

[CO 04/1572]

Secondary Services: Financial Services Guide relief for experts

Issued 22/12/2004

Class Order [CO/04 1572] gives relief to allow an expert's FSG to be included as a separate and clearly identifiable part of an expert's report that is prepared for inclusion in a third party's disclosure document (eg a prospectus or product disclosure statement (PDS)) where certain conditions are met.

Australian Securities and Investments Commission
Corporations Act 2001 — Paragraph 951B(1)(a) — Exemption

1. The Australian Securities and Investments Commission grants this exemption under paragraph 951B(1)(a) of the *Corporations Act 2001* (the *Act*).

Exemption — giving of FSG by experts

2. An expert (the *providing expert*) who is a financial services licensee or an authorised representative of such a licensee does not have to comply with subsections 941A(1) or 941B(1) to the extent that a Financial Service Guide (the *expert FSG*) that the providing expert must give in relation to the provision of the financial service referred to in paragraph 3:
 - (a) must be given in the way required section 940C; and
 - (b) must be given at the time required by subsection 941D(1); and
 - (c) must have a title in accordance with subsection 942A(1); and
 - (d) must not be combined with a Product Disclosure Statement in contravention of subsection 942DA(3).

Note: The expert's reports to which this instrument applies are not limited to those combined with a Product Disclosure Statement.

Where relief applies

3. The exemption in paragraph 2 applies where the providing expert provides general advice in a report or statement (the *expert's report*) that is included in a document (the *disclosure*

document) prepared by or on behalf of another person (the *principal*) and all of the following are satisfied:

- (a) the providing expert is not:
 - (i) the person who prepared the disclosure document; or
 - (ii) an employee or director of the principal; and
- (b) the disclosure document clearly and prominently discloses the identities of the:
 - (i) providing expert; and
 - (ii) the person for whom, or on whose behalf, the expert's report was prepared; and
 - (iii) the principal; and
- (c) the disclosure document clearly and prominently discloses the nature of the relationship between the providing expert and:
 - (i) the person for whom, or on whose behalf, the expert's report was prepared; and
 - (ii) the principal; and
- (d) the disclosure document clearly and prominently discloses the liability of the expert in relation to the likely audience of the disclosure document; and
- (e) the expert's report:
 - (i) forms a separate and clearly identifiable part of the disclosure document; and
 - (ii) bears an expression at or near the front of the report that makes it clear that it is both an expert's report and a Financial Services Guide; and
- (f) the expert FSG forms a separate and clearly identifiable part of the expert's report.

Interpretation

- 4. In this instrument:
 - (a) references to provisions are references to provisions of the Act; and
 - (b) *authorised representative* has the meaning given by section 761A;

Financial Services Guide has the meaning given by section 761A; and

general advice has the meaning given by subsection 766B(4).

Dated this 22nd day of December 2004

Signed by Brendan Byrne
as a delegate of the Australian Securities and Investments
Commission