

12 February 2016

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By email: policy.submissions@asic.gov.au

Dear Tony

Subject: Submission in relation to CP 249 Remaking CO 05/1122

We are pleased to provide this submission in relation to ASIC consultation paper *CP 249: Remaking ASIC class order on generic financial calculators* ("CP 249").

Willis Towers Watson is a leading global advisory, broking and solutions company that helps clients around the world turn risk into a path for growth. With roots dating to 1828, Willis Towers Watson has 39,000 employees in more than 120 territories. We design and deliver solutions that manage risk, optimise benefits, cultivate talent, and expand the power of capital to protect and strengthen institutions and individuals. In Australia, we provide actuarial, communication, technology and investment consulting services to a broad range of defined benefit and accumulation superannuation funds including standalone corporate funds, industry funds, master trusts and master trust sub-funds, and a wholly owned subsidiary of ours acts as trustee to a number of corporate funds. In particular, we are one of the leading providers of financial calculators to the superannuation industry and have a deep expertise in this area.

In this submission, numbering of our responses refers to the numbering in CP 249.

Breach reporting

ASIC proposes to introduce a new requirement in the remade class order that if a person relying on the relief fails to comply, or becomes aware of matters that give the person reason to believe that they have failed to comply, with any of the conditions in the relief, the person must lodge a written report on the matter with ASIC within 10 business days. If, having received a breach report, ASIC does not confirm within 20 business days that the provider may continue to rely on the relief, then the provider will not be able to do so. While we acknowledge ASIC's view of the importance of breach notifications, we have several concerns with this proposed amendment to the conditions of relief:

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- Currently holders of AFSLs are required to report “significant” breaches (in terms of section 912D of the Corporations Act 2001) to ASIC. The proposed amendment would require reporting of all instances of failure to comply with the relief “other than in an immaterial respect”. The proposed threshold is therefore inconsistent with the reporting threshold applicable in respect of other breaches.
- If a provider has not received a response from ASIC within 20 business days, for risk management reasons they will then be required to immediately remove the calculator from the website, even in cases where the non-receipt of a response is due to factors such as postal delays and the breach itself was minor (but not immaterial). This may be of particular concern to providers who do not themselves hold an AFSL. In our view it is not practicable for providers to remove a calculator from a website without a workable period of notice. In many cases calculators are hosted under sub-contracting relationships, compounding these practical difficulties.
- This proposed change to the standard may also have unintended consequences for sub-contracts in relation to the hosting of calculators. For example, removal of calculators from websites could result in hosting sub-contractors failing to meet performance standards in service level agreements, thereby triggering financial penalties and even contract termination rights.
- The potential for practical disruption to providers’ business operations is, in our view, not consistent with the harm sought to be avoided, particularly in cases where the actual occurrence of the breach has not been established.

We encourage ASIC to review the proposed breach reporting changes in the light of these comments.

Reference to a financial product

We note that one of the proposed changes to CO 05/1122 is to:

clarify that although the assumptions used by a calculator may in fact reflect a particular financial product, the calculator should not refer to any particular product...

We strongly support the clarification that the assumptions used by a calculator may in fact reflect a particular financial product.

As one of the relief conditions is that the financial calculator must display to the user why the default assumptions including any statutory assumptions are reasonable, we believe there is a significant conflict in not being able to name a particular product where the reasonableness of the assumption is because it reflects that product.

This could relate to assumptions about fees and costs deducted from accounts, assumptions about tax rates and investment fees when determining net investment returns used in the projection, or the indicative amount of insurance premium typically deducted.

We recommend that latitude be provided to name the product when outlining the reasonableness of assumptions, subject to that naming not promoting the product.

Calculators for defined benefit members

Some trustees also provide calculators for the use of defined benefit members of superannuation funds. Defined benefit sections are commonly closed to new members and so are not advertised or promoted as products. It is essential that such calculators use category-specific benefit designs and assumptions and user-specific data. The remade CO 05/1122 should not act to prevent such use.

Role of the class order

As we have stated in previous consultation responses in relation to superannuation benefit projections, relief via class order or legislative instrument provides the provider of the superannuation projection (or the generic calculator in this case) with incomplete legal protection. In our view, this aspect is yet to be adequately addressed and we encourage ASIC to seek government assistance to rectify this.

We continue to advocate that legislation should give the maximum relief possible, including full immunity from civil suit, to providers of superannuation projections and generic calculators provided specified minimum standards are met.

Proposed legislative instrument – definition of ‘n’

We note that the draft legislative instrument provides a definition of present value where the term ‘n’ in the formula provided is measured in whole years. It is common in many existing generic calculators to adopt more accurate periods of time than whole years. For example, it is very common to assume that regular cash-flow occurs midway through a year on average.

Continuing to adopt whole years in this definition will result in an overstatement of the correct present value. For example, a cash-flow that occurs at 9.5 years will only be discounted for 9 years. We estimate that if this applies throughout the projection, failure to discount for the extra half year could cause an overstatement of 2.5% to 3.5% in the overall resulting present value.

Continuing to adopt whole years in this definition will also result in many existing generic calculators needing to be modified to comply with this definition. In that process the results provided will become less accurate.

We therefore recommend that providers of generic calculators be given the discretion to adopt “whole years and fractions of a year” for this purpose.

Specific responses to consultation questions

B1Q1 We broadly agree with the proposals in CP 249, subject to our comments in this submission. In particular, we would strongly support the remade CO 05/1122 being sufficiently flexible to deal with future innovations in the calculator space. As it is difficult to predict where these future innovations may come from and what form they may take, it would be useful if a calculator which did incorporate such innovations could be deemed to comply with the requirements of the class order if actuarial certification was obtained that the calculator met a set of criteria, specified by ASIC, for example where:

- it does not promote any specific product;
- the innovation would, in the actuary's view, enhance the user's ability to understand the information presented by the calculator;
- the innovation would, in the actuary's view, enhance the user's understanding of investment risk.

Alternatively or in addition, ASIC should offer an efficient consultation mechanism under which a determination could be sought from ASIC that a particular proposed innovation would be in accordance with the class order. Such determinations could be de-identified and published, for example in a similar manner to ASIC's relief reports.

B1Q2 We do not agree with this suggestion. From a useability perspective it is, in our view, a substandard experience to send users to another site when they have sought information from their superannuation fund's site. On the fund's site, information can be tailored to the fund (within the limits of the remade CO 05/1122) so that users will better understand the information provided.

Further, providers of calculators should be encouraged to develop new and more engaging ways of presenting information and projections to users of financial calculators, with the goal of enhancing education. Examples of such changes could include the illustration of investment risk and the potential for incorporating stochastic modelling into such calculators. The remade class order and any associated ASIC guidance should encourage such innovation, similar to the approach recently taken by ASIC in *Regulatory Guide 221 Facilitating digital financial services disclosures*.

B1Q3 Subject to the comments in this submission, we consider that the proposals in CP 249 do help achieve ASIC's objectives.

B1Q4 We consider that the requirement that a generic financial calculator must display to the user clear and prominent statements and explanations is achieving its objective. The provision by ASIC of additional examples of how to comply with this requirement may assist in compliance.

B1Q5 In our view, the choice of inflation assumption/s should be the responsibility of the provider of the calculator. However, we would support the provision of guidance from ASIC such that the inflation assumption/s should be set on a basis consistent with those on which the investment objectives, and default investment assumptions, of the available investment options are based. This would ensure that they are suitable for purpose and consistent with other assumptions used in the calculator. Further, we would be comfortable with a requirement that professional advice be obtained as to whether the assumptions are appropriate and in line with the requirements of the remade class order.

B1Q6 We would support an ASIC requirement that calculators include a field(s) relating to fees and costs.

- B1Q7 We do not consider that ASIC should prescribe standardised fees and costs. In our view, setting the fees and costs should be the responsibility of the provider of the calculator. However, we would support an ASIC requirement that the fees and costs be consistent with those reported in the relevant Product Disclosure Statement. We would also support this approach in relation to insurance premiums/fees.
- B1Q8 In our experience, the requirement referred to in this question has proved problematic in practice.
- In some cases, reference to a product actually helps set context for the user around the choices and inputs in the calculator. An example of this would be the ability to use product-specific investment option names when choosing or exploring alternative investment option choices. We are aware of calculators which require users to input their choice of investment return in order for clear compliance with the promotional prohibition, but we consider this approach requires a certain level of financial literacy which may challenge some users. In this example, allowing users to select between product-specific investment options with appropriate default assumptions, together with the ability to edit these defaults, would better enhance the user experience.
- In our view, a more balanced restriction would take the form of a prohibition on providing product-specific advice relating to potential actions arising from the use of the calculator. We would also be comfortable with a requirement to include prescribed educational content and text associated with such potential actions, including appropriate links to the MoneySmart website.
- B1Q9 We would support a requirement that statutory assumptions be kept up to date, provided that industry is given an appropriate period of time (such as 90 days) in which to implement updates after the relevant data are released.
- If such a requirement was to be introduced, we would recommend that the calculator be required to disclose the effective date of its most recent update, so that users can be satisfied that it is up to date. We would also support a requirement that a calculator must prominently disclose, by not more than 30 days after an updated statutory assumption is published, any such assumptions that have not yet been updated.
- B1Q10 We have a number of concerns regarding the inclusion of an estimator in product dashboards, as proposed by the exposure draft legislation to refine the Corporations Act provisions on dashboards, as we consider dashboards and estimators to be intended for very different purposes. We would be pleased to provide further information on this matter. However, if an estimator is to be required, ideally it should provide consistent results to the superannuation fund's own calculator, to minimise user confusion and any consequent reluctance to use, and benefit from, such tools.
- B1Q11 It is difficult to provide precise estimates of costs associated with the proposed changes to the relief. However, we note that, among other costs, it is possible that providers and sub-contractors may be required to review sub-contracting agreements as a result of the proposed changes to breach reporting.

B1Q12 In our view, the relief in CO 05/1122 provides calculator providers with the opportunity for increasing user engagement and education, and ultimately results in better decision making in relation to retirement planning.

We would be pleased to discuss this letter with ASIC or provide any further information needed. Please do not hesitate to contact us should you wish to do so.

Yours sincerely



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