ASIC
Australian Securities & Investments Commission

REPORT 449

Overview of decisions on relief applications (February to May 2015)

September 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 from 1 February 2015 to 31 May 2015. 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 from 1 February 2015 to 31 May 2015 that may be relevant to prospective applicants for relief, including legislative instruments, 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 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 February 2015 and ending 31 May 2015. During this period we received 545 applications. We granted relief in relation to 372 applications and refused relief in relation to 44 applications; 98 applications were withdrawn. The remaining 31 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 We are streamlining the process for considering applications for relief to ensure that applications are assessed as quickly and efficiently as possible. As part of this, we will be more strictly enforcing our policy to refuse applications for relief where information needed to make a decision is not provided. Where we have asked for additional information within a specified time period—and a reasonable explanation is not provided for any delay—we may refuse your application for relief.

8 The appendix to this report details the individual relief instruments we have executed for matters referred to in the report. Legislative instruments

(including class orders) are available from our website via www.asic.gov.au/co. Individual relief instruments are published in the *ASIC Gazette*, 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 on our website via www.asic.gov.au/markets under 'market integrity rules'. For 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 s926A(2), from the Australian financial services (AFS) licensing requirements.

We also outline the publications we issued during the period of this report that relate to licensing relief.

AFS licence requirements

Relief from the requirement to appoint authorised representatives

9 We granted conditional relief from the requirement to formally appoint authorised representatives to an AFS licensee that distributes basic deposit products, general insurance products and non-cash payment facilities. We granted this relief under s926A(2).

10 The AFS licensee is a wholly owned subsidiary of a corporation that oversees a substantial network of franchisee and licensee outlets. The relief we provided deems that the franchisees, licensees and staff in the outlets are representatives of the AFS licensee for the purposes of Ch 7. The relief removes the administrative burden of advising ASIC of the formal appointment of almost 3,000 outlets and approximately 12,000 staff as representatives of the licensee.

11 A condition of the relief requires the representatives of the licensee to provide information about the lines of liability and how consumers may make complaints about the conduct of the outlets.

12 We granted this relief because we considered the cost of compliance with Ch 7, including the requirement to formally appoint authorised representatives, was unduly burdensome given the significant size of the franchisee and licensee networks.

13 We also considered that the risk of consumer detriment was minimal because the licensee is responsible for the conduct of the representatives in the same way that it is responsible for its authorised representatives.

Relief from a licensing condition imposed on a time-sharing scheme

14 We granted relief to a licensee operator of a time-sharing scheme from the AFS licence condition that requires any deposit for the purchase or issue of an interest in a time-sharing scheme to be less than 30% in value of the total purchase or issue price.

15 This condition is imposed on time-sharing schemes to protect consumers from taking on the development risk associated with the building of the property: see Regulatory Guide 160 *Time-sharing schemes* (RG 160) at RG 160.31–RG 160.33. This risk exists when a time-sharing scheme promotes and sells interests in properties that are not yet built or completed.

16 We considered that the risk this licence condition was designed to mitigate was no longer relevant to the operator of the time-sharing scheme because interests in the time-sharing scheme were no longer being issued or made available for purchase in relation to incomplete properties.

17 We granted the relief on condition that the responsible entity's constitution contains a provision to the effect that property that is not substantially completed and suitable as living quarters cannot be used for the purposes of allocating owner holiday credits for that property.

Providing financial services on behalf of multiple licensees

18 We granted conditional relief from s911B(1)(b)(iv) of the Corporations Act to an AFS licensee that sought to launch a new business, relying on prominent members of the financial services industry to work on corporate advisory matters on a pro bono basis, with the fees generated to be donated to an international development organisation. We granted this relief under s926A(2).

19 Section 910A of the Corporations Act identifies several classes of 'representatives', including an authorised representative of a licensee, and an employee or director of a licensee. The applicant sought relief to allow it to appoint authorised representatives to provide financial services on its behalf, while those people remained an employee or director representative of another licensee. Ordinarily, such an arrangement would contravene s911B(1)(b)(iv).

20 In granting relief, we were satisfied that the regulatory burden outweighed the benefit of requiring compliance in this instance. We also considered the fact that the relief extended only to financial services provided to wholesale clients, and that effective legal protections were in place under s917C of the Corporations Act.

21 We granted this relief subject to strict conditions, including procedures to manage conflicts of interest and restrictions on the use of confidential information. The relief will only apply where panel members do not receive a financial benefit as a result of providing the relevant financial services.

22 In the interests of timing, we firstly executed an individual relief instrument providing relief to individuals initially appointed to the advisory panel. We then executed a legislative instrument on 4 August 2015, giving relief to people nominated by the applicant to provide financial services on its behalf, as a discrete class of persons.

Publications

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

Legislative instruments

Superseded Class Order [SCO 15/52] *Greyhound schemes* and Superseded Class Order [SCO 15/153] *Repeal of Class Order [CO 15/52]*

24 We made [SCO 15/52] to put in place a framework to provide relief from certain AFS licensing, scheme registration, product disclosure, advertising and anti-hawking requirements in Chs 5C and 7 of the Corporations Act to promoters and managers of small-scale greyhound racing and breeding schemes. However, we decided that this framework required further consultation and, in the interim, we repealed [SCO 15/52]: see [SCO 15/153].

25 We are undertaking further consultation because the relief envisaged under [SCO 15/52] was based on a co-regulation arrangement between ASIC and the greyhound racing controlling bodies. Information has come to our attention that places in question the resourcing and organisational capacity of some controlling bodies and, consequently, their fitness to perform the role required under the regulatory framework established under [SCO 15/52].

26 ASIC will take into account any further developments concerning the greyhound racing controlling bodies which are relevant in this regard.

Regulatory guides

RG 236 *Do I need an AFS licence to participate in carbon markets?*

27 RG 236 is a guide for those who are involved in carbon abatement activities and who enter into abatement contracts related to the Emissions Reduction Fund (ERF), as well as other carbon financial services and markets. This guide is also relevant for persons advising on carbon market participants. It provides

guidance on whether an AFS licence is needed to participate in carbon markets, or to provide financial product advice and other financial services in relation to carbon markets.

28 We updated RG 236 following changes to the structure and regulation of carbon markets in Australia. The updated guidance will assist carbon market participants—in particular, carbon abatement project developers and aggregators—to operate their business in compliance with financial services law.

29 RG 236 has been updated to take into account:

- the end of the carbon pricing mechanisms in February 2015;
- the start-up of the ERF, including the broader scope of the project types and new participants under the ERF;
- the anticipated ERF project structures that involve multiple small-scale carbon abatement activities under a single project;
- competitive ERF reverse auctions for carbon abatement contracts; and
- the introduction of the emissions reduction safeguard mechanism in July 2016.

30 RG 236 has also been updated to reflect:

- that carbon units, European Union allowances and Australian-issued international units ceased to be financial products from the end of the carbon pricing mechanism; and
- the exemption of carbon abatement contracts from the definitions of 'derivative' and 'financial product' for the purposes of the Corporations Act.

31 We have also reissued INFO 156: see paragraphs 32–33.

Information sheets

INFO 156 *Regulated emissions units: Applying for or varying an AFS licence*

32 We reissued INFO 156 following our update to RG 236. We updated RG 236 following changes to the structure and regulation of carbon markets in Australia: see paragraphs 27–31.

33 INFO 156 is meant for anyone intending to apply for either a new AFS licence, or a variation to an existing AFS licence, to authorise them to provide financial services in regulated emissions units and associated products. It covers:

- the requirement to hold an AFS licence for regulated emissions units;
- what 'regulated emissions units' are;

- what 'financial services' in regulated emission units are;
- the scope of the authorisations required in the AFS licence;
- the information required when applying for a new AFS licence or a variation to an existing AFS licence;
- the steps in the application process; and
- how we assess an applicant's organisational competence in emissions units.

Reports

REP 433 *Overview of licensing and professional registration applications: July to December 2014*

34 REP 433 outlines ASIC's decisions on applications for the period from 1 July 2014 to 31 December 2014 for:

- new AFS licences and AFS licence variations;
- new Australian credit licences and credit licence variations;
- the registration of liquidators, official liquidators, company auditors and approved self-managed superannuation fund auditors; and
- Australian market licences, clearing and settlement facility licences, and Australian derivative trade repository licences.

35 REP 433 is our first report on our approach to licensing and registration applications. The purpose of this report is to provide greater transparency and understanding of ASIC's licensing and professional registration activities. It presents statistics and comments on applications and outcomes for these licensing and registration assessments. We intend to issue this report for each half-year period.

36 In addition to reporting key outcomes and statistics, we will use these six-monthly reports:

- to highlight areas of focus for regulatory intervention based on issues identified in the preceding period;
- where necessary, to foreshadow changes to our assessment and processing of applications (and related guidance information); and
- to impose new licence conditions or requirements on individual licensees in response to poor behaviour and misconduct.

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).

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

Relief associated with prospectuses

Disclosure related to an offer of a non-renounceable foreign rights issue

37 An entity sought relief to extend Class Order [CO 00/183] *Foreign rights issue* to include AIM (operated by the London Stock Exchange) as an 'approved foreign market' for the purposes of disclosure relief for a proposed non-renounceable foreign rights issue.

38 We were of the view that AIM did not meet the requirements in Regulatory Guide 72 *Foreign securities prospectus relief* (RG 72) for admission as an 'approved foreign market'. We indicated to the applicant that further detailed submissions would be required in relation to the criteria in RG 72 that we considered AIM did not meet. The application for relief was ultimately withdrawn without further submissions being made.

39 As noted in RG 72, we will accept applications for additional foreign markets to be included in the list of approved foreign markets. Applications should address the criteria in RG 72.54. An application should be accompanied by an English translation of the rules of the foreign market and, if applicable, the market's policy manual.

Pre-prospectus communications related to an initial public offering

40 We granted conditional relief from s734 of the Corporations Act to a group of companies so that communications with shareholders in relation to an upcoming initial public offering (IPO) could occur before lodgement of a prospectus, and in a manner different from that permitted under the Corporations Act. We granted this relief under s741(1)(a).

41 This allowed the companies to communicate information to shareholders about the opportunity to sell some or all of their shares to new investors as part of the IPO (sale facility). However, the relief did not extend so far as to allow sale documentation to be provided before the lodgement of a prospectus.

42 The relief also allowed the companies to communicate a request for shareholders to enter into a power of attorney in connection with the IPO (including in relation to the sale facility and matters requiring shareholder approval).

43 As a condition of the relief, the entity was not allowed to request that shareholders enter into a power of attorney regarding matters requiring shareholder approval in connection with the IPO prior to shareholders being provided with notice of meeting documentation for the relevant approvals.

44 We were satisfied that the commercial benefits to the applicant and its members that flowed from granting relief outweighed the regulatory detriment.

Employee incentive schemes

Extension of relief in Class Order [CO 14/1000] *Employee incentive schemes: Listed bodies* to an AIM-listed Australian incorporated company

45 We extended the relief in [CO 14/1000] to an AIM-listed Australian incorporated company despite AIM not being an 'eligible foreign market' under the class order.

46 We granted relief on the basis of the company's individual circumstances. We were satisfied that there was robust trading in the company's shares. We were also satisfied that:

- the continuous disclosure and governance practices and policies of the company strongly resembled those of an ASX-listed company, which meant that information about the valuation of the shares was readily available to the employees; and
- the objective of the company's employee incentive scheme was not fundraising but the promotion of interdependence between the employer and its employees.

47 We will not consider this to be the case for all AIM-listed entities as we do not consider that AIM meets the criteria of an approved foreign market in Regulatory Guide 49 *Employee incentive schemes* (RG 49) at RG 49.21.

Extension of relief in Class Order [CO 14/1001] *Employee incentive schemes: Unlisted bodies* to offers exceeding $5,000 per participant per year

48 We extended the relief in [CO 14/1001] to allow an unlisted company to make a small number of offers under its employee incentive scheme that would exceed $5,000 in value per participant per year.

49 We granted relief because we were satisfied that there was adequate disclosure and pricing information about the financial products being offered for participants to assess the value of the company's offer.

50 Specifically, the company's offer document included information that would have met the content requirements for an offer information statement contained in s715(1)(a)–(b) and (d) of the Corporations Act. In addition, the offer document was accompanied by:

- the company's most recent audited financial report; and
- a summary of an independent expert's report that contained an opinion on the value of the shares to which the financial products offered related (with the full report available on request).

51 Our relief was conditional on the aggregate value of all offers being valued at no more than $20,000 per participant per year.

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.

We did not issue any relevant publications in relation to managed investment scheme relief during the period of this report.

Scheme registration

Relief from the registration requirement for an escrow arrangement

52 We considered a request for relief from the requirement to register an escrow arrangement under s601ED of the Corporations Act.

53 The escrow arrangement was established following the acquisition of all the interests in a managed investment scheme by way of a trust scheme. Upon implementation of the trust scheme, the responsible entity and custodian of the scheme would execute a deed poll in favour of the scheme's unit holders to hold certain money in escrow for the benefit of the unit holders—that is:

- the remaining balance of certain sale proceeds received from a disposal of a property asset of the scheme; and
- an amount set aside by the responsible entity to meet outstanding expenses of the scheme.

54 The responsible entity of the scheme applied for relief on the basis that the escrow arrangement may constitute a managed investment scheme. We considered that the arrangement did not satisfy the definition of a managed investment scheme under s9 of the Corporations Act as the arrangement did not give rise to any benefits to unit holders. Therefore, we considered relief to be unnecessary. The application was ultimately withdrawn.

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.

We also outline the publications we issued during the period of this report that relate to mergers and acquisitions relief.

Relevant interests

Relief to facilitate escrow arrangements for a company seeking to list on AIM

55 We granted conditional relief modifying s609 of the Corporations Act to a company seeking to list on AIM. The company's nominated adviser for the purposes of the AIM Rules for Companies (AIM Rules) was also granted the same relief. We granted this relief under s655A(1).

56 In order to be listed on AIM, the company was required by the AIM Rules to escrow the shareholdings of certain shareholders. The modification to s609 ensured that the company, and its nominated adviser, did not acquire a relevant interest in over 20% of the company's shares by virtue of the escrow.

57 The relief was subject to a number of conditions, including that the company undertook to publish a copy of the relief instrument and the escrow deeds on its website.

58 We granted relief because it was consistent with:

- the relief provided in Class Order [CO 13/520] *Relevant interests, voting power and exceptions to the general prohibition* for companies listing on Australia's prescribed financial markets; and
- the policy contained in Regulatory Guide 5 *Relevant interests and substantial holding notices* (RG 5).

Relief to facilitate a sale facility in relation to a demerger

59 We granted relief in relation to a sale facility proposed under a demerger based on the relief in Class Order [CO 08/10] *Share and interest sale facilities*.

60 Under [CO 08/10], the terms of a sale facility must provide that each participating holder be paid their proportion of the proceeds of sale as soon as practicable and, in any event, within eight weeks after the date on which

the issuer received the participating holder's election to participate in the facility.

61 In granting the relief in this case, we modified this eight-week period so that it commenced from the first date that the securities in the new demerged company commenced trading. We provided this relief as we were satisfied that the underlying policy for this time period—for participating holders to receive their consideration within a reasonable time—would be upheld by allowing the commencement of this period to be from a single date.

Lodgement of notices under s205G

62 We made an order under s205G(6) of the Corporations Act relieving two directors of a listed public company from the obligation to notify ASX of certain relevant interests.

63 Regulatory Guide 193 *Notification of directors' interests in securities—Listed companies* (RG 193) states that ASIC has rarely made these orders.

64 The relief was required because the company had a relevant interest in employee shares which were subject to disposal restrictions under an employee incentive scheme. Both directors held over 20% of the voting power in the company and, as a result, they were deemed to have a relevant interest in those shares through the operation of s608(3) of the Corporations Act.

65 We granted relief from the requirement to lodge notices with ASX under s205G because:

- the notices were relatively frequent as a result of small parcels of employee shares vesting and becoming free of disposal restrictions at different times. The notices may have suggested to the market that the directors were disposing of relevant interests other than those deemed through the operation of s608(3) and the terms of the employee incentive scheme, which was not the case;
- the employee shares were not beneficially held by the directors or their associates. The order did not extend to notification of a disposal in a relevant interest in any shares which the directors themselves may have acquired under the employee incentive scheme; and
- the directors had no effective control over the employee shares or when they would vest and become free from disposal restrictions.

66 In these circumstances, we did not consider that disclosure by way of s205G notices would assist in achieving the objectives of increasing transparency of directors' transactions, or providing an indication of the directors' confidence in the company, consistent with our policy in Table 1 of RG 193.

67 The relief we granted in relation to the relevant interests was limited to s205G to ensure that other provisions of the Corporations Act would continue to apply (e.g. the requirement to lodge substantial holding notices).

Takeover bids

Consent for early dispatch of replacement bidder's statement

68 We provided consent under Class Order [CO 13/528] *Changes to a bidder's statement between lodgement and dispatch* for early dispatch of a replacement bidder's statement (replacement statement).

69 [CO 13/528] allows a bidder to dispatch a replacement statement incorporating the substantive information in both the original bidder's statement and each subsequent supplementary bidder's statement. ASIC has granted this relief because, in many cases, it will be preferable for a holder to receive a single replacement statement when the original bidder's statement has been amended before dispatch.

70 We sought amended disclosure from the bidder due to a number of concerns we had with the bidder's statement, including that:

- an acceptance of the offer was combined with an immediate appointment of the bidder (whether or not the offer had become unconditional) as agent and attorney on the member's behalf to exercise all the member's powers and rights in relation to their securities for the purpose of attending a meeting and voting in favour of certain resolutions; and
- the implied value that the bidder ascribed to the offer consideration was based on the bidder's all-time highest closing price, which occurred the day before the bidder's statement was lodged and which was a few cents higher than the closing prices of the preceding days.

71 Due to these and other amendments which were requested by either ASIC or the target, as well as the fact that we were concerned that providing a supplementary bidder's statement to security holders would result in confusion, we provided consent under [CO 13/528] to shorten the time between lodgement and dispatch of the bidder's replacement statement.

Other relief

Buy-back relief

72 We granted conditional relief to a listed investment company from the requirement in s257D of the Corporations Act to conduct a selective buy-back as an equal access scheme in circumstances where the buy-back involved a tender invitation process.

73 We have granted similar relief in the past—however, in this case, the buy-back price was determined by reference to net tangible asset (NTA) backing per share 20 days after the close of the tender period. A significant percentage of shares were also able to be bought back without the benefit of an independent expert's report.

74 We granted relief on the basis that further disclosure was made in the notice of meeting sent to shareholders about the risks of determining the buy-back price in this manner. However, we considered that, given the nature of the listed investment company, shareholders had enough information available to them to assess the value of their share, based on the NTA.

75 We also considered that the commercial benefits of relief outweighed the regulatory detriment because the purpose of the buy-back was to allow shareholders to realise the value of the shares at a price equivalent to NTA (less costs) in circumstances where the company's shares had been trading at a significant discount to NTA for several years.

Publications

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

Consultation papers

CP 228 *Collective action by investors: Update to RG 128*

77 CP 228 sought feedback from institutional investors, companies, listed managed investment schemes and other interested parties on our proposal to update our guidance in Regulatory Guide 128 *Collective action by institutional investors* (RG 128).

78 We also consulted on our proposal to discontinue the relief in Class Order [CO 00/455] *Collective action by institutional investors*.

79 Submissions on CP 228 closed on 20 April 2015. We released Report 438 *Response to submissions on CP 228 Collective action by investors: Update to RG 128* (REP 438) and the updated RG 128 on 23 June 2015.

E Conduct relief

Key points

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

We also outline the publications we issued during the period of this report that relate to this area.

ASIC's power to appoint an auditor to a public company

Appointment of an auditor to a listed public company following notification of the failure to replace the auditor

80 We appointed an auditor to a listed public company under s327E of the Corporations Act after the company had removed the auditor at the annual general meeting (AGM) and failed to pass a resolution to replace that auditor.

81 Our power to appoint an auditor to a public company can be triggered by the public company providing us with written notice under s327E(2) of its failure to appoint a new auditor. After receiving notification from the company, we must appoint an auditor of the company as soon as practicable: s327E(3).

82 Our decision to appoint an auditor to a public company will involve the consideration of potential conflicts of interest. In this instance, the company suggested that we appoint the auditor that shareholders had previously voted down on a resolution at the company's AGM. We decided against the appointment of this auditor on the basis that doing so would undermine the decision made by the shareholder vote.

83 The auditor that we seek to appoint to a public company under s327E must provide us with its consent to the appointment: s327G(1).

Publications

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

Legislative instruments

ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251

85 We reviewed the relief underlying our policy on insolvent or financially distressed companies and registered schemes, and updated the policy in Regulatory Guide 174 *Relief for externally administered companies and registered schemes being wound up* (RG 174): see paragraphs 89– 92.

86 We replaced Class Order [CO 03/392] *Externally administered companies: Financial reporting relief* with ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251. This instrument provides relief from the financial reporting obligations in Pt 2M.3 of the Corporations Act to externally administered companies and insolvent registered schemes that are being wound up. It also exempts public companies that have a liquidator appointed from the obligation to hold an AGM.

87 This instrument also provides relief to companies that have a liquidator appointed and a cancelled AFS licence from the AFS licensee reporting obligations under Subdiv C of Div 6 of Pt 7.8 of the Corporations Act.

88 The instrument requires those in charge of the winding-up to periodically report to members and creditors by making certain information available. In addition, it ensures that members of externally administered companies and registered managed investment schemes being wound up can obtain information by requiring the external administrator of the company or person having responsibility for winding up the scheme to have arrangements in place to answer, without charge, any reasonable question asked by a member.

Regulatory guides

RG 174 *Relief for externally administered companies and registered schemes being wound up*

89 RG 174 is a guide for externally administered companies and registered managed investment schemes that are being wound up. We updated it to:

- ensure that affected members and creditors of registered managed investment schemes are kept informed; and
- reflect the new legislative instrument that provides companies that have a liquidator appointed with an exemption from financial reporting obligations and, if the company is also a public company, with AGM relief in certain circumstances.

90 This guidance assists:

- externally administered companies and external administrators to understand when we will grant relief from the financial reporting obligations in Pt 2M.3 of the Corporations Act;
- externally administered public companies to understand when we will grant relief from the AGM obligations;
- responsible entities or other persons who have responsibility for winding up a registered scheme to understand when we will grant relief from the financial reporting and compliance plan audit obligations; and
- externally administered companies (including responsible entities) that are or have been AFS licensees to understand when we will grant relief from any of the AFS licensee financial reporting obligations.

91 We also replaced [CO 03/392] with ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251: see paragraphs 85– 88.

92 The release of the updated RG 174 follows the issue of Consultation Paper 223 *Relief for externally administered companies and registered schemes being wound up—RG 174 update* (CP 223) in October 2014 and our report on submissions: see paragraphs 93– 95.

Reports

REP 434 *Response to submissions on CP 223 Relief for externally administered companies and registered schemes being wound up—RG 174 update*

93 REP 434 highlights the key issues that arose out of the submissions received on CP 223 and details our responses in relation to those issues.

94 CP 223 set out our proposals for updating RG 174 and revising our class order relief currently in [CO 03/392].

95 Feedback received on CP 223 helped us finalise our guidance, which is published in the updated RG 174 (see paragraphs 89–92), and the related legislative instrument (see paragraphs 85–88).

F Credit relief

Key points

This section outlines some of our regulatory action in relation to applications for relief under the National Credit Act.

We also describe the relevant guidance we issued on credit relief during the period of this report.

Licensing relief

Limited relief from the requirement for sub-authorised credit representatives to maintain their own external dispute resolution scheme memberships

96 We provided limited relief to a corporate credit representative by removing the requirement for individuals that it sub-authorises to have their own membership with an ASIC-approved external dispute resolution (EDR) scheme.

97 The relief we granted was limited to circumstances in which the sub-authorised individuals were employed by a related body corporate of the corporate credit representative, and were not themselves credit licensees or credit representatives of anyone other than the specified licensee. The relief was also limited to circumstances where the licensee and the corporate credit representative were each members of an ASIC-approved EDR scheme.

98 The relief was given for a limited period to enable transition to a new corporate and licensing structure, under which the sub-authorised individuals would be able to engage in credit activities in the capacity of employees of a credit licensee.

99 This relief reduced compliance burdens by removing the need for individual EDR scheme membership. We were satisfied that any regulatory detriment resulting from granting relief was outweighed by the commercial benefit in circumstances where customers continue to have access to EDR schemes of both the licensee and the body corporate authorised representative.

100 We also considered that the relief would only operate for a relatively short period of time, after which such individual membership would no longer be required due to the structural changes in the corporate and licensing structure of this business.

101 This relief was originally set to expire on the earlier of 30 August 2015 and the date on which any Australian credit licence obtained by the applicant

became effective. We have since issued an amending instrument to extend this relief to apply until 31 March 2016. This extension was given because of changes to the future corporate and licensing structure for this business, and to allow sufficient time to implement the new structure. We based our decision to extend the relief on the same considerations as for the original relief.

Publications

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

Legislative instruments

Superseded Class Order [SCO 15/130] *Amendment of Class Order [CO 14/41]*

103 [SCO 15/130] amends and extends for a further 12 months the relief given by Class Order [CO 14/41] *Extension of transitional credit hardship provisions* (which extended the transitional exemptions in regs 69A and 69B of the National Consumer Credit Protection Regulations 2010).

104 Regulations 69A and 69B were introduced to minimise the administrative burden on industry as a result of the amendment to the National Credit Act, including the National Credit Code, by the *Consumer Credit Legislation Amendment (Enhancements) Act 2012* (Credit Enhancement Act), which introduced a number of reforms to the regulation of hardship variations.

105 Where a consumer is experiencing financial difficulties in repaying their loan, a consumer may ask their credit provider to vary or change their loan repayments under the hardship provisions of the National Credit Act. The Credit Enhancement Act introduced changes to the pre-existing hardship application processes, with the relevant provisions in effect from 1 March 2013. This had the effect of creating two hardship systems because contracts that were entered into before 1 March 2013 remained subject to the pre-existing hardship variation provisions.

106 The transitional exemptions in regs 69A and 69B were originally extended by [CO 14/41] to allow ASIC time to consult with stakeholders to develop a recommendation to Treasury regarding what obligations credit providers and lessors should have in recording any contractual changes and providing written notice to debtors and lessors where the parties come to an agreement for a simple arrangement.

107 A key issue that emerged during our stakeholder consultation was the need for regulatory guidance from us on what constitutes a hardship notice in the new hardship process (in s72 of the National Credit Code). Stakeholders agreed that this guidance should be settled before we finalise our

recommendation to Treasury regarding simple arrangements. This is because providing clarity on the meaning of s72 of the National Credit Code would also deal in part with the administrative issues currently the subject of the transitional exemptions.

108 We extended the exemption in order to:

- settle our guidance for industry relating to s72 of the National Credit Code and provide our recommendation to Treasury regarding the transitional exemptions;
- allow Treasury to consider our recommendations and reform the law if and how it considers appropriate; and
- allow credit providers and lessors to update their systems in accordance with any amendments made.

Reports

REP 426 *Payday lenders and the new small amount lending provisions*

109 REP 426 sets out the findings of a review we undertook in relation to the payday lending industry and its response to the additional protections for vulnerable consumers contained in the small amount lending provisions of the Credit Enhancement Act.

110 We obtained and reviewed the policies and procedures of 13 payday lenders who we estimate are responsible for more than three-quarters of payday loans made to Australian consumers. We reviewed 288 individual files from those lenders to assess how lenders were complying with their obligations under the Credit Enhancement Act, and more generally with their responsible lending and disclosure obligations.

111 While our review found that compliance with some of the requirements was working, we also found that payday lenders are falling short in meeting important new obligations introduced as part of the small amount lending reforms in 2013.

112 Our review found particular compliance risks around the tests for loan suitability, which must be considered when the consumer has multiple other payday loans or is in default under a payday loan. The report also found systemic weaknesses in documentation and record keeping, including in relation to inquiries about the consumer's objectives and needs.

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.

We also outline further publications that we issued during the period of this report.

Relief from pre-trade transparency requirements

ASX Centre Point 'Any Price Block' order waiver

113 We granted relief to ASX Limited, by way of waiver instrument, from the obligation to comply with the provisions under sub-rule 5.1.6(1) of the ASIC Market Integrity Rules (Competition in Exchange Markets) 2011 to the extent that these provisions require ASX to disclose, on a 20-minute delayed basis, on the ASX public website:

- bid and offer prices in its 'Any Price Block' order type for its Centre Point order book (its non-pre-trade transparent, or 'dark', order book); and
- high, low, last transaction prices resulting from its 'Any Price Block' order type that executes in Centre Point under the block trade exception in rule 4.2.1 (rather than the trade with price improvement exception in rule 4.2.3).

114 In April 2015, ASX Limited introduced a new order type to its Centre Point order book—the 'Any Price Block' order, designed to facilitate additional demand in the market for block-size orders. This new order type enables execution pricing to occur at or outside the national best bid and offer (NBBO) for these block-sized Centre Point orders.

115 We granted relief on the basis that Centre Point 'Any Price Block' orders should not be included in the trading information under Rule 5.1.6 because these obligations are meant to reflect transactions that have arisen from orders that are pre-trade transparent on ASX's central limit order book, and are not intended to create additional obligations for disclosure regarding dark orders on its Centre Point order book, which by their nature are not pre-trade transparent.

No-action letters

Refusal of no-action letter in relation to the client money provisions

116 We refused to grant a no-action letter in relation to the client money provisions under Divs 2 and 3 of Pt 7.8 of the Corporations Act and Rule 2.2.6 of the Market Integrity Rules (ASX 24 Market) 2010. The applicant sought the relief to the extent that these obligations apply to its global futures business operated by the applicant's offshore branches.

117 The application was made after the Markets and Participants Supervision team raised concerns with the applicant about how client money was being dealt with.

118 Our reasons for refusing to grant the no-action letter included:

- the fundamental importance of the client money and property protections which should not be removed lightly;
- our concerns with the applicant's ability to comply with its overseas client money obligations;
- that the administrative burden to ensure compliance with Australian client money obligations (including where respective rules within the different jurisdictions may conflict) should not outweigh the regulatory benefits of the Australian client money obligations;
- that the relevant client money provisions in the Corporations Act were not intended to operate only for client money received in Australia;
- that since class orders were made providing relief to foreign financial service providers for sufficiently equivalent jurisdictions, including the applicant's offshore branches, differences between the Australian client money obligations and the client money obligations in those jurisdictions have developed; and
- that other entities with a similar business model (i.e. one legal entity conducting the business) are currently able to comply with the provisions.

Extension of no-action position regarding s791A

119 We granted extensions of no-action letters to seven swap execution facilities (SEFs) whose related entities have a presence in Australia. These entities were granted extensions of ASIC's no-action position in relation to s791A of the Corporations Act to allow them to operate a market in Australia.

120 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 facilitates to US persons the execution of swaps through a multiple-to-multiple trading mechanism must register as an SEF and comply with the principles set out in the SEF'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 SEFs with the US Commodity Futures Trading Commission (CFTC) to offer US persons the ability to trade in those swaps.

121 Some of the platforms currently operating in Australia under an Australian market licence, or an exemption, sought to continue to provide their Australian users with the ability to transact with US persons through their SEFs.

122 Six SEFs were initially granted no-action letters from 2 October 2013 to 2 April 2014. This relief was extended from 2 April to 2 October 2014, and then again from 2 October 2014 to 2 April 2015. We granted a further extension to these facilities from 2 April 2015 to 2 April 2016.

123 A seventh SEF was granted its first no-action relief from 29 October 2014 to 29 April 2015. This SEF was granted its first extension from 29 April 2015 to 29 April 2016.

124 We granted extensions to these no-action letters because:

- our policy position on the treatment of SEFs had not been finalised as Treasury's licensing review had not been settled. Treasury has not, at this stage, finalised its policy in relation to SEFs 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 the over-the-counter (OTC) derivatives markets); and
- we consulted with Treasury about extending the no-action position for a further 12 months, and Treasury did not object to our approach.

Refusal of no-action letter in relation to disallowed FOFA regulations

125 We refused to provide a no-action letter to an applicant regarding the disallowance of the modified versions of regs 7.6.02AB, 7.6.02AC, 7.6.02AD and 7.6.02AE of the Corporations Regulations 2001 (Corporations Regulations). These modifications came into effect on 1 July 2014 but were later disallowed on 19 November 2014.

126 Before they were disallowed, the effect of the modified regulations was to amend the test for determining whether a client is a retail client or a wholesale client for the purposes of Pt 7.7A of the Corporations Act, known as the Future of Financial Advice (FOFA) reforms. This aligned the Pt 7.7A

definition of 'wholesale client' with the definition applicable to Pts 7.6, 7.7, 7.8 and 7.9 of the Act.

127 The applicant, who has a private wealth management business in Australia catering for high net worth wholesale clients, submitted that the disallowance of the modified regulations left it unsure whether some of its clients would be classified as retail clients for the purposes of Pt 7.7A. The applicant further submitted that ascertaining the current status of its clients for the purposes of Pt 7.7A would be an overly cumbersome process.

128 The applicant requested a no-action letter to the effect that we would not take action against it for potentially treating retail clients as wholesale clients, following the disallowance of the modified regulations.

129 We considered that providing a no-action letter would be inconsistent with Parliamentary intent that was current at the time. We have also taken a facilitative approach to FOFA that is aimed at encouraging compliance with the legislation. As the law stood, we considered it important for the applicant to acknowledge the risk that some of its clients may be entitled to retail client protections.

130 It should be noted that, as of 1 July 2015, the modified regulations have again been brought into effect.

Short-selling relief

Refusal of relief in relation to the short-selling provisions

131 We refused to grant relief to a number of applicants from the short-selling provisions in s1020B of the Corporations Act. One applicant sought an exemption from s1020B. The other applicants sought a no-action letter in relation to s1020B.

132 We refused to grant relief for a number of reasons, including that:

- the applications were received on extremely short notice and, in the time allowed, it was not possible to determine whether any unintended consequences might flow from the grant of relief;
- certain investors may have arranged their affairs with an understanding of how the short-selling provisions would operate and assuming no relief had been granted;
- granting relief may have exacerbated arbitrage opportunities and distorted the market;
- there may potentially be:

- transparency issues associated with the applicants' plans to make short sales only to their clients and not on the lit market;
- index rebalancing issues if relief was granted; and
- a risk that the market could be affected by a loss of liquidity.

Publications

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

Legislative instruments

ASIC Corporations (Amendment No. 1) Instrument 2015/238

134 This instrument amends Class Order [CO 14/1262] *Relief for 31 day notice term deposits* to ensure that the definition of 'basic deposit product', modified by [CO 14/1262], has effect for the purpose of the financial advisers register.

135 [CO 14/1262] notionally modifies the definition in the Corporations Act of a 'basic deposit product'. The effect is that 31-day notice term deposits of up to five years are basic deposit products for the purposes of Pts 7.6 (other than Divs 4 and 8), 7.7 and 7.9 of the Corporations Act. [CO 14/1262] does not have effect for the purposes of Pt 7.7A of the Corporations Act: see paragraphs 157–161 of Report 435 *Overview of decisions on relief applications (October 2014 to January 2015)* (REP 435).

136 The Corporations Amendment (Register of Relevant Providers) Regulation 2015 introduced the regulatory framework for the financial advisers register. The financial advisers register will keep a list of individuals that are authorised to provide personal advice on 'relevant financial products'. These individuals are generally perceived by consumers as financial advisers.

137 Those who provide general advice only or personal advice only on simpler products (e.g. motor vehicle insurance or basic deposit products) are not required to be listed on the financial advisers register. These individuals (e.g. bank counter staff and insurance call centre staff) are not generally perceived by consumers as financial advisers.

138 Section 922C of the Corporations Act—which is inserted by the Corporations Amendment (Register of Relevant Providers) Regulation 2015—defines 'relevant financial product' to mean all financial products except for those specified in the definition. A 'basic banking product' is one such specified exception. 'Basic banking product' has the meaning given by s961F of the Corporations Act, which forms part of Pt 7.7A of the Act. The definition of 'basic banking product' includes a 'basic deposit product'.

139 Despite the amending regulations being made for the purposes of Pt 7.6 of the Corporations Act, there is doubt about whether the modified definition of 'basic deposit product' made by [CO 14/1262] would have effect for the purposes of the financial advisers register.

140 In other words, there is doubt about whether an individual who is authorised to provide personal advice on a 31-day notice term deposit of up to five years would still need to be included on the financial advisers register. This is because that kind of product might not be considered to be a 'basic banking product' for the purposes of the amending regulations, even though it would be a 'basic deposit product' for the purposes of Pt 7.6.

141 The amendment will have the effect that only individuals authorised to give personal advice on more complex products (rather than only simpler products) are included on the financial advisers register.

ASIC Superannuation (Amendment No. 1) Instrument 2015/333 (superseded)

142 To promote systemic transparency, s29QB of the Corporations Act requires the publication, on the public section of the registrable superannuation entity's (RSE) website, of information and documents prescribed in regs 2.37 and 2.38 of the Superannuation Industry (Supervision) Regulations 1994 (SIS Regulations).

143 Class Order [CO 14/509] *Keeping RSEs' superannuation websites up to date*, among other things, deferred the start date until 1 July 2015 for certain disclosures required under s29QB(1) of the Corporations Act for standard employer-sponsored sub-plans.

144 The superseded ASIC Superannuation (Amendment No. 1) Instrument 2015/333 amends [CO 14/509] to further defer the start date until 1 July 2016. This means that, for standard employer-sponsored sub-plans, RSE documents—such as Product Disclosure Statements, trust deeds and governing rules, actuarial reports of defined benefit funds, annual reports and summaries of significant event notices—do not have to be published on the RSE's website until 1 July 2016, or may be redacted if the document relates to both the sub-plan and the RSE more generally.

145 This deferral is intended to allow time for more consultation in relation to RSE documents that contain potentially sensitive information about standard employer-sponsored sub-plans.

146 As a result of feedback received from industry, we understand that most issues regarding commercially sensitive information relate to sub-plans as defined in [CO 14/509]. There is no intention to extend the scope of this deferral to other documents or information required by regs 2.37 and 2.38 of the SIS Regulations.

ASIC Corporations (Amendment No. 2) Instrument 2015/338 (superseded)

147 This instrument amends Class Order [CO 13/1534] *Deferral of Stronger Super amendments in relation to PDS and periodic statement disclosure* and Class Order [CO 14/443] *Deferral of choice product dashboard and portfolio holdings disclosure regimes*.

148 The Superannuation Legislation Amendment (MySuper Measures) Regulation 2013 introduced reg 7.9.20(1)(o) of the Corporations Regulations which requires that superannuation product dashboards must be included as part of a periodic statement if the trustee is required to make publicly available a product dashboard for the investment option under s1017BA of the Corporations Act.

149 [CO 13/1534] provides, among other things, interim relief from reg 7.9.20(1)(o) so that it applies only to periodic statements with a reporting period ending before 1 July 2015.

150 The superseded ASIC Corporations (Amendment No. 2) Instrument 2015/338 extends the exemption from reg 7.9.20(1)(o) in [CO 13/1534] for a further 12 months so that it now applies to periodic statements with a reporting period ending before 1 July 2016. The purpose of extending the interim relief is to enable further consideration of how best to clarify obligations relating to product dashboards. To this end, we consulted with Treasury, which had no objection to this extension.

151 The *Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012* amended the Corporations Act, including by requiring trustees of certain superannuation funds to:

- publish on the fund's website a product dashboard which provides summary information for consumers about the fund's MySuper and choice products; and
- publish full portfolio holdings for the fund on the fund's website twice annually.

152 Under [CO 14/443], we extended the original start date for the commencement of the product dashboard provisions for choice products to 1 July 2015 and the first reporting day for the portfolio holdings disclosure provisions to 31 December 2015.

153 The superseded ASIC Corporations (Amendment No. 2) Instrument 2015/338 defers the commencement of the product dashboard provisions for choice products to 1 July 2016 and defers the first reporting day for the portfolio holdings disclosure provisions to 31 December 2016.

154 In relation to the portfolio holdings disclosure requirements, the obligations of an intermediary to provide a notification that an asset invested is an asset

of a superannuation fund, or is indirectly derived from an asset of a superannuation fund, do not have to be complied with until 1 July 2016. Further, an intermediary who receives a notification of this kind does not have to provide the investment information to the trustee of the superannuation fund until on or after the first reporting day of 31 December 2016.

155 The purposes of these deferrals are as follows:

- to allow further time for the regulations relating to both requirements to be made;
- to provide industry with a reasonable period to prepare for the detailed presentation and content requirements relating to the above requirements; and
- to reduce the administrative burden on industry, including other parties who may be supplying information to trustees for the purposes of disclosing portfolio holdings under s1017BB of the Corporations Act.

ASIC Corporations (Amendment No. 3) Instrument 2015/349 (superseded)

156 This instrument amends Class Order [CO 10/630] *Long-term superannuation returns* to provide relief from the operation of the current long-term superannuation performance reporting requirements that are proposed to be refined by amending regulations.

157 Regulation 7.9.20AA of the Corporations Regulations requires regulated superannuation funds (other than self-managed superannuation funds) to disclose long-term performance returns to assist members to understand the long-term performance of their superannuation.

158 On 19 February 2010, following discussions with the superannuation industry, the then Minister for Financial Services, Superannuation and Corporate Law announced refinement proposals to the long-term performance reporting regime. This aligns with the current Government's de-regulation agenda.

159 Under the proposals:

- exit statements would be excluded from the regime;
- industry would be permitted to use inserts to provide five-year performance information until 30 June 2011;
- 'traditional' funds of an insurance nature would be exempted from the regime; and
- approved deposit funds and pooled superannuation trusts would be permitted to provide annual reports online.

160 [CO 10/630] provides relief from the operation of the current long-term performance reporting regime that is proposed to be refined by implementing the refinements pending the making of amending regulations. This assists industry by providing greater certainty about their compliance obligations.

161 The amending instrument extends the maximum period of the operation of the principal class order to 31 December 2015 to allow additional time for the proposed amending regulations to be made to implement the refinements.

162 Before making the amending instrument, ASIC consulted with Treasury, but did not consult publicly with industry. The amendment made by the amending instrument is a transitional measure of a minor or machinery nature.

ASIC Superannuation (Amendment) Instrument 2015/396 (superseded)

163 The purpose of this instrument (superseded) is to extend the exemption for RSE licensees in Class Order [CO 14/541] *RSE licensee s29QC SIS Act disclosure exemption* from the disclosure requirement in s29QC(1) of the SIS Act until 1 January 2016.

164 The requirement under s29QC(1) for RSE licensees to provide consistent information commenced on 1 July 2013. However, [CO 14/541] provided an exemption for RSE licensees from compliance with the requirement in s29QC(1) until 1 July 2015.

165 The exemption in [CO 14/541] was granted because we considered that further time was required to consult with industry on the application of s29QC(1) to ensure that disclosure requirements appropriately aligned with the Australian Prudential Regulation Authority's (APRA) reporting standards.

166 In December 2014, we released Consultation Paper 227 *Disclosure and reporting requirements for superannuation trustees: s29QC* (CP 227). In CP 227, we sought feedback on options proposed for dealing with the uncertainty about how to achieve consistency between the disclosure requirements under s29QC(1) and the data that is required to be reported under APRA's reporting standards.

167 On 28 April 2015, APRA released amended superannuation reporting standards for industry consultation. These reporting standards are expected to take effect from 1 January 2016.

168 In these circumstances, we consider that a further deferral of s29QC(1) is appropriate to provide industry with additional time to consider and respond to APRA's revised reporting standards, particularly in relation to performance related information.

169 In addition, industry will have further time to consider our guidance and any amendments made in relation to the disclosure requirement in s29QC(1).

Consultation papers

CP 229 *Repealing redundant ASIC class orders*

170 CP 229 sets out ASIC's proposal to repeal class orders that we consider are no longer required and do not form a necessary and useful part of the legislative framework.

171 Under the *Legislative Instruments Act 2003* (Legislative Instruments Act), these class orders will expire (or 'sunset') if not remade. We sought feedback on our proposals to repeal these class orders

172 Submissions on CP 229 closed on 17 June 2015. We have reported on the submissions to CP 229 in Media Release (15-257MR) *ASIC repeals redundant class orders*.

CP 230 *Remaking ASIC class orders on banking and insurance*

173 CP 230 sets out ASIC's proposals to remake three class orders on banking and insurance into ASIC instruments. Under the Legislative Instruments Act, these class orders will expire if not remade.

174 We are seeking feedback from the banking and insurance sectors on our proposals to remake, without significant changes, the following class orders:

- Class Order [CO 04/909] *Agency banking*, which is due to expire on 1 October 2017;
- Class Order [CO 05/681] *Transitional relief for deposit product providers—PDSs and periodic statements*, which is due to expire on 1 October 2015; and
- Class Order [CO 05/1070] *General insurance distributors*, which is due to expire on 1 April 2016.

175 We are also seeking feedback on our proposal to repeal the following class order that we consider is no longer required:

- Class Order [CO 06/623] *Relief for certain general insurers from s981B account requirements*, which is due to expire on 1 October 2016.

176 Submissions on CP 230 closed on 7 July 2015. We have reported on the submissions to CP 230 in Media Release (15-196MR) *ASIC remakes three 'sunsetting' banking and insurance class orders*.

CP 231 *Mandatory central clearing of OTC interest rate derivative transactions*

177 CP 231 seeks feedback on our proposals to implement mandatory central clearing under Pt 7.5A of the Corporations Act.

178 In September 2009, the Leaders of the Group of Twenty (G20) nations, including Australia, committed to reforming OTC derivatives markets. One of the key commitments made was to require the clearing of all standardised OTC derivative transactions through a central counterparty. These reforms are expected to improve transparency, mitigate systemic risk and protect against market abuse in OTC derivatives markets.

179 On 3 January 2013, legislation came into effect that inserted a new Pt 7.5A in the Corporations Act, providing a legislative framework to implement these G20 commitments in Australia

180 The draft ASIC Derivative Transaction Rules (Clearing) 2015, attached to CP 231, set out our proposed requirements for the mandatory central clearing of certain OTC interest rate derivative transactions through licensed or prescribed clearing and settlement facilities.

181 Submissions on CP 231 closed on 10 July 2015. A report on our response to submissions has not been released at the date of this report.

Regulatory guides

RG 100 *Enforceable undertakings*

182 RG 100 explains our approach to accepting undertakings under s93A and 93AA of the *Australian Securities and Investments Commission Act 2001* (ASIC Act).

183 We updated RG 100 to include guidance on independent experts and publicity for enforceable undertakings, and make a number of minor technical changes.

RG 214 *Guidance on ASIC market integrity rules for ASX and ASX 24 markets*

184 RG 214 is a guide for participants of the ASX and ASX 24 (formerly the Sydney Futures Exchange) markets. It explains how market participants can comply with their obligations under the ASIC market integrity rules for these markets.

185 We updated RG 214 to reflect the repeal of a number of obligations under the ASIC market integrity rules which applied (variously) across markets operated by ASX, Chi-X, APX, NSXA and SIM VSE to reduce the compliance burden on market participants.

186 The changes remove rules that:

- require certain market participants to notify ASIC of the details of their professional indemnity insurance;
- require certain market participants to obtain ASIC's consent before sharing business connections; and
- restrict certain transactions such as special crossings during takeovers, schemes of arrangement and buy-backs.

187 We made these changes following consultation with market participants and investors: see paragraphs 201–203.

RG 215 *Guidance on ASIC market integrity rules for IMB, NSXA and SIM VSE markets*

188 RG 215 is a guide for market participants of the IMB, National Stock Exchange of Australia (NSXA) and SIM Venture Securities Exchange (SIM VSE) (formerly Bendigo Stock Exchange) markets. It explains how market participants can comply with their obligations under the ASIC market integrity rules for these markets.

189 RG 215 has been updated to reflect the repeal of a number of obligations under the ASIC market integrity rules which applied (variously) across markets operated by ASX, Chi-X, APX, NSXA and SIM VSE to reduce the compliance burden on market participants. We made these changes following consultation with market participants and investors: see paragraphs 201–203.

RG 223 *Guidance on ASIC market integrity rules for competition in exchange markets*

RG 223 is a guide for market operators and participants of markets and crossing systems that are subject to the ASIC Market Integrity Rules (Competition in Exchange Markets) 2011. It explains how market operators and market participants can comply with their obligations under the competition market integrity rules.

190 RG 223 has been updated to reflect the repeal of a number of obligations under the ASIC market integrity rules which applied (variously) across markets operated by ASX, Chi-X, APX, NSXA and SIM VSE to reduce the compliance burden on market participants. We made these changes following consultation with market participants and investors: see paragraphs 201–203.

RG 224 *Guidance on ASIC market integrity rules for Chi-X and APX markets*

191 RG 224 is a guide for participants of the markets operated by Chi-X Australia Pty Ltd (Chi-X) and Asia Pacific Exchange Limited (APX). It

explains how market participants can comply with their obligations under the ASIC market integrity rules for Chi-X and APX.

192 RG 224 has been updated to reflect the repeal of a number of obligations under the ASIC market integrity rules which applied (variously) across markets operated by ASX, Chi-X, APX, NSXA and SIM VSE to reduce the compliance burden on market participants. We made these changes following consultation with market participants and investors: see paragraphs 201–203.

RG 249 *Derivative trade repositories*

193 RG 249 explains:

- when an Australian derivative trade repository (ADTR) licence is required and how to apply for one;
- the information that should be submitted with an application for an ADTR licence; and
- the obligations of an ADTR licensee.

194 We amended RG 249 to clarify what information needs to be provided for each director, secretary and member of the senior management team of the applicant and holding company of the applicant in an application for an ADTR licence.

RG 251 *Derivative transaction reporting*

195 RG 251 is a guide for reporting entities that are subject to the reporting obligations under the ASIC Derivative Transaction Rules (Reporting) 2013. It explains the derivative transaction reporting regulatory regime, and gives guidance on particular areas where we consider reporting entities would benefit from guidance to assist them to understand how to comply with the reporting obligations.

196 We amended RG 251 to take account of amendments made to the ASIC Derivative Transaction Rules (Reporting) 2013 by ASIC Derivative Transaction Rules (Reporting) Amendment 2015 (No. 1).

Reports

REP 422 *Response to submissions on CP 221 Proposed amendments to ASIC Derivative Transaction Rules (Reporting) 2013*

197 REP 422 highlights the key issues that arose out of the submissions received on Consultation Paper 221 *OTC derivatives reform: Proposed amendments to the ASIC Derivative Transaction Rules (Reporting) 2013* (CP 221) and details our responses to those issues.

198 CP 221 sought feedback on our proposals to amend the ASIC Derivative Transaction Rules (Reporting) 2013.

REP 423 *ASIC regulation of corporate finance: July to December 2014*

199 REP 423 is for companies, lawyers, corporate advisers and compliance professionals working in corporate finance. It provides greater transparency about the role that ASIC plays in the regulation of corporations in Australia.

200 REP 423 highlights and discusses key statistical information, observations and our work in the regulation and oversight of fundraising, mergers and acquisitions transactions, corporate governance and other general corporate finance areas for the period from 1 July to 31 December 2014.

REP 432 *Response to submissions on CP 222 Reducing red tape: Proposed amendments to the market integrity rules*

201 REP 432 highlights the key issues that arose out of the submissions received on Consultation Paper 222 *Reducing red tape: Proposed amendments to the market integrity rules* (CP 222) and details our responses in relation to those issues.

202 CP 222 sought feedback from market participants and investors on proposals to repeal or refine three categories of obligations under the ASIC market integrity rules for the ASX, Chi-X, APX, NSXA and SIM VSE markets.

203 Following consultation, we have repealed a number of obligations under the ASIC market integrity rules to reduce the compliance burden on market participants.

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
9–13	Australia Post Services Pty Ltd	15-0178 (A10/15)	05/03/2015	Sections 911A(2)(l) and 926A(2)(c) of the Corporations Act. Relief from the requirement to appoint persons as authorised representatives.	
18–22	Adara Advisors Pty Limited	15-0474 (A25/15)	29/05/2015	Section 926A(2)(a) of the Corporations Act. Relief for nine people from s911B(1) of the Corporations Act.	
18–22	Adara Advisors Pty Limited	ASIC Corporations (Adara Advisors) Instrument 2015/628	04/08/2015	Section 926A(2)(a) of the Corporations Act. Conditional relief for a defined class of persons (Panel Members) to provide financial services on behalf of Adara Advisors Pty Limited, acting as an authorised representative of this licensee, without also needing to be appointed as an authorised representative of another licensee on whose behalf they ordinarily provide financial services.	
40–44	MYOB Group Pty Ltd	15-0149 (A12/15)	16/03/2015	Section 741(1)(a) of the Corporations Act. Relief from s734(2) of the Corporations Act.	On the earlier of: (a) the date on which the IPO prospectus is lodged with ASIC; and (b) 31/05/2015.
45–47	Seeing Machines Limited	15-0397 (A19/15)	28/04/2015	Sections 601QA(1), 741(1), 911A(2)(l), 992B(1) and 1020F(1) of the Corporations Act. Conditional relief similar to [CO 14/1000] to facilitate offers of shares to Australian employees under an employee incentive scheme.	

Para no.	Entity name	Instrument no. (Gazette no. if applicable)	Date executed	Power exercised and nature of relief	Expiry date
48–51	Message4U Pty Ltd	15-0119 (A09/15)	23/02/2015	Sections 741(1), 926A(2), 992B(1) and 1020F(1) of the Corporations Act. Conditional relief similar to [CO 14/1001] to facilitate offers of incentive rights to participants under an employee incentive scheme.	
55–58	Ironridge Resources Ltd and SP Angel Corporate Finance LLP	15-0074 (A06/15)	29/01/2015	Sections 655A(1)(b) of the Corporations Act. Conditional relief modifying s609 of the Corporations Act so that a company and its nominated adviser did not acquire a relevant interest in the company's shares by virtue of escrow arrangements required by AIM listing rules	
59–61	BHP Billiton Limited BHP Billiton Plc	15-0230 (A12/15)	17/03/2015	Sections 601QA(1)(a), 911A(2)(l) and 1020F(1)(a) of the Corporations Act. Relief provided in relation to sale facility for demerger.	
62–67	Freelancer Limited	15-0445 (A21/15)	12/05/2015	Section 205G(6) of the Corporations Act. Relief from s205G(1) of the Corporations Act.	
96–99	GE Capital Finance JV Holdco Pty Limited*	15-0287	01/04/2015	Section 109(1)(c) of the National Credit Act.	On the earlier of: (a) 30/08/2015; or (b) the date on which any Australian credit licence obtained by GE Holdco becomes effective.
101	GE Capital Finance JV Holdco Pty Limited	15-0635	15/07/2015	This instrument varies ASIC Instrument [15-0287] by omitting paragraph 6 of that instrument and substituting: '6. This declaration ceases to apply at the end of 31 March 2016'.	31/03/16