

## ASIC CLASS ORDER [CO 11/927]

### 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 11/927] under paragraph 911A(2)(1) of the *Corporations Act 2001* (the *Act*).

Paragraph 911A(2)(1) of the Act provides that ASIC may exempt a class of persons from the requirement to hold an Australian financial services licence (AFSL) for a financial service.

Persons who provide financial product advice are required to hold an Australian financial services licence. “Financial product advice” is defined in section 766B of the *Corporations Act* and means a recommendation or statement of opinion or a report of either of those things that:

- (a) is intended to influence a person or persons in making a decision in relation to a particular financial product or class of financial products, or an interest in a particular financial product or class of financial products; or
- (b) could reasonably be regarded as being intended to have such an influence.

#### 1. Background

In 2003, ASIC provided a limited exemption to financial counselling agencies from the requirement to hold an AFSL under the *Corporations Act 2001* to enable them to provide financial product advice to persons where the advice was provided in the context of the overall financial counselling service. The exemption is set out in ASIC Class Order [CO 03/1063].

The conditions imposed upon exempt service providers were that services were provided to consumers at no cost, that the agency did not otherwise carry on a business that would otherwise require a financial services licence and that certain other requirements relating to training were met.

ASIC Class Order [CO 03/1063] defined a “financial counselling service” as a counselling and advocacy service provided predominantly for the purposes of assisting individuals who are in financial difficulty due to circumstances such as debt over-commitment, unemployment, sickness or family breakdown.

When framing the *National Consumer Credit Protection Act 2009* (the *Credit Act*) and the *National Consumer Credit Protection Regulations 2010* (the *Credit Regulations*), this licensing exemption was substantially adopted in subregulation 20(5) of the Credit Regulations to exempt financial counsellors from the credit licensing requirements.

Following the implementation of the new national consumer credit regime, ASIC undertook an assessment of the range of non-commercial services provided to consumers and small business principally by non-Government organisations in relation to financial and credit issues to consider any regulatory issues arising in relation to the new credit regime or the existing financial services licensing requirements. ASIC identified a spectrum of services inclusive of services directed toward:

- low income and/or disadvantaged consumers and people in financial hardship;
- primary producers and rural small businesses; and
- capacity building programs such as financial literacy programs.

ASIC considers that the financial literacy services provided by money management service providers, principally to Indigenous consumers in regional and remote Australia, should be exempt from the requirement to hold an AFSL in relation to the provision of financial product advice about basic deposit products for the reasons set out below.

ASIC Class Order [CO 11/926] also exempts these service providers from the credit licensing requirements for providing “credit assistance” under the Credit Act.

#### *Money management services*

Money management services are financial literacy and capacity building services designed to assist people to better and more safely use financial products and services such as basic deposit products and consumer credit. Money management service providers are not exempt under ASIC Class Order [CO 03/1063] as these services provided by these providers are qualitatively different from general financial counselling services. The objectives of money management service providers include:

- helping people better understand and use financial products and services including credit;
- assisting and empowering people to make better informed decisions about managing their money including developing the skills to budget, save and manage debt;
- helping people manage immediate financial pressures and create sustainable, long-term behaviours and outcomes; and
- making appropriate referrals to other services such as financial counselling services or legal services for further specialist assistance.

The provision of financial product advice about basic deposit products is not the core business of money management service providers. However, it may be provided from time to time depending upon the circumstances and financial position of the client in the context of the broader service.

## **2. Purpose of the class order**

ASIC Class Order [CO 11/927] gives a limited exemption from the Australian financial services licensing requirements to money management service providers in relation to the provision of financial product advice limited to advice about basic deposit products where it is provided as part of the money management service.

The purpose of the exemption for money management service providers is to ensure that their services can continue to be provided to consumers, principally Indigenous consumers in regional and remote Australia. This exemption recognises the important assistance and support money management services give to consumers to access and use basic deposit products in more cost effective and sustainable ways.

This relief is given to money management service providers that deliver services within the parameters set by the Government funding and supervisory arrangements. This exemption is designed to support the continuing provision of these services within a consistent regulatory framework without imposing a disproportionate regulatory burden on service providers that would otherwise make their services unviable.

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

#### *Money management services*

Under the relief, a money management service provider may lawfully provide financial product advice about basic deposit products without holding an Australian financial services licence provided:

- the financial product advice is provided as part of the money management service; and
- no fees or charges are payable by the consumer for any aspect of the money management service; and
- the service provider ensures its representatives have adequate skills, knowledge and experience to satisfactorily provide the financial product advice and any other aspect of the money management service.

### **4. Consultation**

Before making this class order, ASIC consulted with the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA). ASIC also consulted with money management services and financial counselling agencies.