ASIC CLASS ORDER [CO 14/870]

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 14/870] under paragraphs 926A(2)(a) and 951B(1)(a) of the *Corporations Act 2001* (the Act).

Paragraph 926A(2)(a) of the Act provides that ASIC may exempt a class of persons from all or specified provisions of Part 7.6 of the Act.

Paragraph 951B(1)(a) provides that ASIC may exempt a class of persons from all or specified provisions of Part 7.7 of the Act.

Class Order [CO 14/870] amends ASIC Class Order [11/1227]. Under subsection 33(3) of the *Acts Interpretation Act 1901* (as in force as at 1 January 2005 and as applicable to the relevant powers because of section 5C of the Act), where an Act confers a power to make, grant or issue any instrument (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

# 1. Background

A retirement estimate is an estimate of a member’s likely balance of their superannuation investment at retirement. A retirement estimate may be personal advice under section 766B of the Act.

ASIC Class Order [CO 11/1227] provides conditional relief from the AFS licensing requirements in the Act to superannuation fund trustees who prepare retirement estimates for their members in accordance with the conditions in [CO 11/1227]. Where a trustee already holds an AFS licence, we have given relief from the advice, conduct and disclosure requirements of Part 7.7 of the Act.

Without relief providers of retirement estimates may need to hold an Australian financial service (AFS) licence with a personal advice authorisation and comply with the personal advice requirements of the licensing regime as well as the other conduct and disclosure requirements in Part 7.7 of the Act.

# 2. Purpose of the class order

The purpose of this class order is to amend ASIC's relief for providers of retirement estimates to allow a provider to include an estimate of the age pension which might be available to the member along with the member's superannuation benefit at retirement.

The revised guidance and relief also make a number of minor technical changes.

The relief aims to facilitate superannuation fund trustees providing retirement estimates to members. The purpose of a retirement estimate is not to give an exact estimate of the member’s retirement benefit, but is instead intended to provide an initial figure that would prompt the member to make further inquiries in relation to their retirement planning.

# 3. Operation of the class order

[CO 14/870] amends [CO 11/1227] to:

(a) allow a superannuation fund trustee (if they wish) to include an estimate of a member’s age pension together with the member’s superannuation forecast. The age pension estimate must be calculated on the basis that:

(i) the member qualifies for an age pension under section 43 of the *Social Security Act 1991*;

 (ii) the member has a partner;

 (iii) the member and their partner jointly own their own home;

(iv) the member and their partner each have a single superannuation fund retirement benefit equal to the lump sum and these benefits are applied on the date of the estimate to purchase superannuation pensions that provide each of the member and their partner with income in that year equal to the annual income stream amount worked out in accordance with the amended [CO 11/1227];

 (v) the member and their partner have no other assets or income affecting the amount of the age pension payable to the member or their partner, including any other superannuation accounts;

(b) require that the estimate be calculated based on an assumed retirement age of 67 for all persons, and that the income stream be based on a 25 year period post-retirement;

(c) amend the definition of administration fees which are required to be taken into account in calculating the retirement estimate to align with the definition in section 29V of the *Superannuation Industry (Supervision) Act 1993*. Various consequential amendments to [CO 11/1227] are also made as a result of this change;

(d) clarify that contributions excludes amounts transferred into the member’s account with the fund from another account with another superannuation entity;

(e) require that amounts stated in the retirement estimate must be rounded to three significant figures; and

(f) amend the wording of the prescribed consumer warning to clarify and improve the warning.

# 4. Consultation

ASIC Regulatory Guide 229 *Superannuation Forecasts* (RG 229) was published in December 2011 and describes the relief contained in [CO 11/1227]. In preparing [CO 14/870], we have taken into account submissions made in response to Consultation Paper 203 *Age pension estimates in superannuation forecasts: Update to RG 229* (CP 203) which was published in March 2013. ASIC received 15 submissions in response to this consultation paper. ASIC has released a report, Report 418 *Response to submissions on CP 203 Age pension estimates in superannuation forecasts: Update to RG 229* and an updated version of RG 229 at the same time as the class order.

The Office of Best Practice Regulation has confirmed that a Regulation Impact Statement is not necessary.

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the*

*Human Rights (Parliamentary Scrutiny) Act 2011*

**ASIC Class Order [CO 14/870]**

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the legislative instrument**

The purpose of this legislative instrument is to amend ASIC Class Order [CO 11/1227] (the principal class order). The principal class order provides conditional relief from the Australian financial services licensing requirements in the *Corporations Act 2001* to superannuation fund trustees who prepare retirement estimates for their members in accordance with the conditions in the principal class order.

The key changes made by [CO 14/870] to [CO 11/1227] include:

(a) allowing superannuation fund trustees to provide an estimate of a member’s age pension together with the member’s superannuation forecast; and

(b) requiring that the estimate be calculated based on an assumed retirement age of 67 for all persons.

**Human rights implications**

This legislative instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This legislative instrument is compatible with human rights as it does not raise any human rights issues.