



**ASIC**

Australian Securities & Investments Commission

**REPORT 477**

# **Response to submissions on CP 249 Remaking ASIC class order on generic financial calculators: [CO 05/1122]**

April 2016

## **About this report**

This report highlights the key issues that arose out of the submissions received on Consultation Paper 249 *Remaking ASIC class order on generic financial calculators: [CO 05/1122]* (CP 249) and details our responses to those issues.

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

This report does not contain ASIC policy. Please see [Regulatory Guide 167 Licensing: Discretionary powers](#) (RG 167).

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## A Overview/Consultation process

- 1 In [Consultation Paper 249](#) *Remaking ASIC class order on generic financial calculators: [CO 05/1122]* (CP 249), we consulted on proposals to remake, without significant amendments, our class order on generic financial calculators, which was due to expire on 1 April 2016 under the *Legislation Act 2003*.
- 2 CP 249 proposed to continue the relief currently given by [Class Order \[CO 05/1122\]](#) *Relief for providers of generic calculators*, subject to amendments, so that:
  - (a) the assumptions must be clearly and prominently displayed, but allow the provider of a generic financial calculator greater flexibility about how they present information on why the assumptions are reasonable for working out the estimate—in particular, the information may be layered (i.e. detailed disclosure may be accessed through a link);
  - (b) if an estimate is of an amount payable or receivable at a future time of two or more years, the results must be adjusted for inflation;
  - (c) if a person relying on the relief becomes aware of a breach, or a likely breach, of any of the conditions in the relief, the person must lodge a written report on the matter with ASIC; and
  - (d) the assumptions used by a calculator may in fact reflect a particular financial product, but the calculator should not refer to any particular product.
- 3 This report highlights the key issues that arose out of the submissions received on CP 249 and our responses to those issues.
- 4 This report is not meant to be a comprehensive summary of all responses received. It is also not meant to be a detailed report on every question from CP 249. We have limited this report to the key issues.
- 5 For a list of the non-confidential respondents to CP 249, see the appendix. Copies of these submissions are currently on the ASIC website at [www.asic.gov.au/cp](http://www.asic.gov.au/cp) under CP 249.

## Responses to consultation

- 6 We received seven non-confidential submissions and one confidential submission to CP 249 from relevant industry bodies, financial services providers and consultants. We are grateful to respondents for taking the time to send us their comments.

7 The submissions we received were largely supportive of the proposals in CP 249.

8 The main issues raised by respondents related to:

- (a) whether a generic financial calculator should be permitted to refer to a specific financial product as part of the disclosure about reasonableness of assumptions;
- (b) the meaning of the condition that a generic financial calculator must not advertise or promote a specific financial product;
- (c) whether ASIC should prescribe an appropriate measure of inflation for the purpose of discounting future receipts and payments;
- (d) whether ASIC should require that generic financial calculators include a field relating to fees and costs and prescribe standardised fees; and
- (e) whether ASIC should amend the conditions of our relief to include a new breach reporting requirement.

## B Remaking [CO 05/1122]

### Key points

This section outlines the submissions on our proposals to remake [CO 05/1122] and our response to those submissions—in particular, it discusses:

- references to specific financial products (see paragraphs 9–13);
- the advertising or promotion of specific financial products (see paragraphs 14–15);
- the inclusion of future estimates in today's dollars (see paragraphs 16–20);
- the inclusion of a field relating to fees and costs and the prescribing of standardised fees (see paragraphs 21–22); and
- the breach reporting requirement (see paragraphs 23–26).

### References to specific financial products

- 9 In CP 249 we proposed to clarify in our regulatory guidance that although the assumptions used by a calculator may in fact reflect a specific financial product, the calculator should not refer to any specific financial product.
- 10 We received a positive response from all respondents about providing guidance confirming that the assumptions used by the generic financial calculator may reflect a specific financial product. However, all of the respondents were opposed to the proposal that the calculator should not refer to that specific product.
- 11 All of the respondents queried how the calculator can explain that the assumptions are reasonable for the purpose of working out the estimate—as required under the relief—without citing the specific financial product. Two respondents also expressed concern that the restriction would make the calculator less user friendly and make it more difficult for consumers to understand the output and learn from the result.
- 12 One respondent cited an example of a fund offering a number of growth investment options (e.g. a passively managed option and an actively managed option) and asserted that it is vital to inform the member on which product the assumptions have been determined because the fee structures will be very different.
- 13 One respondent suggested that simply referring to a specific financial product is different from advertising or promoting that product. However, they did not give reasons for this conclusion.

*ASIC's response*

We have clarified in updated [Regulatory Guide 167 Licensing: Discretionary powers](#) (updated RG 167) that a provider of a generic financial calculator may refer to a specific financial product, but only as part of the disclosure about the reasonableness of assumptions and only if it is material to that disclosure.

We accept the submissions from all of the respondents that allowing a generic financial calculator to refer to a specific financial product as part of the disclosure about the reasonableness of assumptions provides context for the user about the assumptions.

[ASIC Corporations \(Generic Calculators\) Instrument 2016/207](#) sets limits on how the provider may cite a specific financial product as part of their disclosure about reasonableness of assumptions, as well as provides context about the purpose of the generic financial calculator.

## The advertising or promotion of specific financial products

- 14 In CP 249 we sought feedback on how the condition that a generic financial calculator must not advertise or promote a specific financial product has worked in practice.
- 15 All four of the respondents to this feedback question raised concerns about the lack of clarity about when a generic financial calculator advertises or promotes a specific financial product. Three of the respondents:
- (a) recommended that the names of the investment options listed by a particular calculator should be permitted to reflect those available to the user; and
  - (b) queried whether ancillary marketing material that is elsewhere on a fund website (e.g. a panel highlighting the benefits of rolling your superannuation into the fund) can be included on the same screen as a calculator even though it is not part of the calculator.

*ASIC's response*

In ASIC Corporations (Generic Calculators) Instrument 2016/207, we have retained the condition that a generic financial calculator must not advertise or promote a specific financial product, and have provided additional guidance in updated RG 167 about what we consider to be advertising or promoting a specific product.

We consider that we should put some parameters around what these concepts mean by clarifying with guidance and examples that specifically address the concerns raised by respondents.

## Adjustment of future receipts and payments for inflation

- 16 In CP 249 we proposed that if an estimate is of an amount payable or receivable at a future time of two or more years, the results must be discounted for inflation. We also sought feedback on whether ASIC should prescribe an appropriate measure of inflation or whether the provider should be left to make assumptions about the rate of inflation.
- 17 We received a positive response from all respondents to our proposal that results must be discounted for inflation. One respondent recommended that we introduce a transition period of one year to allow sufficient time for affected calculators to be updated.
- 18 Respondents were divided on the issue of whether ASIC should prescribe an appropriate measure of inflation. Three respondents supported the proposal that ASIC should prescribe an appropriate measure of inflation and three respondents believed that the choice of assumptions about inflation should be the responsibility of the provider.
- 19 Two respondents recommended that the deflator should be based on the best estimate of future experience and to ensure consistency this could be an estimate determined by ASIC or the Australian Government Actuary. One respondent recommended that the inflation assumption should be derived from the Australian Bureau of Statistics rolling average data.
- 20 Three respondents recommended that Average Weekly Ordinary Time Earnings (AWOTE) is an appropriate deflator during the pre-retirement period and after retirement the provider should have a choice of using the Consumer Price Index (CPI) or AWOTE.

### *ASIC's response*

We consider consumer comprehension of future returns is assisted by giving an indication of what the return may be at current dollar values at the end of a specified term. This view was confirmed by respondents.

We consider that ASIC should prescribe standard assumptions about the appropriate measure of inflation used to discount future receipts and payments: see ASIC Corporations (Generic Calculators) Instrument 2016/207. Inflation will impact equally on all generic financial calculators regardless of the financial product or the asset allocation that the calculator is modelled on. Further, this approach will reduce the risk of calculators producing divergent results by eliminating differences in a default assumption that can have a significant influence on the outcome.

The respondents recommended that the inflation assumption should be based on the best estimate of future experience. The midpoint of the Reserve Bank of Australia (RBA) target range for

inflation is forward looking and therefore we consider it is a reliable estimate of future experience.

## Fees and costs

- 21 In CP 249 we sought feedback on whether ASIC should:
- (a) require that generic financial calculators include a field relating to fees and costs; and
  - (b) prescribe standardised fees.
- 22 The majority of respondents supported ASIC introducing a new condition that generic financial calculators must include a field relating to fees and costs because otherwise the retirement estimate may be significantly overstated. All of the respondents were opposed to ASIC prescribing standardised fees and costs. For example, two respondents argued that standardised fees and costs could potentially mislead consumers because fees vary for different products and for different asset classes.

### *ASIC's response*

We do not consider that it is appropriate to introduce a new condition that the provider must include a field relating to fees and costs. Similarly, ASIC should not prescribe standardised fees. It is reasonable for providers to use their own fees and providers should retain the flexibility to determine how they disclose fees.

The settings of our relief in ASIC Corporations (Generic Calculators) Instrument 2016/207 inform consumers about the impact of fees and costs on long-term returns. If a generic financial calculator does not include a provision for fees, this needs to be clearly and prominently explained, including the impact of this limitation. Further, a calculator is subject to the prohibition against misleading or deceptive conduct.

## Breach reporting requirement

- 23 In CP 249 we proposed to amend our relief to include a new breach reporting requirement. There was general acceptance of this proposal. Some respondents recommended that we make some technical amendments to the condition.
- 24 Two respondents recommended that the breach reporting condition should only apply to non-Australian financial services (AFS) licensees because AFS licence holders already have an existing framework for compliance and breach reporting. One respondent was also concerned that the breach reporting condition in our relief would impose additional compliance

obligations on licensees because the condition imposes a different threshold for reporting a breach. Licensees must report 'significant breaches' of the obligations set out in s912A and 912B of the *Corporations Act 2001* (Corporations Act), whereas the condition in our relief requires reporting of any failure to comply with a condition of the relief 'other than in an immaterial respect'.

- 25 One respondent also raised concerns about the consequences of reporting a failure to comply with a condition of the relief. The draft instrument excluded a provider of a generic financial calculator from relying on the relief if they notify ASIC of a breach and ASIC does not confirm within 20 business days that they may continue to rely on the relief. The respondent submitted that the potential for practical disruption to business operations would outweigh any potential harm to consumers.
- 26 One respondent recommended that ASIC should provide guidance about the proposed breach reporting requirement and the circumstances in which a breach would be 'other than in an immaterial respect'.

*ASIC's response*

ASIC Corporations (Generic Calculators) Instrument 2016/207 allows the provider of a generic financial calculator to continue to rely on the relief after they lodge a breach notification until they are notified in writing by ASIC that they are excluded from relying on the instrument. This helps to address the possibility of practical disruption to business identified by one of the respondents.

We do not consider that the breach reporting condition should only apply to providers that are not AFS licensees. The approach taken in the instrument is to apply the same reporting condition on all persons relying on the relief, whether or not they are AFS licensees.

As requested by respondents, we have provided additional guidance in updated RG 167 to assist providers determine when a breach would be 'other than in an immaterial respect'.

## Appendix: List of non-confidential respondents

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- Australian Institute of Superannuation Trustees
  - Challenger
  - Financial Services Council
  - Infocus Wealth Management
  - Institute of Actuaries of Australia
  - Mercer Consulting (Australia) Pty Ltd
  - Willis Towers Watson
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