



Credit and Investments Ombudsman

PO Box A252
Sydney South NSW 1235

ABN 59 104 961 882

T 02 9273 8400
F 02 9273 8481
raj.venga@cio.org.au

31 July 2017

Ms Natasha Nguyen
Lawyer
Financial Advisers
Australian Securities and Investments Commission
Level 5, 100 Market Street
Sydney NSW 2000

Submission regarding ASIC Consultation Paper 284: 'Example Statement of Advice for life insurance: Update to RG 90'

The Credit and Investments Ombudsman welcomes the opportunity to comment on the proposals contained in ASIC's Consultation Paper 284 (**CP 284**).

In this submission we will also refer to the following legislation and regulatory documents:

- *Corporations Act 2001* (Cth) (**Corporations Act**),
- ASIC's draft Regulatory Guide 90 'Example Statement of Advice: Scaled advice for a new customer' (**RG 90**),
- ASIC's Regulatory Guide 175 'Licensing: Financial product advisers — Conduct and disclosure' (**RG 175**), and
- ASIC's Regulatory Guide 244 'Giving information, general advice and scaled advice' (**RG 244**)

B2 – Structure of the example SoA

RG 175 outlines, and RG 90 reiterates, the matters ASIC considers should be addressed in an SoA. The example SoA in RG 90 appears to be structured such that each of these matters appears as a distinct 'section' within the SoA. ASIC acknowledges that this results in some repetition of information, but considers it necessary to enable each section to be read in isolation.

We consider that some consolidation of this information is still possible to reduce both repetition and overall length, without sacrificing clarity. We have illustrated two particular examples below.

Clients' insurance needs

The clients' specific insurance needs are listed on page 7 of the example SoA. Each of these specific needs is individually addressed as a basis for an insurance recommendation on pages 8 to 12, but again repeated on pages 18 to 22 when explaining why the advice is appropriate.

We consider this information could be delivered in a manner which addresses each of the above elements within a single section. This would reduce repetition without compromising clarity, and increase the likelihood of clients in fact reading the entire document.

Scope of advice

Page 6 of the example SoA contains a summary of matters on which clients sought advice and the parties agreed would be included in the advice. This information is essentially a partial 'scope' of the advice and could readily be consolidated with the information provided in the section 'What you should know about my advice' on page 23.

B3Q1 – Information which could be excluded

Privacy notice

We note ASIC's comments in CP 284 and draft RG 90 regarding information not directly related to advice being provided in other documents, rather than the SoA. On this basis, we consider that the information regarding privacy provided on page 24 of the example SoA could also be more appropriately addressed in other documents (such as the Financial Services Guide).

Authority to proceed

We acknowledge ASIC's comments regarding the inclusion of an 'authority to proceed' (ATP) in the example SoA. However, as an ATP is not a statutory requirement, its inclusion in the example SoA could be viewed by advice providers as an implicit endorsement by ASIC regarding the use of ATPs (especially as ASIC has explicitly stated that it does not consider non-essential material should be included in the SoA).

We would welcome any further clarification that ASIC may wish to provide regarding the use of ATPs in practice.

B3Q2 and C1Q2 – Further guidance on information which has not been included

The example SoA states on pages 20 and 22 that the recommended insurance should be implemented on a stepped premium basis, as stepped premiums are more affordable in the short term and the required level of insurance cover ('sum insured') is expected to reduce over time as the clients' mortgage balance decreases and the children become independent.

While a reduction in the sum insured over time due to these factors can be expected, we note that this could apply equally to a level premium structure. Consequently, the explanation within the example SoA may be misleading.

While this information could potentially be provided elsewhere within the client file, ASIC may wish to provide further guidance, particularly in view of sections 947B(3) and 947C(3) of the Corporations Act which requires an SoA to set out a level of detail that a client would reasonably require for the purpose of deciding whether to act on the advice.

B4Q1 and B4Q2 – Remuneration disclosure

While we welcome clarity in remuneration disclosure, we refer to our comments above regarding repetition of information. We do not consider that disclosing remuneration on the cover page of an SoA provides any significant benefit, and in fact may inappropriately focus consumers on the costs of the advice at the expense of whether it in fact satisfies their needs.

We consider that the disclosure of remuneration is adequately addressed in the section on page 26 of the example SoA.

C3 – Barriers to industry acceptance of the example SoA

We agree with ASIC's view that SoAs are intended to be a tool by which advice is communicated to clients in a clear and concise manner, rather than a mechanism to protect the advice provider against liability.

However, our experience is that SoAs are often designed primarily for compliance at the expense of client readability and comprehension. While ASIC has provided guidance regarding the content of SoAs, we note that its guidance, views and other general comments regarding SoAs are variously contained within the following documents:

- CP 284 explains the information which has not been included in the example SoA, and discusses other options for providing this information,¹
- RG 175 explains the information which ASIC considers should be included in an SoA, including the disclosure of commissions and other benefits,²
- the draft RG 90:
 - repeats some – but not all – of the information from RG 175 regarding the content of an SoA,³
 - repeats the commentary from CP 284 regarding other options outside of the SoA for providing information, and the information which has not been included in the sample SoA,⁴ and
 - provides additional commentary regarding other information which has not been included in the sample SoA, but which ASIC considers important to provide to clients,⁵ and
- RG 244 contains various other example SoAs presented in a different format to the example SoA provided within the draft RG 90.

In addition to this are the statutory requirements within the Corporations Act, to which the above documents also frequently refer.

We consider that advice providers may obtain a greater understanding of ASIC's overall views on SoA content, and greater confidence in following an example format, if all material relating to the content of SoAs was consolidated into a single resource utilising a consistent format.

¹ CP 294, paragraphs 56–64.

² RG 175, paragraphs 162-187.

³ Draft RG 90, paragraph 34.

⁴ Draft RG 90, paragraphs 44 and 86-95.

⁵ Draft RG 90, paragraph 37.

This single resource would also ideally include further guidance on those matters which ASIC has identified as being of equal importance in demonstrating that an advice provider has satisfied their obligations, but considers should not be included within the SoA itself (or have not been demonstrated in the example SoA), such as:

- information about alternative products and strategies that were considered and rejected by the advice provider,⁶ and
- the factors which should be considered if the advice provider wishes to satisfy the 'take any other step' provision within section 961B of the Corporations Act.⁷

Conclusion

We welcome ASIC's continued guidance regarding advice providers and their obligations. If you would like further information regarding our submission or our views on the proposed example SoA, please contact our Senior Manager – Financial Planning and Investments, Mr Craig Osland, on (02) 9273 8464 or by email at Craig.Osland@cio.org.au.

Sincerely



Raj Venga
Chief Executive Officer and Ombudsman

⁶ Especially in light of the guidance provided in the draft RG 90 at paragraphs 34(b)(iv) and 34(b)(vi), compared with that in paragraph 37.

⁷ Corporations Act, section 961B(2)(g).