



ASIC

Australian Securities & Investments Commission

REPORT 97

Overview of decisions on relief applications (January to May 2007)

September 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 January to 31 May 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*.

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 advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

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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 January 2007 and ending 31 May 2007. During this period we decided 1090 applications. We granted relief in relation to 825 applications and refused relief in relation to 158 applications—107 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. Instruments are published in the ASIC Gazette, which is available via www.asic.gov.au/gazettes. The information and media releases referred to throughout the report are available via www.asic.gov.au/mr.

Applications for relief 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 *Corporations Act 2001* 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.

Professional indemnity insurance for MDA operators

- 1 We refused to grant relief to a managed discretionary accounts (MDA) operator from the requirement to hold professional indemnity insurance as required by paragraph 1.27 of Class Order [CO 04/194] *Managed discretionary accounts* and its AFS licence conditions. In place of professional indemnity insurance, the operator proposed alternative compensation arrangements of a security bond or the imposition of a financial requirement similar to those required for derivatives or managed investment schemes under Regulatory Guide 166 *Licensing: Financial requirements* (RG 166). Relief was refused because:
 - we did not view the proposed compensation arrangements as an acceptable alternative to holding the required level of professional indemnity insurance;
 - due to the deferred operation of s912B (the obligations under s912B will commence 1 January 2008 for new licensees and 1 July 2008 for existing licensees), we were unable to approve alternative arrangements under the provision; and
 - the operator had not demonstrated that the public policy purposes requiring MDA operators to maintain professional indemnity insurance were outweighed by its difficulties in obtaining professional indemnity cover.

Employee scheme offering rights over stapled securities

- 2 We granted licensing relief to the operator of an employee share scheme for the offer and issue of unsecured rights in stapled securities to its directors. The operator could not rely on Class Order [CO 03/184] *Employee share schemes* as it did not apply to the performance rights in question. We were satisfied that the operation of the scheme met our policy for relief because the scheme was not for a fundraising purpose and the scheme promoted mutual long-term interdependence between the operator and its directors. The relief was subject to conditions similar to those imposed by [CO 03/184].

Superannuation clearing house facility

- 3 We refused to grant licensing relief to a trustee of a superannuation fund that also operated a superannuation clearing house facility for employee contributions into other superannuation funds. The trustee could not rely on relief under Class Order [CO 05/736] *Low value non-cash payment facilities* because the clearing amounts under the facility exceeded the 'low value' threshold of \$1000 specified in [CO 05/736]. We refused relief because the total contributions held by each employer (i.e. the client) on behalf of its employees far exceeded the \$1000 threshold. Because of the risks and potential consumer detriment that could arise from such a facility, we considered there would be regulatory benefit in the AFS licensing regime applying to the facility.

Information releases

- 4 The following information releases relate to licensing relief granted during the period of this report.

[IR 07-15] *ASIC consults on relief for some arrangers of group insurance*

[IR 07-19] *ASIC releases technical updates to financial services related policy statements and class orders*

[IR 07-21] *ASIC consults on policy on licensing relief for trustees of wholesale equity schemes*

B Disclosure relief

Key points

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

Prospectus relief

Employee scheme offering unsecured rights over stapled securities

- 5 In the matter referred to at paragraph 2, we also granted relief from the need to give a prospectus for the offer of the products under the employee scheme.

Prospective directors liable for disclosures under a prospectus fundraising

- 6 We refused to grant relief from the liability provision in s729, or the disclosure content requirements in s711 for proposed directors moving from the board of one company into another. The second company was raising the cash component for the proposed merger of the two companies. We considered the legislative policy behind s729 was clear—i.e. the provision applied to the proposed directors, irrespective of their actual level of involvement. We considered that the importance of the ongoing directors of the merged entity being liable to shareholders for the prospectus outweighed any burden on the directors.

On-sale of securities using alternative disclosure

- 7 We granted relief from the secondary sale provisions in s707(3) and 707(4) so that a company could on-sell shares issued offshore under a New Zealand Investment Statement and International Offering Circular, without accompanying Ch 6D prospectus disclosure. We considered the proposed disclosure was of a similar standard to that required of a prospectus under Ch 6D. We granted relief on the basis that relief would not erode the anti-avoidance effect of the secondary sale provisions and the potential detriment to retail shareholders would be minimal.

Relief to allow a listed stapled entity to rely on the cleansing notice exemption

- 8 We granted relief to a listed stapled entity so that it could rely on the cleansing notice exemption in s708A(5) from the need to provide a prospectus in a secondary sale situation. The stapled entity could not rely on the exemption because the entity had been listed for only 11 months and also had benefited from a s340 order within the previous 12 months exempting it from the requirement to lodge half-yearly financial reports for its first half year of operation. We considered relief to be within the policy of Regulatory Guide 174 *Externally administered companies: Financial reporting and AGMs* (RG 174). In particular, we were satisfied the s340 order did not detract from the quality of information available to the market: RG 174.34.

Pre-prospectus advertising relief

- 9 We refused to grant relief from s734(2), which restricts advertising and publicity about a public offer of securities under a prospectus. The company requested relief to enable it to inform potential investors of the company's proposed change in ultimate ownership and any priority entitlements for investors under the offer. The application only related to investors who had contacted the company about the offer prior to the issue of the prospectus. We considered communications about the opportunity for preferential placement to an indeterminate pool of potential investors to be distribution of information in a piecemeal manner that could result in information asymmetry between investors. We also considered relief to be in conflict with the intent behind s734(5)(b) to encourage all investors to make fully informed investment decisions.

Pre-prospectus information for employees

- 10 We granted relief from s734(2) to allow the provision of certain information to employees prior to the issue of a prospectus. The distribution of information was limited to those employees involved in the preparation of the prospectus. We considered that the nature of the communication would not constitute drip-feeding of the market, nor encourage inadequate analysis of the disclosure document.

On-sale relief applying to exchangeable shares

- 11 We granted relief so that ordinary shares in a listed company issued in exchange for exchangeable shares issued by the company could be on-sold without prospectus disclosure. Relief was granted in circumstances where all offers of exchangeable shares were made outside the Australian jurisdiction and a prospectus in relation to the ordinary shares of the company was issued at or shortly before the time the exchangeable shares were issued. Relief was

also conditional on the company issuing a notice under s708(6) if offers under the prospectus had closed by the time the exchangeable shares were to be issued. Relief was considered analogous to that provided in category 3 of Class Order [CO 04/0671] *Disclosure for on-sale of securities and other financial products*.

On-sale relief for convertible bonds

- 12 We granted relief from s707(3) to permit the secondary sale of convertible bonds (and the underlying shares issued on conversion) offered without prospectus disclosure to professional or institutional investors or investors outside of Australia. Relief was granted on the condition that the company give ASX Limited (ASX), at the time of issue of the convertible notes, a document containing s713(2) disclosure in relation to the convertible bonds and s713(2), (3), (4) and (5) disclosure in relation to the underlying shares. We considered the relief to be analogous to that provided in category 3 of [CO 04/0671] and Class Order [00/195] *Offer of convertible securities under s713*. We also considered that it would not be practicable for the company to issue a cleansing notice potentially every day during the exercise period.

PDS relief

Employee scheme offering unsecured rights over stapled securities

- 13 In the matter referred to at paragraph 2, we also granted relief from the need to give a PDS for the products under the employee scheme.

Transaction-specific PDS for interests quoted for less than 12 months

- 14 We granted relief to allow the responsible entity of a registered scheme to use a transaction-specific PDS for the offer of interests that had been recently de-stapled from a listed stapled security. The responsible entity could not rely on s1013FA to produce a transaction-specific PDS because the interests had been separately quoted and traded for less than 12 months and were therefore not 'continuously quoted securities'. We granted relief to allow the responsible entity to produce a transaction-specific PDS for an issue of interests separately quoted and traded for seven months. We considered that this relief did not detract from the legislative intent behind the exemption from the disclosure provisions contained in s1013FA.

PDS relief for quoted interests of an exchange traded fund

- 15 We granted relief to the responsible entity of a registered scheme so that it did not need to provide a PDS for subsequent offers of interests from the exchange traded fund. Although the responsible entity was able to prepare a PDS for the initial issue of interests in the fund, it could not satisfy s1013H for subsequent offers made under the same PDS (as amended by way of a Supplementary PDS from time to time, as necessary) because any application for quotation of those interests would be made outside the prescribed period. Relief was granted on the basis that there was no apparent mischief in the application or any regulatory detriment in granting the relief. The relief was available where the PDS contained certain disclosures about the newly issued units.

No additional dollar disclosure relief for PDS of deposit products

- 16 We refused to grant relief to an issuer of deposit products by modifying reg 7.9.15A, which requires certain amounts in a PDS to be stated as an amount in dollars. The issuer had prepared and printed PDSs for 30 products, which were awaiting distribution. We refused relief on the basis that:
- PDSs for deposit products prepared before 31 March 2007 had the benefit of dollar disclosure relief under Class Order [05/683] *Dollar disclosure: further transitional relief*. [CO 05/683] also covered any reprinting of these PDSs ([CO 05/683] was amended in June 2007);
 - any re-preparation of those PDSs provided the issuer with the appropriate opportunity to comply with the dollar disclosure content requirements at that time or, in relation to basic deposit products, to determine whether it still wished to make disclosures under a PDS or avail itself of the option not to use a PDS under reg 7.9.07FA; and
 - only one PDS prepared after 31 March 2007 required a Supplementary PDS in order to comply with the dollar disclosure requirements and we did not consider this amendment to be overly burdensome on the issuer.

Other disclosure relief

Relief from Part 7.9

- 17 In the matter referred to at paragraph 3, we also refused to grant relief from the disclosure provisions in Parts 7.7 and 7.9.

Employee scheme offering unsecured rights over stapled securities

- 18 In the matter referred to at paragraph 2, we also granted relief to the operator of the employee scheme from the need to provide a PDS for on-sale. The operator could not rely on [CO 04/671] because it proposed to issue the stapled securities through a trustee, who would then transfer those products to participants once certain performance hurdles had been met. We were satisfied that the scheme met our policy because:
- the cost of disclosure under the on-sale provisions was likely to be a disincentive for the operator to establish, and employees to participate in, the employee share schemes;
 - the anti-avoidance purpose of the on-sale provisions was not eroded because the purpose of the issue of the stapled securities under the schemes was to foster better employer/employee relations, rather than to raise funds; and
 - the role of the trustee did not affect the underlying policy.

Reduction of minimum period for unsolicited offers to purchase financial products off-market

- 19 We granted relief to a company seeking to make unsolicited off-market offers to repurchase convertible notes it had previously issued. The relief modified s1019G(2) and 1019I(2)(e) so that the offer could be open for 22 days, rather than the minimum statutory period of one month. The offer period of 22 days equated to the minimum period applicable to offers to buy back shares under the ASX Listing Rules. The company had difficulty meeting the repurchase timetable prescribed by the convertible notes. We did not consider relief to offend the intention behind the provisions because the offer for the convertible notes was at market price, rather than discount. The offer was also accompanied by significant disclosure to investors.

Variation of offer period for unsolicited offers to purchase financial products off-market

- 20 In the same matter as in paragraph 19, we also granted relief by modifying s1019H(1) so that the company could 'vary' the offer by extending the offer period. We granted this relief to avoid any doubt that extending the offer period might be construed as varying the offer.

Treating a responsible entity as the 'issuer' of the financial product

- 21 We granted relief to the responsible entity of a registered scheme, a security trustee and an underwriter so that the responsible entity could rely on the

cleansing notice provisions in s1012DA(5)(e) and 1012DA(6) for the on-sale of instalment receipts. The responsible entity was proposing to place instalment receipts with wholesale clients using the scheme's existing instalment receipt structure. However, the responsible entity could not rely on the cleansing notice provisions because it was not the 'issuer' of the instalment receipts, as required by the cleansing notice provisions. We considered relief appropriate in this circumstance because the responsible entity was the actual entity responsible to the investors for the performance of the instalment receipts and the underlying interests in the scheme.

Information releases and class orders

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

Information releases

[IR 07-08] *Policy on disclosure in reconstructions released*

[IR 07-11] *ASIC extends disclosure relief for general insurance products*

[IR 07-12] *ASIC proposes prospectus relief for foreign scrip takeovers*

[IR 07-13] *ASIC releases its joint bids policy*

[IR 07-14] *ASIC provides guidance on disclosing Simpler Superannuation*

[IR 07-19] *ASIC releases technical updates to financial services related policy statements and class orders*

[IR 07-20] *ASIC issues further updated fees and costs disclosure guide*

Class orders

[CO 07/09] *Prospectus relief for foreign schemes of arrangement and PDS relief for Part 5.1 schemes and foreign schemes of arrangements*

[CO 07/10] *Technical disclosure relief for reconstructions and capital reductions*

[CO 07/42] *Disclosure for on-sale of securities and other financial products—variation*

[CO 07/386] *Superannuation: Delivery of product disclosure for investment strategies—amendment*

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

Arrangement viewed as a single managed investment scheme

- 23 We refused to grant a company relief from the need to register an arrangement as a series of individual managed investment schemes under s601ED. We refused the application because we did not consider relief necessary. The interests acquired by investors under the arrangement as a whole were similar in nature, acquired through the same processes, subject to the same framework of investor rights and governed under one constitution. It appeared that the arrangement, when considered in its entirety, was a single managed investment scheme due to the interdependency between the series of separate property arrangements.

Other relief relating to registered schemes

Outsourcing of investment management functions to a third party

- 24 We granted relief to the responsible entity of a number of registered schemes from s601FC(4), which prohibits a registered scheme from investing in unregistered schemes. The responsible entity sought to invest in real estate investment trusts from a number of jurisdictions, but could not rely on the specific terms of relief typically given for investment in foreign collective investment schemes (FCIS). These typically require a responsible entity to prepare and sign a document explaining why the investment complies with its duties before an investment is made. However, the structure of the registered schemes was such that the responsible entity outsourced its investment management function to a third party overseas investment manager. The third party manager could only invest within the approved investment strategy mandated for each of the schemes. We decided to grant relief on condition that the record keeping and certification requirements

applied to the approved investment strategy, rather than a particular investment product. We considered that this modification to the condition still met our existing policy in Regulatory Guide 178 *Foreign collective investment schemes* (RG 178), which requires the responsible entity to document and undertake a substantive consideration of the relevant foreign regulatory regime.

Note: s601FC(4) has since been repealed.

Relief from holding a members' meeting where scheme has one retail client

- 25 We granted relief to the responsible entity of a registered scheme to allow it to amend the scheme's constitution by written consent from all members rather than a special resolution of members. The scheme consisted of 12 members, including one retail client. Even though not all members were wholesale clients, we granted relief in this circumstance because the retail member would be provided with information about the nature of the changes otherwise required under s252J(b) and (c). In granting relief, we also considered submissions relating to commercial urgency underlying the transaction and the potential risk to members of losing their investment opportunity if they had to hold a members' meeting under s601GC(1)(a).

Relief refused because financial benefits can be transferred at arm's length

- 26 We refused to grant relief to the responsible entity of a registered scheme by modifying s601LC. If granted, the relief would have allowed financial benefits to be given to a related party without the protections of Ch 2E. The financial benefits included arrangements that would allow a group of entities to acquire scheme property from a registered scheme if any action was taken to change the responsible entity of the scheme. We considered relief to be unnecessary because the financial benefits could be transferred at arm's length under the exemption in s210.

Extension of time to establish a compliance committee

- 27 We granted an extension of time under s601JA(3) so that the responsible entity of two registered schemes had six months to establish a compliance committee, rather than the statutory period of 14 days. The responsible entity was in the process of deregistering the schemes. Relief was granted on the basis that it would be unduly burdensome on the responsible entity given the schemes were being deregistered and there were only two members remaining in the schemes, both of whom were part of the corporate group to which the responsible entity and all the internal directors belonged. The relief was conditional on the responsible entity deregistering the schemes.

Issue price based on the greater of market price or net asset value

- 28 We granted the responsible entity of a listed scheme relief from s601GA(1)(a), as modified by Class Order [CO 05/26] *Constitutional provisions about the consideration to acquire interests*, so that it could determine the issue price of units in its listed scheme by reference to the value of scheme property (NAV). For listed schemes, [CO 05/26] provides relief from s601GA(1)(a) where the issue price is based on market price. Relief was granted on the basis that, if the issue price is based on the greater of market price or NAV, consumer protections would remain in place because the value of existing holdings would not be diluted.

On-market buy-back of interests without the net-asset backing price ceiling

- 29 We granted relief to the responsible entity of a registered scheme (the interests of which formed part of a listed stapled security) from s601GAC (as notionally inserted by [CO 05/26]), so that it could conduct an on-market buy-back of the stapled interests. The responsible entity sought relief without the net-asset backing price ceiling imposed in previous relief granted by ASIC. We granted relief without this requirement, as consistent with the proposed policy position in Consultation Paper 77 *On-market buy-backs by ASX-listed schemes* (December 2006). We also accepted the applicant's submission that the ASX Listing Rule price ceiling requirement provides an appropriate pricing mechanism.

Comfort relief for differential treatment relating to fees

- 30 We granted relief, for the avoidance of doubt, to the responsible entity of a number of registered schemes from the equal treatment provision in s601FC(1)(d). The responsible entity wanted to offer existing and new members a discount on management fees charged. The responsible entity proposed to apply the rebate to new investments made during a specified period of time. We granted relief for the avoidance of doubt based on the information provided in this circumstance. We were of the view that differential treatment did not exist (because all members had an equal opportunity in participating in the rebate) and relief in these circumstances was unnecessary.

Comfort relief for differential treatment relating to additional transaction charges

- 31 We granted relief, for the avoidance of doubt, to the responsible entity of a registered scheme from the equal treatment provision in s601FC(1)(d) so that members paid an additional transaction charge if interests were

withdrawn in certain circumstances. The additional transaction charge applied where the volume of net withdrawals exceeded a specified withdrawal threshold in that calendar month, resulting in additional costs to the responsible entity. The relief was conditional on the additional transaction charge being disclosed in the constitution and PDS and applied consistently by the responsible entity. We were of the view that it was arguable that differential treatment existed (because all members were potentially subject to the additional transaction charge) and relief in these circumstances was unnecessary.

Information releases and class order

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

Information releases

[IR 07-02] *Changes to managed investments class order relief*

[IR 07-04] *ASIC amends policy statement on time-sharing schemes*

[IR 07-15] *ASIC consults on relief for some arrangers of group insurance*

[IR 07-16] *ASIC consults on proposals to modify requirements for management rights schemes*

Class order

[CO 07/189] *Management rights schemes where the strata unit cannot be used as a residence*

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

Severance of association between trustee and unit holders

- 33 We granted relief for the avoidance of doubt to sever an association under s12(2)(b) between holders of units in a trust and the trustee. An Australian company had issued scrip in the form of exchangeable preference shares with no voting power to a foreign company. The votes attached to ordinary shares to be held as a special voting share by the trustee of a unit trust. The trustee had no discretion to exercise any votes unless and until directed to do so by individual exchangeable shareholders. The holders submitted that although it was possible that such an association would be excluded by s16(1)(a), the situation was unclear. The effect of an association was that the trustee would have voting power in the Australian company in two ways—as holder of the voting share and as associate of each of the holders of exchangeable shares. Further, each holder of exchangeable shares would have voting power in all the shares in which the trustee had a relevant interest. We granted relief so that each individual holder of exchangeable shares was not required to aggregate its voting power with that of the trustee. We also granted the trustee relief from the substantial holding obligations under Ch 6C.

Payment of fees in the form of scheme interests

- 34 We refused to grant relief to the responsible entity of a listed scheme from s606, which prohibits certain acquisitions of relevant interests in voting interests. Uncertainty in relation to the ability to repatriate cash from a foreign country caused the responsible entity to explore being paid management fees in the form of scheme interests rather than cash. The payment of fees in the form of scheme interests, coupled with other matters, could have resulted in the responsible entity increasing its voting power beyond that permitted by Ch 6. We refused relief because the responsible entity could have deferred the issue of interests to which it was entitled by way of fees until after it had disposed of a sufficient percentage of interests

held by it to ensure the takeovers thresholds were not exceeded. We were also concerned that giving relief would allow the responsible entity to increase its relevant interests at a greater rate than permitted by Ch 6, which might have had a detrimental impact on the market for control having regard to the significant holdings in the scheme held by associates.

Tender offer relief

35 We granted relief from s606 to a group of minority shareholders of a target company under a takeover bid. The minority shareholders required relief because s606 prohibited them from combining their interests in the target company in order to sell their collective securities as a parcel by way of tender. This was because the collective relevant interest in the target was over 20%. We granted relief in line with our policy in Regulatory Guide 102 *Tender offers by vendor shareholders* (RG 102).

36 We granted relief from s606(4) to parties who intended to respond to the minority shareholders' invitation to tender to buy their parcel of shares. Prospective tenderers required relief because they would otherwise breach s606(4) in submitting a tender to purchase the vendors' parcel of shares. The relief was in line with our policy in RG 102.

37 In relation to the matter in paragraph 36, we also granted conditional relief from s606 to the successful tenderer. The successful tenderer required relief to enter a transaction to acquire the vendors' parcel of shares, which was a relevant interest of over 20%. We granted this relief subject to the successful tenderer making offers under a takeover bid for the remaining shares in the target within 30 days in order to satisfy the conditions for relief under the instrument. The relief was in line with our policy in RG 102.

Refusal of relief to permit an agreement conditional on scheme of arrangement

38 We refused relief to modify s609(7) and 611 in connection with a proposed joint acquisition of a target company via scheme of arrangement. The applicant sought relief to avoid upstream companies from acquiring a relevant interest in a pre-existing parcel of the target company's shares until the scheme of arrangement was effective. We refused to grant relief because it involved a separate transaction to that proposed by the scheme and we considered that the benefit of a separate shareholders' resolution held under Item 7 of s611 (in addition to the approval of the scheme of arrangement under s411(4)) outweighed any additional administrative cost.

Acquisition of relevant interest in shares by offers of instalment receipts

- 39 We granted relief to modify s609 to avoid the creation of relevant interests in entities playing a mechanical role in the offer of instalment receipts. The relief was provided to an entity that was both instalment issuer and creditor, despite it having limited power to dispose of the interests in order to enforce the terms of the trust or in the case of default, and to the security trustee, which had legal title but was not a bare trustee. In both cases the relief was granted on the basis of the analogous relief we provide to warrant trustees—namely, the limited nature of the power and the immateriality of the information that disclosure would provide to the market as described in Regulatory Guide 143 *Takeovers provisions: Warrants* (RG 143).

Takeovers

Changes to a bidder's statement between lodgement and dispatch

- 40 We granted relief from s612(f) so that a bid could lawfully proceed despite the bidder not having complied with Item 6 of s633(1). The bidder in question lodged a replacement bidder's statement under Class Order [CO 00/344] *Changes to a bidder's statement between lodgement and dispatch* but failed to send offerees notice within 14 days of lodgement as required by [CO 00/344]. The relief was granted in circumstances where the bidder sent the replacement bidder's statement to offerees soon after the Christmas/New Year industry close-down period and after consultation with the target.

Minimum bid principle for a return of capital

- 41 We granted relief from s621(3) to a takeover bidder for a managed investment scheme, so that consideration paid under the bid could be reduced by the amount of a return of capital paid by the target fund prior to the offer period. Section 621(3) requires the minimum bid consideration to be equivalent to the highest price for which a bidder purchased securities in the four months prior to the bid. We considered that relief given to bidders with regard to a target company declaring a cash dividend is comparable to a managed investment scheme declaring a return of capital. We also considered that a reduction in bid consideration equivalent to the amount paid by way of a return of capital at or before the time the bid consideration was paid would not offend the minimum bid price principle.

Listed AIM securities ‘quoted’

- 42 We granted relief from s621 and 636 to permit a bidder whose securities were quoted on the Alternative Investment Market of the London Stock Exchange (AIM) to treat those securities as ‘quoted’ securities for the purposes of s621 (minimum bid price rule) and s636(1)(h)(ii) when valuing the AIM-quoted securities provided by the bidder as consideration for a pre-bid stake and to be offered as consideration under the takeover. Relief was granted on the basis that we considered AIM provided a reliable market price for the bidder’s securities and that, accordingly, it was appropriate to value those securities according to their market price so that an expert’s report was not required under s636(2).

Takeover bid withdrawal rights

- 43 We granted relief from s654A to permit a bidder to give withdrawal rights to all target shareholders who accepted its takeover offer. Relief was granted in the final stages of the bid, following an announcement that the bidder would declare its offer unconditional if it reached acceptances of 70% by a set date. Relief was granted on the basis that withdrawal rights would not enable the bidder to manipulate the market price of the target shares.

Takeover bid acceptances and offer extension

- 44 We refused relief from s650F to permit a bidder to declare its takeover offer unconditional if it reached 70% in the final seven days of the offer period. Relief was requested on the condition that the bidder would extend its offer period in such circumstances for at least seven days or such longer period as ASIC considered appropriate. The application was made in the final stages of the bid, following an announcement that the bidder would declare its offer unconditional if it reached acceptances of 70% by a set date. The bidder submitted that relief was necessary to enable it to adhere to its ‘truth in takeovers statement’, as required by our policy in Regulatory Guide 25 *Takeovers: False and misleading statements* (RG 25). We refused to grant relief on the basis that the situation could be remedied without relief, by the bidder publicly clarifying the operation of its ‘truth in takeovers statement’.

Takeover bid acceptances

- 45 We granted relief, for the purposes of s624(2), to permit a bidder to count acceptance forms received by the bidder, regardless of whether such acceptances had been processed by the relevant broker in accordance with the ASTC Settlement Rules. The relief was requested following a decision by the Federal Court, which held that acceptances were not effective for the purposes of s653A until so processed. Relief was granted on the basis that the Federal Court decision was made in the final stages of the bid and

shareholders were proceeding on the basis they could validly accept in the ways set out in the bidder's statement (including by providing an acceptance form to the bidder). We considered that there was insufficient time to notify shareholders of the change. We have also provided this type of relief at the outset of a bid.

- 46 We refused relief to extend the takeover offer period after the scheduled close of a takeover bid, given that such relief would be retrospective in nature and contrary to the bidder's 'truth in takeovers statement' under RG 25 that the offer would not be extended beyond a set date other than in accordance with s624(2).

Successive bids and equality of opportunity

- 47 We granted relief to a party making a takeover bid from the requirement to provide information and a supporting expert's report about the value of unquoted securities offered by that party in the four months before the bid. In this case, the bid was made immediately after an earlier bid had inadvertently lapsed as a result of failure to comply with Ch 6 notice requirements. We granted relief because the equality of opportunity principle was not offended. In forming this view we took into account that both bids were open to all shareholders and that the terms of the bids were identical. We also noted that over 80% of shareholders had purported to accept the first bid, the target was in a weak financial position and the value of the consideration offered had improved as the value of the target's shares had fallen.

Other mergers and acquisitions relief

Issuing or transferring shares to controlled entity

- 48 We refused to grant relief from s259C to permit the issue or transfer of shares by a company to an entity the company controlled. The company sought relief to issue shares or transfer shares as part of an initial public offer to a managed investment scheme, the responsible entity of which was a controlled entity of the company. We refused to grant relief because the application was not consistent with our policy in Media Release [MR 98-316] *ASIC Policy Proposal Paper on indirect self acquisition by investment funds*. In particular, the company was not a financial institution and neither would it represent a large proportion of the All Ordinaries Index when its shares listed.

Listing of debt securities

- 49 We granted relief from Chs 6 and 6C to an unlisted company seeking to offer debt securities that would be listed on ASX. To enable the debt securities to be traded on a secondary market, the company sought and obtained membership of the official list of ASX. As a result, the company was, for the purposes of Ch 6 and Pt 6C.1, a 'listed company' and subject to the takeovers and substantial holding provisions. The debt securities did not confer any control or voting rights over the company. The holders of issued voting shares in the company provided their written consent to the granting of relief.

Compulsory acquisition notices for bearer bonds

- 50 We agreed to modify the operation of s664C, 664E, 666B and 668A to allow a company that had acquired over 90% of bearer bonds (with options convertible into shares) issued by another company to compulsorily acquire the remaining bonds under notices served on the relevant bond clearers. We granted the relief after establishing that the clearing systems maintained records of account holders (the beneficial owners of the bonds or their custodians) and would notify the account holders of receipt of the notices. Our relief was consistent with the policy underlying Ch 6A, that takeovers of securities should be facilitated once a party has acquired 90% of those securities. The relief also afforded security holders access to the same information and period in which to object to the acquisition.

Information releases and class order

- 51 The following information releases and class order relate to mergers and acquisitions relief granted during the period of this report.

Information releases

[IR 07-12] *ASIC proposes prospectus relief for foreign scrip takeovers*

[IR 07-13] *ASIC releases its joint bids policy*

Class order

[CO 07/44] *Unsolicited offers under a regulated foreign takeover bid—variation*

E Conduct relief

Key points

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

Financial reporting

Alternative financial reporting obligations for Australian branch of global entity

- 52 We amended relief previously granted to an AFS licensee from the financial reporting requirements in s601CK and 989B in recognition that it would be unreasonably burdensome to require the licensee, as a global entity that operated in Australia only through an Australian branch, to either restate the accounts of its global operations in accordance with Australian accounting standards or to incorporate a local subsidiary. The licensee could not comply with a condition of the earlier relief, which required its auditors to provide a review opinion on certain figures using United States generally accepted accounting principles to equivalent figures prepared on the basis of Australian generally accepted accounting principles. We agreed to modify the conditions of the earlier relief so that the licensee could instead lodge the financial statements of the licensee's holding company, together with certification that the licensee's financial statements were incorporated into those of the consolidated group.

Relief from auditor rotation requirements

- 53 We refused to grant relief from the auditor rotation requirements in s324DA to the lead auditor of a listed company. The auditor had already been playing a significant role in the audit of the company for seven years and sought relief so that they could continue to play a significant role in the audit for another six months. This would have allowed the auditor's partner to register as an auditor under the Act and take on the role of lead auditor for the company. We refused the relief because ASIC does not have the power to extend the period in which an auditor is eligible to play a significant role in the audit of the listed company for more than seven years under section 324DA.

Financial reporting

- 54 We refused to grant relief from the Ch 2M requirements to prepare, audit and lodge financial reports. The company sought relief on the basis of competitive disadvantage. We refused to grant relief because the company was unable to demonstrate how a competitor would be able to calculate the company's profit margin or output per unit and how the information could be used to disadvantage the company.

Relief from synchronisation of financial years

- 55 We granted relief from s323D(3) for 12 months to permit a domestic parent company to avoid the need to require two consolidated entities to synchronise their financial years with its own financial years. We considered that synchronisation would be unreasonably burdensome, given the entities would not be consolidated within 12 months and the company quantified the significant costs of synchronisation. We did not accept the argument there was an anomaly in the law and that the effect of s323D(3) was inappropriate.

Retrospective relief applications

- 56 Various financial reporting relief applications were lodged in this reporting period. These included applications for orders under s340 (e.g. relief from the requirement to lodge financial accounts or extension of class order relief in special circumstances) and for extensions of time to lodge ASIC Forms 384 and 382 to obtain accounting and audit relief.
- 57 A material percentage of these applications were applications for retrospective relief, which ASIC is unable to grant: see Regulatory Guide 43 *Accounts and audit relief* (RG 43) at RG 43.15. Retrospective relief is where we are asked to give relief from a financial reporting obligation where the deadline for completing the obligation has passed before the application can be processed and relief granted. During the period covered by this report we received and refused 26 such applications. Applicants must ensure that they lodge relief applications no later than 15 business days before the deadline for completing the obligation. We typically require 15 business days to consider and process an application and issue any applicable relief instruments.

Financial services providers

Relief from the conduct provisions

- 58 In the matter referred to at paragraph 3, we also refused relief from the hawking provisions.

Repayment of margin loans using a s1017E account

- 59 We considered an application from the responsible entity of a registered scheme for relief from s1017E to enable clients' repayments of margin loans (to acquire interests in the scheme) to be remitted to the margin lender outside a s1017E account. We did not consider the relief necessary. Regulation 7.9.08(4) requires certain money to be identified and held in accordance with s1017E. Our view was that repayments relating to margin loans are 'other money' and not within the ambit of s1017E, and therefore did not need to be held in accordance with that provision. The application was withdrawn.

Insurers appointing representatives to operate s1017E accounts

- 60 We refused to grant class order relief to general and life insurers from s1017E, which requires money received before a financial product is issued to be dealt with in a certain way. The relief would have enabled representatives and distributors of insurers (for this purpose, called 'representatives') to deposit client money into a trust account held by the representative for another purpose, or hold the money in an account that complied with s981B as if the representative was an AFS licensee. The application related to money received by representatives prior to the issue of general insurance, consumer credit insurance and extended warranty products. We did not accept the applicant's submission that client money would have the same level of protection, regardless of whether the account was held in the name of the insurer or its representative. We were concerned about consumer protection if money was administered in a s981B account by someone other than an AFS licensee because certain protections (such as auditing) would not apply to these accounts. We were also concerned relief could expose consumers to a higher incidence of fraud, given the level of access a representative would have to client funds.

No relief to insurers seeking to hawk certain general insurance products

- 61 We refused to grant relief to issuers of general insurance products from the hawking provision in s992A for the proposed distribution of personal sickness and accident insurance to regional and rural parts of Australia. The distribution would have involved general insurers and their representatives providing general advice about the products to retail clients at an initial unsolicited meeting, and then providing personal advice and making an offer at a subsequent meeting. We did not consider that class order relief of this kind was appropriate. We also refused to grant individual relief to an applicant. We did not accept that the impact of s992A on the insurer's business was disproportionate to the regulatory benefit of maintaining the

provision. We were not satisfied that conditional relief would ensure that consumers would have adequate protection intended by Parliament, nor was there adequate alternate regulation of the relevant sales practices.

Information release and class order

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

Information release

[IR 07-05] *New policy on auditor rotation*

Class order

[CO 07/505] *Variation and revocation of financial reporting instruments*

F Other relief

Key points

This section outlines some of the 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.

Cashless exercise not a derivative

- 63 We refused to declare that a choice of payment method known as a ‘cashless exercise’, which was embedded in a security, was not a ‘derivative’ separate from the security. The company had previously issued securities (i.e. options to acquire shares by way of issue) without a prospectus in reliance on a prospectus exemption in s708. These options allowed a holder to choose the method of payment. The company was concerned that the product fell outside the definition of ‘security’ under s761A. We did not consider the declaration necessary.

Share buy-back for small parcels

- 64 We refused an application requesting an exemption from the requirement to hold a special resolution under s257D(1) on condition that shareholder approval for the buy-back was sought by ordinary resolution. The company proposed to conduct a tender buy-back of up to 14% of the company’s share capital. In the event tenders exceeded this amount, a scale-back would apply with a priority acceptance to shareholders who had tendered a certain amount of shares. We refused relief primarily for the reason that the buy-back amount would be significantly greater than the maximum allowed for small parcels, as set out in Information Release [IR 05-18] *ASIC announces new limits on share buy-back relief for small parcels*.

Extension of time to lodge financial statements

- 65 We refused an application by a foreign company listed on a financial market operated by ASX for an extension of time to lodge documents under s601CK(1). The company had simultaneously made an application to ASX for a waiver of ASX Listing Rule 4.5.2, which requires lodgement of the documents required by s601CK within three months of the balance date. The application to ASX was ultimately unsuccessful. We considered relief inappropriate in circumstances where the operator of the market required the documents.

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

Table 1: ASIC relief instruments

Report para no.	Class order title or entity name	Instrument no. (Gazette no. if applicable)	Date executed	Power exercised and nature of relief	Expiry date
2 5 13	Stockland Corporation Limited (ACN 000 181 733) and Stockland Trust Management Limited (ACN 001 900 741) as responsible entity of Stockland Trust (ARSN 092 897 348)	[07/0248] (in 14/07)	05/04/2007	s741(1)(a), 911A(2)(1), 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 entity of the scheme, where the offer is made to eligible employees of the company under an employee share scheme.	
7	Shareholders of Boart Longyear Limited (ACN 123 052 728)	[07/0205] (in 12/07)	21/03/07	s741(1) This instrument grants relief from s707(3) and 707(4) so that a shareholder of the company can on-sell shares issued under its New Zealand Investment Statement and International Offering Circular without prospectus disclosure.	
8	Macquarie Media Holdings Limited (ACN 116 024 536) and Macquarie Media International Limited (ARBN 118 577 423)	[07/0095] (in 07/07)	05/02/07	s741(1)(b) and 1020F(1)(c) This instrument grants relief from s708A(5) so that the market listing of a stapled entity can comply with the on-sale provisions.	

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
10	Platinum Investment Management Limited (ACN 063 565 006)	[07/0279] (in 17/07)	04/04/2007	s741(1)(a) This instrument exempts the company from s734(2) in relation to the provision of certain information to employees prior to the issue of a prospectus.	
11	Shareholders of Worleyparsons Limited (ACN 096 090 158)	[07/0134] (in 09/07)	20/02/2007	s741(1) This instrument grants relief from s707(3) and (4) to allow the on-sale of ordinary shares issued on exchange of convertible securities, where all offers of convertible securities are to be made outside Australia and a prospectus in relation to the ordinary shares is issued at or about the time of the offer of convertible securities.	
12	Noteholders or shareholders of Centennial Coal Company Limited (ACN 003 714 538)	[07/0154] (in 10/07)	02/03/2007	s741(1) This instrument grants relief from s707(3) and (4) to permit the on-sale of convertible notes and shares issued on conversion of those convertible notes.	
14	Everest Capital Investments Management Limited (ACN 112 731 978) as responsible entity of Everest Babcock & Brown Alternative Investment Trust (ARSN 112 129 218)	[07/0240] (in 14/07)	30/03/2007	s1020F(1)(c) This instrument grants relief from Pt 7.9 by modifying the definition of 'continuously quoted securities' in s9 to enable the responsible entity to prepare a transaction-specific PDS.	
15	Equity Trustees Limited (ACN 004 031 298) as responsible entity of Credit Suisse PL 100—World Water Trust (ARSN 124 201 074)	[07/0207] (in 12/07)	16/03/2007	s1020F(1)(c) This instrument grants the responsible entity relief from s1013H, 1016D and 1016E so that it does not need to provide a PDS for subsequent offers of interests from the exchange traded fund.	

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
18	Shareholders in Stockland Corporation Limited (ACN 000 181 733) and members of Stockland Trust (ARSN 092 897 348)	[07/0247] (in 14/07)	03/04/2007	s741(1)(b) and 1020F(1)(c) This instrument grants prospectus and PDS relief in relation to the on-sale of stapled securities issued by the company and Stockland Trust Management Limited (ACN 001 900 741) as responsible entity of the scheme.	
19 20	Amcor Investments (New Zealand) Limited (ARBN 096 271 313)	[07/0092] (in 06/07)	06/02/2007	s1020F(1)(c) This instrument grants relief from s1019G(2) and 1019I(2)(e) so that the minimum offer period for an offer to purchase financial products off-market only needs to be 22 days instead of one month. Relief was also granted from s1019H(1) so that the company could vary the offer by extending the offer period.	
21	Westpac Funds Management Limited (ACN 085 352 405), Westpac Custodian Nominees Limited (ACN 002 861 565) and Westpac Securities Limited (ACN 087 924 221)	[07/236] (in 14/07)	30/03/2007	s1020F(1)(c) This instrument grants relief from s1012DA(5), 1012DA(6), 1017E(1) and 1017F(8) so that references to the 'issuer' are replaced with 'the RE of the registered scheme to which the financial product relates' in relation to the entities' proposed institutional placement of instalment receipts.	
22	<i>Prospectus relief for foreign schemes of arrangement and PDS relief for Part 5.1 schemes and foreign schemes of arrangements</i>	[CO 07/09]	21/02/2007	s741(1)(a) and 1020F(1)(a) This class order grants prospectus and PDS relief for schemes of arrangement regulated under the laws of certain foreign countries. It also grants PDS relief for schemes of arrangement conducted under Pt 5.1 that involve the issue of financial products.	

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
22	<i>Technical disclosure relief for reconstructions and capital reductions</i>	[CO 07/10]	21/02/2007	s741(1)(a) and 1020F(1)(c) This class order grants relief from certain technical requirements of the prospectus and PDS provisions when there is an offer of securities or financial products made in conjunction with a reconstruction or capital reduction.	
22	<i>Disclosure for on-sale of securities and other financial products—variation</i>	[CO 07/42]	21/02/2007	s741(1) and 1020F(1) This class order varies Class Order [CO 04/671] <i>Disclosure for on-sale of securities and other financial products</i> . It grants on-sale relief for securities issued without a prospectus or PDS because of the exemption in s708(17) or because the issuer relied on Class Order [CO 07/9] <i>Prospectus relief for foreign schemes of arrangement and PDS relief for Pt 5.1 schemes and foreign schemes of arrangement</i> . It also extends the on-sale relief currently in Category 1 of Class Order [CO 04/671] (relating to employee share schemes) for financial products not issued under a PDS.	

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
22	<i>Superannuation: Delivery of product disclosure for investment strategies—amendment</i>	[CO 07/386]	8/06/2007	s1020F(1)(a) and (c) This class order modifies the disclosure options provided in Class Order [CO 06/636] <i>Superannuation: Delivery of product disclosure for investment strategies</i> . This class order provides an additional option about accessible financial products by allowing a superannuation trustee to include the information that would be required to be in a product disclosure document (PDS) about an accessible financial product in the same disclosure document as information about the superannuation product (i.e. to produce an integrated PDS).	
24	MLC Investments Limited (ACN 002 641 661) as responsible entity of WM Pool—Equities Trust No 9 (ARSN 114 536 828), WM Pool—Equities Trust No 13 (ARSN 094 965 732) and WM Pool—Vanguard Property Securities Trust (ARSN 103 280 119)	[07/0028], [07/0029], [07/0030], [07/0031] and [07/0032] (in 03/07)	16/01/2007	s601QA(1)(a) These instruments grant relief to the responsible entity from s601FC(4) to allow investment in real estate investment trusts in Canada, Hong Kong, Japan, Singapore and the United States where the responsible entity approves the investment strategy.	
25	Permanent Investment Management Ltd (ACN 003 278 831) as responsible entity of Calibre Capital Real Estate Workout Fund No 1 (ARSN 114 280 741)	[07/0067] (in 05/07)	29/01/2007	s601QA(1)(b) This instrument grants relief from s601GC(1)(a) to permit the responsible entity to alter the scheme constitution subject to all members giving their written consent without a meeting of members.	

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
28	Aurora Funds Management Limited (ACN 092 626 885) as responsible entity of Aurora Property Buy-Write Income Trust (ARSN 125 153 648)	[07/0383] (in 22/07)	1/05/2007	s601QA(1)(b) This instrument grants relief from s601GA(1)(a) (as modified by Class Order [CO 05/26] <i>Constitutional provisions about the consideration to acquire interests</i>) so the responsible entity can determine the issue price of units by reference to the value of scheme property (NAV) where NAV is greater than the market price for those units.	
29	Australian Leisure and Entertainment Property Management Ltd (ACN 105 275 278) as responsible entity of Australian Leisure and Entertainment Property Trust (ARSN 106 063 049)	[07/0372] (in 21/07)	1/05/2007	s601QA(1)(a), 601QA(1)(b) and 655A(1)(b) This instrument grants relief from s601GAC (as notionally inserted into the Act by [CO 05/26], Pt 5C.6, s601GA(4), 611 and 601FC(1)(d) to enable the responsible entity to conduct an on-market buy-back of stapled interests.	

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
30	I.O.O.F. Investment Management Limited (ACN 006 695 021) as responsible entity of Perennial Balanced Wholesale Trust (ARSN 087 718 349), Perennial Capital Stable Wholesale Trust (ARSN 087 718 545), Perennial International Shares Wholesale Trust (ARSN 087 719 515), Perennial Asian Shares Wholesale Trust (ARSN 096 451 393), Perennial Japanese Shares Wholesale Trust (ARSN 096 451 535), Perennial Growth Shares Wholesale Trust (ARSN 087 718 910), Perennial Value Shares Wholesale Trust (ARSN 096 451 900), Perennial Global Property Wholesale Trust (ARSN 118 190 542), Perennial Australian Property Wholesale Trust (ARSN 087 719 917), Perennial Fixed Interest Wholesale Trust (ARSN 087 719 739), Perennial Cash Enhanced Wholesale Trust (ARSN 087 720 401), Perennial Value High Yield Shares Trust (ARSN 100 098 486), Perennial Global Shares High Alphon Trust (ARSN 118 075 764), Perennial Growth High Conviction Shares Trust (ARSN 118 076 592) and Perennial Value Smaller Companies Trust (ARSN 099 824 101)	[07/0309] (in 19/07)	4/05/2007	s601QA (1)(a) This instrument grants relief from s601FC(1)(d), for the avoidance of doubt, in relation to a fee rebate arrangement for the 15 schemes operated by the responsible entity.	
31	Credit Suisse Asset Management Limited (ACN 007305 384) as responsible entity of Credit Suisse/TremontIndex Strategies Fund (ARSN 124 396 005)	[07/0395] (in 22/07)	25/05/2007	s601QA(1)(a) and 601FC(1)(d) This instrument grants the responsible entity relief from s601FC(1)(d), for the avoidance of doubt, in relation to an additional transaction cost charged to members when withdrawing from the 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
32	<i>Management rights schemes where the strata unit cannot be used as a residence</i>	[CO 07/189]	30/03/2007	s601QA(1)(a) This class order exempts a person who operates a management rights from the requirement to register the scheme as a managed investment scheme under Ch 5C in circumstances where ASIC has issued an instrument that exempts interests in the scheme from certain requirements of Ch 7, in substantially the same terms as Pro Forma <i>Management rights schemes where the strata unit cannot be used as a residence</i> [PF 187].	
33	Worleyparsons Limited (ACN 096 090 158), Worleyparsons Canada SPV Limited (a company existing under the laws of Canada) and Computershare Trust Company of Canada (a trust company licensed to carry on business in all Provinces of Canada)	[07/0229] (in 14/07)	19/03/2007	s655A(1)(b) and s673(1)(a) This instrument exempts a trustee company holding a special voting share from substantial holding obligations and excludes any association between the trustee and the beneficiaries within s16.	
35	Investors Mutual Limited (ACN 078 030 752) as responsible entity of Investors Mutual Small Cap Fund (ARSN 122 918 496), Investors Mutual Future Leaders Fund (ARSN 093 182 828) and Investors Mutual Value & Income Fund (ARSN 107 095 438), Bethal Nominees Pty Limited (ACN 005 655 256), Mount Edisar Pty Limited (ACN 005 758 501), Cenecoh Pty Limited (ACN 006 074 693), Huntley Investment Company Limited (ACN 060 306 738), Leagou Funds Management Pty Limited (ACN 121 587 586), Wallbay Pty Limited (ACN 068 029 925) and Lorraine Pennefather	[07/0281] (in 17/07)	17/04/2007	s655A(1)(a) This instrument grants relief to a group of minority shareholders from s606 to permit their combined relevant interest to be sold by tender.	

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
36	Gunns Limited (ACN 009 478 148)	[07/0348] (in 21/07)	11/05/2007	s655A(1)(a) This instrument grants relief from s606(4) to permit the company to make a tender offer of Auspine Limited ACN 004 289 730.	
36	DeBruin Nominees Pty Limited (ACN 007 898 240)	[07/0347] (in 21/07)	11/05/2007	s655A(1)(a) This instrument grants relief from s606(4) to permit the company to make a tender offer of Auspine Limited ACN 004 289 730.	
37	Gunns Limited (ACN 009 478 148)	[07/0397] (in 22/07)	28/05/2007	s655A(1)(a) This instrument grants relief from s606 to allow the company as a successful tenderer to acquire a relevant interest in issued voting shares in Auspine Limited ACN 004 289 730.	
39	Macquarie Bank Limited (ACN 008 583 542) and Bond Street Custodians Limited (ACN 008 607 065)	[07/0276] (in 17/07)	17/04/2007	s655A(1)(b) and 673(1)(b) This instrument modifies s609 so that the creditor, trustee and issuer of instalment receipts do not hold relevant interests in those securities.	
40	Cabcharge Australia Limited (ACN 001 958 390)	[07/0014] (in 02/07)	5/01/2007	s655A(1)(b) This instrument grants relief from s612(f) so that a takeover bid could lawfully proceed despite the bidder not having complied with Item 6 of s633(1).	

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
41	Pelorus Property Group Limited (ACN 091 209 639)	[07/0288] (in 14/07)	28/03/2007	s655A(1)(b) This instrument modifies s621B to exempt the company from the minimum bid price principle in relation to a takeover bid for interests that were ex-return of capital.	
42	Central African Mining & Exploration Corporation Plc (UK Company Registration No. 4232247)	[07/0396] (in 22/07)	29/05/2007	s655A(1)(b) This instrument grants relief from s626 and 636 to permit shares in the company quoted on the Alternative Investment Market of the London Stock Exchange to be valued as 'quoted' securities for the purposes of s621 and 636(1)(h)(ii).	
43	Airline Partners Australia Limited (ACN 123 058 917)	[07/0297] (in 18/07)	22/04/2007	s655A(1)(a) and 655A(1)(b) This instrument grants relief to the company from s654A to permit a takeover offer to include an offer of withdrawal rights to all shareholders.	
45	Airline Partners Australia Limited (ACN 123 058 917)	[07/0308] (in 19/07)	02/05/2007	s655A(1)(b) This instrument grants relief from s653A to permit the company to count acceptance forms received prior to the close of the offer as acceptances, regardless of whether such acceptances are effective in accordance with the ASTC Settlement Rules.	
47	VentureAxess Capital Limited (ACN 085 039 818)	[07/0105] (in 07/07)	13/02/2007	s655A(1)(b) This instrument modifies s636 so the bidder's statement in a scrip bid does not have to include an expert's report or other information on the value of scrip consideration offered under a lapsed, conditional bid for the same securities by the same bidder.	

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
49	Southern Cross Airports Corporation Holding Limited (ACN 098 082 029)	[07/0016] (in 02/07)	05/01/2007	s655A(1) and 673(1) This instrument modifies the definition of 'listed' in s9 for the purposes of Chs 6 and 6C so that the company would not become a 'listed company' solely because of its admission to the official list of ASX upon issue of certain debt securities.	
50	CAID Pty Limited (ACN 113 960 848)	[07/0295] (in 18/07)	27/04/2007	s669(1) This instrument modifies Ch 6C so that notice of a compulsory acquisition to be issued in respect of an issue of subordinated bearer bonds may be effected by providing the notice to the clearing houses for those bonds to pass onto the bond account holders.	
51	<i>Unsolicited offers under a regulated foreign takeover bid—variation</i>	[CO 07/74]	21/02/2007	s1020F(1)(a) This class order varies Class Order [CO 05/850] <i>Unsolicited offers under a regulated foreign takeover bid</i> . It provides relief from the requirement to comply with Div 5A of Pt 7.9 of the Act when the unsolicited offer is made under a scheme arrangement regulated under the laws of certain foreign companies.	
52	American Express International Inc (ARBN 000 618 208)	[07/0156] (in 10/07)	05/03/2007	s601CK(7) and 992B(1)(a) This instrument grants relief from s601CK (requiring the company to lodge a copy of its balance sheet, cash flow statement and profit and loss statement) and s989B (requiring the company, as a financial services licensee, to prepare and lodge a true and fair profit and loss statement and balance sheet).	

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
55	Macquarie Bank Limited (ACN 008 583 542)	[07/0243] Not gazetted.	30/03/2007	s340(1) This instrument exempts a parent company from s323D(3) so that it does not have to synchronise the financial years of two consolidated entities for 12 months.	
62	<i>Variation and revocation of financial reporting instruments</i>	[CO 07/505]	10/07/2007	s341(1) and 601CK(7) 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: <ul style="list-style-type: none"> • 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>; • Declaration [CO 02/1432] <i>Registered foreign companies—financial reporting requirements</i>; and • Class Order [CO 98/96] <i>Synchronisation of financial year with foreign parent company</i>. <p>[CO 07/505] also revokes Class Orders [CO 05/83] <i>Timing of auditor's independence declaration</i> and [CO 05/910] <i>Auditor's independence declaration—exemption</i>, which are no longer required as the relief they provided has been incorporated into the Act by the SRS Act.</p>	