

Attachment 1 to CP 226: Draft instrument



ASIC

Australian Securities & Investments Commission

ASIC Corporations (Financial Services Guides—Secondary Services) Instrument 2015

ASIC Legislative Instrument No. XX, 20XX

I, <insert name>, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Dated 2015

<signature>

<insert name>

Delegate of the Australian Securities and Investments Commission

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Part 1—Preliminary

1 Name of legislative instrument

This instrument is *ASIC Corporations (Financial Services Guides—Secondary Services) Instrument 2015*.

2 Commencement

This instrument commences on the day after it is recorded in the Federal Register of Legislative Instruments in electronic form.

Note: The register may be accessed at <http://www.comlaw.gov.au>.

3 Authority

This instrument is made under subsection 951B(1) of the *Corporations Act 2001* (the *Act*).

4 Definitions

In this instrument:

authorised representative has the meaning given by section 761A of the Act.

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

intermediary authorisation has the same meaning as in paragraph 911A(2)(b) of the Act.

Part 2—Exemption

5 Financial Services Guides—Secondary services

- (1) This section applies in relation to a Financial Services Guide that a person must give in relation to the provision of a financial service to the extent the Financial Services Guide:
 - (a) must be given in the way required by section 940C of the Act; and
 - (b) must be given at the time required by subsection 941D(1) of the Act; and
 - (c) must have a title in accordance with subsection 942A(1) of the Act; and
 - (d) must not be combined with a Product Disclosure Statement in contravention of subsection 942DA(3) of the Act.

Expert reports

- (2) A financial services licensee (the *expert*) or an authorised representative (the *expert*) of a financial services licensee that, acting in their capacity as an expert, provides general advice in a report or statement (the *expert's report*) that is included in a document (the *principal document*) prepared by or on behalf of another person (the *principal*) does not have to comply with subsection 941A(1) or 941B(1) of the Act in relation to a Financial Services Guide that the expert must give in relation to the provision of the advice, provided all of the following are satisfied:
 - (a) the expert is neither:
 - (i) the person who prepared the principal document; or
 - (ii) an employee or a director of the principal;
 - (b) the expert's report:
 - (i) forms a separate and clearly identifiable part of the principal 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;
 - (c) the Financial Services Guide forms a separate and clearly identifiable part of the expert's report;

- (d) the principal document prominently discloses the following information:
 - (i) the respective names of:
 - (A) the expert;
 - (B) the principal; and
 - (C) the person for whom, or on whose behalf, the expert’s report was prepared;
 - Note: The person for whom, or on whose behalf, the expert’s report was prepared may or may not be the principal.
 - (ii) the nature of the relationship between the expert and:
 - (A) the principal; and
 - (B) the person for whom, or on whose behalf, the expert’s report was prepared;
 - (iii) the extent of the liability of the expert in relation to the principal document and the expert’s report.

Arrangers acting under intermediary authorisations

- (3) A financial services licensee (the ***intermediary***) or an authorised representative (the ***intermediary***) of a financial services licensee that provides a financial service consisting of arranging for the issue of a financial product by a person (the ***product provider***) under an intermediary authorisation does not have to comply with subsection 941A(1) or 941B(1) of the Act in relation to a Financial Services Guide that the expert must give in relation to the provision of the financial service, provided both of the following are satisfied:
 - (a) the Financial Services Guide:
 - (i) forms a separate and clearly identifiable part of the Product Disclosure Statement for the financial product; and
 - (ii) bears the expression “Financial Services Guide” at or near the front of the part of the Product Disclosure Statement that is the Financial Services Guide;
 - (b) the Financial Services Guide prominently discloses the following information:
 - (i) the respective names of:
 - (A) the intermediary;
 - (B) the product provider;

- (C) where the intermediary is an authorised representative—
the financial services licensee on whose behalf the
intermediary acts in relation to the intermediary
authorisation;
- (ii) the nature of the relationship between the product provider
and:
 - (A) the intermediary; and
 - (B) where the intermediary is an authorised representative—
the financial services licensee on whose behalf the
intermediary acts in relation to the intermediary
authorisation.