



ASIC CO14 & RG175 update

FPA SUBMISSION | ASIC RECORD KEEPING CLASS ORDER CO14 & RG175 UPDATE | DATE: 24.07.2014

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Dear Maria

CO14 and RG175 Update: *Updated Record Keeping Obligations for AFS Licensees*

The Financial Planning Association of Australia (FPA)¹ welcomes the opportunity to provide feedback to ASIC on consultation draft Class Order CO14 record keeping and consultation draft update to RG 175.

The FPA is supportive of record keeping obligations for financial planners and licensees provided they are reasonable and effective.

The FPA's main concerns relate to clarification of who is required to hold the records, privacy obligations, unnecessary cost implications, increased burden placed on small business and a level playing field between entities such as Banks, Super funds and financial planning AFSL holders.

Appendix A provides FPA comment and feedback on the updated RG175 for ASIC consideration.

The FPA would be happy to discuss further if you have any questions, please contact me on 02 9220 4505 or dante.degori@fpa.asn.au.

Yours sincerely

Dante De Gori
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¹ The Financial Planning Association of Australia (FPA) is the peak professional body for financial planning in Australia. The 8,000 individual professional members of the FPA have an enforceable Code of Professional Practice, including the Client First principle. 5,700 of our members have achieved CFP certification, which is the global standard of excellence in financial planning. FPA practitioner members manage the financial affairs of more than 5 million Australians whose investments are valued at \$630 billion.



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Appendix A

FPA comment on updated RG175: *Record-keeping obligations that apply to personal advice*

RG 175.392 We expect AFS licensees to keep records of how their advice providers have acted in relation to providing **personal** advice. This includes the inquiries an advice provider makes into the client's relevant circumstances, and the consideration and investigation of the financial products they are advising on, if relevant.

~~Note: We are currently consulting on proposals to amend our guidance on the record-keeping obligations for AFS licensees that provide personal advice: see Consultation Paper 214 Updated record-keeping obligations for AFS licensees (CP 214) for more information.~~

FPA Comment:

The FPA agrees with this requirement and change confirming the record keeping obligations is in relation to 'personal' advice.

RG 175.393 In our view, the duties imposed by the Corporations Act require AFS licensees to keep adequate records about their financial services business, and this includes an obligation to keep records of personal advice ~~and the steps an advice provider takes in providing their client with personal advice.~~

FPA Comment:

The FPA agrees with this obligation to keep records of personal advice.

~~RG 175.396 Class Order [CO 14/xxx] sets out the record-keeping requirements for AFS licensees when the licensee or its representatives provide personal advice to retail clients. Under the class order, Pt 7.6 of the Corporations Act (except Divs 4 and 8) applies in relation to all AFS licensees as if Div 3 of that part was modified or varied by inserting a new s912G.~~

The FPA has no comment



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RG 175.397 Under [CO 14/xxx], when an AFS licensee or its representatives provide personal advice to retail clients, the licensee is required to keep a record of the following matters:

(a) the information relied on and the action taken by the provider that proves the provider has acted in the best interests of the client in relation to the advice given, in accordance with the best interests duty in s961B(1);

(b) if the safe harbour is being relied on to prove that the best interests duty has been satisfied—the information relied on and the action taken by the provider that satisfies the steps in s961B(2);

Note: The keeping of records that satisfy the record-keeping obligation in RG 175.397(b) will satisfy the record-keeping obligation in RG 175.397(a).

(c) the advice given, including the reasons why it would be reasonable to conclude that the advice is appropriate for the client, in accordance with s961G, assuming that the provider has satisfied the best interests duty; and

(d) where the provider knows, or reasonably ought to know, that there is a conflict between the interests of the client and the interests of any person mentioned in s961J(1)(a)–(f)—the information relied on and the action taken by the provider to prove that the provider has given priority to the client's interests when giving the advice.

FPA Comment:

The FPA has received feedback questioning the 'level of proof' required in respect to satisfying s961B(1) and therefore paragraph (a).

The guidance in RG175 on meeting 961B(1) is no substantive, therefore ASIC may want to consider further guidance for providers meeting section 961B(1) and relating this back to record-keeping requirements.

Further the FPA requests clarification on whether the 'provider' is required to specify exactly what information was relied upon in providing the personal advice.

RG 175.398 Records should be kept for a period of at least seven years from the date the personal advice is provided to the client.

FPA Comment:

Clarification is require on whether the AFS licensee must physically hold the records as implied in RG175.397 or if the AFS licensee can operate as per RG175.402 and 175.403.

Comment [DDG1]: This statement has been interpreted to mean the AFSL must physically hold the records – however this seems to contradict RG175.402 and 175.403.



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RG 175.400 The requirements also do not extend to personal advice where the modified best interests duty applies—that is, where the subject matter of the advice sought is:

(a) a basic banking product only (s961B(3));

(b) a general insurance product only (s961B(4));

(c) a combination of basic banking and general insurance products (reg 7.7A.1); or

(d) a combination of general insurance and other products (reg 7.7A.1).

FPA Comment:

The FPA doesn't agree in principle allowing for an exemption on record keeping obligations for personal advice based on product.

An extension of this is Intra-Fund Advice as provided by Super Funds. Though there is no specific exemption outlined in the Class Order or the updated RG175, the FPA requests that ASIC confirm that record keeping obligations also apply to Intra-Fund services that are defined as personal advice.

RG 175.402 We do not expect the record-keeping requirements in [CO 14/xxx] to change the way in which AFS licensees have been keeping records of personal advice provided to clients by their authorised representatives and advice providers in accordance with licence condition 57(b) of PF 209, which applies to personal advice provided before 1 July 2013. Under the current industry model, authorised representatives that are geographically spread across different locations generally maintain the client files, while licensees have a contractual right to access these client files. We consider that this practice will comply with the new requirements.

FPA Comment:

The FPA recommends that ASIC clarifies the confusion created by RG175.397, which states that the AFS licensee is required to 'keep' records. Though the obligation is correct and the FPA agrees with this it is the literal interpretation of this that is causing the confusion.

Industry practice is for AFS licensee to have a contractual right to access the client files. RG175.402 also states that ASIC consider that this practice will comply with the new requirements.

FPA members have also stated that there is an ongoing concern of Privacy and whether or not the AFSL's contractual right to access their client files is a breach of the Privacy Act provisions.



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RG 175.403 We expect records to be kept in a way that enables information for a particular period to be readily provided to ASIC by the AFS licensee if it is requested to do so.

FPA Comment:

Further to the comments made above in RG175.402, the FPA is aware of some circumstances that arise when an AFSL is unable to access client files/records (and provide access to ASIC) due to the provider having changed Licensees and as a result have taken their clients and the respective 'records' with them.

RG 175.406 Client records should also contain evidence outlining the reasons why an advice provider considers the advice to be 'appropriate' for the purposes of s961G. In our view, advice is appropriate if it would be reasonable to conclude that, at the time the advice is provided, it is fit for purpose and the client is likely to be in a better position if they follow the advice. For more information, see RG 175.340–RG 175.358.

FPA Comment:

The FPA agrees with this requirement.