



ASIC

Australian Securities & Investments Commission

GPO Box 9827 in your Capital City

Our Reference: FSR2008/10862
Your Reference: Philip Field

19 June 2008

Mr Philip Field
General Manager – Corporate
Banking and Financial Services Ombudsman Ltd
GPO Box 3
MELBOURNE VIC 3001

Dear Mr Field

FINANCIAL OMBUDSMAN SERVICE LIMITED

I refer to your letter of 28 April 2008 in which you applied on behalf of the members (the *Members*) of the Banking and Financial Services Ombudsman Limited, the Financial Industry Complaints Service Limited and the Insurance Ombudsman Service (together the *Existing Schemes*) for the modification of sections 942B, 942C and 1013C of the Corporations Act 2001 (*the Act*). We understand this request is intended to facilitate the transition of the Existing Schemes to the Financial Ombudsman Services Limited (*FOS*).

ASIC has decided that in these circumstances it is appropriate to provide the Members with the no action position set out below. The no action position has the practical effect of allowing the Members to continue to use current printed Product Disclosure Statements (PDSs) and Financial Services Guides (FSGs) that do not contain references to FOS.

Decision

ASIC will take no action against the Members for breaches of sections 941E and 1012J of the Act, the requirements to keep the information PDSs and FSGs up to date, in circumstances where:

1. the PDS or FSG is printed prior to 1 July 2008;
2. the Member has become a member of FOS; and

3. the Member has not included information about FOS in the relevant PDS or FSG.

This no action position is provided on the following conditions:

1. the PDS or FSG was up to date at the time it was printed;
2. the Member must provide details of FOS to a consumer who requests the information or makes a complaint. The information may be provided in writing, orally or via a website; and
3. for complaints that are unresolved after having been through a Member's IDR procedures, the Member must inform the complainant that they have a right to pursue their complaint with FOS and provide details of how to access FOS.

This no action position is also conditional on FOS maintaining re-direction arrangements for all communications to the Existing Schemes which have the effect that if a consumer contacts an Existing Scheme, that consumer is directed to FOS (details of the re-direction arrangements are set out in your letter dated 28 April 2008).

This no action position will apply only until the next reprint of the PDS or FSG, or until 30 September 2009, whichever comes first.

Where information about EDR schemes is contained in documents which are not printed, or is set out on a website, Members are expected to keep that information up to date and include details of FOS. This does not apply to a copy of a printed PDS or FSG available on a website.

Qualification

The decision to grant a no action letter in relation to the facts outlined above is subject to the following standard qualifications as outlined in Regulatory Guide 108 *No Action Letters*

- ASIC may at any time reconsider its view of the Act, legislative policy or its administrative policy and may withdraw or revise this no-action letter. In revising or acting contrary to such a statement, ASIC will give due allowance to the consequences for any persons who have already acted in reasonable reliance on this letter.
- This letter does not preclude third parties (including the Director of Public Prosecutions) from taking legal action in relation to that conduct or conduct of that kind. Nor will it necessarily impede a Court from holding that such conduct infringes the Act. ASIC does not represent that such conduct will not be held to contravene the Act. Nor does it undertake to intervene in an action brought by third parties in respect of such conduct.
- This no-action letter is specific to this case and is only a statement of ASIC's intentions on the information available to it at a particular time. Notwithstanding

that this no-action letter has been issued, ASIC reserves its right to take action. This is especially so if there has been incomplete disclosure at the time the request for the no-action letter was submitted.

Please contact me on 03 6235 6817 should you wish to discuss this matter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Christopher Green', with a long horizontal flourish extending to the right.

Christopher Green
Assistant Director, Applications and Advice
Regulation Directorate