

# ASIC CLASS ORDER [CO 11/1227]

## EXPLANATORY STATEMENT

Prepared by the Australian Securities and Investments Commission

*Corporations Act 2001*

The Australian Securities and Investments Commission (ASIC) makes ASIC Class Order [CO 11/1227] under paragraphs 926A(2)(a) and 951B(1)(a) of the *Corporations Act 2001* (the Act).

Paragraph 926A(2)(a) of the Act provides that ASIC may exempt a class of persons from all or specified provisions of Part 7.6 of the Act.

Paragraph 951B(1)(a) provides that ASIC may exempt a class of persons from all or specified provisions of Part 7.7 of the Act.

### 1. Background

A retirement estimate is an estimate of a member's likely balance of their superannuation investment at retirement. A retirement estimate may be personal advice under s766B of the Act. Without relief providers of retirement estimates may need to hold an Australian financial service (AFS) licence with a personal advice authorisation and comply with the personal advice requirements of the licensing regime as well as the other conduct and disclosure requirements in Part 7.7 of the Act.

Prior to the Super System Review, ASIC has released two consultation papers on the preparation of retirement estimates by superannuation fund trustees: Consultation Paper 101 *Superannuation forecasts* (July 2008) and Consultation Paper 122 *Superannuation forecasts: ASIC relief and guidance for super funds* (CP 122).

The Government's Super System Review recommended that retirement estimates should be mandatory for MySuper products and should be developed in consultation with industry in accordance with the approach identified by the Panel (recommendation 1.17).

In its response to the Super System Review, the Government did not support this recommendation. Instead, it stated that the Government will ask ASIC to continue its work on facilitating the preparation of retirement estimates.

[CO 11/1227] is issued in conjunction with ASIC policy stated in Regulatory Guide 229 *Superannuation forecasts* (RG 229).

### 2. Purpose of the class order

The purpose of this class order is to provide conditional relief from the AFS licensing requirements in the Act to superannuation fund trustees who prepare retirement

estimates for their members in accordance with the conditions in [CO 11/1227]. Where a trustee already holds an AFS licence, we have given relief from the advice, conduct and disclosure requirements of Pt 7.7 of the Act.

The relief aims to facilitate superannuation fund trustees providing retirement estimates to members. The purpose of a retirement estimate is not to give an exact estimate of the member's retirement benefit, but is instead intended to provide an initial figure that would prompt the member to make further inquiries in relation to their retirement planning.

### **3. Operation of the class order**

[CO 11/1227] provides licensing and/or disclosure and conduct relief to superannuation fund trustees that provide retirement estimates where:

- (a) the retirement estimate is given at the same time as the member's periodic statement and is included in the statement or accompanies the statement;
- (b) the retirement estimate is given to a member that has been a member of the fund for at least 12 continuous months before the date of the estimate;
- (c) the member is younger than 65 at the date of the estimate;
- (d) the retirement estimate:
  - (i) calculates the estimated balance of the member's superannuation account with the fund when the member is 65 (lump sum) using the formula prescribed in the class order;
  - (ii) presents the lump sum as an amount in dollars rounded to the nearest \$10,000; and
  - (iii) includes a statement describing what this amount represents;
- (e) the retirement estimate:
  - (i) calculates the estimated annual income stream the member may get when they retire (annual income stream amount) using the formula prescribed in the class order;
  - (ii) presents the annual income stream amount as an amount in dollars rounded to the nearest \$1,000; and
  - (iii) includes a statement describing what this amount represents;
- (f) apart from the lump sum and annual income stream amount, the retirement estimate must not specify other amounts or figures representing or purporting to represent the member's expected retirement benefit; and
- (g) the retirement estimate includes the mandatory consumer warnings and disclosures, prescribed in the class order.

#### **4. Consultation**

In preparing [CO 11/1227], we have taken into account submissions made in response to CP 122. ASIC received 16 submissions in response to this consultation paper. A report, Report 266 *Response to submissions on CP 122 Superannuation forecasts: ASIC relief and guidance for super funds*, has been released simultaneously with the publication RG 229.

In determining how the lump sum and annual income stream amount should be calculated, ASIC engaged the services of the Australian Government Actuary (AGA). In preparing its recommended formulae for calculating these figures, the AGA consulted with industry associations and actuarial firms.