



**ASIC**

Australian Securities & Investments Commission

CONSULTATION PAPER 70

# Online calculators

August 2005

## What this paper is about

1 This consultation paper sets out our proposals for guidance on and relief from the *Corporations Act 2001* (the Act) for online calculators.

Note: Online calculators include savings calculators, superannuation calculators, insurance calculators and risk profilers; see Section 1 of this paper for other examples.

2 Online calculators are electronic tools designed to help consumers better understand their financial circumstances. While online calculators can be useful educational tools, they are not a substitute for personal advice from a financial adviser (e.g. through a face-to-face interview).

3 This consultation paper has been developed as part of the refinement proposals set out in the Australian Government's proposals paper *Refinements to Financial Services Regulation* (May 2005). The refinement proposals respond to some concerns about the practical operation of the changes brought about by the *Financial Services Reform Act 2001*.

4 In its proposals paper, the Government says that ASIC will provide further guidance and/or relief on the provision of basic online calculators to promote their use: see Refinement Proposal 10.3.

5 As part of this process, ASIC has recently granted class order relief for certain online superannuation calculators: see Class Order [CO 05/611] *Relief for providers of superannuation calculators*. This consultation paper does not reconsider this existing relief. However, we might need to review the relief when we have finalised our position on the proposals in this paper.

Note: For copies of ASIC publications mentioned in this paper, such as class orders (CO), policy statements (PS) and frequently asked questions (QFS), go to [www.asic.gov.au](http://www.asic.gov.au) or contact ASIC Infoline on 1300 300 630.

## Your feedback is invited

We invite you to comment on our proposals and the issues for consideration in this paper. We would also like to receive any qualitative or quantitative information to support your comments or arguments. All submissions will be treated as public documents unless you specifically request that we treat the whole or part of your submission as confidential. Following the comment period, we aim to publish final relief and/or guidance by November 2005.

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### Your comments

Comments are due by 23 September 2005 and should be sent to:

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You can also contact ASIC Infoline on 1300 300 630 for information and assistance.

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## Section 1: Types of online calculators

**1.1** For the purpose of this paper, we have divided online calculators into three categories:

- (a) generic calculators;
- (b) product-specific calculators; and
- (c) risk profilers.

### Generic calculators

**1.2** Generic calculators are:

- (a) mathematical tools (i.e. they only produce numerical results)
- (b) that *do not produce* results relating to one or more specific financial products.

**1.3** Examples of generic calculators include the following (but only where they do not relate to specific financial products):

- (a) savings calculators;
- (b) managed investment calculators; and
- (c) life insurance calculators.

**1.4** Typically, generic calculators help the user calculate:

- (a) the estimated value of total savings or investments at a future point in time; and/or
- (b) the estimated level of saving, investment or life insurance cover required to achieve a particular financial goal.

### Product-specific calculators

**1.5** Product-specific calculators are:

- (a) mathematical tools (i.e. they only produce numerical results)
- (b) that *produce* results relating to one or more specific financial products.

**1.6** Examples of product-specific calculators include:

- (a) calculators that are connected to promotional material for a named financial product (e.g. by including a link to the Product Disclosure Statement for the product or a link to 'Apply now' on the calculator's results page);
- (b) superannuation or managed investment calculators that allow the user to select, perform calculations on, and compare the estimated performance of named financial products (or investment strategies within a product);

- (c) life insurance calculators that enable the user to calculate the sum insured (i.e. the amount of insurance they should take out) as part of the process of applying for, or obtaining a quote for, a specific life insurance product; and
- (d) warrant calculators that enable the user to calculate and compare the projected income and taxation for specific instalment warrant products.

## Risk profilers

**1.7** Risk profilers are tools that, based on the user's answers to a series of questions about investment preferences, assess the user's attitude to risk.

**1.8** Risk profilers are generally not mathematical tools (i.e. they do not produce numerical results). Although the result may be derived using mathematical formulae (e.g. by assigning the user's answers scores and using the total to produce a result), the results themselves are not numerical (e.g. the output is that the client has a risk weighting, such as 'conservative' or 'aggressive').

Note: This category of online calculators includes risk profilers that produce numerical results combined with an interpretative guide to explain those results (e.g. a risk profiler that produces the numerical result '5' and then has an interpretative guide that '5' equates to a 'conservative' risk profile).

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### Your feedback: Section 1

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- Q1.1** Are these categories appropriate? If not, how should they be amended?
- Q1.2** Are there other types of online calculators or tools for which we should consider providing relief and/or guidance? If so, what relief and/or guidance should we provide and what should be the conditions of any relief?
- Q1.3** Should we consider providing relief and/or guidance for calculators or tools that are made available through means other than the internet (e.g. paper-based tools, stand-alone computer software packages)? If so, what relief and/or guidance should we provide and what should be the conditions of any relief?

## Section 2: Promoting the use of online calculators

### Refinement Proposal 10.3

**2.1** The Government's Refinement Proposal 10.3 says that ASIC will provide further guidance and/or relief on the provision of basic online calculators.

**2.2** The refinement proposal aims to 'promote the provision of basic on-line calculators to enable consumers to understand and compare financial products and services without that being classed as personal advice'.

**2.3** Well-designed online calculators can be useful and cost-effective educational tools through which consumers can better understand their financial circumstances and goals. For example, savings or investment calculators can help consumers:

- (a) assess whether their current level of savings or investment is likely to be sufficient to achieve their particular financial goals;
- (b) understand the impact of certain costs or fees on their savings and investments; and
- (c) understand the beneficial effects of a regular savings or investment plan and the compounding or re-investment of returns.

**2.4** Similarly, insurance calculators can help consumers assess whether their current level of insurance (e.g. term life, income protection or general insurance) is likely to give them sufficient protection and thereby reduce the risk of under-insurance.

### Licensing issues

#### Financial product advice

**2.5** Online calculators that provide financial product advice are subject to the licensing, conduct and disclosure provisions of the Act. An online calculator involves financial product advice if it produces recommendations or statements of opinion that are (or could reasonably be regarded as being) intended to influence the user in making a decision about a particular financial product or class of financial products: see s766B. Whether a particular online calculator involves financial product advice will, therefore, depend on the facts of the particular case.

Note: For a discussion of the meaning of financial product advice, see *Licensing: The scope of the licensing regime: Financial product advice and dealing—An ASIC guide* (November 2001, updated November 2002).

**2.6** An online calculator does not involve financial product advice if, for example, it merely provides:

(a) factual information;

Note: For more details, see QFS 55 *What is the distinction between factual information and financial product advice?*.

(b) information about the cost or rate of return of a product (see s766B(7));

(c) for insurance calculators, information about the cost of a product and the value of an item (e.g. a house or car covered by the product) from which the cost of the product is worked out (see s766B(6)); or

(d) asset allocation advice (see reg 7.1.33A).

**2.7** In our view, it is likely that some online calculators, especially those that produce results relating to particular financial products (e.g. product-specific calculators), involve financial product advice.

### **Obligation to hold an AFS licence**

**2.8** In general, where an online calculator involves financial product advice, the provider of the calculator must hold an Australian financial services (AFS) licence unless otherwise exempt: see s911A(1).

**2.9** Currently, only limited licensing exemptions are available to providers of online calculators.

### ***Superannuation calculators***

**2.10** ASIC has recently granted licensing and related relief for certain superannuation calculators: see Class Order [CO 05/611] *Relief for providers of superannuation calculators*. This relief is limited to generic superannuation calculators (i.e. those that do not provide advice related to specific products) and is subject to certain conditions, such as the ability of the user to change assumptions used by the calculators and the reasonableness of any default assumptions.

### ***General advice by product issuers***

**2.11** The Government's proposals paper discusses the possibility of regulations giving licensing relief for general advice provided by an unlicensed product issuer about its own products where no remuneration or other benefit is received: see Refinement Proposal 10.1. This relief may cover providers of some online calculators to the extent that the calculators only involve general advice. However, it would not apply to calculators that involve personal advice.

## Personal advice issues

**2.12** Personal advice is financial product advice given 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: see s766B(3).

**2.13** Advice may be personal advice even where the advice is given by electronic means, where the adviser has not had direct contact with the client, or where the adviser did not (subjectively) intend to provide personal advice.

Note: For a discussion of the meaning of personal advice, see Policy Statement 175 *Licensing: Financial product advisers—Conduct and disclosure* at [PS 175.14]–[PS 175.18] and QFS 158 *Can I give a client general advice about a financial product if I have information about their personal circumstances?*

### Online calculators and personal advice

**2.14** Online calculators typically require the user to input information about their financial objectives, financial situation or needs (e.g. information about their initial investment, investment timeframe, ongoing investments, salary, age, attitude to risk, etc).

**2.15** The calculator then uses this information to generate a result. In doing so, the calculator has taken into account at least one aspect of the user's objectives, financial situation or needs.

**2.16** For these reasons, in our view, the financial product advice provided by many online calculators is likely to be personal advice.

### Requirements for personal advice

**2.17** If an online calculator provides personal advice to a retail client, the provider must comply with the personal advice regime in Division 3 of Part 7.7 of the Act. Under these provisions:

- (a) there must be a reasonable basis for the advice and the advice must be appropriate (s945A);
- (b) the client must be warned if the advice is based on incomplete or inaccurate information about the client's relevant personal circumstances (s945B); and
- (c) the client must be given a Statement of Advice (SOA) setting out, among other things, the advice and the basis upon which it is given (s946A).



## Industry concerns

**2.18** We are aware of comments that the introduction of the licensing, conduct and disclosure provisions of Chapter 7 of the Act have led, or may lead, to consumers having reduced access to online calculators.

**2.19** This is apparently due to industry concerns regarding:

- (a) uncertainty about whether online calculators involve financial product advice or not, and therefore whether an AFS licence with an advice authorisation is required;
- (b) uncertainty about whether personal advice provided through an online calculator can satisfy the suitability of advice requirements under s945A (e.g. whether the requirement to determine, and make reasonable inquiries about, the client's relevant personal circumstances can in all cases be satisfied by the user entering personal details into a series of pre-determined fields);
- (c) uncertainty about whether a generic statement prepared using the information the user enters into the calculator would satisfy the content requirements for an SOA; and
- (d) the significant costs that would be involved in developing technology to provide, and keep records of, SOAs in these circumstances, especially given that calculators are often provided free of charge to the public.

**2.20** We acknowledge that some legal uncertainty remains about how aspects of the licensing, conduct and disclosure provisions apply to online calculators. While our existing guidance and class order relief deal with superannuation calculators, the proposals in this paper aim to address some outstanding issues for online calculators more generally.

Note: For details of our existing guidance and relief, see Information Release [IR 04-17] *ASIC provides guidance on superannuation calculators* and Information Release [IR 05-32] *ASIC provides relief and guidance for providers of superannuation calculators*.

## Quality of online calculators

**2.21** While online calculators can be useful educational tools for consumers, we believe that, if not designed responsibly, they can do more harm than good.

**2.22** We recently reviewed 24 online superannuation calculators that allow people to estimate their hypothetical future superannuation benefits. To see if someone using these calculators would get broadly similar results regardless of which calculator they used, we keyed in the same facts and compared the dollar estimates generated by each calculator. On the same facts, we found widely differing estimated retirement balances, ranging from \$283,000 up to \$966,000. The

information provided to users was generally inadequate to explain the differences: see [IR 05-32].

**2.23** Differences in results from the same facts can arise naturally from reasonable variations in assumptions and mathematical processes. Large differences might in some circumstances still be reasonable if a calculator relates to a specific financial product or investment strategy, and users can find enough information to account for the difference.

**2.24** In our view, three factors are critical to developing useful and reliable calculators:

- (a) the reasonableness of assumptions (see paragraphs 2.25–2.28);
- (b) the adequacy of explanations about the limitations of the calculator and the impact of those limitations on the results (see paragraphs 2.29–2.30); and
- (c) whether estimates of future values are given in today’s dollars (see paragraphs 2.31–2.33).

### **Reasonableness of assumptions**

**2.25** Assumptions (whether default or set by the user) are an important component of any online calculator. Even small changes to assumptions can make large differences in results.

**2.26** In our existing relief and guidance on superannuation calculators, we have not set prescriptive rules about assumptions (e.g. we have not prescribed what assumptions the calculator should take into account or how the default values of assumptions should be determined): see [IR 05-32].

**2.27** We have instead adopted a more flexible approach requiring that:

- (a) the user must be able to alter all default assumptions (except for certain statutorily fixed factors, such as taxation rates, which can either be fixed or able to be altered by the user);
- (b) the default assumptions must be reasonable; and
- (c) the calculator must include clear statements about, among other things, the limitations of the calculator and why the provider considers the default assumptions to be reasonable.

**2.28** There are currently no widely accepted industry standards for the assumptions used by online calculators, or for disclosure of information about these assumptions. We expect the industry to develop its own guidelines outlining acceptable assumptions and disclosures as soon as possible.

## Explanations for users

**2.29** In our view, users of online calculators should be able to easily understand both the purpose and limitations of the calculator.

**2.30** For example, we think that:

- (a) to the extent the online calculator has any significant limitations (e.g. by not including the effect of fees or taxation), these limitations and their impact should be clearly explained; and

Note: For example, if a managed investment calculator does not take into account fees, we would expect that the calculator would not only explain this limitation, but would also go on to say that, as a result of this, the final value would be lower than what is shown because of the compounding effect of fees over time.

- (b) where a user makes clearly inappropriate changes to default assumptions (e.g. where the taxation rate can be varied by the user), the user should be given a clear warning that the results of the calculator are likely to be unrealistic.

## Future values in today's dollars

**2.31** We are concerned that some online calculators only provide results in future dollars (i.e. the actual amount at a future point in time rather than the amount with equivalent buying power in today's dollars).

**2.32** Where the online calculator relates only to financial products to be held for limited time periods (e.g. 1 year), the use of future dollars is generally of less concern. However, consumers might not realise that future dollars, especially over longer periods of time (e.g. 10 years or more), will be worth far less than today's dollars.

**2.33** We strongly recommend that the results of online calculators be expressed in today's terms. Where this is not done, we think that online calculators should state clearly that results are expressed in future dollars and warn users that future dollars, especially over 10 years or more, will be worth far less than today's dollars.

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## Your feedback: Section 2

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**Q2.1** Are there any other concerns about the impact of the licensing, conduct and disclosure provisions on online calculators we should address? If so, what are they?

**Q2.2** Are there any other concerns about the quality of online calculators we should address? If so, what are they?

## Section 3: Our proposals

### Generic calculators

**3.1** We propose to grant relief so that:

- (a) the provider of a generic calculator does not need to hold an AFS licence to provide financial product advice by, or through, the calculator; and
- (b) where the provider already holds an AFS licence (or is an authorised representative of a licensee), the provider does not need to comply with the conduct and disclosure provisions under Divisions 2, 3 and 4 of Part 7.7 of the Act for financial product advice provided by, or through, the calculator.

**3.2** Under the conditions of our proposed relief:

- (a) the user must be able to alter all default assumptions (except for certain statutorily fixed factors, such as taxation rates, which can either be fixed or able to be altered by the user);
- (b) the default assumptions must be reasonable;
- (c) the calculator must include clear statements about:
  - (i) the purpose and limitations of the calculator (including an explanation of the likely impact of the limitations);
  - (ii) why the default assumptions are reasonable;
  - (iii) where the calculator provides an estimate of the amount or value as at a future time, whether or not the estimate is in today's dollars or future dollars and that future dollars will be worth far less than today's dollars especially over longer periods of time (e.g. 10 years or more); and
  - (iv) that the calculator should not be relied on for making a decision about a particular financial product, and that the user should consider getting advice from a licensed adviser before making any financial decisions;
- (d) the calculator must not prevent the user from readily printing or electronically storing results produced by the calculator; and
- (e) the calculator must not provide financial product advice about one or more specific financial products.

**3.3** Our proposal aims to:

- (a) recognise that, where the conditions set out above are satisfied, the results produced by generic calculators are more akin to factual information than financial product advice;

- (b) promote legal certainty about when providers of generic calculators do not need to hold an AFS licence or comply with related conduct and disclosure obligations; and
- (c) set minimum standards of quality for generic calculators.

**3.4** Our proposed relief is also generally consistent with relief we have already provided for superannuation calculators under [CO 05/611].

## **Product-specific calculators**

**3.5** We propose to:

- (a) provide guidance about complying with the obligation under s945A(1)(a) of the Act to make reasonable inquiries about the client's relevant personal circumstances (see paragraphs 3.8–3.14); and
- (b) grant relief to providers of product-specific calculators from the Statement of Advice (SOA) provisions under Subdivisions C and D, Division 3 of Part 7.7 of the Act (see paragraphs 3.15–3.16).

## **Licensing**

**3.6** We do not propose to provide any relief from the licensing provisions for product-specific calculators. This means that providers of these types of calculators must still be covered by an AFS licence with appropriate authorisations to provide advice (unless, of course, a licensing exemption applies: see, for example, paragraph 2.11).

**3.7** Product-specific calculators are more likely to perform a marketing or promotional function (rather than simply being an educational tool for consumers). Therefore, they are likely to produce a specific recommendation to acquire a financial product and consumers are more likely to acquire a specific product based on product-specific calculators. We think that when using product-specific calculators, consumers should have the benefit of the consumer protection mechanisms of the licensing regime (e.g. the provider should be competent, have dispute resolution systems, have arrangements for compensating clients for loss).

## **Suitability of advice provisions**

**3.8** We propose to provide guidance about complying with the obligation under s945A(1)(a) to make reasonable inquiries about the client's relevant personal circumstances.

**3.9** In our view, providers are likely to be able to design online calculators that comply with the suitability of advice provisions. We think there is sufficient flexibility in the suitability of advice provisions to cater for advice provided by online calculators and other electronic means.

**3.10** To comply with the client inquiries obligation under s945A(1)(a), the provider must:

- (a) determine the client’s relevant personal circumstances in relation to giving the advice (see s945A(1)(a)(i)); and

Note: The ‘relevant personal circumstances’ are such of the user’s objectives, financial situation and needs as would reasonably be considered relevant to the advice: see s761A.

- (b) make reasonable inquiries about those personal circumstances (s945A(1)(a)(ii)).

**3.11** This obligation is ‘scaleable’. This means that it 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 or strategies.

Note: See Policy Statement 175 *Licensing: Financial product advisers—Conduct and disclosure* at [PS 175.103].

**3.12** Where client contact is not interactive (e.g. where advice is provided through an online calculator), conducting reasonable inquiries can be more difficult. This is particularly so where the advice is relatively complex or where the client has low levels of financial literacy.

**3.13** We acknowledge that determining the financial literacy of a client in an online context is difficult. Usually, where client inquiries are made in a face-to-face interview or over the telephone, follow-up questions can be used to ensure that the client understood earlier questions and that the information received by the provider is relevant and complete.

Note: See Policy Statement 175 *Licensing: Financial product advisers—Conduct and disclosure* at [PS 175.106].

**3.14** When advice is provided through an online calculator, providers need to consider other methods for ensuring the completeness and accuracy of client information. For example, depending on the circumstances (e.g. the complexity of the calculator and the financial strategy), this may require:

- (a) additional questions to cross-check information entered by the user;
- (b) warnings if the user enters information that is outside reasonable parameters; and/or
- (c) access to the calculator being restricted to ensure that, as far as reasonably practicable, only clients with an appropriate level of financial knowledge can access the calculator (e.g. by locating the calculator on a restricted access website that is only available to clients who have first answered a short questionnaire to test their knowledge of relevant financial concepts).

### Statement of Advice provisions

**3.15** We propose to provide relief from the obligation to provide an SOA where:

- (a) the requirements in paragraph 3.2 (a)–(d) for generic calculators are satisfied;
- (b) the calculator is accompanied by information about any remuneration, interests or associations with product issuers that might reasonably be capable of affecting the advice; and
- (c) the provider keeps, for a period of 7 years, copies of:
  - (i) the calculator (e.g. in an electronic format);
  - (ii) the default assumptions; and
  - (iii) information showing the default assumptions are reasonable.

**3.16** This proposal aims to:

- (a) address practical difficulties in giving and keeping records of SOAs when advice is provided by an online calculator; and
- (b) maintain minimum consumer protections by requiring providers to retain copies of online calculators and disclose information to users about remuneration and other interests.

## Risk profilers

**3.17** We do not propose to provide any relief for providers of risk profilers. This is because, in our view:

- (a) where the risk profiler does not relate to specific financial products or specific classes of financial products, relief is unnecessary because the risk profiler does not involve financial product advice; and
- (b) where the risk profiler relates to specific products or classes of products, we are not satisfied relief is appropriate.

**3.18** We do, however, propose to provide guidance on how the licensing provisions apply to risk profilers.

### Generic risk profilers

**3.19** In general, our view is that where risk profilers do not produce results relating to a specific financial product or products or specific classes of financial products, they are unlikely to involve financial product advice.

**3.20** This is because, in these circumstances, risk profilers typically either:

- (a) do not relate to financial products at all (e.g. the risk profiler only provides generic information about the user's attitude to risk); or
- (b) only make recommendations or statements of opinion about the allocation of the user's funds among one or more classes of assets (e.g. shares, debentures, deposit products, managed investment products etc).

Note: Under reg 7.1.33A, asset allocation advice is not a financial service.

### **Product-specific risk profilers**

**3.21** Where a risk profiler produces results relating to a specific product or specific class of financial products, our view is that the risk profiler is likely to involve financial product advice and the provider will have to comply with the licensing, conduct and disclosure provisions of the Act.

**3.22** In our view, product-specific risk profilers are more likely to perform a marketing or promotional function, rather than simply being an educational tool for consumers. As such, they are likely to produce a specific recommendation to acquire a financial product and consumers are more likely to acquire a specific product based on the results of the risk profiler. We therefore think that when using product-specific risk profilers, consumers should have the benefit of the consumer protection mechanisms of the licensing regime (e.g. the provider should be competent, have dispute resolution systems, have arrangements for compensating clients for loss).

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## **Your feedback: Section 3**

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- Q3.1** Are our proposals for relief for generic calculators appropriate and sufficient? If not, why not?
- Q3.2** Are our proposals for guidance and relief for product-specific calculators appropriate and sufficient? If not, why not?
- Q3.3** Is it practicable for providers of product-specific calculators to comply with the suitability of advice provisions? If not, why not? Will our proposed guidance help providers comply with these provisions? If not, why not?
- Q3.4** Are our proposals for guidance on risk profilers appropriate and sufficient? If not, why not?



- Q3.5** Should ASIC consider extending its proposed guidance on risk profilers to other types of online tools? If so, what types of tools should be covered and why?
- Q3.6** Should ASIC rely on industry groups to develop their own guidelines on acceptable assumptions (and explanations of assumptions) for online calculators? Alternatively, should ASIC adopt a more prescriptive approach to assumptions used by online calculators? (See also paragraphs 2.25–2.28.)
- Q3.7** Should users of online calculators be given additional explanations (e.g. an explanation of how the results will differ if the assumptions are incorrect)? If so, what additional explanations should be given? (See also paragraphs 2.29–2.30.)
- Q3.8** Should ASIC prescribe that users of online calculators should always be given amounts in today's dollars? (See also paragraphs 2.31–2.33.)

## Key terms

In this paper, the following terms have the following meanings:

**Act** The *Corporations Act 2001*, including regulations made for the purposes of the Act

**AFS licence** An Australian financial services licence

**ASIC** Australian Securities and Investments Commission

**[CO 05/611]** (for example) An ASIC class order (in this example numbered 05/611)

**[IR 05-32]** (for example) An ASIC information release (in this example numbered 05-32)

**licensee** A person who holds an AFS licence

**[PS 175]** (for example) An ASIC policy statement (in this example, numbered 175)

**QFS 55** (for example) A ‘frequently asked question’ posted on ASIC’s website at [www.asic.gov.au](http://www.asic.gov.au) (in this example numbered 55).

**s911A** (for example) A section of the Act (in this example numbered 911A)

**SOA** Statement of Advice

**SOA provisions** Subdivisions C and D of Division 3, Part 7.7 of the Act

**suitability of advice provisions** Subdivision B of Division 3, Part 7.7 of the Act