

What should be in a 2 page SoA? Starting point draft submission to Nick Sherry
for comment by BFPPG membership - Date: 3 May 2008

Let me just approach this topic by way of template of what a 2 page SoA disclosure document might look like.

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“Complex and lengthy documents, often between 50 and 100 pages, are unreadable to most people.” Any reasonable person would have to have that view – and it is very widely understood among financial planners that long SoAs do not get read - and very few consumers read PDSs. This being the case, it is clear that the law is not providing the consumer protection that the government seeks to ensure.

Defining the problem more precisely:

While we will give further thought to this issue, it seems clear that central elements of the problem are as follows:

- That FSR requires documentation of information about the basis for the advice (and the level of details is what a retail investor would require to make a decision)
- And that the ENFORCER (namely FICS), only uses the written advice and correspondence to judge guilt or innocence, rather than the test about whether there was a reasonable basis.

The combination of the above 2 things guarantees that anyone writing short and concise SoAs is certainly currently taking an unreasonable business risk.

Further, the basis for non-simplistic investment advice is complex – and exceptionally long, not practical to put in SoA. So under the current law, there will always be an argument that an SoA is non-compliant because insufficient basis for advice has been provided – so many AFS licencees will err on the side of caution by providing more (excessive) basis for advice. So there clearly is an unsolvable tension in FSR Law, between a) requirement to provide information about the basis for advice and b) the sensible requirement to be clear concise and effective.

Proposed Solution:

- Remove the requirement to provide information about the basis for advice eg remove sections 947B(2)(b) and 947B(3) – and revert back to the pre-FSR Corporations Law protection that the advice provider must HAVE a reasonable basis for advice, rather than requiring the documentation of this basis in the SoA.
- Refocusing the consumer protection strategy regarding financial advice onto the following key elements:
 - Policing (and probably standardising) disclosure of factors which might influence i.e. 947B(2)(d) and 947B(2)(e). There currently is still a very high level of non-compliance with these sections – unpoliced.
- Policing

- The well established common law obligations in terms of negligence, duty of care; etc.
- The Corporations Act 2001 requirement that:
 - there was a reasonable basis for the advice and the advice was reasonable in the circumstances. Section 945A
- a licensee must "do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly" s912A(1)(a)
 - The ASIC Act 2001 provision for protection in respect of:
 - Misleading or deceptive conduct. Section 12DA.
- False or misleading representations. Section 12DB.
- Requirements to apply "due care and skill", and that advice is "fit for the purpose". Section 12ED
 - The requirement to disclose all factors which might taint the advice. Section 947 2(d) & 947 2(e).

Why this solution will work:

- Because it will be a major step on refocusing FSR from FORM onto SUBSTANCE.
- Because it refocuses the law onto the key principles of consumer protection that are needed.
- This would also go a long way towards making FSR workable for regular and ongoing advice providers such as that which is typically provided by 55 AFS licensee members of the Boutique Financial Planning Principals Group Inc – an association of independently-owned financial planning licensees.

Yes, many advice providers may wish to provide a supplementary document to explain, in a form tailored to THIS client [rather than for the "generic" retail client referenced in 947B(3)], the basis for the advice.

Appendix A Template of 2 2 page SoA.

ABC Financial Services P/L
 Australian Financial Service Licence 244450
 Unit 100, 57 Hill Rd
 Surrey Heights Qld 4999

3 May 2008

John & Mary Bloggs
 54 Essendon Lane
 Surrey Heights Qld 4999

Statement of Advice

Dear John and Mary

Scope of Advice: You have asked for a recommendation for a long-term investment strategy for your super fund.

Disclosure of Recommendations & factors which might taint the advice:

<u>Investment</u>	<u>Amount</u>	<u>Commission received by AFSL&advisor</u> (or AFSL & corporate authorised rep)		<u>Management Expense Ratio - MER</u> (Disclosure of MER is required if Product provider or platform provider has any direct or indirect relationship with the AFSL)	
		<u>up-front</u>	<u>ongoing</u>		
1. investment1Fund	\$200K	\$6000 &	\$800pa	2.0%pa i.e.	\$4000pa
2. investment2Fund	\$100K	\$3000 &	\$400pa	1.5%pa i.e.	\$1500pa
Total	\$300K	\$9000 &	\$1200pa		\$5500pa

Level of risk in the portfolio recommended: Low Medium High Very High

Level of likely volatility in portfolio recommended: Low Medium High Very High

Other factors which might taint (influence) my advice:

Note: Please consult the ASIC “Consumer Guide to Conflicts of Influence Tainting Advice” for discussion of how these conflicts of interest might taint my advice.

<u>Potential factor which might taint/fluence my advice</u>	<u>Response</u>
Is this AFS licensee or any related party owned (or partially owned) by any product provider or any related party to a product provider? (Note: A product provider includes a platform provider)?	Yes/No. If yes, the related product providers are
Other than clearly disclosed commission, does any product provider or related party provide any financial benefit to the AFS licensee or their representatives? Note: In this context, a related party to a product provider includes 3 rd -parties with any relationship with product providers or their related parties including where the 3 rd party is a conduit for volume bonus arrangements.	Yes/No. If yes, benefits received include: Volume bonuses (Yes/No), loans of any form (Yes/No), Marketing assistance (Yes/No), Training assistance (Yes/No), Shelf-space fees either for the approved list

<u>Potential factor which might taint/fluence my advice</u>	<u>Response</u>
	or for the platform (Yes/No), other financial benefits which are detailed below (Yes/No). The financial benefits the AFS licensee or representatives receive are as follows
Does the AFS licensee and the representatives of the AFS licensee fully disclose all financial benefits that they receive both directly and indirectly from all product providers, related parties to any product provider and any third-party which might have any arrangement (including volume bonus arrangements.)	Yes, no. If no, what financial benefits are being received and why are they not being disclosed?
Does this AFS licensee require any product provider to pay shelf-space fees (or any other fee) for either placing a product on either an approved list or on a platform?	
<p><u>Neutral advice compensation for the advisor.</u> When investment advice is provided, is the representative and AFS licensee going to be paid the same regardless of what (if any) products are recommended? Note: There are two primary ways to achieve neutral advice compensation:</p> <ol style="list-style-type: none"> 1. No commission or financial benefits are provided by any product provider to the AFS licensee or their representatives. 2. If there is commission or financial benefits are provided by any product provider or related party, THEN the client receives credit of an amount equivalent to the commission or value of the financial benefits. 	Is advice provided on a neutral-compensation basis? Yes/No.
Is the advisor given a “quota” of product to sell?	
Will the advisor lose their job if they do not sell a certain amount of product?	
More factors that might taint advice to be added.	

Yours Sincerely

Peter Pickpocket DipFinPlanning
Representative, Peters Financial Product Sales Pty Ltd

Note: For discussion about the recommendations above, please read the attached document titled “Basis for Advice”.