ASIC
Australian Securities & Investments Commission

REPORT 506

Overview of decisions on relief applications (April to September 2016)

December 2016

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 some of our decisions on relief applications during the period from 1 April 2016 to 30 September 2016. It summarises examples of situations where we have exercised, or refused to exercise, ASIC's exemption and modification powers from the financial reporting, managed investment, takeovers, fundraising or financial services provisions of the *Corporations Act 2001* and the *National Consumer Credit Protection Act 2009*.

It also refers to a number of publications issued by ASIC during the period from 1 April 2016 to 30 September 2016 that may be relevant to prospective applicants for relief, including legislative instruments, consultation papers, regulatory guides and reports.

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 2001*)
- 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 advice. We encourage you to seek your own professional advice to find out how the *Corporations Act 2001* and/or the *National Consumer Credit Protection Act 2009* and other applicable laws apply to you, as it is your responsibility to determine your obligations.

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Overview

1 ASIC has powers under the *Corporations Act 2001* (Corporations Act) to exempt a person or a 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 ASIC's exemption and modification powers under the provisions of the following chapters of the Corporations Act: Chs 2M (financial reports and audit), 5C (managed investment schemes), 6 (takeovers), 6D (fundraising) and 7 (financial services and markets).

> Note: In this report, references to sections (s), chapters (Chs), divisions (Divs) and parts (Pts) are to the Corporations Act, unless otherwise specified.

2 ASIC has powers to grant relief under the provisions of Chs 2 (licensing) and 3 (responsible lending) of the *National Consumer Credit Protection Act 2009* (National Credit Act) and from all or specified provisions of the National Credit Code, which is in Sch 1 to the National Credit Act.

3 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 ASIC's discretionary powers to grant relief from provisions of the Corporations Act and the National Credit Act.

4 This report covers the period beginning 1 April 2016 and ending 30 September 2016. During this period we received 954 applications. We granted relief in response to 602 applications and refused to grant relief in response to 23 applications; 162 applications were withdrawn. The remaining 167 applications were decided outside of this period.

5 This report does not provide details of every single decision made in the period. It is intended to provide examples of decisions that demonstrate how we have applied our policy in practice. We use our discretion to vary or set aside certain requirements of the law where the burden of complying with the law significantly detracts from its overall benefit, or where we can facilitate business without harming other stakeholders.

6 In this report, we have outlined matters in which we refused to exercise ASIC's 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.

7 To ensure that applications are assessed as quickly and efficiently as possible, we will continue to strictly enforce our policy to refuse applications for relief where information needed to make a decision is not provided. Where we have asked for additional information within a specified time

period—and a reasonable explanation is not provided for any delay—we may refuse an application for relief.

8 The appendix to this report details the individual relief instruments we have executed for matters referred to in the report. Legislative instruments are available from our website at www.asic.gov.au/li. Individual relief instruments are published in the *ASIC Gazette*, available at www.asic.gov.au/gazettes, or under 'credit relief' on our website (for credit instruments). A register of waivers, including class rule waivers, granted under ASIC market integrity rules is published on our website at www.asic.gov.au/markets under 'market integrity rules'. For media releases on the matters and publications referred to in this report, see www.asic.gov.au/mr.

9 This report refers to a number of publications issued by us during the period that may be relevant to prospective applicants for relief. These include legislative instruments, consultation papers, regulatory guides and reports.

10 We also publish a number of reports on a periodic basis that have not been summarised in the body of this report, but are published on our website at www.asic.gov.au/reports. The periodic reports published during the period of this report are:

(a) Report 475 *Market integrity report: July to December 2015* (REP 475);

(b) Report 478 *Overview of licensing and professional registration applications: July to December 2015* (REP 478);

(c) Report 479 *ASIC regulation of registered liquidators: January to December 2015* (REP 479);

(d) Report 483 *Overview of decisions on relief applications (October 2015 to March 2016)* (REP 483);

(e) Report 485 *ASIC enforcement outcomes: January to June 2016* (REP 485); and

(f) Report 489 *ASIC regulation of corporate finance: January to June 2016* (REP 489).

A AFS licensing relief

Key points

This section outlines some of our decisions on whether to grant relief under Ch 7 of the Corporations Act, including under s926A(2), from the Australian financial services (AFS) licensing requirements.

We also outline the publications we issued on licensing relief during the period of this report.

AFS licence requirements

Approval of the subsidiary of a government-owned corporation as an eligible provider

11 We granted approval for the subsidiary of a government-owned corporation (GOC) to be considered as an eligible provider for the purposes of an AFS licensee in accordance with Regulatory Guide 166 *Licensing: Financial requirements* (RG 166) at RG 166.141(g).

12 As a condition of their AFS licences, most AFS licensees must have sufficient resources to meet their anticipated cash flow expenses in order to meet the cash needs requirement. Entities relying on an eligible undertaking from an eligible provider (e.g. an Australian authorised deposit-taking institution (ADI)) may be able to meet the solvency and positive net assets requirement on the basis of adjusted assets and adjusted liabilities. They may also be able to take into account the value of that undertaking in meeting the cash needs requirement.

13 We previously approved the entity as an eligible provider on the condition that:

(a) the entity continued to be a GOC;

(b) the entity continued to have access to borrowing facilities from a government or another GOC; and

(c) the government owner of the entity guaranteed its liabilities.

14 A restructure meant that the entity would instead become a subsidiary of a GOC and that access to the borrowing facility would be through a subsidiary of a GOC.

15 We were satisfied that:

(a) exceptional circumstances still existed—the entity, as a subsidiary of a GOC, was still required to source its finance from a specified government facility; and

(b) it was an entity of undoubted financial substance.

16 The approval was conditional on the entity continuing to:

(a) be a subsidiary of a GOC;

(b) have access (as a subsidiary of a GOC) to borrowing facilities operated by the government;

(c) maintain a specified level of net tangible current assets; and

(d) maintain its financial position with no material adverse change.

Refusal of application for AFS licensing relief for digital advice tool

17 We refused to grant relief from the requirement to hold an AFS licence for the development and use of a digital advice (also known as robo-advice or automated advice) tool. The application was made by an entity developing a tool for use by superannuation fund trustees on their websites, to provide consumers with automated personal advice through a retirement income calculator. We considered that the calculator constituted providing financial product advice that was personal advice.

18 Regulatory Guide 167 *Licensing: Discretionary powers* (RG 167) explains the factors we consider when deciding whether to grant relief from the licensing provisions, including that we will consider granting relief to address atypical or unforeseen circumstances and unintended consequences of the licensing provisions of the Corporations Act.

19 In refusing to grant relief, we considered that the application was not within our policy (including Regulatory Guide 51 *Applications for relief* (RG 51) and RG 167) because:

(a) the regulatory detriment was neither minimal nor clearly outweighed by the resulting commercial benefit;

(b) granting relief would have had a significant regulatory detriment, as:

(i) we expect persons in similar circumstances to hold an AFS licence; and

(ii) the licensing provisions also impose other important duties on AFS licensees. For example, Div 3 of Pt 7.6 and Div 2 of Pt 7.7A require that AFS licensees:

(A) act in the client's best interests and comply with related obligations in providing personal advice;

(B) do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly;

(C) have in place adequate arrangements for the management of conflicts of interest;

(D) comply with the conditions on the licence and the financial services laws; and

(E) have a dispute resolution system complying with s912A(2);

(c) there was a lawful and effective way for superannuation fund trustees to comply with the licensing provisions of the Corporations Act; and

(d) the applicant had not demonstrated that compliance with Ch 7 would result in unforeseen circumstances or unintended consequences of the licensing provisions of the Corporations Act.

Foreign financial services providers

Relief for Luxembourg fund managers as foreign financial services providers

20 An industry association sought relief on behalf of Luxembourg fund managers who:

(a) hold a current licence or authorisation granted by the Commission de Surveillance du Secteur Financier (CSSF)—the financial services regulator in Luxembourg—authorising them to provide financial services; and

(b) are either:

(i) management companies that can manage Undertakings for Collective Investment in Transferable Securities (UCITS)—established under Pt I of the *Law of 17 December 2010 relating to undertakings for collective investment* (Luxembourg) (2010 Law)—and that come under Ch 15 of the 2010 Law (Ch 15 management companies); or

(ii) investment companies established under Pt I of the 2010 Law that have designated themselves as 'self-managed' (self-managed UCITS).

21 The applicant sought relief from the requirement in s911A to hold an AFS licence in connection with the provision of financial services under the policy set out in Regulatory Guide 176 *Foreign financial services providers* (RG 176).

22 We granted the relief sought because it was within our existing policy framework for foreign financial services providers (FFSPs) in RG 176. In particular:

(a) the relevant financial services will be provided to wholesale clients only;

(b) the relevant financial services are regulated by the CSSF;

(c) the Luxembourg regulatory regime overseen by the CSSF is sufficiently equivalent to the Australian regulatory regime; and

(d) we have effective cooperation arrangements with the CSSF.

23 We granted relief by a legislative instrument in a similar form to Class Order [CO 03/1099] *UK FSA regulated financial service providers* and on the condition that each Luxembourg fund manager, among other things, holds a current licence or authorisation granted by the CSSF and is a Ch 15 management company or a self-managed UCITS.

24 To be consistent with the interim position taken by us for our review of policy settings under RG 176, the legislative instrument will cease on 28 September 2018. We consulted on our proposals for that review in Consultation Paper 268 *Licensing relief for foreign financial services providers with a limited connection to Australia* (CP 268), as discussed at paragraphs 36–42.

25 Luxembourg fund managers who meet the terms of the legislative instrument should apply to rely on it in the same way as other FFSPs, as set out in RG 176.

Financial products

Relief for a sports spread betting service

26 We granted relief to the operator of an online sports betting service by declaring that a spread bet over a sports event (sports spread bet) facilitated through the operator's website would not be a financial product under the Corporations Act.

27 The circumstances of the operator's arrangement meant that a sports spread bet was capable of being a derivative and, therefore, a financial product under Ch 7. The operator sought a declaration under s765A(2) that this was not a financial product for the purposes of Ch 7.

28 We granted the declaration because:

(a) the regulation of gaming is the responsibility of the states and territories;

(b) the predominant purpose of the sports spread bet was not a financial product purpose; and

(c) there was no community expectation that we would be regulating gambling on sporting events.

29 The declaration we made applies to a specified list of sports and sport betting markets and was based on the specific terms and conditions provided to us. In particular, the declaration applies when the arrangement is regulated under the laws of the state or territory where the bettor is at the time the arrangement is entered into.

Publications

30 We issued the following publications on AFS licensing relief during the period of this report.

Consultation papers

CP 260 *Further measures to facilitate innovation in financial services*

31 CP 260 sought feedback from financial technology businesses, financial services providers, consumers and consumer representatives, and other parties on our proposed approach to facilitating innovation in financial services.

32 In particular, CP 260 sought feedback on:

(a) additional guidance about when we consider a responsible manager has appropriate knowledge and skills;

(b) modifying our policies to allow some small-scale, heavily automated businesses to rely, in part, on sign-off from an appropriately experienced third party to meet their organisational competence obligation; and

(c) a conditional, industry-wide exemption (the regulatory sandbox exemption) to allow new Australian businesses to test certain financial services for six months without holding an AFS licence.

33 We have proposed that the regulatory sandbox exemption will be limited to giving financial advice about, or arranging for other persons to deal in, certain liquid products—such as listed or quoted Australian securities, simple managed investment schemes (schemes) and deposit products. Businesses testing under the regulatory sandbox exemption will also need to comply with particular requirements, such as limiting the number of retail investors and their exposure, and maintaining consumer protections.

34 We have also produced an infographic setting out the current financial services framework and our proposals in CP 260 (PDF 1 MB).

35 Submissions on CP 260 were due on 22 July 2016.

CP 268 *Licensing relief for foreign financial services providers with a limited connection to Australia*

36 CP 268 sought feedback on our proposal to repeal Class Order [CO 03/824] *Licensing relief for financial services providers with limited connection to Australia dealing with wholesale clients*. Under the *Legislation Act 2003* (Legislation Act), that class order will expire ('sunset') if not remade.

37 CP 268 also provides an update for FFSPs and other relevant stakeholders on:

(a) the recent temporary extension of our relief for FFSPs from the United Kingdom, United States, Germany, France, Singapore and Hong Kong that provide a range of financial services to Australian wholesale clients; and

(b) our plans to comprehensively review our relief for FFSPs during the extension period, which will involve us engaging with stakeholders about the terms of any relief.

38 Submissions on CP 268 were due on 2 December 2016.

39 At the same time, we extended for two years relief to FFSPs providing financial services to wholesale clients. ASIC Corporations (Repeal and Transitional) Instrument 2016/396 continues our previous relief for FFSPs in the same form as in:

(a) [CO 03/1099];

(b) Class Order [CO 03/1100] *US SEC regulated financial service providers*;

(c) Class Order [CO 03/1101] *US Federal Reserve and OCC regulated financial service providers*;

(d) Class Order [CO 03/1102] *Singapore MAS regulated financial service providers*;

(e) Class Order [CO 03/1103] *Hong Kong SFC regulated financial service providers*;

(f) Class Order [CO 04/829] *US CFTC regulated financial services providers*; and

(g) Class Order [CO 04/1313] *German BaFin regulated financial service providers*.

40 Under the Legislation Act, those class orders were due to sunset if not remade.

41 ASIC Corporations (Repeal and Transitional) Instrument 2016/396 also contains an amended information gathering power. This amendment clarifies that we may request information from an FFSP about the operation of its financial services business.

42 We will consult publicly before 1 October 2018 on our relief in this area.

Legislative instruments

ASIC Corporations (Superannuation and Schemes: Underlying Investments) Instrument 2016/378

43 ASIC Corporations (Superannuation and Schemes: Underlying Investments) Instrument 2016/378 remakes, in a single instrument and without significant changes:

(a) Class Order [CO 02/1073] *Financial Services Guide: Dealing in underlying investments by responsible entities*;

(b) Class Order [CO 02/1074] *Financial Services Guide: Dealing in underlying investments by superannuation trustees*; and

(c) Class Order [CO 02/1161] *Licensing relief (dealing) for public offer superannuation entities*.

44 Under the Legislation Act, those class orders were due to sunset if not remade.

45 Consultation Paper 244 *Remaking ASIC class orders on dealing in underlying investments* (CP 244) sought feedback from superannuation trustees and responsible entities of registered schemes on our proposals to remake those class orders without significant changes.

46 Submissions on CP 244 were due on 15 February 2016. Submissions received were supportive of our proposal.

ASIC Corporations (Amendment) Instrument 2016/397

47 ASIC Corporations (Amendment) Instrument 2016/397 extended the relief in Class Order [14/1262] *Relief for 31-day notice term deposits* to:

(a) 31-day notice term deposits entered into on or before 22 June 2016 until 30 June 2017; and

(b) 31-day notice term deposits entered into as a result of rolling over such term deposits.

48 [CO 14/1262] provided conditional relief to enable 31-day notice term deposits of up to five years to be treated as basic deposit products under the Corporations Act for an interim period of 18 months from 22 December 2014. This was intended to give the Australian Government the opportunity

to consider legislative reform regarding the meaning of 'basic deposit product' under the Corporations Act, as it applies to 31-day notice term deposits.

49 The House of Representatives and the Senate were dissolved on 9 May 2016, for the federal election held on 2 July 2016. Consequently, there was not an opportunity for any legislative changes to be made until after the election. In order to preserve the treatment of 31-day notice term deposits as an interim measure, the legislative instrument extended the relief in [CO 14/1262].

ASIC Corporations (Amendment) Instrument 2016/513

50 ASIC Corporations (Amendment) Instrument 2016/513 extended the relief in Class Order [CO 08/1] *Group purchasing bodies* from the managed investments and licensing provisions (Chs 5C and 7) of the Corporations Act. Specifically, the instrument postpones by an additional 12 months the dates from which group purchasing bodies must notify ASIC in writing of a material failure to comply with the conditions of [CO 08/1], as required by sub-paragraph 10(f) of the class order.

51 Regulatory Guide 195 *Group purchasing bodies for insurance and risk products* (RG 195) explains the relief in [CO 08/1] and what group purchasing bodies must do in order to receive the benefit of that relief.

Regulatory guides

RG 1 *AFS Licensing Kit: Part 1—Applying for and varying an AFS licence* and RG 2 *AFS Licensing Kit: Part 2—Preparing your AFS licence or variation application*

52 We updated RG 1 and RG 2 to remove references to the expired limited licence regime for self-managed superannuation fund (SMSF) auditors.

53 On 30 June 2016, the transitional period for recognised accountants who provide SMSF-related financial advice ended. Recognised accountants who lodged applications with ASIC between 1 July 2013 and 30 June 2016—and who were professional practising certificate members of CPA Australia, Chartered Accountants Australia & New Zealand or the Institute of Public Accounts—were only required to demonstrate that they had completed the appropriate financial product training.

54 From 1 July 2016, accountants intending to recommend their clients acquire or dispose of an interest in a SMSF must hold a limited AFS licence (or a full AFS licence) or become an authorised representative of an AFS licensee.

55 We have issued public warnings about the consequences of not applying for, and obtaining, a limited AFS licence by 1 July 2016 in:

(a) Media Release (15-227MR) *Applying for a limited AFS licence – the time to act is now* (25 August 2015); and

(b) Media Release (16-182MR) *Limited AFS licensing regime: Transitional arrangements end 30 June 2016* (7 June 2016).

RG 36 *Licensing: Financial product advice and dealing*

56 We updated RG 36 to take account of ASIC Corporations (Financial Product Advice – Exempt Documents) Instrument 2016/356, which remade Class Order [CO 03/606] *Financial product advice: Exempt documents*.

57 The instrument has the same effect as relief that we had granted by [CO 03/606].

58 Consultation Paper 251 *Remaking ASIC class order on financial product advice: Exempt documents—[CO 03/606]* sought feedback on our proposal to remake [CO 03/606], without significant changes. Under the Legislation Act, that class order was due to sunset if not remade.

RG 255 *Providing digital financial product advice to retail clients*

59 We released RG 255 to bring together guidance on some of the issues that persons providing digital advice to retail clients need to consider when operating in Australia—from the licensing stage (i.e. obtaining an AFS licence) through to the actual provision of advice.

60 Digital advice (also known as robo-advice or automated advice) is the provision of automated financial product advice using algorithms and technology and without the direct involvement of a human adviser.

61 RG 255 also includes guidance on some issues that are unique to digital advice, such as how the organisational competence obligation applies to digital advice licensees and the ways in which digital advice licensees should monitor and test their algorithms. Consultation Paper 254 *Regulating digital financial product advice* (CP 254) sought feedback on our proposals relating to those issues.

62 Report 490 *Response to submissions on CP 254 Regulating digital financial product advice* (REP 490) highlights the key issues that arose out of the submissions received on CP 254 and details our responses to those issues.

B Disclosure relief

Key points

This section outlines some of our decisions on whether to grant relief from:

- the requirements in Ch 6D of the Corporations Act to provide prospectuses and other disclosure documents; and
- the Ch 7 requirements to provide Product Disclosure Statements (PDSs) and Financial Services Guides (FSGs).

We also outline the publications we issued on disclosure relief during the period of this report.

Capital reductions and reconstructions

Relief to facilitate a demerger by way of capital reduction

63 We granted relief to a holding company for a proposed demerger of a New Zealand subsidiary. The demerger involved a capital reduction, with shares in the New Zealand subsidiary provided as consideration for the reduction to eligible shareholders in proportion to the shares they held in the holding company. The holding company had a primary listing on the market operated by ASX Limited (ASX) and a secondary listing on the main board operated by NZX Limited (NZX). This would remain the case after the demerger but the New Zealand subsidiary would have a primary listing on NZX and a secondary listing on ASX.

64 The capital reduction required disclosure under s256C(4). We granted relief under s741(1) so that a prospectus would not be required in addition to disclosure under s256C(4).

65 Regulatory Guide 188 *Disclosure in reconstructions* (RG 188) provides that we may grant case-by-case relief for reconstructions such as capital reductions where there are only changes to the form of the entity rather than the substance of its business. This is on the basis that a change to the form of the entity does not require shareholders to make a new investment decision that would require a prospectus.

66 In this case, the holding company planned to complete a significant rights issue before the capital reduction under the disclosure exemption in s708AA. In our view, this did not mean that the demerger involved a new investment decision because the rights issue was a pro-rata offer and would not have any significant effect on control of the holding company.

67 There was also a proposal for the New Zealand subsidiary to merge with another New Zealand company after the demerger from the Australian holding company. The applicant and the independent expert stated that this New Zealand merger would be pursued independently of the demerger from the Australian holding company and whether or not the demerger was approved.

68 We considered that the demerger transaction came within our policy in RG 188 even with the proposed New Zealand merger, which would be subject to separate regulatory requirements.

69 We closely reviewed the holding company's draft disclosure under s256C(4) before providing relief.

Publications

70 We issued the following publications on disclosure relief during the period of this report.

Consultation papers

CP 261 *Remaking and repealing ASIC class orders on rights issue notifications and money market deposits*

71 CP 261 sought feedback on our proposals:

(a) to remake Class Order [CO 02/225] *Rights issue notifications—securities* without significant changes; and

(b) to repeal Class Order [CO 00/231] *Money market deposits*.

72 Under the Legislation Act, those class orders were due to sunset if not remade.

73 We subsequently made:

(a) ASIC Corporations (Renounceable Rights Issue Notifications) Instrument 2016/993 to replace [CO 02/225]; and

(b) ASIC Corporations (Repeal) Instrument 2016/994, which repealed [CO 00/231] on 18 October 2016.

74 Submissions on CP 261 were due on 15 July 2016.

Legislative instruments

Extension of relief and deferral of start dates of key superannuation reforms

75 In Media Release (16-130MR) *Further update on Stronger Super regime* (4 May 2016), we provided an update on aspects of the Stronger Super regime aimed at providing the superannuation industry with certainty around the start dates for key superannuation reforms. The deferrals discussed in that update will provide industry with certainty about the commencement dates of the requirements, reduce the administrative burden on industry and provide it with time to finish preparing for the introduction of the new requirements.

76 We issued the following instruments to reflect those deferrals:

(a) ASIC Superannuation (Amendment) Instrument 2016/345, which amends Class Order [CO 14/509] *Keeping RSEs' superannuation websites up to date*;

(b) ASIC Superannuation (Amendment) Instrument 2016/351, which amends Class Order [CO 14/443] *Deferral of Choice product dashboard and portfolio holdings disclosure regimes*; and

(c) ASIC Corporations (Amendment) Instrument 2016/364, which amends Class Order [CO 13/1534] *Deferral of Stronger Super amendments in relation to PDS and periodic statement disclosure* and [CO 14/443].

ASIC Corporations (Amendment) Instrument 2016/566

77 ASIC Corporations (Amendment) Instrument 2016/566 amends Class Order [CO 11/1340] *Financial Claims Scheme contact number* so that regs 7.9.07FA(7A)(ca)(iii) and 7.9.14D(1)(c) of the Corporations Regulations 2001 (Corporations Regulations) are modified or varied with updated contact details for the Australian Prudential Regulation Authority (APRA).

ASIC Corporations (Disclosure in Dollars) Instrument 2016/767

78 ASIC Corporations (Disclosure in Dollars) Instrument 2016/767 remakes, without significant changes:

(a) Class Order [CO 04/1431] *Dollar disclosure: Cost of derivatives, foreign exchange contracts, general insurance products and life risk insurance products*;

(b) Class Order [CO 04/1433] *Dollar disclosure: Non-monetary benefits and interests*; and

(c) Class Order [CO 04/1435] *Dollar disclosure: Amounts denominated in a foreign currency*.

79 Under the Legislation Act, those class orders were due to sunset if not remade.

80 The new instrument has the same effect as the relief granted by those class orders and provides exemptions from the requirements to display in dollar amount various costs, fees, charges, expenses, benefits and interests in Statements of Advice, PDSs and periodic statements, subject to the conditions in the instrument.

81 We also repealed:

(a) Class Order [CO 04/1432] *Dollar disclosure: Interest payable on deposit products*; and

(b) Class Order [CO 04/1434] *Dollar disclosure: Transitional relief*.

82 Consultation Paper 253 *Remaking and repealing ASIC class orders on dollar disclosure* (CP 253) sought feedback from AFS licensees on our proposals to remake or repeal these class orders. Submissions on CP 253 were due on 30 March 2016.

Reports

REP 494 *Marketing practices in initial public offerings of securities*

83 REP 494 outlines the key findings from reviews we conducted to examine how initial public offerings (IPOs) are marketed to retail investors. We particularly considered the extent to which social media has become important for marketing. The report identifies some risks and recommendations that may be useful for firms and issuers to consider when developing an IPO marketing strategy.

84 REP 494 also discusses relief that we have granted or may grant from provisions of the Corporations Act, either in response to individual applications for relief or by legislative instruments such as ASIC Corporations (Market Research and Roadshows) Instrument 2016/79.

C Managed investment relief

Key points

This section outlines some of our decisions on whether to grant relief, under s601QA, from the provisions of Ch 5C of the Corporations Act.

We also outline the publications we issued on managed investment relief during the period of this report.

Scheme registration

Relief from the registration requirement for sub-trusts

85 We granted relief from the requirement to register individual sub-trusts of a retail property investment platform as schemes under s601ED.

86 The property investment platform will be an online platform facilitating the acquisition and disposal of direct interests in residential investment properties by members of the platform. Each residential investment property will be held in a sub-trust, and members of the platform will be able to purchase units in the sub-trust in which they have chosen to invest.

87 The responsible entity of the scheme applied for relief on the basis that the platform is intended to operate as a single scheme, even though the platform effectively splits a member's whole interest in the platform into units in various sub-trusts.

88 We granted relief because:

(a) we consider that the scheme can exist even if groups of investors derive their financial benefits in different ways or participate in separate pools or common enterprises; and

(b) it was consistent with the policy contained in Regulatory Guide 136 *Managed investments: Discretionary powers and closely related schemes* (RG 136).

Standards for responsible entities

Refusal of application for relief from minimum standards for asset holders

89 As part of the application to register the retail property investment platform referred to at paragraphs 85–88, we considered an application for relief from

s601FCAA and 601FCAB—as notionally inserted by Class Order [CO 13/1409] *Holding assets: Standards for responsible entities*—to allow a trustee of a sub-trust to hold scheme property on trust for members instead of the responsible entity.

90 The responsible entity for the scheme applied for relief on the basis that:

(a) the responsible entity would safeguard members' interests by entering into a custody agreement with the trustee and the scheme's custodian, which would give the responsible entity the power to monitor the compliance standards of the trustee;

(b) the standards for responsible entities and asset holders in s601FCAA and 601FCAB would apply to the trustee, so that the trustee satisfying these standards would discharge the responsible entity's obligations under s601FCAA and 601FCAB; and

(c) the responsible entity would remain liable to members of the scheme for the conduct of the trustee in this role and the scheme constitution would include an express indemnity by the responsible entity in favour of members that is consistent with this responsibility.

91 We refused relief as, in our view, under the proposed structure members of the scheme would not have the protections they were intended to have under the statutory regime for the following reasons:

(a) there may be difficulties or extra steps in members enforcing their rights under contractual arrangements rather than under statute; and

(b) in removing the responsible entity from the normal statutory regime, we and other parties may lose the ability to enforce compliance with the Corporations Act, which may result in a lower incentive to comply with the Act.

92 In our view, [CO 13/1409] clarifies the application of s601FC(2) when an external custodian is used, but does not undermine the policy of this provision. We are of the view that the proposed structure significantly departed from the policy in s601FC(2) by having scheme property jointly held by the custodian, trustee and responsible entity.

Publications

93 We issued the following publications on managed investment relief during the period of this report.

Consultation papers

CP 258 *Remaking ASIC class order on differential fees: [CO 03/217]*

94 CP 258 sought feedback on our proposal to remake Class Order [CO 03/217] *Differential fees* without significant changes. Under the Legislation Act, that class order will sunset if not remade.

95 Submissions on CP 258 were due on 12 July 2016.

CP 259 *Repealing ASIC class order on managed investment schemes: No issue required disclosure*

96 CP 259 sought feedback on our proposal to repeal Class Order [CO 02/226] *Managed investment schemes: No issue required disclosure*. Under the Legislation Act, that class order was due to sunset if not remade.

97 In our view, [CO 02/226] was no longer required, no longer served a regulatory purpose, and did not form a necessary and useful part of the legislative framework.

98 Submissions on CP 258 were due on 28 June 2016.

99 ASIC Corporations (Repeal) Instrument 2016/774 repealed [CO 02/226] on 18 August 2016.

CP 264 *Remaking ASIC class order on nominee and custody services and proposed changes to platforms policy*

100 CP 264 sought feedback from nominee and custody services operators, platform operators, dealer groups and other interested stakeholders on our proposal to remake, with changes, Class Order [CO 02/295] *Nominee and custody services*. Under the Legislation Act, that class order will sunset if not remade.

101 CP 264 also sought feedback on our proposals:

(a) on access by retail clients to a financial product issuer's dispute resolution processes for investments through a nominee and custody service, or through an investor directed portfolio service (IDPS) or IDPS-like scheme (together, referred to as platforms); and

(b) to amend the definitions of 'IDPS' and 'IDPS-like schemes' in our class orders for platforms.

102 Submissions on CP 264 were due on 1 September 2016.

CP 266 *Remaking ASIC class orders on managed investment schemes: Not for money*

103 CP 266 sought feedback from operators and promoters of schemes on our proposals to remake, without significant changes:

(a) Class Order [CO 02/210] *Interests in film and theatrical ventures*;

(b) Class Order [CO 02/211] *Managed investment schemes: Interests not for money*; and

(c) Class Order [CO 02/236] *Film investment schemes*.

104 Under the Legislation Act, those class orders will sunset if not remade.

105 Submissions on CP 266 were due on 9 September 2016.

Legislative instruments

ASIC Corporations (Amendment) Instrument 2016/476

106 ASIC Corporations (Amendment) Instrument 2016/476 extends the relief in Class Order [CO 13/898] *Representative proceedings and proof of debt arrangements funded by conditional costs agreements* until 12 July 2017.

107 [CO 13/898] provides relief from the scheme requirements in Chs 5C and 7 that may otherwise apply to litigation schemes funded under a conditional costs agreement, including:

(a) registering the scheme with ASIC;

(b) adopting a complying constitution and compliance plan for the scheme;

(c) appointing an AFS licensed public company as 'responsible entity';

(d) preparing a PDS; and

(e) providing ongoing disclosure to members of the scheme.

ASIC Corporations (Attribution Managed Investment Trusts) Instrument 2016/489

108 We issued ASIC Corporations (Attribution Managed Investment Trusts) Instrument 2016/489 to address issues that a responsible entity may encounter in implementing the new tax system for managed investment trusts for a registered scheme. The new tax system was introduced on 5 May 2016 by the *Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016* (and supporting legislation).

109 The instrument addressed uncertainty about:

(a) the requirements under s601GC for changing the constitution, by modifying s601GC(1) to provide an alternative method for responsible entities to use to change the constitution so that the scheme can be

operated as an attribution managed investment trust (AMIT) under the new tax system; and

(b) the duty under s601FC(1)(d) to treat members who hold interests of the same class equally, by exempting the responsible entity of a scheme that is an AMIT from that duty when making an attribution in accordance with the new tax system.

110 The instrument is intended to allow those that choose to implement the new tax system for a scheme to be able to do so in a cost-effective and efficient manner, including by making changes to the constitution that, where it is in the best interests of members, enable the scheme to be operated optimally as an AMIT.

111 Responsible entities wanting to rely on the instrument to make changes to the scheme's constitution will need to publish a prominent notice on their website explaining that they intend to change the constitution, summarising the reasons for this and the effect of the changes. The instrument requires responsible entities to post the notice on the website for at least seven days before changing the constitution, providing members with time to request a meeting. These requirements were placed on the relief so that members are able to understand the nature of the changes and decide whether it is appropriate for a members' meeting to be held to consider the changes. If no members' meeting is required, responsible entities can make the amendments without the need for member approval.

112 For registered schemes where all interests are held by wholesale clients, responsible entities can choose to follow this website notice process or, alternatively, to make changes where they have taken reasonable steps to consult with each member before making the changes. We issued ASIC Corporations (Amendment) Instrument 2016/514 to amend ASIC Corporations (Attribution Managed Investment Trusts) Instrument 2016/489 to clarify that the responsible entity of such registered schemes may rely on either of these procedures.

113 The instrument was made following consultation with two industry bodies and an individual responsible entity on applications made to ASIC for relief. We also consulted with the Australian Taxation Office (ATO).

ASIC Corporations (Serviced Apartment and Like Schemes) Instrument 2016/869 and ASIC Corporations (Property Rental Schemes) Instrument 2016/870

114 Following public consultation through Consultation Paper 250 *Remaking ASIC class orders on property, strata and management rights schemes* (CP 250), we have continued the relief available to operators, promoters and developers of strata schemes and management rights schemes from certain managed investment, licensing, hawking and disclosure provisions.

115 The following seven property, strata and management rights schemes class orders have been remade, without significant changes, into a single instrument, ASIC Corporations (Serviced Apartment and Like Schemes) Instrument 2016/869:

(a) Class Order [CO 99/463] *Serviced strata schemes valuations*;

(b) Class Order [CO 02/185] *Sale of strata units for $500,000 or more*;

(c) Class Order [CO 02/245] *Closed schemes*;

(d) Class Order [CO 02/303] *Management rights schemes—amendment*;

(e) Class Order [CO 02/304] *Management rights schemes*;

(f) Class Order [CO 02/305] *Management rights schemes*; and

(g) Class Order [CO 07/189] *Management rights schemes where the strata unit cannot be used as a residence*.

116 We have also continued the relief available to real estate agents who are engaged by investors to let out their strata unit for residential or commercial purposes but not as part of a serviced strata arrangement.

117 ASIC Corporations (Property Rental Schemes) Instrument 2016/870 replaced Class Order [CO 02/182] *Real property rental schemes*, which was remade without significant changes.

Regulatory guides

RG 87 *Charitable schemes and school enrolment deposits*

118 We updated RG 87 to account for revisions to our policy and regulatory framework for charities that raise investment funds, including:

(a) ASIC Corporations (Charitable Investment Fundraising) Instrument 2016/813, which replaced Class Order [CO 02/184] *Charitable investment schemes—fundraising*; and

(b) ASIC Corporations (School Enrolment Deposits) Instrument 2016/812, which replaced Class Order [CO 02/151] *School enrolment deposits* without substantive amendment.

119 RG 87 is a guide for charities that wish to raise funds by issuing debentures or interests in a scheme to help them meet their objectives. It sets out our policy on giving relief to those charities from the fundraising, managed investment, debenture and licensing provisions of the Corporations Act. It also covers our exemption for schools accepting enrolment deposits from the fundraising provisions of the Corporations Act.

120 Consultation Paper 207 *Charitable investment fundraisers* (CP 207) sought feedback from charities, holders of investments offered by charities and

other interested stakeholders on two options for amending exemptions that were then available to charitable investment fundraisers under RG 87:

(a) a proposal to remove all existing exemptions for new investment fundraising, except exemptions from the AFS licensing requirements of the Corporations Act, for fundraisers that only raise investment funds from associated entities (Option 1); and

(b) a proposal to retain existing exemptions (with some modification) for new investment fundraising, but on the basis that they are only available if existing conditions and a number of new conditions are satisfied (Option 2).

121 Report 495 *Response to submission on CP 207 Charitable investment fundraisers* (REP 495) highlights the key issues that arose out of the submissions received in response to CP 207 and our follow-up consultation, and details our responses to those issues. The report notes our agreement with submissions that Option 1 was not the appropriate alternative. We subsequently implemented a modified version of Option 2.

122 The revisions are aimed at ensuring the policy is consistent with our objectives of confident and informed investors and fair and efficient markets, and include the following updates:

(a) from 1 January 2017, charitable investment fundraisers will not be permitted to issue at-call or short-term investments (i.e. with a term of less than 31 days) to retail investors; and

(b) from 1 January 2018, charitable investment fundraisers that wish to issue investments to retail investors who are not associated with the charity will no longer be exempted from the requirement to hold an AFS licence. Further, additional restrictions apply that are designed to avoid the investments being used for transactional facilities.

123 We have also applied disclosure, lodgement, breach reporting and financial reporting requirements, although these requirements are less stringent than the equivalent provisions in the Corporations Act that apply to regulated entities.

RG 91 *Horse breeding schemes and horse racing syndicates*

124 We updated RG 91 to reflect the terms of ASIC Corporations (Horse Schemes) Instrument 2016/790, which remade:

(a) Class Order [CO 02/172] *Horse breeding schemes: private broodmare syndication*;

(b) Class Order [CO 02/178] *Horse breeding schemes: private stallion syndication*; and

(c) Class Order [CO 02/319] *Horse racing syndicates*.

125 Under the Legislation Act, those class orders were due to sunset if not remade.

126 No significant changes were made to the terms of the relief for horse breeding schemes. The key changes made to the terms of the relief for horse racing syndicates were:

(a) raising the investment limit for a horse racing syndicate from $250,000 to $500,000;

(b) increasing the maximum number of members for a horse racing syndicate from 20 to 50;

(c) formalising our co-regulatory arrangements with the lead regulators; and

(d) imposing additional content requirements for a PDS for a horse racing syndicate.

127 Consultation Paper 242 *Remaking ASIC class orders on horse racing syndicates and horse breeding schemes* (CP 242) sought feedback on our proposals to remake those class orders, without significant changes. Under the Legislation Act, those class orders were due to sunset if not remade.

128 Report 491 *Response to submissions on CP 242 Remaking ASIC class orders on horse racing syndicates and horse breeding schemes* (REP 491) highlights the key issue that arose out of the submissions received on CP 242 and details our responses to those issues.

RG 179 *Managed discretionary accounts*

129 We updated RG 179 to take account of ASIC Corporations (Managed Discretionary Accounts) Instrument 2016/968, which remade Class Order [CO 04/194] *Managed discretionary accounts*.

130 Under the Legislation Act, that class order was due to sunset if not remade.

131 The new legislative instrument continues the relief from the provisions in the Corporations Act that would apply to the provider of a managed discretionary account (MDA), with some changes.

132 The legislative instrument and RG 179:

(a) incorporate relief for MDAs operated on a regulated platform and MDAs provided to family members, with some changes from relief under the previous no-action positions;

(b) implement new requirements to ensure MDA investors are adequately informed when the MDA provider has a discretion to invest in products where recourse is not limited (e.g. contracts for difference);

(c) require specific upfront disclosure about:

(i) terminating the MDA contract;

(ii) fees charged within the MDA; and

(iii) outsourcing arrangements, where the MDA provider outsources significant functions of the MDA; and

(d) provide greater certainty on the scope and application of the MDA relief and about our expectations for managing conflicts of interest.

133 Consultation Paper 200 *Managed discretionary accounts: Update to RG 179* (CP 200), released on 8 March 2013, sought feedback on our proposed changes to our regulatory approach to MDAs as contained in RG 179 and [CO 04/194].

134 We proposed to update the financial resource requirements for MDA providers to ensure that these requirements correspond with the requirements that apply to responsible entities of schemes and for platform operators. We do not intend to proceed with those proposals at this time.

135 Submissions on CP 200 were due on 19 April 2013.

136 Report 496 *Response to submissions on CP 200 Managed discretionary accounts: Update to RG 179* (REP 496) highlights the key issues that arose out of submissions received on CP 200 and details our response to those issues.

D Mergers and acquisitions relief

Key points

This section outlines some of our decisions on whether to grant relief from the provisions of Ch 6 of the Corporations Act.

We also outline the publications we issued on mergers and acquisitions relief during the period of this report.

Joint schemes of arrangement

Relief for a joint acquisition by scheme of arrangement

137 We granted relief to allow two parties to enter into arrangements to facilitate a proposal to jointly acquire a target company by way of a scheme of arrangement.

138 One of the acquirers had an existing interest in approximately 39% of the voting shares in the target while the other had no holding. In seeking relief, the acquirers requested that we not impose our standard condition for joint schemes of arrangement that the joint acquirers:

(a) accept or match any higher rival bid; and

(b) not vote against any higher rival scheme of arrangement (match or accept condition).

139 We granted the acquirers relief from s606 to enter into the joint scheme arrangements with the usual conditions as set out in Section L of Regulatory Guide 9 *Takeover bids* (RG 9), other than the match or accept condition.

140 In the circumstances, we did not impose the match or accept condition, as:

(a) consistent with our policy in RG 9, one acquirer did not have any voting power in the target securities and therefore the joint scheme arrangements did not, through the combination of separate holdings of the acquirers, increase the potential deterrent effect; and

(b) having considered the circumstances and terms of the joint scheme of arrangement proposal, we were not aware of any attempt to structure the arrangements to specifically circumvent the imposition of the match or accept condition or to avoid any requirement or underlying principles of Ch 6 (other than the requirements we usually provide relief from to facilitate genuine joint scheme of arrangement proposals).

141 As part of our consideration of the application for relief, we reviewed the draft agreement proposed to govern the arrangements. We raised the issue of

whether the agreement resulted in the parties acquiring a relevant interest in any securities in the target held by the other party. We were of the view that the agreements, arrangements and understandings necessarily connected with the joint bid would have this effect regardless of whether specific terms regarding voting or disposal were expressly included in the draft agreement. Before providing relief we required the joint bidders to clarify and acknowledge that the joint bid arrangements would result in the parties acquiring relevant interests in any shares held by the other.

Rights issues

Approval of foreign holder nominee for rights issue that may trigger compulsory acquisition rights

142 We approved a foreign holder nominee, under s615(a), to deal with ineligible foreign shareholders' entitlements for the purposes of item 10 of s611, in the case where a major shareholder's relevant interest in the company could increase to a point above 90%. If this occurred, the major shareholder would be able to compulsorily acquire all outstanding securities under s664A.

143 Even though there was the potential for the major holder to cross the compulsory acquisition threshold, we approved the foreign holder nominee after considering our guidance in Regulatory Guide 6 *Takeovers: Exceptions to the general prohibition* (RG 6). In particular, we were satisfied that:

(a) the company had independently explored alternative ways of obtaining the necessary funds;

(b) the company had explored and had in place reasonably available options to mitigate the control impact; and

(c) the foreign holder nominee met the requisite criteria for appointment.

Refusal of relief to permit reliance on item 10 of s611 without a nominee for foreign holders

144 We refused to grant relief for a company that sought to rely on the exception in item 10 of s611 to undertake fundraising by way of a rights issue to existing members without appointing a nominee under s615.

145 The offer was underwritten by a number of major shareholders. Depending on participation in the offer, there was potential for the underwriting to result in some of the major shareholders increasing their holding in the company above the 20% takeover threshold.

146 As discussed in RG 6, when assessing requests for relief from the requirement to appoint a nominee, we will consider both:

(a) the basis for not appointing a nominee (see RG 6.128–RG 6.130); and

(b) whether we have concerns that the rights issue may be unacceptable, given our policy set out at RG 6.81–RG 6.96 (see RG 6.131).

147 We examined the underwriting arrangements and queried how they had been determined and whether the option to participate in the underwriting had been extended to other major shareholders. Following our queries, the option to participate in the underwriting was extended to all shareholders holding greater than 5% of the company's equity.

148 We also queried why under the structure of the rights issue the company had decided not to permit existing shareholders to apply for shares in addition to their pro rata allocation through a shortfall facility. Following discussions, the company proposed to alter the offer terms to incorporate a facility allowing shareholders to apply for a number of shares in addition to their existing holding equal to their entitlement under the rights issue.

149 We were concerned that the imposition of a 'cap' on the number of shares that existing holders could acquire under the facility was inconsistent with the company taking all reasonable steps to mitigate the potential control effect of the offer being underwritten.

150 In light of our concerns, the company withdrew its application and sought instead to proceed with the fundraising by seeking approval under item 7 of s611 for the acquisitions by the major shareholders under the underwriting arrangements.

Temporary relevant interests

Relief to apply a holding lock to interests in a listed managed investment scheme in connection with re-investment offer

151 We granted relief from Chs 6 and 6C so that the applicant did not acquire a relevant interest in certain voting interests in a listed scheme, and did not have to disclose its substantial holding arising as a result of the applicant applying a holding lock under the ASX Listing Rules over the voting interests.

152 The applicant sought relief in connection with an offer of regulatory capital securities, which included a reinvestment offer to existing holders of the voting interests. The voting interests were to be redeemed by the issuer (a subsidiary of the applicant) shortly. However, the existing holders could

elect to participate in the applicant's offer of regulatory capital securities through the reinvestment offer.

153 The applicant sought to apply a holding lock to the voting interests of any holder that elected to participate in the reinvestment offer, to prevent such interests from being traded after acceptance of the offer. As the holding lock prevented disposal of the voting interests, it gave the applicant a relevant interest in any voting interests subject to the reinvestment offer.

154 We granted relief from the takeovers prohibition in s606 because we were satisfied that (among other things):

(a) the purpose of the holding lock was not to acquire control of voting interests;

(b) the nature of the relevant interests was temporary (as the voting interests were to be redeemed shortly) and limited in nature (as the holding lock did not give the applicant any ability to exercise voting rights or to dispose of the interests itself); and

(c) shareholders would be free to accept a takeover bid if one was made, although this was considered unlikely given the voting interests were to be redeemed shortly and the scheme was to be delisted from ASX.

155 We granted relief from the substantial holding provisions in s671B because we were satisfied that:

(a) there was a risk that the lodgement of substantial holding notices could have an adverse commercial impact on the applicant's offer of regulatory capital securities; and

(b) the nature of the relevant interest giving rise to the applicant's substantial holding was temporary and limited in nature (see paragraph 154(b)).

156 In addition, we considered that in this rare case, relief from both s606 and 671B would give the applicant competitive neutrality with similar reinvestment offers where holding locks are frequently used (ordinarily, such reinvestment offers do not relate to voting shares or interests in a Ch 6 company or scheme).

Compulsory acquisitions

Relief from the 75% test for acquisitions prior to offers being made under a market bid

157 We granted relief to permit a bidder to include, when calculating whether the 75% threshold in s661A(1)(b)(ii) had been met, securities acquired

on-market (under item 2 of s611) between the date of the announcement of the on-market bid and the commencement of the offer period.

158 Section 661A(2A)—notionally inserted by Class Order [CO 13/522] *Compulsory acquisitions and buyouts*—requires that, for the purposes of the 75% calculation, a bidder exclude from the number of securities acquired and the number of securities that the bidder offered to acquire securities in which the bidder has a relevant interest at the date of the first offer under the bid. The securities acquired by a bidder between the date of the announcement of the market bid and the commencement of the offer period would be excluded from the number of securities acquired and the number of securities that a bidder offered to acquire, as the first offer under the bid itself is not made until commencement of the offer period.

159 Relief was granted because we were satisfied that the purchases made by the bidder through the market—prior to formal offers under the market bid being made, but after the bidder's statement was available on ASX—indicated that there had been an overwhelming acceptance of the bid terms by shareholders independent of the bidder. This was consistent with the policy underpinning the post-bid compulsory acquisition provisions described in Regulatory Guide 10 *Compulsory acquisitions and buyouts* (RG 10) at RG 10.28 and RG 10.50.

Publications

160 We issued the following publication on mergers and acquisitions relief during the period of this report.

Regulatory guides

RG 71 *Downstream acquisitions*

161 We made minor updates to RG 71 to take account of ASIC Corporations (Approved Foreign Financial Markets) Instrument 2015/1071, which remade Class Order [CO 02/249] *Approved overseas financial markets: s257B(7)* and Class Order [CO 02/259] *Downstream acquisitions: foreign stock markets*. Those class orders were remade at the same time that we remade other class orders on takeovers and schemes of arrangement, as we reported in REP 483 at paragraphs 152–153.

162 RG 71 is a guide for companies, listed schemes, investors and their advisers who are involved in, or affected by, downstream acquisitions.

163 In some circumstances, a downstream acquisition may breach s606. RG 71 explains:

(a) the downstream acquisition exemption in item 14 of s611;

(b) when we may grant relief;

(c) the conditions that may apply to our relief; and

(d) how to apply for relief.

E Conduct relief

Key points

This section outlines some of our decisions on whether to grant relief from the conduct obligations imposed by Chs 2D, 2G, 2M, 5C and 7 of the Corporations Act.

We also outline the publications we issued on conduct relief during the period of this report.

External administration

Relief to allow additional time to prepare and lodge 'catch-up reports'

164 We granted relief to allow a number of companies some additional time to prepare and lodge outstanding financial reports ('catch-up reports') that were due when the companies ceased to be under external administration.

165 The companies initially had the benefit of our six-month deferral relief under ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251 after going into administration and then entering into a deed of company arrangement (DOCA) before the end of the initial six-month deferral period. We initially granted relief for only a short period while the applications were being assessed.

166 We were satisfied that compliance with the outstanding financial reporting obligations immediately at the end of the six-month deferral period provided under ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251 would impose unreasonable burdens on the companies because:

(a) the DOCA was initially intended to be effectuated before the end of the initial six-month deferral period provided under the instrument;

(b) the date for satisfaction of various conditions under the DOCA was extended on two occasions, delaying effectuation of the DOCA until shortly after the initial six-month period and, consequently, delaying the drawdown of new debt facilities being provided under the DOCA;

(c) the deed administrators considered that it was not in the interests of creditors to prepare the outstanding financial reports while the DOCA conditions remained unsatisfied because, if the conditions were not satisfied and the DOCA was not effectuated, then the companies would likely be wound up and any costs incurred by the companies in

preparing and lodging outstanding financial reports would be thrown away; and

(d) we were satisfied that there was no prejudice to any users of the outstanding financial reports while the listed parent company's shares were suspended from trading and its lead mine was under care and maintenance.

167 Externally administered companies that have the benefit of our financial reporting deferral relief will generally be required to comply with any outstanding financial reporting obligations before the deferral relief ends, unless they either obtain further deferral relief or enter liquidation.

Relief for registered scheme being wound up

168 We granted a deferral of the obligations that apply under Pt 2M.3 and s601HG to a registered scheme that is being wound up.

169 The relief was sought because the liquidator of the responsible entity and the person appointed under s601NF(1) to ensure the scheme was wound up in accordance with its constitution (responsible person) disagreed about, among other things, their respective reporting responsibilities. The parties sought directions from the court about this dispute. The court ordered, among other things, that the responsible person apply for financial reporting relief, although it did not express an opinion on whether relief should be granted.

170 We granted relief because:

(a) uncertainty and disagreement between the relevant parties had resulted in informational asymmetries that meant complying with the reporting obligations in the immediate future would impose unreasonable burdens on the responsible entity;

(b) the winding-up had been, and would continue to be, subject to oversight by the court;

(c) the circumstances in which relief would apply meant that members of the scheme would be made aware of the relief and provided on a regular basis (as well as from time to time in the form of arrangements to answer questions) with relevant information about the winding-up of the scheme, in a similar manner to that already being carried out;

(d) the responsible person would be providing an alternate source of updated financial information; and

(e) where we grant an individual deferral from the financial reporting obligations, we will generally defer compliance plan audit obligations in s601HG for the same period of time.

171 Our policy on the financial reporting and compliance plan audit relief we may grant to registered schemes being wound up is set out in Regulatory

Guide 174 *Relief for externally administered companies and registered schemes being wound up* (RG 174).

172 Taking into account the circumstances of the dispute between the liquidator and the responsible person, the decision of the court, and our policy, we considered that the period of disruption was best measured from the time the court orders were made, instead of the date of appointment of the liquidator. Therefore, the deferral was granted for a period of 24 months from the next reporting date after the date of the orders of the court regarding the dispute between the parties.

Market conduct

No-action letter provided for market stabilisation activities subsequent to an IPO

173 A company was provided a no-action letter for market stabilisation activities for a period of 30 days post-listing in connection with a large IPO.

174 The post-listing market stabilisation allowed the pre-IPO owners of the company to use proceeds from an over-allocation during the fundraising to buy and sell shares on-market for the purpose of stabilising the price of shares for a 30-day period following listing.

175 The company submitted that allowing market stabilisation would promote an orderly market, be consistent with the expectations of foreign investors, counter immediate aftermarket volatility, provide greater confidence in the book-build process and be consistent with our policy.

176 In considering whether the company's proposed market stabilisation was appropriate in the circumstances, we assessed the proposal against the criteria set out in Section B of Consultation Paper 63 *Market stabilisation* (CP 63), as well as the disclosures to be made in the prospectus regarding market stabilisation. We also evaluated the controls put into place by the entity responsible for trading the stabilisation shares.

177 Following our evaluation of the proposed market stabilisation, we provided a no-action letter to the company with the standard conditions set out in CP 63, on the basis that the terms of the proposed market stabilisation activities were within our policy and consistent with prior decisions.

Wholly owned entities

Relief from financial reporting obligations for wholly owned subsidiaries of a cooperative

178 We granted relief from the requirement to comply with certain financial reporting obligations (under s340(1)) to three large proprietary companies, each a wholly owned subsidiary of a large cooperative, that are party to a deed of cross-guarantee.

179 The relief we granted was analogous to relief provided at that time by Class Order [CO 98/1418] *Wholly-owned entities*. The relief was required because cooperatives did not fall within the definition of 'Holding Entity' for the purposes of [CO 98/1418].

180 [CO 98/1418] has since been replaced by ASIC Corporations (Wholly-owned Companies) Instrument 2016/785. See paragraphs 191–199 for more information.

181 The cooperative prepares audited consolidated financial statements for itself and its controlled entities (including the subsidiaries) in accordance with the *Co-operatives Act 2009* (including Ch 2M as it applies to cooperatives), as well as other legislation.

182 We granted relief because:

(a) we were satisfied that the financial reporting obligations imposed an unreasonable burden on the wholly owned subsidiaries of the cooperative in the circumstances; and

(b) the relief involved the application of existing policy underpinning [CO 98/1418].

Publications

183 We issued the following publications on conduct relief during the period of this report.

Legislative instruments

ASIC Corporations (Repeal) Instrument 2016/391

184 ASIC Corporations (Repeal) Instrument 2016/391 repealed Class Order [CO 14/632] *Key management personnel equity instrument disclosures* on 14 May 2016.

185 We repealed [CO 14/632] as we considered that it was no longer required due to the commencement of the Corporations Amendment (Remuneration

Disclosures) Regulation 2016, which amended the Corporations Regulations to clarify and correct the remuneration disclosure requirements.

ASIC Corporations (Client money – Cash common funds) Instrument 2016/671

186 ASIC Corporations (Client money – Cash common funds) Instrument 2016/671 remakes Class Order [CO 04/1063] *Section 981B money in cash common funds*. Under the Legislation Act, that class order was due to sunset if not remade.

187 We originally made [CO 04/1063] to address doubt as to whether s981B of the Corporations Act and reg 7.8.1 of the Corporations Regulations allowed client money to be paid into a registered cash common fund operated by a trustee company. The new instrument maintains the relief in [CO 04/1063] and enables client money received by an AFS licensee to be deposited into a cash common fund, provided the fund is also a registered scheme.

188 Consultation Paper 256 *Remaking and repealing class orders on trustee company common funds* (CP 256) sought feedback on our proposal to remake [CO 04/1063] without significant changes. We did not receive any submissions on CP 256 and, accordingly, proceeded with the proposal.

ASIC Corporations (Repeal) Instrument 2016/675

189 ASIC Corporations (Repeal) Instrument 2016/675 repealed Class Order [CO 00/199] *Trustee companies' common funds* from 19 July 2016. [CO 00/199] modified provisions of Ch 5C.

190 CP 256 sought feedback on our proposal to repeal [CO 00/199] as part of our review of [CO 04/1063]. We did not receive any submissions on CP 256 and, accordingly, proceeded with the proposal.

Regulatory guides

RG 115 *Audit relief for proprietary companies*

191 We updated RG 115 after remaking our legislative instruments that affect financial reporting by companies.

192 Consultation Paper 267 *Remaking ASIC class orders and guidance on audit and financial reporting* (CP 267) sought feedback from preparers of financial statements on our proposals to remake, without significant changes, our class orders relating to audit and financial reporting relief. Under the Legislation Act, those class orders were due to sunset if not remade.

193 Those class orders were remade as the following legislative instruments:

(a) ASIC Corporations (Audit Relief) Instrument 2016/784 replaced Class Order [CO 98/1417] *Audit relief for proprietary companies*;

(b) ASIC Corporations (Wholly-owned Companies) Instrument 2016/785 replaced [CO 98/1418]; and

(c) ASIC Corporations (Qualified Accountant) Instrument 2016/786 replaced Class Order [CO 01/1256] *Qualified accountant*.

194 CP 267 also sought feedback on our proposals:

(a) to update:

(i) RG 115;

(ii) Pro Forma 24 *Deed of cross guarantee* (PF 24);

(iii) Pro Forma 25 *Notice of disposal* (PF 25);

(iv) Pro Forma 26 *Revocation deed* (PF 26);

(v) Pro Forma 27 *Assumption deed* (PF 27); and

(vi) Pro Forma 183 *Deed of subordination* (PF 183); and

Note: To download copies of these pro formas, see www.asic.gov.au/pro-formas.

(b) to repeal:

(i) Class Order [CO 98/106] *Financial reports of superannuation funds, approved deposit funds and pooled superannuation trusts*; and

(ii) Class Order [CO 99/1225] *Financial reporting requirements for benefit fund friendly societies*.

195 In addition to updating RG 115, we also updated the pro formas listed above and reissued Information Sheet 24 *Deeds of cross-guarantee* (INFO 24).

196 A consequence of remaking [CO 98/1418] as a legislative instrument is that, in order to join a company to a deed of cross-guarantee that was executed before the commencement of the new instrument, a new deed will need to be executed or the pre-existing deed varied to reflect the revised PF 24.

197 Submissions on CP 267 were due on 12 September 2016.

198 ASIC Corporations (Amendment and Repeal) Instrument 2016/914 repealed [CO 98/106] and [CO 99/1225] on 29 September 2016.

199 On 30 September 2016, we released Report 497 *Response to submissions on CP 267 Remaking ASIC class orders on audit and financial reporting* (REP 497), which highlights the key issues that arose out of the submissions received on CP 267 and details our responses to those issues.

RG 180 *Auditor registration*

200 We released revised RG 180, which simplifies and improves the registration process for prospective auditors.

201 As part of our changes to RG 180, we:

(a) approved a new competency standard for satisfying practical experience requirements;

(b) reduced the paperwork and information required for satisfying an hours-based experience test; and

(c) updated the professional indemnity (PI) insurance requirements for authorised audit companies and new registered company auditors.

202 We also updated our PI insurance requirements to remain consistent with the limitation of liability schemes for members of two professional accounting bodies that were revised in 2014 under the Professional Standards Council schemes.

203 We also reissued the following pro formas:

(a) Pro Forma 215 *Company auditor registration conditions* (PF 215);

(b) Pro Forma 216 *Authorised audit company registration conditions* (PF 216); and

(c) Pro Forma 217 *Deed: Authorised audit company run-off insurance cover* (PF 217).

Note: To download copies of these pro formas, see www.asic.gov.au/pro-formas.

Reports

REP 488 *Response to submissions on CP 240 Remaking ASIC class orders on rounding and other matters*

204 REP 488 highlights the key issues that arose out of the submissions received on Consultation Paper 240 *Remaking ASIC class orders on rounding, directors' reports, disclosing entities and other matters* (CP 240) and details our responses to those issues.

205 CP 240 sought feedback on our proposals to remake, without significant changes, six class orders that affected the financial reporting requirements of disclosing entities and entities generally. Under the Legislation Act, those class orders were due to sunset if not remade.

206 Those class orders were remade as the following five legislative instruments:

(a) ASIC Corporations (Uncontactable Members) Instrument 2016/187 replaced Class Order [CO 98/101] *Members of companies, registered schemes and disclosing entities who are uncontactable*;

(b) ASIC Corporations (Directors' Report Relief) Instrument 2016/188 replaced Class Order [CO 98/2395] *Transfer of information from the directors' report*;

(c) ASIC Corporations (Synchronisation of Financial Years) Instrument 2016/189 replaced Class Order [CO 98/96] *Synchronisation of financial year with foreign parent company*;

(d) ASIC Corporations (Disclosing Entities) Instrument 2016/190 replaced Class Order [CO 98/2016] *Entities which cease to be disclosing entities before their deadline* and Class Order [CO 08/15] *Disclosing entities—half-year financial reporting relief*; and

(e) ASIC Corporations (Rounding in Financial/Directors' Reports) Instrument 2016/191 replaced Class Order [CO 98/100] *Rounding in financial reports and directors' reports*.

F Credit relief

Key points

This section outlines some of our decisions on whether to grant relief under the National Credit Act.

This section also describes the relevant guidance we issued on credit relief during the period of this report.

Exclusion from the National Credit Code

Refusal of application for National Credit Code exclusion for loans to persons who have commenced litigation

207 We refused an application for an exclusion from the National Credit Code under s6(14) of the Code.

208 The application sought the exclusion of the provision of credit to individuals who have commenced litigation (e.g. personal injury or workers compensation matters). The loans would only be repayable if the litigation is successful. There were no proposed restrictions on how the debtors would be able to use the credit provided. The effect of the exclusion sought would have been that the National Credit Act disclosure and responsible lending obligations, as well as the rules in the National Credit Code, would not apply to the loans.

209 We refused to grant the exclusion sought because there would be more than a minimal regulatory detriment associated with granting the exclusion sought. We also reached the view that:

(a) the costs identified by the applicant were the ordinary costs of compliance with the National Credit Act;

(b) the usual and intended effect of the National Credit Act was for debtors under the loans to receive the normal protections provided by the regulatory framework; and

(c) the arrangements were not analogous to existing relief for litigation funding schemes—where the credit may only be used to participate, conduct or fund legal proceedings—in Class Order [CO 13/18] *Funded representative proceedings and funded proof of debt arrangements exclusion from the National Consumer Credit Protection Act 2009*.

Relief from the minimum monthly repayment disclosure requirement

210 We granted relief to a credit licensee to permit the licensee to not include the prescribed form of minimum monthly repayment warning in account statements for a particular credit card product.

211 The relief applies to a credit card that allows for debtors to enter fixed instalment plans for parts of the credit balance, while the remainder of the balance is held as a 'revolving balance'. For this particular contract, the prescribed form of warning (set out in reg 79B of the National Consumer Credit Protection Regulations 2010) does not operate in a way that gives debtors accurate information about the size and cost of their debt, and the impact of making additional repayments.

212 We granted relief because:

(a) the repayment terms of the credit card appeared to reduce the likelihood of consumers making a minimum repayment that results in relatively high balances being carried for an extended period of time; and

(b) including information in the minimum repayment warning table about balances covered by instalment plans may detract from the usefulness of the prescribed warning, as it could confuse or hide the actual payment schedule for the revolving balance and amount of interest being paid on the revolving balance.

213 The relief is subject to requirements designed to minimise any consumer risks by:

(a) ensuring consumers continue to receive information about the duration of their credit arrangements, and the impact on total interest charges, at points in time when this message may have an impact on the consumer's use and management of their credit balance; and

(b) limiting the licensee's ability to change the terms of instalment plans to permit balances to be held for longer periods or otherwise allow the consumer to accrue significantly more interest charges than the revolving balance.

Publications

214 We issued the following publications on credit relief during the period of this report.

Legislative instruments

ASIC Credit (Amendment) Instrument 2016/632

215 ASIC Credit (Amendment) Instrument 2016/632 extends the relief in [CO 13/18] until 12 July 2017.

216 [CO 13/18] provides relief from the application of the National Credit Act to lawyers and funders involved in legal proceedings structured as funded representative proceedings and funding claims lodged with liquidators to prove in the winding-up of an insolvent company. The relief is from the requirements that would otherwise apply to funded representative proceedings and funded proof of debt arrangements if they amount to 'credit' to which the National Credit Act applies.

217 The relief means that funded representative proceedings and funded proof of debt arrangements can commence or progress without needing to comply with specific requirements, including holding an Australian credit licence and complying with the conduct, disclosure and responsible lending requirements.

G Other relief

Key points

This section outlines some of our decisions on whether to grant relief that do not fall within any of the previous sections, and that may be significant to participants in the financial services and capital markets industry.

We also outline other publications on relief that we issued during the period of this report.

Swap execution facilities

Extension of no-action position regarding s791A

218 We granted extensions of no-action letters to six swap execution facilities (SEFs) whose related entities have a presence in Australia. These entities were granted extensions of our no-action position in relation to s791A to allow them to operate a market in Australia.

219 Title VII of the *Dodd–Frank Wall Street Reform and Consumer Protection Act* (US) amended the *Commodity Exchange Act* (US) to establish a comprehensive new regulatory framework for swaps in the United States. From 2 October 2013, any platform that facilitates to US persons the execution of swaps through a multiple-to-multiple trading mechanism must register as an SEF and comply with the principles set out in the SEF's rules. As a result, a number of international trading platform operators (some of which are currently operating in Australia) have developed and registered their SEFs with the US Commodity Futures Trading Commission (CFTC) to offer US persons the ability to trade in those swaps.

220 Some of the platforms currently operating in Australia under an Australian market licence, or an exemption, sought to continue to provide their Australian users with the ability to transact with US persons through their SEFs.

221 We initially provided no-action letters to six SEFs from 2 October 2013 to 2 April 2014 and extended our no-action position a number of times. We granted a further final extension to five of these facilities from 2 October 2016 to 2 April 2017.

222 We provided another SEF with its first no-action letter from 29 October 2014 to 29 April 2015 and extended our no-action position a number of times. We granted a final extension to this SEF from 29 October 2016 to 29 April 2017.

223 These will be the final extensions to these no-action letters, as we now consider it more appropriate to bring the SEFs within our market licensing regime (as exempt professional markets) rather than to continue the no-action positions.

Short-selling relief

Relief for short-selling granted in connection with an IPO

224 We granted relief from the short-selling provisions in s1020B to enable a number of persons to sell their shares in the applicant (sale shares) to a special purpose vehicle (SaleCo) as part of a restructure in connection with an IPO by the applicant.

225 The restructure involved a number of separate partnerships. As part of the restructure, the partners of each separate partnership would transfer their interests in the assets of the partnerships in return for shares in newly incorporated companies, which would ultimately be wholly owned subsidiaries of the applicant. These partners would then receive shares in the applicant, being the sale shares, in consideration for their existing shares in the subsidiaries. Some of these sale shares would then be sold by SaleCo under a prospectus for an IPO by the applicant.

226 The relief was required because, under the terms of the restructure, the sale shares were to be issued after the offer closed but prior to the applicant listing on ASX. Therefore, the sale shares would not have been issued at the time that:

(a) SaleCo offered to sell the sale shares to potential investors under the prospectus for the IPO; and

(b) the existing shareholders offered to sell their sale shares to SaleCo.

227 Section 1020B prohibits certain short sales of securities, managed investment products and certain other financial products. In particular, s1020B(2) provides that (subject to s1020B and the Corporations Regulations) in this jurisdiction a person must only sell securities to a buyer if, at the time of the sale, the person has or believes on reasonable grounds that they have a presently exercisable and unconditional right to vest the products in the buyer.

228 Without relief, s1020B would have prohibited the sale of sale shares from the partners to SaleCo and the sale of the sale shares by SaleCo under the prospectus.

229 We granted relief because:

(a) the applicant, the existing shareholders and SaleCo had entered into a number of contractual arrangements, including an irrevocable offer

deed, which meant that the sale shares would be available to SaleCo in the event of the restructure and IPO proceeding;

(b) the IPO would not proceed, and all money received from subscribers under the prospectus would be refunded, if the restructure did not proceed; and

(c) subscribers under the prospectus would not be able to trade in the sale shares until the company's shares were granted quotation (at which time the shares would have been transferred to SaleCo and then to the subscribers).

Publications

230 We issued the following other publications during the period of this report.

Consultation papers

Remaking and repealing ASIC class orders on markets and securities

231 Consultation Paper 262 *Remaking and repealing ASIC class orders on markets and securities* (CP 262) sought feedback on our proposals to remake an exemption instrument and eight class orders without significant changes. Under the Legislation Act, the instrument and class orders were due to sunset if not remade.

232 However, we proposed:

(a) to vary the application of the Corporations (Low Volume Financial Markets) Exemption Notice 2003 by increasing the transaction threshold of low-volume financial markets and amending the transaction period to which the transaction threshold applies; and

(b) to amend the application of Class Order [CO 01/1519] *Disclosure of directors' interests* so it no longer imposes certain conditions on the relief.

233 The instrument and class orders were remade as the following legislative instruments:

(a) ASIC Corporations (Disclosure of Directors' Interests) Instrument 2016/881 replaced [CO 01/1519];

(b) ASIC Corporations (Transfers of Division 3 Securities) Instrument 2016/893 replaced Class Order [CO 02/313] *Part 7.11: Transfers of securities under Division 3*;

(c) ASIC Corporations (Exchange-Traded Warrants) Instrument 2016/886 replaced both Class Order [CO 02/608] *Warrants: Relief from PDS*

requirements for secondary sales and Class Order [CO 03/957] *ASX managed investment warrants: Disclosure and reporting exemptions*;

(d) Corporations (Low Volume Financial Markets) Instrument 2016/888 replaced Corporations (Low Volume Financial Markets) Exemption Notice 2003;

(e) ASIC Corporations (Records: Dealings on Foreign Markets) Instrument 2016/889 replaced Class Order [CO 03/826] *Market related records: Australian financial services licensees dealing on overseas markets*;

(f) ASIC Corporations (Financial Product Advice – Exempt Documents) Instrument 2016/356 was amended to replace Class Order [CO 03/911] *Licensing relief for self-dealers who provide general product advice about own securities*;

(g) ASIC Corporations (Exchange-Traded Derivatives: Multiple Issuers) Instrument 2016/883 replaced Class Order [CO 06/682] *Multiple derivative issuers*; and

(h) ASIC Corporations (Securities: NZ FASTER System) Instrument 2016/891 replaced Class Order [CO 07/183] *Transfer of Australian securities traded in New Zealand*.

234 CP 262 also sought feedback on our proposal to repeal Class Order [CO 02/284] *CHESS-approved foreign securities*. Under the Legislation Act, that class order was due to sunset if not remade. ASIC Corporations (Repeal) Instrument 2016/896 repealed [CO 02/284] on 24 September 2016.

235 Submissions on CP 262 were due on 11 August 2016.

236 Consultation Paper 236 *Remaking ASIC class orders on dematerialised securities and CHESS units of foreign securities* (CP 236) sought feedback on our proposals to remake, without significant changes, two class orders.

237 Those class orders were remade as the following legislative instruments:

(a) ASIC Corporations (Dematerialised Securities: Austraclear) Instrument 2016/841 replaced Class Order [CO 02/281] *Dematerialised securities traded on Austraclear*; and

(b) ASIC Corporations (Division 4 Financial Products) Instrument 2015/1030 replaced Class Order [CO 02/312] *Part 7.11, Division 4 financial products for ASTC*, as we reported in REP 483 at paragraphs 211–213.

238 CP 236 also sought feedback on our proposals to repeal two class orders. Under the Legislation Act, those class orders were due to sunset if not remade.

239 Those class orders were repealed by ASIC Corporations (Repeal) Instrument 2016/909, which repealed:

(a) Class Order [CO 00/2449] *ASX Online—relief from paper form lodgment* on 24 September 2016; and

(b) Class Order [CO 02/1296] *ASX managed investment warrants—FSR Act transition* on 24 September 2016.

240 Submissions on CP 236 were due on 21 September 2015. We previously reported on CP 236 in Report 467 *Overview of decisions on relief applications (June to September 2015)* (REP 467) at paragraphs 208–211.

Legislative instruments

ASIC Corporations (Derivative Transactions Reporting Exemption) Instrument 2016/688

241 ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2016/0688 provides exemptive relief from the ASIC Derivative Transaction Rules (Reporting) 2013 for over-the-counter (OTC) participants of ASX Clear (Futures) where an OTC participant submits a transaction for clearing on behalf of an affiliate or client of the OTC participant, and the transaction is accepted for clearing by ASX Clear (Futures).

ASIC Corporations (Amendment) Instrument 2016/913

242 ASIC Corporations (Amendment) Instrument 2016/913 amended the ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844 to extend:

(a) name information relief and foreign exchange security conversion transaction relief until 30 September 2018; and

(b) relief for foreign privacy restrictions until 31 December 2018.

Class rule waivers

ASIC Class Rule Waiver [CW 16/0352]

243 ASIC Class Rule Waiver [CW 16/0352] amended ASIC Class Rule Waiver [CW 13/680] and is a continuance of ASIC Class Rule Waiver [CW 15/0384].

244 The continuance extends until 4 May 2017 the relief granted by [CW 13/680] from the requirement to provide pre-trade transparency, as required by Rule 4.1.1(1) of the ASIC Market Integrity Rules (Competition in Exchange Markets) 2011, in an equity market product that is part of a contingent equity transaction.

Note: For the definition of 'equity market product' see Rule 1.4.3 of ASIC Market Integrity Rules (Competition in Exchange Markets) 2011, and for the definition of 'contingent equity transaction' see [CW 13/680].

ASIC Class Rule Waiver [CW 16/0359]

245 ASIC Class Rule Waiver [CW 16/0359] amended ASIC Class Rule Waiver [CW 14/1091] to extend the relief granted until 30 June 2017.

246 Where the client is not a retail client and the market transaction is in respect of a product that is a derivatives market contract, [CW 14/1091] grants conditional relief to a market participant from the obligation to comply with Rule 3.4.1 of the ASIC Market Integrity Rules (ASX Market) 2010.

> Note: For the definitions of 'retail client', 'market transaction', 'product' and 'derivatives market contract', see Rule 1.4.3 of the ASIC Market Integrity Rules (ASX Market 2010).

Appendix: ASIC relief instruments

Table 1 lists the individual relief instruments we have executed for matters referred to in this report and that are publicly available. The instruments are published in the *ASIC Gazette*, which is available at www.asic.gov.au/gazettes, except for credit instruments (marked with asterisks), which are published on our website under 'credit relief'.

Table 1: ASIC relief instruments

Para no.	Entity name	Instrument no. (Gazette no., if applicable)	Date executed	Power exercised and nature of relief	Expiry date
20–25	CSSF-regulated financial services providers	16-1109 (A55/16)	8 November 2016	Relief under s926A(2) of the Corporations Act from Pt 7.6 (other than Divs 4 and 8), subject to specified conditions	28 September 2018
26–29	Pointsbet Australia Pty Limited	16-0284 (A16/16)	1 April 2016	Declaration under s765A(2) of the Corporations Act that a spread bet in relation to a specified sport betting market provided by Pointsbet Australia Pty Limited that is a derivative is not a financial product for the purposes of Ch 7 of the Corporations Act.	N/A
63–69	APN News and Media Limited	16-0401 (A24/16)	11 May 2016	Relief under s741(1)(a) and (b) of the Corporations Act from Pts 6D.2 and 6D.3. Relief also granted to the shareholders of APN News and Media Limited from s707.	N/A
85–88	Theta Asset Management Ltd	16-0672 (A34/16)	6 July 2016	Relief under s601QA(1)(a) of the Corporations Act from s601ED(1).	N/A

Para no.	Entity name	Instrument no. (Gazette no., if applicable)	Date executed	Power exercised and nature of relief	Expiry date
137–141	Simonds Family Office Pty Ltd SFO Operations Pty Ltd Roche Holdings Pty. Ltd. Tarquin Australia Pty. Ltd. SR Residential Pty Ltd	16-0830 (A44/16) 16-0831 (A44/16)	30 August 2016	Relief under s655A(1) from s606 of the Corporations Act to facilitate the joint acquisition of a target company by scheme of arrangement.	N/A
151–156	Westpac Banking Corporation	16-0403 (A25/16)	17 May 2016	Relief under s655A and 673 of the Corporations Act from s606 and 671B.	N/A
157–159	Mercantile OFM Pty Limited	16-0871 (A45/16)	9 September 2016	Relief under s669(1)(b) of the Corporations Act to modify s661A(2A)—as notionally inserted by [CO 13/522]—so that securities acquired on-market under item 2 of s611, between date of announcement of an on-market bid and the start of offer period, are not excluded under s661A(2A)(a)(i).	N/A
168–172	LM Investment Management Limited	16-0959 (A48/16)	29 September 2016	Relief under s111AT(1) and 601QA(1) of the Corporations Act from Pt 2M.3 and s601HG.	16 March 2018
210–213	ING Bank (Australia) Limited	16-0733	26 July 2016	Relief under s203A(1) of the National Credit Code from reg 79B of the National Consumer Credit Protection Regulations 2010.	N/A
224–229	QANTM Intellectual Property Limited	16-0743 (A41/16)	26 July 2016	Relief under s1020F(1)(b) of the Corporations Act from s1020B(2).	N/A