



**ASIC**

Australian Securities & Investments Commission

## REPORT 111

# Overview of decisions on relief applications (June to August 2007)

November 2007

### **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 ASIC's decisions on relief applications during the period 1 June to 31 August 2007. It summarises situations where ASIC has exercised, or refused to exercise, its exemption and modification powers from the financial reporting, managed investment, takeovers, fundraising or financial services provisions of the *Corporations Act 2001* (the Act).

### 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 Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

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

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

### Disclaimer

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

# Contents

<b>Overview</b> .....	<b>4</b>
<b>A Licensing relief</b> .....	<b>6</b>
Information releases and class order .....	8
<b>B Disclosure relief</b> .....	<b>9</b>
Prospectus relief .....	9
PDS relief.....	11
FSG relief.....	13
Other disclosure relief.....	13
Information releases and class orders.....	13
<b>C Managed investments relief</b> .....	<b>15</b>
Registration.....	15
Other relief relating to registered schemes.....	15
Information releases and class order .....	17
<b>D Mergers and acquisitions relief</b> .....	<b>18</b>
Acquisition of relevant interests in voting shares .....	18
Other mergers and acquisitions relief.....	20
Information release .....	21
<b>E Conduct relief</b> .....	<b>22</b>
Financial reporting .....	22
Financial service providers .....	23
Information release and class order .....	23
<b>F Other relief</b> .....	<b>24</b>
<b>Appendix 1: ASIC relief instruments</b> .....	<b>25</b>

## Overview

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

The purpose of the report is to improve the level of transparency and the quality of information available about decisions we make when we are asked to exercise our discretionary powers to grant relief from provisions of the Act.

The report covers the period beginning 1 June 2007 and ending 31 August 2007. During this period we decided 674 applications. We granted relief in relation to 512 applications and refused relief in relation to 108 applications—54 applications were withdrawn.

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

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

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

Applications for relief are assessed by the Applications and Advice division of ASIC's Regulation directorate. Applications must be in writing and should address the requirements set out in Regulatory Guide 51 *Applications for relief* (RG 51). Relief applications can be submitted electronically to **applications@asic.gov.au**. More information on applying for relief is available at **www.asic.gov.au/fsrrelief** and **www.asic.gov.au/cfrelief**.

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

## A Licensing relief

### Key points

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

### Transport card consisting of a non-cash payment facility

- 1 We granted relief from the requirement to hold an AFS licence in relation to a transport card that will be issued by a state statutory transport body. The transport card, known as the 'long life smartcard' (LLS), will be offered by various distributors, including retailers. The LLS will constitute a non-cash payment facility because it enables cardholders to use stored value to pay for public transport travel and non-transit purchases at participating retailers. We considered relief to be within the policy parameters of Regulatory Guide 185 *Non-cash payment facilities* (RG 185). In particular, we considered that granting relief did not compromise the consumer protection and market integrity aims of the Act because the LLS will be issued by a statutory body.

### Licensing relief refused for holiday park scheme operator

- 2 We refused to grant relief from the requirement to hold an AFS licence for the operator of a proposed holiday park that constituted a management rights scheme. The operator proposed to offer cabins for purchase as part of the holiday park. Relief was sought in line with Pro Forma 187 *Management rights schemes where the strata unit cannot be used as a residence* (PF 187) and purported not to include para (g) of Sch B of PF 187 (now para 4(g)), which permits the removal of the operator by a majority of the scheme members. The operator submitted that para 4(g) was commercially impracticable. Relief was refused because:
  - we considered that it was not commercially practicable for members to withdraw from the scheme as an alternative to replacing the manager;
  - para 4(g) expresses a fundamental policy principle that underpins PF 187 relief; and
  - the right of each member to terminate their arrangement with the ongoing operator is not an adequate substitute for the collective right of members to, by majority, replace the scheme operator.

### **Discretionary fund operator dealing in general insurance**

- 3 We granted conditional licensing relief to a mutual discretionary fund operator for dealing in general insurance products where dealing is for corporate members of a closed group of companies. The discretionary fund was established to manage the financial risk of the group. Relief was granted on the basis that the licensing exception in s911A(2)(1) could have applied in the circumstances but for one member company, which was not a related body corporate but was controlled (within the meaning of 'control' in s50AA) by the controllers of the closed group of companies.

### **NZ broker dealing in ASX-listed securities as Account Participant**

- 4 We refused an application for licensing relief from a New Zealand (NZ) broker proposing to become an Account Participant on Australian Securities Exchange Limited (ASX). The broker intended to directly register its NZ clients' holdings of ASX-listed securities as sponsored holdings. Sponsored holdings would enable the broker's clients to receive issuer information regarding corporate actions through the CHESS messaging functions and therefore more quickly and easily exercise their shareholder rights. The broker sought licensing relief on the basis that it was not proposing to deal on behalf of any Australian clients and the NZ Securities Commission and the NZ Stock Exchange regulated it. We refused relief because:
- we were not satisfied that the NZ regulation would regulate the broker's activities in Australia; and
  - the broker had not satisfied us it could not operate lawfully under its current arrangements under reg 7.6.01(1)(f) without the need for relief.

### **Employee share scheme giving contingent rights in a stapled security**

- 5 We granted relief to a company and the responsible entity of three managed investment schemes whose shares/units were stapled together. The relief was to allow the company to offer an employee share scheme to its employees that gave contingent performance-based rights in the stapled securities. These rights were offered through a trustee arrangement and relief was needed because the offer did not precisely fall exactly within the definition of 'eligible offer' in Class Order (CO 03/184) *Employee share schemes* and because the trustee also needed relief. We granted relief because the plan fell within the policy parameters set out in Regulatory Guide 49 *Employee share schemes* (RG 49).

## Employee contribution plan with exit restrictions

- 6 We granted relief to a company to offer an employee share scheme (a salary sacrifice plan) to its employees. The plan fell outside the scope of CO 03/184 for three reasons. Firstly, employees could not exit the plan at any time, but only during a three-week 'administrative period' each quarter. In our view, this was not significant departure as the restriction was very limited. Secondly, the company had discretion to add its own money to the plan. This did not fall outside the policy parameters of RG 49. Finally, the plan did not have to purchase shares on a specific date, but instead could purchase shares at any time during the 'administrative period'. Again, we could not see that the departure affected the policy parameters of RG 49.

## Information releases and class order

- 7 The following information releases and class order relate to licensing relief granted during the period of this report.

### Information releases

(IR 07-25) *Interim relief for general insurers and actuaries until 31 August 2007* (18 June 2007)

(IR 07-28) *ASIC updates licensing requirements for AFS licensees* (25 June 2007)

(IR 07-39) *ASIC consults on compensation and insurance requirements for AFS licensees* (23 July 2007)

(IR 07-40) *ASIC consults on updating its policy on the training of financial advisers* (31 July 2007)

### Class order

(CO 07/410) *Actuaries: Further extended transitional relief*

## B Disclosure relief

### Key points

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

### Prospectus relief

#### Share purchase plan

- 8 We granted relief to a company to make offers to shareholders who purchased the company's shares on market in a three-day period prior to the relevant record date in respect of the share purchase plan. The shareholders, through no fault of their own, were unable to participate in the share purchase plan as they were not recorded on the company's share register because the transactions did not settle by the relevant record date, contrary to the ASX T+3 settlement rules. Had the relevant acquisitions settled in accordance with the settlement rules, the affected shareholders would have been able to participate in the share purchase plan. We provided relief so that a new prospectus did not have to be prepared in relation to the offer. We considered relief to be within the policy of Class Order (CO 02/831) *Share purchase plans*.

#### Share issue by trading cooperative

- 9 We refused to grant relief to allow a trading cooperative, transferring its registration under state cooperative legislation to the Act, to issue shares to new and existing members under an offer information statement of indefinite term and with no limit on the amount that could be raised. We took into account the wide membership, that members could subscribe for multiple shares and that those shares generated substantial annual dividends. However, we also noted the fixed price of the shares, that the returns projected were very high and that there was no available secondary market. We considered that full disclosure was warranted in these circumstances. In relation to previous inadvertent breaches of Ch 6D for offers made across state borders, we issued a no-action letter because RG 108.18 of Regulatory Guide 108 *No-action letters* (RG 108) was met, including that there were no material adverse effects on third parties.

### **Offers to non-employees under an employee share scheme**

- 10 We granted employee share scheme relief in relation to the global restructure of a company, which would result in three new companies listing on an approved foreign market. Class Order (CO 03/184) *Employee share schemes* could not be relied upon because the 12-month listing requirement was not met and it was proposed securities would be issued to non-employees of the new entities. We granted relief in the form of CO 03/184 under Regulatory Guide 46 *Employee share schemes* (RG 46) but restricted the exercise of options issued under the employee share schemes for 12 months. Although the policy objective of mutual interdependence was not satisfied, the overall circumstances of the offer favored relief because the purpose of offers to former employees was not fundraising. We also modified s708(5) in relation to new issues so that two of the three companies could rely on the small-scale offerings exemption at s708(1)–(7) while disregarding issues under the various employee share schemes.

### **On-sale relief for stapled securities post reconstruction**

- 11 We granted relief to a newly stapled group (the group) from the on-sale provisions in Ch 6D. The group comprised an existing listed company and a newly registered managed investment scheme where the assets of the scheme were transferred from the company. The group also acquired certain additional assets before the stapled securities were issued. We were willing to grant relief only where:
- there was no change in the underlying risk profile of the group from the previous company structure; and
  - any new assets acquired by the group before the issue of the stapled securities that were not previously owned by the company were assets that the company previously had an interest in and were consistent with the company's core business.

### **Employee share scheme giving contingent rights in a stapled security**

- 12 In the matter referred to at paragraph 5, we also granted relief from the need to give a prospectus for the offer of the stapled securities under the employee share scheme.

### **Employee contribution plan with exit restrictions**

- 13 In the matter referred to at paragraph 6, we also granted relief from the need to give a prospectus for the offer of the products under the employee share scheme.

## PDS relief

### **On-sale relief for stapled securities post reconstruction**

- 14 In the matter referred to at paragraph 11, we also granted relief from Pt 7.9 for the issue and on-sale of interests in the new registered managed investment scheme.

### **Transport card consisting of a non-cash payment facility**

- 15 In the matter referred to at paragraph 1, we also granted relief from Pt 7.9 in relation to the LLS.

### **Comfort relief for a share sale facility**

- 16 We granted relief, for the avoidance of doubt, to the operators of a share sale facility from the requirement to comply with the disclosure provisions of Pt 7.9 in relation to offers to issue, offers to arrange for the issue of, or the issue of, interests in the share sale facility. The applicants were concerned that relief was needed because the share sale facility was a managed investment scheme and interests in the facility were therefore financial products. The share sale facility was offered by a company that proposed to delist from the financial market operated by the ASX to enable Australian shareholders to sell their shares through a broker on the Toronto Stock Exchange for a specified period after the delisting date.

### **PDS relief refused for holiday park scheme operator**

- 17 In the matter referred to at paragraph 2, we also refused relief from the need to give a PDS. PF 187 requires that full disclosure compliant with Pt 7.9 be made to prospective investors. In addition to the reasons outlined in paragraph 2, we refused relief because the disclosure proposed by the operator did not meet all the relevant requirements of Pt 7.9.

### **Enhanced fee disclosure requirements applying to a superannuation fund trustee**

- 18 We issued a no-action letter to the trustee of superannuation funds in respect of past and future breaches of the enhanced fee disclosure requirements applying to periodic statements issued by the trustee. Initially, the trustee sought relief from the itemisation of transaction requirements (reg 7.9.60B(2), 7.9.60B(5), 7.9.60B(6) and 7.9.60B(7)), the requirement to state the amount of other management costs (cl 301 of Sch 10, Pt 3, Div 1 of the Regulations), and the requirement to show the total dollar amount of fees and costs (cl 302 of Sch 10, Pt 3, Div 1 of the Regulations). The trustee sought relief on the basis that it was issuing 'legacy superannuation

products’—i.e. the computer systems the trustee used to administer the superannuation products were dated and did not allow the trustee to generate periodic statements that comply with the enhanced fee disclosure requirements. The trustee advised us that it would upgrade its computer systems to produce compliant periodic statements by 31 December 2007.

We refused relief because we are unable to grant retrospective relief for past breaches. Instead, we issued a no-action letter for the period of non-compliance ending 31 December 2007. We issued the no-action letter because:

- the trustee satisfied our policy for precedent relief granted beyond the scope of Class Order (CO 06/602) *Transitional periodic statement relief for legacy superannuation products*;
- the employer-sponsored fund was closed to new employees (though continues to issue interests to employees of existing employers);
- the relief sought was narrower than that given by CO 06/602; and
- the trustee implemented plans for compliance and further disclosures beyond those required by CO 06/602 to assist consumers to understand the effect of fees and costs.

### **Employee share scheme giving contingent rights in a stapled security**

- 19 In the matter referred to at paragraph 5, we also granted relief from the need to give a PDS for the offer of the stapled securities under the employee share scheme.

### **Employee contribution plan with exit restrictions**

- 20 In the matter referred to at paragraph 6, we also granted relief from the need to give a PDS for the offer of the products under the employee share scheme.

### **On-sale of stapled securities on conversion of exchangeable preference shares**

- 21 We granted relief from s1012C(6) and (7) for the on-sale of stapled securities on conversion of exchangeable preference shares that had been offered as part consideration for an acquisition to be implemented by a scheme of arrangement. We granted the relief because we considered it was analogous to the relief provided by Categories 3 and 5 of Class Order (CO 04/671) *Disclosure for on-sale of securities and other financial products* and would not erode the anti-avoidance effect of the on-sale provisions.

## FSG relief

### Combining FSG with PDS for superannuation fund

- 22 We granted relief from s942DA(1), which only allows an FSG and PDS to be combined as a single document in certain circumstances, to enable the administrator of a superannuation fund to combine its FSG with the issuer's PDS without liability extending to both parties for both documents. Relief was granted on the basis that the financial services the administrator provided in connection with the superannuation fund were directly linked to the financial product offered by the issuer under the PDS, so the prospect of consumer confusion was minimal and there would be no material reduction in consumer protection.

## Other disclosure relief

### Inviting offers to sell under a share sale facility

- 23 In the matter referred to at paragraph 16, we also granted relief to the operators of a share sale facility from s1019F, which prohibits a person from inviting other persons to make offers to sell financial products. We gave this relief because we considered that the prohibition was not intended to apply to a facility where, although the invitation to sell the shares by the facility provider was made off market, the shareholders made offers to sell their shares on market through a broker. The relief was conditional on the operator of the scheme including specific information in the invitation document given to the shareholders of the company. This condition was intended to ensure that shareholders would be informed about the current market value of their shares and have sufficient information about how the facility operates to make an informed decision about whether to participate in the facility.

## Information releases and class orders

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

### Information releases

(IR 07-22) *ASIC reissues its policy on how to deliver product disclosure about super investment strategies* (8 June 2007)

(IR 07-24) *ASIC helps time-critical superannuation advice* (18 June 2007)

*(IR 07-32) Relief from consent to quote credit ratings, trading data and geological reports in prospectuses, PDS and takeover documents (3 July 2007)*

*(IR 07-34) ASIC releases updated policy on foreign securities prospectus relief (3 July 2007)*

*(IR 07-35) ASIC consults on class order relief for share and unit sale facilities (4 July 2007)*

### **Class orders**

*(CO 07/409) General insurance disclosure: extension of transitional period*

*(CO 07/428) Consent to quote: Citing credit ratings, trading data and geological reports in disclosure documents and PDS*

*(CO 07/429) Consent to quote: Citing credit ratings agencies, trading data and geological reports in takeovers*

*(CO 07/447) Temporary extension of time for SOA delivery*

## C Managed investments relief

### Key points

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

### Registration

#### Gazettal notice of proposed deregistration

- 25 We refused to grant relief from the two-month gazettal period in s601PA(3) to the responsible entity of a managed investment scheme that was in the process of voluntary deregistration. We considered the gazettal period to be a fundamental safeguard imposed by Parliament to ensure that all members have adequate opportunity to dissent from the deregistration of the scheme and stakeholders (including creditors) are given notice of the pending deregistration. We considered that the gazettal period could not be altered but for exceptional circumstances. The circumstances of the application appeared to fall squarely within s601PA(2), so we considered that relief was not warranted.

### Other relief relating to registered schemes

#### Comfort relief for a share sale facility

- 26 In the matter referred to at paragraph 16, we also granted relief, for the avoidance of doubt, from the requirement to comply with Ch 5C in relation to the operation of the share sale facility.

#### Holiday park scheme viewed as a managed investment scheme

- 27 In the matter referred to at paragraph 2, we refused to grant the operator of a proposed holiday park a no-action letter that would have exempted it from complying with Ch 5C. We refused the request because the proposed arrangements exhibited the features of a managed investment scheme in having the same overall supervisory structure and using the same method of operation. In particular, the following proposed arrangements constituted a 'common enterprise':

- the investors' conduct would be restricted by a common set of rules and procedures set by the operator;
- the holiday park would be marketed by encouraging investors to rely on the expertise of the operator;
- the investment would have heavy restrictions on use and occupation;
- investors would not have day-to-day control over the operation of the holiday park and were not allowed, in any circumstance, to change the operator; and
- although individual investor accounts would be handled separately and each investor did not share in the profits of other investors, there was a developed system for deriving rental receipts resulting in the investors' money being invested in a rational manner.

### **Employee contribution plan with exit restrictions**

- 28 In the matter referred to at paragraph 6, we also granted relief from the need to register the scheme as a managed investment scheme.

### **Listed non-liquid managed investment scheme buyback**

- 29 We granted relief from s601GAC (as notionally inserted by Class Order (CO 05/26) *Constitutional provisions about the consideration to acquire interests*), s601GA(4), Pt 5C.6 and s611 to enable a listed non-liquid managed investment scheme to conduct an on-market buy-back of its interests. We refused relief from the equal treatment rule at s601FC(1)(d) on the basis that it was not required. The decision was based on the principles set out in Consultation Paper 77 *On-market buy-backs by ASX-listed schemes* (CP 77).

### **Member approval required to confer a financial benefit upon a related party**

- 30 We refused to grant relief from s601LC so that the responsible entity of a managed investment scheme could confer a variety of financial benefits upon a related party without a meeting of members in the context of a stapling arrangement. The legislative intent of Pt 5C.7 is to protect the interests of scheme members as a whole by requiring related party transactions, which could endanger scheme property, to be disclosed and approved by members of the scheme. We refused relief because we considered it to be unnecessary given the availability of the arm's length exemption at s210. We were not satisfied that s210 was unavailable or that ASIC should remove the scheme from the protections of Pt 5C.7.

## Information releases and class order

- 31 The following class order and information releases relate to managed investments relief granted during the period of this report.

### Information releases

*(IR 07-27) ASIC consults on proposals to review its policy on investor directed portfolio services (20 June 2007)*

*(IR 07-31) ASIC clarifies audit report requirements for investor directed portfolio and managed discretionary account services (2 July 2007)*

*(IR 07-33) ASIC consults on managed investment schemes: withdrawal rights and scheme liquidity (3 July 2007)*

### Class order

*(CO 07/480) Investor directed portfolio services, investor directed portfolio-like services and managed discretionary accounts—amendments*

## 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.

### Acquisition of relevant interests in voting shares

#### Depository service providers

- 32 We granted relief to a depository service provider (DSP) by modifying s609 to facilitate the provision of depository services to Australian entities seeking to list on the Alternative Investment Market of the London Stock Exchange plc (AIM). AIM, under Certificateless Register of Electronic Stock and Shares Transfer (CREST) Regulations, does not allow the securities of entities incorporated outside of the United Kingdom to be held and transferred through CREST. The DSP therefore provides depository services to Australian entities seeking to list on AIM by holding the entity's securities as trustee and in turn issuing AIM-traded depository interests to investors. Under the terms of a deed poll entered into with such Australian entities, the DSP had certain limited discretions over the disposal of the entity's securities, constituting a relevant interest in the securities of the entity. Our relief modified s609 so that the DSP does not have a relevant interest in the securities of an Australian entity as a result of discretions arising from a deed poll entered into with the entity. While we have granted this type of relief before, previous cases have been entity-specific.

#### Conditional agreement

- 33 We granted relief from s606 to the responsible entity of a managed investment scheme and its related parties so that they would not acquire a relevant interest in the scheme under a s609(7) conditional agreement. The conditional agreement had been entered into with another party to settle legal proceedings under which that other party would dispose of its interests in the managed investment scheme in a particular way. As a result, the responsible entity of the managed investment scheme and its related parties had technically acquired an interest in the scheme. We granted relief after we were satisfied that the conditional agreement complied with s609(7).

### Accelerated rights offer

34 We made a decision to grant relief so that a company could temporarily exceed the 20% share ownership threshold in Ch 6 when participating in an accelerated rights offer, where offers to professional and institutional investors closed before offers to retail investors. We were willing to grant relief on the basis the temporary breach was the result of a timing issue unique to the offer, and on condition that the company:

- would not hold more than a 30% relevant interest in the entity making the offer;
- would hold more than a 20% relevant interest in the entity for a period of less than 25 calendar days;
- would not exercise any of its voting power attaching to the shares held in excess of the 20% threshold; and
- during this period would not call a meeting of members or any other event where votes would be cast, except at the request of the members in accordance with the Act.

We considered such relief would have a similar effect to the exemption in Item 10 of s611. While a decision to grant relief was made, the application was subsequently withdrawn.

### Market making of warrants and stock-lending arrangements

35 We granted relief to enable a company to purchase back warrants that it had issued in its role as a market maker of those warrants. We granted relief from s606 in relation to the underlying shares on the basis that the applicant was engaging in the market stabilising function of market making, the percentage of shares involved was low and the degree of control was remote. However, we refused relief from s671B because Regulatory Guide 159 *Takeovers, compulsory acquisitions and substantial holding notices* (RG 159) considers the purpose of s671B not to be limited to identifying bidders or potential bidders but also to maintaining an informed market in quoted securities. We also refused relief from s621(3) on the basis that there were no prescriptive guidelines regarding the pricing of warrants.

36 In relation to the matter in paragraph 35, the company also applied for relief to enable it to purchase shares for the purpose of fulfilling contractual obligations under its stock-lending arrangements without obtaining a relevant interest or the consideration offered being subject to the minimum bid price principle in s621(3). We refused relief from s606, 671B and 621(3), partly because, under the general terms of the stock-lending agreements, the company could potentially hold a volume of stock with little independent control.

## Other mergers and acquisitions relief

### Dispatch of bidder's statement

- 37 We granted conditional relief from s631(1)(b) to extend the two-month period within which offers under a takeover bid must be made. The bidder's announcement of the bid was for the purposes of conducting due diligence inquiries and Takeover Panel proceedings required additional disclosure in the bidder's statement. We considered that relief was consistent with Regulatory Guide 59 *Announcing and withdrawing takeover bids* (RG 59) and provided an extension of 13 days.

### Material financial information

- 38 We refused to grant relief to an entity conducting a scheme of arrangement from the obligation in reg 5.1.01 to disclose material changes to the company's financial position since the date of the last balance sheet in its explanatory statement, as prescribed in cl 8302(h) of Sch 8, Pt 3 of the Regulations. The relief was sought in relation to a 'top-hatting' where an ultimate holding company was being replaced by a non-operating holding company and where the last balance sheet laid before the company was dated six months before the explanatory statement was to be dispatched to members. We refused relief on the basis that we do not consider the continuous disclosure requirements to be an adequate alternative to the disclosure required under cl 8302(h). Also, despite the fact that members were not being asked to make an investment decision, we considered that information about the company's financial position was material to a member's decision on whether to approve the scheme of arrangement.

### Joint bid relief

- 39 We assessed an application seeking joint bid relief in relation to a proposed takeover bid under Ch 6. The applicants requested relief to enable them to undertake a joint takeover bid where they would not be required to accept into any rival scrip or part-scrip bids unless the consideration under any such rival bids was assessed by the target as being a higher offer than the offer under the applicants' joint bid. Such relief deviates from the parameters for joint bid relief in Pt Z of RG 159, which requires joint bidders to accept into a rival bid that ASIC considers constitutes a higher offer. The potential regulatory detriment of granting such relief is particularly pronounced where the joint bidders hold a significant joint stake in the target, as was evident in the applicants' case, because in such circumstances the joint bidders may be in a position to frustrate a rival bid and influence the target's evaluation of the consideration under the rival bid. Accordingly, we decided to only grant joint bid relief on substantially the same terms as those contemplated in Pt Z of RG 159.

## Information release

40            The following information release relates to mergers and acquisitions relief granted during the period of this report.

*(IR 07-29) ASIC releases updated policy on tracing beneficial ownership  
(27 June 2007)*

## E Conduct relief

### Key points

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

### Conduct relief refused for holiday park operator

- 41 In the matter referred to at paragraph 2, we also refused relief from Pt 7.8 for the holiday park scheme.

## Financial reporting

### Voluntary administration

- 42 We granted relief and a no-action letter to a company placed into voluntary administration, subject to a deed of company arrangement in relation to the applicant's failure to prepare, audit and lodge financial directors' reports. The duration of the relief sought was a relevant factor in considering the application. The no-action letter was granted for the financial years ending 30 June 2001 to 30 June 2006 and relief was provided for a maximum two-year period from the date of the relief instrument. We were of the view that an unreasonable burden was demonstrated and granting relief for a two-year period and a no-action letter for the duration requested was in accordance with our policy in Regulatory Guide 174 *Externally administered companies: Financial reporting and AGMs* (RG 174) (at RG 174.10, RG 174.33, RG 174.36 and RG 174.42–RG 174.45) and Regulatory Guide 108 *No-action letters* (RG 108).

### Extension of time to hold a company's AGM

- 43 We granted an extension of time under s250P for a listed company to hold its AGM for the financial year ending 31 December 2006. We were of the view that the company met the policy criteria in Regulatory Guide 44 *Annual general meeting—extension of time* (RG 44) at RG 44.17(b)—i.e. it was in the interests of shareholders to extend the time to hold the AGM. This was largely due to the company's inadvertence in omitting certain information from a rights offer document and its desire to delay the AGM so that the information could be included with the notice and annual accounts to give shareholders the requisite 28-day notice period. Given the small size of

the company and its limited resources, it was in the interests of shareholders to reduce the company's administrative costs.

## **Financial service providers**

### **Transport card consisting of a non-cash payment facility**

- 44 In the matter referred to at paragraph 1, we also granted relief from Pt 7.8 in relation to the LLS.

### **Employee share scheme giving contingent rights through a trustee**

- 45 In the matter referred to at paragraph 5, we also granted relief from the restriction on hawking stapled securities offered under the employee share scheme.

## **Information release and class order**

- 46 The following information release and class order relate to conduct relief granted during the period of this report.

### **Information release**

(IR 07-37) *ASIC financial reporting relief* (17 July 2007)

### **Class order**

(CO 07/505) *Variation and revocation of financial reporting instruments*

## F 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.

### Employee contribution plan with exit restrictions

- 47 In the matter referred to at paragraph 6, we also granted relief from the requirements under Ch 2L relating to debentures involved in the employee share scheme.

## Appendix 1: ASIC relief instruments

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

**Table 1: ASIC relief instruments**

Report para no.	Class order title or entity name	Instrument no. (Gazette no. if applicable)	Date executed	Power exercised and nature of relief	Expiry date
1 15 44	The Transport Ticketing Authority	07/672 (in <a href="#">36/07</a> )	21/08/2007	s926A(2)(b), 992B(1)(b) and 1020F(1)(b)  This instrument exempts the 'Long Life Smartcard' issued by a state statutory body from s911A(1), 911B(1), 992A and Pt 7.9.	
3	RG Mutual Limited (ACN 078 766 542)	07/0609 (in <a href="#">30/07</a> )	20/07/2007	s911A(2)(l)  This instrument grants licensing relief to the company for dealing in general insurance products.	
5 12 19 45	Australand Holdings Limited (ACN 008 443 696), Australand Property Limited as responsible entity of Australand Property Trust (ARSN 106 680 424), Australand Investments Limited (ACN 086 673 092) as responsible entity of Australand Property Trust No. 4 (ARSN 108 254 413) and Australand Property Trust No. 5 (ARSN 108 254 771)	07/0434 (in <a href="#">23/07</a> )	7/06/2007	s741(1)(a), 911A(2)(l), 992B(1)(a), 1020F(1)(a) and 1020F(1)(b)  This instrument grants disclosure, licensing and hawking relief in relation to an offer of rights to acquire stapled securities issued by the company and the responsible entities of the schemes under an employee share scheme.	

Report para no.	Class order title or entity name	Instrument no. (Gazette no. if applicable)	Date executed	Power exercised and nature of relief	Expiry date
6 13 20 28 47	National Australia Bank Limited (ACN 004 044 937)	07/0470 (in <a href="#">25/07</a> )	20/06/2007	s283GA(1)(a), 601QA(1)(a), 741(1)(a), 911A(2)(l), 992B(1)(a), 1020F(1)(a) and 1020F(1)(b)  This instrument grants disclosure, managed investment scheme registration, licensing and hawking relief in relation to an offer of rights to acquire shares issued by the company under an employee share scheme.	
7	<i>Actuaries: Further extended transitional relief</i>	<a href="#">CO 07/410</a>	12/06/2007	s911A(2)(1)  This class order varies Class Order (CO 03/1096) <i>Actuaries</i> to provide actuaries with further transitional relief from the AFS licensing regime. The transitional relief, which was to end on 30 June 2007, has been extended until 31 August 2007.	31/8/07
8	MEO Australia Limited (ACN 066 447 952)	07/0604 (in <a href="#">29/07</a> )	16/07/2007	s741(1)  This instrument grants prospectus relief in relation to an offer for the issue of shares by the company.	
10	Covidien Limited (a company incorporated under the law of Bermuda), Tyco Electronics Limited (a company incorporated under the law of Bermuda) and Tyco International Limited (a company incorporated under the law of Bermuda)	07/0514 (in <a href="#">27/07</a> )	29/06/2007	s741(1)(a), 741(1)(b) and 911A(2)(l)  This instrument grants disclosure, licensing, hawking and small-scale offerings relief in relation to offerings under employee share schemes.	

Report para no.	Class order title or entity name	Instrument no. (Gazette no. if applicable)	Date executed	Power exercised and nature of relief	Expiry date
11 14	Shareholders in Primelife Corporation Limited (ACN 010 622 901), members in Babcock & Brown Communities Trust (ARSN 124 896 733) (the Scheme) and Babcock & Brown Responsible Entity No. 1 Limited (ACN 080 737 042) as responsible entity of the Scheme	07/0624 (in <a href="#">30/07</a> )	26/07/2007	s741(1)(b), 1020F(1)(c) and 1020F(1)(a)  This instrument grants relief from s707(3) and (4) and s1012C(6) and (7) in relation to the on-sale of stapled securities issued by the company and the responsible entity. Relief was also granted from Pt 7.9 for the issue of interests in the scheme by the responsible entity.	
16 23 26	LionOre Mining International Limited (ARBN 105 421 341), Royal Bank of Canada (ARBN 076 940 880) and Computershare Investor Services Pty Limited (ACN 078 279 277)	07/0368 (in <a href="#">21/07</a> )	18/05/2007	s601QA(1)(a) and 1020F(1)(a)  This instrument grants relief from s1019F, Ch 5C and Pt 7.9 to the companies in relation to the operation of a share sale facility.	
21	Interests in Babcock & Brown Infrastructure Trust (ARSN 100 375 479)	07/0646 (in <a href="#">33/07</a> )	09/08/2007	s741(b), 1020F(1)(b) and 1020F(1)(c)  This instrument grants relief from s1012C(6) and (7) to allow the on-sale of stapled securities issued by Babcock & Brown Investor Services Limited (ACN 099 717 638) as responsible entity of the scheme, on conversion of exchangeable preference shares for the purposes of part consideration for a proposed acquisition by scheme of arrangement.	
22	BT Portfolio Services Limited (ACN 050 294 052)	07/0635 (in <a href="#">31/07</a> )	1/08/2007	s951B(1)(c)  This instrument grants relief from s942DA (by modifying reg 7.7.08A) to allow the company to combine its FSG with a PDS issued by Trust Company Superannuation Services Limited (ACN 006 421 638) for a superannuation fund known as the 'Retirement Wrap'.	

Report para no.	Class order title or entity name	Instrument no. (Gazette no. if applicable)	Date executed	Power exercised and nature of relief	Expiry date
24	<i>General insurance disclosure: extension of transitional period</i>	<a href="#">CO 07/409</a>	12/06/2007	s1020F(1)(c)  This class order extends the transitional period applying to reg 7.9.15D–F, which relates to the content of PDSs issued by general insurers. The transitional period is extended from 20 June 2007 until 31 August 2007.	31/8/07
24	<i>Temporary extension of time for SOA delivery</i>	<a href="#">CO 07/447</a>	18/06/2007	s951B(1)(a)  This class order gives providing entities (i.e. financial advisers) additional time to provide Statements of Advice during the period leading up to the Government's 'Simpler Super' changes that take effect on 1 July 2007.	
24	<i>Consent to quote: Citing credit ratings, trading data and geological reports in disclosure documents and PDS</i>	<a href="#">CO 07/428</a>	27/06/2007	s741(1) and 1020F(1)  This class order declares that s716 and 1013K are modified so that a disclosure document or PDS may include a credit rating reference, a statement in a historical geological report and trading data reference without the consent of the maker of the statement.	
24	<i>Consent to quote: Citing credit ratings agencies, trading data and geological reports in takeovers</i>	<a href="#">CO 07/429</a>	27/06/2007	s655A(1)  This class order declares that s636 and 638 are modified so that a bidder's statement or target's statement may include a credit rating reference, a statement in a historical geological report and trading data reference without the consent of the maker of the statement.	

Report para no.	Class order title or entity name	Instrument no. (Gazette no. if applicable)	Date executed	Power exercised and nature of relief	Expiry date
29	Commonwealth Managed Investments Limited (ACN 0894 0098 180) as responsible entity of Commonwealth Property Office Fund (ARSN 086 029 739)	07/0693 (in <a href="#">38/07</a> )	28/08/2007	s601QA(1)(b) and 655A(1)(b)  This instrument grants relief from s601GAC (as notionally inserted into the Act by Class Order (CO 05/26) <i>Constitutional provisions about the consideration to acquire interests</i> ), Pt 5C.6, s601GA(4) and 611 to enable the responsible entity to conduct an on-market buy-back of interests.	
31	<i>Investor directed portfolio services (IDPS), investor directed portfolio-like services and managed discretionary accounts—amendments</i>	<a href="#">CO 07/480</a>	27/06/2007	s601QA(1)(a), 741(1)(a), 992B(1)(a) and 1020F(1)(a)  This class order amends Class Order (CO 02/294) <i>IDPS</i> , Class Order (CO 02/296) <i>Investor directed portfolio-like services provided through a registered managed investment scheme</i> and Class Order (CO 04/194) <i>Managed discretionary accounts</i> .	
32	Computershare Investor Services plc (a company incorporated in the United Kingdom), Computershare Company Nominees Limited (a company incorporated in the United Kingdom) and Computershare Clearing Pty Limited (ACN 063 826 228)	07/0461 (in <a href="#">25/07</a> )	18/06/2007	s655A(1)(b) and s673(1)(b)  This instrument modifies s609 so that the companies do not acquire a relevant interest in voting shares of entities to which they provide depository services in order to enable the securities of those entities to be traded on the Alternative Investment Market of the London Stock Exchange plc.	
33	Australian Pipeline Limited (ACN 091 344 704) as responsible entity of Australian Pipeline Trust (ARSN 091 678 778), APT Investment Trust (ARSN 115 585 441) and APT Pipelines Limited (ACN 009 666 700)	07/0648 (in <a href="#">33/07</a> )	06/08/2007	s655A(1)(a)  This instrument modifies s606 so that the responsible entity would not acquire a relevant in the scheme under an s609(7) conditional agreement.	

Report para no.	Class order title or entity name	Instrument no. (Gazette no. if applicable)	Date executed	Power exercised and nature of relief	Expiry date
35	Macquarie Bank Limited (ACN 008 583 542)	07/0468 (in <a href="#">25/07</a> )	13/06/2007	s655A(1)(a)  This instrument grants relief from s606 in relation to the purchasing back of warrants by the issuer of those warrants for the purposes of market making.	
37	Territory Resources Limited (ACN 100 552 118)	07/0665 (in <a href="#">34/07</a> )	23/08/2007	s655A(1)(b)  This instrument modifies s631(1)(b) to extend the two-month period in which a formal bid must be made by the company after a proposal to make a bid is announced.	
39	Toga Investments Pty Limited (ACN 000 699 427), Rodiv (NSW) Pty Limited (ACN 000 687 098) in its capacity as trustee of the Rodiv Pension Fund, Barana Capital Pty Limited (ACN 058 056 634) and Parsley Bay Investments Pty Limited (ACN 074 380 199), and Vicaroma Pty Limited (ACN 122 218 231) in its capacity as trustee of the Tobar Trust.	07/0660 (in <a href="#">34/07</a> )	09/08/2007	s655A(1)(a)  This instrument grants relief from s606 to allow the companies to enter into a joint bid under Ch 6.	
42	Allstate Prospecting Pty Limited (ACN 000 809 754)	07/0270  Not gazetted.	17/04/2007	s340(1)  This instrument grants the company relief from the requirements to prepare, audit and lodge financial and directors' reports.	17/4/09

Report para no.	Class order title or entity name	Instrument no. (Gazette no. if applicable)	Date executed	Power exercised and nature of relief	Expiry date
46	<i>Variation and revocation of financial reporting instruments</i>	<a href="#">CO 07/505</a>	10/07/2007	<p>s341(1) and 601CK(7)</p> <p>This class order amends the following instruments as a result of legislative changes made by the <i>Corporations Legislation Amendment (Simpler Regulatory System) Act 2007</i> (SRS Act), which change the size test for financial reporting by proprietary companies:</p> <ul style="list-style-type: none"> <li>• Class Order (CO 98/98) <i>Small proprietary companies which are controlled by a foreign company but which are not part of a large group</i>;</li> <li>• Declaration (CO 02/1432) <i>Registered foreign companies—financial reporting requirements</i>; and</li> <li>• Class Order (CO 98/96) <i>Synchronisation of financial year with foreign parent company</i>.</li> </ul> <p>CO 07/505 also revokes Class Order (CO 05/83) <i>Timing of auditor's independence declaration</i> and Class Order (CO 05/910) <i>Auditor's independence declaration—exemption</i>, which are no longer required as the SRS Act has incorporated the relief they provided into the Act.</p>	