

ASIC CLASS ORDER [CO 05/1195]

EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

Corporations Act 2001

Paragraphs 951B(1)(a) and (c) – Exemption, Declaration and Variation

The Australian Securities and Investments Commission (ASIC) makes Class Order [CO 05/1195] *Simplified warning for oral general advice* under s951B(1)(a) and (c) of the *Corporations Act 2001* (the Act).

Section 951B(1)(a) provides that a person or class of persons is exempt from all or specified provisions of Pt 7.7 of the Act if the exemption is specified by ASIC in writing and published in the *Gazette*.

Section 951B(1)(c) provides that ASIC may declare that Pt 7.7 applies to a specified person or class of persons as if specified provisions of Pt 7.7 were omitted, modified or varied as specified by ASIC in writing and published in the *Gazette*.

1. Background

Section 949A(2) of the Act provides that when an Australian financial services licensee or their authorised representative provides general advice to a retail client they must give a warning that conveys the following messages:

- (a) the advice has been prepared without taking account of the client's objectives, financial situation or needs; and
- (b) because of that, the client should, before acting on the advice, consider the appropriateness of the advice, having regard to the client's objectives, financial situation and needs; and
- (c) if the advice relates to the acquisition, or possible acquisition, of a particular financial product – the client should obtain a Product Disclosure Statement (PDS) relating to the product and consider the PDS before making any decision about whether to acquire the product.

Under the Act this warning must be given whether the advice is given in writing or orally.

The Australian Government's proposals paper *Refinements to Financial Services Regulation* (2 May 2005) states, at *Refinement Proposal 5.1*, that ASIC will:

...provide further guidance to develop simple General Advice Warnings conveying the substance of the legislative requirements, instead of relying on the precise wording of the Corporations Act. ASIC will also use its powers to provide relief, where appropriate.

In making this proposal it was noted that:

It is the substance of the GAW that is important. The form of the GAW should be modified to suit the circumstances.

2. Purpose of the class order

The primary purpose of [CO 05/1195] *Simplified warning for oral general advice* is to modify the warning that must be given when general advice is provided orally. The relief is intended to make the warning more easily understood by consumers when given orally and to reduce the regulatory burden on general advice providers.

[CO 05/1195] also corrects an incorrect cross reference in s949A(4) and varies Class Order [CO 05/835] *General advice in advertising* so that [CO 05/835] fully achieves its intended effect (see Explanatory Statement to ASIC Class Order [05/835]).

3. The class order

[CO 05/1195] exempts Australian financial services licensees and their authorised representatives from the s949A(2) general advice warning requirement when they give oral general advice to retail clients, where they instead provide a simplified oral warning. The simplified warning must convey the message that the advice:

- (a) is general; and
- (b) may not be appropriate for the client.

The general advice provider can choose their own words to convey the simplified warning.

A declaration is also given to modify s949A(4) for providing entities so that references to subsection (1) are replaced with references to subsection (2).

Finally, a variation is made to [CO 05/835] to provide an exemption from s949A(2) for licensed issuers offering products under a Chapter 6D disclosure document.

4. Consultation

On 31 August 2005, ASIC issued a consultation paper *Repetition of the general advice warning*, seeking comments on the proposed relief to give effect to *Refinement 5.1*. ASIC received a total of 8 submissions (6 from industry bodies and 2 from general advice providers). ASIC took these submissions into account before making [CO 05/1195].

A Regulation Impact Statement (RIS) was prepared for [CO 05/1195]. A copy of the RIS is attached.