

ASIC Class Order [CO 09/210]

Intra-fund superannuation advice

Issued 7/7/2009

Registered 8/7/2009

Effective 8/7/2009 (date of registration)

Related documents: MR 09/119 and RG 200

Class Order [CO 09/210] provides relief from s945A of the Corporations Act 2001 to superannuation fund trustees (and their authorised representatives) who provide personal advice to fund members about their existing super fund.

This instrument has effect under s951B(1)(a) of the *Corporations Act 2001*.

Prepared by the Australian Securities and Investments Commission.

Australian Securities and Investments Commission Corporations Act 2001 — Paragraph 951B(1)(a) — Exemption

Enabling legislation

1. The Australian Securities and Investments Commission makes this instrument under paragraph 951B(1)(a) of the *Corporations Act 2001* (the *Act*).

Title

2. This instrument is ASIC Class Order [CO 09/210].

Commencement

3. This instrument commences on the date it is registered under the *Legislative Instruments Act 2003*.

Note: An instrument is registered when it is recorded on the Federal Register of Legislative Instruments (*FRLI*) in electronic form: see *Legislative Instruments Act 2003*, s 4 (definition of *register*). The FRLI may be accessed at <http://www.frli.gov.au/>.

Exemption

4. A trustee (the *adviser*) of a regulated superannuation fund (the *fund*) or an authorised representative (the *adviser*) of the trustee does not have to comply with section 945A of the Act for the provision of personal advice (the *advice*) to a member of the fund where all of the following apply:

- (a) the trustee holds an Australian financial services licence that covers the provision of personal advice in relation to superannuation products;
- (b) the advice relates to the member's interest in the fund and does not also relate to:
 - (i) any other financial product (except eligible insurance in relation to the member's interest in the fund); or
 - (ii) anything mentioned in subsection 765A(1) of the Act that would be a financial product but for that subsection (except eligible insurance in relation to the member's interest in the fund);
- (c) the advice does not relate to any of the following matters:
 - (i) an investment strategy in relation to which the member may give a direction under regulation 4.02 of the *Superannuation Industry (Supervision) Regulations 1994* that involves a financial product in relation to which the trustee is required to give disclosure under section 1012IA of the Act or under Part 7.9 of the Act as notionally modified or varied by ASIC Class Order [CO 06/636];
 - (ii) an election by the member of the kind described in subregulation 7.1.04E(1) of the *Corporations Regulations 2001*;
 - (iii) the issue of a new interest in the fund which is taken to occur because of a change to which subregulation 7.9.02(4) of the *Corporations Regulations 2001* applies where under the governing rules of the fund the member has any option, choice or election in relation to the change;
- (d) the fund is not a self managed superannuation fund.

Conditions

5. The exemption in paragraph 4 is available for so long as the conditions in paragraphs 6 and 7 are met.

6. The adviser must inform the member:
- (a) before or at the same time as the advice is provided, that the advice is limited to the member's interest in the fund; and
 - (b) when or as soon as practicable after the advice is provided, that the adviser has provided the advice in reliance on this instrument and accordingly the advice provided is limited to the member's interest in the fund.

The information referred to in paragraph (b) must be provided in writing.

Note: Both these obligations will be satisfied where the advice is provided in writing in a document which also sets out the information required under paragraph (b).

7. If acting on the advice would result in an increase in any of the following:
- (a) fees, costs or charges incurred in relation to the member's interest in the fund;
 - (b) amounts payable by the member as premiums in respect of eligible insurance;
 - (c) remuneration (including commission) or other benefits payable in relation to the member's interest in the fund,

then the adviser must notify the member in writing of the increase when, or as soon as practicable after, the advice is provided, and in accordance with paragraphs 8 to 11.

Note: The conditions in paragraphs 6 and 7 can be satisfied if the relevant information is included in:

- (a) a Statement of Advice that:
 - (i) is the means of providing the advice; or
 - (ii) covers the advice and is given in accordance with subsection 946C(1) of the Act; or
- (b) a record of the advice made under subsection 946AA(4) of the Act and given in accordance with subsection 946AA(5) of the Act.

8. For the purposes of paragraph 7 an increase in the matters listed in that paragraph includes any of the following:
- (a) an increase in the amount or rate of the matter;
 - (b) an increase in the amount that will or may be incurred, be attributable or become payable in relation to a matter resulting from the application of a higher value in relation to the matter;
- Note: This may include, for example, an increase in the final amount of a contribution fee that arises where an increased amount of contributions is applied and the rate of the fee is unchanged.
- (c) a matter becoming applicable in relation to the member's interest in the fund.
9. For the purposes of subparagraph 7(c), an increase in remuneration (including commission) or other benefits must be notified:
- (a) in relation to advice provided by the trustee—if it is to be received by any of the persons listed in paragraph 947B(2)(d) of the Act; or
 - (b) in relation to advice provided by an authorised representative of the trustee—if it is to be received by any of the persons listed in paragraph 947C(2)(e) of the Act.
10. The adviser must express the amount of the increase as an amount in dollars.
11. The adviser need only notify the member of the increase in the matters listed in paragraph 7 to the extent that the adviser knows or could reasonably be expected to find out about the relevant matter.

Interpretation

12. In this instrument:

authorised representative has the meaning given by section 761A of the Act.

eligible insurance means insurance of a kind that the trustee maintains in relation to the members of the fund for the purpose of financing benefits to the members that are within the scope of the *Superannuation Industry (Supervision) Act 1993*.

governing rules has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

investment strategy means an investment strategy formulated by the trustee under the covenant referred to in paragraph 52(2)(f) of the *Superannuation Industry (Supervision) Act 1993*.

personal advice has the meaning given by subsection 766B(3) of the Act.

regulated superannuation fund has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

self managed superannuation fund has the same meaning as in section 17A of the *Superannuation Industry (Supervision) Act 1993*.

trustee has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

Dated this 7th day of July 2009

Signed by Stephen Yen, PSM
as a delegate of the Australian Securities and Investments
Commission