



**ASIC**

Australian Securities & Investments Commission

## REGULATORY GUIDE 175

# Licensing: Financial product advisers—Conduct and disclosure

May 2009

### **About this guide**

This is a guide for persons who provide financial product advice and their professional advisers (such as lawyers).

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

## About ASIC regulatory documents

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

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

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

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

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

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

## Document history

This version was issued on 22 May 2009 and is based on legislation and regulations as at 22 May 2009.

Previous versions:

- Superseded Policy Statement 175C, issued 28 May 2007
- Superseded Policy Statement 175B, issued 13 May 2005
- Superseded Policy Statement 175A, issued 26 June 2003, updated 23 September 2003.

## Disclaimer

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

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

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## A Overview

### Key points

Part 7.7 imposes a number of conduct and disclosure obligations on providers of financial product advice. The obligations vary depending on whether the advice is personal or general advice:

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

- providing financial product advice (see Section B);
- preparing and providing a Financial Services Guide (see Section C);
- preparing and providing suitable personal advice (see Section D); and
- preparing and providing a Statement of Advice (see Section E).

### Conduct and disclosure obligations under Pt 7.7

RG 175.1 Part 7.7 of the *Corporations Act 2001* (Corporations Act) requires persons who provide financial product advice to retail clients to comply with certain conduct and disclosure obligations. These obligations are designed to ensure that retail clients receive professional and reliable advice about financial products. The obligations vary depending on whether the advice is personal advice or general advice.

Note: 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. 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 175.2 The obligations in Pt 7.7 apply to ‘providing entities’. A providing entity may be a licensee or an authorised representative: see RG 175.26.

RG 175.3 This guide 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.

RG 175.4 Under Pt 7.7, providing entities must:

- (a) prepare and provide a Financial Services Guide (FSG);

Note: This obligation applies to all providers of financial services to retail clients, not just financial product advisers.

- (b) where general advice is provided, ensure that a general advice warning is given to the client;
- (c) where personal advice is given:
  - (i) ensure the personal advice is suitable;
  - (ii) prepare and provide a Statement of Advice (SOA); and
  - (iii) where the personal advice is based on incomplete or inaccurate information, warn the client that this is so.

### What is the difference between general advice and personal advice?

- RG 175.5 All financial product advice is either ‘general advice’ or ‘personal advice’. Under the Corporations Act, personal advice has particular characteristics.
- RG 175.6 Table 1 sets out the definitions of personal and general advice. For more guidance on the difference between general and personal advice, see Section B and the Appendix.

**Table 1: The meaning of ‘personal advice’ and ‘general advice’**

Personal advice	General advice
Financial product advice given or directed to a person (including by electronic means) in circumstances where: <ul style="list-style-type: none"> <li>• the provider of the advice has considered one or more of the client’s objectives, financial situation and needs; or</li> <li>• a reasonable person might expect the provider of the advice to have considered one or more of those matters: s766B(3).</li> </ul>	All other financial product advice: s766B(4).

## The obligation to prepare and provide an FSG

- RG 175.7 The obligation to prepare and provide an FSG applies to providers of both general advice and personal advice, as well as providers of other financial services.
- RG 175.8 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.

## Timing of FSGs

- RG 175.9 Providing entities must generally give an FSG to a client *before* providing a financial service to them; however, there are exceptions in some instances: see RG 175.58–RG 175.66.

## Content requirements

- RG 175.10 An FSG must include various information, including how the providing entity and its associates will be paid for the advice: see RG 175.68–RG 175.82.

## Relief for secondary services

- RG 175.11 We have given class order relief to certain providing entities that provide secondary financial services to retail clients permitting them to combine their FSG with other documents: see RG 175.91.

## How FSGs relate to other disclosure documents

- RG 175.12 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? (if it is personal advice, disclosure is in an SOA);
  - (c) What financial product am I buying? (disclosure is in a Product Disclosure Statement (PDS) or Short-Form PDS, except where the product is a security, such as a share or debenture).

Note: PDSs are regulated under Pt 7.9. This regulatory guide does not contain guidance on PDSs or Short-Form PDSs. For guidance on PDSs and Short-Form PDSs, see Regulatory Guide 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)* (RG 168).

## Other obligations relating to the provision of general advice

- RG 175.13 Under s949A, providing entities must give a prescribed 'general advice warning' when providing general advice to a retail client: see RG 175.37–RG 175.40.
- RG 175.14 We have given class order relief to allow providing entities to give a shorter, simpler general advice warning when they provide oral general advice: see RG 175.41–RG 175.44.

RG 175.15 In certain circumstances, we have also given conditional relief to licensed product issuers that provide general financial product advice in relation to securities (needing a disclosure document) in advertisements: see RG 175.45.

## Other obligations relating to the provision of personal advice

- RG 175.16 Under s945A, all personal advice must comply with the ‘suitability’ or ‘reasonable basis for advice’ rule. The providing entity must:
- (a) make reasonable inquiries about the client’s relevant personal circumstances (see RG 175.114–RG 175.124);
  - (b) reasonably consider and investigate the subject matter of the advice (see RG 175.125–RG 175.131); and
  - (c) ensure the advice is appropriate to the client (see RG 175.132–RG 175.137).
- RG 175.17 Where personal advice is based on incomplete or inaccurate information, a providing entity must warn the client that this is so: s945B.
- RG 175.18 Part 7.7 generally requires providing entities to give their clients an SOA where personal advice is being provided: see Section E. An SOA must include various information, including:
- (a) the advice;
  - (b) the reasoning that led to that advice; and
  - (c) all conflicts of interest that may affect the advice.

## ASIC’s monitoring of the provision of advice

- RG 175.19 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 guidance. We may rely on various sources of information including:
- (a) monitoring investor complaints;
  - (b) further consultation with industry and retail investor representatives; and
  - (c) further consumer research or projects with industry or retail investor representatives.
- RG 175.20 We will pay particular attention to whether retail investors 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.

## B Providing financial product advice

### Key points

This section considers:

- the meaning of ‘financial product advice’ (RG 175.21–RG 175.23);
- the key obligations that apply to the provision of financial product advice to retail clients (see Table 2);
- the meaning of ‘providing entity’ (see RG 175.26);
- the meaning of ‘retail client’ (see RG 175.27);
- the difference between personal advice and general advice (see RG 175.28–RG 175.36);
- the general advice warning required under s949A (see RG 175.37–RG 175.45); and
- other obligations that may apply to the provision of financial product advice (see RG 175.46–RG 175.51).

### What is ‘financial product advice’?

- RG 175.21 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).

- RG 175.22 Under the Corporations Act, all financial product advice is either ‘general advice’ or ‘personal advice’.

- RG 175.23 Personal advice is 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 (s766B(3)).

All other financial product advice is general advice: s766B(4).

## What obligations apply to the provision of financial product advice?

RG 175.24 If a person carries on a business of providing financial product advice, they are providing a financial service under the Corporations Act and, unless an exemption applies, they must hold an AFS licence or act as the representative of an AFS licensee: see RG 36. They must also comply with their obligations as a licensee or authorised representative.

Note: For example, people who provide opinions about the tax implications of decisions about financial products are likely to be providing financial product advice and need to hold an AFS licence or be an authorised representative. In certain circumstances, providing advice about the tax implications of financial products may be an ‘exempt service’ (i.e. not a financial service): see reg 7.1.29.

RG 175.25 Persons who provide financial product advice to *retail clients* must also comply with certain conduct and disclosure obligations under Pt 7.7 of the Corporations Act.

**Table 2: Conduct and disclosure obligations under Pt 7.7**

Key obligation	Applies to general advice?	Applies to personal advice?
Prepare and provide an FSG: see Section C	Yes	Yes
Ensure that a general advice warning is given to the client (s949A): see RG 175.37–RG 175.45	Yes	No
Prepare and provide suitable personal advice: see Section D	No	Yes
Where it is the case, warn the client that the personal advice is based on incomplete or inaccurate information (s945B): see RG 175.123	No	Yes
Prepare and provide an SOA: see Section E	No	Yes

Note: There are some exemptions from the requirements to provide an FSG (see RG 175.64–RG 175.66), give a general advice warning (see reg 7.7.20 and RG 175.45) and provide an SOA (see RG 175.151).

## Who is the ‘providing entity’

RG 175.26 The conduct and disclosure obligations in Pt 7.7 apply to ‘providing entities’. Providing entities may be licensees or authorised representatives. 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 s761A or ‘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](http://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 the financial services laws (as defined in s761A), which include 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.

## Who is a ‘retail client’?

RG 175.27 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).

Table 3 shows how this works in different situations.

**Table 3: The meaning of ‘retail client’**

Type of financial product	Who is a retail client?
General insurance	<p>The person to whom the advice is provided is a retail client 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"> <li>• the client is a natural person; or</li> <li>• the product is or would be used in connection with a small business (s761G(5) and (12)).</li> </ul> <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, and medical indemnity insurance.</p>
Superannuation or retirement savings account (RSA)	<p>The person to whom the advice is provided is generally a retail client unless s761G(6)(aa) or 761G(6)(c) applies.</p> <p>Advice to an employer about a default fund is a financial service ‘in relation to a superannuation product or an RSA product’ under s761G(6)(b), and as such the service is always provided to the employer as a retail client. This is the case irrespective of the size of the employer or the value of their business assets.</p> <p>Note: An employer’s ‘default’ fund is the fund an employer will contribute to where an employee has made no choice of a superannuation fund. A default fund must be a complying superannuation fund or an RSA (among other requirements): s32C(2) and 32D, <i>Superannuation Guarantee (Administration) Act 1992</i>.</p>

Type of financial product	Who is a retail client?
Other products	<p>The person to whom the advice is provided is a retail client unless:</p> <ul style="list-style-type: none"> <li>• the price for the provision of the product or the value of the product is above the prescribed amount (s761G(7)(a) and regs 7.1.18–7.1.26);</li> <li>• the advice is provided for use in connection with a business that is not a small business (s761G(12));</li> <li>• the client has net assets or net income in excess of the prescribed amounts (s761G(7)(c) and regs 7.1.28, 7.6.02AB and 7.6.02AC);</li> <li>• the client is a professional investor (e.g. a licensee or APRA-regulated body) (s761G(7)(d) and reg 7.6.02E); or</li> <li>• the advice is provided by a licensee to a client where: <ul style="list-style-type: none"> <li>– the licensee is satisfied on reasonable grounds that the client has previous experience in using financial services and investing in financial products that allows the client to assess the products and services;</li> <li>– the licensee provides a written statement to the client explaining why the licensee is so satisfied; and</li> <li>– the client signs a written acknowledgement that the licensee will not be treating the client as a retail client and giving them the retail disclosure documents: s761GA.</li> </ul> </li> </ul>

## What is the difference between general advice and personal advice?

### Circumstances that may be relevant to whether advice is personal or general advice

- RG 175.28 As noted in RG 175.23, advice given to a person is personal advice where the provider of the advice has considered one or more of the person's objectives, financial situation and needs, or a reasonable person might expect the provider to have considered these matters. All other financial product advice is general advice.
- RG 175.29 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 providing entity (e.g. the financial product 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 providing entity 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 they should make)?
  - (d) Did the providing entity 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.

### Relevant personal circumstances

- RG 175.30 A providing entity 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 providing entity to have considered at least one aspect of the client's relevant personal circumstances (s766B(3)).
- RG 175.31 If a providing entity 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 providing entity *merely possesses* information about the client's personal circumstances.
- RG 175.32 Whether such advice is personal advice will generally depend on whether the providing entity has considered (or whether a reasonable person might expect the adviser to have considered) that information in providing the advice, e.g. whether the providing entity considered one or more of the person's objectives, financial situation and needs or whether a reasonable person would expect them to have considered these: s766B(3).
- Note: For example, if an 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.
- RG 175.33 Whether the providing entity has considered at least one aspect of the client's relevant personal circumstances depends on what the providing

entity *actually* considered (i.e. took into account or had regard to) in the process of preparing and giving the advice.

RG 175.34 Whether or not a reasonable person might *expect* the providing entity to have considered at least one aspect of the client's relevant personal circumstances looks beyond what the providing entity *actually* considered in the process of preparing and giving the advice to what a reasonable person might expect the providing entity 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 175.28.

RG 175.35 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 providing entity has not had direct contact with the client (e.g. where the advice is based on information supplied by a third person);
- (c) the providing entity 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 D);
- (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 providing entity did not (subjectively) intend to provide personal advice.

RG 175.36 See the Appendix for examples illustrating the difference between personal and general advice.

## The general advice warning

RG 175.37 Whenever general advice is provided to a retail client, s949A requires the providing entity to 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 PDS for that product before making any decision.

## Conveying the substance of the warning

RG 175.38 The Corporations Act does not require providing entities to use the exact wording in s949A(2) when giving general advice. What is required is that retail clients are *warned* about the things highlighted in RG 175.37 and that the warning is given to clients at the same time and by the same means as the advice is provided: s949A(3).

RG 175.39 In our view, providing entities will meet this obligation where they convey the substance of s949A(2) in a way that is likely to result in clients understanding the message. This means that retail clients should understand from the warning that the advice should *not* be treated as though it were necessarily appropriate for them. Providing entities can develop their own clear wording to meet the warning requirement. For example, the following wording conveys each of the matters highlighted in s949A(2) without using the exact wording:

‘This brochure doesn’t take into account what you currently have, or what you want and need for your financial future. It is important for you to consider these matters and read the Product Disclosure Statement (PDS) before you make an investment decision. You can get a copy of the PDS from our website at [www.xxxxxxx.com.au](http://www.xxxxxxx.com.au) or by calling 1800 xxx xxx.’

RG 175.40 In our view, it is good practice for providing entities to develop their own wording to make their general advice warnings more meaningful to clients. For example, providing entities could:

- (a) incorporate the warning messages into the substance of their general advice (rather than reciting the words of s949A(2) or including them in fine print at the end of the document); and/or
- (b) consider any special communication needs of clients (e.g. age, culture, education) and develop general advice warnings that are likely to result in clients understanding the matters they are being warned about.

## Simpler warnings for oral general advice

RG 175.41 We have granted relief to simplify the general advice warning required where oral general advice is provided to a retail client under Class Order (CO 05/1195) *Simplified warning for oral general advice*. CO 05/1195 allows providers of general advice to give a shorter, simpler general advice warning when they provide oral general advice.

RG 175.42 The simplified warning requires that a retail client be orally warned that the advice is general and may not be appropriate for the 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.

RG 175.43 Providers of general advice do not have to use the words in the class order but may develop their own words to convey this simpler warning. We

consider it to be good practice for providing entities to consider the needs of their audience when deciding what words to use.

- RG 175.44 Some examples of simplified warnings for oral general advice that may be used include:
- (a) ‘This advice is general—it may not be right for you.’
  - (b) ‘This advice is not tailored, so you can’t assume it will be suitable for you.’
  - (c) ‘This advice may not be suitable for you because it is general advice.’
  - (d) ‘You will need to decide whether this advice meets your needs because I haven’t considered this’.

### General advice in advertisements

- RG 175.45 Financial product advertisements must identify the issuer of the product and refer potential buyers to the PDS or disclosure document: s1018A or 734. Provided that the advertisement also states that the client should consider whether the financial product is appropriate for them, the advertisement does not need to contain the s949A warning. This applies to advertisements for offers or intended offers on billboards, posters or in the media: see reg 7.7.20 and Class Order (CO 05/835) *General advice in advertising*.

Note: CO 05/835 also conditionally exempts a licensed issuer of securities from giving an FSG.

## Other obligations that apply to the provision of financial product advice

### Corporations Act and ASIC Act provisions

- RG 175.46 Other sections of the Corporations Act apart from Pt 7.7 may also apply to the provision of financial product advice, such as:
- (a) Div 2 of Pt 7.10, which deals with prohibited conduct relating to the provision of financial products and financial services;
  - (b) Div 10 of Pt 7.6, which restricts the use of certain words and expressions relating to how providing entities represent themselves (see RG 175.48–RG 175.50); and
  - (c) Pt 7.9, which imposes obligations relating to the provision of PDSs and Short-Form PDSs.

Providing entities 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).

- RG 175.47 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).

#### **Use of restricted words such as ‘independent’**

- RG 175.48 Section 923A restricts the use of certain words, such as ‘independent’, ‘impartial’ and ‘unbiased’. Use of a restricted word would include use of the word in any publication or advertisement produced or released by the providing entity.
- RG 175.49 For example, providing entities cannot call themselves ‘independent’ under s923A unless any commissions they receive (including ‘trail’ or ‘trailing’ commissions) are rebated in full to their clients: see s923A(5)(a)(i) and 923A(2)(a)(i).
- RG 175.50 Commissions can be said to be ‘rebated in full’ if, as soon as the commission is received, it is rebated to the client without delay by:
- (a) rebating an amount equivalent to the commission directly to the client by cash, cheque or other direct means (e.g. by direct credit to a bank account nominated by the client); or
  - (b) offsetting any debt owed by the client (i.e. a debt owed before the commission was received by the providing entity) by an amount equivalent to the commission, except in circumstances where the amount of the debt is calculated by reference to commissions expected to be received by the providing entity.

Note: A commission would not be rebated in full if the rebate is not immediately available to the client (i.e. the client cannot demand payment of the funds). For example, it would not be rebated in full if a providing entity credits a client’s account with the amount of the commission but the funds may be used to meet future liabilities of the client to the providing entity only.

#### **Common law obligations**

- RG 175.51 Providing entities should be aware that common law obligations 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 complying with this obligation, see Regulatory Guide 181 *Licensing: Managing conflicts of interest* (RG 181).
- (b) adopt due care, diligence and competence in preparing advice.

## Failure to comply with obligations

RG 175.52 A failure by the providing entity 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 (or, if the providing entity is an authorised representative, the authorising licensee) has failed to comply with the general licensee obligation to act ‘efficiently, honestly and fairly’: s912A(1)(a).

Note: For guidance on the general obligations of licensees, see Regulatory Guide 104 *Licensing: Meeting the general obligations* (RG 104).

RG 175.53 A licensee’s failure to comply with any of its obligations may give us grounds for exercising our administrative powers to revoke or suspend a licence after a hearing: s915C.

Note: For guidance on our administrative powers, see Regulatory Guide 98 *Licensing: Administrative action against financial services providers* (RG 98).

RG 175.54 We may issue a banning order 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.

## C Preparing and providing a Financial Services Guide

### Key points

Part 7.7 generally requires providing entities to give their clients an FSG where financial product advice (i.e. general or personal advice) is being provided.

An FSG must include various information, including how the providing entity and its associates will be paid for the advice: see RG 175.68–RG 175.82.

We have given class order relief from the FSG obligations to certain providing entities that provide secondary financial services to retail clients: see RG 175.91.

### The obligation to prepare and provide an FSG

- RG 175.55 The obligation to prepare and provide a Financial Services Guide (FSG) applies to providers of both general advice and personal advice, as well as providers of other financial services.
- RG 175.56 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.
- RG 175.57 This section considers:
- (a) when an FSG must be provided (see RG 175.58–RG 175.62);
  - (b) what must be included in an FSG (see RG 175.68–RG 175.84);
  - (c) how an FSG must be provided (RG 175.85–RG 175.87);
  - (d) how the FSG obligations apply in relation to secondary services (see RG 175.88–RG 175.92);
  - (e) when an FSG can be combined with a PDS (see RG 175.93–RG 175.96);
  - (f) the record-keeping obligations that apply to FSGs (see RG 175.97–RG 175.99); and
  - (g) other requirements that apply to FSGs (see RG 175.102–RG 175.105).

## When must an FSG be provided?

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, they 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 175.61–RG 175.62), and in other cases an FSG does not need to be given at all (see RG 175.64–RG 175.67).

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

### The importance of timely provision of FSGs

RG 175.59 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 175.60 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.

### Delayed provision of FSGs in time critical cases

RG 175.61 An FSG may be given *after* a financial service has been provided in ‘time critical cases’—that is, 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 175.62 For example, where the client expressly instructs the providing entity over the telephone to provide advice immediately, the providing entity 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: The client need not actually state that the service is ‘time critical’ from their perspective. It is enough that the client requests or instructs that the service be provided immediately or by a specified time.

- RG 175.63 We have granted relief in Class Order (CO 04/1055) *Information in a Financial Services Guide given in a time critical situation* so that information in an FSG given in a time critical situation need only be up-to-date as at the time the earlier statement was given to a retail client. The class order means that an FSG given after the provision of a financial service in a time critical case is the same as an FSG that is given before the provision of a financial service in normal cases.

### Where an FSG does not need to be provided

- RG 175.64 An FSG is not required to be given to a client in certain circumstances, including where:
- (a) the client is not a retail client;
  - (b) 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);
  - (c) the financial service relates to a cash management trust, basic deposit products, non-cash payment products related to a basic deposit product or traveller’s cheques (but only if the information mentioned in s941C(7) is provided) (s941C(6) and reg 7.7.02(1));
  - (d) 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);
  - (e) 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));

- (f) 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
- (g) 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 traveller's cheques does not have to be included: see reg 7.7.05C.

RG 175.65 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 175.66 A 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, failure to provide an FSG is unlikely to contravene the Corporations Act where:

- (a) it becomes apparent to a providing entity that general advice is likely to be provided to a retail client; and
- (b) the providing entity then asks the client for their postal or electronic address and the client refuses to provide their address to the providing entity.

RG 175.67 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.

## What must be included in an FSG?

RG 175.68 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, 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 (s942B(2)(a) and 942C(2)(a)) and, if the providing entity is a licensee, its licence number (s912F and reg 7.6.01C(1)(a));

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) where the providing entity is an authorised representative—the name, contact details and licence number of the authorising licensee(s) 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) where the providing entity is an authorised representative (and where reg 7.7.05B does not apply to the FSG)—the authorised representative number of the providing entity (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 (i.e. an SOA, PDS or Short-Form PDS), together with a description of the purpose of those documents (regs 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), regs 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 (regs 7.7.04(4)(c) & (d) and 7.7.07(4)(c) & (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 (regs 7.7.04(5)(c) & (d) and 7.7.07(5)(c) & (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 or advice to which s946B(7) applies—certain information about obtaining a record of the advice (s942B(2)(g) and 942C(2)(h), regs 7.7.05, 7.7.08, 7.7.09, 7.7.10AC–7.7.10AE);

Note: For more detailed guidance, see RG 175.193–RG 175.195.

- (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));
- 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)); and
  - (p) details about the kind of compensation arrangements the providing entity (or authorising licensee) has in place (i.e. whether via professional indemnity insurance or otherwise) and whether these arrangements comply with s912B: see reg 7.7.03A and Regulatory Guide 126 *Compensation and insurance arrangements for AFS licensees* (RG 126).

RG 175.69 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 175.70 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: regs 7.7.04A(4) and 7.7.07A(4).

RG 175.71 The information contained in an FSG must be up-to-date as at the time it is given: s941E.

Note: We have provided class order relief so that information in an FSG given in a time critical situation need only be up-to-date as at the time the verbal statement of information in s941D(3) was given to a retail client: see RG 175.63.

## Remuneration, commissions and other benefits

- RG 175.72 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) and regs 7.7.04(2)–(5), 7.7.07(2)–(5), 7.7.04A and 7.7.07A.
- RG 175.73 ‘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 175.74 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 175.75 Subject to RG 175.79, 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: regs 7.7.04(3) and 7.7.07(3). Whether this can be ascertained depends on the circumstances.
- RG 175.76 Where it is not possible to ascertain an amount of remuneration, commission or other benefits 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: regs 7.7.04(3)–(4) and 7.7.07(3)–(4).
- RG 175.77 Ranges, rates, comparisons, simple tables and formulas should normally be included in the FSG to ensure that the information about remuneration, commission and other benefits 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 175.78 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: regs 7.7.04(4) and 7.7.07(4).
- RG 175.79 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. 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 the amount.
- RG 175.80 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 175.81 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): regs 7.7.04(3)–(5) and 7.7.07(3)–(5).

- RG 175.82 In addition to s942B(2)(e) and 942C(2)(f), regs 7.7.04 and 7.7.07 require the FSG to include information about the remuneration, commission and other benefits that a person has received or is to receive for referring another person to the licensee or providing entity.

### **Consumer testing**

- RG 175.83 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 investors need.

### Good Disclosure Principles

RG 175.84 We consider that, when preparing FSGs, providing entities should take into account the Good Disclosure Principles in Regulatory Guide 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)* (RG 168).

## How must an FSG be provided?

RG 175.85 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 175.86 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 175.87 A providing entity may only rely on the 'otherwise 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.

## Secondary services

RG 175.88 Under the Corporations Act, an FSG may be required for a financial service that is provided as a secondary service—that is, a financial service provided to a retail client via an intermediary. A secondary service provider is a licensee or authorised representative who provides a financial service to a retail client via an intermediary.

RG 175.89 A financial service that is a secondary service may, or is likely to, be provided in the following circumstances:

- (a) where a licensee (or authorised representative) causes or authorises financial product advice to be given or directed to a retail client (within the meaning of s52). In our view, the licensee (or authorised representative) is likely to be providing a secondary service if:
  - (i) they 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 the licensee (or authorised representative);

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

- (b) where a licensee (or authorised representative) deals in a financial product (see s766C) by issuing a financial product to a retail client via an intermediary;
- (c) where a licensee (or authorised representative) deals 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 a licensee (or authorised representative) holds 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. In this case, the licensee (or authorised representative) will be providing a custodial or depository service to the retail client (see s766E).

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

RG 175.90 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 the secondary service provider can overcome this practical difficulty—that is, by:

- (a) relying on ASIC class order relief (see RG 175.91);
- (b) arranging for the intermediary to give their FSG to the retail client;
- (c) entering into a written agreement with the intermediary (see RG 175.92);
- (d) structuring their relationship with the intermediary in such a way that they avoid providing a secondary service to the retail client;
- (e) including requirements in their agreement with the intermediary for the intermediary to provide the secondary service provider with address details of the retail client—the secondary service provider could then provide their FSG to that retail client; or
- (f) preparing a combined FSG with the intermediary incorporating information about the financial service that each provides to the retail client.

RG 175.91 We have given class order relief to secondary service providers in the following two areas:

- (a) we have granted facilitative relief to allow the author of an ‘expert report’ to include its FSG as a separate and clearly identifiable part of the expert 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 175.92 A secondary service provider is also exempt under reg 7.7.02(7) 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 service provider's FSG to the client; or
  - (b) inform the client how to obtain the secondary service provider's FSG.

## When can an FSG be combined with a PDS?

- RG 175.93 Regulation 7.7.08A prescribes the circumstances in which a PDS or Short-Form PDS and an FSG can be combined under s942DA.
- (a) If the providing entity for the financial service and the product issuer are the same person, the document must be:
    - (i) divided into two separate parts—identifiable as a fully compliant FSG and a fully compliant PDS or Short-Form PDS;
    - (ii) 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
    - (iii) provided to a client at the earlier of the required time for an FSG or PDS and Short-Form PDS.
  - (b) If the providing entity is an authorised representative or a related body corporate of the product issuer, the document must (among other requirements) prominently disclose:
    - (i) the identity of the providing entity and the product issuer;
    - (ii) the relationship between them; and
    - (iii) their respective liabilities.

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

- RG 175.94 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 175.95 Where the providing entity is an authorised representative or related body corporate of the product issuer, a combined FSG and PDS or Short-Form PDS can only be used for a basic deposit product, non-cash payment facility related to a basic deposit product, general insurance product or life risk product.

RG 175.96 If an FSG has already been provided to the client, the providing entity can instead give the client a PDS or Short-Form PDS together with a statement containing any specified FSG information that is not included in the PDS: reg 7.7.02A.

Note: 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).

## Record-keeping obligations that apply to FSGs

RG 175.97 In our view, the duties imposed by the Corporations Act on licensees require licensees to keep adequate records about 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 175.98 We have imposed a licence condition under s914A 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: Records may be kept electronically: see Pro Forma 209 *Australian financial services licence conditions* (PF 209), condition 57.

RG 175.99 This licence condition is designed 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.

## Other key aspects of the FSG regime

### Can an FSG cover more than one providing entity?

RG 175.100 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 as well as all the individual representatives appointed by the authorised representative provided the Corporations Act and regulations are satisfied, including the requirement that the information 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 175.101 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 regs 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 175.68(g)(ii).

## Liability and offences

RG 175.102 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’: see RG 175.49–RG 175.50.

RG 175.103 It is an offence to provide a defective FSG: s952D and 952E. 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 175.104 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 175.105 It is an offence to fail to provide an FSG when one is required: s952C.

## D Preparing and providing suitable personal advice

### Key points

All personal advice must comply with the ‘suitability rule’ (or ‘reasonable basis for advice rule’).

There are three limbs to the suitability rule:

- making reasonable inquiries about the client’s relevant personal circumstances (see RG 175.114–RG 175.124);
- reasonably considering and investigating the subject matter of the advice (see RG 175.125–RG 175.131); and
- ensuring that the advice is ‘appropriate’ for the client (see RG 175.132–RG 175.137).

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 ‘scalable’: see RG 175.115–RG 175.117 and RG 175.127.

### The suitability rule

RG 175.106 All personal advice must comply with the ‘suitability rule’ (or ‘reasonable basis for advice rule’): s945A. Under this rule, where a providing entity provides personal advice to a retail client, each of the following three elements must be satisfied:

- (a) the providing entity must make reasonable inquiries about the client’s relevant personal circumstances;
- (b) the providing entity must consider and investigate the subject matter of the advice as is reasonable in all the circumstances; and
- (c) the advice must be ‘appropriate’ for the client.

RG 175.107 The rationale for the suitability rule has been explained as follows:

‘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.’

*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, p. 102.

- RG 175.108 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 175.109 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.
- RG 175.110 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 set out in RG 175.106.
- RG 175.111 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 RG 175.28–RG 175.36.
- RG 175.112 This section considers:
- (a) the client inquiries that are required to satisfy s945A(1)(a) (see RG 175.114–RG 175.124);
  - (b) the consideration and investigation of the subject matter of the advice that is required to satisfy s945A(1)(b) (see RG 175.125–RG 175.131);
  - (c) when advice is ‘appropriate’ within the meaning of s945A(1)(c) (see RG 175.132–RG 175.137); and
  - (d) the personal advice record-keeping obligations that apply (see RG 175.141–RG 175.144).
- RG 175.113 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.

## Making client inquiries

- RG 175.114 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.

## Scalable advice

RG 175.115 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 'scalable'. 'Scalable' means that the requirement 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 175.116 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).

RG 175.117 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 Table 4.

**Table 4: Factors relevant to the client inquiries requirement**

Relevant factor	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).

Relevant factor	Effect on client inquiries requirement
Financial literacy of the client	<p>The client inquiries requirement will involve attempting to <i>resolve and clarify the client's objectives</i> where the client:</p> <ul style="list-style-type: none"> <li>• has limited financial understanding or knowledge;</li> <li>• has conflicting objectives; or</li> <li>• is confused about their objectives (or has difficulty articulating them).</li> </ul>

### Advice on financial products with an investment component

RG 175.118 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.

### Impact of the surrounding circumstances

RG 175.119 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 175.120 Where client contact is 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 other means of communication, such as the 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 175.121 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 175.122 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.

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

- RG 175.123 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 has been explained as follows: 'An intermediary which provides personal recommendations should make appropriate inquiries and provide warnings to a client who declines to disclose relevant information': *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, p. 103.

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

- RG 175.124 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.

## Considering and investigating the subject matter of the advice

RG 175.125 The providing entity must, having regard to the information obtained from the client about their relevant personal circumstances, consider and investigate the subject matter of the advice as is reasonable in all the circumstances: s945A(1)(b).

### Scalable advice

RG 175.126 The requirement to consider and investigate the subject matter of the advice is ‘scalable’. ‘Scalable’ means that the requirement 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 175.127 In administering the law on the requirement to consider and investigate the subject matter of the advice, we will take into account all the circumstances when determining whether s945A(1)(b) has been satisfied, including the factors in Table 5.

**Table 5: Factors relevant to considering and investigating the subject matter of the advice**

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

## The range of financial products, classes of financial product and strategies

- RG 175.128 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).

## Switching

- RG 175.129 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 s945A(1)(b) generally requires the providing entity to consider and investigate both the new product (or option) and 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. In addition, s947D may require certain investigations to be conducted.

Note 1: 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 175.157.

Note 2: For more information and guidance on switching, see Regulatory Guide 84 *Super switching advice: Questions and answers* (RG 84).

## Impact of the surrounding circumstances

- RG 175.130 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.
- RG 175.131 The obligation to consider and investigate the subject matter of the advice cannot be avoided by any notice or disclaimer provided to the client.

## Providing ‘appropriate’ advice

RG 175.132 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 the best to comply with the Corporations Act.

RG 175.133 In administering 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 175.118 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 175.134 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 175.135 The obligation to ensure that personal advice is appropriate cannot be avoided by any notice or disclaimer provided to the client.

## Switching

RG 175.136 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 175.137 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).

### **Tax implications outside the providing entity's competence**

- RG 175.138 A client's tax position may be relevant to the assessment of the client's relevant personal circumstances. Complex advice involving complex tax strategies is likely to involve more inquiry about the client's tax position than relatively simple advice.
- RG 175.139 We consider that there are two possible ways that a providing entity can give appropriate advice when there are material tax implications that the client should consider that go beyond the providing entity's competence:
- (a) the advice can be based on competent tax advice given to the client by someone else—in which case, the providing entity should ensure that they make clear in the SOA and discussions with the client that they are assuming the tax advice is appropriate, rather than endorsing it; or
  - (b) the advice can be limited to those matters on which the providing entity is competent to advise—in which case, the providing entity must take reasonable steps to ensure that the client understands that they should seek tax advice from someone competent to provide it before following the providing entity's advice.
- RG 175.140 The advice will not be appropriate if the providing entity does not reasonably believe that the client will understand that tax advice should be obtained before making any investment decision.

Note: For example, for some retirement income stream products, tax issues are both complex and central to the investment decision. For such products it may be of limited value to a client to receive advice on other aspects of the products, such as the investment expertise of the issuer, before the suitability of a product for the client's tax objectives is resolved. In those circumstances, if a providing entity were to provide personal advice on other aspects of the product to the client, the providing entity would have to take particular care to ensure that they had a reasonable basis for believing that the client understood they should not acquire a financial product unless they obtained competent tax advice.

## **Record-keeping obligations that apply to personal advice**

- RG 175.141 In our view, the duties imposed by the Corporations Act require licensees to keep adequate records about 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 912E).

Note: See also RG 78.

RG 175.142 We will impose a licence condition requiring licensees to keep (or cause to be kept) records of 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 of 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)).

These records may be kept electronically.

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

RG 175.143 This condition does not apply for:

- (a) further advice where a record of the advice is kept in accordance with s946B(3A) (see regs 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 traveller's cheques).

RG 175.144 An SOA is not 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 175.141, 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 the Explanatory Statement to the *Corporations Amendment Regulations 2005 (No. 5)*, pp. 27–28.

## E Preparing and providing a Statement of Advice

### Key points

Part 7.7 generally requires providing entities to give their clients an SOA where personal advice is being provided: see RG 175.149–RG 175.153.

There are many content requirements for an SOA: see RG 175.154–RG 175.160.

In summary, all SOAs must set out, in a clear, concise and effective manner:

- the advice and the reasoning that led to the advice;
- information about remuneration and benefits;
- all conflicts of interest that may affect the advice; and
- the costs, loss of benefits and other significant consequences when recommending switching between financial products.

### The obligation to prepare and provide an SOA

- RG 175.145 The obligation to prepare and provide a Statement of Advice (SOA) applies to most personal advice, but does not apply to general advice. For a discussion of the difference between personal and general advice, see RG 175.28–RG 175.36.
- RG 175.146 An SOA is a document that helps a retail client understand, and decide whether to rely on, personal advice.
- RG 175.147 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 175.148 This section considers:
- (a) when an SOA must be provided (see RG 175.149–RG 175.153);
  - (b) what must be included in an SOA (see RG 175.154–RG 175.160);
  - (c) what the SOA must disclose about the advice and the basis for the advice (see RG 175.161–RG 175.162);
  - (d) the information about remuneration, commission and other benefits that must be included in the SOA (see RG 175.165–RG 175.180);
  - (e) the SOA record-keeping obligations that apply (see RG 175.186–RG 175.187);

- (f) other requirements that apply to SOAs (see RG 175.188–RG 175.192); and
- (g) the obligations that apply to further advice (see RG 175.193–RG 175.195).

## When must an SOA be provided?

RG 175.149 Generally, where personal advice is provided to a retail client other than in an SOA, an SOA 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))—that is, 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 is not required

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 traveller's cheques (provided the information mentioned in s946B(6) is provided) (reg 7.7.10);
- (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 175.193–RG 175.195;

- (e) where the advice does not recommend or state an opinion about the acquisition or disposal of a financial product and where the providing entity and certain associates do not receive any remuneration or benefit in relation to the advice, provided the information mentioned in s947B(2)(d) and (e), or 947C(2)(e) and (f), is provided (s946B(7)); or

Note: When relying on this exemption, the providing entity must keep a record of the advice provided: s946B(9) and reg 7.7.10AAA. This record must be provided to the client on request: s942B(8) and 942C(8).

- (f) where the advice relates to financial investments whose value does not exceed \$15,000 (s946AA and reg 7.7.09A).

Note: This relief does not generally apply in respect of advice about derivatives, general insurance products or life insurance products. When relying on this exemption, the providing entity must keep a record of the advice provided: s946AA(4) and reg 7.7.08C. This record of advice (including the information mentioned in s947B(2)(d) and (e), or 947C(2)(e) and (f)) must be given to the client: s946AA(5).

### **Does an SOA need to be given to a client whenever a fact-finding consultation occurs?**

RG 175.152 Personal advice is typically provided to a client as part of a process that includes one or more fact-finding consultations with the client. These consultations are usually necessary in order to comply with s945A: see Section D. During these fact-finding consultations, providing entities may respond to client queries or express preliminary views on various matters. We consider that an SOA does not need to be given to a client at the time of the fact-finding consultations provided:

- (a) the consultations have a genuine fact-finding purpose relating to the future provision of personal advice that will be contained in or recorded in an SOA (and each consultation is limited to this purpose); and
- (b) the client is clearly informed at the outset of each fact-finding consultation that:
  - (i) the purpose of the consultation is to enable the providing entity to find out about the client's relevant personal circumstances so that personal advice can be provided;
  - (ii) the personal advice will be set out or recorded in an SOA; and
  - (iii) the client should not act on any representations made during the consultations.

### **The importance of timely provision of SOAs**

RG 175.153 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 exception for time critical cases in s946C described in RG 175.150.

## What must be included in an SOA?

- RG 175.154 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, or at or near the front, of the document (s947A);
  - (b) the name and contact details of the providing entity (s947B(2)(c) and 947C(2)(c)) and, if the providing entity is a licensee, its licence number (s912F and reg 7.6.01C(1)(e));
  - (c) where the providing entity is providing the advice as an authorised representative—the name, contact details and AFS licence number of the authorising licensee(s), 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)): see RG 175.161–RG 175.164;
  - (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), regs 7.7.11 and 7.7.12): see RG 175.165–RG 175.180;
  - (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 (regs 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 175.155 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 175.156 The information contained in an SOA must be worded and presented in a clear, concise and effective manner (s947B(6) and 947C(6)): see RG 175.181–RG 175.184. An SOA must not include material that is misleading or deceptive.

### Switching

RG 175.157 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 175.158 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 investors need.

## Good Disclosure Principles

RG 175.159 We consider that providing entities should take into account the Good Disclosure Principles in RG 168 in preparing SOAs.

Note: For guidance on clear, concise and effective disclosure, see RG 175.181–RG 175.184.

## Incorporation by reference

RG 175.160 An SOA is not required to include a statement or information (other than a statement or information required by s945B and 947D) in an SOA provided to a client if:

- (a) the SOA refers to the statement or information;
- (b) the SOA provides *sufficient details* about the statement or information to enable the client to:
  - (i) identify by a unique identifier the document, or part of the document, that contains the statement or information; and
  - (ii) decide whether or not to read the statement or information or obtain a copy of the statement or information;
- (c) the document containing the statement or information has already been given to the client, or is given at the same time as the SOA; and
- (d) the SOA states that a copy of the statement or information may be obtained from the providing entity on request, at no charge: reg 7.7.09B.

Note: Providing entities must keep any SOA (together with any document, or part of a document, mentioned in the SOA) for seven years from the date on which the SOA was provided to the client.

## Information about the advice and the basis for the advice

RG 175.161 An SOA must:

- (a) disclose the advice (s947B(2)(a) and 947C(2)(a));
- (b) disclose the basis for the advice (s947B(2)(b) and 947C(2)(b)); and
- (c) include as much detail about a matter as 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)).

RG 175.162 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) 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) (i.e. including descriptions of alternatives to the recommended product or strategy); and
  - (iii) a concise statement of the reasons why the advice and recommendation was considered appropriate, including in light of the alternatives considered, and 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: 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.

RG 175.163 The SOA should clearly disclose if a providing entity’s recommendations are restricted to products from an approved product list.

RG 175.164 The basis for the advice may also set out:

- (a) *Tax considerations*: Where tax considerations are taken into account in providing the advice, these should be stated.
- (b) *Risk*: Disclosure about risk should describe the significant risks that the client will bear in relation to:
  - (i) acquiring the recommended financial product specifically; and
  - (ii) acquiring the recommended class of products generally.

## Information about remuneration, commission and other benefits

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

- RG 175.165 The requirements for the disclosure of remuneration, commission and other benefits in the SOA are set out in s947B(2)(d), 947B(2)(h), 947C(2)(e), 947C(2)(i), 947D(2)(d), 1013D(1)(m), 1017D(5A) and regs 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 175.166 ‘Remuneration, commission and other benefits’ includes, for example, all upfront commissions, trailing commissions and ‘soft’ dollar commissions or benefits.
- RG 175.167 Even where a 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 they recommend, 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 175.168 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.
- RG 175.169 In administering the law (and subject to RG 175.170–RG 175.171) 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 175.170 ‘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 175.171 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. Providing entities who form the view that a back office payment does not need to be disclosed in the SOA should maintain records to enable them to demonstrate why they have 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.

- RG 175.172 For 'back office' payments as described in RG 175.170, 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 175.173 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.
- RG 175.174 The following information about various costs, fees, charges, expenses, benefits and interests must be disclosed as amounts in dollars in an SOA (except where we have provided relief):
- (a) for SOAs prepared by licensees—the information required by s942B(2)(d), 942B(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: For further guidance on the dollar disclosure provisions and ASIC relief, see RG 182 *dollar disclosure* (RG 182).

- RG 175.175 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 175.176 In administering the law, we will take the view that the SOA should set out, in easy-to-understand language, 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.
- RG 175.177 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.
- RG 175.178 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 175.179 The importance of conflicts disclosure in the SOA has been explained as follows:

'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.'

*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, p. 102.

Note: Section 912A(1)(aa) imposes 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 Regulatory Guide 79 *Managing conflicts of interest: A guide for research report providers* (RG 79).

## Disclosure of referral payments

RG 175.180 In addition to s947B(2)(d) and 947C(2)(e), regs 7.7.11 and 7.7.12 require the SOA to include information about the remuneration, commission and other benefits that a person has received or is to receive for referring another person to the licensee or providing entity.

## Clear, concise and effective presentation

RG 175.181 Clear, concise and effective presentation of SOAs promotes understanding of advice by retail investors. We consider that the presentation requirements are as important as the content requirements in preparing an SOA.

Note: 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)

RG 175.182 SOAs should:

- (a) contain all key information in the body of the document instead of relegating some key information to an appendix;
- (b) be tailored to the client and so not contain any irrelevant information such as generic research or educational materials that are not relevant to the SOA (this information can be made separately available to retail investors on request); and
- (c) avoid repetition of content (so as to avoid adding unnecessary length to the SOA) by using clear cross-referencing.

RG 175.183 Useful presentation tools include:

- (a) headings, irrespective of the length of the document;
- (b) a table of contents;
- (c) a description of the purpose of the document;
- (d) an executive summary to highlight the most important information;
- (e) logical sequencing of information and grouping of related information; and
- (f) tables and graphs that are clearly explained.

RG 175.184 Language should be used accurately and consistently throughout the SOA.

- RG 175.185 In particular, when preparing SOAs, providing entities 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 key 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 retail investors. Consumer testing can help, provided entities assess the effectiveness of various disclosure formats.

## Record-keeping obligations that apply to SOAs

- RG 175.186 In our view, the duties imposed by the Corporations Act require licensees to keep adequate records about 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 175.187 We have imposed 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. Records may be kept electronically.

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

## Other requirements that apply to SOAs

- RG 175.188 An SOA must not describe a person as ‘independent’ unless the requirements of s923A are satisfied.
- RG 175.189 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 175.190 If an SOA is defective, an affected person (e.g. a retail client) may take civil action against the providing entity (and the authorising licensee) for any loss or damages.
- RG 175.191 It is an offence to fail to provide an SOA when one is required: s952C.
- RG 175.192 The Corporations Act prohibits the combination of an FSG, PDS or Short-Form PDS with an SOA: see s947E.

## Obligations that apply to further advice

- RG 175.193 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’);
  - (b) the client’s relevant personal 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 175.194 Where the providing entity is not required to (and does not) provide an SOA for further advice, the providing entity must:

- (a) 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) 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: regs 7.7.05 and 7.7.08.

RG 175.195 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.

## Appendix: Examples of the difference between general and personal advice

RG 175.196 The following examples illustrate our general approach to determining whether financial product advice is general advice or personal advice.

**Table 6: Examples of the difference between personal and general advice**

Example	Explanation
<p><b>1 Mail-out to entire client list</b></p>	<p>A stockbroker prepares periodic newsletters or research reports containing assessments of various financial products and sends them to its entire client list.</p> <p>We would expect that those newsletters or research reports would ordinarily be general advice and not personal advice. We would expect them to contain a general advice warning under s949A.</p> <p>This is because the stockbroker would not ordinarily take into account any individual's personal circumstances in preparing and providing a periodic newsletter or research report that is sent to all of their clients and nor would a reasonable person expect them to have done so.</p>
<p><b>2 Investment seminar for all clients</b></p>	<p>A person invites all their clients to an investment seminar.</p> <p>We would expect that they would ordinarily provide general advice and not personal advice at an investment seminar that is open to all of their clients. We would expect them to provide a general advice warning under s949A at such a seminar.</p> <p>This is because the financial product advice the person provides at a seminar that is open to all their clients would not ordinarily take into account any individual's personal circumstances and nor would a reasonable person expect it to have done so.</p> <p>However, if the person wanted to confine their seminar to the provision of general advice (and not stray into providing personal advice with all of the additional obligations that would entail), they would need to take care not to:</p> <ul style="list-style-type: none"> <li>• use language in their pre-prepared presentation that gives the impression that they have considered the objectives, financial situation or needs of any audience members in providing the financial product advice that it contains;</li> <li>• deviate from their presentation in response to audience comments or questions in a way that gives the impression that the financial product advice that they are providing takes into account any audience member's objectives, financial situation or needs;</li> <li>• give personal advice in their response to audience questions.</li> </ul>

Example	Explanation
<p><b>3 Mail-out of brochure in response to a client query</b></p>	<p>A product issuer, in response to client queries, sends out a marketing brochure about a particular product or product range that they offer.</p> <p>We would expect that those brochures would ordinarily contain general advice and not personal advice. We would expect them to contain a general advice warning under s949A.</p> <p>This is because a product issuer would not ordinarily take into account any individual's personal circumstances in providing a marketing brochure in response to a client query and nor would a reasonable person expect them to have done so. It would be a different matter if they had prepared a brochure in response to a particular query.</p>
<p><b>4 Quoting from a Product Disclosure Statement in response to a query</b></p>	<p>A product issuer responds to telephone queries about product features by quoting from the Product Disclosure Statement (PDS).</p> <p>By quoting from the PDS in order to respond to a telephone query about product features, the product issuer would not ordinarily take into account any individual's personal circumstances and nor would a reasonable person expect them to have done so. We would expect the product issuer to provide a general advice warning under s949A.</p> <p>In this situation, it is also important that the product issuer takes care to ensure that the information they provide is not misleading or deceptive. For example, if they are asked about product costs, it is important to inform the caller about all of the fees, charges and costs that may affect the value of an investment and not just some of this information.</p>
<p><b>5 Mail-out to particular client groups</b></p>	<p>A person sends different newsletters, research reports or marketing brochures to different segments of their client base.</p> <p>The position is less clear in this situation. However, the mere fact that they have sent different newsletters, research reports or marketing brochures to different segments of their client base does not necessarily mean that they have, or might be expected to have, taken into account any particular client's objectives, financial situation or needs in giving them the financial product advice contained in a particular newsletter, research report or marketing brochure.</p> <p>We are unlikely to be concerned if this person takes the view that they are providing general advice when, in deciding to send a particular newsletter, research report or marketing brochure to a particular segment of their client list, they looked at broad client groupings based on:</p> <ul style="list-style-type: none"> <li>• the size of a client's portfolio;</li> <li>• whether a client currently invests in, or has expressed interest in receiving information about, any of the broad market sectors discussed in the newsletter (e.g. property trusts, the industrials sector);</li> <li>• a client's age;</li> <li>• whether a client is employed or retired; or</li> <li>• whether a client has used the person's services within a particular timeframe.</li> </ul>

Example	Explanation
<p><b>6 Marketing campaigns to a market segment</b></p>	<p>An insurance broker markets a product suitable for people subject to a particular broad type of risk and sends standardised marketing material for that product to clients who fall within that broad market segment.</p> <p>This situation falls within Example 5, and for the same reasons we would be unlikely to be concerned if the broker takes the view that they are giving general advice.</p>
<p><b>7 Investment seminars for particular client groups</b></p>	<p>A person invites a particular segment of their client base to a seminar based on broad groupings as described in Example 5 and provides a pre-prepared presentation focused on areas that are likely to be of interest to that broad client group.</p> <p>These facts do not necessarily mean that they have, or might be expected to have, taken into account any particular client's objectives, financial situation or needs in giving them the financial product advice provided at the seminar.</p> <p>Again, as in Example 5, we would be unlikely to be concerned if they take the view that they are giving general advice.</p> <p>They will also need to consider the matters highlighted in Example 2 if they want to confine their seminar to the giving of general advice.</p>

## Key terms

Term	Meaning in this document
advice	'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	<i>Australian Securities and Investments Commission Act 2001</i>
authorised representative-	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 an authorised representative provides financial services
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of the Corporations Act
dollar disclosure provisions	Provisions of the Corporations Act and 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 regs 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: <ul style="list-style-type: none"> <li>• makes a financial investment (see s763B);</li> <li>• manages financial risk (see s763C);</li> <li>• makes non-cash payments (see s763D)</li> </ul> Note: This is a definition contained in s763A: see also s763B–765A.
financial product advice	A recommendation or a statement of opinion, or a report of either of those things, that: <ul style="list-style-type: none"> <li>• is intended to influence a person or persons in making a decision in relation to a particular financial product or class of financial products, or an interest in a particular financial product or class of financial products; or</li> <li>• could reasonably be regarded as being intended to have such an influence,</li> </ul> but does not include anything in an exempt document Note: This is a definition contained in s766B.

Term	Meaning in this document
financial service	The meaning set out in s766A
Financial Services Guide	A document 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
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: <ul style="list-style-type: none"> <li>the provider of the advice has considered one or more of the client's objectives, financial situation and needs; or</li> <li>a reasonable person might expect the provider of the advice to have considered one or more of those matters</li> </ul> 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
providing entity	The meaning explained in RG 175.26 of this guide
Pt 7.7 (for example)	A part of the Corporations Act (in this example, numbered 7.7)
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	Means: <ul style="list-style-type: none"> <li>an authorised representative of the licensee;</li> <li>an employee or director of the licensee;</li> <li>an employee or director of a related body corporate of the licensee; or</li> <li>any other person acting on behalf of the licensee</li> </ul> Note: This is a definition contained in s910A.

<b>Term</b>	<b>Meaning in this document</b>
retail client	The meaning set out in s761G
RG 146 (for example)	An ASIC 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 Product Disclosure Statement	A disclosure document that complies with the Short-Form PDS requirements in Schedule 10BA of the Corporations Regulations 2001
SOA	Statement of Advice
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

### 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 for the advice; further advice

### Class orders and pro formas

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

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

CO 03/606 *Financial product advice: exempt documents*

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

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

CO 04/1055 *Information in a Financial Services Guide given in time critical situation*

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*

CO 04/1435 *Dollar disclosure: Amounts denominated in foreign currency*

CO 04/1572 *Secondary services: Financial Services Guide relief for experts*

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

CO 05/835 *General advice in advertising*

CO 05/1195 *Simplified warning for oral general advice*

PF 209 *Australian financial services licence conditions*

## **Regulatory guides**

RG 1–RG 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: A guide for research report providers*

RG 84 *Super switching advice: Questions and answers*

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

RG 104 *Licensing: Meeting the general obligations*

RG 105 *Licensing: Organisational competence*

RG 146 *Licensing: Training of financial product advisers*

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

RG 181 *Licensing: Managing conflicts of interest*

RG 182 *Dollar disclosure*

## **Legislation**

Corporations Act Chapter 7, Pt 7.7, Pt 7.9, Pt 7.10 Div 2, s761A, 761G, 761GA, 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 and reports**

CP 71 *Repetition of the general advice warning*

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

REP 29 *Preferential remuneration project*

REP 30 *Disclosure of soft dollar benefits*

REP 50 *Superannuation switching surveillance*

REP 51 *Report to the Parliamentary Joint Committee on late 2004 (and early 2005) superannuation switching advice surveillance*

REP 69 *Shadow shopping survey on superannuation advice*

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

### **Media and other 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 04-61 *ASIC provides guidance on Statements of Advice*

IR 04-67 *ASIC issues dollar disclosure policy*

IR 04-78 *ASIC grants relief for secondary service providers*

IR 05-22 *ASIC provides details on financial services refinements projects*

IR 05-23 *ASIC releases updated policy statements and licensing guidance papers*

IR 05-45 *ASIC provides guidance about giving general financial product advice*

IR 05-47 *ASIC grants relief for advertising by product issuers*

*IR 05-53 Delivery of ASIC's financial services refinements projects on time*

*IR 05-62 ASIC announces simpler warnings for oral general advice*

*IR 05-176 ASIC guidance on giving super switching advice*

*IR 06-02 ASIC provides guidance on compliance with FSR refinements regulations*

*IR 07-19 ASIC releases technical updates to financial services related policy statements and class orders*