

ASIC REVIEWS RELIEF GRANTED IN RELATION TO SERVICED STRATA SCHEMES

The Australian Securities and Investments Commission (ASIC) today announced that it had clarified several aspects about the ongoing operation of its Policy Statement 140, *Serviced Strata Schemes* (PS 140).

PS 140 gives guidance on the application of the Corporations Law (The Law), and in particular the managed investments part of the Law, to arrangements involving property under strata title or community title and under adjoining freehold titles or leasehold interests. PS 140 outlines how ASIC will regulate strata schemes that fit within the definition of a managed investment scheme under the Law.

The changes made include the extension of the 31 December 2000 deadline for relief for well advanced, open, non-complying strata schemes.

ASIC has made these changes in response to a number of industry submissions. However, this review did not include any review of the requirements of the Management Rights Class Orders (CO 99/460 and CO 00/570) concerning change of manager. ASIC plans to review these requirements and the disclosure statement requirements, under PS140, in the first half of 2001.

Extension of the 31 December 2000 Deadline in Relief granted to Well Advanced, Open, Non-Complying Strata Schemes

ASIC has modified the terms of PS 140 so that purchasers of units in developments that have been granted relief as well advanced, open, non-complying schemes, through ASIC Pro Forma 186, can participate in the scheme, even where these units are purchased after 31 December 2000.

ASIC's previous relief only allowed participation in the scheme where units were purchased prior to 31 December 2000, with certain exceptions. There is an ongoing requirement that promoters provide a disclosure statement, to potential purchasers of units, in relation to offers of interests in the scheme after 31 December 2000.

The relief will be made available by varying all current relief instruments through the issue of a single amending instrument. However, to take advantage of the relief promoters will have to provide ASIC with up to date information in relation to uncompleted stages of construction, the progress of proposed sales and expected time frames in relation to units unsold. The amending instrument will be available shortly.

ASIC requires this information so that it can confirm the current status of developments that have relief and gauge the state of the transition of the industry to the managed investments regime. This information should be provided to the Regional Office that processed the original application for relief from the Corporations Law. Where it appears that the scheme has substantially changed from that which was granted relief, ASIC may take action to restrict further offers. ASIC may follow up promoters at a later date to confirm details on an ongoing basis.

...2/



ASIC

Australian Securities &
Investments Commission

INFORMATION

Further guidance on what ASIC considers to be a serviced strata scheme

PS140 makes the distinction between serviced strata schemes that are subject to regulation in accordance with the policy and other strata arrangements that are eligible for unconditional class order relief as ordinary commercial or residential letting arrangements if operated by a licensed real estate agent (see CO 00/209, previously CO 98/1803).

In defining what strata arrangements are serviced strata schemes, PS140 refers to the use of the owner's strata unit as part of a hotel, motel, resort or serviced apartment complex.

In determining what is a serviced apartment complex, ASIC considers that strata operations offering longer term tenancies, for example 3 or more months, are unlikely to fall within this category. Strata operations consisting of tenancies of this length involve less day-to-day management in the form of promotion and regular room allocation by an operator. Operations offering longer-term tenancies may not be serviced apartment complexes even if the management conducts some servicing such as cleaning or apartment maintenance. For example, some student accommodation schemes may not be serviced strata schemes even if some cleaning is provided.

ASIC considers the extent of day-to-day management provided by the operator, on behalf of, or for the benefit of the owner of the unit, is key in determining what arrangements should be considered as serviced strata schemes. Notwithstanding the use of long-term tenancy agreements, a strong reliance on the activities of the management for the generation of an investor's return would generally indicate the existence of a serviced strata scheme. This might apply for example in certain kinds of retirement accommodation schemes.

A process to allow Management Rights Schemes which have taken advantage of the relief under CO 99/460 to take advantage of the relief under CO 00/570

ASIC has previously given relief to management rights schemes. This relief is encompassed in a number of Class Orders including CO 98/2287, CO 99/460 and CO 00/570. These class orders exempt operators from the managed investment provisions of the Corporations Law where they meet conditions set out in PS140.

ASIC has modified its policy so that schemes subject to the relief under CO 99/460 and CO 98/2287 can take advantage of the latest relief encompassed in CO 00/570, when a majority of the members of the scheme and the body corporate, not just those voting, agree to allow the operator to take advantage of that relief. The relief under CO 00/570 includes provisions that allow for transfer of management rights over a nine month period.

For operators to be eligible for this relief, members of the scheme need to be provided with adequate disclosure, prior to any vote, in relation to the rights that are being given up and their new rights, which will be identical to those set out in CO 00/570.

Operators need to give the disclosure, which they propose to provide to members, to ASIC prior to sending this information to members. ASIC will only give relief if it appears that the disclosure is adequate.

On being informed of the outcome of the vote and receiving any minutes of any meeting held, ASIC will give an individual exemption, based on CO 00/570, to that operator in relation to the relevant scheme.

Amendment to Closed Scheme Class Order CO 99/461

ASIC has previously granted relief in relation to schemes that were closed as at 6 October 1998. The definition of a closed scheme is set out in PS140 at paragraph 70. This relief is contained in CO 99/461.

ASIC has received some submissions in relation to the uncertainties that may arise due to operators not knowing whether strata units were owned on 6 October 1998 by an associate of a person who was involved in the development of the strata units or the operation of the Scheme. After considering these submissions ASIC has decided to amend CO 99/461 to give operators more certainty about offering interests in relation to units held by associates of Promoters on 6 October 1998.

The amended class order requires that the operator make reasonable enquiries in relation to whether the unit was held, on 6 October 1998, by a person or an associate of a person involved in the promotion of the scheme.

Concise Prospectus Relief under CO 99/462

ASIC had granted relief, through CO 99/462, to registered serviced strata schemes to allow the use of concise prospectuses in relation to offers in the scheme. This relief was available in relation to prospectuses lodged prior to 1 August 2000 with consideration to be given to an extension of the period after this date.

ASIC has decided not to extend the relief under CO 99/462 as recent changes to the Law allow a wider range of disclosure documents and there does not appear to be any substantial interest in using the relief.

Issued by:

ASIC Media Unit

Tel: 02 9911 2683

ASIC Information Release 00/034