

[PS 121]
Policy Statement 121
**Investment advisory services: retail investor
protection requirements**

Chapter 7 — Securities

Issued 3/3/1997

Purpose

[PS 121.1] This Policy Statement sets out ASIC's guidelines on its retail investor protection requirements. These guidelines assist advisers who provide investment advisory services to retail investors and therefore must comply with ASIC's requirements.

[PS 121.2] This Policy Statement forms part of ASIC's investment advisory services series of Policy Statements.

[PS 121.3] The Policy Statement is structured as follows:

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|----------|---|
| Part I | Definitions [PS 121.4] |
| Part II | Scope of the retail investor protection requirements [PS 121.5–121.24] |
| Part III | Advisory Services Guide (“ASG”) [PS 121.25–121.71] |
| Part IV | Warnings when general securities advice is given [PS 121.72–121.84] |
| Part V | Warnings when full personal information is not given [PS 121.85–121.96] |
| Part VI | Complaints resolution procedures [PS 121.97–121.105] |

Part I: Definitions

[PS 121.4] In this Policy Statement:

- (a) “advice” means personal securities recommendations or general securities advice (details in Policy Statement 122);
- (b) “adviser” means a natural person who provides advice relating to securities and includes both a licensee and a representative of a licensee;
- (c) “ASG” means an Advisory Services Guide;
- (d) “investment advisory services” means advice on securities whether provided with another service (eg dealing or discretionary portfolio services) or on its own. It is used interchangeably with the terms “advisory services” and “securities advice”;
- (e) “investment products” mean securities (eg shares, bonds and unit trusts) and superannuation products;
- (f) “Law” means the Corporations Law;
- (g) “licensee” means a holder of a dealers or an investment advisers licence under the Law;
- (h) “licensing provisions” means the requirements in Pt 7.3 to 7.7 of the Law and the relevant Corporations Law regulations;
- (i) “operating under a licence” means conducting a securities or an investment advice business under one’s own licence or acting as a representative of a holder of a dealers or an investment advisers licence;
- (j) “principal” means a “licensee” under the Law and these terms are used interchangeably; and
- (k) “representative” means a “securities representative” as defined in s94 of the Law.

Part II: Scope of the retail investor protection requirements

[PS 121.5] The scope of ASIC's retail investor protection requirements are set out in answers to the following questions:

- What is the approach ASIC has adopted in developing the requirements?
- How will ASIC implement the retail investor protection requirements?
- Who is a "retail investor" in relation to whom these requirements must be satisfied?
- Who should comply with the requirements?
- What are the legal consequences of not complying with the requirements?

[PS 121.6] ASIC's retail investor protection measures require an adviser to:

- (a) issue an Advisory Services Guide (ASG);
- (b) provide warnings when general securities advice is given;
- (c) provide warnings to a client who refuses to provide full personal information; and
- (d) have internal complaints handling procedures.

[PS 121.7] These measures have been developed by ASIC as part of the *Good Advice*¹ report proposals for enabling retail investors to make well informed decisions when obtaining investment advisory services. The proposals received strong endorsement from consumers, consumer organisations, industry bodies and most industry participants.

What is the approach ASIC has adopted in developing the requirements?

[PS 121.8] ASIC has adopted a flexible approach in developing the new retail investor protection requirements. This approach is based on performance outcomes and general principles rather than prescribing processes in detail.

[PS 121.9] A "performance based" approach describes actions which an investor should be able to perform as a result of information provided by a licensee. This is different to a "prescriptive" approach which prescribes the exact content and format of the information. Similarly, a "principle based"

1 Australian Securities Commission (1996) *Good Advice*. ASIC, Sydney.

approach specifies the broad intention of a requirement rather than a process which must be followed to comply with it. This performance and principle based approach gives a licensee the flexibility to develop mechanisms and processes which are suitable to their individual businesses and clients.

[PS 121.10] Using these approaches, ASIC has specified what actions an investor should be able to perform after reading the information in an Advisory Services Guide (ASG). (See Part III [PS 121.25–121.71] for details.) For example a retail investor should be able to identify who is responsible for the investment advisory services provided and who to contact if they have a complaint.

[PS 121.11] This less prescriptive approach has the following advantages:

- (a) it gives licensees greater flexibility to choose internal procedures to comply with the requirements which best suit their own individual business circumstances, clients and environment. This is important given the diversity of the products and services available in securities markets;
- (b) it enables licensees to develop more user friendly documents by taking into account the level of sophistication and understanding of their own clients;
- (c) it promotes an appropriate level of consistency as the desired outcomes are specified;
- (d) it allows for innovation; and
- (e) it is also consistent with the current approach adopted in the Corporations Law Simplification Program and in other legislative areas.

[PS 121.12] In developing the retail investor protection requirements, ASIC has also attempted to balance the competing needs for flexibility and an appropriate level of certainty. For example, ASIC has issued four pro forma ASGs to assist licensees. A licensee who does not wish to incur the expense of designing and user testing its own ASG may instead use the pro formas. ASIC considers that many licensees may be able to use the pro formas with some limited modification to suit their individual services. These four pro formas are at [PS 121.106], [PS 121.107], [PS 121.108] and [PS 121.109].

How will ASIC implement the retail investor protection requirements?

[PS 121.13] The retail investor protection requirements will be implemented through prescribed licence conditions in the Corporations Regulations. ASIC has sought Law reform rather than using its limited administrative powers to implement the retail investor protection

requirements. ASIC considers this to be administratively more efficient because:

- (a) ASIC will not have to conduct individual hearings (which is mandatory when using its licence conditions power); and
- (b) the licensees will not face the additional cost burden of having to reissue new proper authorities. (This is a necessary consequence when licence conditions are changed by ASIC and not by the Regulations.)

[PS 121.14] ASIC has asked the Treasury to arrange for these conditions to be incorporated into the Corporations Regulations. ASIC expects that they will be incorporated in early 1997.

[PS 121.15] Until the prescribed licence conditions are incorporated in the Corporations Regulations, ASIC expects licensees to comply with these requirements as best practice standards.

[PS 121.16] The guidelines in this Policy Statement are issued on the basis that the relevant licence conditions will be incorporated into the Corporations Regulations. However, they are only *proposed licence conditions* at this stage. Therefore, until the regulations are made, these requirements remain a matter of ASIC proposed best practice.

Who is a “retail investor” in relation to whom these requirements must be satisfied?

[PS 121.17] The retail investor protection requirements apply to any licensee who, in the course of its securities or investment advice business, provides investment advisory services to “*retail investors*”. The regulations incorporating the retail investor protection requirements will contain a definition of the term “retail investor” as a person who is not:

- (a) a holder of a dealers or an investment advisers licence or an exempt dealer or investment adviser (as defined in s68). However, a dealer, investment adviser, exempt dealer or exempt investment adviser may ask to be treated as a retail investor;
- (b) a body corporate registered under the Life Insurance Act 1995 (Cth);
- (c) a bank as defined in s5 of the Banking Act 1959 (Cth) or a bank constituted by or under a law of a State or Territory;
- (d) a trustee of a superannuation fund, an approved deposit fund or a pooled superannuation trust within the meaning of the Superannuation Industry (Supervision) Act 1993 (Cth) that has more than 100 members;
- (e) a trustee or management company of a prescribed interest scheme (other than a scheme under (d) above) which has net assets of not less than \$10,000,000 and more than 100 members;

- (f) a trustee or management company of prescribed interest schemes when the trustee or management company has aggregate funds under management of not less than \$50,000,000 and for each scheme under management there is:
 - (i) not less than \$10,000,000 funds under management; and
 - (ii) more than 50 members;
- (g) a financial institution, building society or credit union under the Australian Financial Institutions Commission (AFIC) Codes;
- (h) an exempt public authority (s9 definition);
- (i) an “investment company” as defined in reg 7.3.12(3); and
- (j) a foreign entity which is registered under comparable overseas legislation (eg a registered US broker-dealer or a foreign life company or a bank*).

[*Licensees should be aware that when providing investment advisory services to foreign clients, they may be subject to the regulatory regime that applies in the client’s home jurisdiction.]

[PS 121.18] The persons excluded from the definition of retail investor are persons who, in ASIC’s view, have adequate resources and expertise to be able to assess and monitor the investment advisory services offered to them. They therefore need a lower degree of regulatory intervention. (See also Policy Statement 122 for further details of the proposed exemption from the Conduct of Business Rules for sophisticated investors.)

[PS 121.19] The above definition takes into account public comments given to ASIC during the development of the *Good Advice*² proposal on the sophisticated investor exclusion. Persons of high net worth have not been excluded from the definition of retail investors, because ASIC has some concerns as to whether such persons necessarily have, in all cases, the appropriate levels of investment experience and expertise and the capacity to seek their own remedies.

[PS 121.20] ASIC considers that if there is any doubt about whether or not a client comes within the above definition of a retail investor, it would be prudent for a licensee to comply with the retail investor protection requirements set out in this Part for that client (see [PS 121.24] for consequences of failing to comply with a licence condition).

Who should comply with the requirements?

[PS 121.21] All the retail investor protection requirements are imposed on licensees who provide investment advisory services in the course of their

² Australian Securities Commission (1996) *Good Advice*. ASIC, Sydney.

securities or investment advice business. Therefore, the licensee is primarily responsible for complying with these requirements when investment advisory services are offered to retail investors.

[PS 121.22] Many licensees are corporate entities and, therefore, conduct their business through representatives (ie proper authority holders). When representatives provide investment advisory services to retail investors in the course of their licensee's securities or investment advice business, the licensee must ensure that those representatives comply with its licence conditions. Failing to do so would result in the licensee breaching its own licence conditions (see [PS 121.24] for consequences of failing to comply with licence conditions). Therefore, the licensee must have adequate compliance procedures to ensure that their representatives comply with the relevant investor protection requirements.

[PS 121.23] ASIC has not prescribed the type of internal procedures that a licensee must have for ensuring that its representatives comply with the retail investor protection requirements. However, when clients are offered investment advisory services through a number of different representatives of a licensee, it may be prudent for a licensee to have procedures enabling each representative to verify whether the requirements have already been complied with for that client. For example, they may need to check whether the client has already received an ASG from a different representative of the licensee.

What are the legal consequences of not complying with the retail investor protection requirements?

[PS 121.24] The retail investor protection requirements will be imposed as prescribed licence conditions under s786(1)(a) (see [PS 121.16] for the current status of these conditions). Therefore, failure to comply with these licence conditions will be grounds for ASIC to take action. ASIC can suspend or revoke a licence after a hearing (see s826(1)(d) and s827(1)(b)).

Part III: Advisory Services Guide

[PS 121.25] The scope of the obligation to provide an ASG and guidelines to assist licensees in complying with that obligation are set out in answers to the following questions:

- What is the purpose of an ASG?
- What does the ASG licence condition require?
- Who should be given an ASG?
- What should an investor be able to do using the information in an ASG?
- When should an ASG be given?
- When should an ASG be updated/supplemented?
- What is the format of an ASG?
- Can an ASG contain additional information such as advertising and promotional material?
- Can a representative prepare their own ASG?
- What are the possible legal consequences of the information in an ASG?

What is the purpose of an ASG?

[PS 121.26] Products and services available in the financial markets are increasingly complex. As a result, it is often not easy for retail investors to understand the nature of the services offered to them, particularly on a comparative basis. Therefore, ASIC considers that retail investors must be given clear key information on the nature of the advisory services offered. This view is based on the *Good Advice*³ proposal for an ASG, which received strong support both from industry participants and consumers.

What does the ASG licence condition require?

[PS 121.27] The licence condition in the regulations will require that a licensee providing investment advisory services to any retail investor must ensure that each retail investor is given an ASG at the earliest available opportunity before providing investment advisory services to

them. Information in an ASG must enable an investor to:

3 Australian Securities Commission (1996) *Good Advice*. ASIC, Sydney.

- (a) clearly identify the licensee responsible for the advice and, if the advice is provided through a representative, the identity of the representative;
- (b) clearly understand:
 - (i) the nature of the investment advisory service offered;
 - (ii) the method and extent of charges for that service; and
 - (iii) their (ie the investor's) basic rights when obtaining the investment advisory service offered;
- (c) compare, if desired, the investment advisory service offered by the licensee to services offered by other licensees; and
- (d) easily access available complaints procedures if they are dissatisfied with the investment advisory services given.

Who should be given an ASG?

[PS 121.28] A licensee must give an ASG to every retail client to whom investment advisory services are offered. The term “retail investor” is defined in [PS 121.17]. Investment advisory services include providing personal securities recommendations and general securities advice. When any of these services are given to a retail client, that client must be given an ASG.

[PS 121.29] Generally, a client only needs to be given one ASG, unless there is a long lapse of time between the first issue of an ASG and the subsequent provision of investment advisory services. (See [PS 121.57–121.59] on updating/supplementing the information in an ASG.)

[PS 121.30] In the case of a group of retail clients (such as family members), in most circumstances giving one ASG to the person who is generally in contact with the adviser is adequate. However, it may be appropriate for the adviser to tell the client that the information in the ASG is important to every member of the group and that they should all read it.

[PS 121.31] Some retail investors may not have an adequate understanding of the English language. If this is the case, given the importance of the information provided in an ASG, ASIC considers it appropriate for a licensee to provide such clients with suitable interpreter services.

What should an investor be able to do by using the information in an ASG?

[PS 121.32] The following guidelines describe the type of information which should be included in an ASG. A licensee must include this information to enable investors to take certain actions using that information. The pro formas at [PS 121.106]; [PS 121.107]; [PS 121.108]; and [PS 121.109] include this information. Therefore, a licensee can use the pro formas (with appropriate modifications to include their individual details). If the pro formas are unsuitable for a licensee's individual business and circumstances, a licensee can prepare their own ASG by following the guidelines set out in this Part. (See [PS 121.60] and [PS 121.110] for details on how a licensee must user test an ASG they design.)

Identify the licensee responsible for the investment advisory service

[PS 121.33] An ASG must give a retail investor information which clearly identifies the licensee who is responsible for the investment advisory services offered. This is particularly important because advisory services are offered mostly through representatives of a licensee.

[PS 121.34] Therefore, an ASG should contain the following information:

- (a) name of the licensee and their ACN number (if the licensee is a corporation);
- (b) registered address of the licensee. If it is an interstate address, it may be appropriate to give an office address in the State or Territory where the ASG is distributed;
- (c) if the licensee is a member of a financial group, the name of the group.

[PS 121.35] In addition to the above information, a licensee may include more information about themselves, such as their membership of professional or industry associations.

Identify the individual adviser

[PS 121.36] An investor must be able to identify the identity of the adviser from the information in an ASG. ASIC considers that the identity of the adviser is important because the adviser plays a very significant role as the direct contact service provider. This information is particularly important when a licensee has representatives located outside its central place of business. This information must also be supplied under the ISC's Life Code. Therefore, for persons providing mixed advice on securities and life insurance products (see Policy Statement 124 for details), supplying this information helps them comply with both ASIC and ISC regimes.

[PS 121.37] The adviser's identity should be disclosed in the ASG in a manner which will not give the impression that it is the adviser (ie the representative), and not their principal (ie the licensee), who is carrying on the business of providing investment advisory services. Such an impression may be a breach of s780 and s781. Section 780 and s781 prohibit a person from holding out as conducting a securities or investment advice business unless they are licensed in their own right. To avoid breaching these sections, ASIC considers that the ASG must clearly:

- (a) identify the licensee responsible for the advisory services; and
- (b) indicate that the adviser is acting in a representative capacity.

[PS 121.38] A licensee may wish to include additional information about representatives who act as advisers, such as their qualifications and experience.

[PS 121.39] A licensee will not always be able to pre-determine which representative will provide investment advisory services to a particular retail client. Therefore, ASIC considers that it is appropriate for a licensee to either:

- (a) leave a blank space in the ASG for the identity (and other information about the adviser) to be filled in; or
- (b) include an insertion in the ASG with the details of the adviser. (This insertion should be cross referred to in the ASG.)

[PS 121.40] This approach gives flexibility for a licensee to include, if desired, the individual details about the adviser.

Understand the nature of the investment advisory services offered

[PS 121.41] A retail investor should be able to identify key features of the investment advisory services offered from the information in the ASG. The type of information that is relevant includes:

- (a) the range of securities for which investment advisory services are offered. For example, if advice is offered only on securities of a particular issuer, the range of the products should be identified. Similarly, if advice is offered only on a certain class of securities, eg shares, this should be disclosed;
- (b) whether personal securities recommendations or general securities advice or any combination of them are offered (see Policy Statement 122 for details of this distinction);
- (c) whether or not execution services are offered; and
- (d) whether any portfolio monitoring services are offered. This may include monitoring and reporting on specific investments held in the portfolio or general advice on securities provided in periodic circulars.

[PS 121.42] The nature of the investment advisory services offered by a licensee can vary. For example, some advisory services may cover a wide range of securities but other services may be confined to a particular range of products. Such limitations may arise from the restricted nature of the licence or other contractual arrangements under which a licensee operates. For example, a licensee may have a contractual arrangement with a product provider and therefore only provides advisory services on the products of that provider. An ASG should include information about these limitations.

Understand how the licensee is paid

[PS 121.43] An investor should be able to clearly understand how the advisory services are paid for from the information in an ASG. The type of information that is relevant includes:

- (a) whether the licensee charges fees for the investment advisory services and, if so, how the fees are calculated (eg hourly rate or a performance based fee);
- (b) whether the licensee is remunerated by commission (including trailing commissions) and/or other benefits (eg soft dollar arrangements such as subsidised research) provided by product providers. If they are remunerated in these ways, the extent of those commissions and the method of deduction should be included; and
- (c) whether the licensee receives any combination of fees and commissions as above and, if so, how they are calculated/deducted.

[PS 121.44] This information is important for retail investors when choosing the type of advisory services they obtain. ASIC's surveillance data indicates that there are many consumer complaints about how advisory services are paid for. Therefore, clear information given very early in a client adviser relationship would minimise the possibility of subsequent client disputes and dissatisfaction.

[PS 121.45] Including this information in an ASG is not a substitute for disclosing specific conflict of interests under s849 (see Policy Statement 122 for details of this obligation).

Understand their basic rights

[PS 121.46] An investor should be able to clearly understand their basic rights from the information in an ASG. Some of these rights are expressly stated in the Law and others arise under common law obligations of an adviser as a fiduciary. Additional rights may be created by contract between the licensee and the client (eg allowing a client to examine the information maintained by the licensee in the client file on request). These contractual rights can also be included in an ASG.

[PS 121.47] The type of information that is relevant includes that clients:

- (a) have a right to be told of any material benefits and interests of the adviser which may influence the advice provided (conflict of interests);
- (b) have a right to receive advice that is suitable to their individual investment objectives, financial circumstances and particular needs;
- (c) should ask about the risks associated with any investment products or strategies recommended; and
- (d) can give instructions to the licensee on a range of matters such as whether confirmation of any oral recommendations made are needed and how they wish to instruct the licensee (eg in writing, by telephone).

[PS 121.48] ASIC considers that this information is important because retail investors using investment advisory services are not always clearly aware of their rights and about other information they can obtain. Therefore, it is important that they are made aware of their basic rights and the key information which they should be given so that they can form realistic expectations about the services and products offered.

Access available complaint resolution procedures

[PS 121.49] An investor should be able to find out from the information in an ASG how they can use the available complaints procedures when they are dissatisfied with the advisory services obtained. ASIC considers this information to be important because many retail clients are not aware of the complaints procedures they can follow. Therefore, the information in an ASG should help a retail investor clearly understand:

- (a) the nature of complaint resolution procedures available to clients (internal and any external procedures and ASIC's free Infoline service 1300 300 630); and
- (b) how clients can use those procedures (for example, the name, position and the telephone number of the contact person in the licensee's organisation to whom a complaint can be made, whether the complaint should be made in writing or orally, and if it is not resolved to a client's satisfaction, what further steps they can take).

When should an ASG be given?

[PS 121.50] A licensee must give an ASG "at the earliest available opportunity" before providing investment advisory services to a retail client. ASIC will administer this requirement flexibly to accommodate some differences in:

- (a) the methods of providing such services, eg non face to face advice [PS 121.53]; and

- (b) the type of investment advisory services, eg execution related telephone [PS 121.54] and general securities advice given in a non-personal context such as securities reports, computer software and books containing general securities advice made available to the public [PS 121.55–121.56].

General obligation

[PS 121.51] ASIC considers that an adviser must give a prospective retail client an ASG before any investment advisory services are provided or any formal arrangement to provide such services are made (whichever occurs first). This means that the adviser (generally a representative of a licensee) must give the ASG to that client at their first meeting. Some investors may ask for an ASG even before making arrangements to meet with an adviser. In that case, the adviser must give an ASG when requested.

[PS 121.52] ASIC considers that the following best practice standards are appropriate when complying with the timing requirement in providing an ASG:

- (a) the adviser should give the retail client enough time to read and understand the information in the ASG before providing any investment advisory services or entering into any formal arrangement to obtain investment advisory services (whichever occurs first); and
- (b) the adviser should advise the client of the importance of reading and understanding the information in the ASG and that the adviser is willing to explain the information if necessary.

When client contact is not face to face

[PS 121.53] Because of the rapid development in communication technology, the popularity of providing investment advisory services on electronic media has also increased. Investment advisory services may be offered to retail investors using a communication service without any face to face contact. Unless it is execution related telephone advice on quoted securities by dealers (see the next paragraph), ASIC considers that an adviser must give an ASG at the earliest available opportunity. This can be done in several ways:

- (a) if the client contact is by telephone, the adviser must send an ASG to that client (eg by mail or delivery) before providing any investment advisory services or entering into an agreement to provide such services (whichever occurs first). It is also appropriate to adopt the best practice standards set out in [PS 121.52] as far as practicable; and
- (b) if investment advisory services are offered by post, facsimile or using any other communication service (eg Internet), the adviser may use the same communication service to send an ASG to the retail client. It is also appropriate to communicate to the client the matters noted in [PS 121.52] (eg their willingness to explain the information).

Execution related telephone advice on quoted securities

[PS 121.54] In the case of execution related telephone advice (see Part VI of Policy Statement 122 [PS 122.132–122.146]), an adviser must give an ASG as soon as practicable after the advice is provided. This should be no later than 3 days after the trading following the advice.

General securities advice given in a non-personal context

[PS 121.55] A person may provide general securities advice in a non-personal context, for example, a person who publishes newsletters or periodicals containing investment advice. Unless they are exempt under the media exemption (see Policy Statement 118), these persons must fully comply with the licensing provisions. This means that they must hold a licence or a proper authority and they must also issue ASGs to persons receiving the newsletters or periodicals.

[PS 121.56] However, general securities advice may be given in a *non-personal context* (eg a securities report made available to a wide class of persons). In this case, if ASIC's warnings requirements are fully satisfied, ASIC will not require persons who give such advice to provide an ASG to each retail investor to whom the advice or report is made available. (See [PS 121.72–121.84] for details of warnings.)

When should an ASG be updated/supplemented?

[PS 121.57] An ASG contains key information on which the client-adviser relationship between the licensee and the client will be based (see [PS 121.69–121.71] for the legal consequences of the information in the ASG). Therefore, an ASG must contain current relevant information.

[PS 121.58] A licensee is best placed to decide when updating/supplementing an ASG is necessary. This is because a licensee may have different types of retail clients. They will have clients to whom a one-off service has been provided in the past and clients to whom services are provided on an on-going basis. The latter category may include clients to whom advisory services are provided infrequently. ASIC applies the following general guidelines on how a licensee should update/supplement the information in an ASG:

- (a) for retail clients to whom a one-off service was provided in the past, a licensee need not update information in the ASG, unless that client is to be provided with investment advisory services again;
- (b) for retail clients to whom advisory services are provided on an on-going basis, the licensee should update the information in the ASG at the earliest available opportunity after the change to the information

has occurred (see [PS 121.51] for what constitutes earliest available opportunity).

[PS 121.59] ASIC does not wish to be prescriptive about the method by which an ASG should be updated (ie whether by the issuing a supplementary document or a new ASG). Which method is more appropriate (from a cost efficiency perspective) will depend on the extent of the changes that need to be made to the ASG. Therefore, ASIC leaves this matter to the discretion of the licensee. However, the licensee must communicate the new information to the client in a clear and easy to understand manner.

What is the format of an ASG?

[PS 121.60] ASIC does not wish to be prescriptive about the format of an ASG. This gives a licensee the flexibility in developing its own ASG to suit the particular nature and circumstances of its own business. When a licensee develops its own ASG, ASIC expects the licensee to carry out user testing of their ASG before using it. (User testing may be carried out by the licensee following the procedures set out in “User Testing Procedures” at Attachment E [PS 121.110]). ASIC will expect licensees to maintain adequate records of “user testing” procedures they have followed.

[PS 121.61] However, some licensees may not want to incur the additional expense of developing their own ASG. ASIC has therefore developed a number of pro forma ASGs in conjunction with the Communication Research Institute of Australia. (See pro formas at [PS 121.106], [PS 121.107], [PS 121.108] and [PS 121.109].) These have already been user tested by the Communication Research Institute of Australia. A licensee may use these pro formas by following the guidelines set out in this Part. A licensee may make any necessary minor modifications and adjustments to adapt the pro formas to their own business.

Can an ASG contain additional information such as advertising or promotional material?

[PS 121.62] ASIC considers that including advertising and promotional material in an ASG would generally detract from its intended purpose of giving retail investors key information about the investment advisory services being offered. The information in an ASG must also be easy to understand and in a readily comparable form. To achieve this purpose, a retail client must be able to clearly distinguish the ASG.

[PS 121.63] However, ASIC considers that it may be possible for a licensee to give an ASG in a package of information which contains advertising and promotional material, if the main purpose of the ASG is not

defeated. Therefore, a licensee will be able to comply with the ASG licence condition if:

- (a) the other information does not overwhelm the investor and detract from the key information that the ASG must contain; or
- (b) an investor's attention is not distracted from the key information in the ASG because it is part of another document or in a package of documents.

Could a representative prepare their own ASG?

[PS 121.64] When a multi-agent provides mixed advisory services in life insurance products and securities they can prepare a single ASG for all the advisory services they provide. Although detailed guidelines for persons offering mixed advisory services are set out in Policy Statement 124, the general guidelines that apply when a representative prepares and issues an ASG are set out here.

[PS 121.65] A representative may prepare the ASG they issue, if:

- (a) their conduct does not suggest that the representative is conducting a securities or an investment advice business in their own right; and
- (b) it meets ASIC's information requirements (see [PS 121.32–121.49] for the content of the ASG).

[PS 121.66] A representative who prepares and issues an ASG does this as either an agent or employee of the licensee in connection with that licensee's securities or investment advice business (see s94(3) and Policy Statement 117 for details of an act of a representative). The licensee is accountable for the content of the ASG even though it is prepared by the representative. Therefore, it is prudent for a licensee to take reasonable steps to ensure that the information in the ASG meets ASIC's guidelines and does not contain information that is likely to mislead or confuse investors.

[PS 121.67] If a representative creates the impression when they are preparing and issuing an ASG that they, rather than their principal, carry on the business, the representative may be conducting or holding out as conducting a securities or investment advice business. Because a representative does not have an appropriate licence in their own right, this amounts to a breach of s780 or s781. (Section 780 and s781 prohibit a person from conducting or holding out that they conduct a business as a licensee, unless they hold an appropriate licence.)

[PS 121.68] However, ASIC considers that a representative who prepares and issues an ASG may not, by doing that act alone, be seen as conducting the advisory service on their own behalf. This is because their ASG (and the business documents they use, see Policy Statement 117) must clearly identify the licensee on whose behalf the representative works.

What are the possible legal consequences of the information in an ASG?

[PS 121.69] The legal effect of the information in an ASG depends on a range of factors, particularly the intention of the parties involved (ie the licensee and the retail investor who is given the ASG).

[PS 121.70] Generally, ASIC considers that the information in an ASG is not an offer that a retail investor can accept and thereby create a contract straight away. It gives key information on the advisory services of the licensee allowing a retail investor to make a well informed decision in choosing the service. This approach gives licensees flexibility to negotiate detailed terms of any contractual arrangement with a retail client who is given their ASG.

[PS 121.71] A retail investor induced to enter into a contract to obtain investment advisory services from a licensee because they relied on misleading information in the ASG would be able to invoke civil remedies. These would be based on liability for misrepresentation. In addition, statutory remedies would also be available to a retail client. These remedies are based on misleading and deceptive conduct (eg s995 of the Law) and contractual remedies (to the extent the information in the ASG forms part of any subsequent contract).

Part IV: Warnings when general securities advice is given

[PS 121.72] A licensee must give certain warnings when they give general securities advice to retail investors. The scope of this obligation and guidelines to assist licensees to comply with it are set out in answers to the following questions:

- What is the purpose of a warning when giving general securities advice?
- What is the scope of the licence condition on warnings?
- How and when must warnings be given?

What is the purpose of a warning when giving general securities advice?

[PS 121.73] Warnings must be given when general securities advice and not a personal securities recommendation is given to a retail client. ASIC draws a distinction between general securities advice and a personal securities recommendation.

[PS 121.74] A “personal securities recommendation” is advice to the effect that some action in relation to securities is appropriate to the individual investment needs and financial circumstances of a particular client. The conduct of business rules in Pt 7.4 Div 3 apply to any person who provides a personal securities recommendation. These rules include the requirement in s851 to ensure that the recommendation is appropriate to the investment objectives, financial situation and particular needs of the particular investor.

[PS 121.75] “General securities advice” is advice that does not contain any direct or implicit recommendation that the securities referred to are appropriate to the individual needs and circumstances of a particular person. The conduct of business rules in Div 3 of Pt 7.4 do not apply to general securities advice (although the common law obligations of a fiduciary continue to apply where general securities advice is given, see Policy Statement 122 [PS 122.37–122.39]).

[PS 121.76] ASIC is aware that many retail investors do not readily appreciate the difference between general securities advice and personal securities recommendations. As a result, investors may rely on general securities advice without making any further inquiries about its suitability to their own individual investment objectives, financial situation and particular needs. Therefore, ASIC considers that it is important that licensees giving general securities advice to retail investors include adequate warnings about the limited nature of the general securities advice.

What is the scope of the licence condition on warnings?

[PS 121.77] The licence condition on warnings when general securities advice is provided to retail investors adopts a performance and principle based approach rather than an overly prescriptive approach. This means that there are no mandatory words for warnings. However, after receiving the warning an investor must clearly understand that:

- (a) the advice has not been prepared taking into account their particular investment objectives, financial situation and particular needs; and
- (b) the investor should assess whether the advice is appropriate to their individual investment objectives, financial situation and particular needs. They should do this before making an investment decision on the basis of that general advice. They can either assess the advice themselves or seek the help of an adviser.

How and when must warnings be given?

[PS 121.78] Warnings must be given to a client at the same time as they are provided with general securities advice. For example, if general securities advice is in a newsletter or circular, the warning must appear in the newsletter or circular immediately after that advice. If general securities advice is provided on the Internet, a warning must be placed on the Internet immediately after that advice.

[PS 121.79] General securities advice may be provided either orally or in writing. ASIC considers that the warning should generally be given in the same form as the advice. The following guidelines will assist licensees to comply with the warning requirement.

Oral general securities advice and warnings

[PS 121.80] If general securities advice is provided orally, the warnings may also be given orally. One warning given to a particular retail client is generally adequate when general securities advice is provided orally and the client is reminded of the previous warnings. However, when there is a long lapse of time between the first advice and the subsequent advice, it is prudent for the adviser to repeat the warnings. If oral advice given to a retail client consists of both personal securities recommendations and general securities advice, it may be prudent for the adviser to remind the client of the warnings when general securities advice is provided later.

[PS 121.81] An adviser may give oral general securities advice face to face or using a communication service such as the telephone. The warning must still be given regardless of the context of the oral advice.

[PS 121.82] Oral general securities advice may also be given using a mass communication service such as television or radio. ASIC considers that persons using such mass communication services would not normally be in a position to provide any investment advice other than general securities advice. This is because these communication services reach a vast number of potential investors whose investment needs and circumstances vary widely.

[PS 121.83] Even if the mass communication service used is an interactive one (eg talk-back-radio), it does not give enough time with any individual investor to undertake a full needs analysis. Therefore, only general securities advice, which does not require a full needs analysis, could be provided using such services. When mass communication services are used to provide general securities advice, the warnings must still be given.

Written general securities advice and warnings

[PS 121.84] When an adviser gives written general securities advice, warnings must be set out in the same document in which the advice is provided. Previous warnings given to that client are not considered adequate. This is because, when general securities advice is provided in newsletters or circulars which have a wide circulation (rather than a group of specific subscribers), the advice may be read by persons who may not have had the benefit of any previous warnings. Therefore, ASIC considers that for the benefit of all readers, warnings must accompany the written advice.

Part V: Warning when full personal information is not given

[PS 121.85] A licensee must give certain warnings to a retail client who refuses to provide full personal information. The scope of this obligation and guidelines to assist licensees to comply with it are set out in answers to the following questions:

- What is the purpose of warning a retail client who refuses to give full personal information?
- What is the scope of the licence condition on warnings?
- How and when must warnings be given?

What is the purpose of warning a retail client who refuses to give full personal information?

[PS 121.86] When making personal securities recommendations, an adviser must have a reasonable basis for that recommendation (s851) (see Policy Statement 122 on Conduct of Business Rules). To properly comply with this obligation, an adviser must get full personal information from a client about their investment objectives, financial situation and particular needs (see Policy Statement 122 [PS 122.102–122.104] for details of what is full personal information).

[PS 121.87] Not all retail clients may want to disclose full personal information to their adviser. Some retail investors may only want to give limited information about their personal needs and circumstances. However, ASIC is concerned that sometimes retail investors may decline to give personal information without fully appreciating the limitations of the advice that may be provided as a result.

[PS 121.88] Therefore, it is important that retail investors are given some warning about the limitations of personal recommendations they receive if they do not supply full personal information to the adviser.

What is the scope of the licence condition on warnings?

[PS 121.89] This licence condition requires a licensee to ensure that when personal securities recommendations are provided to a retail investor (a client) who refuses to supply any personal information, or supplies only limited personal information, that client is given certain warnings by the adviser. The warning must enable the client to clearly understand that:

- (a) the adviser has not been able to undertake a full needs analysis for them because they have not given full personal information;
- (b) there are limits on how appropriate the personal recommendations are because they were not based on full information (or based on limited information) about them. Clients must understand, for example, that they may be given an investment recommendation which is not quite appropriate to their individual needs and circumstances; and
- (c) they must, therefore, carefully assess how appropriate the recommendations are in light of their individual investment objectives, financial situation and particular needs.

How and when must warnings be given?

[PS 121.90] Personal securities recommendations may be provided orally or in writing. The following guidelines will assist licensees to comply with the requirement to give warnings when making oral or written personal securities recommendations to retail clients who do not give full personal information.

Oral personal securities recommendations

[PS 121.91] If a personal securities recommendation is provided orally, the warnings may also be given orally. Such warnings may be given either:

- (a) at the time when the retail client refuses to give full personal information in response to the adviser's request; or
- (b) at the time of providing personal securities recommendations.

[PS 121.92] One warning to a particular retail client is generally adequate. However, when there is a long lapse of time between providing the first oral advice and the subsequent advice it may be prudent for the adviser to remind the client about the previous warnings.

[PS 121.93] Oral personal securities recommendations may be provided either face to face or using a communication service such as the telephone. The adviser is still required to do a full needs analysis when making personal recommendations using such communication services. Therefore, a warning must also be given with that advice. (*Note:* [PS 121.82–121.83] about the inappropriateness of mass communication services for making personal securities recommendations.)

Execution related telephone advice on quoted securities

[PS 121.94] ASIC has adopted an approach which is consistent with the underlying objectives of s849 and s851 when applying these obligations to execution related telephone advice (which are personal securities

recommendations) provided by a dealer on quoted securities. An adviser providing execution related telephone advice must undertake a needs analysis only initially to ensure that the advice is not unsuitable to a specific retail client in light of that client's investment needs and financial circumstances. If the client refuses to give full personal information during this process, the warnings must be given at that point. ASIC does not consider it necessary to repeat warnings when subsequent telephone advice is provided to such a client.

Written general securities advice and warnings

[PS 121.95] If a personal securities recommendation is provided in writing, it is appropriate to also give the warnings in writing. The warnings may be given either:

- (a) at the time when the retail client declines to give full personal information in response to the adviser's request; or
- (b) at the time of providing personal securities recommendations.

[PS 121.96] One warning to a particular retail client is generally adequate unless there is a long lapse of time between providing the first recommendations and the subsequent recommendations. In this case it may be prudent for the adviser to remind the client about the previous warnings.

Part VI: Complaints resolution procedures

[PS 121.97] A licensee who provides investment advisory services to retail investors must have certain internal complaints handling procedures. The scope of this obligation and guidelines to assist licensees to comply with it are set out in answers to the following questions:

- What is the purpose of having mandatory internal complaints handling procedures?
- What is the scope of the licence condition on internal complaints handling procedures?
- What internal complaints handling procedures are satisfactory?
- When will ASIC require licensees to be members of an external complaints resolution scheme?

What is the purpose of having mandatory internal complaints handling procedures?

[PS 121.98] ASIC considers it is important that persons providing investment advisory services to retail investors have in place adequate internal complaint handling procedures to deal with clients' complaints efficiently and fairly. These procedures must include internal mechanisms to properly record, assess and resolve any complaints.

[PS 121.99] These procedures are particularly beneficial to a licensee because they:

- (a) enhance retail clients' confidence in the licensee's services; and
- (b) give important feed-back to the licensee about client satisfaction or lack of it.

[PS 121.100] Retail investors greatly benefit from an easy to access and relatively inexpensive process (when compared to judicial processes) of obtaining redress through the service provider, who is in the best position to deal with complaints in the first instance. ASIC considers that the benefits of having internal procedures far outweigh any cost involved because it promotes greater investor confidence in advisory services.

What is the scope of the licence condition on internal complaints handling procedures?

[PS 121.101] When a licensee provides investment advisory services to retail investors, the licensee must ensure that it has in place adequate internal complaints handling procedures for dealing with any complaints made by a retail client to whom advisory services have been provided.

What internal complaints handling procedures are satisfactory?

[PS 121.102] Any procedures that meet the guidelines set out in the Australian Standard, Complaints Handling, AS 4269-1995 would be accepted by ASIC as adequate for the purposes of this requirement. Because AS 4269-1995 has adopted a functional approach in setting out minimum standards, it is suitable for both small as well as large businesses. These standards have been accepted by ASIC as giving the appropriate level of flexibility and certainty to licensees who have to comply with this requirement.

When will ASIC require licensees to be members of an external complaints resolution scheme?

[PS 121.103] ASIC stated in its *Good Advice*⁴ report that it will:

- (a) review the requirement for mandatory membership with an external industry based complaints resolution scheme within 12 months of the issue of the report;
- (b) await the finalisation by the Federal Bureau of Consumer Affairs (FBCA) of its guidelines for complaints resolution schemes; and
- (c) liaise with the existing complaints resolution schemes to promote consistency in both the standards of customer dispute resolution procedures available under the existing schemes and uniform access to these schemes by persons.

[PS 121.104] ASIC's market research and liaison activities, and the submissions to the Wallis Inquiry, indicate that the advisory industry and consumer organisations are strongly supportive of the need for uniform standards in external complaints resolution mechanisms available to retail investors.

[PS 121.105] Therefore, ASIC will require persons who provide investment advisory services to retail investors to be members of an external complaints resolution scheme with effect from 1998. ASIC will work with key industry bodies (including the Financial Planning Association and ASX) during 1997 to improve the coverage of complaints resolution schemes in the investment advice industry. This will ensure that all advisers are able to comply with this requirement when it comes into effect in 1998.

ASIC notes that investor access to complaints resolution schemes and current structural arrangements for schemes in the financial services industry are important issues before the Wallis Inquiry. ASIC will take into

4 Australian Securities Commission (1996) *Good Advice*. ASIC, Sydney.

account any recommendations by the Inquiry in its plans to ensure that all advisers are members of an appropriate scheme in 1998.

[PS 121.106]

ASIC POLICY STATEMENTS

[PS 121.106]

Attachment A

Advisory Services Guide: Generic

For information on Advisory Services Guides see [PS 121.25–121.71].

Advisory Services Guide

[Name of licensee]

ACN Number

Address of licensee

You have the right to ask us about our charges, the type of advice we will give you, and what you can do if you have a complaint about our services.

Key information is set out in answer to the questions below.

If you need more information or clarification, please ask us.

1 Before you get our advice

Your questions

Our answers

Who is my adviser?

Your adviser will be [*name of adviser*].

[*He/she*] has [*specify adviser's educational qualifications and experience*]¹.

[*Name of adviser*] is an [*employee/agent*] of [*name of licensee*]².

(See [PS 121.36–121.40])

Who will be responsible for the advice given to me?

Your adviser will be acting on behalf of [*name of licensee*]. [*Name of licensee*] is therefore responsible to you for any advisory services your adviser provides.

[*Name of licensee*] is [*specify details of relevant licences/registrations*]³.

[*Some information/history about licensee may be inserted*]⁴.

[*Name of licensee*] is a member of [*specify any professional associations of which licensee is a member*]⁵.

[*Specify details of membership of any financial group or any ownership links*]⁶.

(See [PS 121.33–121.35])

Your questions

Our answers

What advisory services are available to me?

We offer you the following services:

[specify type of advisory services offered].

We provide advice on *[specify classes of products on which advice is provided]*⁷.

*[Specify whether personal securities recommendations or general securities advice or any combination of them are offered]*⁸.

*[Specify whether any portfolio monitoring services are offered]*⁹.

(See [PS 121.41–121.42])

How will I pay for the service?

*[Specify how licensee will be paid for the service offered]*¹⁰.

(See [PS 121.43–121.45])

How much commission/fee do you get?

*[Specify the amount of commissions/fees...etc]*¹¹.

How are the commissions/fees calculated and deducted?

*[Specify how licensee calculates/deducts commissions/fees]*¹².

2 When you get our advice

Your questions

Our answers

Do I get detailed information about actual commissions and other benefits my adviser gets from making the recommendations?

Yes. You have the right to know about details of commissions and other benefits your adviser receives for recommending investments. We will provide this information to you when we make specific recommendations.

(See [PS 121.46–121.48])

Will you give me advice which is suitable to my investment needs and financial circumstances?

Yes. But to do so we need to find out your individual investment objectives, financial situation and needs before we recommend any investment to you.

You have the right not to divulge this information to us, if you do not wish to do so. In that case, we are required to warn you about the possible consequences of us not having your full personal information. You should read the warnings carefully.

(See [PS 121.46–121.48])

What should I know about any risks of the investments or investment strategies you recommend to me?

We will explain to you any significant risks of investments and strategies which we recommend to you. If we do not do so, you should ask us to explain those risks to you.

(See [PS 121.46–121.48])

Your questions

Our answers

What information do you maintain in my file and can I examine my file?

We maintain a record of your personal profile which includes details of your investment objectives, financial situation and needs.

We also maintain records of any recommendations made to you.

If you wish to examine your file, you should ask us, and we will make arrangements for you to do so¹³.

(See [PS 121.46–121.48])

Can I tell you how I wish to instruct you to buy or sell my investment?

Yes. You may specify how you would like to give us instructions. For example by telephone, fax or other means.

(See [PS 121.46–121.48])

3 If you have any complaints

Your questions

Our answers

Who can I complain to if I have a complaint about the advisory service?

If you have any complaint about the service provided to you, you should take the following steps.

1. Contact your adviser and tell your adviser about your complaint.

*Your questions**Our answers*

2. If your complaint is not satisfactorily resolved within 3 days, please contact [*specify another person in the licensees organisation to whom a complaint can be made*] or put your complaint in writing and send it to us at [*postal address of licensee*]. We will try to resolve your complaint quickly and fairly.
3. If you still do not get a satisfactory outcome, you have the right to complain to [*specify name, address and telephone number of external disputes resolution scheme of which licensee is a member*]. We are a member of this scheme.

The Australian Securities and Investments Commission (ASIC) also has a freecall Infoline on 1300 300 630 which you may use to make a complaint and obtain information about your rights.

(See [PS 121.49])

Footnotes for Advisory Services Guide: Generic

- 1 Details of an adviser's educational qualifications and experience are optional.
- 2 If it is not practicable to pre-determine the identity of the specific adviser when the ASG is printed, as an alternative:
 - (a) this section may contain blank spaces which are filled in immediately before providing the ASG to a client or potential client; or

- (b) the ASG may have an insertion which contains the adviser's details and is referred to in this section eg "see the insert for details about your adviser".
- 3 For example, specify whether the licensee holds a dealers licence or an investment adviser's licence under the Corporations Law and also any other relevant registrations eg as a registered life broker under the Insurance (Agents and Brokers) Act.
- 4 This information is optional. A licensee may provide this information/history to assist the investor to identify the licensee who is providing the service (eg whether the licensee is based in Australia or elsewhere, how long the organisation has been established etc).
- 5 This information is optional.
- 6 The licensee should specify any relevant ownership links and also any group affiliations that may have any effect on the advice. Again, this information is necessary to assist the investor to understand who is providing the service and the nature of the service they are being offered.
- 7 The licensee should clearly specify any limitations on the range of products upon which advice is provided. These limitations may arise from the restricted nature of the licence or contractual or other arrangements under which the licensee operates (eg research limitations). Any limitations should be clearly explained.

If it is necessary to list product issuers or types of products and it is not practicable to set out all those product issuers or product types in this section, the product issuers may be listed in a Schedule attached to the ASG and referred to in this section.

- 8 For example:

"We will only recommend an investment to you after considering its suitability for your individual investment needs and objectives and financial circumstances."

and/or

“We will only provide you with general securities advice or reports on securities and it is up to you to consider whether those securities are suitable for your own investment needs and objectives and financial circumstances.”

and/or

“We will execute securities transactions on your behalf.”

- 9 This is optional.
- 10 For example, whether the licensee charges fees for the service or is paid by commissions and other benefits paid by product issuers or any combination of these.
- 11 This should clearly set out how the fees are calculated (if the charge is on a fee for service basis). Alternatively, the extent of the commissions or other benefits received eg “we get between 2% and 5% commissions from product providers...etc”.
- 12 Specify when/how the fees/commissions are paid or deducted etc.
- 13 This information is optional.

[PS 121.107]

Attachment B

**Advisory Services Guide: Sample for financial planner
paid by fee for service**

For information on Advisory Services Guides see [PS 121.25–121.71].

Advisory Services Guide

**XYZ Financial Planning Pty Ltd
ACN 767 301 295
Level 3, 200 Bourke Street
GPO Box 88, Melbourne Vic 3001**

You have the right to ask us about our charges, the type of advice we will give you, and what you can do if you have a complaint about our services.

Key information is set out in answer to the questions below.

If you need more information or clarification, please ask us.

1 Before you get our advice

Your questions

Our answers

Who is my adviser?

Your adviser will be Joe Smith.

He has a Financial Planning Diploma from the FPA and 3 years experience as a financial planner.

Joe Smith is an employee of XYZ Financial Planning Pty Ltd.

Who will be responsible for the advice given to me?

Your adviser will be acting on behalf of XYZ Financial Planning Pty Ltd. XYZ Financial Planning Pty Ltd is therefore responsible to you for any advisory services your adviser provides.

XYZ Financial Planning Pty Ltd is a licensed dealer under the Corporations Law and a registered Life Broker under the Insurance (Agents and Brokers) Act.

XYZ Financial Planning Pty Ltd has been established for 15 years.

XYZ Financial Planning Pty Ltd is a member of the Financial Planning Association (FPA).

What advisory services are available to me?

We offer you the following services:

- *financial planning advice*
- *life insurance advice*

*Your questions**Our answers*

- *superannuation and rollover advice*
- *tax planning advice.*

We provide advice on shares, debentures, life insurance, superannuation and unit trust products.

We only recommend an investment to you after considering its suitability for your individual investment objectives, financial situation and needs.

We provide an independent advisory service. Therefore any advice you obtain from us will be independent advice.

We can provide ongoing monitoring of your portfolio. If you want this service you must pay an extra [\$100] per year. We will then monitor your portfolio and provide you with a monthly report on its performance.

How will I pay for the service?

We will charge a fee directly to you.

We do not obtain any commissions, fees or other benefits from any other party. If we receive any commissions from another party, we will rebate them to you.

How are the fees calculated and paid?

Fees will be calculated on the basis of:

- *[2.0%] of the first \$100 000 invested*
- *[1.0%] of the next \$100 000 invested*
- *[0.5%] of the remainder.*

*Your questions**Our answers*

[Note: this is subject to a minimum fee of \$500.]

Fees are payable after we provide the service.

2 When you get our advice

*Your questions**Our answers*

Do I get detailed information about actual commissions and other benefits my adviser gets from making the recommendations?

Yes. You have the right to know about details of commissions and other benefits your adviser receives for recommending investments. We will provide this information to you when we make specific recommendations.

Will you give me advice which is suitable to my investment needs and financial circumstances?

Yes. But to do so we need to find out your individual investment objectives, financial situation and needs before we recommend any investment to you.

You have the right not to divulge this information to us, if you do not wish to do so. In that case, we are required to warn you about the possible consequences of us not having your full personal information. You should read the warnings carefully.

What should I know about any risks of the investments or investment strategies you recommend to me?

We will explain to you any significant risks of investments and strategies which we recommend to you. If we do not do so, you should ask us to explain those risks to you.

*Your questions**Our answers*

What information do you maintain in my file and can I examine my file?

We maintain a record of your personal profile which includes details of your investment objectives, financial situation and needs.

We also maintain records of any recommendations made to you.

If you wish to examine your file, you should ask us, and we will make arrangements for you to do so.

Can I tell you how I wish to instruct you to buy or sell my investment?

Yes. You may specify how you would like to give us instructions. For example by telephone, fax or other means.

3 If you have any complaints

*Your questions**Our answers*

Who can I complain to if I have a complaint about the advisory service?

If you have any complaint about the service provided to you, you should take the following steps:

- 1. Contact your adviser and tell your adviser about your complaint.*
- 2. If your complaint is not satisfactorily resolved within 3 days, please contact John Brown of XYZ Financial Planning Pty Ltd on (03) 9231 4533 or put your complaint in writing and send it to us at Level 3, 200 Bourke St, GPO Box 88, Melbourne Vic 3001. We will try to resolve your complaint quickly and fairly.*

*Your questions**Our answers*

3. *If you still do not get a satisfactory outcome, you have the right to complain to the FPA Complaints Resolution Scheme at 6th Floor, 50 Queen Street, Melbourne Vic 3000. [Telephone (03) 9614 2289.] We are a member of this scheme.*

The Australian Securities and Investments Commission (ASIC) also has a freecall Infoline on 1300 300 630 which you may use to make a complaint and obtain information about your rights.

[PS 121.108]

Attachment C

**Advisory Services Guide: Sample for financial planner
paid by commissions from product issuers**

For information on Advisory Services Guides see [PS 121.25–121.71].

Advisory Services Guide

**Specialised Financial Planning Pty Ltd
ACN 808 010 808
101 Collins Street
GPO Box 20, Melbourne VIC 3001**

You have the right to ask us about our charges, the type of advice we will give you, and what you can do if you have a complaint about our services.

Key information is set out in answer to the questions below.

If you need more information or clarification, please ask us.

1 Before you get our advice

Your questions

Our answers

Who is my adviser?

Your adviser will be Warren Jones.

He has a Graduate Diploma from the Securities Institute of Australia and 5 years experience as a financial planner.

Warren Jones is an employee of Specialised Financial Planning Pty Ltd.

Who will be responsible for the advice given to me?

Your adviser will be acting on behalf of Specialised Financial Planning Pty Ltd. Specialised Financial Planning Pty Ltd is therefore responsible to you for any advisory services your adviser provides.

Specialised Financial Planning Pty Ltd is a licensed dealer under the Corporations Law.

Specialised Financial Planning Pty Ltd has been established for 5 years.

Specialised Financial Planning Pty Ltd is a member of the Financial Planning Association (FPA).

What advisory services are available to me?

We offer you the following services:

- *financial planning advice*
- *superannuation and rollover advice*

Your questions

Our answers

- *tax planning advice.*

We provide advice on shares, debentures, superannuation and unit trust products.

We only recommend an investment to you after considering its suitability for your individual investment objectives, financial situation and needs.

Our advisory service does not include ongoing monitoring of your portfolio.

How will I pay for the service?

We will not charge any fee directly to you. All our payments come from commissions paid to us by the product issuers whose products we recommend to you.

How much commission do you get?

We get between 2% and 3% commissions from fund managers and other product issuers whose products we recommend to you.

Some companies also pay us an ongoing commission.

How are the commissions calculated and deducted?

These commissions will be calculated on the basis of the funds you invest. They will be deducted from the funds you have given us to invest.

2 When you get our advice

*Your questions**Our answers*

Do I get detailed information about actual commissions and other benefits my adviser gets from making the recommendations?

Yes. You have the right to know about details of commissions and other benefits your adviser receives for recommending investments. We will provide this information to you when we make specific recommendations.

Will you give me advice which is suitable to my investment needs and financial circumstances?

Yes. But to do so we need to find out your individual investment objectives, financial situation and needs before we recommend any investment to you.

You have the right not to divulge this information to us, if you do not wish to do so. In that case, we are required to warn you about the possible consequences of us not having your full personal information. You should read the warnings carefully.

What should I know about any risks of the investments or investment strategies you recommend to me?

We will explain to you any significant risks of investments and strategies which we recommend to you. If we do not do so, you should ask us to explain those risks to you.

What information do you maintain in my file and can I examine my file?

We maintain a record of your personal profile which includes details of your investment objectives, financial situation and needs.

We also maintain records of any recommendations made to you.

If you wish to examine your file, you should ask us, and we will make arrangements for you to do so.

Your questions

Our answers

Can I tell you how I wish to instruct you to buy or sell my investment?

Yes. You may specify how you would like to give us instructions. For example by telephone, fax or other means.

3 If you have any complaints

Your questions

Our answers

Who can I complain to if I have a complaint about the advisory service?

If you have any complaint about the service provided to you, you should take the following steps.

- 1. Contact your adviser and tell your adviser about your complaint.*
- 2. If your complaint is not satisfactorily resolved within 3 days, please contact Sally O'Malley of Specialised Financial Planning Pty Ltd on (03) 9876 2345 or put your complaint in writing and send it to us at 101 Collins Street, Box 20, Melbourne Vic 3001. We will try to resolve your complaint quickly and fairly.*
- 3. If you still do not get a satisfactory outcome, you have the right to complain to the FPA Complaints Resolution Scheme at 6th Floor, 50 Queen Street, Melbourne Vic 3000. [Telephone (03) 9614 2289.] We are a member of this scheme.*

Your questions

Our answers

The Australian Securities and Investments Commission (ASIC) also has a freecall Infoline on 1300 300 630 which you may use to make a complaint and obtain information about your rights.

[PS 121.109]

Attachment D

Advisory Services Guide: Sample for fund manager

For information on Advisory Services Guides see [PS 121.25–121.71].

Advisory Services Guide

**ABC Funds Management Limited
ACN 701 305 400
Level 2, 8 Pitt Street, Sydney NSW 2000
GPO Box 1323, Sydney NSW 2001**

You have the right to ask us about our charges, the type of advice we will give you, and what you can do if you have a complaint about our services.

Key information is set out in answer to the questions below.

If you need more information or clarification, please ask us.

1 Before you get our advice

Your questions

Our answers

Who is my adviser?

Your adviser will be Arthur Brown.

He has a Certificate in Financial Markets from the Securities Institute of Australia and 4 years experience as a financial adviser.

Arthur Brown is an agent of ABC Funds Management Limited.

Who will be responsible for the advice given to me?

Your adviser will be acting on behalf of ABC Funds Management. ABC Funds Management is therefore responsible to you for any advisory services your adviser provides.

ABC Funds Management Limited is a licensed dealer under the Corporations Law and a registered life broker under the Insurance (Agents and Brokers) Act.

ABC Funds Management Limited is a member of the ABC Financial Group.

We have been established for 10 years and have branches in each state of Australia.

continued ...

Your questions

Our answers

Who will be responsible for the advice given to me?

ABC Funds Management Limited is a member of the following associations:

continued

- *the Financial Planning Association.*
- *the Investment Funds Association of Australia*
- *the Life Insurance and Superannuation Association of Australia.*

What advisory services are available to me?

We offer you the following services:

- *financial planning*
- *retirement planning*
- *superannuation and rollover advice*
- *tax planning advice.*

We will only provide advice on superannuation and unit trusts issued by members of the ABC Financial Group.

We only recommend an investment to you after considering its suitability for your individual investment objectives, financial situation and needs.

Our advisory service does not include ongoing monitoring of your portfolio.

How will I pay for the service?

We will not charge any fee directly to you. All our payments come from commissions paid to us by the fund managers in the ABC Financial Group whose products we recommend to you.

*Your questions**Our answers*

How much commission do you get?

We get between 2% and 3% commissions from the members of the ABC Financial Group whose products we recommend to you.

How are the commissions calculated and deducted?

These commissions will be calculated on the basis of the funds you invest. They will be deducted from the funds you have given us to invest.

2 When you get our advice

*Your questions**Our answers*

Do I get detailed information about actual commissions and other benefits my adviser gets from making the recommendations?

Yes. You have the right to know about details of commissions and other benefits your adviser receives for recommending investments. We will provide this information to you when we make specific recommendations.

Will you give me advice which is suitable to my investment needs and financial circumstances?

Yes. But to do so we need to find out your individual investment objectives, financial situation and needs before we recommend any investment to you.

You have the right not to divulge this information to us, if you do not wish to do so. In that case, we are required to warn you about the possible consequences of us not having your full personal information. You should read the warnings carefully.

Your questions

Our answers

What should I know about any risks of the investments or investment strategies you recommend to me?

We will explain to you any significant risks of investments and strategies which we recommend to you. If we do not do so, you should ask us to explain those risks to you.

What information do you maintain in my file and can I examine my file?

We maintain a record of your personal profile which includes details of your investment objectives, financial situation and needs.

We also maintain records of any recommendations made to you.

If you wish to examine your file, you should ask us, and we will make arrangements for you to do so.

Can I tell you how I wish to instruct you to buy or sell my investments?

Yes. You may specify how you would like to give us instructions. For example by telephone, fax or other means.

3 If you have any complaints

Your questions

Our answers

Who can I complain to if I have a complaint about the advisory service?

If you have a complaint about the service provided to you, you should take the following steps:

- 1. Contact your adviser and tell your adviser about your complaint.*

*Your questions**Our answers*

2. *If your complaint is not satisfactorily resolved within 3 days, please contact Jane Smith of ABC Funds Management on (02) 9874 5634 or put your complaint in writing and send it to us at Level 2, 8 Pitt Street, GPO Box 1323, Sydney NSW 2001. We will try to resolve your complaint quickly and fairly.*
3. *If you still do not get a satisfactory outcome, you have the right to complain to the FPA Complaints Resolution Scheme at 6th Floor, 50 Queen Street, Melbourne Vic 3000. [Telephone (03) 9614 2289.] We are a member of this scheme.*

The Australian Securities and Investments Commission (ASIC) also has a freecall Infoline on 1300 300 630 which you may use to make a complaint and obtain information about your rights.

**[PS 121.110]
Attachment E
User testing procedures****Why test?**

Advisory Service Guides (ASG) can be complex and each one is different. The types and needs of consumers are also complex and highly varied. This is why an ASG, which differs substantially from the model documents, needs to be “tested”.

What is the testing method?

Diagnostic testing

The method used to develop an ASG should be diagnostic testing, used iteratively. As the name suggests, diagnostic testing is concerned with finding out what is wrong with a document. It takes the behaviours of people using the document as symptoms of the document’s health. This involves following a certain procedure to find out whether the information in the document enables its user to achieve the desired outcomes — in this case the outcomes specified in Policy Statement 121, [PS 121.32–121.49].

Diagnostic testing is widely used where useability is a critical concern. It is cheaper than more traditional methods, such as surveys and focus groups, and the quality of data from diagnostic testing is good.

Diagnostic testing does not allow you to make precise predictions about how users will treat the ASG. But repeated experience has shown that the conclusions from such testing work well in practice.

What is the procedure that should be followed?

A licensee who wishes to user test its own design of an ASG should follow the following steps:

Step 1: How should the ASG be designed?

You should design your ASG following the detailed guidelines in Part III of Policy Statement 121, [PS 121.25–121.71]. The best person to develop and conduct testing (following the procedures in Step 3) is the person who wrote the ASG. This is because writers learn a great deal from the experience of testing which cannot be learnt from reading research reports. There is nothing quite like the experience of observing someone struggling with a document you have created and beginning to understand why they find it difficult. This experience is very valuable when it is later applied to modifying a poorly performing document (see Step 4).

Step 2: Who should be tested?

Select a suitable group of users. The users should represent the type of clients you have. However, you should aim to recruit from the group of persons at risk, ie those people who are likely to have problems with using the ASG. For example, in many instances it is appropriate to recruit older clients, because they are known to have problems with technical documents of this type.

Avoid recruiting from a population of convenience, such as fellow workers. (However, you can use such people to pilot your test questions, to check that you are eliciting the sort of answers that you expect to gain from your questions.)

How many should you test?

Minimally you should aim for 80% of people being able to find the information they want and use it appropriately. For many practical purposes a sample size of 20 will give you a good indication of the document's likely performance with the general population.

If you are concerned to minimise any business risk that might arise from misunderstanding of your documents, you should use a sample size of 80. Roughly speaking, if 80% of people using the document can use it appropriately, then there is a less than one in twenty chance that a larger proportion of the population will have difficulty with the document.

Step 3: How should you test the ASG?

Distribute the model ASG to the selected group of users. Give them time to read and understand the document. Then:

- (a) ask users to carry out the tasks they might normally carry out using the ASG (eg identify the licensee responsible for the advice, see Policy Statement 121, [PS 121.32–121.49] details of the tasks)
- (b) observe and record in detail what users do and say, either about particular tasks they are undertaking or the ASG in general; and
- (c) probe users to find out whether they can appropriately interpret and use the information they have read.

Step 4: When should you modify and retest the ASG?

If the feedback from the user testing indicates that users have difficulty in understanding the information in the ASG and therefore are not able to achieve the desired outcomes, you should modify the ASG to address those difficulties. Following modifications, you should retest the document using the same procedures set out in Step 3.

What records must you keep?

When you have completed the user testing of your ASG, you should maintain adequate records of the procedures you have followed and the outcomes (see [PS 121.60–121.61]).

Note

Diagnostic testing is not difficult to learn. However, you do need to be a good listener and observer, with a sense of humility about your own writing skills.