



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 36

Licensing: Financial product advice and dealing

April 2011

About this guide

This guide is for persons who may provide financial product advice or deal in a financial product as defined in the *Corporations Act 2001* (Corporations Act) and their professional advisers (such as lawyers).

It gives guidance on the meaning of 'provide financial product advice' and the meaning of 'deal in a financial product'. It also provides guidance on the obligations that apply to providers of financial services.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This version was issued on 1 April 2011 and is based on legislation and regulations as at 1 April 2011.

Previous versions:

- Superseded Regulatory Guide 36, issued 5 July 2007
- Superseded guide *Licensing: The scope of the licensing regime: Financial product advice and dealing*, issued 28 November 2001, updated 1 November 2002, 1 May 2005 and 28 May 2007

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

Contents

A Overview	4
What is a 'financial service'?	4
What is the meaning of 'provide financial product advice'?	4
What is the meaning of 'deal in a financial product'?	5
What obligations apply to providers of financial services?	6
B What is the meaning of 'provide financial product advice'?	7
What is 'financial product advice'?	7
When do you 'provide' financial product advice?	11
C What is the meaning of 'deal in a financial product'?	15
What is 'dealing'?	15
What is 'arranging'?	15
What conduct is exempt from the definition of 'dealing'?	16
D What obligations apply to providers of financial services?	18
The need to hold an AFS licence	18
When do you satisfy the business test?	18
Does an exemption from the requirement to hold an AFS licence apply?	19
What obligations are imposed on licensees?	24
When do representatives need to hold an authorisation?	26
What obligations are imposed on representatives?	28
Key terms	29
Related information	31

A Overview

Key points

To determine your obligations under the licensing provisions you first need to consider whether you provide a ‘financial service’: see 0–RG 36.2.

You provide a financial service if (amongst other things) you:

- ‘provide financial product advice’ (see RG 36.3–RG 36.6); or
- ‘deal in a financial product’ (RG 36.7–RG 36.9).

If you provide a financial service you need to consider whether you must hold an AFS licence or hold an authorisation from a licensee: see RG 36.10–RG 36.12 and RG 36.14.

Licensees and their representatives must comply with certain obligations: see RG 36.13 and RG 36.15–RG 36.16.

What is a ‘financial service’?

RG 36.1 To determine your obligations under the licensing provisions you first need to consider whether you provide a ‘financial service’.

RG 36.2 Generally, a person provides a financial service if they:

- (a) provide financial product advice;
- (b) deal in a financial product;
- (c) make a market for a financial product;
- (d) operate a registered scheme;
- (e) provide a custodial or depository service;
- (f) provide traditional trustee company services; or
- (g) engage in conduct of a kind prescribed in the Corporations Regulations 2001 (Corporations Regulations): see s766A.

Note: This guide does not provide guidance on the types of financial service set out in paragraphs (c)–(g).

What is the meaning of ‘provide financial product advice’?

RG 36.3 The licensing provisions apply to persons who ‘provide financial product advice’. To determine whether you ‘provide financial product advice’, it is necessary to separately consider two questions:

- (a) What is 'financial product advice'?
- (b) When do you 'provide' financial product advice?

What is 'financial product advice'?

- RG 36.4 A recommendation or a statement of opinion, or a report of either of those things, constitutes financial product advice under s766B if:
- (a) it is intended to influence a person or persons in making a decision on a particular financial product or class of financial products, or an interest in a particular financial product or class of financial products, or could reasonably be regarded as being intended to have such an influence; and
 - (b) it is not exempted from the definition of 'financial product advice'.

When do you 'provide' financial product advice?

- RG 36.5 The licensing provisions apply to persons who 'provide' financial product advice. The person who *provides* the advice will generally include the author(s) of the advice as well as the principal for whom they act. It also includes any other person who endorses the advice, or any person who causes or authorises the provision of the advice: s52. However, a person does not provide financial product advice in certain circumstances specified in the Corporations Act (e.g. where the person's conduct occurs in the course of work of a kind ordinarily done by clerks and cashiers).
- RG 36.6 The meaning of 'provide financial product advice' is considered in more detail in Section B.

What is the meaning of 'deal in a financial product'?

- RG 36.7 The licensing provisions apply to persons who 'deal in a financial product'.
- RG 36.8 To determine whether you 'deal in a financial product' it is necessary to consider the following questions:
- (a) What is 'dealing' within the meaning of s766C(1)?
 - (b) What is 'arranging' within the meaning of s766C(2)?
 - (c) What conduct is exempt from the definition of 'dealing'?
- RG 36.9 The meaning of 'deal in a financial product' is considered in more detail in Section C.

What obligations apply to providers of financial services?

- RG 36.10 If you provide a financial service you may need to hold an AFS licence.
- RG 36.11 You will need to hold an AFS licence if you carry on a financial services business in this jurisdiction, unless an exemption in s911A(2) (or regulations made for the purposes of that provision) applies. For example, due to the exemption in s911A(2)(a), you do not need an AFS licence to provide financial services as a *representative* of a licensee.
- RG 36.12 To determine whether you need to hold an AFS licence to provide a financial service it is necessary to consider the following questions:
- (a) When do you satisfy the business test?
 - (b) Does an exemption from the requirement to hold an AFS licence apply?
- RG 36.13 Licensees must comply with various obligations, including the general licensee obligations set out in s912A and 912B.
- RG 36.14 If you provide financial services as a *representative* of a licensee, you may need to hold an authorisation from that licensee.
- RG 36.15 While the primary obligation to ensure compliance with the financial services laws is imposed on licensees, some obligations in the law apply directly to representatives.
- RG 36.16 The obligations that apply to providers of financial services are considered in more detail in Section D.

B What is the meaning of ‘provide financial product advice’?

Key points

The licensing provisions apply to persons who ‘provide financial product advice’.

To determine whether you ‘provide financial product advice’ it is necessary to separately consider two questions:

- What is ‘financial product advice’? (see RG 36.17–RG 36.29); and
- When do you ‘provide’ financial product advice? (see RG 36.30–RG 36.32).

What is ‘financial product advice’?

RG 36.17 A recommendation or a statement of opinion, or a report of either of those things, constitutes financial product advice under s766B if:

- it is intended to influence a person or persons in making a decision in relation to a particular financial product or class of financial products, or an interest in a particular financial product or class of financial products, or could reasonably be regarded as being intended to have such an influence; and
- it is not exempted from the definition of ‘financial product advice’.

Note: There are two types of financial product advice under the Corporations Act—personal advice and general advice: see s766B(2)–(4). For a brief description of these two types of advice, see RG 36.51–RG 36.53. These paragraphs describe some key obligations that apply depending on whether a person is providing personal or general advice. For further guidance about the distinction between personal advice and general advice and your obligations, see Regulatory Guide 175 *Licensing: Financial product advisers—Conduct and disclosure* (RG 175).

RG 36.18 Financial product advice will generally involve a qualitative judgement about, or an evaluation, assessment or comparison of, some or all of the features of one or more financial product(s).

Note: For example, a service that involves rating some or all of the features of one or more superannuation product(s) will generally constitute financial product advice. Such a service involves making an evaluation, assessment or comparison of some or all of the features of one or more financial product(s).

Consider the overall impression and circumstances

RG 36.19 You will need to take into account the overall impression created by a communication, and all the surrounding circumstances in which it is provided, to determine whether it constitutes financial product advice under the test set out in s766B.

RG 36.20 This will mean you need to consider, among other things:

- (a) the means by which the provider(s) of the communication (and their associates) are remunerated; and
- (b) any representations made to the person to whom the communication is provided (who may be a retail or wholesale client).

For example, a communication is more likely to be financial product advice if its provider (or associate) is remunerated by the client or stands to benefit depending on the decisions made by a client. This is because an intention to influence may be more readily inferred.

The distinction between factual information and financial product advice

RG 36.21 If a communication does not involve a recommendation or a statement of opinion, or a report of either of those things, it is not financial product advice. Communications that consist only of factual information (i.e. objectively ascertainable information whose truth or accuracy cannot be reasonably questioned) will generally not involve the expression of opinion or recommendation and will not, therefore, constitute financial product advice.

Note: For example, factual information will generally include information about the rights and obligations of persons under relevant legislation (such as the *Superannuation Guarantee (Administration) Act 1992*).

RG 36.22 However, in some circumstances, a communication that consists only of factual information *may* amount to financial product advice. Where factual information is presented in a manner that may reasonably be regarded as suggesting or implying a recommendation to buy, sell or hold a particular financial product or class of financial products, the communication may constitute financial product advice (e.g. where the features of two financial products are described in such a manner as to suggest that one compares more favourably than the other).

RG 36.23 The examples in Table 1 illustrate the distinction between factual information and financial product advice.

Table 1: Examples of the distinction between factual information and financial advice

Example	
Superannuation	<p>A client asks a fund representative about salary sacrifice arrangements and superannuation. The representative informs the client what is generally understood by the term 'salary sacrifice arrangement'. This is likely to constitute the provision of factual information.</p> <p>If, however, the representative expresses a qualitative or comparative judgement about salary sacrifice arrangements (e.g. 'sacrificing salary into a superannuation fund is very tax effective' or 'sacrificing salary into a superannuation fund is more tax effective than negative gearing'), this would be likely to constitute the provision of financial product advice.</p>
Call centres and general insurance	<p>A client contacts a call centre wanting to buy insurance for their motor vehicle. The client asks the operator to explain the difference between third party liability and comprehensive cover and asks for two quotes.</p> <p>Note: Telling an inquirer the cost or estimated cost of a financial product does not constitute the provision of financial product advice: s766B(6).</p> <p>The operator simply explains the differences in policy coverage between the two policies and provides the requested quotations. This is likely to constitute the provision of factual information.</p> <p>However, suppose the client has obtained two quotes to insure their motor vehicle: one covers third party liability, the other is for comprehensive cover. The client asks whether it is worth taking out comprehensive cover. The operator explains the differences in policy coverage between the two policies. Without referring to any particular circumstances of the client, the operator says that comprehensive cover is the best choice for most people. This is likely to constitute the provision of financial product advice, because the context in which the response is given suggests a value judgement about the comparative merits of the two policies.</p>
Branch staff and a spare \$10,000	<p>A client visits their local bank branch with \$10,000 to deposit. The client asks for the different interest rates on a savings account and a term deposit and is referred to a customer service officer. The officer provides the interest rates for each of these facilities. This is likely to constitute the provision of factual information.</p> <p>However, suppose the officer not only explains the interest rates for each of these facilities but also adds that there is an 'attractive special rate' available on term deposits for a 6-month term. This is likely to constitute the provision of financial product advice because it is a matter of opinion as to whether the special rate is 'attractive' and the teller could reasonably be regarded as intending to influence the client to choose the term deposit.</p>
Seminars	<p>A financial institution organises a seminar on investment. Fifteen people attend the seminar. The presenter merely provides a general description of the different types of financial products that are available for investment purposes. This is likely to constitute the provision of factual information only.</p> <p>However, suppose the presenter claims that, during periods of stock market volatility, property trusts are more desirable than shares because they offer more consistent returns. This is likely to constitute the provision of financial product advice. The desirability of property trusts is a matter of opinion and the presenter's statements could reasonably be regarded as intending to influence the attendees to invest in property trusts.</p>

Example**Cross-selling**

A client approaches a financial institution to ask about a home mortgage. The client also asks the customer service representative about income protection insurance. The representative confirms that the financial institution also offers income protection insurance products. This is likely to constitute the provision of factual information.

However, suppose that the customer service representative suggests that the client should consider taking out income protection insurance because it can give 'peace of mind' in meeting mortgage payments. This is likely to constitute the provision of financial product advice because whether income protection insurance provides peace of mind or not is a matter of opinion. The representative's suggestion could reasonably be regarded as intending to influence the client to purchase income protection insurance.

A decision on a particular financial product or class

- RG 36.24 A specific issue that arises is the meaning in s766B(1) of 'decision in relation to a particular financial product or class of financial products, or an interest in a particular financial product or class of financial products'. This expression includes any decision to buy, sell or hold a particular financial product or class of financial products. Examples include a decision to:
- (a) exercise a right or option to acquire or dispose of a financial product;
 - (b) acquire an equitable interest in a financial product; or
 - (c) accept or reject a takeover offer.
- RG 36.25 Section 766B(1) encompasses decisions made by consumers to make additional payments or contributions in relation to financial products held by them (whether or not the making of such additional payments or contributions involves the issue of a financial product: see s761E). It also encompasses decisions made by consumers about investment strategies or options that they may select within a fund.
- RG 36.26 In the context of superannuation, s766B(1) encompasses (but is not limited to) decisions made by consumers about:
- (a) joining a superannuation fund;
 - (b) the level of contributions to be paid to a superannuation fund (including altering the level of contributions);
 - (c) selecting a particular investment or insurance option within a superannuation fund;
 - (d) moving funds between sub-plans within a fund;
 - (e) claiming superannuation benefits;
 - (f) moving funds from one fund to another fund.

RG 36.27 Clearly, decisions that relate only to things that are not financial products (e.g. a credit facility as defined in s765A(1)(h)(i) and related regulations) are not caught by s766B(1). However, these may be caught by other legislation such as the *National Consumer Credit Protection Act 2009*.

Use of disclaimers

RG 36.28 If your communications include information about financial products, but do not constitute financial product advice, you should consider giving consumers a disclaimer to the effect that you are not providing financial product advice, and that consumers should consider obtaining independent advice before making any financial decisions. This will help avoid misleading or confusing consumers about the purpose of the communication.

Note: A disclaimer will not, of itself, determine whether a communication constitutes financial product advice.

When is a communication exempt from the definition of 'financial product advice'?

RG 36.29 A communication is exempt from the definition of 'financial product advice' in s766B if:

- (a) it is advice given by a lawyer in the circumstances set out in s766B(5)(a) or (b);
- (b) it is advice given by a registered tax agent in the circumstances set out in s766B(5)(c); or
- (c) it is a quote relating to the cost of a financial product or the rate of return on a financial product in the circumstances set out in s766B(6) or (7).

Note: Apart from these exemptions, you will not be providing financial product advice in any of the circumstances listed in RG 36.31. Even if you are providing financial product advice, you may not need an AFS licence or authorisation, depending on the circumstances: see Section D.

When do you 'provide' financial product advice?

RG 36.30 The licensing provisions apply to persons who 'provide' financial product advice. The person who *provides* the advice will generally include the author(s) of the advice as well as the principal for whom they act. It also includes any other person who endorses the advice, or any person who causes or authorises the provision of the advice: s52.

Note 1: For further guidance on s52 and the provision of financial services through a licensed intermediary, see RG 175.

Note 2: Financial product advice may be provided by traditional means (e.g. verbally or by paper) or electronically (e.g. via a website).

Circumstances where a person does not provide financial product advice

RG 36.31 A person does *not* provide financial product advice in any of the following circumstances:

- (a) the conduct is the provision of an exempt document or statement (s766B(1A)). The expression ‘exempt document or statement’ is defined in reg 7.1.08;

Note 1: We have given class order relief from the requirement to hold an AFS licence for the issue of certain documents that contain general advice (e.g. documents prepared for the purposes of the Corporations Act): see Class Orders [CO 03/606] *Financial product advice—exempt documents* and [CO 03/911] *Licensing relief for self-dealers who provide general product advice about own securities*.

Note 2: A recommendation or statement of opinion made by an ‘outside expert’ (defined in s766B(9)(b)), or a report of such a recommendation or statement of opinion, that is included in an exempt document or statement is financial product advice. Under the law, the advice is provided by the outside expert and not the issuer of the exempt document: see also reg 7.6.01(1)(u).

- (b) the conduct is the provision of certain kinds of business, structural and risk-related advice in the circumstances set out in reg 7.1.29(3);

Note: These services are an ‘exempt service’ within the meaning of reg 7.1.29(1).

- (c) the conduct is the provision of advice about the taxation implications of a financial product in the circumstances set out in reg 7.1.29(4);

Note: This is an ‘exempt service’ within the meaning of reg 7.1.29(1).

- (d) the conduct is the provision of advice about the establishment, operation, structuring or valuation of a superannuation fund (other than advice for inclusion in an exempt document or statement) in the circumstances set out in reg 7.1.29(5);

Note 1: This is an ‘exempt service’ within the meaning of reg 7.1.29(1).

Note 2: The requirement in reg 7.1.29(5)(c)(ii) (that the advice does not include a recommendation that a person acquire or dispose of a superannuation product) does not apply to a recommendation by a recognised accountant in relation to a self-managed superannuation fund: see reg 7.1.29A. The term ‘recognised accountant’ is defined in reg 7.1.29A(2): see also Class Order [CO 02/551] *Recognised accountant*.

- (e) the person’s conduct consists *only* of passing on, publishing, distributing or otherwise disseminating a document that contains financial product advice in the circumstances described in reg 7.1.31. This may include a publisher or internet portal operator;
- (f) the person’s conduct occurs in the course of work of a kind ordinarily done by clerks and cashiers (s766A(3)): see RG 36.32;
- (g) the person’s conduct consists *only* of advising another person about the manner in which voting rights attaching to securities or interests in

- managed investment schemes may or should be exercised in the circumstances set out in reg 7.1.30;
- (h) the conduct is the provision of advice to another person that relates only to the structuring of remuneration packages for that other person's employees (reg 7.1.32);
 - (i) the person's conduct consists only of providing a recommendation or statement of opinion in the course of, and as a necessary or incidental part of, the handling or settlement of claims or potential claims for an insurance product (reg 7.1.33(1));
 - (j) the person's conduct consists only of providing a recommendation or statement of opinion about the allocation of the funds among the general asset types listed in reg 7.1.33A. This exemption does not apply if the recommendation or statement of opinion relates to specific financial products or specific classes of financial product;
 - (k) the conduct is the preparation of general advice by a product issuer about that issuer's own product(s), but only where a third party licensee gives the advice to its recipients (reg 7.1.33B). In this situation the licensee will be taken to be the provider of the financial product advice;
 - (l) the conduct is advice about the existence of a custodial or depository service in the circumstances set out in reg 7.1.33E;
 - (m) the conduct is the provision of general advice intended to influence a decision on school banking and the person is employed by a school or provides the service on behalf of a school in the circumstances set out in reg 7.1.33F;
 - (n) the conduct is the provision of general advice that is not about a particular financial product and is not intended to influence a person in making a decision in relation to a particular financial product or an interest in a particular financial product (or could not reasonably be regarded as being intended to have such an influence), and the adviser or an associate of the adviser does not receive any remuneration, commission or other benefit for the advice (reg 7.1.33G); or
 - (o) the conduct is the provision of general advice by a product issuer about its own products in circumstances where the issuer is not licensed to provide financial product advice and, at the time of giving the advice, advises the client that it is not licensed, recommends that the client obtain and read a copy of the Product Disclosure Statement (PDS) or Short-Form PDS for the product before making a decision about the product and notifies the client about any cooling-off period (reg 7.1.33H).

Note 1: Apart from the circumstances set out in RG 36.31, you will not be providing financial product advice if the communication in question falls within an exemption listed in RG 36.29. Even if you are providing financial product advice, you may not

need an AFS licence or authorisation, depending on the circumstances: see Section D, especially RG 36.43.

Note 2: The list of circumstances in RG 36.31 that do not amount to financial product advice under the Corporations Act is not exhaustive. In determining whether or not your conduct constitutes the provision of financial product advice you should look at the Corporations Act, relevant regulations and ASIC instruments, as well as other ASIC publications. ASIC instruments and other ASIC publications are available at www.asic.gov.au.

Note 3: Certain products are subject to specific disclosure regimes. Superannuation products, simple managed investment schemes and margin lending facilities are subject to a shorter PDS regime: see Corporations Amendment Regulations 2010 (No. 5). For more information on the shorter PDS regime that applies to these products, see Information Sheet 133 *Shorter and simpler PDSs: Superannuation, managed investment schemes and margin lending* (INFO 133). Modified disclosure regimes also apply to general insurance products and first home saver accounts: see Pt 7.9 of the Corporations Regulations.

Clerks and cashiers

RG 36.32 A person's conduct occurs in the course of work of a kind ordinarily done by clerks and cashiers (and, therefore, the person does not 'provide financial product advice') if it merely involves:

- (a) posting, handing out, or otherwise distributing or displaying, documents such as prospectuses, PDSs, Short-Form PDSs or Financial Services Guides (FSGs);
- (b) answering routine questions from consumers by giving factual information (see RG 36.21–RG 36.23), such as minimum investment amounts of funds accepted, whether a particular offer is still open or the nature of investments made by a specific trust;
- (c) collecting payments (e.g. subscription money) and issuing receipts;
- (d) performing the routine or administrative function of assisting consumers to complete application forms and send completed application forms to the relevant product issuer; or

Note: This applies only where the consumer has already made the decision to acquire the financial product. It does not apply where the person helps the consumer make their decision to acquire the financial product.

- (e) performing other routine or administrative functions that do not involve a judgement about what financial products, or classes of financial products, are appropriate or should be considered by a consumer.

Note: This is not intended to be an exhaustive list of conduct that may fall within s766A(3). In interpreting s766A(3), it is important to note that the provision is prefaced with the words 'to avoid doubt'. Licensees must monitor and supervise their clerks and cashiers to ensure that the licensee complies with its obligations relating to the provision of financial services: see Regulatory Guide 104 *Licensing: Meeting the general obligations* (RG 104) and Regulatory Guide 105 *Licensing: Organisational competence* (RG 105).

C What is the meaning of ‘deal in a financial product’?

Key points

The licensing provisions apply to persons who ‘deal in a financial product’.

To determine whether you ‘deal in a financial product’ it is necessary to consider the following questions:

- What is ‘dealing’ within the meaning of s766C(1)? (see RG 36.33);
- What is ‘arranging’ within the meaning of s766C(2)? (see RG 36.34–RG 36.38); and
- What conduct is exempt from the definition of ‘dealing’? (see RG 36.39).

What is ‘dealing’?

RG 36.33 The following conduct constitutes ‘dealing’ in a financial product within the meaning of s766C(1) (unless the conduct is exempt from the definition of ‘dealing’: see RG 36.39):

- (a) applying for or acquiring a financial product;
- (b) issuing a financial product;
- (c) for securities or managed investment schemes, underwriting the securities or interests;
- (d) varying a financial product; or
- (e) disposing of a financial product.

What is ‘arranging’?

RG 36.34 Arranging for a person to engage in conduct referred to in RG 36.33 also constitutes dealing unless:

- (a) the actions concerned amount to providing financial product advice (s766C(2)); or
- (b) the conduct is exempt from the definition of ‘dealing’ (e.g. if the clerks and cashiers exemption applies: s766A(3)).

RG 36.35 ‘Arranging’ refers to the process by which a person negotiates for, or brings into effect, a dealing in a financial product (e.g. an issue, variation, disposal,

acquisition or application). The person who is arranging may be acting for a product issuer, seller or consumer.

RG 36.36 Arranging includes ‘arranging contracts of insurance’ as that expression has been interpreted in relation to the *Insurance (Agents and Brokers) Act 1984* (now repealed). However, arranging is not limited to arranging contracts of insurance—it extends to all financial products.

RG 36.37 The following factors are general indicators that your conduct may constitute arranging:

- (a) where your involvement in the chain of events leading to the relevant dealing is of sufficient importance that without that involvement the transaction would probably not take place (e.g. where you are the main or only person consumers deal directly with in a particular transaction);
- (b) where your involvement significantly ‘adds value’ for the person for whom you are acting; and
- (c) where you receive benefits depending on the decisions made by the person for whom you are acting.

Note: This is not intended to be an exhaustive list of potentially relevant factors. In determining whether you are arranging, the presence (or absence) of any one or more of the listed factors is not conclusive.

RG 36.38 As an example, the activities of an order router will generally involve arranging (i.e. where a service provider takes steps to bring into effect an acquisition or disposal of a financial product, albeit that another intermediary is also involved in the process and executes the customer’s order). On the other hand, the operator of a business introduction service will probably not be arranging where the operator does not play a significant role and does not benefit from investment decisions made by consumers.

What conduct is exempt from the definition of ‘dealing’?

RG 36.39 You are *not* dealing where:

- (a) you deal on your own behalf, unless you are a product issuer dealing in your own products (s766C(3));
- (b) you are a government or local government authority, a public authority or instrumentality or agency of the Crown, or a body corporate or an unincorporated body, and you deal in your own securities (s766C(4));

Note: A body corporate or an unincorporated body is not exempt under s766C(4) if it is an investment company: see s766C(5).

- (c) you act as a sub-underwriter (s766C(6));
- (d) your conduct occurs in the course of work of a kind ordinarily done by clerks and cashiers (s766A(3): see RG 36.32);

- (e) you arrange for another person to deal in interests in a self-managed superannuation fund in the circumstances set out in regs 7.1.29(5)(b) and (c) (reg 7.1.29(3)(f));
- (f) you arrange for another person to deal in a financial product by preparing a document of registration or transfer in order to complete administrative tasks on instruction from the person (reg 7.1.29(3)(g));
- (g) you deal in an insurance product as a necessary or incidental part of handling or settling insurance claims or potential claims (reg 7.1.33(2));
- (h) you arrange for the issue or acquisition of a school banking product and are employed by a school or provide the service on behalf of a school in the circumstances set out in reg 7.1.33F;
- (i) you enforce rights under a credit facility, including under a power of attorney (reg 7.1.34(2)(a));
- (j) you dispose of a financial product that is subject to a mortgage or transfer such a product to the mortgagor, whether the disposal or transfer is carried out at the direction of the mortgagor or occurs as a result of the mortgagor fulfilling its obligations under the mortgage (reg 7.1.34(2)(b));

Note: Regulations 7.1.34(2)(a) and 7.1.34(2) (b) do not apply to a margin lending facility.

- (k) you deal in a product held on trust for another person and the holding of the financial product does not constitute the provision of a custodial or depository service under reg 7.1.40 (reg 7.1.35(1)); or
- (l) you are a lawyer and you arrange for a person to deal in a financial product or you deal in a financial product as the agent of a client, an associate of a client or a relative of a client, and you do so in the circumstances set out in reg 7.1.35A.

Note 1: Even if you are dealing, you may not need an AFS licence or authorisation, depending on the circumstances: see Section D, especially RG 36.43.

Note 2: The list of circumstances in RG 36.39 that do not amount to dealing under the Corporations Act is not exhaustive. In determining whether or not your conduct constitutes dealing in a financial product, see the Corporations Act, relevant regulations and ASIC instruments, as well as other ASIC publications at www.asic.gov.au.

D What obligations apply to providers of financial services?

Key points

If you provide a financial service you may need to hold an AFS licence: see 0–RG 36.41.

To determine whether you need to hold an AFS licence to provide a financial service it is necessary to consider the following questions:

- When do you satisfy the business test? (see RG 36.42);
- Does an exemption from the requirement to hold an AFS licence apply? (see RG 36.43–RG 36.47).

Licensees must comply with the various obligations, including the general licensee obligations set out in s912A and 912B: see RG 36.48–RG 36.53.

If you provide financial services as a *representative* of a licensee, you may need to hold an authorisation from that licensee: see RG 36.54–RG 36.56.

Some obligations in the law apply directly to representatives: see RG 36.57.

The need to hold an AFS licence

RG 36.40 You will need to hold an AFS licence if you carry on a financial services business in this jurisdiction, unless an exemption in s911A(2) (or regulations made for the purposes of that provision) applies. For example, due to the exemption in s911A(2)(a), you do not need an AFS licence to provide financial services as a *representative* of a licensee.

RG 36.41 In the absence of an exemption, you will need to hold an AFS licence whether you provide financial services to retail or wholesale clients (provided the business test is satisfied).

When do you satisfy the business test?

RG 36.42 The business test is satisfied where a person provides financial services with system, repetition and continuity. Paragraph 11.5 of the Explanatory Memorandum to the Financial Services Reform Bill 2001 states that ‘one-off transactions relating to the provision of financial services and financial products are unlikely to be caught by the new regime’. There is no requirement for a profit motive in order for the business test to be satisfied.

Does an exemption from the requirement to hold an AFS licence apply?

Exemptions under s911A(2)

RG 36.43 The exemptions from the requirement to hold an AFS licence are set out in s911A(2) and regulations made for the purposes of that provision. For example, you do not need to hold an AFS licence for the following conduct:

- (a) you provide financial services as a *representative* of a licensee (or as a representative of a person exempt from the requirement to hold an AFS licence) (s911A(2)(a); see RG 36.44–RG 36.47);
- (b) you are a product provider who *issues, varies or disposes* of a financial product pursuant to an arrangement with a licensee as specified in s911A(2)(b);
- (c) you are a product issuer who *varies or disposes* of a financial product at the direct request of the product holder (rather than through an intermediary) (s911A(2)(c));
- (d) you provide *general advice* by publishing a newspaper or periodical that is generally available to the public (otherwise than only on subscription) and where the sole or principal purpose of the newspaper or periodical is not the provision of financial product advice (s911A(2)(ea));
- (e) you provide *general advice* in transmissions made by means of an information service where the transmissions are generally available to the public and where the sole or principal purpose of the transmissions is not the provision of financial product advice (s911A(2)(eb));
- (f) you provide *general advice* in sound recordings, video recordings or data recordings that are made publicly available and where the sole or principal purpose of the recordings is not the provision of financial product advice (s911A(2)(ec));
- (g) you provide the service *only* to wholesale clients and you are a body regulated by the Australian Prudential Regulation Authority (APRA) and the service is one for which APRA has regulatory or supervisory responsibilities (s911A(2)(g));
- (h) you provide the service *only* to wholesale clients and you are regulated by an overseas regulatory authority and the provision of the service is covered by an exemption specified by ASIC (s911A(2)(h));

Note: For information about our approach to applications under this provision, see Regulatory Guide 176 *Licensing: Discretionary powers—Wholesale foreign financial services providers* (RG 176).

- (i) you *deal* in a financial product in the capacity of trustee of a non-public offer superannuation entity (reg 7.6.01(1)(a));

- (j) you *deal* in a financial product in the capacity of trustee of a pooled superannuation trust (PST) where the PST is not used for the investment of assets of a regulated superannuation fund (reg 7.6.01(1)(d));
- (k) you *deal* in a financial product in the capacity of trustee of a PST where the regulated superannuation fund investing its assets in the PST has net assets of at least \$10 million (reg 7.6.01(1)(b));
- (l) you *deal* in a financial product in the capacity of trustee of a PST where the regulated superannuation fund investing its assets in the PST has net assets of at least \$5 million where you reasonably expect that the superannuation fund will have net assets of at least \$10 million within three months (reg 7.6.01(1)(c));
- (m) you provide a *financial service* that consists *only* of a ‘referral’—that is:
 - (i) informing another person that a licensee (or one of its representatives) is able to provide a particular financial service or class of financial services; and
 - (ii) giving that other person contact details for the licensee or representative.

Unless you are a representative of the licensee (or a related body corporate of the licensee), you must disclose any benefits (including commission) that you (and your associates) are to receive in respect of, or that are attributable to, the service (regs 7.6.01(1)(e) and 7.6.01(1)(ea));

- (n) you are an employer-sponsor *dealing* in a financial product only by paying contributions on behalf of an employee into a superannuation product or retirement savings account (RSA) product (reg 7.6.01(1)(h));
- (o) you are a trustee of a superannuation fund *dealing* in a financial product only by paying the benefits of a member into a superannuation product or RSA product (reg 7.6.01(1)(ha));
- (p) you are an RSA provider *dealing* in a financial product only by paying the benefits of an RSA product holder into a superannuation product or RSA product (reg 7.6.01(1)(hb));
- (q) you are an employer-sponsor *dealing* in a financial product only by arranging for the issue of a superannuation product to an employee (reg 7.6.01(1)(hc));
- (r) you provide the service as a sub-custodian in the circumstances set out in reg 7.6.01(1)(k);
- (s) you *advise* other persons about, and arrange for the use of, non-cash payment facilities in the ordinary course of your business, but only if you do not provide financial services as a significant part of your business (reg 7.6.01(1)(l));

Note: See also regs 7.6.01(1)(la), 7.6.01(lb) and 7.6.01(lc) and Class Order [CO 03/705] *Non-cash payment facilities—licensing relief* for other licensing exemptions for the provision of financial services in relation to non-cash payment facilities.

- (t) you *deal* on your own behalf in (but do not make a market in) derivatives or foreign exchange contracts for the purpose of managing a financial risk that arises in the ordinary course of a business, but only if you do not deal in derivatives or foreign exchange contracts as a significant part of your business (reg 7.6.01(1)(m));
- (u) you are a product issuer providing *general advice* in the media in the circumstances set out in reg 7.6.01(1)(o);
- (v) you provide financial product advice about, and deal in, a medical indemnity insurance product (reg 7.6.01(1)(t));
- (w) you provide advice in a document that is issued in connection with a takeover bid or an offer of a financial product and the advice relates to matters other than financial products (e.g. a geologist's report) in the circumstances set out in reg 7.6.01(1)(u);
- (x) you are a nominee company (*the nominee*) that is a wholly owned subsidiary of a licensed market participant (*the participant*) and you hold a financial product or the beneficial interest in a financial product on trust for a client of the participant in the circumstances set out in reg 7.6.01(1)(v);
- (y) you are located and provide a financial service outside Australia to a person who is an Australian citizen or resident in Australia and you do not engage in conduct that is intended to or likely to induce people in Australia to use the service (reg 7.6.02AG, which inserts s911A(2A) into the Corporations Act);
- (z) you are located and provide a financial service outside of Australia to another person and:
 - (i) you believe on reasonable grounds that the person to whom you are providing the financial service is also not located in Australia;
 - (ii) you are a participant in a financial market in Australia that is licensed under s795B(2); and
 - (iii) the financial service you are providing relates to a financial product traded on the licensed market (reg 7.6.02AG, which inserts s911A(2B) into the Corporations Act);
- (aa) you are located and provide a financial service outside of Australia to another person who:
 - (i) holds an AFS licence or is exempt from the requirement to hold a licence under s911A(2)(h); and
 - (ii) is not, in relation to the service, acting as a trustee, responsible entity of a registered managed investment scheme or otherwise

acting on someone else's behalf (reg 7.6.02AG, which inserts s911A(2C) into the Corporations Act);

- (bb) you are located and provide a financial service outside of Australia to another person in Australia and:
 - (i) the service relates to a financial product acquired while the person was not in Australia or on the application or enquiry of the person;
 - (ii) you do not actively solicit the person or persons in Australia in relation to financial products (reg 7.6.02AG, which inserts s911A(2D) into the Corporations Act);
- (cc) you are located and provide a financial service outside of Australia to another person who is a 'professional investor' and the financial service consists only of any or all of the following:
 - (i) dealing in derivatives or foreign exchange contracts;
 - (ii) providing advice on derivatives or foreign exchange contracts;
 - (iii) making a market in derivatives or foreign exchange contracts (reg 7.6.02AG, which inserts s911A(2E) into the Corporations Act);
- (dd) you are giving general advice in connection with an eligible employee share scheme and you are the issuer of the financial products covered by the scheme (e.g. you are the employer) or an entity controlled by the issuer (s911A(2)(ed));

Note: 'Eligible employee share scheme' is defined in s9 of the Corporations Act.
- (ee) you are dealing in a financial product in connection with an eligible employee share scheme where:
 - (i) the scheme requires that any purchase or disposal of the financial product under the scheme occurs through either an AFS licensee or a foreign entity licensed to deal in their own country; and
 - (ii) you are the issuer of the financial products covered by the scheme (e.g. you are the employer) or an entity controlled by the issuer (s911A(2)(ee));
- (ff) you are providing a custodial and depository service dealing in a financial product in connection with an eligible employee share scheme and you are the issuer of the financial products covered by the scheme (e.g. you are the employer) or an entity controlled by the issuer (s911A(2)(ef)); and
- (gg) you are dealing in an interest in a contribution plan that you operate in relation to an eligible employee share scheme and you are the issuer of the financial products covered by the scheme (e.g. you are the employer) or an entity controlled by the issuer (s911A(2)(eg)).

Note 1: You need to consider this list of exemptions only if you are providing a financial service. If you are not providing a financial service, you do not need to hold an AFS licence.

Note 2: We have the power to exempt a person or a class of persons from the need to hold an AFS licence for conduct that amounts to the provision of a financial service: s911A(2)(l). See Regulatory Guide 167 *Licensing: Discretionary powers* (RG 167) for details about how we might use our exemption power.

Note 3: The media exemptions referred to in RG 36.43(d)–RG 36.43(f) are subject to a condition concerning the disclosure of remuneration and pecuniary or other interests set out in reg 7.6.01B.

Note 4: The list of circumstances in RG 36.43 for which an AFS licence is not required under the Corporations Act is not exhaustive. In determining whether or not your conduct is exempt from the requirement to hold an AFS licence, see the Corporations Act, relevant regulations and ASIC instruments, as well as other ASIC publications at www.asic.gov.au.

Factors to consider to determine whether you are acting as a principal or representative

RG 36.44 In order to determine whether the exemption from the requirement to hold an AFS licence in s911A(2)(a) applies, you need to consider whether you are acting as a principal or as a representative of a principal. The exemption applies only if you are acting as a representative of a principal.

RG 36.45 The following factors are general indicators that you may be acting as a principal and not as a representative:

- (a) if your conduct is not monitored and supervised by someone else;
- (b) if you hold out that you are a principal;
- (c) if your conduct is not covered by anyone else's compensation arrangements (e.g. professional indemnity insurance);
- (d) if client assets are held in an account in your name;
- (e) if clients are directed to pay any fees owing for the provision of financial services to you or into an account in your name;
- (f) if you receive commissions directly from product issuers; and
- (g) if you have ownership of, access to, or liability for, client information.

Note: This is not intended to be an exhaustive list of potentially relevant factors. In determining whether you are acting as a principal, the presence (or absence) of any one or more of the listed factors is not conclusive.

RG 36.46 You may handle money without being treated as a principal, namely, where you perform purely administrative or mechanical functions, such as accepting and banking cheques drawn in favour of a licensee or accepting and depositing insurance premiums in an insurance broker's trust account.

RG 36.47 You will not be holding yourself out to be a principal merely by placing your name on your business documentation (such as letterhead, business cards and promotional material) provided:

- (a) the documentation makes it clear that you are acting as a representative of a licensee (and not as a principal); and
- (b) the licensee for whom you act is clearly disclosed.

Note: It is also important to ensure that the documentation is not confusing or misleading to consumers.

What obligations are imposed on licensees?

General licensee obligations

RG 36.48 If you are a licensee you must comply with the obligations set out in s912A and 912B, which may be summarised as follows. You must:

- (a) do all things necessary to ensure that the financial services covered by the AFS licence are provided efficiently, honestly and fairly;
- (b) have adequate arrangements in place to manage your conflicts of interest;
- (c) comply with your AFS licence conditions;
- (d) comply with the financial services laws;
- (e) take reasonable steps to ensure that your representatives comply with the financial services laws;
- (f) have available adequate resources;
- (g) maintain the competence to provide the financial services;
- (h) adequately train your representatives and ensure that they are competent to provide the financial services;
- (i) have a dispute resolution system that satisfies s912A(2) where financial services are provided to retail clients;
- (j) have adequate risk management systems; and
- (k) have compensation arrangements where financial services are provided to retail clients. The type of compensation arrangement that a licensee must have is set out in s912B, which is affected by regs 7.6.02AA and 7.6.02AAA.

Note 1: RG 36.48(f) and RG 36.48(j) do not apply if the licensee is a body regulated by APRA within the meaning of s3(2) of the *Australian Prudential Regulation Authority Act 1998*.

Note 2: For information about how to comply with these obligations, see our other regulatory guides on licensing under 'Related information'.

- RG 36.49 The licensee remains ultimately responsible for all the financial services provided under its AFS licence, regardless of how those services are provided.

Conduct and disclosure obligations

- RG 36.50 Licensees must also comply with various obligations under the Corporations Act and other financial services laws, including (but not limited to):

- (a) various obligations in Pt 7.6, including the obligation to notify us of significant breaches or likely breaches of certain licensee obligations under s912A, the obligation to provide us with assistance and the obligation to quote the AFS licence number in documents under s912F;

Note 1: The obligation to notify ASIC of a breach or likely breach of a licence obligation applies only to 'significant' breaches of certain obligations: s912D(1)(b). For guidance about complying with this obligation, see Regulatory Guide 78 *Breach reporting by AFS licensees* (RG 78).

Note 2: For details about the obligation to cite AFS licence numbers in documents, see s912F and reg 7.6.01C.

- (b) the financial services disclosure obligations in Pt 7.7 where the licensee is the 'providing entity'. This includes an obligation, in most circumstances, for the providing entity to give an FSG where the financial service is being provided to a retail client (s941A);

Note: For information about complying with the FSG and other disclosure obligations in Pt 7.7, see RG 175.

- (c) the further financial services conduct obligations set out in Pt 7.8;
(d) some product disclosure obligations under Ch 6D (in the case of securities) or Pt 7.9 (in other cases);

Note: For further information about complying with the product disclosure obligations in Pt 7.9 and how we will approach applications for relief, see our regulatory guides on disclosure under 'Related information'.

- (e) the market misconduct and other prohibited conduct provisions in Pt 7.10; and
(f) the consumer protection provisions of the *Australian Securities and Investments Commission Act 2001* (ASIC Act).

Note: Some of these obligations also apply to persons other than licensees.

Additional obligations: Financial product advice

- RG 36.51 There are additional obligations under Pt 7.7 where the providing entity provides financial product advice to retail clients. These obligations vary depending on whether the advice is personal advice or general advice. Personal advice is financial product advice given or directed to a person (including by electronic means) in circumstances where:

- (a) the provider of the advice has considered one or more of the person's objectives, financial situation and needs; or
- (b) a reasonable person might expect the provider to have considered one or more of those matters (s766B(3)).

All other financial product advice is general advice.

Note 1: The definition of 'financial product advice' is set out in RG 36.17.

Note 2: For further information about the distinction between personal and general advice, see Section A of RG 175.

RG 36.52 Generally, if you are the providing entity and the financial service is the provision of personal advice to a retail client, you must:

- (a) make reasonable inquiries into the relevant personal circumstances of the client and have a reasonable basis for the advice (s945A);
- (b) warn the client if the advice is based on incomplete or inaccurate information (s945B); and
- (c) give the client a Statement of Advice (s946A).

Note: For further information about complying with these additional obligations, see Sections C and D of RG 175.

RG 36.53 If the advice is general advice, you do not need to comply with the obligations referred to in RG 36.52. However, if general advice is provided to a retail client, the providing entity must warn the client that the advice does not take account of the client's objectives, financial situation or needs: s949A.

Note 1: For further information about complying with this obligation, see Section A of RG 175.

Note 2: We have granted relief to simplify the warning where oral general advice is provided to a retail client. See Class Order [CO 05/1195] *Simplified warning for oral general advice* and Information Release [IR 05/62] *ASIC announces simpler warnings for oral general advice*.

Note 3: We have granted relief so that no general advice warning is required where a product issuer gives general financial product advice in advertisements in the media or on billboards or posters. See Class Order [CO 05/835] *General advice in advertising* and Information Release [IR 05/47] *ASIC grants relief for advertising by product issuers*.

When do representatives need to hold an authorisation?

RG 36.54 In general, if you provide financial services in this jurisdiction as a representative of another person (a principal), you need to hold an authorisation under the Corporations Act from that principal (who must in general hold an AFS licence). You do not need to hold an authorisation if:

- (a) you are not providing financial services;
- (b) you are an employee or director of the principal (or a related body corporate of the principal) and the principal holds an AFS licence and the other requirements of s911B(1)(a) are satisfied;
- (c) you are an employee of an authorised representative of the principal, but only if the principal holds an AFS licence and the financial service is the provision of:
 - (i) a basic deposit product;
 - (ii) a facility for making non-cash payments that is related to a basic deposit product; or
 - (iii) a traveller's cheque,
 and the other requirements of s911B(1)(c) are satisfied;
- (d) you are a licensee providing the financial service under your own AFS licence (s911B(1)(d) and 911B(3)); or

Note: As a licensee you cannot be the authorised representative of another licensee except in relation to a binder: see s916D and 916E.

- (e) the financial services you provide would be exempt under s911A(2) if they were instead provided by the principal (s911B(1)(e)).

Note: We have given relief to allow licensees who are authorised to deal in general insurance products to appoint distributors to deal in these products on their behalf without the need to appoint the distributors as authorised representatives. See Information Release [IR 05/59] *ASIC offers general insurance dealers choice on how to appoint their distributors* and Class Order [CO 05/1070] *General insurance distributors*.

RG 36.55 Accordingly, if you provide financial services as a representative of a licensee, you will generally need to hold an authorisation from that licensee (unless you are an employee or director of that licensee or a related body corporate).

RG 36.56 Under s766A(4) a person is not regarded as operating a registered scheme merely because they act as an agent or employee of another person who does. This means that if an agent of the operator of a registered scheme merely acts in connection with the operation of the scheme, and does not provide a financial service of a type referred to in s766A(1)(a), (b), (c), (e) or (f), they will not have to hold an authorisation.

Note: The responsible entity remains responsible for the acts of its agents: see s601FB(2).

What obligations are imposed on representatives?

RG 36.57 The primary obligation to ensure compliance with the financial services laws is imposed on licensees, who are responsible for the conduct of their representatives (as defined in s910A). However, some obligations in the law apply directly to representatives, including (but not limited to):

(a) the financial services disclosure obligations in Pt 7.7 where the representative is the providing entity (including the additional obligations relating to financial product advice described in RG 36.51–RG 36.53);

(b) the hawking prohibitions in Pt 7.8;

Note: For further information about the hawking prohibitions, see Regulatory Guide 38 *The hawking prohibitions* (RG 38).

(c) some product disclosure obligations under Ch 6D (in the case of securities) or Pt 7.9 (in other cases);

(d) the market misconduct and other prohibited conduct provisions in Pt 7.10; and

(e) the consumer protection provisions in Div 2 of Pt 2 of the ASIC Act (e.g. the prohibition against misleading or deceptive conduct in s12DA).

Note: Some of these obligations also apply to persons other than representatives.

Key terms

Term	Meaning in this document
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services <p>Note: This is a definition contained in s761A of the Corporations Act.</p>
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
authorised representative of a licensee	A person authorised in accordance with s916A or 916B of the Corporations Act to provide a financial service or financial services on behalf of the licensee <p>Note: This is a definition contained in s761A of the Corporations Act.</p>
[CO 00/241] (for example)	An ASIC class order (in this example numbered 00/241)
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
financial product	Generally a facility through which, or through the acquisition of which, a person does one or more of the following: <ul style="list-style-type: none"> • makes a financial investment (see s763B); • manages financial risk (see s763C); • makes non-cash payments (see s763D) <p>Note: See Div 3 of Pt 7.1 of the Corporations Act for the exact definition.</p>
Financial Services Guide	A document that must be given to a retail client in relation to the provision of a financial service in accordance with Div 2 of Pt 7.7 of the Corporations Act <p>Note: See s761A of the Corporations Act for the exact definition.</p>
FSG	Financial Services Guide
licensee	A person who holds an AFS licence
licensing provisions	The financial services licensing regime under Pts 7.6–7.8 of the Corporations Act (including regulations made for the purposes of those parts)

Term	Meaning in this document
Pt 7.9 (for example)	A part of the Corporations Act (in this example numbered 7.9)
PDS	Product Disclosure Statement
Product Disclosure Statement	A document that must be given to a retail client in relation to the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act Note: See s761A of the Corporations Act for the exact definition.
PST	A pooled superannuation trust as defined in the <i>Superannuation Industry (Supervision) Act 1993</i>
reg 7.6.04 (for example)	A regulation of the Corporations Regulations (in this example numbered 7.6.04)
representative of a licensee	Means: <ul style="list-style-type: none"> • an authorised representative of the licensee; or • an employee or director of the licensee; or • an employee or director of a related body corporate of the licensee; or • any other person acting on behalf of the licensee Note: This is a definition contained in s910A(a) of the Corporations Act.
RG 175 (for example)	An ASIC regulatory guide (in this example, numbered 175)
s912A (for example)	A provision of the Corporations Act (in this example numbered 912A), unless otherwise specified
Short-Form Product Disclosure Statement (Short-Form PDS)	A PDS that complies with the requirements set out in Div 3A of Pt 7.9 of the Corporations Act, which were introduced by the Corporations Amendment Regulations 2005 (No. 5), and which provide issuers with the option of giving retail clients a Short-Form PDS (unless excluded) as long as a full PDS is available on request: see s1017H as inserted by Sch 10BA of the Corporations Regulations
shorter PDS	A PDS that is required to comply with the shorter PDS regime
shorter PDS regime	The requirements set out in Div 3A of Pt 7.9 of the Corporations Act as modified by Subdivs 4.2 to 4.2C and Sch B, C, D and E of the Corporations Regulations, which prescribe the content and length of the PDS for margin loans, superannuation products and simple managed investment schemes
Statement of Advice	A document that must be given to a retail client for the provision of personal advice under Subdiv C and D of Div 3 of Pt 7.7 of the Corporations Act Note: See s761A of the Corporations Act for the exact definition.

Related information

Headnotes

arranging, authorisation, business test, clerks and cashiers, conduct and disclosure obligations, dealing in a financial product, factual information, financial product advice, general licensee obligations, licensing exemptions, obligations that apply to providers of financial services, principal, provide financial product advice, representative

Class orders and pro formas

[PF 209] *Australian financial services licence conditions*

[CO 02/551] *Recognised accountant*

[CO 03/606] *Financial product advice—exempt documents*, as amended by Class Order [CO 03/770] *Financial product advice: exempt documents—amendment* and Class Order [CO 09/69] *Variation of Class Orders [CO 03/606] and [CO 04/671]*.

[CO 03/705] *Non-cash payment facilities—licensing relief*

[CO 03/911] *Licensing relief for self-dealers who provide general product advice about own securities*

[CO 05/835] *General advice in advertising*, as amended by Class Order [CO 05/1195] *Simplified warning for oral general advice*

[CO 05/1070] *General insurance distributors*

[CO 05/1195] *Simplified warning for oral general advice*

Regulatory guides

RG 1–RG 3 *AFS Licensing Kit*

RG 38 *The hawking prohibitions*

RG 78 *Breach reporting by AFS licensees*

RG 79 *Managing conflicts of interest: A guide for research report providers*

RG 84 *Super switching advice: Questions and answers*

RG 90 *Example Statement of Advice for a limited financial advice scenario for a new client*

RG 98 *Licensing: Administrative action against financial services providers*

RG 104 *Licensing: Meeting the general obligations*

RG 105 *Licensing: Organisational competence*

RG 126 *Compensation and insurance arrangements for AFS licensees*

RG 146 *Licensing: Training of financial product advisers*

RG 165 *Licensing: Internal and external dispute resolution*

RG 166 *Licensing: Financial requirements*

RG 167 *Licensing: Discretionary powers*

RG 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)*

RG 175 *Licensing: Financial product advisers—Conduct and disclosure*

RG 176 *Licensing: Discretionary powers—Wholesale foreign financial services providers*

RG 181 *Managing conflicts of interest*

RG 182 *Dollar disclosure*

RG 183 *Approval of financial services sector codes of conduct*

Legislation

ASIC Act, Pt 2, Div 2, s12DA

Australian Prudential Regulation Authority Act 1998, s3(2)

Corporations Act Pts 7.1, 7.6, 7.7, 7.8, 7.9, 7.10, s52, 766A, 766B, 766C, 910A, 911A, 911B, 912A, 912B, 912D, 912F, 945A, 945B, 946A, 949A, Corporations Regulations, regs 7.1.08, 7.1.29–7.1.35, 7.1.40, 7.6.01, 7.6.02AG, 7.9.61AA, Sch 10BA, Corporations Amendment Regulations 2010 (No. 5)

Insurance (Agents and Brokers) Act 1984 (now repealed)

National Consumer Credit Protection Act 2009

Superannuation Guarantee (Administration) Act 1992

Consultation papers and reports

REP 50 *Report to the Parliamentary Joint Committee on late 2004 (and early 2005) superannuation switching advice surveillance*

REP 69 *Shadow shopping survey on superannuation advice*