

**Bills Committee on
Securities and Futures Bill and Banking (Amendment) Bill 2000**

**Securities and Futures Bill
No-Action Letters**

Background

In considering clause 273 (safe harbour) in Part XIII of the Securities and Futures Bill at the Bills Committee meeting on 28 September 2001, the question was raised as to the actual legal effect of a no-action letter in the US and Australia, i.e. whether the relevant contravention is still technically a breach despite the no-action letter. The following sets out the findings by the SFC concerning the relevant policy of the Securities and Exchange Commission (SEC) in the US and the Australian Securities and Investments Commission (ASIC).

Australia

2. The ASIC's Policy Statement 108 "No-action letters" states that –

“All practice notes and no-action letters should be read as expressions of ASIC's regulatory intention and only incidentally as expressions of legal views. The purpose of these statements is to provide an indication of the future regulatory or enforcement action that ASIC will take. This is based on considerations of legislative policy, as well as ASIC's interpretation of the Corporations Act and facts at the time of the statement. Their purpose is not to publish propositions of the Act.

ASIC may at any time reconsider its view of the Act, legislative policy or its administrative policy and may withdraw or revise a no-action letter, practice note or policy statement. In revising or acting contrary to such a statement, ASIC will give due allowance to the consequences for persons who have already acted in reasonable reliance on ASIC's published view.

Normally each no-action letter will contain an express statement of ASIC's right to withdraw or revise such a statement ...

An ASIC no-action letter or practice note in relation to certain conduct conveys a policy decision, not a legal opinion. It does not preclude third parties (including the Director for 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.

Any no-action letter is specific to the facts and circumstances of the particular case. Such letters should not be considered as a de facto 'rulings system' to indicate ASIC's view of whether particular types of conduct are legal. Nor should such letters be relied on as precedents.

A no-action letter from ASIC is only a statement of its intentions on the information available to it at a particular time. Even where a no-action letter has been issued, ASIC reserves the right to take action. This is especially so if there has been incomplete disclosures at the time the application for the no-action letter was submitted."

US

3. We understand that SEC's no-action letters are to the same effect as those issued by ASIC, although we have been unable to find a precise policy statement on no-action letters.

**Securities and Futures Commission
Financial Services Bureau
6 December 2001**