



ASIC
Australian Securities &
Investments Commission

**Australian Securities
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14 June 2024

**Second Party Opinions (SPO) – ASIC class no-action letter – s911A(1) of the
Corporations Act 2001**

The Australian Securities and Investments Commission (ASIC) understands that there is increasing demand for various expert service providers to prepare a second party opinion (SPO). SPOs are used for the purpose of providing an independent third-party opinion on the alignment or contribution of a financing instrument, program, or framework of an entity to industry-accepted environmental sustainability-based principles.

In response to approaches by some participants about whether an SPO may involve the provision of financial product advice, ASIC has decided to issue this class no-action letter. The full terms of this no-action letter are set out below.

Unless amended or revoked, this no-action position applies until the end of 15 June 2026.

In this letter:

Second Party Opinion' or 'SPO' means an opinion, statement or report on the alignment or contribution of a financing instrument, program, or framework of an entity to industry-accepted environmental sustainability-based principles, as prepared by a person who is independent of the commissioning party.

SPO Provider means a person that provides the SPO.

ASIC's no-action position

Where the conditions are satisfied, ASIC does not intend to take action for a contravention of subsection 911A(1) of the *Corporations Act 2001* (**Corporations Act**) in relation to the provision of a SPO that involves providing general financial product advice to wholesale clients only.

Conditions applying to ASIC's SPO class no-action position

ASIC's no-action position is conditional on:

1. the SPO being provided in connection with an offer for issue or sale of financial products made available only to wholesale clients.
2. the SPO Provider:
 - a. having a written agreement with the commissioning party that provides that neither SPO Provider, the commissioning party, nor any of their representatives will make the SPO publicly available in connection with an offer to retail clients;
 - b. having in place adequate mechanisms for managing conflicts of interest that may arise in relation to preparing, publishing and distributing the SPO, or any revisions to the SPO;
3. the SPO providing an independent opinion based on the SPO Provider's professional judgement;
4. the SPO disclosing, or being accompanied by disclosure referencing the matters in (a)-(c) (where further details may be made available via an electronic link):
 - a. any conflicts of interest that are material that may arise in providing the views and opinions in the SPO;
 - b. that the SPO Provider does not hold an Australian financial services license to provide general financial product advice and that the SPO is provided subject to the conditions of this SPO class no-action position; and
 - c. any industry-accepted framework and standards relevant to the SPO.

General conditions

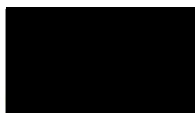
Consistent with RG108: *No-action letters (RG 108)*, this letter is provided on the following conditions:

1. The position set out in this letter is a policy decision, not a legal opinion and is based on information currently available to ASIC.
2. This letter is given in accordance with RG 108 and is only a statement of ASIC's present regulatory intentions based on the information currently available to it.
3. Notwithstanding the issue of this letter, ASIC reserves the right to take action in relation to the matters set out above, particularly in the event that other information comes to light that was not known to ASIC at the time this no-action letter was issued.

4. ASIC reserves the right to withdraw or revise this no-action letter at any time, particularly if:
 - a. further or other information becomes available to it; or
 - b. ASIC reconsiders:
 - i. its view of the relevant provisions of the Corporations Act and, or, ASIC Act as they applied at the relevant times; or
 - ii. legislative or administrative policy.
5. In revising or acting contrary to this letter ASIC will have regard to the consequences for persons who have acted in reasonable reliance on this letter.
6. This no-action letter is specific to the facts and circumstances of the matter under consideration. It should not be viewed as a de facto 'rulings system' to indicate ASIC's view of whether the conduct or conduct of such a kind is legal. It is not to be relied on as a precedent.
7. This no-action letter does not preclude third parties (including the Director of Public Prosecutions) from taking legal action in relation to the conduct the subject of this letter. This letter will not necessarily impede a court from holding that the conduct set out in this letter infringes the relevant provisions of the Corporations Act and, or, the ASIC Act.
8. ASIC does not represent that the conduct the subject of this letter will not be held to contravene the relevant provisions of the Corporations Act and, or, the ASIC Act as they applied at the relevant times, nor does it undertake to intervene in an action brought by third parties in respect of such conduct.
9. ASIC reserves its rights to make publicly known its regulatory position, including this no-action letter.

Enquiries

Please email  if you have any questions in relation to this no-action letter.



Peng Lee
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Australian Securities and Investments Commission