



ASIC

Australian Securities & Investments Commission

[CO 04/576]

Statements of additional advice

Issued 20/7/2004

Effective 20/7/2004

Class Order [CO 04/576] facilitates shorter Statements of Advice (SOAs) where the adviser has an ongoing relationship with the client. The class order provides relief to permit SOAs to 'incorporate by reference' certain information that the client has already received in a previous SOA.

Amended by Class Orders:

[CO 04/1034]

Date of operation

19/8/2004

For details of amendments see historical notes in this class order.

Australian Securities and Investments Commission
Corporations Act 2001 — Paragraph 951B(1)(c) — Declaration

Under paragraph 951B(1)(c) of the *Corporations Act 2001* (the *Act*) the Australian Securities and Investments Commission (*ASIC*) declares that Part 7.7 of the Act applies in relation to the class of persons referred to in the Schedule as if provisions of that Part were modified or varied as follows:

Main modifications

1. in Division 3, add after section 948A:

“Subdivision F – Statement of Additional Advice

948AA What is a Statement of Additional Advice

A *Statement of Additional Advice* is a document by which a person who has given another person (the *client*) a Statement of Advice (the *original Statement of Advice*) and who later provides the client with additional advice may satisfy the requirement to give the client a Statement of Advice in relation to the additional advice without necessarily repeating all the information contained in the original Statement of Advice.

948AB Title of Statement of Additional Advice

- (1) The title “Statement of Additional Advice” must be used on the cover of, or at or near the front of, a Statement of Additional Advice.
- (2) In any other part of a Statement of Additional Advice, “Statement of Additional Advice” may be abbreviated to “SoAA”.

948AC Situation in which a Statement of Additional Advice can be given

If:

- (a) apart from this section, a person (the *providing entity*) would be required to give another person (the *client*) a Statement of Advice (the *new Statement of Advice*); and
- (b) the client has, because of a requirement of this Part that applied to the providing entity on a previous occasion, already been given a Statement of Advice (the *original Statement of Advice*) by the providing entity containing some, but not all, of the statements or information that the new Statement of Advice is required to contain,

then subject to this Subdivision, the providing entity may, instead of giving the client the new Statement of Advice, give the client a Statement of Additional Advice.

In this Subdivision, *new Statement of Advice* and *original Statement of Advice* have the same meaning as in this section.

948AD Content of Statement of Additional Advice

- (1) A Statement of Additional Advice must include all of the statements or information that a new Statement of Advice would be required to include.

Note: The effect of section 948AF must be taken into account in determining whether this provision is complied with.

- (2) A Statement of Additional Advice may incorporate any statements or information contained in an original Statement of Advice other than:
 - (a) statements required to be included in the new Statement of Advice by section 945B; and
 - (b) information required to be included in the new Statement of Advice by paragraphs 947B(2)(d) and (e), or paragraphs 947C(2)(e) and (f), as the case requires, that specifically relates to the advice in the new Statement

(regardless of how it is expressed in the original Statement); and

- (c) information required to be included in the new Statement of Advice by section 947D.

The statements or information that may be incorporated into a Statement of Additional Advice are referred to elsewhere in this Subdivision as *relevant statements or information*.

- (3) A Statement of Additional Advice may contain other statements or information.
- (4) At or near the beginning of a Statement of Additional Advice there must be:
 - (a) a statement identifying the original Statement of Advice from which it incorporates statements or information;
 - (b) a statement to the effect that the Statement of Additional Advice should be read together with the original Statement of Advice and that the statements or information in the original Statement are taken to be incorporated in the Statement of Additional Advice except to the extent clearly set out in the Statement of Additional Advice;
 - (c) a statement that clearly explains the extent (if any) to which the statements or information taken to be incorporated from the original Statement of Advice are no longer accurate; and
 - (d) a statement that a person can obtain a copy of the original Statement of Advice from the providing entity free of charge and how a copy can be obtained.
- (5) The Statement of Additional Advice must be dated. The date must be the date on which the Statement of Additional Advice was prepared or its preparation was completed.
- (6) For the purposes of subsection (2), information of the kind required by paragraphs 947B(2)(d) or 947C(2)(e) is taken not to *specifically relate* to advice in the new Statement of Advice if it covers remuneration (including commission) or other benefits that a person referred to in those paragraphs is to receive as a result of:
 - (a) the advice in the original Statement of Advice being acted on (regardless of whether that advice has been acted on at the time of the preparation of the new Statement); and

- (b) the advice in the new Statement of Advice being acted on.

Note: An effect of subsections 948AD(2) and (6) is that some kinds of information about remuneration may be incorporated by reference in a Statement of Additional Advice. For example, information about brokerage rates for share transactions set out in the original Statement of Advice may be so incorporated if those rates are applicable to transactions conducted as a result of acting on the advice covered by the original Statement of Advice as well as acting on the advice covered by the Statement of Additional Advice.

948AE Information that cannot be incorporated by reference

A Statement of Advice must not incorporate or purport to incorporate statements or information from more than one Statement of Advice.

948AF Inclusion of information in a Statement of Additional Advice by reference

A Statement of Additional Advice is taken to include all of the relevant statements or information included in a Statement of Advice identified in it and from which it is expressed to incorporate statements or information, except to the extent clearly set out in the Statement of Additional Advice.

948AG Wording and presentation of a Statement of Additional Advice

The statements or information included (other than because of section 948AF) in a Statement of Additional Advice must be worded and presented in a clear, concise and effective manner.

948AH How a Statement of Additional Advice must be given

A Statement of Additional Advice is given to a person if all of the following apply:

- (a) it is given in any way permitted by section 940C in relation to a Statement of Advice; and
- (b) the way in which the Statement of Additional Advice is given is:
 - (i) the same way as the original Statement of Advice was given to the person; or
 - (ii) with the written agreement of the person, in another way permitted by section 940C in relation to a Statement of Advice.

948AI Statement of Additional Advice not to be combined with Financial Services Guide or Product Disclosure Statement

A Statement of Additional Advice must not be combined in a single document with a Financial Services Guide or a Product Disclosure Statement.”;

[*Historical note:* Introductory words of paragraph 1 amended 19/8/2004 [CO 04/1034] by replacing the reference to ‘Division 4’ with ‘Division 3’.]

Consequential modifications

2. in section 761A add after the definition of *self-managed superannuation fund*:

“*Statement of Additional Advice* has the meaning given by section 948AA.”;
3. in subsection 766B(9) (definition of *exempt document or statement*) omit “Advice;” from subparagraph (a)(i), substitute “Advice or Statement of Additional Advice;”;
4. in section 940B:
 - (a) omit “section 940C)” from paragraph (1)(b), substitute “section 940C or 948AH)””; and
 - (b) after “section)” in paragraph (2)(a) insert “or section 948AH)””;
5. in subsection 946A(3) after “section 946B” insert “and Subdivision F”;
6. in subsection 952B(1) (definition of *defective*):
 - (a) omit “Advice,” from paragraph (b) (introductory words), substitute “Advice or Statement of Additional Advice,”; and
 - (b) at the end of subparagraph (b)(iii) add “or”; and
 - (c) after subparagraph (b)(iii) add:

“(iv) if it is a Statement of Additional Advice that is given for the purposes of section 948AC – there is an omission from the Statement of Additional Advice of material that because of subsection 948AD is required by paragraphs 947B(2)(d) and (e), or 947C(2)(e) and (f), or sections 945B or 947D; or
 - (v) if it is a Statement of Additional Advice that is given for the purposes of section 948AC – the document incorporates or purports to incorporate statements or

information that are prohibited to be incorporated in the Statement by section 948AE;”;

7. in section 952B (definition of *disclosure document or statement*) after paragraph (c) insert:
 - “(ca) a Statement of Additional Advice; or”;
8. in section 952C omit “section 940C” (twice occurring), substitute “section 940C or 948AH”;
9. in each of subsections 952D(3) and 952E(7) omit “section 940C.”, substitute “section 940C or 948AH.”;
10. in subsection 952F(1) after “Advice,” (twice occurring) insert “a Statement of Additional Advice,”;
11. in subsection 952G(1) after “Advice,” (twice occurring) insert “a Statement of Additional Advice,”;
12. in section 952J:
 - (a) omit “person;” in paragraph (1)(a), substitute “person, or instead gives the person a Statement of Additional Advice;”;
 - and
 - (b) omit “947E.” from paragraph (1)(b), substitute “947E or the Statement of Additional Advice does not comply with section 948AB or 948AI.”; and
 - (c) omit “section 940C.” from subsection (3), substitute “section 940C or 948AH.”;
13. in subsection 953A(1) (definition of *defective*):
 - (a) omit “Advice,” from paragraph (b) (introductory words), substitute “Advice or Statement of Additional Advice,”; and
 - (b) omit “section.” from the end of subparagraph (b)(iii), substitute “section; or”; and
 - (c) after subparagraph (b)(iii) add:
 - “(iv) if it is a Statement of Additional Advice that is given for the purposes of section 948AC – there is an omission from the Statement of Additional Advice of material that because of section 948AD is required by paragraphs 947B(2)(d) and (e), or 947C(2)(e) and (f), or sections 945B or 947D; or
 - (v) if it is a Statement of Additional Advice that is given for the purposes of section 948AC – the document incorporates or purports to incorporate statements or

information that are prohibited to be incorporated in the Statement by section 948AE.”;

14. in subsection 953A(1) (definition of *disclosure document or statement*) after paragraph (c) insert:

“(ca) a Statement of Additional Advice; or”; and

15. in section 953B omit “section 940C” (twice occurring), substitute “section 940C or 948AH”.

Schedule

A person who is required by a provision of Part 7.7 of the Act to give another person a Statement of Advice, except a person who has received written notice from ASIC stating that this instrument does not apply in relation to the person.

Dated this 20th day of July 2004

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