ASIC
Australian Securities & Investments Commission

REPORT 142

Overview of decisions on relief applications (April to July 2008)

October 2008

About this report

This report outlines our decisions on relief applications during the period 1 April 2008 to 31 July 2008. It summarises situations where we have exercised, or refused to exercise, our exemption and modification powers from the financial reporting, managed investment, takeovers, fundraising or financial services provisions of the *Corporations Act 2001*.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Disclaimer

This report does not constitute legal, financial or other professional advice. We encourage you to seek your own professional advice, including to find out how the Corporations Act and other applicable laws apply to you. It is your responsibility to determine your obligations and to obtain any necessary professional advice.

Contents

Overview

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

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 Corporations Act.

The report covers the period beginning 1 April 2008 and ending 31 July 2008. During this period we considered 1172 applications. We granted relief in relation to 863 applications and refused relief in relation to 154 applications—155 applications were withdrawn.

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

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

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

Applications for relief must be in writing and should address the requirements set out in Regulatory Guide 51 *Applications for relief* (RG 51). Relief applications can be submitted electronically to applications@asic.gov.au. More information on applying for relief is available at www.asic.gov.au/fsrrelief and www.asic.gov.au/cfrelief.

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

A Licensing relief

Key points

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

Employee share scheme: Units over stapled securities

1 We granted relief from the requirement to hold an AFS licence to an issuer in relation to an employee share scheme under which eligible employees would be offered stapled securities up to a specified value, with the number of stapled securities to be issued determined by using the market value in 12 months time. At the end of the 12-month period, the issuer would cause a related party trustee to acquire the number of stapled securities corresponding to that specified value, which the trustee would hold on behalf of the eligible employee. The issuer could not rely on Class Order (CO 03/184) *Employee share schemes*, as the definition of 'eligible offer' does not contemplate an offer for issue or sale of units of fully-paid stapled securities. In granting relief, we noted that CO 03/184 allows for 'units of fully-paid shares' and that previous relief provided for offers for issue or sale of options over stapled securities.

Self-dealing exception: Members' pre-emptive rights process

2 We refused to grant relief from the requirement to hold an AFS licence in relation to the facilitation of members' rights to transfer shares and options. Under the applicant's constitution, members are afforded pre-emptive rights so that members wishing the sell their shares or options must first offer these shares or options to 'eligible participants' before they can be sold to other parties. The applicant was concerned that in facilitating the pre-emptive rights process it was dealing in a financial product and would require an AFS licence. We refused to grant relief as we were of the opinion that the applicant could rely on the self-dealing exception contained in s766C(4) even though it was not acting as principal in the transaction. This was because the applicant was nonetheless 'dealing' in its own securities by 'arranging' the pre-emptive rights process.

Exemption for compulsory transfer of interests

3 We granted relief from the requirement to hold an AFS licence to an issuer of interests in a managed investment scheme where a small number of Australian investors would have their interests in another scheme compulsorily transferred into this scheme. We decided relief was appropriate because:

- the interests in the other scheme were of small value;
- the Australian investors would have no opportunity to make further contributions and the scheme would be closed to other Australians;
- there was also an alternative regulatory regime in place; and
- the relief was within the policy parameters in Regulatory Guide 167 *Licensing: Discretionary powers* (RG 167) and would provide a real commercial benefit.

Non-traditional rights issue

4 We received an application for an exemption from the requirement to hold an AFS licence in relation to a non-traditional rights issue made in reliance on Class Order 08/35 (CO 08/35) *Disclosure relief for rights issues*. The applicant was concerned that it would be required to hold an AFS licence as an unintended consequence of reliance on the disclosure relief in CO 08/35 because Class Order 03/606 *Financial product advice— exempt document* only provides relief where a prospectus is lodged with ASIC. We did not consider that relief was necessary because the applicant was a financial product issuer under s761E(4) and could rely on reg 7.1.33H. The application was withdrawn.

Management rights scheme

5 We refused to grant relief to an AFS licensee proposing a resort development consisting of multiple cabins, which would be managed by a subsidiary of the licensee (the operator). The operator would be responsible for:

- renting out the cabins as the letting agent on behalf of each purchaser; and
- providing management services for the cabins and common property.

The applicant sought relief on the terms provided for in Pro Forma 187 *Management rights schemes where strata unit cannot be used as a residence* (PF 187). In applying for the relief, the AFS licensee was concerned that the operator may be required to hold an AFS licence in order to issue interests in such a scheme. However, in seeking relief, the AFS licensee sought to vary PF 187 by deleting paragraph 4(c), which imposes a condition that members

must be able to withdraw from the scheme and appoint their own letting agent to manage their strata unit. The licensee sought this amendment as the conditions attaching to the resort development consent (granted to the licensee by a state government) made it mandatory that the licensee and owners of the cabins use a single manager. We refused relief because we considered paragraph 4(c) to be fundamental in providing sufficient protection for investors. In the absence of such a condition it would not be commercially practicable for members to withdraw from the scheme. We also considered that compliance with the Corporations Act would not be disproportionately burdensome given the large size of the scheme (250 units). The type of relief sought by the applicant is usually granted to small schemes where the managed investment, AFS licensing and hawking requirements would impose an unreasonable burden.

Advice on master group insurance policies

6 We granted licensing relief (for the avoidance of doubt) to a not-for-profit industry association for the provision of general advice in relation to a master group insurance policy it had organised through a broker for its members to help the members meet their compensation arrangement requirements under s912B. We granted relief on the basis that the provision of advice about the policy was incidental to the applicant's role as an industry association and no remuneration would be paid to members or employees of the industry association as an incentive to recommend the product. Rather, remuneration for advice allowed the industry association to direct the funds towards training and other costs associated with the facilitation of the policy and towards improving activities and support for members.

Foreign financial services providers: Custodians

7 We granted relief under s911A(2)(l) from the requirement to hold an AFS licence to a foreign financial services provider (FFSP) for the provision of custodial and depository services to foreign companies that offer employee share schemes to their Australian employees. The services were essentially backroom services of the type that Australian custodians provide on behalf of Australian companies that offer employee share schemes. The FFSP could not rely on CO 03/184 because it was not an associate of the issuer and requested relief on terms incorporating similar protections to those imposed on custodians in CO 03/184. In granting relief, we took particular note of the reputation of the jurisdiction in which the FFSP operated, the application of a prudential regulation regime in that jurisdiction and the limited circumstances in which the relief was requested.

Escrow arrangement offered in connection with scrip alternative under scheme of arrangement

8 We refused to grant relief from the requirement to hold an AFS licence in order to offer an 'escrow arrangement' as part of a proposal to delist a stapled entity. The proposal was to be put to members via scheme of arrangement under which members were offered cash or scrip consideration. Members selecting the scrip alternative were to direct a portion of their consideration to be held by the 'escrow trustee' in cash in an 'escrow account'. The member was to receive a 'reasonable' rate of interest on that amount and direct the escrow trustee to pay amounts from the trust accounts to the scheme proponent upon request (at which time the member would receive a pay out in the form of securities). We considered that providing licensing relief to deal in a financial product in relation to the escrow arrangement was inconsistent with the policy parameters in RG 167.3C. Specifically, we considered that:

- the extent of potential consumer detriment was not minimal;
- strict compliance with the licensing regime was not impossible or disproportionately burdensome;
- if relief were granted, the investors would not have all the protections intended by Parliament as if the applicant were licensed;
- the escrow arrangement was not subject to adequate alternative regulation;
- a reasonable person would think the predominant purpose of the escrow arrangement was a 'financial product purpose'; and
- the escrow arrangement was provided to retail clients.

Employee share scheme relief for newly listed NSX company

9 We granted relief from the requirement to hold an AFS licence to an issuer in relation to an employee share scheme under which eligible employees would be offered options to acquire shares, subject to various vesting and exercise conditions. The applicant could not rely on CO 03/184 because its shares are not quoted on the Australian Securities Exchange (ASX) or an approved foreign market, but rather the National Stock Exchange of Australia (NSX). The applicant also did not satisfy the condition that it be continuously quoted for a period of 12 months without suspension for a total of two days in that period because it had only recently been admitted to quotation. In granting relief, we took particular note of the fact that prior to listing on the NSX the applicant had traded on its owned licensed market for several years such that the applicant had sufficient trading history to establish a verifiable market price.

Appointment of authorised representative in relation to risk insurance products

10 We granted relief to permit the appointment of an AFS licensee as an authorised representative. The applicant sought relief to appoint an AFS licensee who acts under a binder or written agreement as an authorised representative to provide general advice and dealing services in relation to risk insurance products on its behalf. The relief applies in circumstances where the AFS licensee appointed as authorised representative does not hold any authorisation in relation to the risk insurance products under its AFS licence.

Media release and class orders

11 The following release and class orders relate to licensing relief granted during the period of this report.

Media release

MR 08-152 *Australia and Hong Kong sign deal to allow cross-border marketing of retail funds* (7 July 2008)

Class orders

CO 08/276 *Variation of Class Order (05/1230)*

CO 08/385 *Variation of Class Orders (03/1094) and (03/1095)*

CO 08/405 *Variation of Class Order (07/74)*

CO 08/506 *Hong Kong collective investment schemes*

B Disclosure relief

Key points

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

Prospectus relief

Employee share scheme: Units over stapled securities

12 In the matter referred to in paragraph 1, we also granted relief from the need to provide a prospectus for the offer of the securities under the employee share scheme.

Disclosure relief for share purchase plan

13 We refused to grant disclosure relief on terms similar to relief provided under Class Order (CO 02/831) *Share purchase plans* to a company listed on the NSX that proposed to offer securities under a share purchase plan. The company could not rely on CO 02/831 as Schedule A of CO 02/831 specifically limits relief to companies listed on the ASX. We have previously granted relief on similar terms to CO 02/831 to companies listed on the NSX in circumstances where the company has a history of trading and disclosure that indicates the establishment of a reliable market price for the securities in question. We were not satisfied in the circumstances that the company had such a history as the company had been listed for five months and its securities had been thinly traded during that time.

Mutual recognition of New Zealand securities offering

14 We granted relief to a New Zealand company that sought relief on similar terms to those in Ch 8 with respect to New Zealand offer documents. Chapter 8 was made effective on 21 December 2007 and provides for the mutual recognition of securities offers (‘recognised offers’) made in accordance with the laws of a foreign country prescribed by the Regulations as a recognised jurisdiction. Chapter 8 provides, among other things, that Ch 6D (other than s736 and 738) does not apply in relation to a recognised offer, an offeror of a recognised offer or any offer document for the recognised offer. Although the regulations to Ch 8 were not finalised as at

the date of receipt of the relief application, we granted relief because the explanatory material to the draft Corporations Amendment (NZ Closer Economic Relations) Bill clearly indicated the intention that New Zealand be prescribed by the Regulations as a 'recognised jurisdiction'. We granted relief after the New Zealand company confirmed that its proposed offer was within the ambit of the notion of a recognised offer under Ch 8 and that the offer would be restricted to employees under an employee share scheme.

De-merger of partially owned entity

15 We refused to grant relief from the prospectus disclosure requirements and on-sale provisions in relation to a de-merger of a foreign listed entity that was partially owned by an Australian listed entity. The de-merger was to occur by way of a capital reduction and in-specie distribution. As part of the de-merger, certain assets of the Australian entity were to be divested to the foreign entity. After the de-merger the foreign entity was to be dual-listed with a primary listing overseas and a secondary listing in Australia. We considered that disclosure relief was outside the policy parameters in Regulatory Guide 188 *Disclosure in reconstructions* (RG 188). We were not satisfied that there was no change to the overall investment of members of the Australian entity or that there was no change to the underlying business or assets in that:

- the overall investment of the Australian entity's members would have changed as they would no longer have held the same proportional interest in the assets to be divested after the de-merger; and
- the Australian entity would have used carried forward tax losses to offset capital gains tax liabilities resulting from the divestment of assets. This would have diminished the entity's potential non-current assets.

We also refused to grant the on-sale relief, as this was unnecessary after we had refused the disclosure relief.

Transaction-specific prospectus

16 We granted relief modifying s713 and the definition of 'underlying securities' in s9 to enable the applicant to use a transaction-specific prospectus for an offer of convertible securities. The applicant also sought relief in circumstances where it may have interposed a new holding entity by way of a Part 5.1 scheme of arrangement. We granted relief in relation to convertible securities convertible into continuously quoted securities of the body, or securities of a new holding company of the company, that may be interposed in the future under a Pt 5.1 scheme of arrangement.

Historical geologist report consent

17 We granted relief from the expert consent requirement in s716(2) in circumstances where Class Order (CO07/428) *Consent to quote: Citing credit ratings, trading data and geological reports in disclosure documents and PDS* does not apply. Where a current geological report to a disclosure document includes references to historical geological reports, relief from s716(2), subject to certain conditions being met, is given by CO 07/428 so that the consent of the person who prepared the historical report is not required. CO 07/428 is drafted in such a way that the authors of both the historical geological report and the current geological report must be members of the Australian Institute of Mining and Metallurgy or the Australian Institute of Geoscientists and have five years relevant experience. The applicant could not avail itself of the relief in CO 07/428 because it could not ascertain who the authors were in relation to the historical reports and hence it could not confirm whether these authors had the required membership and experience.

We granted relief having regard to:

- a statement by the current independent geologist addressing the criteria in Regulatory Guide 55 *Disclosure documents and PDS: consent to quote* (RG 55) at RG 55.64, in particular paragraph (g), which relates to the maker of the statement being 'credible or authoritative on the subject matter'; and
- an ASX waiver from ASX Listing Rule 5.6 for the inclusion of these reports into its IPO prospectus as pre listing disclosure. This meant that the applicant did not have to comply with JORC, which is incorporated into ASX Listing Rule 5.6 in relation to historical references in its IPO prospectus.

Transaction-specific prospectus in takeover bid

18 We granted relief in the form of a modification of s723(3) to reflect the conditions set out in s625(3)(c) in relation to a scrip takeover bid for a foreign company that has Australian shareholders. The relief allowed Australian shareholders to receive a transaction-specific prospectus that provides information required under s713 that will also include both the takeover offer document and the UK prospectus equivalent document. This would allow a prospectus to not be invalidated if the shares were not issued within three months after the date of the prospectus.

Stapled securities offered under scheme of arrangement

19 In the matter referred to in paragraph 8, we granted relief from the obligation to prepare and lodge a prospectus in relation to an offer of stapled securities under a proposal to delist a tri-stapled entity via three interdependent

schemes including a Pt 5.1 scheme of arrangement. Relief was granted in accordance with RG 188, as we considered there would be no change to the underlying assets or business as a result of the proposal and it appeared the investors would hold the same proportionate rights and liabilities in relation to the business or assets before and after the proposal. The relief granted was consistent with Class Order (CO 07/9) *Prospectus relief for foreign schemes of arrangement and PDS relief for Pt 5.1 schemes and foreign schemes of arrangement*.

20 In the matter referred to in paragraph 8, we also granted relief to facilitate the secondary sale of the stapled securities offered under the scheme of arrangement. Relief was granted on the basis of RG 188.36 since, without relief, a member would be unable to sell the stapled securities issued without an on-sale prospectus within 12-months of receiving them where there is no prospectus accompanying the issue of the securities.

Lodgement of unregulated document

21 We refused to grant relief from Ch 6D obligations in relation to various classes of shares which function like exchange-traded funds. Chess Depository Interests (CDIs) were issued (the issuers were established in the United States) to facilitate the trading of these shares in Australia. We had already provided on-sale relief for CDIs issued over the shares where a prospectus is provided for the underlying shares. Relief was now requested from s707(3) for CDIs issued over the shares, on the basis of a two-part unregulated document. Without relief, the holders of CDIs issued over the shares would need to comply with s707(3) by preparing a Ch 6D prospectus for the CDIs where the CDIs are offered for sale within 12-months of their issue by virtue of trading on the ASX. We refused relief on the basis that the criteria for relief in Regulatory Guide 51 *Applications for relief* (RG 51) at RG 51.44 were not met. In particular, we considered there is net regulatory benefit gained from the applicants preparing and lodging with ASIC prospectuses in connection with the underlying shares instead of preparing and making available on the ASX unregulated disclosure documents.

Employee share scheme relief for newly listed NSX company

22 In the matter referred to in paragraph 9, we also granted relief from the need to provide a prospectus for the offer of the securities under the employee share scheme.

Share purchase plan: $10,000 monetary limit

23 We agreed to grant conditional relief to a listed Australian deposit-taking institution (ADI) to offer a share purchase plan to its shareholders without a

disclosure document and substantially in line with CO 02/831. However, the relief allows the ADI to offer $10,000 in shares in any 12-month period rather than only $5,000, which is the current monetary limit under CO 02/831. The share purchase plan is intended to be offered concurrently with a placement of shares to institutional and sophisticated investors, which under s708A(5)(e) will require the lodgement with the ASX of a cleansing statement containing the information required by s708(6) to 708(8). We were minded to grant relief in this case due to:

- the status of the listed company as an Australian Prudential Regulatory Authority regulated ADI;
- the fact that the company plans to undertake the share purchase plan concurrently with a placement to institutional investors; and
- the fact that the company will be required to lodge a cleansing statement at the time of the offer.

PDS relief

Employee share scheme: Units over stapled securities

24 In the matter referred to in paragraph 1, we also granted relief from the need to provide a PDS for the offer of financial products under the employee share scheme.

Interests under escrow arrangement

25 We granted relief from the requirement to provide a PDS for the offer of financial products under the escrow arrangement described in paragraph 8. Relief was granted as disclosure of the escrow arrangement was to be made in a Pt 5.1 document and Pt 5.1 measures were adequate for ensuring that members receive sufficient information in the scheme booklet so as to render PDS disclosure unnecessary: see RG 188.19. Relief was conditional on the escrow trustee being responsible for the information as if it had prepared the information in a PDS.

Employee share scheme relief for newly listed NSX company

26 In the matter referred to in paragraph 9, we also granted relief from the need to provide a PDS for the offer of financial products under the employee share scheme.

Other disclosure relief

Unsolicited offers to purchase under three simultaneous reconstruction transactions

27 In the matter referred to in paragraph 8, we granted relief from Div 5A of Pt 7.9 in relation to unsolicited offers to purchase under the three inter-conditional schemes. One scheme required disclosure under Pt 5.1. Two schemes under the proposal were a Bermudian scheme of arrangement and a trust scheme. We provided relief on the basis that adequate disclosure about the price and value of offer was required under Pt 5.1 in relation to the unsolicited offers and the offer would be reviewed by us and approved by the court. Further, the general policy risks surrounding unsolicited offers were not present in these circumstances.

28 In the matter referred to in paragraph 8, we also granted relief to facilitate the secondary sale of interests in the escrow arrangement. This relief was required where members decide to sell their stapled securities prior to the escrow arrangement ending. The relief granted was consistent with relief under Class Order (CO 04/671) *Disclosure of on-sale of securities and other financial products*.

Exposure period

29 We granted relief from the exposure period obligation in s727(3) for a proposed offer of non-quoted convertible securities made to wholesale investors under a Pt 6D.2 prospectus. In order to obtain relief under Category 3 of CO 04/671 for the on-sale of the underlying shares, the offer was to be accompanied by Pt 6D.2 disclosure despite being made to wholesale investors. Relief was granted as it was consistent with Class Order 00/843 *Options over listed securities: exposure period relief*, which grants relief from the exposure period requirement for options over quoted securities, and Class Order 00/195 *Offer of convertible securities under s713*, which grants relief so that issuers of convertible notes over quoted shares can use the transaction-specific exemption.

On-sale relief for in-specie distribution

30 We refused to grant relief to an entity that sought comfort relief from the on-sale provisions (specifically a modification to s708A) in order to distribute its shares in another entity in specie to its shareholders without having to provide disclosure as required by s707(5) or provide a cleansing notice. The applicant submitted that the cleansing notice regime was too onerous and not designed for this situation. We refused the relief on the basis that we did not think that it was clear there was any burden imposed beyond what was contemplated by Parliament.

Information releases, media releases and class orders

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

Information releases

IR 08-14 *ASIC extends disclosure relief for rights issues* (15 May 2008)

IR 08-15 *Joint Treasury and ASIC consultation on cross-border recognition of financial regulation* (16 June 2008)

Media releases

MR 08-82 *ASIC acts to provide retail investors with better disclosure in unlisted unrated debentures* (23 April 2008)

MR 08-122 *Australian and New Zealand Securities Commissions welcome new regime for Trans-Tasman securities offerings* (13 June 2008)

MR 08-152 *Australia and Hong Kong sign deal to allow cross-border marketing of retail funds* (7 July 2008)

MR 08-153 *ASIC releases proposals to improve disclosure by unlisted mortgage and property schemes* (8 July 2008)

Class orders

CO 08/35 *Disclosure relief for rights issues*

CO 08/171 *Variation of Class Orders (CO 04/671) and (CO 05/26)*

CO08/506 *Hong Kong Collective Investments*

C Managed investments relief

Key points

This section sets out some of the circumstances in which we have granted or refused relief under s601QA from the provisions of Ch 5C.

Relief relating to registered schemes

Refusal of equal treatment relief in relation to redemption rights

32 We refused to grant relief to the responsible entity (RE) of a registered scheme from the requirement in s601FC(1)(d) to treat members who hold interests of the same class equally. The RE proposed to enable wholesale members to access a redemption facility on an ad hoc basis, with retail members only being able to redeem on a monthly basis. Accordingly, relief was required from s601FC(1)(d) to permit this different treatment of wholesale and retail members. We refused relief on the basis that it would not be consistent with the RE's duty to act in the best interests of members as a whole. Further, relief would appear to create a disadvantageous outcome for retail investors of the trust.

Relief for unequal treatment in relation to dividend redistribution plan

33 We granted relief from s601FC(1)(d) to permit the issue of additional stapled securities to the majority stapled security holder at the same time as, or immediately after, any issue under a dividend and distribution reinvestment plan (DRP) to the extent necessary for the majority holder to maintain its current holding. We granted relief on the basis that:

- the majority holder is a foreign shareholder and the issue of additional stapled securities to the majority holder only arises as a result of the majority holder being subject to withholding tax on distributions;
- the circumstances under which additional stapled securities are issued (if required) to the majority holder are limited only to where its majority holding is diluted as a result of a high rate of participation in the DRP by other security holders not similarly subject to withholding tax; and
- the policy concerns with treating members of the same class equally and members of different classes fairly are not infringed by issuing

additional stapled securities to the majority holder in connection with the particular DRP.

Retirement of responsible entity where identity of replacement unknown

34 We refused to grant relief in the form of a modification to s601FL to permit an RE to retire as responsible entity of a registered scheme and be replaced by the proposed RE without holding a meeting of members of the registered scheme. We were concerned that, at the time of the application, the identity of the proposed replacement RE was unknown and no application for an AFS licence for that RE had been made. We refused relief on the basis that:

- the applicant had not provided sufficient commercial imperatives to justify why compliance with the Corporations Act was disproportionately burdensome;
- given the unknown identity of the proposed replacement RE, we were not satisfied that the proposed replacement RE would not result in a significant change to the identity of the bodies corporate or individuals that would be responsible for the day-to-day operations of the scheme; and
- the application was distinguishable from precedent.

Buy-back of unlisted interests

35 We granted relief to modify s601KF as inserted by Class Order (CO 07/422) *On-market buy-backs by ASX-listed schemes* to an ASX-listed scheme that had two classes of interests on issue—one listed, the other unlisted. While the application for relief was outside the scope of CO 07/422, we considered that the application met the regulatory purpose of CO 07/422 and the policy parameters of Regulatory Guide 101 *On-market buy-backs by ASX-listed schemes* (RG 101) on the basis that the buy-back would not cause one class of interests to be unfairly disadvantaged over the other class of interests. This was achieved by making the relief conditional on the holders of the unlisted class of interests—being all wholesale clients as defined under the Corporations Act—consenting to the buy-back.

Media release and class orders

36 The following release and class orders relate to managed investments relief granted during the period of this report.

Media release

MR 08-152 *Australia and Hong Kong sign deal to allow cross-border marketing of retail funds* (7 July 2008)

Class orders

CO 08/171 *Variation of Class Orders (CO 04/671) and (CO 05/26)*

CO 08/385 *Variation of Class Orders (CO 03/1094) and (CO 03/1095)*

CO 08/506 *Hong Kong collective investment schemes*

D Mergers and acquisition relief

Key points

This section outlines some of the circumstances in which we have granted or refused relief from the provisions of Chs 2J, 6, 6A and 6C under s259C, 655A, 669 and 673 respectively.

Acquisition of relevant interests in voting shares

Jumbo accelerated pro rata rights issue

37 We granted relief from s606(1) by modifying item 10 of s611 to facilitate a 'jumbo' accelerated pro rata rights issue. The applicant could not rely on the rights issue exemption contained in item 10 of s611 because intra-group cross-holdings prevented the offer being made to every person who held securities in the relevant class. In addition, the terms of the offer were not the same because institutional investors were to receive the offer and have their pro rata entitlement issued before retail investors. In granting relief, we noted that the rights issue was not for the purpose of facilitating a control transaction as the issue price under the rights issue was at a significant discount to its previous trading price. It was also material that the rights issue was both renounceable and not underwritten.

Revocation of instrument in relation to equity financing transactions

38 We made a decision to revoke an earlier instrument that gave relief to a company from s606 and 671B in connection with equity financing transactions. We made that decision partly on the basis that the relief contained in the earlier instrument was inconsistent with current ASIC policy. In particular, in relation to s671B, we consider that disclosure of interests is appropriate where those securities are acquired as a result of securities lending transactions as well as where those securities are acquired as a hedge against an equity derivative or similar. In relation to s606, we had previously given relief where the circumstances were such that we did not consider that the person concerned had a control purpose and the purposes to which the securities might be put were closely constrained. However in the context of securities acquired under securities lending transactions and securities acquired as a hedge against an equity derivative or similar, a person will acquire full legal title and therefore have the potential to exercise control by, for instance, frustrating another control transaction.

Associate relationships and collateral benefits arising from shareholder agreements

39 We refused to grant relief allowing a modification of s606 such that the major shareholders of a company would not be considered to be associates of the company by virtue of entering into certain shareholder agreements with the company. We refused relief on the basis that the company had not demonstrated that it and its major shareholders were associates within the meaning of s12 and, therefore, that s606 had been triggered by virtue of the parties' entry into the shareholder agreements. Further, we did not consider that there were any policy factors that would justify the provision of comfort relief in circumstances where a control transaction concerning the company was imminent.

40 In the matter referred to in paragraph 39, we granted relief in the form of a modification of s623 such that the retention bonuses payable to employee shareholders of the company would not be considered to be benefits likely to induce the employee shareholders to accept an offer under the bid or dispose of securities in the bid class. We granted relief on the basis that, given their quantum and terms, the retention bonuses payable to employee shareholders were unlikely to induce the employee shareholders to accept an offer under a bid for the company or dispose of securities in the bid class. Further, we were of the view that relief was appropriate in the circumstances on the basis that the employee shareholders were receiving a benefit in a capacity other than as shareholders in accordance with Regulatory Guide 35 *Collateral benefits in takeovers* (RG 35) at RG 35.17.

On-market purchases during scheme of arrangement

41 We refused to grant relief in the form of a modification of item 2 of s611 so that it would extend to on-market purchases by, or on behalf of, an acquirer under a proposed scheme of arrangement. In this case, a scheme of arrangement had been proposed, but neither shareholders nor the court had given their approval. We refused to grant relief because schemes of arrangement are conditional on shareholder and court approval, as well as any other conditions contained in the relevant implementation deed, whereas item 2 of s611 is restricted to bids that are unconditional or conditional only on the happening of an event referred to in s652C(1) or 652C(2).

Acquisition of a relevant interest in a special share as a result of the acquisition of the responsible entity of a stapled group

42 We granted relief in the form of a modification to s609 in relation to the acquisition of an RE of a stapled group. As part of a wider transaction, an entity sought to acquire the RE, which held a 'special share' in the stapled

company. The special share carried limited voting rights in respect of the appointment of a minority number of directors. As a result of the acquisition of the RE, the entity would acquire a relevant interest in the special share in the stapled company. The entity was concerned that, by acquiring a relevant interest in the special share, it would breach s606 as there was uncertainty in determining the voting power attached to the special share. Our relief was conditional on the entity undertaking that it would procure that the RE would not exercise the rights (including voting rights) attaching to the special share in the company unless and until a resolution is passed at a general meeting of the company approving such exercise. We considered that this condition would remove the potential control element of the proposed acquisition by the entity. Further, we considered that disclosure of the relevant interest was appropriate under s671B.

Notice of meeting requirements for acquisition of relevant interest

43 We granted relief from the exemption provided in item 7 of s611 in relation to a proposed issue of securities as consideration for the injection of capital into a company. The proposed issue did not come within the terms of item 7 of s611 because, at the time the notice of meeting was sent to shareholders, the exact voting power that each person and each of its associates would have as a result of the acquisition was unknown. At that stage, only an issue price range and not the exact issue price of the shares and options had been determined. We granted relief to allow the notice of meeting to specify the maximum voting power that each investor may acquire under the proposed issue on the condition that shareholders be given sufficient time to consider the proposal once the exact issue price and voting power that would result from the acquisition was known. We considered it sufficient for shareholders to be informed of this information no less than 10 days prior to the meeting.

Other mergers and acquisitions relief

Bid class securities

44 We granted relief from the requirement in s662A(1) to offer to buy out remaining holders of bid class securities. Relief was made conditional on the bidder sending compulsory acquisition notices to all remaining holders of bid class securities under s661B(1). The relief was granted because the bidder, as a 90% holder of bid class securities, was entitled to compulsorily acquire the remaining bid class securities under s661A(1). We considered there was no regulatory detriment in exempting the bidder from the provisions requiring buy-out of bid class securities, given the bidder already had power to compulsorily acquire them under s661A(1).

Convertible securities

45 In the matter referred to in paragraph 44, we granted relief from the requirement in s663A(1) to offer to buy out holders of convertible securities. Relief was made conditional on the bidder sending compulsory acquisition notices to all holders of convertible securities under s664A(3). In order to send out compulsory acquisition notices under s664A(3), s664A(2) requires the bidder to hold 90% by value of all the company's securities (including convertible securities) and have this status qualified by an independent expert's report under s667A(2). We considered that this condition gives sufficient protection for holders of convertible securities, as their right to be bought out under s663A(1) would prevail unless the bidder had reached a holding of 90% by value of all the company's securities. In granting relief, we considered there was no regulatory detriment in exempting the bidder from the provision requiring compulsory buy-out of convertible securities if an independent expert concluded the bidder was a 90% holder under s664A(2), since the bidder would then be entitled to compulsorily acquire the convertible securities under s664A(3).

Requirement to send out notices for the compulsory acquisition of bid class and convertible securities

46 In the matter referred to in paragraph 44, we refused to grant the bidder relief from the requirement in s664A(3) to send out notices to acquire convertible securities. The bidder sought to satisfy the perceived overlapping notice requirements that arose under s661B(1) and 664A(3) by sending out a single notice under s661B(1) while triggering the compulsory acquisition rights arising under both s661A(1) (to acquire the bid class securities) and s664A(3) (to acquire the convertible securities). We refused relief on the basis that both s661A(1) and 664A(3) give the bidder a right (but not an obligation) to compulsorily acquire securities by sending out notices. As such, it was open to the bidder to elect which of the provisions it sought to rely on as there did not appear to be any commercial detriment in requiring compliance with both sections. Further, we formed the view that Parliament clearly enacted Pt 6A.1 (i.e. s661B) to apply in the case of a 90% acquisition following a takeover bid, whereas Pt 6A.2 (i.e. s664A(3)) is purported to apply in other situations such as where the 90% threshold may have been met by creeping.

Timing of notices for the compulsory acquisition of bid class and convertible securities

47 In the matter referred to in paragraph 44, we refused to grant the bidder a four-week extension to the requirements in s661B(2)(a) and 663B(2)(a) to dispatch the notices within one-month after the right to compulsorily acquire, or the obligation to buy out, securities has arisen. Relief was sought

by the bidder to satisfy its notice requirements in one batch (i.e. to dispatch notices for the acquisition of bid class securities and convertible securities at the same time). In order to facilitate this, the bidder sought an extension of four weeks because the expert's report required to be issued with the notice in relation to the buy-out of convertible securities under s663B(1) had not been prepared within the required one-month timeframe. We refused relief because we considered that there was no commercial benefit outweighing the regulatory detriment. In particular, we considered that giving the bidder an extension of time for the notice requirements to buy out the convertible securities under s663B(1) would interfere with the rights of its holders to be bought out since time was an element of value for the convertible securities.

Equal offer of increased consideration during compulsory acquisition

48 We granted a modification to s664D(3) to facilitate a settlement during compulsory acquisition proceedings brought under s664F where the 90% holder was prevented from issuing new compulsory acquisition notices due to the six-month time limit in s664AA. Our relief clarified that the 90% holder may make identical offers of increased consideration to each recipient of the compulsory acquisition notice notwithstanding that the benefit constituted by the increased consideration would not be offered 'under the notice' and thereby contravening s664D(3)(d) (on one reading of the provision). We granted comfort relief after providing an opportunity for each notice recipient to make submissions, because the modification gives effect to our preferred interpretation of s664D(3) taking into account the underlying policy of the provision.

Selective share buy-back

49 We refused to grant relief to exempt the applicant from the operation of s257D in relation to a proposed selective buy-back of approximately 8% of the applicant's shares. The buy-back was proposed in order to settle certain outstanding claims between the applicant and two of its shareholders. In refusing relief we were concerned that the consideration being paid for the shares was not nominal such that we could not be certain there was fairness between the applicant's shareholders in accordance with our policy in RG 110.

Information releases, media releases and class orders

50 We did not publish any class orders or information or media releases relating to mergers and acquisitions relief during the period of this report.

E Conduct relief

Key points

This section outlines some of our decisions to grant relief from certain conduct obligations imposed by Chs 2D, 2M, 5C and 7.

Financial reporting

Lodgement of consolidated group reports for registered foreign company

51 We refused to grant relief to a large registered foreign company so that it did not have to lodge audited financial reports under s601CK(1) where it sought to lodge consolidated group reports of its unregistered foreign parent company and enter into a deed of cross-guarantee with its parent. We refused relief because:

- it would result in the registered foreign company lodging less information than an equivalent Australian company;
- it would go further than the relief provided to Australian wholly owned companies under Class Order (CO 98/1418) *Wholly owned entities*;
- the applicant was unable to demonstrate any special circumstances that distinguished its position from that of other registered foreign companies that are wholly owned by unregistered foreign companies or Australian companies that are wholly owned by unregistered foreign companies; and
- the applicant did not demonstrate any special cost of compliance.

Lodgement of consolidated and combined financial statements by responsible entity of stapled group

52 We granted relief akin to Class Order (CO 05/642) *Combining financial reports of stapled security issuers* to the RE of an unlisted stapled trust so it could include its financial statements and the consolidated and combined financial statements of the stapled group in adjacent columns in the one financial report. The RE could not rely on CO 05/642 because the stapled trust was not trading on a 'prescribed financial market'. We granted relief as an unreasonable burden was demonstrated and the presentation of accounts in accordance with CO 05/642 would be more meaningful to members.

Financial service providers

Hawking relief: Units over stapled securities

53 In the matter referred to in paragraph 1, we also granted relief from the hawking provisions.

Changing from representative to authorised representative of an AFS licensee

54 We granted relief (for the avoidance of doubt) to an AFS licensee to modify notional s946B as inserted by reg 7.7.10AE (the requirement to provide a record of advice instead of a Statement of Advice for further advice). Relief was required because certain employees of the licensee's parent company, who were previously considered 'representatives' of the licensee within the meaning under s910A(a)(iii), were to be authorised as authorised representatives of the licensee under s916A. The licensee was concerned that, upon authorisation, these representatives would not be able to utilise the record of advice requirement in notional s946B because, prior to authorisation, the providing entity would have been the AFS licensee whereas after authorisation the authorised representatives would be the providing entity. We noted that the legislative policy behind the definition of 'providing entity' in s944A is that a person who does not have a sufficiently close relationship to a licensee to be considered a representative, so that they must be an authorised representative, should be required to assume some direct responsibility in providing financial services as provided in Pt 7.7. We therefore considered that relief was justified given that the authorised representatives in this case did have a sufficiently close relationship with the licensee (being employees of its parent company and its previous representatives).

Hawking relief refused for management rights scheme

55 In the matter referred to in paragraph 5, we refused to grant relief from the hawking provisions.

56 Also, in the matter referred to in paragraph 5, we refused to grant relief to the manager of a management rights scheme from the requirement to confirm the transaction with the holder of a financial product under a management rights scheme.

Employee share scheme relief for newly listed NSX company

57 In the matter referred to in paragraph 9, we also granted relief from the hawking provisions.

Timing of FSGs for underwritten policies

58 We refused to grant relief to an AFS licensee in relation to the timing requirements for the provision of FSGs in 'time-critical' cases. The applicant sought relief to be allowed to provide its clients with an FSG as soon as practicable instead of within 5 days (as is required by s941D(4)) after being given the statement required by s941D(2) in those cases. The applicant markets its products through mainstream media and handles enquiries through a call centre without any face-to-face contact with its clients. It issues general acceptance policies, and underwritten policies. In the case of underwritten policies, delays can emerge during the underwriting process that, according to the applicant, can cause it to be unable to comply with the timing requirements for providing an FSG. We refused to grant relief as we were not satisfied that:

- compliance with the current requirements was disproportionately burdensome to the regulatory benefit of compliance;
- if the relief were given, the protections intended by Parliament would be maintained;
- if the relief were given, there would be only minimal detriment to consumers; and
- the applicant was complying with the current requirements for the giving of FSGs and PDSs, because it may have been relying on the 'time-critical' concessions in circumstances where it was not entitled to do so.

Dollar disclosure for fees received by authorised representatives

59 We refused to grant an AFS licensee relief from the requirement to disclose in FSGs and Statements of Advice (SOAs) the fees received by the employers of its authorised representatives, known as management entities, in dollar amounts. These management entities manage the licensee's different branch offices Australia-wide under contractual agreements with the licensee. The licensee submitted that to the extent that a management entity's charges are determined on a monthly basis according to monthly activity and product mix, the amount of those charges is not ascertainable at the time that the FSG and SOA are given. Our policy for relief from the dollar disclosure requirements, set out in Regulatory Guide 182 *Dollar disclosure* (RG 182) at RG 182.55, requires applicants to establish that compliance with the requirements is impossible, will impose an unreasonable burden or is not in the interests of clients. We noted the view expressed at RG 182.59(d) that circumstances would rarely arise where compliance with the dollar disclosure provisions is not in the interests of clients. We concluded that the licensee's submissions did not satisfy any of the three criteria at RG 182.55 because:

- the fact that it is difficult to calculate the management entities' fees on a monthly basis shows that compliance with the dollar disclosure requirements is in fact possible, although difficult;
- it would be in the interests of clients to understand how their fees will affect the relevant management entity's profitability and the impact such charges may have had on the authorised representative's provision of financial services to them;
- in providing relief under Class Order (CO 04/1430) *Dollar disclosure: unknown facts or circumstances*, we have already taken into consideration circumstances where the amount of certain fees in SOAs depends on unknown facts or circumstances. CO 04/1430 allows such information to be disclosed as either a percentage of a specific matter or as a description of the method of calculating the amount, with worked out dollar examples; and
- we did not consider confidentiality sufficient grounds for relief. We consider that the law on these matters is clear and intentional, and such requirements apply to all industry participants so that all authorised representatives providing personal advice must provide the same level of disclosure regardless of claims of confidentiality and commercial detriment.

Information release and class orders

60 The following release and class orders relate to conduct relief granted during the period of this report.

Information release

IR 08-12 *Facilitating online financial services disclosures* (2 April 2008)

Class orders

CO 08/285 *Variation of Class Order (CO 98/1418)*

CO 08/618 *Variation of Class Order (CO 98/1418)*

F Other relief

Key points

This section outlines decisions we have made that do not fall within any of the categorises mentioned in previous sections and that may be significant to other participants in the financial services and capital markets industries.

Accelerated pro rata jumbo' rights issue: Cooling-off rights

61 In the matter referred to in paragraph 37, we also granted relief from s1019B so that the issuer did not have to offer cooling-off rights to holders of a financial product. The offer of stapled securities under the accelerated 'jumbo' rights issue was made without disclosure in reliance on CO 08/35. As such, the issuer could not rely on reg 7.9.64(1)(h), which exempts the issuer of a managed investment product where a PDS discloses the information set out in s1016D(1). We considered it appropriate to grant relief because the offer was to be quoted on a financial market and the issue of a statement that the securities will be able to be traded on a financial market achieved a substantially similar purpose to that contemplated under s1016D(1).

AFS licensee compensation arrangements

62 We refused a request from an AFS licensee to treat loan receivables from a related party as not being excluded assets for the purposes of calculating its net tangible assets (NTA). Under the proposed arrangement, the licensee would make an interest-free loan to a related entity so that the related party could use the funds to purchase, from the licensee, units in a trust that the licensee manages. The licensee is currently using these units as part of its NTA calculations. The decision to refuse the request was made on the grounds that we were not satisfied that:

- the assets do not arise from a transaction that might avoid our financial requirements;
- recovery of the assets is highly probable; and
- it would be unreasonably burdensome to have structured the transaction so that the amount owing was not an excluded asset.

In particular, we formed the view that:

- the proposed arrangement would result in the licensee holding substantially less real assets for the calculation of the NTA and it could artificially create equity and assets in a licensee;

- it did not appear that the circumstances of the licensee would be enhanced by the proposed arrangement, particularly as the loan was interest free and the primary form of security that constituted the basis of the loan was units the licensee previously held; and
- the related party is a small proprietary company that is not required to prepare financial reports. Accordingly, the proposed arrangement presented an increased risk that adequate provision would not be made and the receivables might not be appropriately adjusted in the event that units declined in value.

Internet payment and clearing service

63 We refused to grant relief to declare under s765A(2) that an internet payment and clearing service is not a financial product. The applicant intended to provide a service whereby customers of a participating merchant could, on such a merchant's website, select its service to pay the merchant for goods and services acquired on that website. Once the selection was made, payment would be electronically withdrawn from funds in the customer's bank account and electronically transmitted to the applicant's clearing bank account. There it would be retained prior to being batched with other customers' payments for that merchant and electronically transmitted to the merchant. We refused relief because:

- consistent with our view given in Regulatory Guide 185 *Non-cash payment facilities* (RG 185) that electronic bill payment facilities are non-cash payment facilities, the applicant's service would be a facility for making non-cash payments; and
- the service involved more than the mere provision of software and the applicant would be operating as more than an information intermediary, as evidenced, for instance, by its provision of a clearing house for payments made utilising the facility.

Information release

64 The following release relates to relief granted during the period of this report that does not fall within any of the categories mentioned in previous sections.

Information release

IR 08-18 *ASIC updates guidance on no-action letters* (9 July 2008)

Appendix: ASIC relief instruments

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

Table 1: ASIC relief instruments

Report para no.	Class order title or entity name	Instrument no. (Gazette no. if applicable)	Date executed	Power exercised and nature of relief	Expiry date
1 12 24 53	GEO Property Group Limited (ACN 117 546 326), GEO Management Limited (ACN 116 506 882) as RE of the GEO Property Trust (ARSN 104 482 206)	08-00528 (in 56/08)	07/07/2008	s741(1)(a), 926A(2)(b), 992B(1)(b), 1020F(1)(a) and 1020F(1)(b) This instrument exempts the issuer of units over fully-paid stapled securities issued under the GEO Property Group Employee Plan from Pts 6D.2, 6D.3, 7.9 and s736, 911A(1), 992A, 992AA.	
3	MG Trust Company LLC, a company incorporated under the laws of Colorado, a state of the United States	08-00435 (in 52/08)	24/06/2008	s911(2)(l) This instrument exempts the entity from s911A(1) for the provision of financial product advice and dealing in a managed investment scheme.	
6	Financial Planning Association of Australia Limited (ACN 054 174 453)	08-00568 (in 60/08)	14/07/2008	s911A(2)(l) This instrument exempts the entity from s911A(1) for the provision of financial product advice.	

Report para no.	Class order title or entity name	Instrument no. (Gazette no. if applicable)	Date executed	Power exercised and nature of relief	Expiry date
7	Credit Suisse (ARBN 061 700 712)	08-00335 (in 42/08)	21/05/2008	s911A(2)(l), 926A(2)(a), 951B(1)(a) and 992B(1)(a) This instrument exempts a foreign custodian from s911A(l), Pt 7.6 (other than s911A(l) and Div 4 and 8), Divs 2, 3 and 4 of Pt 7.7, and Divs 2, 3, 5 and 6 of Pt 7.8 in relation to custodial services provided to Australian employees of a foreign company that offer employee share schemes.	
9 22 26 57	Golden Circle Limited (ACN 054 355 618)	08-00534 (in 56/08)	08/07/2008	s741(1)(a), 911A(2)(l), 992B(1)(b), 1020F(1)(a) and 1020F(1)(b) This instrument provides relief to allow an issuer to issue options over shares under an employee share scheme where issuers' shares are newly listed on the NSX.	
10	Ace Insurance Limited (ACN 001 642 020)	08–00574 (in 64/08)	04/08/2008	s926A(2)(c) and 951B(1)(c) This instrument grants relief to permit the appointment of an AFS licensee as an authorised representative.	
14	MWH Holdings B.V., a company incorporated in New Zealand	08-00269 (in 38/08)	02/05/2008	s741(1)(b) This instrument exempt the company from the need to provide disclosure under Ch 6D in relation to an offer of shares in the company to Australian employees of the company pursuant to its 'Staff Share Ownership Plan'.	
16	Suncorp-Metway Limited (ACN 010 831 722)	08-00274 (in 44/08)	29/04/2008	s741(1)(b) This instrument modifies s713 and the definition of 'underlying securities' in s9 to extend the transaction-specific prospectus provision to convertible securities convertible into continuously quoted securities or securities of a body that becomes the holding company of the body issuing the convertible securities under a Pt 5.1 arrangement.	

Report para no.	Class order title or entity name	Instrument no. (Gazette no. if applicable)	Date executed	Power exercised and nature of relief	Expiry date
17	Energy and Minerals Australia Limited (ACN 120 178 949)	08-00330 (in 42/08)	11/04/2008	s741(1)(c) This instrument gives relief from s716(2) to allow a geological report included in a prospectus to cite statements based on a historical geological report where CO 07/428 did not apply.	
18	CopperCo Limited (ACN 004 434 904)	08-00441 (in 52/08)	26/06/2008	s723(3) modified to replicate s625(3)(c) This instrument gives relief from s723(3)(b) to allow Australian shareholders to receive a transaction-specific prospectus in relation to a takeover bid.	
19 20 27 28	Macquarie Capital Alliance International Limited (ARBN 113 880 783), Macquarie Capital Alliance Management Limited (ACN 105 777 704), Macquarie Advanced Investment Company Limited (ACN 131 467 411)	08-00581 (in 60/08)	18/07/2008	s741(1)(a), 741(1)(b), 1020F(1)(a) and 1020F(1)(c) This instrument provides various disclosure relief in relation to the offer of stapled securities under three simultaneous schemes.	
25	Macquarie Capital Loans Management Limited (ACN 077 595 012)	08-00577 (in 57A/08)	18/07/2008	s601QA(1)(a), 911A(2)(l), 1020F(1)(a) and 1020F(1)(c) This instrument provides various disclosure (and licensing) relief in relation to the offer of interests in an escrow arrangement.	
29	Alumina Finance Limited (ACN 130 920 562), Alumina Limited (ACN 004 820 419)	08-00302 (in 40/08)	12/04/2008	s741(1)(a) This instrument provides relief under Ch 6D so that offers under a prospectus do not need to be accompanied by application forms and the offer is not subjected to an exposure period.	

Report para no.	Class order title or entity name	Instrument no. (Gazette no. if applicable)	Date executed	Power exercised and nature of relief	Expiry date
33	SP Australia Networks (RE) Ltd (ACN 109 977 371); SP Australia Networks (Finance) Trust (ARSN 116 783 914); Singapore Power International Pte Ltd, a company incorporated in Singapore; SP Australia Networks (Transmission) Ltd (ACN 116 124 362); SP Australia Networks (Distribution) Ltd (ACN 108 788 245)	08-00345 (in 44/08)	27/05/2008	s601QA(1)(a), 741(1)(b) and 1020F(1)(c) This instrument provides relief from the equal treatment requirement under s601FC(1)(d) to enable additional stapled securities to be issued to a majority interest holder to allow it to maintain its percentage holding following a distribution and dividend reinvestment plan as well as modifying the cleansing notice requirements.	
37	CapitaLand Limited, a body corporate incorporated under the laws of Singapore; Temasek Holdings (Pte) Limited, a body corporate incorporated under the laws of Singapore; Minister for Finance (Incorporated), a body corporate incorporated under the laws of Singapore	08-00654 (in 66/08)	14/08/2008	s655A(1)(b) This instrument gives relief from s606(1) by modifying the exemption provided in item 10 of s611 to allow major shareholders to participate in a 'jumbo' accelerated pro rata rights issue by excluding specified cross-holders and allowing for institutional investors to be treated differently from retail investors. Note: This instrument also revokes Instrument 08-00612 (executed 25/07/2008) in relation to the same rights issue.	
38	Primebroker Securities Limited (ACN 081 178 645)	08-00589 (in 60/08)	22/07/2008	s655A(1) and 673 This instrument revokes Instrument 01/0100 (executed 2/02/2001) in relation to Primebroker Securities Limited ACN 081 178 645.	

Report para no.	Class order title or entity name	Instrument no. (Gazette no. if applicable)	Date executed	Power exercised and nature of relief	Expiry date
39	Hewlett Packard EMEA Holdings II BV	08-00244 (in 32/08)	04/04/2008	s655A(1)(a) This instrument exempts the company from s623 where it offers, agrees to or gives certain benefits to a person who holds shares in and is an employee of Tower Software Engineering Pty Ltd (ACN 008 602 739), where the company has made an off-market takeover bid for all the shares in Tower and the benefit is on ordinary commercial terms.	
42	Arctic Capital Limited, a company incorporated in Hong Kong with CR No. 1127428	08-00526 (in 56/08)	04/07/2008	s655A(1)(b) and 673(1)(b) This instrument modifies s609 to enable the acquisition of a relevant interest in a 'special share'. It also modifies s671B as notionally inserted by Class Order (CO 03/634) *Takeovers: listing rule escrow* by amending the definition of '*substantial holding*' in s9.	
43	FCR – Espirito Santo Ventures II managed by Espirito Santo Venutres, SCR, SA, a company incorporated in Portugal; Emerald Energy Fund I LP managed by Emerald Partners I Limited, a company incorporated in Guernsey; and, New Energy Fund managed by Banif Gestao de Activos – Sociedade Gestora Fundos de Investimento Mobiliario, S.A., a company incorporated in Portugal	08-00536 (in 56/08)	08/07/2008	s655A(1)(b) This instrument amends the exemption to s606(1) found in item 7 of s611 so that the company is not required to specify at the time a notice of meeting is sent to shareholders the exact voting power that each person and each of its associates would have as a result of the acquisition.	

Report para no.	Class order title or entity name	Instrument no. (Gazette no. if applicable)	Date executed	Power exercised and nature of relief	Expiry date
44 45	GPG (No. 6) Pty Limited (ACN 094 608 161)	08-00264 (in 36/08)	24/04/2008	s669(1) This instrument modifies s662A(1) so that it doesn't apply where a bidder has issued a notice under s661B(1) and modifies s663A(1) so that it doesn't apply where a bidder has given a notice under s664A(3).	
48	Mitsui & Co Limited (ARBN 001 855 465)	08-00600 (in 60/08)	23/07/2008	s669(1) This instrument modifies s664D(3)(d) by omitting the words 'under the notice'.	
52	Goodman Funds Management Limited ACN (113 249 595)	08-00380	04/06/2008	s340(1) This instrument provides an exemption from compliance with s292(1), 302 and 314(1) in relation to the preparation of audited annual financial reports on terms similar to CO 04/642.	
54	Commonwealth Financial Planning Limited (ACN 003 900 169)	08-00259 (in 36/08)	28/04/2008	s951B(1)(c) This instrument declares Pt 7.7 to apply to Commonwealth Financial Planning Limited as if s944A were modified or varied.	
61	Australand Property Limited (ACN 105 462 137) in its capacity as RE of the Australand Property Trust (ARSN 106 680 424); Australand Investments Limited (ACN 086 673 092) in its capacity as RE of Australand Property Trust No.4 (ARSN 104 254 413); Australand Property Trust No.5 (ARSN 108 254 771)	08-00609 (in 62/08)	25/07/2008	s1020F(1)(c) This instrument provides relief from the cooling-off provisions under s1019A where an offer of a financial product is made without disclosure under CO 08/35.	