



ASIC

Australian Securities & Investments Commission

REPORT 556

Overview of decisions on relief applications (April to September 2017)

December 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 April to 30 September 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 April to 30 September 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)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

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

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

Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the *Corporations Act* and/or the *National Consumer Credit Protection Act 2009* and other applicable laws apply to you, as it is your responsibility to determine your obligations.

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Overview

1 ASIC has powers under the *Corporations Act 2001* (Corporations Act) to exempt a person or a class of persons from particular provisions and to modify the application of particular provisions to a person or class of persons. This report deals with the use of 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 sections (s), chapters (Chs) and parts (Pts) 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 April 2017 and ending 30 September 2017. During this period we received 925 applications. We granted relief in response to 440 applications and refused to grant relief in response to 48 applications; 212 applications were withdrawn. The remaining 225 applications were decided outside of this period.

5 This report does not provide details of every single decision made in the period. It is intended to provide examples of decisions that demonstrate how we have applied our policy in practice. We use our discretion to vary or set aside certain requirements of the law where the burden of complying with the law significantly detracts from its overall benefit, or where we can facilitate business without harming other stakeholders.

6 In this report, we have outlined matters in which we refused to exercise 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 530](#) *Overview of decisions on relief applications (October 2016 to March 2017)* (REP 530);
 - (b) [Report 532](#) *ASIC regulation of registered liquidators: January to December 2016* (REP 532);
 - (c) [Report 536](#) *ASIC enforcement outcomes: January to June 2017* (REP 536);
 - (d) [Report 539](#) *ASIC regulation of corporate finance: January to June 2017* (REP 539); and
 - (e) [Report 542](#) *Market integrity report: January to June 2017* (REP 542).

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 money held on trust in overseas bank accounts

- 11 We granted relief to two related entities from the requirement to hold an AFS licence when providing a custodial and depository service for money held on trust with overseas banks in foreign jurisdictions.
- 12 Regulation 7.1.40 of the Corporations Regulations 2001 (Corporations Regulations) provides that a custodial and depository service does not include holding an interest in a basic deposit product on trust. However, the entities could not rely on this exemption for their service as the products in which the funds were held were not basic deposit products (because the money was not held in ‘authorised deposit-taking institutions’ (ADIs) within the meaning in the *Banking Act 1959*).
- 13 We granted conditional relief for the provision of the service in Canada, the United Kingdom and the United States for the following reasons:
 - (a) the conduct would be exempt from licensing requirements if the money was held on trust with Australian ADIs;
 - (b) the entities only held the money on trust for a small number of days, which differs from a traditional custody arrangement where financial products (or interests in those products) are generally held on trust for an extended time period; and
 - (c) the money was held on trust for professional investors.

Excluded assets in relation to an AFS licensee

ASIC consent to treat a receivable as not being an excluded asset under the financial requirements

- 14 Under [Regulatory Guide 166](#) *Licensing: Financial requirements* (RG 166), we may consent in writing to a licensee treating a receivable as not being an

- excluded asset: see RG 166.153(c)(v). We gave written conditional consent to allow a licensee to treat specific receivables from associates of the licensee as not being excluded assets in calculating the adjusted assets, used for the purposes of meeting its surplus liquid funds requirement under its licence conditions.
- 15 The receivables were intra-group fee receivables from foreign associates under group transfer pricing arrangements.
- 16 In making the decision to grant consent, we considered the evidence provided by the licensee in accordance with RG 166.153(c)(v). We were satisfied that there was strong evidence of recoverability of the receivables because each foreign associate:
- (a) held a substantial amount of assets; and
 - (b) was licensed by a foreign regulatory authority under a regulatory regime with minimum capital requirements that is sufficiently comparable to the Australian regulatory regime.
- 17 We granted consent to the licensee subject to various conditions to ensure the continued recoverability of the receivables, including that:
- (a) the licensee has no reason to believe that the recovery of the fees receivable from the foreign associate is not highly probable;
 - (b) fees receivable from the foreign associate are not due for over 40 days; and
 - (c) the foreign associate must, at all times, hold the minimum capital requirements imposed on its licence by the regulatory authority in its jurisdiction.

Managed discretionary account (MDA) requirements

Refusal of relief to exclude the provision of an investment program for an MDA operator

- 18 We refused to give relief to an MDA operator from the requirement in [ASIC Corporations \(Managed Discretionary Account Services\) Instrument 2016/968](#) to provide retail clients of a MDA service with an investment program that includes personal advice about the suitability of the MDA product. The applicant proposed to offer retail clients on its trading platform an MDA service that automatically enacted or mirrored trades and strategies of different strategy providers—including professional traders—that the client elected to follow.
- 19 We considered this an MDA because retail clients permit their contributions to be used in an investment strategy of automated trades arranged by the

applicant, who selects the strategy providers, in circumstances where the applicant exercises trading discretion.

- 20 We recently strengthened our approach to regulating MDAs following extensive public consultation: see [Consultation Paper 200 Managed discretionary accounts: Update to RG 179](#) (CP 200) and [Regulatory Guide 179 Managed discretionary accounts](#) (RG 179). RG 179 states that the overriding objectives in regulating MDAs are to help promote investor and financial consumer trust and confidence, and that we consider the investment program to be a critical aspect of any MDA to promote retail client protection: see RG 179.5–RG 179.6.
- 21 In refusing to grant relief, we considered the guidance in RG 179 and determined that the application was not within our policy in [Regulatory Guide 51 Applications for relief](#) (RG 51) and [Regulatory Guide 167 Licensing: Discretionary powers](#) (RG 167) for the following reasons:
- (a) the regulatory detriment was neither minimal nor clearly outweighed by the resulting commercial benefit;
 - (b) granting relief would result in regulatory detriment, because without the provision of personal advice:
 - (i) there would be a lack of accountability and responsibility to retail clients for the automated trades from the applicant, as the MDA operator, and the strategy providers selected by the MDA operator; and
 - (ii) regulatory certainty and the objective of promoting consumer confidence in using financial services would be undermined;
 - (c) there was an alternative lawful way for the applicant to comply with the conditions in ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968; and
 - (d) the applicant had not demonstrated that compliance with ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 would result in unforeseen circumstances or unintended consequences of the licensing provisions, which would justify a departure from the policy in RG 179.

Foreign financial service providers

Licensing relief for foreign financial service providers

- 22 We granted relief, under s926A(2)(a), to a foreign financial service provider (FFSP) from the requirement to hold an AFS licence for the provision of wholesale financial services in Australia. The FFSP was unable to rely on [Class Order \[CO 04/1313\]](#) *German BaFin regulated financial service*

- providers* (as it continues to apply under [ASIC Corporations \(Repeal and Transitional\) Instrument 2016/396](#)) because the FFSP did not hold a German Banking Licence issued by the Bundesanstalt für Finanzdienstleistungsaufsicht of Germany (BaFin).
- 23 [CO 04/1313] provides relief from the requirement to hold an AFS licence, subject to specified conditions, for FFSPs that:
- (a) are a body corporate incorporated in Germany; and
 - (b) hold a German Banking Licence issued by the BaFin under the German Banking Act (*Gesetz über das Kreditwesen—KWG*).
- 24 We granted individual relief on terms similar to [CO 04/1313] to the FFSP because it held current authorisations by BaFin to carry on financial services as a Management Company (i.e. to provide collective and individual portfolio management services) under the German Capital Investment Code (*Kapitalanlagegesetzbuch—KAGB*). This relief was within our existing policy in [Regulatory Guide 176 Foreign financial services providers](#) (RG 176).
- 25 The individual relief applies as long as ASIC Corporations (Repeal and Transitional) Instrument 2016/396 continues the relief that was provided under [CO 04/1313].

Publications

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

Legislative instruments

ASIC Corporations (Financial Reporting: Natural Person Licensees) Instrument 2017/307

- 27 We remade, without substantive changes, Class Order [CO 03/748] *Reporting requirements under s989B*, which provided relief from the reporting requirements to AFS licensees who are natural persons: see [Media Release \(17-122MR\) ASIC remakes ‘sunsetting’ class order on reporting requirements for Australian financial services licensees who are natural persons](#) (26 April 2017).
- 28 [ASIC Corporations \(Financial Reporting: Natural Person Licensees\) Instrument 2017/307](#) remakes [CO 03/748], which was due to expire (‘sunset’) in 2017. The instrument continues relief for 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 the financial services business carried on by the licensee.

- 29 We remade [CO 03/748] following public consultation via [Consultation Paper 278](#) *Remaking ASIC class order on reporting requirements for AFS licensees who are natural persons* (CP 278), issued in February 2017. We did not receive any submissions in response to CP 278.

ASIC Corporations (Amendment) Instrument 2017/464

- 30 We issued [ASIC Corporations \(Amendment\) Instrument 2017/464](#), which amends ASIC Corporations (Recognised Accountants: Exempt Services) Instrument 2016/1151: see [Media Release \(17-160MR\)](#) *Amendments to ASIC Corporations (Recognised Accountants: Exempt Services) Instrument 2016/1151* (30 May 2017). The amendments enable full AFS licensees and authorised representatives with limited authorisations to provide exempt advice under reg 7.1.29(4) of the Corporations Regulations to retail clients on the tax implications of financial products that are not covered by an authorisation in their licence.
- 31 We also updated [Information Sheet 216](#) *AFS licensing requirements for accountants who provide SMSF services* (INFO 216) to reflect these amendments.

ASIC Corporations (Life Insurance Commissions) Instrument 2017/510

- 32 We made [ASIC Corporations \(Life Insurance Commissions\) Instrument 2017/510](#), which permits commissions for the sale of life insurance products to be paid to AFS licensees and their representatives if the commission structure meets the commission cap and clawback arrangement requirements: see [Media Release \(17-168MR\)](#) *ASIC releases instrument setting the commission caps and clawback amounts as part of the life insurance advice reforms* (5 June 2017).
- 33 We released ASIC Corporations (Life Insurance Commissions) Instrument 2017/510 following public consultation via [Consultation Paper 245](#) *Retail life insurance advice reforms* (CP 245).
- 34 [Report 527](#) *Response to submissions on CP 245 Retail life insurance advice reforms* highlights the key issues that arose out of the submissions received on CP 245 and details our responses to those issues.

ASIC Corporations (Amendment) Instrument 2017/577

- 35 In June 2017, we issued [ASIC Corporations \(Amendment\) Instrument 2017/577](#), which amends Class Order [CO 08/1] *Group purchasing bodies* to remove breach reporting conditions.

ASIC Corporations (Amendment) Instrument 2017/580

- 36 In June 2017, we issued [ASIC Corporations \(Amendment\) Instrument 2017/580](#), which makes minor amendments to several legislative instruments. We made these amendments to:
- (a) ensure that the licensing exemption for representatives in s911A(2)(a) operates in the same way whenever a licensing exemption is granted under s926A(2) or 911A(2)(1);
 - (b) ensure that the definition of ‘regulated person’ in s1101B operates in the same way whenever a licensing exemption is granted under s926A(2) or 911A(2)(1); and
 - (c) clarify that references in ASIC documents to disclosure documents, bidder’s and target’s statements, and Product Disclosure Statements (PDSs) operate in the same way as references in the Corporations Act in circumstances where the relevant document has been supplemented or replaced.
- 37 ASIC Corporations (Amendment) Instrument 2017/580 made amendments to the following legislative instruments to ensure that the principal instruments operate as intended:
- (a) [ASIC Corporations \(Effect of Licensing Exemptions\) Instrument 2015/1115](#);
 Note: This instrument is now titled ASIC Corporations (Miscellaneous Technical Relief) Instrument 2015/1115.
 - (b) [ASIC Corporations \(Foreign Licensees and ADIs\) Instrument 2016/186](#);
 - (c) [ASIC Corporations \(Securitisation Special Purpose Vehicles\) Instrument 2016/272](#);
 - (d) [ASIC Corporations \(School Enrolment Deposits\) Instrument 2016/812](#);
 - (e) [ASIC Corporations \(Charitable Investment Fundraising\) Instrument 2016/813](#);
 - (f) [ASIC Corporations \(Serviced Apartment and Like Schemes\) Instrument 2016/869](#);
 - (g) [ASIC Corporations \(Property Rental Schemes\) Instrument 2016/870](#);
 - (h) ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968; and
 - (i) [ASIC Corporations \(Concept Validation Licensing Exemption\) Instrument 2016/1175](#).

ASIC Corporations (Credit Union Member Shares) Instrument 2017/616

- 38 We issued [ASIC Corporations \(Credit Union Member Shares\) Instrument 2017/616](#), which remakes, without substantial changes, Class Order [CO 02/1176] *Credit union member shares*: see [Media Release \(17-232MR\)](#)

ASIC remakes 'sunsetting' class order on credit union member shares (11 July 2017).

39 We remade the relief following public consultation via [Consultation Paper 283](#) *Remaking ASIC class order on credit union member shares: [CO 02/1176]* (CP 283).

40 We received one submission in response to CP 283, which was supportive of our proposals to remake the relief.

ASIC Corporations (Amendment) Instrument 2017/684

41 In July 2017, we issued [ASIC Corporations \(Amendment\) Instrument 2017/684](#), which makes minor technical amendments to ASIC Corporations (Concept Validation Licensing Exemption) Instrument 2016/1175, regarding the provision of personal advice to a person as a retail client.

ASIC Corporations (Factoring Arrangements) Instrument 2017/794 and ASIC Corporations (Mortgage Offset Accounts) Instrument 2017/795

42 In September 2017 we issued:

- (a) [ASIC Corporations \(Factoring Arrangements\) Instrument 2017/794](#), which remakes Class Order [CO 04/239] *Factoring arrangements: Licensing, hawking and disclosure relief* with no substantive changes; and
- (b) [ASIC Corporations \(Mortgage Offset Accounts\) Instrument 2017/795](#), which remakes Class Order [CO 03/1048] *Mortgage offset accounts* with one minor change.

Note: See [Media Release \[17-318MR\]](#) *ASIC remakes 'sunsetting' class orders relating to mortgage offset accounts and factoring arrangements* (19 September 2017),

43 ASIC Corporations (Mortgage Offset Accounts) Instrument 2017/795 differs slightly from [CO 03/1048] in that it does not require persons to be members of an ASIC-approved external dispute resolution (EDR) scheme. We reached the view that this requirement was redundant, as the majority of persons relying on [CO 03/1048] have separate obligations to be members of EDR schemes.

44 We issued ASIC Corporations (Factoring Arrangements) Instrument 2017/794 and ASIC Corporations (Mortgage Offset Accounts) Instrument 2017/795 following public consultation via [Consultation Paper 286](#) *Remaking ASIC class orders on mortgage offset accounts and factoring arrangements* (CP 286). We received no submissions in response to CP 286.

ASIC Corporations (Amendment and Repeal) Instrument 2017/848 and ASIC Corporations (Wholesale Equity Scheme Trustees) Instrument 2017/849

- 45 We issued both [ASIC Corporations \(Amendment and Repeal\) Instrument 2017/848](#) and [ASIC Corporations \(Wholesale Equity Scheme Trustees\) Instrument 2017/849](#) to remake Class Order [CO 07/74] *Wholesale equity schemes: Licensing relief for trustees*: see [Media Release \(17-330MR\) ASIC remakes 'sunsetting' class order providing licensing relief for trustees of wholesale equity schemes](#) (29 September 2017).
- 46 [CO 07/74] provided relief in specific circumstances from the requirement to hold an AFS licence to trustees of wholesale equity schemes. The class order was due to expire on 1 October 2017.
- 47 We updated the relief in ASIC Corporations (Wholesale Equity Scheme Trustees) Instrument 2017/849 to include financial and custody requirements that were not contained in [CO 07/74], and reflect the strengthened requirements in the following class orders (which we updated in 2013):
- (a) [Class Order \[CO 13/760\]](#) *Financial requirements for responsible entities and operators of investor directed portfolio services*;
 - (b) [Class Order \[CO 13/761\]](#) *Financial requirements for custodial or depository services providers*; and
 - (c) [Class Order \[CO 13/1410\]](#) *Holding assets: Standards for providers of custodial and depository services*.
- 48 ASIC Corporations (Amendment and Repeal) Instrument 2017/848 repeals [CO 07/74]. It also amends [CO 13/760] and [CO 13/761], regarding managers of wholesale equity schemes, to be consistent with the requirements of ASIC Corporations (Wholesale Equity Scheme Trustees) Instrument 2017/849.
- 49 We remade the relief following public consultation via [Consultation Paper 280 ASIC class order on wholesale equity schemes: Licensing relief for trustees—\[CO 07/74\]](#) (CP 280). We received four confidential and two non-confidential responses (with one respondent providing two submissions) to CP 280.
- 50 [Report 545 Response to submissions on CP 280 ASIC class order on wholesale equity schemes](#) (REP 545) highlights the key issues that arose out of the submissions received on CP 280 and our responses to those issues.

ASIC Corporations (Financial Counselling Agencies) Instrument 2017/792

- 51 We issued [ASIC Corporations \(Financial Counselling Agencies\) Instrument 2017/792](#), which remakes Class Order [CO 03/1063] *Licensing relief for financial counselling agencies* without substantial changes: see

[Media Release \(17-324MR\)](#) ASIC remakes relief for financial counselling agencies providing advice or credit assistance (26 June 2017).

- 52 ASIC Corporations (Financial Counselling Agencies) Instrument 2017/792 continues relief for financial counselling agencies from the AFS licensing, conduct and disclosure obligations in Ch 7 when providing particular financial product advice.
- 53 We made the relief following public consultation via [Consultation Paper 282](#) *Remaking ASIC class orders on financial counselling licensing relief* (CP 282).
- 54 We also updated the following documents:
- (a) [Regulatory Guide 203](#) *Do I need a credit licence?* (RG 203);
 - (b) [Regulatory Guide 234](#) *Advertising financial products and services (including credit): Good practice guidance*; and
 - (c) [Information Sheet 112](#) *Guidance for financial counsellors* (INFO 112).

Regulatory guides

RG 262 *Crowd-sourced funding: Guide for intermediaries and related regulatory guides*

- 55 To provide guidance about the crowd-sourced funding (CSF) regime, we issued [RG 262](#), a new regulatory guide for entities providing, or seeking to provide, a crowd-funding service as a CSF intermediary by operating a platform for CSF offers and investments. As this is a new type of financial service, RG 262 provides guidance to intermediaries on how to comply with their unique gatekeeper obligations when providing a crowd-funding service to offering companies and investors.
- 56 We also issued [ASIC Corporations \(Financial Requirements for CSF Intermediaries\) Instrument 2017/339](#), which outlines specific minimum requirements for CSF intermediaries.
- 57 We released RG 262 and ASIC Corporations (Financial Requirements for CSF Intermediaries) Instrument 2017/339 following public consultation via [Consultation Paper 289](#) *Crowd-sourced funding: Guide for intermediaries* (CP 289).
- 58 We received 12 responses to CP 289 (including three confidential submissions). [Report 544](#) *Response to submissions on CP 288 and CP 289 on crowd-sourced funding* (REP 544) highlights the key issues that arose out of the submissions received on CP 289 and details our responses to those issues.
- 59 We updated [RG 166](#) to accommodate the new CSF regime. The guide sets out the financial requirements for AFS licensees, which vary depending on the financial products and services the licensee offers. RG 166 now provides

guidance on the financial resource requirements that will apply to a CSF intermediary: see Appendix 9 of RG 166.

- 60 We also updated the following regulatory guides relating to AFS licensing in connection with the introduction of the CSF regime:
- (a) [Regulatory Guide 1](#) *AFS Licensing Kit: Part 1—Applying for and varying an AFS licence* (RG 1);
 - (b) [Regulatory Guide 2](#) *AFS Licensing Kit: Part 2—Preparing your AFS licence application* (RG 2);
 - (c) [Regulatory Guide 3](#) *AFS Licensing Kit: Part 3—Preparing your additional proofs* (RG 3); and
 - (d) [Pro Forma 209](#) *Australian financial services licence conditions* (PF 209).
- 61 We have also updated [Regulatory Guide 148](#) *Platforms that are managed investment schemes and nominee and custody services* (RG 148) to provide guidance on requirements for platform operators and custody service operators who acquire shares under a CSF offer on behalf of investors. For further information, see paragraphs 126–129.
- 62 We have also issued guidance for CSF companies and updated existing relief for disclosure-related issues and other matters: see paragraphs 98–103.
- 63 For further information, see [our guidance on crowd-sourced funding](#) on our website and [Media Release \(17-321MR\)](#) *ASIC facilitates crowd-sourced funding by public companies* (21 September 2017).

B Disclosure relief

Key points

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

- the requirements in Ch 6D to provide prospectuses and other disclosure documents; and
- the requirements in Ch 7 to provide 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 placements

- 64 We granted relief to a New Zealand company listed on the New Zealand securities exchange (NZX) that was seeking a foreign exempt listing on ASX. Our relief permits the on-sale of securities in Australia within 12 months of issue without disclosure in Australia, as long as the original offer was exempt from the New Zealand disclosure regime and the on-sale of those securities is permitted in New Zealand. An important factor in our decision was that the issuer was willing to give a modified version of a New Zealand cleansing notice to the market, despite no obligation to do so under New Zealand requirements.
- 65 Under the original offer, securities were issued without disclosure to institutional investors under a foreign placement. Subscribers under the placement provided a warranty that they had no intention of dealing in the securities at the time of the subscription. This meant that a New Zealand cleansing notice was not required, nor could one be technically issued, for the on-sale of securities in that jurisdiction.
- 66 However, the issuer was willing to give a New Zealand cleansing notice regarding the on-sale of those securities, modified only to the extent it omits references to the issuer's reliance on s19 of Sch 1 to the *Financial Markets Conduct Act 2013* (New Zealand).
- 67 We granted the relief because we were satisfied that Australian investors would be fully informed, as the modified New Zealand cleansing notice would:
- (a) state that the issuer had complied with its continuous disclosure and financial reporting obligations; and
 - (b) set out any information that was excluded from continuous disclosure.

68 We accepted that the issuer's inability to comply with the strict provisions of the New Zealand cleansing notice regime was due to the nature of certain exempt offers under New Zealand law, rather than the issuer's choice.

69 However, we refused to grant relief for the on-sale of convertible securities in Australia within 12 months of their issue or transfer without further disclosure. Under New Zealand law, a cleansing notice may be given at the time of an offer to subscribe for a convertible security, but there is no requirement to provide a further cleansing notice or disclosure document at the time of conversion and issue of the underlying security regarding the potential on-sale of those underlying securities. Although the entity offered to provide a modified New Zealand cleansing notice, we refused to grant the relief because it would have had the effect of significantly modifying the operation of the New Zealand cleansing notice regime.

Relief for rights issues on-sale within three months of listing

70 We were minded to refuse an application for relief to enable securities issued to institutional investors under an accelerated rights offer to be on-sold without further disclosure within three months of being listed on ASX. Although s708AA permits a cleansing notice to be used for a rights issue to existing investors where a company has not been listed for three months, s708A (as modified by [ASIC Corporations \(Non-Traditional Rights Issues\) Instrument 2016/84](#)) requires that the securities be quoted for three months before they can benefit from disclosure relief for the on-sale of those securities.

71 While ASIC Corporations (Non-Traditional Rights Issues) Instrument 2016/84 gives relief from the requirement to provide a second cleansing notice (under s708A) if a cleansing notice is provided for an accelerated rights offer under s708AA, it deliberately maintains the three-month quotation requirement in s708A for on-sale purposes.

72 This is because we consider that the three-month period of price discovery and continuous disclosure after a company first lists remains important for retail investors, to whom shares may be on-sold without further disclosure. We were minded to refuse the application for relief to reduce the three-month quotation requirement because we considered that it was not appropriate to distinguish, for the purpose of on-sale disclosure relief, between securities issued to institutional investors under a rights offer and securities issued under an institutional placement, which would be required to be quoted for three months under s708A.

73 As the company would have been listed for two months at the time of its proposed accelerated rights offer, we also considered that waiting an additional month to rely on ASIC Corporations (Non-Traditional Rights Issues) Instrument 2016/84 was not unduly burdensome. In light of our view that individual relief was not appropriate, the company withdrew its application.

Offers of CHESS Depository Interests (CDIs)

Refusal of relief to modify existing relief for offers of CDIs

- 74 We refused relief to modify the following existing legislative instruments that provide relief for CDIs:
- (a) [Class Order \[CO 14/827\]](#) *Offers of CHESS Depository Interests*, which applies the disclosure regime in Ch 6D to offers of CDIs (for the avoidance of doubt) and clarifies our view that it is the foreign issuer that is required to issue a prospectus; and
 - (b) [ASIC Corporations \(Division 4 Financial Products\) Instrument 2015/1030](#), which facilitates the transfer of CDIs through ASX Settlement Pty Limited.
- 75 The existing legislative instruments specifically name CHESS Depository Nominees Pty Ltd (CDN) as the depository nominee holding underlying financial products of a foreign issuer over which CDIs have been issued. This relief does not extend to CDIs when a depository nominee other than CDN holds the underlying products.
- 76 The applicant sought relief on an alternate basis to allow either *any* depository nominee other than CDN, or the particular depository nominee specified in the application, to be appointed by foreign issuers seeking to list on approved Australian markets.
- 77 This type of relief is contemplated in [Regulatory Guide 253](#) *Fundraising: Facilitating offers of CHESS Depository Interests* (RG 253), which states that we will consider granting relief to facilitate the use of a depository nominee other than CDN: see RG 253.64–RG 253.66. RG 253.65 lists some factors we will consider when deciding whether to grant relief.
- 78 In deciding whether to grant relief, we considered the applicant’s submissions and the factors listed in RG 253—namely:
- (a) the extent to which the proposed depository nominee is governed by the ASX Settlement Operating Rules or other equivalent market rules; and
 - (b) whether the nominee holds an AFS licence with authorisation to provide custodial or depository services to wholesale and retail clients.
- 79 We also took into account other relevant considerations, such as ASIC’s general regulatory powers and our policy in [RG 51](#).
- 80 We refused relief for the particular proposed depository nominee specified in the application, as we were not satisfied that the entity was an appropriate person to act as a depository nominee for CDIs. We also refused to amend the legislative instruments to facilitate the use of *any* depository nominee; we did not consider broader relief appropriate, as it removes our ability to assess the suitability of particular proposed depository nominees.

‘Low doc’ capital raisings

Refusal of relief to facilitate a capital raising using the ‘low doc’ disclosure regime

- 81 We refused relief to a company seeking to regain access to the low doc disclosure regime (under s708AA and 7088A) after it had been excluded from the regime due to previously receiving technical financial reporting relief under s340.
- 82 The company sought readmission to the low doc disclosure regime on the basis that the s340 relief that excluded it from the regime was technical only, and that other considerations (including our concerns about their continuous disclosure compliance) were not relevant to a decision to exercise the modification powers in s741.
- 83 The company submitted that concerns about their compliance with the continuous disclosure obligation would only be a relevant consideration if we made a determination that there had been a contravention of the obligations.
- 84 We disagreed with the company’s submissions and considered our concerns about their continuous disclosure to be relevant to a decision about whether to exercise the s741 modification power, even if a determination of a contravention of the Corporations Act had not yet been confirmed and we were still making inquiries.

PDS fee and costs disclosure

Relief from the definition of an ‘interposed vehicle’

- 85 We were minded to refuse an application seeking relief from the definition of an ‘interposed vehicle’ in Sch 10 of the Corporations Regulations (as provided for by [Class Order \[CO 14/1252\]](#) *Technical modifications to Schedule 10 to the Corporations Regulations*). The applicant sought the relief so that it would not be required to comply with the interposed vehicle costs disclosure obligations for leveraged exposure to exchange traded products offered through the product.
- 86 We considered that granting relief would create a net regulatory detriment that outweighed the commercial or regulatory benefit, particularly the likelihood and extent of detriment to retail clients. Our view was that if relief was granted:
- (a) there would be inconsistent disclosure of indirect costs in comparison to other financial products with an exposure to a managed investment product, and that this may lead to reduced comparability of financial products for retail clients; and

(b) retail clients may be less likely to appreciate the indirect costs associated with the facility and, in particular, the effect of leverage on the applicable indirect costs, which would be inconsistent with the promotion of transparent fees and costs information.

87 The applicant subsequently withdrew their relief application.

88 Our policy on disclosure of indirect costs is set out in [Regulatory Guide 97 Disclosing fees and costs in PDSs and periodic statements](#) (RG 97).

Publications

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

Legislative instruments

ASIC Corporations (Urgent Superannuation Advice) Instrument 2017/530

90 We issued [ASIC Corporations \(Urgent Superannuation Advice\) Instrument 2017/530](#) to provide temporary and conditional relief to financial advisers to provide Statements of Advice (SOAs) to retail clients about superannuation products in the lead up to superannuation reforms enacted by the *Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016*, which became effective on 1 July 2017: see [Media Release \(17-203MR\) ASIC temporarily extends time to provide Statements of Advice for urgent superannuation advice](#) (26 June 2017).

ASIC Corporations (Disclosure Relief—Offers to Associates) Instrument 2017/737

91 We issued [ASIC Corporations \(Disclosure Relief—Offers to Associates\) Instrument 2017/737](#), which remade Class Order [CO 04/899] *Definition of 'senior manager': Modification* without substantive changes, to provide disclosure relief for an offer of securities to a director or secretary.

92 We remade the relief following public consultation via [Consultation Paper 285 Remaking ASIC class order on disclosure relief for an offer to a director or secretary: \[CO 04/899\]](#) (CP 285). In response to our consultation, we received two submissions, which did not object to our proposals to remake the relief.

ASIC Corporations (Definition of Approved Foreign Market) Instrument 2017/669 and ASIC Corporations (Amendment) Instrument 2017/6

- 93 In August 2017, we issued both [ASIC Corporations \(Definition of Approved Foreign Market\) Instrument 2017/669](#) and [ASIC Corporations \(Amendment\) Instrument 2017/6](#) to add Euronext Brussels and Euronext Lisbon to our list of ‘approved foreign markets’, because they meet the standards referred to in [Regulatory Guide 72 Foreign securities: Disclosure relief](#) (RG 97). We also updated the names of some of the approved foreign markets, which had merged or changed names. We removed the reference that restricted relief to ‘main boards’ and specified secondary boards of approved foreign markets, which are no longer widely used concepts.
- 94 The amendments affect the following 13 class orders and legislative instruments:
- (a) [Class Order \[CO 08/10\]](#) *Share and interest sale facilities*;
 - (b) [Class Order \[CO 12/752\]](#) *Financial requirements for retail OTC derivative issuers*;
 - (c) [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*;
 - (d) [\[CO 13/760\]](#);
 - (e) [\[CO 13/761\]](#);
 - (f) [Class Order \[CO 14/1000\]](#) *Employee incentive schemes: Listed bodies*;
 - (g) [ASIC Corporations \(Foreign Rights Issues\) Instrument 2015/356](#);
 - (h) [ASIC Corporations \(Foreign Scrip Bids\) Instrument 2015/357](#);
 - (i) [ASIC Corporations \(Foreign Securities—Publishing Notices\) Instrument 2015/359](#);
 - (j) [ASIC Corporations \(Foreign Small-Scale Offers\) Instrument 2015/362](#);
 - (k) [ASIC Corporations \(Managed investment product consideration\) Instrument 2015/847](#);
 - (l) [ASIC Corporations \(Minimum Bid Price\) Instrument 2015/1068](#);
 - (m) [ASIC Corporations \(Approved Foreign Markets—Buy-backs and Takeovers\) Instrument 2015/1071](#);
 - (n) [ASIC Corporations \(Consents to Statements\) Instrument 2016/72](#); and
 - (o) ASIC Corporations (Definition of Approved Foreign Market) Instrument 2017/669.

ASIC Corporations (Amendment) Instrument 2017/664

- 95 We made [ASIC Corporations \(Amendment\) Instrument 2017/664](#), which amends definitions in [Class Order \[CO 14/1252\]](#) *Technical modifications to Schedule 10 to the Corporations Regulations* to provide greater clarity on the costs that must be disclosed under Sch 10 to the Corporations Regulations: see [Media Release \(17-282MR\)](#) *Super fees set to become more transparent and easier to understand* (25 August 2017).
- 96 ASIC Corporations (Amendment) Instrument 2017/664 extends the deadline for disclosure of property operating costs under ‘Additional information about fees and costs’ in the PDS (rather than as part of the ‘investment fee’ or ‘indirect costs’) to 30 September 2018, and makes other amendments to provide more certainty about the fees and costs disclosure requirement.
- 97 ASIC Corporations (Amendment) Instrument 2017/664 addresses some provisions in [CO 14/1252] that could be misinterpreted in light of the Stronger Super reforms.

Regulatory guides**RG 261 *Crowd-sourced funding: Guide for public companies***

- 98 We have released guidance for public companies and CSF intermediaries to support them in using the new CSF regime: see paragraphs 55–63 for information on our guidance for CSF intermediaries.
- 99 [RG 261](#) is a new regulatory guide for public companies seeking to raise funds using the CSF regime. The guide helps public companies understand and comply with their obligations in the new regime, as many of these companies will not have experience in making public offers of their shares.
- 100 We have also issued the following related instruments:
- (a) [ASIC Corporations \(Amendment\) Instrument 2017/817](#), which updates ASIC Corporations (Consents to Statements) Instrument 2016/72 to reduce the compliance burden associated with obtaining consent for statements in CSF offer documents; and
 - (b) [ASIC Corporations \(Amendment\) Instrument 2017/821](#), which amends Class Order [CO 13/762] *Investor directed portfolio services provided through a registered managed investment scheme*, Class Order [CO 13/763] *Investor directed portfolio services* and ASIC Corporations (Nominee and Custody Services) Instrument 2016/1156, to provide that retail clients, for whom securities offered under a CSF offer are held through a platform or a nominee and custody service, have equivalent rights and protections as if they had acquired the shares directly.

- 101 We released RG 261 and our updated relief following public consultation via [Consultation Paper 288](#) *Crowd-sourced funding: Guide for public companies* (CP 288).
- 102 We received 13 submissions (including five confidential submissions) in response to CP 288. [REP 544](#) highlights the key issues that arose out of the submissions received on CP 288 and details our responses in relation to those issues.
- 103 We have updated our guidance for platform operators and custody service operators who acquire shares under a CSF offer on behalf of investors: see paragraph 126–129.

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 minimum asset holding standards to facilitate an asset transfer process

- 104 We granted relief under s601QA(1)(a) to exempt a responsible entity from the minimum standards for asset holders in s601FCAA (as notionally inserted by [Class Order \[CO 13/1409\]](#) *Holding assets: Standards for responsible entities*).
- 105 The purpose of the relief was to facilitate the simplification of a stapled group of managed investment schemes. The simplification involved a transfer of scheme assets within the stapled group, as part of a three-step asset transfer process which was a condition of the stamp duty ruling obtained by the responsible entity.
- 106 The transfer process was expected to occur immediately and involved the responsible entity holding the scheme assets for less than 24 hours before the assets were transferred to the custodian. This required the responsible entity to comply with the asset holding standards in s601FCAA during the period it held the scheme assets.
- 107 We granted relief from s601FCAA to the responsible entity for a 24-hour period on the basis that:
- (a) the scheme assets would ultimately be transferred to the custodian;
 - (b) the scheme assets would be held by the responsible entity on trust and separately from other scheme property; and
 - (c) there would be functional separation during the transfer process to minimise any potential conflict of interest, and adequate oversight by senior management at each stage of the three-step transfer process.
- 108 We granted this relief because it was consistent with our policy contained in [Regulatory Guide 133](#) *Managed investments and custodial or depository services: Holding assets* (RG 133) and [Regulatory Guide 136](#) *Managed investments: Discretionary powers and closely related schemes* (RG 136).

Publications

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

Legislative instruments

ASIC Corporations (Chapter 5C—Miscellaneous Provisions) Instrument 2017/125 and ASIC Corporations (Amendment and Repeal) Instrument 2017/545

- 110 We issued two instruments, [ASIC Corporations \(Chapter 5C—Miscellaneous Provisions\) Instrument 2017/125](#) and [ASIC Corporations \(Amendment and Repeal\) Instrument 2017/545](#): see [Media Release \(17-224MR\)](#) *ASIC remakes ‘sunsetting’ class orders relating to registered schemes* (5 July 2017).
- 111 We remade, without substantive changes, the following class orders and consolidated them into one instrument:
- (a) Class Order [CO 98/50] *Incorporating parts of other compliance plans*;
 - (b) Class Order [CO 98/1806] *Related bodies corporate and external members of the compliance committee*; and
 - (c) Class Order [CO 98/1808] *Allowing constitutions to use Appendix 15A of the ASX Listing Rules*.
- Note: See ASIC Corporations (Chapter 5C—Miscellaneous Provisions) Instrument 2017/125.
- 112 ASIC Corporations (Amendment and Repeal) Instrument 2017/545 remade, without substantial changes, the relief in Class Order [CO 98/60] *Protecting class rights in a managed investment scheme* by amending [Class Order \[CO 09/552\]](#) *Changing scheme constitutions*.
- 113 We released the new instruments following public consultation via [Consultation Paper 270](#) *Remaking ASIC class orders on registered schemes* (CP 270). We did not receive any submissions in response to the proposals outlined in CP 270.

ASIC Corporations (Mortgage Investment Schemes) Instrument 2017/857

- 114 We issued [ASIC Corporations \(Mortgage Investment Schemes\) Instrument 2017/857](#) to remake the relief in Class Order [CO 02/238] *Mortgage schemes: Chapter 5C and disclosure relief* with changes: see [Media Release \(17-332MR\)](#) *ASIC remakes ‘sunsetting’ class order about mortgage schemes* (5 July 2017).

- 115 ASIC Corporations (Mortgage Investment Schemes) Instrument 2017/857 continues to provide relief from the:
- (a) scheme registration, licensing and disclosure obligations, and the hawking prohibition, for certain small-scale schemes with no more than 20 members; and
 - (b) scheme registration requirements and withdrawal provisions in relation to individual mortgages in a scheme.

116 We have not continued the transitional ‘run-out’ relief provided by [CO 02/238], as it was no longer necessary.

117 We have temporarily extended the relief given to small, industry-supervised schemes under [CO 02/238]. We will review the extension within 12 months and assess whether it should be remade in light of the operation of the Legal Profession Uniform Law, which comes into effect on 1 July 2018 and affects the promotion and operation of managed investment schemes by law practices.

Note: The Legal Profession Uniform Law is contained in Sch 1 to the *Legal Profession Uniform Law Application Act 2014* (Vic.) and applies in New South Wales under s4 of the *Legal Profession Uniform Law Application Act 2014* (NSW).

118 We have included material in the explanatory statement for ASIC Corporations (Mortgage Investment Schemes) Instrument 2017/857 to provide clarity about:

- (a) the temporary extension of industry-supervised scheme relief if s258 of the Legal Profession Uniform Law comes into effect; and
- (b) the scope of the withdrawal-related relief for individual mortgages in a scheme.

119 We remade the relief following public consultation via [Consultation Paper 287](#) *Remaking ASIC class order on mortgage schemes and proposed relief for multiple withdrawal periods* (CP 287). All respondents were supportive of the proposals in CP 287.

ASIC Corporations (Time-sharing Schemes) Instrument 2017/272

120 We issued [ASIC Corporations \(Time-sharing Schemes\) Instrument 2017/272](#), which remade the relief in;

- (a) Class Order [CO 00/2460] *Time-sharing schemes: Property valuations*;
- (b) Class Order [CO 02/315] *Time-sharing schemes: Use of loose-leaf price list*; and
- (c) Class Order [CO 03/104] *Relief facilitating the acquisition and sale of forfeited interests in registered time-sharing schemes*.

Note: See [Media Release \(17-084MR\)](#) *ASIC remakes class orders on time-sharing schemes* (28 March 2017).

- 121 ASIC Corporations (Time-sharing Schemes) Instrument 2017/272 also provides transitional relief for existing operators who were relying on Class Order [CO 02/237] *Time-sharing schemes: Operation of rental pool*.
- 122 We remade the relief following public consultation via [Consultation Paper 272](#) *Remaking ASIC class orders on time-sharing schemes*. We received eight submissions to CP 272.
- 123 [Report 522](#) *Response to submissions on CP 272 Remaking ASIC class orders on time-sharing schemes* (REP 522) highlights the key issues that arose out of the submissions received on CP 272 and details our responses to those issues.

Regulatory guides

RG 140 Strata schemes and management rights schemes

- 124 We updated [RG 140](#) after the issue of both [ASIC Corporations \(Serviced Apartment and Like Schemes\) Instrument 2016/869](#) and [ASIC Corporations \(Property Rental Schemes\) Instrument 2016/870](#) in September 2016, which replaced several class orders that dealt with relief for property, strata and management rights schemes: see [Media Release \(17-112MR\)](#) *ASIC updates guidance for strata schemes and management rights schemes* (12 April 2017).
- 125 RG 140 sets out how the managed investment scheme provisions of the Corporations Act apply to arrangements involving real property, including under strata or community title, and certain freehold titles or leasehold interests (referred to in RG 140 as ‘strata schemes’).

RG 148 Platforms that are managed investment schemes and nominee and custody services

- 126 We updated [RG 148](#) to provide guidance on requirements for a platform operator or nominee and custody service operator acquiring shares under a CSF offer on behalf of an investor.
- 127 RG 148 explains:
- (a) our objectives when regulating investor directed portfolio services (IDPSs) and IDPS-like schemes (platforms), and nominee and custody services;
 - (b) the requirements and related disclosure obligations for operating these services;
 - (c) some of the obligations when issuing investments acquired through a platform or a nominee and custody service; and
 - (d) the obligations of financial product advisers who give advice about platforms.

- 128 We have updated our guidance for CSF intermediaries and AFS licencing to accommodate the CSF regime: see paragraphs 55–63.
- 129 For further information on our guidance for public companies seeking to raise funds using the CSF regime, see paragraphs 98–103.

D Mergers and acquisitions relief

Key points

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

There were no publications issued during the period of this report that relate to mergers and acquisitions relief.

Foreign holder nominee sale facility

Relief to allow ineligible foreign shareholders to be paid in cash rather than scrip through a nominee

- 130 We granted relief to permit a bidder to deem that all ineligible foreign shareholders had elected to receive cash consideration, rather than scrip. This results in the bidder not being required to appoint a nominee to sell the scrip consideration received by ineligible foreign shareholders where no market currently exists, as required under s619(3)(c).
- 131 In granting the relief, we considered our policy in [RG 51](#) and the particular circumstances of the transaction—namely that:
- (a) the bidder's shares were illiquid with no readily available, active market for the purpose of resale to facilitate the nominee process;
 - (b) the sale price of the bidder's shares would be less than the cash consideration per share, given that the target company would be the only asset of the bidder should the takeover proceed and that the cash consideration would be offered to all of the target's shareholders;
 - (c) the independent expert concluded that the cash consideration was superior to any proceeds ineligible foreign shareholders could potentially receive from a nominee sale procedure of the scrip consideration; and
 - (d) relief would not offend the equality principle by deeming ineligible foreign shareholders accepting the takeover bid to have elected cash consideration.
- 132 We were satisfied that the regulatory detriment of removing investor choice, by deeming all ineligible foreign shareholders to have elected the cash consideration, to clearly be outweighed by the commercial benefit of not requiring the bidder to conduct a sale process. We took into account the conclusions of the independent expert's report and the estimated costs of the sale process, and accepted that it was highly unlikely that the proceeds of the sale process will give ineligible foreign shareholders a return that is higher than the cash consideration.

E Conduct relief

Key points

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

There were no publications issued during the period of this report that relate to this area.

Responsible entity reporting requirements

Relief from the financial reporting and compliance plan audit requirements

- 133 We considered whether to grant relief to a registered managed investment scheme with a sole member from the financial reporting and compliance plan audit requirements. The scheme had a sole member following completion of a trust scheme, and the responsible entity had applied under s601PA(1) to deregister the scheme.
- 134 The responsible entity sought relief under:
- (a) s340(1), from the financial reporting requirements in s292, 301, 314 and 319; and
 - (b) s601QA(1)(a), from the compliance plan audit obligations in s601HG.
- The relief was sought for the financial year ended 30 June 2017
- 135 We were not inclined to grant the relief because:
- (a) we were not satisfied that the costs of the preparation and audit of financial reports and the compliance plan audit report were unreasonable;
 - (b) the requirement to prepare and lodge a compliance plan audit report is a fundamental obligation of Ch 5C, which helps us determine whether a responsible entity has breached any of its obligations under the Corporations Act and whether any regulatory action is necessary;
 - (c) there were other users of the financial report and the compliance plan audit report, apart from the sole member of the registered scheme, who would benefit from the information in the reports.
- 136 The applicant subsequently withdrew their relief application.

F Credit relief

Key points

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

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

Exclusion from the National Credit Code

Refusal of relief for Islamic finance home lending product

- 137 We refused an application for relief regarding a proposal to operate a sharia-compliant lending business to assist consumers to acquire real property, using a lending model known as ‘murabaha’.
- 138 Sharia law does not permit lenders to charge interest. Murabaha addresses this by structuring the transaction as a sale of property with deferred payment and a declared fixed profit margin. Although the fixed profit margin is not considered to be ‘interest’ for the purposes of sharia law, it is likely to be interest for the purpose of the National Credit Code.
- 139 The applicant sought relief from the following requirements of the National Credit Code and National Credit Act, which it considered it could not comply with while maintaining compliance with sharia law:
- (a) the contract document requirements, which require the licensee to disclose the annual percentage rate, the method of calculation of interest charge, and the frequency with which interest charges are to be debited;
 - (b) the prescribed maximum amount for interest charges;
 - (c) the prohibition on early debit of interest charges;
 - (d) the prescribed wording for a home loan key facts sheet;
 - (e) the hardship provisions; and
 - (f) the provisions relating to court powers to change contracts.
- 140 We refused to grant the relief sought because:
- (a) we considered that the applicant had viable alternatives to relief that it could explore further to enable compliance with the National Credit Code. We considered that compliance with the National Credit Code could be achieved by specifying a notional annual percentage rate, while tailoring disclosure and contract material to explain that charges

are subject to a range of legal requirements even though they are not considered to be interest for the purposes of sharia law; and

- (b) ASIC has the power to grant exemptions from the National Credit Code, but not to modify it. Giving exemptions from the requirements to specify an annual percentage rate and comply with the provisions that control the amount of interest that can be imposed by reference to the annual percentage rate has a potentially broader impact on the operation of the National Credit Code and consumer access to remedies under it.

Publications

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

Legislative instruments

ASIC Credit (Financial Counselling Agencies) Instrument 2017/793

- 142 We issued [ASIC Credit \(Financial Counselling Agencies\) Instrument 2017/793](#), which remakes Class Order [CO 11/926] *Credit licensing exemptions for NGOs (non-government organisations) providing credit assistance to consumers* without substantial changes: see [Media Release \(17-324MR\)](#) *ASIC remakes relief for financial counselling agencies providing advice or credit assistance* (27 September 2017).
- 143 ASIC Credit (Financial Counselling Agencies) Instrument 2017/793 continues relief for rural financial counselling service providers from the requirement to have an Australian credit licence when providing credit assistance. It also continues amendments made to the National Consumer Credit Regulations 2010 for financial counselling agencies.
- 144 We made the relief following public consultation via [CP 282](#).
- 145 We also updated [RG 203](#), [RG 234](#) and [INFO 112](#), in light of the remaking of relief.

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.

ASIC Derivative Transaction Rules (Reporting) 2013

No-action letter regarding the ASIC Derivative Transaction Rules (Reporting) 2013

- 146 We granted a no-action letter regarding obligations to comply with Rule 2.2.1(1) of the ASIC Derivative Transaction Rules (Reporting) 2013 for transactions in Swiss futures contracts traded on the Eurex Zurich market.
- Note: In this document, ‘derivative transaction rules (reporting)’ refers to the ASIC Derivative Transaction Rules (Reporting) 2013 and ‘Rule 2.2.1(1) (Reporting)’ (for example) refers to a particular rule of the derivative transaction rules (reporting).
- 147 The applicant notified ASIC of a breach of their trade reporting obligations, regarding a failure to report Swiss futures trades on Eurex Zurich in relation to trades that it had executed both as principal and as trustee for certain investment trusts. As Eurex Zurich is a foreign market that is not a financial market listed in [ASIC Regulated Foreign Markets Determination \[OTC DET 13/1145\]](#) or [ASIC Corporations \(Derivative Transaction Reporting Exemption\) Instrument 2015/844](#), the trades on Eurex Zurich were reportable under the derivative transaction rules (reporting).
- 148 We accepted submissions from the applicant that Eurex Zurich is a ‘Relevant Financial Market’ for the purposes of ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844, given that transactions on Eurex Zurich are centrally cleared. Further, Eurex Zurich is regulated by the Swiss Financial Market Authority (FINMA), a long-standing member of the International Organization of Securities Commissions (IOSCO).
- 149 The no-action relief applied for the period from 15 October 2015 to 5 September 2017.
- 150 On 5 September 2017, we issued [ASIC Corporations \(Amendment\) Instrument 2017/0723](#) to include Eurex Zurich as a ‘Relevant Financial Market’: see paragraphs 152–155.

Publications

- 151 We issued the following publications on other relief during the period of this report.

Legislative instruments

ASIC Corporations (Amendment) Instrument 2017/0723

- 152 In September 2017, we made [ASIC Corporations \(Amendment\) Instrument 2017/0723](#), which amends section 5(4) of [ASIC Corporations \(Derivative Transaction Reporting Exemption\) Instrument 2015/844](#) to include Eurex Zurich in the list of financial markets that constitute the definition of ‘Relevant Financial Market’.
- 153 ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844 provides time-limited transitional exemptions from the reporting requirements under the derivative transaction rules (reporting), for varying periods, to all ‘Reporting Entities’ (as defined in Rule 1.2.5 (Reporting)).
- 154 The time-limited exemptions will apply while we consider whether the specified financial markets are regulated foreign markets for the purposes of the derivative transaction rules (reporting) and whether any changes to the test of determining a regulated foreign market should be made.
- 155 A review of the ASIC Regulated Foreign Markets Determination [OTC DET 13/1145] is planned to be completed before 30 September 2018, which is the date that relief provided by ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844 is due to expire.

ASIC (Amendment, Repeal and Transitional) Instrument 2017/839

- 156 We issued [ASIC \(Amendment, Repeal and Transitional\) Instrument 2017/839](#): see [Media Release \(17-328MR\)](#) *ASIC repeals ‘sunsetting’ class orders relating to prime broking and holding client assets* (28 September 2017).
- 157 We issued ASIC (Amendment, Repeal and Transitional) Instrument 2017/839 to:
- (a) extend to 30 September 2018 the relief in:
 - (i) Class Order [CO 03/1110] *Prime brokerage services: Relief from obligation to hold client property on trust*; and
 - (ii) Class Order [CO 03/1111] *Prime brokerage services: Relief from obligation to hold scheme property separately*.
 - (b) repeal Class Order [CO 03/1112] *Relief from obligation to hold client money on trust*; and

- (c) amend, to remove references to the repealed [CO 03/1112]:
 - (i) [Class Order \[CO 13/1409\]](#) *Holding assets: Standards for responsible entities*; and
 - (ii) [Class Order \[CO 13/1410\]](#) *Holding assets: Standards for providers of custodial and depository services*.

158 We made these changes following public consultation via [Consultation Paper 273 Repealing ASIC class orders on holding client assets](#) (CP 273). We received three submissions in response to CP 273, two of which were confidential. Our report on the responses to CP 273 has yet to be published.

Class rule waivers

Class Rule Waiver [CW 17-0583], Class Rule Waiver [CW 17-0584] and Class Rule Waiver [CW 17-0586]

159 We issued [Class Rule Waiver \[CW 17-0583\]](#), [Class Rule Waiver \[CW 17-0584\]](#) and [Class Rule Waiver \[CW 17-0586\]](#) to grant relief to market participants of ASX, Chi-X and APX from certain obligations in the ASIC Market Integrity Rules (ASX Market) 2010, ASIC Market Integrity Rules (Chi-X Australia Market) 2011, and ASIC Market Integrity Rules (APX Market) 2013.

Note: In this document ‘ASIC Market Integrity Rules (ASX)’ refers to the ASIC Market Integrity Rules (ASX Market) 2010, ‘ASIC Market Integrity Rules (Chi-X)’ refers to the ASIC Market Integrity Rules (Chi-X Australia Market) 2011 and ‘ASIC Market Integrity Rules (APX)’ refers to the ASIC Market Integrity Rules (APX Market) 2013.

160 We exempted ASX, Chi-X and APX market participants from complying with the obligation to:

- (a) ensure that each of its responsible executives completes a review by 10 July each year of their allocated supervision and control procedures (as at 30 June that year)—Rule 2.3.3(1) (ASX), (Chi-X) and (APX);
- (b) ensure that its responsible executives meet the compliance education requirements during the period from 1 July each year until 30 June the following year—Rule 2.3.4 (ASX), (Chi-X) and (APX); and
- (c) by 31 July each year, notify ASIC of its responsible executives and provide a self-assessment of whether the responsible executives satisfy the requirements for competence, character and continuing education—Rule 2.3.5(5) (ASX), (Chi-X) and (APX).

Note: In this document ‘Rule 2.3.3(1) (ASX), (Chi-X) and (APX)’ (for example) refers to a particular rule of the ASIC Market Integrity Rules (ASX), ASIC Market Integrity Rules (Chi-X) and ASIC Market Integrity Rules (APX).

161 The class rule waivers are an interim measure until Rules 2.3.3, 2.3.4 and 2.3.5 (ASX), (Chi-X) and (APX) have been repealed, as proposed in

[Consultation Paper 277](#) *Proposals to consolidate the ASIC market integrity rules* (CP 277).

162 The class rule waivers mean that we will no longer be responsible for approving examinations written by industry providers that assess the knowledge and competency of supervisory staff. A market participant will need to satisfy itself that its supervisory staff have the relevant skills, knowledge and experience, providing greater flexibility to market-participants to make an overall assessment.

Class Rule Waiver [CW 17-740]

163 [Class Rule Waiver \[CW 17-740\]](#) provides relief from certain rules in the ASIC Market Integrity Rules (ASX 24 Market) 2010, to the extent that those rules apply the definition of ‘approved securities’ set out in Rule 7.1.1 (ASX 24).

Note: In this document ‘ASIC Market Integrity Rules (ASX 24)’ refers to the ASIC Market Integrity Rules (ASX 24 Market) 2010 and ‘Rule 7.1.1 (ASX 24)’ (for example) refers to a particular rule of the ASIC Market Integrity Rules (ASX 24).

164 Rules 7.2.2(4), 7.2.5, 7.2.6 and 7.2.8 (ASX 24) impose various obligations on trading participants to call margins from their clients. Margin calls can be satisfied by the trading participant accepting either cash or approved securities from their clients. The purpose of a margin call is to mitigate the risk that a party to a trade in a futures contract will default on their obligations under that trade. Mitigating this risk promotes investor confidence and market orderliness.

165 Trading participants that are clearing participants also have an obligation under the Operating Rules of ASX Clear to post margins.

166 Class Rule Waiver [CW 17-740] addresses some of the inconsistencies between ASX Clear’s current list and the definition of ‘approved securities’ in Rule 7.1.1 (ASX 24). The class rule waiver introduces a new term, ‘approved collateral’, which refers to securities, collateral and other property accepted by ASX Clear.

167 The effect is to allow trading participants to rely on the list of accepted collateral published by ASX Clear to meet their obligations under the relevant rules of ASIC Market Integrity Rules (ASX 24).

Appendix: ASIC relief instruments

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

Table 1: ASIC relief instruments

Paragraph number	Entity name	Instrument number (Gazette number if applicable)	Date executed	Power exercised and nature of relief	Expiry date
11–13	Computershare Investor Services Pty Ltd Computershare Plan Managers Pty Ltd	17-0745 (A43/17)	25 September 2017	Relief under s926A(2) of the Corporations Act from s911A(1), subject to specified conditions	N/A
18–21	Allianz Global Investors GmbH	17-0629 (A36/17)	18 August 2017	Relief under s926A(2) of the Corporations Act from s911A(1), subject to specified conditions	N/A
22–25	Restaurant Brands New Zealand Limited	17-0851 (A42/17)	19 September 2017	Relief under s741(1) of the Corporations Act from certain disclosure requirements in s707 and 708, subject to specified conditions	N/A
104–108	Charter Hall WALE Limited	17-0844 (A42/17)	18 September 2017	Relief under s601QA of the Corporations Act from s601FCAA	19 September 2017
130–132	Northern Silica Corporation	17-0406 (A20/17)	2 May 2017	Relief under s655A(1)(b) of the Corporations Act to modify s619(3), subject to specified conditions	N/A