



ASIC

Australian Securities & Investments Commission

REPORT 34

**Overview of decisions
on relief applications from
financial service providers
(October 2003 to August 2004)**

December 2004

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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 11 October 2003 and ending 14 August 2004. During this period we decided 1610 applications concerning Chapter 5C, Chapter 7 and related provisions of the Act. We granted relief in relation to 1337 applications and refused relief in relation to 273 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 who have read this report 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. The instruments and class orders are available from our website via www.asic.gov.au/co. The information and media releases referred to throughout the report are available from our website at www.asic.gov.au.

7 Applications for relief from the provisions of Chapter 5C and Chapter 7 are assessed by the Legal & Technical Operations division of ASIC's Financial Services 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)(1) to exempt a person or class of persons from the requirement to hold an Australian financial services (AFS) licence or from particular licensing provisions.

Foreign financial service providers

Recognition of overseas regulation

1.2 We granted class order relief to allow foreign financial service providers (FFSPs) to offer financial services to wholesale clients in Australia without an AFS licence if the regulation of those services in their home jurisdiction is sufficiently similar to our own. We will also consider, on a case-by-case basis, exempting FFSPs regulated in other jurisdictions that are not covered by the above class orders and FFSPs that, for other reasons, do not fit within the terms of those class orders.

1.3 We exempted some entities that were regulated by the Hong Kong Securities and Futures Commission (HKSF) but were unable to rely on Class Order [CO 03/1103] for HKSF-regulated entities because they were not incorporated in Hong Kong.

1.4 For example, we granted an exemption to a limited liability company incorporated in Delaware, the United States, for providing financial services in Australia because, as a 'registered overseas company' under Hong Kong law, the Delaware company was subject to the same regulation and oversight by the HKSF as a domestic company based in Hong Kong.

1.5 We exempted a company that was incorporated and regulated in the United Kingdom but was unable to rely on Class Order [CO 03/1099] because its primary business was the production of oil rather than the provision of financial services. As the company was not subject to prudential standards under the UK regime, the exemption was conditional on the company meeting financial resource requirements equivalent to those that apply to AFS licensees.

FFSPs with limited connection to Australia

1.6 We granted class order relief to various FFSPs from the requirement to be licensed in Australia (irrespective of the jurisdiction that regulates them) where the provision of the financial services has only a limited nexus with Australia. We will also consider, on a case-by-case basis, exempting FFSPs that do not fit strictly within the terms of those class orders where the provision of their financial services only has a limited nexus with Australia.

1.7 We refused to exempt self-employed financial planners who were agents of foreign entities for providing financial advice on and dealing in financial products where some of the financial products had been acquired in Australia. We considered that, as the applicants fell outside Class Order [CO 03/825], they had a sufficient nexus with Australia to justify the imposition of the requirement to hold an AFS licence.

Deemed issuer of certain derivative products

1.8 We exempted an FFSP to the extent that the FFSP was deemed to be providing financial services in relation to the secondary sale of ASX-traded endowment warrants it had issued over shares that were quoted on the Australian Stock Exchange (ASX). This was to address the anomaly that the FFSP may otherwise have been deemed to be dealing in the warrants (as the deemed issuer) each time a secondary sale occurred because of the effect of s761E(3) and reg 7.9.07A(3).

Foreign custodians of employee share schemes

1.9 We granted interim exemptions to several foreign custodians who provided financial services solely for employee share schemes. The custodians were not exempted under Class Order [CO 03/184] *Employee share schemes* because they were not associates of the issuer. The relief was given to allow the custodians to continue to provide these services to the employee share schemes without an AFS licence until 11 June 2004 and was confined to cases where no more than 5% of the participants in the employee share scheme were Australian residents.

Offshore banks

1.10 We exempted two offshore banks for financial services provided in relation to financial products that were acquired outside Australia. They were ineligible for class order relief under Class Order [CO 03/825] because they operated in Australia through Australian branches rather than through Australian subsidiaries. In all other respects, the services provided by the branches satisfied the requirements and the policy underpinning Class Order [CO 03/825].

Overseas insurer

1.11 We granted an interim exemption (until 1 July 2005) to an insurer that was registered in a foreign jurisdiction for the provision of professional indemnity insurance and custodial/depository services. The offshore insurer was a subsidiary of a state law society that was managing a mutual indemnity fund for solicitors. The relief was granted on condition that the applicant make available on its website or principal place of business a notice to the effect that the body is not licensed under the Act or regulated under the *Insurance Act 1973*. The exemption was granted pending a Federal Government decision as to how unauthorised foreign insurers should be regulated.

Reliance on previous form of s911A(2)(h)

1.12 We refused to issue a no-action letter to a hedge fund that was servicing sophisticated clients and operating without an AFS licence. We did not accept the argument that the applicant would have come under s911A(2)(h) before that provision was amended because the argument was inconsistent with our published interpretation of the provision.

Interim no-action letter

1.13 We issued an interim no-action letter (from 11 March 2004 to 30 September 2004) to a Danish provider of financial services for its failure to hold an AFS licence. We took a no-action position because the applicant did not have sufficient time to lodge an application for a licence before 11 March 2004 after we refused its application for exemption from the requirement to be licensed. It was a condition of the no-action letter that the applicant take all reasonable steps to obtain a licence.

Other relief applications

1.14 We refused a request for a class order exempting all clubs in a particular state in order to operate a loyalty scheme. In order for us to assess each application on its merits, we require each individual club to submit an application outlining why their relevant loyalty program should be exempt.

1.15 We issued no-action letters to a number of unlicensed entities that were operating loyalty schemes pending their applications for exemption from the requirement to hold an AFS licence.

Non-cash payment facilities

1.16 We granted issuers of low-value non-cash payment facilities interim relief from the licensing provisions of Part 7.6 on a case-by-case basis. The relief only covers low-value non-cash payment facilities that are conducted on a small scale or for a limited purpose and are not part of another financial product.

1.17 In the period that this report covers, we granted this limited relief in relation to several gift voucher programs, pre-paid mobile phone recharge cards and stored-value systems such as university campus cards. Relief was refused in the case where applicants are carrying on a substantial business of providing non-cash payment facilities.

Operation of internet-based cotton derivative trading facility

1.18 We refused to exempt the operator of an internet-based cotton derivative trading facility. The operator was exempted from the requirement to hold an Australian markets licence because the facility offered a single product to wholesale clients. However, we considered that neither the market licence exemption nor the fact that overseas regulators had chosen not to regulate the operator's activities justified an exemption from the requirement to hold an AFS licence.

Trustee of employee share plan

1.19 We exempted the trustee of an employee share plan so that the trustee (which was holding participating employees' shares on trust for them) could participate in a rights issue on behalf of the beneficiaries and then immediately transfer the shares acquired under the rights issue to the beneficiaries. We considered that it would be disproportionately burdensome to require the trustee to obtain an AFS licence for the purpose of this one transaction only.

Employee share scheme custodian providing financial product advice

1.20 We refused to exempt a licensee for providing financial product advice in circumstances where its authorised representative, as custodian for an employee share plan, would provide general advice to prospective members of the employee share plan. We did not consider that it would be disproportionately burdensome for the licensee to obtain the relevant authorisation.

Subsidiaries of government-owned corporation

1.21 We exempted a number of subsidiaries of a statutory government-owned corporation (which was exempt from the operation of the Act) to the extent that they were not acting on behalf of their parent. The exemption was subject to the parent providing a guarantee of all the exempt subsidiaries' liabilities arising out of their provision of financial services. We considered that it was an appropriate case in which to grant an exemption because the subsidiaries only provided financial services to wholesale clients and most of the subsidiaries' activities were carried out under instructions from their parent.

New South Wales energy service corporations

1.22 We granted an exemption until 11 March 2005 to energy service corporations (ESCs) for dealing in, providing general financial product advice on, and making a market in, energy derivatives where the transactions were entered into by an ESC outside New South Wales and/or with counterparties located outside New South Wales. Given the fact that the New South Wales Government was considering introducing legislation that would remove the need for ESCs to provide financial services and therefore obtain an AFS licence, we considered that it would be unreasonably burdensome to require each of the ESCs to apply for and hold an AFS licence for such a limited activity and for what may turn out to be a relatively short period of time.

National Electricity Market Management Company

1.23 We granted an exemption to the National Electricity Market Management Company (NEMMCO) for dealing in, and providing general advice on, Settlement Residue Distribution Agreements (SRDAs) where such dealing was with, or such advice was given to, a wholesale client. Relief was granted due to the limited nature of the activity and the fact that this activity comprised NEMMCO's role in the National Electricity Market.

Dealing by investment companies

1.24 We were not prepared to exempt investment companies from the requirement to hold an AFS licence for dealing in financial products where s766C(5) (offering to the public in the course of carrying on an investment business) applied. We took the view that it would be inconsistent with the purpose of the Act to grant such relief.

Special purpose risk management companies

1.25 We exempted certain entities where the only financial service they provide is dealing in derivatives for the purpose of managing risks associated with the ordinary business activities of other members of the same corporate group. We considered that relief was consistent with the legislative intent of reg 7.6.01(1)(m).

Partnership trusts

1.26 We extended relief from the requirement to hold a securities dealers licence we had given to entities who operated partnership trusts so that the entities would not need an AFS licence. We considered that it was appropriate to continue the status quo because the activities of the trusts had not changed since the original relief was given. The trusts were set up purely for the internal purpose of streaming income from the partnership to eligible partners.

Administrator in deed of company arrangement

1.27 We refused to grant an exemption to the administrators of a deed of company arrangement who, because they were not taking steps towards winding up, appeared to be operating a managed investment scheme. We refused the application on the basis that there is a clear legislative intent in s911A to exempt an administrator only to the extent that they are *not* operating a registered managed investment scheme.

1.28 However, for a short period we extended the transition period for the responsible entity of the schemes so that it was not required to obtain an AFS licence. The relief was given on the basis that it would assist scheme members by providing the responsible entity with the opportunity to either obtain its own AFS licence to operate the schemes, transfer the schemes to a responsible entity that held an AFS licence or wind up the schemes.

Operator of time-sharing scheme

1.29 We refused to grant an exemption from the licensing requirement to the operator of a time-sharing scheme that was already exempt from the requirement under Chapter 5C to register a managed investment scheme. This was because a person who operates a time-sharing scheme nonetheless provides a financial service and therefore needs an AFS licence.

Variation/disposal of superannuation interests issued by different trustee

1.30 We exempted the trustee of a closed superannuation fund in relation to the variation and/or disposal of interests in the fund that had been issued by its predecessor trustee. The Act and the regulations exempt a person from the requirement to hold an AFS licence where the person varies/disposes of financial products they have issued. We granted an exemption to the trustee because we considered that it would be an anomalous result to require the trustee to hold an AFS licence for activities for which no licence would have been necessary if the activities were performed by the predecessor trustee/issuer.

Pooling assets of superannuation funds

1.31 We refused to exempt the trustee of a unit trust established for the sole purpose of pooling the assets of four regulated superannuation funds to enable the funds to achieve economies of scale for investment management. We were not persuaded that the unit trust should be treated like a pooled superannuation trust (PST), which is exempted by the regulations, because, unlike a PST, the unit trust was not regulated by APRA.

Clarification of exemption for lawyers

1.32 We refused an application for an exemption for a lawyer investing client money, on the client's instructions, in a cash management account. We considered that it was not necessary for us to give an exemption because the effect of s766B(5) was that a lawyer would not need to be licensed for the provision of this service.

Insurance broker assisting company

1.33 We refused to exempt a company that provides services to insurance brokers for providing financial product advice in the course of providing such services. We refused the application because the insurance brokers were retail clients.

Financial planning calculator

1.34 We clarified that an AFS licence was not required merely for the provision of a financial planning calculator, based on our view that no AFS licence is required for the mere provision of superannuation calculators that only perform mathematical functions.

Charitable body arranging insurance

1.35 We refused to exempt a charitable body that arranges insurance for more than 100 companies. We considered that the circumstances in this case were readily distinguishable from the class order relief that is given to charitable investment schemes because, unlike a charitable investment scheme, the arrangement of insurance clearly has a financial product purpose (managing a financial risk). We did not consider that compliance with the Act would be impossible or disproportionately burdensome and we were not satisfied that the insurance agency agreement and the church canons provided adequate alternative regulation to protect consumers.

Custodial/depository services in relation to unregistered managed investment scheme

1.36 We refused to grant an exemption for custodial or depository services provided by a trustee of an unregistered managed investment scheme. Given that the exemption in s766E(3)(b) applies only to registered schemes, we were not satisfied that the applicant could be distinguished from other providers of custodial and depository services who are required to be licensed.

ASX Settlement and Transfer Corporation

1.37 We refused to grant an exemption for custodial services in relation to a facility regulated under the ASX Settlement and Transfer Corporation (ASTC) regulatory regime because we were not satisfied that the ASTC represented an adequate regulatory alternative to the AFS licensing regime.

Delay/error in licence application process

1.38 We refused to issue a no-action letter or grant an exemption in a number of cases where the reason that the applicant was carrying on business unlicensed (while we assessed its AFS licence application) could be attributed to the applicant's error or delay in making the licence application or in responding to our requests for information during the licence assessment process.

Pooled development funds

1.39 We refused to issue a no-action letter and grant an exemption to a pooled development fund (PDF) operator who did not have an AFS licence. We did not accept the applicant's argument that they had only just realised they needed an AFS licence because we had communicated the need for an AFS licence to all PDF operators well before the end of the transition period.

Fund for retiring professional football players

1.40 For the avoidance of doubt, we granted an exemption to an incorporated association consisting of professional football players. The relief permitted the operation of two funds that were established for the purpose of providing benefits to players retiring from professional football to enable them to obtain employment and financial security.

Supermarket collective purchasing trustee

1.41 We exempted the trustee of a trust that was established to enable its supermarket members to access collective purchasing arrangements. We gave this relief on the basis that, in essence, the trust was a cooperative buying arrangement under which all of the parties to the arrangement either provided services to the arrangement or were directly engaged in the business of selling goods purchased under the arrangement and therefore did not require the regulatory protection of having an AFS licensee as trustee.

Provision of prime seating at sporting venue

1.42 We exempted an entity that, in return for a fee, issued a product that conferred the right to occupy a defined seat within a prime seating area for most sporting events held at a particular sports venue during a specified term, together with food and beverage, car parking and entertainment services. We granted relief on the basis that it was consistent with relief we had previously given for a similar arrangement. We were satisfied that investors would be adequately protected where conditions were imposed requiring the relevant entity to give purchasers of the product cooling-off rights, disclose the risks associated with holding the product and refrain from making representations to the effect that the product was a financial investment.

Licensing class orders and information or media releases

1.43 Following is a list of class orders and information or media releases that relate to the licensing relief granted during the period of this report.

Foreign financial service providers

Information Release [IR 03/28] *ASIC provides limited relief for certain foreign financial services.*

Information Release [IR 03/41] *ASIC issues licensing relief for certain wholesale foreign financial services providers.*

Information Release [IR 04/20] *ASIC releases new policy on foreign collective investment schemes.*

Class Order [CO 03/823] *Relief from licensing, accounting and audit requirements for foreign authorised deposit-taking institutions.*

Class Order [CO 03/824] *Licensing relief for financial service providers with limited connection to Australia dealing with wholesale clients.*

Class Order [CO 03/825] *Licensing relief for the provision of ongoing services in relation to a product acquired when the client was outside the jurisdiction.*

Class Order [CO 03/1099] *UK FSA regulated financial service providers.*

Class Order [CO 03/1100] *US SEC regulated financial service providers.*

Class Order [CO 03/1101] *US Federal Reserve and OCC regulated financial service providers.*

Class Order [CO 03/1102] *Singapore MAS regulated financial service providers.*

Class Order [CO 03/1103] *Hong Kong SFC regulated financial service providers.*

Class Order [CO 04/443] *Licensing relief for off-shore participants in the market operated by Eurex Frankfurt AG.*

Class Order [CO 04/444] *Licensing relief for offshore participants in the market operated by Chicago Mercantile Exchange Inc.*

Class Order [CO 04/526] *Foreign collective investment schemes.*

Other licensing relief

Information Release [IR 03/36] *ASIC gives limited class order relief for general advice in offer documents provided to wholesale clients.*

Information Release [IR 03/39] *ASIC grants exemption to financial counselling agencies.*

Information Release [IR 04-06] *ASIC guidelines for interim relief for loyalty schemes.*

Information Release [IR 04/07] *ASIC guidelines for interim relief for low-value non-cash payment facilities.*

Information Release [IR 04/17] *ASIC provides guidance on superannuation calculators.*

Information Release [IR 04/18] *ASIC grants relief for debt factoring arrangements.*

Media Release [MR 03/388] *ASIC grants relief in relation to mortgage offset accounts.*

Class Order [CO 03/911] *Licensing relief for self-dealers who provide financial product advice about own securities.*

Class Order [CO 03/1048] *Mortgage offset accounts.*

Class Order [CO 03/1063] *Licensing relief for financial counselling agencies.*

Class Order [CO 04/239] *Factoring arrangements—licensing, hawking and disclosure relief.*

Temporary licensing relief for certain financial services

[IR 04/43] *ASIC provides temporary relief during period of consultation.*

Class Order [CO 03/1093] *Credit rating agencies.*

Class Order [CO 03/1094] *Law societies—professional indemnity scheme and fidelity funds.*

Class Order [CO 03/1095] *Law societies—statutory deposit accounts and public purpose funds.*

Class Order [CO 03/1096] *Actuaries.*

Class Order [CO 03/1098] *Securitisation special purpose vehicles.*

Section 2: Relief from AFS licence requirements

2.1 This section outlines some of our decisions on whether to vary the standard licence conditions imposed on all AFS licensees.

Relief from [PS 166] financial requirements

2.2 Policy Statement 166 *Licensing: Financial requirements* [PS 166] sets out the basis for the financial requirements that apply under an AFS licence and our discretion to relax them and approve alternative arrangements. Some examples of the decisions we have made for relief from these requirements are set out below.

Cash needs requirement

2.3 We refused to tailor the application of Option 1 of the cash needs requirement (reasonable estimate projection plus cash) to a particular licensee in circumstances where we were satisfied that the licensee could reasonably comply with Option 2 (contingency based projection). We considered that, given the prudent business practices that had been adopted by the licensee, the licensee would be able to comply with Option 2.

Approval of eligible providers

2.4 We have approved privately owned companies as eligible providers where the company either had at least \$100 million net tangible current assets, or was able to borrow at least \$100 million supported by a guarantee from its parent entity. Our approval was subject to there being no significant adverse change to the relevant company's financial position.

2.5 We have also approved some government-owned entities as eligible providers where:

- the entity maintains a specified level of net tangible current assets;
- the entity continues to have access to borrowing facilities from a government or government-owned corporation;
- the government owner of the entity guarantees its liabilities; and
- the entity continues to be government owned.

Exemption from financial requirements for foreign prudentially regulated body

2.6 We exempted a foreign AFS licensee carrying on a broking business in Australia from the financial requirements of its AFS licence on the basis that:

- it was an unlimited partnership under which all traders and shareholders were jointly and severally liable for all debts and obligations of the partnership; and
- its two parent entities were deposit-taking institutions that were prudentially regulated in accordance with the Basel guidelines.

The exemption was conditional on the ownership and legal status of the licensee remaining the same.

Eligible undertakings

2.7 We refused to approve financial commitments that could be cancelled without our consent as an eligible undertaking, on the basis that they would not be as effective as an undertaking that complied with [PS 166.168].

Approval of non-excluded assets

2.8 We allowed an AFS licensee to treat certain derivatives transactions with its associates as non-excluded assets for the purposes of calculating its adjusted surplus liquid funds (ASLF). We considered that the criteria in paragraph (c) of [PS 166.172] were satisfied because:

- the licensee intended only to enter a transaction if its parent entity or another entity in the same group entered into ‘back-to-back’ arrangements with the applicant under which the other entity accepted the risk of the transaction in consideration for receiving a share of the fees earned from the particular transaction; and
- the licensee’s parent was providing a guarantee to the licensee covering the obligations of the subsidiaries that enter into the back-to-back arrangements with the applicant.

ASLF requirement

2.9 We gave an exemption from the ASLF requirement to an AFS licensee that is a government owned energy provider authorised to deal in derivatives with wholesale clients only. The exemption will only operate where the licensee is wholly government-owned, holds more than \$500 million net tangible assets and continues to hold a reasonable belief that there is no material risk that it will be unable to meet liabilities arising from its derivatives trading.

2.10 We refused to grant relief to allow certain liabilities to be excluded for the purposes of ascertaining whether an AFS licensee met the ASLF requirement. We did not accept the argument that certain liabilities incurred by a licensee were subject to an enforceable right of set-off because there was no mutuality between the licensee and the party to whom the liabilities were owed.

Financial requirements of Sydney Futures Exchange no substitute for [PS 166]

2.11 We did not permit a licensee who was a participant of the Sydney Futures Exchange (SFE) to substitute the financial requirements imposed by the SFE for those set out in [PS 166]. This was because the financial services provided by the licensee were not all provided solely as a participant in the SFE's market or incidental to the licensee's participation in the SFE's market.

No interim relief from [PS 166]

2.12 We refused to grant any interim relief from the financial requirements to an AFS licensee that had no suitable alternative means to satisfy us of its financial solvency. We need to be convinced of the financial stability of a licensee, even if the licensee is operating only for a month, because there is the potential for significant detriment to clients if a licensee does not have adequate financial resources.

Relief from other AFS licence requirements

Relief relating to Policy Statement 146 *Licensing: Training of financial product advisers* [PS 146]

2.13 We refused to permit Tier 2 trained advisers to advise on debenture products with a term of five years or less. We did not accept the applicant's argument that Tier 2 trained advisers could advise on debenture products because they were simple and easily understood. In refusing the relief we confirmed the policy in [PS 146] that people advising on debenture products require a higher level of competency than those who only provide advice on basic deposit products.

Relief relating to Policy Statement 33 *Security deposits* [PS 33]

2.14 We refused to remove the requirement of a \$20,000 security bond imposed on the applicant during the transition period. We did not consider that the applicant's professional indemnity insurance was an adequate substitute for the security bond from a consumer protection perspective.

Fraud and professional indemnity insurance requirement

2.15 We will only dispense with this requirement where the insurance is not generally available on an industry-wide basis and the responsible entity has adequate alternative arrangements in place to ensure that investors are compensated for any loss or damage arising from negligence by the responsible entity or fraud by its officers.

2.16 We granted some operators of timeshare schemes temporary relief from our professional indemnity and fraud insurance requirements because of industry-wide difficulties with obtaining that insurance. Each of the operators affected was offered a modified licence condition that required them to find an alternative scheme operator or wind up the scheme if they could not obtain appropriate insurance by 30 September 2004.

Licence authorisations

2.17 We issued a no-action letter to an execution broker for a technical breach that had arisen as the company had inadvertently traded in a managed investment scheme and miscellaneous investment products without the necessary AFS licence authorisation. We took a no-action position on the failure to obtain the appropriate AFS licence authorisation on the condition that the applicant apply for the correct authorisation.

Licence requirements class orders and information releases

2.18 Following is a list of class orders and information releases that relate to the licence requirements relief granted during the period of this report.

Relief from [PS 166] financial requirements

Information Releases [IR 03/26] *Alternative means to satisfy cash needs requirement under PS 166.*

Information Release [IR 03/44] *ASIC provides further options to meet cash needs requirements.*

Relief from other AFS licence requirements

Information Release [IR 03/33] *Amended Pro Forma 209: AFS licence conditions.*

Section 3: Disclosure relief

3.1 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, Financial Services Guides and Statements of Advice.

Relief relating to Product Disclosure Statements (PDSs)

Multi-issuer PDS relief

3.2 We refused on a number of occasions to grant relief to permit the issue of a PDS by two or more issuers where the relief requested was outside the terms of [CO 03/876].

Requirement to include interest rates in PDS

3.3 We gave relief from the requirement to include the interest rate in the PDS for a particular product where, at the time the PDS was prepared, the issuer would not know the interest rate because it changed daily. As the issuer would not know the interest rate when the PDS was prepared, the facts were distinguishable from other scenarios where a supplementary PDS may be the appropriate way to ensure that a PDS is up-to-date.

Requirement to provide PDS on exercise of options

3.4 We exempted certain responsible entities of managed investment schemes that are listed on the ASX from the requirement to give a PDS for the issue of interests in a scheme upon the exercise of options, provided that the options were issued under a PDS or prospectus.

3.5 We granted an exemption from the requirement to give a PDS for the exercise of options over stapled securities where the option holders acquired options over interests in a managed investment scheme under a prospectus and, upon the stapling of those interests to shares in a company and interests in another scheme, were provided with a disclosure document relating to the stapling arrangement.

PDS requirements for stapling arrangements

3.6 We granted exemptions from some of the formal requirements of Part 7.9 (use of the title ‘Product Disclosure Statement’, requirement to have application form, cooling off rights, requirement to send PDS to nominated address) in relation to schemes of arrangement under which interests in listed trusts and shares in listed companies would be stapled. We allowed the issuers to combine the PDS for interests in the trusts with a prospectus for the shares in the company and an explanatory statement for the scheme of arrangement under Part 5.1 in a single explanatory memorandum document.

3.7 We granted relief from the requirement to include an application form in the PDS where members of a particular scheme could acquire the stapled units offered in the PDS by giving an exchange notice to the responsible entity of the scheme asking the responsible entity to facilitate the conversion of their interests to stapled units. We considered that relief could be granted without undermining the policy objective of ensuring that a retail client does not acquire a financial product without first receiving the PDS.

3.8 We allowed the responsible entity of a managed investment scheme to rely on scheme of arrangement disclosure under Part 5.1 as a substitute for PDS disclosure. Interests in the scheme were stapled to shares in a company and traded together as a stapled security. We granted relief having regard to the fact that all of the following factors were satisfied:

- the scheme of arrangement under Part 5.1 was subject to court oversight;
- the scheme of arrangement required the approval of members of the scheme (in their capacity as stapled security holders);
- the members received an information memorandum providing extensive information about the scheme of arrangement; and
- there was a relatively close correlation between the interests that the members held before the scheme of arrangement and the interests they would hold after the transaction.

Secondary sales of stapled securities

3.9 We gave relief from the requirement in s1012C(6) and 1012C(7) to provide a PDS for the secondary sale of interests in a scheme that were stapled to shares in a company and listed as stapled securities. This was where there was a change of structure for an existing business but the entity’s underlying assets did not change and, prior to the offer for sale, the explanatory memorandum and notice for the company scheme of arrangement (which gave rise to the stapling) were lodged with the ASX and a combined PDS/prospectus was lodged with ASIC.

3.10 However, we refused to grant relief in similar circumstances where we considered that the underlying assets after the restructure were substantially changed. For example, we refused relief where the shares in a company (to which interests in the scheme were stapled) had been listed on the ASX for several years. We considered that the stapled securities, which were issued after a substantial restructure, were a different product from the previously listed shares because most of the value of the stapled securities was attributed to the interests in the scheme (which had not previously been listed) rather than to the value of the shares.

3.11 We granted relief so that a PDS was not required for the secondary sale of interests in a managed investment scheme that are part of a stapled security arrangement where those interests were issued under an employee share scheme.

Distribution/dividend reinvestment plans for stapled securities

3.12 We granted relief on a number of occasions by analogy to s708(13) and 1012D(3) to allow dividends and distributions to be pooled to purchase stapled securities under a reinvestment plan. Relief was granted so that the statutory exemption from prospectus/PDS disclosure to existing holders applied to stapled securities.

Secondary sale of financial products listed for less than 12 months

3.13 We refused to grant relief outside of Schedule C, Category 3, of Class Order [CO 02/1180] *Disclosure for on-sale of securities and other financial products* to permit secondary sales of interests in a listed managed investment scheme without a PDS where the scheme had been listed for less than 12 months. The 12-month requirement is aimed at ensuring that the market has had reasonable experience in pricing the securities. It is consistent with the requirements underpinning the use of transaction-specific prospectuses under s713.

Supplementary PDS

3.14 We granted relief to allow a supplementary PDS to be provided to investors who had not received (and would not receive) the PDS, even though the supplementary PDS was not being provided to investors who had received the PDS. The PDS had been provided to investors who were converting interests in a particular scheme (convertible interests) to stapled units. The terms of the issue of the convertible interests did not permit a replacement PDS to be used for the initial public offering (IPO) for the stapled units. Therefore, a supplementary, rather than a replacement, PDS was provided to new investors under an IPO for the stapled units. We were satisfied that relief was justified because the supplementary PDS was a stand-alone document that contained all the information that the new investors would need in deciding whether to acquire the stapled units and therefore the level of disclosure would not be reduced.

Requirement to lodge in-use notice for supplementary PDS

3.15 We refused to grant an exemption from the requirement to lodge an in-use notice for a supplementary PDS for mortgage schemes because this requirement serves an important regulatory function by notifying us and the market of financial products offered under a regulated disclosure document. However, we are in the process of amending the form of the current 'In-use notice' form (FS53) so as to allow multiple statements (both PDSs and supplementary PDSs) to be included within one form to be lodged with us (but still within the time required by law).

Superannuation funds winding down

3.16 We granted an interim exemption (until 30 June 2004) from some of the PDS requirements to the trustees of certain superannuation funds that were not public offer funds. The relief was given on the basis that the funds in question were in the process of winding up and members' benefits were to be transferred to other funds by 30 June 2004. Therefore, it would be disproportionately burdensome to require the trustees to amend their disclosure documents to comply with the PDS regime between 11 March and 30 June 2004.

Mutual discretionary fund for solicitors' professional indemnity insurance

3.17 We gave disclosure relief to the insurer mentioned in paragraph 1.11.

Partnership trusts

3.18 We gave disclosure relief to the operators of the trusts mentioned in paragraph 1.26.

Lodgment of single in-use notice for multiple PDSs

3.19 We issued a no-action letter to superannuation product issuers who attempted to lodge single in-use where those notices purported to cover several thousand employer-sponsored superannuation products, but did not specify the individual products. Our no-action position applies where the issuer only lodged one in-use notice in relation to a standard employer-sponsored plan, for which there are a large number of employer sub-plans, on condition that the issuer provides us with a schedule listing the sub-plans.

Foreign authorised deposit-taking institution (ADI) required to give PDS to 30 retail clients

3.20 We refused to exempt a foreign ADI that only had 30 retail clients in Australia from the requirement to provide a PDS. We were not persuaded by the applicant's arguments that each client had to deposit at least \$250,000 into their account and would be given information about the product terms and conditions, interest rate and fees. We did not consider that it would be appropriate to remove the consumer protection that Parliament intended for those retail clients.

Successor superannuation fund

3.21 We refused to exempt the successor of a public offer superannuation fund from the requirement to give a PDS in circumstances where the transfer of superannuation interests between funds constituted the issue of a financial product. We were not satisfied that a statement produced for the purposes of s1017B (which requires ongoing disclosure of material changes and significant events) would produce the required level of disclosure and consumer protection.

Application form requirement

3.22 We refused to exempt the superannuation industry from the requirement to use an application form for the issue of an interest in a superannuation fund where a deferred annuity contract is terminated and the benefits are transferred into a superannuation fund. We did not consider that the argument that the interest in the fund and the deferred annuity were 'equivalent rights' constituted an adequate basis upon which we could grant relief, given Parliament's clear intent to treat these interests as different financial products.

PDS and application form for switching superannuation interests

3.23 We refused to grant relief to allow switching across superannuation funds without issuing a PDS or application form each time an investor switched across funds. We did not consider that it was in the interests of consumer protection to extend existing switching relief (under Class Order [CO 02/262] *Applications to switch managed investment products*) to superannuation products, given the clear Parliamentary intent to treat these switches as the issue of a new financial product.

Superannuation PDS timeframe

3.24 We exempted the trustee of a master superannuation trust from the requirement to provide a PDS within three months after the superannuation product is issued to a retail client in circumstances where the trustee would be unable to provide some of its PDSs for certain employer plans within the required timeframe. We considered that the retail clients would still have substantial protection because they had been provided with the material required under the Superannuation Industry (Supervision) Regulations, which enabled them to make decisions as to their insurance contribution and investment choices early on in their term of membership.

Fund for retiring professional football players

3.25 We gave disclosure relief to the funds mentioned in paragraph 1.40.

Relief relating to Financial Services Guides (FSGs)**State public trust offices**

3.26 We exempted some state public trust offices from the requirement to provide an FSG until 30 June 2005. The relief was given on the basis that a decision by the Department of Treasury on whether to make regulations to exempt those bodies from the requirement to hold an AFS licence for certain activities was pending.

FSG exemption for research house

3.27 We exempted an AFS licensee that provides general financial product advice in the form of ratings and research information to wholesale client intermediaries from the requirement to provide an FSG to retail clients. We acknowledged that it might be difficult for the licensee to comply with the FSG requirement because the licensee may not have the details of the retail clients to whom the advice was given.

FSG in expert report

3.28 We granted relief on a number of occasions to permit an FSG to be combined with a PDS where the author of the FSG and the issuer of the product to which the PDS related were not the same person. The author of the FSG provided general advice in the PDS document in the form of an expert report. We allowed the FSG to be included in the expert report. The expert report formed part of an explanatory memorandum that consisted of a PDS, prospectus and explanatory statement relating to a scheme of arrangement under which certain interests in certain schemes and shares in certain companies were to be stapled. The relief was given on condition that:

- the FSG was set out at the front of the expert report;
- the title of the expert report included a reference to the FSG; and
- the FSG was clearly a separate document (despite being included in the expert report).

3.29 We granted similar relief to combine an FSG with an expert report to accompany a notice of meeting and explanatory memorandum for a scheme of arrangement under which two property groups that issued stapled securities were to merge.

FSG form and content requirements—share sale facility

3.30 We provided relief to enable a broker to include its FSG in a share sale facility invitation document rather than providing a separate FSG. We also gave the broker and the issuer of shares relief so that the FSG given in relation to the share sale facility and an associated share purchase facility need only contain details of the financial services being provided for the particular facilities. We considered relief to be appropriate because, in the circumstances, the provision of information in the FSG about other financial services that were not being offered to eligible shareholders would not further the legislative purpose of providing consumers with information relevant to their decision about whether to use a financial service.

Advice about interests in managed investment scheme operated by an AFS licensee

3.31 We refused to exempt the responsible entity of a number of managed investment schemes from the requirement to provide an FSG for the provision of general financial product advice to retail clients relating to schemes that it operated. The exemption in s941C(3) from the requirement to provide an FSG only applies to the operation of a registered managed investment scheme. We did not accept the applicant's argument that the provision of general financial product advice was incidental to the operation of the scheme and therefore considered that an FSG was required.

Share buy-back arrangement

3.32 We granted relief to AFS licensees from the requirement to provide an FSG for the implementation of a share buy-back arrangement. This is because the requirement for an entity to give an FSG when it conducts a buy-back would be inconsistent with the licensing exemption approved in [CO 03/606] *Financial product advice—exempt documents* for any advice contained in buy-back documents. Another reason we considered that relief would be appropriate is that the additional information required to be provided in an FSG goes beyond what is required to be disclosed for buy-backs generally under Chapter 2J.1 and such information would not ordinarily be considered material in the context of the share buy-back.

Licence not required for relevant financial services

3.33 We exempted an AFS licensee from the requirement to provide an FSG for the offer of pooled pricing products to cotton growers in circumstances where Class Order [CO 02/211] *Managed investment schemes—interests not for money* did not require the licensee to hold an AFS licence authorising them to provide financial services in relation to those products. We considered that the relief did not jeopardise consumer protection because any FSG provided to the cotton growers would not cover the provision of the pooled pricing products. This is because the information required to be disclosed in the FSG is limited only to those financial services the licensee's AFS licence authorises it to provide. It need not include any disclosure about financial services for which there is a licensing exemption.

Minor change to licence authorisation

3.34 We granted interim relief and issued a no-action letter (for prior breaches) to a number of AFS licensees whose FSGs were not up-to-date and did not state all of the financial services their licence authorised them to provide. The licensees had corrected their licence authorisation for managed investment warrants after the FSGs were printed. Relief was provided because we had changed the AFS licence authorisation that was required for managed investment warrants shortly before the FSR transition period ended. This may not have allowed sufficient time to ensure disclosure documents were accurate before they were required to be given.

Requirement to provide details of person providing financial service

3.35 We refused to exempt an AFS licensee company from the requirement to provide an FSG to a retail client. The staff who provided financial services on behalf of the company were employed by a partnership that also controlled the company. We refused to grant relief because we considered that the licensee could avoid having to prepare individual FSGs for each staff member by either appointing the partnership's employees as its authorised representatives or by restructuring its affairs so that they were employees of the licensee.

Lack of awareness excuse not accepted

3.36 We refused to issue a no-action letter for the failure to give retail clients an FSG in circumstances where the applicant claimed to be unaware of its obligation to do so.

Other disclosure relief**Issue of convertible notes by credit union**

3.37 We refused to exempt a credit union from the obligation to comply with the disclosure requirements under Part 5 of Schedule 4 of the Act for a proposal to raise capital by issuing convertible notes that would convert to preference shares. We did not consider that it would be appropriate for us to grant an exemption because the fact that the notes converted to preference shares with dividend rights attached to them, and which would be listed and subsequently traded on a stock exchange, seemed inconsistent with the principle of mutuality contained in s30 of Schedule 4. Therefore, it was appropriate that the issue of the notes be disclosed to and approved by the credit union's members.

Requirement to disclose details of providing entity

3.38 We refused to grant relief to an AFS licensee from the requirement to disclose the name of the individual authorised representative who was the provider of personal advice on basic deposit products (where no FSG is needed). The licensee was unable to establish that there was any significant regulatory burden, other than mere inconvenience, imposed by this requirement. In the circumstances we were not satisfied that relief was warranted, given that there is a clear legislative intent that the identity of the provider of personal advice is material and therefore ought to be disclosed.

Requirement to provide information in public forum situation

3.39 We granted interim relief to an AFS licensee that provides general financial product advice in a public forum so that it was not required to give retail clients certain warnings before providing the advice. The relief was given to allow the licensee sufficient time to make changes to its systems to ensure that it could comply. We considered that retail clients would still be protected because the relevant warnings would be provided to them at the time they accessed the general advice on the licensee's website.

Margin on reset convertible notes

3.40 We refused to grant relief to allow the lodgement with us of a prospectus for an offer of convertible reset notes that did not disclose the margin on the notes, which was to be determined by a book build process. The applicant had proposed that a later version of the prospectus would include the margin, and that the later version would be provided to investors and to us. We considered that the applicant's proposed conduct would not comply with s710. We did not consider it appropriate to extend the relief available to sophisticated and professional investors under s734(9) and to certain other specified persons under Class Order [CO 00/175] *Pre-prospectus roadshow presentations* in circumstances where the applicant proposed to promote the convertible notes to retail investors before the margin was disclosed.

Requirement to notify ASX of directors' interests

3.41 We granted relief on a number of occasions from the requirement in s205G to notify the ASX of the interests held by directors of listed companies in cash management trusts operated by related bodies corporate. The relief was granted on the basis that:

- it is burdensome to have to report changes in bank balance each day;
- investors do not benefit from the receipt of the information as these are minor daily changes to trusts that operate like transaction/bank accounts;

- directors still have to report their securities interests to the ASX and to their own shareholders; and
- the ASX had already granted the relevant persons a waiver from Listing Rule 3.19A regarding the reporting requirements for the funds.

We considered that the relief would not undermine the underlying policy objectives of s205G—i.e. to make the transactions of the directors of listed companies transparent and to give the market an indication of directors' confidence in listed companies.

Failure to provide member statements on time

3.42 We issued a no-action letter in respect of an entity's failure, due to upheavals caused by its collapse, to provide superannuation fund members with member statements and annual fund reports for the 2001–2002 year by the 31 December 2002 deadline in relation to three different funds. Our decision took into account the entity's collapse and the fact that it had rectified the breach by dispatching the reports to fund members.

3.43 We issued a no-action letter to a number of superannuation fund trustees who had failed to meet their obligation to provide annual benefit statements to their members within six months of the end of the reporting period. We considered that, given the breach was inadvertent and members had been provided with their statements, a no-action position would be appropriate.

Money received for financial product before the product is issued

3.44 We refused to grant relief to permit an AFS licensee to hold monies received for a financial product for up to three months rather than one month. The licensee wanted to be able to hold the money for a longer period so that it had enough time to source property in which to invest. We considered that relief was not necessary because arguably the applicant could rely on s1017E(4)(e), which allows the product provider to return the money, or issue or transfer the financial product 'by the end of such longer period as is reasonable in the circumstances' if it is not reasonably practicable to issue or transfer the financial product to which the funds relate within one month of receipt of the funds.

Inadequate disclosure to investors in management rights scheme

3.45 We refused to issue a no-action letter for a breach relating to the prior promotion of interests in a managements rights scheme. The applicant alerted us that the disclosure to investors had been incorrect and that they had attempted to rectify the mistake by writing to each individual investor. We refused to grant the relief in the circumstances because there was no doubt as to what the law required.

Landlord insurance policies

3.46 We refused to exempt the provider of landlord insurance policies from the disclosure provisions in Parts 7.7, 7.8 and 7.9. We did not accept the applicant's argument that a landlord seeking to protect a commercial interest should be treated by the legislation as a wholesale client. We considered that the provision of insurance for a business purpose did not of itself prevent the policyholder being a retail client and that the cost of providing the required disclosure would not be overly burdensome to the applicant.

Earnings rate disclosure relief

3.47 We gave relief from the requirement to provide earnings rate disclosure in periodic statements for certain unitised superannuation products. Given that the applicant's IT facilities would not have the capacity to provide this disclosure until September 2004, we considered that strict compliance with this requirement would be disproportionately burdensome. We considered that retail clients would still largely have the protection intended by Parliament because there would be sufficient disclosure in the statement (i.e. the amount of earnings) to enable them to understand how the product had performed during the reporting year. The applicant agreed to provide the rate on request.

Disclosure class orders and information or media releases

3.48 Following is a list of class orders and information or media releases that relate to the disclosure relief granted during the period of this report.

PDS disclosure

Information Release [IR 03/37] *ASIC varies disclosure and continuous reporting requirements for issuers of managed investment warrants.*

Information Release [IR 03/42] *ASIC provides further relief for joint product disclosure statement.*

Information Release [IR 04/03] *Extension of transitional relief from requirement to cite licence numbers on PDS documentation.*

Information Release [IR 04/06] *ASIC guidelines for interim relief for loyalty schemes.*

Information Release [IR 04/07] *ASIC guidelines for interim relief for low-value non-cash payment facilities.*

Class Order [CO 03/876] *Multi-issuer product disclosure statements.*

Class Order [CO 03/957] *ASX managed investment warrants—disclosure and reporting exemptions.*

Class Order [CO 03/1092] *Further relief for joint product disclosure statements.*

Class Order [CO 04/103] *Relief from s912F requirement to cite licence numbers on prescribed documents.*

FSG and SOA disclosure

Information Release [IR 04/02] *ASIC extends Statement of Advice exemption for some overseas listed products.*

Information Release [IR 04/34] *ASIC facilitates shorter Statements of Advice.*

Media Release [MR 04/236] *ASIC provides further guidance on Statements of Advice.*

Class Order [CO 04/10] *Statement of Advice relief for certain products able to be traded on an approved foreign market.*

Class Order [CO 04/291] *CHESS Depository Nominees—FSG relief in relation to CHESS Depository Interests.*

Class Order [CO 04/576] *Statements of additional advice.*

Section 4: Managed investments relief

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

Registration requirement

4.2 We exempted property developers who were offering renounceable property sales contracts from the requirement to register a managed investment scheme. In our view such contracts constitute an interest in a managed investment scheme. We considered that the exemption was appropriate because each investor's deposit was held individually in a regulated trust account and, if the investor was required to pay the balance of the purchase price (in the event that the developer was unable to sell the property to a third party), the deposit would be used to complete the purchase.

4.3 We issued a no-action letter for the operation of an unregistered managed investment scheme (which had been operating since 1989) in order to facilitate a court supervised restructure under which units in the trust were to be converted into shares pursuant to the scheme of arrangement provisions in Part 5.1. As there was no evidence of fraud or mismanagement by the trustee and as the investors had the right to vote on the proposed restructure (which would be subject to judicial oversight), we did not think it was in the interests of the investors or the public to take action to wind up the trust.

4.4 We refused to exempt an unregistered managed investment scheme from the requirement to be registered in circumstances where the scheme had been operating since 1988 and was due to wind up in 2005. We did not consider that the consumer protection benefits of registering the scheme were outweighed by the costs involved.

4.5 We exempted the trustee of the trust referred to in paragraph 1.41 from the requirement to register as a managed investment scheme.

4.6 We extended the duration of an exemption from the requirement to register a former listed property trust as a managed investment scheme on the basis that the fund would be wound up once outstanding legal proceedings had been resolved. Relief was granted on the basis that:

- members had been given the chance to withdraw from the fund on several occasions; and
- members were regularly updated on the progress of proceedings and the terms of the relief we granted.

4.7 We refused to grant relief from the requirement to register a managed investment scheme where a parent entity sold grain to its subsidiary's grain pool. We did not consider that the sale of grain in these circumstances constituted a managed investment scheme because there was no evidence to suggest that the benefits received by the parent entity were produced by the scheme, that the parent entity's right to payment was connected with the performance of the scheme, or that its contributions would be pooled or used in a common enterprise to produce those rights.

4.8 On a number of occasions we granted an exemption from the requirement to register a scheme for the operation of pools of agricultural produce in circumstances where Class Order [CO 02/211] *Managed investment schemes—interests not for money* does not apply because the pools include some traders who are not primary producers. We considered that it would be disproportionately burdensome to require such pools to be registered because of their short duration.

Issue of scheme interests at a discount

4.9 We granted relief on several occasions to permit the issue of interests in a listed scheme that were offered to, but not acquired by, scheme members in a non-renounceable rights issue to be issued at a discount to non-member institutional investors, underwriters or sub-underwriters (who are not associates of the responsible entity), or retail clients who are given a PDS.

4.10 We refused to extend the application of Class Order [CO 98/52] *Relief from the consideration to acquire constitutional requirement* (which allows interests to be issued at a price determined by the responsible entity rather than at the price stipulated by the scheme constitution) to allow the responsible entities of a number of managed investment schemes to issue discounted interests pursuant to an underwritten distribution reinvestment plan (DRP). The relief under the class order is limited to DRPs that are not underwritten. DRPs have the benefit of disclosure relief on the basis that their purpose is to allow scheme members to increase their holdings rather than to raise capital. Therefore, we did not consider that it would be appropriate to allow the discounted DRP interests to be underwritten because that would permit the DRP to be used as a fundraising vehicle.

4.11 Pending the review of our policy on market placements, we were not prepared to permit placements (the issue of a limited number of interests in a 12-month period at a discount of up to 10% of the market price) of interests in managed investment schemes listed on stock exchanges other than the ASX and approved foreign exchanges.

Requirement to hold scheme property separately

4.12 We granted relief to responsible entities from the statutory duty to hold scheme property separately from the property of the responsible entity and the property of any other scheme. The relief applies where the responsible entity has appointed an authorised deposit-taking institution (ADI) as custodian to hold cash for the scheme under a prime brokerage agreement. We considered that scheme members would still be adequately protected, as long as the responsible entity ensured that there was appropriate separation of the custodial functions and the banking functions of the ADI.

The equal treatment requirement

4.13 We granted an exemption from the requirement to treat all members of the same class equally to allow the holding company of the responsible entity to hold interests in the scheme on different terms to other members. Under the scheme constitution, interests could be exchanged for shares in the holding company at certain times and without election. Relief was required to allow interests held by the holding company to be redeemed for cash instead of shares in these circumstances in order to prevent a breach of s259A (prohibition on a company acquiring shares in itself).

4.14 We granted relief that permits the responsible entity to treat retail clients and wholesale clients differently in a rights issue by giving retail clients the option of a longer period to accept the offer.

4.15 In a number of scheme restructure arrangements, we exempted the responsible entity from the requirement to treat all members of the same class equally so that the responsible entity was not required to issue new financial products to members resident outside Australia (foreign members) and could pay cash consideration to the foreign members in lieu of such issues. We gave this relief on the basis that it would not be practicable or cost-effective to extend the offer to foreign members in light of the cost of obtaining legal advice on the relevant securities law of each foreign country in which members resided.

4.16 We granted relief exempting the responsible entity of a number of ASX-listed schemes from the requirement to treat all members of the same class equally so that it does not have to give persons who are not resident in Australia for income tax purposes the right to withdraw from the scheme. We considered that it would be disproportionately burdensome for the responsible entity to have to comply with this requirement.

Other managed investments relief

Requirement to obtain member approval for change of constitution

4.17 We granted relief from the requirement to obtain member approval to change the constitution of a registered scheme where the responsible entity had already printed a PDS on the basis that the requisite changes had been made. The applicant stood to lose millions of dollars each week if it had to wait until a meeting was held before the constitution was amended so that it could use the PDS. Given that the responsible entity was the only member of the scheme (which it used to invest funds from other registered schemes of which it was also responsible entity and other unregistered schemes it operated), we considered that relief could be granted without compromising consumer protection because, in any event, member approval would have been given.

4.18 We granted relief from the requirement to obtain member approval for changes to the constitution of a registered scheme where there were only three members in the scheme, on condition that each member provided written consent to the constitutional amendments. We were satisfied that the costs to the scheme would be reduced and that the policy objective of ensuring that members were properly informed and could exercise their rights was not undermined.

4.19 We refused an application for relief from the requirement to hold a meeting of members to effect certain changes to the constitution of a registered scheme in circumstances where we were satisfied that the Act already permitted the responsible entity to change the constitution without member approval, because it could be satisfied that members' rights were not adversely affected.

Requirement to hold meeting of members to change responsible entity

4.20 We granted relief from the requirement to hold a meeting for the retirement and replacement of the responsible entity after a successful takeover where 100% of the interests in the target scheme had been acquired by a certain date. We considered that, as the new owner could control the outcome of the meeting in any event, there was no diminution of other members' rights if a meeting was not held. Relief was granted to reduce the commercial burden of holding a meeting and/or postal vote, and to avoid any potential inconsistency with the compulsory acquisition provisions of the Act.

4.21 We granted relief from the requirement to hold a meeting for a change of responsible entity in a case where no vote could be taken because all scheme members were associates of the responsible entity within the meaning of s253E and s12(2)(e).

4.22 We granted relief from the requirement to hold a meeting for a change of responsible entity where the existing responsible entity was to retire as responsible entity of certain schemes and be replaced with a related body corporate. Given that some of the schemes only had one member, it would not be possible to hold a meeting. Where the schemes had more than one member, the members were either related bodies corporate of the responsible entities or trustees of trusts ultimately controlled by related bodies corporate of the responsible entity. We considered that, in the circumstances, those members would be adequately protected where their written consent to the change was required in lieu of a vote at a meeting.

4.23 We refused to grant relief to allow the retiring responsible entity of an IDPS-like scheme to appoint a replacement responsible entity without holding a meeting of members as required by the Act. We have only allowed dispensation of the requirement to hold a meeting of members to replace the responsible entity (on conditions) where the replacement responsible entity belonged to the same corporate group as the retiring responsible entity. In this case, we refused the application because the proposed replacement responsible entity had different directors, belonged to a different corporate group and had different compliance standards from the retiring responsible entity.

Investing in unregistered schemes

4.24 We granted an interim exemption to the responsible entity of a registered scheme from the prohibition on investing in unregistered schemes. An exemption from this prohibition that the previous responsible entity held did not extend to the new responsible entity when it took over the operation of the scheme. We granted relief for a short period of time to allow the promoter of the unregistered scheme to vary its AFS licence and register the scheme.

4.25 We refused to issue a no-action letter to the responsible entity of a registered scheme that had more than 10% of scheme property invested in unregistered schemes. There was no justification given by the applicant for permitting investment of scheme monies in an unregulated trust, contrary to Class Order [CO 98/55] *Investments in unregistered schemes*.

Related party provisions

4.26 We granted relief to the responsible entity of a master trust that owned all of the interests in seven other registered schemes from the requirement imposed by Chapter 5C.7 to seek approval of the members of each scheme for related party benefits. The relief enabled the responsible entity to provide lenders to the corporate group with security over property held by the individual schemes.

Illiquid withdrawal provisions

4.27 We granted an exemption from Part 5C.6 to a registered scheme that was set up to own a single property and only had three members. The relief was given on the basis that each of the three members had consented in writing to the terms of redemption of their interests and therefore were adequately protected.

4.28 We granted relief from Part 5C.6 so that the vendor of a property to be acquired for a property syndicate could purchase 10 interests in the syndicate for \$10 and then redeem those interests upon settlement of the syndicate's purchase. The vendor was acquiring and redeeming those units to enable the scheme to be eligible for stamp duty relief. We considered that members of the syndicate would benefit if relief was granted to permit this arrangement to occur, as the purpose of the syndicate was to acquire the property for investment purposes.

4.29 We gave relief from Part 5C.6 to an illiquid scheme so that large institutional members could sell down their holdings and the responsible entity could issue the same number of holdings to other investors. The purpose of the exercise was to ensure that when interests in the scheme were stapled to interests in another scheme, the stapled interests would meet the spread requirements for listing on the ASX.

Transaction costs

4.30 We are prepared to give interim relief until 31 March 2005, on a case-by-case basis, where scheme constitutions do not comply with s601GA to the extent that it requires adequate provision to be made for transaction costs in the scheme constitution. We are consulting with the managed funds industry about proposed ongoing class order relief. For further information see Information Release [IR 04/31] *ASIC announces interim position for managed investment scheme constitutions* and Information Release [IR 04/49] *ASIC seeks comments on relief for managed investment scheme constitutions*.

On-market buyback arrangement

4.31 We granted relief to allow the responsible entity of a listed scheme to undertake an on-market buyback of up to 10% of interests in the scheme over a 12-month period. We did not permit the price paid by the responsible entity to exceed 100% of the net tangible asset value of the interest bought back. This was done to ensure that the buyback would not dilute the value of interests held by members whose interests were not bought back by the responsible entity.

Appointment of director to responsible entity

4.32 We refused to grant relief to enable a person to be appointed as an 'external' director of the responsible entity of a registered scheme, where the person did not qualify as an external director because, for the first six months of the person's term as a director, the person would remain a member of a partnership that was substantially involved in a professional capacity with the responsible entity. We were not satisfied that the relief was justified, given that it was open to the responsible entity to appoint a compliance committee if less than half of its directors were 'external'.

Management rights schemes

4.33 We amended Class Order [CO 02/305] *Management rights schemes* and the associated pro forma relief instruments to allow the operator of a management rights scheme to establish a furniture fund to receive, and hold on trust for each investor, money to be used for the replacement, repair or refurbishment of the investor's furniture, fittings and equipment. For further information see Information Release [IR 04/30] *ASIC provides relief for furniture funds in management rights schemes* and Class Order [CO 02/305].

Foreign collective investment schemes

4.34 We extended relief that was due to expire on 30 June 2004 for a foreign collective investment scheme (FCIS) operated in New Zealand. The scheme was registered in Australia but had relief from certain requirements of Chapter 5C under a Pro Forma [PF 71] *Foreign collective investment schemes—Chapter 5C* instrument. The extension of the relief would allow sufficient time for arrangements to be made to deregister the scheme. Once the scheme was deregistered, it would have the benefit of Class Order [CO 04/526] *Foreign collective investment schemes*, which does not require an FCIS operated in New Zealand to be registered in Australia.

4.35 We granted relief that permitted an FCIS to continue to operate in Australia without being registered, even though it could not meet the requirement under the [PF 71] relief to have a local agent. We considered that relief (with appropriate investor protection conditions) was appropriate, given that the agency agreement was terminated in September 2003 and the interests of all existing members were to be redeemed in November 2003. The relief ensured that the compulsory redemption process could proceed lawfully.

Prescribed interest schemes

4.36 We refused an application for extension until 30 June 2010 of the transition period for a closed prescribed interest scheme where the trustee was in liquidation and was not able to certify the matters required by Information Release [IR 03/05] *ASIC grants further extension of interim relief for non-transitioning managed investment schemes*.

Mutual discretionary funds

4.37 We refused to exempt a mutual fund provider from the requirement to register the fund as a managed investment scheme where the provider did not hold an AFS licence.

4.38 We extended our mutual risk policy to permit a mutual fund provider to acquire life insurance risk products from pooled funds without having to register the mutual fund as a managed investment scheme. Previously, our relief was limited to providers who were acquiring general insurance policies. By analogy with our policy settings on the acquisition of general insurance policies, we did not consider there was any significant dependence on the investment performance of the money in the pool or on the investment management expertise of the fund provider. It is a requirement of our relief that providers hold an AFS licence authorising them to carry out the regulated activities and that they satisfy our requirements for handling contribution monies.

4.39 The relief referred to in paragraph 1.11 included an exemption from the requirement to register a managed investment scheme.

Section 5: Conduct relief

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

Part 7.9, Division 5A and relief for share sale facilities

5.2 We granted relief from the prohibition on making unsolicited offers or invitations for the purchase of financial products via a share sale facility. The relief allowed various companies to offer a mechanism for their own shareholders to sell their shares in the company off-market. We granted the relief in these cases because the proposed facilities were not an attempt to profit from the ignorance of shareholders or scheme members as to the market value of their shares or interests. The price paid to investors selling their shares or interests was based on the market price of those shares or interests at the relevant time. The relief was granted subject to conditions that the members were provided with clear, concise and effective disclosure of the features and risks of participating in the facility.

5.3 We refused to grant relief to a proposed share sale facility under which the price paid for shares would be determined at the discretion of the company's directors rather than by reference to the market price.

Prohibition on appointment of AFS licensee as authorised representative

5.4 Section 916D prohibits an AFS licensee from appointing another AFS licensee as its authorised representative. We refused to allow a licensee that was authorised to give certain insurance advice to appoint another licensee (which did not have an authorisation to provide insurance advice) as its authorised representative. We did not consider it appropriate to grant relief that, in effect, would allow a licensee to provide insurance advice without satisfying the competency requirements for that financial service.

Requirement to meet Australian accounting standards

5.5 We granted relief so that an entity incorporated in the United States only had to comply with relevant Australian accounting standards for its Australian operations for the purposes of satisfying its obligations under s989B. The relief was granted on the basis that it would be unreasonably burdensome to require a global entity (operating in 10 countries) that operated in Australia only through an Australian branch to either restate the accounts of its global operations in accordance with Australian accounting standards or to incorporate a local subsidiary.

Internal and external dispute resolution requirements

5.6 We refused to exempt a government-owned organisation issuing financial products from the requirement in s1017G to have a dispute resolution system. We did not accept the applicant's argument that the Commonwealth Ombudsman's jurisdiction was an adequate substitute for an external dispute resolution system. This is because the Ombudsman does not have power to deal with the types of disputes that may arise between the issuer and consumers in relation to certain financial products and is unable to make binding determinations on government agencies. We issued a no-action letter to the agency covering the interim period until it was able to meet the requirement.

5.7 We did not exempt an AFS licensee who claimed it did not have direct contact with retail clients from the requirement to maintain an internal dispute resolution system or belong to an external dispute resolution system. We were not convinced that the licensee would incur disproportionate costs in complying with these requirements such as to outweigh the clear consumer benefit of access to effective dispute resolution mechanisms.

Compensation arrangement requirements refused

5.8 We refused to grant an AFS licensee relief from the requirement to have compensation arrangements under s912B because:

- relief from these requirements is available to licensees until 10 March 2005; and
- the longer-term position for the compensation regime under Chapter 7 has not been fully decided.

Part 7.8 audit requirements

5.9 We refused applications for relief from the Part 7.8 audit requirements where the applicants did not deal with client money. We consider that audit requirements address other risks and provide other benefits apart from those relating only to client money.

Corporate authorised representative notice requirement

5.10 We refused to exempt an AFS licensee's corporate authorised representatives (CARs) from the requirement to lodge notices under s916F(1) in the provision of consumer credit insurance (CCI) policies comprising both general insurance and life insurance. We considered that it was not consistent with the legislation to treat the CCI product as a general insurance product and that it would not be impossible or disproportionately burdensome for the CARs to comply with s916F(1AA) to lodge the notice.

Conduct class orders and information releases

5.11 Following is a list of class orders and information releases that relate to the conduct relief granted during the period of this report.

Information Release [IR 03/28] *ASIC provides limited relief for certain foreign financial services.*

Information Release [IR 04/32] *ASIC provides relief for payments into insurance brokers section 981B accounts.*

Information Release [IR 04/35] *ASIC provides relief for agency banking services.*

Class Order [CO 03/826] *Market related records: Australian financial services licensees dealing on overseas markets.*

Class Order [CO 03/1110] *Prime brokerage services: relief from obligation to hold client property on trust.*

Class Order [CO 04/673] *Insurance brokers' trust accounts under s981B.*

Class Order [CO 04/909] *Agency banking.*

Section 6: Other relief

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

Wholesale clients

6.2 We refused to grant relief to treat an entity that was 80% owned by one wholesale client and 20% owned by three other wholesale clients as a wholesale client. We refused the application on the basis that an entity that was substantially owned by a particular wholesale client could not be said to have exactly the same interests and information access as its parent.

Definition of 'representative'

6.3 We granted relief to extend the definition of 'representative' so that natural persons who were previously proper authority holders of two AFS licensees could be treated as the licensees' representatives without having to become authorised representatives. The natural persons were employed by a company that was not technically a related body corporate of the licensees but belonged to the same corporate group and shared the same ownership as the licensees. The relief was conditional upon the common ownership arrangements remaining in place.

Reporting breaches by superannuation trustee

6.4 We issued a no-action letter to an acting trustee of a superannuation fund in relation to a number of specific items of reporting in member statements and fund annual reports either erroneously prepared by the original trustee or not prepared at all.

Employee share schemes and incentive plans

6.5 We granted relief in a number of cases that technically fell outside Class Order [CO 03/184] *Employee share schemes* in accordance with Policy Statement 49 *Employee share schemes* [PS 49].

6.6 We granted conditional relief from the licensing, hawking and disclosure provisions of the Act to employee incentive plans that fell outside the class order relief for the following reasons:

- the financial product being offered to the employees was a derivative;
- the custodian of the plan was not an associate of the issuer;
- the financial product being offered to employees had not been listed for the minimum 12-month period;

- the proceeds of employees' dividends could be used to reduce the balance of loans advanced to them for the purpose of acquiring the shares;
- the number of shares being offered under the employee share scheme exceeded 5% of the total shares in that class in the issuer at the time of the offer; and
- options over stapled securities that included both shares and interests in managed investment schemes were offered to employees.

The financial products offered required no monetary contributions or payments by employees and the broad policy requirements set out in [PS 49] were otherwise met.

6.7 We granted relief beyond Class Order [CO 03/184] that allowed an employee share scheme offer document to include pricing information calculated 14 days before the offer was made to employees. The additional time was necessary to accommodate unavoidable delays in printing and postage by the employer's service providers. The relief was given on condition that the employees' attention was drawn to the date of the pricing information.

6.8 We issued a no-action letter to a number of entities who had transferred, rather than issued, treasury stock to employees in satisfaction of employee options without first obtaining any relief. The issuers would only have been able to rely on Class Order [CO 00/220] *Employee share schemes* (which preceded Class Order [CO 03/184] and applied at the time of the relevant transactions) if the treasury stock was *issued* to the employees. We took a no-action position in light of the fact that if the transactions had been effected on or after 30 April 2003 (the date of execution of Class Order [CO 03/184]), they would have fallen within the ambit of Class Order [CO 03/184].

6.9 We refused to grant relief from the requirement to hold employee contributions in trust for employees of an Australian ADI on the basis that the requirement to keep funds in an ADI is an important safeguard that is intended to ensure that employees will not be disadvantaged in the event of a deterioration in the financial position of the employer.

6.10 We clarified that relief outside the class order is not needed in the case where employees are provided with a contingent right to the issue of a unit of a share if those circumstances fall within the term 'eligible offer' in the class order.

6.11 We issued a no-action letter to an entity that failed to provide us with copies of the offer document and any other accompanying document for an offer made under its employee share scheme within seven days of the day the documents were first given to an employee, as required by Class Order [CO 03/184]. The documents were provided to us approximately three weeks after the offer closed. We decided to issue a no-action letter because the breach was minor and involved minimal risk to investors.

6.12 In another matter, we refused to issue a no-action letter in relation to a failure to lodge a copy of offer documents and a trust deed with us as required by Class Order [CO 03/184] because there was a delay of several months in notifying us and in rectifying the breach.

6.13 We refused to issue a no-action letter for a failure to comply with, or seek an exemption from, provisions of the Act relating to the operation of an employee share plan and incentive plan. We did not consider that the applicant's inadvertent non-compliance should be sanctioned.

IDPS operators

6.14 We issued a no-action letter to a number of IDPS operators for conduct that, at the time it took place, did not meet the requirements of Class Order [CO 02/294] *Investor directed portfolio services*, but which would have complied with the class order if certain subsequent amendments had been made on the date the conduct occurred.

6.15 We refused to grant an extension of time to an IDPS operator to comply with the reporting requirements of Class Order [CO 02/294] *Investor directed portfolio services*. The applicant was unable to demonstrate any significant impediment to complying with the quarterly reporting requirements beyond cost and inconvenience. We did not consider that this was sufficient to justify undermining the protection that investors receive from the requirement that the operator report information on the performance of their investment.

6.16 We refused to issue a no-action letter to an IDPS operator who failed to meet the requirements of Class Order [CO 02/294] because it provided IDPS members with a copy of the audit report on members' statements several weeks overdue and was almost 12 months late in lodging the audit of its internal controls with us. Given the importance we place on the internal control audit of IDPS operators, we considered that it would not be appropriate to grant relief.

Debt advocacy services

6.17 We refused to make a declaration that certain fee-for-service debt advocacy services were not a financial product. We considered that relief was not necessary for some of the applicant's activities because they related to credit rather than financial products. However, to the extent that the applicant's activities were financial services under the Act, we did not consider that the declaration sought was justified where services are provided for a fee, rather than free of charge. The applicant did not appear to fit within Class Order [CO 03/1063] *Licensing relief for financial counselling agencies*, which gives relief to community-based financial counselling agencies that provide services free of charge.

Exemption for charities

6.18 We granted relief modifying the requirements of Class Order [CO 02/184] *Charitable investment schemes—fundraising* so that the offer document provided to prospective investors, rather than containing the full terms and conditions of the offer, need only contain a summary of such terms. We considered that the same policy objectives could be achieved if the offer document contained a summary of the terms and conditions that were relevant to the decision whether to invest.

Class orders and information releases on other relief

6.19 Following is a list of class orders and information releases that relate to the other relief granted during the period of this report.

Information Release [IR 04/12] *ASIC clarifies category of wholesale client.*

Class Order [CO 01/1256] *Qualified accountant.*

Class Order [CO 03/965] *Sydney Futures Exchange—extension of the definition of 'member' of a futures organisation.*

Class Order [CO 03/966] *Application of Part 8.6 of the old Corporations Act to participants.*

Class Order [CO 04/150] *Wholly-owned subsidiaries of professional investors to be treated as wholesale clients.*

Appendix: ASIC relief instruments

This appendix details the relief instruments we have executed for matters that are referred to in the report. The instruments and class orders listed in this table are available from our website 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	Standard Life Investments (Asia) Limited ARBN 107 310 494	[04/531]	18/5/2004	s911A(2)(l) <i>This instrument provides relief similar to that granted under Class Order [CO 03/1103] to foreign financial service providers that are regulated by the Hong Kong Securities and Futures Commission. The relief applies to the provision of certain financial services to wholesale clients in Australia</i>	N/A
1.3, 1.4	Goldman Sachs (Asia) LLC	[04/250]	9/3/2004	s911A(2)(l) <i>This instrument provides relief similar to that granted under Class Order [CO 03/1103] to foreign financial service providers that are regulated by the Hong Kong Securities and Futures Commission. The relief applies to the provision of certain financial services to wholesale clients in Australia</i>	N/A
1.5	BP Oil International Limited	[04/956]	4/8/2004	s911A(2)(l) <i>This instrument provides a limited conditional exemption from the requirement to hold an AFS licence on similar terms to Class Order [CO 03/1099]</i>	N/A

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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	Credit Suisse First Boston International ARBN 062 787 106	[04/242]	8/3/2004	s911A(2)(l) <i>For the avoidance of doubt, this instrument gives licensing relief for a limited time in respect of the issuing of certain endowment warrants by Credit Suisse First Boston International (CSFBi)</i>	30/6/2007 + 30 business days
1.9	Abacus (CI) Limited Imperial Tobacco Group plc	[04/244]	8/3/2004	s283GA(1)(a), 601QA(1)(a), 741(1)(a), 911A(2)(l), 992B(1)(a) and 1020F(1)(a) <i>This instrument exempts the foreign custodian of an employee share scheme from the requirement to hold an AFS licence</i>	N/A
1.9	Citibank International plc	[04/245]	8/3/2004	s911A(2)(l) <i>This instrument exempts the foreign custodian of an employee share scheme from the requirement to hold an AFS licence</i>	N/A
1.9	Hoare Govett Limited	[04/246]	8/3/2004	s911A(2)(l) <i>This instrument exempts the foreign custodian of an employee share scheme from the requirement to hold an AFS licence</i>	N/A
1.9	UBS Financial Services Inc	[04/227]	8/3/2004	s911A(2)(l) <i>This instrument exempts a third party foreign custodian from the requirement to hold an AFS licence for the administrative and financial services provided in respect of employee share schemes</i>	N/A
1.10	Barclays Bank plc ARBN 062 449 585	[04/240]	8/3/2004	s911A(2)(l), 926A(2)(a), 951B(1)(a), 992B(1)(a) and 1020F(1)(a) <i>This instrument grants relief from specific provisions of Chapter 7 for a foreign bank in circumstances in which the bank holds an AFS licence for wholesale services and seeks exemption for its provision of retail services in terms consistent with Class Order [CO 03/0825]</i>	N/A

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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)
1.10	Royal Bank of Scotland ARBN 101 464 528	[04/241]	8/3/2004	s911A(2)(l), 926A(2)(a), 951B(1)(a), 992B(1)(a) and 1020F(1)(a) <i>This instrument grants relief from specific provisions of Chapter 7 for a foreign bank in circumstances in which the bank holds an AFS licence for wholesale services and seeks exemption for its provision of retail services in terms consistent with Class Order [CO 03/0825]</i>	N/A
1.11	Licensing relief for financial service providers with limited connection to Australia dealing with wholesale clients	[CO 03/824]	26/9/2003	s911A(2)(l) <i>This class order exempts persons from the need to hold an AFS licence where they are dealing with wholesale clients and the only reason the person is carrying on a financial services business in Australia is a result of s911D</i>	N/A
1.11, 3.17	QLS Insurance Pte Ltd ARBN 098 964 740	[04/264]	10/3/2004	s601QA(1)(a), 911A(2)(l), 992B(1)(a) and 1020F(1)(a) <i>This instrument grants interim relief until 1 July 2005 to a Singapore captive insurer, QLS Insurance Pte Limited. The insurer is a wholly owned subsidiary of the Queensland Law Society Inc, and relief applies to the provision of professional indemnity insurance in Australia to the law society and its members. The relief is granted in conjunction with relief granted to the law society under a variation to Class Order [CO 03/1094]</i>	1/7/2005

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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	Telstra Corporation Ltd ACN 051 775 556	[04/70]	27/1/2004	s911A(2)(l), 992B(1)(a) and 1020F(1)(a) <i>This instrument grants interim relief from the requirements to:</i> <ul style="list-style-type: none"> • <i>hold an AFS licence;</i> • <i>comply with the anti-hawking provisions to the extent necessary to inform customers about material changes to terms and conditions; and</i> • <i>comply with the disclosure provisions in Part 7.9,</i> <i>for the provision of a non-cash payment facility</i>	31/12/2004
1.17	Deakin University ACN 104 608 504	[04/910]	19/7/2004	s911A(2)(l) and 1020F(1)(a) <i>This instrument provides interim licensing and product disclosure relief until 30 June 2005 for dealing in, and providing financial product advice about, a non-cash payment facility</i>	30/6/2005
1.19	I.T. & E. Employee Share Plan Pty Limited ACN 093 694 145	[03/887]	21/10/2003	s911A(2)(l) <i>This instrument grants relief from the requirement to hold an AFS licence to the trustee of an employee share plan for arranging for the participating employees to acquire shares offered to the trustee in its capacity as the registered holder of shares on behalf of the participating employees</i>	N/A
1.21	Balfour Pty Ltd ACN 051 675 033 & others	[04/96]	4/2/2004	s911A(2)(l) <i>This instrument grants relief from the requirement to hold an AFS licence to 27 subsidiaries of the Queensland Investment Corporation</i>	N/A

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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)
1.22	Delta Electricity ACN 139 819 642 Eraring Energy ACN 357 688 069 Macquarie Generation ACN 402 904 344 Australian Inland Energy Water Infrastructure ACN 854 879 489 Country Energy ACN 428 185 226 Energy Australia ACN 253 130 878 Integral Energy Australia ACN 253 130 878	[03/1151]	24/12/2003	s911A(2)(l) <i>This instrument provides an exemption from the requirement to hold an AFS licence for dealing, giving general advice and making a market</i>	N/A
1.23	National Electricity Market Management Company Ltd ACN 072 010 327	[04/90]	3/2/2004	s911A(2)(l) <i>This instrument grants a licensing exemption for the provision of certain financial services to wholesale clients for settlement residue distribution agreements entered into by National Electricity Market participants</i>	N/A
1.25	Westfield Capital Corporation Limited ACN 008 589 384 Westfield Holdings Limited ACN 001 671 496	[04/178]	2/3/2004	s911A(2)(l) <i>This instrument provides relief from the requirement to hold an AFS licence for the hedging activities conducted on behalf of a group of companies for the purpose of managing financial risks that occur in the ordinary course of the group's business</i>	N/A
1.25	WT Finance (Aust) Pty Ltd ACN 108 806 711 Westfield Management Ltd ACN 001 670 579 Westfield Trust ARSN 090 949 746	[04/988]	9/8/2004	s911A(2)(l) <i>This instrument provides relief from the requirement to hold an AFS licence for the hedging activities conducted on behalf of a group of companies for the purpose of managing financial risks that occur in the ordinary course of the group's business</i>	N/A

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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)
1.25	ACN 108 802 384 Pty Ltd ACN 108 802 384 Westfield America Management Ltd ACN 072 780 619 Westfield America Trust ARSN 092 058 449	[04/989]	9/8/2004	s911A(2)(l) <i>This instrument provides relief from the requirement to hold an AFS licence in respect of the hedging activities conducted on behalf of a group of companies for the purpose of managing financial risks that occur in the ordinary course of the group's business</i>	N/A
1.26, 3.18	Allens Arthur Robison Services Limited ACN 001 295 843 and Allens Arthur Robison Services Trust	[04/0162]	26/2/2004	s601QA(1)(a), 741(1)(a), 911A(2)(l) and 1020F(1)(a) <i>This instrument provides exemptions from the scheme registration, licensing and disclosure requirements for a partnership trust</i>	N/A
1.26, 3.18	BDW Services Pty Limited ACN 001 687 618 Travinto Services Trust	[04/243]	8/3/2004	s601QA(1)(a), 741(1)(a), 911A(2)(l) and 1020F(1)(a) <i>This instrument provides exemptions from the scheme registration, licensing and disclosure requirements for a partnership trust</i>	N/A
1.30	National Australia Superannuation Pty Ltd ACN 006 972 309	[04/59]	22/1/2004	s911A(2)(l) <i>This instrument provides an exemption to permit the later trustee of a closed superannuation fund to vary or dispose of superannuation interests issued by a previous trustee in the same circumstances as those in s911A(2)(c) and reg 7.6.01(1)(q) without obtaining an AFS licence</i>	N/A
1.40, 3.25	Australian Football League Players' Association Inc and Australian Football League ACN 004 155 211	[04/223]	5/3/2004	s601QA(1)(a), 911A(2)(l), 992B(1)(a) and 1020F(1)(a) <i>This instrument grants exemptions from s601ED, 992A, 992AA, Part 7.9 and the requirement to hold an AFS licence for funds established for the benefit of retiring Australian Rules Football players</i>	N/A

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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)
1.41, 4.5	Impeach Pty Ltd ACN 008 143 959	[04/5]	6/1/2004	s601QA(1)(a), 911A(2)(1) and 1020F(1)(a) <i>This instrument grants exemptions from the requirement to register a managed investment scheme, the requirement to hold an AFS licence and Part 7.9 for a cooperative buying arrangement for supermarkets</i>	N/A
1.42	Medallion Club (Melbourne) Pty Ltd ACN 106 631 967	[04/27]	12/1/2004	s601QA(1)(a), 911A(2)(1), 992B(1)(a) and 1020F(1)(a) <i>This instrument grants exemptions from s601ED, 992A, 992AA, Part 7.9 and the requirement to hold an AFS licence for a sports venue prime seating arrangement</i>	N/A
1.43	UK FSA regulated financial service providers	[CO 03/1099]	22/12/2003	s911A(2)(l) <i>This class order conditionally exempts foreign companies regulated by the UK Financial Services Authority from the need to hold an AFS licence for certain financial services</i>	N/A
1.43	US SEC regulated financial service providers	[CO 03/1100]	22/12/2003	s911A(2)(l) <i>This class order conditionally exempts foreign companies regulated by the US Securities and Exchange Commission from the need to hold an AFS licence for certain financial services</i>	N/A
1.43	US Federal Reserve and OCC regulated financial service providers	[CO 03/1101]	22/12/2003	s911A(2)(l) <i>This class order conditionally exempts foreign companies regulated by the US Federal Reserve Board or the Comptroller of the Currency from the need to hold an AFS licence for certain financial services</i>	N/A
1.43	Singapore MAS regulated financial service providers	[CO 03/1102]	22/12/2003	s911A(2)(l) <i>This class order conditionally exempts foreign companies regulated by the Monetary Authority of Singapore from the need to hold an AFS licence for certain financial services</i>	N/A

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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)
1.43	Hong Kong SFC regulated financial service providers	[CO 03/1103]	22/12/2003	s911A(2)(l) <i>This class order conditionally exempts foreign companies regulated by the HK Securities and Futures Commission from the need to hold an AFS licence for certain financial services</i>	N/A
1.43	Licensing relief for the provision of ongoing services in relation to a product acquired when the client was outside the jurisdiction	[CO 03/825]	26/9/2003	s911A(2)(l) <i>This class order exempts person from the need to hold an AFS licence where the person provides further services to an existing client (i.e. a client holding a financial product previously issued by the person), where the client was not in this jurisdiction when they acquired the original product</i>	N/A
1.43	Relief from licensing, accounting and audit requirements for foreign authorised deposit-taking institutions	[CO 03/823]	26/9/2003	s911A(2)(l) and 992B(1)(a) <i>This class order provides some exemptions from some of the obligations on overseas-based authorised deposit-taking institutions (ADIs). Exemptions are provided from some of the accounting and audit obligations in the Act for holders of an AFS licence where equivalent reports prepared for the overseas regulator of the foreign ADI are lodged with ASIC. Relief is also provided to foreign ADIs from the requirement to be licensed where they engage in limited dealings with derivatives and foreign exchange that are related to ordinary banking business and the counterparty to the dealing is a wholesale client</i>	N/A
1.43	Licensing relief for offshore participants in the market operated by Eurex Frankfurt AG	[CO 04/443]	21/4/2004	s911A(2)(l) <i>This class order exempts offshore participants in the licensed market operated by Eurex Frankfurt AG from holding an AFS licence in relation to conduct on the market. The exemption applies only to a financial services business that is taken to be carried on in this jurisdiction by virtue of s911D(1)</i>	N/A

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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)
1.43	Licensing for offshore participants in the market operated by Chicago Mercantile Exchange Inc	[CO 04/444]	21/4/2004	s911A(2)(1) <i>This class order exempts offshore participants in the licensed market operated by Chicago Mercantile Exchange Inc from holding an AFS licence in relation to conduct on the market. The exemption applies only to a financial services business that is taken to be carried on in this jurisdiction by virtue of s911D(1)</i>	N/A
1.43	Foreign collective investment schemes	[CO 04/526]	27/5/2004	s601QA(1)(a) and 911A(2)(1) <i>This class order provides relief from some of the licensing and managed investment provisions of the Act for certain foreign collective investment schemes</i>	N/A
1.43	Licensing relief for self-dealers who provide financial product advice about own securities	[CO 03/911]	30/10/2003	s911A(2)(1) <i>This class order provides licensing relief for bodies that are entitled to the licensing exemption in s766C(4) (known as the 'self-dealing exemption') and who provide general advice to wholesale clients in an offer document about securities covered by s766C(4)</i>	N/A
1.43	Mortgage offset accounts	[CO 03/1048]	8/12/2003	s911A(2)(1) <i>The effect of this class order is that an AFS licence is not required for the provision of a mortgage offset account</i>	N/A

Report para no.	Class order title or entity name	Instrument no.	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
1.43	Licensing relief for financial counselling agencies	[CO 03/1063]	8/12/2003	<p>s911A(2)(1)</p> <p><i>This class order provides licensing relief for financial counselling agencies that may provide financial product advice in the course of providing a financial counselling service. This relief is subject to certain conditions, including requirements that:</i></p> <ul style="list-style-type: none"> • <i>no fees or charges are payable by the client for any aspect of the service;</i> • <i>a financial counsellor is appropriately trained to carry out the service; and</i> • <i>a financial counsellor is a member of, or is eligible for membership of, the relevant financial counselling association.</i> <p><i>This is also designed to facilitate the professional delivery of financial counselling services to consumers in financial difficulty</i></p>	N/A
1.43	Factoring arrangements—licensing, hawking and disclosure relief	[CO 04/239]	6/3/2004	<p>s911A(2)(1), 992B(1)(a) and 1020F(1)(a)</p> <p><i>This class order grants relief to persons who provide financial services in relation to factoring arrangements. The relief applies to a person who is or proposes to become the purchaser of debt obligations under a factoring arrangement and is conditional on that person disclosing the terms and conditions of the factoring arrangement to retail clients and on having an internal dispute resolution system that covers complaints made by retail clients</i></p>	N/A

Report para no.	Class order title or entity name	Instrument no.	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
1.43	Credit rating agencies	[CO 03/1093]	22/12/2003	s911A(2)(l) <i>This class order grants temporary licensing relief to certain credit rating agencies. This will provide time to finalise the regulatory position in the light of international developments. The relief in this class order is conditional on credit rating agencies including appropriate warnings in their rating material</i>	1/7/2005
1.43	Law societies—professional indemnity schemes and fidelity funds	[CO 03/1094]	22/12/2003	s601QA(1)(a), 911A(2)(l), 992B(1)(a) and 1020F(1)(a) <i>A number of state and territory law societies are obliged under the relevant state and territory legislation to operate various professional indemnity and fidelity funds. The relevant legislation partially regulates these funds. We granted temporary relief for these funds pending the outcome of the Federal Government’s Review of Discretionary Mutual Funds and Direct Offshore Foreign Insurers. The relief in this class order is conditional on the law societies giving warnings that these funds are not licensed under the Act. Aspects of the relief given by this class order have been given for the avoidance of doubt</i>	1/7/2005
1.43	Law societies—statutory deposit accounts and public purpose funds	[CO 03/1095]	22/12/2003	s911A(2)(l) <i>A number of state and territory law societies are obliged under the relevant state and territory legislation to operate various statutory deposit and public purpose funds. The relevant legislation partially regulates these funds. We granted temporary relief for these funds pending the outcome of the Federal Government’s Review of Discretionary Mutual Funds and Direct Offshore Foreign Insurers. This class order relief is conditional on the law societies giving warnings that these funds are not licensed under the Act</i>	1/7/2005

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)
1.43	Actuaries	[CO 03/1096]	22/12/2003	s911A(2)(1) <i>Traditional professional actuarial services have not historically required licensing under the Act and concerns have been raised that not all aspects of the ordinary business of actuaries were considered when the exemption from licensing was provided for certain professional services under reg 7.1.29. We granted temporary relief in Class Order [CO 03/1096] so that affected parties do not have to obtain an AFS licence while the details of any potential permanent exemption can be determined</i>	1/7/2005
1.43	Securitisation special purpose vehicles	[CO 03/1098]	22/12/2003	s911A(2)(1) <i>We have been working with the securitisation industry for some time regarding the application of the FSR regime to the special purpose vehicles established in the course of a securitisation transaction. We granted temporary licensing relief in Class Order [CO 03/1098] to enable final discussions with industry about the appropriateness and form of any permanent relief. This includes further consideration of the importance of ensuring that a principal (whether a licensee or not) takes responsibility for the acts of the special purpose vehicle entities</i>	30/9/2004
3.3	Perpetual Investment Management Ltd ACN 000 866 535 Perpetual's Term Deposit Fund ARSN 092 387 874	[04/236]	5/3/2004	s1020F(1)(a) <i>This instrument grants relief from s1013D(1) and 1013E in relation to interest rate disclosure in the PDS</i>	
3.4	Gresham Technology Management Ltd ACN 003 217 703 Technology Investment Fund ARSN 089 174 372	[03/702]	7/8/2003	s741(1)(a) and 1020F(1)(a) <i>This instrument grants an exemption from s1012A and 1012B in relation to provision of a PDS upon exercise of bonus options after 11 March 2004</i>	N/A

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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)
3.4	McLaughlins Financial Services Limited ACN 088 647 786 MFS Diversified Trust ARSN 104 482 206	[04/881]	13/7/2004	s1020F(1)(a) <i>This instrument grants exemptions from s1016A(2)(a), 1012A and 1012B for the issue of interests upon exercise of bonus options</i>	N/A
3.5	Westfield Management Ltd ACN 001 670 579 Westfield Trust ARSN 090 849 746 Westfield America Management Ltd ACN 072 780 619 Westfield America Trust ARSN 092 058 449	[04/550]	21/5/2004	s741(1)(b) and 1020F(1)(c) <i>This instrument exempts the responsible entities of each of Westfield Trust and Westfield America Trust from the requirement to give a PDS when an interest in each respective trust is issued upon exercise of an option over stapled securities that consist of a share in Westfield Holdings Ltd, an interest in Westfield Trust and an interest in Westfield America Trust</i>	N/A
3.6	Westfield Holdings Limited ACN 001 671 496 Westfield Management Limited ACN 001 670 579 Westfield Trust ARSN 090 849 746 Westfield America Management Limited ACN 072 780 619 Westfield America Trust ARSN 092 058 449	[04/632]	21/5/2004	s1020F(1)(a) and 1020F(1)(c) <i>This instrument provides for exemptions and modifications of Part 7.9 to facilitate the combining of a PDS with a prospectus and an explanatory statement pursuant to Part 5.1 for the purposes of an offer of stapled securities</i>	N/A

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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)
3.6	Australand Holdings Ltd ACN 008 443 696 Australand Property Limited ACN 105 462 137 Australand Property Trust Australian Wholesale Property Trust ARSN 099 698 012 Australian Wholesale Property Trust No 2 ARSN 101 660 253	[03/280]	15/9/2003	s741(1)(a) and 1020F(1)(a) <i>This instrument grants relief from disclosure requirements of Part 7.9 and Chapter 6D for the issue of stapled securities as part of a scheme of arrangement</i>	N/A
3.6	Australand Property Limited ACN 105 462 137	[03/822]	15/9/2003	s1020F(1)(a) <i>This instrument grants relief from Part 7.9 disclosure obligations for the issue of interests in a managed investment scheme and the issue of options over stapled securities as part of a scheme of arrangement</i>	N/A

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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, 3.14	AMP Capital Investors Limited ACN 001 777 591 Powers Trust ARSN 105 094 442 AMPCI Macquarie Infrastructure Management No 1 Limited ACN 108 013 672 Diversified Utility and Energy Trust No 1 ARSN 109 363 037 AMPCI Macquarie Infrastructure Management No 2 Limited ACN 108 014 062 Diversified Utility and Energy Trust No 2 ARSN 109 363 135	[04/854]	17/6/2004	s1020F(1)(a) and 1020F(1)(c) <i>This instrument grants an exemption from s1016A and modifies s1014C(c) and 1014E for an issue of interests in two registered managed investment scheme in consideration for the exchange of an interest in another registered managed investment scheme under the terms of issue of that interest</i>	N/A
3.8	CPT Manager Limited ACN 054 494 307 Prime Retail Property Trust ARSN 091 043 793	[04/983]	6/8/2004	s1020F(1)(a) <i>This instrument grants an exemption under s1020F(1)(a) from compliance with Part 7.9 for the issue of interests in a registered managed investment scheme in consideration for the acquisition of stapled securities pursuant to a scheme of arrangement</i>	N/A
3.9	Australand Holdings Ltd ACN 008 443 696 Australand Property Ltd ACN 105 462 137 Australand Property Trust	[04/821]	15/9/2003	s741(1)(b) and 1020F(1)(c) <i>This instrument grants relief from the secondary sales provisions of Part 7.9 and Chapter 6D, in particular s1012C and 707, for the resale of interests in a registered managed investment scheme and shares in a company issued under a scheme of arrangement</i>	N/A

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)
3.11	Australand Holdings Limited ACN 008 443 696 Australand Property Limited ACN 105 462 137	[04/419]	8/4/2004	s741(1)(b) and 1020F(1)(c) <i>This instrument provides secondary sales relief for stapled securities issued under a scheme of arrangement as part of an employee share scheme</i>	N/A
3.12	Australand Holdings Limited ACN 008 443 696 Australand Property Limited ACN 105 462 137 Australand Property Trust ARSN 106 680 424	[03/1082]	10/12/2003	s741(1)(b) and 1020F(1)(c) <i>This instrument grants relief from the requirement to provide a PDS and prospectus to existing holders of stapled securities whose distributions and dividend proceeds are used to acquire additional stapled securities</i>	N/A
3.16	Mercer Human Resource Consulting Pty Ltd ACN 005 315 917	[04/282]	11/3/2004	s1020F(1)(a) <i>This instrument grants conditional relief to trustees of certain superannuation funds from the obligation to give a PDS for the period 11 March 2004 to 30 June 2004 inclusive</i>	30/6/2004
3.24	Mercer Investment Nominees Limited ACN 004 717 533 and Mercer Super Trust	[04/651]	11/6/2004	s1020F(1)(a) <i>This instrument provides the trustee of a superannuation master trust with a further limited period to give a PDS to a limited class of new members of a limited number of employer sub-plans of the trust</i>	N/A
3.26	State Trustees Ltd ACN 064 593 148	[04/288]	11/3/2004	s951B(1)(a) <i>This instrument grants an exemption until 31 December 2004 from the requirement to provide an FSG for certain activities</i>	30/6/2005
3.26	Public Trustee New South Wales	[04/289]	11/3/2004	s951B(1)(a) <i>This instrument grants an exemption until 31 December 2004 from the requirement to provide an FSG for certain activities</i>	31/12/2004

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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)
3.27, 3.39	Morningstar Research Pty Ltd ACN 062 096 342	[04/395]	9/4/2004	s951B(1)(a) <i>This instrument provides exemptions from the requirement to provide an FSG for advice given to retail clients through a wholesale intermediary (until 10 March 2005), for advice provided on an internet website that is not a public forum (until 30 June 2004), and the requirement in s941C(5) to provide certain information to the recipients of advice received via a public forum (under s941C(4A)) before the advice is provided to those recipients (relief operates until 30 June 2004). The information required by s941C(5) can be provided at substantially the same time as the advice is provided</i>	10/3/2005 and 30/6/2004
3.28	KPMG Transaction Services (Australia) Pty Limited ACN 003 891 718 Deloitte Corporate Finance Pty Limited ACN 003 833 127 AMPCI Macquarie Infrastructure Management No 1 Limited ACN 108 013 672 Diversified Utility and Energy Trust No 1 ARSN 109 363 037 AMPCI Macquarie Infrastructure Management No 2 Limited ACN 108 014 062 and Diversified Utility and Energy Trust No 2 ARN 109 363 135	[04/850]	17/6/2004	s951B(1)(c) <i>This instrument grants relief to facilitate the combining of an FSG and a PDS where the FSG is given by an expert as part of an expert's report that is included in the PDS</i>	N/A

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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)
3.28	Grant Samuel & Associates Pty Ltd ACN 050 036 372 Westfield Management Limited ACN 001 670 579 Westfield Trust ARSN 090 849 746 Westfield America Management Limited ACN 072 780 619 Westfield America Trust ARSN 092 058 449	[04/636]	26/5/2004	s951B(1)(c) <i>This instrument permits an FSG and a PDS to be combined where the FSG is included in an expert's report in the PDS</i>	N/A
3.29	Grant Samuel & Associates Pty Ltd ACN 050 036 372 Prime Property Management Limited ACN 078 590 682 CPT Manager Limited ACN 054 494 307 Prime Retail Property Trust ARSN 091 043 793	[04/1008]	6/8/2004	s951B(1)(a) and 951B(1)(c) <i>This instrument grants relief to allow an FSG to be included in an expert's report in an explanatory memorandum for the purposes of a scheme of arrangement</i>	N/A
3.30	Commonwealth Bank of Australia ACN 123 123 124 Commonwealth Securities Limited ACN 067 254 399 ASX Perpetual Registers Limited ACN 083 214 537	[04/537]	20/5/2004	s 951B(1)(c) and 1020F(1)(c) <i>This instrument grants relief from aspects of the FSG provisions in Part 7.7 and the unsolicited offers provisions in Division 5A of Part 7.9 for the provision of a share sale facility and a share purchase plan</i>	N/A

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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)
3.32	Westpac Banking Corporation ACN 007 457 141	[04/501]	7/5/2004	s257D(4) and 951B(1)(a) <i>This instrument provides relief from compliance with s257D and 941A for a share buy-back tender</i>	N/A
3.32	Commonwealth Bank of Australia Limited ACN 123 123 124	[04/1057]	16/2/2004	s257D(4) and 951B(1)(a) <i>This instrument provides relief from compliance with s257D and 941A for a share buy-back tender</i>	N/A
3.33	Macquarie Bank Limited ACN 058 583 542	[04/511]	14/5/2004	s951B(1)(a) <i>This instrument grants an exemption from Part 7.7 where financial services are provided in relation to interests in a managed investment scheme that are issued in consideration for the sale of agricultural produce</i>	N/A
3.34	BT Portfolio Services Ltd ACN 095 055 208	[04/513]	14/5/2004	s951B(1)(a) <i>This instrument provides an interim exemption from the requirement to include certain information in an FSG relating to the licensee's authorisation to deal in and provide financial product advice on managed investment warrants</i>	14/11/2004
3.34	BT Securities Ltd ACN 000 720 114	[04/514]	14/5/2004	s951B(1)(a) <i>This instrument provides an interim exemption from the requirement to include certain information in an FSG relating to the licensee's authorisation to deal in and provide financial product advice on managed investment warrants</i>	14/11/2004
3.34	Westpac Securities Ltd ACN 087 924 221	[04/515]	14/5/2004	s951B(1)(a) <i>This instrument provides an interim exemption from the requirement to include certain information in an FSG relating to the licensee's authorisation to deal in and provide financial product advice on managed investment warrants</i>	14/11/2004

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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)
3.41	Perpetual Trustees Australia Limited ACN 000 431 827 Perpetual Wholesale Monthly Income Fund ARSN 093 211 682	[04/583]	31/5/2004	s205G(6) <i>This instrument grants relief from s205G requirements to notify the ASX that a director holds certain interests</i>	N/A
3.41	Westpac Banking Corporation ACN 007 457 141	[04/671]	23/6/2004	s205G(6) <i>This instrument grants relief from s205G requirements to notify the ASX that a director holds certain interests</i>	N/A
3.47	ING Custodians Pty Limited ACN 008 508 496	[04/440]	20/4/2004	s1020F(1)(a) <i>This instrument provides conditional relief from reporting earnings rates from a periodic statement given for a reporting period ending on or before 31 August 2004</i>	31/8/2004
3.47	ANZ Managed Investments Limited ACN 004 392 269	[04/438]	20/4/2004	s1020F(1)(a) <i>This instrument provides conditional relief from reporting earnings rates from a periodic statement given for a reporting period ending on or before 31 August 2004</i>	31/8/2004
3.47	Perpetual Investment Management Ltd ACN 000 866 535 Perpetual's Term Deposit Fund ARSN 092 387 874	[04/236]	5/3/2004	s1020F(1)(a) <i>This instrument grants relief from s1013D(1) and 1013E in relation to interest rate disclosure in the PDS</i>	31/8/2004

Report para no.	Class order title or entity name	Instrument no.	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
3.48	Further relief for joint product disclosure statements	[CO 03/1092]	22/12/2003	<p>s1020F(1)(a)</p> <p><i>This class order permits two or more product issuers to prepare a joint PDS. The relief is conditional on clients being informed:</i></p> <ul style="list-style-type: none"> • <i>that the PDS covers two or more separate financial products;</i> • <i>of the identity of the issuer of each financial product it covers;</i> • <i>that each issuer takes full responsibility for the whole PDS;</i> • <i>which external dispute resolution schemes are able to deal with complaints relating to the products covered by the PDS; and</i> • <i>how they may exercise their cooling off rights (if any).</i> <p><i>This class order also revokes [CO 03/876] from 1 January 2006</i></p>	
3.48	ASX managed investment warrants— disclosure and reporting exemptions	[CO 03/957]	6/11/2003	<p>s111AT(1) and 1020F(1)</p> <p><i>This class order exempts all issuers of ASX traded instalment warrants over managed investment products from certain PDS content and procedural requirements under Part 7.9 that would otherwise apply because of the characterisation of the warrants as ‘managed investment products’. This also clarifies that where the managed investment warrant might be characterised as an ‘enhanced disclosure’ security, warrant issuers are exempt from the Chapter 2M reporting and Chapter 6CA continuous disclosure requirements but are subject to the continuous disclosure requirements under Part 7.9</i></p>	N/A

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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)
3.48	Relief from s912F requirement to cite licence numbers on prescribed documents	[CO 04/103]	10/2/2004	s1445(1) <i>This class order provides relief to AFS licensees from the requirement to cite their AFS licence number on a PDS where that document was printed and made available for distribution before the date the licence was granted to the financial services licensee and this date was before 11 March 2004</i>	1/10/2004
3.48	CHESS Depository Nominees Pty Ltd ACN 071 346 506	[CO 04/291]	11/3/2004	s951B(1)(a) and 951B(1)(c) <i>This provides CHESS Depository Nominees Pty Ltd ACN 071 346 506 (CDN) with an extension until 11 June 2004 to comply with Part 7.7. From 11 June 2004, the class order modifies s940C(1)(a) to permit CDN to provide an FSG or a supplementary FSG to CHESS Depository Interest clients by making it available on the internet</i>	11/6/2004
3.48	Statement of Advice relief for certain products able to be traded on an approved foreign market	[CO 04/10]	20/1/2004	s951B(1)(c) <i>This class order extends the existing exemption from the need to provide an SOA in s946B for certain products able to be traded on an approved foreign market</i>	N/A
3.48	Statements of additional advice	[CO 04/576]	20/7/2004	s951B(1)(c) <i>This class order provides relief to permit SOAs to 'incorporate by reference' certain information that the client has already received in a previous SOA</i>	N/A
4.2	Abacus Funds Management Limited ACN 007 415 590 Abacus Property Services Pty Limited ACN 050 739 001 Royal Domain Plaza Pty Limited ACN 006 166 034	[04/483]	5/5/2004	s601QA(1)(a) <i>This instrument grants an exemption from the requirement to register a managed investment scheme where offers of renounceable property sales contracts are made</i>	N/A

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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)
4.6	Perpetual Trustee Company Limited ACN 000 001 007 AGP Management Limited ACN 081 075 505	[04/679]	23/6/2004	s601QA(1)(a) and 911A(2)(l) <i>This instrument grants relief from the requirement to register a managed investment scheme and licensing relief for the winding up of a trust. It varies ASIC Instrument [03/520]</i>	31/12/2005
4.8	Grain Pool Pty Ltd ACN 089 394 883 Agracorp Pty Ltd ACN 008 668 326	[04/859]	8/7/2004	s601QA(1)(a), 911A(2)(I), 992B(1)(a) and 1020F(1)(a) <i>This instrument grants exemptions from the requirement to register a managed investment scheme, the requirement to hold an AFS licence, the prohibitions on hawking of financial products and interests in managed investment schemes and Part 7.9 for the operation of grain pools</i>	N/A
4.8	GrainCorp Operations Ltd ACN 003 875 401 GrainCorp Wheat Pools Pty Ltd ACN 095 759 890 GrainCorp Barley Pool Pty Ltd ACN 106 600 006	[04/660]	18/6/2004	s601QA(1)(a), 911A(2)(I), 992B(1)(a) and 1020F(1)(a) <i>This instrument grants exemptions from the requirement to register a managed investment scheme, the requirement to hold an AFS licence, the prohibitions on hawking of financial products and interests in managed investment schemes and Part 7.9 for the operation of grain pools</i>	N/A
4.9	Acumen Capital Securities Limited ACN 103 736 081 Acumen Capital Property Securities Fund ARSN 103 341 988	[04/455]	21/4/2004	s601QA(1)(a) and 601QA(1)(b) <i>This instrument modifies Class Order [CO 98/52] in its application to a rights issue in the following ways:</i> <ul style="list-style-type: none"> • <i>allowing the responsible entity to issue interests offered to, but not acquired by, scheme members to bona fide underwriters (who are not associates of the responsible entity) or to members of the public;</i> • <i>providing that the responsible entity need not offer interests in a non-renounceable rights issue to members located outside Australia and New Zealand if the responsible entity reasonably considers that it would not be practical to do so</i> 	N/A

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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)
4.9, 4.14	Macquarie DDR Management Ltd ACN 101 743 926 Macquarie DDR Trust ARSN 106 570 352	[04/447]	20/4/2004	s601QA(1)(a) and 601QA(1)(b) <i>This instrument modifies the relief afforded by Class Order [CO 98/52] in its application to a rights issue in the following manner:</i> <ul style="list-style-type: none"> • allowing the responsible entity not to offer interests to foreign members in a non-renounceable rights issue; • allowing the responsible entity to give retail clients a longer period to consider the offer than wholesale clients; and • allowing interests offered to but not acquired by scheme members to be subsequently issued to underwriters and members of the public 	N/A
4.9, 4.14	Australand Property Limited ACN 105 462 137 Australand Holdings Limited ACN 008 443 696 Australand Property Trust ARSN 106 680 424	[04/564]	28/5/2004	s601QA(1)(a) and 601QA(1)(b) <i>This instrument grants relief to allow interests offered to members in a pro rata issue that are not taken up by the offerees to be issued to other existing members, third parties and underwriters. The instrument also grants an exemption from s601FC(1)(d) to allow a shorter timeframe in which institutional investors can take up the offer than is afforded to retail investors</i>	N/A
4.12	Prime brokerage services: relief from obligation to hold scheme property separately	[CO 03/1111]	16/12/2003	s601QA(1)(a) and 601QA(1)(b) <i>This class order grants a responsible entity relief from the obligation to hold scheme property separately where the property consists of money and an Australian ADI holds the property as custodian under a prime brokerage agreement</i>	N/A

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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)
4.13	Commonwealth Managed Investments Limited ACN 084 098 180 PERLS II Trust ARSN 107 133 488	[03/1072]	2/12/2003	s601QA(1)(a) <i>This instrument grants an exemption from the requirement in s601FC(1)(d) to treat all scheme members who hold interests of the same class equally</i>	N/A
4.15	AMP Capital Investors Limited ACN 001 777 591 Powers Trust ARSN 105 094 442	[04/852]	17/6/2004	s601QA(1)(a) <i>This instrument exempts the responsible entity from s601FC(1)(d) so that it is not required to extend a pro rata offer of interests to foreign members</i>	N/A
4.15	Challenger Financial Services Group ARSN 091 545 185 CPH Management Limited ACN 080 207 496 CPH Investments Management Pty Ltd ACN 092 008 172	[03/993]	7/11/2003	s601QA(1)(a), 655A(1)(b) and 741(1)(a) <i>This instrument exempts the responsible entity from s601FC(1)(d) so that it is not required to extend a pro rata offer of interests to foreign members and grants relief from certain provisions of Chapters 6 and 6D</i>	N/A
4.20	AMP Henderson Global Investors Limited ACN 001 777 591 AMP Shopping Centre Trust ARSN 087 393 397 Westfield Management Limited ACN 001 670 579 Westfield Trust ARSN 090 849 746 Parliv Pty Limited ACN 052 002 558	[03/689]	4/8/2003	s601QA(1)(b) <i>This instrument modifies s601FL so that the responsible entity can retire and be replaced without a meeting of members being held</i>	N/A

Report para no.	Class order title or entity name	Instrument no.	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
4.21	Australand Wholesale Investments Limited ACN 086 673 092	[03/1072]	19/12/2003	s601QA(1)(b) <i>This instrument modifies s601FL so that the responsible entity can retire and be replaced without a meeting of members being held</i>	N/A
4.22	Deutsche Asset Management (Australia) Limited ACN 076 098 596 Gordon Property Investment Trust ARSN 092 631 297 Northgate Property Investment Trust ARSN 092 632 329 Abbotsford Property Investment Trust ARSN 092 632 721 Gordon Property Trust ARSN 092 632 052 Northgate Property Trust ARSN 092 632 481 Abbotsford Property Trust ARSN 092 632 883 DB RREEF Funds Management Limited ACN 060 920 783	[04/970]	4/8/2004	s601QA(1)(b) <i>This instrument modifies s601FL so that the responsible entity can retire and be replaced without a meeting of members being held</i>	N/A

Report para no.	Class order title or entity name	Instrument no.	Date executed	Power exercised and nature of relief	Expiry date (if applicable)
4.24	NRMA Financial Management Limited ACN 067 544 549 Australian Equity Fund ARSN 099 180 408 Insurance Australia Group Limited ACN 090 739 923 MBF Management Pty Limited ACN 107 325 388 IAG Asset Management Limited ACN 054 552 046	[04/41]	20/1/2004	s601QA(1)(a) <i>This instrument provides relief from the prohibition in s601FC(4) on investing scheme property in schemes that are unregistered, until we determine the application by the new promoter of the unregistered scheme for a licence authorisation to operate a registered scheme</i>	See instrument
4.26	Property Funds Australia Limited ACN 078 199 569 Property Funds Australia Diversified Property Trust ARSN 097 860 690	[03/975]	31/10/2003	s601QA(1)(a) <i>This instrument exempts the responsible entity from the obligation to seek scheme member approval for the provision of benefits to related parties</i>	N/A
4.28	Arc Funds Management Limited ACN 082 747 797 Brand Smart Riverbank Property Syndicate ARSN 108 482 837	[04/866]	8/6/2004	s601QA(1)(b) <i>This instrument modifies provisions of Chapter 5C to allow the responsible entity to offer the initial member the opportunity to wholly withdraw from the scheme by selling its interests to the responsible entity without making a withdrawal offer to other scheme members</i>	N/A

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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)
4.29	AMPCI Macquarie Infrastructure Management No 1 Limited ACN 108 013 672 Diversified Utility and Energy Trust No 1 ARSN 109 363 037 AMPCI Macquarie Infrastructure Management No 2 Limited ACN 108 014 062 Diversified Utility and Energy Trust No 2 ARSN 109 363 135	[04/851]	17/6/2004	s601QA(1)(b) <i>This instrument grants relief from Part 5C.6 in relation to the redemption of interests in the schemes specified in the instrument</i>	N/A
4.31	Gresham Technology Management Ltd ACN 003 217 703 Technology Investment Fund ARSN 089 174 372	[04/478]	30/4/2004	s601QA(1)(b) <i>This instrument modifies s601GA so that the responsible entity can facilitate the withdrawal of members' interests from the scheme through an on-market buy-back</i>	N/A
4.33	Management rights schemes— amendment	[CO 04/739]	6/7/2004	s601QA(1)(a), 911A(2)(l) and 992B(1)(a) <i>This class order amends Class Order [CO 02/0305] to allow operators of management rights schemes to require payments into furniture funds to be held in trust for investors. Relief only applies where certain conditions are met, including:</i> <ul style="list-style-type: none"> • <i>payments into each investor's fund cannot exceed 3% of gross scheme revenue attributable to the investor;</i> • <i>the balance of each investor's fund cannot exceed \$5000 for each strata unit made available by the investor for use in the scheme; and</i> • <i>each investor's fund must be audited annually</i> 	N/A

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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)
4.34	Kiwi Income Property Trust Kiwi Income Properties Limited New Zealand Permanent Trustees Limited New Zealand Guardian Trust Company Limited	[04/863]	25/6/2004	s340(1) and 601QA(1) <i>This instrument varies ASIC Instrument [03/1155] to extend the operative period of the relief granted therein</i>	31/12/2004
4.38	Coverforce Pty Ltd ACN 067 079 261 U-PLUS Industry Insurance Trust	[04/913]	22/7/2004	s601QA(1)(a) <i>This instrument grants an exemption from the requirement to register a mutual discretionary fund as a registered managed investment scheme</i>	1/7/2005
5.2	Coles Myer Limited ACN 004 089 936 Computershare Investor Services Pty Ltd ACN 078 279 277 UBS Securities Australia Limited ACN 008 586 481	[04/0396]	10/3/2004	s1020F(1)(a) <i>This instrument grants an exemption from s1019F so that a share sale facility can be offered to holders of ordinary shares in Coles Myer Limited</i>	N/A
5.5	American Express International Inc ARBN 000 618 208	[03/1154]	24/12/2003	s601CK(7) and 992B(1)(a) <i>This instrument provides interim conditional relief from the financial reporting requirements of s601CK and 989B for financial years ending before 30 June 2006</i>	30/6/2006
5.11	Insurance brokers' trust accounts	[CO 04/673]	21/6/2004	s992B(1)(c) <i>This class order provides relief to insurance brokers to allow the deposit of monies into s981B accounts that the broker reasonably believes may comprise, in whole or in part, monies to which s981(1)(b)(i) to (v) apply</i>	N/A

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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)
5.11	Prime brokerage services: relief from obligation to hold client property on trust	[CO 03/1110]	16/12/2003	s992B(1)(a) <i>This class order exempts an AFS licensee who is an Australian ADI from the obligation to hold a client's property on trust where the property consists of securities, the licensee holds the securities under a prime brokerage agreement, the client is a wholesale client and the licensee and client agree in writing</i>	N/A
5.11	Agency banking	Class Order [CO 04/909]	19/7/2004	s926A(2)(c) <i>This class order grants relief to deem as a representative under s910A any person engaged under a written agreement by an Australian ADI to provide the financial service of arranging for the issue of a basic deposit product by the ADI</i>	N/A
5.11	Market related records: AFS licensees dealing on overseas markets	[CO 03/0826]	26/9/2003	s992B(1)(a) <i>This class order exempts AFS licensees that are dealing with wholesale clients who are in Australia for instructions, in relation to a dealing on a financial market that is not operating in Australia, from the requirement to keep certain records of the transactions as required under reg 7.8.19</i>	N/A

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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)
6.3	Goldman Sachs JBWere Pty Ltd ACN 006 797 897 Goldman Sachs JBWere Futures Pty Ltd ACN 006 862 808 Goldman Sachs JBWere Group Holdings Pty Ltd ACN 006 163 524 JBWere Group Holdings Pty Ltd ACN 006 163 524 Goldman Sachs JBWere Services Pty Ltd ACN 004 595 448	[04/287]	10/3/2004	s926A(2)(b) <i>This instrument modifies provisions of Part 7.6 so that employees of Goldman Sachs JBWere Pty Ltd can be the representatives of the companies that are the subject of this instrument</i>	N/A
6.6	Westfield Holdings Ltd ACN 001 671 496 Amond Pty Ltd ACN 087 465 763 Westfield Management Ltd ACN 001 670 579 Westfield Trust ARSN 090 849 746 Westfield America Management Ltd ACN 072 780 619 Westfield America Trust ARSN 092 058 449	[04/548]	21/5/2004	s741(1)(a), 911A(2)(l), 992B(1)(a) and 1020F(1)(a) <i>This instrument grants disclosure, licensing and hawking relief for the amendment of options over shares in Westfield Holdings Ltd and the subsequent issue of stapled securities pursuant to those options under the Westfield Executive Performance Share Plan and the Westfield Executive Option Plan</i>	N/A

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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)
6.6	Virgin Blue Holdings Limited ACN 100 686 226	[03/991]	7/11/2003	s283GA(1)(a), 741(1)(a), 911A(2)(l), 992B(1)(a) and 1020F(1)(a) <i>This instrument grants relief based on the Second and Fourth Exemptions of Class Order [CO 03/184] for a contribution plan and key employee performance plan</i>	N/A
6.6	Australand Holdings Limited ACN 008 443 696 Australand Property Limited ACN 105 462 137	[04/419]	8/4/2004	s741(1)(a), 911A(2)(l), 992B(1)(a) and 1020F(1)(a) <i>This instrument grants relief based on Class Order [CO 03/184] for the offer of stapled securities in an employee share scheme</i>	N/A
6.6	Australian Stock Exchange Limited ACN 008 624 691	[04/249]	9/3/2004	s601QA(1)(a), 741(1)(a), 911A(2)(l), 992B(1)(a) and 1020F(1)(a) <i>This instrument grants relief from the licensing, disclosure and anti-hawking provisions of the Act for an employee share scheme on a basis similar to that set out in Class Order [CO 03/184]</i>	N/A
6.6	Woolworths Limited ACN 000 014 675 Woolworths Custodian Pty Limited ACN 002 940 445.	[04/263]	10/3/2004	s741(1)(a), 911A(2)(l), 992B(1)(a) and 1020F(1)(a) <i>This instrument grants relief substantially in the terms of Class Order [CO 03/184] but provides that the number of shares on offer in relation to the employee share schemes must not exceed 5.55% of the total number of shares in that class as at the time of the offer. It also provides custodial relief for past offers</i>	N/A
6.7	AWB Limited ACN 081 890 459 AWB Custodians Pty Ltd ACN 066 361 653	[04/0528]	25/11/2003	s283GA(1)(a), 601QA(1)(a), 741(1)(a), 911A(2)(l), 992B(1)(a) and 1020F(1)(a) <i>This instrument grants relief substantially in the terms of Class Order [CO 03/184] but allows the worked example of the share price formula to be applied up to 14 days before the offer ends</i>	N/A

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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)
6.18	Uniting Growth Fund Limited ACN 102 469 821	[03/1066]	10/12/2003	s283GA(1)(a), 601QA(1)(a), 741(1)(a), 911A(2)(l), 992B(1)(a), 1020F(1)(a) and 1020F(1)(c) <i>This instrument grants conditional relief from the fundraising, managed investment, licensing and disclosure provisions of the Act</i>	N/A
6.19	Managed discretionary accounts	[CO 04/194]	11/3/2004	s601QA(1)(a), 741(1)(a), 951B(1)(a), 1020F(1)(a) and 1020F(1)(c) <i>This class order provides conditional relief from the managed investment and disclosure provisions of the Act for certain managed discretionary accounts operated by AFS licensees. The class order relief applies to operators, custodians and other persons involved in operation of or offerings of the managed discretionary accounts. The class order also provides conditional disclosure relief to persons providing financial services or issuing financial products to clients of the managed discretionary account</i>	11/12/2004
6.19	Wholly-owned subsidiaries of professional investors to be treated as wholesale clients	[CO 04/150]	23/2/2004	s926A(2), 951B(1), 992B(1) and 1020F(1) <i>This class order causes wholly owned subsidiaries of professional investors to be treated as wholesale clients for the purposes of Parts 7.6 (other than Divisions 4 & 8), 7.7, 7.9 and s992A and 992AA.</i>	31/12/2005
6.19	Qualified accountant—amendment	[CO 04/173]	2/3/2004	s88B(2) <i>This class order varies Class Order [CO 01/1256] to allow certain overseas professional accounting associations to be an 'eligible professional body'</i>	N/A

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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)
6.19	Sydney Futures Exchange— extension of the definition of 'member' of a futures organisation	[CO 03/965]	12/11/2003	s1437(2)(b) <i>This class order modifies s56 and 1148 of the old Corporations Act so that in relevant provisions of Parts 8.3, 8.4, 8.5 and 8.7 a reference to a 'member' of a futures organisation includes a participant of the Sydney Futures Exchange (SFE) that is not a member of the SFE</i>	N/A
6.19	Application of the old Corporations Act to participants of Sydney Futures Exchange	[CO 03/966]	12/11/2003	s1445(1) <i>This class order determines that Part 8.6 of the Old Corporations Act applies to persons who are participants (but not members) of the SFE as if they were members of the SFE</i>	N/A