ASIC
Australian Securities & Investments Commission

REPORT 530

Overview of decisions on relief applications (October 2016 to March 2017)

June 2017

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 our decisions on relief applications during the period from 1 October 2016 to 31 March 2017. It summarises examples of situations where we have exercised, or refused to exercise, ASIC's 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 October 2016 to 31 March 2017 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 advice. We encourage you to seek your own professional advice to find out how the *Corporations Act 2001* and/or the *National Consumer Credit Protection Act 2009* and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Contents

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 ASIC's exemption and modification powers under various provisions of the Corporations Act, including the following:

(a) Ch 2M (financial reports and audit);

(b) Ch 5C (managed investment schemes);

(c) Ch 6 (takeovers);

(d) Ch 6D (fundraising); and

(e) Ch 7 (financial services and markets).

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

2 ASIC has powers to grant 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 ASIC's discretionary powers to grant relief from provisions of the Corporations Act and the National Credit Act.

4 This report covers the period beginning 1 October 2016 and ending 31 March 2017. During this period we received 838 applications. We granted relief in response to 474 applications and refused to grant relief in response to 38 applications; 170 applications were withdrawn. The remaining 156 applications were decided outside 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 ASIC's 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 continue to strictly enforce 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 an 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 at www.asic.gov.au/li. Individual relief instruments are published in the *ASIC Gazette*, available at 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 at 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.

9 This report refers to a number of publications issued by us during the period that may be relevant to prospective applicants for relief. These include legislative instruments, consultation papers, information sheets, regulatory guides and reports.

10 We also publish a number of reports on a periodic basis that have not been summarised in the body of this report, but are published on our website at www.asic.gov.au/reports. The periodic reports published during the period of this report are:

(a) Report 501 *Market integrity report: January to August 2016* (REP 501);

(b) Report 503 *Overview of licensing and professional registration applications: January to June 2016* (REP 503);

(c) Report 506 *Overview of decisions on relief applications (April to September 2016)* (REP 506);

(d) Report 507 *Insolvency statistics: External administrators' reports (July 2015 to June 2016)* (REP 507);

(e) Report 511 *Regulator Performance Framework: ASIC self-assessment 2015–16* (REP 511);

(f) Report 512 *ASIC regulation of corporate finance: July to December 2016* (REP 512); and

(g) Report 513 *ASIC enforcement outcomes: July to December 2016* (REP 513).

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

Licensing relief for entity that provides financial services solely to a foreign trust

11 We granted relief from the requirement to hold an AFS licence to an entity that proposed to provide financial services only to a trust in Canada. The Canadian trust provides a pension scheme to civil service employees in Ontario and had formed the entity in Australia to assist in its engagement with Australian businesses. The entity would be carrying on a financial services business in Australia in arranging for the Canadian trust to acquire and dispose of financial products in Australia.

12 The entity was unable to rely on the AFS licensing exemption in s911A(2)(i) for persons who provide financial services only to related bodies corporate because the Canadian trust did not meet the definition of a 'body corporate'. All other requirements in s911A(2)(i) were satisfied.

13 In considering the relief, we consulted with the Canadian trust in accordance with Regulatory Guide 92 *Procedural fairness to third parties* (RG 92). RG 92 provides guidance on how ASIC will afford procedural fairness when exercising our discretionary powers under the law.

14 We made a decision to grant conditional relief from the requirement to hold an AFS licence for the following reasons:

(a) the control exercised by the Canadian trust over the entity was sufficiently analogous to the control a related body corporate would have over a subsidiary;

(b) there were valid legal or commercial reasons for structuring the arrangement in this way; and

(c) the Australian entity proposed to provide the financial services only to the Canadian trust and to no other third parties in Australia. The financial services would be limited to arranging for the Canadian trust to acquire and dispose of financial products, and providing financial product advice. This did not include entering into any derivative or foreign exchange contract on behalf of the Canadian trust.

Licensing relief for foreign financial services providers

15 Three foreign financial services providers (FFSP), each part of a banking group, sought individual relief from the requirement in s911A(1) to hold an AFS licence in connection with the provision of financial services under the policy set out in Regulatory Guide 176 *Foreign financial services providers* (RG 176).

16 The FFSPs were unable to rely on the relevant class orders—Class Order [CO 03/1100] *US SEC regulated financial service providers*, Class Order [CO 03/1103] *Hong Kong SFC regulated financial service providers*, and Class Order [CO 03/1099] *UK regulated financial service providers*—due to the FFSPs' historical failure to report class order breaches to ASIC in the required timeframe.

17 We granted the relief sought by each FFSP because it was within our existing policy framework for FFSPs in RG 176. In particular, we determined that, on balance, the burden of full compliance with Australian regulatory obligations was unnecessary in the case of these three FFSPs because:

(a) the relevant financial services would be provided in Australia to wholesale clients only;

(b) the relevant financial services were regulated by the US Securities and Exchange Commission (SEC), Securities and Futures Commission of Hong Kong (SFC) and the UK Financial Conduct Authority (FCA);

(c) the regulatory regime overseen by the SEC, SFC and FCA was sufficiently equivalent to the Australian regulatory regime; and

(d) there were effective cooperation arrangements between ASIC and the SEC, SFC and FCA.

18 We granted conditional relief through three individual instruments on terms broadly similar to Class Order [CO 03/1100], Class Order [CO 03/1103] and Class Order [CO 03/1099]; and on condition that each FFSP, among other things:

(a) ensures that records of the written disclosure required under the conditions of relief are kept for a period of seven years after the day the disclosure is given, and are accessible by the FFSP during that period in a way that enables the FFSP to provide those records to ASIC;

(b) provides a written statement to ASIC each calendar year, signed by a senior executive of the FFSP responsible for compliance, attesting to the FFSP's compliance with the requirements of the individual instrument throughout the calendar year; and

(c) provides ASIC with a description, which ASIC has stated in writing is adequate, of the financial service(s) intended to be provided to Australian clients in reliance on the individual instrument.

19 To be consistent with the interim position taken by us for our review of policy settings under RG 176, all three individual instruments will cease on 30 June 2018.

Publications

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

Consultation papers

CP 280 *ASIC class order on wholesale equity schemes: Licensing relief for trustees—[CO 07/74]*

21 In CP 280, we sought feedback from trustees and managers of wholesale equity schemes and other stakeholders on our proposals to either remake Class Order [CO 07/74] *Wholesale equity schemes: Licensing relief for trustees* without significant changes, or to repeal it if it no longer forms a useful part of the legislative framework.

22 Under the *Legislation Act 2003* (Legislation Act), [CO 07/74] is due to expire ('sunset') on 1 October 2017 if not remade.

23 Submissions to CP 280 were due by 13 April 2017.

Legislative instruments

Licensing exemptions for financial technology businesses

24 ASIC is committed to encouraging and facilitating innovation in financial services and credit where this is likely to produce good outcomes for investors and financial consumers. In seeking to facilitate the development of innovative products and services, we have established an Innovation Hub to help new financial technology (fintech) businesses navigate our regulatory framework.

> Note: More information about our Innovation Hub can be found on our website at www.asic.gov.au.

25 Based on our work through the Innovation Hub, we have identified three interconnected issues that affect new fintech businesses seeking to provide financial services or engage in credit activities. These issues are:

(a) speed to market;

(b) organisational competence; and

(c) access to capital.

26 Allowing fintech businesses to test their new products and services before they obtain a licence can help alleviate the barriers to innovation identified above by:

(a) allowing concepts to be validated and refined before businesses spend the time and money associated with obtaining a licence; and

(b) providing increased opportunities for businesses to obtain investment that may assist with meeting the costs of complying with the law.

27 In Media Release (16-440MR), *ASIC releases world-first licensing exemption for fintech businesses* (15 December 2016), ASIC announced that we had released a 'class waiver' to allow eligible fintech businesses to test certain specified services without holding an AFS or credit licence.

28 We provided this 'fintech licensing exemption' by making the following instruments:

(a) ASIC Corporations (Concept Validation Licensing Exemption) Instrument 2016/1175, which provides an exemption from particular requirements in the Corporations Act to eligible businesses to test certain products and services for 12 months without needing to obtain an AFS licence; and

(b) ASIC Credit (Concept Validation Licensing Exemption) Instrument 2016/1176, which provides an exemption from particular requirements in the National Credit Act to eligible businesses to test certain products and services for 12 months without needing to obtain a credit licence.

29 We have also made ASIC Corporations (Amendment Instrument 2016/1246), which amends ASIC Corporations (Concept Validation Licensing Exemption) Instrument 2016/1175 to include debentures, stocks or bonds issued or proposed to be issued by the Australian Government within the meaning of 'eligible product' in that instrument. The effect of this change is that new businesses may test certain financial services relating to Government-issued debentures, stocks or bonds without an AFS licence for 12 months.

30 The purpose of the fintech licensing exemption is to facilitate innovation in financial services and credit by allowing businesses to test certain product and service offerings without holding a licence for a period of 12 months (testing period).

31 The fintech licensing exemption allows concept validation of a business model without holding a licence in circumstances where:

(a) many fundamental consumer protections still apply in some form; and

(b) the products and services being tested are limited in scope to minimise the risk of loss, particularly where the business ceases operations following the end of the testing period.

Note: Information about the services covered by the fintech licensing exemption is available in an ASIC infographic: see 16-440MR.

32 In addition to the fintech licensing exemption, other options are available for testing products and services without a licence. These options include:

(a) where there are existing statutory exemptions or flexibility in the Corporations Act and National Credit Act; or

(b) for other services, where ASIC grants individual relief.

33 Together with the fintech licensing exemption, these measures collectively form Australia's 'regulatory sandbox' framework.

34 In December 2016, we released Regulatory Guide 257 *Testing fintech products and services without holding an AFS or credit licence* (RG 257) to provide guidance for fintech businesses seeking to test products and services within the regulatory sandbox. In February 2017, we updated RG 257 to account for the amendments made by ASIC Corporations (Amendment Instrument 2016/1246).

35 Consultation Paper 260 *Further measures to facilitate innovation in financial services* (CP 260) set out ASIC's proposals, which included providing a limited industry-wide licensing exemption to allow new Australian businesses to test certain financial services for six months without holding an AFS licence.

36 We received 29 submissions in response to CP 260 and, based on this feedback, we implemented the fintech licensing exemption.

37 Report 508 *Response to submissions on CP 260 Further measures to facilitate innovation in financial services* (REP 508) highlights the key issues that arose out of the submissions received on CP 260 and details our responses to those issues.

38 We also announced in 16-440MR the release of updated:

(a) Regulatory Guide 105 *Licensing: Organisational Competence* (RG 105); and

(b) Regulatory Guide 206 *Credit licensing: Competence and training* (RG 206).

39 We updated our guidance to licensees in RG 105 and RG 206 on how to satisfy the requirement to maintain organisational competence in light of the introduction of the fintech licensing exemption. These updates were also based on the feedback we received on the proposals in CP 260.

40 RG 105 is a guide for AFS licensees and AFS licence applicants. This guide describes what we look for when we assess compliance with the organisational competence obligation, which is one of the general obligations under s912A(1).

41 RG 206 is for credit licensees, credit licence applicants and unlicensed carried over instrument lenders (unlicensed COI lenders). It provides guidance

on how credit licensees and unlicensed COI lenders can meet their organisational competence and representative training obligations under the National Credit Act.

ASIC Corporations (Amendment) Instrument 2016/1090

42 In Media Release (16-446MR) *ASIC extends the transition period for superannuation and retirement calculators* (19 December 2016), ASIC announced that we had extended to 1 July 2018 the time that providers of retirement and superannuation calculators have to comply with the new requirement that generic financial calculators must account for inflation.

43 We made ASIC Corporations (Amendment) Instrument 2016/1090 to amend ASIC Corporations (Generic Calculators) Instrument 2016/207 so that providers of superannuation or retirement calculators do not need to comply until 1 July 2018 with the requirement that an estimate of an amount payable at a future time of two years or more must set out the present value of the estimate calculated using a discount rate of 2.5% (being the current mid-point of the Reserve Bank of Australia's target range for inflation over the cycle).

44 We have deferred the commencement of this requirement for superannuation and retirement calculators because there are a number of current superannuation reforms that may affect how superannuation calculators should present and calculate estimates in the future. For example, the regulations have not yet been made to refine the content and presentation requirements for a Choice product dashboard, including the use of a 'super estimator'.

45 Regulatory Guide 167 *Licensing: Discretionary powers* (RG 167) has been updated to account for the extension of time that providers of retirement and superannuation calculators have to comply with the new requirement.

ASIC Corporations (Recognised Accountants: Exempt Services) Instrument 2016/1151

46 Under the Corporations Amendment Regulation 2013 (No. 3) (Amending Regulation), reg 7.1.29A of the Corporations Regulations 2001 (Corporations Regulations)—which allowed recognised accountants to provide advice on the acquisition or disposal of interests in a self-managed superannuation fund (SMSF) without being covered by an AFS licence (accountants' exemption)—was repealed on 1 July 2016.

47 To facilitate accountants moving to the AFS licensing regime, the Amending Regulation created an alternative form of licence, known as a limited AFS licence. Accountants (and other advisers) have been able to apply for a limited AFS licence from 1 July 2013. We made ASIC Corporations (Recognised Accountants: Exempt Services) Instrument 2016/1151 to

address a specific regulatory anomaly that arose between the limited AFS licence regime and reg 7.1.29(4) of the Corporations Regulations.

48 Regulation 7.1.29(4) enables a person to provide advice on taxation issues (including advice on the tax implications of financial products) without holding an AFS licence. If the advice is also financial product advice given to a retail client, it must be accompanied by a written statement which states that, among other things, the person providing the advice is not licensed to provide financial product advice: reg 7.1.29(4)(c)(ii).

49 Licensees holding limited AFS licences cannot comply with the requirement to provide a disclaimer stating that they are not licensed. Therefore, they could not rely on the exemption to provide advice to retail clients on the tax implications of financial products that were not covered by their licence; nor could they provide that advice under their licence if their authorisations did not cover the financial products that were the subject of the advice.

50 ASIC Corporations (Recognised Accountants: Exempt Services) Instrument 2016/1151 modifies reg 7.1.29(4)(c)(ii) as it applies to 'limited' AFS licensees and their authorised representatives so that they can provide advice to retail clients on the tax implications of financial products not covered by their licence by giving a modified version of the disclaimer.

51 We released Information Sheet 216 *AFS licensing requirements for accountants who provide SMSF services* (INFO 216) for accountants who provide services in relation to SMSFs. It sets out the various SMSF services an accountant might provide and whether a licensing exemption applies to them or whether the accountant must be covered by an AFS licence for those services.

ASIC Corporations (Foreign Financial Services Providers—Limited Connection) Instrument 2017/182

52 In Consultation Paper 268 *Licensing relief for foreign financial services providers with a limited connection to Australia* (CP 268), we sought feedback on our proposal to repeal Class Order [CO 03/824] *Licensing relief for financial services providers with limited connection to Australia dealing with wholesale clients*. Under the Legislation Act, this class order would automatically expire unless remade.

53 Submissions on CP 268 were due on 2 December 2016. We received 12 responses to CP 268 from industry bodies, law firms, investment managers and foreign banks. Additionally, we met with a number of industry bodies, law firms and interested entities to discuss our proposed approach. The feedback received on CP 268 highlighted the importance of the interrelationship between [CO 03/824] and the suite of 'passport' relief provided to foreign providers.

54 We subsequently published Report 519 *Responses to submissions on CP 268 Licensing relief for FFSPs with a limited connection to Australia* (REP 519), which highlights the key issues that arose out of the submissions received on CP 268 and details our responses to those issues.

55 In Media Release (17-089MR) *ASIC remakes 'sunsetting' class order providing relief to foreign financial services providers with a limited connection to Australia* (29 March 2017), ASIC announced that, following public consultation in CP 268, we were temporarily extending the relief provided in [CO 03/824].

56 We have issued ASIC Corporations (Foreign Financial Services Providers—Limited Connection) Instrument 2017/182, which continues to provide licensing relief until 27 September 2018 for FFSPs with limited connection to Australia providing financial services to wholesale clients. This date aligns with the expiry of the suite of 'passport' relief provided to FFSPs under ASIC Corporations (Repeal and Transitional) Instrument 2016/396: see Report 506 *Overview of decisions on relief applications (April to September 2016)* (REP 506) at paragraph 39.

57 This extension of relief will allow ASIC to undertake a comprehensive review of the underlying policy settings applicable to relief for foreign providers, and to seek detailed information from industry about the impact of a repeal.

Regulatory guides

RG 245 *Fee disclosure statements*

58 We updated RG 245 to reflect regulatory and legislative changes since the guide was first published, including revisions to the Future of Financial Advice (FOFA) reforms.

59 As well as making some minor changes to remove outdated references, we updated RG 245 to:

(a) reflect technical amendments to the FOFA legislation since the previous version of RG 245 was released; and

(b) clarify that the three limited no-action positions that were previously taken by ASIC in respect of the obligation to prepare and give the client a fee disclosure statement (FDS) were no longer available. These no-action positions were taken to assist the industry to make a smooth transition to meeting the FDS obligations, which have now been in force for some time.

60 RG 245 provides guidance on how ASIC will administer the requirement under the Corporations Act for financial advisers who provide personal advice to retail clients under an ongoing fee arrangement to prepare and give an FDS to the client.

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 requirements in Ch 7 of the Corporations Act 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.

New Zealand foreign exempt listings

Relief to facilitate New Zealand placement

61 We granted relief to an entity listed on the New Zealand securities exchange (NZX). The entity had made a placement to institutional investors under a cleansing notice issued in accordance with New Zealand law, shortly before seeking to list on ASX as a foreign exempt listing.

62 Recognising that the entity had been listed for more than three months in New Zealand, and had therefore been subject to continuous disclosure obligations under New Zealand law, we granted relief to permit:

(a) the immediate on-sale on ASX of securities that had been issued under the placement, without the need for a contemporaneous Australian prospectus (e.g. under s708A(11)); and

(b) a placement or rights issue to be conducted by the entity immediately after listing on ASX using a New Zealand cleansing notice for the purposes of the on-sale provisions in the Corporations Act, without having to wait until it had been continuously quoted on ASX for three months.

63 We had previously granted relief on a number of occasions to allow secondary sales and rights issues to be made where a New Zealand cleansing notice had been given after the entity had been listed on ASX for three months: see Report 469 *ASIC regulation of corporate finance: July to December 2015* at paragraphs 49–51, and Report 489 *ASIC regulation of corporate finance: January to June 2016* at paragraphs 28–31.

64 However, we decided to remove the three-month waiting period on the basis that we were satisfied that the history of trading and continuous disclosure on NZX was sufficiently similar to the same period of trading on ASX to allow the benefit of relief immediately after listing.

Foreign capital reductions

Disclosure relief for *in specie* distributions where no notice of meeting was given to shareholders

65 We received an application for prospectus disclosure relief in connection with an *in specie* distribution involving a transfer of securities to effect the spin-off of an entity.

66 This type of relief is contemplated in Regulatory Guide 188 *Disclosure in reconstructions* (RG 188), which states that we may give relief for capital reductions (such as an *in specie* distribution) where there is no significant change to the overall investment as a result of the transfer or issue of securities.

67 In deciding whether to grant relief, we take into account whether shareholders have been provided with sufficient disclosure in the notice of meeting to approve the capital reduction, as required by the Corporations Act.

68 The applicant was a foreign company and was not required to seek shareholder approval for the *in specie* distribution under the laws of its place of incorporation. We were concerned that disclosure relief, if required, may not be appropriate in these circumstances.

69 Ultimately, the company amended the timing of the distribution to coincide with a public offer of shares in the spin-off entity, and prepared a prospectus covering both the public offer and the *in specie* distribution of shares.

70 As a result, the relief was not necessary and the application was withdrawn.

Publications

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

Consultation papers

CP 274 *Remaking ASIC class orders on application form requirements*

72 In CP 274, we sought feedback on our proposal to remake class orders on the application form requirements under Div 2 of Pt 7.9 and Pt 6D.2 of the Corporations Act. Under the Legislation Act, these class orders would expire if not remade.

73 We sought feedback from the financial services industry on our proposals to remake, with changes, in a single new instrument:

(a) Class Order [CO 02/260] *Product Disclosure Statements—application forms created by a licensee*;

(b) Class Order [CO 02/262] *Applications to switch managed investment products*;

(c) Class Order [CO 02/437] *Eligible applications—relief from s1016A(2)(a) for managed investment products*; and

(d) Class Order [CO 07/10] *Technical disclosure relief for reconstructions and capital reductions* (paragraphs 4 and 8).

74 CP 274 also sought feedback on our proposals to incorporate ASIC Corporations (Options: Bonus Issues) Instrument 2016/77 and Class Order [CO 14/26] *Personalised or Australian financial services licensee created application forms* into the new instrument.

75 Submissions on CP 274 were due on 2 January 2017. We received two informal submissions to CP 274 in support of the proposals.

76 Following the public consultation in CP 274, ASIC announced—in Media Release (17-078MR) *ASIC remakes 'sunsetting' class orders on application forms* (23 March 2017)—that we had made ASIC Corporations (Application Form Requirements) Instrument 2017/241 to consolidate and replace [CO 02/260], [CO 02/262], [CO 02/437], [CO 07/10], [CO 14/26] and ASIC Corporations (Options: Bonus Issues) Instrument 2016/77.

77 We also announced in 17-078MR that paragraph 9 of [CO 07/10] had been remade into ASIC Corporations (Capital Reductions and Reconstructions—Technical Disclosure Relief) Instrument 2017/242, which continues the substantive effect of the relief granted by paragraph 9 of [CO 07/10].

Legislative instruments

Remaking class orders on financial services disclosure

78 In Media Release (16-395MR) *ASIC remakes 'sunsetting' class orders on financial services disclosure* (17 November 2016), ASIC announced that we had remade, without substantive changes, three class orders relating to specific financial services disclosure requirements. The class orders, which were due to expire ('sunset') in 2017, were remade as:

(a) ASIC Corporations (Top-up Product Disclosure Statements Relief) Instrument 2016/1054, which grants an exemption from s1012A, 1012B and 1012C in certain circumstances, continuing the substantive effect of the relief granted by Class Order [CO 02/1072] *Product Disclosure statements: Top-up relief for managed investment schemes*;

(b) ASIC Corporations (Updated Product Disclosure Statements) Instrument 2016/1055, which grants relief from the requirements in

s1012J in certain circumstances, continuing the substantive effect of the relief granted by Class Order [CO 03/237] *Updated information in product disclosure statements*; and

(c) ASIC Corporations (Joint Product Disclosure Statements) Instrument 2016/1056, which modifies s1013A and omits reg 7.9.07J of the Corporations Regulations to permit joint Product Disclosure Statements (PDSs) in certain circumstances, continuing the substantive effect of the relief granted by Class Order [CO 03/1092] *Further relief for joint product disclosure statements*.

Conditional extension to transition period for updated PDS fee and cost disclosure requirements

79 In Media Release (16-412MR) *ASIC extends the transition period for superannuation trustees and responsible entities to comply with updated fee and cost disclosure requirements* (29 November 2016), ASIC announced that we were extending the transition period for trustees of superannuation funds and responsible entities of managed funds and other managed investment schemes (issuers) to comply with the updated fee and cost disclosure requirements in [CO 14/1252].

80 In December 2014, we made Class Order [CO 14/1252] *Technical modifications to Schedule 10 of the Corporations Regulations* to modify the Corporations Act to revise some of the definitions, including the 'indirect cost' and 'management cost' definitions, and to clarify the costs that must be disclosed consistently with the intended effect of Sch 10 of the Corporations Regulations. [CO 14/1252] also addressed some provisions that could be interpreted in an anomalous way, which were included in the Corporations Regulations as part of the Stronger Super reforms.

81 In December 2016, we issued ASIC Corporations (Amendment) Instrument 2016/1224 to amend [CO 14/1252] to provide industry with a longer transition period to comply with [CO 14/1252], to clarify how borrowing costs should be disclosed for superannuation products and to make minor amendments to ensure greater clarity in disclosing fees and costs for superannuation and managed investment products in order to promote accurate and consistent disclosure in accordance with the Corporations Regulations.

82 The transition period will now end by 30 September 2017 for issuers that notified ASIC in writing before 1 February 2017 that they intended to take advantage of this extension in relation to a PDS. Issuers that did not want to take of advantage of this extension would have had to comply with the updated requirements from 1 February 2017. The facilitative approach we published previously will apply until 1 October 2017 for those issuers that opted to comply before that date.

83 In Media Release (16-450MR) *ASIC publishes form for superannuation trustees and responsible entities to provide ASIC information on updated fee and cost disclosure requirements* (20 December 2016), ASIC announced that we had published the form and instructions for trustees of superannuation funds and responsible entities of managed funds and other managed investment schemes (issuers) to provide ASIC with information in order to qualify for the extension to the transition period to comply with the updated fee and cost disclosure requirements in relation to PDSs.

84 We also updated Regulatory Guide 97 *Disclosing fees and costs in PDSs and periodic statements* (RG 97) to provide guidance on the extension of the transition period for complying with [CO 14/1252], and to modify the requirements for disclosure of borrowing costs by superannuation trustees.

85 The updated RG 97 makes clear that this guidance also applies to providers of managed discretionary account from 1 October 2017.

ASIC Corporations (Amendment and Repeal) Instrument 2017/65

86 In March 2017, we issued ASIC Corporations (Amendment and Repeal) Instrument 2017/65, which repealed Class Order [CO 03/578] *Financial Services Guide exemption for market-making services on a licensed market*. [CO 03/578] was due to expire on 1 April 2017.

87 In Consultation Paper 275 *Repealing ASIC class order on FSG exemption for market-making services on a licensed market: [CO 03/578]* (CP 275), we sought feedback on ASIC's proposal to repeal [CO 03/578]. We received one submission in response to CP 275. The submission supported ASIC's proposal to repeal [CO 03/578].

88 We reconsidered the basis for the relief provided by [CO 03/578], and whether the Corporations Act requires a market maker on a licensed market to be given a Financial Services Guides (FSG) in the absence of relief. We repealed [CO 03/578] because we considered that the class order was no longer legally necessary.

89 ASIC Corporations (Amendment and Repeal) Instrument 2017/65 made minor amendments to the following legislative instruments to correct drafting errors and ensure that the principal instruments operate as intended:

(a) Class Order [CO 09/425] *Share and interest purchase plans*;

(b) Class Order [CO 11/272] *Substantial holding disclosure: securities lending and prime broking*;

(c) Class Order [CO 13/656] *Equality of treatment impacting on the acquisition of interests*;

(d) Class Order [CO 13/760] *Financial requirements for responsible entities and operators of investor directed portfolio services*;

(e) Class Order [CO 13/1410] *Holding assets: Standards for providers of custodial and depository services*;

(f) Class Order [CO 14/1252] *Technical modifications to Schedule 10 of the Corporations Regulations*;

(g) ASIC Corporations (Compromises or Arrangements) Instrument 2015/358;

(h) ASIC Corporations (Securitisation Special Purpose Vehicles) Instrument 2016/272; and

(i) ASIC Corporations (Managed Investment Schemes: Interests Not For Money) Instrument 2016/1107.

90 ASIC Corporations (Amendment and Repeal) Instrument 2017/65 also made a minor amendment to ASIC Corporations (Charitable Investment Fundraising) Instrument 2016/813 to correctly reflect the policy intention of the instrument and Regulatory Guide 87 *Charitable schemes and school enrolment deposits* (RG 87). The definition of 'retail client' in relation to debentures is now consistent with the position under the Corporations Act.

ASIC Corporations (Amendment) Instrument 2016/1173

91 In December 2016, we issued ASIC Corporations (Amendment) Instrument 2016/1173, which amends ASIC Corporations (Horse Schemes) Instrument 2016/790 by removing a requirement from the information that has to be included in a PDS for a horse-racing syndicate.

92 It also amends ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 by correcting an error in a cross-reference to a section of that instrument.

ASIC Corporations (Nominee and Custody Services) Instrument 2016/1156

93 In Media Release (16-438MR) *ASIC releases new instrument for nominee and custody services and amends platforms class orders* (15 December 2016), ASIC announced that we had made ASIC Corporations (Nominee and Custody Services) Instrument 2016/1156, which replaces Class Order [CO 02/295] *Nominee and custody services*. Under the Legislation Act, [CO 02/295] was due to expire if not remade.

94 ASIC Corporations (Nominee and Custody Services) Instrument 2016/1156 provides conditional relief from certain fundraising provisions in Ch 6D, and certain financial product disclosure and conduct provisions in Ch 7 for persons who are operating, or are involved in the operation or promotion of, a nominee and custody service.

95 In Consultation Paper 264 *Remaking ASIC class order on nominee and custody services and proposed changes to platforms policy* (CP 264), we sought feedback on our proposals:

(a) to remake the nominee and custody services class order with changes;

(b) for issues or sales after 30 June 2017—to require that retail clients of platforms and nominee and custody services have access to a product issuer's internal and external dispute resolution system if they have concerns about investments made through the platform or nominee and custody service; and

(c) to update the definition of an 'IDPS' and an 'IDPS-like scheme' to clarify what is covered by these definitions.

96 We received one non-confidential and one confidential submission.

97 Submissions highlighted that the draft version of ASIC Corporations (Nominee and Custody Services) Instrument 2016/1156 attached to CP 264 required that a nominee and custody service operator be a public company. On balance, we have accepted that relief should be extended to a body corporate.

98 We further discuss other relief issued following CP 264 at paragraphs 130–135.

Regulatory guides

RG 190 *Offering financial products in New Zealand and Australia under mutual recognition*

99 RG 190 is a guide for New Zealand and Australian issuers offering financial products or interests in managed or collective investment schemes in both countries. It explains what issuers have to do under the trans-Tasman mutual recognition scheme for offers of financial products.

100 This is a joint guide published by ASIC and the New Zealand Financial Markets Authority.

101 We updated RG 190 to make the following technical amendments:

(a) references to transitional arrangements, which applied until 30 November 2016, have been removed;

(b) certain references to Part 3 of the *Financial Markets Conduct Act 2013* of New Zealand have been removed to be consistent with reg 8.2.01 of the Corporations Regulations;

(c) references to the Financial Markets Conduct Regulations 2014 of New Zealand have been added to be consistent with reg 8.2.01 of the Corporations Regulations; and

(d) ASIC's position on offers made during an exposure period, set out in RG 190.50, has been clarified.

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.

Responsible entity requirements

Relief for a responsible entity from the need to be a public company and hold an AFS licence

102 We were minded to refuse an application seeking relief from s601FA to enable the current responsible entity of a registered managed investment scheme (registered scheme) to be replaced by a new responsible entity that was not a public company and did not hold an AFS licence. The application was related to a proposed trust scheme in which the registered scheme would be wound down if the trust scheme was approved by members.

103 We considered the application for relief from s601FA to be novel in nature, outside ASIC's policy, and inconsistent with the underlying legislative intention of s601FA that a responsible entity must be a public company and hold an AFS licence.

104 It was not clear to ASIC whether the applicant had considered any alternative courses of action—including allowing the current responsible entity to remain as the responsible entity of the scheme until it was deregistered, or hiring a third party to act as the responsible entity until the scheme was deregistered.

105 We advised the applicant that we would refuse to grant the relief on the basis that there was no net regulatory benefit, and for ASIC to grant relief would be to reverse the usual and intended effect of the Corporations Act that a responsible entity of a registered scheme must be a public company and hold an AFS licence.

106 The applicant subsequently withdrew their application.

Publications

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

Consultation papers

CP 269 *Remaking ASIC class order on managed investment scheme buy-backs and updating related guidance*

108 In CP 269, we sought feedback from responsible entities of registered schemes on our proposal to remake Class Order [CO 07/422] *On-market buy-backs by ASX-listed schemes*, which was due to expire on 1 April 2018. Under the Legislation Act, this class order would have expired if not remade.

109 We proposed to continue the relief currently given by [CO 07/422], without significant changes, so that the ongoing effect would be preserved without any disruption to the entities that rely on it. However, we also proposed to:

(a) expand the relief to cover ASX-listed schemes that have more than one class of interest; and

(b) simplify requirements where a responsible entity or its nominee exercise a discretion.

110 In CP 269, we also sought feedback on our draft updated Regulatory Guide 101 *Managed investment scheme buy-backs* (RG 101), which provides guidance on our relief for managed investment scheme buybacks.

111 Submissions were due by 23 November 2016. We did not receive any responses to our consultation.

112 We made the new legislative instrument ASIC Corporations (ASX-listed Schemes On-market Buy-backs) Instrument 2016/1159, which replaced [CO 07/422]. This instrument provides relief from s601GA(4), Pt 5C.6 and s606 to allow the responsible entity of a registered scheme listed on ASX to carry out on-market buybacks of interests on a similar basis to buybacks of shares in companies listed on ASX.

113 We also updated RG 101 to include ASIC's broader policy on managed investment scheme buybacks—in addition to our policy on market buybacks by ASX-listed schemes—and to account for the sunsetting class order that has been remade as a new legislative instrument.

CP 270 *Remaking ASIC class orders on registered schemes*

114 In CP 270, we sought feedback on our proposals to remake, without significant changes, the following class orders:

(a) Class Order [CO 98/50] *Incorporating parts of other compliance plans*;

(b) Class Order [CO 98/60] *Protecting class rights in a managed investment scheme*;

(c) Class Order [CO 98/1806] *Related bodies corporate and external members of compliance committee*; and

(d) Class Order [CO 98/1808] *Allowing constitutions to use Appendix 15A of the ASX Listing Rules*.

115 In relation to [CO 98/1808], we also proposed to extend the relief to apply to the listing rules of the Sydney Stock Exchange.

116 Under the Legislation Act, these class orders will expire if not remade.

117 Submissions for CP 270 were due on 25 November 2016.

CP 272 *Remaking ASIC class orders on time-sharing schemes*

118 In CP 272, we set out our proposals to remake our class orders on time-sharing schemes. Under the Legislation Act, these class orders would expire if not remade.

119 We sought feedback from the time-sharing industry, consumers and consumer advocates, and other interested parties on our proposals to:

(a) remake, as a single new instrument, our class orders relating to time-sharing schemes:

(i) Class Order [CO 00/2460] *Time-sharing schemes—property valuations*;

(ii) Class Order [CO 02/315] *Time-sharing schemes—use of loose-leaf price list*; and

(iii) Class Order [CO 03/104] *Relief facilitating the acquisition and sale of forfeited interests in registered time-sharing schemes*;

(b) incorporate into the new instrument:

(i) transitional relief for existing operators relying on Class Order [CO 02/237] *Time-sharing schemes—operation of rental pool*, with amendments;

(ii) for registered time-sharing schemes, the template cooling-off statement under Pro Forma 208 *Time-sharing schemes—cooling-off statement* (PF 208), with amendments;

(iii) the AFS licence conditions under Pro Forma 209 *Australian financial services licence conditions* (PF 209), with amendments; and

(iv) modifications to the enhanced fee disclosure requirements in Sch 10 of the Corporations Regulations;

(c) make amendments to [CO 13/760];

(d) withdraw Pro Forma 205 *Time-sharing schemes formerly exempt under state laws* (PF 205), Pro Forma 206 *Time-sharing schemes—Chapter 5C relief* (PF 206), and Pro Forma 207 *Title-based time-sharing schemes for new operators* (PF 207);

(e) make amendments to PF 208 so that it applies only to exempt time-sharing schemes and reflects the wording of the cooling-off statement for registered time-sharing schemes in the new instrument; and

(f) update our guidance in Regulatory Guide 160 *Time-sharing schemes* (RG 160).

120 Submissions to CP 272 were due on 12 January 2017. We received eight submissions in response to CP 272. The submissions generally supported our proposals to continue the relief under [CO 00/2460], [CO 02/315] and [CO 03/104]. We also received feedback that supported our proposal to provide transitional relief to existing operators relying on [CO 02/237], and to consider any new applications for similar relief on a case-by-case basis.

121 However, we received divergent feedback on many other proposals in CP 272, such as the introduction of a new oral advice requirement and a new fee disclosure regime. An area of significant contention was the current cooling-off regime and whether changes were required to the timeframe of the cooling-off periods or the opt-out model.

122 We released Report 522 *Response to submissions on CP 272 Remaking ASIC class orders on time-sharing schemes* (REP 522), which highlights the key issues that arose out of the submissions received on CP 272 and details our responses to those issues.

123 REP 522 outlines the phased approach to our review of the current policy settings for time-sharing schemes. This approach will allow us to provide certainty to operators and customers of time-sharing schemes while we undertake further consultation to ensure that our proposals to change the current policy settings are given proper consideration.

124 In Media Release (17-084MR) *ASIC remakes class orders on time-sharing schemes* (28 March 2017), ASIC announced that we had made ASIC Corporations (Time-sharing Schemes) Instrument 2017/272, which:

(a) remakes as a single new instrument [CO 00/2460], [CO 02/315] and [CO 03/104] without substantive change; and

(b) provides transitional relief for existing operators relying on [CO 02/237].

Legislative instruments

ASIC Corporations (Managed Investment Schemes: Interests Not For Money) Instrument 2016/1107

125 In Media Release (16-426MR) *ASIC releases new instrument for non-monetary consideration managed investment schemes* (8 December 2016), ASIC announced that we had released a new legislative instrument on interests-not-for-money schemes, replacing three class orders on show schemes, interests-not-for-money schemes and film investment schemes. Under the Legislation Act, these class orders would expire if not remade.

126 We made ASIC Corporations (Managed Investment Schemes: Interests Not For Money) Instrument 2016/1107 to consolidate and continue, without fundamental changes, the relief in the following class orders:

(a) Class Order [CO 02/0210] *Interests in film and theatrical ventures*;

(b) Class Order [CO 02/0211] *Managed investment schemes—interests not for money*; and

(c) Class Order [CO 02/0236] *Film investment schemes*.

127 The new instrument followed public consultation in Consultation Paper 266 *Remaking ASIC class orders on managed investment schemes: Not for money* (CP 266). We received nine non-confidential and two confidential submissions, which were generally supportive of our proposal to remake the class orders without fundamentals changes.

128 We released Report 505 *Response to submissions on CP 266 Remaking ASIC class orders on managed investment schemes: Not for money* (REP 505), which highlights the key issues that arose out of the submissions received on CP 266 and details our responses to those issues.

129 We have also updated Regulatory Guide 80 *Managed investment schemes: Interests not for money* (RG 80) to incorporate Regulatory Guide 19 *Film investment schemes* (RG 19), as well as reflecting the terms of the new legislative instrument. RG 19 has been withdrawn.

ASIC Corporations (Amendment) Instrument 2016/1158

130 We released ASIC Corporations (Amendment) Instrument 2016/1158 to update:

(a) Class Order [CO 13/763] *Investor directed portfolio services*; and

(b) Class Order [CO 13/762] *Investor directed portfolio services provided through a registered managed investment scheme*.

131 We have also updated Regulatory Guide 148 *Platforms that are managed investment schemes and nominee and custody services* (RG 148), as well as

reflecting the terms of the updated legislative instruments. Regulatory Guide 149 *Nominee and custody services* (RG 149) has now been withdrawn.

132 The new nominee and custody services instrument, and updates to the platforms class orders, followed our public consultation in CP 264.

133 We received one non-confidential and one confidential submission.

134 Submissions focused on the related amendments to our platforms policy, and generally highlighted the requirement for an operator to ensure that there is a dispute resolution system for underlying issuers or sellers of financial products through the platform.

135 Key points raised and how they were addressed include:

(a) investments by wholesale or sophisticated investors may be affected by the proposed changes—we have amended the final version of the relevant provisions to clarify that the dispute resolution requirements only apply where the operator acquires financial products for retail clients;

(b) the length of the transition period—we have amended the relevant provisions so that the dispute resolution requirements only apply from 1 January 2018, to allow more time for a platform operator or a nominee and custody service operator to conduct due diligence and to make relevant system changes;

(c) balancing regulatory benefit and compliance costs—we have considered the arguments and, on balance, consider that the regulatory benefits outweigh the compliance costs; and

(d) whether any divestment would be required for existing investments—we have clarified that no divestment is required for existing investments held through a platform or a nominee and custody service.

ASIC Corporations (Registered Schemes—Differential Fees) Instrument 2017/40 and ASIC Corporations (Amendment and Repeal) Instrument 2017/41

136 We made ASIC Corporations (Registered Schemes—Differential Fees) Instrument 2017/40, which replaces Class Order [CO 03/217] *Differential fees*, and provides exemptions from the requirement for a responsible entity of a registered scheme to treat members who hold interests of the same class equally subject to the conditions in the instrument. Equal treatment prohibits a responsible entity from charging fees to a member of one class that differ from those charged to another member of the same class based on either characteristics of the member or individual negotiation between the member and the responsible entity.

137 ASIC Corporations (Registered Schemes—Differential Fees) Instrument 2017/40 also:

(a) expands the relief where a member acquires an investment under a switching facility that involves a withdrawal from a managed investment scheme operated by the responsible entity to also cover a switching facility that involves a withdrawal from a managed investment scheme operated by a related body corporate of the responsible entity; and

(b) removes unnecessary relief where a member carries out transactions in relation to the scheme by electronic means.

138 The new instrument follows Consultation Paper 258 *Remaking ASIC class order on differential fees: [CO 03/217]* (CP 258), where we sought feedback on our proposals to remake [CO 03/217] without significant changes.

139 We received one non-confidential and one confidential submission. Neither submission raised any concerns with our proposals to remake [CO 03/217].

140 To reflect the new instrument, ASIC Corporations (Amendment and Repeal) Instrument 2017/41 amends the following legislative instruments:

(a) Class Order [CO 13/655] *Provisions about the amount of consideration to acquire interests and withdrawal amounts not covered by ASIC Corporations (Managed investment product consideration) Instrument 2015/847*; and

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

ASIC Corporations (Repeal and Transitional) Instrument 2017/271

141 We made ASIC Corporations (Repeal and Transitional) Instrument 2017/271 to extend for two years the effect of the relief in Class Order [CO 04/526] *Foreign collective investment schemes*.

142 [CO 04/526] provides relief for collective investment schemes from the requirement to register as a managed investment scheme or obtain an AFS licence where the relevant overseas regulatory regime delivers regulatory outcomes that are sufficiently equivalent to our own regulatory regime.

143 We have extended this relief for two years so that we can review and consult on the policy settings of our relief in light of other regulatory developments, such as the Government's announcement of the introduction of new collective investment vehicles, and the implementation of the Asia Region Funds Passport regime.

144 We will consult publicly on our relief for foreign collective investment schemes before 1 April 2019.

D Mergers and acquisitions relief

Key points

This section outlines some of the circumstances in which we have granted or refused relief from the provisions of Chs 6–6C of the Corporations Act.

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

Takeover procedure

Relief for bidder to request target's share register information on varied terms

145 We granted relief to permit a bidder to request the target's share register information under s641(1) that was correct at a date before the request was made.

146 The bidder failed to request information about securities holdings from the target on or before the record date for the bid it set under s633(2). The information was required to be correct at the date set under s633(2) in order to determine which holders of target securities would need to be sent the bidder's and target's statements.

147 The bidder's request for the target to provide information about holders of target securities was delayed until after the date on which the bidder determined holders in s633(2). As such, the target was unable to comply with the bidder's request, given that s641(2) requires the bidder to specify a date on which the information must be correct, and such a date must occur after the day on which the bidder makes the request.

148 We granted a modification to s641(2) because this would only affect the timing of when the target must supply the information required and would not affect the date already announced for determining holders set by the bidder under s633(2).

Relief to extend bid class to performance rights under executive incentive plan

149 A bidder requested relief to modify s617(2) to extend the definition of 'bid class securities' in an off-market takeover bid to include performance rights to be issued during the bid period.

150 After considering the terms of the performance rights, we were of the view that they were properly characterised as options for the purposes of s92(3)(e), and that relief was therefore not required (because the rights would already be captured under s617(2), as notionally modified by Class Order [CO 13/521] *Takeover bids*).

151 The legal characterisation of performance rights, and whether they are a security (such as an option) or a derivative for the purposes of Ch 6, can raise difficulties as this depends on the particular terms of the rights. As noted in Consultation Paper 218 *Employee incentive schemes* (CP 218) at paragraph 92, ASIC administers the Corporations Act on the basis that a performance right may be classified as an option in circumstances where its terms contain a mechanism requiring the employee to exercise their right to obtain the shares to which the right relates (rather than, for example, an automatic issue or transfer on vesting). In the context of Ch 6, this applies to options to acquire shares by way of issue or transfer: see s92(3).

152 In our view, if a performance right does not have an exercise mechanism, but vests automatically, it is unlikely to be considered to be an option. In such a circumstance, it is likely to be a derivative and would not be captured under s617(2). In this application, both limbs of the test were satisfied and relief to modify s617(2) was not required.

153 We informed the bidder of our view that relief was not required and the bidder subsequently withdrew its application.

Voluntary escrow

Relief to facilitate a voluntary escrow arrangement

154 We considered a request for relief to modify s609 to permit a company subject to a deed of company arrangement (DOCA) to acquire a relevant interest in its own securities above the thresholds set out in s606 under a voluntary escrow arrangement.

155 The company proposed to enter into an escrow arrangement with its substantial shareholder in relation to the issue of shares to the substantial holder under the DOCA in exchange for an injection of funds by the substantial shareholder. The applicant sought relief to modify s609 so that the company did not acquire a relevant interest in over 20% of the company's shares by virtue of the escrow arrangement.

156 Regulatory Guide 5 *Relevant interests and substantial holding notices* (RG 5) sets out the circumstances in which ASIC will grant a company relief so that it does not acquire a relevant interest in its own shares merely

because the company requires a shareholder to enter into an escrow arrangement that is not required under the relevant listing rules.

157 The underlying policy of ASIC's escrow relief is that an escrow arrangement delays the time in which a vendor can realise the value of the escrowed securities. The delay allows time for the value of assets or services sold to the entity to become more apparent, and for the market price of the entity's securities to adjust, before the vendor receives full consideration—thereby sharing the business risk between the vendor and other investors.

158 We were minded to refuse relief because we considered that the application was not within our policy in RG 5. In particular, there was no need for a delay to allow time for the value of assets or services to become apparent because the vendor was providing a quantified amount of funds in return for the escrowed shares.

159 The application was ultimately withdrawn and the company instead sought approval for the acquisition of the relevant interest from its shareholders under item 7 of s611.

Request for modification of existing voluntary escrow relief

160 We refused an application to modify s609 on terms similar to an existing ASIC instrument under which voluntary escrow relief had already been provided to the applicant.

161 The existing relief was granted in 2015 to permit the applicant to acquire a relevant interest in its own securities above the thresholds set out in s606 as a result of entering into voluntary escrow agreements with some of its shareholders.

162 The applicant sought a modification of the existing relief because one of the parties to the voluntary escrow agreements was in the process of refinancing its debt arrangements which involved the transfer of shares subject to escrow.

163 It was proposed that replacement voluntary escrow deeds be executed, with the replacement deeds being on substantially the same terms as the existing voluntary escrow deeds.

164 We took the view that the initial basis for the original voluntary escrow agreement was negated by this subsequent transfer of shares. Providing a modification of the existing relief raised new policy considerations which were outside ASIC's policy in RG 5.

Downstream acquisitions

Downstream takeover relief arising from acquisitions of unlisted upstream entities

165 We were minded to refuse relief to enable two foreign companies to increase their relevant interests in an Australian listed trust above the thresholds set out in s606 without being able to rely on one of the exceptions in s611.

166 The application sought relief from s606 to permit the applicants to acquire an indirect relevant interest in the units of the Australian trust as a result of having entered into conditional agreements to acquire shares held in unlisted closely held upstream foreign entities. The applicants could not rely on the downstream acquisition exception in item 14 of s611 and sought relief as contemplated in Regulatory Guide 71 *Downstream acquisitions* (RG 71).

167 The applicants applied for relief a number of months after having entered into the conditional agreements giving rise to the downstream acquisitions. We are unable to grant retrospective relief in relation to contraventions of s606.

168 The application was withdrawn.

Substantial holding disclosure

Substantial holding disclosure by agent intermediaries involved in securities lending

169 We received an application seeking relief for investment banks acting as agent intermediaries in securities lending transactions (agent lenders) from the requirement to comply with the substantial holding reporting provisions in Ch 6C.

170 Under a typical agency arrangement, agent lenders will generally exercise discretion when entering into and managing securities lending transactions on behalf of their client. Agent lenders also manage securities received as collateral for securities lending transactions on behalf of their clients. This discretion is subject to any mandates set by the agent lender's client in the agency agreement.

171 We consider that agent lenders have a relevant interest in their client's securities (because of their power to control disposal of the securities) and are not able to rely on any of the exceptions in s609 (e.g. the exception for bare trustees in s609(2)). Therefore, agent lenders are required to report substantial holdings in any of their clients' securities that the agent lender:

(a) has been authorised under the agency arrangement to lend to borrowers;

(b) has been authorised under the agency arrangement to recall from borrowers; and

(c) receives and manages as collateral for a securities lending transaction.

172 We were minded to refuse relief because we considered that:

(a) the substantial holding disclosure provisions are intended to have a broad application, capturing the relevant interests of agent lenders who exercise control and discretion over the disposal of their clients' securities;

(b) disclosure of substantial holdings by agent lenders achieves greater transparency about the volume of listed entities' securities that are subject to securities lending activities and the impact that securities lending activities may have on a control transaction. There is value in this information for listed entities, investors and the market more broadly;

(c) any duplication of substantial holding reporting in relation to the same securities (e.g. by both the agent lenders and their clients) is consistent with the broad application of the 'relevant interest' provisions, which recognise that multiple persons can have a relevant interest in the same securities; and

(d) any concerns about potential confusion in the market arising from multiple substantial holding notices in relation to the same securities, or about the agent lender's voting power in a listed entity, can be addressed through clearer descriptions of the nature of the relevant interest in the substantial holding notice.

173 Investment banks providing securities lending services, including agency intermediary services, should have adequate systems and processes in place to ensure compliance with their substantial holding reporting obligations under the Corporations Act.

174 The application was subsequently withdrawn.

Publication

175 We issued the following publication on mergers and acquisitions relief during the period of this report.

Regulatory guide

RG 9 *Takeover bids*

176 In December 2016, we reissued RG 9.

177 RG 9 is a guide for listed and unlisted entities, their advisers, and investors involved in a takeover bid. In RG 9, we:

(a) discuss ASIC's regulatory role in relation to takeover bids and how we interpret and administer the requirements of the takeover provisions in Ch 6; and

(b) explain how we exercise our discretionary powers in relation to takeover bids, including the power to exempt from, or modify, the takeover provisions.

178 The principal change we made to RG 9 was to update and incorporate our guidance on the minimum bid price rule in s621(3).

179 We rewrote our guidance to make it clearer and easier to use, and included the new Section D on the minimum bid price rule to further consolidate our policies on takeovers.

180 Other changes we made in the reissued RG 9 include:

(a) the removal of discussion on broker handling fees, which are likely to be conflicted remuneration;

(b) amendments to reflect our current policy on relief to permit a bidder to disclose its voting power at an earlier date than the day on which offers are first made; and

(c) updated references to relevant regulatory guides that have been issued or reissued since RG 9 was first released, and to the new legislative instruments relating to takeovers, which were released in December 2015, including ASIC Corporations (Minimum Bid Price) Instrument 2015/1068.

181 We have withdrawn Regulatory Guide 163 *Takeovers: Minimum bid price principle—s621* (RG 163) because this guidance has now been incorporated into RG 9.

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.

Financial reporting

Relief from the half-yearly financial reporting requirements of a market lending scheme that is a disclosing entity

182 We were minded to refuse relief to a registered scheme as a disclosing entity from the half-yearly directors' and financial reporting requirements in Pt 2M.3.

183 The applicant sought relief under s340 relying on the statutory pre-conditions in s342(1)(b) that compliance with the half-yearly reporting requirements would be inappropriate in the circumstances, and in s342(1)(c) that compliance would impose an unreasonable burden. The applicant made submissions that, as a newly established innovative marketplace lender, the cost of compliance by the scheme would be inappropriate, and a burden that would divert its limited resources from developing its innovative business model.

184 We were minded to refuse relief as the applicant was unable to satisfactorily demonstrate that any of the pre-conditions in s324(1), required for ASIC to relieve the applicant from the half-yearly reporting requirements, were met. We consulted with ASIC's Innovation Hub and noted that other disclosing entities that were innovative marketplace lenders were complying with their half-yearly reporting requirements under s320.

185 The application was subsequently withdrawn.

186 Our policy on how we will exercise our powers to grant relief from the financial reporting and audit requirements of the Corporations Act is set out in Regulatory Guide 43 *Financial reports and audit relief* (RG 43).

Relief from financial reporting, net tangible asset requirement and the conditions of an AFS licence

187 We granted deferral relief under s340(1) to a responsible entity of a registered scheme from the scheme's financial reporting obligations in Ch 2M (in particular, s301, 314 and 319) for a 24-month period because, in the reasonable opinion of the responsible entity, the scheme was likely to be insolvent.

188 We also granted relief under s601QA from the compliance plan audit obligations in s601HG and the requirement to provide a copy of the scheme's final audited financial report and auditor's report when lodging a Form 5138 on completion of the winding-up, as required by reg 5C.9.01.

189 We considered the application met our policy in Regulatory Guide 174 *Relief for externally administered companies and registered schemes being wound up* (RG 174) for individual deferral relief for registered schemes being wound up. We were satisfied that, because the scheme was likely to be insolvent, a deferral of the financial reporting obligations was appropriate given the expected costs of compliance and unlikelihood of any compensating benefit to the users of the financial reports.

190 We refused to grant relief under s926A(2)(c) to exempt the responsible entity from:

(a) complying with the net tangible asset requirements in s912AA(4) (as notionally inserted by Class Order [CO 13/760] *Financial requirements for responsible entities and operators of investor directed portfolio services*); and

(b) s912A(1)(b), which requires the holder of an AFS licence to comply with the conditions on the licence, in respect of the licence condition that imposes a net tangible asset requirement only.

191 The relief under s926A(2)(c) was sought to permit the responsible entity to personally hold scheme assets rather than having to appoint a third-party custodian, which would provide the scheme with $20,000 per year in cost savings.

192 We decided to refuse the relief under s926A(2)(c) because we were not satisfied that the commercial benefit of the cost saving to the scheme outweighed the regulatory detriment to investors in not having the scheme's property held by a custodian who complies with the requirements of [CO 13/760] and is adequately licensed, capitalised and regulated.

193 We considered the regulatory benefit to members of the scheme in maintaining an adequately capitalised and external custodian, even if the scheme was insolvent or likely to be insolvent, was imperative.

194 We noted the applicant had other lawful methods available to reduce the scheme's custodial costs.

Publications

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

Consultation papers

CP 271 *Remaking and repealing ASIC class orders on internet offers, hawking and PDS obligations*

196 In November 2016, we released CP 271 seeking feedback on our proposal to:

(a) remake Class Order [CO 02/246] *Offers of securities on the internet*, which gives relief for foreign offerors of securities to persons outside Australia, where the offer or advertisement is accessible incidentally to Australians;

(b) remake Class Order [CO 02/641] *Hawking: Securities and managed investments*, which gives technical relief so that securities and interests in managed investment schemes are not subject to two differing hawking prohibitions; and

(c) repeal Class Order [CO 02/286] *Obligation to provide a PDS: s1012B(4)*.

197 Under the Legislation Act, these class orders would expire if not remade.

198 We found that [CO 02/246] and [CO 02/641] were operating effectively and efficiently, and continued to form a necessary and useful part of the legislative framework. However, in remaking [CO 02/246], ASIC proposed to update and streamline the conditions.

199 [CO 02/286] was originally issued to correct possible oversights in instruments issued before March 2002. We were unaware of any continuing instruments that relied on the relief provided by [CO 02/286] and we therefore considered that relief was redundant.

200 Responses to CP 271 were due on 7 December 2016. We did not receive any submissions.

201 In Media Release (17-054MR) *ASIC remakes 'sunsetting' class orders about internet offers, hawking and PDS obligations* (7 March 2017), ASIC announced that we had made:

(a) ASIC Corporations (Offers over the internet) Instrument 2017/181 to replace [CO 02/246]; and

(b) ASIC Corporations (Securities and Managed Investment Scheme Hawking Relief) Instrument 2017/184 to replace [CO 02/641].

202 The new instruments will continue the effect of the previous instruments with some minor amendments, which include simplifying the drafting to give greater clarity and streamline the conditions.

203 Finally, ASIC Corporations (Repeal) Instrument 2017/185 repealed [CO 02/286] without remaking the relief in that instrument.

CP 273 *Repealing ASIC class orders on holding client assets*

204 We released CP 273 seeking feedback on ASIC's proposals to repeal:

(a) Class Order [CO 03/1110] *Prime brokerage: Relief from holding client property on trust*, which is due to expire on 1 October 2017;

(b) Class Order [CO 03/1111] *Prime brokerage: Relief from holding scheme property separately*, which is due to expire on 1 October 2017; and

(c) Class Order [CO 03/1112] *Relief from obligation to hold client money on trust*, which is due to expire on 1 October 2017.

205 In ASIC's view, these class orders are no longer necessary and do not serve any regulatory purpose. Under the Legislation Act, these class orders will expire if not remade.

206 Submissions on CP 273 were due on 21 December 2016.

CP 278 *Remaking ASIC class order on reporting requirements for AFS licensees who are natural persons*

207 We released CP 278 seeking feedback from AFS licensees on our proposals to remake, without significant changes, Class Order [CO 03/748] *Reporting requirements under s989B*, which was due to expire on 1 October 2017. Under the Legislative Act, this class order would expire if not remade.

208 [CO 03/748] grants relief to AFS licensees who are natural persons from the requirement to include in a profit and loss statement any revenues and expenses that do not relate to financial services businesses carried on by the licensee.

209 Submissions for CP 278 were due on 20 March 2017 and we did not receive any submissions. We concluded that the class order was operating effectively and efficiently, and remained a necessary and useful part of the legislative framework. We subsequently issued the relief without substantive changes in ASIC Corporations (Financial Reporting: Natural Person Licensees) Instrument 2017/307.

Legislative instruments

ASIC Corporations (Amendment) Instrument 2016/1006

210 In Media Release (16-362MR) *ASIC clarifies record-keeping obligations for financial services licensees* (27 October 2016), ASIC announced that we had made ASIC Corporations (Amendment) Instrument 2016/1006 to amend Class Order [CO 14/923] *Record-keeping obligations for Australian financial services licensees when giving personal advice*.

211 [CO 14/923] inserted a new notional s912G, which imposes specific record-keeping requirements on AFS licensees when the licensee or its representative gives personal advice to retail clients.

212 Section 912G requires AFS licensees to ensure that, in relation to the provision of personal advice, certain records are kept that demonstrate compliance with the best interests duty and related obligations in Div 2 of Pt 7.7A. Subsection 912G(3) specifies that records should be kept for a period of at least seven years after the day the personal advice is provided to the client.

213 We believe it is important that consumers have trust and confidence that advice licensees (i.e. AFS licensees who provide personal advice to retail clients) have access to their representatives' records so that they can monitor the advice given by their representatives and remediate consumers if they suffer loss or detriment as a result of receiving non-compliant advice.

214 We made the amendments in ASIC Corporations (Amendment) Instrument 2016/1006 to:

(a) make it clear that AFS licensees must have access at all times to records in relation to personal advice during the period in which the records are required to be kept;

(b) place a direct obligation on authorised representatives who are advisers to keep records in relation to personal advice, and to give the records to their AFS licensee if the licensee requests the records; and

(c) restore the original policy intent of [CO 14/923] in that the exemption to the record-keeping obligation in [CO 14/923] only applies where the 'modified best interests duty' applies.

Note: The 'modified best interests' duty applies where an adviser is able to satisfy the best interests duty in s961B(1) by taking the steps mentioned in s961B(2)(a), (b) and (c) and does not need to also take the steps set out in the other paragraphs of that subsection.

ASIC Corporations (Ongoing Fees Code) Instrument 2016/1129

215 The Financial Planning Association of Australia Ltd (FPA) lodged an application for ASIC to use our power under s1101A to approve the FPA's Consumer Code for Ongoing Fee Arrangements in Financial Planning (FPA Code), and to grant relief for members of the FPA who subscribe to the FPA Code from complying with the opt-in requirement.

216 The opt-in requirement was introduced as part of the FOFA reforms and requires an AFS licensee or representative who receives fees under an ongoing fee arrangement to give the client a written renewal notice every two years, requiring the client to opt in to renew that arrangement. If the client does not respond to the renewal notice or opts out, the ongoing fee arrangement terminates.

217 Section 962CA allows ASIC to exempt a person or class of persons from the opt-in requirement, if we are satisfied that they are bound by a code of conduct approved by us that removes the need for persons bound by the code to comply with the opt-in requirement.

218 We have the power under s1101A to approve a code of conduct that relates to any aspect of the activities of AFS licensees, or issuers of financial products. A code of conduct will only be approved by ASIC if:

(a) the code is consistent with the laws that ASIC administers; and

(b) we consider it appropriate to approve the code, given the ability of the applicant to ensure compliance with the code and the desirability of codes being standardised to the greatest extent possible.

219 In Media Release (16-404MR) *ASIC approves the FPA Professional Ongoing Fees Code* (23 November 2016), ASIC announced that we had approved the FPA Code and granted the relief requested by the FPA by making ASIC Corporations (Ongoing Fees Code) Instrument 2016/1129.

220 We determined that the FPA Code would achieve the same policy outcomes as the opt-in requirement is intended to achieve—that is, to protect disengaged clients from paying ongoing financial advice fees where they are receiving little or no service.

221 A crucial part of the FPA Code is that the FPA will meet and maintain certain minimum governance requirements. In particular, the FPA has implemented processes to ensure that subscribers comply with the FPA Code. There are sanctions that apply for non-compliance, including termination of the FPA member's subscription to the code and the member no longer having relief from the opt-in requirement.

222 This was the first time we have used our power to approve a code.

ASIC Corporations (Repeal and Transitional) Instrument 2017/186

223 In Media Release (17-090MR) *ASIC extends the relief provided for business introduction services for two years* (29 March 2017), ASIC announced that we had extended the relief in Class Order [CO 02/273] *Business introduction or matching services* for two years. Under the Legislation Act 2003, the class order would expire if not remade. The class order was due to expire on 1 April 2017.

224 [CO 02/273] gave conditional relief from the fundraising, financial product disclosure, hawking and advertising requirements in the Corporations Act that would otherwise apply to a person making or calling attention to offers of securities or interests in a registered scheme through a business introduction service.

225 ASIC Corporations (Repeal and Transitional) Instrument 2017/186 extends the relief in [CO 02/273] in the same form for two years so that we can review and consult on the policy settings of our relief.

226 The review is necessary because of recent amendments to the Corporations Act, which introduce a new framework to facilitate crowd-sourced funding offers by small unlisted public companies. This new regime in the *Corporations Amendment (Crowd-sourced Funding) Act 2017* commences later this year.

ASIC Corporations (Amendment) Instrument 2016/1211

227 ASIC Corporations (Amendment) Instrument 2016/1211 amends ASIC Corporations (Wholly-owned Companies) Instrument 2016/785 in relation to Pro Forma 24 *Deed of cross guarantee* (PF 24).

228 The current version of PF 24 came into force on 28 September 2016, the day before Class Order [CO 98/1418] *Wholly-owned entities* was repealed. There is doubt about whether—without the amendments made by ASIC Corporations (Amendment) Instrument 2016/1211—a deed of cross guarantee based on the 31 March 2008 version of PF 24 would be acceptable for an entity wishing to take advantage of financial reporting relief under [CO 98/1418] (as continued in force) or ASIC Corporations (Wholly-owned Companies) Instrument 2016/785 in relation to a financial year ending on or after 28 September 2016.

Note: To download copies of PF 24, see www.asic.gov.au/pro-formas.

229 The purpose of ASIC Corporations (Amendment) Instrument 2016/1211 is to amend ASIC Corporations (Wholly-owned Companies) Instrument 2016/785 so that the 31 March 2008 version of the deed of cross guarantee continues to be an acceptable form of deed of cross guarantee for the purposes of the financial reporting relief given by ASIC Corporations (Wholly-owned Companies) Instrument 2016/785 and [CO 98/1418], where the deed of cross guarantee was entered into before 28 September 2016.

ASIC Corporations (Foreign-Controlled Company Reports) Instrument 2017/204

230 Following consultation in Consultation Paper 248 *Remaking ASIC class orders on reporting by foreign entities: [CO 98/98] and [CO 02/1432]* (CP 248), we made ASIC Corporations (Foreign-Controlled Company Reports) Instrument 2017/204, which:

(a) relieves certain small foreign-controlled proprietary companies and certain registered foreign companies from the requirement to lodge financial statements; and

(b) replaces sunsetting class orders:

(i) Class Order [CO 98/98] *Small proprietary companies which are controlled by a foreign company but which are not part of a large group*; and

(ii) Class Order [CO 02/1432] *Registered foreign companies—financial reporting requirements*.

231 ASIC Corporations (Foreign-Controlled Company Reports) Instrument 2017/204 specifically provides that ASIC may give notice to a small proprietary company controlled by a foreign company or a registered foreign company that it cannot rely on the relief for a particular financial year.

232 We released Report 520 *Response to submissions on CP 248 Remaking ASIC class orders on reporting by foreign entities* (REP 520), which highlights the key issues that arose out of the submissions received on CP 248 and details our responses to those issues.

Regulatory guide

RG 175 *Licensing: Financial product advisers—Conduct and disclosure*

233 We updated RG 175 to reflect regulatory and legislative changes, including revisions to the FOFA reforms. The updates reflect:

(a) technical amendments to the FOFA reforms since the previous version of RG 175 was released;

(b) recent amendments to clarify financial advisers' record-keeping obligations in Class Order [CO 14/923] *Record-keeping obligations for Australian financial services licensees when giving personal advice*;

(c) the application of the tax agent services regime in the *Tax Agent Services Act 2009* to financial advisers who provide tax (financial) advice services from 1 July 2014; and

(d) the relief available under ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647 to facilitate the delivery of financial services disclosure by making the disclosure available digitally and notifying the client.

234 We have also updated RG 175 to clarify that, while the best interests duty and the appropriate advice requirement introduced as part of the FOFA reforms are separate obligations, it is unlikely that advice which fails to meet the best interests duty will be appropriate. We have included two examples to illustrate the process we apply in determining whether the best interests duty has been satisfied.

235 The updates to RG 175 are generally technical in nature and do not represent substantive policy changes.

236 RG 175 provides guidance to persons who provide financial product advice to retail clients, and their professional advisers. It considers how certain conduct and disclosure obligations in Pt 7.7 and Div 2 of Pt 7.7A apply to the provision of financial product advice.

Information sheets

Financial reporting information sheets

237 We reissued the following information sheets due to technical amendments to account for the replacement of Class Order [CO 98/1417] *Audit relief for proprietary companies* and [CO 98/1418] with ASIC Corporations (Audit Relief) Instrument 2016/784 and ASIC Corporations (Wholly-owned Companies) Instrument 2016/785 respectively:

(a) Information Sheet 17 *Changing a company financial year* (INFO 17);

(b) Information Sheet 24 *Deeds of cross guarantee* (INFO 24); and

(c) Information Sheet 31 *Lodgement of financial reports* (INFO 31).

INFO 217 *Licensing relief for low volume financial markets*

238 Under Corporations (Low Volume Financial Markets) Instrument 2016/888, certain low-volume financial markets are exempt from Pt 7.2 and therefore do not need to hold an Australian market licence. This exemption applies to low-volume financial markets named on the register established and kept by ASIC in accordance with the instrument.

239 Operators of low-volume financial markets must apply to ASIC to be included on this register.

240 We released INFO 217 to provide answers to the following questions:

(a) What is a low-volume financial market?

(b) What must you include in your application?

(c) When may ASIC remove you from the register?

Note: For ASIC's information sheets, see www.asic.gov.au/infosheets/.

F Credit relief

Key points

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

Publication

241 We issued the following publication on credit relief during the period of this report.

Legislative instrument

ASIC Credit (Repeal) Instrument 2016/1087

242 In Media Release (16-376MR) *Consumers will no longer be charged direct debit fees for payday loans* (4 November 2016), ASIC announced that we had made ASIC Credit (Repeal) Instrument 2016/1087 to repeal Class Order [CO 13/818] *Certain small amount credit contracts* so that, from 1 February 2017, a consumer can no longer be charged direct debit processing fees by a third party.

243 Following an independent review of payday lending laws, ASIC has taken steps to ensure consumers are not charged direct debit fees when taking out a payday loan.

244 Loans that commence before 1 February 2017 will continue to operate under the existing rules, and third-party direct debit fees will be able to be charged on those loans. However, if a contract is varied on or after 1 February 2017, no further direct debit fees may be charged.

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.

Debentures

ASIC approves body corporate to act as trustee for debenture issuers under amended financial conditions

245 A body corporate sought ASIC's approval under s283GB to act as trustee for specified debentures issued under Ch 2L.

246 Chapter 2L requires debenture issuers to enter into a trust deed and appoint a trustee. ASIC has the power under s283GB to approve a body corporate to become a trustee.

247 The applicant sought ASIC's approval to act as trustee for unlisted and unrated debentures issued by five companies, all of which are in the business of on-lending funds raised by issuing debentures.

248 In assessing the application, we revisited the policy behind the usual conditions placed on an approval of this type—in particular, the condition that a trustee must hold professional indemnity insurance (PI insurance) equal to the total value of debentures issued under the trust deed. We reduced the level of PI insurance required to 25% of the debentures on issue to set the requirement at a more commercial level, and after taking into account the purpose of the insurance.

249 We granted approval for the applicant to act as trustee for the five debenture trusts on condition that, among other things, the trustee:

(a) holds adjusted net current assets equal to, or more than, the total of $250,000 per trusteeship at all times (adjustments include subtracting any surplus liquid funds required under any AFS licence); and

(b) holds the following PI insurance:

(i) if the total value of debentures issued per trust is:

(A) $5 million or less, the PI insurance must be held at the total value of debentures issued; or

(B) more than $5 million, the PI insurance held must be the greater of:

(I) $5 million; or

(II) 25% of the total value of debentures issued;

(ii) for multiple trusteeships, the applicant must maintain a level of PI insurance that would allow it to claim on each separate trust; and

(iii) any PI insurance to be held for the applicant's actions as debenture trustee must be in addition to any PI insurance that it is required to hold under an AFS licence.

Buybacks

Relief granted to facilitate off-market share buyback

250 We granted conditional relief from the shareholder approval requirements of s257D to enable a listed company to conduct an off-market selective buyback as an equal access scheme. We considered that the proposed buyback was, in essence, an equal access scheme and that the relief sought was consistent with the law and our policy.

251 Part D of Regulatory Guide 110 *Share buy-backs* (RG 110) explains how ASIC may exercise our powers to grant relief from certain requirements to obtain shareholder approval for a company to conduct a buyback. In particular, Table 3 of RG 110 notes that we may exempt a company from the requirement for shareholder approval to enable it to buy back a small parcel of shares from each shareholder and avoid shareholders being left with small parcels after a buyback.

252 The applicant proposed to prioritise buying back all of the shares held by shareholders who had parcels of shares worth $2,000 or less. The applicant then proposed to buy back up to 10% of its ordinary shares on issue, subject to ensuring that no shareholder was left with a parcel of shares worth $500 or less. Because the proposed buyback would involve the applicant making different offers to different groups of members, and buying back different percentages of ordinary shares from different shareholders, this would be a selective buyback and not an equal access scheme.

253 As a result of the applicant's particular circumstances, it was not feasible and was potentially inappropriate for the applicant to seek shareholder approval for the buyback in accordance with s257D(1). The applicant only proposed to diverge from an equal access scheme in connection with the buyback mechanism described above. We therefore granted the relief sought.

Market integrity rule waiver

ASIC Market Integrity Rules (Competition in Exchange Markets) 2011—Rule 1.2.1(1) waiver

254 We granted relief to Australian Securities Exchange Limited (ASX 24) in relation to the ASIC Market Integrity Rules (Competition in Exchange Markets) 2011 (ASIC Market Integrity Rules (Competition)) regarding volatility controls applied for the equity futures markets.

255 Under Rules 1.2.1(1) and 1.2.3 of the ASIC Market Integrity Rules (Competition), we granted ASX 24 relief in relation to how certain rules would apply with respect to volatility controls for equity futures contracts.

256 ASX 24 sought the relief to manage extreme price movements in the ASX 24 equity index futures, primarily through the application of anomalous order threshold (AOT) functionality rather than the extreme trade range (ETR) functionality.

257 In addition, the waivers allow ASX 24 to apply the ETR provisions of the ASIC Market Integrity Rules (Competition) in a flexible manner, and on a manual rather than automated basis, to address specific issues at the opening of the ASX 24 trading sessions, as well as issues in relation to leg price allocations for net price strategy orders (spreads).

258 The model in the ASIC Market Integrity Rules (Competition) allows market operators considerable discretion in the design and implementation of the AOT. Given the specific design of ASX 24's AOT, it is expected that not applying the ETR rules to the equity futures contracts, and relying solely on the AOT, will address some of the adverse consequences of market halts without weakening the tempering effect that an ETR halt is meant to deliver.

259 Coinciding with the release of the ASX 24 New Trading Platform (NTP), the conditional relief commenced on 20 March 2017. In Australia, ASX 24 and ASIC will continue to assess and refine our volatility control model against structural market developments and international regulatory approaches in this area. For that reason, the waiver has been granted for a year and applies until 20 March 2018.

260 The waiver relieves ASX 24 from the obligation to comply with the following ASIC Market Integrity Rules (Competition) related to volatility controls applied for the equity futures markets:

(a) Rule 2.1.3, to the extent that the rule requires ASX 24 to have in place adequate controls to prevent an anomalous order that is a net price strategy order from entering an order book of its market in the case where:

(i) at the time of entry, there is no AOT established for one or more of the futures contracts that are the subject of the net price strategy order; or

(ii) the net price strategy order matches with another net price strategy order and the resulting trade price generated by the spread trade price algorithm is outside the current AOT for one or more of the corresponding futures contracts;

(b) Rule 2.2.2(1), to the extent that the rule requires ASX 24 to determine the reference price for an ASX SPI 200 future or equity index future at specified times and using the methodology set out in that rule; and

(c) Rule 2.2.2C(1)(c), to the extent that the rule would require ASX 24 to immediately impose a trading pause on an ASX SPI 200 future or equity index future for a period of two minutes following an ETR event that occurs where:

(i) the price of the opening transaction in the ASX SPI 200 future or equity index future was invalid;

(ii) ASX 24 determines an alternative reference price for the ASX SPI 200 or equity index future; and

(iii) the price for the opening transaction is in the ETR, as determined by reference to the alternative reference price.

Note: For the definitions of 'anomalous order', 'anomalous order threshold', 'ASX SPI 200 future', 'equity index future', 'extreme trade range', 'market', 'opening transaction', 'order book', 'reference price' and 'trading pause', see Rule 1.4.3 of the ASIC Market Integrity Rules (Competition).

Publications

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

Legislative instruments

ASIC Corporations and Credit (Amendment and Repeal) Instrument 2016/1182

262 We made ASIC Corporations and Credit (Amendment and Repeal) Instrument 2016/1182 to repeal Class Order [CO 14/757] *Relief in relation to the registration of auditors* because [CO 14/757] is no longer necessary following the commencement of the *Corporations Amendment (Auditor Registration) Act 2016*.

263 ASIC Corporations and Credit (Amendment and Repeal) Instrument 2016/1182 also amends any amendments made by [CO 14/757] in the following class orders to wind back the effects it had on them:

(a) Class Order [CO 02/237] *Time-sharing schemes—operation of rental pool*;

(b) Class Order [CO 09/425] *Share and interest purchase plans*;

(c) Class Order [CO 10/654] *Inclusion of parent entity financial statements in financial reports*;

(d) Class Order [CO 12/752] *Financial requirements for retail OTC derivative issuers*;

(e) Class Order [CO 13/760] *Financial requirements for responsible entities and operators of investor directed portfolio services*;

(f) Class Order [CO 13/761] *Financial requirements for custodial or depository service providers*;

(g) Class Order [CO 13/762] *Investor directed portfolio services provided through a registered managed investment scheme*;

(h) Class Order [CO 13/763] *Investor directed portfolio services*;

(i) ASIC Corporations (Disregarding Technical Relief) Instrument 2016/73; and

(j) ASIC Corporations (Disclosing Entities) Instrument 2016/190.

ASIC Corporations (Repeal) Instrument 2016/1048

264 Class Order [CO 98/67] *Charitable investment schemes—continuous disclosure* provided relief to charitable bodies or trustees of charitable bodies from disclosing entity provisions in relation to securities issued or proposed to be issued.

265 In September 2016, following extensive consultation under Consultation Paper 207 *Charitable investment fundraisers* (CP 207), we updated the regulatory framework for charitable investment fundraisers. This included making ASIC Corporations (Charitable Investment Fundraising) Instrument 2016/813 to replace Class Order [CO 02/184] *Charitable investment schemes—fundraising*.

266 As part of the review of the exemptions that applied to charitable investment fundraisers, we identified that [CO 98/67] was no longer required and did not form a necessary and useful part of the legislative framework.

267 Our view is that [CO 98/67] was unnecessary because the disclosing entity provisions do not apply to charitable investment fundraisers unless they meet the definition of a disclosing entity in s111AC. Charitable investment fundraisers are not disclosing entities for the purposes of s111AC because the effect of ASIC Corporations (Charitable Investment Fundraising) Instrument 2016/813 is that securities issued by charitable investment fundraisers do not meet the definition of ED (enhanced disclosure) securities in either s111AF or 111AI.

268 [CO 98/67] was due to expire on 1 October 2017. We have reviewed the operation of [CO 98/67] and, as a result of that review, made ASIC Corporations (Repeal) Instrument 2016/1048, which repeals [CO 98/67] before its statutory sunsetting in 2017.

ASIC Superannuation (Amendment) Instrument 2016/1232

269 In Media Release (16-447MR) *ASIC defers the superannuation consistency requirements until 2019* (19 December 2016), ASIC announced that we had further deferred, until 1 January 2019—under ASIC Superannuation (Amendment) Instrument 2016/1232—the operation of s29QC of the *Superannuation Industry (Supervision) Act 1993*.

270 This is to allow sufficient time for the Choice product dashboard requirements to be settled and implemented. We consider it beneficial to allow these reforms to be finalised before settling the policy position for the application of s29QC.

271 Section 29QC was introduced as part of the Stronger Super requirements. The section requires that, if a trustee provides information to APRA under a reporting standard and the trustee gives the same or equivalent information to another person, or on a website, then the trustee must ensure that this information is calculated in the same way as the information given to APRA.

272 The purpose of this section was to improve the comparability of superannuation products.

Class rule waiver

ASIC Class Rule Waiver [CW 17-0251]

273 We granted relief to market participants of ASX 24 in relation to the ASIC Market Integrity Rules (ASX 24 Market) 2010 (ASIC Market Integrity Rules (ASX 24)) regarding the management and monitoring of aggregate loss limits. Relief was granted under Rule 1.2.1(1) of the ASIC Market Integrity Rules (ASX 24).

274 On 20 March 2017, ASX Trade24 was replaced with an upgraded new derivatives trading platform, the ASX 24 New Trading Platform (NTP). While the NTP has greater functionality in many respects, it does not have functionality to enable a market participant to input aggregate loss limits into the trading platform. As a result, once the NTP went live, market participants would have difficulties in complying with Rules 2.2.1(1)(a), (ab) and (c) of the ASIC Market Integrity Rules (ASX 24).

275 Following targeted consultation, we considered it appropriate to provide conditional relief to all market participants by way of a class waiver. On

15 March 2017, ASIC Class Rule Waiver [CW 17/0251] was issued. [CW 17/0251] relieves market participants from the obligation to:

(a) set and document aggregate loss limits on each of its client accounts and house accounts, as required by Rules 2.2.1(1)(a) and (ab) of the ASIC Market Integrity Rules (ASX 24); and

(b) input these aggregate loss limits into trading platform account maintenance.

Note: For the definitions of 'client accounts', 'house accounts', 'market participant' and 'trading platform', see Rule 1.4.3 of the ASIC Market Integrity Rules (ASX 24).

276 We issued [CW 17/0251] because we accept that:

(a) the requirement in Rules 2.2.1(1)(a) and (ab) to set and document appropriate pre-determined aggregate loss limits is part of a suite of controls mandated to ensure market participants manage their risk across multiple platforms, order management and overlaying risk systems. Relief from the obligation to comply with just one of the suite of controls will not adversely affect a market participant's overall risk management processes, nor will it undermine the intended purpose of these rules; and

(b) the NTP does not have the necessary functionality to allow market participants to fully comply with Rule 2.2.1(1)(c) in respect of aggregate loss limits.

277 Accordingly, to address this incompatibility, while still giving effect to the intended purpose of the rules, relief under [CW 17/0251] is conditional on the market participants monitoring the aggregate loss limit on each of their client accounts and house accounts.

278 [CW 17/0251] is an interim measure and will apply for a period of one year, until 20 March 2018, to enable ASIC to more fully consider how the ASIC Market Integrity Rules (ASX 24) should be amended to appropriately account for these issues in the long term.

Appendix: ASIC relief instruments

Table 1 lists the individual relief instruments we have executed for matters referred to in this report that are publicly available. The instruments are published in the *ASIC Gazette*, which is available at www.asic.gov.au/gazettes, except for credit instruments (where noted), which are published on our website under 'credit relief'.

Table 1: ASIC relief instruments

Paragraph references in this report	Entity name	Instrument number (Gazette number if applicable)	Date executed	Power exercised and nature of relief	Expiry date
11–14	Maple Leaf Management Pty Limited	16-1058 (A54/16)	27 October 2016	Relief from the requirement to hold an AFS licence for providing financial services, covered by an exemption specified by ASIC in s911A(2)(l) of the Corporations Act, where the financial services would be provided only to a Canadian trust	N/A
15–19	Barclays Capital Inc.	17-0007 (A15/17)	3 March 2017	Relief under s926A(2) of the Corporations Act from s911A(1), subject to specified conditions	30 June 2018
15–19	Barclays Capital Asia Limited	17-0008 (A15/17)	3 March 2017	Relief under s926A(2) of the Corporations Act from s911A(1), subject to specified conditions	30 June 2018
15–19	Barclays Capital Securities Limited	17-0009 (A15/17)	3 March 2017	Relief under s926A(2) of the Corporations Act from s911A(1), subject to specified conditions	30 June 2018
61–64	ikeGPS Group Limited	16-1121 (A56/16)	16 November 2016	Relief under s741(1) of the Corporations Act from certain disclosure requirements in s706 and 707	N/A
145–148	CIMIC Group Investments Pty Limited	17-0083 (A07/17)	6 February 2017	Relief under s655A(1) of the Corporations Act to modify s641(2)	N/A
187–194	Shakespeare Haney Securities Limited in its capacity as responsible entity of the Shakespeare Haney Premium Income Fund	17-0178 (A11/17)	22 February 2017	Relief under s340(1) and 601QA of the Corporations Act to defer financial reporting and compliance plan audit obligations	16 March 2019

Paragraph references in this report	Entity name	Instrument number (Gazette number if applicable)	Date executed	Power exercised and nature of relief	Expiry date
245–249	Melbourne Securities Limited	16-1197 (A10/17)	28 November 2016	Approval under s283GB of the Corporations Act for body corporate to act as debenture trustee	N/A
250–253	CMI Limited	16-1132	17 November 2016	Relief under s257D(4) of the Corporations Act to provide conditional relief from s257D to facilitate a proposed off-market share buyback	N/A
254–260	Australian Securities Exchange Limited	17-0262	20 March 2017	Relief under Rule 1.2.1(1) of the ASIC Market Integrity Rules (Competition in Exchange Markets) 2011 from Rules 2.1.3, 2.2.2(1) and 2.2.2C(1)(c) in relation to equity futures contracts	20 March 2018