ASIC
Australian Securities & Investments Commission

REPORT 226

Overview of decisions on relief applications (June to September 2010)

January 2011

About this report

This is a report 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 June 2010 to 30 September 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, including finding out how the *Corporations Act 2001*, *National Consumer Credit Protection Act 2009* or *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009*, and other applicable laws apply to you. It is your responsibility to determine your obligations and to obtain any necessary professional advice.

Contents

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: Chs 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).

2 ASIC also has powers to give relief under the provisions of Ch 2 (licensing) and Ch 3 (responsible lending) of the *National Consumer Credit Protection Act 2009* (National Credit Act), and to give relief from the registration provisions under Sch 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 we are asked to exercise our discretionary powers to grant relief from provisions of the Corporations Act, the National Credit Act and the Transitional Act.

4 This report covers the period beginning 1 June 2010 and ending 30 September 2010. During this period, we considered 730 applications. We granted relief in 559 applications and refused relief in 74 applications; 97 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 business 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 where we have been prepared to take a no-action position on instances of non-compliance.

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. 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.

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. It also describes the relevant class orders and guidance we have issued.

Relief granted

Licensing relief for online betting facility

8 We granted conditional relief from the requirement to hold an AFS licence for the provision of an online betting facility comprising two components: a facility through which a person manages financial risk and a non-cash payment facility. The applicant proposed to establish a website to facilitate the trading of betting contracts relating to horse races between registered/licensed bookmakers or fixed odd wagering operators (bookmakers), on an anonymous basis. The applicant was not proposing to be a party to the underlying betting contracts.

9 Conditional relief was granted for the following reasons:

- The online betting facility could only be used by bookmakers who had lodged surety bonds with the relevant state or territory-based gaming regulator. The surety bonds guaranteed the fulfilment of the bets in the event that a bookmaker defaulted. Also, the consumers affected were either wholesale or relatively sophisticated.
- The alternative state or territory-based regulation of the applicant and the bookmakers, which would apply if relief was granted, was 'adequate' in that it promoted the provision of efficient, honest and fair financial services and consumer confidence in using the facility.
- On balance, it would be disproportionately burdensome for the applicant to have to comply with the financial services licensing, disclosure and anti-hawking requirements under the Corporations Act.

10 Some of the conditions imposed were that all monies received must be held in trust accounts, proper disclosure documents must be provided to all persons who use the betting facility, and the applicant must maintain adequate internal dispute resolution (IDR) processes in accordance with our policy in Regulatory Guide 165 *Licensing: Internal and external dispute resolution* (RG 165).

Licensing relief for the issuer of a 'bundled' insurance product

11 We granted relief to a general insurer in relation to its motor trade business insurance policy from the obligations in Ch 7 of the Corporations Act that apply to dealings with retail clients, including disclosure requirements, prohibitions against hawking, advertising requirements and requirements for intermediaries to have appropriate authorisations from a licensee.

12 Relief was granted because we considered that:

- the insurance policy comprised a number of 'bundled' elements, which were predominantly types of cover that would be considered as being provided to clients as wholesale clients, but which also included minor elements of cover that fell within the definition of 'motor vehicle insurance product' for the purpose of the definition of *retail client*;
- the classification of parts of the policy as a retail product resulted merely from the nature of the stock-in-trade covered by the policy;
- the policy was provided in a business context; and
- the retail components of the insurance policy were incorporated in such a way that they could not be easily separated from the wholesale components of the policy.

Licensing relief to a market operator and trading participants

13 We granted relief from the obligation to hold an AFS licence to a market operator, and to a specified class of trading participant in that wholesale market, so that they could provide limited financial services in connection with a discrete pricing mechanism of that wholesale market.

14 We granted relief because:

- it related to a wholesale market that is subject to its own regulatory regime;
- all of the relevant market participants meet the definition of a wholesale client;
- the pricing mechanism is an essential part of the market;
- the exemption has limited scope; and
- compliance with the requirement to obtain an AFS licence would be disproportionately burdensome when compared with the regulatory benefit.

No-action position for group purchasing body

15 We adopted a no-action position in relation to the requirement to hold an AFS licence for a group purchasing body that was unable to rely on relief provided in Class Order [CO 08/1] *Group purchasing bodies* because it was an associate of:

- 'captive insurers' that carry on a business of issuing risk management products other than interests in a risk management scheme and who deal in, or advise on, risk management products; or
- AFS licensees authorised to deal in, or advise on, risk management products.

16 The applicant, as the credit licensee of a financial services group, proposed to act as the group purchasing body for its credit representatives by arranging a master professional indemnity (PI) insurance policy from an arm's-length insurer.

17 The no-action letter was granted subject to the applicant:

- complying with the conditions in [CO 08/1];
- acting only in the best interests of its credit representatives in arranging the group PI insurance policy;
- being independent of the issuer of the group PI insurance policy; and
- being reasonably satisfied that it was not reasonably practicable for any of its associates to provide group purchasing arrangements for its credit representatives in relation to PI insurance.

Publications

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

Class orders

[CO 10/177] *Group purchasing bodies—variation of [CO 08/1]*

19 [CO 10/177] amends [CO 08/1] to clarify the relief available for eligible group purchasing bodies that are arranging and holding risk management products or operating a risk management scheme. [CO 10/177] also extends the cessation of the transitional period for compliance with the breach reporting requirements from 30 June 2010 until the first time that the group purchasing body acquires, renews or renegotiates the terms of the risk management product on or after 31 December 2010, but in any event no later than 31 December 2011.

[CO 10/407] *Short term trading market exemptions*

20 [CO 10/407] exempts Australian Energy Market Operator Ltd (AEMO) from the requirement to hold an AFS licence in relation to providing general advice about, dealing in, or making a market in, *ex ante* rights to deliver or withdraw a specified quantity of gas in a short-term trading market established under the National Gas Law and the National Gas Rules. AEMO's trading participants (shippers and users of gas) are also exempted from holding an AFS licence for dealing in *ex ante* rights on their own behalf by issuing the rights where these rights are also issued by AEMO to the trading participant as a wholesale client of AEMO.

Regulatory guide

RG 195 *Group purchasing bodies for insurance and risk products*

21 RG 195 was amended to clarify when we may grant relief to some group purchasing bodies from the AFS licensing and disclosure regime and Ch 5C of the Corporations Act, and to give additional guidance on how the conditions for relief operate. RG 195 also explains the relief we have given for bodies that purchase risk management products (e.g. insurance) for groups of people and what the group purchasing bodies must do to receive the benefit of our relief.

B Disclosure relief

Key points

This section outlines some of the applications we have considered, and the relevant class order and guidance we have issued, that relate to the requirements under Chs 6D and 7 of the Corporations Act to provide prospectuses and other disclosure documents, Product Disclosure Statements (PDSs) and Financial Services Guides (FSGs).

Prospectus relief

Prospectus relief for scrip consideration under a foreign scheme of arrangement

22 We granted relief from the prospectus requirements in Ch 6D for the offer of securities in a company incorporated in Bermuda to Australian investors as scrip consideration under a Bermudian scheme of arrangement.

23 We granted relief for the following reasons:

- The relief was broadly consistent with our policy in Regulatory Guide 188 *Disclosure in reconstructions* (RG 188) to provide prospectus relief for the offer of securities under foreign schemes regulated under jurisdictions that impose a regulatory framework similar to that set out in Pt 5.1 of the Corporations Act, or otherwise provides adequate disclosure and investor protection.
- The explanatory memorandum satisfied the disclosure requirements of an explanatory memorandum to a scheme of arrangement made under Pt 5.1 of the Corporations Act.
- The applicant indicated that, consistent with our policy in Regulatory Guide 60 *Schemes of arrangement* (RG 60) at RG 60.66, the disclosure in the explanatory statement would satisfy the requirements of a bidder's statement for a scrip bid (i.e. prospectus-level disclosure).

Prospectus relief for foreign scheme of arrangement

24 We granted relief from the prospectus requirements in Ch 6D for the offer of securities of an Australian company to Australian investors as scrip consideration under a Papua New Guinean scheme of arrangement.

25 We granted relief for the same reasons as those set out at paragraph 23, other than the final bullet point. In this case, the applicant indicated that the scheme booklet would satisfy the prospectus content requirements under the *Securities Regulation 1999* (PNG). These requirements are broadly equivalent to the full prospectus content requirements under s710 of the Corporations Act and provide more detailed disclosure than the applicant would have been required to provide if relief was not granted. That is, given the applicant was already listed on the Australian Securities Exchange (ASX), the applicant would only have been required to lodge a 'short form' prospectus under s713 of the Corporations Act in relation to the offer of securities.

Prospectus relief for spin-out of assets to an unlisted foreign-incorporated subsidiary

26 An ASX-listed company sought relief from the requirement to prepare and lodge a prospectus to effect the spin-out of its assets by distributing 80% to 85% of its holding in an unlisted foreign-incorporated subsidiary. We were not prepared to give relief until we were satisfied with the disclosure regarding the proposal in the notice of meeting to approve the associated capital reduction. We expected fulsome disclosure, given the nature of the transaction. The matter was ultimately withdrawn.

Disclosure relief for on-sale of shares issued overseas

27 An unlisted company sought relief from the requirement that an offer of shares for sale will need disclosure to investors if their issue will amount to an indirect issue. The company proposed to issue an initial public offering (IPO) prospectus in Canada to raise C$40 million and, with the ASX's consent, lodge an Information Memorandum providing prospectus-equivalent disclosure for Australian retail investors.

28 We advised the applicant of our intention to refuse to grant relief because:

- contrary to our policy in Regulatory Guide 173 *Disclosure for on-sale of securities and other financial products* (RG 173), an Information Memorandum would not provide investors with those protections available under the Corporations Act if a prospectus was lodged with us; and
- the relief was sought to reduce expenditure by the company not having to lodge a prospectus with us, and our policy in Regulatory Guide 51 *Applications for relief* (RG 51) is generally not to grant relief for that purpose in the absence of any anomalous circumstances.

The application was subsequently withdrawn.

PDS relief

PDS relief for online betting facility

29 In the matter referred to in paragraphs 8–10, relief was also granted to the applicant from Pt 7.9 of the Corporations Act for the same reasons discussed.

PDS relief for the issuer of a 'bundled' insurance product

30 In the matter referred to in paragraphs 11–12, relief was also granted to the applicant from the retail client provisions in Pt 7.9 of the Corporations Act for the same reasons discussed.

Refusal of PDS relief to change the time for giving a PDS for general insurance products

31 We refused to grant relief to change the time for giving a PDS for general insurance products to allow the insurer to provide a quote (that amounted to an invitation to acquire the quoted policy) during unsolicited telephone calls. We considered that the applicant had not demonstrated any special circumstances that would distinguish it from other insurers. However, we also decided to give further consideration to whether the requirement to give a PDS at or before the time an offer to issue is made is a broader problem for the provision of quotes by general insurers, and whether ASIC should provide class order relief. Consultation Paper 144 *Giving a PDS in telephone sales of general insurance products* (CP 144) was released in October 2010.

Other disclosure relief

Disclosure relief for issuer of a 'bundled' insurance product

32 In the matter referred to in paragraphs 11–12, relief was also granted to the applicant from the retail client provisions in Pt 7.7 of the Corporations Act for the same reasons discussed.

Disclosure relief from restrictions on advertising and publicity

33 We granted relief from the advertising prohibition in s734(2) to permit a company to file a registration statement and accompanying documents with the United States Securities and Exchange Commission (SEC) for publication on the SEC's website, and to give a copy of the registration statement to professional and sophisticated investors in Australia, before lodging a prospectus with ASIC. The company is domiciled in the US and

proposed to offer securities in Australia and the US at the same time under a prospectus and a registration statement, respectively. However, under the US laws and regulations that apply to offers of securities, a registration statement only becomes effective after being lodged with, and approved by, the SEC. Without relief, the company could not make offers in Australia and the US at the same time.

34 We granted relief on the condition that the registration statement and accompanying documents contain a statement that each person whose address is in Australia can only apply for securities under a prospectus.

Relief to incorporate by reference concurrently lodged information

35 We granted relief modifying s712(1) so that a prospectus can incorporate by reference information contained in an explanatory statement lodged with ASIC concurrently with the prospectus, rather than before the prospectus is lodged. Relief was granted because we considered that it will not detract from the benefit of disclosure in either the prospectus or the explanatory statement that is provided to security holders.

Publications

36 We issued the following class order and regulatory guides in relation to disclosure relief during the period of this report.

Class order

[CO10/630] *Long-term superannuation returns*

37 [CO10/630] provides relief from the operation of the current long-term superannuation performance reporting requirements that are proposed to be refined, pending the commencement of the proposed amending regulations.

Regulatory guides

RG 69 *Debentures and unsecured notes—Improving disclosure for retail investors*

38 We released a new version of RG 69 with updated requirements and guidance for issuers of unlisted debentures and unsecured notes to improve disclosure to retail investors. The updated RG 69 sets out:

- adjustments to the eight benchmarks that issuers should disclose against on an ‘if not, why not?’ basis from 1 September 2010, including those

relating to minimum amounts of equity capital, adequate liquidity, and disclosure about loan portfolios and valuations;

- the plain-English explanations that issuers should provide in prospectuses from 1 September 2010 about the importance of their benchmark disclosures; and
- information on naming restrictions that will apply to debentures and unsecured notes under s283BH of the Corporations Act from 1 July 2011.

RG 156 *Debenture and unsecured note advertising*

39 Following the release of updated RG 69, consequential amendments have also been made to RG 156. We also plan to release an updated version of the ASIC investor guide on unlisted debentures and unsecured notes and Pro Forma 223 *Interim auditor's benchmark report* (PF 223).

RG 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)*

40 We updated RG 168 to reflect key findings from Report 201 *Review of disclosure for capital protected products and retail structured or derivative products* (REP 201), released in July 2010 at www.asic.gov.au/reports. The report was based on a review by ASIC of 64 PDSs for adequacy of disclosure.

41 The updated RG 168 recommends that issuers:

- clearly explain counterparty risk, and include supporting financial information, to ensure retail investors can assess the issuer's financial ability to meet its counterparty obligations;
- ensure disclosure for capital protected products is sufficient so that investors can assess the likelihood of early termination or any other significant limitations of such products; and
- provide better disclosure of break costs that may apply where an investor seeks to terminate or redeem a product before its maturity date.

42 The updated RG 168 also consolidates guidance currently provided by ASIC in various locations and formations and provides a single guide for product issuers and other individuals responsible for PDSs and other disclosure obligations.

RG 212 *Client money relating to dealing in OTC derivatives*

43 RG 212 has been released to improve transparency for retail investors in over-the-counter (OTC) derivative products, such as contracts for difference (CFDs). RG 212 aims to promote better disclosure about:

- the treatment of money which is paid to, or left with, a licensee;
- the timing and basis of any payments out of the client money account;

- any use of client money to meet a licensee's trading obligations for other clients;
- the treatment of interest earned on client money; and
- the risks associated with client money.

44 Concurrently with RG 212, ASIC also released the results of a 'health check' into the OTC CFD market: see Report 205 *Contracts for difference and retail investors* (REP 205) at www.asic.gov.au/reports.

C Managed investment relief

Key points

This section sets out some of the applications for relief from the provisions of Ch 5C of the Corporations Act we have considered under s601QA, and describes the relevant class order and consultation paper we have issued.

Registration

No-action position for group purchasing body

45 In the matter referred to in paragraph 15, we also adopted a no-action position for any breaches of s601ED(1) for the reasons discussed.

Other relief relating to registered schemes

Equal treatment relief for a special small balance cash out facility as part of withdrawal proposals for illiquid schemes

46 We granted relief to the responsible entity of three mortgage funds from the obligation to treat members of the same class of interests equally. All three mortgage funds were frozen but two would become liquid for the purposes of Pt 5C.6 as a result of proposed amendments to their constitutions. The responsible entity proposed to make a main withdrawal facility available so that members who held up to a set maximum dollar value of interests (directly or indirectly in the scheme) can withdraw their investment in one lot. Similar small balance withdrawal facilities for the interest would later be available on a periodic basis.

47 The responsible entity sought relief from its equal treatment obligation because only those members who held up to the maximum dollar value of interests would be able to withdraw their investment in one lot. For the scheme that will remain illiquid, the responsible entity sought incidental relief from the withdrawal provisions to allow it to make a withdrawal facility available to small balance holders, but only for their full investment.

48 We granted relief from both the equal treatment and the withdrawal provisions to facilitate the proposed small balance cash out facilities for the following reasons:

- It appeared likely that the value that small balance members could access through the special cash out facilities would not be materially

different from the value other members could access through the progressive withdrawal facilities.

- The special cash out facilities also had the commercial advantage of allowing small balance members to withdraw their entire interest in the relevant fund as opposed to only a percentage of their interests, which would progressively decrease with future withdrawal facilities without ever reaching zero.
- The withdrawal facilities did not affect the liquidity of the schemes because the percentage of interests held by small balance members was low.

Relief granted so that withdrawals from a managed investment scheme may be satisfied by interests in another managed investment scheme

49 We considered an application for relief so that withdrawal from a managed investment scheme may be satisfied by interests in another managed investment scheme. Interests in the latter scheme may then be sold on a matching facility to be run by the responsible entity before they become tradable on a financial market through listing of the latter scheme and quotation of the relevant class of interests.

50 In considering the application, we looked at the transaction as a whole (i.e. the *in-specie* withdrawal, operation of a matching facility and the listing of the relevant scheme) and assessed whether and how members of the schemes would be affected. We also considered the fairness of the transactions, in particular, the comparability of the assets of the two schemes including the ratio of liquid to non-liquid assets of each scheme, and how the assets of the schemes are valued.

51 We considered relief may be provided if we could be satisfied that members' protection is ensured through, for example, adequate disclosure, similar protections as those in Ch 6, members not being committed to an investment without knowing the price of the investment, and a members' meeting being facilitated if one is requisitioned. The application was withdrawn subsequent to our decision in-principle to grant relief.

Refusal of relief to allow managed investment schemes to issue quoted interests using a net asset value (NAV)-based pricing formula

52 We refused to grant relief to allow two managed investment schemes to use a net asset value (NAV)-based formula to calculate the issue price for the interests of the schemes after the interests are quoted on a financial market.

53 We considered that if interests in a managed investment scheme are issued at a NAV-based price which is lower than the market price for the interests at

the time of issue, the value of the interests held by existing members of the scheme will be reduced as a result. This is because issues at a price lower than the market price may reduce the market price at which members can sell their interests.

54 In addition, we considered that issuing interests at a NAV-based price will detract liquidity from trading of the interests on the financial market on which a scheme is quoted. This will undermine the effectiveness of listing on the financial market in meeting its rationale of allowing price discovery through the interaction of buyers and sellers.

Publications

55 We issued the following class order and consultation paper in relation to managed investment relief during the period of this report.

Class order

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

56 We have granted an extension until 1 March 2011 of the interim class order relief to lawyers and funders involved in legal proceedings structured as funded representative proceedings and funding claims lodged with liquidators to prove in the winding up of an insolvent company.

57 [CO 10/333] provides relief from the requirements that would otherwise apply to funded representative proceedings and funded proof of debt as 'managed investment schemes' under Chs 5C and 7 of the Corporations Act. These requirements include:

- registering the scheme with ASIC;
- adopting a complying constitution and compliance plan for the scheme;
- appointing an AFS-licensed public company as 'responsible entity';
- preparing a PDS; and
- providing ongoing disclosure to members of the scheme.

Consultation paper

CP 140 *Responsible entities: Financial requirements*

58 We released CP 140 on the financial requirements for responsible entities of managed investment schemes. CP 140 sought feedback on the following issues:

- restricting guarantees and indemnities granted by responsible entities;
- requiring these entities to create rolling 12-month cash flow projections;
- increasing the net tangible asset capital requirements for these entities; and
- specifying the net tangible asset liquidity requirements.

We will consider updating regulatory guidance in light of the response to the consultation proposals.

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 Chs 2J, 6, 6A and 6C under s259C, 655A, 669 and 673 of the Corporations Act, respectively. It also describes the relevant consultation paper we have issued.

Acquisition of relevant interests in voting shares

Refusal of relief to permit acquisitions up to 3% within six months where item 9 of s611 did not apply

59 We refused to grant relief from s606(1) and 606(2) to enable a company to make acquisitions of up to 3% in various downstream companies within six months in circumstances where the exemption in item 9 of s611 did not apply. The company could not rely on the 3% creep exemption in item 9 of s611 because the identity of the holder of the relevant interest in the downstream companies had changed as a result of a scheme of arrangement. We refused to grant relief because the exemption in item 9 of s611 is a narrow exemption and is not cumulative with the exemptions in item 14 of s611 for relevant interests acquired through a listed entity, and the exemption in item 17 of s611 for acquisitions that result from a scheme of arrangement.

Refusal of escrow relief where the purpose of escrow is to potentially fund liabilities under a merger

60 We refused to grant relief from s606 to enable a company to enter into escrow arrangements in connection with a proposed merger. Under the terms of the proposed merger, the applicant would acquire all the ordinary and preference shares in the target in consideration for the issue of shares in the acquirer, which equated to 50% of the acquirer's enlarged issued share capital (new shares). A condition precedent to the merger was that the applicant be able to escrow the new shares issued to the target holders to address the concerns that the target holders would not have any material assets (other than the new shares) which could be monetised to fund a claim under the terms of the merger post-completion. Accordingly, the applicant sought relief from s606 to enable it to enter into these escrow arrangements.

61 We refused relief for the following reasons:

- The applicant indicated that a purpose of the escrow arrangements was to potentially fund liabilities arising from claims made under the terms

of the merger. We did not consider this purpose to be consistent with the principle in s602(a) and, therefore, one which warranted the grant of relief.

- As an alternative to relief, the applicant could seek approval under item 7 of s611 for the relevant interests it will acquire under the escrow arrangements. In general, ASIC is not inclined to grant relief if there is a lawful and effective way of doing a thing without relief: see RG 51.42.
- We considered that the escrow deeds conferred to the applicant a level of control over the escrowed shares beyond that which is appropriate and, contrary to the principle in s602(a), would inhibit an efficient, competitive and informed market: see Regulatory Guide 159 *Takeovers, compulsory acquisitions and substantial holdings* (RG 159) at RG 159.132.

Takeovers

Buy-out relief for bid-class securities

62 We will generally grant relief from the requirement to make buy-out offers for bid-class securities under Div 2 of Pt 6A.1 where an applicant also proceeds to compulsorily acquire the bid-class securities under Div 1 of Pt 6A.1. Relief is granted because ASIC is of the view that there seems to be no real benefit to holders in requiring the bidder to lodge a buy-out notice. Although there may be some minor timing differences between the completion of the compulsory acquisition process and the completion of a buy-out, the timing differences are likely to be insignificant (assuming the shareholder does not object to the compulsory acquisition, in which case they would presumably not accept the buy-out offer).

Relief to offer cash in lieu of scrip consideration

63 In the matter referred to in paragraph 35, we granted relief from s619(3) to enable the bidder to offer cash in lieu of scrip consideration to ineligible foreign holders of the target's securities. Under the terms of the bid, the cash consideration to be offered to ineligible foreign holders will be derived from a combination of cash contribution from the bidder and market sales of the scrip consideration (rather than just market sales as prescribed in s619(3)).

64 We granted relief in the particular circumstances because:

- the new alternative mechanism for determining each ineligible foreign holder's pro-rata entitlement under the takeover offer is entirely market-base; and
- the costs of compliance were likely to be disproportionately burdensome compared to the regulatory benefit if relief was not provided.

Other mergers and acquisitions relief

Treatment of foreign holders for equal access issue under item 10 of s611

65 We refused to approve the appointment of a nominee for foreign holders of a company's securities made under s615. Approval was not given because we considered that the rights issue, which the responsible entity sought to conduct by relying on item 10 of s611, was designed to avoid the purposes of Ch 6. In particular, we were concerned that the proposed issue price of units was at a substantial premium to their prevailing market price and was unlikely to attract any unitholder participation, and major unitholders underwriting the issue would acquire units in excess of the 20% threshold as set by s606. Given this possibility, we indicated our preference for the rights issue to be subject to unitholder approval under item 7 of s611.

Modification to item 7 of s611 for financial services business in connection with a merger

66 We granted conditional relief from the voting exclusion and disclosure requirements of item 7 of s611. The applicant operates a diversified financial services business. As a result of a merger effected under item 7 of s611 between an acquirer and a target, the applicant's voting power in the acquirer would increase from below 19% to 50%. Without relief, the applicant would not be able to acquire any further relevant interests in the acquirer's shares for six months after completion of the merger without breaching s606, as none of the exceptions in s611 would apply for the duration of that period. In particular, item 7 of s611 did not apply, as the acquisitions proposed to be made by the applicant would be in the course of its ordinary financial services business and, therefore, to counterparties who were not presently discernible.

67 Relief was granted to enable the applicant to increase its voting power in the acquirer up to 3% higher, subject to the following conditions:

- the applicant, in making an acquisition in the acquirer's shares on behalf of a third party, is obliged to act in the interests of that third party;
- the acquisition is made in the ordinary course of the applicant's financial services business;
- as a result of the acquisition, neither the applicant nor any related body corporate of the applicant will have a beneficial interest in the shares that are the subject of the acquisition (other than in its capacity as trustee, responsible entity, life company, investment manager or similar); and
- the acquisition is made as a result of an on-market transaction or as a result of the applicant entering into an agreement to provide investment management services.

Refusal to modify item 7 of s611 for a takeover offer

68 In the matter referred to in paragraph 35, we refused relief to modify item 7 of s611 so that unitholders of the target who have accepted the takeover offer before the date of the scheme meeting may vote on the resolutions approving the acquisition of all the units in the trust by the bidder, notwithstanding that those unitholders may be associates of the bidder.

69 It was a proposed term of the takeover offer that an acceptance of the takeover offer before the record date for the scheme meetings will not be treated as a valid acceptance by the bidder unless the unitholder also provided a proxy in favour of the chairman of the scheme meetings. The bidder, by requiring proxies from unitholders of the target who accepted the takeover offer ahead of the scheme meeting, created the technical association for which relief was now required.

70 We refused relief because the offer term was not essential for the scheme or the takeover offer to proceed, and on balance, we were not satisfied that the commercial benefits of granting the relief outweigh the resulting regulatory detriment.

Publications

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

Consultation paper

CP 137 *Indirect self-acquisition by investment funds: Further consultation*

72 We previously released Consultation Paper 1 *Indirect self-acquisition by investment funds* (CP 1) in October 1998 seeking feedback on the circumstances in which relief from s259C should be given to investment funds and similar entities. Based on CP 1, we provided interim relief on a case-by-case basis with a sunset clause.

73 In response to a number of discrete issues that have arisen since CP 1 was issued, we released CP 137 seeking comments on the following proposals:

- granting future case-by-case relief without a sunset clause;
- adding an extra condition on relief for controlled trustees and responsible entities to limit the amount of units in the scheme or trust that can be held by controlled entities to a maximum of 20%;

- granting relief from investment-linked statutory funds and related managed investment schemes that allow participation in a placement of the company's shares;
- granting relief allowing self-acquisition of shares in a listed company for the purpose of index arbitrage; and
- making regular periodic disclosure a condition of relief.

E Short selling relief

Key points

This section outlines the class order we have issued 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.

Publications

74 We issued the following class order in relation to short selling relief during the period of this report.

Class order

[CO 10/464] *Variation of Class Order [CO 10/29] to amend the definition of 'short position'*

75 [CO 10/464] varies the terms of [CO 10/29] *Short position reporting regime postponement and clarification* to modify the definition of 'short position' in reg 7.9.99 of the Corporations Regulations 2001.

76 These modifications:

- require a person (e.g. a responsible entity) who holds a product on behalf of another person (except where that other person has the sole discretion to decide whether the product will be sold) to include the product in its calculation of the quantity of the product the person has. This amendment addresses a risk of over-reporting short positions;
- clarify that if another person (e.g. a bare trustee) is holding a product on the person's behalf, and the person has the sole discretion to decide whether the product will be sold, the person must include the product in its calculation of the quantity of a product it has; and
- clarify the nature of the obligations to deliver referred to in reg 7.9.99(4)(b) by including an obligation to vest title in a lender under a securities lending arrangement even if the obligation to vest title is contingent upon the lender recalling the product.

F 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 of the Corporations Act. It also describes the relevant class orders and guidance we have issued.

Financial services providers

Conduct relief for online betting facility

77 In the matter referred to in paragraphs 8–10, relief was also granted to the applicant from s992A for the same reasons discussed.

Relief for issuer of 'bundled' insurance product

78 In the matter referred to in paragraphs 11–12, relief was also granted to the applicant from the retail client provisions in Pt 7.8 of the Corporations Act for the same reasons discussed.

Publications

79 We issued the following class orders and regulatory guide in relation to conduct relief during the period of this report.

Class orders

[CO 10/654] *Inclusion of parent entity financial statements in financial reports*

80 [CO 10/654] permits entities to continue to include parent entity financial statements in their financial reports. Entities taking advantage of the relief are not required to present the summary parent entity information otherwise required by reg 2M.3.01.

[CO 10/655] *Variation of Class Orders [CO 01/1455], [CO 04/672] and [CO 05/642]*

81 Class Order [CO 05/642] *Combining financial reports of stapled security issuers* allows a stapled security issuer to include the financial statements of the other stapled entities together in a single financial report. This class order

has been amended by [CO 10/655] to allow the financial report to exclude parent entity financial statements for those stapled entities that prepare consolidated financial statements.

Regulatory guides

RG 115 *Audit relief for proprietary companies*

82 RG 115 has been updated to reflect the changes to resolution-passing and form-lodging arrangements for companies that can take advantage of audit relief under Class Order [CO 98/1417] *Audit relief for proprietary companies.* As a result of the changes, resolutions of directors and shareholders dispensing with an audit will still be required to be passed annually, but most companies will only have to lodge notice of the resolution (Form 382) once when first taking advantage of the class order relief.

G Credit relief

Key points

This section outlines some of our decisions in relation to applications for relief under the National Credit Act or the Transitional Act. It also describes the relevant publications we have issued.

Licensing relief

Conditional relief for loans to clergy

83 We granted conditional relief from the requirement to hold a credit licence for the provision of loans to clergy. Conditional relief was granted to bring the provision of loans to clergy into line with the employee loan exemption in s6(11) of the National Credit Code. We granted this relief because we considered that if relief was not granted, there was the potential consequence that the loan program would be withdrawn, or there would be an increase to interest rates and credit fees and charges. This would have a detrimental effect on the ability of members of the clergy to obtain and repay the loans. Conditions were imposed on the relief to retain some key protections for these loans, including the hardship provisions in the National Credit Code.

Refusal of relief to exempt insurance brokers

84 We refused to grant relief from the requirement to hold a credit licence to insurance brokers who provided credit assistance for contracts to finance insurance premiums (premium funding). The relief was refused for the following reasons:

- We considered that the intention of Parliament is clear that a broker who provides credit services should be licensed or appointed as a credit representative of a licensee and regulated under the National Credit Act and the Transitional Act, even if the credit service provided is only a relatively minor part of the broker's business.
- We were not satisfied that the application established that compliance with the requirements of the National Credit Act and the Transitional Act would be disproportionately burdensome to the regulatory benefits of compliance.
- We considered that brokers could use other business models that would minimise their compliance costs, such as providing credit services as a credit representative or acting within the scope of the exemption for referrals.

- If relief was granted, we were not satisfied that the regulatory detriment and potential for detriment to consumers would only be minimal.
- We were not satisfied that the premium funding arrangements described in the application were sufficiently similar to payment-by-instalment arrangements provided by insurers, which are already excluded from the National Credit Code.

Transitional relief for certain credit representatives

85 We refused to grant permanent relief to certain credit representatives of authorised deposit-taking institutions (ADIs) (i.e. franchisee and agent companies that operate branches of those ADIs and their employees) from the requirement to have separate external dispute resolution (EDR) scheme membership. We refused permanent relief because:

- we considered that the intention of Parliament is clear that it is appropriate for credit representatives to have separate EDR scheme membership;
- Parliament has already allowed an exemption from these requirements where the credit representative has been sub-authorised by a body corporate credit representative and is an employee or director of that body corporate credit representative; and
- we were not satisfied that the costs of compliance were disproportionate to the intended regulatory and consumer benefits of compliance.

86 However, we granted interim relief for a period of 12 months to allow the affected ADIs and credit representatives sufficient time to put in place administrative arrangements and systems for compliance.

Refusal to grant relief on training requirements for mortgage brokers

87 We refused to grant relief to modify the definition of 'mortgage broking services' in Regulatory Guide 206 *Credit licensing: Competence and training* (RG 206) on the basis that the policy intention behind the broad definition of 'mortgage broking services' in RG 206 was to capture all representatives providing credit assistance for credit secured by real property, including those that only provide assistance for a credit licensee's own loans. In addition, the reference to a 'minimum of 20 CPD hours per year' of training in RG 206 is intended to apply flexibly and is what ASIC considers to be the best practice standard rather than a requirement.

88 We also refused to take a no-action position to relieve an ADI from the mortgage broker training requirements under the National Credit Act should its credit representatives technically come within the definition of 'mortgage brokers'.

Refusal to exempt external loan processors

89 We refused to grant relief from the requirement to hold a credit licence to a loan processor, who operates externally to, and independent of, credit licensees or authorised representatives of a credit licensee. Relief was refused for the following reasons:

- We considered that the intention of Parliament is clear that a person operating as a clerk or cashier be exempted from the National Credit Act, even where the clerk or cashier operates externally to, and independent of, a licensee or an authorised representative of a licensee. To the extent that that exemption applies, relief was not required.
- To the extent that a loan processor engages in credit activities that fall outside that exemption, we were not satisfied that any regulatory detriment is minimal and would be outweighed by the resulting commercial benefit.

Responsible lending relief

Conditional relief for loans to clergy

90 In the matter referred to in paragraph 18, relief was also granted from the responsible lending obligations.

National Credit Code relief

Conditional relief for loans to clergy

91 In the matter referred to in paragraph 18, we also granted partial relief from the National Credit Code to mirror the conditions of the employee loan exemption under s6(11) of the National Credit Code.

Transitional relief on certain requirements under the National Credit Code

92 We granted transitional relief to an ADI to allow them sufficient time to make system enhancements for compliance with certain requirements of the National Credit Code. The interim relief was granted from the requirement to issue:

- a default notice to a debtor/customer within 10 business days from the first time an unrectified direct debit default occurs (this relief was granted for a period of three months);

- a debtor with loan contract documents that include the prescribed pre-contractual statement (Form 7) and the Information Statement required in reg 70 (Form 5) before entering a credit contract (this relief was granted for a period of six months); and
- separate notices or other prescribed documents under the National Credit Code to each joint debtor, mortgagor or guarantor and/or allow each of these parties to nominate one party to receive the documentation on their behalf (this relief was granted for a period of six months).

Similar relief has been granted to a number of ADIs.

93 We granted this relief for the following reasons:

- Each of these requirements are new requirements under the National Credit Code (compared to previous state and territory-based credit regulation).
- We considered that the short timeframes for implementation were not practicable and manual workarounds would be disproportionately burdensome to any benefit gained.
- Conditions imposed on the relief reduced the potential for consumer detriment. Such conditions included the requirement that any resulting complaints be dealt with within four business days, fees and charges incurred as a result of not receiving the required documents be waived or reimbursed, and that the ADI advise customers of inaccuracies in documents they received.

Refusal to grant relief from the requirement to give reasons for refusing a hardship application

94 We refused to grant interim relief from the requirement to give the debtor a written response under s72(3) of the National Credit Code outlining the reasons for not agreeing to changes to the terms of a credit contract requested in a hardship application. Interim relief was sought to allow the applicant time to make system changes for the electronic generation of these responses.

95 We refused to grant relief because:

- it is the clear intention of Parliament that the debtor receives a written response outlining reasons for refusing to change the contract terms requested in a hardship application;
- we were not satisfied that there would be significant difficulties in complying with the requirement, pending completion of the proposed system changes; and
- we considered that there was a risk of significant consumer detriment if interim relief was granted. This is because the appeal rights of the consumer are better enhanced when the consumer is given a written response to their hardship application.

Other credit relief

Extension of time to lodge an application for registration

96 We granted relief to extend the time to lodge an application for registration to engage in credit activities after determining that the applicant satisfied certain criteria. The criteria includes:

- the explanation for the delay in applying for registration (whether the explanation was reasonable in the circumstances);
- the type and size of the credit business;
- the cost to the credit business of suspending operations while a licence application is being prepared and assessed;
- the cost to the credit business of preparing a licence application;
- the likelihood and extent of any consumer detriment resulting from the proposed extension of the registration period;
- the likelihood and extent of any detriment to consumers resulting from the suspension of the applicant's credit business while a licence application is prepared and assessed;
- whether the applicant is a member of an EDR scheme; and
- any other matters considered relevant in the circumstances.

97 We granted relief because we considered that the risk of consumer detriment was low and that there were benefits for consumers if the applicant became registered quickly (e.g. they would be required to be a member of an EDR scheme and the responsible lending obligations would apply to them from the time they were registered).

98 We will consider similar relief on a case-by-case basis.

Refusal of interim relief to extend time to notify ASIC of credit representatives

99 We refused to grant an extension of time to notify ASIC of the appointment of credit representatives where the appointing entity did not have sufficient details about the credit representative to provide appropriate notification to ASIC. However, we decided to take a no-action position for a period of one month (to be considered on a case-by-case basis). We considered that the no-action period would allow the appointing entity enough time to obtain the required information and lodge the notification.

Publications

100 We issued the following media releases and consultation papers in relation to credit relief during the period of this report.

Media releases

10-121AD *ASIC released information sheets to aid compliance with new National Consumer Credit regime* (11 June 2010)

101 ASIC has published a package of new information sheets containing frequently asked questions about the National Consumer Credit Protection regime to help lenders, brokers and intermediaries comply with the new requirements. ASIC also published two additional information sheets about fees associated with the cost of a credit licence on frequently asked questions on the operation of some offences under the National Credit Act.

102 The information sheets are:

- Information Sheet 101 *Does the new credit regime apply?* (INFO 101);
- Information Sheet 102 *Getting registered for credit* (INFO 102);
- Information Sheet 103 *Getting a credit licence* (INFO 103);
- Information Sheet 104 *Complying with your credit obligations* (INFO 104);
- Information Sheet 105 *Dealing with consumers and credit* (INFO 105);
- Information Sheet 108 *How much does a credit licence cost?* (INFO 108); and
- Information Sheet 109 *Credit licensee offences: Prohibited dealings and unlawful authorisations* (INFO 109).

10-117AD *Updated ASIC guidance helps industry prepare for credit licensing* (8 June 2010) and 10-134AD *ASIC releases further updated guidance to assist credit licensees* (25 June 2010)

103 We have updated and re-released further versions of regulatory guides to assist those intending to engage in credit activities after 1 July 2010.

104 The updated regulatory guides are:

- Regulatory Guide 202 *Credit registration and transition* (RG 202);
- Regulatory Guide 203 *Do I need an Australian credit licence?* (RG 203);
- Regulatory Guide 204 *Applying for and varying an Australian credit licence* (RG 204);
- Regulatory Guide 205 *Credit licensing: General conduct obligations* (RG 205);
- Regulatory Guide 206 *Credit licensing: Competence and training* (RG 206);

- Regulatory Guide 207 *Credit licensing: Financial requirements* (RG 207);
- Regulatory Guide 208 *How ASIC charges fees for credit relief applications* (RG 208); and
- Regulatory Guide 209 *Credit licensing: Responsible lending conduct* (RG 209).

We also updated and re-released Pro Forma 224 *Australian credit licence conditions* (PF 224).

10-142AD *Some book up providers must be licensed under new national credit laws* (30 June 2010)

105 Under the National Credit Act, people who provide or assist others with consumer credit will need to be licensed by ASIC, or be a representative of someone who is already licensed. Businesses that allow customers to buy goods or services and pay later are likely to need an Australian credit licence as they are providing a type of consumer credit.

Consultation papers

CP 135 *Mortgage early exit fees: Unconscionable fees and unfair contract terms*

106 CP 135 contains proposals about our expectations for compliance with provisions in the National Credit Code and ASIC Act that apply to setting the price of and explaining mortgage early exit fees.

CP 138 *Dispute resolution requirements for trustee companies providing traditional services*

107 CP 138 contains proposals about how the dispute resolution framework should apply so it is efficient and effective for clients of traditional services. The proposals in CP 138 will be implemented by updating and refining Regulatory Guide 165 *Licensing: Internal and external dispute resolution* (RG 165) and Regulatory Guide 139 *Approval and oversight of external dispute resolution schemes* (RG 139).

H Other relief

Key points

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

Selective buy-back

Refusal of relief for equal access scheme as a selective buy-back

108 We refused to grant relief from s257D to permit a company to conduct a selective buy-back of 10% of the company's shares. The proposed buy-back was selective because the company proposed to selectively scale back shares where the buy-back was over-subscribed to avoid shareholders being left with small parcels. The proposed buy-back was priced at a substantial premium to the market price of the company's shares and was only effectively being offered to 22% of the company's shareholders as the substantial holder was not intending to participate.

109 We had concerns about the effect on control and the potential for dilution due to the pricing on the company's minority shareholders. We refused to grant the requested relief because we were not satisfied that the proposed buy-back was consistent with the underlying principle of ensuring fairness between the company's shareholders as a whole.

Publications

110 We did not issue any publications in relation to other relief during the period of this report.

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 instruments are published in the *ASIC Gazette*, which is available via www.asic.gov.au/gazettes.

Table 1: ASIC relief instruments

Report para no.	Entity name	Instrument no. (Gazette no. if applicable)	Date executed	Power exercised and nature of relief	Expiry date
8–10, 29, 77	Interbet Australia Pty Limited (ACN 134 506 068)	10-0740 (A077/10)	30/08/2010	s911A(2)(l), 992B(1)(a) and 1020F(1)(a), Corporations Act This instrument provides conditional relief from s992A , Pt 7.9, the requirement to hold an AFS licence covering dealing in and providing financial product advice in relation to an online betting facility.	
11–12, 30, 32, 78	CGU Insurance Ltd (ACN 004 478 371)	10-0441 (A051/10)	11/06/2010	s926A(2)(c), 951B(1)(c), 992B(1)(c) and 1020F(1)(c), Corporations Act This instrument provides conditional relief from the obligations arising in Pt 7.6, 7.7, 7.8 and 7.9 in relation to a specified bundled insurance product issued by the applicant insurer. The instrument relieves the applicant company from the obligations in the above parts as they apply to retail clients who are individuals and small businesses.	
13–14	Australian Energy Market Operator Limited (ACN 072 010 327)	10-0407 (A047/10)	31/05/2010	s911A(2)(l), Corporations Act This instrument provides relief from the obligation to hold an AFS licence to a market operator, and to a specified class of trading participants in that wholesale market, for the purpose of providing limited financial services in connection with a discrete pricing mechanism of that wholesale market.	

Report para no.	Entity name	Instrument no. (Gazette no. if applicable)	Date executed	Power exercised and nature of relief	Expiry date
22–23	Blue Jay Roads Limited, a company incorporated under the Bermudian Act with registration number EC 44587	10-1012 (A092/10)	14/10/2010	s741(1)(a), Corporations Act This instrument provides relief from the prospectus requirements in Ch 6D for scrip consideration offered under a Bermudian scheme of arrangement.	
24	Newcrest Mining Limited (ACN 005 683 625)	10-0626 (A063/10)	16/07/2010	s741(1)(a), Corporations Act This instrument provides relief from the prospectus requirements in Ch 6D for scrip consideration offered under a PNG scheme of arrangement.	
33–34	REVA Medical, Inc., a body incorporated under the laws of the state of California in the United States	10-0760 (A073/10)	17/08/2010	s741(1)(a), Corporations Act This instrument provides relief from the restrictions on advertising and publicity under 34(2).	
35	Brookfield Infrastructure Partners L.P. and its general partner, Brookfield Infrastructure Partners Limited	10-0912 (A086/10)	24/09/2010	s741(1)(b), Corporations Act This instrument modifies s712(1) to enable the issuer to lodge a short-form prospectus that simply refers to information contained in a document lodged concurrently with ASIC.	

Report para no.	Entity name	Instrument no. (Gazette no. if applicable)	Date executed	Power exercised and nature of relief	Expiry date
46–48	Challenger Managed Investments Limited (ACN 002 835 592), in its capacity as responsible entity of the Challenger Howard Mortgage Fund (ARSN 090 464 074) and the Challenger Howard Wholesale Mortgage Fund (ARSN 093 720 159)	10-00854 (A082/10)	10/09/2010	s601QA(1)(a), Corporations Act This instrument exempts the responsible entity of two registered schemes from the obligation under s601FC(1)(d) to treat members who hold interests in the same class equally. The relief was provided for the special small balance cash out facilities proposed by the responsible entity of the two schemes.	
46–48	Challenger Managed Investments Limited (ACN 002 835 592), in its capacity as responsible entity of the Challenger Howard Mortgage Plus Trust (ARSN 091 029 248)	10-00855 (A082/10)	10/09/2010	s601QA(1)(a) and 601QA(1)(b), Corporations Act This instrument exempts the responsible entity of an illiquid scheme from the obligation under s601FC(1)(d) to treat members who hold interests in the same class equally. The instrument modifies the withdrawal provisions in Pt 5C.6 for the illiquid scheme. The relief was provided for the special small balance cash out facilities proposed by the responsible entity of the illiquid scheme.	
62	G.U.D. Holdings Limited (ACN 004 400 891)	10-0791	24/08/2010	s669(1)(a), Corporations Act This instrument provides relief from the requirement to prepare and lodge a buy-out notice for bid-class securities where a compulsory acquisition notices has also been sent to shareholders.	
63–64	Brookfield Infrastructure Partners L.P., a limited partnership registered under the laws of Bermuda	10-1026 (A092/10)	18/10/2010	s655A(1)(b), Corporations Act This instrument provides relief from s619(3) to enable a bidder in an off-market takeover bid to offer an alternative cash-out facility to foreign holders of the target where the offer of scrip consideration would otherwise be unlawful or impractical.	

Report para no.	Entity name	Instrument no. (Gazette no. if applicable)	Date executed	Power exercised and nature of relief	Expiry date
66–67	UBS AG, a body corporate incorporated under the laws of Switzerland, and its controlled entities	10-0668 (A067/10)	27/07/2010	s655A(1)(b), Corporations Act This instrument provides relief from the voting and disclosure requirements of item 7 of s611 to enable the applicant, who operates a diversified financial services business, to increase its voting power in the acquirer up to 3% higher following a merger between the acquirer and a target.	
83, 90, 91	Roman Catholic Church for the Archdiocese of Sydney	10-0539*	25/06/2010	s41(1)(a), Sch 2, Transitional Act; s109(1)(a), National Credit Act; and s203A(1), National Credit Code This instrument exempts the trustees of the Roman Catholic Church for the Archdiocese of Sydney from the registration and licensing obligations and from specified provisions of the National Credit Code.	
86	Bendigo & Adelaide Bank (ACN 068 049 178)	10-0540*	30/06/2010	s109(1)(c), National Credit Act This instrument grants transitional 12-month relief from the requirement for credit representatives to be members of an external dispute resolution scheme.	
92–93	Commonwealth Bank of Australia (ACN 123 123 124)	10-0578*	30/06/2010	s203A(1), National Credit Code This instrument provides transitional relief from specified provisions of the National Credit Code.	
96–97	Madness Pty Ltd (ACN 118 917 785)	10-0591*	08/07/2010	This instrument extends the time for the entity to register by declaring that Pt 3 of Sch 2 to the Transitional Act applies as if that part were modified or varied by, in s11(2)(b), omitting '30 June 2010' and substituting a later date.	

* This instrument is published on our website at www.asic.gov.au under 'Credit relief', not in the *ASIC Gazette*.