

# APPENDIX 3

## Letter to National Institute of Accountants from ASIC

Australian Securities & Investments Commission

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Our Reference:  
Your Reference:

5 July 2002

Reece Agland  
General Counsel  
National Institute of Accountants  
PO Box 18204  
MELBOURNE VIC

Dear Reece

I refer to your two letters of 2 July 2002 I attempt to address in this letter. Thank you for offering to assist ASIC in relation to providing feedback to the industry. Wherever possible ASIC utilises examples to deliver a clearer message to industry. We have found that in some instances examples cause more questions than they resolve as often they are interpreted to apply to that particular fact situation only.

Examples also fall within that fine line between providing guidance and legal advice. We need to be mindful that our examples may not cover the full fact situation and may provide misleading information to the industry.

ASIC welcomes the industry providing examples to its members. We find that the industry bodies are in a much better position to provide this service than ASIC. On this basis I would welcome the NIA to provide me with examples of situations it would like clarification on so I can seek internal feedback for you. They could then be placed by you on your website.

I am happy to meet with representatives of the National Institute of Accountants. I am currently located in Perth but am travelling regularly to the east coast. I am happy to arrange a phone hook up with you or meet with you on my next visit to the east coast which is in the last week of July. Please contact Emma Robinson on (08) 9261 4113 to arrange this.

I acknowledge that the definition of advice is broad. The focus of that definition is whether or not individuals are influenced in making a decision about a financial product because of a recommendation or opinion. The two examples you have provided in your letter in relation to superannuation and business advice do not necessarily amount to the provision of financial product advice. In particular most of the information that would be provided to the client in those situations would be in the nature of factual information and not necessarily amount to an opinion or recommendation in relation to a financial product.

You also raise an issue in relation to a "licence that will cover accountants". One Australian financial services licence can cover more than one financial service. As you would be aware there are five types of financial services that are covered by the Financial Services Reform Act. These include:

- The provision of financial product advice
- Dealing in a financial product
- Making a market
- Operating a managed investment scheme
- Providing a custodial service

Most accountants would be either advising or dealing in financial products or both. Their license would cover these services as well as the types of products they provide these services in relation to. It is irrelevant how they are paid for these services in relation to the licence. I am happy to discuss further with you the licensing process and what is required. For most accountants the cost would be minimal. We have developed the licenses so that they can be tailored as much as possible to the particular financial services.

I look forward to discussing this further with you when we meet or talk.

Yours sincerely

**Pauline Vamos**  
**Director**  
**Licensing and Business Operations**