



ASIC

Australian Securities & Investments Commission

REPORT 325

Overview of decisions on relief applications (June to September 2012)

January 2013

About this report

This is a report for participants in the capital markets and financial services industry who are prospective applicants for relief.

This report outlines some of ASIC's decisions on relief applications during the period 1 June 2012 to 30 September 2012. It summarises examples of situations where we have exercised, or refused to exercise, our exemption and modification powers from the financial reporting, managed investment, takeovers, fundraising or financial services provisions of the *Corporations Act 2001*, the *National Consumer Credit Protection Act 2009* or the *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*, the *National Consumer Credit Protection Act 2009* or the *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.

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Overview

- 1 ASIC has powers under the *Corporations Act 2001* (Corporations Act) to exempt a person or a 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 (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 ASIC has powers to give relief under the provisions of Chs 2 (licensing) and 3 (responsible lending) of the *National Consumer Credit Protection Act 2009* (National Credit Act) and from all or specified provisions of the National Credit Code, which is in Sch 1 of the National Credit Act. ASIC also has powers 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 the report is to improve the level of transparency and the quality of information available about decisions we make when we are asked to exercise our discretionary powers to grant relief from provisions of the Corporations Act, the National Credit Act and the Transitional Act.
- 4 This report covers the period beginning 1 June 2012 and ending 30 September 2012. During this period, we received 959 applications. We granted relief in relation to 577 applications and refused relief in relation to 71 applications; 113 applications were withdrawn. The remaining 198 applications were decided outside of this period.
- 5 This report does not provide details of every single decision made in the 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 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. Instruments are published in the *ASIC Gazette*, which is available via www.asic.gov.au/gazettes, or under ‘Credit relief’ on our website (for credit instruments). 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 Ch 7, including under s911A(2) and 926A(2), from the requirement to hold an Australian financial services (AFS) licence. It also outlines the publications we issued that relate to licensing relief.

Employee share scheme

Relief for an employee share scheme for one senior employee with monetary consideration

- 8 We granted relief to a company under s911A(2)(l) and 1020F(1)(a) to offer a senior employee a benefit under an incentive plan without the need to hold an AFS licence or issue a Product Disclosure Statement (PDS). The incentive plan was to be settled in cash rather than in shares. In this case, the company required the employee to make a monetary contribution to execute an agreement to participate in the scheme. The contribution was to be incorporated into the company's income. Nonetheless, the company would refund the contribution in full at the termination of the agreement.
- 9 In consideration of our broader policy in Regulatory Guide 167 *Licensing: Discretionary powers* (RG 167) and Regulatory Guide 169 *Disclosure: Discretionary powers* (RG 169), the conditional relief was granted because the scheme was tailored for the benefit of one senior employee who held a strong knowledge of the company. The unconditional refund of the contribution upon termination of the agreement ensures that the employee is not disadvantaged in that regard. The company also agreed to provide the relevant reports and valuations to the employee so that the employee is informed of the value of the assets that underlie the agreement or the scheme. We noted that the granting of this relief would be rare.

Professional indemnity (PI) insurance

Withdrawal of application for relief from having professional indemnity (PI) insurance

- 10 We considered an application for relief from the requirement to have PI insurance under s912B(2)(B) of the Corporations Act and Regulatory Guide 126 *Compensation and insurance arrangements for AFS licensees* (RG 126).

- 11 The applicant submitted that it had been refused coverage by a number of PI insurers because the underwriters did not cover the provision of general advice. We considered refusing the relief for the following reasons:
- under RG 126, we do not grant exemptions for PI cover for the provision of general advice;
 - although the applicant had sought cover from a list of PI brokers, the list was not exhaustive and did not cover a list of brokers commonly used by AFS licensees;
 - insurance brokers do not generally refuse cover unless there is a poor track record or the business presents an unusually high risk exposure (see Report 107 *Compensation arrangements for financial services licensees: Research into the professional indemnity insurance market* (REP 107)); and
 - a search of ASIC databases indicated that there were a number of reports of misconduct in relation to the applicant.
- 12 We were subsequently advised by the applicant that it had successfully applied for PI insurance and the application was withdrawn.

Excluded assets

Approval under RG 166 to enable AFS licensee to treat its hedging transactions with its associate hedging counterparties as not being ‘excluded assets’

- 13 We provided consent under Regulatory Guide 166 *Licensing: Financial requirements* (RG 166) to an issuer of retail structured products to treat its hedging transactions with its associate hedging counterparties (receivables) as not being ‘excluded assets’ for the purpose of calculating its financial requirements in accordance with RG 166. Without ASIC approval, the receivables are ‘excluded assets’ under RG 166 because they are assets invested in the associates of the applicant.
- 14 We exercised our discretion to provide consent under RG 166.154(c)(v) to allow the applicant to treat the receivables as not being ‘excluded assets’ for the purposes of calculating its net tangible assets and adjusted surplus liquid funds requirements under its AFS licence conditions. We accepted that it would be unreasonably burdensome for the applicant to enter into new hedge positions with an external counterparty given its business was in run-off. Further, the position of investors would not be improved by the applicant doing so because investors already had the benefit of other guarantees from related entities.
- 15 Our consent was subject to the following conditions:

- the applicant must not issue any new financial products to retail clients;
- there are no material changes, without our prior written consent, to the other guarantees from related entities; and
- the applicant must notify us of any material adverse changes to the financial position of the applicant, its associate hedge counterparties, and any related entity within five business days.

Publications

16 We issued the following publications in relation to licensing relief during the period of this report.

Class orders

Class Order [CO 12/752] *Financial requirements for retail OTC derivative issuers*

- 17 [CP 12/752] expands on the requirement in the Corporations Act for retail over-the-counter (OTC) derivatives issuers to have adequate financial resources and establishes financial requirements designed to ensure issuers of retail OTC derivatives:
- have sufficient financial resources to conduct their financial services businesses in compliance with the Corporations Act (including carrying out supervisory arrangements);
 - maintain a financial buffer that decreases the risk of a disorderly or non-compliant wind-up if their business fails; and
 - are sufficiently capitalised so that there are incentives for issuers' owners to comply through risk of financial loss.

18 The [CO 12/752] requirements replace the previous requirements of OTC derivative businesses to hold adjusted surplus liquid funds and amend other relevant AFS licence conditions relating to cash flow forecasting, trigger points and reporting, as well as audit. These changes account for the complexity and risks of a retail OTC derivatives business and the need for adequate supervisory arrangements, and comparable regulatory regimes overseas.

Class Order [CO 12/794] *Emissions units: Relief for representatives*

19 [CO 12/794] varies s911A of the Corporations Act to provide a licensing exemption for representatives of registered persons or representatives of AFS licensees authorised to provide financial services in relation to a carbon unit, an Australian carbon credit unit or an eligible international emissions unit, during the period from 1 July 2012 to 31 December 2012.

Consultation papers

CP 182 *Future of Financial Advice: Best interests duty and related obligations—Update to RG 175*

20 CP 182 sought feedback on our updated guidance in Regulatory Guide 175 *Licensing: Financial product advisers—Conduct and disclosure* (RG 175). These updates state our position on how advice providers can comply with the best interests duty and related obligations.

21 The update to our guidance in RG 175 is a result of the Australian Government's Future of Financial Advice (FOFA) reform regime.

CP 183 *Giving information, general advice and scaled advice*

22 CP 183 sets out our proposed guidance for AFS licensees, authorised representatives and advice providers who give information and advice to retail clients. Our proposed guidance on scaled advice will apply to all industry sectors, including superannuation, financial planners, and banks and insurers, and includes practical guidance and examples about giving scaled personal advice, as well as practical examples about giving factual information and general advice to clients.

23 CP 183 explains:

- the differences between giving factual information, general advice and personal advice; and
- how to meet the advice obligations in Ch 7 of the Corporations Act, including the best interests duty and related obligations, when giving 'scaled' advice (i.e. personal advice that is limited in scope).

CP 189 *Future of Financial Advice: Conflicted remuneration*

24 CP 189 sets out proposals for guidance on complying with the ban on conflicted remuneration. This ban includes commissions and volume-based payments in relation to the distribution of and advice about retail investment products and operates alongside other FOFA reforms. CP 189 consulted on what matters we will consider when determining whether a benefit is conflicted remuneration and invited feedback on our proposed guidance.

Regulatory guides

RG 98 *Licensing: Administrative action against financial services providers*

25 We released a revised version of RG 98 to assist participants in the financial services industry to understand when and how we may take administrative action such as a banning action. This revised policy reflects amendments to our administrative powers under the Corporations Act, introduced as part of

the FOFA reforms. The main changes relate to our power to suspend or cancel an AFS licence or to make an order banning a person from providing a financial service on the basis of anticipated future conduct.

RG 237 *Trustee companies: Transfer determinations by ASIC*

26 RG 237 is for licensed trustee companies that are seeking to transfer the administration of estate assets and liabilities to other trustee companies under the transfer determination provisions of Ch 5D of the Corporations Act. RG 237 sets out information we require from trustee companies with an application for a voluntary transfer determination, and when we make a compulsory transfer determination.

27 RG 237 is a result of Consultation Paper 173 *Trustee companies: Transfer determinations by ASIC* (CP 173) and the responses we received.

Reports

REP 291 *Custodial and depository services in Australia*

28 REP 291 was released following a review of the custodial and depository services industry in Australia, identifying a number of key risks to the safety of client assets and recommending some matters of good practice that custodians and responsible entities may need to consider.

29 REP 291 is for responsible entities, providers of custodial and depository services, and their clients. It discusses the custodial industry, the current regulatory regime and matters a custodian may need to consider, including:

- unauthorised debiting of omnibus accounts;
- stability and safety of IT systems;
- operational risks created by manual and disparate systems;
- whistleblowing culture and framework;
- reporting on suspicious third party valuations;
- breach reporting relating to custodial and investment administration services; and
- the risks inherent in corporate actions such as share buy-backs and rights issues.

30 REP 291 also foreshadows our intention to consult with industry about updating our regulatory guidance for the holding of scheme property. In addition, we are proposing to:

- change the financial resource requirements of custodians; and
- require responsible entities and other financial product issuers to provide clearer disclosure about the role of custodians in retail marketing material, including PDSs.

REP 293 Response to submissions on CP 156 Retail OTC derivative issuers: Financial requirements

- 31 REP 293 highlights the key issues that arose from the submissions received on Consultation Paper 156 *Retail OTC derivative issuers: Financial requirements* (CP 156) and details our responses to those issues. In CP 156, we sought feedback on:
- the cash needs requirement whereby a retail OTC derivative issuer would need to prepare, on a quarterly basis, rolling cash flow forecasts over at least 12 months;
 - the net tangible assets (NTA) requirement, where an issuer would be required to have at all times NTA of the greater of:
 - \$1,000,000; or
 - 10% of its average revenue; and
 - reporting requirements.
- 32 We received two confidential responses and one non-confidential response from retail OTC derivative issuers and one response from the Australian Financial Markets Association. The main issues raised by respondents included:
- the adequacy of the minimum amount of required NTA (\$1 million);
 - the ability of retail OTC derivative issuers that are prudentially regulated overseas to apply for relief from the financial requirements;
 - the effect on issuers that have a branch structure of calculating the required NTA based on the issuer's average revenue;
 - concerns that excluding only money held in client segregated or trust accounts when calculating the required NTA may encourage issuers to transfer excess money out of these accounts; and
 - concerns that requiring issuers to calculate cash flow forecasts on an individual entity level, rather than on a group basis, may disadvantage corporate groups.
- 33 In addition to the CP 156 consultation, a voluntary questionnaire was sent to retail OTC derivative issuers that would be affected by the proposed financial requirements.

B Disclosure relief

Key points

This section outlines some of the applications we have decided that relate to the Ch 6D requirements to provide prospectuses and other disclosure documents and the Ch 7 requirements to provide PDSs and Financial Services Guides (FSGs). It also outlines the publications we issued that relate to disclosure relief.

Prospectus relief

Withdrawal of application for relief from the requirement for the issuer to include an audited annual financial report

- 34 We were prepared to grant relief from s715(2) of the Corporations Act to enable an applicant to offer shares and options to its eligible employees under its employee incentive scheme by way of an offer information statement that includes the latest audited annual financial report of its recently acquired wholly owned subsidiary and its unaudited pro-forma consolidated annual financial report as if it had acquired its wholly owned subsidiary at the commencement of that financial year. This financial information would have been provided instead of the statutory requirement to provide an audited financial report for the group as a whole, including the newly acquired subsidiary.
- 35 In contemplating the relief, we considered whether the provision of the applicant's wholly owned subsidiary's audited annual financial report and its unaudited pro-forma consolidated annual financial report would mean investors are provided with comparable financial information to enable them to make an investment decision about the shares and options under the employee incentive scheme. In the circumstances, we considered relief was appropriate because:
- since incorporation, the applicant had carried on no activities other than the acquisition of its wholly owned subsidiary;
 - the provision of the unaudited pro-forma consolidated financial statements would enable investors to assess the impact of the new capital structure and the underlying business of the applicant; and
 - the pro-forma consolidated financial statements would be prepared according to Australian accounting standards.
- 36 Although we considered granting relief, the application was subsequently withdrawn.

Withdrawal of application for relief from requirement that offers under a rights issue be the same

- 37 We considered an application to amend the definition of ‘rights issue’ in s9A of the Corporations Act to remove the requirement that offers be the same under a proposed rights issue. It was proposed that offers would be made in different currencies depending on the registered address of the shareholder. We indicated we considered that the application should be refused, and it was consequently withdrawn and the proposed rights issue restructured.
- 38 Our in principle decision was on the basis we were not satisfied that it was not possible for the offers to be made to shareholders on the same terms. The rights issue was amended so that all shareholders had a choice to elect the currency in which they wished to accept the offer regardless of the country in which the shareholder had its registered address.

PDS relief

Relief granted for a trustee of a superannuation fund to give a PDS by sending a written reference to a website where the PDS can be found

- 39 We granted relief to allow a trustee of a superannuation fund to give a PDS to members of a transferring fund in relation to a successor fund transfer by sending a written notice that contains a reference to an internet website address where the PDS can be found.
- 40 Conditional relief was granted because we were satisfied that the detriment to transferring members of receiving the online disclosure of a PDS rather than a hard copy PDS appeared to be minimal and was outweighed by the resulting commercial benefit because:
- the disclosure related to a successor fund transfer where there would be no change to transferring members’ entitlements;
 - members would be able to request a hard copy of the PDS free of charge; and
 - members would receive disclosure about the successor fund transfer and the differences between the transferring fund and successor fund within three months of the successor fund transfer. Members would not be denied any disclosure that they would have otherwise been entitled to under the Corporations Act because s1012F and reg 7.9.04 of the Corporations Regulations 2001 (Corporations Regulations) allow the trustee to provide the PDS within three months after the successor fund transfer.

Relief granted to small APRA funds from the requirement to prepare and give a shorter PDS

- 41 We granted relief to the trustee of a series of small APRA funds (SAF) from the requirement to prepare and give a shorter PDS with regard to interests in those funds for a period of 12 months ending 22 June 2013. As a result, the trustee will be permitted to prepare a standard PDS, rather than a shorter PDS.
- 42 Relief was granted on the basis that we were satisfied the relief was consistent with relief provided to superannuation platforms under Class Order [CO 12/749] *Relief from the Shorter PDS regime* and was not contrary to parliamentary intention. Further, we were satisfied that any detriment to new members of not receiving the shorter PDS was outweighed by the commercial benefit to the trustee because:
- it is likely that there would only be a small number of people affected;
 - any new SAF members would receive a standard PDS;
 - the trustee is required to comply with the existing standard product disclosure requirements in the interim;
 - we considered that SAFs share similar characteristics to superannuation platforms and providing the trustee with additional time to develop its approach to comply with the shorter PDS regime would promote a consistent approach to the regulation of similar products; and
 - the financial cost associated with the preparation of individual shorter PDSs for each new SAF would be significant in comparison to the expected total funds under management.

Relief granted from the requirement to prepare and give a shorter PDS

- 43 We granted relief to a trustee of a superannuation fund from the requirement to prepare and give a shorter PDS with regard to interests in designated divisions of a superannuation fund for a period of 12 months ending 31 January 2013.
- 44 We were satisfied that the submissions demonstrated uncertainty as to the application of the Corporations Act and [CO 12/749], and that commercially significant effects would flow from the class order's application for the following reasons:
- the class order was released on 18 June 2012, three days before the implementation date of the shorter PDS requirements on 22 June 2012;
 - the trustee did not have sufficient time to determine whether the specified parts of underlying divisions of the superannuation fund were excluded from the operation of the shorter PDS regime as a superannuation platform product under [CO 12/749]; and

- the extension of time granted under the relief would enable the trustee to develop a shorter PDS for the relevant divisions of the fund should it be determined that those divisions are not exempted under the class order.

Relief granted from the requirement to prepare and give a shorter PDS

- 45 We granted relief from the requirement in Div 2 of Pt 7.9 of the Corporations Act, as modified by reg 7.9.11K of the Corporations Regulations, to prepare and give a shorter PDS for superannuation interests comprising combined defined benefit and accumulation products being offered to retail clients.
- 46 Relief was granted on the basis that shorter PDS disclosure may not promote confident and informed decision making for the product. Further, the commentary to the Corporations Regulations for the shorter PDS regime contemplated that case-by-case relief would be given from the regime for combined defined benefit and accumulation superannuation products. Relief was also consistent with our policy stated in RG 169.

Relief granted from the requirement to prepare and give a shorter PDS

- 47 We granted relief from the requirement to prepare and give a shorter PDS for superannuation interests that may be issued to retail clients during the period for completion of a successor fund transfer. The successor fund transfer had been significantly advanced before the commencement date for the shorter PDS regime and was expected to complete relatively soon after the regime's commencement date.
- 48 Relief was granted because the detriment that new members would suffer as a result of receiving a standard PDS for the fund, and not a shorter PDS, was considered to be outweighed by:
- the cost of preparing a shorter PDS for the fund for the relatively short period after commencement of the shorter PDS regime; and
 - the relatively small number of expected users of the PDS.
- 49 Relief was also consistent with our policy stated in RG 169.

Refusal of relief for a fund not to be treated as a 'hedge fund' for the purposes of [CO 12/749], but interim facilitative relief granted

- 50 We refused relief to allow an unlisted managed investment scheme to not be treated as a 'hedge fund' for the purposes of [CO 12/749], which would have allowed the issuer of the units in the applicant to issue a shorter PDS. The relief was requested in connection with a proposed restructure that required

the preparation of a PDS for units in the scheme. The effect of [CO 12/749] is to exclude 'hedge funds' from the shorter PDS regime.

- 51 Relief was refused because the managed investment scheme satisfied three of the five hedge fund characteristics specified in [CO 12/749] and therefore should be treated as such for the purpose of this class order.
- 52 However, given the PDS was well advanced before the release of [CO 12/749] on 18 June 2012, we granted a more narrow form of interim relief to enable the issuer to proceed with issuing a shorter PDS. The relief ceases to apply on and from the earlier of 22 June 2013 and completion of implementation of the proposed restructure.

Other relief

Relief granted to include US GAAP financial information in an offer information statement to employees

- 53 We granted relief to a US entity so that it could offer securities to a small number of employees in Australia (employed by its Australian subsidiary) using an offer information statement that would contain US Generally Accepted Accounting Principles (US GAAP) financial information. The offer of securities would be made pursuant to a global employee share plan and limited only to those employees who were US citizens, temporarily in Australia under business-sponsored employee (long-stay) visas (Australian-located US employees).
- 54 Relief was granted because we recognised that, in the limited circumstances, the burdens associated with a foreign company preparing full financial statements that comply with Australian International Financial Reporting Standards (AIFRS) may be disproportionate having regard to the size of the proposed offer and the particular employees.
- 55 Relief was granted subject to the following conditions:
- offers are made only to Australian-located US employees, who would return to the United States after their visas expire or are no longer renewable;
 - the offer information statement includes a reconciliation of the material differences in the key line items between US GAAP and AIFRS; and
 - the offering memorandum provided to employees in the United States under the relevant Securities and Exchange Commission (SEC) Rule should also be given to Australian-located US employees receiving offers.

Publications

- 56 We issued the following publications in relation to disclosure relief during the period of this report.

Class orders

Class Order [CO 12/622] *Variation of Class Order [CO 10/630] (Long-term superannuation returns)*

- 57 [CO 12/622] varies [CO 10/630] to extend its maximum period of operation by a further 12 months to allow additional time for proposed amending regulations, which will refine the long-term superannuation performance reporting requirements, to be made. This means that the relief provided by [CO 10/630] from the operation of the current long-term superannuation performance reporting requirements that are proposed to be refined is extended to the earlier of:
- 19 July 2013; and
 - the date any relevant amendments to regs 7.9.20AA and 7.9.75BA of the Corporations Regulations commence.

Class Order [CO 12/749] *Relief from the Shorter PDS regime*

- 58 The purpose of [CO 12/749] is to provide interim class order relief from the shorter PDS regime for superannuation platforms, multifunds and hedge funds. This relief means that issuers of these products will remain subject to the disclosure provisions under Ch 7 of the Corporations Act.
- 59 For the purpose of [CO 12/749], ‘superannuation platforms’ refers to those superannuation products in which two or more investment strategies are available and each of the strategies enables a regulated acquisition of a financial product. A ‘multifund’ refers to a simple managed investment scheme for which a shorter PDS is required to be prepared that is offered as part of a collection of a registered managed investment scheme for which a standard PDS is required. Lastly, a ‘hedge fund’ refers to a registered managed investment scheme that is promoted by the responsible entity as being a ‘hedge fund’ or is covered by two or more of the defined characteristics of a hedge fund.

Consultation papers

CP 178 *Advertising credit products and credit services: Additional good practice guidance*

- 60 CP 178 was released to seek feedback on our proposals for additional good practice guidance to help promoters of credit products and credit services comply with their legal obligations to not make false or misleading

statements or engage in misleading or deceptive conduct. This release relates specifically to credit facilities and builds on Regulatory Guide 234 *Advertising financial products and advice services: Good practice guidance* (RG 234), which was released earlier this year and applies to all types of financial products.

CP 187 *Effective disclosure in an operating and financial review*

- 61 CP 187 relates to the operating and financial review (OFR), which forms part of a listed entity's annual report and is required to contain information investors would reasonably require to make an informed assessment of the entity's operations, financial position, and business strategies and future prospects.
- 62 CP 187 requests feedback on proposed guidance to assist directors in ensuring that the OFR provides information and analysis useful to investors.

Regulatory guide

RG 240 *Hedge funds: Improving disclosure*

- 63 RG 240 sets out our guidance for improved disclosure to investors in hedge funds to help them understand and assess these products. This guidance is a result of Consultation Paper 174 *Hedge funds: Improving disclosure—Further consultation* (CP 174), which was released following responses to Consultation Paper 147 *Hedge funds: Improving disclosure for retail investors* (CP 147), published in 2011. Further, the outcome of the Parliamentary Joint Committee on Corporations and Financial Services (PJC) report into the Trio collapse has influenced the new disclosure guidance.
- 64 RG 240 contains new disclosure benchmarks and principles for hedge funds to improve investor awareness of the risks associated with these products.

Report

REP 301 *Response to submissions on CP 174 Hedge funds: Improving disclosure—Further consultation*

- 65 REP 301 highlights the key issues that arose out of the submissions received for CP 174. CP 174 followed our initial consultation under CP 147, which consulted on introducing benchmarks and disclosure principles for hedge fund disclosure documents, setting out the specific features and risks of hedge funds that we think should be addressed in a PDS for these products. Based on responses to CP 147, we refined our proposals and sought further feedback from stakeholders on our proposed disclosure guidance through CP 174, including:
- the likely compliance costs;

- the likely effect on competition; and
- other impacts, costs and benefits.

66 We received eight submissions on CP 174 and also undertook further targeted consultation with the Alternative Investment Management Association and the Financial Services Council. Generally, respondents were supportive of the need for guidance on disclosure by hedge funds but identified concerns about some aspects of the guidance. We have revised our guidance to take account of many of these concerns.

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. It also outlines the publications we issued that relate to managed investment relief.

Relief for registered schemes

Relief granted to not treat members of the same class equally

- 67 We granted relief to the responsible entity of a managed investment scheme from the obligation to treat members of the same class of interests equally. The scheme was winding up and was making quarterly capital payments to members in circumstances where the responsible entity has provided a guarantee that the value of each interest in the scheme will not fall below \$1. Relief was required because the responsible entity proposed to pay members who held up to a set maximum dollar value of interests their full capital entitlement in priority to other members of the scheme.
- 68 We were satisfied that, in the circumstances, the commercial benefits that flowed from granting relief outweighed the regulatory detriment. We also considered that granting relief is analogous to the equal treatment relief previously granted to allow small balance members to be paid out in priority to other members where the scheme is illiquid.
- 69 Relief was granted on the condition that the responsible entity must not make a payment to a small balance member in priority to other members of the scheme unless the responsible entity is satisfied that:
- following the payment, the scheme property would include sufficient liquid assets to enable the responsible entity to satisfy its obligations under the constitution for the scheme in relation to the winding up of the scheme; and
 - the payment would not reduce the capital of the scheme by more than 2%.

Refusal of relief for a foreign holding company to be approved as an eligible provider

- 70 We refused an application from a responsible entity for its foreign ultimate holding company to be approved by ASIC in writing as an eligible provider under s912AA of the Corporations Act, as notionally inserted by Class Order

[CO 11/1140] *Financial requirements for responsible entities*.

Section 912AA imposes revised minimum standards for responsible entities to have available adequate financial resources to provide the financial services covered by their AFS licence.

- 71 The responsible entity applied to ASIC for its foreign ultimate holding company to be approved in writing as an eligible provider so as to enable that entity to provide it with an eligible undertaking for the purpose of meeting its NTA obligation as an AFS licensee under s912AA(5). RG 166.142 provides that we may provide such written approval in exceptional circumstances to an entity of undoubted financial substance.
- 72 We refused to provide written approval on the basis that we were not satisfied that the submissions of the responsible entity demonstrated:
- exceptional circumstances; or
 - that the foreign ultimate parent was an entity of undoubted financial substance.

Publications

- 73 We issued the following publications in relation to managed investment relief during the period of this report.

Class order

Class Order [CO 12/1295] *Variation of [CO 11/1140] (Financial requirements for responsible entities)*

- 74 [CO 12/1295] incorporates minor amendments to [CO 11/1140] and varies the existing definitions for adjusted liabilities and average responsible entity revenue.

Consultation paper

CP 188 *Managed investments: Constitutions—Updates to RG 134*

- 75 CP 188 was for responsible entities, their advisers, industry associations, financial consumer and investor advocacy groups, and any other interested parties of registered management investment schemes.
- 76 CP 188 seeks feedback on proposals to update the guidance on the content requirements of constitutions of registered managed investment schemes. The guidance covers the requirements in s601GA and 601GB 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 Chs 2J, 6, 6A and 6C under s259C, 655A, 669 and 673 respectively.

Buy-back relief

Withdrawal of application for relief to enable a recently restructured company to conduct a share buy-back without shareholder approval

- 77 We considered an application for relief under s257D of the Corporations Act to enable an Australian company listed on the New York Stock Exchange (NYSE) to undertake a tender-style share buy-back without having to seek shareholder approval at a meeting under s257D(1), which would technically exceed the 10/12 limit in s257(b)(4).
- 78 At the time of the application, the applicant had recently undertaken a restructure through a series of merger transactions resulting in an Australian public company becoming the new parent entity of the group. The newly incorporated holding company was registered with issued capital of one ordinary share, and shortly after incorporation issued new shares to facilitate the restructure. The company subsequently completed a debt offering and sought to apply some of those funds to buy back selected shares and make a capital return to shareholders.
- 79 Absent relief, the company would not be permitted to buy back its shares without shareholder approval due to the operation of the 10/12 limit because the smallest number of votes attaching to voting shares of the company in the past 12 months was one vote. Accordingly, the company sought relief so that the 10% limit was counted from a date after the further share issue.
- 80 We considered that the application was within the broad policy objectives of the buy-back provisions of the Corporations Act as outlined in Regulatory Guide 110 *Share buy-backs* (RG 110) and did not diminish the protections that the buy-back provisions afford to shareholders and creditors. Accordingly, we considered granting the application, although the application was subsequently withdrawn.

Relevant interests

Refusal of relief for acquisition of relevant interest in securities acquired for the purpose of employee share plans

- 81 We refused relief to modify s608(3) of the Corporations Act for an ASX-listed entity and its substantial holder in relation to acquisitions of securities in the ASX-listed entity for the purposes of allocation to employees under various employee share plans. The relief sought would have disregarded relevant interests acquired in these securities for the purposes of s606 and the 3% creep exemption in item 9 of s611.
- 82 Relief was refused because we considered that the operation of the share plans would have an impact on control of the ASX-listed entity due to the negative control implications arising from disposal restrictions under the terms of the share plans and the regulatory risk of stockpiling by the share plan trustees of more securities than were reasonably required to allocate to employees. We also considered that relief was unnecessary and that it was appropriate for the ASX-listed entity to seek shareholder approval at a meeting convened under item 7 of s611.

Other mergers and acquisitions relief

Refusal of shortfall facility relief in connection with a non-renounceable pro-rata rights issue; relief granted to appoint a nominee for foreign shareholders

- 83 We refused relief from s606 of the Corporations Act that was sought to enable members of the company to participate in a shortfall facility in connection with the pro-rata non-renounceable rights offer. The rights issue was not underwritten. Relief was refused because it was considered to be unnecessary or excessively wide in the circumstances having regard to:
- the ratio of the rights issue, which we considered was highly dilutionary and had the potential to result in a substantial shortfall of shares;
 - no other dispersion strategies were put in place to minimise the potential effect of the rights issue on control of the company; and
 - it was not apparent from the share register of the company or the information provided by the company that any of its shareholders would be likely to increase their shareholding above the 20% takeovers threshold. Relief under s606 is only required if a shareholder is going to exceed the 20% threshold.
- 84 We considered that relief from s606 in the circumstances would be inconsistent with the principles in s602 of the Corporations Act because any

shareholder of the company (including a shareholder who holds a nominal shareholding, or a shareholder who became a shareholder of the company recently, including after the rights issue was announced and before the record date) could potentially acquire control of the company through the shortfall at a substantial discount to the market price of the company's shares. Also of concern was that this may occur in circumstances where the other shareholders and the directors of the company do not know the identity or intentions of the person who proposes to acquire a substantial interest in the company.

- 85 However, we granted approval under s615 to enable the company to appoint a nominee for foreign shareholders. If approval was not granted, shareholders could not rely on the exception in item 10 of s611 (because ASIC approval of the nominee under s615 had not been given) and risked exceeding the takeovers threshold as a result of the rights issue.

Relief granted for members to participate in a shortfall facility in connection with a non-renounceable pro-rata rights issue

- 86 We granted relief from s606 of the Corporations Act that was sought to enable members of the company to participate in a shortfall facility in connection with a pro-rata non-renounceable rights offer. The rights issue was to be fully underwritten by an associate of a substantial shareholder and a director of the company. The company had not approached any professional underwriters or other substantial shareholders in relation to underwriting arrangements and was having difficulty securing commitments from sub-underwriters.
- 87 Relief was granted in the circumstances because:
- if the rights issue proceeded without relief, the shortfall facility would be restricted in such a way that it would have adverse dilution consequences for existing shareholders;
 - if the rights issue proceeded without relief, this would increase the flow of any shortfall shares to the underwriter (in contrast to a shortfall facility that entitled existing shareholders to apply for an unrestricted number of shortfall shares); and
 - the relief granted was conditional on the substantial shareholder associated with the underwriter being excluded from taking up additional shares under the shortfall facility excess of its pro-rata entitlement.

Withdrawal of application for foreign holder nominee approval in relation to equal access rights issue

- 88 We considered an application for relief to approve a nominee for foreign holders of a company's securities for the purposes of s615 of the Corporations Act in relation to a partially underwritten rights issue.
- 89 The underwriting agreement was conditional upon the underwriter obtaining sub-underwriting commitments for 100% of the underwritten amount, and was only underwritten to the extent the sub-underwriters honoured their obligations. We considered that an arrangement that permitted the underwriter to be relieved of its obligations following a default by a sub-underwriter—either entirely through termination of the agreement, or by reducing the amount of the underwriting commitment by the amount in default—relieved the underwriter of their 'principal risk'. Accordingly, we did not consider such an arrangement to constitute 'underwriting'. As we were of the view that the offer was not underwritten, the company was unable to rely on the exemption in item 10 of s611 of the Corporations Act.
- 90 Accordingly, we considered refusing the application, but the application was subsequently withdrawn.

Publications

- 91 We did not issue any relevant publications in relation to mergers and acquisitions relief or self-acquisition relief during the period of this report.

E Conduct relief

Key points

This section outlines some of our decisions to grant relief from certain conduct obligations imposed by Chs 2D, 2G, 2M, 5C and 7. It also outlines the publications we issued that relate to conduct relief.

Deeds of cross-guarantee

Relief granted varying a definition in Class Order [98/1418] *Wholly owned entities*

- 92 We granted relief modifying the definition of ‘wholly owned entities’ in [CO 98/1418] to enable certain wholly owned entities within a corporate group to continue to be a party to an existing deed of cross-guarantee with their Australian parent entity and be relieved from the requirement to prepare and lodge audited financial statements under Ch 2M of the Corporations Act.
- 93 Before a recent corporate group restructure, all the entities party to the deed were wholly owned by the Australian parent entity. However, as part of the restructure, the Australian parent entity transferred its majority interest in one of its wholly owned subsidiaries to a newly established company (sister company) within the wider corporate group. As a result, a number of entities party to the deed ceased to be wholly owned by the Australian parent entity, which is required to prepare and lodge audited consolidated financial statements for the group of companies that are parties to the deed.
- 94 We granted conditional relief in these particular circumstances because:
- the entities that had ceased to be wholly owned by the Australian parent entity continue to be indirectly wholly owned by the overseas parent entity;
 - the Australia parent entity and the sister company are wholly owned by the overseas parent entity;
 - the entities that had ceased to be wholly owned by the Australian parent entity are dormant and had no external creditors or shareholders; and
 - we were satisfied that the commercial benefit of granting the relief outweighed the regulatory detriment.
- 95 Relief was conditional on all the entities covered by the relief remaining wholly owned subsidiaries of the overseas parent entity, either directly or indirectly, and remaining dormant. Relief was also conditional on the overseas parent entity and the sister company acknowledging the existence of the deed and giving an undertaking not to challenge its validity.

Publications

- 96 We issued the following publication in relation to conduct relief during the period of this report.

Consultation paper

CP 185 Litigation schemes and proof of debt schemes: Managing conflicts of interest

- 97 CP 185 outlines proposals on how we believe funders, insolvency practitioners and lawyers can satisfy the new obligation to have adequate arrangements for managing conflicts of interest that may arise in relation to a litigation scheme or a proof of debt scheme. This obligation was introduced by the Corporations Amendment Regulation 2012 (No.6) (Corporations Amendment Regulation). The Corporations Amendment Regulation removes litigation schemes and proof of debt schemes from the definition of ‘managed investment scheme’ under s9 of the Corporations Act. To clarify that these arrangements are not ‘financial products’ as defined in Ch 7 of the Corporations Act, the Corporations Amendment Regulation provides exemptions from the licensing, conduct and disclosure requirements.
- 98 Our proposals outline that a funder and lawyer relying on the exemptions in the Corporations Amendment Regulation should have written processes and procedures to manage conflicts of interest that address a number of considerations, including:
- effective disclosure of conflicts of interest to members of the scheme;
 - controlling situations where interests may diverge or conflict;
 - review of the terms of the funding agreement in light of the law on unfair contracts and unconscionability; and
 - approval of the terms of settlement of a litigation scheme, where proceedings have not been commenced, by an independent panel or counsel.

F Credit relief

Key points

This section outlines some of our regulatory action in relation to applications under the National Credit Act or the Transitional Act. It also outlines the publications we issued that relate to credit relief.

Relief granted

Relief granted to provide Key Facts Sheet in modified form

- 99 We granted relief to enable a credit licensee to provide a home loan Key Facts Sheet in a form that modifies the wording prescribed by the National Consumer Credit Protection Regulations 2010. We granted relief because we considered that if the licensee were to provide an unmodified Key Facts Sheet to consumers, certain information contained within the Key Facts Sheet would have the potential to mislead consumers about the nature of the specific home loan product offered by the licensee. Additionally, we considered that the modifications allow consumers to better compare the licensee's home loan product with other standard home loans, in line with the policy intent of the Key Facts Sheet.

Interim no-action position

Interim no-action position in relation to new credit card requirements in Pt 3-2B of the National Credit Act

- 100 An industry association, on behalf of its members, sought an interim no-action position for a period of three months in relation to the potential breach by its members of the requirements of Pt 3-2B of the National Credit Act. The additional requirements in Pt 3-2B commenced on 1 July 2012 and applied to licensees that are credit providers under credit card contracts. A no-action position was sought because it was not clear how these requirements would apply to a debit card with the following features:
- the debit card is linked to a deposit facility and may also be used to access credit under a continuing credit facility; and
 - transactions that are made using the debit card are applied first to any funds held on deposit in the deposit facility and the continuing credit facility will only be accessed if there are insufficient funds available in the deposit facility.

101 We decided to take a no-action position because the issue had been raised with Treasury, which is considering whether an exemption would be appropriate in the circumstances. Further, in the interim it was not without doubt whether the requirements of Pt 3-2B would apply to debit cards, and the association members were concerned that they may breach the requirements, and we considered it would serve a clear regulatory purpose to provide a no-action position. Similarly, we considered it would not advance the policy of the legislation to take other regulatory action in relation to the conduct.

Publications

102 We issued the following publication in relation to credit relief during the period of this report.

Report

REP 300 *Review of early termination fees for residential loans entered into before 1 July 2011*

103 REP 300 sets out the findings from our review of early termination fees charged by lenders on residential loans entered into before the commencement on 1 July 2011. The report focuses on how lenders were complying with their obligations under the National Credit Act, the National Credit Code and the *Australian Securities and Investments Commission Act 2001* (ASIC Act), following the release of Regulatory Guide 220 *Early termination fees for residential loans: Unconscionable fees and unfair contract terms* (RG 220) in November 2010.

104 We selected 20 lenders for our review from a broad cross-section of lenders and included both authorised deposit-taking institutions (ADIs) and non-ADI lenders. REP 300 identifies factors that increase the likelihood of an early termination fee being declared unconscionable, and provides views for lenders on how they can reduce the likelihood of this happening. Fees identified as being at increased likelihood of being declared unconscionable include fees that:

- did not reduce over time;
- were calculated by reference to the loan amount; and
- did not account for lenders' recovery (or 'clawback') of commissions paid to mortgage brokers when a loan is terminated early.

G 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 other participants in the financial services and capital markets industries. It also outlines further publications we issued.

Relief granted

Relief granted from auditor rotation requirement

- 105 We granted relief to allow the directors of a listed company to approve the extension of its current lead auditor to play a significant role in the audit of the listed company for an additional successive financial year, even though the approval will be granted after the end of those five successive financial years. Having regard to the recent enactment of the *Corporations Legislation Amendment (Audit Enhancement) Act 2012* (Audit Enhancement Act), we granted the relief because both the directors and the audit committee of the listed company, before the end of those five successive financial years, were satisfied the extension would be consistent with maintaining the quality of the audit and would not give rise to a conflict of interest situation (as defined in s324CD of the Corporations Act).
- 106 The relief mirrored the relevant auditor rotation requirements in the Audit Enhancement Act and was conditional on the directors passing the relevant resolution at the next scheduled board meeting.

Relief granted for an extension of time to respond to a request for a copy of register of members

- 107 We granted relief to allow a listed public company a longer period of time (three months) to comply with a request made under s173 of the Corporations Act for a copy of part of its register of members. Without relief, the company was required to provide a copy of its register within seven days of receiving a valid request made in accordance with the requirements of s173(3A).
- 108 We granted relief in these particular circumstances because:
- the purpose for which the person was seeking access to the register of members was to make offers, outside Australia, to some or all of the company's foreign shareholders;
 - reg 2C.1.03 of the Corporations Regulations prescribes a number of improper purposes for accessing a copy of the register, including the

making of an unsolicited offer in this jurisdiction. However, unsolicited offers made or received outside Australia were not a prescribed improper purpose; and

- we considered that an extension of three months was appropriate in the circumstances to enable the Australian Government the opportunity to investigate whether law reform was appropriate and, if so, to implement such law reform to address what appeared to be an unintended consequence of the drafting of the prescribed improper purpose relating to unsolicited offers and access to the register.

109 On 29 September 2012, the Corporations Amendment Regulation 2012 (No. 7) came into effect, which amended the prescribed ‘improper purpose’ in reg 2C.1.03(d) of the Corporations Regulations so that it is not limited to unsolicited offers made in this jurisdiction. The Corporations Regulations now make all unsolicited offers, regardless of where they are made or received, a prescribed improper purpose for accessing a copy of the register.

Relief from the requirement to provide share certificates to holders of securities traded on NYSE

110 We granted relief to an Australian company listed on the NYSE from the requirement to issue share certificates under s1071B of the Corporations Act. The company had recently undertaken a series of merger transactions resulting in an Australian public company becoming the new parent entity of the group. As the company was listed on the NYSE but not the ASX it was unable to rely on s1071H(2), which provides an exemption from s1071H(1) where the operating rules of a prescribed clearing and settlement facility do not require physical share certificates to be provided. The only clearing and settlement facility prescribed under the Corporations Regulations is ASX Settlement and Transfer Corporation Pty Ltd where settlements are processed through CHESS and do not involve the issue of physical share certificates.

111 We granted relief because we were satisfied that the ownership rights of security holders were adequately protected due to the US system of direct registration of share ownership on the electronic books of the company’s transfer agent. We were also satisfied that granting relief would make the transfer of securities more efficient. This was because absent the relief trades may not be settled until the physical certificate is delivered.

Publications

Consultation papers

CP 179 *Australian market structure: Draft market integrity rules and guidance*

- 112 CP 179 sought comments on draft market integrity rules and guidance following on from Consultation Paper 168 *Australian equity market structure: Further proposals* (CP 168), including proposed consequential amendments to the market integrity rules stemming from CP 168.
- 113 CP 179 was released as a result of the feedback received to CP 168 and we refined our proposals on draft market integrity rules and guidance relating to wider market structure issues for competition in trading services.

CP 181 *Retail trading in Commonwealth Government Securities*

- 114 CP 181 sought feedback on specific regulatory proposals for Commonwealth Government Securities (CGS). These proposals were to help implement the Australian Government's decision to facilitate retail trading of CGS as part of fostering a deep and liquid corporate bond market. It proposes market integrity rules to provide for fair, orderly and transparent trading of depository interests in CGS traded on public exchanges.
- 115 CP 181 also sought comments on whether, and to what extent, the proposals should be applied to other debt market products, such as corporate debt, that are or may be traded on public exchanges. This is to assist in the development of the regulatory framework as part of the Government's long-term plan to foster the retail corporate debt market.

CP 184 *Australian market structure: Draft market integrity rules and guidance on automated trading*

- 116 CP 184 relates to proposed rules and guidance on participant level controls over automated trading. This release was foreshadowed in CP 179: see paragraph 112.
- 117 CP 184 sought feedback on our proposed rules and guidance, which included:
- draft new market integrity rules requiring direct control over filters and automated controls to suspend orders and/or systems;
 - draft rules that revise the process for certifying systems and reviewing changes at least yearly; and
 - draft regulatory guidance on automated trading, covering issues consulted on in CP 168, consolidated with updated guidance currently contained in ASX guidance notes. This includes guidance on testing of systems and

filters/controls—the ability to manage highly automated trading, and stress testing of order flow.

CP 186 Clearing and settlement facilities: International principles and cross-border policy (update to RG 211)

- 118 CP 186 relates to proposed amendments to our regulatory guidance for clearing and settlement facilities to take into account updated international standards and recent Council of Financial Regulators policy. These proposals seek to align our oversight of clearing and settlement facilities with policy recently released by the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions (IOSCO).
- 119 The proposals in CP 186 look to provide certainty and transparency on how we intend to put in place measures and update existing guidance to ensure there is appropriate regulatory influence over cross-border clearing and settlement facilities.

Regulatory guide

RG 238 Suspicious activity reporting

- 120 Following significant consultation with domestic and international market operators, market participants and industry associations, we developed ASIC market integrity rules relating to suspicious activity reporting. RG 238 is for participants of the ASX market and the Chi-X market and gives guidance on new requirements relating to short sale tagging and the reporting of suspicious activity on the respective exchanges.

Report

REP 290 Response to submissions on CP 168 Australian equity market structure: Further proposals

- 121 REP 290 highlights the key issues that arose out of the submissions received on CP 168. The matters we sought feedback on in CP 168 included:
- enhanced controls for an increasingly automated trading environment;
 - volatility controls to automatically limit market activity during periods of extreme price movement;
 - enhanced regulatory data requirements for ASIC's surveillance capability;
 - broadening the scope of best execution so investors have the same protection for both equity and non-equity products listed or quoted on the market operated by ASX Limited (ASX); and

- exceptions to pre-trade transparency and mechanisms for promoting pre-trade transparency to address the impact of dark liquidity on the price formation process.

122 We received 28 written submissions to CP 168 from a range of stakeholders, including market operators, market participants, fund managers, high-frequency trading firms, and a data vendor and technology firm. The main comments provided by respondents included:

- widespread support for our approach to focus on the rules most necessary considering the current financial pressure in the industry;
- general support of measures to address risks created by the increasingly high-speed and automated nature of markets, stressing that such measures should be straightforward, transparent and flexible;
- questions regarding the impact of some proposals on Australia's international competitiveness and whether the benefits of ASIC's proposed approach outweighed the costs; and
- limited feedback on the appropriate maximum penalty to be imposed for the proposed new market integrity rules, with most generally in agreement with the maximum penalty.

123 Following the consultation process and further dialogue with industry and an analysis of costs and benefits, the proposals in CP 168 were substantially refined. Our intentions are to focus more on guidance rather than rules, and most rules will have implementation periods of between 9 and 18 months from the date the rules and guidance are settled.

Appendix: ASIC relief instruments

This table lists the relief instruments we have executed for matters that are referred to in this report and that are publicly available. The instruments are published in the *ASIC Gazette*, which is available via www.asic.gov.au/gazettes, except for credit instruments (marked with asterisks), which are published on our website under ‘Credit relief’.

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
8–9	Austbrokers AEI Transport Pty Limited ACN 123 670 002	12-0392 (in A052/12)	1/6/2012	s911A(2)(l) and 1020F(1)(a), Corporations Act Conditional relief from the financial product disclosure requirements in Pt 7.9 of the Corporations Act to offer one senior employee a benefit under an incentive plan. Relief was also given from the requirement to hold an AFS licence.	
39–40	Statewide Superannuation Pty Ltd ACN 008 099 223	12-0781 (in A057/12)	20/06/12	s1020F(1)(a), Corporations Act This instrument exempts a superannuation trustee from s1012B(3) and 1015C to the extent that they would prevent the trustee from giving an online PDS in relation to a successor fund transfer.	
41–42	The Trust Company (Superannuation) Limited ACN 006 421 638	12-1207 (in A071/12)	4/9/2012	s1020F(1)(c), Corporations Act Relief to the company as the trustee of small APRA funds from the requirement in Subdiv 4.2B of Div 2 of Pt 7.9 of the Corporations Act to prepare and give a shorter PDS for the issue of superannuation interests.	22/6/2013

Report para no.	Entity name	Instrument no. (Gazette no. if applicable)	Date executed	Power exercised and nature of relief	Expiry date
43–44	Suncorp Portfolio Services Limited ACN 063 427 958	12-0796 (in A059/12)	21/6/2012	s1020F(1)(c), Corporations Act Relief from the requirement in Subdiv 4.2B of Div 4 of Pt 7.9 of the Corporations Regulations to prepare and give a shorter PDS for the issue of superannuation interests in specified divisions of the fund.	31/1/2013
45–46	UniSuper Limited ACN 006 027 121 as trustee of UniSuper RSE 1001716	12-0798 (in A059/12)	21/06/2012	s1020F(1)(c), Corporations Act Relief from the shorter PDS regime.	
47–49	Coonara Superannuation Services Pty Ltd ACN 065 116 752 as trustee of the IBM Australia Limited Superannuation Fund RSE 1005424	12-0809 (in A059/12)	26/06/2012	s1020F(1)(c), Corporations Act Relief from the shorter PDS regime.	01/12/2012
50–52	Global Mining Investment Limited ACN 107 772 467	12-1310 (in A076/12)	28/9/2012	s1020F(1)(c), Corporations Act Interim facilitative relief from the shorter PDS regime—hedge fund.	22/06/2013
53–55	Peter Kiewit Sons' Inc, a Delaware Corporation	12-1176 (in A070/12)	29/08/12	s741(1)(a), Corporations Act Relief to modify s715 to allow US GAAP financial information to be included in an offer information statement.	
67–69	National Mutual Funds Management Ltd ACN 006 787 720	12-1258 (in A073/12)	18/9/2012	s601QA(1)(a), Corporations Act Relief from s601FC(1)(d) to allow the responsible entity to pay the net proceeds of the winding up of the fund to small balance members in priority to other members of the fund. Small balance members are members who hold interests in the scheme that are equal to or less than \$500 in value.	

Report para no.	Entity name	Instrument no. (Gazette no. if applicable)	Date executed	Power exercised and nature of relief	Expiry date
86–87	Pulse Health Limited ACN 104 113 760	12-0600 (in A044/12)	11/5/2012	s655a(1)(b), Corporations Act Relief granted from Ch 6 of the Corporations Act to permit shareholders of the company to acquire a relevant interest in the company under a shortfall facility in connection with a non-renounceable rights offer by the company.	
92–95	News Australia Holdings Pty Limited ACN 105 197 028, Advertiser Newspapers Pty Ltd ACN 007 872 997, ACN 105 222 026 Pty Ltd, Advertiser- News Weekend Publishing Company Pty Ltd ACN 007 562 950, Chesterland Pty Ltd ACN 105 197 037, Davies Brothers Pty Ltd ACN 063 505 706, Geelong Advertiser (Holdings) Pty Ltd ACN 004 735 095, Gold Coast Publications Pty Ltd ACN 009 696 511, Leader Associated Newspapers Pty Ltd ACN 004 337 446, Messenger Press Pty Ltd ACN 007 563 439, Nationwide News Pty Ltd ACN 008 438 828, Queensland Newspapers Pty Ltd ACN 009 661 778, Tejeku Pty Ltd ACN 002 988 258	12-0791	29/06/2012	s340(1), Corporations Act Relief to enable a group of companies to continue to rely on the relief under [CO 98/1418].	
99	HomeStart Finance, a statutory corporation under the <i>Housing and Urban Development (Administrative Arrangements) Act 1995</i> (SA)	12-0702	1 June 2012	s163(1)(d), National Credit Act Relief to enable provision of a home loan Key Facts Sheet in a modified form.	

Report para no.	Entity name	Instrument no. (Gazette no. if applicable)	Date executed	Power exercised and nature of relief	Expiry date
105–106	AMP Limited ACN 079 354 519	12-0827	28/06/12	s342A(1), Corporations Act Relief from the auditor rotation requirement for the sixth successive financial year of the listed company.	
110–111	Tronox Limited ACN 153 348 111	12-1086	14/08/2012	s1075A(1), Corporations Act Relief from the requirement to issue share certificates under s1071H of the Corporations Act.	