



ASIC

Australian Securities & Investments Commission

REPORT 65

Overview of decisions on relief applications from financial service providers (May to August 2005)

December 2005

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About this report

1 ASIC is vested with a number of 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 managed investments provisions of Chapter 5C and the financial services provisions of Chapter 7 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 May 2005 and ending 31 August 2005. During this period we decided 855 applications concerning Chapter 5C, Chapter 7 and related provisions of the Act. We granted relief in relation to 752 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. Our general policy is to only consider granting relief from the requirements of Chapter 5C and Chapter 7 to address atypical or unforeseen circumstances and unintended consequences of those provisions.

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

7 Applications for relief from the provisions of Chapter 5C and Chapter 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 **fsr.applications.manager@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 significant decisions on whether to exercise our power under s911A(2) and s926A(2) to exempt a person or class of persons from the requirement to hold an Australian financial services (AFS) licence.

Foreign financial services providers (FFSPs)

Takeover documents for foreign companies

1.2 We issued a no-action letter to a target company that was listed on Singapore Exchange Limited regarding its unlicensed provision of general financial product advice to Australian shareholders. The advice was contained in a target statement that was provided in accordance with the Singapore Code on Takeovers and Mergers. We made this decision on the basis that Singapore Exchange Limited is an approved foreign body for the purposes of Class Order [CO 02/259] *Downstream acquisitions: foreign stockmarkets*. Given that the independent advice contained within the target statement was required under Singapore law and was provided in an isolated incident, we considered that it would be disproportionately burdensome to require the applicant to hold an AFS licence.

1.3 Similarly, we exempted a New Zealand company for the provision of general financial product advice concerning an off-market takeover offer to Australian shareholders. We considered that, as the takeover documents complied with New Zealand law and the provision of financial services was only in connection with a one-off transaction, it was appropriate to grant an exemption. We considered that the New Zealand mergers and acquisitions regulatory regime was sufficiently equivalent to the Australian regime because the New Zealand Stock Exchange is an approved foreign body for the purposes of Class Order [CO 02/259] *Downstream acquisitions: foreign stockmarkets*.

1.4 We exempted a foreign bank for the provision of general financial product advice contained in the documents comprising a takeover bid of a South African public company listed on the Johannesburg Stock Exchange. Only 14 of the company's shareholders would be receiving the documents in Australia.

1.5 Each of the above decisions was consistent with our policy of exempting entities that provide general financial product advice in takeover documents that comply with foreign financial services laws and operate under the listing rules of approved foreign exchanges where the provision of financial product advice is an isolated incident.

Exemption beyond class order refused

1.6 We refused to grant an exemption to a number of subsidiaries of a French state-owned utility that were incorporated in the United Kingdom (UK) for entering into derivative agreements with Australian wholesale clients. The relief sought fell outside the scope of relief provided for in Policy Statement 176 *Licensing: Discretionary powers—wholesale foreign financial services providers* [PS 176] and Class Order [CO 03/1099] *UK FSA regulated financial service providers*. As the applicants were not directly regulated by the Financial Services Authority (FSA) in the UK, we were unable to conclude that the applicants operated within a regulatory framework comparable to Chapter 7 of the Act. Instead, we issued a no-action letter, subject to conditions that required one of the applicants to apply for an AFS licence within one month.

No exemption for foreign health insurance provider

1.7 We refused to exempt a foreign health insurance provider that proposed to offer expatriate health insurance to Australian corporate groups, insurance brokers and individuals covering Australians working overseas. Although the applicant was regulated by the FSA in the UK for its provision of health insurance, it was required to hold an AFS licence because Class Order [CO 03/1099] *UK FSA regulated financial service providers* does not exempt providers of general insurance products who are regulated by the FSA. We were not prepared to grant an exemption or issue a no-action letter regarding the applicant's failure to hold an AFS licence because the applicant did not address the question of whether the regulation of health insurance in the UK provided an adequate alternative regulatory regime to the regulation of health insurance in Australia.

Exemption for FFSP investing in registered schemes

1.8 We exempted a United States (US) financial services provider that was regulated by the Securities Exchange Commission (SEC) in the US and was only providing financial services to Australian wholesale clients for the purpose of investing in Australian listed managed investment schemes, which are required to be registered under Chapter 5C of the Act. Class Order [CO 03/1100] *US SEC regulated financial service providers* currently only provides an exemption for dealing in interests in managed investment schemes that are not required to be registered and therefore the class order relief did not cover the applicant's activities. We considered that it was consistent with the objectives of [PS 176] to grant relief to the applicant.

Exemption for US broker–dealer representative

1.9 We exempted an individual representative of a registered broker–dealer regulated by the US SEC. The individual was unable to comply with the

requirement under Class Order [CO 03/1100] *US SEC regulated financial service providers* to be registered with the SEC because individual representatives of US SEC registered broker-dealers are not required under US law to be registered with the SEC where they provide financial services outside the US. We decided that, as the applicant was complying with the relevant US regulatory requirements, it was appropriate to grant an exemption on similar terms to [CO 03/1100] (save for the SEC registration requirement).

Class Order [CO 03/1099] breach notification

1.10 An FFSP that relied on Class Order [CO 03/1099] *UK FSA regulated financial service providers* notified us that it had breached the requirement under that class order to disclose that it was not licensed in Australia and was regulated under the laws of the UK. We decided not to take any further action as there was no detriment to affected clients and the FFSP had taken steps to rectify the breach.

Class Order [CO 03/1100] breach notification

1.11 An FFSP that relied on Class Order [CO 03/1100] *US SEC regulated financial service providers* informed us that it had breached the requirement under that class order to disclose that it was not licensed in Australia and was regulated under the laws of the US. We decided not to take further action because the FFSP had only failed to make the required disclosure to three out of its 20 clients, it had taken action to rectify the breach and the affected clients would not suffer any loss as a consequence of the breach.

Licence exemption breach notification

1.12 We had granted an exemption allowing a company that was incorporated in France to provide financial services to Australian wholesale clients. In accordance with the terms of the instrument of exemption, the company notified us that a French regulatory body had taken enforcement or disciplinary action against it. We decided that, as the enforcement or disciplinary action did not make any adverse findings concerning the company's provision of financial services to Australian wholesale clients, we would not revoke the exemption.

Employee share schemes

Employee share scheme relief not extended to suppliers of issuer

1.13 We refused to exempt a company that wanted to issue its shares to its suppliers. The applicant submitted that the issue of shares to the suppliers would be analogous to the operation of an employee share scheme because it would provide an incentive to the suppliers and the rules of the scheme were

substantially the same as those that apply in employee share schemes. We did not accept the applicant's submission. As Policy Statement 49 *Employee share schemes* [PS 49] states, the rationale for the relief that we provide in Class Order [CO 03/184] *Employee share schemes* and other specific instances is that the employee share scheme enables employees to participate in the ownership of the company and supports long-term mutual interdependence between the company and the employee. We were not persuaded that this policy should be extended to a situation where the participants in the scheme were not employees and were not providing labour services to the company.

Exemption granted to trustee of employee share scheme

1.14 We exempted the trustee of an employee share scheme for its provision of a custodial service and other related dealing activities. The trustee held shares in an unlisted company on behalf of the participants of the company's employee share scheme. The trustee's involvement in the scheme was limited to allocating the beneficial interest in the shares to the employees, on direction from the employer. The scheme did not fall within the scope of Policy Statement 49 *Employee share schemes* [PS 49] or Class Order [CO 03/184] *Employee share schemes* because the shares were not listed on the ASX or an approved foreign exchange. Although the shares were unlisted, we granted the exemption on the basis that the offer fell within our general policy on employee share schemes, satisfied the key conditions of [CO 03/184] and would not compromise investor protection. We imposed a condition that required the employer company to provide prospectus disclosure to the participants.

Class order non-compliance not sanctioned

1.15 We refused to issue a no-action letter to a foreign company that had issued shares and stock options as part of its global employee share scheme to some of its Australian employees without meeting the requirements of Class Order [CO 03/184] *Employee share schemes*. The applicant was listed on an approved foreign exchange but, at the time the offers were made, shares in the applicant had not been quoted for 12 months. The applicant had also failed to provide us with copies of the offer document within seven days of providing it to the employees. We refused to issue a no-action letter on the basis that five months had lapsed between the date of the breach and the date the applicant sought a no-action letter.

Exemption for reconstruction of options over stapled securities

1.16 We granted an exemption for an executive option plan in circumstances where there was a restructure of a stapled security arrangement. Additional financial products were being added to the stapled package of financial products and executives who held options covering each financial product in

the stapled security arrangement were to be issued with options over the additional financial products. No further executive options over the stapled securities were to be issued, only 63 people held executive options and the options, if exercised, would only represent 0.25% of the total stapled securities on issue. The applicant was unable to rely on Class Order [CO 03/184] *Employee share schemes* because the class order does not cover options over stapled securities and the restructured corporate group had not been listed for the minimum 12-month period. We considered that it was appropriate to grant an exemption, on condition that the executives who held options received a Product Disclosure Statement (PDS) for the additional financial products at the time they were issued with options over those products.

Other licensing relief

Exemption granted to facilitate dam scheme

1.17 We granted an exemption to facilitate a managed investment scheme that involved the construction of a dam for the purpose of providing irrigation to a farming region. Local farmers were to contribute to the construction costs of the dam and to purchase strata title lots together with the right to receive water from the dam. We granted relief on the basis that the scheme was an adjunct to the commercial activities of the participating farmers and would be a private, closed arrangement available only to local farmers. The exemption included conditions that required the scheme operator to warn the farmers that they should obtain independent advice before investing in the scheme, keep money paid by farmers to join the scheme and build the dam in an audited trust account, provide appropriate disclosure and establish appropriate dispute resolution procedures.

No exemption for software provider

1.18 We refused to issue a no-action letter to an unlicensed company that provided front- and back-office function software packages to stockbrokers. The software program involved had the capability to provide information processing, foreign currency derivatives and clearing-house functions. The applicant did not submit sufficient policy or legal reasons to persuade us to issue a no-action letter.

Accountants' exemption refused

1.19 We refused to exempt public practitioners who were 'recognised accountants' under the Act for the provision of basic deposit product advice on Farm Management Deposit Accounts because we were not satisfied that the exemption under reg 7.1.29A was inapplicable.

Exemption for law firm partner family discretionary trusts

1.20 We exempted some trustee entities that were owned or controlled by one or more partners of a law firm for the provision of custodial or depository services for certain partner discretionary trusts. The trusts were established by partners and the trustees allocated partnership income to beneficiaries (who were family members or associated entities) nominated by the relevant partners. We considered that the circumstances were analogous to the exemption in reg 7.1.40(b) for the provision of custodial or depository services to clients who are associates of the provider of the service. Given that the services were essentially a private arrangement, we took the view that it would be disproportionately burdensome to require the trustees to hold an AFS licence. Our decision was consistent with other relief we previously granted to private service trusts established by law firms. The exemption only applies where the trustees are owned or controlled by current partners of the law firm, act on the instruction or under the supervision of the partners, do not receive remuneration for their services and only provide the services to current partners and their associates.

Licence required for law firm's provision of custodial/depository services to clients

1.21 We were not prepared to exempt trustees that were controlled by a law firm in circumstances where they were providing custodial or depository services to clients of the firm. We did not accept the applicant's arguments that the services were ancillary to the provision of legal services, particularly given that the trustees and the entity providing the legal service were separate. We were not convinced that state law societies' regulatory oversight of these activities provided comparable alternative regulation to the provisions of the Act. We took the view that, if we were to grant the exemption, the trustees would have an unfair advantage over professional trustees who are required to hold an AFS licence. For these reasons we considered that it would not be consistent with the purposes of the Act to grant relief.

Group insurance purchasing arrangement exempted

1.22 We granted an interim exemption for a 12-month period to a community organisation that acquired general insurance products on behalf of its members at a competitive price. The exemption covered the arranging of members' acquisition of general insurance products, any incidental custodial or depository services and the provision of general advice about the general insurance products. We imposed conditions on the relief to ensure that the applicant:

- did not receive any commission or remuneration from insurers or insurance brokers;

- provided financial services only to wholesale clients;
- made proper disclosure to members for whom it arranged insurance;
- informed members that it was not licensed; and
- did not hold money received from members on trust for more than a reasonable number of days.

The exemption was given on an interim basis to allow us to conduct further research and policy analysis on the broader issue of whether ongoing relief should be granted for group insurance purchasing arrangements generally.

Licence not required for managed investment scheme instalment receipts

1.23 We granted relief so that the requirement to be licensed did not apply for dealing in, or providing advice about, instalment receipts over interests in a particular managed investment scheme. Investors were to pay for their interests in two instalments and a security trustee would hold the interests on trust for the investors until full payment for the interests had been made. The instalment receipts were characterised as interests in interests in a registered managed investment scheme. There was no AFS licence authorisation for this type of financial product. We considered that it was appropriate to grant relief because the responsible entity of the scheme and the entity providing the loan for the instalment receipts were both licensed to deal in interests in managed investment schemes, which we considered to be functionally similar in nature to these particular instalment receipts. In our view it would be disproportionately burdensome if all of the licensees who were dealing in, or providing financial product advice about, the instalment receipts needed to vary their AFS licence to enable them to deal in the instalment receipts on a one-off basis. This was particularly the case, given that such products are relatively uncommon in the market.

Exemption for licensee debt factoring arrangement

1.24 We exempted an AFS licensee that provided debt factoring arrangements. The applicant was ineligible for the relief under Class Order [CO 04/239] *Debt factoring arrangements* because, rather than acquiring debt obligations at a discount, it acquired debt obligations from its customers at face value and then debited fees and charges to the customers' accounts. Given that the financial service the licensee provided was still debt factoring, we considered that it was appropriate to grant relief so that the licensee was not required to hold an authorisation under its AFS licence to enter debt factoring arrangements. The conditions we imposed on the exemption required the licensee to disclose the terms and conditions of the factoring arrangement to

each retail client before it issued the factoring arrangement and to maintain an internal dispute resolution system covering complaints made about the factoring arrangement.

Interim no-action position for unlicensed market-making

1.25 We issued a no-action letter to an AFS licensee regarding market-making services it had provided without holding the appropriate authorisation under its AFS licence. We considered that it would be detrimental to the applicant's current clients if the applicant had to cease its operations and we noted that the applicant was in the process of rectifying the breach by varying its AFS licence. Our no-action position applied only until we had determined the applicant's AFS licence variation application and extended only to the applicant's dealings with entities that were existing clients at the time the application was made (and not to any new business).

No-action position for extended warranties

1.26 We were not prepared to exempt an organisation that offered extended warranties on its engines to customers. While the extended warranties may have been incidental to the sale of the engines within the meaning of s763E of the Act, they would nonetheless be characterised as a financial product if they were general insurance under s764A(1)(d). However, in the particular circumstances, we decided to adopt a no-action position on the basis that there was doubt whether the extended warranties were general insurance products.

No-action position extended to facilitate AFS licence application

1.27 We extended a no-action position we had taken regarding a financial services provider who was in the process of applying for an AFS licence. The original no-action position was to expire on 30 June 2005. We extended the no-action position until 30 September 2005 because it was a condition of the draft AFS licence issued to the applicant that its responsible officers undergo certain training by 5 September 2005.

No-action position for unauthorised provision of investor directed portfolio services (IDPSs)

1.28 We issued a no-action letter to an AFS licensee that had been dealing and advising in IDPSs without the appropriate authorisation. We were satisfied that the breach was inadvertent and that the applicant genuinely believed it was complying with ASIC policy. Upon realising it was in breach of the Act, the applicant made an application to vary its AFS licence to ensure that the licence covered dealing and advising in an IDPS.

Media and information releases and class orders

1.29 The following media and information releases and class orders relate to the licensing relief granted during the period of this report.

Media and information releases

[MR 05-235] *Remote indigenous communities in the NT and Queensland to benefit from ASIC licensing relief.*

[IR 05-23] *ASIC releases updated policy statements and licensing guidance papers.*

[IR 05-24] *ASIC amends policy statement on wholesale foreign financial services providers.*

[IR 05-27] *ASIC extends interim relief for some non-cash payment facilities.*

[IR 05-30] *ASIC seeks industry comment on proposed licensing exemption for credit rating agencies.*

[IR 05-32] *ASIC provides relief and guidance for providers of superannuation calculators.*

[IR 05-37] *ASIC further extends interim relief for actuaries.*

[IR 05-44] *ASIC consults on authorisation requirements for general insurance arrangers.*

[IR 05-46] *ASIC consults on proposed relief and guidance for online calculators.*

Class orders

[CO 05/308] *Wholesale foreign financial services providers—amendment.*

[CO 05/611] *Relief for providers of superannuation calculators.*

[CO 05/678] *Law societies—professional indemnity scheme and fidelity funds—amendment.*

[CO 05/679] *Law societies—statutory deposit accounts and public purpose funds—amendment.*

[CO 05/680] *Transitional relief for actuaries.*

[CO 05/835] *General advice in advertising.*

Section 2: Disclosure relief

2.1 This section identifies the types of applications we have decided that relate to Chapter 7 requirements to provide disclosure documents such as Product Disclosure Statements (PDSs) and Financial Services Guides (FSGs).

Relief relating to PDSs

GDP mistake in disclosure document excused

2.2 We granted relief so that a mistake in a combined prospectus/PDS and the application forms attached to it could be amended by substituting a sticker over an incorrect figure. The applicant took steps to retrieve existing documents bearing that error and replace them with the amended disclosure document. The applicant also undertook to avoid accepting applications bearing that error. We granted relief in accordance with our policy outlined in Practice Note 60 *Updating and correcting prospectuses and application forms* [PN 60].

PDS relief to facilitate dam scheme

2.3 In the matter referred to at paragraph 1.17, we exempted the operator of the scheme from the requirement to provide a PDS.

PDS relief for managed investment instalment receipts

2.4 In the matter referred to at paragraph 1.23, we granted relief so that only the responsible entity would be deemed the ‘issuer’ of the instalment receipts and therefore would be solely responsible for preparing a PDS for the instalment receipts. The effect of the definition in s761E(4) was that the security trustee and the provider of the loan for the instalment receipts could both be deemed issuers of the instalment receipts under the Act because they were responsible for obligations arising out of the instalment receipts. We considered that it would be potentially confusing for investors if they received a PDS about the same financial product from three different entities and we did not consider that it would enhance consumer protection. We granted the relief on the basis that the responsible entity would assume responsibility for the PDS.

2.5 In the same matter, we exempted the responsible entity from the requirement to provide a PDS to investors at the time the final instalment was paid and interests were issued. A PDS for interests in the scheme was to be provided to prospective investors at the time they acquired their instalment receipts. The final instalment was payable eight years after the instalment receipts were issued. Under the terms of issue, when the final instalment was paid, the interests held by the security trustee were to be cancelled and the

responsible entity was to issue new interests to the investors. While s1012D(1) does not require an issuer to provide a PDS if the client has already received one, it was possible that some initial investors who had received a PDS would transfer their instalment receipts to investors who had not received a PDS before the final instalment was payable, which meant that s1012D(1) may not apply. It would be difficult for the responsible entity to identify the persons to whom the instalment receipts had been transferred in order to provide them with a PDS. We noted that investors had acquired the instalment receipts on the understanding that upon payment of the final instalment they would receive interests. We considered that investors would be adequately protected because they had received disclosure about the interests in the initial PDS and the instalment receipts and the interests would be the subject of ongoing disclosure as required under the Act.

PDS exemption for executive option stapled security restructure

2.6 In the matter referred to at paragraph 1.16, we granted an exemption from the requirement to issue a PDS at the time the executive options were exercised.

Consent required to quote credit rating agency

2.7 We refused to grant an exemption from the requirement under s716(2) (for prospectuses) and s1013K (for PDSs) to obtain consent before using statements made by a person in disclosure documents. The applicant wanted to use statements made by a credit rating agency for an initial public offering of stapled securities that included both shares and interests in managed investment schemes without having to obtain the agency's consent. Although our draft Practice Note 55 *Disclosure documents and PDS: consent to quote* [PN 55] proposed class order relief from the consent requirement for issuers of debt securities, we did not consider that it was appropriate to grant similar relief to issuers of equity securities because there are fundamental differences between debt and equity securities. We did not consider that the stapled securities would be similar to a debt security or a hybrid debt security because the forecast distribution yield was not equivalent to an undertaking to repay a debt. In our view, credit ratings were less relevant to a decision to invest in equity securities as compared with a decision to invest in debt securities because they only address creditworthiness and do not reflect the prospects of the product more generally.

PDS relief not necessary for preference shares

2.8 We refused to grant relief from the requirements in s1013H and s1016D that apply if a PDS states that a financial product will be able to be traded on a financial market because we considered that relief was unnecessary. The PDS

related to interests in a managed investment scheme that was to be listed on the ASX. The scheme was to hold convertible debentures that converted into preference shares in the responsible entity's parent company. The preference shares would be listed on the ASX and were to be issued to the scheme members when interests were redeemed or when the scheme was wound up. The applicant wanted relief from s1013H and s1016D for the preference shares. Given that the preference shares were securities and that s1013H and s1016D do not apply to securities (see s1010A), we did not consider that any relief was required.

Failure to provide PDS within time not excused

2.9 We refused to issue a no-action letter to the trustee of a superannuation fund regarding its failure to meet the requirement under s1012F to give a PDS to a client as soon as reasonably practicable and, in any event, within three months of the product being issued. The reason for the breach was that the fund's administrator had not finished the PDS within the required timeframe. We decided not to adopt a no-action position because the trustee could have avoided the breach by applying for relief from s1012F when it became aware that the PDS would not be ready and that there was some risk that they would not be able to comply with the Act.

In-use notice required for supplementary warrant PDSs

2.10 We refused to exempt entities that were approved warrant issuers for the purposes of the ASX Market Rules from the requirement to lodge an in-use notice under s1015D(2) for Supplementary Product Disclosure Statements (SPDSs). SPDSs are used regularly in the warrants market, for example, to adjust the exercise price of a warrant, or where an entity whose shares make up the underlying instrument of the warrant takes corporate action. We refused the application because, in our view, in-use notices collect important information from the issuer that play a vital role in our surveillance activities, the requirement to prepare in-use notices is not disproportionately burdensome and the notices are important publicly available information. The fact that ASIC has entered into a memorandum of understanding with the ASX was not, of itself, a sufficient basis for us to exempt an ASX-approved warrant issuer from providing an in-use notice for an SPDS to ASIC.

Other disclosure relief

PDS and FSG relief for debt factoring arrangement

2.11 In the matter referred to at paragraph 1.24, we also granted the applicant an exemption from the requirement to provide a PDS and an FSG for the debt factoring arrangement.

No disclosure relief for foreign health insurer

2.12 In the matter referred to at paragraph 1.7, we refused to exempt the applicant from the requirement to provide a PDS and an FSG for the provision of the expatriate health insurance.

No dollar disclosure relief for unlisted fund

2.13 We refused to exempt the responsible entity of an unlisted fixed term property trust from its obligation to disclose the opening and closing balance in dollars in the periodic statement as required by s1017D. The applicant sought relief on the basis that there was no dollar amount that could represent the sale value of the units without being misleading because the units had no market value. We noted that s1017D only required the responsible entity to provide information that a retail client would reasonably need to understand the investment in the scheme. For this reason we considered that the requirement to disclose the amounts in dollars did not extend to an obligation to disclose amounts that necessarily reflected a sale price that could be obtained for the trust units. Although there was no current market price for the units, we considered that a proxy, such as net tangible assets, could be used. We did not consider that calculating such an amount would be unreasonably burdensome because the responsible entity would need to make the calculation to meet the scheme's reporting requirements under Chapter 2M of the Act. We also noted that the responsible entity had a duty to value the scheme property at regular intervals.

Ongoing dollar disclosure relief for termination values refused

2.14 We refused to provide ongoing relief to an Australian bank from the requirement under s1017D(5A) to disclose the termination value of a term deposit and an at-call account as a dollar amount in a periodic statement. We had provided interim relief in Class Order [CO 05/681] *Transitional relief for deposit product providers—PDSs and periodic statements* that applies where product holders can obtain the relevant termination value on request at no charge, are made aware that they can do so and other class order requirements are satisfied. We considered that the applicant could comply with [CO 05/681]. The applicant's argument that the s1017D(5A) requirement imposed an unreasonable burden did not, of itself, justify the provision of ongoing relief in the circumstances.

Superannuation choice breaches not excused

2.15 We refused to issue a no-action letter to a person who was an authorised representative of an AFS licensee. The applicant had breached a number of the financial services laws, including the requirement to provide an FSG, the requirement to maintain a 'no contact/no call register' and requirements relating

to the content of a Statement of Advice (SOA) and the timing of the provision of an SOA. We did not accept the applicant's submission that the breaches were purely technical in nature and we were not satisfied that the breaches were inadvertent.

Relief from demutualisation disclosure requirements for constitutional change

2.16 We granted relief to allow a credit union to amend its constitution without meeting the disclosure requirements of Part 5 of Schedule 4 of the Act. The effect of the proposed amendments to the constitution was that only people who had been members for a minimum 12-month period could vote on, or participate in the profits or surplus of, a restructure that would result in the credit union no longer being entitled to call itself a 'credit union' or 'credit society'. The relief that we granted allowed the applicant to make the constitutional amendments concerning eligibility to participate in the profits or surplus of the restructure without disclosure. We did not grant relief from the disclosure requirements regarding the proposed voting restriction because we considered that a 12-month minimum qualification period was unreasonably long and therefore was not a necessary restriction for fair member governance in terms of our policy set out in Policy Statement 147 *Mutuality—Financial institutions* [PS 147].

2.17 We granted an exemption to enable a friendly society that had demutualised to amend its constitution in a manner that would have the effect of varying or cancelling the rights of its sole member without meeting the disclosure requirements of Part 5 of Schedule 4 of the Act. We considered that it was appropriate for us to exercise our power to grant relief on the basis that the applicant no longer had a mutual structure.

Media and information releases and class orders

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

Media and information releases

[MR 05-235] *Remote indigenous communities in the NT and Queensland to benefit from ASIC licensing relief.*

[IR 05-17] *ASIC promotes tailored financial services guides.*

[IR 05-27] *ASIC extends interim relief for some non-cash payment facilities.*

[IR 05-31] *ASIC further extends interim relief for superannuation investment strategy product disclosure.*

[IR 05-32] ASIC provides relief and guidance for providers of superannuation calculators.

[IR 05-35] Transitional relief for deposit product (and related non-cash payment facility) issuers and general insurers.

[IR 05-36] ASIC provides further relief to warrant issuers from dollar disclosure.

[IR 05-39] ASIC seeks industry comment on policy for disclosure in reconstructions.

Class orders

[CO 05/346] Deferral of s1012IA—amendment.

[CO 05/611] Relief for providers of superannuation calculators.

[CO 05/646] Variation of Class Orders [CO 01/1455] and [CO 04/672].

[CO 05/678] Law societies—professional indemnity scheme and fidelity funds—amendment.

[CO 05/679] Law societies—statutory deposit accounts and public purpose funds—amendment.

[CO 05/681] Transitional relief for deposit product providers—PDSs and periodic statements.

[CO 05/682] Dollar disclosure: relief for warrant issuers.

[CO 05/683] Dollar disclosure: further transitional relief.

[CO 05/835] General advice in advertising.

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.

Registration requirement

Registration exemption to facilitate dam scheme

3.2 In the matter referred to at paragraphs 1.17 and 2.3, we exempted the dam scheme from the requirement to register as a managed investment scheme.

Registration exemption not necessary for instalment receipts

3.3 We refused to grant an exemption from the requirement to register a managed investment scheme to a security trustee who was holding scheme interests that had been purchased on an instalment basis on trust for the investors. We considered that relief was unnecessary because the security trustee's conduct did not constitute the operation of a managed investment scheme.

Extension of interim relief for timeshare schemes

3.4 We granted relief from the requirement to register a managed investment scheme to certain timeshare schemes that were:

- previously exempt under state laws;
- member-controlled clubs; or
- title-based schemes.

One of the conditions imposed on the relief required the operator of the timeshare scheme to belong to an ASIC-approved external dispute resolution scheme on or before 30 June 2005. We extended the date by which this condition had to be met until 31 March 2006. We granted the extension to enable further consideration of our policy on this issue.

Management rights schemes

3.5 Class Order [CO 02/185] *Sale of strata units for \$500,000 or more* grants relief from the requirement to register a managed investment scheme, the hawking prohibition and the requirement to provide a PDS for management rights schemes in which the participating strata units are all sold for a purchase price of at least \$500,000. We refused to grant relief that would provide the same exemptions in circumstances where the value, rather than the purchase price, of the strata units was at least \$500,000. The characterisation of

wholesale and retail clients under the Act is based on the price paid, which can be ascertained objectively. We considered that it would not be appropriate to grant relief that applied based on a valuation rather than a sale price because valuations are inherently subjective.

3.6 We refused to grant relief to a management rights scheme operator that wanted to exclude an investor's ability to withdraw from the scheme on 90 days notice. The applicant submitted that it needed to require investors to keep their strata title units in the scheme for a minimum period of two years in order to make the rental income guarantee that it proposed to offer to investors commercially viable. While we accepted that rental income was likely to be important to an investor, we took the view that an investor may still wish to withdraw from the scheme despite the rental income guarantee if they were dissatisfied with the operator's services. We would not be prepared to grant the relief given under instruments such as Class Order [CO 02/305] *Management rights schemes* if investors did not have the right to unilaterally withdraw from the scheme and for this reason the application was refused.

Prescribed interest schemes

3.7 We extended the transition period in s1454(2) of the old Corporations Law for a trustee until 30 June 2006. The applicant was unable to comply with the criteria set out in [IR 03-05] *ASIC grants further extension of interim relief for non-transitioning managed investment schemes* to obtain an extension until 2010 because it had not obtained an unqualified audit report. The applicant was in the process of obtaining the information needed to get an unqualified audit report from the management company. We granted the relief on the basis that, apart from the unqualified audit report, it appeared that the applicant was able to satisfy the remaining requirements of [IR 03-05]. We imposed conditions on the relief to ensure that we had a mechanism to evaluate whether a new management company should be appointed and to obtain unqualified audit reports so that we could establish whether the scheme was being operated appropriately.

3.8 We refused to issue a no-action letter to the manager of two prescribed interest schemes regarding its contravention of the requirement to register the schemes. The schemes had the benefit of relief that allowed them to operate under the old prescribed interest framework until 30 June 2004. The projects underlying each of the schemes had become unviable and had been terminated in accordance with their deeds. The applicant had not sought any extension of the relief beyond 30 June 2004. We considered that it would not be appropriate to adopt a no-action position that would effectively sanction the illegal operation of an unregistered managed investment scheme.

Other managed investments relief

Relief to facilitate change of responsible entity

3.9 The responsible entity of six registered managed investment schemes wished to retire and be replaced by an entity that was the existing investment manager and previous responsible entity. A meeting of members was required to change the responsible entity and make corresponding changes to each scheme's constitution. Section 253E of the Act does not allow the responsible entity of an unlisted scheme and its associates to vote their interest on a resolution to change the responsible entity if they have an interest other than as a member. We were not prepared to allow the responsible entity to vote holdings it had in three of the schemes because of potential conflicts of interest. We were prepared to grant relief to allow the responsible entity to vote those of its holdings in two of the schemes, which it held as a bare trustee, nominee or custodian, in a manner that reflected the beneficiaries' wishes and did not contradict the terms of the trust/custody/nominee agreement. We also granted relief affecting the remaining scheme, whose only members were three wholesale clients, to enable the resolutions to be determined without a meeting by obtaining the members' unanimous written consent.

Receiver non-compliance not excused

3.10 We refused to issue a no-action letter to the receivers of an insolvent responsible entity for general non-compliance with the constitutions and compliance plans of two registered managed investment schemes. The applicants were unable to specify what breaches had occurred. We did not consider that it would be consistent with our policy set out in Policy Statement *No-action letters* [PS 108] to provide a blanket no-action position to a responsible entity for acts that the responsible entity could not itself identify. If the receivers decided to continue to operate the scheme when the responsible entity became insolvent, they would assume the duties of the responsible entity. We also refused to issue a no-action letter to the effect that we would not exercise our power to replace the receivers as responsible entity of the schemes.

Responsible entity breaches not excused

3.11 We refused to issue a no-action letter to an applicant who sought to take over the responsible entity of five managed investment schemes once the deed of company arrangement concerning the responsible entity ceased. The administrators of the responsible entity had interim relief that allowed them to manage those schemes for the duration of the deed. The responsible entity was unlicensed and the administrators were not prepared to sign or approve any AFS licence applications on behalf of the responsible entity. We considered that it was outside our policy set out in Policy Statement *No-action letters* [PS 108]

to adopt a no-action position. The applicant could not provide specific details of the breaches. Further, it was proposed that the personnel of the responsible entity, who may have been involved in the breaches, would continue to be involved with the applicant. Finally, it was uncertain whether the applicant had standing to apply for the no-action letter on the responsible entity's behalf.

Relief from illiquid withdrawal provisions for stapled security arrangement

3.12 We granted relief to the responsible entity of a registered managed investment scheme to enable a company related to the responsible entity to withdraw from one of the schemes (which was illiquid) without having to meet the requirements of Part 5C.6 of the Act (which govern withdrawals from illiquid schemes). It was proposed that shares in the related company, interests in the scheme and interests in another scheme with the same responsible entity would together become stapled securities. Therefore the withdrawal would merely involve a transfer of value within the stapled group. The withdrawal would be funded by the initial public offering of the stapled securities and not by the realisation of scheme assets. Therefore we considered that the risk to non-withdrawing scheme members of being left in the scheme without sufficient assets, which Part 5C.6 was intended to prevent, was unlikely to eventuate. We granted relief that would operate only if the scheme members approved the withdrawal and investors in all relevant entities approved the proposed stapling arrangement. We also granted relief from s601GA(4)(c) so that the scheme constitution did not have to comply with Part 5C.6.

Issue price relief for instalment receipts

3.13 We granted relief that would enable the responsible entity of a scheme to conduct a placement of interests that were subject to instalment receipts in a listed, but untraded, managed investment scheme. Class Order [CO 05/26] *Constitutional provisions about the consideration to acquire interests* allows interests to be issued at a discount of up to 10% to the market price without member approval. The class order provision for placements did not apply to interests because, as they would not be traded until the final instalment had been paid, they did not have a current market price. Until the final instalment was paid, instalment receipts, and not interests in the scheme, were traded on the market. The effect of the relief that we granted was that interests could be issued at a price that represented a 10% discount to the sum of the market price of the instalment receipt and the amount of the outstanding instalment.

Ineffective disclosure precludes alteration of equal treatment relief

3.14 We made a decision in principle to exempt a responsible entity from its obligation to treat all members of a scheme equally so that it could exclude

members who were resident in foreign jurisdictions from a proposed offer that would result in interests in the scheme becoming part of a stapled security arrangement. One of the conditions we imposed on the proposed relief required that scheme members be fully informed through disclosure about which members were eligible to participate in the offer. The applicant then discovered that some members in a particular jurisdiction, whom it had thought were ineligible, were in fact eligible to participate in the offer. The applicant asked us to revise the terms of the relief to accommodate this. We were not prepared to accede to this request because we considered that the responsible entity had not met its disclosure obligation. The notice of meeting and explanatory memorandum that had been provided to members for the purpose of voting on the stapling proposal had indicated that members based in that particular jurisdiction would not be participating in the offer and, by the time the error was discovered, there was insufficient time for the responsible entity to provide corrective disclosure to members.

Removal of termination clauses allowed where members have limited withdrawal rights

3.15 We granted relief from s601GC to allow responsible entities of certain unlisted schemes to remove termination clauses from the schemes' constitutions without obtaining member approval. Under the Australian equivalents to the International Financial Reporting Standards, members' contributions may be classed as liabilities where there is no unconditional right to avoid settling a contractual obligation to pay out the scheme's equity to members at the end of the life of the scheme. This affects schemes that have a termination clause in their constitution. Member contributions may only be treated as equity if the termination clause is removed. We have granted relief under Class Order [CO 05/566] *Management investment schemes: perpetuity clauses in scheme constitutions* to facilitate the removal of termination clauses without a members' meeting. However, the class order relief only applies to unlisted schemes where there is no provision for members to withdraw, on the basis that members' contributions to the scheme ought to be classed as equity rather than liabilities in those circumstances. The applicants were unable to rely on the class order relief because their constitutions made provision for members to withdraw from the scheme if the responsible entity allowed them to. Given that the responsible entities of the respective schemes did not have to allow withdrawals, we considered that members' contributions could be treated as equity and that it was consistent with the policy underlying the class order to extend relief to the applicants.

Extension of time for establishment of compliance committee

3.16 We granted relief from the s601JA(3) requirement to establish a compliance committee within 14 days if less than half of the directors of the responsible entity are external directors. We allowed the applicant a period of 60 days to establish the compliance committee because one of the external directors had unexpectedly resigned, triggering the need to establish a compliance committee. We considered that the responsible entity had adequately addressed the criteria in Policy Statement *Managed investments: Discretionary powers* [PS 136] and closely related schemes because the circumstances were exceptional.

No dispensation with member approval requirement for grant of option to responsible entity

3.17 We refused to grant relief from s601LC to enable a responsible entity, without first obtaining member approval, to grant an option to the responsible entity that allowed it to purchase current and future scheme properties. None of the scheme members were eligible to vote on a resolution under s601LC because of the nature of the benefit proposed to be given. The applicant proposed to make full disclosure concerning the granting of the option and the consequences to potential investors in a PDS. We did not consider that disclosure in a PDS of the existence of a financial benefit was equivalent to the procedure for obtaining member approval set out in Division 3 of Part 2E.1 of the Act. We also considered that the option could be detrimental to members' rights because the future operation of the option would give the responsible entity the right to acquire both existing scheme assets and any assets acquired by the scheme in the future.

Information releases and class orders

3.18 We issued the following information releases and class orders relating to managed investments during the period covered by this report.

Information releases

[IR 05-20] *ASIC expands class order relief for responsible entities of managed investment schemes.*

[IR 05-29] *ASIC facilitates removing termination date from property trust deeds.*

[IR 05-34] *ASIC extends interim relief for certain managed investment scheme constitutions.*

Class orders

[CO 05/26] *Constitutional provisions about the consideration to acquire interests.*

[CO 05/566] *Managed investment schemes: perpetuity clauses in scheme constitutions.*

[CO 05/643] *Combining registered scheme financial reports.*

Section 4: Conduct relief

4.1 This section details some of our decisions on whether to grant relief from certain conduct obligations that Chapter 7 imposes on persons who provide financial services in Australia.

Relief not necessary for responsible entity's invitation to members to sell interests to another scheme

4.2 We refused to grant relief from Division 5A of Part 7.9 to allow a responsible entity to offer members of two managed investment schemes the opportunity to sell their interests to another scheme, of which it was also responsible entity. The responsible entity would only acquire the interests from the members if the members passed a resolution at a meeting. We could not see any reason why the proposed arrangement would not comply with Division 5A of Part 7.9 and refused the application on the basis that relief was not necessary.

No conduct relief for foreign health insurer

4.3 In the matter referred to at paragraphs 1.7 and 2.12, we refused to exempt the applicant from the Part 7.8 requirements that would apply to the provision of the expatriate health insurance.

Employee share scheme relief not extended to supplier of issuer

4.4 In the matter referred to at paragraph 1.13, we also refused to exempt the company from the prohibition on hawking financial products in s992A for its offer of shares to suppliers.

No-action position for failure to meet licensee financial reporting requirements

4.5 We issued a no-action letter to an AFS licensee regarding its failure to comply with its obligations under s989B to lodge a balance sheet and an auditor's report with ASIC within three months of the end of the financial year ending 30 June 2005. We noted that the licensee was issued with its AFS licence on 29 June 2005 and that it would be burdensome for the licensee to meet the requirements for only the last two days of the financial year.

4.6 In another matter, we issued a no-action letter to an AFS licensee regarding its failure to comply with s989B for the 2003–04 financial year, which was its first financial year as an AFS licensee. We decided it was appropriate to take a no-action position because the applicant had provided us with financial statements that provided some (but not all) relevant information and had put in place arrangements to ensure that it could comply in future financial years.

Hawking exemption for debt factoring arrangement

4.7 In the matter referred to at paragraphs 1.24 and 2.11, we exempted the applicant from the s992A prohibition on hawking financial products for offers to issue the debt factoring arrangement.

No relief from internal dispute resolution requirement for management rights scheme operator

4.9 We refused to exempt the operator of a management rights scheme from the requirement to establish an internal dispute resolution (IDR) system under s1017G. The applicant claimed that it was subject to equivalent state legislation that also required it to have an IDR system. We refused the application on the basis that there was reason to doubt the independence and effectiveness of the applicant's IDR system, and we were not satisfied that its essential elements met the standards outlined by the Australian Standard on Complaints Handling AS 4269–1995.

Extended use of 'stockbroker' term not permitted

4.10 We refused to grant relief to allow the term 'stockbroker' to be used by natural persons, or corporate members of an industry association, without an authorisation from an AFS licensee. We considered that it would be contrary to the express intention of the Act if we were to grant relief.

Alternative compensation arrangements rejected

4.11 We refused to grant relief to a group of licensed insurance brokers to allow each of the licensed brokers to use an alternative arrangement to meet the compensation requirement under s912B (as modified by reg 7.6.02AA). The proposed alternative arrangement did not accord with our policy on the maximum deductible allowed. We were not prepared to provide interim or other relief regarding the deductible amount pending finalisation of government policy concerning compensation requirements for AFS licensees and discretionary mutual funds.

Information release and class order

4.12 The following information release and class order concern the conduct related relief granted during the period of this report.

Information release

[IR 05-49] *ASIC consults on proposal to reduce repetition of the general advice warning.*

Class order

[CO 05/508] *Insurance brokers' trust accounts under s981B—revocation.*

Section 5: Other relief

5.1 This section outlines decisions we have made that do not fall within any of the categories mentioned earlier and that may be significant to other participants in the financial services industry.

Access to building society member register

5.2 We decided to approve three purposes that allowed access to the register of members of a building society. The application arose in the context of a merger proposal that the applicant wanted to make to the members of a mutual entity. The applicant submitted four purposes, of which we approved three. The three purposes we approved related to the actual process, and matters reasonably incidental to the process, of the applicant sending information to the mutual entity's members about the merger proposal. Such information included the benefits and consequences of merging the two entities, and any other information that would help the mutual entity's shareholders to consider the merger and facilitate a meeting of members to consider and pass resolutions effecting the merger. We were prepared to extend this last purpose to include resolutions that would affect the composition of the board to effect the merger, but we did not allow the applicant to send information that would assist the mutual entity's shareholders to direct their current directors to support the merger (fourth purpose).

5.3 We received a further application and approved another purpose to permit the bidding entity to send draft resolutions to the mutual entity's shareholders. The draft resolutions would help facilitate a general meeting in which the mutual entity's constitution would be varied to expressly give the mutual entity's members the power to give directions or recommendations to their board concerning the merger proposal.

5.4 Our approval of these purposes was given pending the release of a final policy covering the issue.

Electricity providers' financial arrangement with state government treasury corporation approved as an eligible undertaking

5.5 We approved an arrangement that several licensed statutory owned electricity corporations had with a state government treasury corporation as an eligible undertaking under paragraph [PS 166.169] of Policy Statement 166 *Licensing: Financial requirements* [PS 166]. Each of the licensees was required to obtain all of its financial accommodation from the treasury corporation. We considered that the arrangement with the treasury corporation would be as effective as an eligible undertaking that fell within the requirements of

[PS 166.168]. Our approval remains in place so long as there is no material adverse change to the financing arrangement.

Responsible entity's temporary custody of scheme assets permitted

5.6 We issued a no-action letter to the responsible entity of two registered managed investment schemes in circumstances where it briefly held scheme assets without having the required minimum level of net tangible assets. The assets of the schemes were being transferred from one custodian to another. It was likely that a direct transfer of scheme property between the two custodians would constitute a transaction on which several million dollars of stamp duty was payable in various states of Australia, and the applicant submitted that a direct transfer would not be in the best interests of the schemes' members. We adopted a no-action position because we considered that it was in the interests of the schemes' members to enjoy the benefit of express stamp duty exemptions that would apply if the scheme property was transferred to the responsible entity by the outgoing custodian before it was transferred to the incoming custodian.

MDA class order dispensation unnecessary

5.7 We received a relief application from a body representing a number of trustee corporations that asked us to exempt the trustee corporations from certain requirements that apply under Class Order [CO 04/194] *Managed discretionary accounts* where the trustees were appointed by the court to act under a testamentary trust and where the trustee was appointed under a power of attorney which would only be activated if the donee lost mental capacity. We refused the relief application because we were not persuaded that either of these scenarios gave rise to the provision of a MDA service. Therefore we considered that no relief was required.

Corporate actions for clients to comply with MDA class order

5.8 We refused an application for relief that asked us to remove certain corporate actions relating to clients' existing investments from the definition of MDA services under Class Order [CO 04/194] *Managed discretionary accounts*. The particular conduct involved scenarios where clients had long term shareholdings that they had acquired of their own volition but asked the applicant to make ongoing decisions to invest contributions on their behalf without having to consult the clients. The applicant submitted that such conduct ought not to be characterised as an MDA service because it merely involved the exercise of clients' rights regarding portfolio assets and that the clients maintained control of their assets. We considered that the conduct ought to be regulated as an MDA service, given that the applicant had a discretion to deal in corporate actions on its clients' behalf.

Media and information releases and class orders

5.9 The following media and information releases and class orders relate to other relief granted during the period of this report.

Media and information releases

[MR 05-110] *ASIC welcomes financial services refinements proposals paper.*

[IR 05-18] *ASIC announces new limits on share buy-back relief for small parcels.*

[IR 05-22] *ASIC provides details on financial services refinement projects.*

[IR 05-26] *ASIC seeks comment on policy for approving a purpose to access the register of members of a mutual entity.*

[IR 05-42] *Changes to ASIC class orders, practice notes and guidelines relating to new financial reporting requirements.*

Class orders

[CO 05/542] *Variation of Class Order 98/1418—certificates by legal practitioners.*

[CO 05/637] *Additional month for first financial reports under AIFRS.*

[CO 05/638] *Anomalies preventing certain large proprietary companies from being grandfathered.*

[CO 05/639] *Application of accounting standards by non-reporting entities.*

[CO 05/640] *Related party transactions and balances.*

[CO 05/641] *Miscellaneous amendments to financial reporting class orders.*

[CO 05/642] *Combining financial reports of stapled security issuers.*

[CO 05/644] *Disclosing post balance date acquisitions and disposals.*

Appendix: ASIC relief instruments

This appendix details the relief instruments we have executed for matters that are referred to in the report. The class orders listed in this table 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/co.

Note that 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.

Report para no.	Class order title or entity name	Instrument no.	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
1.3	Rank Group Investments Limited— New Zealand company number 1486208	[05/870]	18/8/2005	s911A(2)(l) and 1020F(1)(a) This instrument grants licensing relief and relief from Div 5A of Part 7.9 for offers made to Australian shareholders under a foreign takeover bid.	
1.4	ABSA Group Limited ACN 114 110 600 Barclays Bank Plc ARBN 86 062 449 585	[05/436]	6/5/2005	s911A(2)(l) This instrument grants licensing relief for the provision of general financial product advice.	

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Report para no.	Class order title or entity name	Instrument no.	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
1.8	LaSalle Investment Management (Securities) LP	[05/552]	20/5/2005	s911A(2)(h) This instrument extends the licensing relief available under Class Order [CO 03/1100] <i>US SEC regulated financial service providers</i> so that an entity regulated by the US SEC may provide financial services to wholesale clients in Australia in relation to interests in a managed investment scheme that is required to be registered under Chapter 5C of the Act.	
1.9	CUNA Brokerage Services Inc.	[05/849]	8/8/2005	s911A(2)(l) This instrument grants licensing relief to individual representatives of a US SEC regulated foreign financial services provider who are not registered, or required to be registered, with the US SEC.	
1.14	Ord Minnett Holdings Pty Limited ACN 062 323 728 ACN 100 037 474 Pty Limited ACN 100 037 474	[05/507]	12/5/2005	s741(1)(b) and 911A(2)(l) This instrument grants licensing and disclosure relief for an employee share scheme.	
1.16, 2.6	Australand Holdings Limited ACN 008 443 696	[05/886]	17/8/2005	s741(1)(a), 911A(2)(l), 992B(1)(a) and 1020F(1)(a) This instrument grants licensing relief and relief from Parts 6D.2, 6D.3 (except for s736) and 7.9 of the Act for an employee options plan.	

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Report para no.	Class order title or entity name	Instrument no.	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
1.17, 2.3, 3.2	Sustainable Irrigation Australia Ltd ACN 113 837 559 Tasmanian Water Solutions Pty Ltd ACN 101 121 546 Roberts Limited ACN 009 475 647	[05/676]	17/6/2005	s601QA(1)(a), 911A(2)(l), 992B (1)(a) and 1020F(1)(a) This instrument grants licensing relief and relief from s601ED, the anti-hawking requirements and Part 7.9 of the Act.	
1.20	Mazene Pty Limited ACN 057 261 211 Rysted Pty Limited ACN 005 668 959 Seventh Naremi Pty Limited ACN 005 669 474 Aramis Pty Limited ACN 005 007 250	[05/847]	11/8/2005	s911A(2)(l) This instrument grants licensing relief for the provision of custodial or depository services provided by trustees of family trusts of certain partners of the law firm Mallesons Stephen Jaques.	
1.22	Duck for Cover Entertainers Group Inc.	[05/885]	22/8/2005	s911A(2)(l) This instrument grants interim licensing relief for the provision of specified financial services provided to members or prospective members of the association relating to a financial product that is a group or master insurance policy.	30/6/2006

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Report para no.	Class order title or entity name	Instrument no.	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
1.23, 2.4 – 2.5	Stockland Funds Mangement Limited ACN 078 081 722 Westpac Banking Corporation ACN 007 457 141 Permanent Trustee Company Limited ACN 000 000 993 Stockland Direct Office Trust No 2 ARSN 115 017 466.	[05/795]	15/7/2005	s911A(2)(l), 926A(2)(c), 1020F(1)(a) and 1020F(1)(c) This instrument grants licensing and disclosure relief to facilitate the issue of instalment receipts and the issue of interests in a scheme to the holders of the instalment receipts.	
1.24, 2.11, 4.7	National Australia Bank Limited ACN 004 044 937	[05/902]	29/8/2005	s926A(2)(a), 951B(1)(a), 992B(1)(a) and 1020F(1)(a) This instrument extends the relief in Class Order [CO 04/239] <i>Debt factoring arrangements</i> to certain debt factoring arrangements.	
1.28	Wholesale foreign financial services providers—amendment	[CO 05/308]	12/5/2005	s911A(2)(l) This instrument amends the notification requirements and lapsing provisions in the class orders issued under Policy Statement 176 <i>Licensing Discretionary powers—wholesale foreign financial service providers</i> [PS 176].	
1.29, 2.18	Relief for providers of superannuation calculators	[CO 05/611]	15/6/2005	s926A(2)(c) and 951B(1)(a) This class order provides licensing relief or conduct and disclosure relief for certain providers of superannuation calculators.	

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Report para no.	Class order title or entity name	Instrument no.	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
1.29, 2.18	Law societies—professional indemnity scheme and fidelity funds—amendment	[CO 05/678]	21/6/2005	s601QA(1)(a), 911A(2)(l), 992B(1)(a) and 1020F(1)(a) This class order extends existing interim relief granted under Class Order [CO 03/1094] <i>Law societies—professional indemnity scheme and fidelity funds</i> to 1 July 2006, omits the Law Society Northern Territory and the Legal Practitioners' Fidelity Fund Committee, and updates some statutory references.	1/7/2006
1.29, 2.18	Law societies—statutory deposit accounts and public purpose funds—amendment	[CO 05/679]	21/6/2005	s911A(2)(l) This class order extends existing interim relief granted under Class Order [CO 03/1095] <i>Law societies—statutory deposit accounts and public purpose funds</i> to 1 July 2006 and omits the Law Society Northern Territory, the Legal Practitioners Trust Committee and the Queensland Law Society.	1/7/2006
1.29	Transitional relief for actuaries	[CO 05/680]	22/6/2005	s911A(2)(l) This class order amends Class Order [CO 03/1096] <i>Actuaries</i> by extending temporary relief to eligible actuaries from the requirement to hold an AFS licence until 1 January 2006.	1/1/2006

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Report para no.	Class order title or entity name	Instrument no.	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
1.29, 2.18	General advice in advertising	[CO 05/835]	31/8/2005	s911A(2)(l) and 951B(1)(a) This class order exempts issuers of financial products from the requirement to hold an AFS licence where they provide general advice in advertisements in the media or on billboards or posters. It also exempts licensed issuers providing general advice in relation to securities in advertisements from the requirement to give an FSG. These exemptions apply only where the issuer includes a statement in the advertisement that a person should consider whether or not the financial product is appropriate for them.	
2.2	Centro MCS Manager Limited ACN 051 908 984 Centro MCS 35 Trust ARSN 113 176 471 Centro Watt America REIT 2 Inc ARBN 113 432 885.	[05/416]	22/4/2005	s741(1) and 1020F(1) This instrument grants relief to allow an offeror to make some changes to a prospectus/PDS.	
2.16	CPS Credit Union (SA) Limited ACN 087 651 143	[05/749]	1/7/2005	s30(1), Schedule 4 This instrument grants an exemption from compliance with Part 5 of Schedule 4 of the Act.	

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Report para no.	Class order title or entity name	Instrument no.	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
2.17	Australian Unity Dispensaries Friendly Society Limited ACN 087 822 231	[05/372]	15/4/2005	s30(1), Schedule 4 This instrument grants an exemption from compliance with Part 5 of Schedule 4 of the Act.	
2.18	Deferral of s1012IA—amendment	[CO 05/346]	3/6/2005	s1020F(1)(a) This class order amends Class Order [CO 03/1097] <i>Deferral of s1012IA</i> to extend the delayed application of s1012IA to superannuation products until 30 June 2006.	30/6/2006
2.18	Variation of Class Orders [CO 01/1455] and [CO 04/672]	[CO 05/646]	29/7/2005	s741(1) and 1020F(1) This class order allows the use of transaction-specific disclosure documents and secondary trading exemptions, despite certain relief granted under s341(1).	
2.18	Transitional relief for deposit product providers—PDSs and periodic statements	[CO 05/681]	24/6/2005	s1020F(1)(a) This class order provides conditional relief to deposit product providers, exempting them from the requirement to disclose interest rates in PDSs and termination values in periodic statements on a transitional basis until 30 June 2006.	30/6/2006

OVERVIEW OF DECISIONS ON RELIEF APPLICATIONS FROM FINANCIAL SERVICE PROVIDERS

Report para no.	Class order title or entity name	Instrument no.	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
2.18	Dollar disclosure: relief for warrant issuers	[CO 05/682]	24/6/2005	s1020F(1)(a) This class order amends [CO 04/1431] by providing relief from dollar disclosure to issuers of warrants that may be securities.	
2.18	Dollar disclosure: further transitional relief	[CO 05/683]	24/6/2005	s1020F(1)(c) This class order provides transitional relief from the dollar disclosure provisions for deposit products (and related non-cash payment facilities) as well as general insurance products.	1/7/2006
3.4	Time-sharing schemes—extension of time until 31 March 2006 to belong to an ASIC approved Industry Supervisory Body	[05/403]	22/4/2005	s601QA(1) This instrument provides an extension of time until 31 March 2006 for timesharing schemes that are members of the Australian Timeshare and Holiday Ownership Council Limited or an external complaints resolution scheme to become members of an ASIC-approved Industry Supervisory Body by varying underlying relief instruments applicable to those schemes.	31/3/2006
3.7	Sandhurst Trustees Limited ACN 004 030 737	[05/723]	27/6/2005	s1084(6), 1454(2) and 601QA(1)(b) This instrument varies ASIC Instrument [04/1208] by continuing relief for the Schoolhouse Trust until 30 June 2006 for the Airport Trust.	30/6/2006

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Report para no.	Class order title or entity name	Instrument no.	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
3.7	Sandhurst Trustees Limited ACN 004 030 737	[05/724]	27/6/2005	s1084(6), 1454(2) and 601QA(1)(b) This instrument varies ASIC Instrument [04/1207] by continuing relief for the Schoolhouse Trust until 30 June 2006.	30/6/2006
3.9	Perpetual Trust Services Limited ACN 000 142 049 Maple-Brown Abbott Asia Pacific Trust ARSN 108 735 299	[05/601]	30/5/2005	s601QA(1)(b) This instrument modifies s601FL to allow the retirement of the responsible entity where all members are not entitled to vote by virtue of s253.	
3.9	Perpetual Trust Services Limited ACN 000 142 049 Maple-Brown Abbott International Equity Trust ARSN 098 266 758 Maple-Brown Abbot Small Companies Trust ARSN 091 138 233 Maple-Brown Abbott Asia Pacific Trust ARSN 108 735 29	[05/602]	12/5/2005	s601QA(1)(b) This instrument modifies s601GC and 601FL to allow the retirement of the responsible entity and consequential constitutional amendments where all members are not entitled to vote by virtue of s253.	
3.12	Trafalgar Managed Investments Limited ACN 090 664 396 Trafalgar Opportunity Fund No 4 ARSN 107 416 348	[05/455]	5/5/2005	s601QA(1)(b) This instrument grants relief from the illiquid scheme withdrawal provisions and the equal treatment of members in a class requirement for a proposed stapled securities transaction involving units in two registered schemes and shares in a company.	

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Report para no.	Class order title or entity name	Instrument no.	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
3.13	Westpac Funds Management Limited ACN 085 352 405 Westpac Office Trust ARSN 103 853 523	[05/557]	18/5/2005	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 a placement of interests that are issued on an instalment basis can occur when the instalment receipts rather than the interests are listed on the ASX.	
3.15	Orchard Investments Management Ltd ACN 105 684 231 Timbercorp Orchard Trust ARSN 106 557 297	[05/745]	30/6/2005	s601QA(1)(b) This instrument modifies s601GC to allow the responsible entity to change the scheme constitution by removing a termination clause without requiring a special resolution of members.	
3.15	Australand Wholesale Investments Limited ACN 086 673 092 Australand Wholesale Property Trust No 4 ARSN 108 254 413 Australand Wholesale Property Trust No 5 ARSN 108 254 771	[05/778]	28/6/2005	s601QA(1)(b) This instrument modifies s601GC to allow the responsible entity to change the scheme constitution by removing a termination clause without requiring a special resolution of members.	
3.16	LM Investment Management Limited ACN 077 208 461	[05/629]	8/6/2005	s601QA(1)(a) This instrument grants relief from the s601JA requirement to establish a compliance committee within a 14-day period.	

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Report para no.	Class order title or entity name	Instrument no.	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
3.18	Constitutional provisions about the consideration to acquire interests	[CO 05/26]	4/5/2005	s601QA(1) This class order revokes Class Order [CO 98/52] <i>Relief from the consideration to acquire constitutional requirement</i> and provides relief to responsible entities of registered managed investment schemes (other than timesharing schemes) from s601GA(1)(a) in certain prescribed circumstances.	
3.18	Managed investment schemes: perpetuity clauses in scheme constitutions	[CO 05/566]	6/6/2005	s601QA(1)(b) This class order empowers the responsible entity of a registered scheme to modify the scheme's constitution by removing a termination clause, without obtaining member approval, subject to certain conditions.	
3.18	Combining registered scheme financial reports	[CO 05/643]	29/7/2005	s341(1) This class order allows related registered schemes with a common responsible entity to include their financial statements in adjacent columns in a single financial report where there is a facility for investors to switch monies between the related schemes.	
4.12	Insurance brokers' trust accounts under s981B—revocation	[CO 05/508]	13/5/2005	s992B(1)(c) This instrument revokes Class Order [CO 04/673] <i>Insurance brokers trust accounts under s981B</i> , as it is no longer necessary because of reg 7.8.01.	

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Report para no.	Class order title or entity name	Instrument no.	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
5.9	Variation of Class Order 98/1418— certificates by legal practitioners	[CO 05/542]	15/6/2005	s341(1) This class order varies Class Order [CO 98/1418] <i>Wholly owned entities</i> to clarify the level of certification required by a legal practitioner and create greater certainty for lawyers giving certificates.	
5.9	Additional month for first financial reports under AIFRS	[CO 05/637]	7/7/2005	s341(1) and 992B(1) This class order allows most unlisted entities and individuals an additional month to distribute to members their first financial reports under the Australian equivalents of International Financial Reporting Standards and to lodge those financial reports with ASIC. The relief applies to financial reports under both Chapter 2M and Chapter 7 of the Act and for half-years and financial years commencing from 1 January 2005 to 31 December 2005 inclusive.	

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Report para no.	Class order title or entity name	Instrument no.	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
5.9	Anomalies preventing certain large proprietary companies from being grandfathered	[CO 05/638]	7/7/2005	<p>s341(1)</p> <p>This class order allows certain large proprietary companies to be treated as 'grandfathered'. These companies are not required to lodge a financial report, directors' report and auditor's report provided that the financial report is audited. Large proprietary companies to which the order relates may be grandfathered despite having:</p> <ul style="list-style-type: none"> • a foreign company shareholder (provided the company is not controlled by a foreign company); • an authorised trustee company as a non-beneficial member; or • taken advantage of Australian Securities Commission relief to complete their financial reporting obligations for a year ending in June or July 1996 one month late. 	
5.9	Application of accounting standards by non-reporting entities	[CO 05/639]	26/7/2005	<p>s341(1)</p> <p>This class order ensures that non-reporting entities can take advantage of concessions or other modifications of the recognition and measurement requirements of accounting standards that are available to reporting entities, such as:</p> <ul style="list-style-type: none"> • concessions available under accounting standard AASB 1 'First-time Adoption of Australian Equivalents to International Financial Reporting Standards'; and • transitional provisions or other concessions available under a non-mandatory accounting standard. 	

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Report para no.	Class order title or entity name	Instrument no.	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
5.9	Related party transactions and balances	[CO 05/640]	26/7/2005	<p>s341(1)</p> <p>This class order relieves ADIs, their parent entities and controlled entities from the requirement to disclose in their financial report regularly made balances and transactions involving the bank and persons other than directors and specified executives of the entity, their close family members, and the entities they control or significantly influence. This class order replaces Class Order [CO 98/110] <i>ADIs—related party balances and transactions</i> for years commencing on or after 1 January 2005.</p>	
5.9	Miscellaneous amendments to financial reporting class orders	[CO 05/641]	26/7/2005	<p>s341(1), 601QA(1), 741(1) and 1020F(1)</p> <p>This class order varies a number of ASIC class orders that provide financial reporting relief. Orders updated include [CO 98/2395] <i>Transfer of information from the directors report</i> and [CO 98/100] <i>Rounding in financial reports and directors' reports</i>. The changes relate to the introduction of the Australian equivalents of International Financial Reporting Standards and the CLERP 9 amendments.</p>	
5.9	Combining financial reports of stapled security issuers	[CO 05/642]	29/7/2005	<p>s341(1)</p> <p>This class order allows issuers of stapled securities to include their financial statements and the consolidated or combined financial statements of the stapled group in adjacent columns in one financial report.</p>	

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Report para no.	Class order title or entity name	Instrument no.	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
4.5	Disclosing post balance date acquisitions and disposals	[CO 05/644]	29/7/2005	s341(1) This class order allows the presentation of a pro forma statement of financial position in the notes to the financial statements to explain the financial effect of material acquisitions and disposals of entities and businesses after balance date.	