



ASIC

Australian Securities & Investments Commission

REPORT 124

Overview of decisions on relief applications (September to November 2007)

April 2008

About this report

This is a report for participants in the capital markets and financial services industry who are prospective applicants for relief.

This report outlines ASIC's decisions on relief applications during the period 1 September to 30 November 2007. It summarises situations where ASIC has exercised, or refused to exercise, its 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 (transactions affecting 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 September 2007 and ending 30 November 2007. During this period we decided 753 applications. We granted relief in relation to 563 applications and refused relief in relation to 105 applications—85 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 businesses 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.

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

Applications for relief 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 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).

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.

Licence conditions for operators of forestry managed investment schemes

- 1 We decided to amend the standard licence conditions in Pro Forma 209 *Australian financial services licence conditions* (PF 209) that relate to the protection of investors' interests in the land used by forestry managed investment schemes. The amendments reflect recent changes to tax laws by the *Tax Laws Amendment (2007 Measures No. 3) Act 2007*. The amendments to condition 45 of PF 209:
 - remove the sunset date limiting the operation of the condition to investors who joined forestry schemes before 30 June 2008; and
 - extend the maximum period for registering investors' interests in the land used by the scheme, so that licensees have a maximum of 15 months from the end of the income year in which the investor first invests to register the investor's interest in the land.

These amendments will be reflected in PF 209 when it is next released.

Approved eligible provider following restructure

- 2 We granted a company approval to be an eligible provider under RG 166.165(g) of Regulatory Guide 166 *Licensing: Financial requirements* (RG 166) in circumstances where the company had not yet lodged audited financial statements following a restructure of the group. We granted approval as the company provided a reasonable commercial explanation of 'exceptional circumstances' and was an entity of undoubted financial substance as required under RG 166.165(g). We took into consideration that the assets within the restructured group had been the subject of audit as part of the formerly listed company in the group. This supported the company's submissions on the financial position of the proposed eligible provider.

No-action letter for distribution of non-cash payments

- 3 We granted a no-action letter to a licensee for potential contraventions of s911A and 911B. The licensee was proposing to sell stand-alone non-cash

payment products distributed through unrelated retail outlets such as service stations. The retail outlets would:

- display advertising material and ‘Product Packs’ containing disclosure documents and related material;
- receive the application fee for the products;
- in some cases, receive money to be loaded onto the product on issue; and
- give the customer a receipt containing information necessary for the customer to complete the application for the products.

The customer would not be issued with the products at the retail outlet.

The licensee was concerned that the retail outlets would be seen to be providing the financial service of dealing by ‘arranging’ for the licensee to issue, or for the customer to apply for and acquire, the products for the purposes of s766C(2). We decided to grant a no-action letter on the condition that the licensee would be responsible for the conduct of the retail outlets involved, consistent with Class Order (CO 04/909) *Agency banking*. The licensee was also required to disclose this to customers in the Product Packs.

No-action position for custodian of a superannuation fund

- 4 We granted a no-action letter to a licensee providing a custodial service to a trustee of a superannuation fund in relation to past and expected future breaches of s911A(1) and 912A(1). The trustee had previously been considered to be a wholesale client of the licensee. However, during the winding-up of the fund, a disability insurance matter arose which caused the fund’s net assets to fall below \$10 million, resulting in the trustee becoming a retail client (s761G(6)(c)). The licensee’s AFS licence only authorised it to provide custodial services to wholesale clients. The licensee initially sought relief from Pt 7.6 and 7.7 to permit it to provide custodial services for the fund as a retail client in the particular circumstances. We decided that relief was not appropriate given the nature of the breaches (including the fact that the licensee had not assessed these as being significant and requiring the lodgement of breach notifications with ASIC under s912D). However, we were prepared to provide a no-action letter.

Breach of AFS licence during merger

- 5 We granted a no-action letter to a licensee that had been providing financial services in relation to non-cash payment products without appropriate authorisations on its AFS licence. The licensee was completing negotiations and arrangements for a merger. Following the merger, all financial services would be provided under the AFS licence of the merged entity. We decided

to grant a no-action position, sunsetted until 31 January 2008 to allow sufficient time for the licensee to either finalise the merger or take other steps to ensure the financial services offered were provided in accordance with the Corporations Act (i.e. by varying its own licence or entering an intermediary authorisation arrangement with a licensee authorised to undertake the relevant financial services).

Lodgement of financial statements before cancellation of AFS licence

- 6 We responded to a query about whether a company was required to comply with the financial reporting obligations under s989B in relation to a financial year that ended shortly before the company's AFS licence was cancelled. We indicated that the obligations under s989B apply in relation to each financial year where the entity holds an AFS licence at the end of the year. As such, the company was required to comply with s989B in relation to the financial year in question.

Licensing relief for a NZ amalgamation proposal

- 7 We granted relief from the requirement to hold an AFS licence in connection with offers under an 'amalgamation proposal' in accordance with New Zealand law. We granted relief on the basis that the amalgamation proposal was analogous to other forms of control transactions in Class Order (CO 03/606) *Financial product advice—exempt documents*.

Foreign company providing financial services to retail clients in Australia

- 8 We granted relief to a UK company from the need to hold an AFS licence where it provides financial services from premises outside Australia to retail clients who are in Australia in the following circumstances:
- where the financial services are in relation to:
 - a product issued by the UK company (or a specified entity that has been amalgamated with others to form the UK company) following an application or inquiry by the client;
 - a product issued by the UK company (or a specified entity that has been amalgamated with others to form the UK company) to the client at a time when they were not in Australia, or
 - a product that supplements or is the same kind as, and is issued in substitution for, one of those products; and
 - the UK company did not actively solicit the retail clients in Australia in relation to those products.

This relief is similar to the exemption in s911A(2D) as inserted by reg 7.6.02AG. We gave this relief because the UK company was unable to rely on s911A(2D) because they had a branch in Australia that provided financial services to wholesale clients and held an AFS licence for those services. We considered that relief was appropriate because the Australian branch of the UK company was not accessible to retail clients.

Fixed rent management rights scheme

- 9 We granted relief from Pt 7.6 to the operators of a proposed management rights scheme where the operators had the ability to rent a serviced strata unit from an owner of a strata unit at a fixed rental price. A typical scheme involves an owner's entitlement to receive variable rent after deduction of the operator's fees and costs (as opposed to fixed rent) where the operator manages the rental of the strata unit. We considered that a fixed rental arrangement did not necessarily exclude the strata scheme from being a management rights scheme provided that the investor's return materially depended upon the arrangement involving their strata unit. Before a potential owner entered the scheme, the operators would advise owners that the return may, to some extent, depend on the operator's success in managing the business of renting out the owner's units. The relief was based on Pro Forma 187 *Management rights schemes where the strata unit cannot be used as a residence* (PF 187) but was varied to account for the fixed rental arrangements.

Information releases

- 10 The following information releases relate to licensing relief granted during the period of this report.
- IR 07-43 APRA and ASIC release discussion paper on breach reporting by dual-regulated institutions (4 October 2007)*
- IR 07-45 ASIC updates guidance on licensee obligations (11 October 2007)*
- IR 07-51 ASIC updates its policy on training for financial product advisers (22 November 2007)*
- IR 07-52 ASIC releases guidance on compensation and insurance arrangements for AFS licensees (27 November 2007)*

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 Guide (FSGs).

Prospectus relief

Refusal of extension to 13-month expiry date

- 11 We refused to grant relief to extend the expiry date for a combined prospectus and PDS to more than 13 months after the date of the document. The document was issued in relation to an agricultural scheme, and a six-month extension was sought from the expiry date of the document to take advantage of a proposed extension to the operation of a product ruling from the Australian Tax Office. We refused relief because we considered the applicant could comply by issuing a new prospectus. We considered the period of the extension to be considerable and that the costs of preparing a new prospectus for that period would not be disproportionate.

Unlisted employee share scheme relief

- 12 We refused to grant disclosure relief for an employee share scheme by a foreign unlisted company. Class Order (CO 03/184) *Employee share schemes* could not be relied upon because shares in the company were not quoted on the financial market operated by the Australian Securities Exchange Ltd (ASX) or an approved foreign market. The *Corporations Legislation Amendment (Simpler Regulatory System) Act 2007* (SRS Act) introduced amendments to facilitate unlisted employee share schemes, effective from 28 June 2007. These amendments provide exemptions from the licensing and hawking provisions for unlisted employee share schemes where (among other things) the offer is made under a disclosure document. However, the SRS Act exemptions do not extend to the requirement to provide disclosure. We refused relief because we did not consider that there were factors present that would justify the granting of relief beyond the exemptions introduced by the SRS Act. We also noted that the employees were required to provide monetary consideration for shares under the offer meaning the risk to employees was higher.

Offer of stapled securities by NZ issuer to Australian members

13 We assessed an application by a public company in New Zealand that planned a reconstruction and was to offer stapled securities in its newly formed entity to the company's existing members (including Australian residents). The stapled securities included debentures. The company sought relief so that the new entity would not be required to:

- appoint a separate trustee and produce a trust deed for the company's Australian shareholders, as required under Ch 2L; and
- issue an Australian prospectus for the stapled securities.

We decided in-principle to grant relief because of the impending enactment of the *Corporations (NZ Closer Economic Relations) and Other Legislation Amendment Act 2007*, which, when enacted, would exempt certain 'recognised offers' from New Zealand entities from various provisions of the Corporations Act including Ch 2L and Pt 6D. While a decision in-principle was made to grant relief, the company subsequently withdrew the application.

On-sale of securities by issuer previously granted s340 order

14 We granted relief to enable the use of the 'cleansing notice' disclosure exemption in s708A(5) by removing the requirement in s708A(5)(d) that there be no order under s340 covering the issuer during the relevant period. The issuer would have been able to utilise the on-sale exemption under s708A(5) but for the fact that it was previously granted an order under s340 which relieved it from the requirement to prepare and lodge a half-year financial report that covered a two-month period. We were satisfied that the s340 order did not detract from the overall disclosure to the market because of the existence of other financial information that the issuer had made publicly available that covered the two-month half-year.

On-sale disclosure relief for suspended company

15 We granted relief to permit the use of the 'cleansing notice' disclosure exemption in s708A(5) in circumstances where the listed company was suspended for 12 trading days and so could not meet the requirement in s708A(5)(b). The suspension was imposed under ASX Listing Rule 11.3 in respect of a proposed change of activities. The suspension was imposed until the company had complied with the requirements of Chs 1 and 2 of the Listing Rules, including the lodgement of a prospectus with ASIC. We noted that the suspension was not as a result of market misconduct and the company's securities had not, except for the 12 trading days, otherwise been suspended for more than five trading days in the 12 months before the day

on which the relevant securities were issued. In addition, the securities had been quoted at all times in the three months before the date on which the relevant securities were issued.

Consent, liability and content relief for proposed director

- 16 We granted various prospectus relief in relation to a proposed directorship that was contingent on the implementation of a proposed scheme of arrangement. The proposed director was a director of the company being acquired by the proposed scheme of arrangement. We granted relief so that:
- the proposed director did not have to consent to the prospectus (s720);
 - disclosure under s711 relating to interests, fees and benefits was not required in relation to the proposed director;
 - the proposed director would not be liable under s729 for loss or damage resulting from a contravention of s728.

The relief applied where the proposed director was not a director of the company during the period commencing from the date of the prospectus and ending on the last day that a person may have accepted offers made in or accompanied by the prospectus.

Foreign securities and CDIs

- 17 We considered some applications for relief and a request for advice in relation to securities issued by a registered foreign entity. The trading of the securities was to be facilitated in Australia via the issue of CHESSE Depository Interests (CDIs):
- We refused to grant relief from the on-sale provisions in s707(3) in relation to the securities of the foreign entity (as opposed to CDIs) on the basis that it was not required. We considered that the CDIs, not the foreign securities, were being offered for sale through the market conducted by the ASX.
 - Relief was also sought from the on-sale provisions for the offer of CDIs for sale through the market conducted by the ASX. We granted relief conditional on an Australian prospectus being lodged for the underlying foreign securities, given the importance of information about the underlying securities to investors in CDIs. Despite the existence of a US disclosure document, we noted that it was currently beyond our policy to treat US disclosure as equivalent to Australian disclosure.
 - The foreign entity sought confirmation that it did not need relief from the disclosure provisions in Ch 6D for the offer of CDIs. We confirmed that the foreign entity did not need this relief since we consider that CHESSE Depository Nominees Pty Limited issues the CDIs, not the foreign entity.

We are currently reviewing the scope of the relief we provide in relation to CDIs generally, in particular in Class Order (CO 02/311) *CHESS Depository Nominees Pty Ltd—CDIs*.

Disclosure relief for a NZ amalgamation proposal

- 18 In the matter referred to at paragraph 7, we also granted relief from Pts 6D.2 and 6D.3 in relation to the offers made under the amalgamation proposal, and on-sale relief. We granted this relief on the basis that the circumstances of the transaction fell within the proposed relief in Consultation Paper 79 *Disclosure relief for foreign scrip takeovers* (CP 79).

Disclosure in reconstructions

- 19 We refused to grant relief from the disclosure requirements in s706 in connection with a proposed restructure. We also rejected a second revised application for relief made on similar terms to the first. In both these instances, we decided that the circumstances of the proposed restructure were such that shareholders would not hold the same proportionate rights and liabilities in relation to the business and assets after the restructure was effected. This meant the restructure did not satisfy the policy in Regulatory Guide 188 *Disclosure in reconstructions* (RG 188).

Financial information in an OIS

- 20 We refused to grant a US-based company relief from s715(2) so that it could offer options over its shares to 48 Australian employees under an Offer Information Statement (OIS). The offer was to be part of an issue of options to its global employees under a stock purchase plan. Relief was needed as the applicant proposed to include audited accounts for a 12-month period ending earlier than six months before the offer (as required by s715(2)(a)), to be supplemented by audit reviewed (rather than audited) accounts for a further three-month period. Further, these accounts were prepared in accordance with US GAAP, rather than the Australian accounting standards. Relief was refused as it was considered inappropriate to deviate from the requirements of the offer information statement regime, with its already very limited disclosure requirements, and because US GAAP does not require the same level of disclosure as the Australian accounting standards.

Consents relief for historical report

- 21 We granted relief to a resource company from the consent obligation in s716(2) to allow it to refer to a historical geological mining report in its prospectus. A firm of geologists had issued the report but the commissioning party refused to identify the specific author. The firm of geologists was also prevented by its client from providing this information. We granted relief

because the information in the report was clearly material to investors' decision-making and reasonable, though unsuccessful efforts, had been made to obtain the author's consent.

On-sale of securities on conversion

- 22 We provided relief from s707(3) to facilitate secondary sale of continuously quoted securities issued on conversion of convertible securities, where the issue of the convertible securities was made without Pt 6D.2 disclosure. Relief was conditional on the issuer giving the ASX a document (not a prospectus) containing information prescribed under s713 about the convertible securities and underlying securities at the time the convertible securities are issued. The relief was based on our policy described in Regulatory Guide 173 *Disclosure for on-sale of securities and other financial products* (RG 173) and consistent with the relief provided by Class Order (CO 04/671) *Disclosure for on-sale of securities and other financial products*.

We have recently reconsidered our approach to this relief and no longer intend to grant relief of this type. We consider relief provided under Category 3 of CO 04/671 and Class Order (CO 00/195) *Offer of convertible securities* under s713 is adequate to facilitate secondary sales of the securities issued on conversion of convertible securities. We will entertain minor and technical applications for procedural prospectus relief on the basis of our revised approach. Our revised approach to secondary sales relief will be applied for applications for relief received from 31 March 2008.

PDS relief

PDS relief for insurance claim card

- 23 We refused to grant an insurer relief from the need to give a PDS for an insurance claim card. Clients receiving an insurance claim payout would have the option of receiving the insurance claim card as an alternative to receiving a cheque payment for a settled claim. We refused relief because we were not satisfied that the insurer's burden of providing a PDS outweighed the benefit to clients receiving it. The PDS contained important information that we considered to be essential to a client's decision whether to acquire the card (e.g. that the card had an expiry date and could only be used at a limited number of specified retail outlets). We considered that without a PDS it would be difficult for clients to make a confident and informed decision about the card. In addition, we were not satisfied that there were 'special circumstances' to justify departure from our policy in Regulatory

Guide 169 *Disclosure: Discretionary powers* (RG 169) and Regulatory Guide 185 *Non-cash payment facilities* (RG 185).

Disclosure of material changes by trustee of eligible rollover fund

- 24 We granted relief to a trustee of an eligible rollover fund from the requirement to provide ongoing disclosure of material changes and significant events under s1017B within the timeframes stipulated under s1017B(3). The relief related to certain interim crediting rate errors and the required adjustment made to members' accounts as a result of those errors. Relief was granted on the condition that the material change or significant event:
- be published in the fund's annual report for its financial year ending 30 June 2007 (prominently and within the first six-pages); and
 - in periodic statements provided to the affected holders of interests in the fund by 31 December 2007.

Disclosure breaches by trustee of eligible rollover fund

- 25 In the matter referred to at paragraph 24, we also refused to grant the trustee or its predecessor a no-action letter for each year it may have been required to notify members under s1017B of any interim crediting rate errors associated with the fund within the timeframes stipulated under s1017B(3). We did not believe there was sufficient justification to grant a no-action position. In particular we noted that it was the applicant or its predecessor that implemented the interim crediting rate policy of the fund that resulted in the interim crediting rate errors.

Foreign company providing financial services to retail clients in Australia

- 26 In the matter referred at paragraph 8, we also granted relief to the UK company from Divs 2, 3, 4 and 5 of Pt 7.9 to provide PDS disclosure to retail clients.

FSG relief

No-action position for custodian of a superannuation fund

- 27 In the matter referred to at paragraph 4, we also granted the licensee a no-action letter in relation to the requirement to give an FSG.

FSR relief for insurance claim card

- 28 In the matter referred to at paragraph 23, we also refused to grant the insurer relief from the need to provide an FSG when arranging for the issue of the insurance claim card. We were not satisfied that the burden of providing the FSG would outweigh the benefit of its clients receiving it. The FSG sets out important information about the insurer's financial services business, including details about commissions paid by the issuer of the insurance claim card to the insurer in arranging for the issue. We considered this information to be essential in a client's decision whether to acquire the insurance claim card. In addition, we were not satisfied that there were 'special circumstances' to justify departure from our policy in RG 169 and RG 185.

Foreign company providing financial services to retail clients in Australia

- 29 In the matter referred at paragraph 8, we also granted relief to the UK company from Divs 1, 2, 3 and 4 of Pt 7.7 to provide FSG disclosure to retail clients.

Other disclosure relief

Offer of a share sale facility by SPV

- 30 We granted relief from s1019G and 1019I(2) to a Special Purpose Vehicle (SPV) created for the sole purpose of offering a share sale facility to certain preference shareholders of a company. Relief was sought so that the offer need not include a fair estimate of value of the shares as at the date of offer. The SPV proposed to offer to acquire the shares at the initial public offering (IPO) issue price, determined by the company and its underwriters after an institutional book build process. That price would only be determined after the offer to sell shares into the share sale facility had closed. Any ordinary shares acquired by SPV under the facility would be immediately on-sold into the company's IPO. Relief was granted for the following reasons:
- the share sale facility was being made available to facilitate a capital restructure and associated IPO, so the circumstances can be distinguished from those intended to be captured by Div 5A of Pt 7.9;
 - preference shareholders were mostly directors or employees of companies that the company had acquired over the years and therefore had knowledge of the company;
 - it would be unduly burdensome for each of the shareholders to sell their shares into the IPO under the prospectus. A share sale facility would

give shareholders a viable alternative to realise the value of their shares under the IPO; and

- although the price shareholders would receive for their shares was unknown at the time they were required to accept the offer, the fact that the price would be the same as the IPO price provided some certainty about how the price would be set.

Share sale facility through a book build

- 31 We granted relief from Div 5A of Pt 7.9 to allow a company to offer a share sale facility to shareholders receiving unlisted shares upon implementation of a scheme of arrangement. Relief was provided to facilitate the sale of the shares through a book build where adequate disclosure was provided to relevant shareholders to satisfy the policy of Div 5A of Pt 7.9. We decided to grant relief as we accepted that the share sale facility was not intended to be prohibited under Div 5A of Pt 7.9. Applicants for this type of relief will need to specifically address how the book build price will be sufficiently approximate to the listing price of the shares.

Share sale facility post listing

- 32 In the matter referred to at paragraph 31, we also granted relief from Div 5A of Pt 7.9 to allow the applicant to offer a second share sale facility, post-listing. The relief was provided to facilitate the sale of the shares on-market through the ASX. Shareholders received a volume weighted average market price for their shares (minus brokerage fees). We granted relief as we accepted that share sale facilities were not intended to be prohibited under Div 5A of Pt 7.9. Further, the relief was consistent with our policy, which is now reflected in Regulatory Guide 161 *Share and interest sale facilities* (RG 161) and Class Order (CO 08/10) *Share and interest sale facilities*.

Fixed rent management rights scheme

- 33 In the matter referred to at paragraph 9, we also granted relief from the obligation to confirm transactions in s1017F.

Information releases, media release and class order

- 34 The following releases and class order relate to disclosure relief granted during the period of this report.

Information releases

IR 07-42 *ASIC proposes widening prospectus exemption for rights issues*
(28 September 2007)

IR 07-48 *Independent expert reports* (30 October 2007)

Media release

MR 07-280 *ASIC's next steps towards better disclosure for unlisted and unrated debentures* (31 October 2007)

Class order

CO 08/25 *Sale offers within 12 months after controller sales*

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

Refusal of scheme registration

- 35 We considered a managed investment scheme that sought to combine two trusts under the umbrella of one registered scheme. Under the scheme, members would be required to acquire and maintain interests in both schemes and the number of interests held by a member in each scheme would shift according to the investment strategy of the scheme. We considered the arrangement was a single scheme due to the interdependency between the operations of the schemes. However, we refused registration as the constitution for the scheme did not make adequate provision for each of the obligations imposed under s601GA in relation to the overall scheme, rather than separately for each trust.

Scheme registration relief connected to court proceedings

- 36 We refused relief from the requirement to register a managed scheme that was currently subject to court proceedings relating to operating an unregistered managed investment scheme. We also refused a no-action letter request. The applicant submitted that its conduct did not in fact amount to a managed investment scheme; however, it sought relief for the avoidance of doubt. We refused relief on the basis that submissions made did not satisfy criteria for relief or a no-action letter and relief in this case could be seen to pre-empt a decision of the courts.

Other relief relating to registered schemes

Redemption from liquid scheme

- 37 We refused to grant relief from s601FC(1)(d) and 601KA(3) to allow the responsible entity of a managed investment scheme to facilitate redemption of members' interests as if the scheme was liquid when it appeared to the

responsible entity that the scheme may be illiquid. We refused relief from the equal treatment provisions under s601FC(1)(d) as we considered the relief unnecessary. In particular, it appeared that all members of the scheme held the same class of interests (although withdrawing at different times) and members would be treated equally as the same redemption procedures outlined in the constitution would apply to all members. We also refused relief from s601KA(3) as we did not consider it appropriate to displace the investor protections that apply to illiquid withdrawals under Pt 5C.6, which had also been specified in the constitution. The responsible entity further sought relief for the avoidance of doubt from s601KA(3)(b), which we also refused because this was dependent on the relief being granted from s601KA(3).

Offers to withdraw from an illiquid scheme

- 38 We granted a responsible entity relief from Pt 5C.6 and s601GA(4), which set out requirements for making withdrawal offers to members of an illiquid scheme. Relief was granted to allow offers that would only be met from the profits of the scheme, additional debt or money raised by the issue of ordinary interests in the scheme made for the purpose of satisfying withdrawal requests, or by conversion of interests to ordinary interests (that is, not from the sale of scheme property). We gave this relief because we considered that in these circumstances withdrawals would not result in the dissipation of the scheme's assets and differential treatment of members.

Issue price relief for placement to associate

- 39 We granted relief from s601GA(1)(a) to permit a responsible entity of a managed investment scheme to exercise a discretion to determine the issue price in respect of a placement. This would enable an associate not acting in a fiduciary capacity or as underwriter to participate in the placement to maintain its relevant interest in voting shares in the stapled company. The responsible entity was unable to rely on Class Order (CO 05/26) *Constitutional provisions about the consideration to acquire interests* as the class order restricts associates from participating unless they underwrite the placement or hold interests in the scheme in a fiduciary capacity (s601GAA(2)(b)). In granting relief, we considered the risk that the associate would lose its controlling interest as a result of the rights issue and placement, shareholder approval would be obtained under Item 7 of s611 and the terms and pricing of the placement would be the same in respect of all offerees. Relief was granted on the basis that the proportion of interests issued to the associate would not exceed the proportion of interests in the scheme held by the associate immediately before the issue occurred.

Rights issue by a dual-listed fund

- 40 We extended the relief from s601GA in CO 05/26, in the context of a rights issue. We modified the requirement (in notional s601GAA(3)(d)) that the price of all interests offered be the same to take account of fluctuations in exchange rates. This relief was granted to facilitate a rights issue by a dual-listed scheme where investors were given the choice between subscribing under the rights issue in either Australian currency or foreign currency of a relevant exchange on which the scheme is also listed.

Provision of related party benefit without member approval

- 41 We granted relief from s601LC so that a responsible entity was not required to obtain member approval for the giving of financial benefits from the assets of a scheme to its associate. Prior to the lodgement of the relief application, the responsible entity had lodged with ASIC an application under s601PA for deregistration of the scheme that was still being processed by ASIC. There would be no requirement to obtain member approval of the transaction under s601LC once the scheme was deregistered. We decided to grant relief to relieve the applicant from costs arising from the timing of the deregistration process. We were of the view that the regulatory detriment of granting relief would be minimal and would be clearly outweighed by the resulting commercial benefit. Relief was specified to sunset within one-month of the relief instrument.

Breach of reporting obligations by IDPS operator

- 42 We refused a request by a company for a no-action letter for its non-compliance with the requirements in Class Order (CO 02/294) *Investor directed portfolio services* in relation to the operation of an investor directed portfolio service (IDPS). In particular, the company indicated that it had been non-compliant with the reporting obligations and valuation methods contained in paragraph 2(e)(xii)(D) of CO 02/294 on the basis that the methods outlined in that paragraph were not the most appropriate methods to adopt in relation to its IDPS. We made a decision to refuse the request for a no-action letter on the basis that we were not satisfied the applicant had met the requirements of Regulatory Guide 108 *No-action letters* (RG 108) at RG 108.9, RG 108.10 and RG 108.19.

Information release and class orders

- 43 The following information release and class orders relate to managed investments relief granted during the period of this report.

Information release

IR 07-53 ASIC releases class order on Singaporean collective investment schemes (4 December 2007)

Class orders

CO 07/422 On-market buy-backs by ASX-limited schemes

CO 07/570 Revocation of Class order (CO 98/55)

CO 07/642 Variation of Class order (CO 02/315)

CO 07/753 Singaporean collective investment schemes

D Mergers and acquisitions relief

Key points

This section outlines some of the circumstances 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

Relief for temporary relevant interest over 20%

- 44 We refused to grant relief to facilitate a transaction that would have the same outcome as a Pt 5.1 scheme of arrangement, which had already been voted down by a company's shareholders. Under the proposed transaction, the applicant would acquire businesses from another company (the target) for scrip consideration issued to the target. The scrip would then be distributed in specie to target shareholders. For the brief period that the target held the shares, it would hold more than a 20% relevant interest in the applicant. Relief was sought from the operation of s606 for this period of time. We did not consider it appropriate to provide relief in a case where shareholders had already decided on the matter, and there was an alternative, legally effective, way to conduct the transaction without relief (Item 7, s611).

Takeovers

Less favourable terms than in public proposal

- 45 We refused to grant relief from s631(1) to permit a bidder to make takeover offers at a price less favourable than the announced price. Relief was requested on the basis of a potentially dilutionary entitlement offer announced by the target after the takeover announcement. As the action by the target triggered a defeating condition, we considered that relief was unnecessary as it was open to the bidder not to proceed to make offers relying on s670F, consistent with Regulatory Guide 59 *Announcing and withdrawing takeover bids* (RG 59).

Applicant's refusal to allow procedural fairness

46 We refused to grant an entity relief from having to prepare a prospectus or amend and resend the bidder's statement to shareholders in circumstances where bid consideration was varied to include debentures (in response to a rival bid). The applicant submitted that we should not consult any other parties about the application given:

- the confidential nature of the application;
- the relief sought was minor and technical; and
- there were no 'materially adversely affected third parties'.

In line with Regulatory Guide 92 *Procedural fairness to third parties* (RG 92) at RG 92.24, we refused to grant relief as we were unable to ascertain whether the potential adverse effects on third parties of granting the relief would be clearly outweighed by the detrimental effect on the applicant of consulting with third parties. We also took the view that failure to afford procedural fairness would invalidate a decision to grant relief.

Other mergers and acquisitions relief

Substantial holding notices

47 We made an in-principle decision to grant a bidder relief from s671B in the context of a hostile takeover of a financial services business. The combined effect of s671B and s608(3) meant that the bidder would need to lodge substantial holding notices covering the target's substantial holdings once the bidder obtained a relevant interest of more than 20%. Although the bidder later withdrew the application, we agreed in-principle to give relief because the target had indicated it would not provide the bidder with the information necessary for the bidder to lodge substantial holding notices. In this case, the nature of the target's business meant significant compliance costs would be expended to provide substantial holding notices. We decided to grant relief for a limited time and where circumstances did not allow the bidder to procure the target to provide it with necessary substantial holding information.

Changes in financial position

48 We gave relief to a company undergoing a scheme of arrangement from the obligation at cl 8302(h) of Pt 3 of Sch 8 of the Regulations. This provision requires disclosure in the scheme memorandum of changes in the company's financial position since the last balance sheet laid before members or sent to them under s314 or 317. Relief was granted to allow disclosure of changes to the company's financial position from the date of audited full year accounts

to be filed with the ASX pursuant to Appendix 4E of the ASX Listing Rules before the dispatch of the scheme memorandum, provided the company offered to dispatch those accounts to shareholders on request and included the audited balance sheet in the scheme memorandum.

Experts report in a scheme of arrangement

49 We granted relief from the requirement for a full expert report to be included in, or to accompany, the explanatory memorandum (cl 8303 of Pt 3 of Sch 8 of the Regulations). We made our decision to grant relief on the basis that the scheme of arrangement was an internal reconstruction as described in Regulatory Guide 142 *Schemes of arrangement and ASIC review* (RG 142) at RG 142.33. The relief was subject to:

- a summary of the expert report accompanying the explanatory memorandum;
- the summary of the expert's report being titled 'Summary of Independent Expert Report and FSG';
- the full expert report being released on the ASX announcements platform and the company's website on or before the date that the explanatory memorandum is dispatched; and
- the explanatory memorandum prominently notifying members that they may obtain a copy of the complete experts report, free of charge, by contacting the company.

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

Auditor independence

- 50 We granted relief from the auditor independence requirements (Pt 2M.4, Div 3 and s307A(2)) to the audit firm of a public company limited by guarantee (an Australian health fund in the process of demutualising and listing on the ASX). In connection with that process, policyholders would receive shares in the company. A number of partners and staff of the company's auditor firm held policies with the company (on commercial terms), and the issue of shares would result in a breach of the auditor independence provisions. We granted relief as we considered it likely that any other audit firm would require relief on the same terms and, in any event, a change of auditors would impose an unreasonable burden on the company and the auditor firm. We granted relief for a period ending one-month after listing to enable affected persons to dispose of the relevant shares.

Synchronisation of financial years of schemes

- 51 We granted relief to a company required to prepare consolidated financial reports from the requirement in s323D(3) to synchronise the financial years of numerous managed investment schemes with its own (30 September year-end). We granted relief on the basis that complying with the requirement would be unreasonably burdensome. We also noted that there was a basis for allowing the funds to continue to balance at 30 June having regard to the information needs and expectations of their investors. This relief is most relevant to large banking groups with financial periods that do not end at either 30 June or 31 December.

Financial service providers

Notifying ASX of relevant interests

- 52 We granted relief from s205G(6) to allow directors of a company to participate in a cash management trust or IDPSs operated by related bodies corporate without being required to notify the ASX of changes in their relevant interests. We had previously granted relief in relation to cash management trusts on the basis that the interest of a director of a listed company in a cash management trust operated by a related body corporate is generally of no relevance to the policy objectives of s205G (since there is no market in the cash trust interests). We considered that this policy rationale could be equally applied in the case of an interest in an IDPS.

Foreign company providing financial services to retail clients in Australia

- 53 In the matter referred to at paragraph 8, we also granted relief to the UK company from Divs 2, 3, 4, 5, 6 and 7 of Pt 7.8 for the provision of financial services to retail clients.

Fixed rent management rights scheme

- 54 In the matter referred to at paragraph 9, we also granted relief from the prohibition on hawking in s992A.

Information release and class order

- 55 The following information release and class order relate to conduct relief granted during the period of this report.

Information release

IR 07-47 *Simpler auditor registration* (29 October 2007)

Class order

CO 07/569 *Revocation of Class Order* (CO 05/21)

F 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.

Relief from disclosure requirements for demutualisations

- 56 We exempted a company from Pt 5 of Sch 4, which imposes disclosure and reporting requirements where a company seeks to demutualise. The company previously operated as a mutual and then became a wholly owned subsidiary after merging with another entity. It now proposed to replace its constitution. Despite being a wholly owned subsidiary, the company remained subject to the requirements of Sch 4. We granted relief under cl 30 of Sch 4 as we were satisfied that a wholly owned subsidiary cannot be regarded as having a mutual structure.

ADI offer of debit cards without written request

- 57 We refused to grant a no-action letter to an authorised deposit-taking institution (ADI) to offer debit cards to existing customers over the telephone or online without the customer also making a written request, as required under s12DL of the *Australian Securities and Investments Commission Act 2001* (ASIC Act). We considered that online written requests satisfied s12DL and a no-action letter was not required for online offers. However, telephone requests clearly fell within the prohibition of s12DL. Section 12DL is an important safeguard in preventing the issue of credit cards or debit cards in situations where the customer had not expressly requested them in writing.

ADI offer of companion credit cards without written request

- 58 We granted a no-action letter to an ADI in relation to a proposal to send credit cards to existing credit card customers. The card would be an additional companion card linked to the customers' existing accounts and would be sent without a request in writing from the customers as required under s12DL(2)(a) of the ASIC Act. The no-action position was conditional on the companion card not increasing the customer's credit limit, interest rate or the fees associated with their existing account. Also, the customer must be able to activate the card before it can be used to ensure the customer is making a conscious decision about whether or not to accept the additional

card. We considered this would also reduce the risk of fraudulent use of the card. We considered that a conditional no-action letter was appropriate in the circumstances as we were of the view that it would not advance the policy of the legislation to take action in respect of this proposal.

Buy-back voting restrictions for nominees

- 59 We granted relief from the buy-back voting restriction in s257D(1)(a). The provision restricts votes from being cast in favour of the buy-back resolution by any person whose shares are proposed to be bought back and their associates. Without relief, this provision prohibits a nominee holder from voting in respect of one underlying holder's shares (who would otherwise be entitled to vote) if the nominee also holds shares on behalf of another unrelated underlying holder who would be prohibited from voting. We considered that relief to allow the nominee to vote on the shares held on behalf of persons who would otherwise be entitled to vote on the resolution was consistent with the purpose of the provision. The relief ensures that the vote more accurately reflects the views of persons whose shares (or beneficial interest in shares) are not the subject of the proposed buy-back.

Information release and media release

- 60 The following releases relate to other relief granted during the period of this report.

Information release

IR 07-50 ASIC seeks further comments on competition for market services
(21 November 2007)

Media release

MR 07-241 Competition for market services—trading in listed securities and related data (13 September 2007)

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 1: 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
7 18	Provenco Group Limited (a company incorporated under the law of New Zealand) Cadmus Technology Limited (a company incorporated under the law of New Zealand)	07/0959 (in 62/07)	28/11/2007	s741(1) and 911A(2)(l) This instrument grants the companies relief from Pts 6D.2 and 6D.3 and s911A(2)(l) for the provision of financial product advice in connection with the amalgamation of the two companies under New Zealand law. It also grants shareholders of Provenco Group Ltd relief from s707(3) and (4) for the on-sale of shares issued as part of the amalgamation.	
8 26 29 53	Bank of Scotland plc (a company incorporated in the United Kingdom)	07/738 (in 39A/07)	17/09/2007	s911A(2)(l), 926A(2)(a), 951B(1)(a), 992B(1)(a) and 1020F(1)(a) This instrument exempts the bank from the requirement to hold an AFS licence, Divs 3, 6 and 10 of Pt 7.6, Divs 1, 2, 3 and 4 of Pt 7.7, Divs 2, 3, 4, 5, 6 and 7 of Pt 7.8 and Divs 2, 3, 4 and 5 of Pt 7.9 in relation to providing financial services to existing retail clients.	

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
9 33 54	Interests in a managed investment scheme, (service strata scheme) known as the Inter City Motel, Belmont located at 8 Kimberley Road, Belmont, Western Australia	07/704 (in 38/07)	04/09/07	926A(2)(b), 992B(1)(b) and 1020F(1)(b) This instrument exempts the interests in the serviced strata scheme from Pt 7.6 (other than Divs 4 and 8), s992AA and 1017F where the scheme involved a fixed rental price arrangement.	
14	BlueFreeway Limited (ACN 122 262 819) and shareholders in BlueFreeway Limited (ACN 122 262 819)	07/0843 (in 54/07)	15/10/2007	s741(1)(b) This instrument modifies s708A(5)(d) to allow the on-sale of securities issued by the company without a prospectus within 12 months despite a s340 order previously granted to the company.	
15	Facilitate Digital Holdings Limited (ACN 093 823 253)	07/0739 (in 42/07)	13/9/2007	s741(1)(b) This instrument modifies s708A(5)(b) to exclude a suspension of securities trading required by a market operator due to significant change to the nature or scale of the company's activities.	
16	Bank of Queensland Limited (ACN 009 656 740)	07/0924 (in 60/07)	9/11/2007	s741(1) This instrument grants the bank relief from s710(3)(c), 711(3)(a), 711(4)(a) and Item 1 of s720 in relation to an offer of redeemable preference shares where a proposed directorship is contingent on the implementation of a scheme of arrangement. This instrument also grants the proposed director of the company relief from Item 3 of s729(1).	
17	iShares Inc (ARBN 125 632 279) and iShares Trust (ARBN 125 632 411)	07/0810 (in 48/07)	8/10/2007	s741(1) This instrument grants relief from s707(1), (3) and (4) to allow the secondary sale of CHESSE Depository Interests (CDIs) issued over shares in a foreign registered company.	

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
21	Ivanhoe Australia Limited (ACN 107 689 878)	07/0913 (in 60/07)	7/11/2007	s741(1)(b) This instrument grants an exemption from s716(2) so that statements from a historical geological report can be made in a disclosure document for the offer of securities by the company without the author's consent.	
22	Shareholders of Lynas Corporation Limited (ACN 009 066 648)	08/172 (in 22/08)	6/03/2008	s741(1)(b) This instrument modifies s9 and 708A to permit the on-sale of listed shares in the company issued on the conversion of convertible securities where the convertible securities were issued by the company without disclosure.	
24	Perpetual Superannuation Limited (ACN 008 416 831)	07/939 (in 60/07)	20/11/2007	s1020F(1)(a) and 1020F(1)(c) This instrument revokes Instrument 07/802 and conditionally exempts the company as trustee of the Australian Eligible Rollover Fund from s1017B(1) to the extent that s1017B(5) requires notice of an adjustment to be given within six months after the change or event occurs.	
30	Centric SaleCo Pty Limited (ACN 127 002 733)	07/0840 (in 52/07)	24/10/2007	s1020F(1)(c) This instrument modifies s1019G(2) and 1019I(2) so that the company can offer to purchase shares from shareholders of Centric Wealth Limited (ACN 100 375 237) under a share sale facility without including in the offer document a fair estimate of the value of the shares as at the date of the offer.	
31	NIB Holdings Limited (ACN 125 633 856)	07/0757 (in 44/07)	21/09/2007	s1020F(1)(a) This instrument exempts the company from Div 5A of Pt 7.9 in relation to offers connected to a share sale facility conducted prior to the shares being listed on the ASX.	

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	NIB Holdings Limited (ACN 125 633 856)	07/0857 (in 54/07)	25/10/2007	s1020F(1)(a) This instrument grants the company relief from Div 5A of Pt 7.9 in relation to offers connected to a share sale facility.	
34	<i>Sale offers within 12 months after controller sales</i>	CO 08/25	3/03/2008	s741(1) and 1020F(1) This class order modifies various provisions in Ch 6D and Pt 7.9 to ensure the effective operation of the exemptions under s708A and 1012DA for sale offers made within 12 months of an earlier sale by a controller. This instrument has effect under s741(1) and 1020F(1).	
38	PrimeSpace Property Investment Limited (ACN 107 345 317) as responsible entity of Prime Access Property Fund ARSN 127 803 525	07/0885 (in 56/07)	6/11/2007	s601QA(1)(b) This instrument grants relief from Pt 5C.6 and s601GA(4) to allow the responsible entity to redeem interests in the scheme without complying with the withdrawal provisions for illiquid schemes.	
39	SP Australia Networks (RE) Limited (ACN 109 977 371) (SP) as responsible entity of SP Australia Network (Finance) Trust (ARSN 116 783 914)	07/0919 (in 60/07)	19/11/2007	s601QA(1)(b) This instrument grants relief from s601GAA(2)(b)(ii) (as notionally inserted by Class Order (CO 05/26) <i>Constitutional provisions about the consideration to acquire</i>) to permit the responsible entity of the scheme to issue interests to its associate at a discount under a placement.	
40	MacarthurCook Fund Management Limited (ACN 004 956 558) as responsible entity of MacarthurCook Property Securities Fund (ARSN 111 442 150)	07/0731 (in 40/07)	10/09/2007	s601QA(1) and 10120F(1) This instrument modifies s601GAA(3)(d) (as notionally inserted by CO 05/26) so that the RE can set the issue price in a rights issue where the price is affected by fluctuations in exchange rates.	

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
41	Investa Properties Limited (ACN 084 407 241) as the responsible entity of Investa Property Trust (ARSN 088 705 882)	07/1067 (in 22/08)	19/10/2007	s601QA(1)(b) This instrument grants relief from s601LC to allow the responsible entity to give financial benefits from the assets of the scheme to a related party without member approval.	19/12/2007
43	<i>On-market buy-backs by ASX-limited schemes</i>	CO 07/422	13/11/2007	s601QA(1) and 655A(1) This class order grants conditional relief from s601GA(4), Pt 5C.6 and s606 to allow the responsible entity of a registered scheme listed on ASX, that has no more than one class of interests, to carry out on-market buy-backs of interests. Its purpose is to avoid placing listed schemes at a regulatory disadvantage to listed companies in relation to capital management techniques where there is no regulatory reason for different treatment of listed schemes and listed companies while ensuring that the regulatory protections that Parliament intended for registered schemes are not undermined but operate in a commercially sensible manner.	
43	<i>Revocation of Class order (CO 98/55)</i>	CO 07/570	17/11/2007	s601QA(1) This class order revokes Class Order (CO 98/55) <i>Investments in unregistered schemes.</i>	

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
43	<i>Variation of Class order (CO 02/315)</i>	CO 07/642	21/09/2007	s601QA(1)(b) This class order amends Class Order (CO 02/315) <i>Time-sharing schemes—use of loose-leaf price list</i> to remove the requirement that operators of registered time-sharing schemes give a cooling-off period of 14 calendar days and replace it with a requirement that gives them a choice of: <ul style="list-style-type: none"> • giving a cooling-off period of not less than seven calendar days if: <ul style="list-style-type: none"> – they are members of the Australian Timeshare and Holiday Ownership Council Limited; and – ASIC has not notified them in writing that they cannot continue to give a cooling-off period of seven calendar days; or • giving a cooling-off period of not less than 14 calendar days if they are not members of the Australian Timeshare and Holiday Ownership Council Limited. 	
43	<i>Singaporean collective investment schemes</i>	CO 07/753	15/11/2007	s601QA(1)(a), 911A(2)(l), 1020F(1)(a) and 1020F(1)(c) This class order grants registration, licensing and certain product disclosure relief to operators of collective investment schemes authorised by the Monetary Authority of Singapore on an ongoing and conditional basis.	
50	N.I.B. Health Funds Limited (ACN 000 124 381) and PricewaterhouseCoopers (PwC)	07/0829 Not gazetted.	12/10/2007	s340(1) This instrument grants relief from s324CB(1), (1A), (2) & (4) and 324CF(1), (1A) & (2) to members of PricewaterhouseCoopers (PwC) and relief from s307A(2) to PwC's lead auditor in connection with the demutualisation of the company.	31/12/2007

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
51	National Wealth Management Holdings Limited (ACN 093 329 983)	07/0795 Not gazetted.	3/10/2007	s340(1) This instrument grants relief from s323D(3) so that the company is not required to synchronise the financial years of managed investment schemes with its own year end.	
52	Macquarie Group Limited (ACN 122 169 279)	07/0848 (in 54/07)	25/10/2007	s205G(6) This instrument exempts a director of the company from s205G(1) in relation to a relevant interest in a security that is an interest in either Macquarie Cash Management Trust (ARSN 086 886 606) or Macquarie Flexible Cash Trust (ARSN 096 054 698). This instrument also revokes Instrument 03/829.	
55	<i>Revocation of Class Order (CO 05/21)</i>	CO 07/569	17/10/2007	s992B(1) This class order revokes Class Order (CO 05/21) <i>Clarification of requirement for the appointment of auditors by financial services licensees.</i>	
56	Australian Unity Capital Management Limited (ACN 087 648 726)	07/0841 (in 52/07)	25/10/2007	Subcl 30(1) of Sch 4 This instrument exempts the company from compliance with Pt 5 of Sch 4.	
59	Australia and New Zealand Banking Group Limited (ACN 005 357 522)	07/0858 Not gazetted.	30/10/2007	s257D(4) This instrument grants the company relief from s257D(1)(a) so that votes can be cast in favour of a special resolution by a nominee.	