

# Attachment to CP 249: Draft instrument



**ASIC**

Australian Securities & Investments Commission

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## **ASIC Corporations (Generic Calculators) Instrument 2016/XX**

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I, <insert name>, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 2016

<signature>

<insert name>

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## Part 1—Preliminary

### 1 Name of legislative instrument

This instrument is *ASIC Corporations (Generic Calculators) Instrument 2016/XX*.

### 2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislative Instruments.

Note: The register may be accessed at [www.comlaw.gov.au](http://www.comlaw.gov.au).

### 3 Authority

This instrument is made under paragraphs 926A(2)(a) and 951B(1)(a) of the *Corporations Act 2001*.

### 4 Definitions

In this instrument:

*Act* means the *Corporations Act 2001*.

*assumptions* means the factors (which may be changed by the user) that are applied by a financial calculator in working out the estimate.

*estimate* means the result of a numerical calculation performed by a financial calculator.

*financial calculator* means a facility, device, table or other thing used to make a numerical calculation or find out the result of a numerical calculation relating to a financial product.

Note: The facility, device, table or other object will not be a financial calculator to the extent that its output goes beyond the numerical result of a calculation and a description of what that result is. For example, an electronic facility will not be a financial calculator to the extent that it makes a recommendation about a particular financial product or the associated disclosures refer to a particular financial product.

*present value* of the estimate is the amount:

$$\frac{C}{(1+r)^n}$$

where:

C is the estimate to be received or paid in the future.

n is the number of whole years between the present date and the date that the estimate is to be received or paid.

**r** is the assumed rate of inflation between the present date and the date that the estimate is to be received or paid.

Note: The assumed rate of inflation is an assumption to which paragraphs 6(1)(c) to (e) apply.

**statutory assumption** means an assumption that reflects a rate or amount fixed by legislation.

## Part 2—Exemption

### 5 Exemption for providers of financial calculators

- (1) A person who provides financial product advice through, or through making available, a financial calculator does not have to comply with:
  - (a) the requirement in subsection 911A(1) of the Act to hold an Australian financial services licence covering the provision of that advice; and
  - (b) where the person is a financial services licensee—Divisions 2, 3 and 4 of Part 7.7 of the Act in relation to that advice.

#### *Exclusion*

- (2) Subsection (1) ceases to apply to a person if:
  - (a) the person is notified in writing by ASIC that the person is excluded from relying on this instrument and ASIC has not withdrawn that notice in writing; or
  - (b) 10 business days have elapsed since the person became or should reasonably have become aware of matters that give the person reason to believe that the person has failed, other than in an immaterial respect, to comply with a condition of this instrument without full particulars of the failure having been notified to ASIC (to the extent that the person knows those particulars or would have known them if they had undertaken reasonable enquiries); or
  - (c) having received a notification under paragraph (b), ASIC does not notify the person in writing that they may continue to rely on this instrument within 20 business days of the notification.

### 6 Conditions

- (1) A person who relies on the exemption in subsection 5(1) must take reasonable steps to meet the following requirements:
  - (a) The financial calculator must not advertise or promote a specific financial product.
  - (b) If the financial calculator is an electronic facility or device, the financial calculator must:
    - (i) enable the user to change any of the assumptions that are applied by the financial calculator in working out the estimate relating to a financial product other than a statutory assumption; and

Note: The financial calculator does not have to involve the application of any statutory assumptions; but if it does, it may permit the user to change them.

- (ii) work out or enable the user to work out an estimate on the basis of the changed assumptions.
  - (c) The assumptions, including any statutory assumptions, applied by the financial calculator, unless changed by the user, must be reasonable for the purpose of working out the estimate.
  - (d) The financial calculator must display to the user in the ordinary course of its use or have printed on it all of the following:
    - (i) a clear and prominent statement about the purpose and limitations of the calculator;
    - (ii) a clear and prominent explanation of the impact of any significant limitation of the financial calculator;
    - (iii) a clear and prominent statement of the assumptions;
    - (iv) where the estimate is of an amount payable or receivable at a future time of 2 or more years—a clear and prominent statement setting out the present value of the estimate; and
    - (v) a clear and prominent statement to the effect that the financial calculator is not intended to be relied on for the purposes of making a decision in relation to a financial product and that they should consider obtaining advice from a financial services licensee before making any financial decisions.
  - (e) The financial calculator must display to the user (including because of a step taken by the user) or have printed on it an explanation of why the assumptions, including any statutory assumption, are reasonable for the purpose of working out the estimate.
  - (f) If the financial calculator is an electronic facility or device—the financial calculator must not prevent the user from readily printing or electronically storing the estimate.
  - (g) The person must keep a copy of the financial calculator for 7 years from when it is first made available.
- (2) A statement or explanation required under paragraphs 6(1)(d) and 6(1)(e) must contain as much detail as a retail client using the financial calculator would reasonably expect to find having regard to the nature of the calculator.