



ASIC

Australian Securities & Investments Commission

REPORT 150

Overview of decisions on relief applications (August to November 2008)

April 2009

About this report

This report outlines our decisions on relief applications during the period 1 August to 30 November 2008. It summarises situations where we have exercised, or refused to exercise, our exemption and modification powers from the financial reporting, managed investment, takeovers, fundraising or financial services provisions of the *Corporations Act 2001*.

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, financial or other professional advice. We encourage you to seek your own professional advice, including to find out how the Corporations Act and other applicable laws apply to you. It is your responsibility to determine your obligations and to obtain any necessary professional advice.

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Overview

ASIC has powers under the *Corporations Act 2001* (Corporations 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 provisions of the following Chapters of the Corporations Act: 2D (officers and employees), 2J (transaction offering share capital), 2L (debentures), 2M (financial reporting and audit), 5C (managed investment schemes), 6 (takeovers), 6A (compulsory acquisitions and buy-outs), 6C (information about ownership of listed companies and managed investment schemes), 6D (fundraising) and 7 (financial services).

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 Corporations Act.

The report covers the period beginning 1 August 2008 and ending 30 November 2008. During this period we considered 1238 applications. We granted relief in relation to 1011 applications and refused relief in relation to 157 applications—149 applications were withdrawn.

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. We use our discretion to vary or set aside certain requirements of the law where the burden of complying with the law significantly detracts from its overall benefit, or where we can facilitate business without harming other stakeholders.

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.

For the first time this report includes a new section on short selling relief (Section F), which outlines our response to situations arising from the ban implemented on 19 September 2008.

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 available via www.asic.gov.au/gazettes. The advisories¹ and information and media releases referred to throughout the report are available via www.asic.gov.au/mr.

Applications for relief must be in writing and should address the requirements set out in Regulatory Guide 51 *Applications for relief* (RG 51). Relief applications can be submitted electronically to applications@asic.gov.au. More information on applying for relief is available at www.asic.gov.au/fsrrelief and www.asic.gov.au/cfrelief.

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

¹ Since 1 September 2008, ASIC has issued ‘advisories’ instead of ‘information releases’.

A Licensing relief

Key points

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.

Non-cash payment facility provider

- 1 We granted relief from the requirement to hold an AFS licence to a company providing a non-cash payment facility that consisted of a physical card linked to a record of value maintained on behalf of the Commonwealth of Australia (the Commonwealth). The company was employed by the Commonwealth to provide administrative and support services for an income management system being established by the Commonwealth, as well as to provide access for the Commonwealth to the EFTPOS system and two payments clearing systems. We granted relief because consumers were adequately protected in their use of the facility, as:
 - the Commonwealth would provide disclosure of the facility's terms and conditions to a standard comparable with disclosure in a Product Disclosure Statement (PDS);
 - the Commonwealth held all funds;
 - cardholders had access to internal and external dispute resolution schemes; and
 - the Commonwealth agreed to comply with the EFT Code in relation to the facility.

Entity operating a scheme established to finance a feasibility study

- 2 We granted relief from the requirement to hold an AFS licence to a government owned entity established to finance a feasibility study for a specified project. As consideration for contributing to the scheme, the contributors derive preferential capacity to use the project's assets on a pro rata basis. The scheme included no guaranteed minimum contribution, while the scheme was structured in a way that personal offers for contributions could not be made below the wholesale threshold. We granted relief because we were satisfied that, in substance, the contributors were not retail investors.

Relief for a contractual scheme

- 3 We granted relief from the requirement to hold an AFS licence to the responsible entity of eight registered managed investment schemes in relation to a proposed contractual scheme of arrangement for each scheme. The responsible entity held a meeting of members of each managed investment scheme to amend the respective constitutions to allow the responsible entity to redeem members' interests in exchange for shares in its listed parent company. The notice of meeting included an explanatory memorandum with disclosure similar to a Part 5.1 scheme of arrangement, and an independent expert report and a prospectus for the issue of shares in the listed parent company. The responsible entity could not rely on Class Order [CO 03/606] *Financial product advice—exempt documents* as any recommendation or advice provided by the independent directors would not be within a document referred to in [CO 03/606]. We took into account that the advice contained in the explanatory memorandum would not be personal advice. Relief was conditional on the notices of meeting and accompanying explanatory memoranda being provided to ASIC.

Management rights relief for a storage facility

- 4 We granted relief from the requirement to hold an AFS licence to the operator of a storage facility in the form of a management rights scheme. Even though the storage facility operator would receive a management fee from the storage unit owners, the storage facility operator could not rely on our existing relief for management rights schemes because the particular strata units available were not used as part of a serviced apartment, hotel, motel or resort complex. We considered the storage facility to be sufficiently analogous to our existing management rights relief such that relief based on Pro Forma 187 *Management rights schemes where the strata unit cannot be used as a residence* (PF 187) was warranted.

Consent under RG 166.172(d): Treasury balances held with an associate

- 5 We provided written consent to a group of licensees who sought our consent under our policy in Regulatory Guide 166 *Licensing: Financial requirements* (RG 166) at RG 166.172(d) so that treasury balances held with an associate were not an 'excluded asset' for the purposes of calculating the licensees' net tangible assets. We gave our consent because:
- the assets did not arise from a transaction to avoid our financial requirements;
 - payment of the treasury balances to the licensees was highly probable; and

- it would be unreasonably burdensome to have structured the transaction so that the amount owing was not an excluded asset.

Statutory business trust as a foreign financial service provider

- 6 We granted relief on similar terms to Class Order [CO 03/1100] *US SEC financial service providers* to a statutory business trust registered in the US state of Delaware. The statutory business trust could not rely on [CO 03/1100] because it was not ‘a body corporate incorporated in the US or a State of the US, or a partnership formed in the US or a State of the US’. We granted relief because the statutory business trust had all of the essential features of a ‘body corporate’ and it could also meet all other conditions of [CO 03/1100].

Refusal of relief for issue of options under an employee share scheme

- 7 We refused to grant relief from the requirement to hold an AFS licence to a company proposing to issue options to eligible employees under an employee share scheme. The company could not rely on Class Order [CO 03/184] *Employee share schemes* because the size of the issue was in excess of the 5% limit and the company had been suspended from trading for more than two days. We decided to refuse relief, in part because the issue of options would have represented 20% of all shares on issue if all options were exercised. We considered the application to be outside our general policy, which is not to grant relief to employee share schemes where the purpose of the schemes is to facilitate capital raising: see Regulatory Guide 49 *Employee share schemes* (RG 49).

Stapled security employee share scheme

- 8 We granted relief from the requirement to hold an AFS licence to an issuer in relation to an employee share scheme under which eligible employees would be offered stapled securities comprising interests in two registered managed investment schemes. The issuer could not rely on [CO 03/184] as the definition of ‘stapled security’ does not include stapled securities comprising interests in registered schemes only, and as a consequence the employee share scheme did not fall under the definition of ‘eligible offer’. In granting relief we imposed a condition that the issuer make the offer to no more than 20 eligible employees.

Employee share scheme with cash settlement

- 9 We granted relief from the requirement to hold an AFS licence to an issuer in relation to an employee share scheme under which the issuer could settle

an award to an eligible employee by way of a cash settlement (being the amount equal to the number of shares to which the eligible employee would be entitled, multiplied by the prevailing market price of the shares at the vesting date). The issuer could not rely on [CO 03/184] because the definition of ‘eligible offer’ did not contemplate a cash settlement offer that would come within the definition of a ‘derivative’ under s761D. In granting relief we considered that the proposed offer was within our existing employee share scheme policy.

Employee share scheme with foreign exchange element

- 10 We refused to grant an issuer relief from the requirement to hold an AFS licence in relation to a contribution employee share scheme. We refused the relief because an employee’s contributions would be exposed to exchange rate risk over a significant period before the purchase of shares under the scheme, and if an employee elected to discontinue their participation in the scheme, that employee would not necessarily be repaid, as a minimum, their full Australian dollar denominated contributions.

Employee share scheme offered to employees of a target company under a scheme of arrangement

- 11 We granted licensing relief to an entity offering options under an employee share scheme that was unable to rely on [CO 03/184] because the options were being offered to employees of a target company in a proposed takeover bid. The offers were to be made conditional on the scheme being implemented so that shares would only be issued in the merged entity. We decided to grant relief because:
- the aim of the employee share scheme was not fundraising;
 - the scheme supported the long-term mutual interdependence of the parties; and
 - adequate disclosure had been provided to the investors.

Offer of ‘VCR shares’ under employee share scheme

- 12 We granted relief from the requirement to hold an AFS licence to a company offering rights under an employee share scheme. The rights (called ‘VCR shares’) offered under the plan were contingent rights to potentially receive newly issued shares at a future time, dependent on the employee’s performance. A differentiating feature of this scheme from other employee share schemes is the provision of an interest-free loan to assist employees in acquiring the VCR shares. The company could not rely on [CO 03/184] because the VCR shares did not fall within the definition of ‘eligible offer’. We granted relief because the scheme fell within the scope of our relief policy set out in RG 49.

Information releases, advisories and class orders

- 13 The following information releases, advisories and class orders relate to licensing relief granted during the period of this report.

Information releases

IR 08-22 ASIC issues further guidance to people overseas wanting to offer financial services in Australia

IR 08-21 Ongoing licensing relief for trustees of wholesale equity schemes

Advisories

AD 08-13 Conditional relief for operators of collective investment schemes authorised by Hong Kong SFC

AD 08-29 ASIC provides relief for group insurance

Class orders

[CO 08/1] Group purchasing bodies

[CO 08/405] Variation of Class Order [CO 07/74]

[CO 08/506] Hong Kong collective investment schemes

B Disclosure relief

Key points

This section outlines some of the applications we have decided that relate to the Ch 6D requirements to provide prospectuses and other disclosure documents and the Ch 7 requirements to provide Product Disclosure Statements (PDSs) and Financial Services Guides (FSGs).

Prospectus relief

Employee share scheme relief with cash settlement

- 14 In the matter referred to in paragraph 9, we also granted relief from the need to provide a prospectus for the offer of shares under the employee share scheme.

Employee share scheme with foreign exchange element

- 15 In the matter referred to in paragraph 10, we also refused to grant relief from the need to provide a prospectus for the offer of shares under the employee share scheme.

Employee share scheme offer to non-employees

- 16 In the matter referred to in paragraph 11, we also granted relief from the requirement to issue a prospectus in relation to the offer of shares under one entity's (the first entity's) employee share scheme made to employees of another entity (the second entity). Offers under the employee share scheme were conditional on the scheme of arrangement being implemented so that the first entity's shares would not be issued under the offers unless the second entity's employees had become employees of the first entity as a result of the implementation of the scheme.

Offer of 'VCR shares' under employee share scheme

- 17 In the matter referred to in paragraph 12, we also granted relief from the need to issue a Ch 6D disclosure document in relation to the employee share scheme.

Attaching options in demerger

- 18 We refused to grant relief from the Ch 6D disclosure requirements in relation to a de-merger by way of an in specie distribution where shares, together with options to subscribe for shares, in the demerging subsidiary would be transferred and issued to existing shareholders (Shareholders). The demerger did not fall within the policy parameters for relief in Regulatory Guide 188 *Disclosure in reconstructions* (RG 188) since the options would be distributed together with shares as part of the reconstruction. We considered that:
- where the power to exercise the options lies in the hands of the Shareholder and the Shareholder uses their own funds to satisfy the exercise, the Shareholder is required to make a new investment decision. This is because a Shareholder's 'direct investment' in holding the options personally is not the same as the 'indirect investment' held when it was the parent company's directors who had the power to exercise the options; and
 - the issue and transfer of options in the subsidiary was not necessary to effect the demerger. The decision to attach the options to the shares issued in the demerging subsidiary was made for commercial reasons and in such circumstances it was not considered appropriate to grant relief.

Prospectus relief for continuous quoted securities but for s340 order

- 19 We granted relief to a listed entity to enable it to:
- conduct fundraising activities using a s713 transaction-specific prospectus for continuously quoted securities;
 - conduct an undocumented rights issue under s708AA; and
 - proceed with the secondary sales of quoted securities under s708A(5) by issuing a s708A(6) cleansing notice.

Relief was required because we had previously granted the entity an order under s340 that prevented it from conducting the above activities under the respective provisions of the Corporations Act. We considered our policy in Regulatory Guide 66 *Transaction-specific disclosure* (RG 66) and Regulatory Guide 173 *Disclosure of on-sale of securities and other financial products* (RG 173) and granted relief because we believed that the s340 order, which relieved the entity from the requirement to synchronise its financial years with those of its foreign subsidiaries, did not detract from the level of information available to the market and existing disclosures to the Australian Securities Exchange (ASX) were available.

Issuer of options under an employee share scheme

- 20 In the matter referred to in paragraph 7, we also refused to grant relief from the requirement to issue a disclosure document in relation to the employee share scheme.

Disclosure requirements for capital reductions involving transfer of securities

- 21 We refused to grant relief from the disclosure requirements under Ch 6D to a company (company A) that proposed to sell the shares it held in another company (company B) to a third company (company C) in consideration for shares in the capital of company C. Company A would then distribute the shares in company C to its shareholders by way of an equal reduction of capital. We refused to grant relief because we formed the view that this type of capital reduction involves a change to the members' overall investment because the member receives a security to which they previously had no exposure. Relief for capital reductions involving an issue or transfer of securities to members is only available under RG 188.22 where there is no significant change to the members' overall investment such that it cannot be said that members are making a new investment decision (e.g. an in specie distribution).

Australian holders under a foreign merger

- 22 We granted relief from the Ch 6D disclosure requirements to a foreign listed banking corporation in relation to its acquisition of another foreign listed bank via a merger. The merger was governed by Delaware law and was subject to various conditions precedent including the approval of the merger agreement by each entity's members. Chapter 6D was triggered because certain shareholders of the bank being acquired were located in Australia and were offered the right to convert their existing holdings into shares and options of the acquiring bank under a US prospectus. The acquirer could not rely on Class Order [CO 00/185] *Foreign securities* because the merger was not strictly a foreign takeover or a foreign scheme with there being no court approval process or approval between the bank and its members. We granted relief because:
- the merger is analogous to an Australian takeover or a scheme of arrangement and satisfies the policy behind Regulatory Guide 72 *Foreign securities prospectus relief* (RG 72) at RG 72.17;
 - Australian security holders would have prospectus level disclosure available; and
 - we had previously granted Ch 6D relief for foreign scrip takeovers with less than 10% Australian holders and for schemes with court approval.

Offers made in Australia under a foreign rights issue to extend to shortfall offers

- 23 We granted relief so that offers made in Australia under a foreign rights issue could extend to shortfall offers if the rights issue was undersubscribed. The relief was consistent with the terms and policy underlying relief for foreign rights issues in Class Order [CO 00/183] *Foreign rights issues* and the disposal of shortfall for domestic rights issues in Class Order [CO 08/35] *Disclosure relief for rights issues*.

PDS relief

Offer of non-cash payment facility

- 24 In the matter referred to in paragraph 1, we also granted relief from the requirement to provide a PDS in relation to the offer of the non-cash payment facility.

Entity operating a scheme established to finance a feasibility study

- 25 In the matter referred to in paragraph 2, we also granted relief from the requirement to issue a PDS as we were satisfied that the joint venturers, being the potential users of the financial reports, had the skills and resources to make an informed decision regarding their participation in the scheme. We considered that the consumer protection objectives set out in Regulatory Guide 169 *Disclosure: Discretionary powers* (RG 169) at RG 169.3B would not be undermined as a result of providing the relief since extensive legal contracts will govern the relationship between the issuer and the joint venturers and all parties will seek advice on their participation in the joint venture.

Management rights relief for a storage facility

- 26 In the matter referred to in paragraph 4, we also granted relief from the requirement to issue a PDS for a storage facility that was operating a management rights scheme.

Stapled security employee share scheme

- 27 In the matter referred to in paragraph 8, we also granted relief from the requirement to issue a PDS for the offer of financial products under the employee share scheme.

Employee share scheme with cash settlement

- 28 In the matter referred to in paragraph 9, we also granted relief from the requirement to issue a PDS for the offer of financial products under the employee share scheme.

Employee share scheme with foreign exchange element

- 29 In the matter referred to in paragraph 10, we also refused to grant relief from the requirement to issue a PDS for the offer of financial products under the employee share scheme.

Employee share scheme offer to employees of a target company under a scheme of arrangement

- 30 In the matter referred to in paragraph 11, we also granted relief from the requirement to issue a PDS for the offer of financial products under the employee share scheme.

Offer of 'VCR shares' under employee share scheme

- 31 In the matter referred to in paragraph 12, we also granted relief from the requirement to issue a PDS for the offer of financial products under the employee share scheme.

Fee disclosure relief for stapled entities

- 32 We granted an issuer relief from the requirement to issue a PDS in order to facilitate disclosure of fees and costs for a triple stapled entity in a consolidated form (i.e. to allow the fees and costs attributable to the individual stapled entities to be consolidated and reflected as an aggregate amount of fees and costs for the stapled group as a whole). Under s1013D(1)(d), a PDS is required to disclose information about the fees and costs of the financial product. Regulation 7.9.16N then requires the presentation, structure and format of the fees and costs in the PDS to be set out according to Part 2 of Sch 10 of the Regulations. As each stapled security is made up of one unit in three managed investment schemes, each of which are financial products, a strict reading of the law requires each of the stapled schemes to be disclosed in the prescribed manner. We granted relief so that the issuer could disclose the fees and costs of its triple stapled entities in a consolidated manner (i.e. one consumer advisory warning, one fee table, one example of annual fees and costs and one additional explanation of fees and costs section for the three schemes making up the stapled security). We made the decision because we took the view that strict adherence to the Corporations Act and Regulations would be contrary to the principle of clear, concise and effective disclosure.

Other PDS relief

Warrants: Out-of-use notices

- 33 We granted relief in the form of Class Order [CO 08/781] *Warrants: Out-of-use notices* as a result of an application from a warrant issuer for relief from the need to comply with the out-of-use notice provisions in s1015D(2)(c). [CO 08/781] reduces the burden of complying with s1015D(2)(c) where warrants are offered in a PDS or supplementary PDS covering two or more warrant products. We also released Regulatory Guide 197 *Warrants: Out-of-use notices* (RG 197) for issuers of warrants to explain the circumstances in which relief is available under [CO 08/781].

FSG relief

Issue of interests under a pro rata entitlement offer

- 34 We granted relief in the form of a modification to s941C(2) to the responsible entity of a registered scheme (RE) so that the RE did not need to provide an FSG to retail clients in relation to the issue of interests under a pro rata entitlement offer of stapled securities. The stapled securities consisted of interests in the scheme and shares in a company. We granted relief so that the RE, being a licensee and product issuer dealing in its own products, would not be excluded from relying on the exemption under s941C(2) merely because its product is stapled to a product that is issued by someone else.

Advisories, media release and class orders

- 35 The following advisories, media release and class orders relate to disclosure relief granted during the period of this report.

Advisories

AD 08-22 *Update on ASIC's response to short selling*

AD 08-69 *PDS notifications to be lodged electronically from 1 January 2009*

Media release

MR 08-211 *Requirements for disclosure and reporting of short sales from 19 November 2008*

Class orders

[CO 08/506] *Hong Kong collective investment schemes*

[CO 08/751] *Covered short sales*

[CO 08/781] *Warrants: Out-of-use notices*

C Managed investments relief

Key points

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

Registration

Entity operating a scheme established to finance a feasibility study

- 36 In the matter referred to in paragraph 2, we also granted relief from the requirement to register a managed investment scheme established to finance a feasibility study for a specified project.

Management rights relief for a storage facility

- 37 In the matter referred to in paragraph 4, we also granted relief from the requirement to register a managed investment scheme in relation to a storage facility that was to operate as a management rights scheme.

Employee share scheme with foreign exchange element

- 38 In the matter referred to in paragraph 10, we also refused to grant relief from the requirement to register a managed investment scheme relief in relation to an employee share scheme.

Employee share scheme offered to employees of a target company under a scheme of arrangement

- 39 In the matter referred to in paragraph 11, we also granted relief from the requirement to register a managed investment scheme in relation to an employee share scheme.

Relief relating to registered schemes

Audit of a compliance plan

- 40 We granted relief to a responsible entity from the requirement to have its registered scheme's compliance plan audited on the basis that the scheme was in the process of being wound up and that it would be deregistered under s601PA(3). We granted relief because the scheme had been dormant since registration and the commercial benefit in granting relief outweighed any potential regulatory detriment. Furthermore, the responsible entity had previously complied with s601HG for the previous financial year. Relief was conditional on the responsible entity providing a copy of the audited financial statements for the scheme for that particular financial year to confirm that the scheme was dormant.

Extension of time to lodge audit report of compliance plan

- 41 We refused to grant relief to the responsible entity of a registered scheme to extend the timeframe in s601HG(7) for the lodgement of an audit report of the scheme's compliance plan. The scheme had a significant interest in a fund that had imposed a deferral on redemptions, which led the responsible entity to apply for the extension of time to lodge the audit report of the scheme's compliance plan so that it could resolve any issues arising from the deferral. We refused relief because we considered non-compliance with the timeframe was significant such that the resulting commercial benefit to the responsible entity did not clearly outweigh the regulatory detriment caused.

Requirement to make withdrawal offers to all unit holders where some unit holders are foreign

- 42 We granted relief from s601KB(2)(b) and 601FC(1)(d) to permit the responsible entity to make a withdrawal offer while the scheme was non-liquid to all members except a member from a jurisdiction outside Australia in circumstances where:
- the member resides in a jurisdiction where it would be illegal under the laws of that jurisdiction to make an offer to the member; or
 - it would be unreasonable to make the offer to the member having regard to the number of members in that jurisdiction, the number and value of interests held by members in that jurisdiction, and the costs of complying with the legal requirements and any relevant regulatory authority applicable to making the offer in that jurisdiction.

We granted relief as we considered that the applicant had demonstrated that it would be unduly burdensome in the circumstances to make the offer to all members.

- 43 In the matter referred to in paragraph 42, we also granted relief from s601KD and 601FC(1)(d) to permit the preferential redemption of small-holdings (subject to monetary caps of \$2000 and \$500) where there was an insufficient amount of money available from the assets specified in the withdrawal offer to satisfy all requests.

Relief for related party transaction

- 44 We granted relief to a responsible entity of a scheme to allow a related party benefit (from scheme assets) without approval by a resolution of members where the responsible entity was a subsidiary of the sole member of the scheme. We modified s601LC to substitute the requirement for member approval with the sole member's written consent. We also modified notional s208 to require the lodgement of the consent along with a copy of an explanatory statement compliant with the requirements of s219 within 14 days of the consent being given. Additionally, the responsible entity must not issue a PDS unless:

- the explanatory statement has been lodged for at least 14 days;
- the applicant for any interest under the PDS has received a copy of the PDS and consented in writing to the giving of the benefit; and
- where the benefit included the giving of a guarantee or indemnity or provision of a charge or security, the responsible entity has no further obligations under the guarantee or the charge has been discharged.

In granting relief, we took particular note of whether the relief was in the best interests of the sole member as a member of the scheme.

Requirement to offer interests to all members of the scheme in a rights issue

- 45 We granted relief to a responsible entity of a stapled group from s601GAA(3) (as notionally inserted by Class Order [CO 05/26] *Constitutional provisions about the consideration to acquire interests*) and s601FC(1)(d) so that the responsible entity was not required to offer interests to all members of the scheme under a rights issue. In this case, the responsible entity was unable to offer interests to one of the members because that member's shares are stapled to the interests of the scheme.

Accelerated pro rata rights issue

- 46 We granted relief to a responsible entity by modifying s601GAA (as notionally inserted by [CO 05/26]) to allow the responsible entity to set the issue price of interests in the scheme where the pro rata offer of interests in the scheme was made to wholesale investors prior to retail investors. The responsible entity could not rely on [CO 05/26] because the offer to retail

investors and wholesale investors would not occur at substantially the same time. We granted relief on condition that no member could be issued an interest in the scheme under the offer before a time at which every member could participate and have a reasonable time to consider the offer.

- 47 In the matter referred to in paragraph 46, we also granted relief permitting the responsible entity to treat retail investors and wholesale investors differently in a pro rata rights issue where wholesale investors received the offer prior to retail investors.

No-action letter for failure to fill a vacancy in compliance committee

- 48 We granted a no-action letter to a responsible entity for its failure to fill a vacancy in the scheme's compliance committee within the period prescribed by s601JB(6). The responsible entity required relief because a member of the compliance committee resigned with immediate effect because of potential conflicts of interest. In this case, the compliance committee member was required to give significantly more than 14 days notice of their resignation, allowing the responsible entity time to comply with its obligations under the Corporations Act. We granted the no-action letter because we considered that the case satisfied the policy parameters in Regulatory Guide 108 *No-action letters* (RG 108).

Hardship relief for frozen mortgage funds

- 49 We granted relief to the responsible entity of a frozen mortgage fund so that it could allow withdrawals by members on hardship grounds. Without relief, withdrawals could only occur in accordance with the Corporations Act where members are treated equally and, if the registered scheme is non-liquid, the non-liquid withdrawal process must be followed. The relief only allows for hardship withdrawals where a member is able to satisfy the operator that they:

- are unable to meet reasonable and immediate family living expenses;
- have compassionate grounds (e.g. medical costs for serious illness, funeral expenses, to prevent foreclosure); or
- are permanently incapacitated.

The relief is subject to a cap of:

- the specific amount requested under the hardship withdrawal request; or
- \$20,000 per member plus 50% of the balance of the member's investment in the scheme.

Indirect hardship relief for frozen mortgage funds

- 50 In a similar matter to the matter in paragraph 49 we granted additional relief to permit hardship withdrawals for indirect members of frozen funds. A frozen fund that has the benefit of this relief is able to accept hardship applications from members who invested in the frozen fund through intermediate structures such as, for example, superannuation funds, other managed investment schemes or investor directed portfolio services.

Advisories and class orders

- 51 The following advisories and class orders relate to managed investments relief granted during the period of this report.

Advisories

AD 08-13 Conditional relief for operators of collective investment schemes authorised by Hong Kong SFC

AD 08-29 ASIC provides relief for group insurance

Class orders

[CO 08/1] Group purchasing bodies

[CO 08/506] Hong Kong collective investment schemes

D Mergers and acquisitions relief

Key points

This section outlines some of the circumstance in which we have granted or refused relief from the provisions of Chs 2J, 6, 6A and 6C under s259C, 655A, 669 and 673 respectively.

Acquisition of relevant interests in voting shares

Fully underwritten non-renounceable rights issue

52 We granted relief to enable a company to undertake a fully underwritten non-renounceable rights issue excluding certain foreign members. The relief enabled the company to rely on item 10 of s611. The company submitted that the relief was necessary because the company's market price had fallen significantly as a result of market turmoil. As a result, a nominee could incur a loss where the rights were not assignable because they would be required to sell the rights on market. In granting relief we were mindful of:

- the company's urgent need for capital;
- extraordinary changes in market conditions since the rights issue was announced such that the rights issue, while at a discount upon announcement, was now at a significant premium;
- the small number of foreign members affected by the rights issue; and
- the fact that the transaction appeared genuinely about fundraising rather than consolidating the underwriter's control of the company (in line with our policy in Regulatory Guide 159 *Takeovers, compulsory acquisitions and substantial holdings* (RG 159) at RG 159.152).

Non-renounceable rights issue

53 We refused to grant relief in the form of a modification of item 10 of s611 so that a non-renounceable rights issue that excluded foreign holders would fall within the exemption in item 10 despite foreign holders not being treated in accordance with s615. We made an in-principle decision to refuse relief because:

- the value of the securities to which s615 would have applied was material (even though it represented a small proportion of the number of securities being offered under the rights issue);

- the issue price under the rights issue was less than the market price of the securities at the time the application was made; and
- although foreign holders do not need to be treated in accordance with the procedure in s615 for the purposes of the disclosure exemption in s708AA and 1012DAA, there are different policy rationales behind the disclosure exemption and s615. In particular, s615 reflects the principle in s602(c) that all holders are given a reasonable and equal opportunity to participate in the benefits arising from a control transaction.

Previous relief granted from the requirements of s615 was distinguishable from the current application.

Financial accommodation relief

54 We granted relief to enable a company to provide financial accommodation to an entity that would result in it holding a relevant interest in up to 56.2% in a listed entity through the issue of debentures secured by a series of legal mortgages and fixed charges over securities held in the listed entity. The company required relief because it could not be said that its ordinary course of business included the provision of financial accommodation in order to come within the ambit of s609(1). We granted relief because:

- we were satisfied that the company was not providing financial accommodation for the purposes of gaining control of the listed entity; and
- the transaction was on ordinary commercial terms. This is consistent with our policy in Regulatory Guide 171 *Anomalies and issues in the takeover provisions* (RG 171) at RG 171.15, which provides that a person should not have a relevant interest in securities merely because they participate in common commercial arms-length mortgage structures and transactions.

Redemption of interests in a managed investment scheme

55 We refused to grant relief from s606 in relation to an offer to members of a managed investment scheme under a redemption proposal by a company acting in its capacity as responsible entity of the scheme. The company considered it may acquire a relevant interest in the interests in the scheme in breach of s606. This was because the company considered that it would have the power to dispose of, or control the exercise of a power to dispose of, the units that are the subject of the redemption request. We refused to grant relief on the basis that, from the information provided to us, it was not apparent that relief was necessary. In particular, it was not apparent that the company would acquire a relevant interest in the interests in the scheme as a result of the redemption proposal. This was because the interests would not be transferred to the company prior to them being cancelled. Furthermore,

we were not convinced that the cancelling of units in accordance with a redemption request would mean that the company would have the power to dispose, or control the exercise of a power to dispose of, interests in the scheme.

On-sale relief refused in demerger

- 56 In the matter referred to in paragraph 18, we also refused to grant on-sale relief in relation to a demerger by way of an in specie distribution to existing members.

Takeovers

Extension of bid to shares issued under share purchase plan

- 57 We granted relief to facilitate the extension of a bidder's takeover bid to target company shares issued after the date set by the bidder under s633(2) as a result of the acceptance by target company shareholders of an offer under a share purchase plan. We granted relief on the basis that it was consistent with RG 159 (at RG 159.38) and avoided the possibility of the company being unable to rely on the compulsory acquisition provisions due to the issue of shares under the share purchase plan during the offer period.

Withdrawal of takeover offer

- 58 We gave consent to the withdrawal of an off-market takeover bid where there was a competing takeover bid. The competing bidder held over 79% of the target and was very unlikely to sell their interest to the withdrawing bidder. The bidder had advised that, from an economic viewpoint, the current implied premium no longer provided the target shareholders with a substantially higher premium than the competing offer. We were satisfied that the target shareholders would not be disadvantaged by the withdrawal as the competing offer remained on foot.

Extension of time to dispatch a target's statement

- 59 We refused to grant relief to extend the time under which a target was required to send its target's statement to target shareholders under an off-market bid. We considered that as the bidder's statement had been served on the target and offers had not yet dispatched, the target had sufficient time to send its target's statement in accordance with the Corporations Act. We were concerned that if an extension of time were granted, it was probable that offers would be open for more than one month before the target's statement

was sent. We made our decision having regard to the Eggleston principles in s602(a) and 602(c)(iii) and the increased risk that some target shareholders might accept the bidder's offer without the benefit of the target's statement information. We were not persuaded by the argument that possible savings would result from a delayed dispatch of the target's statement as any such possible savings were outweighed by timely disclosure in the target's statement of material information about the bidder's offer to target shareholders.

Other mergers and acquisitions relief

Substantial holding relief where financial accommodation relief also granted

- 60 In the matter referred to in paragraph 54, we also granted relief from the substantial holding notice requirements. In granting relief, we imposed the condition that details of the transaction must be disclosed to the market. We imposed the condition to ensure that the market would be informed of the transaction, which was clearly relevant information for investors, creditors and other interested persons.

Relief from disclosing specified information in substantial holding notices

- 61 We refused to grant relief from the s671(3)(g) requirement to disclose the names and addresses of employees in substantial holding notices where the applicant had acquired a relevant interest in its employees' shares (to which various disposal restrictions applied). We refused to grant relief because we expect strict compliance with the prescribed requirements of s671B by all holders in respect of voluntary and listing rule escrows that restrict the disposal of shares (see RG 159 at RG 159.150). In order to protect their employee's confidentiality, the applicants submitted that the nature of their employees' work meant that their identities and residential addresses should not be publicly available. In refusing the relief, we noted that the employees' names were on the applicant's website which, together with the member register, would provide the name of the employee as the registered holder of the shares. We also noted that s671(B)(3) does not require a specific or prescribed residential address such that the substantial holding notices could refer to an employee's work address.

Information releases, advisories, media releases and class orders

- 62 We did not publish any information releases, advisories, media releases or class orders relating to mergers and acquisitions relief during the period of this report.

E Conduct relief

Key points

This section outlines some of our decisions to grant relief from certain conduct obligations imposed by Chs 2D, 2M, 5C and 7.

Financial reporting

Competitive disadvantage

- 63 We refused to grant Ch 2M relief to a large proprietary company requesting lodgement relief for its 2008 audited financial report. The applicant submitted that lodging its report would place it at a competitive disadvantage because its customers, competitors and suppliers would be able to use the information to their advantage. We refused relief because:
- the applicant was unable to demonstrate an unreasonable burden;
 - the applicant was unable to demonstrate that complying with the disclosure requirements would allow competitors, suppliers or customers to extract precise information from the financial statements of a specific nature giving rise to detrimental consequences;
 - any economic detriment to the company was outweighed by the regulatory benefits of the financial report being provided. If relief were granted, users of the financial report would lose access to valuable information on the company's financial condition and performance; and
 - third parties should be entitled to know what their debts are and understand the financial position of the company and any associated risks that may be contained in the financial report.

Lodgement by an AFS licensee of an auditors report

- 64 We refused to grant an AFS licensee relief from the requirement in s989B(3) to lodge an auditor's report with ASIC containing the information and matters required by the Corporations Regulations. We refused relief on the basis that the AFS licensee had provided financial services for most of the relevant financial year. Further, we were concerned that there may be external users relying on the disclosures provided by s989B(3). Relief was refused on the basis that compliance with s989B(3) did not appear to impose an unreasonable burden and third party interests may have been adversely affected.

Hawking prohibition

Non-cash payment facility

65 In the matter referred to in paragraph 1, we granted relief from the hawking provisions in relation to a non-cash payment facility.

Storage facility

66 In the matter referred to in paragraph 4, we also granted relief from the hawking provisions in relation to a storage facility that was operating as a management rights scheme.

Stapled security employee share scheme

67 In the matter referred to in paragraph 8, we granted relief from the hawking provisions in relation to an employee share scheme.

Employee share scheme with cash settlement

68 In the matter referred to in paragraph 9, we granted relief from the hawking provisions in relation to an employee share scheme.

Employee share scheme with foreign exchange element

69 In the matter referred to in paragraph 10, we refused to grant relief from the hawking provisions in relation to an employee share scheme.

Employee share scheme for employees of target under a scheme of arrangement

70 In the matter referred to in paragraph 11, we granted relief from the hawking provisions in relation to an employee share scheme.

Employee share plan

71 In the matter referred to in paragraph 12, we also granted relief from the hawking provisions in relation to an employee share scheme.

Issuing insurance products as an 'insurance plan'

72 We refused to grant relief from the hawking provisions in circumstances where the applicant was issuing insurance products to clients as an 'insurance plan' that could include both wholesale and retail insurance products. The retail client definition in s761G(5) makes an individual or small business purchaser of certain general insurance products a retail client

for the purposes of Ch 7. This meant the applicant had to treat the client differently depending on the type of insurance products that were being purchased under the 'insurance plan'. The applicant submitted that this imposed unreasonable burdens on its particular business given its direct business model and the location and remoteness of its market. We refused to grant relief because:

- the law in respect of hawking is clear and unambiguous in the way that it applies. To the extent that the applicant's business model was based on persuasion selling, the hawking provisions were intended to apply in that case; and
- legislative change to the retail client definition in s761G(5) was previously considered to cover a bundled insurance product. Our discretionary relief powers should not be used to effect law reform.

Advisory and class order

73 The following advisory and class order relate to conduct relief granted during the period of this report.

Advisory

AD 08-35 ASIC updates guidance on financial reports and audit relief

Class order

[CO 08/618] Variation of Class Order [CO 98/1418]

F Short selling relief

Key points

This section outlines some of the circumstances in which we have issued no-action letters stating that we do not intend to take regulatory action in relation to breaches of the short selling provisions in s1020B and in notional s1020BC and 1020BD (as set out in ASIC Class Order [CO 08/751] *Covered short sales*).

Client facilitation

74 We issued individual no-action letters to stockbrokers to allow them to make naked or covered short sales of securities in the course of their client facilitation businesses. In providing client facilitation services a stockbroker may make a short sale of securities to a client in response to a client's buy order. The no-action letters were given subject to the following conditions:

- the stockbroker has an existing business of providing facilitation services;
- the short sale to the client is a bona fide facilitation transaction in the ordinary course of the stockbroker's facilitation business;
- the stockbroker does not know after making reasonable inquiries that the facilitation will result in the client establishing or increasing an economic net short position in relation to the security; and
- the stockbroker makes reasonable inquiries of its facilitation client to understand the purpose of the client's trading.

We issued the no-action letters on the basis that the client facilitation by stockbrokers did not fall within the market-making exception to the prohibition against covered short selling but was analogous to market making and added to the efficient operation of the market.

Direct Market Access providers

75 We issued individual no-action letters relieving Direct Market Access (DMA) service providers from the positive obligation in notional s1020BC(3) (as set out in [CO 08/751]) to ask whether a client sell order would result in a short sale where:

- the client sell order is placed using the DMA service provider's automated trading facilities;
- the sell order is made by a retail client;

- the DMA service provider knows from its systems that the client holds the securities the subject of the sell order; and
- the DMA service provider has notified the client that short sales are not permitted to be made using the automated trading facilities.

These no-action letters gave effect to guidance given in *AD 08-22 Update on ASIC's response to short selling*.

Hedging the financial consequences of underwriting a placement or a rights issue

- 76 We have issued individual no-action letters to allow underwriters to make covered short sales to manage, avoid or limit the financial consequences of underwriting a shortfall under a placement or rights issue of securities in a company. The underwriter must not make a short sale of securities in reliance on the no-action letter after the issue of the securities under the placement or rights issue. In issuing these no-action letters we took into account the need for underwriters to hedge having accepted the risk of a shortfall. We also had regard to the role of underwriters in facilitating successful capital raisings by companies. The relief is similar to that under [CO 08/751] for underwriters of dividend reinvestment plans and share purchase plans.

'Long/short' trading strategies

- 77 We refused to issue a no-action letter to permit a fund manager to employ a 'long/short' trading strategy that would otherwise contravene the short selling prohibitions. A long/short strategy involves the purchase of securities in a company that are expected to increase in price while also making a short sale of securities in another company that are expected to decrease in price.

We refused to issue a no-action letter because:

- a short sale in securities made as part of a long/short strategy would establish an economic net short position in the securities as it is not offset by an existing long position in those securities;
- short positions in particular stocks are 'directional' (i.e. established for profit upon downward price movement); and
- there is considerable risk that multiple funds may employ a long/short strategy in relation to the same benchmark index, collectively short selling the same stocks causing downward pressure on the price of those stocks. This risk cannot be addressed by imposing conditions on relief granted.

Advisories, media release and class orders

- 78 The following advisories, media release and class orders relate to short selling relief granted during the period of this report.

Advisories

AD 08-23 No action position for owners selling form stock lending portfolios

AD 08-44 Short selling relief for convertible securities expanded

AD 08-65 ASIC lifts ban on covered short selling for non-financial securities

Media releases

MR 08-211 Requirements for disclosure and reporting of short sales from 19 November 2008

Class orders

[CO 08/751] Covered short sales

[CO 08/763] Variation of Class Order [CO 08/751]

[CO 08/764] Short selling—exercise of exchange traded options

[CO 08/801] Variation of Class Order [CO 08/751]

[CO 08/824] Variation of Class Orders [CO 08/751] and [CO 08/764]

G Other relief

Key points

This section outlines decisions we have made that do not fall within any of the categories mentioned in previous sections and that may be significant to other participants in the financial services and capital markets industries.

Declaration that non-cash payment facility is not a financial product

- 79 In the matter referred to in paragraph 1, we refused to declare under s765A(2) that the non-cash payment facility in question was not a financial product. In making our decision, we decided that the non-cash payment facility involves a high number of transactions such that it would be inconsistent with our previous approach in like applications. Generally, we will only grant relief to declare that a non-cash payment facility is not a financial product where the facility is a very simple product, which is usually issued as an ancillary activity to the company's main business.

Appendix 1: 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 available via www.asic.gov.au/gazettes.

Table: ASIC relief instruments

Report para no.	Class order title or entity name	Instrument no. (Gazette no. if applicable)	Date executed	Power exercised and nature of relief	Expiry date
1 24 65	ReD Prepaid Cards Australia Pty Ltd (ACN 085 449 529)	08-00694 (in 70/08)	29/08/2008	s911A(2)(l), 992B(1)(a) and 1020F(1)(a) This instrument exempts a company from s911A(1), 992A and Part 7.9 in relation to a non-cash payment facility provided in accordance with the income management system established by the Australian Government.	
2 25 36	Gladstone Ports Corporation Limited (ACN 131 965 896)	08-00790 (in 82/08)	9/10/2008	s601QA(1)(a), 911A(2)(l) and 1020F(1)(b) This instrument exempts the entity from s601ED, 911A(1) and Part 7.9 in relation to the establishment of a feasibility study.	
3	Great Southern Managers Australia Limited (ACN 083 825 405) in its capacity as the responsible entity of numerous schemes	08-01004 (in 102/08)	17/12/2008	s911A(2)(l) This instrument exempts the entity from s911A(1) in relation to the provision of general advice stemming from a proposed compromise or arrangement with members or a class of members in Part 3 of Sch 8 of the Regulations.	

Report para no.	Class order title or entity name	Instrument no. (Gazette no. if applicable)	Date executed	Power exercised and nature of relief	Expiry date
4 26 37 66	Universal Self Storage Pty Ltd (ACN 116 432 565)	08/00958 (in 98/08)	04/12/2008	s601QA(1)(a), 926A(2)(b), 992B(1)(b) and 1020F(1)(b) This instrument exempts the entity from s601ED, 992AA, 1017F and Part 7.6 (other than Divs 4 and 8) in relation to a management rights scheme for a storage facility.	
6	Delaware Management Business Trust, a statutory business trust registered in the US state of Delaware	08-00696 (in 74/08)	10/09/2008	s911A(2)(l) This instrument exempts the entity from s911A(1) on terms similar to Class Order [CO 03/1100] <i>US SEC financial service providers</i> in relation to the provision of financial services by a foreign financial service provider.	
8 27 67	ConnectEast Management Limited (ACN 071 292 647)	08-00798 (in 86/08)	14/10/2008	s911A(2)(l), 992B(1)(a) and 1020F(1)(a) This instrument exempts an issuer from s911A(1), 992A and 992AA, and Part 7.9 in relation to an employee share scheme offering to issue stapled securities comprising interests in registered schemes only.	
9 14 28 68	Royal Dutch Shell PLC, a company incorporated under the laws of England	08-00978 (in 102/08)	15/12/2008	s601QA(1)(a), 741(1)(a), 911A(2)(l), 992B(1)(a), 1020F(1)(a) and 1020F(1)(b) This instrument provides relief to the entity in relation to an employee share scheme with a cash settlement facility.	
11 16 30 39 70	Westpac Banking Corporation (ACN 007 457 141)	08-00716 (in 74/08)	05/09/2008	s741(1)(a), 911A(2)(l), 992B(1)(a), 1020F(1)(a) and 1020F(1)(b) This instrument enables the entity to make offers under an employee share scheme to employees of a target company where the relief is conditional on the success of a scheme of arrangement under Part 5.1.	

Report para no.	Class order title or entity name	Instrument no. (Gazette no. if applicable)	Date executed	Power exercised and nature of relief	Expiry date
12 17 31 71	Slater & Gordon Ltd (ACN 097 297 400)	08-00657 (in 66/08)	15/08/2008	s741(1)(a), 911A(2)(l), 992B(1)(a), 1020F(1)(a) and 1020F(1)(b) This instrument enables the entity to offer conditional rights in the form of 'VHS shares' (being either securities or derivatives) to eligible employees under an employee share scheme.	
19	Macquarie Group Limited (ACN 122 169 279)	08-00921 (in 96/08)	21/11/08	s741(1)(b) This instrument enables the entity to meet the definition of 'continuously quoted securities' notwithstanding the existence of an ASIC order under s340(1) that was issued in the previous 12 months. The relief allows the entity to issue securities using a s713 transaction-specific prospectus, conduct a rights issue without disclosure under s708AA and facilitate secondary sales of quoted securities under s708A(5) by issuing a cleansing notice under s708A(6).	
22	Bank of America Corporation, a corporation incorporated in the US state of Delaware	08-00847 (in 90/08)	31/10/08	s741(1)(b) This instrument provides relief to the entity from the technical requirements of Chs 6D.2 and 6D.3 in relation to the offer of the entity's shares to Australian holders of another entity's securities under a proposed foreign merger transaction.	
23	Lloyds TSB Group PLC and HBOS PLC, each a company incorporated in the United Kingdom	08-00894 (in 94/08)	13/11/2008	s741(1)(b) This instrument revokes a previous ASIC instrument and provides further relief to an entity to enable it to make shortfall offers in Australia under a foreign rights issue.	

Report para no.	Class order title or entity name	Instrument no. (Gazette no. if applicable)	Date executed	Power exercised and nature of relief	Expiry date
32	Australian Unity Investments Retail Property Fund (ARSN 133 632 765), Australian Unity Retail Property Trust (ARSN 086 218 199), Australian Unity Property Syndicate – East West Retail (ARSN 091 941 061) and Australian Unity Gillies Street Trust (ARSN 103 267 447)	08-00804 (in 86/08)	15/10/2008	s1020F(1)(c) This instrument amends sub regulation 7.9.16N(3) of the Regulations to allow an entity to issue a PDS relating to an offer of more than one financial product to consolidate the fees and cost disclosure required by sub regulation 7.9.16N(2).	
33	Warrants: Out-of-use notices	[CO 08/781]	28/10/2008	s1020F(1)(a) This instrument provides an exemption to a responsible person who has a PDS or supplementary PDS for warrants from the requirement to lodge an out-of-use notice with ASIC until all the warrants to which the PDS or supplementary PDS relates, cease to be available to be recommended or offered to new clients in a recommendation, issue or sale situation.	
34	Mirvac Funds Limited (ACN 002 561 640) in its capacity as responsible entity of Mirvac Property Trust (ARSN 086 780 645)	08-00870 (in 90/08)	05/11/2008	s941C(2)(b) This instrument provides relief to the entity in its capacity as responsible entity for a scheme to extend the FSG exemption for a stapled securities rights offer.	
40	Record Funds Management Limited (ACN 095 162 931) in its capacity as responsible entity of Red Property Trust (ARSN 119 785 269)	08-00733 (in 76/08)	15/09/02008	s601QA(1)(a) This instrument provides the responsible entity of a registered scheme with relief from the requirement to prepare an auditor's report of the scheme's compliance plan within three months after the end of the financial year on the condition that the scheme is deregistered by a specified date.	

Report para no.	Class order title or entity name	Instrument no. (Gazette no. if applicable)	Date executed	Power exercised and nature of relief	Expiry date
42 43	Everest Capital Investment Management Limited (ACN 112 731 978) in its capacity as responsible entity of Everest Babcock & Brown Alternative Investment Trust (ARSN 112 129 218)	08-00810 (in 90/08)	23/10/2008	s601QA(1)(a) and 601QA(1)(b) This instrument provides a responsible entity with relief from s601FC(1)(d), 601KB(2) and 601KD in relation to a withdrawal offer made while the scheme is non-liquid.	
44	Austcorp Funds Management Limited (ACN 113 412 703) in its capacity as responsible entity of Austcorp Property Trust (ARSN 116 899 300)	08-00757 (86/08)	17/10/2008	s601QA(1)(b) This instrument enables a responsible entity to give a financial benefit to a related party by obtaining the written consent from the sole member of a trust instead of obtaining member approval in accordance with s217–227, providing certain conditions are met.	
45	FKP Funds Management Limited (ACN 089 800 082)	08-00796 (in 90/08)	24/10/2008	s601QA(1)(a) and 601QA(1)(b) This instrument enables an entity in its capacity as the responsible entity of a stapled group to offer interests under a rights issue where certain members are excluded from the offer because of intra-group cross-holdings.	
46 47	GPT Re Limited (ACN 107 426 504)	08-00844 (in 88/08)	28/10/2008	s601QA(1)(a) and 601QA(1)(b) This instrument enables an entity to conduct an accelerated rights issue on the condition that no issue of interests is made before a time that every member may accept the offer and be issued with interests.	
49	Challenger Managed Investments Limited (ACN 002 835 592) in its capacity as responsible entity of Challenger Howard Mortgage Fund (ARSN 090 464 074)	08-00872 (in 96/08)	31/10/2008	s601QA(1)(a) This instruments exempts the entity from s601FC(1)(d) and inserts a hardship withdrawal provision into Ch 5C.6.	

Report para no.	Class order title or entity name	Instrument no. (Gazette no. if applicable)	Date executed	Power exercised and nature of relief	Expiry date
50	Perpetual Investment Management Limited (ACN 000 866 535)	08-00935 (in 98/08)	27/11/2008	s601QA(1)(a) This instruments exempts the entity from s601FC(1)(d) and inserts a hardship withdrawal provision into Ch 5C.6. It permits hardship applications to be made by indirect members of a frozen fund.	
52	IFC Capital Limited (ACN 087 737 068)	08-00823 (in 86/08)	21/10/2008	s655A(1)(b) This instrument modifies item 10 of s611 to an enable the entity to conduct a fully underwritten non-renounceable rights issue excluding a small number of foreign members.	
54 60	Reco City Pte Limited, a company incorporated in Singapore, and AET Structured Finance Services Pty Limited (ACN 106 424 088)	08-00924 (in 96/08)	21/11/2008	s655A(1)(a) and 673(1)(b) This instrument enables the entity to provide financial accommodation without acquiring a relevant interest in certain securities (provided as security for the financial accommodation) and also provides relief from the substantial holding information requirements.	
57	Brickworks Investment Company Limited (ACN 106 719 868)	08-00779 (in 82/08)	3/10/2008	s655A(1)(b) This instrument modifies s617(1)(b) so that a takeover offer can be extended to shares issued under a share purchase plan after the date set by a bidder under s633(2).	