



ASIC

Australian Securities & Investments Commission

REPORT 133

Overview of decisions on relief applications (December 2007 to March 2008)

July 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 our decisions on relief applications during the period 1 December 2007 to 31 March 2008. It summarises situations where we have exercised, or refused to exercise, our powers to exempt or modify 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* (the Act) to exempt a person or class of persons from particular provisions and to modify the application of particular provisions to a person or class of persons. This report deals with the use of our exemption and modification powers under the provisions of the following Chapters of the 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 Act.

The report covers the period beginning 1 December 2007 and ending 31 March 2008. During this period we decided 975 applications. We granted relief in relation to 740 applications and refused relief in relation to 116 applications—119 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. Most 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 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.

Employee incentive scheme—cash payment award

- 1 We granted relief from the requirement to hold an AFS licence to an issuer of interests (the employer) in an employee incentive scheme. Under the employee incentive scheme, employees receive a cash payment referable to price movements in a listed underlying financial product. In most cases, the issuer of the underlying financial product is a related body corporate of the employer. The issuer will also provide trustee, investment management, investment advisory or similar services (pursuant to agreements entered into on arms length terms) for a fee (which is, at least in part, linked to the performance of the underlying product/s). Based on these considerations, we decided relief was appropriate because:
- it was within the policy parameters of Regulatory Guide 51 *Applications for relief* (RG 51) and Regulatory Guide 49 *Employee share schemes* (RG 49) as the commercial benefits of granting relief outweighed any regulatory detriment that might arise from the operation of the employee incentive scheme;
 - the offer of the interests appeared to be for the intention of promoting an ongoing relationship between the employer and employee;
 - the purpose of the offer was not fundraising;
 - interests are offered and vest with the employee for nil consideration;
 - the offer relates to underlying products that are listed on the financial market operated by ASX Limited (ASX) or an approved foreign exchange;
 - the offer will be made to a small proportion of employees;
 - an employee will receive interests in the plan that relate to a listed stock they directly or indirectly provide services to, evidencing a level of mutual interdependence between the employee and applicant; and
 - most of the eligible employees are wholesale investors.

Employee share scheme with restrictions on beneficiary rights

- 2 We granted relief from the requirement to hold an AFS licence in relation to an employee share scheme. Under the employee share scheme, the employees are offered and issued shares that are held on trust for a fixed-term vesting period. At the end of the vesting period, shares would then be transferred to the employees. The applicant could not rely on Class Order (CO 03/184) *Employee share schemes* for relief because the company and trust deed placed restrictions on the rights of employees who hold shares to vote and receive dividends during a fixed term vesting period. In granting relief, we noted that the vesting period was for a period of not more than three years and the relief was otherwise consistent with the policy parameters in RG 49. More specifically, the restrictions on voting and dividend rights would not undermine the promotion of long-term mutual interdependence between the company and employees.

Ongoing relief—employee share scheme

- 3 We granted relief from the requirement to hold an AFS licence in relation to the offer of options and performance rights over stapled securities to eligible employees. Relief was provided to cover all future employee share schemes under which the products are offered (and not in relation to a specified employee share scheme). We granted relief as it was consistent with the policy parameters in RG 49.

Rollover of employee share scheme following restructure of a foreign entity

- 4 We granted relief from the requirement to hold an AFS licence to a newly created foreign company following a restructure. The employee share scheme had previously been offered by another foreign company. Offers under the employee share scheme were intended to be ‘rolled over’ such that the offers of options and performance rights already made under the scheme would lapse and new offers would be made in relation to shares in the new entity. We considered that relief was consistent with the policy parameters in RG 51 and RG 49 as:
- the aim of the offer was not fundraising but rather to promote mutual interdependence between the companies and its senior employees;
 - relief would allow relatively few Australian employees to access the same employee benefits as foreign employees; and
 - interests were purchased for nominal consideration.

Overall, we were satisfied a net regulatory benefit would flow from granting relief.

Stored value card consisting of a non-cash payment facility

- 5 We granted relief from the requirement to hold an AFS licence in relation to the issue of a non-cash payment (NCP) facility. The NCP facility is a stored value card, issued to customers of a retail store who request a refund above a particular amount. The amount of value on the card will reflect the amount of the refund requested. Individual relief was required because the NCP facility was not a 'gift card' and the issuer could not guarantee that payments under the NCP facility would not exceed the \$10 million threshold for all facilities of the same class. The relief granted was within the policy parameters in Regulatory Guide 185 *Non-cash payment facilities* (RG 185). In particular we noted that:
- the NCP facility can only be used at participating stores that are wholly owned by the issuer;
 - the financial services provided in relation to the NCP facility are not a significant part of the issuer's business;
 - the NCP facility is easy to use and well understood by customers; and
 - there are unlikely to be any significant developments in the nature and/or use of the NCP facility.

UK financial service provider of insurance products

- 6 We granted relief from holding an AFS licence to a private company registered in the United Kingdom (UK) that issues insurance to vendor companies covering the failure by the purchaser to fulfil deferred consideration obligations (instead of being paid in full on the date of the sale). The applicant was unable to rely on Class Order (CO 03/1099) *UK FSA regulated financial service providers* as CO 03/1099 does not cover the provision of insurance products by a foreign financial service provider. We granted relief on the basis that the applicant met some of the conditions in CO 03/1099 for a UK FSA regulated financial service provider. The relief was conditional on the applicant complying with s985D, when it comes into force, as if the applicant were an AFS licensee.

Distribution of New Zealand target's statement

- 7 We granted relief from the requirement to hold an AFS licence in relation to providing general advice in relation to a financial product in connection with the distribution in Australia of a target's statement issued under New Zealand law. The target was a company incorporated in New Zealand, registered under Pt 5B.2, and was listed on the ASX and the New Zealand Stock Exchange. It received a partial off-market takeover offer and proposed to distribute reports from its advisers in its target's statement. We considered the provision of the target company statement satisfied the definition of financial product advice (specifically, general advice), and the distribution of

it involved carrying on a financial services business in Australia. We considered granting relief to be within the policy parameters in Regulatory Guide RG 167 *Licensing: Discretionary powers* (RG 167) and our proposed policy in Consultation Paper 79 *Disclosure relief for foreign scrip takeovers* (CP 79). In particular, we noted that the takeover was to be regulated in the jurisdiction of an approved foreign market and the bid document was required to be provided under regulations governing the conduct of the takeover.

Participating property syndicate

- 8 We granted relief from the requirement to hold an AFS licence in relation to a managed investment scheme under which the responsible entity as developer/promoter purchases and transforms property (into holiday units) and disposes of the property to no more than 15 investors. The investors will own property units as tenants-in-common under Certificates of Title representing their fractional holdings. The rights and obligations of the investors will be governed by an agreement in the lease. When 80% of the fractional interests have been sold, the developer/promoter (the applicant) will cease to have any managerial control of the property or scheme unless otherwise voluntarily engaged by the investors. After the applicant's departure, the investors will form an Owners Committee, which will exercise full control over the property. Should the applicant hold any residual interest in the property (being 20% or less), the rights of the applicant will be the same as those of the other investors. We granted relief as it was within the policy parameters in Regulatory Guide 77 *Property trusts and property syndicates* (RG 77).

Information releases and class orders

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

Information releases

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

IR 07-55 Auditor notifications about AFS licensees (20 December 2007)

IR 08-06 ASIC grants relief for share and interest sale facilities (18 March 2008)

Class orders

CO 07/753 Singaporean collective investment schemes

CO 07/862 Variation of Class Order (CO 07/753)

CO 08/10 Share and interest sale facilities

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

Conversion of co-operative to a company

- 10 We refused to grant relief from the obligation to provide a prospectus for offers' to issue shares to members and qualifying ex-members of a co-operative incorporated under the *Co-operative Act 1992* (NSW) seeking to become a company registered under the Act. Relief was refused because:
- in relation to existing members, we considered that no relief was required as there was no relevant 'offer' under Ch 6D but rather a transfer under Pt 5B.1; and
 - in relation to ex-members, there was an 'offer' for Ch 6D purposes and we considered that an important investment decision had to be made by ex-members in deciding whether to purchase shares. Therefore, in accordance with the intent of Ch 6D, we were of the view that there should be a prospectus for these offers.

We also granted relief from:

- the advertising restrictions in s734(2), to allow existing members to discuss the conversion process and its implications; and
- the application form requirements in s723(1) and 734(6)(b), as the nature of the conversion process did not require an application form.

Relief for a foreign scrip takeover

- 11 We granted relief to an ASX-listed entity proposing to acquire a New York Stock Exchange (NYSE) listed entity by offering American Depositary Receipts (ADRs) over the acquirer's shares. The merger was to be regulated under the General Corporation Law of the State of Delaware. We granted relief from Pts 6D.2 and 6D.3 so the acquirer could issue ADRs without a prospectus to a small number of shareholders of the NYSE-listed entity residing in Australia. Relief was also granted from s707(3) and (4) so

securities could be on-sold within 12 months of the date of issue. We considered relief was analogous to the policy proposed in Consultation Paper 79 *Disclosure relief for foreign scrip takeovers* (CP 79). The relief was subject to the conditions proposed in CP 79.

On-sale disclosure where issuer's purpose is on-sale

- 12 We refused to grant relief from the purpose test in s708A(1)(b) so that a company could use a cleansing notice to facilitate the on-sale of shares issued upon the exercise of convertible bonds issued to a sophisticated investor. The applicant sought relief because, under the proposed transaction, the shares would necessarily be on-sold and therefore issued with the on-sale purpose referred to in s707(3)(b)(i). We refused to grant relief because we did not consider that the proposed transaction was of the type the cleansing notice regime was intended to facilitate, given the express limitation in s708A(1)(b). However, we subsequently granted on-sale disclosure relief on terms similar to Category 3 of Class Order (CO 04/671) *Disclosure for on-sale of securities and other financial products* (excluding the on-sale purpose test)—that is, where disclosure is made for the issue of the convertible bonds and conversion of the bonds does not involve a further offer.

Relief for CDIs issued in connection with a scheme of arrangement

- 13 We granted on-sale relief from s707(3) to an Australian entity proposing to redomicile in the United States (US) by way of a 'top-hatting' reconstruction scheme of arrangement. The applicant sought relief from s707(3) for the offer of:
- Chess Depository Interests (CDIs) over shares in the new US company. The CDIs were to be issued upon exercise of options received under the scheme of arrangement. We granted relief to permit the on-sale of the CDIs on condition that the circumstances and terms of issue of the options and CDIs were disclosed in the explanatory statement for the scheme of arrangement; and
 - the shares in the new US company underlying those CDIs. We considered that relief was not necessary for the shares underlying the CDIs as it is the CDIs, not the underlying shares, that are offered for sale on the market operated by the ASX.

Relief for rights issue

- 14 We granted relief to an applicant that proposed to undertake a renounceable rights issue using the cleansing notice regimes in s708AA for the offer to issue shares and s708A for subsequent offers for sale. Due to the timing of

the rights issue, without relief the applicant would have been required to lodge multiple cleansing notices under s708AA and 708A. We granted relief so that the applicant did not have to issue multiple cleansing notices, in line with the proposals outlined in Consultation Paper 91 *Non-traditional rights issues* (CP 91).

Note: This relief has been superseded by Class Order (CO 08/35) *Disclosure relief for rights issues*.

IDPS and separately managed account

15 We granted relief from the need to provide a prospectus to facilitate a proposed investor directed portfolio service (IDPS) where investments in shares would be available through a separately managed account that constituted a managed investment scheme (scheme). The IDPS operator was also the scheme's responsible entity. The scheme entailed share investment models where the acquisition and disposal of assets was at the discretion of model managers. Where trust law operates to merge the trusts (IDPS and scheme), the applicant is deemed to hold shares on direct trust for the investor. In this circumstance, the applicant would be unable to rely on relief under Class Order (CO 02/294) *Investor directed portfolio services* because it can exercise discretion in relation to changes of investments within the scheme. In granting relief, we considered that the applicant was acting in two separate capacities, that is:

- when managing client assets under the model mandate, the applicant was acting as the responsible entity of the scheme, under its constitution; and
- when managing the IDPS investment platform, the applicant was acting as an IDPS operator, in accordance with the terms of CO 02/294.

Relief was granted in line with relief provided for IDPS-like schemes in Class Order (CO 02/296) *Investor directed portfolio-like services provided through a registered managed investment scheme*.

Offers under an employee share scheme of securities that have been suspended for change of activities

16 We granted disclosure relief for offers under an employee share scheme where a listed company's securities had been suspended for more than two trading days in the previous 12 months due to a significant change in the nature of the company's activities. The applicant could not rely on CO 03/184 because the suspension meant that an offer of the company's securities could not satisfy the definition of 'eligible offer'. We noted that:

- the suspension was imposed until the company had complied with the requirements of Chs 1 and 2 of the ASX Listing Rules, including the lodgement of a prospectus with ASIC;

- the suspension was not the result of market misconduct; and
- but for the suspension, the company would have been able to meet the definition of an ‘eligible offer’.

Disclosure relief for New Zealand offer relating to an employee share scheme

- 17 We granted relief from the disclosure obligations in Ch 6D in relation to an offer of a company’s securities made under Pt 2 of the New Zealand *Securities Act 1978* to employees of the company in Australia. We made the decision to grant relief on the basis that the offer related to an employee share plan, the offer was available to a relatively small number of Australian employees and relief was consistent with the policy underlying the mutual recognition framework in Ch 8. The Regulations to Ch 8, which prescribe the ‘recognised jurisdictions’ and other relevant terms, were not finalised when we assessed the relief application. However, the explanatory material to the draft Corporations Amendment (NZ Closer Economic Relations) Bill indicated the intention that New Zealand be prescribed by the Regulations as a ‘recognised jurisdiction’.

Note: The mutual recognition scheme between Australia and New Zealand has now been finalised and is contained in Chapter 8 of the Act and the Corporations Amendment Regulations 2008 (No. 2), which amend the Regulations. As such, this relief has been superseded.

Employee share scheme with restrictions on beneficiary rights

- 18 In the matter referred to in paragraph 2, we also granted relief from the need to provide a prospectus for the offer of the securities under the employee share scheme.

Ongoing relief—employee share scheme

- 19 In the matter referred to in paragraph 3, we also granted relief from the need to provide a prospectus for the offer of options and performance rights over stapled securities under the employee share scheme.

PDS relief

Employee incentive scheme—cash payment award

- 20 In the matter referred to in paragraph 1, we also granted relief from the requirement to provide a PDS for the offer of financial products under the employee incentive scheme.

Employee share scheme with restrictions on beneficiary rights

- 21 In the matter referred to in paragraph 2, we also granted relief from the requirement to provide a PDS for the offer of the products under the employee share scheme.

Ongoing relief—employee share scheme

- 22 In the matter referred to in paragraph 3, we also granted relief from the requirement to provide a PDS for offers under the employee share scheme.

Rollover of employee share scheme following restructure of a foreign entity

- 23 In the matter referred to in paragraph 4, we also granted relief from the requirement to provide a PDS for offers under the employee share scheme.

Stored value card consisting of a non-cash payment facility

- 24 In the matter referred to in paragraph 5, we also granted relief from the requirement to provide a PDS for the offer of the stored value card.

IDPS and separately managed account

- 25 In the matter referred to in paragraph 15, we also granted relief from the requirement to provide a PDS for the offer of interests in the IDPS.

Enhanced fee disclosure relief for unlisted warrants over listed managed investment schemes

- 26 We granted relief to the issuer of unlisted warrants over listed managed investment schemes from providing enhanced fee disclosure in the PDS for the products as required under Pt 2 of Sch 10 of the Regulations. Relief was provided as there were only two ‘fee or cost’ items to be described in the PDS—namely the borrowing fee and the interest charged—in relation to a limited recourse loan from the issuer for the purchase price of the warrant. These costs were still required to be described but were not required to be described in the manner and format required by Pt 2 of Sch 10 of the Regulations. We considered this relief to be consistent with the policy parameters in Regulatory Guide 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)* (RG 168).

Accelerated rights issue of interests in managed investment scheme

- 27 We provided relief from the need to provide a PDS for an accelerated rights issue of interests in a managed investment scheme (fund) where professional investors will be issued interests in the fund prior to other interest holders. The applicant proposed to enter into agreements with the professional investors, preventing the professional investors from trading or disposing of their allotted interests until the remaining interests under the issue have been allotted to other interest holders. We provided relief to allow for the rights issue to be conducted in two stages without the requirement to issue a PDS. We also granted relief from the requirements to give multiple cleansing notices at several steps in the rights issue process that were close in time and from the requirement for a cooling off right to be given to retail investors. We considered that the relief provided was consistent with the relief in Class Order (CO 08/35) *Disclosure relief for rights issues* in relation to shares in a company.

Other disclosure relief

Distribution of New Zealand target's statement

- 28 In connection with the matter referred to in paragraph 7, we also granted relief from Divs 2 and 4 of Pt 7.7. Licensing relief had already been granted in relation to the distribution in Australia of a target's statement issued under New Zealand law. However, one entity involved in the transaction already had an AFS licence that was restricted to the provision of financial services to wholesale clients. We considered it inappropriate to require that person to comply with Divs 2 and 4 of Pt 7.7 merely because they already held an AFS licence. We decided relief was consistent with Regulatory Guide 169 *Disclosure: Discretionary powers* (RG 169). We noted that the circumstances giving rise to this and related applications from the AFS licensee are unlikely to arise often.

Stapled entity and periodic reports

- 29 We refused to grant relief from the periodic statement requirements in s1017D to two listed managed investment schemes that are stapled to a public company. The applicants submitted that the relief was warranted given the schemes' continuous disclosure and other reporting requirements under the Act. We refused relief because:
- the regulatory detriment to retail clients from the applicants' non-disclosure of the type of information required under s1017D(4) and (5)

outweighs any commercial benefit or net regulatory benefit to the applicants from reduced disclosure obligations under the Act;

- the commercial detriment to the applicants of having to comply with all the periodic statement provisions in s1017D, in addition to their other disclosure obligations under the Act, was no greater than that intended by the legislature in enacting s1017D; and
- there was insufficient overlap in the information required under s1017D, the reporting requirements of Ch 2M and the continuous disclosure provisions of Ch 6CA.

Information releases, media release and class orders

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

Information releases

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

IR 08-06 *ASIC grants relief for share and interest sale facilities* (18 March 2008)

Media release

MR 07-333 *Better disclosure for unlisted and unrated debentures: ASIC releases its advertising guide* (19 December 2007)

Class orders

CO 07/753 *Singaporean collective investment schemes*

CO 07/862 *Variation of Class Order (CO 07/753)*

CO 08/10 *Share and interest sale facilities*

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

CO 08/35 *Disclosure relief for rights issues*

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

Participating property syndicate

- 31 In the matter referred to in paragraph 8, we also granted relief from the Ch 5C provisions.

IDPS and separately managed account

- 32 In the matter referred to in paragraph 15, we also granted relief from the Ch 5C provisions.

Other relief relating to registered schemes

Accelerated rights issue of interests in managed investment scheme

- 33 In the matter referred to in paragraph 27, we also granted relief from the requirement to treat all interest holders of a managed investment scheme equally. In granting relief, we noted that the applicant proposed to restrict the right of the wholesale investors to sell their interests under the rights issue until retail investors can also do so. These restrictions prevent wholesale investors from being treated more preferentially than retail investors. We also granted relief so that the constitution of the scheme does not have to make adequate provision for consideration to be paid to acquire an interest in the scheme in this circumstance.

Information releases and class orders

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

Information releases

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

IR 08-06 ASIC grants relief for share and interest sale facilities (18 March 2008)

Class orders

CO 07/753 Singaporean collective investment schemes

CO 07/862 Variation of Class Order (CO 07/753)

CO 08/10 Share and interest sale facilities

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

Securities lending/prime broking agreements

- 35 We refused to grant relief from the takeover prohibition in s606 and the substantial holding obligations in s671B in respect of relevant interests acquired because of a right (whether exercised or not) to borrow listed securities and interests under standard securities loan/prime broking agreements. We refused to grant this relief because:
- in relation to s606, we did not accept that the prime broker and/or its clients would never have control objectives when lending or borrowing securities and interests;
 - in relation to s671B, we did not accept that the absence of control objectives by the prime broker and/or its clients was relevant to their disclosure obligations. We consider that the objectives of the substantial holding provisions extend beyond control scenarios and include keeping the market informed generally as to the substantial holders of listed entities; and
 - we were concerned that the requested relief would result in the market being less informed in takeover situations about:
 - the prime broker's holdings of potentially large pools of listed target securities or interests available to lend and/or vote;
 - the capacity in which these holdings arise; and
 - the identity of the parties the securities or interests are held for.

Downstream acquisition as a result of a private upstream transaction

- 36 We granted relief from s606 in relation to the acquisition of relevant interests in a listed downstream company as a result of its proposed private acquisition of an unlisted public company with less than 50 members (the upstream company). The upstream company held approximately 70% of the

total issued shares in the downstream company. Relief was made conditional on the applicant making an off-market takeover bid for the remainder of the shares in the downstream company at a price equal to or greater than the amount attributable to the value of the downstream shares held by the upstream company as a percentage of the total consideration paid for the upstream company and the price is determined by an independent expert to be fair and reasonable. We considered that this condition gives the minority downstream shareholders a reasonable and equal opportunity to participate in any benefits accruing from the proposed upstream acquisition, consistent with the Eggleston principles. Relief was also subject to the applicant offering a share sale facility to shareholders who receive any securities under the bid as a form of cash exit. Relief was granted because:

- the value of the upstream company's holding in the downstream company was less than 5% of the total value of the upstream company;
- alternative structures for the upstream acquisition that were available to the applicant under the Act were not as commercially viable for the parties; and
- the commercial benefit of the relief to the applicant far outweighed any regulatory detriment that may be caused to the minority downstream shareholders, who will have the benefit of transparency and disclosure under the downstream bid.

Downstream acquisition as a result of upstream schemes of arrangement

37 We granted relief to a company from s606 in relation to the acquisition of relevant interests in an ASX-listed company (the downstream company), resulting from a scheme of arrangement to acquire all the shares in a company that held shares in the downstream company (the upstream company). The upstream company was listed on London Stock Exchange's Alternative Investment Market (AIM) and ownership of 53% of the downstream company was its only asset. The applicant had proposed two separate and independent schemes of arrangement under Pt 5.1 to acquire all the shares in the downstream and upstream companies, leaving the applicant with 100% control of the downstream company if the schemes were successful. Relief was granted on condition that, if the applicant failed to acquire, through the scheme of arrangement with the downstream company, the remaining 47% of shares in the downstream company not held by the upstream company, the applicant must:

- make an unconditional takeover bid for the shares in the downstream company on the same terms and conditions as the schemes of arrangement; and
- offer a share sale facility to the former downstream company shareholders who accept into the bid as a form of cash exit.

This decision reflects our policy in Regulatory Guide 71 *Downstream acquisitions* (RG 71). In considering the application, we noted that:

- there is some doubt as to whether item 17 in s611 (in relation to acquisitions that result from a Pt 5.1 scheme of arrangement or compromise) is applicable to downstream acquisitions of relevant interests;
- as the upstream company holds no assets other than its 53% holding in the downstream company, the purpose of acquiring the upstream company was to gain control of the downstream company. Consequently, we did not consider that the upstream transaction was of the kind that is intended to be covered by item 14 in s611 (acquisition through a listed company) and relief should not be granted in the form of an unrestricted extension of item 14 to cover an upstream company listed on AIM in these circumstances. This is consistent with our policy in Information Release (IR 01-3) *ASIC approves overseas exchanges: safe harbour for downstream acquisitions* (30 January 2001).

Modification of 3% creep exemption

- 38 We refused to modify item 9 in s611 in order to facilitate a proposed 3% creep in a listed company in circumstances where the applicants' holding in the listed company was reduced to below 19% eight months prior to the proposed acquisition. The applicants' holding in the relevant listed company was involuntarily diluted as a result of the exercise of employee options. The applicants submitted that market volatility was the reason they had not made the proposed acquisition sooner. Relief was refused because we consider that the Act specifically prescribes a 6-month period for the use of the exception in item 9 in s611 in order to provide certainty for the market regarding the circumstances in which a major security holder could potentially increase its holding in a company. Similarly, our policy for relief relating to involuntary dilution outlined in Regulatory Guide 159 *Takeovers, compulsory acquisitions and substantial holdings* (RG 159) mirrors this 6-month period for reasons of market certainty. Market volatility and commercial reasons were not considered to be unusual circumstances so as to warrant an extension of our policy.

Takeovers

Collateral benefits involving employee options

- 39 We refused to grant relief to a bidder from the prohibition in s623 on giving benefits to a person that are likely to induce the person to accept a takeover

bid. The bidder proposed to make a private treaty offer to directors and employees of the target who held executive options in the target (the relevant employees). Some of the relevant employees also held shares in the target company that were the subject of the takeover bid by the bidder, and so the private treaty offer to acquire the options may have constituted a collateral benefit under s623. Certain options had vested at the date of the bid announcement; others had not vested and/or were subject to performance conditions. We refused relief because:

- in light of our policy in Regulatory Guide 35 *Collateral benefits in takeovers* (RG 35), we considered that the consequences of compliance with s623 by making a takeover bid for the options:
 - did not appear to be unintended;
 - did not impose an unreasonable burden on the bidder in terms of cost; and
 - did not outweigh the regulatory benefit of transparency afforded by a takeover bid for the options; and
- although not necessarily determinative, we noted that an expert opinion on the fair value of the options was not provided to us by the applicant to enable us to assess the size and nature of the collateral benefit. In any event, we consider that determining whether options are so overvalued as to induce the option-holders to accept the offer under the bid is usually problematic. This difficulty contributes to our policy position of granting collateral benefits relief only sparingly in these situations.

Consent to withdraw unaccepted offers under a bid

40 We granted consent under s652B to enable a bidder to withdraw unaccepted offers made under two initial takeover bids. In accordance with Regulatory Guide 59 *Announcing and withdrawing takeover bids (s653 and s746)* (RG 59), we granted conditional consent on the basis that we considered it futile for the bidder to continue with the bids given that:

- the bids were subject to a 90% minimum acceptance condition;
- the target directors, who between them controlled approximately 24% of the target shares, had publicly announced they did not intend to accept the offers under the bids; and
- the bidder had indicated that it did not intend to waive the minimum acceptance condition.

As the bidder and target had agreed on a revised proposal, our consent was conditional on, among other things, new takeover offers being made by the bidder by a specified date.

Relief to facilitate takeover offer by a dual-listed company for a dual listed company

41 Various forms of relief were requested to facilitate takeover offers by a ‘dual listed company’ bidder listed in Australia and the UK for a dual-listed company target also listed in Australia and the UK. These dual-listed company entities were each formed by a merger of two individual companies. As a result of each merger, the two individual companies continue to exist as separate companies but operate as a combined group with special provisions in their constitution facilitating this structure. This means that the ‘target’ is two separate companies, one incorporated in Australia and one in the UK, and separate takeovers bids are required for each target company.

Our decisions in relation to each ground of relief sought in these applications are summarised below.

Two-month rule relief

42 We granted relief from the requirement in s631 to make offers within two months of the announcement of a takeover bid, on condition that the bidder’s statement for the Australian target company is dispatched on or about the same date that the bidder dispatches offers under the bid for the UK target company in accordance with the requirements of the UK Takeover Code. Under the UK Takeover Code, the bidder is required to make offers for the UK target company once regulatory approvals are obtained and the bidder must use its reasonable endeavours to ensure that the regulatory approvals are obtained. We considered that this relief is in accordance with the policy in RG 59.

Disclosure relief

43 We granted relief in accordance with CP 79 to:

- exempt the bidder from compliance with Pts 6D.2 and 6D.3 (except s736) to enable an offer of securities to be made to Australian resident security holders of the UK target company without disclosure under Pt 6D.2;
- modify s707(3) and (4) to enable Australian resident security holders of the UK target company and holders of American Depositary Shares in the UK target company to offer the securities of the bidder received in connection with the offer for the UK target company for sale without disclosure under Pt 6D.2; and
- exempt the bidder from the requirement to hold an AFS licence for the provision of general advice contained in the offer documents in connection with the offer for the UK target company.

Issuing shares to a controlled entity

- 44 We granted an exemption under s259C(2) to enable the bidder to issue its shares as consideration under the offer for the Australian target company, or as part of related compulsory acquisition proceedings, to a subsidiary of the UK target company that holds a cross-holding in the Australian target company.

In the absence of relief, such an issue would be void if the bidder issues its shares to the subsidiary of the UK target company at a time when the bidder controls the UK target company as a result of acceptances of the offer for the UK target company. We considered the circumstances to be analogous to the circumstances addressed in s259D and accordingly made a decision to grant the relief sought on condition that the bidder not vote the shares in question and that procedures were established for dealing with the shares in the event of a takeover bid for the bidder.

Compulsory acquisition 75% test relief

- 45 We refused to modify s661A so that if the bidder acquires control of the UK target company, and the cross-holding described in paragraph 44 is still held by a subsidiary of the UK target company, the shares comprising the cross-holding would be excluded for the purposes of the numerator and denominator of the 75% test in s661A(1)(b)(ii), as modified by Class Order (CO 01/1544) *Compulsory acquisition following a takeover bid*. We refused relief on the basis that we did not consider that the bidder had established that relief was required, given there was a procedure already established for acceptance of the cross-holding into the bid. As stated in RG 51, if there is a lawful and effective way of doing a thing without relief (or with standard relief only), we will be generally inclined to refuse relief (or non-standard relief) as unnecessary. We did, however, indicate that we would be willing to reconsider a similar application in future if it became apparent that the cross-holding was having a clear defensive effect.

Equivalent treatment relief

- 46 We granted relief to modify item 1A of the table in s611 as notionally inserted by Instrument 01-1041. Instrument 01-1041 requires, among other things, that shareholders of the Australian target company and shareholders of the UK target company be afforded equivalent treatment in terms of the consideration offered for their shares, having regard to the equalisation ratio (as defined in the constitution of the target companies). Instrument 01-1041 also requires that the Australian target company shareholders and UK target company shareholders be afforded equivalent treatment in terms of the information provided to them, the time to consider the offer or procedure, the conditions to which the procedure is subject, and the other terms of the procedure (together, the terms and conditions).

We granted relief to modify Instrument 01-1041 to make clear that the Australian and UK shares offered as consideration by the bidder could be equated in determining whether the consideration to be offered under the proposed takeover bids is equivalent. That is, under the relief granted, the equalisation ratio of the bidder and its associated UK company, as well as the equalisation ratio of the targets, is to be taken into account in determining equivalence.

We also granted relief to permit the terms and conditions of the offers under the UK and Australian bids to differ as a result of certain technical differences existing under the Australian and the UK regimes, where those differences were not significant from a regulatory perspective.

Other mergers and acquisitions relief

Rights issue exception

- 47 In the matter referred to in paragraph 14, we also granted relief to align the treatment of foreign holders in a rights issue for the purposes of the disclosure exemption in s708AA and for the purposes of the takeover exception in item 10 of s615. Without relief, this misalignment means that a company cannot have the benefit of both the disclosure exemption and the takeover exemption—rather, it is one or the other. In line with the proposals in CP 91, we granted relief so that the applicant could rely on the disclosure exemption in s708AA, notwithstanding that it proposed to use the nominee procedure for foreign holders outlined in s615.

Self-acquisition relief

- 48 We granted relief from the self-acquisition prohibition in s259C for a proposed transaction in relation to a stapled group of managed investment schemes. The applicant was the responsible entity of each of a group of managed investment schemes that formed a stapled entity. The applicant was owned by a 'joint venture' company and held a 50% interest in the joint venture' company in its capacity as responsible entity of a managed investment scheme. The transaction involved the applicant, in its capacity as responsible entity of a managed investment scheme, acquiring the remaining shares in a company via a share sale agreement. In this way, the proposed transaction would have the effect of 'internalising' the management of the stapled managed investment schemes as interest holders would own the joint venture company that owns the responsible entity. We granted relief because we did not consider the proposed arrangement to be the kind of arrangement that the self-acquisition provisions are designed to prevent, given the acquirer's role as a responsible entity. As such, we considered that providing

relief was within the policy parameters in Consultation Paper 1 *Indirect self acquisition by investment funds* (CP 1). Relief was conditional on:

- the responsible entity acquiring shares in the joint venture company only in its capacity as responsible entity of the scheme; and
- the responsible entity, the joint venture company and their associates have no beneficial interest in the scheme other than the responsible entity's right of indemnity in the scheme.

Information release and media release

49 The following releases relate to mergers and acquisitions relief granted during the period of this report.

Information release

IR 08-3 *ASIC reminds market participants about stock lending disclosure obligations* (6 March 2008)

Media release

MR 08-46 *Market warned about stock lending and short selling obligations* (6 March 2008)

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

Relief for instalment warrants

- 50 We granted relief from the half-year financial reporting and continuous disclosure requirements to a disclosing entity that is an unlisted managed investment scheme. The application related to a proposed issue of unlisted rolling instalment warrants over interests in another unlisted managed investment scheme that was also a disclosing entity. We granted relief because:
- the performance of the underlying scheme will reflect the performance of the warrants so that the information provided by the underlying scheme under that scheme's own continuous disclosure and periodic reporting requirements would form the basis for the information the applicant would be required to disclose under its 'disclosing entity' requirements as the issuer of the warrants;
 - the applicant will still be subject to the remaining disclosure requirements under the Act, which will provide investors with an adequate level of disclosure in relation to the ongoing performance of the warrants; and
 - relief was consistent with the policy underlying the relief available under Class Order (03/957) *ASX managed investment warrants—disclosure and reporting exemptions* for listed instalment warrants over interests in managed investment schemes.

Relief was conditional on, among other things, the applicant making the entry and exit prices for interests in the underlying scheme available on its website and the applicant complying with the ongoing disclosure of material changes and significant events in s1017B.

Relief from lodging half-year financial reports

- 51 We refused to grant relief from the half-year financial reporting requirements to a credit union that had become a disclosing entity under

s111AF after issuing securities to 141 investors. We refused relief because we were not satisfied that the burden of compliance with the requirement to prepare and lodge half-year reports outweighed the value of the disclosures to the users of the reports, given the interests of creditors and depositors.

Extension of time to lodge half-year financial report

- 52 We refused to grant relief from s320 to extend the time for lodgement of a listed company's half-year report. We refused to grant relief because:
- we did not accept that market volatility and post-balance date negotiations in relation to asset sales were a basis for delaying the provision of important financial information to the users of the financial information. Many disclosing entities are subject to post-balance date events of this nature; and
 - we did not consider it appropriate to grant relief that would have delayed the release of financial information in the half-year report that may have been inconsistent with financial information already in the public domain.

Financial service providers

Employee incentive scheme—cash payment award

- 53 In the matter referred to in paragraph 1, we also granted relief from the hawking provisions of the Act.

Ongoing relief—employee share scheme

- 54 In the matter referred to in paragraph 3, we also granted relief from the hawking provisions of the Act.

Rollover of employee share scheme following restructure of a foreign entity

- 55 In the matter referred to in paragraph 4, we also granted relief from the hawking provisions of the Act.

Stored value card consisting of a non-cash payment facility

- 56 In the matter referred to in paragraph 5, we also granted relief from the hawking provisions of the Act.

Distribution of New Zealand target's statement

57 In connection with the matter referred to in paragraph 7, we gave relief in relation to a person involved in the transaction who already had an AFS licence that was restricted to the provision of financial services to wholesale clients. We considered that relief was consistent with RG 167, and that it was inappropriate to require that person to comply with certain licence obligations relating to the provision of financial services to retail clients when we had granted an exemption from the requirement to hold an AFS licence.

IDPS and separately managed account

58 In the matter referred to in paragraph 15, we also granted relief from the hawking provisions of the Act.

Hawking relief

59 In the matter referred to in paragraph 16, we also granted relief from the hawking provisions of the Act.

Hawking relief refused for providers of risk insurance products

60 We refused to grant relief from the hawking provisions of the Act. The provisions prevent the applicant from making an offer to issue risk insurance products in the course of an unsolicited telephone call unless the person to whom the offer is made has been given a PDS before becoming bound to acquire the product that is offered. The applicant sought relief so that it could rely on the timing requirement in s1012G for giving a PDS in time-critical situations. The applicant submitted that compliance with the requirement in s992A(3)(c) was impossible or commercially impractical and s992A(3)(c) was intended to be read together with s1012G. We refused relief because:

- we were not satisfied that compliance was impossible, or that the costs of compliance were disproportionately burdensome given the important consumer protection role of the hawking provisions in addressing pressure selling; and
- we were not satisfied that if relief were granted the protections for consumers intended by Parliament would be maintained, which would increase the risk of pressure selling of risk insurance products.

Financial reporting requirements

- 61 We granted relief to a licensee from the requirement in s989B to prepare and lodge a profit and loss statement, a balance sheet and an auditor's report with ASIC for the financial year ended 31 December 2007. The licensee had been issued its AFS licence on 27 November 2007. We granted relief on the basis that:
- the applicant had not provided any financial services and did not have any creditors associated with its financial services business during the period between 27 November 2007 and 31 December 2007;
 - the applicant agreed to prepare and lodge a profit and loss statement and balance sheet for a period of 13 months for the financial year ending 31 December 2008; and
 - ASIC is the primary user of financial reports lodged under s989B, as such reports are not accessible to the public.

Managed discretionary account operator

- 62 We refused to grant a managed discretionary account (MDA) operator a no-action letter to allow the operator to engage in the pooling of assets for investment purposes while relying on the relief available under Class Order (CO 04/194) *Managed discretionary accounts*. To rely on the relief under CO 04/194, an MDA operator must not pool a client's portfolio assets with any other client's portfolio assets for investment purposes. This is because pooling would be inconsistent with the requirement to manage the client's assets as a discrete portfolio belonging to that client. We refused the request because we did not consider the application satisfied the policy parameters under Regulatory Guide 108 *No-action letters* (RG 108).

Information releases and class orders

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

Information releases

IR 07-55 *Auditor notifications about AFS licensees* (20 December 2007)

IR 07-56 *Reduced form lodging requirements for some companies* (24 December 2007)

IR 08-04 *APRA and ASIC release new online reporting system for dual-regulated institutions* (11 March 2008)

IR 08-08 *Changes to Class Order (CO 98/1418) relief and new class order relief for disclosing entities* (31 March 2008)

Class orders

CO 07/822 *Variation of Class Order (CO 98/98)*

CO 08/11 *Variation of Class order (CO 98/1418)*

CO 08/15 *Disclosing entities—half-year financial reporting relief*

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.

Related party relief

- 64 We gave relief under s224(4) to allow members of a company to vote on a resolution to provide a related party with a financial benefit, even though the members were also directors, and therefore associates, of the related party. The relief was granted because there were no other members of the company that were not also directors of the related party. Accordingly, we considered that relief was consistent with our policy in Regulatory Guide 76 *Related party transactions* (RG 76) and would not cause unfair prejudice to the interests of any member of the company.

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
1 20 53	Babcock and Brown Limited (ACN 108 614 955)	07-0177 (in 22/08)	14/03/2008	s911A(2)(l), 992B(1)(a) 1020F(1)(a) and 1020F(1)(b) This instrument grants disclosure, licensing and hawking relief in relation to cash payments made under an employee share scheme.	
2 18 21	Oil Search Limited (ARBN 055 079 868)	08-0191 (in 26/08)	23/03/2008	s741(1)(a), 911A(2)(l), 992B(1)(a) and 1020F(1)(a) This instrument revokes ASIC Instrument 07/0638 and grants disclosure, licensing and hawking relief in relation to an offer of units of shares in the company under an employee share scheme.	
3 19 22 54	Mirvac Limited (ACN 003 280 699) and Mirvac Funds Limited (ACN 002 561 640)	07-1002 (in 66/07)	13/12/2007	s741(1)(a), 911A(2)(l), 992B(1)(a), 1020F(1)(a) and 1020F(1)(b) This instrument grants disclosure, licensing and hawking relief in relation to options and performance rights over stapled securities offered under an employee share scheme.	

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 23 55	Invesco Limited (a company incorporated in Bermuda)	07-1045 (in 02/08)	24/12/2007	s741(1)(a), 911A(2)(l), 992B(1)(a), 1020F(1)(a) and 1020F(1)(b) This instrument grants disclosure, licensing and hawking relief in relation to options and performance rights over foreign shares listed for less than 12 months.	
5 24 56	Woolworths Limited (ACN 000 014 675)	07-0989 (in 66/07)	06/12/2007	s911A(2)(l), 992B(1)(a), and 1020F(1)(a) This instrument grants disclosure, licensing and hawking relief in relation to a stored value card issued by a retailer.	
6	Deferred Finance Limited (ACN 116 833 866)	08-0151 (in 18/08)	28/02/2008	s911A(2)(l) This instrument grants licensing relief to a company incorporated in the UK in relation to providing general insurance products to wholesale clients in Australia.	
7	Auckland International Airport Limited (ARBN 085 819 156) First NZ Capital Limited, a body corporate incorporated under the law of New Zealand and with New Zealand company number 647574 Credit Suisse (Australia) Limited (ACN 007 016 300)	07-1000 (in 65/07)	12/12/2007	s911A(2)(l) This instrument grants licensing relief for the provision of general financial product advice in relation to the distribution of a target's statement to Australian shareholders issued under New Zealand law.	
8 31	Leisure First Property Pty Limited (ACN 126 346 487)	08-0042 (in 08/08)	24/01/2008	s601QA(1)(a) and 911A(2)(1) This instrument provides licensing relief and relief from Ch 5C in relation to a property syndicate-like managed investment scheme.	

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
10	The Bega Co-operative Society Limited (ARBN 008 358 503)	07-1061 (in 14/08)	13/12/2007	s741(a) This instruments exempts a co-operative that proposes to convert to a company from the operation of the application form and advertising restrictions in s723(1), 734(2) and 734(6)(b).	
11	Sims Group Limited (ACN 114 388 630) The Bank of New York, a banking corporation formed under the laws of New York, United States of America Metal Management, Inc., a corporation incorporated under the laws of Delaware, United States of America	07-1040 (in 02/08)	20/12/2007	s741(1)(a) and 741(1)(b) This instrument grants disclosure relief from Pts 6D.2 and 6D.3 and on-sale relief from s707(3) and (4) in relation to a foreign scrip takeover.	
12	Central Petroleum Limited (ACN 083 254 308)	08-0169 (in 20/08)	05/03/2008	s741(1) This instrument exempts the issuer from compliance with s707(3) on conditions similar to those in Category 3 of Class Order (CO 04/671) <i>Disclosure for on-sale of securities and other financial products</i> excluding the on-sale purpose test.	
13	New pSivida, Inc., a company incorporated in Delaware	08-0272 (in 38/08)	30/04/2008	s741(1)(b) This instrument grants relief s707(3) and (4) to holders of CDIs, where those CDIs were issued on the exercise of options received under a scheme of arrangement.	

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
14 47	Mirrabooka Investments Limited (ACN 085 290 928)	08-0024 (in 08/08)	17/01/2008	s655A(1) and 741(1) This instrument provides relief in relation to a non-traditional rights issue to remove the requirement for multiple 'cleansing notices' under the disclosure exemptions in s708A and 708AA. It also aligns the required treatment of foreign shareholders under the rights issue for the purposes of s708AA and the takeover exception for rights issues in item 10 in s615.	
15 25 32 58	Navigator Australia Limited	08-0111 (in 16/08)	15/02/2008	s601QA, 741(1)(a), 992B(1)(a) and 1020F(1)(a) This instrument grants managed investment, disclosure and hawking relief in relation to the operator of an IDPS and others involved in operating or promoting the IDPS.	
17	MWH Holding BV, a company registered in New Zealand with company number 659962	08/0269 (in 38/08)	02/05/2008	s741(1)(b) This instrument provides relief from disclosure obligations in Ch 6D in relation to an offer of a body's securities made to Australian employees of the body under Pt 2 of the New Zealand <i>Securities Act 1978</i> .	
26	ABN AMRO Australia Pty Limited (ACN 000 862 797)	08-0089 (in 14/08)	11/2/2008	s1020F(1)(a) This instrument provides an exemption from the enhanced fee disclosure requirements relating to the description of fees and costs in the Product Disclosure Statement for certain managed investment warrants.	

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
27 33	Austock Funds Management Limited (ACN 094 185 092)	08-0100 (in 18/08) and 08/0173 (in 22/08)	14/02/2008 and 12/03/2008	s1020F(1) and 601QA These instruments provide declarations and exemptions to facilitate an accelerated rights issue of interests.	
28 57	Credit Suisse (Australia) Limited (ACN 007 016 300)	07-1008 (in 02/08)	14/12/2007	s926A(2)(a) and 951B(1)(a) This instrument grants relief from s912A(1)(b) and (g) and 912B as they relate to the provision of financial services to retail clients, and exempts the person from Divs 2 and Div 4 of Pt 7.7 in relation to the distribution of the target's statement to Australian shareholders issued under New Zealand law.	
36	SP Telemedia Limited (AN 093 058 068)	08-74 (in 12/08)	04/02/2008	s655(1)(b) This instrument modifies s606 and 611 in relation to the downstream acquisition of relevant interests in a listed company as a result of a private acquisition of an upstream company.	
37	ARC Energy Limited (ACN 009 204 031)	07-1038 (in 02/08)	12/12/2007	s655A(1) This instrument modifies s606 and 611 in relation to the downstream acquisition of interests in a body through an upstream scheme of arrangement to acquire all shares in another body.	
42	BHP Billiton Limited (ACN 004 028 077)	08-0072 (in 10A/08)	19/03/2008	s655A(1)(b) This instrument relieves a body from the requirement to dispatch takeover offers within two months after the announcement of the bid.	

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	BHP Billiton Limited (ACN 004 028 077)	08-0316 (in 42/08)	16/05/2008	s741 and 911A(2)(l) This instrument: <ul style="list-style-type: none"> • exempts a body from Ch 6D in relation to the offer of securities issued as consideration under a foreign-regulated takeover bid; • modifies s707 to provide on-sale relief for the securities issued as consideration under the bid; and • exempts the body from the requirement to hold an AFS licence in connection with general advice contained in the bid documents. 	
44	BHP Billiton Limited (ACN 004 028 077)	08-0188 Not gazetted	19/03/2008	s259C(2) This instrument exempts a body from s259C in connection with the issue of its shares as consideration under a takeover bid for another body or in connection with related compulsory acquisition procedures.	
46	BHP Billiton Limited (ACN 004 028 077)	08-0189 (in 24/08)	19/03/2008	s655A(1)(b) This instrument modifies item 1A of the table in s611 (as inserted by Instrument 01/1041), which deals with equivalence of treatment of shareholders in connection with a takeover bid for a 'dual-listed company'.	
48	DB RREEF Funds Management Ltd (ACN 060 920 783)	08-0129 Not gazetted	21/02/2008	s259C(2) This instrument provides relief from s259C for the transfer of shares in the holding company of a responsible entity of a managed investment scheme to the responsible entity for the benefit of unitholders of the scheme.	

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	ABN Amro Australia Pty Limited (ACN 000 862 797)	08-230 (in 28/08)	02/04/2008	s111AT(1) and 1020F(1)(c) This instrument exempts the issuer of unlisted warrants over interests in unlisted managed schemes from the half-year financial reporting and continuous disclosure obligations for unlisted disclosing entities.	
16 59	Greencap Limited (ACN 006 631 769)	08-0002 (in 02/08)	03/01/2008	s283GA(1), 601QA(1), 741(1), 911A(2)(l), 992B(1) and 1020F(1) This instrument substantially replicates Class Order (CO 03/184) <i>Employee share schemes</i> with an amended definition of 'eligible offer' that carves out the period of suspension required by the ASX Listing Rules due to the company's change of activities from the calculation of a disqualifying suspension of more than two trading days in the previous 12 months.	
61	Guy Carpenter & Company Pty Limited (ACN 000 351 299)	08-196 (in 26/08)	20/03/2008	s992B(1)(a) This instrument provides relief from the obligation to lodge ASIC Forms FS70 and FS71 for the year ending 31 December 2007.	
64	The Children's Leukaemia & Cancer Foundation (ACN 074 617 271)	08-0307 Not gazetted	02/05/2008	s224(4) This instrument permits members who would otherwise be excluded from voting under s224(1)(b) to vote on a resolution for related party benefits.	