneration, commission or other benefits do not need to be disclosed in the FSG under s942B(2)(e) or 942C(2)(f) where they are not attributable to the financial services provided by the providing entity (i.e. where there is no causal connection between the provision of the financial product advice, or other financial service, and the payment of the benefit).

Note: For example, payments by product issuers to the licensee to perform claims-handling services may not need to be disclosed in the FSG (whether such payments need to be disclosed in the SOA is a separate matter). See, reg 7.7.04(3)–(5) and 7.7.07(3)–(5).

What FSG record-keeping obligations will we impose?

RG 175.42 We will impose a licence condition requiring licensees to:

- (a) keep (or cause to be kept) a copy of any FSG (including any supplementary FSG) provided by the licensee (or by any authorised representative of the licensee) for the period commencing on the date of the FSG and finishing no earlier than seven years after the date a copy of that FSG is last provided to a retail client; and
- (b) establish and maintain measures that ensure, as far as is reasonably practicable, that the licensee and its representatives comply with their obligation to give clients an FSG as and when required. Licensees must keep records about how these measures are implemented and monitored.

Note: For details of these record-keeping licence conditions, see Pro Forma 209 *Australian financial services licence conditions* [PF 209], condition 57.

Secondary services

RG 175.42A We have given class order relief from the FSG obligations to certain providing entities that provide secondary financial services to retail clients. A secondary service provider is a licensee or authorised representative who provides a financial service to a retail client via an intermediary.

RG 175.42B We have given relief to secondary service providers in the following two areas:

- (a) we have granted facilitative relief to allow the author of an ‘expert’s report’ to include its FSG as a separate and clearly identifiable part of the expert’s report that is prepared for inclusion in a third party’s disclosure document (e.g. a prospectus or PDS) provided certain conditions are met (see Class Order [CO 04/1572] *Secondary services: Financial Services Guide relief for experts*); and
- (b) we have granted relief to allow an FSG for a person arranging for the issue of a financial product by a product provider under an intermediary authorisation (s911A(2)(b)) to be included as a separate and clearly identifiable part of the product provider’s PDS provided certain conditions are met (see Class Order [CO 04/1573] *Secondary services: Financial Services Guide relief for arrangers acting under an intermediary authorisation*).

RG 175.42C A providing entity (a *secondary service provider*) is also exempt from the obligation to give an FSG where it enters into a written agreement with another person (*the intermediary*), under which the intermediary agrees to:

- (a) give the secondary services provider’s FSG to the client; or
- (b) inform the client how to obtain the secondary service provider’s FSG: reg 7.7.02(7).

Note: In light of the exemption in reg 7.7.02(7), we have revoked Class Order [CO 04/1571] *Secondary services: General financial services guide relief*. For further information, see Information Release [IR 07/19] *ASIC releases technical updates to financial services related guides and class orders*.

Underlying principles

RG 175.43 The FSG provisions are designed to ensure that retail clients are given sufficient information to enable them to decide whether to obtain financial services from the providing entity. The FSG must clearly state how the providing entity and associates will be paid for the advice.

Explanations

RG 175.44 Deleted.

RG 175.45 Deleted.

RG 175.46 Deleted.

RG 175.47 Deleted.

Can an FSG cover more than one providing entity?

RG 175.48 In our view, the Corporations Act does not prevent a single FSG covering more than one providing entity. For example, a conglomerate group containing several providing entities can prepare a single FSG provided the Corporations Act and regulations are satisfied, including the requirements that the information be presented in a clear, concise and effective manner and not be misleading or deceptive. Likewise, a single FSG may be prepared covering a corporate authorised representative (CAR) as well as all the individual representatives authorised by the CAR provided the Corporations Act and regulations are satisfied, including the requirement for that the information to be presented in a clear, concise and effective manner, and not be misleading or deceptive.

Note: See also reg 7.7.05B.

Can a providing entity have more than one FSG?

RG 175.49 In our view, the Corporations Act does not prevent a providing entity having more than one FSG on issue at any one time, provided each such FSG complies fully with Pt 7.7.

Note: Under reg 7.7.10AA and 7.7.10AB an FSG need only include information about the authorised services that the providing entity will be or is likely to be providing to the client. For further details see: RG 175.69(g)(ii).

What information about remuneration, commissions and other benefits must be included in the FSG?

RG 175.50 The requirements for the disclosure of remuneration, commission and other benefits in the FSG are set out in s942B(2)(e) and 942C(2)(f), reg 7.7.04(2)–(5), 7.7.07(2)–(5) 7.7.04A and 7.7.07A.

RG 175.51 ‘Remuneration, commission and other benefits’ includes, for example, fees payable by the client for the advice, commissions received from product issuers and licensees (including upfront and trailing commissions), and ‘soft’ dollar commissions or benefits.

RG 175.52 Where disclosure is required under s942B(2)(e) or 942C(2)(f), the level of detail about a matter that needs to be included is generally what a person would reasonably require for the purpose of making a decision about whether to acquire financial services from the providing entity as a retail client: s942B(3) and 942C(3). In addition to complying with this general disclosure standard, it is also necessary for the FSG to comply with the more detailed requirements under the regulations. (The regulations are not qualified by the standard about what clients would reasonably require. This is because s942B(3) and 942C(3) are expressed to operate subject to s942B(4) and 942C(4) respectively.)

Note: For example, in appropriate circumstances, an FSG could include the following: 'I will receive an upfront commission from the product issuer where you decide to buy a product I recommend to you. Usually this upfront commission is 5% of the amount you invest, although the exact amount may vary from 3% to 10% depending on the product. For example, for an investment of \$10,000 in a product whose manager pays me 5%, I will receive an upfront commission of \$500. In addition to the upfront commission payment, I will also receive ongoing commissions. The amount I will receive varies depending on the circumstances, although typically I receive an ongoing commission of 1% per annum of the value of your holding in a product (as at 30 June each year) for as long as you hold the product.'

RG 175.53 We will not administer the law as if it generally requires the disclosure of the actual amount, range or rate of the annual salary of the providing entity (or other persons specified in s942B(2)(e) or 942C(2)(f)) in the FSG. We consider that, in practice, it will often be very difficult or impossible to ascertain, at the time the FSG is provided, the actual amount, range or rate of a person's salary that is attributable to all the financial services that person will provide in the future. Further, we do not consider that knowing the actual amount, range or rate of a person's annual salary helps the client decide whether to obtain advice from that person. In contrast, the amount, range or rate of a fee payable by the client, or a commission payable by a product issuer, is relevant to the client's decision.

RG 175.54 The requirement for clear, concise and effective disclosure (s942B(6A) and 942C(6A)) means that all the information about remuneration, commissions and other benefits should be presented in one place in the FSG. The information must be presented in a way that is easy for the client to understand: reg 7.7.04(4) and 7.7.07(4).

RG 175.55 In addition to s942B(2)(e) and 942C(2)(f), reg 7.7.04 and 7.7.07 require the FSG to include information about the remuneration, commissions and other benefits that a person has received or is to receive for referring another person to the licensee or providing entity.

What FSG record-keeping obligations will we impose?

RG 175.56 In our view, the duties imposed by the Corporations Act on licensees require licensees to keep adequate records on their financial services business, and this includes an obligation to keep copies of FSGs. The relevant duties of a licensee that imply such a record-keeping obligation include:

- (a) the duty to ‘do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly’ (s912A(1)(a));
- (b) the duty to have an adequate dispute resolution system (s912A(1)(g)); and
- (c) the obligation to notify ASIC of breaches and assist ASIC with compliance inquiries (s912D and 912E).

Note: See Regulatory Guide 78 *Breach reporting by AFS licensees* (RG 78).

RG 175.57 We have decided to impose a licence condition under s914A on all licensees to clarify that the licensee must keep a copy of an FSG (including any supplementary FSG) for the period commencing on the date of the FSG and finishing no earlier than seven years after the date a copy of that FSG is last provided to a retail client. It is not necessary to keep a separate copy of the FSG on each client file. Where the same FSG is given numerous times by or on behalf of the licensee, the licensee should keep at least one copy of the FSG used, together with a record of the period of time during which the FSG was being used. After a new FSG or a supplementary FSG is used, a copy of that new FSG or supplementary FSG must also be retained and appropriate records kept.

RG 175.57A Licensees must:

- (a) take reasonable steps to ensure that they and their representatives comply with their obligation to give clients an FSG as and when required; and
- (b) keep records about how these measures are implemented and monitored.

These records must be kept for at least seven years. Records may be kept electronically.

Note: For details of these record-keeping licence conditions, see [PF 209], condition 57.

Secondary services

RG 175.57B Under the Corporations Act, an FSG may be required where a financial service is provided to a retail client via an intermediary

(secondary service). A financial service that is a secondary service may, or is likely to be, provided in the following circumstances:

- (a) where you cause or authorises financial product advice to be given or directed to a retail client (within the meaning of s52). In our view, you are likely to be providing a secondary service if:
 - (i) you know (or should know) that the advice or any part of it will be passed on to a third party (the recipient); and
 - (ii) the advice is passed on and attributed to you;

Note: You does not authorise the provision of advice by mere inactivity if you did not know or have reason to suspect that the advice might be passed on and attributed to you (*University of New South Wales v Moorhouse & Angus & Robertson (Publishers) Pty Ltd* (1975) 133 CLR 1 at pp. 12–14 per Gibbs J). If the intermediary provides financial product advice to the retail client as its own, without attributing it to you, it will not be financial product advice provided by you to the retail client. This is the case even if the advice provided by you to the intermediary helped that intermediary to formulate its own advice.

- (b) where you deal (s766C) in a financial product by issuing a financial product to a retail client via an intermediary;
- (c) where you deal in a financial product by applying for, acquiring, varying or disposing of a financial product on behalf of retail clients via an intermediary;
- (d) where you hold financial products in trust for a retail client of an intermediary (instead of in trust for the intermediary) under an arrangement with that intermediary who has an arrangement with the retail client, you will be providing a custodial or depository service to the retail client: s766E.

Note: A secondary service is not provided where you hold financial products in trust for the intermediary (instead of in trust for their retail client) because you will be providing a custodial or depository service to the intermediary, and not to their retail client.

RG 175.57C We recognise that there may be practical difficulties in providing an FSG in cases where the providing entity does not have a direct relationship with the retail client. There are a number of ways in which you as the providing entity can overcome this practical difficulty, i.e. by:

- (a) relying on ASIC class order relief. For further information about our class order relief, see RG 175.42A–RG 175.42B;
- (b) arranging for the intermediary to give your FSG to the retail client;
- (c) entering into a written agreement with the intermediary and arranging for the intermediary to either give your FSG to the

retail client or inform the client about how to obtain yourthe FSG, see RG 175.42C and reg 7.7.06(2);

- (d) structuring your relationship with the intermediary in such a way that you avoid providing a secondary service to the retail client;
- (e) including requirements in your agreement with the intermediary for them to provide you with address details of the retail client—the secondary service provider could then provide its FSG to that retail client; or
- (f) preparing a combined FSG with the intermediary incorporating information about the financial service that you each provide to the retail client.

Understanding your obligations

When must you provide an FSG?

RG 175.58 Generally, providing entities must give an FSG to a client as soon as practicable after it becomes apparent to the providing entity that a financial service will be, or is likely to be, provided to that client and, in any event, must give an FSG to the client before a financial service is provided: s941A, 941B and 941D(1). However, in some cases an FSG may be given after a financial service has been provided (see RG 175.59–RG 175.60), and in other cases an FSG does not need to be given at all: see RG 175.61–RG 175.63.

Note: See s941B, which requires an authorised representative to provide an FSG covering each of its authorising licensees. See also, reg 7.7.10AA and 7.7.10AB, which allows an FSG to be tailored to the services that a providing entity will or is likely to provide to the retail client.

Delayed provision of FSGs in time critical cases

RG 175.59 An FSG may be given *after* a financial service has been provided in ‘time critical cases’—i.e. where:

- (a) the client expressly instructs or requests that the financial service be provided immediately, or by a specified time; and
- (b) it is not reasonably practicable to provide the client with an FSG before that financial service is provided as so instructed (s941D(2)).

In such cases, the FSG must be provided as soon as practicable after that financial service has been provided and, at the latest (but subject to s940B) within five days of providing that service: s941D(4).

However, the information in s941D(3) must be provided before the financial service is provided.

Note: Section 941D(3) requires a statement to be given about certain matters including remuneration, commission and other benefits as well as associations.

RG 175.60 For example, where the client expressly instructs the adviser over the telephone to provide advice immediately, the adviser may be able to rely on the ‘time critical’ exception and provide advice to the client without first giving the client an FSG, but only if:

- (a) an FSG is given to the client as soon as practicable but no later than five days after the advice is provided; and
- (b) the information mentioned in s941D(3) is given to the client before the advice is provided.

Note 1: An FSG does not need to be provided to an existing client of the providing entity unless and until a financial service is provided to that client. The receipt of trailing commissions for financial products held by an existing client does not, of itself, give rise to an obligation to provide an FSG to that client; however, an FSG may need to be provided where a further financial service is provided to that client.

Note 2: The client need not actually state that the service is ‘time critical’ from the client’s perspective. It is enough that the client requests or instructs that the service be provided immediately or by a specified time.

Where an FSG does not need to be provided

RG 175.61 An FSG is not required to be given to a client in certain circumstances, including where:

- (a) the client is not a retail client;
- (aa) the financial service is a recommendation, sale or issue situation and the providing entity gives to the client a PDS (or Short-Form PDS) and a ‘statement’ that together contain all of the information that an FSG would be required to contain (reg 7.7.02A);
- (b) the financial service relates to a cash management trust, basic deposit products, non-cash payment products related to a basic deposit product or travellers’ cheques (provided the information mentioned in s941C(7) is provided) (s941C(6) and reg 7.7.02(1));
- (c) the financial service is general advice provided in a public forum (but only if the information mentioned in s941C(5) is given to the client before the advice is provided) (s941C(4) and reg 7.7.02);
- (d) the financial service is general advice about the issue or distribution of financial products that is not provided in a meeting and where certain other requirements (which vary depending on whether the advice is provided during a telephone call or not) are satisfied (reg 7.7.02(4));

- (da) where the financial service is general advice about the issue or distribution of financial products that is provided in a telephone call to an existing client and where certain other requirements are satisfied (reg 7.7.02(4) and (4A)); or
- (e) no financial service is provided to the person.

Note: Where an FSG is issued about a range of financial services, certain information about financial services in relation to basic deposit products, non-cash payment products related to a basic deposit product or travellers' cheques does not have to be included: see reg 7.7.05C.

RG 175.62 An FSG does not need to be given to a client if the client has already received an FSG that contains all the information that would be required to be included in an FSG if one were given for that advice: s941C(1). This means, for example, that an FSG does not need to be given to a client each time advice is provided to that client where the FSG information remains unchanged. If the FSG information changes, a new FSG or a supplementary FSG (see Subdiv C, Div 2) must generally be given to the client before further financial services can be provided: s941F.

RG 175.63 The providing entity will not contravene the Corporations Act by failing to give an FSG where there is 'no reasonable opportunity' to do so: s940B. For example, consider the case where it becomes apparent to a providing entity that general advice is likely to be provided to a retail client. The providing entity then asks the client for his or her postal or electronic address. If the client refuses to provide his or her address to the providing entity, a failure to provide an FSG is unlikely to contravene the Corporations Act. Further, where general advice is broadly distributed (e.g. by media release), there may be no reasonable opportunity to provide an FSG. We do not expect that s940B would be relevant to the provision of personal advice.

The importance of timely provision of FSGs

RG 175.64 An FSG contains important information a retail client should read and understand before deciding whether to obtain financial services from a providing entity. Where an FSG is required, we encourage providing entities to:

- (a) provide FSGs in enough time to give retail clients an adequate opportunity to consider the information they contain before deciding whether to obtain financial services from the providing entity; and
- (b) make their FSGs available to potential clients through their publicly available website (if any) and at their offices or branches.

RG 175.65 As a matter of good practice, an FSG should be provided to a client on request (e.g. if the client has lost their FSG). An FSG must be up-to-date at the time it is given to the client: s941E.

How must you provide an FSG?

RG 175.66 Where an FSG is required, it must be provided in printed or electronic form to the client in one of the following ways:

- (a) by giving it to the client, or the client's agent, personally (s940C(1)(a)(i));
- (b) by sending it to the client, or the client's agent, at an address (including an electronic address) or fax number nominated by the client or the client's agent (s940C(1)(a)(ii)); or
- (c) by otherwise making it available to the client, or the client's agent, in a manner agreed between the client, or the client's agent, and the providing entity (s940C(1)(a)(iii)).

RG 175.67 The client's agent cannot be a person who is acting in a capacity mentioned in s940C(6). This includes a person who is acting as a licensee or authorised representative of a licensee. Therefore, a providing entity cannot meet the requirements of the law, for example, by providing an FSG to a licensee who is also the client's agent.

RG 175.68 A providing entity may only rely on the making available method of delivery under s940C(1)(a)(iii) where the method they have chosen is such that they have reasonable grounds to be satisfied that the client has actually received the FSG: reg 7.7.01(2). Therefore, where a providing entity decides to provide an FSG by making it available in a manner agreed to by the client under s940C(1)(a)(iii), as a matter of good practice (and irrespective of any current legal requirement), the providing entity should:

- (a) ensure that the client has positively agreed to having the FSG made available by that means; and
- (b) take reasonable steps to ensure that the FSG will in fact be readily available to the client by that means. For example, where the issuer wishes to provide the FSG to a client by making it available on the issuer's website, the issuer should try to find out whether the client has ready access to the internet before seeking the client's agreement to providing the FSG in that way.

Note 1: As a matter of good practice, the providing entity should also clearly inform the client of the option(s) available for receiving an FSG (e.g. by post or fax).

Note 2: Regulation 7.7.01(3) adds that where a document is provided in electronic form it must as far as practicable be presented in a way that allows the person to keep a copy or have ready access to the document in the future.

When can you combine an FSG with a PDS?

RG 175.68A Regulation 7.7.08A prescribes the circumstances in which a PDS or Short-Form PDS and an FSG can be combined under s942DA of the Corporations Act. The documents can be combined if:

- (a) the providing entity for the financial service and the product issuer are the same person;
- (b) the document is divided into two separate parts—identifiable as a fully compliant FSG and a fully compliant PDS or Short-Form PDS;
- (c) the document is titled ‘Combined Financial Services Guide and Product Disclosure Statement’ or ‘Combined Financial Services Guide and Short-Form Product Disclosure Statement’ at or near the front; and
- (d) the document is provided to a client at the earlier of the required time for an FSG or PDS and Short-Form PDS.

Note: Section 1017K applies s942DA, 1013M and reg 7.7.08A to the Short-Form PDS (Schedule 10BA).

RG 175.68B Within the combined document, the individual FSG and PDS or Short-Form PDS parts of the document can make cross-references to each other. However, cross-references within the combined document must:

- (a) be clear, concise and effective; and
- (b) not make the overall document misleading or deceptive.

RG 175.68C Regulation 7.7.08A applies further conditions to those in RG 175.68A when an FSG is combined with a PDS or Short-Form PDS. For example, the combined document must prominently disclose the identity of the relationship between, and liabilities of, the providing entity and the product issuer.

Note 1: Section 947E states that an FSG cannot be combined with an SOA.

Note 2: A PDS and Short-Form PDS cannot be combined with an SOA: s947E and 1017K, which applies s947E to the Short-Form PDS (Schedule 10BA).

What must you include in an FSG?

RG 175.69 An FSG must comply with the requirements set out in the Corporations Act and regulations, and must include all of the following:

- (a) the title ‘Financial Services Guide’ on the cover of, or at or near the front of, the document (s942A);
- (b) the date of the FSG (s942B(5) and 942C(5));

- (c) the name and contact details of the providing entity (s912F and reg 7.6.01C(1)(a); s942B(2)(a) and 942C(2)(a)) and, if the providing entity is a licensee, its licence number;

Note: In certain circumstances the name and contact details of the providing entity do not need to be provided: see reg 7.7.05B.

- (d) the name, contact details and licence number of the authorising licensee(s) (if the providing entity is providing the financial service as an authorised representative) and a statement that the providing entity is the authorised representative of that licensee or those licensees (s942C(2)(c) and reg 7.7.06A);
- (e) the authorised representative number of the providing entity (only if the providing entity is providing the financial service as an authorised representative and where reg 7.7.05B does not apply to the FSG) (reg 7.7.05A);
- (f) a statement of the purpose of the FSG and, if appropriate, information about other disclosure documents that the client may receive (SOA, PDS or Short-Form PDS) together with a description of the purpose of those documents (reg 7.7.03 and 7.7.06);
- (g) information about the kinds of financial services that the providing entity:
 - (i) is authorised to provide (s942B(2)(c) and 942C(2)(d)); or
 - (ii) will be or is likely to be providing to the client (reg 7.7.10AA and 7.7.10AB). Under this option, an FSG does not have to include information about *all* of the financial services that the providing entity is authorised to provide);
- (h) information about the amount of all the remuneration, commission and other benefits that the providing entity (and other persons specified in s942B(2)(e) or 942C(2)(f)) will or reasonably expects to receive in respect of, or that is attributable to, the advice to be provided where this amount can be ascertained at the time the FSG is provided to the client (s942B(2)(e) and 942C(2)(f); reg 7.7.04(3) and 7.7.07(3));
- (i) where the providing entity reasonably believes that personal advice **will** be or is likely to be provided and the amount of the remuneration, commission or other benefits cannot be ascertained at the time the FSG is provided—either particulars or general information about the benefit (including ranges or rates of amounts) and a statement that the method of calculating the amount of the benefit will be disclosed at the time the advice is

provided or as soon as practicable after that time (reg 7.7.04(4)(c) and (d) and 7.7.07(4)(c) and (d);

- (j) where the providing entity reasonably believes that personal advice **will not** be provided and the amount of the remuneration, commission or other benefits cannot be ascertained at the time the FSG is provided—particulars of the remuneration, commission and other benefits (including ranges or rates of amounts) *or* general information about the remuneration, commission and other benefits with a statement that the client can request further particulars (reg 7.7.04(5)(c) and (d) and 7.7.07(5)(c) and (d));(k) details of any associations or relationships that might reasonably be expected to be capable of influencing the providing entity in providing the advice (s942B(2)(f) and 942C(2)(g));
- (l) where the providing entity provides further advice (see reg 7.7.10AE)—certain information about obtaining a record of the advice (s942B(2)(g) and 942C(2)(h); reg 7.7.05, 7.7.08, 7.7.09, 7.7.10AC and 7.7.10AD);

Note: For more detailed guidance, see s946B, reg 7.7.09 and RG 175.163–RG 175.165.

- (m) where the providing entity (or authorising licensee) is a participant in a licensed market or clearing and settlement facility—a statement to that effect (s942B(2)(j) and 942C(2)(k));
- (n) where the providing entity is acting under a binder—certain information about the binder and its significance (s942B(2)(i) and 942C(2)(j)); and

Note: This would generally include an explanation of the circumstances in which the providing entity will be acting under a binder.

- (o) details of the dispute resolution procedures that the licensee has in place (s942B(2)(h) and 942C(2)(i)).

RG 175.70 The level of detail about a matter that needs to be included is generally what a person would reasonably require for the purpose of making a decision about whether to acquire financial services from the providing entity as a retail client: s942B(3) and 942C(3).

RG 175.71 The information contained in an FSG must be worded and presented in a clear, concise and effective manner: s942B(6A) and 942C(6A). An FSG must not include material that is misleading or deceptive. The disclosure of information about remuneration, commission or other benefits to a client in response to a request for more detailed information (e.g. a request for particulars) must be presented in a manner that is easy for the client to understand: reg 7.7.04A(4) and 7.7.07A(4).

Consumer testing

RG 175.72 We encourage licensees and industry associations to develop guidelines and conduct consumer testing of FSGs. This may help licensees to identify whether:

- (a) the FSG is presented in a clear, concise and effective manner;
- (b) the FSG is potentially misleading or deceptive; and
- (c) there is additional information that consumers need.

Good Disclosure Principles

RG 175.73 We consider that providing entities should take into account the Good Disclosure Principles in RG 168 in preparing FSGs: see RG 168.36–RG 168.38 and RG 168.41–RG 168.76.

What other requirements apply to FSGs?

RG 175.74 The information contained in an FSG must be up-to-date as at the time it is given: s941E.

Note: We have provided relief that facilitates the provision of an FSG in time critical situations. Class Order [CO 04/1055] *Information in a Financial Services Guide given in time critical situation* provides that information in an FSG given in a time critical situation need only be up-to-date as at the time the verbal statement in s941D(3) was given to a retail client. See also Information Release [IR 04/46] *ASIC provides relief for financial services guides given in time critical situations* for discussion of this relief.

RG 175.75 An FSG must not describe a person as ‘independent’ unless the requirements of s923A are satisfied. Section 923A restricts the use of certain words, such as ‘independent’, ‘impartial’ and ‘unbiased’.

RG 175.76 It is an offence to provide a defective FSG: s952D and 952E. An FSG may be defective where:

- (a) it contains a misleading or deceptive statement; or
- (b) it omits material required by the Corporations Act or regulations: s952B.

RG 175.77 If an FSG is defective:

- (a) the providing entity (and the authorising licensee) may have committed an offence; and
- (b) an affected person (e.g. a retail client) may take civil action for any loss or damages.

RG 175.78 It is an offence to fail to provide an FSG when one is required: s952C.

International approaches

RG 175.79 Our policy on preparing and providing FSGs takes into consideration equivalent disclosure requirements for general and personal advice in overseas jurisdictions. For example, in the United States, Rule 204–3 under the Investment Advisers Act (‘brochure rule’) requires every investment adviser registered with the Securities and Exchange Commission to deliver to each prospective advisory client a written disclosure statement, or ‘brochure’, describing the adviser’s business practices and educational and business background. An adviser must generally deliver this brochure before entering into any written or oral contract with a client. Other jurisdictions, such as the United Kingdom, Hong Kong and Singapore, require advisers to provide prospective clients with adequate information upon which they are able to make an informed decision as to whether to use the designated financial service.

C Preparing and providing suitable personal advice

What this section is about

RG 175.80 Under the ‘suitability’ or ‘reasonable basis for advice’ rule, where a providing entity provides personal advice to a retail client:

- (a) the providing entity must make reasonable inquiries about the client’s relevant personal circumstances;
- (b) the providing entity must give such consideration to, and conduct such investigation of, the subject matter of the advice as is reasonable in all the circumstances; and
- (c) the advice must be ‘appropriate’ for the client: s945A.

RG 175.81 The ‘suitability’ rule applies to all personal advice, but not to general advice. For a discussion of the difference between general advice and personal advice, see Section A.

RG 175.82 The policy in this section considers:

- (a) the client inquiries that are required to satisfy s945A(1)(a)
see RG 175.85 and RG 175.101–RG 175.110
- (b) the consideration and investigation of the subject matter of the advice that is required to satisfy s945A(1)(b)
see RG 175.86–RG 175.88 and RG 175.111–RG 175.114
- (c) when advice is ‘appropriate’ within the meaning of s945A(1)(c)
see RG 175.89–RG 175.92 and RG 175.115–RG 175.116
- (d) the personal advice record-keeping obligations we will impose on licensees
see RG 175.93–RG 175.94 and RG 175.117–RG 175.118.

RG 175.83 This section tells you how we will administer the law. Providing entities must determine and comply with their legal obligations, including those arising under Pt 7.7.

We will continue to monitor developments

RG 175.84 We will continue to monitor the provision of personal advice to determine whether further ASIC guidance on the suitability rule is required to ensure that the law’s objectives are being met.

Our policy

What client inquiries are required? (s945A(1)(a))

RG 175.85 In administering the law on the client inquiries requirement, we will take into account all the circumstances when determining whether s945A(1)(a) has been satisfied, including the factors in the following table.

Relevant factors	Effect on client inquiries requirement
Potential impact of inappropriate advice on the client	<i>More extensive client inquiries</i> are likely to be necessary where the <i>potential negative impact</i> on the client is likely to be <i>relatively serious</i> if the advice is inappropriate (and the client acts on the advice).
Complexity of the advice	<i>Less extensive client inquiries</i> are likely to be necessary where the advice is for a <i>relatively simple purpose</i> , rather than where the advice involves complex financial products, classes of financial product or strategies (including tax-related strategies).
Financial literacy of the client	The client inquiries requirement will involve attempting to <i>resolve and clarify the client's objectives</i> where the client: <ul style="list-style-type: none"> (a) has limited financial understanding or knowledge; (b) has conflicting objectives; or (c) is confused about their objectives (or has difficulty articulating them).

What consideration and investigation of the subject matter of the advice is required (s945A(1)(b))?

RG 175.86 In administering the law on the consideration and investigation of the subject matter of the advice requirement, we will take into account all the circumstances when determining whether s945A(1)(b) has been satisfied, including the factors in the following table.

Relevant factors	Level of consideration and investigation of the subject matter of the advice
Potential impact of inappropriate advice on the client	<i>More extensive consideration and investigation of the subject matter of the advice</i> is likely to be necessary where the <i>potential negative impact</i> on the client is likely to be <i>relatively serious</i> if the advice is inappropriate (and the client acts on the advice).
Complexity of the advice	<i>Less extensive consideration and investigation of the subject matter of the advice</i> is likely to be necessary

where the advice is for a *relatively simple purpose*, rather than where the advice involves complex financial products, classes of financial product or strategies (including tax-related strategies).

RG 175.87 The providing entity must consider and investigate the financial products, classes of financial product and strategies upon which advice is provided to the client. We do not consider that s945A(1)(b) generally requires *detailed* investigation of financial products, classes of financial product or strategies that the providing entity is not authorised to advise upon. Nevertheless, the providing entity will need to possess such generic knowledge about the broad range of relevant products, classes and strategies commonly available as is necessary to ensure that advice is appropriate. In some cases this may require the providing entity to conduct certain investigations to supplement the knowledge that the providing entity (or individual adviser, where the providing entity is not an individual) will already possess through the training required by Regulatory Guide 146 *Licensing: Training of financial product advisers* (RG 146).

Note: We may supplement our guidance on this issue in the future in light of regulatory and market experience.

RG 175.88 In the case of advice to replace one product with another product (or to switch between investment options within a financial product), we consider that consideration and investigation of both the new product (or option) and the old product (or option) is generally required under s945A(1)(b). This applies where either (or both) the new product or the old product is a financial product for the purposes of Pt 7.7. In addition, s947D may require certain investigations to be conducted.

Note: Section 947D requires the providing entity to make certain inquiries about the costs and benefits of switching (in full or in part) between one financial product and another financial product, and for that information to be included in the SOA: see RG 175.156.

What is ‘appropriate’ advice? (s945A(1)(c))

RG 175.89 In administering the law on the appropriate advice requirement, we will take into account all the circumstances when determining whether s945A(1)(c) has been satisfied, including (but not limited to) whether the advice, if acted upon by the client, would be reasonably likely to satisfy (or fail to satisfy) critical aspects of the client’s relevant personal circumstances (e.g. the client’s need for regular income).

Note: RG 175.104 sets out a non-exhaustive list of matters that will normally constitute the client's relevant personal circumstances in the case of advice on a financial product with an investment component.

RG 175.90 If none of those financial products that the providing entity is authorised to advise upon is appropriate for the client, the providing entity must not recommend that a client buy any financial product.

Note: For example, it would be inappropriate to recommend a savings account to a 20 year old for their retirement savings, even if the providing entity was only authorised to advise on deposit products.

RG 175.91 In the case of advice to replace one product with another product (or to switch between investment options within a product), we consider that the advice will generally be inappropriate if the providing entity knew (or ought reasonably to have known) that the overall benefits likely to result from the new product (or option) would be lower than under the old product (or option). This applies where either (or both) the new product or the old product is a financial product for the purposes of Pt 7.7. Of course, we would be unlikely to reach this view where there are overall cost savings to the client that are likely to override the loss of benefits. The determination of whether there are overall cost savings to the client must take into account all the circumstances, including the cost of the replacement (i.e. making the switch).

RG 175.92 In determining whether the providing entity ought reasonably to have known that the overall benefits likely to result from the new product (or option) would be lower than under the old product (or option), we will take into account all the circumstances, including the training required by RG 146 and the consideration and investigation required by s945A(1)(b) (and s947D, where applicable).

What personal advice record-keeping obligations will we impose?

RG 175.93 We will impose a licence condition requiring licensees to keep (or cause to be kept) records for the following matters for at least seven years from the date that personal advice is provided to a retail client:

- (a) the client's relevant personal circumstances as determined under s945A(1)(a)(i);
- (b) the inquiries made about those relevant personal circumstances as required by s945A(1)(a)(ii);
- (c) the consideration and investigation conducted on the subject matter of the advice (s945A(1)(b)); and

- (d) the advice, including reasons why the advice was considered to be ‘appropriate’ (s945A(1)(c)).

Note: For details of these record-keeping obligations see [PF 209], condition 57.

RG 175.94 This condition does not apply for:

- (a) further advice where a record of the advice is kept in accordance with s946B(3A) (see reg 7.7.09 and 7.7.10AE); or
- (b) personal advice where there is no obligation to provide an SOA (e.g. financial product advice relating to some general insurance products, a cash management trust, a basic deposit product, related non-cash payments and travellers’ cheques).

Underlying principles

RG 175.95 The suitability rule (s945A) is designed to ensure that personal advice provided to retail clients is fit for its purpose.

RG 175.96 To comply with the Corporations Act, personal advice does not need to be ideal, perfect or best, but it must satisfy each of the three elements of the suitability rule:

- (a) the providing entity must make reasonable inquiries about the client’s relevant personal circumstances;
- (b) the providing entity must give such consideration to, and conduct such investigation of, the subject matter of the advice as is reasonable in all the circumstances; and
- (c) the advice must be ‘appropriate’ for the client.

RG 175.97 Although all personal advice must comply with the suitability rule, the client inquiries requirement and the requirement to consider and investigate the subject matter of the advice are ‘scaleable’. ‘Scaleable’ means that these requirements vary depending on the circumstances, including the potential impact of inappropriate advice on the client, the complexity of the advice and the financial literacy of the client.

Explanations

RG 175.98 The CLERP 6 policy proposal paper (1997) explained the rationale of the suitability rule:

‘The suitability rule is designed to address the lack of sophistication of retail investors who, irrespective of the level of risk disclosure, may not be able to adequately analyse their

investment needs or develop strategies to achieve their investment goals.’ (p. 102).

RG 175.99 The Revised Explanatory Memorandum to the Financial Services Reform Bill 2001 described the suitability rule to mean that:

‘...where personal advice is provided to a retail client, the providing entity must have a reasonable basis for that advice. The providing entity is required to ascertain the client’s objectives and their financial situation and needs, investigate and consider the options available to the client, and base the advice on that consideration and investigation.’ (paragraph 12.32).

RG 175.100 Personal advice, by its nature, is likely to be relied on by retail clients who may suffer significant loss if the advice is not of sufficient quality. For this reason, the law imposes a specific obligation on providing entities to give due consideration to the client’s circumstances and the subject matter of the advice, and to ensure that the advice is appropriate. The importance of this obligation is further highlighted by the fact that failure to provide appropriate personal advice is an offence: s945A(1). Further, an affected person (e.g. a retail client) may take civil action for any loss or damages as a result of failure to comply with the suitability rule.

What client inquiries are required (s945A(1)(a))?

RG 175.101 The providing entity must first determine the *relevant personal circumstances* in relation to the advice and then make reasonable inquiries about those relevant personal circumstances: s945A(1)(a).

Note: The client’s relevant personal circumstances are ‘such of the person’s objectives, financial situation and needs as would reasonably be considered to be relevant to the advice’: s761A.

RG 175.102 The obligation to determine the client’s relevant personal circumstances and to make client inquiries cannot be avoided by any notice or disclaimer provided to the client.

RG 175.103 The obligation to determine the client’s relevant personal circumstances and to make client inquiries is ‘scaleable’. ‘Scaleable’ means that it varies depending on the circumstances, including the potential impact of inappropriate advice on the client, the complexity of the advice and the financial literacy of the client. For example, where personal advice is provided for a relatively simple purpose, such as the purchase of car insurance or the opening of a deposit account, less extensive client inquiries are likely to be required than for advice about complex financial products, classes of financial

products or strategies (such as tax-related strategies or higher risk strategies such as the use of margin lending in connection with the purchase of a financial product).

RG 175.104 Where advice relates to financial product(s) *with an investment component*, we consider that the ‘relevant personal circumstances’ of the client will normally include the client’s:

- (a) need for regular income (e.g. retirement income);
- (b) need for capital growth;
- (c) desire to minimise fees and costs;
- (d) tolerance of the risk of capital loss, especially where this is a significant possibility if the advice is followed;
- (e) tolerance of the risk that the advice (if followed) will not produce the expected benefits;
- (f) existing investment portfolio;
- (g) need to be able to readily cash-in the investment;
- (h) capacity to service any loan provided for a financial product; and
- (i) tax position, social security entitlements, family commitments, employment security and expected retirement age.

Note: This is not an exhaustive list. The client’s relevant personal circumstances (as defined in s761A) include any other matter that would reasonably be considered to be relevant to the advice. This would normally encompass any matter that the client indicates is important.

RG 175.105 The nature and extent of the inquiries may vary from client to client. To satisfy the client inquiries requirement in any particular case, the providing entity may need to make inquiries additional to those that they normally make.

RG 175.106 Where client contact is not interactive (e.g. not face-to-face), conducting reasonable inquiries may be more difficult. This is particularly so where the advice is relatively complex or where the client has low levels of financial literacy. In these cases, providing entities will need to consider whether they are able to adequately conduct client inquiries using remote communication methods (e.g. telephone or internet). Of particular importance is the capacity to ask follow-up questions to ensure that the client understood earlier questions and that the information received by the providing entity is relevant and complete.

RG 175.107 Where advice is provided to an existing client, the client inquiries requirement under s945A(1)(a)(ii) will generally be satisfied if the providing entity makes reasonable inquiries about whether the

information already held about the client's relevant personal circumstances is up-to-date and complete.

RG 175.108 The Revised Explanatory Memorandum to the Financial Services Reform Bill 2001 states:

'The level of inquiry and analysis required will vary from situation to situation and will depend on the advice requested by the client. The providing entity need only obtain and analyse sufficient information about the client to provide the advice requested or proffered. So, for example, a comprehensive analysis of the client's full financial position may not be necessary where the client has sought personal advice on a specific product.' (paragraph 12.34)

What warnings must be provided where advice is based on incomplete information?

RG 175.109 Personal advice may be provided where the providing entity makes reasonable inquiries into the client's relevant personal circumstances, even if the client has not, in fact, provided all the information which the providing entity has sought (subject to s945A(1)(b) and (c) being satisfied in relation to the advice). If a providing entity knows or ought to know that personal advice is based on incomplete or inaccurate information, the providing entity must provide a warning to the client under s945B. The giving of a warning does not, however, relieve the providing entity from the obligation to make reasonable inquiries.

Note: The interaction between the suitability rule and the warnings a providing entity must give a client is explained in the CLERP 6 policy proposal paper (1997): 'An intermediary which provides personal recommendations should make appropriate inquiries and provide warnings to a client who declines to disclose relevant information.' (p. 103)

What inquiries about environmental, social or ethical considerations should be made?

RG 175.110 Providing entities must form their own view about how far s945A requires inquiries to be made into the client's attitude to environmental, social or ethical considerations. However, as a matter of good practice (and irrespective of any current legal requirement), providing entities should seek to ascertain whether environmental, social or ethical considerations are important to the client and, if they are, conduct reasonable inquiries about them.

What consideration and investigation of the subject matter of the advice is required (s945A(1)(b))?

RG 175.111 ‘The providing entity must, having regard to the information obtained from the client about their relevant personal circumstances, give such consideration to, and conduct such investigation of, the subject matter of the advice as is reasonable in all the circumstances’: s945A(1)(b).

RG 175.112 The obligation to consider and investigate the subject matter of the advice cannot be avoided by any notice or disclaimer provided to the client.

RG 175.113 The obligation to consider and investigate the subject matter of the advice is ‘scaleable’. ‘Scaleable’ means that it varies depending on the circumstances, including whether the adviser has previously provided advice to the client, the potential impact of inappropriate advice on the client, the complexity of the advice and the financial literacy of the client. For example, where personal advice is provided for a relatively simple purpose, such as the purchase of car insurance or the opening of a deposit account, less extensive consideration and investigation of the subject matter of the advice is likely to be required than for advice about complex financial products, classes of financial products or strategies (such as tax-related strategies or higher risk strategies such as the use of margin lending in connection with the purchase of a financial product).

RG 175.114 The obligation rests on the providing entity to investigate the subject matter of the advice. Depending on the circumstances, it may be reasonable for the providing entity to rely on information supplied by external research houses. A providing entity relying on such information should take reasonable steps to ensure that the research is accurate, complete, reliable and up-to-date.

What is ‘appropriate’ advice (s945A(1)(c))?

RG 175.115 Personal advice must be ‘appropriate’ for the client: s945A(1)(c). Advice is appropriate if it is fit for its purpose (i.e. if it satisfies the client’s relevant personal circumstances). Personal advice does not need to be ideal, perfect or best to comply with the Corporations Act.

Note: RG 175.104 sets out a non-exhaustive list of matters that will normally constitute the client’s relevant personal circumstances in the case of advice on a financial product with an investment component.

RG 175.116 The obligation to ensure that personal advice is appropriate cannot be avoided by any notice or disclaimer provided to the client.

What personal advice record-keeping obligations will we impose?

RG 175.117 In our view, the duties imposed by the Corporations Act require licensees to keep adequate records on their financial services business, and this includes an obligation to keep records of personal advice. The relevant duties of a licensee that imply such a record-keeping obligation include:

- (a) the duty to ‘do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly’ (s912A(1)(a));
- (b) the duty to have an adequate dispute resolution system (s912A(1)(g)); and
- (c) the obligation to notify ASIC of significant breaches, or likely significant breaches, and to assist ASIC with compliance inquiries (s912D and s912E).

Note 1: See also RG 78 *Breach reporting by AFS licensees: An ASIC guide* (May 2006).

RG 175.117A An SOA is no longer required for personal advice about general insurance products (except for personal advice about sickness and accident insurance and consumer credit insurance): reg 7.7.10. Consistent with the policy in RG 175.117, we consider that licensees would need to keep adequate records when providing personal advice about these general insurance products to meet the licensing obligations we have referred to. This is also consistent with the legislative intention. For further information, see pages 27 to 28 of the Explanatory Statement to the FSR refinements regulations.

RG 175.118 We will impose a licence condition on all licensees under s914A to clarify that certain records must be kept for at least seven years from the date that the advice is provided. These records may be kept electronically. This condition applies to all personal advice other than:

- (a) further advice where a record of the advice is kept in accordance with reg 7.7.10AE and s946B(3A) (see reg 7.7.09); and
- (b) personal advice where there is no obligation to provide an SOA (e.g. financial product advice relating to a cash management trust, a basic deposit product, related non-cash payments and travellers’ cheques).

Note: For details of these record-keeping obligations, see [PF 209], condition 57.

International approaches

RG 175.119 Our policy on preparing and providing suitable personal advice takes into consideration equivalent requirements for suitability in overseas jurisdictions. For example, in the United Kingdom, the Financial Services Authority has a ‘know your customer’ and ‘suitability’ test in the *Conduct of Business Sourcebook* (COB 5.2 and COB 5.3 respectively). These tests are based on the principle of relationships of trust and require a firm to take reasonable care to ensure the suitability of its advice. The nature of the steps firms need to take will vary greatly, depending on the needs and priorities of the private customer, the type of investment or service being offered, the nature of the relationship between the firm and the private customer and, in particular, whether the firm is giving a personal recommendation.

D Preparing and providing a Statement of Advice (SOA)

What this section is about

RG 175.120 A Statement of Advice (SOA) is a document that helps a retail client understand, and decide whether to rely on, personal advice.

RG 175.121 An SOA may be the means by which personal advice is provided to a client or, alternatively, it may be a separate record of advice that has been previously provided (e.g. by telephone).

RG 175.122 The obligation to prepare and provide an SOA applies to most personal advice, but does not apply to general advice. For a discussion of the difference between general advice and personal advice, see Section A.

RG 175.123 The policy in this section considers:

(a) what the SOA must disclose about the advice and the basis of the advice

see RG 175.126 and RG 175.135–RG 175.136

(b) what information about remuneration, commission and other benefits must be included in the SOA

see RG 175.128–RG 175.132 and RG 175.137–RG 175.146

(c) what SOA record-keeping obligations we will impose on licensees

see RG 175.133 and RG 175.147–RG 175.148.

RG 175.124 This section also explains:

(a) when you must provide an SOA

see RG 175.149–RG 175.152

(b) what you must include in an SOA

see RG 175.153–RG 175.158

(c) what other requirements apply to SOAs

see RG 175.159–RG 175.162A

(d) what obligations apply to further advice

see RG 175.163–RG 175.165.

RG 175.125 This section tells you how we will administer the law. Providing entities must determine and comply with their legal obligations, including those arising under Pt 7.7.

Our policy

What must the SOA disclose about the advice and the basis of the advice?

RG 175.126 In administering the law, we will take the view that an SOA should:

- (a) clearly and unambiguously set out the providing entity's personal advice; and

Note: For example, personal advice about superannuation should set out precisely the fund and investment option recommended.

- (b) set out in easy-to-understand language, in one place, the reasoning which led to the advice, including:
 - (i) subject to RG 175.127, a concise summary of the client's relevant personal circumstances as ascertained after making the reasonable inquiries required by s945A(1)(a);
 - (ii) a generic description of the range of financial products, classes of financial product or strategies considered and investigated within the meaning of s945A(1)(b)); and
 - (iii) a concise statement of the reasons why the advice was considered appropriate, including the advantages and disadvantages for the client if the advice is acted on.

Note 1: The SOA should set out the main risks of the advice not satisfying critical aspects of the client's relevant personal circumstances.

Note 2: In the case of advice to replace one product with another product (or to switch between investment options within a product), the SOA should include a concise summary of the costs and benefits of making the switch. This applies to personal advice where either (or both) the new product or the old product is a financial product for the purposes of Pt 7.7. This obligation is additional to the more specific obligations imposed by s947D in certain circumstances.

Note 3: For further information, see Information Release [IR 04/61] *ASIC provides guidance on statements of advice*. However, [IR 04/61] should be read subject to the material in this guide.

Incorporation by reference

RG 175.127 We have provided relief to permit a providing entity to give a client a Statement of Additional Advice (SOAA) instead of an SOA in certain circumstances. An SOAA is a disclosure document that must comply with the SOA requirements of Pt 7.7 except that it can incorporate by reference information from one or more documents that have previously been provided to the client. For further information about preparing and providing an SOAA, see Section E.

What information about remuneration, commission and other benefits must be included in the SOA?

When is disclosure of remuneration, commission and other benefits required?

RG 175.128 In administering the law (and subject to RG 175.129–RG 175.130) we will take the view that the SOA should normally include information about all the remuneration, commission and other benefits that the providing entity (and other persons specified in s947B(2)(d) or 947C(2)(e)) will, or reasonably expects to, receive for the advice, except where:

- (a) the payment of, or the amount of, the remuneration, commission or other benefit does not depend in any way on whether the client acts on the advice (e.g. an hourly fee paid by the client that is payable irrespective of whether the client acts on the advice);
- (b) the remuneration, commission or other benefit is rebated in full to the client; or
- (c) the providing entity was not, and could not reasonably be expected to have been, aware of the remuneration, commission or other benefit.

When is disclosure of 'back office' payments required?

RG 175.129 'Back office' payments need to be disclosed in the SOA where they might reasonably be expected to be or have been capable of influencing the providing entity in providing the advice. A back office payment is a payment for services provided to a product issuer, such as claims handling services and other administrative services, that would otherwise be performed by the issuer itself. Payments for office fitouts or equipment or conference attendances are not back office payments (and will normally need to be disclosed in the SOA).

RG 175.130 We expect that back office payments will normally need to be disclosed, particularly where they are not provided under an arm's length agreement between the issuer and the providing entity. A providing entity that forms the view that a back office payment does not need to be disclosed in the SOA should maintain records to enable it to demonstrate why it has formed that view. We consider that these records should show, for each back office payment not disclosed in the SOA:

- (a) who made the payment;
- (b) who received the payment;
- (c) the date of the payment; and
- (d) the amount of the payment.

How should remuneration, commission and other benefits be disclosed?

RG 175.130A Under the dollar disclosure provisions, various costs, fees, charges, expenses, benefits and interests must be stated as amounts in dollars in SOAs, PDSs and periodic statements (including exit statements). The following information about various costs, fees, charges, expenses, benefits and interests must be disclosed as amounts in dollars in an SOA (except where ASIC has provided relief):

- (a) for SOAs prepared by licensees—the information required by s942B(2)(d), 941B(2)(e)(i) and 947D(2)(a);
- (b) for SOAs prepared by authorised representatives—the information required by s942C(2)(e), 942C(2)(f)(i) and 942D(2)(a).

Note 1: For further information about complying with the dollar disclosure provisions including any ASIC relief, see RG 182. See also Information Release [IR 04/67] *ASIC issues dollar disclosure policy* and Class Orders [CO 04/1430] *Dollar disclosure: Unknown facts and circumstances*, [CO 04/1431] *Dollar disclosure: Costs of derivatives, foreign exchange contracts, general insurance products and life insurance risk products*, [CO 04/1432] *Dollar disclosure: Interest payable on deposit products*, [CO 04/1433] *Dollar disclosure: Non-monetary benefits and interests*, [CO 04/1434] *Dollar disclosure: Transitional relief* and [CO 04/1435] *Dollar disclosure: Amounts denominated in foreign currency*.

Note 2: Under the Corporations Act, the dollar disclosure provisions commenced on 1 January 2005. We granted relief that extended the transition to the dollar disclosure provisions to 1 July 2005: see [IR 04/67] and [CO 04/1434].

RG 175.131 In administering the law, we will take the view that the SOA should set out, in easy to understand language in one place, the circumstances in which the remuneration, commission and benefits ('benefits') required to be disclosed are expected to be received, the person(s) who would pay such benefits, the person(s) expected to receive such benefits and the source(s) of such benefits. Information about benefits must be disclosed in accordance with the dollar disclosure provisions.

Note: See RG 182 and [IR 04/67]. For guidance about complying with SOA disclosure requirements, see also Information Release [IR 04/61].

RG 175.131A In each case, the disclosure must be presented in a manner that is easy for the client to understand.

RG 175.132 Subject to the requirements of the dollar disclosure provisions, ranges, rates, comparisons, simple tables and formulas should normally be included in the SOA to ensure that the information is presented in a clear, concise and effective manner. It is insufficient

to merely state in the SOA that a benefit will or may be received and that clients can ask for further details to be provided.

What SOA record-keeping obligations will we impose on licensees?

RG 175.133 We will impose a licence condition requiring licensees to keep (or cause to be kept) a copy of every SOA provided by the licensee or by any authorised representative of the licensee to a retail client for at least seven years from the date the SOA is provided to the client.

Note: For details of these record-keeping obligations, see [PF 209], condition 57.

Underlying principles

RG 175.134 The SOA provisions are designed to ensure that retail clients are given sufficient information to enable them to understand, and decide whether to rely on, personal advice provided to them. The SOA must clearly and unambiguously set out the providing entity's advice as well as the reasoning that led to that advice. It must also clearly identify all conflicts of interest that may affect the advice.

Explanations

What must the SOA disclose about the advice and the basis of the advice?

RG 175.135 An SOA must:

- (a) disclose the advice (s947B(2)(a) and 947C(2)(a));
- (b) disclose the basis of the advice (s947B(2)(b) and 947C(2)(b));
- (c) include a level of detail about a matter that is generally what a person would reasonably require for the purpose of making a decision about whether to act on the advice as a retail client (s947B(3) and 947C(3)); and
- (d) be worded and presented in a clear, concise and effective manner (s947B(6) and 947C(6)).

Note: ASIC has issued further guidance about what information needs to be included in an SOA about the basis for the advice: see [IR 04/61].

RG 175.136 Where the providing entity gives a warning to the client under s945B about the advice, as a matter of good practice (and irrespective of any current legal requirement), the SOA should contain a general indication of those aspects of the client's relevant personal circumstances that the providing entity believes are incomplete or inaccurate.

What information about remuneration, commission and other benefits must be included in the SOA?

When is disclosure of remuneration, commission and other benefits required?

RG 175.137 The requirements for the disclosure of remuneration, commission and other benefits in the SOA are set out in s947B(2)(d), s947B(2)(h), 947C(2)(e), 947C(2)(i), 947D(2)(d), 1013D(1)(m), 1017D(5A) and reg 7.7.10A–7.7.11, 7.7.11B–7.7.13B, 7.9.15A–7.9.15C, 7.9.19A–7.9.19B, 7.9.20A–7.9.20B, 7.9.74A–7.9.75 and 7.9.75C–7.9.75D.

RG 175.138 ‘Remuneration, commission and other benefits’ includes, for example, all upfront commissions, trailing commissions and ‘soft’ dollar commissions or benefits.

RG 175.139 Even where the providing entity (or other persons referred to in s947B(2)(d) or 947C(2)(e)) receives the same level of commission for all the financial products it recommends, the commission received should normally be disclosed in the SOA. This is because the receipt of the commission might reasonably be expected to be or have been capable of influencing the providing entity in deciding whether to recommend that the client purchase any financial product.

RG 175.140 The fact that a benefit is difficult or even impossible to rebate to clients does not preclude it from being capable of influencing the providing entity and therefore from needing to be disclosed in the SOA.

When is disclosure of ‘back office’ payments required?

RG 175.141 For ‘back office’ payments as described in RG 175.129, the Explanatory Statement to the Corporations Amendment Regulations 2001 (No 4) states that:

‘... [reg 7.7.11] makes no specific reference to “back office” functions. However, this should not be taken to imply that remuneration, commission or other benefits received for the performance of such functions is not required to be disclosed. It is recognised that the concept of “back office” functions varies depending on the nature of the financial services business. Nevertheless, remuneration received for performing such functions should be treated the same as any other remuneration received, and should be disclosed if it might reasonably be expected to be or have been capable of influencing the providing entity in providing the advice (see paragraph 947B(2)(d) relating to a Statement of Advice given by a financial services licensee, and paragraph 947C(2)(e) relating to a Statement of Advice given by an authorised representative).’

How should remuneration, commission and other benefits be disclosed?

RG 175.142 The dollar disclosure provisions require that various costs, fees, charges, expenses, benefits and interests must be stated as amounts in dollars in SOAs: regs 7.7.11B and 7.7.13–7.7.13B.

Note: For further guidance on the dollar disclosure provisions and ASIC relief, see RG 182.

RG 175.143 The requirement for clear, concise and effective disclosure (s947B(6) and 947C(6)) means that all the information about remuneration, commissions and other benefits should be presented in one place in the SOA. The information must be presented in a way that is easy for the client to understand.

RG 175.144 Where disclosure of a commission is required, the SOA should generally include, among other things, a clear statement of the method of calculating the commission. Where the advice relates to a financial product with an investment component, the SOA should clarify whether the commission is (or is not) related to or dependent on the performance of the product (this should be disclosed as a matter of good practice, whether or not it is required by law).

The importance of conflicts disclosure

RG 175.145 The CLERP 6 policy proposal paper (1997) explains the importance of conflicts disclosure in the SOA:

‘The disclosure of benefits received by an intermediary and any conflicts of interest assists clients in assessing the merits of a product recommendation and reduces the opportunity for advisers to act in self interest to the disadvantage of the client.’ (p. 102)

Note: From 1 January 2005, s912A(1)(aa) imposed a specific duty on licensees to manage conflicts of interest. This general obligation is in addition to the specific conflict disclosure requirements for an SOA. For guidance about compliance with the general obligation to manage conflicts, see RG 181 and RG 79 *Managing conflicts of interest* (RG 79).

Disclosure of referral payments

RG 175.146 In addition to s947B(2)(d) and 947C(2)(e), reg 7.7.11 and 7.7.12 require the SOA to include information about the remuneration, commissions and other benefits that a person has received or is to receive for referring another person to the licensee or providing entity.

What SOA record-keeping obligations will we impose?

RG 175.147 In our view the duties imposed by the Corporations Act require licensees to keep adequate records on their financial services business, and this includes an obligation to keep copies of SOAs. The relevant duties of a licensee that imply such a record-keeping obligation include:

- (a) the duty to ‘do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly’ (s912A(1)(a));
- (b) the duty to have an adequate dispute resolution system (s912A(1)(g)); and
- (c) the obligation to notify ASIC of breaches and assist ASIC with compliance inquiries (s912D and 912E).

RG 175.148 We have decided to impose a licence condition under s914A on all licensees to clarify that copies of SOAs must be kept for at least seven years from the date the SOA is provided to the client. Records may be kept electronically.

Note: For details of these record-keeping licence conditions, see [PF 209], condition 57.

Understanding your obligations

When must you provide an SOA?

RG 175.149 Generally, where personal advice is provided to a retail client other than in an SOA, an SOA (or SOAA, see Section E) must be provided to the client at the same time as, or as soon as practicable after, the advice is provided. In any event, the SOA must be given to the client before the providing entity provides another financial service to the client that arises out of, or is connected with, the advice, such as arranging for a financial product to be issued to the client: s946C(1).

Delayed provision of SOAs in time critical cases

RG 175.150 In ‘time critical’ cases, a further financial service can be provided to the client before an SOA is provided (s946C(3))—i.e. where:

- (a) the client expressly instructs that the further financial service be provided immediately, or by a specified time; and
- (b) it is not reasonably practicable to provide the client with an SOA before that further financial service is provided as so instructed.

In such cases, the SOA must be provided as soon as practicable after that further financial service has been provided and, at the latest (but subject to s940B), within five days of providing that service: s946C(3). However, the information in s946C(2) must be provided when the advice is provided.

Where an SOA does not need to be provided

RG 175.151 An SOA is not required:

- (a) where the advice is provided to a client who is not a retail client;
- (b) where the advice relates to a cash management trust, basic deposit products, non-cash payment products related to a basic deposit product or travellers' cheques (provided the information mentioned in s946B(6) is provided) (reg 7.7.10); or
- (c) where the advice relates to a general insurance product (except for advice about sickness and accident or consumer credit insurance) (reg 7.7.10)
- (d) in the case of further advice (reg 7.7.10AE): see RG 175.163–RG 175.165.

Note: We have granted relief to allow a providing entity to give a client an SOAA instead of an SOA in certain circumstances: see Section E.

The importance of timely provision of SOAs

RG 175.152 An SOA contains important information a retail client should read and understand before deciding whether to act on the advice. Where an SOA is required we encourage providing entities to provide the SOA in enough time to give the clients an adequate opportunity to consider the information in it. See also the time critical cases exception in s946 described in RG 175.150.

What must you include in an SOA?

RG 175.153 An SOA must comply with the Corporations Act and regulations, and must include all of the following:

- (a) the title 'Statement of Advice' on the cover of, or at or near the front of, the document (s947A);
- (b) the name and contact details of the providing entity (s912F and reg 7.6.01C(1)(e); s947B(2)(c) and 947C(2)(c)) and, if they are a licensee, its licence number;
- (c) the name, contact details and licence number of the authorising licensee(s) if the providing entity is providing the advice as an authorised representative, and a statement that the providing entity is the authorised representative of that licensee or those licensees (s947C(2)(d) and reg 7.7.11A);
- (d) a statement setting out the advice (s947B(2)(a) and 947C(2)(a));
- (e) information about the basis on which the advice is or was given (s947B(2)(b) and 947C(2)(b));

- (f) information about the remuneration, commission and other benefits that the providing entity (and other persons specified in s947B(2)(d) or 947C(2)(e)) will, or reasonably expects to, receive that might reasonably be expected to be, or have been capable of, influencing the providing entity in providing the advice (s947B(2)(d) and 947C(2)(e); reg 7.7.11 and 7.7.12);
- (g) information about the remuneration, commissions and other benefits that a person has received or is to receive for referring another person to the licensee or providing entity (reg 7.7.11 and 7.7.12);
- (h) details of any interests, associations or relationships that might reasonably be expected to be or to have been capable of influencing the providing entity in providing the advice (s947B(2)(e) and 947C(2)(f)); and

Note: A providing entity (or the authorising licensee) may be affiliated with a product issuer or an underwriter. For example, a member of a corporate group that comprises a product issuer may employ the providing entity. Also, a member of a corporate group may act as an underwriter of a share issue. Where such affiliations might be reasonably expected to be capable of influencing the providing entity to provide favourable advice about the financial products of the affiliated party, the affiliations must be disclosed to the client in the SOA.

- (i) if s945B requires a warning to be given to the client—a statement setting out, or recording, the required warning (s947B(2)(f) and 947C(2)(g)).

Note: The SOA should be dated and should normally set out the period of time during which the recommended course of action remains current.

RG 175.154 The level of detail about a matter that needs to be included is generally what a person would reasonably require for the purpose of deciding whether to act on the advice as a retail client: s947B(3) and 947C(3).

RG 175.155 The information contained in an SOA must be worded and presented in a clear, concise and effective manner: s947B(6) and 947C(6). An SOA must not include material that is misleading or deceptive.

Product replacement

RG 175.156 Under s947D, where personal advice recommends the replacement of one financial product with another financial product (in full or in part), additional statements about the following are required in the SOA:

- (a) that the client's existing product has been considered;

- (b) the cost of the recommended action (i.e. the disposal of the existing product and acquisition of the replacement product);
- (c) the potential benefits (pecuniary or otherwise) that may be lost; and
- (d) any other significant consequences of the switch for the client.

Note: The SOA should include information about the exit fees applying to the withdrawal, the loss of access to rights (such as insurance cover) or other opportunities, including incidental opportunities (such as access to product discounts) associated with the existing product (including rights or opportunities not presently available to the client but which may become available in future), and the entry and ongoing fees applying to the replacement product.

Consumer testing

RG 175.157 We encourage licensees and industry associations to develop guidelines and conduct consumer testing. This may help licensees to identify whether:

- (a) the SOA is presented in a clear, concise and effective manner;
- (b) the SOA is potentially misleading or deceptive; or
- (c) there is additional information that consumers need.

Note: See also Information Release [IR 04/61].

Good Disclosure Principles

RG 175.158 We consider that providing entities should take into account the Good Disclosure Principles in RG 168 in preparing SOAs: see RG 168.36–RG 168.38.

RG 175.158A We have also provided guidance in Media Release [MR 04/236] *ASIC provides further guidance on Statements of Advice* on how providing entities should prepare SOAs that are clear, concise and effective, as required under the Corporations Act. In particular, when preparing SOAs, advisers should keep the following in mind:

- (a) the existing SOA provisions are very flexible, and providing entities should take a flexible approach to their SOAs (e.g. we expect providing entities to generally provide short and simple SOAs for short and simple advice);
- (b) extraneous information (i.e. information that the law does not actually require to be included in the SOA, such as detailed research) should not be included if it results in the SOA not being clear, concise and effective. If extraneous information is included, it should be clearly distinguishable from the mandatory information;
- (c) the clear, concise and effective obligation does not mean that information required by the SOA content provisions can be left out.

Rather, the clear, concise and effective obligation affects the way that a providing entity presents the required information. This includes trying to present the information in as brief a manner as reasonably possible, without compromising its accuracy;

- (d) the most important information in an SOA should be highlighted (e.g. in an executive summary that summarises the most important information and indicates where more detail can be obtained). This is especially important where the SOA is long (say, more than 10 pages);
- (e) the longer the SOA, the more important will be the inclusion of navigational aids such as a table of contents;
- (f) legal, industry or technical jargon should be avoided, especially where advice is provided to relatively unsophisticated clients; and
- (g) there is no one ‘correct’ or ‘ideal’ format for an SOA—the law provides flexibility in tailoring the format and presentation to the particular information needs of consumers. Consumer testing can help providing entities assess the effectiveness of various disclosure formats.

Note 1: See also Media Release [MR 04/62] *FSR disclosure to be clear, concise and effective* and Information Release [IR 04/61].

Note 2: We have published an example SOA to illustrate our interpretation of clear, concise and effective disclosure in a specific financial advice scenario. See Regulatory Guide 90 *Example Statement of Advice (SOA) for a limited financial advice scenario for a new client* (RG 90) and Information Release [IR 05/258] *ASIC example Statement of Advice: less is more*.

What other requirements apply to SOAs?

RG 175.159 An SOA must not describe a person as ‘independent’ unless the requirements of s923A are satisfied.

RG 175.160 It is an offence to provide a defective SOA: s952D and 952E. An SOA may be defective where:

- (a) it contains a misleading or deceptive statement; or
- (b) it omits material required by the Corporations Act or regulations: s952B.

RG 175.161 If an SOA is defective:

- (a) the providing entity (and the authorising licensee) may have committed an offence; and
- (b) an affected person (e.g. a retail client) may take civil action for any loss or damages.

RG 175.162 It is an offence to fail to provide an SOA when one is required: s952C.

RG 175.162A The Corporations Act prohibits the combination of an FSG, PDS or Short-Form PDS with an SOA: see s947E.

What obligations apply to further advice?

RG 175.163 An SOA does not need to be given in the case of further advice provided the following requirements are met: (reg 7.7.10AE):

- (a) the providing entity has previously given the client an SOA setting out the client's relevant personal circumstances in relation to the advice (the *previous advice*); and
- (b) the client's relevant person circumstances in relation to the further advice (having regard to the client's objectives, financial situations and needs) are not significantly different from the client's relevant personal circumstances in relation to the previous advice; and
- (c) the basis on which the further advice is given is not significantly different from the basis on which the previous advice was given.

RG 175.164 Where the providing entity is not required to (and does not) provide an SOA for further advice, the providing entity:

- (a) must, at the time (or as soon as practicable after) the further advice is provided to the client, give the client the information that would be required in an SOA under s947B(2)(d) and (e), or s947C(2)(e) and (f), as the case requires (s946B(3)); and
- (b) must keep a record of the advice (s946B(3A)).

Note: The record of advice may be kept in any form: reg 7.7.09(2). It must be kept for seven years, depending on the circumstances: reg 7.7.09(3). The client may request a copy of the record of advice during this time: reg 7.7.05 and 7.7.08.

RG 175.165 The record of advice required by s946B(3A) must comply with either of the following:

- (a) it must set out the advice given to the client by the providing entity and any information disclosed to the client under s947D(2) and (3) (reg 7.7.09(1)(a)). We consider that one way of satisfying reg 7.7.09(1)(a) is for the providing entity to keep a full record of the conversation during which the advice was provided (e.g. a tape recording) in accordance with the relevant legislation; or
- (b) it must set out brief particulars of the recommendations made to the client by the providing entity, including the basis on which the recommendations were made and brief particulars of information disclosed to the client under s947D(2) and (3) (reg 7.7.09(1)(b)). We consider that reg 7.7.09(1)(b) will normally be satisfied if the providing entity keeps a record that clearly and unambiguously

sets out the advice provided to the client (e.g. that the client buy a certain quantity of a certain listed security) and also includes either:

- (i) a summary of the client's relevant personal circumstances as ascertained after making the reasonable inquiries required by s945A(1)(a); or
- (ii) a clear statement that information about the client's relevant personal circumstances is set out in a previous record of advice or SOA provided to the client (the record or SOA should be identified by date)—this option is available only where the providing entity has conducted reasonable inquiries that confirm that the client's relevant personal circumstances as set out in the previous record or SOA have not changed.

RG 175.166 Deleted.

E Preparing and providing a Statement of Additional Advice (SOAA)

What this section is about

RG 175.166A A Statement of Additional Advice (SOAA) is a disclosure document that must comply with the SOA requirements of Pt 7.7 except that it can incorporate by reference information from one or more documents that have previously been provided to the client.

RG 175.166B The policy in this section explains:

- (a) the relief we have given to allow an SOAA to be provided to a retail client instead of an SOA

see RG 175.166D–RG 175.166F

- (b) how information is to be incorporated by reference

see RG 175.166H–RG 175.166I

- (c) which information cannot be incorporated by reference

see RG 175.166J–RG 175.166K

- (d) the conditions for incorporating by reference information from more than one eligible advice document

see RG 175.166L

- (e) the obligations that apply to SOAAs

see RG 175.166M–RG 175.166O

- (f) examples illustrating how and when the SOAA relief can be used

see RG 175.166P–RG 175.166W

RG 175.166C This section tells you how we will administer the law. Providing entities must determine and comply with their legal obligations, including those arising under Pt 7.7.

Our policy

What relief have we given for providing SOAAs?

RG 175.166D We have provided relief to permit a providing entity to give a client an SOAA instead of an SOA in certain circumstances.

Note 1: For further information about this relief, see Information Release [IR 04/75] *ASIC refines relief allowing Statements of Additional Advice* and Class Order [CO 04/1556] *Statements of additional advice*.

Note 2: The relief in [CO 04/1556] continues to apply and is not affected by the further advice exemption in reg 7.7.10AE. We consider that the relief will help advisers to reduce the length of their SOAs when they are unable to rely on the further advice exemption in reg 7.7.10AE.

RG 175.166E Where personal advice is provided to a client by a providing entity, an SOAA can be given to the client (instead of an SOA) where the client has previously been given one or more ‘eligible advice documents’ by:

- (a) the providing entity;
- (b) if the providing entity is an authorised representative—the licensee on whose behalf the providing entity is providing personal advice (the authorising licensee); or
- (c) any other person who was an authorised representative of the providing entity or the authorising licensee at the time the eligible advice document was provided to the client (the previous providing entity).

RG 175.166F An SOAA can only incorporate by reference statements or information from one or more ‘eligible advice documents’ the client has already received. An eligible advice document includes any of the following documents provided to the client by the providing entity, the authorising licensee or the previous providing entity:

- (a) an SOA;
- (b) an SOAA prepared in accordance with either [CO 04/576] or [CO 04/1556]; or
- (c) any other document where of all of the following requirements are satisfied:
 - (i) the document was given to the client before Pt 7.7 applied;
 - (ii) the person providing the document (or the authorising licensee if the person providing the document was an authorised representative) was a person of the kind described in an item of column 2 of the table in s1430(1) at the time the document was given to the client;
 - (iii) the document was:
 - (A) the means by which financial product advice was given to the client;
 - (B) a record of the financial product advice given to the client; or
 - (C) a record of the client’s relevant personal circumstances in relation to the giving of the financial product advice.

Note: Under [CO 04/1556], it is a requirement that a copy of any eligible advice document from which information is incorporated by reference into an SOAA must be provided to the client free of charge if the client requests a copy of the document: see [IR 04/75] and [CO 04/1556].

Underlying principles

RG 175.166G The relief we have provided to allow an SOAA to be given to a retail client instead of an SOA is designed to ensure that an existing client continues to receive adequate information about personal advice while avoiding the need for the providing entity to repeat information that the client has already received.

Explanations

How is information incorporated by reference?

RG 175.166H To take advantage of the incorporation by reference class order, the providing entity must:

- (a) prominently call the document a ‘Statement of Additional Advice’;
- (b) clearly indicate in the SOAA:

- (i) that the SOAA must be read together with the clearly identified eligible advice documents;
- (ii) which information contained in the eligible advice documents (if any) is no longer relevant or accurate and is *not* being included in the SOAA. Under the terms of the class order, *all* ‘relevant statements or information’ in the eligible advice documents is deemed to be included in the SOAA unless otherwise specified;

Note: For the definition of ‘relevant statements or information’, see RG 175.166J.

- (iii) that the client can obtain a copy of the identified eligible advice documents free of charge from the providing entity and how this can be obtained. This is to ensure that the client will have access to the information in the eligible advice documents that is being incorporated into the SOAA (in case the client has misplaced the eligible advice documents); and
- (iv) the date the SOAA was prepared or its preparation was completed.

RG 175.166I Under [CO 04/1556], an SOAA is taken to include all of the ‘relevant statements or information’ in the eligible advice documents it incorporates information from, except for any information specifically excluded by the SOAA. Providing entities will be liable for the SOAA, including any information incorporated by reference into it.

What information cannot be incorporated by reference?

RG 175.166J Under the class order, information that can be incorporated by reference from one or more eligible advice documents is defined as ‘relevant information or statements’. While the definition of ‘relevant information or statement’ covers most of the information in an eligible advice document, it does not include:

- (a) the warning where advice is based on incomplete or inaccurate information about the client’s relevant personal circumstances (i.e. the statements required by s945B); and
- (b) information about the costs and benefits of replacing one product with another (i.e. the information required by s947D).

RG 175.166K This means that a providing entity must still include the information and statements referred to in RG 175.166J (if required) in full in the SOAA. A providing entity must not incorporate this information or statements by reference to the eligible advice documents. We have excluded this information from being incorporated by reference because we consider it is information of key importance to consumers.

Note: Under [CO 04/1556], remuneration and conflicts information that relates specifically to the new personal advice needs to be included in the SOAA. This new information would generally not already be in the eligible advice documents being referred to.

What are the conditions for incorporating by reference information from more than one eligible advice document?

RG 175.166L Under [CO 04/1556], an SOAA can incorporate by reference relevant statements or information from one or more eligible advice documents. However, the information and statements contained in the SOAA, including the information and statements being incorporated by reference, must be worded and presented in a clear, concise and effective manner. If the providing entity considers that the client would not receive disclosure that was clear, concise and effective if it relies on incorporation by reference, then it should not do so.

Note: For the definition of ‘eligible advice document’, see RG 175.166F.

Understanding your SOAA obligations

RG 175.166M The SOAA, together with the information it incorporates, must satisfy the SOA content requirements: see Section D.

Clear, concise and effective

RG 175.166N Information and statements contained in an SOAA must be worded and presented in a clear, concise and effective manner. We consider that this may be difficult to satisfy if the information in one or more of the eligible advice documents was not presented in a clear, concise and effective manner.

How must you provide an SOAA?

RG 175.166O An SOAA must be given to a retail client in the manner provided for by s940C of the Corporations Act (which deals with how SOAs are to be given to clients) and in accordance with the timing requirements in s946C. This means that the time critical provision in s946C(3) applies to an SOAA in the same way as it applies to an SOA. For information about the delayed provision of SOAs in time critical cases, see RG 175.150.

Examples

RG 175.166P The following examples illustrate how and when the relief in [CO 04/1556] can be used.

Example 1

RG 175.166Q Authorised representative *X* has provided personal advice from time to time over a number of years to retail client *A*. In December 2003, *X* provided *A* with an SOA. In September 2004, *X* provided *A* with further personal advice, the basis of which was contained in an SOAA (relying on our relief of July 2004, see [CO 04/576]) that incorporated by reference information in the SOA of December 2003. *X* now provides further personal advice to *A* in March 2005. Under [CO 04/1556], *X* can meet its disclosure obligations by providing *A* with another SOAA that incorporates by reference information contained in the SOAA of September 2004 and the SOA of December 2003.

Note: This example assumes there is information in the SOA of December 2003 and the SOAA of September 2004 that is still relevant for the contents of the SOAA of March 2005 and that the SOAA of March 2005 is clear, concise and effective.

Example 2

RG 175.166R This example has the same facts as *Example 1* except that, in addition, *X* provided securities recommendations to *A* in compliance with the pre-FSR regime. These securities recommendations were recorded in a financial plan issued to *A* in February 2001. Further, unlike *Example 1*, *X* does not provide further personal advice to *A* until March 2005 (i.e. after the FSR regime changes). This means that *X* has not

given *A* any personal advice since FSR commencement and therefore has not given *A* an SOA.

RG 175.166S In this example, under the terms of [CO 04/1556], *X* can meet its SOA disclosure obligations by providing *A* with an SOAA that incorporates by reference information contained in the financial plan of February 2001.

Note: This example assumes that there is information in the financial plan that is relevant for the contents of the SOAA of March 2005 and that the SOAA of March 2005 is clear, concise and effective.

Example 3

RG 175.166T Authorised representative *X* acts on behalf of licensee *Y* who became subject to the FSR regime in December 2003. Since December 2003, *X* has provided personal advice to retail client *A* on a couple of occasions, including in an SOA in March 2004 and in an SOAA in October 2004 (relying on our relief of July 2004, see [CO 04/576]). In December 2004, *X* retires. Authorised representative *X2*, acting on behalf of the same licensee *Y*, takes over as *A*'s adviser. *X2* provides personal advice to *A* in March 2005.

RG 175.166U In this example, under the terms of [CO 04/1556], *X2* can meet its disclosure obligations in March 2005 by providing *A* with an SOAA that incorporates by reference information contained in the SOAA of *X* of October 2004 and the SOA of *X* of March 2004.

Note: This example assumes there is information in both the earlier SOAA of October 2004 and the SOA of March 2004 that is still relevant for the contents of the SOAA of March 2005 and that the SOAA of March 2005 is clear, concise and effective.

Example 4

RG 175.166V Authorised representative *X* acts on behalf of licensee *Y*. Since *Y* became subject to the FSR regime, *X* has provided retail client *A* with a number of SOAs and SOAAs. *A* decides to receive personal advice from a different authorised representative, *X2*, who now acts on behalf of a different licensee, *Y2*, (although *X2* formerly acted on behalf of *Y*). *X2* provides personal advice to *A* in March 2005.

RG 175.166W In this example, under the terms of [CO 04/1556], *X2* cannot meet its disclosure obligations in March 2005 by incorporating by reference any relevant information contained in the SOAs and SOAAs provided to *A* by *X* (even assuming *X2* had copies of them). This is because *X2* acts for a different licensee and is not the same providing entity that provided *A* with the earlier SOAs or SOAAs.

Key terms

RG 175.167 In this guide, these terms have the following meaning:

advice ‘financial product advice’

adviser A person who provides financial product advice

AFS licence An Australian financial services licence under s913B that authorises a person who carries out a financial services business to provide financial services

Note: This is a definition contained in s761A.

ASIC Australian Securities and Investments Commission

ASIC Act *Australian Securities and Investments Commission Act 2001*

authorised representative of a licensee A person authorised by the licensee, in accordance with s916A or 916B, to provide a financial service or services on behalf of the licensee

Note: This is a definition contained in s761A.

authorising licensee The licensee on whose behalf a representative provides financial services

CLERP 6 policy proposal paper (1997) *Financial Markets and Investment Products: Promoting competition, financial innovation and investment*, Corporate Law Economic Reform Program, Proposals for Reform: Policy Statement No. 6, Commonwealth Treasury, 1997

Corporations Act The *Corporations Act 2001* including the regulations made for the purposes of the Corporations Act

dollar disclosure provisions Provisions of the Corporations Act and Corporations Regulations that require various costs, fees, charges, expenses, benefits and interests to be stated as amounts in dollars unless ASIC grants relief: see s947B(2)(h), 947C(2)(i), 947D(2)(d), 1013D(1)(m), 1017D(5A) and reg 7.7.10A–7.7.11, 7.7.11B–7.7.13B, 7.9.15A–7.9.15C, 7.9.19A–7.9.19B, 7.9.20A–7.9.20B, 7.9.74A–7.9.75 and 7.9.75C–7.9.75D

financial product A facility through which, or through the acquisition of which, a person does one or more of the following:

- (a) makes a financial investment (see s763B);
- (b) manages financial risk (see s763C);

(c) makes non-cash payments (see s763D)

Note: This is a definition contained in s763A: see also s763B–765A.

financial product advice A recommendation, a statement of opinion or an interpretation of information, or a report of any of those things, that:

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

but does not include anything in an exempt document

Note: This is a definition contained in s766B.

financial service The meaning set out in s766A

Financial Services Guide A Financial Services Guide required by s941A or 941B to be given in accordance with Div 2 of Pt 7.7

Note: This is a definition contained in s761A.

FSG Financial Services Guide

FSR Act *Financial Services Reform Act 2001* or the Corporations Act (as amended by the FSR Act)

Note: The provisions contained in Schedule 1 formed part of the Corporations Act from 11 March 2002. Schedule 1 contains the financial services licensing provisions under Pts 7.6 to 7.8 of the Corporations Act and the financial product disclosure provisions under Pt 7.9.

FSR Amendment Act *Financial Services Reform Amendment Act 2003*

FSR refinements regulations Corporations Amendment Regulations 2005 (No. 5)

further advice The meaning set out in reg 7.7.10AE

general advice Financial product advice that is not personal advice

Note: This is a definition contained in s766B(4).

licensee A person who holds an AFS licence

Note: This is a definition is contained in s761A.

PDS Product Disclosure Statement

personal advice Financial product advice given or directed to a person (including by electronic means) in circumstances where:

- (a) the provider of the advice has considered one or more of the client's objectives, financial situation and needs; or
- (b) a reasonable person might expect the provider of the advice to have considered one or more of those matters

Note: This is a definition contained in s766B(3).

Product Disclosure Statement A document that must be given to a retail client in relation to the offer or issue of a financial product in accordance with Pt 7.9

provide a financial service:

- (a) provide financial product advice;
- (b) deal in a financial product;
- (c) make a market for a financial product;
- (d) operate a registered scheme; or
- (e) provide a custodial or depository service.

Note: This is a definition contained in s766A.

providing entity The meaning explained in RG 175.19 of this guide

Pt 7.7 Part 7.7 of the Corporations Act

reg 7.1.29 (for example) A regulation of the Corporations Regulations 2001 (in this example numbered 7.1.29)

regulations Corporations Regulations 2001

relevant personal circumstances Such of a person's objectives, financial situation or needs as would reasonably be considered to be relevant to the advice

Note: This is a definition contained in s761A.

representative of a licensee:

- (a) an authorised representative of the licensee;
- (b) an employee or director of the licensee;
- (c) an employee or director of a related body corporate of the licensee; or
- (d) any other person acting on behalf of the licensee

Note: This is a definition contained in s910A.

retail client The meaning set out in s761G

RG 146 (for example) A regulatory guide (in this example numbered 146)

s782 (for example) A section of the Corporations Act (in this example numbered 782)

Short-Form PDS Short-Form Product Disclosure Statement

Short-Form PDS requirements The requirements set out in Div 3A of Pt 7.9 inserted into the Corporation Act by reg 7.9.61AA and Schedule 10BA of the Corporations Regulations

Short-Form Product Disclosure Statement Short-form PDS that complies with the Short-Form PDS requirements

SOA Statement of Advice

SOAA Statement of Additional Advice

Statement of Additional Advice A document that can be given to a retail client instead of an SOA in certain circumstances in relation to the provision of personal advice in accordance with [CO 04/1556]. An SOAA is a document that incorporates by reference information required under Pt 7.7 from another document that has previously been provided to the client

Statement of Advice Statement of Advice required by s946A to be given in accordance with Subdivs C and D of Div 3 of Pt 7.7

Note: This is a definition contained in s910A.

Related information

RG 175.168

Headnotes

general advice; personal advice; providing entity; financial product; financial product advice; retail client; relevant personal circumstances; financial services guide; remuneration, commission and other benefits; record-keeping obligations; combined disclosure documents; suitability rule; reasonable basis for advice rule; client inquiries; consideration and investigation of the subject matter of the advice; appropriate advice; statement of advice; basis of the advice; further advice

Pro formas

Pro Forma 209 *Australian financial services licence conditions* [PF 209]

Class orders

Class Order [CO 02/1073] *Financial Services Guide—dealing in underlying investments by responsible entities*

Class Order [CO 02/1074] *Financial Services Guide—dealing in underlying investments by superannuation trustees*

Class Order [CO 03/606] *Financial product advice: exempt documents*

Class Order [CO 04/103] *Relief from s912F requirement to cite licence numbers on prescribed documents*

Class Order [CO 04/272] *Statement of advice relief for certain products able to be traded on an approved foreign market—amendment*

Class Order [CO 04/1055] *Information in a Financial Services Guide given in time critical situation*

Class Order [CO 04/1430] *Dollar disclosure: Unknown facts and circumstances*

Class Order [CO 04/1431] *Dollar disclosure: Costs of derivatives, foreign exchange contracts, general insurance products and life insurance risk products*

Class Order [CO 04/1432] *Dollar disclosure: Interest payable on deposit products*

Class Order [CO 04/1433] *Dollar disclosure: Non-monetary benefits and interests*

Class Order [CO 04/1434] *Dollar disclosure: Transitional relief*

Class Order [CO 04/1435] *Dollar disclosure: Amounts denominated in foreign currency*

Class Order [CO 04/1556] *Statements of additional advice*

Class Order [CO 04/1572] *Secondary services: Financial Services Guide relief for experts*

Class Order [CO 04/1573] *Secondary services: Financial Services Guide relief for arrangers acting under an intermediary authorisation*

Class Order [CO 05/835] *General advice in advertising*

Class Order [CO 05/1195] *Simplified warning for oral general advice*

Regulatory guides

RG 1–3 *AFS Licensing Kit*

RG 36 *Licensing: Financial product advice and dealing*

RG 78 *Breach reporting by AFS licensees*

RG 79 *Managing conflicts of interest*

RG 90 *Example Statement of Advice (SOA) for a limited financial advice scenario for a new client*

RG 146 *Licensing: Training of financial product advisers*

RG 164 *Licensing: Organisational capacities*

RG 167 *Licensing: Discretionary powers*

RG 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)*

RG 179 *Managed discretionary account services*

RG 181 *Licensing: Managing conflicts of interest*

RG 182 *Dollar disclosure*

RG 183 *Approval of financial services sector codes of conduct*

Legislation

Corporations Act Chapter 7, Pt 7.7, Pt 7.9, Pt 7.10 Div 2, s761A, 761G, 766B(1A), 766B(3), 766B(4), 912A, 912D, 912E, 915C, 923A, 940B, 940C, 941A, 941B, 941C, 941C(6), 941D, 941E, 941F, 942A, 942B, 942C, 945A, 945B, 946B, 946B(5)(c), 946C, 947A, 947B, 947C, 947D, 949A, 952B, 952C, 952D, 952E, 952H, 951B, 953B, 1012D(3), 1013B, 1020F, 1436A, reg 7.1.11–7.1.29, 7.1.17A, 7.6.01, 7.6.02AB–7.6.02AF, 7.7.02A, 7.7.01–7.7.10, 7.7.04A, 7.7.07A–7.7.10E, 7.7.10AA–7.7.10AH, 7.7.11–7.7.12, 7.7.20, 7.9.61AA, Schedule 10BA, ASIC Act s12DA, 12ED

Consultation papers

CP 39 *Licensing: Financial product advisers—Conduct and disclosure*

Other papers

Financial Markets and Investment Products: Promoting competition, financial innovation and investment, Corporate Law Economic Reform Program, Proposals for Reform: Policy Statement No. 6, Commonwealth Treasury, 1997

ASIC's submission on CLERP 9: Corporate disclosure: strengthening the financial reporting framework (November 2002)

REP 17 *Compliance with advice and disclosure obligations: Report on primary production schemes* (February 2003)

REP 29 *Preferential remuneration project* (April 2004)

REP 30 *Disclosure of soft dollar benefits* (June 2004)

Media and information releases

[MR 03/197] *ASIC policy statement: Advisers' conduct and disclosure obligations*

[MR 04/62] *FSR disclosure to be clear, concise and effective*

[MR 04/236] *ASIC provides further guidance on Statements of Advice*

[MR 05/11] *ASIC welcomes financial services refinements proposal paper*

[MR 05/258] *ASIC example Statement of Advice: less is more*

[IR 03/20] *ASIC class order exempts issuers of certain documents from requirement to hold an AFSL*

[IR 04/34] *ASIC facilitates shorter Statements of Advice*

[IR 04/46] *ASIC provides relief for financial services guides given in time critical situations*

[IR 04/67] *ASIC issues dollar disclosure policy*

[IR 04/75] *ASIC refines relief allowing Statements of Additional Advice*

[IR 04/78] *ASIC grants relief for secondary service providers*

[IR 05/22] *ASIC provides details on financial services refinements projects*

[IR 05/53] *Delivery of ASIC's financial services refinements projects on time*

[IR 05/45] *ASIC provides guidance about giving general financial product advice*

[IR 05/47] *ASIC grants relief for advertising by product issuers*

[IR 05/62] *ASIC announces simpler warnings for oral general advice*

[IR 06/02] *ASIC provides guidance on compliance with FSR refinements regulations*