

Further Advice Policy (ROA's)

Version 2.0

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AIM OF THIS POLICY

The aim of this policy is to outline the obligations of advisers when providing further advice. The policy also outlines what is a significant change of a client's circumstances.

This policy has been updated following ASIC information sheet on the 5th of November on records of advice (ROA) and three ROA examples to provide clarity to financial advisers and advice licensees on their obligations when using ROAs to provide personal advice to retail clients.

APPLICATION OF THIS POLICY

This policy applies to all Representatives of Insight Investment Partners.

WHAT THIS POLICY COVERS

- Obligation to provide further advice.
- Conduct obligations.
- Disclosure obligations
- What is a significant change?
- Examples of changes considered significant.
- Non-significant change obligations – verbal.
- Non-significant change obligations – written advice.

What is a Record of Advice (ROA)?

A Record of Advice (ROA) is a simple record that confirms the advice provided by an advice licensee or an adviser. The ROA is similar to a Statement of Advice (SOA) but shorter and less formal. It is often given to existing clients to confirm changes to, or implementation of, advice that has been provided in a previous SOA.

Obligation to provide further advice

Once you have provided a client with advice, there are no Corporations Act obligations for you to provide further advice or review services to the client.

For common law purposes you do however need to:

- Agree with your clients on the further advice and review services that you will provide (or not provide);
- Agree the cost of the services and how the client will pay for them;
- Include a clear description of these services in a written agreement; and
- Ensure you complete the services as described.

If you do have clients in this situation, it is imperative that you make it clear what services you will be providing (if any) in return for receiving a fee.

Where you do undertake to provide further advice to your clients you are then subject to the conduct and disclosure obligations under the Corporations Act for the services.

When can I use an ROA instead of an SOA?

You can use an ROA instead of giving a client an SOA in four separate advice situations:

Situation	Description	Tip
Further advice	<p>You give further advice to the client, and:</p> <ul style="list-style-type: none"> you have previously given the client an SOA setting out the client's relevant circumstances in relation to the advice (the 'previous advice') the client's relevant circumstances in relation to the further advice are not significantly different from when the client received the previous advice, and to the extent the further advice is based on matters other than the relevant circumstances of the client – the basis on which the further advice is given is not significantly different from the basis on which the previous advice was given: see reg 7.7.10AE. 	<p>If there is a significant difference in either the relevant circumstances of the client or the basis of the further advice, then you cannot use an ROA, and an SOA is required for the further advice.</p>
No buy or sell product advice	<p>You give advice that does not recommend, or state an opinion about, the acquisition or disposal of a specific financial product, and does not recommend a modification to an investment strategy or a contribution level for a financial product held by the client, and:</p> <ul style="list-style-type: none"> you and certain associates do not receive any remuneration or benefit in relation to the advice, and <p>you provide information about potential conflicts in your advice to the client: see section 946B(7)–(8).</p>	<p>Typically you could rely on this exemption from providing an SOA if you are giving an initial free appointment or if you receive no remuneration for giving your clients 'no action' type advice.</p> <p>Advisers with ongoing service arrangements will not satisfy the requirements to use an ROA in this situation because they are receiving remuneration in relation to the advice.</p>
Small investment advice	<p>You give advice that relates to financial investments in certain products not exceeding \$15,000: see section 946AA and reg 7.7.09A.</p>	<p>The \$15,000 limit is for the total value of all financial investments the advice relates to.</p>

COVID-19 advice	<p>You give advice under ASIC's temporary COVID-19 relief measure, which applies until 15 April 2022.</p> <p>The measure allows advisers to provide an ROA, instead of an SOA, to existing clients requiring financial advice due to the impact of the pandemic: see Media Release (21-269 MR) ASIC further extends temporary financial advice relief measure in COVID-19 instrument (14 October 2021).</p>	<p>ASIC's COVID-19 relief measure is set out in the COVID-19 instrument.</p> <p>See also ASIC's Example Record of Advice (ROA): COVID-19 relief measure and COVID-19 information for financial advisers and advice licensees.</p>
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What must be included in the ROA

You can keep an ROA as an audio or video recording, or in writing

In 'further advice' situations, the ROA must include *either* your advice *or* a brief description of your recommendations to the client and the basis for the recommendations (i.e. your reasoning). Only one is required.

You will normally satisfy the requirement to set out a brief description of your recommendations to the client and the basis of advice required by regulation 7.7.09(1)(b), if the ROA clearly and unambiguously sets out the advice provided to the client and also includes either:

- a summary of the client's relevant circumstances, or
- a clear statement that information about the client's relevant circumstances is set out in a previous ROA or SOA provided to the client. The ROA or SOA should be identified by date.

In 'further advice' and 'COVID-19 advice' situations, you must give the client information about potential conflicts and you can demonstrate through other records on the client's file that you have given the client this information, without including this information in the ROA.

Disclosure obligations

Before providing further advice you must ensure that the client has received the current version of your FSG, including the Adviser Profile.

You should give your clients information about the remuneration, commission and other benefits that you and other persons will receive for the advice, that could influence or be capable of influencing you. 'Other persons' include: the providing entity, its employer, its related body corporates, authorising licensee, their directors or employees and their associates: see sections 947B(2)(d) and 947C(2)(e).

However, you do not need to provide information if the remuneration, commission or other benefit:

- does not depend on whether the client follows the advice (e.g. an hourly fee paid by the client that is payable even if the client doesn't follow the advice)
- is rebated in full to the client, or
- was not known by you (or could not reasonably be expected to have been known).

You must also give details of any interests, associations or relationships that could influence or be capable of influencing you in providing the advice. For example, you may be affiliated with a product

issuer or an underwriter. If the affiliation might reasonably be expected to be capable of influencing you to provide favourable advice about the financial products of the affiliated party, the affiliation must be disclosed to the client.

You can give information about potential conflicts to the client verbally or in writing (or a combination of the two): Generally, information about costs, fees, charges, expenses, benefits and interests must be stated in amounts in dollars.

Do I need to give the ROA to my client?

Sometimes. It will depend on the particular advice situation: see table below

Further advice	No. The client may request a copy.
No buy or sell product advice	No. The client may request a copy.
Small investment advice	Yes
COVID-19 advice	Yes

What is a significant change?

If the client's relevant circumstances at the time you provide further advice are significantly different from the circumstances that you considered when providing the previous advice, you cannot use an ROA and must give the client an SOA for the further advice.

You will need to exercise your professional judgement when considering whether any of your client's relevant circumstances are significantly different from when the previous advice was given.

Examples of relevant circumstances that may be considered significantly different include:

- a new mortgage or significant increase or decrease in debt
- divorce or separation from a partner
- a new baby
- significant home renovations
- redundancy or job loss
- a significant increase or decrease in income
- inheritance
- sale of business
- significant health events (i.e. terminal illness, disability or trauma)
- retirement
- death of a partner, and
- a move to aged care.

If a change in the basis of your further advice introduces a new advice area or strategy, it is likely to be significantly different and an SOA will be required.

Can I give my client further advice if I last gave my client an SOA six years ago?

The law does not specify how often an SOA must be provided to a client. Rather, it depends on whether the client's relevant circumstances and the basis for the advice are significantly different from the last time you gave the client an SOA.

It will ultimately depend on each individual client's circumstances, and you must exercise your judgment to determine whether the client's circumstances are significantly different from when you prepared the client's last SOA.

I've changed licensees, and want to give my existing clients further advice. Can I rely on a previous SOA I gave my clients while authorised by my old licensee, or do I need to give clients a new SOA under my new licensee?

It will depend on whether you were the 'providing entity' who gave the previous SOA to your clients while authorised by your old licensee

The disclosure obligations in Part 7.7 of the Corporations Act apply to 'providing entities'. Providing entities may be AFS licensees or authorised representatives. Authorised representatives can be individuals or corporate authorised representatives. Representatives, such as employed advisers, that are not authorised representatives are not providing entities.

Where financial product advice is provided by:

- a licensee (e.g. through one of its employees) – the licensee is the providing entity
- an authorised representative – the authorised representative is the providing entity.

If you were the providing entity who gave the previous SOA to your clients, you will meet the first condition of regulation 7.7.10AE(2)(a) which states that a providing entity does not have to give a client an SOA for further advice.

However, if you were not the providing entity who gave the previous SOA (e.g. you were an employed adviser under your old licensee), you will not meet the 'providing entity' condition of regulation 7.7.10AE(2)(a) and you will need to give your clients a new SOA before you can use an ROA for further advice.

Examples of who is a providing entity when giving further advice:

If the providing entity under the old licensee was ...	then under your new licensee ...
the old licensee	you cannot rely on the further advice exemption and you must give your existing clients a new SOA for any further advice (not an ROA)
a corporate authorised representative that you work for	you can rely on the further advice exemption and give clients further advice using an ROA – assuming the corporate authorised representative is the providing entity under the new licensee
you in your capacity as an individual authorised representative	you can rely on the further advice exemption and give clients further advice using an ROA – assuming you are also the providing entity under your new licensee