



ASIC

Australian Securities & Investments Commission

REPORT 77

Overview of decisions on relief applications (January to March 2006)

July 2006

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About this report

1 ASIC is given powers under the *Corporations Act 2001* (the Act) to exempt a person or class of persons from particular provisions and to modify the application of particular provisions to a person or class of persons. This report deals with the use of our exemption and modification powers under the provisions of Chapters 2D (officers and employees), 2J (share buy-backs), 2L (debentures), 2M (financial reporting and audit), 5C (managed investment schemes), 6 (takeovers), 6A (compulsory acquisitions and buy-outs), 6C (information about ownership of entities), 6D (fundraising) and 7 (financial services) of the Act.

2 The purpose of the report is to improve the level of transparency and the quality of information available about decisions we make when we are asked to exercise our discretionary powers to grant relief from provisions of the Act.

3 The report covers the period beginning 1 January 2006 and ending 31 March 2006. During this period we decided 624 applications concerning Chapters 2D, 2J, 2L, 2M, 5C, 6, 6A, 6C, 6D and 7 and related provisions of the Act. We granted relief in relation to 521 applications and refused relief in relation to 103 applications.

4 This report does not provide details of every single decision made in that period. It is intended to provide examples of decisions that demonstrate how we have applied our policy in practice. We use our directions 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 the operation of businesses without harming other stakeholders.

5 In this report we have outlined matters in which we refused to exercise our discretionary powers as well as matters in which we granted relief. Prospective applicants for relief may gain a better insight into the factors we take into account in deciding whether to exercise our discretion to grant relief. We have also included some examples of limited situations in which we have been prepared to take a no-action position when instances of non-compliance have been brought to our attention.

6 The appendix to this report details the relief instruments we have executed for matters referred to in the report. Class orders are available from our website via www.asic.gov.au/co. Instruments are published in the ASIC Gazette, which is also available via www.asic.gov.au/gazettes. The information and media releases referred to throughout the report are available via www.asic.gov.au/mr.

7 Applications for relief from the provisions of Chapters 2D, 2J, 2L, 2M, 5C, 6, 6A, 6C, 6D and 7 are assessed by the Applications and Advice division of ASIC's Regulation directorate. Applications must be in writing and should address the requirements set out in Policy Statement 51 *Applications for relief* [PS 51]. Relief applications can be submitted electronically to **applications@asic.gov.au**. More information on applying for relief is available at **www.asic.gov.au/fsrrelief**.

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

Section 1: Licensing relief

1.1 This section outlines some of our decisions on whether to grant relief under s911A(2) and 926A(2) from the requirement to hold an Australian financial services (AFS) licence.

Foreign financial services providers (FFSPs)

Failure to disclose licensing status required under [CO 03/1101]

1.2 An FFSP relying on Class Order [CO 03/1101] *US Federal Reserve and OCC regulated financial service providers* notified us that it did not disclose in a written document that it was not licensed in Australia but regulated under the laws of the United States (US). We allowed the FFSP to continue relying on the class order on the basis that there was no actual or potential detriment, and the FFSP rectified the omission by correcting its current systems and providing the small number of affected clients with the necessary disclosure.

UK branch conducting services via EU passport regime

1.3 We granted licensing relief to the London branch of an FFSP that was incorporated in France, and that would have qualified for relief under Class Order [CO 03/1099] *UK FSA regulated financial services provider* but for the fact that it was not incorporated in the United Kingdom (UK). The FFSP was licensed by *Comite des Etablissements de Credit et des Enterprises d'Investissement (CECEI)*. The London branch conducted its financial services activities through the 'passport' regime established by the European Union's *Banking Consolidation Directives (2000/12/EC)*, which is regulated by the Financial Services Authority (FSA) in the UK. The passport regime allows a financial services provider to conduct business throughout the European economic area without securing prior authorisation from each member state. In granting relief, we were satisfied that there were effective co-operation arrangements with the FSA and CECEI in accordance with Policy Statement 176 *Licensing: Discretionary powers—wholesale foreign financial services providers* [PS 176].

New Zealand FFSP offering a distribution reinvestment plan

1.4 We exempted an FFSP, regulated by the New Zealand Securities Commission and listed on the New Zealand Stock Exchange, from the need to hold an AFS licence for dealing in connection with a distribution reinvestment plan. We granted relief on the basis that the FFSP was providing financial services to no more than 10 existing wholesale clients in Australia on a limited basis and in connection with a discrete distribution reinvestment plan.

Employee share schemes

Situations where disclosure exemptions in [CO 03/184] do not apply

1.5 We exempted a company from the need to hold an AFS licence for the on-market purchase and transfer of \$1,000 worth of its shares to each of its employees who had provided more than three months of service to the company. The company was not required to prepare a disclosure document under Part 6D.2, and the shares had only been listed for 10 months. Licensing relief under Class Order [CO 03/184] *Employee share schemes* is conditional on offer documentation being provided. We considered that relief was consistent with our policy in Policy Statement 49 *Employee share schemes* [PS 49] because the transaction was not for the purpose of fundraising (no monetary consideration was payable), there would be adequate disclosure available for employees, the listing period was only marginally shorter than the required 12 months, and the offer promoted the mutual interdependence between the company and its employees.

Global scheme of unlisted foreign company

1.6 We granted relief to an unlisted foreign company for a global employee share scheme, which was to be offered to fewer than 20 employees of an Australian subsidiary and permitted employees to buy and sell shares in the unlisted foreign parent company during a short trading window each year. The relief was conditional to ensure the unlisted foreign company provided adequate disclosure to employees, since a prospectus was not required.

Financial service provided by a foreign professional trustee

1.7 We exempted a foreign professional trustee company, which administered a trust to satisfy the exercise of options, from the need to hold an AFS licence. The trustee could not rely on [CO 03/184] because it was neither related to the issuer nor an associate of the issuer of the shares under the employee share scheme. Relief was granted because of the small number of eligible employees in Australia and because the scheme fostered mutual interdependence between eligible employees and the issuer. We refused to issue a no-action letter for the conduct concerning the initial issue of options on the grounds that more than two years had passed between the date of the breach and the date the trustee sought a no-action letter.

Other licensing relief

Secondary sale of timeshare interests

1.8 We granted interim relief to an operator of a timesharing scheme so that it could resell forfeited interests or facilitate the selling of interests by scheme members who wanted to exit the scheme. The licensing provisions were considered to be disproportionately burdensome given the limited scope of the operator's secondary sale facilitation activities and because, without relief, members seeking to exit the scheme may have been precluded from doing so in the absence of a cost-effective facility for selling those interests. A condition of relief was that no more than 5% of the interests in the scheme were to be sold in one calendar year. ASIC was not prepared to grant permanent licensing relief as an update of our timesharing schemes is planned.

Litigation funding services

1.9 We granted relief to a provider of litigation funding services from the requirement to hold an AFS licence for dealing, issuing and providing advice. We considered that although this type of litigation funding service could be classed as a derivative, it was not the kind of arrangement that the financial services regime was intended to capture. Conditional relief was granted in line with Class Order [CO 04/239] *Factoring arrangements—licensing, hawking and disclosure relief*, but we imposed a higher standard of disclosure given the greater risks and because the service tended to be provided to unsophisticated retail clients.

Recommendation by the directors of a co-operative

1.10 We granted relief to a co-operative from the requirement to hold an AFS licence to provide financial product advice. A company sought to purchase shares in the co-operative, which was regulated under the *Co-operatives Act 1992* (NSW). The *Co-operatives Act* requires a special resolution by means of a postal ballot along with a disclosure statement to existing members including a recommendation from the directors of the co-operative about the offer. We determined that it was unduly burdensome for the co-operative to obtain a licence for a one-off transaction and was analogous to relief granted under Class Order [CO 03/606] *Financial product advice—exempt documents*.

Information releases and class order

1.11 The following information releases and class order relate to the licensing relief granted during the period of this report.

Information releases

[IR 06-01] *ASIC reissues practice note on fees for relief applications*

[IR 06-02] *ASIC provides guidance on compliance with FSR Refinements regulations*

[IR 06-04] *ASIC provides financial reporting relief to foreign licensees*

Class order

[CO 06-68] *Conditional relief for foreign licensees from financial reporting and record keeping obligations*

Section 2: Disclosure relief

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

Relief relating to prospectuses

Pre-prospectus advertising for offer of securities

2.2 We refused to exempt an offeror of securities from the pre-prospectus advertising prohibition in s734(2) having regard to our policy in Policy Statement 158 *Advertising and publicity for offers of securities* [PS 158]. The offeror proposed to undertake an initial public offering of stapled securities, which included both shares and interests in a managed investment scheme, in Australia, Singapore and internationally to institutional investors. The offeror wanted to publish a media release in Australia at the same time as it registered a prospectus with the Monetary Authority of Singapore (MAS). We considered there was a risk that the prospectus lodged with MAS and the related media release could result in the drip-feeding of selective information to Australian investors usually contained in an Australian prospectus.

Pre-prospectus advertising and non-binding indications

2.3 We refused to modify the application of s734(2) of the Act to permit a company to seek from redeemable security holders non-binding indications of amounts they would consider investing in a new issue of different securities. We were concerned that the solicitation of a non-binding response from an investor may lead to the investor making an investment decision without adequately analysing a disclosure document.

Offer of employee share scheme to franchisees

2.4 We refused to extend disclosure relief available under [CO 03/184] so that an issuer could extend the operation of its employee share scheme to its franchisees and its franchisees' employees. We considered that the reference to 'contractors' at [PS 49.40] did not extend to persons who are owners/managers of businesses and whose contractual relationship with the issuer is based on a franchise agreement. We considered it relevant in refusing the relief that the franchisees operated their own businesses with a high degree of independence and employed their own staff.

On-sale relief for shares issued on conversion of options

2.5 We granted relief from s707(3) for two tranches of options issued to investors without a disclosure document. The issuer sought relief so that following the issue of shares on conversion of the options, holders of those shares would be free to on-sell the shares within 12 months without disclosure. We granted relief because we considered that an appropriate level of disclosure about the shares was available from other sources. We considered it relevant that:

- (a) A third tranche of options (with the same underlying shares) was to be issued under a disclosure document.
- (b) The disclosure document for the third tranche of options contained information about the underlying shares.
- (c) Any underlying shares sold within 12 months of issue arising from conversion of the third tranche of options could rely on Class Order [CO 04/671] *Disclosure for on-sale of securities and other financial products*, and would therefore be free of the on-sale restrictions.

Extending the period for minimum subscription and listing

2.6 We granted relief to enable an issuer of a prospectus to refresh the period in which listing must occur. Usually, where a prospectus states or implies that securities will be listed, but the shares are not listed within three months of the date of the prospectus, s723(3) voids any issue of shares under the disclosure document. We granted relief from s723(3) provided the issuer followed the procedure set out in s724(2). Our relief enabled the issuer to use the procedure in s724(2) on multiple occasions throughout the life of the prospectus.

Relief relating to PDSs

Pre-PDS advertising for financial products

2.7 In the matter referred to at paragraphs 2.2 and 2.10, we refused to exempt the offeror from s1018A(2), which applies to advertising or other promotional material for financial products which are not yet, but are reasonably likely, to become available. We were not satisfied that the offeror had provided sufficient reasons why it was unable to meet these requirements.

Refusal to extend time period to reach minimum subscription

2.8 We refused to grant relief to the offeror of interests in a managed investment scheme from the time periods that apply in s1016E(1). The offeror applied for relief because, after two months, it anticipated that the minimum

subscription amount would not be reached before the prescribed four-month period had elapsed. The offeror sought a one-month extension of time before needing to meet the requirements of s1016E(2), bringing the offer period to a total of five months. The offeror planned to notify investors of the extension of the offer period by publishing a statement on its website. We did not consider that any relief from the procedures prescribed by law were warranted.

Other disclosure relief

Litigation funding services

2.9 In the matter referred to at paragraph 1.9, we also granted conditional relief from the financial product disclosure provisions (Part 7.9).

Secondary sales of stapled securities

2.10 In the matter referred to at paragraphs 2.2 and 2.7, we also granted relief from s707(5), 1012C(6) and s1012C(8) (secondary sales relief). The relief allowed off-shore investors who acquired stapled securities under an offering in Singapore and an international offering to institutional investors, to offer to sell those stapled securities in Australia to retail investors, without a PDS, where the sale offer occurred within 12 months of the issue of the stapled securities. We granted relief because the sale offer of stapled securities under those circumstances did not erode the anti-avoidance effect of the secondary sale provisions of the Act. Australian retail investors would have access to adequate disclosure as the issuer would be giving a combined prospectus and PDS in Australia for the stapled securities at approximately the same time that the stapled securities were to be offered for sale in Singapore and internationally. Furthermore, the stapled securities would be listed on the ASX at the time of any secondary sale offer by the off-shore investors and be subject to continuous disclosure requirements.

Abridged offer period for unsolicited purchase offers

2.11 We granted relief from Division 5A of Part 7.9, which regulates unsolicited off-market offers to purchase financial products, to a company seeking to repurchase convertible notes from holders. The Act required the offer to be open for a minimum of one month. The company was granted relief so that the offer could be open for the minimum offer period set out in the ASX Listing Rules (i.e. 22 days).

Unsolicited purchase offers for foreign company buy-back

2.12 We granted relief from Division 5A of Part 7.9, which regulates unsolicited off-market offers, to a foreign body that proposed a worldwide buy-back of its equity warrants. We considered the objective of the Division could

be met without imposing the requirements of the Act because, among other things, the terms of the buy-back offer will be appropriately regulated by a recognised foreign regulator.

Unsolicited purchase offers for foreign takeover bid

2.13 We granted relief from 1019H, which regulates the terms of an unsolicited off-market offer to purchase financial products. The relief enabled a foreign company that had made a takeover bid for another company from the same jurisdiction (which had a small number of Australian shareholders) to vary the terms of the offer in accordance with the laws of the foreign company's home jurisdiction. Under the laws of that foreign jurisdiction, the terms of the offer may be varied during the offer period provided the variation improves the offer for the offerees. Relief was granted so that the Australian shareholders were not disadvantaged by any changes made to the terms of the offer.

Media and information releases

2.14 The following media and information releases relate to the disclosure relief granted during the period of this report.

[IR 06-01] *ASIC reissues practice note on fees for relief applications*

[IR 06-02] *ASIC provides guidance on compliance with FSR Refinements regulations*

[MR 06-27] *ASIC releases draft guidance on shorter, better prospectuses*

[IR 06-07] *ASIC issues fees and costs disclosure guide*

[IR 06-09] *ASIC puts the spotlight on superannuation disclosure*

Section 3: Managed investments relief

3.1 This section sets out some of the circumstances in which we have exercised (and refused to exercise) our discretionary powers under s601QA to grant relief from the provisions of Chapter 5C.

Investment in real estate investment trusts

3.2 We granted relief to a number of responsible entities of registered schemes from s601FC(4) so that they could invest scheme property in listed real estate investment trusts (REITs) in a number of jurisdictions, including Japan, Hong Kong, Canada and the US. Relief was granted on the basis that the regulation of REITs generally satisfied the criteria in Policy Statement 178 Foreign collective investment schemes [PS 178]. We considered the regime governing REITs in those jurisdictions substantially met the IOSCO Collective Investment Scheme principles and that ASIC has the necessary co-operation arrangements with the equivalent regulatory agency in those jurisdictions. For listed US and Canadian REITs, although REITs are not regulated as collective investment schemes, we considered the regulatory risks associated with investing in them were minimal as they were listed on specific financial markets and registered with the regulator.

Extending time to lodge a notice of change to the responsible entity

3.3 We granted urgent relief to allow an extension of time for lodging a notice to record the change of responsible entity. Previously, the responsible entity was granted relief to enable it to retire as the responsible entity of 21 managed investment schemes and to appoint a related body corporate as the new responsible entity without holding a meeting of members to choose the new responsible entity. It was later discovered that the proposed new responsible entity did not possess the adequate AFS licence authorisations to operate one of the funds. While the proposed responsible entity applied for additional authorisations from ASIC, the responsible entity sought more time to lodge Form 5107 *Notification of change of responsible entity of a registered scheme* so that it could comply with the Act and not breach its obligation to act in the best interests of members of the scheme (e.g. by providing unauthorised financial services). The relief enabled the scheme to be operated by a responsible entity that was licensed to do so at all times.

Class Order [CO 05/26]: Interim no-action position

3.4 We provided certain entities with a no-action letter for a breach of s601GAB, under Class Order [CO 05/26] *Constitutional provisions about the consideration to acquire interests*, provided that the relevant responsible entities:

- (a) took reasonable steps to comply with the conditions of [CO 05/26] as soon as reasonably practicable; and
- (b) continued to report any significant breach of the Act arising out of the exercise of unit pricing discretions.

The no-action position expires on 1 May 2007. The no-action letter was granted so that all scheme pricing discretions could be reviewed at the same time as a planned review of unit pricing issues arising out of ASIC and APRA's unit pricing guide.

DRP issue price relief for separate classes of interests

3.5 We granted relief to the responsible entity of a registered scheme listed on the ASX from the requirement in s601GA(1)(a) for the issue price for a distribution reinvestment plan (DRP) to be independently verifiable, and to operate with respect to two separate classes of interests in the scheme. Relief under [CO 05/26] did not apply to DRPs operating with respect to more than one class of interest. Though we considered it unusual for a registered scheme to have more than one class of interest, we accepted the responsible entity's position that:

- (a) It would be unfair to allow a DRP for one class of members and not the other.
- (b) There would be no detriment to the members of the scheme to allow the DRPs, given that the members of scheme agreed to the two separate classes in the scheme.
- (c) Full disclosure of the DRPs had been made.

Issue price relief for rights offer of partly paid interests

3.6 We granted relief to a responsible entity of a registered scheme by modifying the application of s601GAA, under [CO 05/26], so that the responsible entity could conduct a pro rata rights issue where the offer is made in proportion to the number of interests (whether fully or partly paid) held rather than the value of those interests. The issuer initially issued partly paid interests, followed by a pro rata issue of fully paid interests that were of the same end value as the partly paid interests. The only reason the partly paid interests were worth less than fully paid interests was because a call had not yet been made. We were satisfied that there would not be an unfair dilution of members' interests and the rights issue allocation would not be disproportionate to the value of amount each member had contributed to the scheme.

Differential fees class order and wholesale schemes

3.7 We refused to grant relief to the responsible entity of a number of registered 'wholesale' schemes from the equal treatment rule in s601FC(1)(d), so that it would not need to comply with the disclosure conditions required under Class Order [CO 03/217] *Differential fees*. The disclosure conditions of the class order are intended to ensure transparency and fairness to all scheme members, even if all wholesale clients. All scheme members have a right to be informed of the existence of all differential fee arrangements. We did not accept that the disclosure conditions under the class order were disproportionately burdensome.

Information release

3.8 The following information release relates to the managed investments relief granted during the period of this report.

[IR 06-01] *ASIC reissues practice note on fees for relief applications*

Section 4: Mergers and acquisitions relief

4.1 This section outlines some of the circumstances in which we have granted or refused relief under s655A from the provisions of Chapter 6.

Voting power and relevant interest

4.2 We refused to grant relief to allow an entity to acquire a 30% relevant interest in a listed stapled security, in contravention of the 20% statutory cap imposed by s606. For commercial and financing reasons, the entity proposed to subscribe for the 30% interest at a point up to 4 years after an initial public offer of stapled securities (at a set, predetermined price). The issuer of the stapled securities intended to fully disclose the details of the future issue in the prospectus/PDS for the initial public offering. We did not agree that such disclosure was akin to the exception set out in item 7 of s611. We further considered that it would be difficult for subscribers to the initial public offering to provide informed consent to the issue of a controlling interest at a set price up to four years into the future. We also considered that the entity's situation could be distinguished from that envisaged by the legislature in the exception in item 12 of s611, as that provision contains a time-frame limitation of the life of the initial public offer prospectus.

Joint takeover bids

4.3 We considered an application for relief for a proposed joint takeover bid. The relief sought fell outside our previous guidance in Media Release [MR 01-295] *ASIC clarifies its policy on joint bids* in several key areas. Firstly, as one bidder held a relevant interest in over 20% but the other bidder did not have any relevant interest in the target prior to the joint bid agreement, we decided to grant relief to allow the joint bidders to proceed. This was despite the bidders not agreeing to a condition requiring acceptance of an unmatched higher bid for the shares. We did not consider that this condition was necessary where the joint bidders were not aggregating interests to establish a larger interest in the target. Secondly, we clarified that a joint bid should be subject to a non-waivable condition that the bid be accepted for at least 50.1% of the non-associated shares (the 'Minimum Acceptance Condition'). ASIC determined that this 'share count test' was more appropriate than the shareholder test previously enunciated in [MR 01-295]. Finally, ASIC refused to allow the joint bidders to include putative 'acceptances' in respect of their own target shareholdings in reaching the 50.1% Minimum Acceptance Condition.

Section 5: Conduct relief

5.1 This section outlines some of our decisions on whether to grant relief from certain conduct obligations imposed by Chapters 2D, 2M and 7 of the Act.

Meetings requirements

Voting by directors with a material personal interest

5.2 We granted relief to allow all the directors of a public company to attend and vote on a resolution at a directors' meeting, despite four of the five directors having a material personal interest in the outcome of the resolution to change the terms of options in the company. The public company in question was the subject of cross-conditional takeover bids for its shares and options. The options were non-transferable, so that neither the option bid nor the share bid could succeed, unless the terms of the options were changed so the options could be transferred to the bidder. Four of the five directors between them held more than 95% of the options. The relief granted was conditional on the options not being transferred to the bidder unless and until the share bid had been accepted by holders of more than half the shares and had become unconditional. We considered that satisfaction of these conditions would be analogous to a majority of shareholders voting at a members' meeting to approve the change to the terms of the options.

Further extending time to prepare and lodge financial reports

5.3 We granted additional relief to a partnership holding an AFS licence from the financial reporting requirements of Part 7.8 of the Act. Three of the five companies that formed the partnership were Australian, which under Chapter 2M meant they had four months after the end of the financial year to lodge their financial reports. However, the partnership, as a non-disclosing entity licensee needed to lodge their financial reports within two months of the end of the financial year under Part 7.8. The partnership submitted it was problematic and unreasonably burdensome to have to prepare their reports before their Australian companies had lodged their financials. We considered there were sufficient grounds to grant the relief.

Financial service provider requirements

Conduct relief for employee share scheme outside of [CO 03/184]

5.4 In the matter referred to at paragraph 1.5, we also granted relief, for the avoidance of doubt, from the hawking provisions (s736 and 992A). There was doubt whether there was an 'offer to issue or sell', and therefore whether the

provisions applied. The company satisfied ASIC that there was enough doubt about the applicability of the provisions to grant relief for the avoidance of doubt.

Client monies and trust account requirements

5.5 We refused to grant relief to an AFS licensee from the requirement in s981B(1) to pay client monies into a trust account on the day they are received by the licensee, or on the next business day. Relief was refused on the basis that it was not unduly burdensome for the licensee to comply with the Act given that the nearest banking facilities were only three kilometres away and not considered remote. Further, if insurance monies were unremitted, there would be no evidence that the monies were paid resulting in the loss of cover for a consumer. In making our decision, we also considered the nature of the insurance policies.

Constitutional amendments not affecting mutual status of company

5.6 We granted relief to a credit union from Part 5 of Schedule 4 of the Act to allow it to make a number of amendments to its constitution while maintaining its mutual company structure. Changes included: the ability to issue a new investment share; procedures and eligibility requirements associated with appointing a director; introduction of a waiting period for members for access to reserves in certain situations; removal of joint memberships; and empowering the Board with discretion to exclude persons from becoming members. While each individual amendment separately would most likely not demutualise the company, taken together the combined changes may be taken to have that effect. We considered the changes brought to our attention were within the policy set out in Policy Statement 147 *Mutuality—Financial institutions* [PS 147].

Creation of new class of shares and change in demutualisation procedure likely to influence mutual status of company

5.7 We refused to grant relief to a credit union that was seeking written confirmation from ASIC that proposed amendments to its constitution did not modify the mutual structure of its company. The amendments allowed for the creation of a new class of shares and a change in its demutualisation procedure requirements. We were not satisfied that the proposed amendments would trigger the disclosure for proposed demutualisation (clause 29 of Schedule 4 of the Act), or that amendments in respect of member investment shares were in accordance with our policy on mutuality in [PS 147].

Offer of retirement savings accounts to non-members has no bearing on mutual status of company

5.8 We refused to grant an exemption under clause 30(2) of Part 5 of Schedule 4 of the Act to a credit union seeking to modify its constitution to permit it to offer retirement savings accounts to non-members. We were not satisfied that the proposed amendments would trigger the demutualisation provisions in clause 29 of Part 5 of Schedule 4. We decided that relief was not necessary in this circumstance.

Requirement to provide title documents to members

5.9 We refused to grant relief to a co-operative scheme from s1071H(1) and (3), which require the scheme to provide title documents, such as a share certificate, to holders of the security within two months of its issue, and from the requirement to provide security transfer documentation within one month. The co-operative proposed to post a monthly statement outlining the number of securities to which a member was entitled, and provide a share certificate on request. We were not satisfied that an accurate and reliable record of shareholdings in the company would be maintained or that there were systems in place to ensure that this record would be independently reviewed. In addition, we considered relief was not compatible with the company's constitution.

No extension to definition of basic deposit product

5.10 We refused to grant relief to a bank to extend the definition of basic deposit product (BDP) in Chapter 7 of the Act to a particular account, in which the bank charges an exit fee for any withdrawals made from the account during a specific period of the year. It was considered that relief could not be granted given the clear legislative intention behind the definition of BDP in Chapter 7 of the Act, which specifically excludes accounts that penalise customers for withdrawing funds.

Information releases and class orders

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

Information releases

[IR 06-01] *ASIC reissues practice note on fees for relief applications*

[IR 06-02] *ASIC provides guidance on compliance with FSR Refinements regulations*

[IR 06-03] *ASIC relief on remuneration disclosures*

[IR 06-04] *ASIC provides financial reporting relief to foreign licensees*

[IR 06-05] *ASIC relief on measuring remuneration*

Class orders

[CO 06-06] *Dual lodgement relief for NSX-listed disclosing entities*

[CO 06-50] *Transfer of remuneration information into directors' report*

[CO 06-68] *Conditional relief for foreign licensees from financial reporting and record keeping obligations*

[CO 06-105] *Calculation of director and executive remuneration*

Appendix: ASIC relief instruments

This table lists the relief instruments we have executed and gazetted for matters that are referred to in the report. The class orders are available from our website via www.asic.gov.au/co. Most of the instruments are published in the ASIC Gazette, which is also available via www.asic.gov.au/co.

Note that references in the table to particular provisions of the law are references to the *Corporations Act 2001* and references to particular regulations are references to the Corporations Regulations 2001.

Report para no.	Class order title or entity name	Instrument no./Gazette no. (if published)	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
1.3	Ixis Corporate & Investment Bank (French Company)	06/0134 08/06	20/02/2006	s911A(2)(l) This instrument grants licensing relief to a foreign licensed financial services provider for financial services it provides to its wholesale clients.	
1.4	Macquarie Goodman (NZ) Limited (NZ Company Number 1467292)	06/0018 02/06	12/01/2006	s911A(2)(l) We exempted a foreign company from the licensing requirements for offering financial services in relation to its distribution reinvestment plan, which is to be offered to fewer than 10 wholesale investors in Australia.	
1.5 5.4	Australian Wealth Management Ltd ACN 111 116 511	06/0003 01/06	3/01/2006	s911A(2)(l) This instrument exempts an employer from the requirement to hold an AFS licence for the purpose of offering securities through its employee share scheme.	

OVERVIEW OF DECISIONS ON RELIEF APPLICATIONS

Report para no.	Class order title or entity name	Instrument no./Gazette no. (if published)	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
1.6	Spencer Stuart Management Consultants N.V. (Netherlands Antilles Company)	05/1265 50/05	13/12/2005	s911A(2)(l) This instrument exempts the foreign offeror of shares to fewer than 20 employees of an Australian subsidiary, made under an employee share scheme, from the requirement to hold an AFS licence for the offering of these shares.	
1.7	Australian Skandia Limited ACN 093 415 251	06/0083 04/06	25/01/2006	s911A(2)(l) This instrument exempts the Australian subsidiary of a foreign trustee from the requirement to hold an AFS licence for dealings in relation to its global employee share scheme. The instrument requires particular disclosures be made to individuals holding these securities.	
1.8	Cedar Lake Country Club Limited ACN 009 986 814	06/009 06/06	8/02/2006	s601QA(1)(a) and 911A(2)(l) This instrument provides interim licensing relief to the operator of a timeshare scheme for the purposes of dealing in or advising about secondary interests in the scheme. The instrument also provides an exemption from s601ED requirements in certain prescribed circumstances.	31/12/2006
1.9 2.9	Litigation Management Pty Limited ACN 074 858 674	06/0001 01/06	4/01/2006	s911A(2)(l) and 1020F(1)(a) This instrument provides licensing and disclosure relief to the operator of a litigation funding system for dealing and giving financial product advice, and dealing in relation to a litigation funding agreement.	

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1.10	Taxi Services Co-operative Limited ACN 118 665 553	06/0173 10/06	9/03/2006	s911A(2)(l) This instrument exempts a co-operative from the requirement to hold an AFS licence for the purpose of offering financial product advice contained in a disclosure statement as required by the Co-operatives Act (NSW).	
1.11	Conditional relief for foreign licensees from financial reporting and record keeping obligations	[CO 06/08]	3/02/2006	This class order relieves certain foreign licensees (except foreign ADIs) from the requirement under Division 6 of Part 7.8 to prepare and lodge audited financial statements and keep certain financial records for its financial services business.	
2.2 2.7 2.10	SP Australia Networks (Finance) Trust ARSN 116 783 914 SP Australia Networks (Distribution) Ltd ACN 108 788 245 SP Australia Networks (Transmission) Ltd ACN 116 124 362	05/1247 50/05	9/12/2005	s1020F(1)(c) and 741(1)(b) This instrument modifies the operation of s707 and 1012C in relation to the on-sale of stapled securities without a prospectus or PDS within 12 months of purchase by offshore investors to retail investors in Australia.	
2.5	Hill End Gold Limited ACN 072 692 365	06/0215 12/06	20/03/2006	This instrument provides relief from s707(3), allowing on-sale of securities underlying options issued without Chapter 6D disclosure.	

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Report para no.	Class order title or entity name	Instrument no./Gazette no. (if published)	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
2.6	Geopacific NL	06/0089 05/06	30/01/2006	This instrument modifies s723(3)(b) and 724(1)(b) to permit an issuer to 'refresh' the period for gaining listing on the stock exchange after issuing a prospectus, provided that the issuer follows the procedure in s724(2).	
2.11	Amcor Investments (New Zealand) Limited ARBN 096 271 313	06/0128 07/06	17/02/2006	s1020F(1)(c) This instrument modifies the provisions in 1019G(2) and 1019I(2)(e) by decreasing the offer period prescribed from one month to 22 days.	
2.12	Publicis Group SA (French Company)	06/0004 01/06	5/01/2006	s1020F(1)(a) This instrument provides an exemption to a foreign company from the operation of Division 5A of Part 7.9 of the Act, in relation to making an unsolicited offer to buy back their equity warrants from Australian holders.	
2.13	Nordic Telephone Company (Danish Company)	06/0025 03/06	13/01/2006	s1020F(1)(c) This instrument modifies the operation of s1019H(2) by ensuring variances made to a buy-back offer in a foreign jurisdiction do not adversely affect holders of the securities in Australia.	

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3.2	UBS Global Asset Management (Australia) Ltd ACN 003 146 290 UBS Global Property Securities Fund ARSN 110 631 171	06/0139 08/06	22/02/2006	s601QA(1)(a) This instrument exempts the operator of a number of registered schemes from s601FC(4) by allowing them to invest in real estate investment trusts in Japan.	
3.2	UBS Global Asset Management (Australia) Ltd ACN 003 146 290 UBS Global Property Securities Fund ARSN 110 631 171	06/0150 09/06	27/02/2006	s601QA(1)(a) This instrument exempts the operator of a registered scheme from s601FC(4) by allowing them to invest in real estate investment trusts in Canada.	
3.2	I.O.O.F. Investment Management Limited ACN 006 695 021 Perennial Capital Stable Trust ARSN 096 017 248	06/0120 06/0125 07/06	15/02/2006	s601QA(1)(a) This instrument exempts the operator of a registered scheme from s601FC(4) by allowing them to invest in real estate investment trusts in the United States.	
3.2	I.O.O.F. Investment Management Limited ACN 006 695 021 Perennial Global Property Securities Trust ARSN 096 017 248	06/0157 09/06	28/02/2006	s601QA(1)(a) This instrument exempts the operator of a registered scheme from s601FC(4) by allowing them to invest in real estate investment trusts in Hong Kong.	

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Report para no.	Class order title or entity name	Instrument no./Gazette no. (if published)	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
3.3	Challenger Funds Management Limited ACN 004 778 545 Challenger FM Australia Private Property Fund ARSN 089 988 536	06/0116 06/0117 07/06	9/02/2006	s601QA(1)(b) These instruments work together to vary existing relief provided to the operator of a registered scheme in Instrument [06/0005] providing an extension of time to lodge the forms to replace the responsible entity of a scheme.	
3.5	Challenger Listed Investments Limited ACN 055 293 644 Challenger Wine Trust ARSN 092 960 060	06/0144 09/06	24/02/2006	s601QA(1)(b) This instrument extends the relief in Class Order [CO 05/26] <i>Constitutional provisions about the consideration to acquire interests</i> so that the responsible entity may set the issue price of interests for the purpose of a distribution reinvestment plan to separate classes of interests in its scheme.	
3.6	APN Funds Management Limited ACN 080 674 479 APN/UKA European Retail Trust ARSN 114 153 641	06/0153 09/06	28/02/2006	s601QA(1)(b) This instrument provides an amendment to s601GAA(3)(a), under [CO 05/26], by allowing a rights issue to be made to members based on the number of interests held in scheme rather than the value of those interests.	
5.2	Buka Minerals Limited ACN 000 741 373	06/0146 09/06	27/02/2006	s196(1) This instrument permits directors who have a material personal interest in the outcome of a resolution to attend and vote at a directors' meeting to consider that resolution.	

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5.3	Australian Power Partners BV ARBN 075 477 208 National Power Australia Investments Limited ARBN 075 257 537 CISL (Hazelwood) Pty Limited ACN 074 747 185 Hazelwood Investment Company Pty Limited ACN 075 041 360 Hazelwood Pacific Pty Limited ACN 074 351 376	06/0208 12/06	23/03/2006	s922B(1)(c) This instrument revokes relief granted in ASIC instrument 04/1416 and grants relief to a licensee by increasing the time they have to lodge their licensee financial report from two months to four months.	
5.6	Connect Credit Union of Tasmania Limited ACN 067 729 195	06/0065 06/06	19/01/2006	cl 30(2), Schedule 4 This instrument exempts the company from clauses 29(1)(f) and (h), 31, 32 and 33 of Schedule 4 as these changes to the constitution will not result in or allow a modification of its mutual structure.	
5.11	Dual lodgement relief for NSX-listed disclosing entities	[CO 06/06]	18/01/2006	s641(1) This instrument exempts NSX-listed disclosing entities from the requirement to lodge their full and half financial year financial reports, directors' reports and auditor's reports and associated prescribed forms with ASIC in certain circumstances.	

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Report para no.	Class order title or entity name	Instrument no./Gazette no. (if published)	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
5.11	Transfer of remuneration information into directors' report	[CO 06/50]	30/01/2006	This class order allows listed companies to transfer remuneration information required to be disclosed in the financial report under accounting standard AASB 124 'Related Party Disclosures' into the directors' report. Listed companies must already include remuneration disclosures in the directors' report under s300A of the Act. The relief applies to financial reports under Chapter 2M and applies for financial years ending 31 December 2005 to 31 March 2006, inclusive.	Relief only applies for the financial years ending 31 December 2005 to 31 March 2006, inclusive.
5.11	Conditional relief for foreign licensees from financial reporting and record keeping obligations	[CO 06/68]	17/02/2006	This class order relieves certain foreign licensees (except foreign ADIs) from the requirement under Division 6 of Part 7.8 to prepare and lodge audited financial statements and keep certain financial records for its financial services business.	
5.11	Calculation of director and executive remuneration	[CO 06/105]	21/02/2006	This class order allows listed companies to measure information on remuneration of individual directors and executives required to be disclosed in the financial report under accounting standard AASB 124 'Related Party Disclosures' and in the directors' report under s300A of the Act on a common basis for financial years ending 31 December 2005 to 31 March 2006 inclusive. As there is no measurement basis in AASB 124, relief on measurement in relation to that standard is for avoidance of doubt only.	The relief applies only for financial years ending 31 December 2005 to 31 March 2006 inclusive.