

[CO 04/1571]

Secondary services: General financial services guide relief

Issued 22/12/2004

Class Order [CO 04/1571] gives secondary financial service providers relief, commencing on 1 July 2005, from the consequences of failing to provide an FSG to a retail client to whom the secondary service provider provides, via an intermediary, a financial service. The relief applies where the secondary service provider enters into an arrangement with the intermediary for the intermediary to give the secondary service provider's FSG to the client and where certain other conditions are met.

In addition, [CO 04/1571] gives secondary service providers transitional relief, until 30 June 2005, from the consequences of failing to provide an FSG to a retail client to whom a secondary service is provided where the secondary service provider posts its FSG on its website (if it has one) and makes their FSG available on request.

Australian Securities and Investments Commission
Corporations Act 2001 — Paragraph 951B(1)(a) — Exemption

1. The Australian Securities and Investments Commission grants this exemption under paragraph 951B(1)(a) of the *Corporations Act 2001* (the *Act*).

Exemption

2. A person (the **secondary service provider**) who is a financial services licensee or an authorised representative of a financial services licensee does not have to comply with sections 941A and 941B in relation to the provision of a financial service (the **secondary service**) which consists of causing or authorising another person (the **intermediary**) to provide the financial service to a third person (the **client**) where both of the following apply:
 - (a) the intermediary is a financial services licensee or an authorised representative of a such a licensee (but is not an authorised representative or a related body corporate of the secondary service provider);
 - (b) the financial service is not:
 - (i) personal advice; or

- (ii) general advice contained in a report prepared by the secondary service provider as an expert for inclusion in a document prepared by or on behalf of another person; or
- (iii) arranging for the issue of a financial product under an intermediary authorisation.

Note: By s 52, the reference to “provides a financial service to a person” in ss 941A and 941B includes a reference to causing or authorising the provision of a financial service to a person. Accordingly, if a person (the *principal*) causes or authorises another person to provide a financial service to a third person (the *client*), then the principal must give a Financial Services Guide to the client.

Requirements where secondary service provided before 1 July 2005

3. The exemption in paragraph 2 only applies before 1 July 2005 where the secondary service provider:
 - (a) makes a Financial Services Guide (the *SSP FSG*) which would be required to be given by the secondary service provider in relation to the provision of the secondary service to the client, available on its website (if it has one) in a manner reasonably likely to come to the attention of a person seeking information on the site about the secondary service;
 - (b) has in place reasonable arrangements for the SSP FSG to be made available to persons on request; and
 - (c) has taken all reasonable steps to ensure that the following information will be included in any written financial product advice it provides to the intermediary where the secondary service provider reasonably believes the intermediary is likely to make the advice available to a retail client:
 - (i) the secondary service provider’s telephone number and (if it has one) website address; and
 - (ii) a statement to the effect that a copy of the SSP FSG can be obtained by calling the telephone number or (if it has one) by visiting the secondary service provider’s website.

Requirements where secondary service provided on or after 1 July 2005

4. The exemption in paragraph 2 only applies on or after 1 July 2005 where the secondary service provider:

- (a) has taken reasonable steps to ensure that the intermediary gives the SSP FSG to the client as if the intermediary were the providing entity for the purposes of Division 1 and Subdivision A of Division 2 of Part 7.7 in relation to the secondary service; and
- (b) has no reason to believe that the intermediary will not give the SSP FSG to the client in accordance with paragraph (a); and
- (c) has given or made available to the intermediary the SSP FSG.

Interpretation

5. In this instrument:

- (a) references to provisions are references to provisions of the Act; and
- (b) *authorised representative* has the meaning given by section 761A;

financial product advice has the meaning given by section 766B;

Financial Services Guide has the meaning given by section 761A;

general advice has the meaning given by subsection 766B(4);

intermediary authorisation means an arrangement between a person (the *product provider*) who is the issuer of a financial product and a financial services licensee under which:

- (a) the financial services licensee, or their authorised representatives, may make offers to people to arrange for the issue, variation or disposal of financial products by the product provider; and
- (ii) the product provider is to issue, vary or dispose of financial products in accordance with such offers, if they are accepted;

provided that the offer pursuant to which the issue, variation or disposal is made was covered by the financial services licensee's Australian financial services licence;

personal advice has the meaning given by subsection 766B(3); and

retail client has the meaning given by section 761G.

Dated this 22nd day of December 2004

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