



ASIC

Australian Securities & Investments Commission

REPORT 71

Overview of decisions on relief applications from financial service providers (September to December 2005)

April 2006

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About this report

1 ASIC is vested with a number of powers under the *Corporations Act 2001* (the Act) to exempt a person or class of persons from particular provisions and to modify the application of particular provisions to a person or class of persons. This report deals with the use of our exemption and modification powers under the managed investments provisions of Chapter 5C and the financial services provisions of Chapter 7 of the Act.

2 The purpose of the report is to improve the level of transparency and the quality of information available about decisions we make when we are asked to exercise our discretionary powers to grant relief from provisions of the Act.

3 The report covers the period beginning 1 September 2005 and ending 31 December 2005. During this period we decided 473 applications concerning Chapter 5C, Chapter 7 and related provisions of the Act. We granted relief in relation to 400 applications and refused relief in relation to 73 applications.

4 This report does not provide details of every single decision made in that period. It is intended to provide examples of decisions that demonstrate how we have applied our policy in practice. Our general policy is to only consider granting relief from the requirements of Chapter 5C and Chapter 7 to address atypical or unforeseen circumstances and unintended consequences of those provisions.

5 In this report we have outlined matters in which we refused to exercise our discretionary powers as well as matters in which we granted relief. Prospective applicants for relief may gain a better insight into the factors we take into account in deciding whether to exercise our discretion to grant relief. We have also included some examples of limited situations in which we have been prepared to take a no-action position when instances of non-compliance have been brought to our attention.

6 The appendix to this report details the relief instruments we have executed for matters referred to in the report. Class orders are available from our website via www.asic.gov.au/co. Instruments are published in the ASIC Gazette, which is also available via www.asic.gov.au/gazettes. The information releases referred to throughout the report are available via www.asic.gov.au/mr.

7 Applications for relief from the provisions of Chapter 5C and Chapter 7 are assessed by the Applications and Advice division of ASIC's Regulation directorate. Applications must be in writing and should address the requirements set out in Policy Statement 51 *Applications for relief* [PS 51]. Relief applications can be submitted electronically to **fsr.applications.manager@asic.gov.au**. More information on applying for relief is available at **www.asic.gov.au/fsrrelief**.

8 Throughout this report, references to particular sections, subsections and paragraphs of the law are references to the *Corporations Act 2001* and references to particular regulations are references to the Corporations Regulations 2001.

Section 1: Licensing relief

1.1 This section outlines some of our decisions on whether to grant relief under s911A(2) and 926A(2) from the requirement to hold an Australian financial services (AFS) licence.

Foreign financial service providers

Relief facilitates temporary remote location of employees

1.2 We exempted an investment manager, which was incorporated in the United Kingdom (UK) and regulated by the UK Financial Services Authority (FSA), to enable it to locate two employees in Australia without obtaining an AFS licence. The applicant advised corporate trustees that invested in financial products in Japan and wanted some of its employees to work in the Asian time zone. The applicant was eligible for the relief contained in Class Order [CO 03/1099] *UK FSA regulated financial service providers* but submitted that some of the class order conditions would impose a compliance burden that was disproportionate to the limited level of business activity it would be carrying on in Australia. We decided to give the applicant an exemption on less onerous terms than the class order because the applicant would only be providing services to wholesale clients outside Australia.

UK enforcement action and reliance on class order

1.3 A foreign financial services provider (FFSP) that was relying on Class Order [CO 03/1099] *UK FSA regulated financial service providers* informed us, as required by the class order, that it had been the subject of one enforcement action in the UK. We decided to let the FFSP continue to rely on the class order on the basis that the enforcement action did not create any doubt about whether regulation by the foreign regulator in the foreign regime continued to produce sufficiently equivalent regulatory outcomes to the regime that applies under the Act.

Exemption for SFE clearing activities

1.4 We exempted a UK entity that sought to become a clearing participant on the Sydney Futures Exchange (SFE). The UK entity wanted to clear all SFE positions that its licensed Australian subsidiary had been clearing. We took the view that there was only marginal regulatory benefit in requiring the UK entity to have an AFS licence because the UK entity was regulated by the FSA for its derivatives trading, its activities in Australia were limited to clearing activities on the SFE, and its Australian subsidiary's AFS licence covered the financial services that the applicant proposed to provide.

Employee share schemes

Small-scale on-market purchase and transfer of shares to employees

1.5 We exempted an issuer of shares for the on-market purchase, and subsequent transfer for no monetary consideration, of \$1,000 worth of its shares to each of its employees who had provided more than three years of service to the company. The value of the shares that were to be transferred to the employees represented approximately 0.11% of the total value of shares in the applicant issuer. The applicant was unable to rely on Class Order [CO 03/184] *Employee share schemes* because the class order grants an exemption for the issue of new shares rather than the transfer of existing shares. We decided it would be consistent with our policy stated in Policy Statement *Employee share schemes* [PS 49] to grant relief in this situation because the transaction was not entered for a fundraising purpose and there was a sufficient level of mutual employer-employee interdependence.

Replacement of old employee share plan with new plan

1.6 We exempted an issuer that proposed to issue options to its senior managers. The issuer was ineligible for an exemption under Class Order [CO 03/184] *Employee share schemes* because the class order only applies where options are issued for nominal consideration. In this matter the senior managers had to surrender their rights under a previous employee share scheme in order to benefit from the offer of options and the applicant submitted that it was arguable that the senior managers would be providing something more than nominal consideration. We considered that the circumstances of the restructure of the applicant's employee share plan arrangements ought not to prevent it from having the benefit of an exemption.

Shares not listed on approved foreign market

1.7 We exempted three Australian entities that were operating a global employee share scheme. The offers made under the scheme fell outside the definition of 'eligible offer' under Class Order [CO 03/184] *Employee share schemes* because the shares that were to be issued were listed on an exchange that was not an approved foreign market. We granted the exemption on the basis that the shares were to be issued to the employees for no monetary consideration and the scheme otherwise met the underlying rationale of Policy Statement 49 *Employee shares schemes* [PS 49].

Other licensing relief

Exemption for statutory fund

1.8 We exempted the trustee of a statutory based fund that administered long service leave entitlements to employees within a particular industry. The applicant was created by, and was subject to, an Act of a state parliament (which imposed strict audit and actuarial requirements), was limited in jurisdiction to one state of Australia and was controlled by a state parliamentary minister. We considered that it was an appropriate case in which to grant an exemption because there were similarities between the applicant's circumstances and those of the entities that fall within the ambit of Class Order [CO 02/314] *Employee redundancy funds: relief* and there was adequate alternative regulation under the statutory regime that controlled the operations of the fund.

Treasury activities for mining group

1.9 We exempted a special purpose entity of a mining group that was providing certain treasury activities to some joint venture entities that were associated with the group. Most financial services that the applicant provided were for related bodies corporate and covered by the s911A(2)(i) exemption. However, some of the entities to which it provided financial services were part of the group structure but were not its related bodies corporate, and some of the entities were not part of the group but were involved in joint arrangements with the group. We decided to grant relief on the basis that the applicant was providing financial services to support the group's mining business rather than for trading purposes. As the arrangements were already in place before Chapter 7 of the Act came into force, we considered that it would be disproportionately burdensome to require the applicant to be licensed in the circumstances.

Licence required for debenture offer

1.10 We refused to exempt a special purpose vehicle that proposed to offer debentures. The applicant submitted that the offer was intended as a one-off fundraising and that the self-dealing exception in s766C(4) (which provides that an entity does not provide a financial service where it deals in its own securities) was applicable. We considered that the applicant may be carrying on an investment business and, due to the effect of s766C(5) (which prevents investment businesses relying on the self-dealing exception), would not be eligible for the self-dealing exception. Therefore we took the view that it was consistent with Parliament's intention to require the applicant to hold an AFS licence.

Licence required for advice about voting that relates to dealing

1.11 We refused to exempt a corporate governance advisory firm from the obligation to hold an AFS licence when providing advice about voting, where the vote related to a dealing in financial products. Under reg 7.1.30, advice that is solely about voting does not constitute the provision of a financial service unless the voting about which the advice is given relates to a dealing in financial products. Although the applicant would only be advising wholesale clients about voting with respect to ASX-listed financial products, we did not consider that it would be consistent with Parliament's intention to grant relief.

No-action position pending determination of AFS licence application

1.12 We issued a no-action letter to a taxi club while we were considering its AFS licence application. The applicant required an AFS licence because it was providing a mutual risk product to its members. The applicant accepted annual subscriptions from members and used the pooled contributions to pay benefits relating to members' taxis that covered matters such as damage, towage and actions arising out of property damage. We decided it was appropriate to adopt a no-action position because, upon becoming aware of our view that this conduct involved the provision of a financial service, the applicant promptly took legal advice and applied for an AFS licence in accordance with Information Release [IR 03-17] *ASIC's interim approach for regulation of mutual risk products*.

Risk and insurance products

1.13 We issued a no-action letter to a group of retail optical dispensers for any unlicensed financial services they provided in offering a 12-month warranty to clients free of charge on certain products. We considered that the warranty was likely to fall within the 'incidental' exception to the 'financial product' definition in s763E, but arguably could constitute insurance. We issued the no-action letter on the basis that there was room for doubt whether the warranty was a financial product.

1.14 In another matter, we refused to declare that a specific facility, which was promoted as a 'warranty' for work done by pest controllers in home termite inspections, was not a financial product. We considered that the facility may be a general insurance product. Further, we were not satisfied that the facility could be considered 'incidental' to a non-financial product purpose within the meaning of s763E. Therefore we refused the application on the basis that the warranty should be regulated as a financial product.

Information releases and class orders

1.15 The following information releases and class orders relate to the licensing relief granted during the period of this report.

Information releases

[IR 05-60] *ASIC adopts a flexible approach to the regulation of non-cash payment facilities.*

[IR 05-63] *ASIC provides ongoing licensing relief for credit rating agencies.*

[IR 05-64] *ASIC releases policy on calculators.*

Class orders

[CO 05/736] *Low value non-cash payment facilities.*

[CO 05/738] *Gift facilities.*

[CO 05/740] *Prepaid mobile facilities.*

[CO 05/957] *Singapore MAS regulated financial services providers—amendment.*

[CO 05/1122] *Relief for providers of generic calculators.*

[CO 05/1194] *Actuaries—amendment.*

[CO 05/1230] *Credit rating agencies.*

[CO 05/1243] *Licensing relief for valuers providing valuations of shares in real estate companies.*

Section 2: Disclosure relief

2.1 This section outlines some of our decisions on whether to grant relief under s951B and 1020F from the Chapter 7 requirements to provide disclosure documents such as Product Disclosure Statements (PDSs) and Financial Services Guides (FSGs).

Relief relating to PDSs

Compliance with enhanced fee disclosure required

2.2 We refused to exempt the trustee of a superannuation fund from the enhanced fee disclosure requirements for PDSs that were introduced by the Corporations Amendment Regulations 2005 (No. 1). The trustee intended to wind up the fund by 31 March 2006 and submitted that the cost of updating the PDS to meet the fee disclosure requirements imposed an unreasonable burden because the PDS would only be used from 1 July 2005 until 31 March 2006, during which time it expected no more than 20 new members to join the fund. We refused the application because:

- we considered that the trustee had not adequately addressed consumer detriment issues that could arise for new members of the fund;
- we were not persuaded that the commercial cost of compliance with the enhanced fee disclosure requirements outweighed the consumer protection afforded by compliance; and
- at the time the application was made, we were not satisfied that there was sufficient certainty that the fund would be wound up.

Statutory fund

2.3 In the matter referred to at paragraph 1.8, we also granted the applicant an exemption from the requirement to provide a PDS.

Extension of class order relief for interest purchase plan

2.4 Class Order [CO 02/832] *Interest purchase plans* allows the responsible entity of an ASX-listed registered managed investment scheme to offer to issue up to \$5,000 worth of additional interests in the scheme to each member without providing a PDS. We granted an exemption so that \$5,000 worth of stapled securities that included interests in a listed registered scheme could be offered to all scheme members of the scheme except those who held interests that did not form part of a stapled security. The class order relief would not have permitted the responsible entity to exclude the members who did not hold stapled securities from the offer. We granted relief on the basis of the unusual

circumstances of the application and imposed a condition that required the responsible entity to obtain the unanimous approval of those members who would be excluded from the offer.

Relief to confer continuously quoted securities status

2.5 We granted relief to a company so that financial products it issued could be treated as a ‘continuously quoted security’ for the purposes of s1013FA (which allows issuers of continuously quoted securities to exclude certain information from their PDSs) and s1012DA(5) (which allows continuously quoted securities to be on-sold without a PDS being provided in certain circumstances). The applicant company, which had a dual listed structure, was the subject of an ASIC order made under s341 that allowed it to use the UK Financial Reporting Standards instead of the Australian International Financial Reporting Standards for certain financial years. For this reason the applicant’s financial products technically fell outside the statutory definition of ‘continuously quoted securities’. We considered that it was appropriate to grant relief because the s341 order was of a technical nature and did not undermine the rationale for allowing continuously quoted securities to have the benefit of s1013FA and s1012DA(5). Our decision to grant relief was broadly consistent with the relief we have given in Class Order [CO 04/1455] *Continuously quoted securities* and Class Order [CO 04/672] *Extension of on-sales exemptions*.

Stapled security instalment receipts

2.6 We granted relief so that the issuers of certain financial products that together constituted stapled securities were treated as the offerors and issuers of the interests in the underlying financial products that were created when the stapled securities were issued on an instalment basis. The effect of the relief was to make the issuers of the underlying financial products subject to the liability and defence provisions of Chapter 6D and Part 7.9.

Exposure period relief for replacement PDS

2.7 We granted relief so that a second exposure period was not required for a replacement PDS. We decided to grant relief because we were satisfied that the original PDS was made widely available to the public and the changes in the replacement PDS were so minor that no further exposure period would be necessary for the market to absorb the changes. As a condition of the relief, the applicant had to identify the ways in which the replacement PDS materially differed from the original PDS in the replacement PDS or an accompanying document.

PDS required for put options in renounceable sales contract

2.8 We were not prepared to grant an exemption from the requirement to give a PDS for put options used in renounceable sales contracts (RSCs). Under the RSCs prospective purchasers of strata title units entered into a put option agreement with the developer. The holder of a put option was able to exercise the option to buy the strata unit from the developer at a significant discount to valuation upon completion of construction. Under the put option terms, the option holder had to pay a 10% deposit and when the option expired the developer had to pay the option holder at least 22.5% per annum. In our view, the handling of the deposit involved a facility for making a financial investment and therefore it was appropriate for the option holder to receive a PDS.

Relief relating to FSGs**Trustee FSG combined with unlicensed issuer PDS**

2.9 We granted relief to allow a trustee that provided custodial services in connection with interests in a registered managed investment scheme to include its FSG in the PDS for the scheme interests. The interests were issued on an instalment basis and the applicant was to hold the underlying interests for the benefit of the investors until the final instalment was paid. The entity that issued the interests did so on behalf of the responsible entity and did not hold an AFS licence. We considered that it would be disproportionately burdensome and not beneficial to consumer protection overall if the applicant had to provide its FSG to each person who acquired an interest under the instalment terms. The relief that we granted was broadly consistent with the relief contained in Class Order [CO 04/1572] *Secondary Services: Financial Services Guide relief for experts*, which allows independent experts to include their FSGs in offer documents.

FSG combined with debenture prospectus

2.10 We granted relief to allow an AFS licensee acting as an arranger under an intermediary authorisation to combine its FSG with the prospectus of an unlicensed issuer for an offer of debentures. Our decision to grant the relief was broadly consistent with the policy underlying Class Order [CO 04/1573] *Secondary Services: Financial Services Guide relief for arrangers acting under an intermediary authorisation*, which allows an arranger's FSG to be combined with an issuer's PDS.

Custodial nominee's FSG combined with PDS

2.11 We granted relief to allow a licensed nominee that was providing custodial and depository services in relation to certain financial products to combine its FSG with the unlicensed issuer's PDS. Under the terms of issue of

the products, the applicant nominee (a related body corporate of the issuer) was to hold certain shares on trust for the investors until the products matured. Class Order [CO 04/1573] *Secondary Services: Financial Services Guide relief for arrangers acting under an intermediary authorisation* allowed another entity that was arranging the issue of the product to include its FSG in the PDS for the products. In our view, it would be less confusing for retail clients to receive a PDS (from the issuer) that included two FSGs (from the arranger and the nominee respectively), rather than a combined PDS (from the issuer) and FSG (from the arranger) with a separate FSG (from the nominee). We considered that the relief would enable the issuer, the arranger and the nominee to provide 'clear, concise and effective' disclosure to retail clients.

Other disclosure relief

Extension of reporting period for superannuation sub-plan

2.12 We exercised our power under reg 7.9.32(2) to fix the reporting period for a sub-plan of a superannuation fund for the year ending 30 June 2006 at one year and two days. The effect of our decision was that the sub-plan's reporting period could be streamlined with that of its trustee. We considered that the broader types of information required for a superannuation fund's report under s1017DA and Subdivision 5.6 of Part 7.9 of the Regulations would generally not be affected by a brief extension.

Disclosure relief for friendly society constitutional amendments

2.13 We granted relief from the de-mutualisation disclosure regime in Part 5 of Schedule 4 of the Act to allow a friendly society to make certain amendments to its constitution. The applicant owned a number of pharmacies and one purpose of the constitutional amendments was to refine the applicant's voting system so that it could meet legislative requirements governing pharmacy ownership. Other constitutional amendments altered the arrangements that would apply in the event of a winding up and the procedures for electing directors, and limited the liability of members. We granted relief on the basis that the proposed constitutional amendments would not alter the applicant's mutual structure. We imposed conditions on the relief that would ensure that the notice of meeting proposing the constitutional amendments provided an adequate explanation to ensure that members could make an informed decision about the proposed amendments.

Relief from unsolicited offer provisions for foreign company's acquisition of shares

2.14 We granted relief from the provisions of Division 5A of Part 7.9 to a foreign company that proposed, through its subsidiary, to acquire shares in an Australian company and to significantly increase its ownership share of the Australian company. The purpose of the disclosure regime contained in Division 5A of Part 7.9 is to ensure that investors are adequately protected in circumstances where they may be ignorant as to the value of their financial products. We considered that this objective could be met without imposing the Division 5A requirements because:

- item 7 of s611 requires that shareholders receive all information relevant to their decision on how to vote on the resolution;
- the material to be provided to shareholders would include the price offered, and an analysis of whether the price was fair and reasonable; and
- an independent expert report was to accompany the offer.

Our decision to grant relief was consistent with previous decisions we have made in the context of offers made to Australian residents under regulated foreign takeover bids in approved foreign markets and schemes of arrangement for foreign companies in approved foreign markets that are subject to court approval.

Dollar disclosure required in Statements of Advice

2.15 We refused to exempt an AFS licensee from the dollar disclosure obligations under s947B(2)(d) and 947B(2)(e)(i), which required the licensee to disclose its commissions in its Statements of Advice. The applicant failed to demonstrate that there were any exceptional circumstances that would make compliance with the dollar disclosure provisions unreasonably burdensome. Its submission that it would incur significant compliance costs making adjustments to its systems was not a sufficient basis for us to grant relief, particularly given that the financial services industry had already had a significant period in which to transition to the dollar disclosure obligations.

Information releases and class orders

2.16 The following information releases and class orders relate to the disclosure relief granted during the period of this report.

Information releases

[IR 05-56] *ASIC releases new version of in-use notice.*

[IR 05-60] *ASIC adopts a flexible approach to the regulation of non-cash payment facilities.*

[IR 05-64] *Further answers on some fees and costs questions.*

Class orders

[CO 05/736] *Low value non-cash payment facilities.*

[CO 05/738] *Gift facilities.*

[CO 05/740] *Prepaid mobile facilities.*

[CO 05/850] *Unsolicited offers under a regulated foreign takeover bid.*

[CO 05/938] *Variation of Class Orders [CO 01/1455] and [CO 04/672].*

[CO 05/1230] *Credit rating agencies.*

Section 3: Managed investments relief

3.1 This section sets out some of the circumstances in which we have granted or refused to grant relief under s601QA from the provisions of Chapter 5C.

Registration requirement

Exemption for statutory fund

3.2 In the matter referred to at paragraphs 1.8 and 2.3, we also exempted the applicant from the requirement to register a managed investment scheme.

Further extension of transition period for prescribed interest scheme

3.3 We further extended the transition period for a prescribed interest scheme to enable the scheme's management company to adequately assess the scheme's position and meet with members to determine the future of the scheme. In our view there was no regulatory benefit to be gained from denying a short extension.

Equal treatment requirement

Differential distribution of scheme capital gains permitted

3.4 We exempted a responsible entity from the s601FC(1)(d) obligation to treat all members who hold interests of the same class equally so that it could treat members who were making withdrawals differently based on the size of their withdrawal and the net asset value of the scheme at that time. Under a provision of the proposed scheme constitution, where either the size of the withdrawal exceeded a certain amount and represented more than a certain proportion of the scheme's net assets or the withdrawal was to be satisfied by a direct transfer of scheme assets to the withdrawing member, the responsible entity could allocate any net capital gain caused by the selling of the scheme's assets to meet the withdrawal request to the withdrawing member. We granted relief on the basis that the provision was fair to all members and beneficial to the scheme as a whole.

Relief granted to facilitate compliance with broadcasting regime

3.5 We exempted the responsible entity of a scheme that held media assets from its s601FC(1)(d) obligation so that it could meet certain obligations under the *Broadcasting Services Act 1992*. The Broadcasting Services Act contains provisions that regulate the ownership and control of entities that hold certain

broadcasting licences. Those entities are required to include provisions in their constitutions that allow the entity to force a person to sell their holdings in order to prevent a contravention of the Broadcasting Services Act provisions. We considered that it was appropriate and in the best interests of scheme members overall to allow this differential treatment to occur so that the scheme and the broadcasting entities in which it held interests would not breach the Broadcasting Services Act. We granted relief on the basis that:

- the requirements of the broadcasting regime and the disposal mechanism would be made known to members through the scheme disclosure documents;
- those members who were required to sell their holdings would receive a fair price; and
- a permanent flag notifying the ownership restrictions would be maintained on the ASX's Stock Exchange Automated Trading System.

Relief to permit exclusion of certain US foreign investors

3.6 We exempted a responsible entity from its s601FC(1)(d) obligation to assist in compliance with United States (US) law. Interests in the scheme were to be initially offered to US investors who were both qualified institutional buyers and qualified purchasers (under certain US laws), as well as to investors who were Australian residents. We granted relief so that the applicant could compulsorily divest US members of their interests if the US members ceased to be both qualified institutional buyers and qualified purchasers. The rationale for our decision was broadly consistent with the relief from s601FC(1)(d) contained in Class Order [CO 05/26] *Constitutional provisions about the consideration to acquire interests*, which allows a responsible entity to exclude foreign members from certain offers of discounted interests that would otherwise need to be made to all members.

Other managed investments relief

Transfer of scheme property to wholly owned sub-trust

3.7 We granted relief to a responsible entity from the requirement under s208 (as amended by s601LC) to seek member approval for the transfer of scheme property to the trustee of a sub-trust (sub-trustee). The purpose of that provision was to prevent scheme property from leaving the scheme through a transaction involving a related party without the members of that scheme approving the transaction. The responsible entity wholly owned the sub-trustee and we granted relief on the basis that the scheme would retain control of the property.

Relief to facilitate change of responsible entity

3.8 We granted relief from the s601FL requirement to lodge a notice with ASIC concerning a change of responsible entity within two business days after members pass a resolution to appoint the new responsible entity. The annual report for the scheme had not been signed off before the resolution was passed. We considered that the outgoing responsible entity was more likely to have the requisite knowledge of the scheme's activity for the relevant financial year than the incoming responsible entity. Therefore we considered that it was appropriate to allow the outgoing responsible entity to continue in office until the annual report was finalised. The effect of the relief granted was that the notice concerning the change of responsible entity did not have to be provided to ASIC until 10 days from the date the resolution was passed.

3.9 In another matter, we granted relief to allow the initial responsible entity of a scheme to retire and appoint a replacement responsible entity without calling a meeting of members. The scheme was created at the time of a corporate restructure. The corporate group intended to establish a licensed responsible entity but the relevant body was unlikely to become licensed before funds were transferred. Therefore, a licensed body outside the corporate group was appointed to operate the scheme until the relevant corporate group member obtained its AFS licence.

Extension of issue price class order relief to accommodate stapled security structure

3.10 In the matter referred to at paragraph 2.4, the stapled securities consisted of shares in a listed company and interests in two listed schemes. Some options for issue of the stapled securities had been issued. Under Class Order [CO 05/26] *Constitutional provisions about the consideration to acquire interests*, the responsible entity mentioned in paragraph 2.4 would be required to make offers under an interest purchase plan and offers under a rights issue to members who did not hold stapled securities, and the responsible entities of both schemes would have to make interest purchase plan and rights issue offers to holders of the stapled security options. To ensure that such offers of stapled securities could be restricted to persons who actually held stapled securities at the time the offer was made, we granted relief so that both the members who did not hold stapled securities and the holders of stapled security options could be excluded from the interest purchase plan and rights issue offers.

Issue price relief for transfers under distribution reinvestment plan

3.11 We granted relief from s601GA to allow the responsible entity of a registered scheme to set the price at which interests in the scheme were transferred to existing members under a distribution reinvestment plan. Class

Order [CO 05/26] *Constitutional provisions about the consideration to acquire interests* relief was not available to the applicant because the class order only applies where new interests are issued rather than where existing interests are transferred. We considered that it would be broadly consistent with the policy underlying Class Order [CO 05/26] to grant relief.

Investment in Hong Kong real estate investment trusts (REITs) permitted

3.12 We exempted responsible entities from the prohibition on investing in unregistered schemes in s601FC(4) to allow them to invest in Hong Kong REITs. Class Order [CO 98/55] *Investments in unregistered schemes* only permits responsible entities to invest in Hong Kong managed investment schemes that have to comply with the Code of Unit Trusts and Mutual Funds. The class order relief does not extend to Hong Kong REITs because they are regulated in Hong Kong under the REITs Code rather than the Code of Unit Trusts and Mutual Funds. We considered that it was appropriate to grant the exemptions because we were satisfied that the Hong Kong regulatory regime for REITs substantially meets the Collective Investment Services (CIS) principles of the International Organization of Securities Commissions (IOSCO) and we have cooperation arrangements with the Hong Kong Securities and Futures Commission.

Investment in Singapore REITs permitted

3.13 We also exempted the responsible entity of a registered scheme from s601FC(4) so that it could invest scheme property in REITs incorporated and regulated in Singapore. Singapore REITs are not covered by Class Order [CO 98/55] *Investments in unregistered schemes*. We were prepared to grant relief on the basis that the Singapore regulatory regime governing REITs substantially meets the CIS principles of IOSCO and we have cooperation arrangements with the Monetary Authority of Singapore.

Compliance committee for scheme in process of winding up

3.14 We issued a no-action letter to the responsible entity of a registered scheme regarding its breach of the s601JA requirement to establish a compliance committee within 14 days of the retirement of an external director. We decided to adopt a no-action position on the basis that the applicant was in the process of voluntarily winding up the scheme at the time the external director retired and therefore it would not advance the policy of the legislation to take enforcement action.

Information releases and class orders

3.15 The following information releases and class orders relate to the managed investments relief granted during the period of this report.

Information releases

[IR 05-52] *ASIC continues relief to allow responsible entities to invest in asset-backed securities.*

[IR 05-60] *ASIC adopts a flexible approach to the regulation of non-cash payment facilities.*

[IR 05-66] *ASIC relief facilitates pricing discretions by responsible entities.*

Class orders

[CO 05/737] *Loyalty schemes.*

[CO 05/874] *Investments in unregistered schemes—amendment.*

[CO 05/903] *Relief from duty to separate assets of a managed investment scheme; managed discretionary accounts—amendment.*

[CO 05/1236] *Variation of Class Order [CO 05/26].*

Section 4: Conduct relief

4.1 This section outlines some of our decisions on whether to grant relief from certain conduct obligations in Chapter 7.

Obligation to keep client money for unissued products in trust account

4.2 We refused to grant relief to a licensed insurer from the s1017E requirement to pay money received for a financial product into a trust account if the product is not issued immediately. The applicant submitted that it would be disproportionately burdensome for its authorised representatives to meet this requirement because, in all but a very small proportion of cases, the relevant insurance policy would be issued immediately. It submitted that there was minimal risk to consumer protection because its clients had not made any complaints and the applicant was responsible for the actions of its authorised representatives. We were not persuaded that the applicant's circumstances were unusual or that the compliance burden placed on the applicant and its authorised representatives was disproportionate. We considered that it would be inconsistent with the legislative objective of s1017E—which is to protect client money against misuse and/or insolvency—if we were to grant relief.

4.3 In another matter, we refused to grant relief that would allow a licensed insurer's cross-endorsed authorised representatives to hold client funds obtained on behalf of a number of different insurers in a single trust account in the authorised representative's name. Section 1017E requires an authorised representative to hold a separate trust account for each of its authorising insurers. Although we noted that compliance with the s1017E requirements may be burdensome for authorised representatives of multiple insurers, we did not think it was appropriate to grant the relief sought because it would have the effect of making multiple authorising insurers jointly responsible for money in the same account and we had not received submissions from affected third parties.

Foreign-regulated licensee not required to segregate client money

4.4 We exempted an AFS licensee that provided custodial services through Australian brokers from the s981B obligation to keep client money in a designated trust account with an Australian ADI. The applicant was registered as a broker-dealer with the US Securities and Exchange Commission. The s981B obligations were incompatible with the obligations for dealing with such money that applied under US law. We were satisfied that it would be disproportionately burdensome for the applicant to accommodate the inconsistencies between the Australian and the US regulatory requirements.

Although the US regime did not require the applicant to hold client money in trust, we considered that the regime still provided adequate protection of client funds.

Increased deductible limit under alternative compensation arrangement not permitted

4.5 We refused to grant relief that would allow insurance brokers who belonged to a particular group to have a higher deductible limit for their professional indemnity insurance than that currently permitted under the Act and ASIC policy. The group proposed to implement a discretionary mutual fund arrangement that would be more cost-effective than paying the premium for a more traditional professional indemnity insurance policy. We were not persuaded that the proposed arrangement would provide an equivalent level of consumer protection to that afforded by traditional insurance arrangements. We did not consider that it would be appropriate for us to approve the proposed arrangement in circumstances where government policy on alternative compensation arrangements was still pending.

Dispensation with separate trust account licence condition refused

4.6 We refused to grant relief to allow an AFS licensee that operated a number of horse racing syndicates to have a single trust account for all of its schemes. It was a condition of the operator's AFS licence that it maintain separate trust accounts for each scheme. We did not consider that the applicant's argument that the costs of maintaining separate trust accounts was disproportionately burdensome justified the removal of a fundamental consumer protection requirement.

Facilitation of transfer to new AFS licence

4.7 We issued a no-action letter to an AFS licensee regarding its breach of the s990B requirement to appoint an auditor within one month of being granted an AFS licence. The applicant was already trading under an existing AFS licence, but was going to have the existing licence cancelled under s915B once it had transferred to its new licence. The applicant notified ASIC before it was in breach of the s990B requirement for its new licence. We took an interim no-action position covering the period of one month after the s990B deadline. We considered that the regulatory detriment flowing from our decision would be minimal because the applicant had not been trading under its new licence.

4.8 We also took an interim no-action position regarding the applicant's breach of conditions imposed on its new AFS licence requiring it to provide us with an audited balance sheet and a projected cash flow (with documented calculations and assumptions) for its first three months of trading. We agreed to adopt a no-action position for the period before the applicant began to trade

under its AFS licence on the basis that there were minimal risks to consumer protection before trading commenced.

Information releases and class orders

4.9 The following information releases and class orders relate to the conduct relief granted during the period of this report.

Information releases

[IR 05-58] *ASIC gives relief for unsolicited offers to acquire shares in a foreign company.*

[IR 05-59] *ASIC offers general insurance dealers choice on how to appoint their distributors.*

[IR 05-60] *ASIC adopts a flexible approach to the regulation of non-cash payment facilities.*

[IR 05-62] *ASIC announces simpler warnings for oral general advice.*

Class orders

[CO 05/736] *Low value non-cash payment facilities.*

[CO 05/738] *Gift facilities.*

[CO 05/740] *Prepaid mobile facilities.*

[CO 05/1070] *General insurance distributors.*

[CO 05/1195] *Simplified warning for oral general advice.*

Section 5: Other relief

5.1 This section outlines decisions we have made that do not fall within any of the categories mentioned earlier and that may be significant to other participants in the financial services industry.

Access to members' register

5.2 We approved four purposes under reg 12.8.06(4) permitting access to the members' register of a mutual entity because they involved reasonable aspects of the applicant's plan to send details of a reconstruction proposal to members. We declined to approve another purpose that would involve the applicant sending information to the members about a proposed resolution to give members the power to direct the board about the exercise of its management powers in respect of the reconstruction proposal. This purpose was declined because it was unlawful for the members to usurp the management powers of their board of directors. Both the applicant and the mutual entity lodged an application for review with the Administrative Appeals Tribunal (AAT). The AAT upheld all of our decisions. This matter is the subject of an appeal to the Federal Court.

Failure to hold professional indemnity insurance not sanctioned

5.3 We refused to issue a no-action letter to a responsible entity regarding a breach of its AFS licence condition that required it to maintain appropriate professional indemnity insurance. The applicant asserted that it was unable to obtain appropriate insurance coverage as it had no scheme assets and therefore no insurable risk. We were not prepared to make an exception to our established policy that requires responsible entities to maintain professional indemnity insurance.

Approval of eligible providers

5.4 We decided to approve an unlisted company as an eligible provider for a group of its licensed subsidiaries. The applicant was owned by an ASX-listed company and a group of private US investors. We considered that there were exceptional circumstances and that the applicant was of sufficient financial substance to justify our approval under paragraph [PS 166.165(g)] of Policy Statement 166 *Licensing: financial requirements* [PS 166]. Although there were other entities within the group that fell within existing categories of eligible providers in paragraph [PS 166.165], it was more appropriate for the applicant to be the eligible provider for the subsidiaries because:

- it was in the best position to ensure that each licensed subsidiary met its net tangible asset requirement;
- it had the most financial substance within the group; and
- as the applicant was partly owned by US investors, the burden on Australian investors associated with the eligible undertaking would be less than it would be if the applicant's parent (an ASX-listed entity wholly owned by Australian investors) was the eligible provider.

5.5 In another matter, we approved a US deposit-taking institution as an eligible provider because we were satisfied that it was regulated by the US Federal Reserve Board and other agencies to appropriate standards under the Basel Committee on Banking Supervision guidelines.

No dispensation with s1071H requirement

5.6 We refused to provide class order relief exempting members of an industry association from the s1071H requirement to provide appropriate certificates or other title documents to holders of securities in connection with the issue of interests in registered managed investment schemes. We were not persuaded that the application of this requirement to the applicants was an unintended consequence of the legislation. The applicants had submitted that their operating costs would increase significantly if they had to comply with s1071H but they failed to quantify such costs or differentiate the compliance costs from those that arose under s1096 (which was in force before Chapter 7 commenced).

Transfer of stapled security instalment receipts

5.7 In the matter referred to at paragraph 2.6, we granted relief to ensure that the equitable interest in each underlying financial product of a stapled security was a Division 4 financial product and therefore subject to provisions governing the transfer of title for financial products under Part 7.11 and the Regulations. The definition of 'Division 4 financial product' included shares, debentures and interests in registered schemes, but did not include the equitable interest in each of those underlying products that was created when stapled securities were issued on an instalment basis. The effect of the relief was to ensure that investors who purchased the stapled securities before the final instalment was paid were bound by the deed under which the issue of the stapled securities on an instalment basis took place. Our decision was consistent with the rationale underlying Class Order [CO 02/312] *Part 7.11, Division 4 financial products for ASTC*, which enables certain warrants to be treated as Division 4 financial products.

Loan to subsidiary an excluded asset

5.8 We refused an application under paragraph [PS 166.172(d)] of Policy Statement 166 *Licensing: Financial requirements* [PS 166]. The applicant lent money to its subsidiary so that the subsidiary could purchase land that was unencumbered. Subsequently, the subsidiary company agreed for a registered mortgage to be taken over the land to secure a convertible note issue by the applicant. Although we were satisfied that the applicant was not trying to avoid our financial requirements and that recovery of the loan amount was highly probable, we were not prepared to consent to the loan not being treated as an excluded asset because we did not consider that all applicable criteria under [PS 166.172(d)] were met.

Information releases and class orders

5.9 The following information releases and class orders relate to other relief granted during the period of this report.

Information releases

[IR 05-50] *ASIC revises practice in relation to beneficial tracing notices.*

[IR 05-53] *Delivery of ASIC's financial services refinements packages on time.*

[IR 05-55] *ASIC releases policy statements on external administration: liquidator registration.*

[IR 05-57] *ASIC clarifies impact of IFRS on dividends.*

[IR 05-67] *ASIC provides guidance on superannuation advice to employers.*

Class orders

[CO 05/737] *Loyalty schemes.*

[CO 05/739] *Road toll facilities.*

[CO 05/910] *Auditor's independence declaration—exemption.*

Appendix: ASIC relief instruments

This table lists the relief instruments we have executed for matters that are referred to in the report. The class orders are available from our website via www.asic.gov.au/co. The instruments are published in the *ASIC Gazette*, which is also available via www.asic.gov.au/gazettes.

Note that references in the table to particular provisions of the law are references to the *Corporations Act 2001* and references to particular regulations are references to the Corporations Regulations 2001.

Report para no.	Class order title or entity name	Instrument no.	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
1.2	Thames River Capital LLP	[05/970]	12/09/2005	s911A(2)(l) This instrument grants licensing relief where the body is a foreign company and has a current Part IV permission from the UK Financial Services Authority.	
1.4	Man Financial Limited ARBN 116 205 442	[05/1235]	5/12/2005	s911A(2)(1) This instrument grants licensing relief to allow the company to deal in financial products when carrying out clearing and settlement activities on the facility operated by SFE Clearing for transactions involving derivatives.	
1.5	Leighton Holdings Limited ACN 004 482 982 Computershare Plan Co Pty Ltd ACN 098 404 696	[05/1091]	25/10/2005	s741(1)(a), 911A(2)(l) and 992B(1)(a) This instrument grants licensing, disclosure and conduct relief for an employee share scheme.	

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Report para no.	Class order title or entity name	Instrument no.	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
1.6	Computershare Limited ACN 005 485 825	[05/1022]	30/09/2005	s283GA(1)(a), 601QA(1)(a), 741(1)(a), 911A(2)(l), 992B(1)(a) and 1020F(1)(a) This instrument grants licensing, disclosure, conduct and other relief for an employee share scheme.	
1.7	Volvo Commercial Vehicles Australia Pty Ltd ACN 000 761 259 Volvo Construction Equipment Australia Pty Ltd ACN 050 100 064 Volvo Finance Australia Pty Ltd ACN 071 774 233 Mack Trucks Australia Pty Ltd ACN 009 719 582	[05/1259]	12/12/2005	s911A(2)(l), 741(1)(a) and 992B(1)(a) This instrument grants licensing relief to allow an employer to make a gift of shares to certain Australian employees where the employer is not listed on an approved foreign market for the purposes of Class Order [CO 03/184] <i>Employee share schemes</i> .	
1.8, 2.3, 3.2	CoInvest Limited ACN 078 004 985	[05/1064]	12/10/2005	s601QA(1)(a), 911A(2)(l), 992B(1)(a) and 1020F(1)(a) This instrument grants licensing and disclosure relief for a statutory based fund offering long service leave entitlements to a particular industry.	

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Report para no.	Class order title or entity name	Instrument no.	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
1.9	Rio Tinto Finance Limited ACN 008 559 046 Rio Tinto Limited ACN 004 458 404 Queensland Alumina Limited ACN 009 725 044 Leichhardt Coal Pty Limited ACN 083 181 597 Port Waratah Coal Services Ltd ACN 001 363 828	[05/989]	23/09/2005	s911A(2)(l) This instrument grants licensing relief for the provision of certain financial services to Australian wholesale clients.	
1.15, 2.16, 4.9	Low value non-cash payment facilities	[CO 05/736]	14/11/2005	s911A(2)(l), 926A(2)(a), 951B(1)(a), 992B(1)(a) and 1020F(1)(a) This class order grants conditional licensing, disclosure and conduct relief to persons providing financial services in relation to low value non-cash payment facilities where those facilities meet the criteria set out in the class order. The class order applies only where specified consumer protection requirements are met.	
1.15, 2.16, 4.9	Gift facilities	[CO 05/738]	14/11/2005	s911A(2)(l), 926A(2)(a), 951B(1)(a), 992B(1)(a) and 1020F(1)(a) This class order grants unconditional relief to persons providing financial services in relation to gift facilities, such as gift vouchers or cards. This means that the licensing, conduct and disclosure obligations (as well as the hawking prohibition) in Chapter 7 will not apply.	

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Report para no.	Class order title or entity name	Instrument no.	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
1.15, 2.16, 4.9	Prepaid mobile facilities	[CO 05/740]	14/11/2005	s911A(2)(l), 926A(2)(a), 951B(1)(a), 992B(1)(a) and 1020F(1)(a) This class order grants unconditional relief to persons providing financial services in relation to prepaid mobile facilities. This means that the licensing, conduct and disclosure obligations (as well as the hawking prohibition) in Chapter 7 will not apply.	
1.15	Singapore MAS regulated financial services providers—amendment	[CO 05/957]	23/09/2005	s911A(2)(l) This class order amends Class Order [CO 03/1102] <i>Singapore MAS regulated financial services providers</i> so that Singapore banks and merchant banks can rely on the class order.	
1.15	Relief for providers of generic calculators	[CO 05/1122]	15/12/2005	s926(2)(a) and 951B(1)(a) This class order grants relief to providers of generic financial calculators so that they do not have to hold an AFS licence. Where the provider already holds an AFS licence, the class order grants conditional relief from the advice, conduct and disclosure requirements of Part 7.7.	
1.15	Actuaries—amendment	[CO 05/1194]	24/11/2005	s911A(2)(1) This class order amends Class Order [CO 03/1096] <i>Actuaries</i> by extending the temporary licensing relief for eligible actuaries until 1 July 2006.	1/07/2006

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Report para no.	Class order title or entity name	Instrument no.	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
1.15, 2.16	Credit rating agencies	[CO 05/1230]	15/12/2005	s911A(2)(l), 926A(2) and 951B(1) This class order grants ongoing licensing and disclosure relief to certain credit rating agencies on condition that they, among other things, include appropriate warnings in their rating material and comply with paragraph 4.1 of IOSCO's Code of Conduct Fundamentals for Credit Rating Agencies. The relief does not extend to credit rating statements, opinion or research about managed investment schemes or superannuation entities.	
1.15	Licensing relief for valuers providing valuations of shares in real estate companies	[CO 05/1243]	13/12/2005	s911A(2)(l) This class order provides unconditional licensing relief for persons who provide financial product advice where the advice is, or is incidental to, a valuation of shares in a real estate company. This means that the licensing, conduct and services disclosure requirements will not apply to those persons in those circumstances.	
2.4	Westfield America Management Limited ACN 072 780 619 Westfield Management Ltd ACN 001 670 579 Westfield Trust ARSN 090 849 746 Westfield America Trust ARSN 092 058 449	[05/1202]	22/11/2005	s1020F(1)(a) This instrument grants relief so that an offer of stapled securities including interests in a registered scheme can be made without disclosure where scheme members whose interests are not component parts of the stapled securities are excluded from the offer.	

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Report para no.	Class order title or entity name	Instrument no.	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
2.5	Rio Tinto Limited ACN 004 458 404	[05/1104]	28/10/2005	s741(1), 741(1)(b) and 1020F(1)(c) This instrument extends the Corporations Act definition of 'continuously quoted securities' so that it applies to Rio Tinto Limited securities.	
2.6	Spark Infrastructure Holding No 1 Limited ACN 116 940 786 Spark Infrastructure Holdings No 2 Limited ACN 116 940 795 Spark Infrastructure Holdings International Limited ARBN 117 034 492 Spark Infrastructure RE Limited ACN 114 940 984 Spark Infrastructure Instalment Limited ACN 115 680 601	[05/1146]	8/11/2005	s741(1)(b) and 1020F(1)(c) This instrument grants relief modifying the application of s733(1) so that certain entities are taken to be the offeror of securities. The relief also modifies s761E so that the responsible entity of a registered scheme is taken to be the issuer of instalment receipts.	
2.7	Austcorp Funds Management Limited ACN 113 412 703	[05/1241]	6/12/2005	s1020F(1)(a) This instrument grants relief modifying the application of the exposure period provisions under s1016B where a PDS is lodged to correct an earlier one.	

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Report para no.	Class order title or entity name	Instrument no.	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
2.9	Australian Executor Trustees Limited ACN 007 869 794 Spark Infrastructure RE Limited ACN 114 940 984 Spark Infrastructure Trust ARSN 116 870 725	[05/1141]	8/11/2005	s951B(1)(c) This instrument modifies reg 7.7.08A and allows an FSG to be included within an offer document when a trustee provides custodial services for interests in a registered scheme.	
2.10	Babcock & Brown Asset Holdings Pty Ltd ACN 002 332 345 Babcock & Brown Limited ACN 108 614 955	[05/1128]	4/11/2005	s951B(1)(a) This instrument grants relief to an AFS licensee acting as an arranger under an intermediary authorisation by allowing the licensee to combine its FSG with the prospectus of an unlicensed issuer for an offer of debentures.	
2.11	JP Morgan Trust Australia Limited ACN 050 294 Edrus Limited ACN 056 751 716	[05/1201]	22/11/2005	s951B(1)(a) This instrument grants relief to a licensed nominee providing custodial and related dealing services by allowing the nominee to combine its FSG with the PDS of the unlicensed issuer.	
2.13	Friendly Society Medical Association Limited ACN 088 347 602	[05/1126]	4/11/2005	cl 30(2) of Schedule 4 This instrument grants an exemption from compliance with cl 29(1), 31, 32 and 33 of Schedule 4 to the Act in relation to constitutional amendments.	

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Report para no.	Class order title or entity name	Instrument no.	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
2.14	Professional Investment Holdings Limited ACN 074 949 429 Aviva Marketing Services Pty Ltd ACN 060 534 947	[05/1036]	30/09/2005	s1020F(1)(a) This instrument grants relief from Division 5A of Part 7.9.	
2.16	Unsolicited offers under a regulated foreign takeover bid	[CO 05/850]	5/10/2005	s1020F(1)(a) This class order exempts a person who makes an unsolicited offer to acquire securities of a foreign company from Division 5A of Part 7.9 in relation to certain foreign takeover bids.	
2.16	Variation of Class Orders [CO 01/1455] and [CO 04/672]	[CO 05/938]	8/9/2005	s741(1) and 1020F(1) This class order allows the use of transaction-specific disclosure documents and secondary trading exemptions, despite certain relief granted under s341(1). The class order amends Class Order [CO 01/1455] <i>Continuously quoted securities</i> and Class Order [CO 04/672] <i>Extension of on-sales exemptions</i> .	
3.3	Tumbarumba Pine Plantation No 17 CJM Nominees Pty Ltd ACN 063 931 948 Tree Owners Plantation Management Limited ACN 062 966 643	[05/1285]	21/12/2005	s601QA(1)(b), s1084(6) and 1454(2) old Corporations Law This instrument varies Instrument [00/2502] by extending the duration of the transition period to enable members to meet and determine the future of the scheme.	28/02/2006

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Report para no.	Class order title or entity name	Instrument no.	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
3.4	DFA Australia Limited ACN 065 937 671 Dimensional Short Term Fixed Interest Trust ARSN 092 663 897 Dimensional Diversified Fixed Interest Trust ARSN 096 155 716 Dimensional Australian Value Trust ARSN 092 663 735 Dimensional Australian Large Company Trust ARSN 092 663 600 Dimensional Australian Small Company Trust ARSN 092 663 520 Dimensional Global Value Trust ARSN 092 663 360 Dimensional Global Large Company Trust ARSN 092 663 100 Dimensional Global Small Company Trust ARSN 092 662 952 Dimensional Emerging Markets Trust ARSN 092 662 818	[05/946]	9/09/2005	s601QA(1)(a) This instrument exempts the responsible entity from the s601FC(1)(d) obligation to treat all members who hold interests of the same class equally so that withdrawals made by members that exceed a specified threshold size can be handled differently.	
3.5	Macquarie Media Management Limited ACN 115 524 019 Macquarie Media Trust ARSN 116 151 467	[05/1056]	4/10/2005	s601QA(1)(a) This instrument exempts the responsible entity from the s601FC(1)(d) obligation to treat all members who hold interests of the same class equally. This instrument promotes compliance with the <i>Broadcasting Services Act 1992</i> .	

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Report para no.	Class order title or entity name	Instrument no.	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
3.6	Spark Infrastructure RE Limited ACN 114 940 984 Spark Infrastructure Trust ARSN 116 870 725	[05/1142]	8/11/2005	601QA(1)(a) This instrument exempts the responsible entity from the s601FC(1)(d) obligation to treat all members who hold interests of the same class equally, particularly so it need not comply with certain US laws.	
3.7	Orchard Investments Management Limited ACN 105 684 231 Timbercorp Agribusiness Trust ARSN 116 024 830	[05/945]	6/09/2005	s601QA(1)(b) This instrument grants relief from s208 (as amended by s601LC) to seek member approval for the transfer of scheme property to the trustee of a sub-trust.	
3.8	Challenger Managed Investments Limited ACN 002 835 592 McLaughlins Financial Services Limited ACN 088 647 796 Challenger Howard Property Trust ARSN 098 367 803	[05/1014]	22/09/2005	s601QA(1)(a) This instrument grants relief from s601FL(2)(a) to enable a change of responsible entity to take effect from a future date.	

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Report para no.	Class order title or entity name	Instrument no.	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
3.8	Challenger Managed Investments Limited ACN 002 835 592 McLaughlins Financial Services Limited ACN 088 647 796 PH Sydney Hotel Trust ARSN 104 253 849	[05/1015]	22/09/2005	s601QA(1)(a) This instrument grants relief from s601FL(2)(a) to enable a change of responsible entity to take effect from a future date.	30/09/2005
3.9	Permanent Investment Manager Limited ACN 003 278 831 Alinta Funds Management Limited ACN 115 403 757 Alinta Infrastructure Trust ARSN 115 765 985 Alinta Infrastructure Investment Trust ARSN 115 766 179	[05/907]	26/08/2005	s601QA(1)(b) This instrument modifies the application of s601FL to allow the incumbent responsible entity to retire and appoint a new responsible entity without having to meet the requirement to hold a meeting of members to approve the change.	31/12/2005

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Report para no.	Class order title or entity name	Instrument no.	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
3.10	Westfield America Management Limited ACN 072 780 619 Westfield Management Ltd ACN 001 670 579 Westfield Trust ARSN 090 849 746 Westfield America Trust ARSN 092 058 449	[05/1203]	22/11/2005	s601QA(1)(b) This instrument provides relief so that an offer of stapled securities including interests in a registered scheme may be made only to stapled security holders and not to members whose interests are not component parts of stapled securities.	
3.11	Spark Infrastructure RE Limited ACN 114 940 984 Spark Infrastructure Trust ARSN 116 870 725	[05/1139]	8/11/2005	s601QA(1)(b) This instrument grants relief from s601GA to allow the responsible entity of a registered scheme to set the price at which interests in the scheme are transferred to existing members under a distribution reinvestment plan.	
3.12	UBS Global Asset Management (Australia) Ltd ACN 003 146 290 UBS Global Property Securities Fund ARSN 110 631 171	[05/1207]	23/11/2005	s601QA(1)(a) This instrument grants relief from s601FC(4) to permit investment of scheme property in Hong Kong real estate investment trusts.	
3.13	UBS Global Asset Management (Australia) Ltd ACN 003 146 290 UBS Global Property Securities Fund ARSN 110 631 171	[05/1266]	14/12/2005	s601QA(1)(a) This instrument grants relief from s601FC(4) to permit investment of scheme property in Singapore real estate investment trusts.	

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Report para no.	Class order title or entity name	Instrument no.	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
3.15, 5.9	Loyalty schemes	[CO 05/737]	14/11/2005	s601QA(1)(a) and 765A(2) This class order declares that loyalty schemes constituting non-cash payment facilities are not financial products for the purposes of Chapter 7. It also grants unconditional relief from the registration requirements under Chapter 5C where a loyalty scheme constitutes a managed investment scheme.	
3.15	Investments in unregistered schemes—amendment	[CO 05/874]	5/09/2005	s601QA(1)(a) This class order extends the relief in paragraph 2 of Class Order [CO 98/55] <i>Investments in unregistered schemes</i> by removing the sunset dates. Class Order [CO 98/55] sets out the relief from s601FC(4) described in Policy Statement 136 <i>Managed investments: Discretionary powers and closely related schemes</i> [PS 136] for investments in unregistered schemes. It also sets out the modification of s1454(4) referred to in [PS 136].	

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Report para no.	Class order title or entity name	Instrument no.	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
3.15	Relief from duty to separate assets of a managed investment scheme; managed discretionary accounts—amendments	[CO 05/903]	15/09/2005	s601QA(1)(a), 741(1)(a) and 1020F(1)(a) This class order amends Class Order [CO 98/51] <i>Relief from duty to separate assets of a managed investment scheme</i> by extending the date referred to in paragraph (e) of the Schedule from 30 September 2005 to 31 March 2006. Class Order [CO 98/51] modifies s601FC(1)(i) to allow the limited use of omnibus account structures. This class order also amends Class Order [CO 04/194] <i>Managed discretionary accounts</i> by extending the date referred to in subparagraphs 1.23(b)(v) and 2.10(e) from 30 September 2005 to 31 March 2006. Class Order [CO 04/194] gives relief from the managed investment and disclosure provisions for certain managed discretionary accounts operated by AFS licensees.	31/03/2006
3.15	Variation of Class Order [CO 05/26]	[CO 05/1236]	21/12/2005	s601QA(1) and 1020F(1) This class order varies Class Order [CO 05/26] <i>Constitutional provisions about the consideration to acquire interests</i> to clarify our policy position.	
4.4	Pershing LLC ARBN 108 110 149	[05/1189]	17/11/2005	s992B(1)(a) This instrument grants relief from certain money handling requirements for a foreign financial services provider regulated under the laws of the US.	

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Report para no.	Class order title or entity name	Instrument no.	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
4.9	General insurance distributors	[CO 05/1070]	26/10/2005	s926A(2)(c) This class order deems a distributor of an AFS licensee that is authorised to deal in general insurance products to be a representative of that licensee when they provide the financial service of dealing in a general insurance product. This means that distributors do not need to hold an AFS licence or be formally appointed as an authorised representative to deal in general insurance on behalf of a licensee.	
4.9	Simplified warning for oral general advice	[CO 05/1195]	29/11/2005	s951B(1)(a) and (c) This class order exempts AFS licensees and their authorised representatives from the obligation under s949A(2) to give a general advice warning for oral general advice where a simplified oral warning is given instead. The class order also varies Class Order [CO 05/835] <i>General advice in advertising</i> to grant relief from the s949A(2) general advice warning requirement to licensed issuers offering products under a Chapter 6D disclosure document.	

OVERVIEW OF DECISIONS ON RELIEF APPLICATIONS FROM FINANCIAL SERVICE PROVIDERS

Report para no.	Class order title or entity name	Instrument no.	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
5.7	Spark Infrastructure Holding No 1 Limited ACN 116 940 786 Spark Infrastructure Holdings No 2 Limited ACN 116 940 795 Spark Infrastructure Holdings International Limited ARBN 117 034 492 Spark Infrastructure RE Limited ACN 114 940 984 Spark Infrastructure Instalment Limited ACN 115 680 601	[05/1144]	8/11/2005	s1073E(1)(b) and 1075A(1)(b) This instrument declares that certain units of a stapled security are securities to which Division 3 of Part 7.11 applies and that certain units of a stapled security are financial products for the purposes of reg 7.11.03(1)(b).	
5.9	Road toll facilities	[CO 05/739]	14/11/2005	s765A(2) This class order declares that facilities through which a person can pay a road toll without notes or coins are not financial products for the purposes of Chapter 7.	

OVERVIEW OF DECISIONS ON RELIEF APPLICATIONS FROM FINANCIAL SERVICE PROVIDERS

Report para no.	Class order title or entity name	Instrument no.	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
5.9	Auditor's independence declaration— exemption	[CO 05/910]	5/09/2005	s341(1) This class order grants an exemption for an auditor from the requirement to make an independence declaration under s307C where the declaration would be required to set out details of any contraventions of s324CE(2), 324CF(2) or 324CG(2). The class order also provides consequential relief for directors, companies, registered schemes and disclosing entities.	