



INFORMATION RELEASE



Wednesday 21 July 2004

IR 04-34

ASIC FACILITATES SHORTER STATEMENTS OF ADVICE

The Australian Securities and Investments Commission (ASIC) today announced the release of a new class order, [CO 04/576] *Statements of Additional Advice*, to facilitate shorter Statements of Advice (SOAs) where the adviser has an ongoing relationship with the client.

[CO 04/576] provides relief to permit Statements of Advice (SOAs) to ‘incorporate by reference’ certain information that the client has already received in a previous SOA.

The class order has been issued as part of further guidance from ASIC about how it expects licensees (and their representatives) to prepare their SOAs: see Media Release [MR 04/236] *ASIC provides further guidance on Statements of Advice*, also issued today.

‘The class order will benefit consumers and industry by facilitating the provision of shorter disclosure documents. This promotes the objective of clear, concise and effective disclosure and should make it easier for consumers to read and understand the information provided to them’, ASIC Executive Director of Financial Services Regulation, Mr Ian Johnston said.

‘It will also help avoid the unnecessary duplication of information already provided to consumers and, in many cases, will result in documents consisting of no more than a few pages.

‘The class order provides that when an adviser gives an existing client a further SOA (called a Statement of Additional Advice), that document can ‘incorporate by reference’ information previously given to that client in the original SOA, provided certain conditions are met. The conditions are designed to prevent consumer confusion and ensure that the adviser’s potential liability for the disclosure document is not diminished’, Mr Johnston said.

In short, ASIC expects a Statement of Additional Advice to be dated and to:

- inform the client that it must be read with the original SOA;
- contain the new advice (and supporting information) provided since the original SOA;
- highlight any changes since the original SOA; and
- repeat any required warnings and the additional information required if recommending a replacement of one product with another. (These are particularly important pieces of consumer information and therefore must be included in both the original SOA and the Statement of Additional Advice.)

If the client requests it, a copy of the original SOA must be provided free of charge.

The class order does **not** affect or reduce the requirement to give appropriate advice. The obligation of the adviser to comply with the suitability rule (s945A of the Corporations Act) when providing personal advice to clients is unchanged.

Further information about the class order and Statements of Additional Advice is provided in the attachment to this information release.

Copies of the class order can be obtained from ASIC's Infoline by calling 1300 300 630 or from the ASIC website at www.asic.gov.au/co.

For further information contact:

John Price
Director FSR Legal and Technical Operations
Telephone: 03 9280 3639
Mobile: 0403 138 537

Angela Friend
ASIC Media Unit
Telephone: 03 9280 3338
Mobile: 0412 058 800

ATTACHMENT TO INFORMATION RELEASE 04-034

1. Statements of Additional Advice

Under the *Corporations Act 2001* (the Act), each time an adviser provides personal financial product advice to a retail client, the adviser must give the client a Statement of Advice (SOA). This obligation applies unless there is a specific exception (for example, the exception for further market-related advice provided by market participants). An SOA must contain specific information, which is described in Part 7.7 of the Act, particularly s947B, 947C and 947D.

ASIC Class Order [CO 04/576] *Statements of Additional Advice* refines the application of Part 7.7 so that when an adviser gives an existing client a further SOA, the information that is normally required to be expressly set out in an SOA may be incorporated into the further SOA by reference to the original SOA that already contains that information. This is intended to avoid duplicating information already provided to a client and to shorten the length of SOAs provided to consumers.

Under [CO 04/576], the further SOA that ‘incorporates by reference’ the original SOA is called a ‘Statement of Additional Advice’ or an ‘SOAA’.

This attachment explains:

- when an adviser can give an SOAA;
- what information can be incorporated by reference into an SOAA;
- whether there are any limitations on the types of information that an SOAA can incorporate by reference; and
- how an SOAA must be given to a client.

2. When can a Statement of Additional Advice be used?

Under the class order, an SOAA can be given to a retail client by an adviser where:

- the adviser has already given the client an SOA that contained all of the information required under Part 7.7 (ie an ‘original SOA’); and
- the adviser is required to give the client a further SOA because they have provided subsequent personal advice to the client (ie the further SOA can be the SOAA).

This means that an SOAA can only be provided to a client who has already received an ‘original SOA’. This is to ensure that the client has ready access to all the information required under Part 7.7.

Under the terms of the class order, ASIC has reserved itself the power to issue a written notice to an adviser informing the adviser that they cannot in future use SOAAs for their clients. As long as the adviser has not received a written notice from ASIC stating they must not prepare or give an SOAA to a person, any adviser can give a client an SOAA.

3. How is information incorporated by reference?

To take advantage of the incorporation by reference class order, the adviser must:

- prominently call the further SOA a ‘Statement of Additional Advice’;
- clearly indicate in the SOAA:
 - that it must be read together with a clearly specified original SOA;
 - which information contained in the original SOA (if any) is no longer relevant or accurate and is **not** being included in the SOAA. Under the terms of the class order, **all**

‘relevant information’ in the original SOA is deemed to be included in the SOAA unless specified otherwise (the definition of ‘relevant information’ is discussed in section 4 below);

- that the client can obtain a copy of the original SOA free of charge from the adviser and how this can be obtained. This is to ensure that the client will have access to the information in the original SOA that is being incorporated into the SOAA (in case the client has misplaced the original SOA); and
- the date of the SOAA (being the date it was prepared or its preparation was completed).

Where the conditions of the class order (summarised above) are met, the SOAA is treated as if it includes all of the ‘relevant information’ in the original SOA, except for any information specifically excluded by the SOAA.

4. Is there any information that cannot be incorporated by reference into an SOAA?

Yes. The information that can be incorporated by reference is defined as the ‘relevant information’ under the class order. While this includes most information contained in an SOA, it **excludes**:

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

Therefore, the adviser must still include the above information and statements (if required) in full in the SOAA. The adviser cannot incorporate these items of information or statements by reference to the original SOA. This information is considered to be of key importance to consumers.

Note: Remuneration and conflicts information that relates specifically to the new personal advice needs to be included in the SOAA. This new information would generally not already be in the original SOA.

5. Can an adviser incorporate by reference information from multiple original SOAs or from another SOAA?

No. An SOAA can apply to one original SOA only. It must not incorporate by reference relevant information or statements contained in more than one original SOA. This ensures that a retail client need only refer to two documents at one time.

Further, an SOAA cannot incorporate by reference any information or statements contained in another earlier SOAA. Therefore, each time an SOAA is given to a client, it will need to expressly include in full any information that was set out in any previous SOAAs given to the client.

ASIC has imposed this limitation to reduce the number of documents that a client needs to read, the effect of this being that a client should only be required to read two SOAs at any time, being:

- the original SOA, which contained all of the information or statements required to be in a SOA at the time it was prepared (ie not itself relying on incorporation by reference); and
- the SOAA, which:
 - incorporates by reference relevant information or statements from the original SOA;
 - expressly sets out the information required to be included in an SOAA under Class Order [CO 04/576] (see sections 3 and 4 earlier);

- expressly sets out the ‘new’ information or statements required to be in the SOA relating to the further personal advice (which triggered the SOAA itself); and
- expressly sets out (in full) any relevant information or statement included in any previous SOAAs given to the client.

6. Clear, concise and effective

The information and statements contained in the SOAA must be worded and presented in a clear, concise and effective manner.

7. ‘Giving’ an SOAA

An SOAA must be given to a retail client in the same way and in the same form as the original SOA, unless otherwise agreed in writing by the retail client.

8. Enforcement provisions apply to SOAAs

Class Order [CO 04/576] modifies Parts 7.1 and 7.7 of the Corporations Act, including the enforcement provisions in Division 7 of Part 7.7. The effect of these modifications is that Chapter 7 will apply to SOAAs prepared and given to retail clients by advisers in the same manner that it currently applies to SOAs.

9. Examples

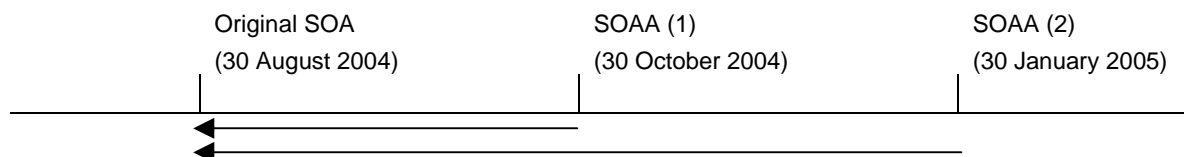
The following diagram illustrates how the SOAA regime might work in practice.

Example 1



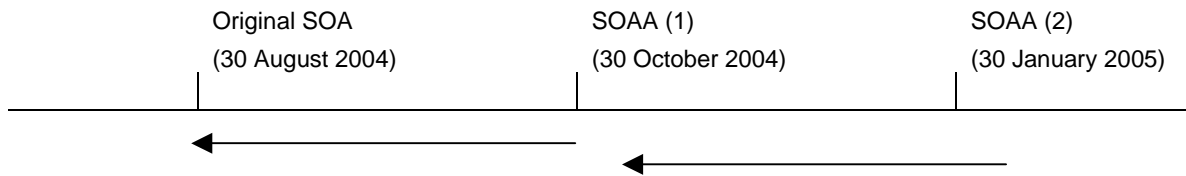
In this example, the adviser gives an original SOA on 30 August 2004 when providing the original personal advice. Further personal advice is provided and an SOAA is given on 30 October 2004. This SOAA would comply with the SOAA regime as it refers back to one original SOA only.

Example 2



In this example, the adviser gives an original SOA on 30 August 2004 when providing the original personal advice. Further personal advice is provided and SOAAs are given on 30 October 2004 and 30 January 2005. These SOAAs would comply with the SOAA regime as they both refer back to a single original SOA only.

Example 3



In this example, the adviser gives an original SOA on 30 August 2004 when providing the original personal advice. Further personal advice is provided and SOAAs are given on 30 October 2004 and 30 January 2005. The first SOAA (30 October 2004) would comply with the SOAA regime as it refers back to one original SOA only. The second SOAA (30 January 2005) would not comply as it refers back to the earlier SOAA (instead of the original SOA). *However, the second SOAA would have complied if it had only referred back to the original SOA.*