# ASIC Class Order [CO 14/923]

## About this compilation

**Compilation No. 1**

This is a compilation of ASIC Class Order [CO 14/923] as in force on 27 October 2016. It includes any commenced amendment affecting the legislative instrument to that date.

This compilation was prepared by the Australian Securities and Investments Commission.

The notes at the end of this compilation (the **endnotes**) include information about amending instruments and the amendment history of each amended provision.

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**Australian Securities and Investments Commission**
**Corporations Act 2001—Paragraph 926A(2)(c)—Declaration**

**Enabling legislation**

1.  The Australian Securities and Investments Commission makes this instrument under paragraph 926A(2)(c) of the *Corporations Act 2001* (the **Act**).

**Title**

2.  This instrument is ASIC Class Order [CO 14/923].

**Declaration**

4.  Part 7.6 of the Act (except Divisions 4 and 8) applies in relation to financial services licensees (and former financial services licensees) and authorised representatives (and former authorised representatives) as if Division 3 of that Part were modified or varied by, after section 912F, inserting the following section:

    "**912G   Record-keeping: personal advice**

    (1)   This section applies in relation to the provision of personal advice to a person (the **client**) as a retail client by a financial services licensee (the **provider**) or a representative (the **provider**) of a financial services licensee.

    (2)   The financial services licensee must ensure that records of the following matters are kept in relation to the provision of the personal advice:

    (a)   the information relied on and the action taken by the provider that indicates the provider has, in accordance with subsection 961B(1), acted in the best interests (the **best interests duty**) of the client in relation to the advice;

    (b)   if subsection 961B(2) 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 that subsection;

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

(c)     the advice given, including the reasons why, under section 961G, it would be reasonable to conclude that the advice is appropriate to the client, had the provider satisfied the best interests duty;

(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 a person mentioned in any of the paragraphs in subsection 961J(1)—the information relied on and the action taken by the provider to indicate that the provider has given priority to the client's interests when giving the advice.

(3)     The financial services licensee must ensure the records required to be kept by this section:

(a)     are kept for 7 years after the day the personal advice was provided to the client; and

(b)     are accessible by the licensee at all times during that period in a way that enables the licensee to produce the records.

This obligation continues to apply even if the financial services licensee ceases to be a financial services licensee during the period that the records are required to be kept and accessible.

(4)     If the provider is an authorised representative of a financial services licensee and the records required to be kept by this section are kept by the authorised representative, the authorised representative:

(a)     must give the records to the licensee if requested by the licensee, provided the request is made:

(i)     in connection with the obligations imposed on the licensee under this Chapter; and

(ii)     within 7 years after the day on which the personal advice was provided to the client; and

(b)     unless the records have been given by the authorised representative to the licensee—must keep the records for a period of 7 years after the day on which the personal advice was provided to the client.

This obligation continues to apply even if the authorised representative ceases to be an authorised representative of the financial services

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licensee during the period that the records are required to be given or kept.

(5)   Nothing in subsection (4) limits the operation of subsections (2) and (3).

(6)   This section does not apply to the provision of personal advice given in relation to a financial product in circumstances where the provider satisfies the duty in subsection 961B(1) in relation to the advice given in relation to the financial product if the provider takes the steps mentioned in paragraphs 961B(2)(a), (b) and (c).

(7)   This section (other than paragraph (2)(d) and subsection (3) as it relates to that paragraph) does not apply to the provision of personal advice covered by either of the following circumstances:

(a)   the provision of personal advice for which a Statement of Advice is not required to be given to the client;

(b)   the provision of personal advice for which a record of the advice is kept in accordance with subsection 946B(3A).

5.   The declaration in paragraph 4 of this instrument applies in relation to the provision of personal advice on or after 23 March 2015.

**Interpretation**

6.   In this instrument:

*personal advice* has the meaning given by subsection 766B(3) of the Act.

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## Notes to ASIC Class Order [CO 14/923]

## Note 1

ASIC Class Order [CO 14/923] (in force under s926A(2)(c) of the *Corporations Act 2001*) as shown in this compilation comprises that Class Order amended as indicated in the tables below.

## Table of Instruments

| Instrument number | Date of FRL registration | Date of commencement | Application, saving or transitional provisions |
|---|---|---|---|
| [CO 14/923] | 18/9/2014 (*see* F2014L01237) | 18/9/2016 | |
| 2016/1006 | 26/10/2016 (*see* F2016L01647) | 27/10/2016 | - |

## Table of Amendments

ad. = added or inserted substituted    am. = amended    LA = *Legislation Act 2003*    rep. = repealed    rs. = repealed and

| Provision affected | How affected |
|---|---|
| Para 3 ........................... | rep. s48D LA |
| Paragraph 4 (notional subsections 912G(3), (4) and (5)).................. | rs. [2016/1006] |
| Paragraph 4 (notional subsections 912G(6) and (7))....................... | ad. [2016/1006] |

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