



ASIC
Australian Securities &
Investments Commission

Attachment 3 to Information Sheet 266

Example Record of Advice (ROA): Stockbroker

November 2021

The Australian Securities and Investments Commission (ASIC) has prepared an example Record of Advice (ROA) to help financial advisers when they are providing personal advice to retail clients in situations where an ROA can be used instead of a Statement of Advice (SOA).

We have annotated this example ROA to help advisers working in a stockbroking context to understand the relevant requirements under the *Corporations Act 2001* (Corporations Act) and *Corporations Regulations 2001* (Corporations Regulations).

We also consulted the Financial Adviser Standards and Ethics Authority (FASEA) and we welcomed FASEA's confirmation that the example ROA is consistent with the advisers' obligations under the FASEA [Financial Planners and Advisers Code of Ethics](#) (Code of Ethics) (including Standard 6).

Note: Standard 6 of the Code of Ethics provides: 'You must take into account the broad effects arising from the client acting on your advice and actively consider the client's broader, long-term interests and likely circumstances.'

Where an annotation in the example ROA refers to a standard in the Code of Ethics, FASEA considers the related step to be essential for compliance with the standard.

For information about our guidance on ROAs, see [Information Sheet 266](#) FAQs: *Records of Advice (ROAs)* (INFO 266).

How to read the example ROA

The example ROA is just an example and confined to the particular facts in the scenario and the requirements under the Corporations Act. Australian financial services (AFS) licensees and their authorised representatives should consider their clients' relevant circumstances when preparing and tailoring their ROA appropriately for clients, as well as any other legal obligations.

It illustrates how stockbrokers may record ROAs and is presented in a common stockbroking format. We understand that many stockbrokers combine their order records and ROAs. However, this example ROA has not been designed to incorporate the requirements in Pt 4.1 of the *ASIC Market Integrity Rules (Securities Markets) 2017* to keep trading records.

The following terms are used in the annotations:

reg 7.7.09 (for example)	A regulation of the Corporations Regulations (in this example numbered 7.7.09)
RG 175	Regulatory Guide 175 <i>Licensing: Financial product advisers—Conduct and disclosure</i>
s946B (for example)	A section of the Corporations Act (in this example numbered 946B)
Standard 7 (for example)	A standard of the Code of Ethics (in this example numbered 7)

Example scenario

Background

The client, Wendy Zhang, is an existing client of Tom Baker of ABC Securities Pty Ltd (licence number 987654). ABC Securities Pty Ltd is a market participant in a licensed financial market.

Note 1: As Tom Baker is an employee financial adviser of ABC Securities Pty Ltd, the licensee is the 'providing entity'. However, for ease, we refer to Tom when discussing personal advice obligations.

Note 2: A 'providing entity' is an AFS licensee, or an authorised representative of an AFS licensee, that provides personal advice to a retail client: see s944A of the Corporations Act.

Tom provides advice to Wendy on her personal investment portfolio of ASX-listed investments. Wendy and Tom are usually in contact every couple of months but this can vary depending on what is happening in the market. Sometimes Wendy initiates contact with Tom when she has additional funds to invest or wants to discuss a particular investment. Other times, Tom contacts Wendy—for example, when ABC Securities Pty Ltd updates its research or when a new investment opportunity or corporate action arises. Tom is remunerated by a brokerage fee based on the value of the trade. No ongoing fee arrangement exists.

Tom first provided advice to Wendy seven years ago when Wendy opened her brokerage account with ABC Securities Pty Ltd. Tom's advice has always been limited to Wendy's personal investment portfolio of ASX-listed investments. Wendy has a financial planner for her other personal advice needs, which are mainly to do with superannuation and insurance.

Current situation

Wendy is 52 years old, is married and has no financial dependents. Her annual income is approximately \$132,200 and she has funds available in a separate bank account for large expenses and emergencies. The only debt Wendy has is an owner-occupier home loan with five years left of principal and interest repayments. Wendy comfortably meets the repayments and wishes to invest her surplus income rather than increase her home loan repayments. Wendy has discussed this approach with her financial planner and with Tom.

Wendy has a diversified portfolio of 12 ASX-listed companies and two ASX-listed exchange traded funds (ETFs), valued at around \$450,000. This portfolio has been funded by savings and an inheritance. It has a mix of growth and income investments mainly comprising ASX 200 securities. The ETFs also provide exposure to international equity markets. Wendy's portfolio aligns with her Growth risk profile and her preference for ASX-listed investments. Wendy is aware that her portfolio may have negative returns in some years, but is comfortable with the risk.

Wendy appreciates the email updates she receives from Tom on investment opportunities and changes to analyst research recommendations. As Tom provides these updates to his entire client database—without considering clients' particular objectives, financial situation and needs—they are limited to general advice.

Previous advice service and documents

In 2019 Wendy received a cash inheritance and initially sought advice from her financial planner on how best to use the funds. Having considered Wendy's relevant circumstances and alternative options, including contributing the funds to superannuation or paying down Wendy's home loan, the financial planner provided a Statement of Advice (SOA) recommending that Wendy add \$220,000 of the inheritance funds to her existing personal investment portfolio and invest them in accordance with her Growth risk profile.

Wendy then approached Tom for advice on how to invest the funds. Tom conducted inquiries into Wendy's relevant circumstances. As the inheritance was a significant change, Tom provided Wendy with an SOA dated 17 October 2019. Tom's SOA contained advice limited to investing the \$220,000 in securities and ETFs to complement Wendy's existing personal investment portfolio. The SOA set out Wendy's relevant circumstances in relation to the advice as well as Tom's specific investment recommendations.

Commentary about this advice

New 'buy' recommendation

Recently, the research team at ABC Securities Pty Ltd updated their research—changing their preferred bank to XYZ Bank Limited and assigning it a 'buy' recommendation. Tom considered the research and the reasons why XYZ Bank Limited is now the preferred bank. This included making comparisons with the other major banks and attending a presentation by the research team. Tom updated his client base (including Wendy) on the general advice research report for XYZ Bank Limited.

Tom then calls Wendy and they discuss the buy recommendation.

During the call, Tom explains to Wendy that the research team's opinion is that XYZ Bank Limited provides better growth prospects than the other major banks. Tom now starts to provide personal advice as he considers Wendy's investment portfolio. Wendy is already invested in one of the other major banks, QRS Bank Limited, which has experienced a large share price rally in the past six months. Tom explains that the research team are maintaining a 'hold' recommendation on QRS Bank Limited.

Wendy is interested in XYZ Bank Limited on the basis of the information in the research report.

Checking for a significant change

It has been a few months since Tom and Wendy last spoke. As such, Tom checks whether there have been any significant changes in Wendy's relevant circumstances before providing personal advice. Wendy confirms she wants to maintain her diversified portfolio of ASX-listed investments and is comfortable with the risk they represent. Wendy also confirms there have been no other changes to her broader financial situation. Therefore, Tom determines there are no significant changes to Wendy's relevant circumstances.

Tom highlights that Wendy's investment in QRS Bank Limited has an unrealised capital gain of approximately \$15,000. He tells Wendy that if the investment is sold, the capital gain will need to be disclosed in her tax return and additional tax will need to be paid in her 30 June 2022 tax return. Tom notes that a 50% capital gains tax discount will apply as the shares have been held for more than 12 months. Wendy confirms she understands that because her QRS Bank Limited investment has made a profit she will pay tax on that amount. Tom confirms with Wendy that she has sufficient funds set aside to pay her tax next year.

Recommended investment switch

Tom recommends that Wendy sell her QRS Bank Limited holding, as it is a good time to take profit given the recent share price rally. Tom further recommends that Wendy invest the proceeds in XYZ Bank Limited, as it provides better growth prospects and has been upgraded to a 'buy' recommendation. Tom updates Wendy on the current trading range for these two shares.

Wendy confirms to Tom that she wants to proceed with the two trades 'at market' price.

Tom confirms that the brokerage fee is [X]% plus GST and that the final share price and actual brokerage fee will be in the contract notes sent to Wendy.

Tom considers his advice to be in Wendy's best interests and appropriate because it will better position Wendy's investment portfolio for future growth, which aligns with Wendy's Growth profile. The recommendation to sell QRS Bank Limited takes advantage of the recent share price rally and expectations of limited upside in valuation. The buy recommendation for XYZ Bank Limited is expected to have greater valuation prospects. The recommendations are supported by the research team at ABC Securities Pty Ltd.

Disclosure requirements

Tom does not have to give Wendy an SOA for his advice as the situation satisfies the conditions for 'further advice' in s946B(2), and he can keep an ROA: see reg 7.7.10AE.

While Tom is not required to give Wendy a copy of the ROA unless Wendy asks for this, he is required to give Wendy a statement that contains the information in s947B(2)(d) and (e), and—as the case requires—information in s947D. The statement needs to be given at the same time as, or as soon as practicable after, giving the further advice.

There are no interests, associations or relationships that need to be disclosed under s947B(2)(e).

Because Tom is recommending that Wendy switch financial products (i.e. dispose of QRS Bank Limited shares and instead acquire XYZ Bank Limited shares), Tom needs to disclose information under s947D(2) and (3). This includes disclosing:

- the fees Wendy must pay for the disposal and acquisition
- any benefits Wendy may lose as a result of the recommended action, and
- any other significant consequences of taking the recommended action.

Tom has already disclosed to Wendy the tax implications of acting on his advice as a significant consequence. The only fees associated with the disposal and acquisition are the brokerage fees, and these will be disclosed to Wendy as dollar values in the contract notes after the orders are executed. As the orders will be placed 'at market' and there is sufficient volume, the orders will be executed quickly, and the contract notes will be sent out shortly after. This will fulfil the requirement to disclose the fees as soon as practicable after the further advice. In this specific situation there are no other disclosures required.

Recording the advice

When the call ends, Tom records the personal advice in ABC Securities Pty Ltd's order system under Wendy's account. He marks the trades as 'Personal Advice' and records the advice given to Wendy. This record is the ROA.

Tom submits the orders as soon as possible, as the advice is time sensitive. Wendy receives the contract notes when the orders are executed.

When would Tom need to give Wendy an SOA?

Tom would need to give Wendy an SOA in the following example situations:

- Wendy has reduced her hours at work and would like to draw a semi-regular income from her personal investment portfolio to supplement her drop in income. An SOA would be needed because there would have been a significant change in Wendy's relevant circumstances since the advice provided to Wendy in the October 2019 SOA.
- Wendy's financial planner has recommended that Wendy roll over her superannuation to a self-managed superannuation fund (SMSF). Wendy would like Tom to advise her on how to invest her SMSF investment portfolio. An SOA would need to be given because the basis of this advice would be significantly different to the basis of the previous advice provided to Wendy in the October 2019 SOA.

Record of Advice

Account name: Wendy Zhang

Account number: 12345

ABC Securities Pty Ltd: AFS licence 987654

Adviser: Tom Baker

ROA date	Trade	ASX code	Volume	Order type	Price	Trade value	Disclosures	Advice type	Advice	Brokerage % incl. GST	Est. brokerage \$ incl. GST
30/8/21	Buy	XYZ	25,000	At market	\$1.50	\$37,500	Nil In this specific situation, there are no disclosures applicable to s947D(2)(a)(iii).	Personal advice Tom is satisfied that Wendy's relevant circumstances are not significantly different from those in the previous advice: s946B(2)(b) inserted by reg 7.7.10AE. Tom is satisfied that the basis on which the further advice is given is not significantly different from the basis on which the previous advice was given: s946B(2)(c) inserted by reg 7.7.10AE.	I discussed the updated buy recommendation for XYZ Bank issued by our research team. Given the QRS price gains in recent months, I recommended Wendy take the profit and invest the proceeds in XYZ Bank as there are better growth prospects. Ref: ABC Securities Pty Ltd research report for XYZ Bank of 29/8/21. When recording the ROA, Tom is choosing to follow part (a) of reg 7.7.09(1) and therefore the ROA must set out the advice given to the client and the information required by s947D(2) and (3) as applicable.	[X]%	[\$X]
30/8/21	Sell	QRS	46,875	At market	\$0.8	\$37,500	Significant consequence: selling QRS will realise a capital gain of approx. \$15,000 which will require additional tax to be paid. Wendy understood this and has funds to pay the capital gains tax.	Personal advice TIP: Tom has considered whether Wendy can pay the capital gains tax and confirmed she understands the tax implications: see Standard 6.	See comments above for XYZ.	[X]%	[\$X]

Further advice ROAs may be kept in any form (e.g. audio or video recording) or in writing: reg 7.7.09(2). An ROA must be kept for seven years after the further advice is provided: reg 7.7.09(3).

The fees for the disposal and acquisition are limited to the brokerage fees in this specific situation: s947D(2)(a)(i) and (ii). The amounts must be stated in dollars: s947D(2)(d). The actual brokerage fees will be disclosed to the client in the contract notes.

TIP: You should ensure your fees and charges are fair and reasonable and represent value for money for your client: see Standard 7. Factors to consider may include the client's relevant circumstances, how much they are willing to pay for the advice and whether this is reasonable, their desire to minimise fees and costs and whether the level of services meets their needs: see RG 175.301(d), RG 175.319(c) and RG 175.413(c).