



**ASIC**

Australian Securities & Investments Commission

# **ASIC Class Order [CO 05/1122]**

***Proposed class order relief  
for providers of generic  
financial calculators***

**Regulation impact statement (RIS)**

**December, 2005**

## What this regulation impact statement is about

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ASIC proposes to issue conditional class order relief to allow providers of generic financial calculators (generic calculators) to provide financial product advice by, or through, the generic calculator, without having to comply with the licensing, conduct and disclosure provisions of the *Corporations Act 2001* (Corporations Act).

This Regulation Impact Statement (RIS) deals only with relief for the provision of generic calculators. ASIC will consider its policy on other types of calculators, such as, product-specific financial calculators and risk profilers, later.

This RIS will explore the costs and benefits of the different options available to ASIC in relation to its policy on generic calculators. The RIS recommends that ASIC issue conditional class order relief in order to promote the use of generic calculators to provide consumers with greater access to good quality advice and information.

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# Issue/problem

## Background

### What is a Generic Calculator?

1. A generic calculator is a facility, device or table that:
  - (a) is used to make a numerical calculation or find out the result of a numerical calculation relating to a financial product; and
  - (b) does *not* advertise or promote one or more specific financial products.

Such calculators can help consumers better understand their financial circumstances. There are different forms of generic calculators available, including "online" calculators (i.e. via the world wide web), electronic calculators (e.g. made available through CD ROM), and paper-based calculators.

2. Examples of generic calculators include the following (but only where they do not advertise or promote one or more specific financial products):
  - (a) savings calculators;
  - (b) managed investment calculators; and
  - (c) life insurance calculators.
3. Typically, generic calculators help the user calculate:
  - (a) the estimated value of total superannuation, savings or investments at a future point in time; and/or
  - (b) the estimated superannuation contributions, saving, investment or life insurance cover required to achieve a particular financial goal.

### The Law

4. The provision of financial product advice triggers the licensing, conduct and disclosure provisions of the Corporations Act.
5. A generic calculator will provide financial product advice if it produces recommendations or statements of opinion that are (or could reasonably be regarded as being) intended to influence the user in making a decision about a particular financial product or class of financial products: s766B.

6. A generic calculator will not involve financial product advice if, for example, it merely provides:

- (a) factual information;
- (b) information about the cost or rate of return of a product: s766B(7);
- (c) for insurance calculators, information about the cost of a product and the value of an item from which the cost of the product is worked out: s766B(6); or
- (d) asset allocation advice: reg 7.1.33A.

7. Where a generic calculator involves the provision of financial product advice, the provider of the calculator must hold an Australian financial services (AFS) licence unless otherwise exempt: s911A(1). Currently, only limited licensing exemptions are available to the providers of calculators. Generally, the provider must also comply with the conduct and disclosure provisions of the Corporations Act.

8. Personal advice is financial product advice given in circumstances where:

- (a) the provider of the advice has considered one or more of the client's objectives, financial situation and needs; or
- (b) a reasonable person might expect the provider of the advice to have considered one or more of those matters: see s766B(3).

9. Generic calculators typically require the user to input information about their financial objectives, financial situation or needs (e.g. information about their initial investment, investment timeframe, ongoing investments, salary, age etc). The generic calculator then uses this information to generate a result. In doing so, the generic calculator has taken into account at least one aspect of the user's objectives, financial situation or needs. For these reasons, the financial product advice provided by many generic calculators is likely to be personal advice. If the calculator provides personal advice to a retail client, the provider must comply with the personal advice aspects of the conduct and disclosure regime.

10. Not all calculators are subject to regulation under Chapter 7 of the Corporations Act. Calculators that do not relate to financial products, as that term is defined in the Corporations Act, are outside the scope of the financial services regime. For example, mortgage calculators will not be subject to the licensing, conduct and disclosure requirements of the Corporations Act because credit products are not "financial products" as that term is defined in the Corporations Act.

## ASIC'S Current Class Order

11. ASIC granted licensing, conduct and disclosure relief for certain superannuation calculators in June 2005: see Class Order [CO 05/611] *Relief for providers of superannuation calculators*. This relief is limited to superannuation calculators that do not provide advice related to specific products and is subject to certain conditions, such as the ability of the user to change assumptions used by the calculators and the reasonableness of any default assumptions.

## What is the issue/problem being addressed?

12. Generic calculators can be useful educational tools for consumers, providing information at no cost to the consumer. However, they also have the potential to mislead consumers, if they are not designed responsibly. ASIC conducted a review of 24 superannuation calculators, and found that different calculators gave vastly different results for the same facts keyed into the calculators. The information provided to users was generally inadequate to explain the differences. Differences in results from the same facts are not necessarily misleading (e.g. because of variations in assumptions or a link to a specific financial product), but the calculator should provide enough information to account for the difference. In developing useful and reliable calculators, the following factors are important:

- (a) the reasonableness of assumptions;
- (b) the adequacy of explanations about the limitations of the calculator and the impact of those limitations on the results; and
- (c) whether estimates of future values are given in today's dollars.

13. As noted in paragraphs [4]–[9] above, the licensing, conduct and disclosure regime of the Corporations Act may apply to some generic calculators. This regime was introduced by the *Financial Services Reform Act 2001* (FSR Act) so that financial services would be provided honestly and competently to consumers and to ensure that consumers have access to sufficient quality information to make good investment decisions.

14. The cost of complying with the licensing, conduct and disclosure requirements will vary for different businesses, depending on the nature, scale and complexity of the business. Providers of generic calculators that fall within the regime would be subject to the various compliance costs, including:

- (a) Permission costs – wages for person filling in the application, external advice from lawyers, conducting checks to ensure business meets licence conditions;
- (b) Purchase costs – licence application fee, costs for meeting financial requirements;
- (c) Notification costs – notifying ASIC of training documents, setting up training documents, wages for person setting up training documents, ongoing financial reporting obligations;
- (d) Education costs – ongoing training for staff as part of licence conditions;
- (e) Documentation costs – production of FSGs and SOAs for the provision of personal advice; and
- (f) Record keeping costs – keeping financial records, training plans, training staff to keep such records, storage of records.

Note: We cannot quantify all of the above costs because ASIC does not have the necessary information to enable quantification.

15. The licensing regime applies generally to all kinds of financial product advice provided to consumers. A simpler regime may be more appropriate for financial product advice provided by generic calculators because:

- the results produced by these calculators may be more akin to factual information than financial product advice; and
- requiring compliance with the full licensing, conduct and disclosure requirements may inhibit the provision of such calculators.

16. The imposition of the licensing regime may cause unnecessary regulatory and administrative burden for providers of generic calculators such that they cease providing the calculator service, thereby restricting consumers' access to what can be useful, educational tools.

## Objectives

17. ASIC aims to ensure that consumers are given access to generic calculators to enable them to understand and compare financial products and services, while at the same time:

- (a) maintaining consumer protection by ensuring that generic calculators are designed responsibly with important features,

including reasonable assumptions and clear statements about the limitations of the calculator; and

- (b) avoiding unnecessary or disproportionately burdensome regulation of providers of generic calculators

## Options

### Option 1 – Maintain the *status quo*

18. If this option were adopted, providers of generic calculators that produce financial product advice would be required to comply with the full licensing, conduct and disclosure requirements set out in the Corporations Act (unless otherwise exempted: see paragraph [11]). No relief would be granted to providers of such calculators except on a case-by-case basis.

### Option 2 – Grant conditional relief to providers of generic calculators

19. If this option were adopted, ASIC would grant class order relief from the requirement to hold an AFS licence, or (where they currently hold an AFS licence) relief from the advice, conduct and disclosure requirements of Part 7.7 of the Corporations Act for generic calculators. Under this option, ASIC would adopt the definition of generic calculator outlined in paragraph [1].

20. Consumer protection conditions would be imposed, including the following:

- Default assumptions must be reasonable;
- In the case of electronic calculators, the user must be able to alter all default assumptions;
- There must be clear statements about any limitations of the calculator; and
- The provider must maintain copies of the calculator for a period of 7 years.

### Option 3 – Same as Option 2 but with a more limited definition of "generic calculator"

21. This option was proposed in ASIC's consultation paper *Online calculators* (August 2005). If this option were adopted, the definition of "generic calculator" would be more limited in scope. A generic

calculator would be a financial calculator that does not produce results relating to one or more specific financial products. This would mean that a calculator that has default assumptions that reflect the features of a provider's own products (e.g. their actual fees) would not be categorised as a generic calculator and would not be entitled to relief.

22. Under this option, relief for generic calculators would otherwise be approached in the same way as outlined in paragraphs [19–20].

## **Option 4 – Grant unconditional relief to providers of generic calculators**

23. If this option were adopted, ASIC would grant unconditional class order relief from the licensing, conduct and disclosure provisions of the Corporations Act to providers of generic calculators.

# **Impact analysis**

## **Affected parties**

24. The parties that would be affected by ASIC's proposals are:

- (a) persons providing generic calculators;
- (b) consumers who use generic calculators; and
- (c) ASIC.

25. As at 9 November 2005, there were 2958 licensees who were authorised to provide financial product advice. We do not know how many of these licensees provide financial product advice through generic calculators, as there are many providers of different types of calculators.

26. Given the demand for and wide range of financial products, it would appear that many Australian consumers may be users of generic calculators. Therefore, many consumers will be affected by ASIC's proposals. However, we do not have exact figures for how many people are users of calculators.

## Costs and benefits of each option

### Option 1 – Maintain the *status quo*

#### Costs

27. If this option were adopted, all providers of generic calculators (other than superannuation calculators) would be caught by the licensing regime. This would result in industry participants that are not able to benefit from the exemptions already provided (see paragraph [11]) having to comply with the full licensing, conduct and disclosure requirements of the Corporations Act. The cost of compliance may be substantial, potentially including:

#### (a) Permission costs

- electronic application for an Australian financial services (AFS) licence for a body corporate, partnership or trustee is \$270 and \$150 for an individual;
- paper-based application for an AFS licence for a body corporate, partnership or trustee is \$540 and \$330 for an individual;
- costs of hiring staff to make applications;

#### (b) Purchase costs

- meeting financial requirements in accordance with Policy Statement 166 *Licensing: Financial requirements* [PS 166];
- setting up and maintaining adequate compliance systems (e.g. in accordance with Policy Statement 164 *Licensing: Organisational capacities* [PS 164]);
- any external advice (such as legal advice, auditing, etc.);

#### (c) Education costs

- ensuring employees meet training and educational requirements (e.g. in accordance with Policy Statement 146 *Licensing: Training of financial product advisers* [PS 146]);
- creating and updating training plans for employees to be trained;

#### (d) Publication and documentation costs

- preparing, producing and issuing FSGs;
- preparing, producing and issuing SOAs to consumers;

#### (e) Record keeping costs

- Keeping financial records to comply with licence conditions;
- Keeping training plans for assessment once every five years.

Many providers of generic calculators will already be licensed to provide advice because they provide advice through means other than calculators. Hence, they may not incur the above costs solely in relation to their provision of generic calculators.

Note: We cannot quantify all of the above costs because ASIC does not have the necessary information to enable quantification.

28. Providers of generic calculators that provide personal advice will also incur costs adapting their calculators to comply with the personal advice requirements. These costs are mainly purchase costs, involving the cost of adapting the technology of the calculator, such as:

- (a) adapting the calculator so that it can produce an SOA;
- (b) adapting the calculator so that it complies with the suitability of advice requirements by, for example:
  - (i) additional questions to cross-check information entered by the user;
  - (ii) warnings if the user enters information that is outside reasonable parameters; or
  - (iii) restrict access to the calculator to ensure that, as far as reasonably practicable, only clients with an appropriate level of financial knowledge can access the calculator.

Note: We cannot quantify these costs. They will depend on the nature of the calculator and we do not have the necessary information to enable such quantification. Costs may include internet technology, legal, and possibly, actuarial costs.

29. The cost of complying with the licensing, conduct and disclosure requirements may be passed on to consumers. In some cases, generic calculators may be withdrawn due to the operating costs. This may restrict access to useful information provided by generic calculators, which would be disadvantageous to consumers.

30. There may be uncertainty as to whether some generic calculators provide financial product advice at all. We are aware that industry are particularly uncertain about when their calculators will be categorised as providing information (and hence are not subject to the licensing regime), and when they provide advice (and hence are subject to the licensing regime).

31. The uncertainty about whether generic calculators generate financial product advice also means that some industry participants

will apply for comfort relief from the licensing, conduct and disclosure requirements. Providers of generic calculators would be subject to purchase costs by the imposition of fees, which are prescribed for certain relief applications in the following way:

- (a) application for licensing relief is \$270 for a body corporate, partnership or non-corporate trustee or \$150 for an individual;
- (b) application for a declaration that something is not a financial service is \$400; and
- (c) application for relief from disclosure requirements is \$33.

32. Doing nothing could also impact on ASIC's resources. If ASIC does not issue guidance and/or relief, industry may be uncertain as to their status, which could result in more applications for relief. This would require more resources for ASIC in dealing with the relief applications. Additionally, adopting this option may send a message discouraging compliance in this area (including by entities that are already fully compliant with the full licensing regime). ASIC's resources may therefore be required to conduct surveillance work.

## **Benefits**

33. If ASIC were to adopt this option, ASIC would require compliance with the full licensing, conduct and disclosure obligations under the Corporations Act for generic calculators. Such an approach could benefit consumers, who would be provided with more protection because providers of generic calculators that provide financial product advice would be licensed (and therefore required to comply with ongoing disclosure and conduct obligations), regardless of whether they pose high or low risk to consumers. For example, by requiring providers of generic calculators to obtain an AFS licence, consumers would be assured that they are competent to provide such services before using the calculators (and potentially exposing themselves to financial loss).

34. There would be no change in current costs for ASIC.

## **Option 2 – Grant conditional relief to providers of generic calculators**

### **Costs**

35. If this option were adopted, consumers who used generic calculators would not be given the protection provided by compliance with the full licensing regime. However, this option would pose less risk to consumers than the granting of unconditional relief because the conditions imposed can afford tailored protection to consumers.

36. If this option were adopted, compliance with the conditions of relief would create compliance costs for providers of generic calculators. Providers of generic calculators may incur costs of complying with the conditions of relief. These costs will include:

- (a) hiring actuaries, or other suitable professionals, to check the reasonableness of the default assumptions used by the calculator; and
- (b) hiring computer technicians for those calculators that are online or electronic, in order to enable the calculators to comply with the various conditions imposed.

The extra compliance costs may cause providers of calculators to withdraw their calculators, which would impact on consumers who may find them useful.

Note: We cannot quantify all of the above costs because ASIC does not have the necessary information to enable quantification.

37. Imposing conditions on relief would shift regulatory risk to ASIC such that ASIC would need to ensure that the conditions are complied with. This would impact on ASIC's resourcing priorities.

## **Benefits**

38. This option recognises that generic calculators provide results that are akin to factual information, making it appropriate to grant licensing relief. This will provide greater certainty to industry. We understand that there is currently considerable uncertainty about whether generic calculators are caught by the financial services licensing regime. It will also reduce the compliance costs of applying for a licence as outlined in paragraph [27] and conduct and disclosure costs outlined in paragraph [28]. Consumers will not be exposed to unacceptable risks created by generic calculators because of the imposition of conditions, ensuring minimum standards of quality for calculators.

39. Option 2 would promote wider access to generic calculators for the public, which is a benefit for consumers, as they would have greater access to inexpensive information in relation to various financial products. The conditions of relief would ensure that the information is useful and accurate.

## **Option 3 – Same as Option 2 but with a more limited definition of "generic calculator"**

### **Costs**

40. If this option were adopted, the costs would be similar to those outlined in paragraphs [35–37].

41. However, this option would limit the scope of the definition of generic calculators such that calculators that use default assumptions relating to specific products (e.g. fees and returns) would not come within the generic calculator definition and, therefore, would not be entitled to relief. Such a result is inappropriate because it would mean that providers of calculators could use fictional default assumptions and be granted licensing relief in relation to their generic calculator, whereas those providers who use default assumptions reflecting actual features of their products would not have the benefit of licensing relief. This option would, therefore, not benefit consumers because it is likely to lead to less accurate results than Option 2.

### **Benefits**

42. Option 3 would provide similar benefits to those outlined in paragraphs [38–39]. (However, as the class of generic calculators would be smaller, the benefits of the relief provided to that class of calculators would be available to few providers of calculators.)

## **Option 4 – Grant unconditional relief to providers of generic calculators**

### **Costs**

43. If this option were adopted, there would be a great reduction in consumer protection, as there would be no conditions to maintain protections for the users of generic calculators. Consumers could be exposed to calculators that use unreliable assumptions and thus produce unreliable and misleading results. Consumers would be less likely to understand the limitations of the generic calculators. This may lead consumers to make poor investment decisions.

### **Benefits**

44. This option would enable the provision of generic calculators without any of the compliance costs outlined in paragraphs [27–28], which would be beneficial for the providers of generic calculators.

## Consultation

45. On 22 June 2005 ASIC issued a consultation paper *Online calculators*, seeking comments on proposed relief to give effect to Refinement Proposal 10.3. Option 3 of this RIS embodies the relief proposed in the consultation paper.

46. ASIC received 16 submissions from industry associations. The responses to the consultation paper were varied. These are some examples of the responses:

- There was general concern about the clarity of the distinction between generic and product-specific calculators. ASIC has responded by proposing to clarify and widen the definition of generic calculator. (ASIC's policy for product-specific calculators is yet to be considered.)
- There was concern about the way in which the use of actual features of a product (e.g. fees and returns) as default assumptions took calculators out of the realm of generic calculators. ASIC has responded by proposing to allow actual features of a product to be used as default assumptions in a generic calculator.

Option 2 of this RIS was developed in response to the comments and concerns raised by industry during consultation.

## Conclusion and recommended option

47. ASIC considers that Option 2 (Grant conditional relief to providers of generic calculators) would be the preferable alternative. This option would:

- (a) promote wider access to generic calculators; and
- (b) maintain consumer protection through the imposition of conditions

48. Option 2 would not disadvantage consumers using generic calculators. They would be protected by the conditions imposed on the relief, which ensure that, among other things, the default assumptions are reasonable and there are clear statements about the limitations of the calculator.

49. Option 2 would reduce the costs of those involved in the provision of generic calculators, as they would not need to apply for licences or provide disclosure documents.

50. Option 1 (maintain the *status quo*) is not a preferred option because there are costs involved in applying for AFS licences and maintaining systems for compliance. Additionally, this option would not remove industry's uncertainty about application of the FSR Act to generic calculators. Both the costs of complying with the licensing regime and the regulatory uncertainty may reduce the provision of generic calculators and restrict consumers' access to the type of information/advice provided by generic calculators.

51. Option 3 (Same as Option 2 but with a more limited definition of "generic calculator") is not preferred. While this option may be similar to Option 2 (which is the preferred option), the limitation on the use of actual features of a product as the default assumption would restrict the provision of useful generic calculators. This option would also fail to address the concerns of industry.

52. Option 4 (Grant unconditional relief to providers of generic calculators) is not a feasible option, as this would expose consumers to calculators that may potentially provide unreliable information.

## Implementation and review

53. ASIC will implement the recommendations in this RIS by issuing a class order in conjunction with an amended Policy Statement 167 *Licensing: discretionary powers* [PS 167]. There will also be an information release, which will be posted on ASIC's website. Currently, ASIC has no plans to specifically monitor the implementation of the changes. ASIC will, in the future, consider its policy on product-specific financial calculators and risk profilers.