



**ASIC**

Australian Securities & Investments Commission

## REPORT 217

# Overview of decisions on relief applications (December 2009 to May 2010)

November 2010

### About this report

This report is for prospective applicants for relief, including participants in capital markets, financial services providers, and credit providers and intermediaries.

This report outlines ASIC's decisions on relief applications during the period 1 December 2009 to 31 May 2010. It summarises situations where we have exercised, or refused to exercise, our exemption and modification powers under the *Corporations Act 2001*, *National Consumer Credit Protection Act 2009* or *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009*.

### 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 to find out how the Corporations Act, National Credit Act, Transitional Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

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# Overview

- 1 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: Ch 2D (Officers and employees), 2J (Transactions affecting share capital), 2L (Debentures), 2M (Financial reports 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 and markets).
- 2 We also have powers to give relief under the *National Consumer Credit Protection Act 2009* (National Credit Act) from the licensing provisions under Ch 2 and the responsible lending conduct provisions under Ch 3 of that Act. ASIC has powers to give relief from the registration provisions under Schedule 2 of the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* (Transitional Act).
- 3 The purpose of this report is to improve the level of transparency and the quality of information available about decisions we make when asked to exercise our discretionary powers to grant relief from provisions of the Corporations Act, National Credit Act or Transitional Act.
- 4 The report covers the period beginning 1 December 2009 and ending 31 May 2010. During this period, we decided 1310 applications. We granted relief in relation to 957 applications and refused relief in relation to 194 applications; 159 applications were withdrawn.
- 5 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 businesses without harming other stakeholders.
- 6 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.

- 7           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](http://www.asic.gov.au/co). Instruments are published in the *ASIC Gazette*, which is available via [www.asic.gov.au/gazettes](http://www.asic.gov.au/gazettes). The advisories and media releases referred to throughout the report are available via [www.asic.gov.au/mr](http://www.asic.gov.au/mr).

## A Licensing relief

### Key points

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

### Relief granted

#### Licensing relief for employee share scheme offering performance rights

- 8 We granted conditional relief from the requirement to hold an AFS licence for an offer of ‘performance rights’ made to full-time or part-time employees under an employee share scheme. The scheme offered rights upon the satisfaction of specified performance and/or retention criteria. The structure and form of the performance rights in this instance meant that they were classed not as a security but as derivative within the meaning of s761D. This is because the scheme was an arrangement under which a party to the arrangement (the issuer) must provide at some future time, consideration (shares) to a participant of the scheme (employees), and the value of the arrangement ultimately varies by the value of the issuer’s shares.
- 9 Relief was required in the specific circumstances because the performance rights did not fall within the definition of ‘eligible offer’ in Class Order [CO 03/184] *Employee share schemes*. Therefore, the company could not rely on the class order relief to make offers of performance rights under the plan.
- 10 Relief was granted in the specific circumstances of the application because:
- the aim of the relevant offer was not fundraising;
  - the offer sufficiently supported the long-term mutual interdependence between the company and its staff; and
  - adequate disclosure would be provided to recipients of the performance rights.

#### Licensing relief for employee share scheme offering derivatives

- 11 We granted relief from the requirement to apply for a variation to an AFS licence to a company making offers under an employee share scheme.

Employees participating in the scheme will, upon retirement, termination of employment due to total and permanent disability, a change in control of the company, an initial public offering (IPO), or sale of the business, be eligible to receive a cash payment based on a percentage of the income earned by the business unit the employee worked in immediately before the event. The scheme does not involve the issue of shares to employees.

- 12 Benefits under the scheme could be classed as derivatives under s761D. Therefore, the company could not rely on [CO 03/184], which only applies to shares and stapled securities. Without relief, the company would be required to apply for a variation to its AFS licence for financial services provided in relation to the scheme because its current AFS licence does not cover the provision of financial product advice or dealing in derivatives to retail clients.
- 13 Regulatory Guide 49 *Employee share schemes* (RG 49) states that ASIC will consider giving case-by-case relief for offers of financial products that fall outside the terms of [CO 03/184] if they substantially satisfy the same policy objectives as the class order, the key conditions of our disclosure class order relief, and granting relief would not unduly compromise consumer protection.
- 14 The application was considered to be outside the current policy for granting relief under RG 49. However, we considered that the application satisfied the broader policy grounds for affording licensing and disclosure relief. Relief was granted on the following conditions:
- participation in the scheme is limited to less than 20 executive level employees;
  - participating employees are sufficiently senior within their business unit to have knowledge of the financial position of the business unit; and
  - the company provides management accounts of the relevant business unit to participating employees on a monthly basis until the period over which the payment is calculated has ended.

### **Licensing relief for share sale facility**

- 15 We granted relief from the requirement to hold an AFS licence to a dual-listed issuer seeking to delist from its foreign exchange. Relief was required because the issuer sought to conduct a share sale facility into which the shares traded on the foreign exchange could be sold, wherein the issuer would pay proceeds as soon as practicable and in any event within 12 weeks, instead of 8 weeks as provided under condition 6(b)(iv) of Class Order [CO 08/10] *Share and interest sale facilities*.

- 16 We considered that an additional 4-week delay in payment was not unreasonable, given the circumstances in which the issuer sought relief, including that:
- the company was subject to two sets of regulations, owing to its dual-listed status; and
  - for practical reasons, the issuer required 20 business days (amounting to 5 weeks, due to public holidays) during which the shares would be sold through the sale facility.
- 17 The issuer was still required to meet all other conditions of [CO 08/10].

### **Licensing relief for a Brazilian-regulated foreign financial services provider**

- 18 We granted relief from the requirement to hold an AFS licence to a Brazilian-regulated foreign financial services provider (FFSP) to enable it to provide a range of financial services to Australian wholesale clients. Relief was required for the Brazilian-regulated FFSP's proposed appointment as investment manager of a registered managed investment scheme focused on Latin American listed securities.
- 19 This is the first time ASIC has provided specific relief for a Brazilian-regulated FFSP. We assessed the matter against the principles in Regulatory Guide 176 *Licensing: Discretionary powers—wholesale foreign financial services providers* (RG 176) and were satisfied that the Brazilian regulatory regime was sufficiently equivalent to regulation by ASIC, and that effective cooperation arrangements existed between the Comissão de Valores Mobiliários (the Securities and Exchange Commission of Brazil) and ASIC.

### **Licensing relief for trustees of wholesale property schemes**

- 20 We granted relief from the requirement to hold an AFS licence to trustees of wholesale property schemes in relation to the incidental activities of acquisition and custody of general insurance products. Relief was granted in circumstances where the trustees are related bodies corporate of an entity that holds an AFS licence authorising the particular financial services, and the licensee takes responsibility for the operation of the wholesale property schemes. The trustees could not rely on Class Order [CO 07/74] *Wholesale equity schemes: licensing relief for trustees* because the schemes were not wholesale equity schemes.
- 21 Relief was granted because it was within the scope of our policy under Section A of Regulatory Guide 167 *Licensing: Discretionary powers* (RG 167), namely:
- Strict compliance with the AFS licensing regime would be disproportionately burdensome. The requirement for each trustee of a



wholesale property scheme to hold an AFS licence for acquisition and custody of general insurance contracts may impose a disproportionate cost burden where a licensee effectively controls the entire operation of the schemes and the nature of the activity carried out by the trustees is limited to holding real property and insurance on behalf of the scheme.

- The persons to whom financial services are provided would still have the protection intended by Parliament. The conditions of relief will ensure, as far as practicable, that the same regulatory and liability consequences apply as if the trustee provided the financial services as the licensee's representative.
- The financial services will only be provided to wholesale clients and relief will not affect the protections Parliament intended for retail clients.
- The likelihood and extent of potential consumer detriment resulting from the proposed relief is minimal, particularly if the relief is granted subject to the recommended conditions which seek to address any consumer protection risks.

22 Relief was subject to similar conditions as those contained in [CO 07/74].

### **Licensing relief for a combined NCP facility**

23 We granted licensing relief in relation to the issue of a facility comprised of two components—a loyalty scheme and a low-value non-cash payment (NCP) facility—namely, a prepaid debit card (the combined facility). The issuer already operated the card-based loyalty scheme, enabling cardholders to access a wide range of benefits and discounts from specified retail outlets. The card was issued free with any purchase of a mobile phone at participating outlets. The issuer wanted to combine this facility with a debit card to be issued by an authorised deposit-taking institution (ADI). The debit card component would allow customers to make low value NCPs for goods and services at participating outlets and would be issued on behalf of the ADI through those outlets.

24 The issuer was already relying on Class Order [CO 05/737] *Loyalty schemes* in relation to the loyalty scheme and Class Order [CO 05/736] *Low value NCP facilities* in relation to the debit card component. However, the issuer could not rely on [CO 05/737] and [CO 05/736] for the combined facility because these class orders limit relief to facilities that are not a component of another financial product.

25 Conditional relief was granted to the issuer on the basis that:

- the individual components of the combined facility would otherwise be entitled to relief if they were offered separately under [CO 05/736] and [CO 05/737]; and

- while the cumulative effect of the two components could increase the risk of consumer detriment (such as cardholder confusion in relation to dispute resolution as there were two joint issuers), this could be addressed by additional disclosure conditions.
- 26 Relief was granted on similar terms to [CO 05/736] with additional disclosure requirements to include information about:
- the different roles of the entity and ADI as the joint issuers of the combined facility; and
  - the internal dispute resolution processes relevant to each component of the combined facility and how they can be accessed by cardholders.

## Relief refused

### Professional indemnity insurance cover for a small investment club

- 27 We refused to grant relief to an AFS licensee operating a small investment club from the requirement to have professional indemnity (PI) insurance cover for retail clients under s912B. The club invests in the top 100 listed companies of the Australian Securities Exchange (ASX), and consists of preference shareholders who are family, friends and associates of the company's directors. Relief was requested because the licensee was having difficulty obtaining appropriate PI insurance cover and believed that the unusual nature of its business (i.e. the relationship of the members to the company's directors) was such that it should not be required to obtain PI insurance cover.
- 28 Relief was refused as there was no policy basis to support granting the exemption:
- While the preference shareholders are family, close friends and associates of the company's directors, they are entitled to no less protection than retail clients who are dealing with a licensee on an impersonal, arms-length basis. No distinction should be drawn based on the client's relationship with the licensee/insured.
  - The legislature has made its intentions clear that all AFS licensees who provide financial services to retail clients must have PI insurance cover or some other adequate alternative compensation arrangement. The applicant was unable to suggest an adequate alternative compensation arrangement that provided no less protection than PI insurance cover.

## Licensing relief for a grain pool operator

- 29 We refused to grant relief to a grain pool operator from the managed investment, licensing, anti-hawking and financial product disclosure provisions of the Corporations Act in connection with certain proposed grain pool operations. Relief was sought on substantially the same terms as Class Order [CO 02/211] *Managed investment schemes—interests not for money*. This class order provides conditional relief from the managed investment, licensing and financial product disclosure provisions of the Corporations Act for transactions that involve personal services, goods or produce, intellectual property, interests in land, other property or a business.
- 30 The applicant submitted that, although they could satisfy the other requirements of [CO 02/211], they were unable to meet the condition set out in paragraph (i) of Schedule B of [CO 02/211] as there would be retail investors participating in the proposed grain pool operations. We refused relief because we considered that the condition in paragraph (i) of Schedule B did not prevent the applicant from relying on [CO 02/211].

## Publications

- 31 We issued the following class orders and regulatory guide in relation to licensing relief during the period of this report.

### Class orders

#### **[CO 10/45] Variation of Class Order CO 08/1 and [CO 10/116] Group purchasing bodies—variation of Class Order [CO 08/1]**

- 32 [CO 10/116] clarifies the availability of relief in Class Order [CO 08/1] *Group purchasing bodies*. [CO 08/1] provides conditional relief from the licensing and managed investment registration requirements for some group purchasing bodies who arrange or hold risk management products on behalf of third parties.
- 33 [CO 10/45] and subsequently [CO 10/116] also extended the breach reporting period in [CO 08/1] to allow ASIC to provide its clarification in [CO 10/116]. Breaches must now be reported to ASIC on the earlier of:
- the first time the group purchasing body acquires, renews or renegotiates the terms of its insurance cover on or after 30 June 2010; or
  - 30 June 2011.

## Regulatory guides

### **RG 211 *Clearing and settlement facilities: Australian and overseas operators***

34 RG 211 was released in anticipation of more clearing and settlement facilities seeking to operate in Australia. It responds to international regulatory developments promoting the use of central counterparty (CCP) clearing and settlement of over-the-counter (OTC) derivative transactions.

35 RG 211 sets out:

- when an Australian clearing and settlement facility (CSF) licence is required;
- how to apply for a CSF licence; and
- our approach to exemptions.

## B Disclosure relief

### Key points

This section outlines some of the applications we have decided relating to requirements under Ch 6D and 7 of the Corporations Act to provide prospectuses and other disclosure documents, and Product Disclosure Statements (PDSs) and Financial Services Guides (FSGs).

### Prospectus relief

#### Disclosure relief for employee share scheme offering performance rights

- 36 In the matter referred to in paragraph 8, we also granted disclosure relief from Pt 6D.2, 6D.3 (except s736) and 7.9. Relief was required because the offer of performance rights did not comply with [CO 03/184].

### PDS relief

#### Disclosure relief for employee share scheme offering derivatives

- 37 In the matter referred to in paragraph 11, we also granted relief from the requirement to provide a PDS or FSG to scheme participants, on the condition that the terms of the employee share scheme were to be included as part of the offer documentation.

#### Disclosure relief for a combined NCP facility

- 38 In the matter referred to in paragraph 23, we also granted relief from Pt 7.9 of Ch 7.

### Other disclosure relief

#### Disclosure obligations for ASX's AQUA-quoted interests

- 39 We granted relief to the responsible entity of an exchange-traded fund (ETF) from the requirement under s1017B to notify unitholders of any material

change to a matter, or significant event that affects a matter, being a matter that would have been required to be specified in a PDS for the financial product prepared on the day before the change or event occurs.

40 Relief was granted for the following reasons:

- there is some uncertainty as to whether quoted interests in ETFs are enhanced disclosure (ED) securities as defined in s111AFA(1); and
- as interests in the ETF will be quoted for trading on the ASX, it is more efficient and appropriate for ongoing disclosure for the units to be made under Ch 6CA than under s1017B.

41 Relief was granted on the condition that the responsible entity complies with the Corporations Act as if it were an unlisted disclosing entity.

### **Disclosure relief for share sale facility**

42 We granted relief from s1019F to allow unsolicited invitations to be made by a company to existing shareholders to participate in a pre-IPO share sale facility. As the company is an unlisted disclosing entity and is subject to the continuous disclosure obligation under s675, the existing shareholders will have sufficient information to make an informed decision about whether to sell their shares under the pre-IPO share sale facility. However, as existing shareholders would not be provided with a copy of the IPO prospectus during the time period in which they were required to accept the invitation, relief was conditional on withdrawal rights being provided until a date after receipt of the IPO prospectus.

43 In the matter referred to in paragraph 15, we also granted relief from the prohibition on unsolicited offers in s1019F.

### **Relief from on-sale provisions**

44 We refused to grant relief to an issuer to extend the 5-day suspension period in s708A(5)(b) to 7 months. The issuer sought relief so that it would not require disclosure for on-sale of securities under s707(3). Given the duration of the suspension, we were not satisfied that the securities *will be* adequately priced and the market *will be* fully informed, and further, at the time the relief was not needed. ASIC does not give relief where the company is merely thinking about, but has not made a decision about whether it intends to rely on the relief sought: see Regulatory Guide 173 *Disclosure for on-sale of securities and other financial products* (RG 173) at RG 173.27.

### **Secondary sale relief**

45 We granted secondary sales relief by way of a modification to s707(3), (4), (5) and (6) for ordinary shares issued or sold under a Canadian prospectus.

These ordinary shares can be on-sold by investors within 12 months without the need to lodge a further Ch 6D offer document. RG 173 enables us to grant relief where investors have, through some alternative means, the benefit of disclosure comparable to that which might otherwise have been contained in a Ch 6D prospectus.

- 46 Relief was granted because:
- the offshore shares could be on-sold in a market where there has been a disclosure document that satisfies Ch 6D and the Canadian prospectus will contain information materially similar to that required of a prospectus under Ch 6D; and
  - the applicant would be subject to continuous disclosure obligations of the ASX Listing Rules.

### **Part 7.9 relief for a grain pool operator**

- 47 In the matter referred to in paragraph 29, we also refused relief from s992A, 992AA and Pt 7.9 as we were not satisfied, based on the reasons submitted, that relief was not available under [CO 02/211].

## **Publications**

- 48 We issued the following class orders and regulatory guides in relation to disclosure relief during the period of this report.

### **Class orders**

#### **[CO 09/1084] *Variation of Class Orders [CO 07/428] and [CO 07/429]***

- 49 [CO 09/1084] varies Class Order [CO 07/428] *Consent to quote: Citing credit ratings, trading data and geological reports in disclosure documents and PDS* and Class Order [CO 07/429] *Consent to quote: Citing credit ratings, trading data and geological reports in takeovers*, which inserted provisions into the Corporations Act that allowed an issuer to cite a credit rating in a disclosure document, PDS, target's statement or bidder's statement without consent. The variations remove these notional provisions from the Act.
- 50 Issuers must now ensure that any credit rating agency has given its consent for the inclusion of a credit rating (and its form and context) in any fund raising or takeover documents.

**[CO 09/425] Share and interest purchase plans**

51 [CO 09/425] was effective from 18 June 2009 and provides prospectus and PDS relief for share and interest purchase plans. It was modified on 15 March 2010 to allow the following investors to participate in share purchase plans:

- those holding shares through structures such as investor-directed portfolio services and superannuation master trusts; and
- those holding shares through structures involving two or more levels of custodians.

**[CO 10/94] Variation of relief for transaction-specific prospectuses when offering convertible securities**

52 [CO 10/94] amends Class Order [CO 00/195] *Offer of convertible securities under s713*, which allows an offeror to offer securities which are convertible into continuously quoted securities by way of a transaction-specific disclosure document under s713, if certain requirements are met. The variations clarify that the exemption in [CO 00/195] does not allow a body for which a determination under s713(6) is in force to use a transaction-specific prospectus under s713 for an offer of convertible securities.

**[CO 10/105] Variation of Class Orders [CO 05/26] and [CO 09/425]**

53 [CO 10/105] varies ASIC's share and interest purchase plan relief in [CO 09/425] *Share and interest purchase plans*, which provides prospectus and PDS relief for share and interest purchase plans. The variations:

- enable persons who hold securities through multiple levels of custodians and through structures such as superannuation master trusts to participate in share and interest purchase plans; and
- facilitate the use of electronic payment facilities by applicants under share and interest purchase plans.

**[CO 10/321] Offers of vanilla bonds**

54 [CO 10/321] provides relief to allow:

- certain offers of 'vanilla' corporate bonds to be made under a vanilla bonds prospectus, which has a similar level of content to a transaction-specific prospectus;
- vanilla bonds to be offered under a two-part vanilla bonds prospectus;

55 Vanilla bonds under a vanilla bonds prospectus or a two-part prospectus will also not be subject to an exposure period if the bonds are in the same class as existing quoted bonds except for differences in the term, interest rate and interest payment dates.



**[CO 10/322] *On-sale for convertible notes issued to wholesale investors***

- 56 [CO 10/322] provides relief so that quoted securities issued on the conversion of convertible notes may be on-sold to retail investors if the convertible notes were issued to institutional investors under a cleansing notice containing prospectus-like disclosure.

**Regulatory guides**

**RG 213 *Facilitating debt raising***

- 57 RG 123 describes the class order relief we have given in [CO 10/321] and [CO 10/322] to facilitate debt raising by listed entities.

**RG 173 *Disclosure for on-sale of securities and other financial products***

- 58 RG 173 was also updated to reflect the class order relief in [CO 10/322].

## C Managed investment 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 of the Corporations Act.

### Registration

#### Managed investment relief for a share sale facility

- 59 In the matter referred to in paragraph 15, we also granted relief from the managed investment provisions under Ch 5C.

#### Managed investment relief for a grain pool operator

- 60 In the matter referred to in paragraph 29, we also refused relief from s601ED as we were not satisfied, based on the reasons submitted that relief was not available under [CO 02/211].

### Other relief relating to registered schemes

#### 'Rolling' withdrawal relief for illiquid schemes

- 61 We modified the application of various technical requirements in Pt 5C.6 so that the applicant could implement a 'rolling' withdrawal offer over a 12-month period for its frozen mortgage funds. The relief was conditional on the applicant:
- providing all members with information about the amount of each withdrawal opportunity and how the withdrawal opportunity is being funded before the withdrawal opportunity becomes open;
  - including reminders about members' ability to participate in the rolling withdrawal in correspondence
  - notifying all members in writing of the outcome of each withdrawal opportunity;
  - maintaining a website that contains all relevant and up-to-date information about the rolling withdrawal offer;
  - distributing all available cash to members; and
  - providing ASIC with information about each withdrawal opportunity.

62 Relief was granted to allow the applicant to streamline withdrawal procedures for investors seeking to redeem their investments in frozen mortgage funds.

### **Procedural relief to facilitate a change of responsible entity**

63 We granted relief from s601FJ(1) to allow for an effective change of responsible entity to occur even though registration of the change would not be made to the ASIC register as required under s601FJ because ASIC's offices would be closed during the Christmas/New Year closedown period. The applicant submitted that an amendment to s601FJ(1) was required because the date of the investors meeting and the 2-business day requirement from the time of passing of the resolutions to effect a change of responsible entity overlapped with the closedown period. If relief was not granted, the registration of the effective date of the change of responsible entity would be delayed.

64 Relief was granted on the basis that the commercial benefit in providing a timely and certain transition outweighed the regulatory detriment. We considered that investors may be misled if there is an effective change of responsible entity that is not accurately reflected in the ASIC register.

### **Refusal of relief to facilitate replacement of responsible entity by special resolution of members**

65 We refused to grant relief from s601FL to facilitate retirement and replacement of the responsible entity of a scheme by a special resolution of members (as defined under s9) rather than by the required extraordinary resolution of members. Section 601FL(1) affords member protection by requiring a resolution to change responsible entity of a registered scheme to be approved by an extraordinary resolution of members in light of the significant impact of a change of responsible entity on a scheme.

66 We were not satisfied that the application was within the existing policy for granting relief under Regulatory Guide 51 *Applications for relief* (RG 51) and Regulatory Guide 136 *Managed investments: Discretionary powers and closely related schemes* (RG 136). We did not consider in the circumstances that the commercial benefits that flowed from granting relief outweighed the regulatory detriment in removing the legislative protections under s601FL(1).

### **Refusal of relief to facilitate liquid redemption rights to an illiquid scheme**

67 We refused to grant relief from s601GA(4) and Pt 5C.6 to a responsible entity to facilitate liquid redemption rights to a class of interests in an illiquid

scheme. Part 5C.6 provides a mechanism for a withdrawal offer to be made by a responsible entity to a class of members in circumstances where a scheme is illiquid.

- 68 We were not satisfied that the application was within the existing policy for granting relief under RG 51 and RG 136 and that compliance with the Corporations Act would impose unreasonable burdens. Further, we were not satisfied that the commercial benefits that flowed from granting relief outweighed the regulatory detriment in removing the legislative protections under Pt 5C.6, particularly given the impact on non-withdrawing members.

## Publications

- 69 We issued the following advisories, media release and class orders in relation to managed investment relief during the period of this report.

### Advisories

#### **10-96AD ASIC extends hardship relief to apply to a 'frozen fund' in winding up (11 May 2010)**

- 70 This advisory announced that ASIC will extend relief it has granted since October 2008 to facilitate operators of 'frozen funds' making hardship payments to members where the fund is in the process of winding up.

#### **10-109AD Information for investors of frozen funds (26 May 2010)**

- 71 This advisory announced the release of Information Sheet 111 *Information for investors in frozen funds* (INFO 111), which informed investors in 'frozen funds' about their rights in relation to the freezing of funds and to confirm which entities have received relief to assist in the redemption of funds.

### Media release

#### **09-269MR ASIC grants conditional relief to improve access to capital for investors in frozen funds (23 December 2009)**

- 72 This media release announced the grant of conditional relief for investors in frozen mortgage funds from some of the withdrawal provisions of the Corporations Act. The relief enables a responsible entity of a frozen mortgage fund to implement a 'rolling' withdrawal offer over a 12-month period. The relief applies for a period of 3 years, or until the frozen mortgage fund becomes liquid.

## Class orders

### **[CO 10/105] Variation of Class Orders [CO 05/26] and [CO 09/425]**

73 [CO 10/105] makes minor changes to [CO 05/26] *Constitutional provisions about the consideration to acquire interests*, which grants relief from s601GA(1)(a) where, for commercial reasons, the consideration to acquire an interest in a registered managed investment scheme cannot be determined independently and investor protection will not be reduced.

74 The variations allow:

- a responsible entity of a managed investment scheme to exclude foreign members from an interest purchase plan offer; and
- custodians that are members who hold interests of the same class to be treated differently in relation to an interest purchase plan.

### **[CO 10/333] Funded representative proceedings and funded proof of debt arrangements**

75 [CO 10/333] enables the temporary operation of funded representative proceedings and funded proof of debt arrangements without compliance with the requirements of the Corporations Act.

## D Mergers and acquisitions relief

### Key points

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

### Acquisition of relevant interests in voting shares

#### Joint bid relief and relief to permit further acquisitions

- 76 We granted relief from the prohibition in s606, on terms similar to ASIC's standard 'joint bid' relief in Regulatory Guide 159 *Takeovers, compulsory acquisitions and substantial holdings* (RG 159), to permit a bidder, the target and a substantial holder of the target to enter into a series of agreements. Those agreements relate to the acquisition by the bidder of all of the ordinary shares in the target, and the division of the target's businesses between the bidder and the substantial holder following the acquisition. The acquisition by the bidder of the substantial holder's holding in the target will occur under a share sale agreement, and the acquisition of the remaining shares in the target will occur under a scheme of arrangement.
- 77 Relief was granted after we reviewed the terms of the agreements (including the proposed exclusivity provisions) and were satisfied that, having regard to the conditions to our relief, entry into the agreements would not unduly impact on the competition for control of the target.
- 78 Relief was granted on the following conditions:
- A substantial holding notice is prepared by the bidder in relation to its relevant interest in the target after entry into the agreements.
  - If a competing proposal is made that the target board considers would likely be a superior proposal if supported by the substantial holder, the substantial shareholder will not be subject to any exclusivity arrangements.
  - An expert is engaged to prepare an independent expert report in relation to the scheme.
  - If a bona fide competing proposal for the target is announced after dispatch of the explanatory statement but before the scheme meeting, the target will provide target shareholders with all material information about the proposal.

- The bidder, the substantial shareholder and their associates will not vote shares held by them in the scheme except where:
  - the shares are held on behalf of, or for the benefit of, a third party (including external investors, unitholders, policy holders or beneficiaries of funds);
  - the entity holding the shares is obliged to act in the interests of that third party; and
  - neither the bidder nor a subsidiary of the bidder (in the case of shares held by the bidder), and neither the substantial holder nor a subsidiary of the substantial holder (in the case of shares held by the substantial holder), has a beneficial interest in the shares, other than in its capacity as trustee, responsible entity, life company, investment manager or similar.

However, all votes by the bidder, the substantial holder and their subsidiaries will be tagged and reported to ASIC and the court; and

- the bidder will terminate the agreements if the scheme is not approved by the court.

79 We also granted relief from the prohibition in s606 to allow the bidder and certain of its subsidiaries, after entry into the agreements described above but before completion, to acquire shares in the target. Relief would only be available where:

- the acquisition is made on behalf of, or for the benefit of, a third party (including external investors, unitholders, policy holders or beneficiaries of funds);
- the entity making the acquisition is obliged to act in the interests of that third party; and
- neither the bidder nor a subsidiary of the bidder has a beneficial interest in the shares, other than in its capacity as trustee, responsible entity, life company, investment manager or similar.

80 Relief was granted on the condition that the bidder could acquire only up to a further 3% voting power in the target based on the relief instrument. In calculating the 3%, acquisitions by the substantial holder and its subsidiaries, but not the target and its subsidiaries, are to be included.

## Takeovers

### Procedural relief for compulsory acquisition and compulsory buy-out notices

- 81 We granted relief to modify s661B for a bidder undertaking a compulsory acquisition of the target's securities. Section 661B requires the bidder to prepare a compulsory acquisition notice which must be lodged with ASIC and given to the ASX (as the relevant market operator).
- 82 If relief was granted, the bidder was required to lodge a pro-forma compulsory acquisition notice only. Otherwise, the bidder would have had to lodge with ASIC and give to the ASX each individual notice, which would be onerous (due to the number of notices required) and of little regulatory benefit. The bidder was still required to provide each relevant shareholder with a personalised notice and keep a copy of each notice.

## Others mergers and acquisitions relief

### Modification of item 7 of s611

- 83 We granted relief to an acquirer by modifying the exception set out in item 7 s611 to facilitate the acquisition by the acquirer of all the ordinary shares in an unlisted company with more than 50 members. Without relief, the acquisition could only proceed if the acquirer made a takeover bid, the company proposed a scheme of arrangement, or if one of the other exemptions in s611 was available. In this case, it was proposed that, if the acquisition is approved by members holding ordinary shares carrying at least 90% of the votes attached to those shares, the acquirer would compulsorily acquire the remaining shares under s414.
- 84 Relief was granted in these circumstances because we were satisfied that:
- it was impractical in this instance for the acquisition to be made under a takeover bid or a scheme of arrangement as we considered, among other things, the likelihood of the company becoming insolvent;
  - shareholders in the company would not be disadvantaged by the acquisition proceeding under item 7 of s611 in this instance;
  - shareholders in the company would not be disadvantaged by the compulsory acquisition proceeding under s414 as the protections that applied to the shareholders in this instance were comparable to those under Pt 6A; and
  - shareholders in the company would be given disclosure comparable to that required under Ch 6 and s414.
- 85 Relief of this type will only be given in very limited circumstances.



## Relief for selective buy-backs

- 86 We granted relief in relation to a proposal by a company to seek approval from its shareholders for the conduct of certain buy-backs of ordinary shares in the company. The buy-backs tenders would be treated as selective buy-backs rather than equal access schemes. Under s257D, the buy-back tenders need to be approved by either:
- a special resolution of company shareholders, with no votes being cast in favour by any person whose shares are proposed to be bought back, or their associates; or
  - a resolution agreed to by all ordinary shareholders. In this case, it would have been logistically impossible for the company to seek approval of a resolution by all ordinary shareholders due to the size of the company's register.
- 87 The company sought an exemption from the shareholder approval requirements for selective buy-backs so that no shareholder would be precluded from voting on the special resolution to approve any buy-back tender.
- 88 The company submitted that, at the time of the shareholder meeting, it would not be possible to determine which shares may be bought back under any buy-back tender that may subsequently be conducted. Therefore, it would not be possible to determine the people whose shares were proposed to be bought back under any future buy-back tenders for the purpose of s257D(1)(a). For this reason, it may not be clear at the time of the shareholder vote who is entitled to vote on the resolution.
- 89 Relief was granted on the basis that the company:
- did not intend to buy-back more than 10% of its shares under the proposed buy-backs (i.e. it only intended to buy-back approximately 7.3% of its issued capital); and
  - intended to seek shareholder approval through a special resolution (this is a higher threshold than is normally required to exceed the 10/12 limit in relation to an equal-access scheme, which only requires an ordinary resolution).

## Publications

- 90 We issued the following consultation paper in relation to mergers and acquisitions relief during the period of this report.

## Consultation paper

### **CP 127 *Schemes of arrangement: Statements under s411(17)(b)***

- 91 CP 127 sought feedback on whether or not ASIC should give a statement under s411(17)(b) if we are satisfied that a scheme meets our policy in Regulatory Guide 60 *Schemes of arrangement* (RG 60), but a member undertakes to us that they will object to the scheme on the basis that it has been proposed to avoid Ch 6 requirements.
- 92 Submissions have closed at the date of this report and the outcome of our consultation will be discussed in a future report.

## E Short selling relief

### Key points

This section outlines some of our regulatory actions in relation to the short selling provisions in s1020B (and notional s1020BC and 1020BD) of the Corporations Act. There are no individual relief items to report during this period.

### No-action letters

#### Client facilitation services

- 93 In September 2008, ASIC issued no-action letters to stockbrokers to allow them to make naked or covered short sales of securities in the course of their client facilitation businesses: see Report 150 *Overview of decisions on relief applications (August to November 2008)* (REP 150).
- 94 On 30 April 2009, we added further conditions to these no-action letters requiring that:
- at the time of the sale, the broker believes on reasonable grounds that a securities lending arrangement can be put in place so that the shorted product can be unconditionally vested in the buyer by the time for delivery; and
  - by the end of the day on which the broker makes the sale of the security, the broker:
    - acquires an equivalent security; or
    - enters into a contract to acquire an equivalent security; or
    - enters into a securities lending arrangement in relation to an equivalent security, so that the security can be unconditionally vested in the buyer at the time of delivery.
- 95 We consider that client facilitation services add to the efficient operation of the financial markets and are analogous to market making services. We have therefore modified the conditions of our client facilitation no-action letters to better protect against the risk of settlement failure and more closely align with the conditions of our relief for naked short selling to hedge risk from market making activities. See Report 167 *Response to submissions on CP 106 Short selling to hedge risk from market making activities* (REP 167) for more information.
- 96 Persons relying on these no-action letters to execute naked short sales should note that they are not required to make transactional reporting of these sales, but are required to comply with disclosure obligations in relation to short positions that are created.

## Publications

- 97 We issued the following advisory, class orders and regulatory guide in relation to short selling relief during the period of this report.

### Advisory

#### **10-42AD Short position reporting (5 March 2010)**

- 98 This advisory announced that ASIC had decided to:
- delay the commencement of short selling obligations to lodge short position reports from 1 April 2010 to 1 June 2010; and
  - reschedule the commencement of ASIC obligations to publish aggregated short position reports from 1 April 2010 to 21 June 2010.
- 99 These changes were made to allow short sellers more time to ensure they have appropriate systems in place to meet their reporting obligations.

### Class orders

#### **[CO 09/1063] Revocation of Class Order [CO 08/751] and variation of Class Order [CO 08/764]**

- 100 [CO 09/1063] revokes Class Order [CO 08/751] *Covered short sales*, which imposed certain reporting requirements upon the execution of covered short sales and certain naked short sales. It also varies Class Order [CO 08/764] *Short selling—exercise of exchange traded options*, which exempts a person from having to comply with the naked short selling prohibition in the Corporations Act in relation to the sale of a security or managed investment product where the transaction affecting the sale of the product is the result of the exercise of an ASX exchange-traded option. The changes remove the conditions that require clients and market participants to take steps to facilitate reporting of naked exchange-traded options short sales.

#### **[CO 10/29] Short position reporting regime postponements and clarification**

- 101 [CO 10/29] varies the Corporations Regulations 2001 to:
- postpone the commencement of the short position reporting regime for positions as at 1 June 2010 to 4 June 2010; and
  - clarify the timing of short position reporting obligations by varying the definition of reporting day and close of business in relation to short positions.

**[CO 10/111] Short selling: limited relief for deferred purchase agreement issuers from s1020B(2)**

102 [CO 10/111] exempts an issuer from having to comply with s1020B(2) in relation to the sale of a security or managed investment product (delivery product) under a deferred purchase agreement (DPA) where:

- the terms of the DPA provide that the issuer will deliver the delivery products at least 12 months after entering into the DPA; and
- the number and value of the delivery products to be delivered is determined by reference to nominated reference assets.

103 The exemption under [CO 10/111] does not extend to an issuer's hedging activities in relation to their exposure to the reference asset under the DPA.

**[CO 10/135] Relief for small short positions**

104 [CO 10/135] exempts short sellers from reporting their short positions that, as at 7 pm on any given day, do not exceed:

- the value (as defined in [CO 10/135]) of \$100,000; and
- a volume of 0.01% of the total quantity of securities or products in that same class of securities or products traded in one day.

**Regulatory guide**

**RG 196 Short selling**

105 RG 196 was updated to clarify the legal position about what short sales are permitted, as well as specific reporting and disclosure obligations.

## F Conduct and financial reporting relief

### Key points

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

### Conduct relief

#### Relief for employee share scheme offering derivatives

- 106 In the matter referred to in paragraphs 11 and 36, we also granted relief from the requirement to provide confirmation of transactions as required under s1017F.

#### Conduct relief for combined NCP facility

- 107 In the matter referred to in paragraph 23, we also granted relief from the prohibition on hawking in s992A.

### Financial reporting relief

#### Financial statements after AFS licence cancellation

- 108 A no-action letter was provided in relation to a breach of s989B due to a failure to prepare and lodge financial statements accompanied by an auditor's report for the applicant's financial year ended 30 June 2009. The applicant's AFS licence was cancelled shortly after the 2009 financial year ended but before the date by which the financial statements were due to be lodged with ASIC. Regulatory Guide 167 *Licensing: Discretionary powers* (RG 167) at RG 167.3C states that ASIC may grant relief under s992B to address atypical or unforeseen circumstances and unintended consequences of the licensing provisions of the Corporations Act.
- 109 No action was justified in these circumstances because the regulatory benefit intended by s989B(2) had already been fulfilled by the applicant notifying ASIC of its breach of the financial requirements imposed as a condition of its AFS licence in the 2009 financial year. ASIC had assessed this breach notification and decided to take no further action.

### Publications

- 110 We did not issue any publications on conduct or financial reporting relief during the period of this report.

## G Credit relief

### Key points

This section outlines some of our regulatory action in relation to applications for relief under the National Credit Act or Transitional Act.

### Relief granted

#### Interim relief from the responsible lending obligations for life insurer

- 111 We granted a life insurer interim relief from the responsible lending obligations (obligations) in Div 3 and 4 of Pt 3–2 of Ch 3 of the National Credit Act. This relief was in relation to the life insurer’s credit contracts known as ‘Loans on Policy’, allowing them to comply with the obligations from 1 January 2011 (rather than from 1 July 2010). Under Loans on Policy, ‘Whole of Life’ and ‘Endowment Life Insurance’ policy holders are entitled to borrow against the accrued policy surrender value from time to time. These policies are legacy products and are closed to new business.
- 112 Relief was needed because it was not commercially or practically viable for the life insurer to incorporate the obligations into the Loans on Policy service for policy owners by 1 July 2010. The applicant proposed to make a relief application for permanent relief from the obligations, but this would not be completed and considered by ASIC by 1 July 2010. The industry body representing life insurers also proposed to seek class order relief on behalf of its members.
- 113 Conditional relief was granted on the basis that:
- it was merely delaying the commencement of the obligations, consistent with the commencement date of the obligations for some other bodies regulated by the Australian Prudential Regulation Authority (APRA); and
  - it would give the life insurer and ASIC more time to consider the substantive issue of whether relief should be granted from the obligations on an industry-wide basis.
- 114 Relief was granted on the condition that the Loans on Policy are administered by the life insurer as limited recourse loans.

## Publications

- 115 We issued the following class order and updated the following regulatory guides in relation to credit relief during the period of this report.

### **Class order**

#### ***[CO 10/381] Notice lodgement requirement for certain persons who are credit providers or lessors in relation to a carried over instrument***

- 116 [CO 10/381] makes a declaration in relation to the Transitional Act to rectify some drafting anomalies. The class order provides for notice lodgement requirements for certain persons who are credit providers or lessors in relation to a carried-over instrument.

### **Regulatory guides**

#### ***RG 51 Applications for relief and RG 108 No-action letters***

- 117 RG 51 and RG 108 were updated to apply to relief applications and no-action letters made under the National Credit Act.

#### ***RG 208 How ASIC charges fees for credit relief applications***

- 118 RG 208 was released specifically for applicants seeking credit relief and describes:
- our approach to charging fees for relief applications;
  - the principles we use to calculate fees; and
  - the fees we charge for standard applications.



## H Other relief

### Key points

This section outlines decisions we have made that do not fall within any of the categories mentioned in previous sections and that may be significant to participants in capital markets, financial services providers, and credit providers and intermediaries.

### Relief granted

#### Relief from restrictions on advertising or publicity for unlisted component of a stapled security

- 119 We granted relief from the prohibition on advertising or publishing a statement regarding an offer or intended offer of securities under s734(2) of the Corporations Act. The relief was sought because a company wished to staple shares in an unlisted company to existing interests in a listed scheme, and to subsequently offer the new stapled securities to the public.
- 120 We considered that the company would have breached s734(2) in relation to the shares in the unlisted company when it:
- sent a notice of meeting to the members of the listed scheme seeking member approval of the stapling transaction and the fundraising offer; and
  - made announcements to the ASX regarding the proposed stapling transaction and fundraising offer.
- 121 We granted relief from s734(2) to enable the company to send the notice of meeting and to make the ASX announcement for the following reasons:
- In relation to sending the notice of meeting, relief was not inconsistent with the policy principles underlying s734(2) as discussed in Regulatory Guide 158 *Advertising and publicity for offers of securities* (RG 158) at RG 158.18. There was no drip feeding of information to members of the scheme, or any concern that the notice of meeting would divert members' attention away from the prospectus for the shares in the unlisted company, as members would receive in the notice of meeting material that would fully explain the restructure transaction and the prospectus would be included in the notice of meeting package.
  - In relation to making the ASX announcement, granting relief would facilitate the company complying with its continuous disclosure obligations and was not inconsistent with the policy principles underlying s734(2).

### **Anti-hawking relief for employee incentive scheme offering performance rights**

- 122 In the matter referred to in paragraphs 8 and 36, we also granted relief from the anti-hawking restrictions in s992A and 992AA of the Corporations Act to permit the company to contact and invite employees to participate in the scheme.

## **Relief refused**

### **Extension of the 3-month period within which a company's shares must be admitted to quotation**

- 123 We refused to grant relief to extend the 3-month period in s723(3) of the Corporations Act to be 3 months and 3 days. The extension was sought so that a company could achieve quotation within 3 months and 3 days from the date of the prospectus, without offering withdrawal rights.
- 124 We considered that a decision to grant relief would be law reform on the basis that the old policy statement refers to the Corporations Law as it was in 1995, and there is a mechanism in the Corporations Act to extend the time period in s723(3), as long as withdrawal rights are offered. Standard relief which included offering withdrawal rights was granted, refreshing the time periods in s723(3)(b) and s724(1)(a) and (b).

## **Publications**

- 125 We issued the following class order in relation to other relief during the period of this report.

### **Class order**

#### **[CO 10/246] *Variation of Class Order [CO 09/340]***

- 126 [CO 10/246] varies [CO 09/340] *External dispute resolution schemes*, which approves external dispute resolution schemes. The variations remove the name of the Financial Co-Operative Dispute Resolution Scheme.

## Appendix: ASIC relief instruments

This table lists the relief instruments we have executed for matters that are referred to in this report and which are publicly available. The class orders are available from our website via [www.asic.gov.au/co](http://www.asic.gov.au/co). The instruments are published in the *ASIC Gazette*, which is available via [www.asic.gov.au/gazettes](http://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
8, 36	Tap Oil Limited (ACN 068 572 341)	10-0260 (A030/10)	30/03/2010	s911A(2)(l), 992B(1)(a), 1020F(1)(a) and 1020F(1)(b), Corporations Act  This instrument grants relief from Pt 7.9 disclosure, licensing, advertising and hawking provisions.	
11, 37, 106	Elkington Bishop Molineaux Insurance Brokers Pty Limited (ACN 009 179 640)	10-0371 (A046/10)	19/05/2010	s911A(2)(l), 1020F(1)(a), Corporations Act  This instrument provides exemptions from the licensing and disclosure provisions for an employee incentive scheme.	
15, 43, 59	Brambles Limited (ACN 118 896 021)	09-1120 (AO01/10)	23/12/2009	s911A(2)(l), 601QA(1)(a), 1020F(1)(a), Corporations Act  This instrument grants relief from Ch 5C, Pt 7.6 and 7.9, and s1019F in relation to a share sale facility.	
18	Itaú Unibanco S.A. (a body corporate incorporated in Brazil)	10-0281 (A033/10)	07/04/2010	s911A(2)(l), Corporations Act  This instrument grants relief to allow a Brazilian FFSP to provide certain financial services to Australian wholesale clients without an AFS licence.	

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
20	ARC Equity Partners Pty Limited (ACN 134 400 230)	10-0334 (A046/10)	28/05/2010	s911A(2)(l), Corporations Act  This instrument exempts trustees of wholesale property schemes from the requirement to hold an AFS licence to deal in and provide a custodial and depository service for general insurance products.	
23, 38, 107	Incard Pty Limited (ACN 132 641 653)	10-0323 (AO44/10)	13/05/2010	s911A(2)(l), 992B(1)(a) and 1020F(1)(a), Corporations Act  This instrument grants relief from Pt 7.9 disclosure, licensing and hawking provisions.	
39	Russell Investments Limited (ACN 068 338 974)	10-0315 (A041/10)	27/04/2010	s1020F(1)(a), Corporations Act  This instrument exempts the applicant from s1017B on the condition that the applicant complies with the Corporations Act as if it were a disclosing entity.	
42	SMEC Holdings Limited (ACN 057 274 049)	10-0279 (A039/10)	27/04/2010	s1020F(1)(a), Corporations Act  This instrument exempts the applicant from s1019F in relation to a share sale facility.	
45	Talison Lithium Limited (ACN 140 122 078)	09-01043 (100/09)	01/12/2009	s741(1)(b), Corporations Act  This instrument modifies s707(3),(4),(5) and (6) in relation to secondary sales of ordinary shares issued under a Canadian prospectus.	
61	National Mutual Funds Management Limited (ACN 006 787 720)	09-01123 (A004/10)	23/12/2009	s601QA(1)(b), Corporations Act  This instrument modifies the withdrawal provisions in s601KB, 601KD and 601KE.	

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
63	Great Southern Managers Australia Limited (Receivers and Managers Appointed) (in Liquidation) (ACN 083 825 405)	09-1137 (A028/10)	24/12/2009	s601QA(1)(b), Corporations Act  This instrument modifies s601FJ to allow the change of responsible entity to occur on the day the notification is posted to ASIC.	
76	National Australia Bank Limited (ACN 004 044 937)  National Wealth Management Holdings Limited (ACN 093 329 983)  AXA (a company incorporated in France)	10-0206 (A030/10)	30/03/2010	s655A(1)(a), Corporations Act  This instrument provides exemptions from the takeovers prohibition in s606.	
79	National Australia Bank Limited (ACN 004 044 937)  Fairview Equity Partners Pty Ltd (ACN 131 426 938)  Lodestar Capital Partners Pty Limited (ACN 115 077 748)  Pengana Holdings Pty Limited (ACN 103 765 082)  Northward Capital Pty Limited (ACN 113 618 938)  And a subsidiary of any of those entities	10-0234 (A030/10)	30/03/2010	s655A(1)(a), Corporations Act  This instrument provides exemptions from the takeovers prohibition in s606.	

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
83	Karmin Exploration Inc. (an entity incorporated under the Canadian Business Corporations Act (Alberta))	10-0370 (AO44/10)	18/05/2010	s655A(1)(b), Corporations Act  This instrument modifies item 7 of s611 to allow all company shareholders to vote on a resolution enabling an acquirer to acquire all the ordinary shares in the company.	
86	Rio Tinto Limited (ACN 004 458 404)	10-0181 (A024/10)	09/03/2010	s257D(4), Corporations Act  This instrument provides an exemption from s257D(1) in relation to proposed off-market selective buy-backs.	
111	AMP Life Limited (ACN 079 300 379)	10-0383 <sup>1</sup>	27/05/2010	s163(1)(a), National Credit Act  This instrument granted relief from Div 3 and 4 of Pt 3–2.	
119	Australian Property Custodian Holdings Limited (ACN 095 474 436)	10-0350 (A044/10)	20/05/2010	s741(1)(a), Corporations Act  This instrument provides an exemption from the restriction in s734(2) from advertising or publishing statements regarding an offer or intended offer of securities.	

<sup>1</sup> This instrument is published on our website at [www.asic.gov.au](http://www.asic.gov.au) under 'Credit relief', not in the *ASIC Gazette*.