

Frequently asked questions about financial services regulation

QFS 55

What is the distinction between factual information and financial product advice?

This frequently asked question is intended to clarify and provide examples of the distinction between factual information and financial product advice. It does not deal with the distinction between general advice and personal advice, since this distinction is discussed in some detail in Policy Statement 175: [Licensing: Financial product advisers - Conduct and disclosure](#).

Factual information is objectively ascertainable – its truth or accuracy cannot reasonably be questioned. Financial product advice is intended to influence a person in making a decision in relation to a financial product or class of financial products. An intention to influence can be actual or inferred. It follows that the mere mention of a financial product does not constitute financial product advice. It is always necessary to examine the context of the communication.

Factual information and financial product advice

Financial product advice is a recommendation or statement of opinion (or a report of either) that:

- is intended to influence a person or persons in making a decision in relation to a financial product or class of financial products (or an interest in a financial product or class of financial products); or
- could reasonably be regarded as being intended to have such an influence: s766B of the *Corporations Act 2001* (the Act).

Two crucial concepts emerge from this definition:

- there must be a recommendation or statement of opinion (as opposed to a statement of fact); and
- there must be an actual or inferred intention to influence a person in making a decision in relation to a financial product (or class of financial products).

A recommendation or statement of opinion will usually involve a qualitative judgement. Information provided in response to a specific question from a client can often be construed as an implied recommendation because of the context in which the response is given. If a person expressly endorses or approves a product, this is likely to constitute a recommendation.

An intention to influence may be inferred from the manner in which a

statement is presented, eg if the features of two financial products are described in such a manner as to suggest that one compares more favourably than the other. An intention to influence may also be inferred from the surrounding circumstances, eg if the person stands to benefit from the client's decision.

It is not possible for a person to avoid providing financial product advice merely by making a statement that the person does not make any recommendation or provide any opinion about the product. However such a statement may be a relevant factor in considering the overall context of the communication.

Some examples

The following examples are illustrative only. They are not exhaustive and are not intended to imply particular rules. Whether a person is providing financial product advice will always depend on the entirety of the circumstances in each individual case.

Superannuation

A client asks a fund representative about salary sacrifice arrangements and superannuation.

The representative informs the client what is generally understood by the term 'salary sacrifice arrangement'. This is likely to comprise the provision of factual information.

The representative expresses a qualitative or comparative judgment about salary sacrifice arrangements (eg 'sacrificing salary into a superannuation fund is very tax effective' or 'sacrificing salary into a superannuation fund is more tax effective than negative gearing'). This is likely to constitute the provision of financial product advice.

Call centres and general insurance

A client contacts a call centre wanting to buy insurance for their motor vehicle.

The client asks the operator to explain the difference between third party liability and comprehensive cover and asks for two quotes. (Note: Telling an inquirer the cost or estimated cost of a financial product does not constitute the provision of financial product advice: s 766B(6) of the Act.) The operator simply explains the differences in policy coverage between the two policies and provides the requested quotations. This is likely to constitute the provision of factual information.

A client has obtained two quotes to insure their motor vehicle: one covers third party liability, the other is for comprehensive cover. The client asks

whether it is worth taking out comprehensive cover. The operator explains the differences in policy coverage between the two policies. Without referring to any particular circumstances of the client, the operator says that comprehensive cover is the best choice for most people. This is likely to comprise the provision of financial product advice, because the context in which the response is given suggests a value judgment about the comparative merits of the two policies.

Branch staff and a spare \$10,000

A client visits their local bank branch with \$10,000 to deposit. The client asks for the different interest rates on a savings account and a term deposit and is referred to a customer service officer.

The officer provides the interest rates for each of these facilities. This is likely to constitute the provision of factual information.

The officer explains the interest rates for each of these facilities but adds that there is an 'attractive special rate' available on term deposits for a 6 month term. This is likely to constitute the provision of financial product advice because it is a matter of opinion as to whether the special rate is 'attractive' and the teller could reasonably be regarded as intending to influence the client to choose the term deposit.

Seminars

A financial institution organises a seminar on investment. About 15 people attend.

The presenter merely provides a general description of the different types of financial products that are available for investment purposes. This is likely to constitute the provision of factual information only.

The presenter claims that, during periods of stock market volatility, property trusts are more desirable than shares because they offer more consistent returns. This is likely to constitute the provision of financial product advice. The desirability of property trusts is a matter of opinion and the presenter's statements could reasonably be regarded as intending to influence the attendees to invest in property trusts.

Cross selling

A client approaches a financial institution to ask about a home mortgage.

The client also asks the customer service representative about income protection insurance. The representative confirms that the financial institution also offers income protection insurance products. This is likely to constitute the provision of factual information.

Without knowledge of the client's personal details, the customer service representative suggests that the client consider taking out income protection insurance because it can give peace of mind in meeting mortgage payments. This is likely to constitute the provision of financial product advice because whether income protection insurance provides peace of mind is a matter of opinion. The representative's suggestion could reasonably be regarded as intending to influence the client to purchase income protection insurance.

Badging

A distributor puts its logo on a brochure for a financial product. The distributor does not receive any financial reward or incentive to do so. The brochure states that the distributor is not the issuer, but merely a distributor of the product. The distributor does not add any testimonial or endorsement to the brochure.

The provision of a brochure with the distributor's logo may not constitute financial product advice by the distributor, depending on the overall impression of the document. The distributor will need to ensure that the way the brochure is badged does not give the impression that the distributor is making an implied recommendation or statement of opinion intended to influence a person's decision about the product. For example, the prominence of the logo could give this impression.

If the distributor gives the brochure with a covering letter highlighting the benefits of the product, this is likely to constitute the provision of financial product advice. The covering letter contains a value judgment about the merits of the product and the distributor could reasonably be regarded as intending to influence a person to purchase the product.

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These FAQs provide general information about how we are regulating the financial services industry following our implementation of the Financial Service Reform legislation. We are unable to provide legal advice or interpretations of the legislation. These FAQs should not be treated as legal advice, nor as statements of our policy.

We are not able to comment or provide guidance on specific commercial situations. We recommend that you get your own professional advice before making any decisions about your particular situation.

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