

[CO 04/1556]

Statements of additional advice

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Class Order [CO 04/1556] allows an SOAA to be provided to a retail client instead of an SOA in certain circumstances. An SOAA incorporates by reference information required under Part 7.7 from another document which has previously been provided to the client. This class order replaces [CO 04/576] which is revoked.

Australian Securities and Investments Commission
Corporations Act 2001 — Paragraph 951B(1)(c) — Declaration and
Revocation

1. Under paragraph 951B(1)(c) of the *Corporations Act 2001* (the **Act**) the Australian Securities and Investments Commission (**ASIC**) declares that Part 7.7 of the Act applies in relation to the class of persons referred to in the Schedule as if provisions of that Part were modified or varied as follows:

Main modifications

- (a) in Division 3, add after section 948A:

“Subdivision F – Statement of Additional Advice

948AA What is a Statement of Additional Advice

A *Statement of Additional Advice* is a document by which a person who provides another person (the **client**) with advice may satisfy the requirement to give the client a Statement of Advice in relation to the advice without necessarily setting out all the information required to be contained in the Statement of Advice because the client has previously received that information in another form mentioned in this Subdivision.

948AB Title of Statement of Additional Advice

- (1) The title “Statement of Additional Advice” must be used on the cover of, or at or near the front of, a Statement of Additional Advice.
- (2) In any other part of a Statement of Additional Advice, “Statement of Additional Advice” may be abbreviated to “SoAA”.

948AC Situation in which a Statement of Additional Advice can be given

- (1) If:
- (a) apart from this section, a person (the *providing entity*) would be required to give another person (the *client*) a Statement of Advice; and
 - (b) the client has previously been given an eligible advice document containing some, but not all, of the statements or information that the Statement of Advice is required to contain, by:
 - (i) the providing entity; or
 - (ii) another person (the *previous providing entity*) that was, when the document was given, an authorised representative of the financial services licensee (the *authorising licensee*) that the providing entity is an authorised representative of at the time the providing entity is required to give the client the Statement of Advice; or
 - (iii) the authorising licensee,
 then subject to this Subdivision, the providing entity may, instead of giving the client the Statement of Advice, give the client a Statement of Additional Advice.

- (2) In this section:

authorised representative of an authorising licensee means:

- (a) in relation to a time before Part 7.7 applied to the authorising licensee – a person who provided a financial service on behalf of the authorising licensee at a time when the authorising licensee was a person of the kind described in an item of column 2 of the table in subsection 1430(1); and
- (b) otherwise – an *authorised representative* as defined in section 761A;

eligible advice document means any of the following:

- (a) a Statement of Advice given to the client by the providing entity, a previous providing entity or the authorising licensee; or

- (b) a Statement of Additional Advice given to the client by the providing entity, a previous providing entity or the authorising licensee; or
- (c) any document given to the client by the providing entity, a previous providing entity or the authorising licensee where all of the following apply:
 - (i) the document was given to the client before Part 7.7 applied to the authorising licensee;
 - (ii) the authorising licensee was a person of the kind described in an item of column 2 of the table in subsection 1430(1) at the time the document was given; and
 - (iii) the document:
 - (A) was the means by which financial product advice was given to the client; or
 - (B) was a record of financial product advice given to the client; or
 - (C) was a record of the client's relevant personal circumstances in relation to the giving of financial product advice.
- (3) In this Subdivision *eligible advice document* has the same meaning as in this section.

948AD Content of Statement of Additional Advice

- (1) A Statement of Additional Advice must include all of the statements or information that the Statement of Advice (the *substituted Statement*) that would otherwise be required to be given would be required to include.

Note: The effect of section 948AF must be taken into account in determining whether this provision is complied with.

- (2) A Statement of Additional Advice may incorporate any statements or information contained in an eligible advice document other than:
 - (a) statements required to be included in the substituted Statement by section 945B; and
 - (b) information required to be included in the substituted Statement by paragraphs 947B(2)(d) and (e), or paragraphs 947C(2)(e) and (f), as the case requires, that specifically relates to the advice that would be covered by the substituted Statement (regardless of how it is expressed in the eligible advice document); and

- (c) information required to be included in the substituted Statement by section 947D.

The statements or information that may be incorporated into a Statement of Additional Advice are referred to elsewhere in this Subdivision as *relevant statements or information*.

- (3) A Statement of Additional Advice may contain other statements or information.
- (4) At or near the beginning of a Statement of Additional Advice there must be:
- (a) a statement clearly identifying the eligible advice documents (the *identified eligible advice documents*) from which it incorporates statements or information;
 - (b) a statement to the effect that the Statement of Additional Advice should be read together with all the identified eligible advice documents and that the relevant statements or information in the identified eligible advice documents are taken to be incorporated in the Statement of Additional Advice except to the extent clearly set out in the Statement of Additional Advice;
 - (c) a statement that clearly explains the extent (if any) to which the relevant statements or information taken to be incorporated from the identified eligible advice documents are no longer accurate; and
 - (d) a statement that a person can obtain a copy of any or all of the identified eligible advice documents from the providing entity free of charge and how copies can be obtained.
- (5) The Statement of Additional Advice must be dated. The date must be the date on which the Statement of Additional Advice was prepared or its preparation was completed.
- (6) For the purposes of subsection (2), information of the kind required by paragraphs 947B(2)(d) or 947C(2)(e) included in an identified eligible advice document that was the means by which financial product was given or was a record of financial product advice is taken not to *specifically relate* to advice that would be covered by the substituted Statement if it is about the remuneration (including commission) or other benefits that a person referred to in those paragraphs is to receive as a result of:

- (a) the financial product advice set out in the identified eligible advice document being acted on (regardless of whether that advice has been acted on at the time of the preparation of the Statement of Additional Advice); and
- (b) the advice that would be in the substituted Statement being acted on.

Note: An effect of subsections 948AD(2) and (6) is that some kinds of information about remuneration may be incorporated by reference in a Statement of Additional Advice. For example, information about brokerage rates for share transactions set out in the eligible advice document may be so incorporated if those rates are applicable to transactions conducted as a result of acting on any advice included in or covered by the eligible advice document as well as acting on the advice covered by the Statement of Additional Advice.

948AF Inclusion of information in a Statement of Additional Advice by reference

A Statement of Additional Advice is taken to include all of the relevant statements or information included in an eligible advice document identified in it and from which it is expressed to incorporate relevant statements or information, except to the extent clearly set out in the Statement of Additional Advice.

948AG Wording and presentation of a Statement of Additional Advice

The statements or information included (other than because of section 948AF) in a Statement of Additional Advice must be worded and presented in a clear, concise and effective manner.

948AH How a Statement of Additional Advice must be given

A Statement of Additional Advice is given to a person if it is given in any way permitted by section 940C in relation to a Statement of Advice.

948AI Statement of Additional Advice not to be combined with Financial Services Guide or Product Disclosure Statement

A Statement of Additional Advice must not be combined in a single document with a Financial Services Guide or a Product Disclosure Statement.”;

Consequential modifications

- (b) in section 761A add after the definition of *self-managed superannuation fund*:

“*Statement of Additional Advice* has the meaning given by section 948AA.”;

- (c) in subsection 766B(9) (definition of *exempt document or statement*) omit “Advice;” from subparagraph (a)(i), substitute “Advice or Statement of Additional Advice;”;
- (d) in section 940B:
 - (i) omit “section 940C” from paragraph (1)(b), substitute “section 940C or 948AH”; and
 - (ii) after “section)” in paragraph (2)(a) insert “or section 948AH”;
- (e) in subsection 946A(3) after “section 946B” insert “and Subdivision F”;
- (f) in subsection 952B(1) (definition of *defective*):
 - (i) omit “Advice,” from paragraph (b) (introductory words), substitute “Advice or Statement of Additional Advice,”; and
 - (ii) at the end of subparagraph (b)(iii) add “or”; and
 - (iii) after subparagraph (b)(iii) add:
 - “(iv) if it is a Statement of Additional Advice that is given for the purposes of section 948AC – there is an omission from the Statement of Additional Advice of material that because of subsection 948AD is required by paragraphs 947B(2)(d) and (e), or 947C(2)(e) and (f), or sections 945B or 947D;”;
- (g) in section 952B (definition of *disclosure document or statement*) after paragraph (c) insert:
 - “(ca) a Statement of Additional Advice; or”;
- (h) in section 952C omit “section 940C)” (twice occurring), substitute “section 940C or 948AH”;
- (i) in each of subsections 952D(3) and 952E(7) omit “section 940C.”, substitute “section 940C or 948AH.”;
- (j) in subsection 952F(1) after “Advice,” (twice occurring) insert “a Statement of Additional Advice,”;
- (k) in subsection 952G(1) after “Advice,” (twice occurring) insert “a Statement of Additional Advice,”;

- (l) in section 952J:
 - (i) omit “person;” in paragraph (1)(a), substitute “person, or instead gives the person a Statement of Additional Advice;”; and
 - (ii) omit “947E.” from paragraph (1)(b), substitute “947E or the Statement of Additional Advice does not comply with section 948AB or 948AI.”; and
 - (iii) omit “section 940C.” from subsection (3), substitute “section 940C or 948AH.”;
- (m) in subsection 953A(1) (definition of *defective*):
 - (i) omit “Advice,” from paragraph (b) (introductory words), substitute “Advice or Statement of Additional Advice;”; and
 - (ii) omit “section.” from the end of subparagraph (b)(iii), substitute “section; or”; and
 - (iii) after subparagraph (b)(iii) add:
 - “(iv) if it is a Statement of Additional Advice that is given for the purposes of section 948AC – there is an omission from the Statement of Additional Advice of material that because of section 948AD is required by paragraphs 947B(2)(d) and (e), or 947C(2)(e) and (f), or sections 945B or 947D.”;
- (n) in subsection 953A(1) (definition of *disclosure document or statement*) after paragraph (c) insert:
 - “(ca) a Statement of Additional Advice; or”; and
- (o) in section 953B omit “section 940C” (twice occurring), substitute “section 940C or 948AH”.

Revocation

2. Under paragraph 951B(1)(c) of the Act, ASIC revokes Class Order [04/576].

Schedule

A person who is required by a provision of Part 7.7 of the Act to give another person a Statement of Advice, except a person who has received written notice from ASIC stating that this instrument does not apply in relation to the person.

Dated this 21st day of December 2004

Signed by Brendan Byrne
as a delegate of the Australian Securities and Investments
Commission