



ASIC

Australian Securities & Investments Commission

REPORT 420

Overview of decisions on relief applications (June to September 2014)

January 2015

About this report

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

This report outlines some of ASIC's decisions on relief applications during the period 1 June 2014 to 30 September 2014. It summarises examples of situations where we have exercised, or refused to exercise, our exemption and modification powers from the financial reporting, managed investment, takeovers, fundraising or financial services provisions of the *Corporations Act 2001* and the *National Consumer Credit Protection Act 2009*.

It also refers to a number of publications issued by ASIC during the period 1 June 2014 to 30 September 2014 that may be relevant to prospective applicants for relief, including class orders, consultation papers, regulatory guides and reports.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

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

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

Disclaimer

This report does not constitute legal, financial or other professional advice. We encourage you to seek your own professional advice, including finding out how the *Corporations Act 2001* and/or the *National Consumer Credit Protection Act 2009*, and other applicable laws apply to you. It is your responsibility to determine your obligations and to obtain any necessary professional advice.

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Overview

- 1 ASIC has powers under the *Corporations Act 2001* (Corporations Act) to exempt a person or a class of persons from particular provisions and to modify the application of particular provisions to a person or class of persons. This report deals with the use of our exemption and modification powers under the provisions of the following chapters of the Corporations Act: Chs 2D (officers and employees), 2G (meetings), 2M (financial reports and audit), 5C (managed investment schemes), 6 (takeovers), 6D (fundraising) and 7 (financial services and markets).
- 2 ASIC has powers to give relief under the provisions of Chs 2 (licensing) and 3 (responsible lending) of the *National Consumer Credit Protection Act 2009* (National Credit Act) and from all or specified provisions of the National Credit Code, which is in Sch 1 to the National Credit Act.
- 3 The purpose of the report is to improve the level of transparency and the quality of information available about decisions we make when we are asked to exercise our discretionary powers to grant relief from provisions of the Corporations Act and the National Credit Act.
- 4 This report covers the period beginning 1 June 2014 and ending 30 September 2014. During this period we received 746 applications. We granted relief in relation to 474 applications and refused relief in relation to 35 applications; 89 applications were withdrawn. The remaining 148 applications were decided outside of this period.
- 5 This report does not provide details of every single decision made in the period. It is intended to provide examples of decisions that demonstrate how we have applied our policy in practice. We use our discretion to vary or set aside certain requirements of the law where the burden of complying with the law significantly detracts from its overall benefit, or where we can facilitate business without harming other stakeholders.
- 6 In this report, we have outlined matters in which we refused to exercise our discretionary powers as well as matters in which we granted relief. Prospective applicants for relief may gain a better insight into the factors we take into account in deciding whether to exercise our discretion to grant relief.
- 7 The appendix to this report details the relief instruments we have executed for matters referred to in the report. Class orders are available from our website via www.asic.gov.au/co. Instruments are published in the *ASIC Gazette*, which is available via www.asic.gov.au/gazettes, or under 'Credit relief' on our website (for credit instruments). A register of waivers, including class rule waivers, granted under ASIC market integrity rules is published via www.asic.gov.au/markets under 'market integrity rules' on our website. For information and media releases on the matters and publications referred to in this report, see www.asic.gov.au/mr.

A AFS licensing relief

Key points

This section outlines some of our decisions on whether to grant relief under Ch 7 of the Corporations Act, including under s911A(2) and 926A(2), from the requirement to hold an Australian financial services (AFS) licence. It also outlines the publications we issued that relate to licensing relief.

AFS licence requirements

Relief from holding an AFS licence

- 8 We granted relief under s 911A (2)(1) of the Corporations Act, to an entity's Hong Kong and Singapore branches, from the requirement to hold an AFS licence.
- 9 The applicant satisfied all the requirements under Class Order [CO 03/1103] *Hong Kong SFC regulated financial service providers* and Class Order [CO 03/1102] *Singapore MAS regulated financial service providers*, except for paragraph (aa) of Schedule A, which requires the foreign body to be either incorporated in, or have a partnership formed in, Hong Kong or Singapore (as applicable). We were satisfied that the regulatory regime that applied to the entity in Hong Kong and Singapore remained sufficiently equivalent to the Australia regulatory regime.

Escrow relief

Relief for escrow facility associated with bitcoin trading platform

- 10 We made a declaration that an escrow facility associated with a bitcoin trading platform is not a financial product. Under the escrow facility, the person buying bitcoins transfers the agreed purchase price into an account held by the platform operator, and the seller transfers the bitcoins to be purchased into a 'wallet' held by the platform operator. Once the sale/purchase transaction is able to proceed, the platform operator transfers the purchase price to the seller and the bitcoins to the buyer to settle the transaction.
- 11 The platform operator applied for an AFS licence solely for the escrow facility (and not the operation of the trading platform, which does not involve the provision of financial products or services). We considered that the facility may technically be a financial product, but that this view was not without doubt.

- 12 We considered it appropriate to declare that the escrow facility is not a financial product for the purpose of the Corporations Act. ASIC made this decision on the basis that the escrow facility is a minor part of broader activities that are not regulated, and that the consumer risks arising from the operator not being licensed for the escrow facility were not significant having regard to the risks to which consumers are already subject to from the trading platform or any associated wallet software.

Relief to allow a sale facility for escrowed shares to be sold through a bookbuild process

- 13 We provided individual relief to allow a broker to operate a share facility in which escrowed shares were to be sold through a bookbuild, and the proceeds of the sale (net expenses) distributed to participating holders. The relief is analogous to relief offered by Class Order [CO 08/10] *Shares and interest sale facilities*.
- 14 The relief was necessary because relief under [CO 08/10] is only available where the share facility is conducted on-market and where the operator of the facility is the issuer of the shares.
- 15 The rationale for granting relief under [CO 08/10] was that the requirements for registrations, licensing, disclosure under Pt 7.9 (arising because the sale facility is a managed investment scheme) and the unsolicited offer provisions, were not intended to apply to a sale facility. This rationale applies here. Strict compliance with these provisions would be impractical or disproportionately burdensome and there would be no significant regulatory benefit.

Derivative transaction reporting

DTCC Data Repository (Singapore) Pte Ltd (DDRS)

ASIC Instrument [14/0913]: Individual exemption for DDRS from certain provisions of the ASIC Derivative Trade Repository Rules 2013

- 16 We granted exemptive relief to DDRS from certain provisions of the ASIC Derivative Trade Repository Rules 2013, conditional on compliance with specified Singaporean law requirements and other specified conditions.
- Note: In this report, 'derivative trade repository rules' refers to the ASIC Derivative Trade Repository Rules 2013.
- 17 This exemption was granted in conjunction with the licensing of DDRS as an Australian derivatives trade repository (ADTR) licensee. This relief instrument reflects our conditional reliance on the rules and supervisory oversight of the Monetary Authority of Singapore over DDRS—to the extent we have determined that the rules of Singapore are substantially equivalent to the requirements in the Corporations Act and the derivative trade repository rules.

ASIC Instrument [14/0911] Class exemption to the officers of DTCC Data Repository (Singapore) Pte Ltd (DDRS) from Rule 2.1.1 of the ASIC Derivative Trade Repository Rules

- 18 We granted relief by way of class exemption to officers of DDRS from Rule 2.1.1 of the derivative trade repository rules. Rule 2.1.1 requires officers of a licensed ADTR to take all reasonable steps to ensure compliance by the licensed ADTR with the obligations arising under the derivative trade repository rules. Relief was granted in conjunction with the licensing of DDRS as an ADTR licensee.
- 19 The exemption requires officers of DDRS to take all reasonable steps to ensure that DDRS complies with the conditions (if any) of its exemption from a provision of the derivative trade repository rules: see ASIC Instrument [14/0913].

Other licensing relief

Relief and no-action position for various dealings in ‘member shares’

- 20 We provided relief to a credit union from various provisions in the Corporations Act to mirror concessions in the Corporations Regulations 2001 (Corporations Regulations) and ASIC Class Order [CO 02/1176] *Credit union member shares* for various dealings in ‘member shares’ (as defined in reg 12.8.03 of the Corporations Regulations). The applicant was unable to rely on the existing concessions due to particular circumstances of its incorporation. One aspect of the relief that we provided to the credit union was in relation to AFS licensing for the provision of specified member share-related financial services, which mirrors AFS licensing relief in [CO 02/1176]: see paragraph 53 for further details of this application.

Relief for trust account facility linked to betting exchange

- 21 We provided licensing, conduct and disclosure relief for a trust account facility that allows persons to make and collect on wagers made on a betting exchange.
- 22 Before the application, the applicant was the counterparty for all wagers made on the betting exchange. As a result, we determined that the facility through which the wagers were made and collected was not a financial product because it was incidental to the operation of the exchange. However, the applicant wished to change its operations so that it merely facilitated wagers between persons who enter wagers. Under this model, the facility was important to users for the entry into the wager and therefore unlikely to be incidental to the betting exchange.

- 23 We considered there would be minimal risk of regulatory detriment resulting from relief because the applicant and the trust account facility are regulated under state gaming and wagering legislation. We also considered the risks to consumers were minimal because the applicant agreed to guarantee all wagers made on the betting exchange using the trust account facility.
- 24 We considered the factors listed in Regulatory Guide 176 *Foreign financial services providers* (RG 176) at RG 176.14, as well as other precedents, and granted the relief accordingly.

Publications

- 25 We issued the following publications on AFS licensing relief during the period of this report.

Class orders

Class Order [CO 14/923] *Record-keeping obligations for Australian financial services licensees when giving personal advice*

- 26 [CO 14/923] modifies Div 3 of Pt 7.6 of the Corporations Act, as it applies to all AFS licensees, to insert a new s912G that imposes record-keeping requirements for AFS licensees when the AFS licensee or their representative (including an advice provider) give personal advice to retail clients.
- 27 Under s912G, AFS licensees must ensure that, when providing personal advice, certain records are kept that demonstrate compliance with the best interests duty and related obligations under Div 2 of Pt 7.7A of the Corporations Act.

ASIC Instrument [14/0633] *Transitional exemptive relief for Phase 3 Reporting Entities from elements of the ASIC Derivative Transaction Rules (Reporting) 2013*

- 28 We provided relief by way of class exemption for Phase 3 reporting entities, allowing for a staggered and delayed start to Phase 3 reporting requirements, subject to specified conditions being met.
- 29 The relief recognises that a number of Phase 3 reporting entities were experiencing practical limitations in their efforts to achieve compliance with the ASIC Derivative Transaction Rules (Reporting) 2013 and the timeframes set out in them.

Note: In this report, 'derivative transaction rules (reporting)' refers to the ASIC Derivative Transaction Rules (Reporting) 2013.

- 30 The relief provides a conditional exemption for the implementation of Phase 3 reporting requirements of the over-the-counter (OTC) derivatives transaction reporting obligations under the derivative transaction rules

(reporting). It further specifies different implementation times for Phase 3A reporting entities and Phase 3B reporting entities, as defined in [14/0633].

- 31 Under the class exemption, a Phase 3A reporting entity is an entity that holds \$5 billion or more total gross notional outstanding in reportable OTC positions as at 30 June 2014. All other Phase 3 reporting entities will be Phase 3B reporting entities.
- 32 For Phase 3A entities, transaction reporting relief relating to interest rates and credit derivatives expires on 13 April 2015. For all other asset classes (excluding electricity derivatives) relief expires on 12 October 2015. Position reporting relief for these entities expires on 2 November 2015 and 2 May 2016, respectively.
- 33 For Phase 3B entities, transaction reporting relief expires on 12 October 2015 for reportable information relating to all asset classes (excluding electricity derivatives). Position reporting relief for all asset classes expires on 2 May 2016.
- 34 The relief also provides time-limited transitional relief from certain other reporting obligations under the derivative transaction rules (reporting).

Note: A summary of the relief instrument is available on [our website](#).

ASIC Instrument [14/0952] *Transitional exemptive relief for Reporting Entities from elements of the ASIC Derivative Transaction Rules (Reporting) 2013*

- 35 We provided relief by way of class exemption for Phase 1, 2 and 3 reporting entities, as defined, subject to specified conditions being met.
- 36 Many of the relief items extend elements of relief granted previously to the reporting entities. We proposed to make some of this relief permanent in Consultation Paper 221 *OTC derivatives reform: Proposed amendments to the ASIC Derivative Transaction Rules (Reporting) 2013* (CP 221). The instrument provides relief in the following areas:
- reporting of exchange traded derivatives on foreign markets;
 - reporting of entity information and name information;
 - foreign privacy/masking—jurisdictions with blocking statutes;
 - foreign privacy/masking—counterparty consents;
 - snapshot reporting;
 - accuracy of reporting;
 - transaction identifiers;
 - ICE credit trades (limited relief);
 - DDRS testing window;
 - reporting collateral information; and

- reporting foreign exchange securities conversion transactions.

Note: A summary of the relief instrument is available on [our website](#).

Consultation papers

CP 221 OTC derivatives reform: Proposed amendments to ASIC Derivative Transaction Rules (Reporting) 2013

- 37 CP 221 sets out our proposed revisions to the derivative transaction rules (reporting) that require the mandatory trade reporting of OTC derivatives such as interest rate swaps. The proposals are aimed at ensuring a smooth transition to the reporting regime and follow a recent revision by ASIC of the timetable for Phase 3 reporting entities (i.e. financial entities holding less than \$50 billion in OTC derivatives outstanding) to start reporting OTC derivative transactions to trade repositories. Submissions on CP 221 were due by 29 August 2014.
- 38 CP 221 proposed the following changes for the reporting of OTC derivative transactions to derivative trade repositories:
- technical changes to the rules, designed to make the reporting regime more effective and easier to comply with;
 - clarification of the requirement for delegated reporting to provide a ‘safe harbour’ from liability if certain conditions are met; and
 - requiring certain larger overseas subsidiaries of Australian financial entities to report transactions.

Information sheets

INFO 198 Extended warranties

- 39 INFO 198 deals with extended warranties and how they fit into the regulatory regime under the Corporations Act and the *Australian Securities and Investments Commission Act 2001* (ASIC Act). It contains information previously included in QFS 35 *Do I need an AFS license to issue or distribute extended motor vehicle warranties?* (now withdrawn). This information sheet covers:
- what an extended warranty is;
 - when an extended warranty is likely to be treated as a ‘financial product’ and when the incidental product exemption may apply;
 - who will be involved in the issue and distribution of extended warranties, and when those persons will need to be covered by an AFS licence; and
 - consumer protection provisions that are relevant to the sale and marketing of extended warranties.

Regulatory guides

RG 1 AFS Licensing Kit: Part 1—Applying for and varying an AFS licence and RG 2 AFS Licensing Kit: Part 2—Preparing your AFS licence or variation application

40 RG 1 is a guide for applicants applying for or varying an AFS licence. RG 2 outlines how to complete Form FS01 *AFS licence application* or Form SF03 *Application for variation of authorisation and other conditions* and prepare ‘core’ supporting proof documents. Applicants will need to read Regulatory Guide 3 *AFS Licensing Kit: Part 3—Preparing your additional proofs* (RG 3) if they are asked to send us ‘additional’ proofs.

41 Since 28 July 2014, the previous arrangement of giving AFS licence applicants a grace period of 20 business days after lodgement to forward the core proof documents has been discontinued. AFS licence applicants will now be required to lodge core proofs promptly when submitting an application. RG 3 provides guidance on additional proofs that may be required.

42 RG 1 and RG 2 have also been updated to:

- provide additional guidance to applicants that operate under a trust structure;
- provide more clarity about the provision of criminal history and bankruptcy checks for responsible managers who have resided overseas;
- include in the template business reference all authorisations available for selection; and
- include in the table of organisational expertise details of activities that support a responsible manager’s experience.

Reports

REP 407 Review of the financial advice industry’s implementation of the FOFA reforms

43 REP 407 discusses the findings of our interviews with representatives of 60 AFS licensees on their experiences implementing the Future of Financial Advice (FOFA) reforms. The report also discusses findings from questionnaires completed by AFS licensees and analyses the information obtained. Key findings in REP 407 included:

- the impact of FOFA on adviser numbers, products and services;
- conflicted remuneration; and
- compliance challenges and risks.

REP 409 *Response to submissions on CP 214 Updated record-keeping obligations for AFS licensees*

- 44 REP 409 highlights the key issues that arose out of the submissions received on CP 214 *Updated record-keeping obligations for AFS licensees* (CP 214) and details our responses to those issues.

B Disclosure relief

Key points

This section outlines some of the applications that relate to the requirements in Ch 6D of the Corporations Act to provide prospectuses and other disclosure documents, and the Ch 7 requirements to provide Product Disclosure Statements (PDSs) and Financial Services Guides (FSGs). It also outlines the publications we issued that relate to disclosure relief.

Relief associated with prospectuses

Advertising and pre-registration activities related to an initial public offering (IPO)

- 45 We provided relief from s734 of the Corporations Act so that advertising, pre-registration activities and employee communications for an IPO may occur before lodgement of a prospectus, and in a manner different from that required by the Corporations Act. The relief also allowed the offeror to make statements to the effect that pre-registration can entitle a person to a priority in allocation, but did not extend so far as allowing them to make statements about the specific allocation policy. Similarly, relief also allowed the offeror to communicate to its employees that they will receive a preference in allocation if they choose to apply.
- 46 We granted relief because we were satisfied that the commercial benefits associated with facilitating the pre-registration process and employee communications for a very large offer clearly outweighed any regulatory risks.

Relief to facilitate an issue of hybrid securities

- 47 ASIC considered relief sought to allow an issuer of convertible hybrid securities to make its offer by way of a prospectus prepared in accordance with s713 of the Corporations Act—where, upon conversion, the holder of the convertible hybrid security will be issued ASX-listed shares in the parent entity.
- 48 The issuer could not rely on s713 because the convertible hybrid securities were not continuously-quoted securities of the issuer. The issuer could also not rely on Class Order [CO 00/195] *Offer of convertible securities under s713* because the issuer of the convertible hybrid securities and the issuer of the underlying shares were two different bodies.
- 49 Due to the drafting of [CO 00/195], it is unclear whether the class order applies to offers of convertible securities where the issuer of the convertible securities and the issuer of the underlying securities are not the same. We believe that [CO 00/195] should be read to apply only where the issuer of the

convertible securities and the underlying securities is the same. On this basis, our view was that relief was necessary.

50 Relief was granted in this instance because:

- the issuer, although not an ASX-listed entity, was a disclosing entity because it had listed debt securities on issue and was therefore subject to continuous disclosure obligations if information affected the listed debt securities;
- the issuer was subject to prudential regulation by the Australian Prudential Regulation Authority (APRA) and obliged to announce to the market quarterly information about its financial position;
- the prospectus prepared under s713 would contain sufficient information about the underlying ASX-listed shares to be issued upon conversion of the securities; and
- appropriate consent would be provided in the prospectus from the parent entity insofar as statements were made about the parent entity.

Demutualisation provisions

Relief from demutualisation provisions

51 We provided conditional relief to a credit union from the requirement in Sch 4 to the Corporations Act to prepare, lodge with ASIC, and give to members, a disclosure statement for a number of constitutional modifications that the applicant proposed to raise for approval by its members.

52 We took the view that some of the proposed modifications could cause a variation in members' rights that may trigger the disclosure statement requirements. However, we were also satisfied that the proposed modifications would not result in or allow a modification of the mutual structure of the company and that it was appropriate to grant an exemption. Relief was conditional on the applicant providing an independent expert's report and a copy of the proposed amended constitution with the notice of meeting—or making this material available to members for the entirety of the notice period.

Dealings in 'member shares'

Relief and no-action position for various dealings in 'member shares'

53 We provided relief to a credit union from various provisions in the Corporations Act: see paragraph 20. One aspect of the relief we provided to the credit union was for financial services disclosure and the requirement to

confirm transactions involving financial products, which mirrors [CO 02/1176]. Another aspect of the relief was for disclosure to investors about securities, which mirrors a concession in the Corporations Regulations.

- 54 ASIC does not have relief-making powers for all Corporations Act provisions that are subject to the concessions in the Corporations Regulations. Accordingly, relief was granted to the extent of ASIC's power and, where relief was not possible, a no-action letter was issued. In relation to concessions in the Corporations Regulations dealing with notices of meetings, we issued the credit union with a no-action letter.
- 55 The concessions in the Corporations Regulations and the relief in [CO 02/1176] were given due to the unique nature and purpose of 'member shares' and the circumstances in which they are offered. We considered the applicant's shares to have the same key elements as 'member shares' and the applicant's economic and governance relationships with its members appeared to meet the tests in Regulatory Guide 147 *Mutuality: Financial institutions* (RG 147).

Scheme registration and financial product relief

Scheme registration and financial product disclosure relief

- 56 We granted relief from the requirement to register a clearing and settlement arrangement as a managed investment scheme and relief from the financial product disclosure provisions (Divs 2–5 of Pt 7.9 of the Corporations Act) related to the arrangements. The arrangement was proposed to be operated under a licence to operate a clearing and settlement (CS) facility and required compliance with financial stability standards. The arrangements included a low level of possible retail client participation.
- 57 We provided comfort relief, in the circumstances where the possibility of a managed investment scheme appeared uncertain, financial product disclosure appeared to impose a disproportionate burden, robust alternative regulation would apply, and the arrangements were directed at financial stability requirements for the clearing of derivatives: see paragraph 81.

Publications

- 58 We issued the following publications on disclosure relief during the period of this report.

Class orders

Class Order [CO 14/632] *Key management personnel equity instrument disclosures*

- 59 [CO 14/632] provides relief for certain key management personnel equity instrument disclosures in a directors' report, to assist in the preparation of directors' reports for financial years ending on or before 30 September 2014.
- 60 [CO 14/632] has been issued to address drafting anomalies in key management personnel disclosure requirements that were moved from Australian Accounting Standards AASB 124 *Related party disclosures* into the Corporations Regulations for financial years starting on or after 1 July 2013. The relevant disclosures relate to:
- equity instruments held by members of key management personnel or their close family members;
 - certain transactions involving equity instruments between the disclosing entity and members of key management personnel or their close family members; and
 - options or rights over equity instruments held by key management personnel or their close family members.
- 61 The class order narrows the disclosure required by entities about equity instruments held by directors, other key management personnel and their close family members. Consistent with AASB 124, ASIC's relief means that disclosures only need to be made about equity instruments in the disclosing entity or its subsidiaries, rather than every company they have an investment in. Entities that adopt the relief will be required to make the disclosures by class of the equity instrument, consistent with AASB 124.

Note: The relief has been granted on an interim basis.

Class Order [CO 14/509] *Keeping RSEs' superannuation websites up to date* and Superseded Class Order [SCO 14/592] *Amendment of Class Order [CO 14/509] Keeping RSEs' superannuation websites up to date*

- 62 [CO 14/509] clarifies the requirement under s29QB of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) that superannuation websites must be kept up-to-date at all times, by prescribing timeframes in which information must be published. [CO 14/509] provides registrable superannuation entity (RSE) licensees with a safe harbour so that if they update the RSE's website within the timeframes prescribed, they will be taken to have complied with the updating obligations under s29QB.
- 63 [CO 14/509] sets release times for each document or item of information prescribed under the Superannuation Industry (Supervision) Regulations 1994 (SIS Regulations), including information about executive officers and individual trustees of the RSE licensee, remuneration details, and various

documents and information relating to the relevant superannuation fund (e.g. trust deeds).

64 SCO [14/592] amends [CO 14/509] so that:

- the information required under regs 2.38(2)(j)–(k) of the SIS Regulations is to be provided for the financial year of the relevant RSE licensee rather than the financial year of the registrable superannuation entity;
- information required under regs 2.38(2)(a), (b), (d), (e), (f) and (h) of the SIS Regulations can be redacted to exclude personal information of fund beneficiaries and former beneficiaries; and
- the start date for certain disclosures required pursuant to s29QB(1) of the SIS Act was deferred until 1 July 2014 for standard employer-sponsored sub-plans.

65 An RSE licensee can utilise the safe harbour offered by [CO 14/509] if updates are made within four months for remuneration items and 20 business days for executive officer information and all information and documents required under reg 2.38 of the SIS Regulations. Regulatory Guide 252 *Keeping superannuation websites up to date* (RG 252) and Report 396 *Response to submissions on CP 219 Keeping superannuation websites up to date* (REP 396) provide further guidance on meeting these requirements under the SIS Act and SIS Regulations: see paragraphs 72 and 74, respectively.

Class Order [CO 14/541] RSE licensee s29QC SIS Act disclosure exemption

66 [CO 14/541] exempts RSE licensees from the disclosure obligations under s29QC of the SIS Act until 1 July 2015, to allow further consultation with industry on the application of this section.

67 Section 29QC of the SIS Act states that a superannuation trustee must use the same calculation when providing information to a person or on a website as it does when giving the same or equivalent information to APRA under a reporting standard.

68 ASIC reiterates that APRA's Reporting Standard SRS 700.0 *Product Dashboard (MySuper)* continues to apply regardless of this deferral of s29QC, and that trustees will need to refer to this reporting standard for the elements of the product dashboard. This includes the return target information in the dashboard. Further, reporting fee and cost information will still be required under APRA's Reporting Standard SRS 703.0 *Fees Disclosed*, regardless of the deferral of s29QC.

Class Order [CO 14/827] Offers of CHESSE Depository Interests

69 [CO 14/827] gives relief so that offers of CHESSE Depository Interests (CDIs) over shares or options of a foreign company are regulated as offers of

the underlying shares or options under Ch 6D of the Corporations Act. It also exempts a foreign company (other than a foreign investment company covered by s766C(5) of the Corporations Act) from the requirement to hold an AFS licence for ‘arranging’ for CHESS Depository Nominees Pty Limited, or a holder or a proposed holder of CDIs, to deal in CDIs over its shares or options.

Information sheets

INFO 170 *MySuper product dashboard requirements for superannuation trustees*

- 70 INFO 170 was revised to incorporate the guidance in Media Release (14-110MR) *ASIC reviews MySuper product dashboards* (22 May 2014). INFO 170 gives guidance to superannuation trustees and other persons on the product dashboard requirements in s1017BA of the Corporations Act for MySuper products, including clarification of the timeframes that apply to a superannuation trustee updating information in the product dashboard.

INFO 197 *Fee and cost disclosure requirements for superannuation trustees*

- 71 INFO 197 provides guidance to superannuation trustees and other persons on the fee and cost disclosure requirements in Schs 10 and 10D to the Corporations Regulations. It explains the information that superannuation trustees must disclose about fees and costs. The requirements are part of the Australian Government’s Stronger Super reforms which started on 1 July 2014, and must be met for both superannuation products and managed investment schemes.

Regulatory guides

RG 252 *Keeping superannuation websites up to date*

- 72 RG 252 explains how remuneration and other information on superannuation websites may be kept up to date under s29QB of the SIS Act. These requirements are also part of the Australian Government’s Stronger Super reforms which commenced on 1 July 2014. From July 2014, superannuation companies have been required to publish on their websites details about their executives (including remuneration), fund PDSs, governing rules, actuarial reports and summaries of significant events that have occurred over the past two years. Companies are also required to ensure this information is kept up-to-date at all times.
- 73 RG 252 states that a website will be viewed as being up-to-date if the information is updated within 20 business days, or within four months for remuneration information. These timeframes are commonly referred to as a ‘safe harbour’, which means that superannuation companies will be viewed

as complying with the law if they update their website within these timeframes: see paragraphs 62 and 72.

Reports

REP 396 Response to submissions on CP 219 Keeping superannuation websites up to date

- 74 REP 396 highlights the issues that arose in response to CP 219 *Keeping superannuation websites up to date* (CP 219). In CP 219, we consulted on proposals for dealing with the uncertainty about the updating obligation under s29QB of the SIS Act, prescribed under regs 2.37 and 2.38 of the SIS Regulations.
- 75 In CP 219, we provided options and sought suggestions for addressing the uncertainty regarding the nature and timing of the requirement to update superannuation websites. REP 396 highlights the key issues that arose out of the submissions received on CP 219 and our responses to those issues. [CO 14/509] and RG 252 provide further guidance: see paragraphs 62 and 72.

REP 400 Responses to feedback on REP 384 Regulating complex products

- 76 REP 400 highlights the feedback received on REP 384 *Regulating complex products* (REP 384) on the risks posed to retail investors by complex products, and ASIC's response to this feedback. REP 384 was published on 31 January 2014 and feedback was requested by 31 March 2014.
- 77 REP 384 sought to:
- outline the risks posed to retail investors by complex products at each state of the product lifecycle;
 - set out our recent and current work on complex products; and
 - identify opportunities for further work.
- 78 We also invited feedback on the issues raised in REP 384, in particular, we sought industry views on:
- the risks posed to investors by complexity in financial products, and the extent of those risks; and
 - the options for mitigating these risks, including the opportunities for further work identified in the report.

C Managed investment relief

Key points

This section sets out some of the circumstances in which we have granted or refused relief under s601QA from the provisions of Ch 5C. It also outlines the publications we issued that relate to managed investment relief.

Scheme registration

Scheme registration relief

- 79 We provided conditional relief from the requirement to register a managed investment scheme to an operator of a mutual discretionary fund (a mutual risk product). The fund involves members making monetary contributions as consideration for acquiring interests in the applicant's mutual risk product, the pooling of those contributions, the ability of members to make claims against the pooled funds upon the occurrence of specified events and the operator's ability to apply discretion as to whether or not to accept valid claims.
- 80 We provided relief because the applicant's mutual discretionary fund appeared to be of a type to which the managed investment scheme registration and consequential requirements were not intended to apply. In particular, we considered that there was no significant dependence on the investment performance of the mutual discretionary fund, the applicant would not be performing the role of investment manager and the applicant would hold an AFS licence with appropriate authorisations. Relief was granted in accordance with the existing policy set out in ASIC Information Release (03-17IR) *ASIC's interim approach to mutual risk products*.

Scheme registration and financial product disclosure relief

- 81 We granted relief from the requirement to register a clearing and settlement arrangement as a managed investment scheme and relief from the financial product disclosure provisions related to the arrangements: Divs 2–5 of Pt 7.9 of the Corporations Act. The arrangement would be operated under a CS facility licence and required compliance with financial stability standards: see paragraph 56.

Equal treatment obligation

Relief from the equal treatment obligation

- 82 We granted relief from the equal treatment obligation in s601FC(1)(d) of the Corporations Act to enable a responsible entity of a registered managed investment scheme (Scheme A) to pay some or all of the net proceeds from the realisation of assets of a class of interests within the scheme to members who suffer hardship, in priority to other members within that class. Prior to relief being granted, members held interests in another scheme (Scheme B). The assets of Scheme B were transferred to Scheme A with member approval to be held as scheme property for holders of interests in a particular class within scheme A. Members of Scheme B were then issued with interests in that class within Scheme A.
- 83 We granted the relief because:
- all members of the class within Scheme A will have equal rights to apply under the hardship relief; and
 - we had granted hardship relief to the responsible entity of Scheme B before the transfer of assets. If relief was refused, members suffering hardship would be disadvantaged as compared to members before the transfer.

Withdrawal Relief

Withdrawal relief

- 84 We granted relief to an operator of an online peer-to-peer lending platform (which operates as a registered scheme) from the requirement to comply with the withdrawal requirements under s601GA(4) and Pt 5C.6 of the Corporations Act. The relief applies to the withdrawal of cash from a member's individual portfolio. Under the scheme, each member's interest comprises a separate class of interest in the scheme.
- 85 We were satisfied that, in the circumstances, the commercial benefits that flowed from granting relief outweighed the regulatory detriment. We considered strict compliance would be disproportionately burdensome and it appeared the requirements of Pt 5C.6 would largely be inapplicable to the withdrawal of cash from a member's individual portfolio. We did not consider that the relief would undermine the policy underpinning Pt 5C.6 of the Corporations Act.
- 86 The relief imposed requirements for alternative procedures in relation to a withdrawal of cash, including that:
- the scheme constitution set out procedures for making and dealing with requests for withdrawal of cash by a member;

- the PDS and website contain prominent disclosure of these procedures, that only cash may be withdrawn and, where the total amount of cash set out in the withdrawal request exceeds the total amount of cash available, a member may only withdraw up to the total amount of cash in a member's portfolio;
- the withdrawal request is generally satisfied within five business days of receipt if accepted by the responsible entity; and
- the responsible entity determines that the withdrawal request does not impact the assets held by the responsible entity for another member.

Publications

- 87 We issued the following publications on managed investment relief during the period of this report.

Reports

REP 398 *Fee and cost disclosure: Superannuation and managed investment products*

- 88 REP 398 examines the industry practices of superannuation and managed investments product issuers in relation to fee and cost disclosure. It also looks at any potential inconsistencies that reduce the benefit of fee and cost disclosure for investors.
- 89 Specifically, the report identifies:
- key issues where inconsistent disclosure of fees and costs occur, including non-disclosure of fees and costs relating to investment in underlying investment vehicles, incorrectly disclosing fees net of tax and inconsistent disclosure of performance fees;
 - our view on proper disclosure with regard to the key issues identified; and
 - further work that ASIC will undertake to assist industry in meeting its fee and cost disclosure obligations. This will include providing industry with further guidance, modifying the requirements in the law to make it clearer and less costly to comply with, and encouraging industry to develop standards that build on our guidance.
- #### **REP 408 *Review of the implementation of RG148: Platforms that are managed investment schemes***
- 90 REP 408 is for platform operators, including operators of investor directed portfolio services (IDPSs) and responsible entities of IDPS-like schemes.

- 91 The report reminds platform operators about some important obligations, including:
- managing conflicts of interest to ensure there is appropriate avoidance, management and disclosure in relation to the conflicts inherent in platform structures;
 - timely breach reporting in accordance with s912D of the Corporations Act and Regulatory Guide 78 *Breach reporting by AFS licensees* (RG 78);
 - having a clear policy and disclosure addressing the implications for unadvised clients on platforms;
 - managing investment governance risk, particularly by superannuation trustees and responsible entities that are platform operators; and
 - compliance with corporate structure requirements.
- 92 Existing platform operators had until 30 June 2014 to act in accordance with a number of class orders described in updated Regulatory Guide 148 *Platforms that are managed investment schemes* (RG 148), in order to be prepared for the new obligations which commenced from 1 July 2014.

D Mergers and acquisitions relief

Key points

This section outlines some of the circumstances in which we have granted or refused relief from the provisions of Ch 6 of the Corporations Act. This section also outlines the publications we issued that relate to mergers and acquisitions relief.

Relevant Interests

Relief to facilitate the implementation of a recapitalisation plan of a company under a deed of company arrangement

- 93 We granted relief from s606 of the Corporations Act to facilitate a recapitalisation by the administrators of a company under a deed of company arrangement involving a debt-for-equity swap and the issue of new shares.
- 94 The recapitalisation proposal involved transferring existing shares in the company to creditors, resulting in a dilution of the interests of existing shareholders by 99%. The share transfer was subject to court approval under s444GA(1)(b) of the Corporations Act and relief from ASIC from the 20% threshold in s606.
- 95 We granted relief on the basis that:
- the court approved the application to transfer shares pursuant to s444GA of the Corporations Act, concluding that the transfer did not involve unfair prejudice to members;
 - the administrators satisfied ASIC that the company's liabilities exceeded its assets and, therefore, there was no prejudice to the company's existing shareholders due to the transaction;
 - an independent expert report and an independent technical specialist report were provided to ASIC that concluded that the company's assets exceeded its liabilities; and
 - relief was only granted to the extent necessary to effect the recapitalisation and would not be cumulative with any other exemption under which a shareholder can increase their holding above the 20% threshold.

Takeover bids

Relief granted to allow two bidders to enter into joint arrangements

- 96 We granted relief to allow two unrelated parties (joint bidders) to enter into arrangements to make a joint off-market takeover bid. At the time, the target entity was the subject of an existing proposal by one of the joint bidders (first bidder) to make a takeover bid (first proposal), for lower consideration.
- 97 Our relief was required because, under s608(1) of the Corporations Act, when the joint bidders enter into joint bid arrangements, they will be taken to each have a relevant interest in the other joint bidder's securities and to be associates of each other under s12. Due to the joint bidders' pre-existing interests in voting shares in the target, each joint bidder's voting power in the target would have increased to a level prohibited by s606(1), as a result of entering into the joint arrangements.
- 98 We also granted associated relief from s631(1) of the Corporations Act by extending the time and modifying the circumstances in which the first bidder was required to make offers for securities under the first proposal, pending the outcome of the joint bid.
- 99 We granted relief because we considered that it was consistent with our policy outlined in Section L of Regulatory Guide 9 *Takeover bids* (RG 9). Relief was conditional on the joint bid being made in a timely manner and in satisfaction of the conditions set out in Table 8 of RG 9.

Relief from Ch 6 to facilitate acquisition by way of a call option agreement

- 100 We considered relief from Ch 6 of the Corporations Act to facilitate an acquisition of an unlisted company that had more than 50 members, but only a small number of those members held ordinary shares and all other members held non-voting preference shares. The acquisition was to occur by way of a call option agreement entered into between the acquirers and each ordinary shareholder of the company.
- 101 Relief was granted on the basis that:
- even though the company had more than 50 members, it is not the type of entity to which the policy in Ch 6 is intended to apply;
 - each ordinary shareholder had entered into the call option agreement to facilitate the intended acquisition of their shares;
 - the acquisition would not go ahead unless all of the ordinary shareholders' shares were to be acquired; and

- the acquisition was not expected to affect the rights of the preference shareholders.

Relief to exempt a conflicted director from including information known to them in target's statement

102 We granted relief to enable a director of a company subject to an off-market takeover bid, to be exempt from providing information known to them for the purposes of inclusion in the company's target statement. At the time, this director was also an employee of a company related to the bidder and, as such, had declared that they were not independent and did not wish to participate in the preparation, review and approval of the target's statement.

103 Our relief was required because, under s638(1A) of the Corporations Act, the target's statement must include all information that investors and their professional advisers expect to find in the statement, and only if the information is known to any of the target directors.

104 We granted relief following consideration of the circumstances against the underlying policy of Ch 6 and our policy with respect to material personal interests in ASIC Regulatory Guide 76 *Related party transactions* (RG 76). In particular, due to the size and composition of the board, we were satisfied that even if the information known to the relevant director was excluded, the target would have access to sufficient information from the remaining directors to satisfy the content requirement of target statements under Ch 6. In addition, the circumstances indicated that:

- any perceived or real conflict was inextricably linked to the bid (because, but for the bid, no such conflict existed); and
- there was no evidence that the relief was sought to limit the director's liability under the bid or that it was sought a result of a dispute about the contents of the target statement.

105 Therefore, on balance, the considerations regarding the real or perceived conflict of that director outweighed concerns regarding that director's liability under the bid.

Publications

106 We issued the following publications on mergers and acquisitions relief during the period of this report.

Reports

REP 406 ASIC regulation of corporate finance: January to June 2014

107

REP 406 is for companies, lawyers, corporate advisors and compliance professionals working in corporate finance and mergers and acquisitions. This report provides information for the period 1 January 2014 to 30 June 2014, on statistical data and key focus areas, and includes information about ASIC's approach to the regulation of:

- fundraising transactions;
- mergers and acquisitions;
- corporate governance issues;
- financial reporting; and
- share buy-backs.

E Conduct relief

Key points

This section outlines some of our decisions to grant relief from conduct obligations imposed by Chs 2D, 2G, 2M, 5C and 7 of the Corporations Act. This section also outlines the publications we issued which related to this area.

Dealing in ‘member shares’

Relief and no-action position for various dealings in ‘member shares’

- 108 We provided relief to a credit union from various provisions in the Corporations Act: see paragraph 20. The relief provided to the credit union related to the requirements to distinguish shares with appropriate numbers, to complete and deliver to security holders the appropriate certificates, and requirements regarding annual financial reporting to members, which mirrors concessions in the Corporations Regulations. In relation to concessions in the Corporations Regulations dealing with the maintenance and inspection of the company register and notice requirements for the issue and cancellation of member shares, we provided the credit union with a no-action letter: see paragraph 53 for further details of this application.

Client money provisions

Relief from certain client money provisions

- 109 We granted relief to allow an AFS licensee (Licensee A), prior to cancelling its AFS licence, to transfer its remaining client money to another AFS licensee (Licensee B). The licensees were related bodies corporate, and Licensee A was being integrated into Licensee B.
- 110 Neither the Corporations Act, nor the Corporations Regulations permit client money to be withdrawn from an account maintained for the purposes of s981B of the Corporations Act, without the written direction of the person entitled to the money. Despite its attempts, Licensee A was unable to obtain written direction from some of its clients to withdraw, transfer or return all client money.
- 111 We granted relief because, without such written directions, Licensee A would have been required to hold remaining client money on trust, even after it ceased to be licensed. Accordingly, there would have been a regulatory burden and business cost in requiring Licensee A to remain as a separate

entity in order to hold the remaining client money. The relief required Licensee B to hold the money on trust, with conditions that reflected the client money requirements, until clients permitted their money to be withdrawn or transferred.

- 112 In the circumstances, we believed this relief balanced commercial and regulatory considerations while also facilitating the legislative intention to protect client money.

Publications

- 113 We issued the following publications on conduct relief during the period of this report.

Class orders

Class Order [CO 14/648] Amendment of Class Order [CO 08/1] Group purchasing bodies

- 114 [CO 14/648] extends the transitional period for compliance with the breach reporting conditions in [CO 08/1] by another 12 months while the Australian Government and ASIC consider the issue. [CO 08/1] provides conditional relief to a limited class of group purchasing bodies that organise insurance on a non-commercial basis. It contains a condition that requires a group purchasing body that relies on the relief, to report to ASIC breaches of conditions of the relief. The requirement to comply with the breach reporting condition was subject to a delayed start to allow for transition.
- 115 The transitional period for compliance with the breach reporting condition in [CO 08/1] was scheduled to end on 30 June 2014. Under [CO 14/648], group purchasing bodies will not need to report breaches of [CO 08/1] to ASIC until after the earlier of the first time the group purchasing bodies acquires, renews, or renegotiates the terms of, the risk management product on or after 30 June 2015, or 30 June 2016.

Class Order [CO 14/757] Relief in relation to the registration of auditors

- 116 [CO 14/757] provides relief to deal with a potential technical defect in the registration of some auditors since December 2005. This defect occurred because the legislative instrument by which ASIC approved the auditing competency standard was inadvertently never registered and, as such, may have been treated as repealed by the *Legislative Instruments Act 2003* on 1 December 2005.

- 117 Consequently, the legal efficacy of auditors registered in reliance on that standard is uncertain. [CO 14/757] seeks to remedy this defect by:
- providing prospective relief, to the extent possible, so that acts and things that must be done by registered company auditors and authorised audit companies may also be done by auditors whose registration may have been adversely affected; and
 - allowing entities that rely on such relief to use transition specific disclosures and rely on ‘cleansing notice’ exemptions and exemptions applying to rights issues and share purchase plans.

Consultation papers

CP 222 Reducing red tape: Proposed amendments to the market integrity rules

- 118 CP 222 seeks feedback from market participants and investors on proposals to repeal or refine three categories of obligations under ASIC market integrity rules for the ASX, Chi-X, APX, NSXA and SIM VSE markets. Submissions on CP 222 were due by 2 October 2014.
- 119 CP 222 sets out ASIC’s proposals to remove or refine market integrity rules that:
- require certain market participants to notify ASIC of the details of their professional indemnity insurance cover (the obligation to retain professional indemnity insurance cover will remain);
 - require certain market participants to obtain ASIC consent before sharing business connections; and
 - prohibit certain transactions during takeovers, schemes of arrangement and buy-backs.

CP 223 Relief for externally administered companies and registered schemes being wound up: RG 174 update

- 120 CP 223 sets out our proposals for updating our guidance in RG 174 *Externally administered companies: Financial reporting obligations and AGMs* (RG 174) and revising our class order relief in Class Order [CO 03/392] *Externally administered companies: Financial reporting relief*. Submissions on CP 223 were due by 20 October 2014.
- 121 In updating our guidance, we proposed to establish policy settings that appropriately balance the information needs of members, and other users of financial reports, with the financial burden imposed on distressed entities by financial reporting costs.

- 122 In particular, CP 223 consulted on proposals regarding whether we should:
- expand our policy to exempt insolvent registered schemes being wound up from financial reporting;
 - expand our policy to exempt public companies from the obligation to hold an AGM if the company has a liquidator appointed; and
 - update our guidance on the circumstances in which we will provide individual relief, including narrowing the circumstances in which we give exemptive relief and expanding the circumstances in which we give deferral relief.

Information sheets

INFO 190 *Disputes about financial reporting by small proprietary companies*

- 123 INFO 190 explains our position when someone makes an allegation of a breach of the financial reporting obligations (including both annual financial reports generally and directors' reports) of a small proprietary company. It also explains:
- who needs to lodge financial reports and when; and
 - what you may do as a shareholder if you wish a small proprietary company to prepare and circulate financial reports.

Reports

REP 397 *Audit inspection program report for 2012–13*

- 124 REP 397 summarises the observations and findings identified by our audit inspection program in the 18 months to 31 December 2013. This report will be of interest to companies, audit committees, investors and other stakeholders interested in financial reporting.
- 125 The report showed that in 20% of the total 454 key audit areas that were reviewed across 107 audit files at firms of different sizes, auditors did not obtain reasonable assurance that the financial report as a whole was free of material misstatement. This compares to 18% for ASIC's report covering the previous 18-month period ending June 2012. While our overall levels of findings has not yet improved, the largest six audit firms only finalised their action plans on audit quality for the 30 June 2013 year-end—these plans are yet to have full effect.
- 126 Our findings do not necessarily mean that the relevant financial reports audited were materially misstated. Rather, in our view, the auditor did not have a sufficient basis to support their opinion on the financial report. We do not report on areas where auditors perform beyond the relevant standards and, to that extent, the report does not represent a balanced scorecard. Our

surveillance also focuses on higher-risk audit areas and caution is needed in generalising the results across the entire market. Therefore, our findings should be viewed as an indication of how some firms address more challenging audit situations.

127

Our inspections suggest that the following three broad areas continue to require improvement by audit firms:

- the sufficiency and appropriateness of audit evidence obtained by the auditor;
- the level of professional scepticism exercised by auditors; and
- ensuring appropriate reliance on the work of experts and other auditors.

F Credit relief

Key points

This section outlines some of our regulatory action in relation to applications under the National Credit Act. It also describes the relevant guidance we issued on credit relief.

Licensing relief

Conditional licensing relief for a retirement village operator in relation to existing agreements

- 128 We provided conditional licensing relief to a retirement village operator to allow it to manage 23 licence agreements with residents of the retirement village that arguably involved the provision of credit through the deferral of a portion of the ingoing contribution. The relief was limited to existing agreements entered into on or before 15 November 2013 and included a condition that the amount payable by the resident for the ingoing contribution on termination of the licence is capped at 30%. Relief was not granted for obligations under the National Credit Code because it was not considered necessary in the circumstances.
- 129 We granted relief because we considered it to be limited in nature (i.e. it only allowed the retirement village to manage existing contracts and no new contracts would be entered into). We also considered that the costs of compliance greatly exceeded the likely benefits, and that any potential consumer detriment would be minimised by the conditions imposed and the protections the applicant had in place.

Publications

- 130 We issued the following publications on credit relief during the period of this report.

Class orders

Superseded Class Order [SCO 14/569] Amendment of Class Order [CO 13/18] Funded representative proceedings and funded proof of debt arrangements exclusion from the National Consumer Credit Protection Act 2009

- 131 [SCO 14/569] extends the relief in [CO 13/18] from 12 July 2014 to 12 July 2016, to further enable the temporary operation of a litigation funding arrangement and a proof-of-debt funding arrangement, without requiring

compliance with the requirements of the National Credit Act and National Credit Code. This will allow the Australian Government additional time to consider its position on whether to exempt litigation funding arrangements and proof-of-debt funding arrangements from the National Credit Act.

Regulatory guides

RG 96 *Debt collection guideline: For collectors and creditors*

132 RG 96 has been jointly produced by the Australian Competition and Consumer Commission (ACCC) and ASIC, and provides information on how the Commonwealth consumer protection laws apply to:

- debt collectors (e.g. debt collection agencies, debt buy-out services, in-house collection departments of business or government agencies and solicitors); and
- creditors who use external collection agencies to collect debts or sell or assign debts to third parties.

RG 206 *Credit licensing: Competence and training*

133 RG 206 provides guidance for credit licensees, credit licence applicants and unlicensed carried over instrument lenders (unlicensed COI lenders) on how to meet their organisational competence and representative training obligations under the National Credit Act. The transitional period for credit licensees and responsible managers to acquire necessary qualifications ended on 30 June 2014.

134 We have updated RG 206 and Pro Forma 224 [PF 224] *Australian credit licence conditions* to remove information about the transitional arrangements for meeting qualification requirements. We have also made some other, more general, updates to RG 206, including to information on:

- how the competence requirements apply to unlicensed COI lenders; and
- the types of streamlined applicants.

Reports

REP 410 *Review of 'low doc' home lending following the introduction of the responsible lending obligations*

135 REP 410 reviews how lenders that provide 'low doc' home loans are complying with their responsible lending obligations. The report presents the findings of our review and identifies a number of examples of how credit licensees can reduce the risk of non-compliance. This review follows on from the reviews in Report 262 *Review of credit assistance providers' responsible lending conduct, focusing on 'low doc' home loans* (REP 262) and Report 330 *Review of licensed credit assistance providers' monitoring and supervision of credit representatives* (REP 330).

G Other relief

Key points

This section outlines decisions we have made that do not fall within any of the categories mentioned in previous sections and which may be significant to participants in the financial services and capital markets industry. It also outlines further publications we issued.

Auditor requirements

Relief granted from auditor rotation requirement

- 136 We granted relief to allow the directors of a listed company to grant approval, after the deadline required by s324DAA(2), for its current lead auditor to play a significant role in the audit of the company for an additional successive financial year.
- 137 Our relief was required because the current lead auditor had played a significant role in the audit of the company for five successive financial years, during which time the company had been unlisted. Upon listing, the rotation requirements contained in s324DA of the Corporations Act applied to make the current lead auditor ineligible to continue to play a significant role in the audit of the company. Although listed entities are able under s324DAA to extend the term of an auditor, the directors of the company could not extend the term for eligibility under s324DAA because the company was not listed before the relevant deadline.
- 138 We granted relief because we were satisfied that extending the term of the auditor by one year was consistent with maintaining the quality of the audit and would not give rise to a conflict of interest. Without modification, the rotation requirements would impose an unreasonable burden on the company for the following reasons:
- the new auditor would need to have specialist knowledge of the activities of the company;
 - the time period between the board's decision to list the company and the company achieving listing was short; and
 - the listed company was able to extend the term of an auditor under s324DAA.

Relief granted: Application for a direction under s324CL(2) that a person is not an officer for the purposes of the auditor independence provisions

139 We gave a direction under s324CL(2) of the Corporations Act that a person was not an officer for the purposes of Div 3 of Pt 2M.4 of the Corporations Act, so the person could be admitted as a partner of an audit firm notwithstanding their role as a director of that firm's audit client in the last 12 months.

140 We considered that, under the circumstances, giving this direction would not compromise the principles underlying the auditor independence provisions in the Corporations Act for the following reasons:

- the person was to become a partner in the audit firm's consulting practice, rather than the audit practice, and would not provide any professional services to the audit client for at least 12 months from the date of their admittance to the partnership;
- the audit client was a not-for-profit charity, limited by guarantee, and the person had no ongoing connection with that organisation;
- the person had been a non-executive director of the audit client;
- the person had not been an audit-critical employee of the audit client and had not been in a position to exercise significant influence over that entity's financial reports.

Relief refused: Application for a direction under s324CL(2) that a person is not an officer for the purposes of the auditor independence provisions

141 We refused to give a direction under s324CL(2) of the Corporations Act that a person was not an officer for the purposes of Div 3 of Pt 2M.4 of the Corporations Act. Such a direction would have allowed the person to be admitted as a partner of an audit firm notwithstanding being a director of a subsidiary of that firm's audit client in the last 12 months.

142 We refused to provide the relief because, under the circumstances, we considered it could compromise the principles underlying the auditor independence provisions in the Corporations Act for the following reasons:

- the audit client was a large listed company;
- the direction sought would have applied in respect of the subsidiary of this audit client and its corporate group;
- the person had been an executive director of the subsidiary of the audit client and held various roles of an executive nature with this company over a period of three financial years; and
- a perceived threat to the audit firm's independence existed.

No-action letters

No-action position regarding s792B(2)(c) notifications

- 143 We granted a no-action letter to the applicant from enforcement action by ASIC with respect to its obligations under s792B(2)(c) of the Corporations Act.
- 144 Section 792B(2)(c) requires an Australian market licensee to notify ASIC of a suspected significant contravention of the market's operating rules or the Corporations Act. The applicant made the request on the basis that where such information had already been provided to ASIC from a participant or its auditor (or legal representative), to avoid duplication, it should not be required to lodge the same information again.
- 145 We granted a no-action letter subject to the applicant having no further knowledge of the suspected significant contravention beyond what was set out in the correspondence or notification already given. This relief applies for an indefinite period of time, subject to the applicant:
- maintaining a register of any matters falling within the scope of this relief; and
 - making this register available to ASIC on request.

No-action position regarding s792C(1)

- 146 We granted a no-action letter to the applicant from s792C(1) of the Corporations Act—to the extent that s792C(1) may require the provision, to ASIC, of brief one-line descriptors of company announcement information as soon as practicable after the applicant transmits this information electronically to persons linked to its trading system.
- 147 The applicant makes company announcement information available to participants by way of message transmitted to computer terminals of persons linked to its trading system. The messages sent to persons only contain brief one-line descriptors of each company announcement released to the market. The applicant specifically sought relief from the requirement to provide to ASIC the messages provided to their participants.
- 148 The no-action letter was granted subject to the condition that the applicant continues to provide information about a listed disclosing entity to ASIC in accordance with s792C(1) and previously agreed-to arrangements.
- 149 ASIC took a no-action position in this instance because:
- the applicant already complies with the obligation in s792C(1) to provide ASIC with information, as soon as practicable after it is made available to participants in the market, about a listed disclosing entity (company announcements) It does this by providing the full content of company announcements to ASIC in separately agreed-to arrangements.

Company announcement information is also currently available without delay to the public and ASIC on its website www.apx.com.au;

- the applicant's trading data is not currently received by ASIC in real time or electronically. Instead, it is reviewed manually by the ASIC Surveillance team at T+1. Therefore, there is no utility in providing company announcement information in real time and electronically to ASIC;
- equivalent relief is already provided to the applicant for this specific type of information in reg 7.2.05 of the Corporations Regulations; and
- providing relief from s792C(1) does not in any way affect the aims of the continuous disclosure provisions in Ch 6CA of the Corporations Act.

No-action position regarding the sending of credit cards

150 We granted a no-action letter to permit existing customers to be sent contactless stickers that are access devices to an existing credit facility, following a verbal request (rather than a written request, as required by s12DL of the ASIC Act). The no-action letter was subject to a number of conditions, including the need to digitally record the customer request and store it on each customer's file.

Extension of no-action position from s791A to five swap execution facilities

151 We granted extensions of no-action letters to five swap execution facilities whose related entities have a presence in Australia. These entities were granted extensions of ASIC's no-action position from s791A of the Corporations Act to allow them to operate a market in Australia.

152 Title VII of the *Dodd–Frank Wall Street Reform and Consumer Protection Act* (US) (Dodd-Frank Act) amended the *Commodity Exchange Act* (US) to establish a comprehensive new regulatory framework for swaps in the United States. From 2 October 2013, any platform that helps US persons to execute swaps through a multiple-to-multiple trading mechanism must register as a swap execution facility and comply with the principles set forth in the swap execution facility's rules. As a result, a number of international trading platform operators (some of which are currently operating in Australia) have developed and registered their swap execution facilities with the CFTC to allow US persons the ability to trade in those swaps.

153 Some of the platforms currently operating in Australia under an Australian market license, or an exemption, wanted to continue to provide their Australian users with the ability to transact with US persons on their swap execution facilities.

- 154 Six swap execution facilities were initially granted no-action letters from 2 October 2013 to 2 April 2014. We granted extensions to these no-action letters because:
- our policy position on the treatment of swap execution facilities had not been finalised because Treasury’s licensing review had not been settled. Treasury has not, at this stage, finalised its policy for swap execution facilities that are regulated under the Dodd-Frank Act;
 - the rationale for granting the initial no-action letters still applied (i.e. to avoid market disruption and fragmentation of liquidity in OTC derivatives markets); and
 - we consulted with Treasury about extending the no-action position for a further six months. Treasury did not object to our approach.
- 155 No-action relief for six swap execution facilities was originally extended from 2 April 2014 to 2 October 2014. No-action relief for five swap execution facilities was extended again from 2 October 2014 to 2 April 2015, subject to the conditions and qualifications specified in the new no-action letters, which were identical in all material respects to the conditions of the existing no-action letters—and included a condition that the products able to be traded on the swap execution facility are limited to those listed on the Australian market licence or the Australian market licence exemption of their related entity. This condition prevents a swap execution facility from introducing products that are not currently being offered by their related entity.

Other relief

Application for relief from the new financial requirement to hold \$10 million net tangible assets

- 156 We granted relief to a responsible entity from the new financial requirements under ASIC Class Order [CO 13/760] *Financial requirements for responsible entities and operators of investor directed portfolio services* and ASIC Class Order [CO 13/761] *Financial requirements for custodial or depository service providers*, for one month from 1 July 2014.

- 157 Relief was necessary to give the applicant time to settle its financing after consent was given by ASIC.

Application for declaration that a risk management facility is not a financial product

- 158 We refused to provide relief for risk-management products for sporting clubs and retailers.

- 159 The risk-management products allow sporting clubs to manage the risk of liability for performance-related payments to their players and third-party promoters or retailers—and, therefore, to manage the risks associated with running promotions that depend upon the outcome of certain sporting events. All persons who purchase the products are wholesale clients. The issuer of the products applied for a declaration that the products were not financial products.
- 160 We refused to grant relief because we considered the products were clearly financial products intended to be regulated under the Corporations Act. It is the normal and intended operation of the Corporations Act for issuers of financial products to wholesale clients to hold an AFS licence. We considered the costs associated with licensing that were identified by the applicant were ordinary costs of compliance.

Application refused for licensing, conduct and disclosure relief for a proposed stored value card

- 161 An authorised deposit-taking institution (ADI) sought relief from the licensing, disclosure and conduct provisions of the Corporations Act for a proposed stored value card facility. Relief was sought in the terms set out in ASIC Class Order [CO 05/736] *Low value non-cash payment facilities*, but with changes to the dollar caps specified in the definition of the term ‘low-value non-cash payment facility’ to remove the limitation on a person holding more than \$1,000 over more than one facility in the same class.
- 162 We considered the limitations on the amount that a person can hold in a payment facility is a key limitation on the ‘low-value’ class order relief that is important for limiting consumer’s risks of loss of stored value. The dollar caps in [CO 05/736] were considered appropriate because larger-scale providers are intended to be covered by the regulatory requirements and any increase in the caps would expose consumers to broader risks.
- 163 We were not satisfied that a departure from the existing policy position that underpins [CO 05/736] was justified solely on the basis that the facility would be issued by an ADI. We also considered that the applicant had not demonstrated that the costs of compliance would be disproportionately burdensome. The applicant withdrew its application.

Disapplication of constitutional rules for a mutual bank

- 164 We published a notice that disapplied the demutualisation approval procedure rules in the constitution of a mutual bank for a specified proposed members’ resolution.
- 165 Some credit union and mutual bank constitutions contain demutualisation approval procedure rules, which prescribe steps that must be taken before the company can hold a members resolution to approve an alteration to its

mutual structure. Many of these constitutions also allow for ASIC to disapply the rules. ASIC has issued Report 369 *Response to submissions on CP 210 Demutualisation approval procedure rules: Minimum member participation requirement* (REP 369), which outlines the circumstances in which we will disapply such rules. One such circumstance is where the application of the rules is triggered by reason only of a company's mutual bank status.

166 The mutual bank requested disapplication of its demutualisation approval procedure rules in order to streamline the process for making minor updates to its constitution. These updates were necessary following the entity's rebranding as a mutual bank in 2011. We considered the request by the mutual bank to be consistent with our policy in REP 369 so we disappplied the rules for the proposed members' resolution.

ASIC Instrument [14/0559] *Extension of transitional exemptive relief*

167 We extended transitional exemptive relief to further delay the start of transaction reporting for equity derivatives that had dependency on the MarkitWire confirmation platform until 11 August 2014. This instrument was executed on 19 June 2014.

168 This instrument extended existing relief, initially granted in September 2013, which recognised the dependency of certain banks on some IT providers. This dependency related to the completion of essential enhancements to middleware to enable reporting of certain OTC derivatives transactions to trade repositories.

169 Time-limited exemptive relief was provided for a range of asset classes confirmed on a number of confirmation platforms. As part of this, the commencement of reporting of equity derivatives confirmed on the MarkitWire confirmation platform was delayed until 5 May 2014: see ASIC Instrument [13/1178].

170 This aspect of the relief was extended to 29 June 2014 (see ASIC Instrument [14/0232]), and further extended by [14/0559] to 11 August 2014, as a result of a revision by MarkitSERV to the target date for completing the necessary changes to its middleware.

Publications

171 We issued the following publications during the period of this report.

Class orders

Superseded Class Order [SCO 14/571] *Amendment of Class Order [CO 13/898]*

172 [CO 14/571] extends the relief in [CO 13/898] to enable representative proceedings and proof of debt arrangements that are subject to a conditional costs agreement from:

- the definition of managed investment scheme in s9 of the Corporations Act; and
- Pts 7.6–7.9 of the Corporations Act,

from 12 July 2014 until 12 July 2016.

173 This is to allow further time for the Australian Government to consider its position on whether to exempt litigation and proof-of-debt funding arrangements under similar terms as those in [CO 13/898].

Reports

REP 401 *Market assessment report: ASX Group*

174 REP 401 relates to ASIC's annual assessment report of ASX Group (ASX) licensees, and examines how ASX dealt with a number of specific issues, including:

- the sufficiency of ASX's technological resources to properly operate their facilities;
- the operation and monitoring of the ASX 24 futures market during the assessment period, and the period 1 September 2013 to 3 October 2013;
- procedures for considering listing applications from emerging market issuers;
- its arrangements for ensuring compliance with the recently introduced capital-raising initiatives for small and mid-cap companies;
- its processes for ensuring that fraudulent or unauthorised announcements are not made to the market through ASX Group's market announcements platform (MAP);
- its processes for identifying and managing any conflicts of interest concerning its directors; and
- the operation and supervision of ASX's CS facilities.

175 REP 401 also sets out a number of areas ASX has agreed to address, while working closely with ASIC.

REP 402 ASIC enforcement outcomes: January to June 2014

176 REP 402 outlines enforcement outcomes achieved by ASIC during the period 1 January 2014 to 30 June 2014. REP 402 identifies the entities and individuals against which enforcement action was taken and highlights examples of conduct targeted during the period.

REP 405 ASIC supervision of markets and participants: January to June 2014

177 REP 405 summarises key outcomes of ASIC's market and participant supervisory and surveillance functions and highlights markets-related enforcement outcomes for the period 1 January 2014 to 30 June 2014.

REP 412 Insolvency statistics: External administrators' reports (July 2013 to June 2014)

178 REP 412 is for insolvency practitioners and other interested stakeholders. It presents an overview of total lodgements of statutory reports lodged by liquidators, receivers and voluntary administrators (external administrators) from 1 July 2013 to 30 June 2014, as well as our statistical findings from external administrators' reports lodged electronically when a company enters external administration (EXAD) status (initial external administrators' reports).

Appendix: ASIC relief instruments

Table 1 lists the individual relief instruments we have executed for matters that are referred to in this report and which are publicly available. The instruments are published in the *ASIC Gazette*, which is available via www.asic.gov.au/gazettes, except for credit instruments (marked with asterisks), which are published on [our website](#) under ‘Credit relief’.

Table 1: ASIC relief instruments

Para no.	Entity name	Instrument no. (Gazette no. if applicable)	Date executed	Power exercised and nature of relief	Expiry date
8–9	Credit Agricole Hong Kong and Singapore branches	14-0818 & 14-0838	26/08/2014	s911A(2)(l) of the Corporations Act Relief from the requirement to hold an AFS licence	
13–15	J.P. Morgan Securities (Australia) Limited	14-0844 (in A39/14)	2/09/14	s601QA(1)(a), 911A(2)(l), and 1020F(1)(a) of the Corporations Act Relief from s601ED, Divs 2–5 of Pt 7.9 of the Corporations Act and the requirement to hold an AFS licence for the provision of dealing in an interest in a sale facility and the provision of general advice for an interest in a sale facility	
16–17	DTCC Data Repository (Singapore) Pte Ltd	14-0913	15/09/2014	s907D(2)(a) of the Corporations Act Relief from certain provisions of the derivative trade repository rules, conditional on compliance with specified Singaporean law requirements and other specified conditions	
18–19	DTCC Data Repository (Singapore) Pte Ltd	14-0911	18/09/2014	s907D(2)(a) of the Corporations Act Class order exemption for the officers of DDRS from Rule 2.1.1 of the derivative trade repository rules	

Para no.	Entity name	Instrument no. (Gazette no. if applicable)	Date executed	Power exercised and nature of relief	Expiry date
20; 53–55; 108	Service One Credit Union Limited ACN 095 848 598	14-0490 (in A39/14)	26/08/2014	s911A(2)(l), 951B(1)(a) and 1020F(1)(a) of the Corporations Act Exemptions from the requirement to hold an AFS licence, from the financial services disclosure requirements in Pt 7.7 and the requirement in s1017F to confirm transactions for specified financial services in connection with the issue of membership shares. Instrument repeals ASIC Instrument [13-1030]	
20; 53-55; 108	Service One Credit Union Limited ACN 095 848 598	14/0729 (in A41/14)	01/09/2014	s741(1)(a) and 1075A(1)(a) of the Corporations Act Exemption from compliance with Pt 6D.2, s1070B and 1071H for member shares	
21–24	Betfair Pty Limited	14-0801 (in A36/14)	07/08/2014	s911A(2)(l), 992B(1)(a) and 1020F(1)(a) of the Corporations Act Exemption from the requirement to hold an AFS licence, s992A and Pt 7.9 of the Corporations Act	
45–46	Medibank Private Limited, The Commonwealth of Australia	14-0979 & 14-0975	26/09/2014	s741(1) of the Corporations Act Modification of s734(5) of the Corporations Act to facilitate advertising, pre-registration activities and employee communications for an IPO in a manner different from that contemplated by s734 of the Corporations Act	
47–50	Macquarie Bank Limited ACN 008 583 542	14-0937	15/09/2014	s741(1)(b) of the Corporations Act Exemption from s710 to facilitate offer of convertible hybrid securities	
51–52	Credit Union Australia Limited ACN 087 650 959	14-0883 (in A44/14)	25/09/2014	cl 30(2) of Sch 4 to the Corporations Act Conditional relief from demutualisation disclosure statement requirements in cl 29 for particular proposed modifications to the company's constitution	

Para no.	Entity name	Instrument no. (Gazette no. if applicable)	Date executed	Power exercised and nature of relief	Expiry date
56–57, 81	ASX Clear (Futures) Pty Limited	14-0662	02/07/2014	s601QA(1)(a) for relief from s601ED of the Corporations Act s1020F(1)(a) for relief from Divs 2–5 of Pt 7.9 of the Corporations Act	
79–80	QOA Taxi Cover Pty Limited ACN 165 604 731	14-0793 (in A42/14)	10/09/2014	s601QA(1)(a) of the Corporations Act Exemption from the requirement in s601ED(1) to register a managed investment scheme	
82–83	La Trobe Financial Asset Management Limited	14-0406	03/06/2014	s601QA(1) of the Corporations Act Exemption for a responsible entity from s601FC(1)(d) to enable it to pay, to the members of a class of interests within a registered scheme, some or all of the net proceeds of the realisation of assets of that class on hardship grounds	
84–86	RateSetter Australia RE Limited	14-1087 (in A50/14)	22/10/2014	s601QA(1)(b) of the Corporations Act Modification of the withdrawal requirements under Pt 5C.6 that apply while the scheme is non-liquid	
93–95	Mirabela Nickel Limited	14-0612	23/06/2014	s655A(1)(a) of the Corporations Act Exemption for a company under a deed of company arrangement from s606(2) to facilitate a recapitalisation by the administrators	
100–101	Terrey Hills Golf Club Limited	14-0959	23/09/2014	s655A(1)(a) of the Corporations Act Relief from the requirement to comply with Ch 6 in an acquisition of shares by way of a call option agreement	
102–105	Aquila Resources Limited	14-0555 (in A28/14)	12/06/2014	s655A(1) of the Corporations Act Exemption for a conflicted director from the requirement in s638(1A)	

Para no.	Entity name	Instrument no. (Gazette no. if applicable)	Date executed	Power exercised and nature of relief	Expiry date
109–112	GFT Global Markets UK Limited	14-0619 (in A29/14)	25/06/2014	s992B(1)(c) of the Corporations Act 2001 Relief from certain client money provisions	
109–112	GAIN Capital FOREX.COM Australia Pty Ltd	14-0619 (in A29/14)	25/06/2014	s992B(1)(c) of the Corporations Act 2001 Relief from certain client money provisions	
128–129	HammondCare	14-0765	25/07/2014	s109(1)(a) of the National Credit Act Conditional relief from the requirement to be licenced: s29(1)–(2)	
156–157	One Managed Investment Funds Limited	14-0642	1/07/2014	s926A(2)(c) of the Corporations Act Declaration Pt 7.6 (other than Divs 4 and 8) applies as if s912AA (as notionally inserted by [CO 13/760]) and s912AC (as notionally inserted by [CO 13/761]) were omitted	
167–169	Macquarie Bank Limited	14-0559 (in A26/14)	24/06/2014	s907D(2)(a) of the Corporations Act Exemption from the requirement to comply with certain reporting obligations with respect to reportable transactions: Rule 2.2.1 the derivative transaction rules (reporting)	11/08/2014