



**ASIC**

Australian Securities & Investments Commission

## REPORT 467

# Overview of decisions on relief applications (June to September 2015)

February 2016

### 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 June 2015 to 30 September 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 June 2015 to 30 September 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 2001*)
- 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 June 2015 and ending 30 September 2015. During this period we received 634 applications. We granted relief in relation to 376 applications and refused relief in relation to 20 applications; 133 applications were withdrawn. The remaining 105 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 To ensure that applications are assessed as quickly and efficiently as possible, 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 are available from our website via [www.asic.gov.au/co](http://www.asic.gov.au/co). Individual relief

instruments are published in the *ASIC Gazette*, available via [www.asic.gov.au/gazettes](http://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](http://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](http://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 for overseas bank providing remittance service in Australia

- 9 We granted licensing and disclosure relief to an overseas bank that provides a money transfer service to Australian customers. The bank does not engage in banking business in Australia and is not regulated by the Australian Prudential Regulation Authority (APRA).
- 10 Relief was granted on the basis that the cost of full compliance with Ch 7 of the Corporations Act would be disproportionately burdensome. Full compliance would involve the bank using its name in this jurisdiction, which would require it to establish a foreign branch in Australia.
- 11 Additionally, we considered that there was a minimal risk of consumer detriment associated with relief as the money transfer service was similar to services that are not regulated under Ch 7 by virtue of reg 7.1.07G of the Corporations Regulations 2001 (Corporations Regulations).
- 12 We granted relief on the condition that information provided to consumers disclosed the risks associated with mistaken transactions.

#### Relief for the operation and promotion of time-sharing schemes for aircraft

- 13 We granted licensing, scheme registration and prospectus disclosure relief to the operator of time-sharing schemes for aircraft and its related bodies corporate for the operation and promotion of the schemes. Investors acquire interests in the schemes, which entitle them to use the aircraft for certain periods of time for personal, recreational and business purposes.

- 14 We granted relief in accordance with our policy for relief for time-sharing schemes set out in Regulatory Guide 160 *Time-sharing schemes* (RG 160). We granted relief because:
- compliance with certain requirements of Chs 5C, 6D and 7 of the Corporations Act would be disproportionately burdensome; and
  - giving relief was unlikely to result in consumer detriment because investors may not consider their investment to be in a financial product.
- 15 The conditions of our relief required that disclosure for the offer for issue or sale of interests in the schemes contain prominent warnings. We considered that this would provide basic consumer protections without imposing additional regulatory burdens.

### **Refusal of application for AFS licensing relief**

- 16 We refused relief from the requirement to hold an AFS licence to an entity that proposed to offer a mutual risk product involving discretionary cover for specified risks. The applicant sought relief for the following financial services:
- dealing in a risk management product;
  - providing custodial or depository services; and
  - providing financial product advice in relation to a risk management product.
- 17 In refusing relief, we considered that there is a clear parliamentary intention for mutual risk products to be regulated under the financial services regime, and we were not satisfied that:
- the applicant had demonstrated how departure from that policy would be justified;
  - there would be a net regulatory benefit in granting relief or that the regulatory detriment of relief would be minimal and clearly outweighed by the resulting commercial benefit;
  - there were atypical or unforeseen circumstances or unintended consequences of the licensing provisions specific to the applicant's circumstances;
  - there was an adequate alternative regulatory regime that had comparable functions and objectives to Ch 7 of the Corporations Act; or
  - there were exceptional circumstances to justify relief.

### **Relief to modify net tangible asset requirement**

- 18 We granted relief to modify, by way of a reduction, the aggregate amount of net tangible assets (NTA) required to be held by three AFS licensees in a

group in the context of a business integration process and corporate restructure. We granted this relief under s926A(2)(a) of the Corporations Act.

- 19 Class Order [CO 13/760] *Financial requirements for responsible entities and operators of investor directed portfolio services* sets out minimum standards for responsible entities to have available adequate financial resources to provide the financial services covered by their AFS licence. From 1 July 2015, a dual-regulated entity with an AFS licence that authorises it to operate a registered managed investment scheme as a responsible entity is required to ensure that it complies with the requirements in [CO 13/760].
- 20 We granted relief because the group is undertaking a complex internal reconstruction, the effect of which will be a reduction in its regulatory capital requirements. The relief reduces the amount of NTA that the group licensees are required to hold to an amount close to the level that the group will collectively be required to hold following the restructure, and only for a period of six months.

## Publications

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

### Legislative instruments

#### **ASIC Corporations (Advertising by Product Issuers) Instrument 2015/539**

- 22 ASIC Corporations (Advertising by Product Issuers) Instrument 2015/539 replaces Class Order [CO 05/835] *General advice in advertising*.
- 23 This instrument provides relief to issuers of financial products from the requirement to hold an AFS licence for providing financial advice where they provide general financial product advice in advertisements.
- 24 This instrument also reduces the regulatory burden on issuers of financial products and securities by allowing them to give general financial product advice in advertisements without needing to provide a Financial Services Guide (FSG) or a general advice warning, provided that they include a statement in their advertisement indicating that a person should consider whether the financial product or securities are appropriate for them.
- 25 ASIC Corporations (Advertising by Product Issuers) Instrument 2015/539 accommodates contemporary forms of advertising by removing the restrictions on the forms of advertising imposed by [CO 05/835].

**ASIC Corporations (General Advice Warning) Instrument 2015/540**

- 26 ASIC Corporations (General Advice Warning) Instrument 2015/540 exempts an AFS licensee or its authorised representative from the requirement to provide a general advice warning for oral general advice, provided that a simplified oral warning is given by the providing entity which conveys that the advice is general advice and the advice may not be appropriate for the client.
- 27 This instrument enables providing entities to give a shorter, simpler general advice warning when they provide oral general advice, thereby making general advice more easily understood by retail clients while simultaneously reducing any regulatory burdens on AFS licensees and their authorised representatives.

**ASIC Corporations (Basic Deposit and General Insurance Product Distribution) Instrument 2015/682**

- 28 ASIC Corporations (Basic Deposit and General Insurance Product Distribution) Instrument 2015/682 modifies s910A and 911B of the Corporations Act to allow AFS licensees who are authorised to deal in basic deposit products and general insurance products to appoint distributors to deal in these products on their behalf.
- 29 The purpose of this modification is to avoid the need to appoint these distributors as authorised representatives. Because the distributors continue to be representatives of the AFS licensee for the purpose of the liability provisions, consumers have recourse to the licensee in relation to the distributors' conduct.
- 30 The relief removes:
- some of the formal requirements that apply to the appointment and revocation of authorised representatives, including notification to ASIC and maintaining the currency of information about authorised representatives that is contained in ASIC's registers; and
  - the need for distributors to provide an FSG.
- 31 The relief afforded by ASIC Corporations (Basic Deposit and General Insurance Product Distribution) Instrument 2015/682 was previously provided by two separate class orders: Class Order [CO 04/909] *Agency banking* and Class Order [CO 05/1070] *General insurance distributors*.

## Consultation papers

### **CP 237 Remaking ASIC class orders on real estate companies: [CO 00/213] and [CO 05/1243]**

- 32 CP 237 sets out ASIC's proposals to remake our class orders relating to real estate companies. Under the *Legislative Instruments Act 2003* (Legislative Instruments Act), these class orders will expire ('sunset') if not remade.
- 33 We sought feedback from real estate agents and valuers on our proposals to remake and consolidate, without significant changes, the following class orders:
- Class Order [CO 00/213] *Real estate companies*; and
  - Class Order [CO 05/1243] *Licensing relief for valuers providing valuations of shares in real estate companies*.
- 34 Submissions on CP 237 closed on 23 September 2015.

## Reports

### **REP 448 Overview of licensing and professional registration applications: January to June 2015**

- 35 REP 448 presents ASIC's decisions on applications for the period from 1 January to 30 June 2015 in relation to:
- 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 SMSF auditors; and
  - Australian financial markets, clearing and settlement facilities and derivative trade repositories.
- 36 The purpose of the report is to provide parties with a high-level overview of some of the important cases and decisions made during this period.

## B Disclosure relief

### Key points

This section outlines some of our decisions on whether to grant relief from:

- 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 also outline the publications we issued in relation to disclosure relief during the period of this report.

Note: In this section, references to sections (s), chapters (Chs) and parts (Pts) are to the Corporations Act, unless otherwise specified.

### Relief associated with prospectuses

#### On-sale and disclosure relief for a New Zealand company listed on ASX as a foreign exempt listing

- 37 We granted relief to a New Zealand company listed on the main board operated by NZX Limited (NZX), seeking a secondary listing on the market operated by ASX Limited (ASX) as a foreign exempt listing, to allow the on-sale of its securities on ASX without disclosure where the securities had been sold by a controller and a ‘cleansing notice’ was issued under New Zealand corporate law. At the time of the controller sales, the New Zealand company was not yet listed on ASX and therefore was not subject to Australian law.
- 38 We also granted relief to permit the New Zealand company to conduct future rights issues and placements in Australia without disclosure on the basis of a ‘cleansing notice’ issued in accordance with the New Zealand cleansing notice regime around the time of the relevant offer. This relief also allows the on-sale of those securities to Australian retail investors within 12 months of their issue or transfer without further disclosure.
- 39 Relief was granted on the basis that:
- Australia and New Zealand have highly comparable provisions and regimes relating to on-sale, cleansing notices and continuous disclosure;
  - retail investors purchasing securities on ASX would have the benefit of information that is comparable to information otherwise available in a prospectus or PDS, resulting in a comparable degree of overall protections; and
  - granting relief would be consistent with the Trans-Tasman Mutual Recognition Arrangement and the single economic market approach to closer economic relations adopted by the Australian and New Zealand governments.

- 40 In granting this relief, we considered factors including the company's history of continuous disclosure on NZX, the length of time the company had been listed on NZX, the depth of trading of its securities, whether the securities were properly priced and whether this would equate to the Australian market being fully informed.

## Employee incentive schemes

### **Extension of relief in Class Order [CO 14/1000] *Employee incentive schemes: Listed bodies to offers made to casual employees***

- 41 We extended the relief in [CO 14/1000] to allow a listed company to make offers to its casual employees who had worked an average of at least one working day per week (pro rata equivalent of 20% of a comparable full-time position) in the financial year ended 30 June 2015 and were reasonably expected to be engaged on this basis in the financial year ending 30 June 2016.
- 42 We granted relief on the basis of the company's individual circumstances, including that:
- the casual employees who were to receive offers had a relatively long history of casual employment with the company, having been employed on a casual basis by the company for three years or more;
  - the company had a relatively high proportion of casual employees in its workforce, with approximately 50% of its 3,000 employees employed on a casual basis; and
  - over 80% of the company's casual employees had been employed for at least three years, indicating a level of stability in the casual component of the company's workforce.
- 43 The company submitted that it regularly undertook reviews of its casual workforce database to remove people it no longer regarded as meeting its internal definition of casual employee. We were of the view that these factors indicated a relationship of sufficient interdependence to be covered by our relief. We also considered that the regulatory detriment in granting relief was outweighed by the commercial benefit. The company will be able to continue to rely on our relief, provided that there are no material changes to the company's individual circumstances as outlined in paragraph 42.

### **Relief for contribution plans not extended to Ch 2L**

- 44 We refused relief to a listed foreign entity seeking to make offers that included a contribution plan to its Australian employees. While we granted relief analogous to [CO 14/1000], we refused to extend this to include relief from Ch 2L of the Corporations Act to facilitate a contribution plan on the basis that such relief was not required.

- 45 In contrast to the former Class Order [CO 03/184] *Employee share schemes*, [CO 14/1000] no longer provides relief under s283GA(1) from Ch 2L in relation to the operation of a contribution plan. We were of the view that the operation of a contribution plan does not fall within the definition of ‘debenture’ in s9 and, as a consequence, relief from Ch 2L is not required.
- 46 The definition of debenture in s9 refers to an undertaking to repay as a debt money deposited with a body. We considered that the repayment of the money held on trust in the event of a withdrawal from a contribution plan is not a repayment of debt, and therefore the operation of a contribution plan does not meet the definition of debenture in s9. Accordingly, relief from Ch 2L was not extended to the foreign entity.

## Entitlement offers

### **Relief to facilitate an entitlement offer involving a New Zealand currency option for New Zealand shareholders**

- 47 We granted relief to enable a listed company to conduct an entitlement offer under s708AA of the Corporations Act (so that disclosure under Pt 6D.2 would not be required) even though the terms of each offer made to shareholders were not the same. The terms differed because retail shareholders with registered addresses in New Zealand were able to elect to subscribe for shares in either New Zealand dollars or Australian dollars, while all other eligible shareholders were only able to subscribe in Australian dollars.
- 48 Relief was required because the entitlement offer:
- did not satisfy the definition of ‘rights issue’ in s9A, which requires that all offers made to shareholders are the same; and consequently
  - did not satisfy s708AA, which only applies if the relevant securities are being offered under a rights issue, as defined in s9A.
- 49 We granted relief because we were satisfied that:
- the relief would facilitate participation by New Zealand retail shareholders in the entitlement offer and this would be consistent with the legislative intention underlying the requirement in s9A to extend rights issues to New Zealand investors;
  - the relief would overcome practical difficulties that New Zealand retail shareholders might face in providing payment for their applications due to the absence of a BPAY system in New Zealand; and
  - on balance, the risk of arbitrage associated with providing the relief was limited in this case because the record date for determining eligible retail shareholders was set before any details about the existence of the New Zealand dollar payment option was announced, and that option was not available to institutional investors.

## Publications

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

### Legislative instruments

#### **ASIC Corporations (Foreign Rights Issues) Instrument 2015/356**

51 ASIC Corporations (Foreign Rights Issues) Instrument 2015/356 provides conditional relief from the prospectus provisions in Ch 6D of the Corporations Act for pro rata offers of securities that are in a class quoted on an approved foreign market. This relief is analogous to the disclosure exemption in s708AA, as notionally modified by Class Order [CO 08/35] *Disclosure relief for rights issues*, and many of the conditions are similar.

52 Without the relief afforded in ASIC Corporations (Foreign Rights Issues) Instrument 2015/356, the requirement to prepare an Australian prospectus may discourage foreign companies from extending rights issues to a relatively small number of Australian shareholders where the cost of complying with Ch 6D will be disproportionate to the funds raised under those offers.

#### **ASIC Corporations (Foreign Scrip Bids) Instrument 2015/357**

53 ASIC Corporations (Foreign Scrip Bids) Instrument 2015/357 provides conditional prospectus and PDS relief for offers of scrip under a bid where the bid class securities are quoted on an approved foreign market and where Australian residents hold no more than 10% of the bid class securities.

54 The instrument also gives relief from the on-sale restrictions in s707(3) and 1012C(6) of the Corporations Act. Without on-sale relief, a person who receives securities or interests described in s707(3) and 1012C(6) under a foreign scrip bid conducted without a prospectus or PDS is restricted from selling those securities or interests in Australia within 12 months of receiving them.

55 This instrument facilitates participation by Australian investors in the above foreign scrip bids on the same basis as foreign investors, where suitable safeguards are in place.

#### **ASIC Corporations (Compromises or Arrangements) Instrument 2015/358**

56 ASIC Corporations (Compromises or Arrangements) Instrument 2015/358 provides relief from the PDS requirements where financial products are offered under a compromise or arrangement under Pt 5.1 of the Corporations Act. This instrument also provides relief from the prospectus and PDS requirements where securities or financial products are offered under a scheme regulated in Hong Kong, Malaysia, Singapore, South Africa or the United Kingdom.

57 We also modified s708(17) so that it refers to securities offered under a Pt 5.1 compromise or arrangement that is approved at a meeting held 'or to be considered at a meeting held' as a result of an order under s411(1) or (1A). This clarification was required as the obligation to give retail investors a disclosure document would ordinarily arise before the Pt 5.1 meeting is held.

**ASIC Corporations (Foreign Securities—Publishing Notices) Instrument 2015/359**

58 ASIC Corporations (Foreign Securities—Publishing Notices) Instrument 2015/359 gives relief from s734(2) of the Corporations Act to bodies that are listed on an approved foreign market for notices or reports about its affairs that are given to the market operator.

59 This instrument gives relief analogous to s734(7)(a) and (b) for notices or reports of a body's general meeting.

**ASIC Corporations (Foreign Securities—Incidental Advertising) Instrument 2015/360**

60 ASIC Corporations (Foreign Securities—Incidental Advertising) Instrument 2015/360 provides relief from s734(2) and 1018A of the Corporations Act to authors and publishers who publish an advertisement or statement relating to foreign securities that is only incidentally published in Australia.

61 The relief under ASIC Corporations (Foreign Securities—Incidental Advertising) Instrument 2015/360 covers statements published in print media, radio and television broadcasts and electronic services operated on a commercial basis that are similar to newspapers, magazines or broadcasts.

**ASIC Corporations (Foreign Small-Scale Offers) Instrument 2015/362**

62 ASIC Corporations (Foreign Small-Scale Offers) Instrument 2015/362 provides conditional relief from the prospectus and PDS requirements for a small number of personal offers by entities that are listed on an approved foreign market.

63 While the relief is similar to the small-scale offer exemptions in s708(2) and 1012E of the Corporations Act, a point of distinction is that the securities or interests must be in a class that is quoted on an approved foreign market and there is no monetary limit on the amount raised.

**ASIC Corporations (Financial Services Guides) Instrument 2015/541**

64 ASIC Corporations (Financial Services Guides) Instrument 2015/541 exempts experts from the requirement to provide a FSG to a retail client where they give general advice in an expert's report and this is included in a disclosure document prepared by or on behalf of another person. The

instrument also exempts arrangers from the requirement to provide a FSG to a retail client where they provide a financial service consisting of arranging for the issue of a financial product under an intermediary authorisation.

65 This relief was previously given in Class Order [CO 04/1572] *Secondary Services: Financial Services Guide relief for experts* and Class Order [CO 04/1573] *Secondary Services: Financial Services Guide relief for arrangers acting under an intermediary authorisation*, which are due to sunset. ASIC Corporations (Financial Services Guides) Instrument 2015/541 consolidates this relief into one instrument.

#### **ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647**

66 ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647 removes some barriers to the electronic provision of information required under Ch 7 of the Corporations Act.

67 This instrument enables electronic delivery of financial services disclosure documents to be the ‘default’ option for disclosure, if the provider chooses, subject to safeguards designed to ensure investors and consumers do not miss the opportunity to choose an alternative method of delivery.

68 This instrument further enhances and replaces relief previously given by Class Order [CO 10/1219] *Facilitating online delivery of PDSs, FSGs and SOAs*.

#### **ASIC Corporations (Removing Barriers to Electronic Disclosure) Instrument 2015/649**

69 ASIC Corporations (Removing Barriers to Electronic Disclosure) Instrument 2015/649 facilitates the use of innovative PDSs, FSGs and Statements of Advice (SOAs) by giving relief from three requirements in the Corporations Act and Corporations Regulations that relate to page length of PDSs, provision of copies of electronic disclosure documents on request and placement of the title of electronic disclosure documents.

70 This instrument further enhances and replaces relief previously given by Class Order [CO 10/1219] *Facilitating online delivery of PDSs, FSGs and SOAs*.

#### **ASIC Corporations (Deposit Product Disclosure) Instrument 2015/683**

71 ASIC Corporations (Deposit Product Disclosure) Instrument 2015/683 addresses uncertainty about whether a periodic statement for a deposit product must include both a closing balance and a termination value.

72 This instrument provides relief by removing the unnecessary burden of disclosing an interest rate in a PDS for a deposit product. It also provides

relief from the requirement to disclose a termination value in a periodic statement for a deposit product.

- 73 This relief was previously given in Class Order [CO 05/681] *Transitional relief for deposit product providers—PDSs and periodic statements*.

## Consultation papers

### **CP 232 Remaking ASIC class orders on superannuation: [CO 04/1574] and [CO 06/636]**

- 74 CP 232 sets out ASIC's proposals to remake two of our class orders on superannuation. Under the Legislative Instruments Act, these class orders will sunset if not remade.
- 75 We sought feedback from the Australian superannuation industry on our proposals to remake, without significant changes, the following class orders:
- Class Order [CO 04/1574] *Application form and cooling-off relief for certain transfers of members between financial products and interests within a superannuation fund*; and
  - Class Order [CO 06/636] *Superannuation: Delivery of product disclosure for investment strategies*.
- 76 Submissions on CP 232 closed on 7 August 2015.

### **CP 239 Disclosure documents: Update to ASIC instruments and guidance**

- 77 CP 239 sets out ASIC's proposals to remake fundraising class orders that are due to sunset under the Legislative Instruments Act, to update and consolidate our fundraising regulatory guidance and to issue two new legislative instruments aimed at helping reduce business costs.
- 78 CP 239 involved the review of 31 class orders relating to Ch 6D of the Corporations Act. ASIC proposes to reissue the relief in 26 of the class orders and repeal five of the class orders that are no longer required. We propose to assist users of this relief by consolidating subject matter-related class orders and reissuing the relief in the form of 13 legislative instruments.
- 79 Submissions on CP 239 closed on 27 November 2015. A report on our response to submissions has not been released at the date of this report.

## Regulatory guides

### **RG 72 Foreign securities: Disclosure relief**

- 80 We updated RG 72 without significant changes to reflect the remaking of six legislative instruments that facilitate Australian investors participating in foreign scrip offers, when appropriate safeguards are in place.
- 81 RG 72 is a guide for foreign entities and their advisers involved in the offer of foreign securities to Australian investors.
- 82 RG 72 outlines the relief granted from Chs 6D and 7 of the Corporations Act for offers of foreign securities and interests. This includes relief relating to rights issues of foreign securities, foreign scrip bids and foreign schemes of arrangement, and foreign entities making small-scale personal offers.

### **RG 221 Facilitating digital financial services disclosures**

- 83 We updated RG 221 to include new guidance to assist businesses to provide disclosures through digital channels and to encourage innovative communication of information about financial products and services. The changes mean that PDSs and other financial services disclosure documents will be delivered to consumers digitally as the default option, unless the consumer opts out.
- 84 RG 221:
- describes the relief available under ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647;
  - describes the relief available under ASIC Corporations (Removing Barriers to Electronic Disclosure) Instrument 2015/649; and
  - sets out our ‘good practice guidance’ on digital disclosure.
- 85 The update follows the issue of Consultation Paper 224 *Facilitating electronic financial services disclosures* (CP 224) and our report on submissions (REP 443): see below.

## Reports

### **REP 442 Response to submissions on CP 216 Advice on SMSFs: Specific disclosure requirements and SMSF costs**

- 86 REP 442 highlights the key issues that arose out of the submissions received on Consultation Paper 216 *Advice on self-managed superannuation funds: Specific disclosure requirements and SMSF costs* (CP 216) and details our responses in relation to those issues.

- 87 In CP 216 we sought feedback on our proposals to require AFS licensees and their authorised representatives who give personal advice to retail clients on establishing or switching to a self-managed superannuation fund (SMSF) to:
- warn clients that compensation arrangements under Pt 23 of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) in the event of fraud or theft do not apply to SMSFs; and
  - explain other matters that may influence a client's decision about whether to set up an SMSF.
- 88 Feedback received on CP 216 resulted in a decision not to modify the law to impose specific disclosure requirements on AFS licensees and their authorised representatives who give personal advice to retail clients on establishing or switching to an SMSF. Instead, we issued Information Sheet 205 *Advice on self-managed superannuation funds: Disclosure of risks* (INFO 205) and Information Sheet 206 *Advice on self-managed superannuation funds: Disclosure of costs* (INFO 206), which provide guidance on how advisers can comply with the conduct and disclosure obligations in Ch 7 of the Corporations Act when giving advice to retail clients on establishing or switching to an SMSF.

**REP 443 Response to submissions on CP 224 Facilitating electronic financial services disclosures**

- 89 REP 443 highlights the key issues that arose out of the submissions received on CP 224 and details our responses in relation to those issues.
- 90 CP 224 sought feedback on our proposed approach to the electronic delivery of financial services disclosures. In particular, we sought feedback on providing legislative instrument relief to facilitate default electronic delivery of financial services disclosures and to facilitate the use of more innovative PDSs.
- 91 Feedback received on CP 224 helped us to update our guidance, which is published in RG 221, and make two ASIC instruments: see paragraphs 66 and 69.

## 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 of the Corporations Act.

We also outline the publications we issued in relation to managed investment relief during the period of this report.

### Scheme registration

#### Net tangible asset requirements and custody relief

- 92 We were minded to refuse relief to modify s912AA(11) of the Corporations Act to enable a managed investment scheme operator as responsible entity to hold units in the unregistered scheme of which it was also the operator. Relief was sought to remove NTA and custody requirements and other related AFS licence requirements applicable to responsible entities.
- 93 We were minded to refuse relief because:
- relief would depart from the fundamental importance of the NTA and custody requirements for responsible entities, which provide protections for members' money and property;
  - we were not persuaded that the entity was unable to comply with the NTA and custody requirements;
  - we were not persuaded by the applicant's argument that the perceived commercial benefits outweighed the regulatory detriment and risk of consumer detriment; and
  - the application did not appear necessary as it was based on a proposed scheme where the operator had applied to register the scheme but subsequently withdrew their application.
- 94 The application for relief was ultimately withdrawn.

### Publications

- 95 We issued the following publications during the period of this report.

## Legislative instruments

### ASIC Corporations (Managed investment product consideration) Instrument 2015/847

96 ASIC Corporations (Managed investment product consideration) Instrument 2015/847 provides relief to responsible entities of schemes registered prior to 1 October 2013 (other than time-sharing schemes) in relation to the requirements that the constitution:

- make adequate provision for the consideration that is to be paid to acquire an interest in the scheme; and
- specify the right of a member to withdraw from the scheme and set out adequate procedures for making and dealing with withdrawal requests.

97 The relief was previously given in Class Order [CO 05/26] *Constitutional provisions about the consideration to acquire interests*.

## Consultation papers

### CP 238 *Remaking ASIC class order on employee redundancy funds: [CO 02/314]*

98 CP 238 sets out ASIC's proposals to remake Class Order [CO 02/314] *Employee redundancy funds: relief*. Under the Legislative Instruments Act, this class order will sunset if not remade.

99 We sought feedback from operators and promoters of employee redundancy funds, trade unions and employer associations on our proposal to remake [CO 02/314], without significant changes.

100 Submissions on CP 238 closed on 2 October 2015.

## Regulatory guides

### RG 136 *Managed investments: Discretionary powers and closely related schemes*

101 RG 136 sets out our guidance on:

- when we have given and when we will give relief from the Corporations Act in relation to managed investment schemes;
- which of our regulatory guides, class orders and pro formas still apply to managed investment schemes;
- when we will give an extension of time to establish or reconstitute a compliance committee; and
- when we will regard schemes as so closely related that they should be aggregated in determining if some exemptions for small schemes apply.

102 We updated RG 136 to incorporate a fundamental change to ASIC's approach to consenting to the resignation, removal and replacement of auditors. ASIC will now generally consent to the resignation of an auditor at

any time of the year, subject to some conditions. Previously, ASIC only consented to the resignation of an auditor of a public company which took place at an annual general meeting unless there were exceptional circumstances.

- 103 ASIC's changed approach was announced in Media Release (15-151MR) *ASIC reduces red tape for changes of auditors* (18 June 2015) and is outlined in a revised Regulatory Guide 26 *Resignation, removal and replacement of auditors* (RG 26): see paragraph 174.

## 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.

Note: In this section, references to sections (s), chapters (Chs) and parts (Pts) are to the Corporations Act, unless otherwise specified.

### Relevant interests

#### Relief from relevant interests arising by way of pre-emptive rights in a shareholders deed

- 104 We granted relief modifying s609 of the Corporations Act to an unlisted proprietary company to facilitate employee ownership in circumstances where a shareholders deed contained pre-emptive rights. The shareholders deed provided, among other things, that a certain percentage of the shares in the company were to be held by employees of the company, with the balance to be held by a parent entity. New and existing employees of the company were given the opportunity to acquire shares from time to time.
- 105 Relief was required because the shareholders deed gave each employee shareholder pre-emptive rights on the transfer of shares in the company. Without relief, if the company had more than 50 members and became regulated by Ch 6, each employee shareholder would obtain a relevant interest in each other's shares as a result of the pre-emptive rights. This would contravene the takeovers prohibition in s606.
- 106 On balance, we considered that relief was appropriate in this instance because:
- relief was comparable to the situation contemplated in s609(8) where pre-emptive rights contained in a company's constitution do not give rise to relevant interests. In particular, pre-emptive rights in the shareholders deed are given to all employee shareholders on the same terms;
  - relief would enable employees in the company to participate in the ownership of the company and encourage interdependence between employer and employees; and
  - while the shareholders deed contained certain 'drag along' rights in favour of the parent entity—which ASIC considers objectionable in light of the principles in s602—this aspect of the deed was peripheral to the relief and the relief would not facilitate the operation or creation of those rights. We also noted that, in any case, the parent entity had a call

option over all the shares held by employee shareholders. Our position on ‘drag along’ rights is outlined in Report 162 *Overview of decisions on relief applications (December 2008 to March 2009)* (REP 162) at paragraph 29.

## Takeover bids

### Relief to extend the period for a bidder to apply for admission to quotation of scrip consideration

- 107 We refused relief to a bidder to extend the seven-day time period in s625(3)(c)(i) of the Corporations Act, by which an application for admission to quotation was required to be made, so that the application could be made instead not less than 14 days before the end of the bid period.
- 108 The application was made because the bidder would not be able to apply for quotation of the consideration shares on the Indonesia Stock Exchange (IDX) within seven days of lodging the bidder’s statement with ASIC.
- 109 We requested additional information from the bidder in relation to, among other things, the process of listing on the IDX—particularly, given that the amendment proposed would have imposed a 21-day period within which application for quotation would need to be made and admission to quotation be granted. This information was not received until the afternoon of the day that the seven-day time period in s625(3)(c)(i) ended.
- 110 Accordingly, we refused relief as uncertainties raised by the application could not be addressed in time.

### Relief to extend time for target’s statement in on-market takeover bid

- 111 We granted relief to the target of an on-market takeover bid to extend the time in which the target was required to lodge its target’s statement with ASX and dispatch its target’s statement to shareholders. In granting the relief, we modified items 10 and 13 of s635(1) of the Corporations Act to extend the time from 14 days to 22 days.
- 112 We granted this relief to allow the independent expert commissioned by the target additional time to prepare an independent expert’s report in relation to the on-market bid, in circumstances where the report would also encompass a concurrent off-market bid by the same bidder.
- 113 In connection with the relief we granted the target, we also modified item 14 of s635(1) to extend the time by which the bidder was required to make offers for the securities under the takeover bid through ASX. We modified the time in item 14 from 14 days to 22 days.

114 We granted this relief to ensure that offers under the takeover bid did not open until the day after the target had lodged its target's statement with ASX and dispatched its target's statement to shareholders.

### **Relief to facilitate simultaneous takeover bids**

115 We granted relief from s623 of the Corporations Act to a bidder who had made two simultaneous takeover bids, each of which was for all of the shares in one target company. The bidder had made an on-market cash bid and an off-market scrip bid which would run concurrently.

116 The bidder required relief because the market price of the bidder's securities may fluctuate during the bid period of the on-market bid, which would cause corresponding fluctuations in the value of the scrip offered under the off-market bid. Depending on these fluctuations, the off-market bid may, at times, constitute a collateral benefit that was prohibited by s623.

117 We granted relief to modify s623(3) so that the off-market bid was excluded from being a collateral benefit prohibited by s623. We granted this relief because it was consistent with the equality principles of Ch 6 in s602(c) that holders of shares all have an equal opportunity to participate in the benefits accruing under each bid.

### **Relief to allow a bidder to change offer terms before dispatch to shareholders**

118 We granted relief to a bidder in a takeover bid to vary the terms of the offer—namely, the proposed opening and closing dates of the offer—before dispatch to shareholders.

119 The bidder had lodged with ASIC a bidder's statement specifying the proposed opening and closing dates of the offer. We sought amended disclosure from the bidder in relation to concerns we had with the bidder's statement. During the course of our discussions with the bidder regarding amended disclosure, the proposed opening date of the offer passed without the bidder dispatching the offer to shareholders.

120 The bidder wished to lodge a replacement bidder's statement in accordance with Class Order [CO 13/528] *Changes to a bidder's statement between lodgement and dispatch* that would address our disclosure concerns. The replacement bidder's statement would rely on Class Order [CO 13/521] *Takeover bids* to omit the opening and closing dates of the offer in the copy lodged with ASIC and sent to the target, with new dates to be inserted in the copy sent to shareholders once those dates had been decided.

121 We granted relief from s633(1) of the Corporations Act—as notionally modified by [CO 13/528]—and s633A(1)—as notionally inserted by

[CO 13/528]—to permit the bidder to vary the terms of the offer—namely, the opening and closing dates of the offer.

- 122 We granted this relief because it was consistent with our policy in Regulatory Guide 9 *Takeover bids* (RG 9), the target did not object, and the variation to the offer terms would reduce confusion for shareholders.

## Publications

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

### Consultation papers

#### **CP 234 *Remaking ASIC class orders on takeovers and schemes of arrangement***

- 124 CP 234 sets out ASIC's proposals to remake a number of our class orders relating to takeovers and schemes of arrangement. Under the Legislative Instruments Act, these class orders will sunset if not remade.
- 125 We sought feedback on our proposals to remake, without significant changes, the following class orders:
- Class Order [CO 05/850] *Unsolicited offers under a regulated foreign takeover bid* and Class Order [CO 02/259] *Downstream acquisitions: foreign stock markets*;
  - Class Order [CO 00/2338] *Relief from the minimum bid price principle—s621(3)*;
  - Class Order [CO 02/249] *Approved overseas financial markets—s257B(7)* and Class Order [CO 04/523] *Investor directed portfolio services takeover relief*; and
  - Class Order [CO 09/459] *Takeovers relief for accelerated rights issues*.
- 126 Submissions on CP 234 closed on 2 October 2015. We have reported on the responses to CP 234 in Media Release (15-375MR) *ASIC remakes instruments on takeovers and schemes of arrangement* (15 December 2015).

### Regulatory guides

#### **RG 128 *Collective action by investors***

- 127 RG 128 is a guide for investors who wish to cooperate with each other in relation to their investment in a listed company or managed investment scheme. We updated this guidance to help investors take collective action to improve the corporate governance of listed entities.

- 128 This guide explains:
- the ways in which effective investor engagement can enhance corporate governance and the long-term performance and corporate value of a listed entity;
  - how collective action can promote corporate governance improvements for the long-term benefit of an entity and its investors;
  - the different forms of collective action that can be engaged in without giving rise to any contravention of the Corporations Act or other unacceptable circumstances; and
  - the circumstances where acting together may lead to investors becoming associates or entering into a relevant agreement for the purposes of the takeover and substantial holding provisions of the Corporations Act.
- 129 This guide also includes:
- illustrative examples of conduct that is more likely, or unlikely, to trigger the takeover and substantial holding provisions;
  - an outline of ASIC's approach to enforcement of these provisions in the context of collective action by investors, which includes considering whether the conflict is control seeking rather than simply promoting good corporate governance; and
  - an overview of some other legal and regulatory issues that can arise in relation to investor engagement.
- 130 The release of RG 128 follows the issue of Consultation Paper 228 *Collective action by investors: Update to RG 128* (CP 228) in February 2015 and our report on submissions (REP 438): see below.

## Reports

### **REP 438 Response to submissions on CP 228 *Collective action by investors: Update to RG 128***

- 131 REP 438 highlights the key issues that arose out of the submissions received on CP 228 and details our responses in relation to those issues.
- 132 CP 228 sought feedback on our proposal to update our guidance in RG 128 and discontinue the relief in Class Order [CO 00/455] *Collective action by institutional investors*.
- 133 Feedback received on CP 228 helped us to update our guidance, which is published in RG 128. We also repealed [CO 00/455].

**REP 446 ASIC regulation of corporate finance: January to June 2015**

- 134 REP 446 presents key statistical information and observations from our work in the regulation and oversight of fundraising, mergers and acquisitions transactions, corporate governance and other general corporate finance areas.
- 135 The report provides a useful overview of our work in these areas for companies, lawyers, corporate advisers and compliance professionals working in corporate finance.

## 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.

Note: In this section, references to sections (s), chapters (Chs) and parts (Pts) are to the Corporations Act, unless otherwise specified.

## Use of information on registers

### Relief from Div 5A of Pt 7.9 to avoid the operation of s177(1AA)(a)

- 136 An applicant was seeking to use its register of hybrid security holders, maintained under Pt 2C.1 of the Corporations Act, so that it could make a pro rata tender offer to all of its hybrid security holders for the purchase of a fixed proportion of their hybrid securities. Section 177(1AA)(a) states that a person must not use information obtained from a register kept under Ch 2C for any purpose prescribed by regulations made for the purposes of s173(3A)(b).
- 137 The applicant considered it was prevented from using its register because of the prohibition under s177(1AA)(a), through the operation of reg 2C.1.03 of the Corporations Regulations, which prescribes the improper purposes for obtaining a copy of the register:
- For paragraph 173(3A)(b) of the [Corporations] Act, the following purposes are prescribed:
- ...
- (d) making an offer that satisfies paragraphs 1019D(1)(a) to (d) of the Act;
- (e) making an invitation that, were it an offer to purchase a financial product, would be an offer that satisfies paragraphs 1019D(1)(a) to (d) of the Act.
- 138 The applicant considered that its offer to its hybrid security holders would satisfy s1019D(1)(a) to (d) and sought relief from Div 5A of Pt 7.9 to avoid the operation of s177(1AA)(a).
- 139 We were of the view that regs 2C.1.03(d) and (e) should be construed as being a description of a circumstance or conduct, and whether or not the circumstance or conduct is within what is described in those paragraphs is a question of fact.

- 140 Accordingly, given that the offer satisfied s1019D as a question of *fact*:
- an exemption under s1020F(1)(a) from Div 5A of Pt 7.9 would not affect the operation of s177(1AA)(a) (through the operation of regs 2C.1.03(d) and (e)); and
  - a declaration under s1020F(1)(b) to the effect that Pt 7.9 applies to the company as if Div 5A of that part (which includes s1019D) were omitted, would also not affect the operation of s177(1AA)(a) (through the operation of regs 2C.1.03(d) and (e)).
- 141 Therefore, even if we had been minded to grant the relief sought, we considered that the relief would not be effective in avoiding the operation of s177(1AA)(a). We conveyed these views to the applicant. The application was subsequently withdrawn.

## Financial reporting

### **Financial reporting relief similar to that provided under Class Order [CO 98/1418] *Wholly-owned entities***

- 142 We granted financial reporting relief to two large proprietary companies that are wholly owned by an exempt body incorporated under a state law.
- 143 We relieved the large proprietary companies from compliance with Pt 2M.3 of the Corporations Act on the same terms and conditions that apply to wholly owned entities that rely on our relief under Class Order [CO 98/1418] *Wholly-owned entities*.
- 144 We granted relief because:
- the large proprietary companies were unable to rely on [CO 98/1418] because the holding company is an exempt body and not a ‘company’, and therefore does not fall within the definition of ‘holding company’;
  - apart from the definition of ‘holding company’, the large proprietary companies were able to satisfy all the other conditions that apply to relief under [CO 98/1418], including the provision of a deed of cross guarantee on similar terms to ASIC’s Pro Forma 24 *Deed of cross guarantee* (PF 24);
  - the exempt body prepares consolidated annual financial statements consistent with accounting standards and Treasury instructions issued by the State Government, and directors’ reports, which are made publicly available within four months after the end of each financial year;
  - the exempt body is audited by the Auditor-General of the state; and
  - we were satisfied that the financial reporting obligations imposed unreasonable burdens on the large proprietary companies where they were able to comply with the conditions for relief under [CO 98/1418], other than the definition of a ‘holding company’.

## Short-selling relief

### No-action letter in relation to naked short selling of CHESSE Depository Interests

- 145 Subject to conditions, we granted a no-action letter to an applicant for the naked short selling of CHESSE Depository Interests (CDIs) in an exchange-traded fund (ETF) incorporated in the United States.
- 146 The applicant had applied for a no-action letter in relation to the prohibition contained in s1020B(2) of the Corporations Act, in connection with its market-making activities for CDIs in the ETF. The applicant outlined its process to borrow equivalent underlying securities from the US market after the short sale of CDIs and then convert those securities to CDIs before the settlement of the short sale on T+3.
- 147 A no-action letter was granted on the grounds that the settlement risk was low due to the liquidity of the borrow market for the ETF, the applicant's settlement and CDI conversion history, and the applicant's process for short selling.

## Future of Financial Advice no-action letters

### No-action letters in relation to the ban on conflicted remuneration

- 148 We provided five AFS licensees with a temporary no-action letter in relation to the ban on conflicted remuneration under Div 4 of Pt 7.7A of the Corporations Act.
- 149 The AFS licensees were previously relying on regulations that enabled them to continue to pay and receive grandfathered benefits when a client switches from accumulation to pension phase within a superannuation fund that is not operating a platform. Regulations 7.7A.16B(5A) and (5B) of the Corporation Regulations were disallowed by the Senate on 19 November 2014.
- 150 Given the uncertainty of the law following the disallowance, the AFS licensees made the decision to cease the payment and receipt of benefits relating to a client's investment in a non-platform superannuation fund when the client switches from accumulation to pension phase within the same fund after 19 November 2014.
- 151 A no-action letter was granted for a period of three months, in addition to ASIC's facilitative compliance period, to give the licensees a transition period to cease the payment and receipt of these benefits.

- 152 We granted the no-action letter because:
- the application of the law in these circumstances is uncertain and ASIC has not settled our views;
  - we believe the AFS licensees were acting in the spirit of the Future of Financial Advice (FOFA) provisions by removing conflicted payments; and
  - any potential conflict on the advice given to the affected consumers after the no-action period would be removed.

### **No-action letter in relation to 31-day notice term deposits under FOFA**

- 153 We provided the members of an industry representative body with a temporary no-action letter for Divs 2 and 4 of Pt 7.7A of the Corporations Act (the FOFA provisions) when treating 31-day notice term deposits as a 'basic banking product'.
- 154 Class Order [CO 14/1262] *Relief for 31 day notice term deposits* modified the definition of 'basic deposit product' for the purposes of Pts 7.6 (other than Divs 4 and 8), 7.7 and 7.9. [CO 14/1262] does not modify the definition for the purposes of Pt 7.7A.
- 155 The definition of a basic banking product in Pt 7.7A includes a basic deposit product, as defined in s761A. The effect of [CO 14/1262] not applying to Pt 7.7A is that products that fall within the definition of basic deposit product under the class order, but not the s761A definition, would not be considered a basic banking product for the purposes of the FOFA provisions (i.e. 31-day notice term deposits). Under the FOFA provisions, basic banking products are subject to a modified best interests duty and an exemption from the ban on conflicted remuneration, in certain circumstances: s961B(3) and 963D of the Corporations Act and reg 7.7A.12H of the Corporations Regulations.
- 156 The no-action letter operates for the duration of [CO 14/1262] and requires the relevant AFS licensees to comply with the conditions in the class order to rely on the no-action letter.
- 157 We granted the no-action letter because:
- providing a no-action letter gives the licensees certainty that 31-day notice term deposits are treated as a basic banking product, consistent with other parts of Ch 7;
  - consistent with the rationale in implementing [CO 14/1262], the no-action letter is intended to give Government the opportunity to consider legislative reform to clarify the meaning of basic deposit product, as defined in the Corporations Act, in relation to how it applies to 31-day notice term deposits;

- term deposit products appear to be relatively low-risk and well-understood products, particularly given the conditions placed on providers of the products in [CO 14/1262]; and
- the no-action letter ensures that the licensees do not incur additional compliance costs as a result of an inconsistent application of the definition of a basic deposit product.

## Publications

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

### Legislative instruments

#### **ASIC Corporations (Amendment) Instrument 2015/617 (superseded)**

159 ASIC Corporations (Amendment) Instrument 2015/617 (superseded) amended ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251:

- to extend the exemption for registered schemes being wound up to make it consistent with the exemption granted to companies being wound up, in relation to past financial years; and
- to remove an unintended consequence that arose from the definition of ‘relevant period’ in relation to the alternative reporting requirements under s601NFA of the Corporations Act—as notionally inserted by ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251—for registered schemes being wound up.

160 ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251 grants various exemptions to externally-administered bodies, including relief from the financial reporting obligations in Pt 2M.3 of the Corporations Act to insolvent registered schemes that are being wound up.

#### **ASIC Corporations (Stapled Group Reports) Instrument 2015/838**

161 ASIC Corporations (Stapled Group Reports) Instrument 2015/838 allows issuers of stapled securities to present financial statements covering individual entities in a stapled group within the same document.

162 This relief was previously given by Class Order [CO 05/642] *Combining financial reports of stapled security issuers*.

#### **ASIC Corporations (Related Scheme Reports) Instrument 2015/839**

163 ASIC Corporations (Related Scheme Reports) Instrument 2015/839 allows the financial statements of related registered schemes to be presented in a

single financial report. The relief applies to annual financial reports, concise financial reports and half-year financial reports.

164 This relief was previously given by Class Order [CO 06/441] *Including different registered scheme financial reports in a single document.*

#### **ASIC Corporations (Exempt Proprietary Companies) Instrument 2015/840**

165 ASIC Corporations (Exempt Proprietary Companies) Instrument 2015/840 allows grandfathered proprietary companies to preserve their exempt status in particular circumstances.

166 This relief was previously given by Class Order [CO 05/638] *Anomalies preventing certain large proprietary companies from being grandfathered.*

#### **ASIC Corporations (Non-Reporting Entities) Instrument 2015/841**

167 ASIC Corporations (Non-Reporting Entities) Instrument 2015/841 allows non-reporting entities to take advantage of concessions in accounting standards available to reporting entities.

168 This relief was previously given by Class Order [CO 05/639] *Application of accounting standards by non-reporting entities.*

#### **ASIC Corporations (Post Balance Date Reporting) Instrument 2015/842**

169 ASIC Corporations (Post Balance Date Reporting) Instrument 2015/842 allows disclosure in the financial statements of the financial effect of significant acquisitions or disposals after the reporting date.

170 This relief was previously given by Class Order [CO 05/644] *Disclosing post balance date acquisitions and disposals.*

### **Consultation papers**

#### **CP 233 Remaking ASIC class orders on financial reporting**

171 CP 233 sets out our proposals to remake certain class orders relating to financial reporting. Under the Legislative Instruments Act, these class orders were due to sunset if not remade.

172 We sought feedback on our proposals to remake, without significant changes, the following class orders:

- Class Order [CO 05/638] *Anomalies preventing certain large proprietary companies from being grandfathered;*
- Class Order [CO 05/639] *Application of accounting standards by non-reporting entities;*

- Class Order [CO 05/642] *Combining financial reports of stapled security issuers*;
- Class Order [CO 05/644] *Disclosing post balance acquisitions and disposals*; and
- Class Order [CO 06/441] *Including different registered scheme financial reports in a single document*.

173 Submissions on CP 233 closed on 17 August 2015.

## Regulatory guides

### **RG 26 Resignation, removal and replacement of auditors**

174 RG 26 is a guide for public companies, responsible entities of registered managed investment schemes, AFS licensees, credit licensees and their appointed auditors. We have revised RG 26 to incorporate fundamental changes to our approach to consenting to the resignation, removal and replacement of auditors.

175 This guidance explains how we may exercise our power to:

- give consent to the resignation or removal of auditors under certain provisions of the Corporations Act; and
- approve the resignation or replacement of auditors under certain provisions of the National Consumer Credit Protection Regulations 2010 (National Credit Regulations).

176 We will now generally consent to the resignation of an auditor at any time of the year, subject to certain conditions. Previously, we only consented to the resignation of an auditor of a public company to take place at an annual general meeting unless there were exceptional circumstances.

177 The release of RG 26 follows the issue of Consultation Paper 209 *Resignation, removal and replacement of auditors: Update to RG 26* (CP 209) and our report on submissions (REP 437): see below.

## Reports

### **REP 437 Response to submissions on CP 209 Resignation, removal and replacement of auditors: Update to RG 26**

178 REP 437 highlights the key issues that arose out of the submissions received on CP 209 and details our responses in relation to those issues.

179 Feedback received on CP 209 helped us to update our guidance, which is published in RG 26.

## F Credit relief

### Key points

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

This section also describes the relevant guidance we issued on credit relief during the period of this report.

### Provision of credit to which the National Credit Code does not apply

#### Exclusion of a specified credit contract from the National Credit Code and National Credit Act

- 180 We approved an application for exclusion under s6(14) of the National Credit Code of a specified credit contract so that the provision of loans to consumers would not be subject to the Code or the National Credit Act.
- 181 Our reason for approving the application was that the features of the specified credit contract were consistent with the policy rationale for exemptions under s6 of the National Credit Code—that is, the credit contract would provide benefits to consumers that are not available under regulated credit contracts.
- 182 Relief is available only where the applicant complies with specified key requirements of the credit licensing regime, designed to minimise consumer risk. Requirements include maintaining membership of an external dispute resolution scheme and having adequate compensation arrangements for compensating persons for loss or damage suffered due to a breach of the credit contract or failure to comply with the conditions and limitations of the relief instrument. We also considered that any commercial benefit of relief may be offset by the benefits to consumers under the contract.

### Electronic disclosure

#### Relief to facilitate the electronic provision of credit documents

- 183 We considered an application for relief under the National Credit Code to remove barriers to giving documents in an electronic form. Under the National Credit Code, *Electronic Transactions Act 1999* and Electronic Transactions Regulations 2000:
- nominations of addresses must be in writing; and

- express written consent is required before some documents relating to credit can be ‘given’ electronically.

- 184 These rules can act as a disincentive to providing credit documents in electronic form—including where holders of Australian credit licences (credit licensees) provide services to customers over the telephone. Additionally, different rules apply to specified credit disclosure documents under reg 28L of the National Credit Regulations and Class Order [CO 10/1230] *Clarification of credit disclosure obligations—including commencement*.
- 185 ASIC generally supports the removal of barriers to electronic communication but we believe these kinds of issues should be addressed on an industry-wide basis. Unfortunately, ASIC does not have sufficient powers to adequately do this on an industry-wide basis.
- 186 Following discussions with the applicant, we have treated the application as withdrawn. We have discussed the barriers to the electronic provision of credit documents with Treasury.

## Publications

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

## Reports

### **REP 445 Review of interest-only home loans**

- 188 REP 445 presents the findings of our review of responsible lending obligations in relation to the provision of interest-only home loans to consumers.
- 189 We reviewed and set out our findings in relation to how consumers were assessed for home loans by lenders, with a focus on the affordability of the loans over the longer term. REP 445 found that lenders have been falling short of their responsible lending obligations when providing interest-only loans.
- 190 The purpose of this review was to help credit licensees improve their lending practices by increasing their awareness of their obligations and identifying opportunities for lenders to improve their practices.
- 191 The information gathered through our review has helped inform our strategic response, which is aimed at minimising any potential detrimental impact on consumers of interest-only home lending.
- 192 We have updated our guidance to consumers on our MoneySmart website to provide updated information about what to consider and the risks involved with interest-only loans.

**REP 447 *Cost of consumer leases for household goods***

193 REP 447 presents the findings of our review of the costs charged by providers of leases of household goods.

194 The report compared the cost of leases from two sources:

- the advertised prices of nine lessors, collected by the Royal Melbourne Institute of Technology (RMIT) in April 2015 on behalf of ASIC; and
- a review by ASIC of 69 leases provided by two lessors since 2014 to consumers in receipt of Centrelink payments.

195 REP 447 found that consumer leases can be a very expensive option for consumers seeking to access common household goods, and that the market for consumer leases is failing many low-income consumers.

## G Other relief

### Key points

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

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

## Transitional relief

### OTC derivatives trade reporting transitional relief

- 196 We granted transitional relief to facilitate efforts by industry to comply with obligations to report over-the-counter (OTC) derivative transactions. Relief was granted in response to an application by the Australian Financial Markets Association (AFMA) and the International Swaps and Derivatives Association (ISDA) on behalf of industry participants.
- 197 The relief granted time-limited exemptions from needing to report exchange-traded derivatives and certain counterparty identifying information, trade identifying information, collateral information and foreign exchange securities conversion transactions.
- 198 Each item of relief was subject to an expiry date of between one and three years. We analysed the underlying causes of the implementation obstacles, the persistence of the problem and industry's level of control in overcoming those obstacles in deciding an appropriate period of relief.
- 199 In several instances, relief was granted to align Australia's trade reporting obligations with international developments. Key considerations in granting relief were international harmonisation and the time-limited and transitional nature of the relief.

### No-action letter in relation to the requirement to report certain OTC derivative transaction information

- 200 We provided a temporary no-action letter to a listed entity for reporting certain name information under the ASIC Derivative Transaction Rules (Reporting) 2013.
- 201 This followed the expiry of the transitional exemptive relief under ASIC Instrument [14/0952] *Transitional exemptive relief for Reporting Entities from elements of the ASIC Derivative Transaction Rules (Reporting) 2013*. The applicant (as an Australian entity that is a Phase 1 reporting entity) was

subsequently required, from 1 July 2015, to commence reporting the name information under the rules to the licensed trade repository DTCC Data Repository (Singapore) Pte Ltd (DDRS).

202 DDRS encountered technical difficulties with the use of a delimiter character used by the applicant in the submission of the name information. This prevented the correct submission to, and processing by, DDRS of the data reported by the applicant. The period covered by the no-action letter (from 1 July to 20 July 2015) was to provide sufficient time for the applicant to make the necessary technical changes to ensure the correct submission of data.

203 We granted the no-action letter because:

- the issue was only discovered just before the commencement of the requirement and there were no delays in the issue coming to ASIC's attention;
- the related contravention was transitional in nature, and was to be rectified as soon as practicable; and
- there were no impacts on third parties caused by the contravention.

## Publications

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

### Consultation papers

#### ***CP 235 Proposed amendments to ASIC market integrity rules and instruments for the Chi-X investment product market***

205 CP 235 sets out ASIC's proposals to amend:

- ASIC Market Integrity Rules (Chi-X Australia Market) 2011;
- ASIC Market Integrity Rules (Competition in Exchange Markets) 2011; and
- existing ASIC instruments for Chi-X's proposals to commence the quotation and trading of warrants and exchange-traded funds on a new product market.

206 CP 235 also proposed minor amendments to the ASIC Market Integrity Rules (ASX Market) 2010.

207 Submissions on CP 235 closed on 9 September 2015. Report 453 *Response to submissions on CP 235 Proposed amendments to ASIC market integrity rules for the Chi-X investment product market* (REP 453) highlights the key issues that arose in the submissions received on CP 235 and details our responses in relation to those issues.

**CP 236 Remaking ASIC class orders on dematerialised securities and CHESS units of foreign securities**

208 CP 236 set out ASIC’s proposals to remake two class orders. Under the Legislative Instruments Act, these class orders will sunset if not remade.

209 We sought feedback on our proposals to remake, without significant changes, the following class orders:

- Class Order [CO 02/281] *Dematerialised securities traded on Austraclear*; and
- Class Order [CO 02/312] *Part 7.11, Division 4 financial products for ASTC*.

210 CP 236 also sought feedback on ASIC’s proposals to repeal:

- Class Order [CO 00/2449] *ASX Online—relief from paper form lodgement*; and
- Class Order [CO 02/1296] *ASX managed investment warrants—FSR Act transition*.

211 Submissions on CP 236 closed on 21 September 2015.

**Reports**

**REP 444 ASIC enforcement outcomes: January to June 2015**

212 REP 444 outlines enforcement outcomes achieved by ASIC during the period 1 January 2015 to 30 June 2015. The report identifies the entities and individuals that enforcement action was taken against, and highlights examples of conduct targeted during this period.

213 REP 444 reports that we achieved 323 enforcement outcomes between January and June 2015. This included criminal as well as civil and administrative (e.g. banning or disqualification) actions, and negotiated outcomes, including enforceable undertakings. These outcomes were achieved across the financial services, market integrity, corporate governance and small business areas.

214 The report highlights our ongoing focus on tackling poor culture and illegal phoenix activity, on protecting consumers and on holding gatekeepers to account.

**REP 439 Snapshot of the Australian hedge funds sector**

215 REP 439 presents the findings of our research on the Australian hedge funds sector, and sets out the results of our 2014 hedge funds survey covering the 12 months to 30 September 2014.

216 The purpose of this project was to better understand the systemic risk posed by hedge funds and to gain insights into the hedge fund industry.

217 The survey and research build on a survey conducted in 2012 which found that there was no strong evidence that hedge funds pose significant systemic risk.

**REP 440 *Financial benchmarks***

218 REP 440 presents an overview of the importance of financial benchmarks and the need for financial benchmarks to be robust and reliable. REP 440 also discusses investigations conducted by ASIC in relation to financial benchmark-related conduct issues.

219 The report sets out the Australian and international regulatory reforms and other responses to concerns about poor conduct relating to financial benchmarks.

220 The purpose of the report was to address the potential manipulation of financial benchmarks, and other related conduct issues.

## 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](http://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
9–12	ICICI Bank Limited	15-0851 (A40/15)	16 September 2015	Sections 926A(2)(a), 992B(1)(a) and 1020F(1)(a) of the Corporations Act  Relief from the licensing and disclosure provisions in relation to a money transfer service	
13-15	Avia Aviation Pty Ltd, Avia Airshares Pty Ltd and the Avia Plane Owing Companies	ASIC Corporations (Avia Syndicate) Instrument 2015/825	9 September 2015	Sections 601QA(1)(a), 741(1)(a) and 926A(2)(a) of the Corporations Act  Relief from s601ED(5) and 911A(1), and Pts 6D.2 and 6D.3 (except for s736) of the Corporations Act	1 October 2025
37–40	Contact Energy Limited	15-0811 (A40/15)	16 September 2015	Sections 741(1)(a) and 741(1)(b) of the Corporations Act  Relief to allow on-sale of securities and rights issues conducted by way of a cleansing notice in New Zealand where the company is a foreign exempt listing on ASX	
41–43	Tabcorp Holdings Limited	15-0732 (A34/15)	6 August 2015	Sections 741, 926A(2) and 992B(1) of the Corporations Act  Conditional relief similar to [CO 14/1000] to facilitate offers of shares to participants under an employee incentive scheme	
47–49	Commonwealth Bank of Australia	15-0570 (A36/15)	14 August 2015	Section 741(1)(b) of the Corporations Act  Modification of s9A(4) (as notionally modified by Class Order [CO 08/35])	

Para no.	Entity name	Instrument no. (Gazette no. if applicable)	Date executed	Power exercised and nature of relief	Expiry date
104–106	Taylor Fry Holdings Pty Limited	15-0796 (A37/15)	26 August 2015	Section 655A(1)(b) of the Corporations Act Relief from a relevant interest by employee shareholders arising by way of certain provisions in a shareholders deed	
111–114	Affinity Education Group Ltd and G8 Education Ltd	15-0746 (A35/15)	10 August 2015	Section 655A(1)(b) of the Corporations Act Relief from s635(1) to extend the time for lodging and dispatching a target's statement in a market bid	
115–117	G8 Education Ltd	15-0784 (A36/15)	20 August 2015	Section 655A(1)(b) of the Corporations Act Relief from s623 to facilitate simultaneous takeover bids	
118–122	Hamilton Securities Limited	15-0417 (A20/15)	5 May 2015	Section 655A(1)(b) of the Corporations Act Relief from s633(1) and 633A(3)(d) to permit a bidder to vary the terms of its offer before dispatch of an offer document to shareholders	
196–199	AFMA and ISDA on behalf of all Reporting Entities	ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844	21 September 2015	Section 907D(2)(a) of the Corporations Act Relief from Rule 2.2.1 of the ASIC Derivative Transaction Rules (Reporting) 2013	1 October 2025