



ASIC
Australian Securities &
Investments Commission

REPORT 664

Overview of decisions on relief applications (October 2019 to March 2020)

June 2020

About this report

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

It outlines some of our decisions on relief applications during the period from 1 October 2019 to 31 March 2020 (report period). 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 and the National Credit Act.

It also refers to a number of publications issued by ASIC during the report period that may be relevant to prospective applicants for relief, including any relevant 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.

Legislative instruments: instruments which have a wider application than individual relief, applying to a class of persons who carry out a particular activity in certain circumstances.

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 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.

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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).

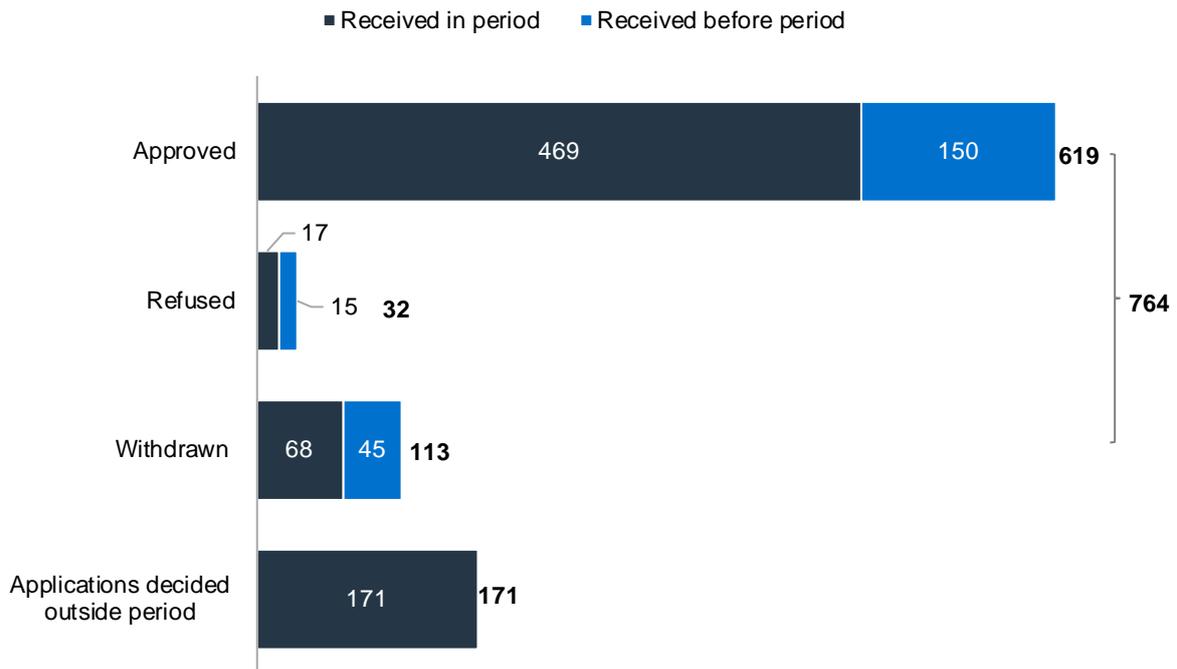
Note: In this report, references to sections (s), chapters (Chs) and parts (Pts) are to the Corporations Act, unless otherwise specified.

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 October 2019 and ending 31 March 2020 (report period). During the report period, we received 725 applications and determined 764 relief applications (this includes some applications received before the report period). Multiple applications may relate to the same activity or transaction. For a summary of the outcomes of all relief applications we decided during this period, see Figure 1.

Figure 1: Outcome of all relief applications received before and during the report period



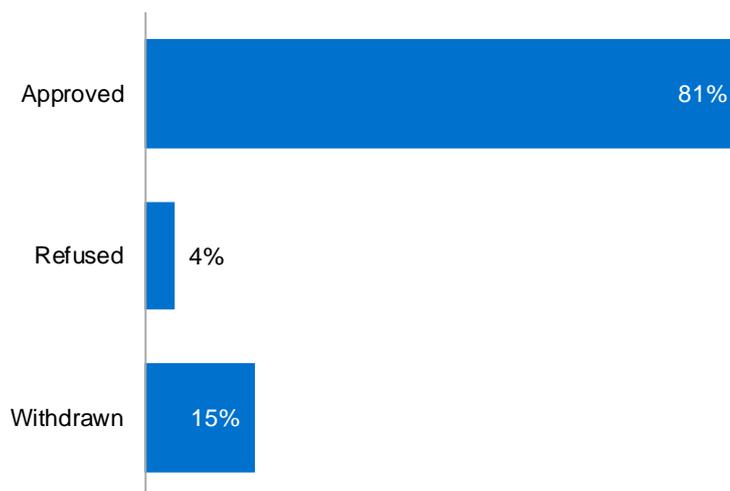
Note: See Table 13 in Appendix 2 for the data shown in this figure (accessible version).

5 The ‘Decided outside this period’ category in Figure 1 comprises 24% of the applications we received. It is made up of applications which were received during the report period but not approved, refused or withdrawn within the period. This could be because the applications:

- (a) were incomplete;
- (b) failed to fully address all the relevant issues;
- (c) were new policy applications (and therefore required more time to consider);
- (d) were received towards the end of the report period; or
- (e) were affected by transaction delays or other timing issues.

6 For a summary of the outcomes of all the applications determined in the report period, see Figure 2. These comprise applications which were received both during and before the commencement of the report period, and were approved, refused or withdrawn within the period.

Note: Due to rounding, some figures in this report may not add up to 100%.

Figure 2: Outcome of all relief applications determined in the report period

Note: See Table 14 in Appendix 2 for the data shown in this figure (accessible version).

7 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.

8 In this report, we have outlined matters in which we refused to exercise our discretionary powers as well as matters in which we granted relief. Prospective applicants for relief may gain a better insight into the factors we take into account in deciding whether to exercise our discretion to grant relief.

Note: We have also included summaries of two relief decisions which were made before the report period.

9 Appendix 1 details the individual relief instruments we have executed for matters referred to in the report. [Legislative instruments](#) are available on our website. Individual relief instruments are published in the [ASIC Gazette](#) or on our [Credit relief webpage](#) (for credit instruments). A [register of waivers granted under ASIC market integrity rules](#), including class rule waivers, is published on our website. See our website for [media releases](#) on the matters and publications referred to in this report.

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

Note: We have also included some publications on conduct relief which we issued after the report period and which relate to COVID-19.

How you apply for relief and lodge documents with us

- 11 Early in the new financial year we will be making changes to the way applications for relief and various fundraising and corporate finance documents (e.g. prospectuses and product disclosure statements) are submitted to us.
- 12 At that time, the [ASIC Regulatory Portal](#) will replace the current email submission channels as the primary method to submit these documents and applications.

Important note

ASIC's approach to assessing applications for relief and lodged corporate finance documents is not changing.

- 13 The [ASIC Regulatory Portal](#) will become your central access to ASIC's growing suite of regulatory services. Benefits of using the portal include:
- (a) structured online transactions that make it easier for stakeholders to ensure the information ASIC requires is provided upfront;
 - (b) the ability to attach supporting documentation;
 - (c) the ability to track the status of your transactions via your portal account;
 - (d) the ability to correspond with ASIC online about submitted transactions;
 - (e) fee estimates are automatically calculated based on the information provided in the transaction; and
 - (f) online payment options for some transactions and a record of invoice history.
- 14 More information is on our website: [applications for relief](#) | [fundraising and corporate finance documents](#).

A AFS licensing relief

Key points

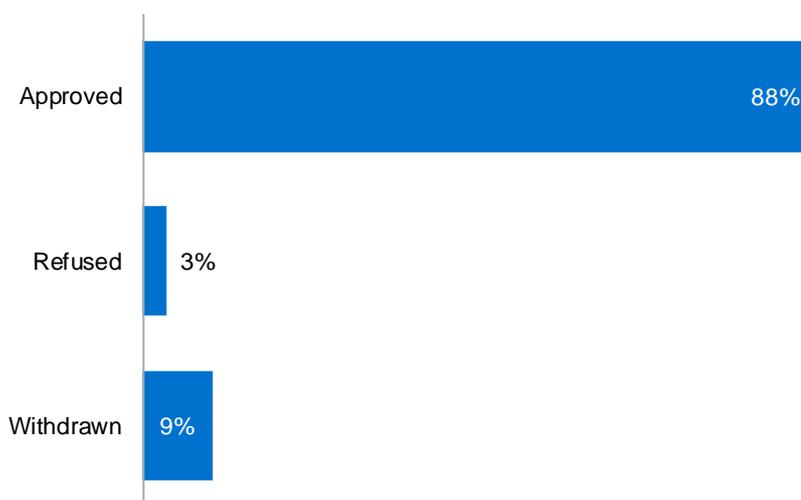
This section outlines some of our decisions on whether to grant relief under Ch 7 of the Corporations Act, including under s926A(2), from the Australian financial services (AFS) licensing requirements.

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

Key statistics

- 15 We have set out a summary of the outcomes of applications for AFS licensing relief that we determined in this period: see Figure 3.

Figure 3: Outcome of AFS licensing relief applications determined in the report period



Note: See Table 15 in Appendix 2 for the data shown in this figure (accessible version).

Non-cash payment provider

Licensing relief for an e-money issuer regulated by the FCA

- 16 We approved an extension to existing transitional AFS licensing relief for an applicant who is an e-money issuer under the Electronic Money Regulations 2011 (UK) (regulated by the Financial Conduct Authority (FCA) in the United Kingdom).

Note: The original relief is detailed in [Report 620](#) *Overview of decisions on relief applications (October 2018 to March 2019)*.

- 17 The firm sought the extension so that they could provide financial product advice and deal in a facility through which a person makes a non-cash payment while we assessed an application for an AFS licence for its Australian subsidiary.
- 18 We approved the extension because:
- (a) the reasons for providing the existing relief continue to be relevant, including that the firm operates in the United Kingdom providing products and services which are regulated by the FCA—the same products and services it intends to provide in Australia;
 - (b) the experience and governance requirements in the United Kingdom are comparable to those that apply in Australia;
 - (c) we are committed to encouraging innovation and the development of new products and services without compromising the fundamental principles of financial services regulation—see [Regulatory Guide 257](#) *Testing fintech products and services without holding an AFS or credit licence*; and
 - (d) consumer harm may have occurred as a result of the firm’s sudden exit from the market.
- 19 To minimise risks for consumers, we imposed the following additional conditions in the individual relief instrument dated 1 November 2019:
- (a) the relief ends at the earlier of:
 - (i) 1 May 2020; or
 - (ii) one month after ASIC’s decision on the licensing application; and
 - (b) the firm must not issue the facility to any additional clients in Australia from 1 November 2019.

Transfer of financial advisers within a corporate group

Relief to avoid financial advisers having to be authorised representatives of the licensee

- 20 We considered whether to grant licensing relief to two entities of a corporate group which sought the relief to allow the financial advisers of an AFS licensee to continue to provide advice following their transfer to an unlicensed entity, which was not a related body corporate of the licensee.
- 21 Under a planned group restructure, the employment contracts of the financial advisers would be transferred to the unlicensed entity, which would then second the advisers back to the licensee. Although the two entities are part of the same corporate group, trust arrangements mean the unlicensed entity is not a ‘related body corporate’ of the licensee.

- 22 The unlicensed entity, on behalf of both entities, sought relief that would treat the two entities as related bodies corporate and therefore allow the advisers of the unlicensed entity to provide advice on behalf of the licensee under s911B(1)(a) of the Corporations Act. The relief was sought to avoid the requirements in s911B which, in the applicants' view, would have unusually onerous implications for them, including additional operational costs and business losses.
- 23 We were not inclined to grant licensing relief because:
- (a) there were lawful and effective ways for the financial advisers to provide advice (including acting as authorised representatives of the licensee); and
 - (b) we did not consider there was a net regulatory benefit, or that the regulatory detriment of granting the relief was minimal and clearly outweighed by the commercial benefit.
- 24 We advised the entities that we were minded to refuse granting relief and the application was subsequently withdrawn by the applicant.

Foreign financial services providers

Refusal of licensing relief for a US financial services provider

- 25 We notified a foreign financial services provider (FFSP) based in the United States that it was excluded from relying on the licensing relief provided by [ASIC Class Order \[CO 03/1100\]](#) *US SEC regulated financial service providers* regarding the provision of certain financial services to wholesale clients in Australia.
- Note: [\[CO 03/1100\]](#) was repealed by [ASIC Corporations \(Repeal and Transitional\) Instrument 2016/396](#) which also provided transitional relief to extend its effect to 31 March 2020. With effect from 31 March 2020, transitional relief is provided until 31 March 2022 to FFSPs able to rely on the relief as at 31 March 2020, under [ASIC Corporations \(Amendment\) Instrument 2020/200](#).
- 26 The company notified ASIC of its intention to rely on [\[CO 03/1100\]](#). The company had also previously provided notice of its intention to rely on [\[CO 03/1100\]](#) in November 2014, and ASIC had acknowledged reliance on the relief.
- 27 Under [\[CO 03/1100\]](#), a foreign company that is a body corporate incorporated in the United States or a state of the United States and is a registered investment adviser under s203(c) of the *Investment Advisers Act 1940* (US) is exempt from the requirement to hold an AFS licence, subject to specified conditions.

- 28 One of the specified conditions is to meet the requirements of a body under paragraph (b)(ii) of Sch A of [\[CO 03/1100\]](#), which requires the body to not have failed to have an agent for any consecutive period of 10 business days.
- 29 Our records indicated that the company's local agent for the purposes of [\[CO 03/1100\]](#) had ceased to be an agent. The company submitted that it had ceased to provide financial services in reliance on the relief. A new agent was not appointed until 23 months later.
- 30 We had not been notified by the company of its intention to cease to rely on [\[CO 03/1100\]](#) and only became aware of the applicant's cessation to rely on the relief as a result of our inquiries.
- 31 We notified the company that the relief had lapsed by force of law as it had ceased to meet the requirements of a body under paragraph (b)(ii) of Sch A of [\[CO 03/1100\]](#).
- 32 We also informed the company that it was excluded from reliance (under paragraph (d) of Sch A of [\[CO 03/1100\]](#)) for failing to notify that it had ceased to provide financial services in reliance on the relief within 15 business days, as required under our policy in [Regulatory Guide 176 Foreign Financial Services Providers](#) (RG 176), as current at the time.
- 33 We issued the company with a notice of exclusion from reliance on [\[CO 03/1100\]](#), and accordingly refused to provide licensing relief.

Publications

- 34 We issued the following publications in relation to AFS relief during the report period: see Table 1 and Table 2.

Table 1: New regulatory documents on AFS relief issued during the report period

Type and number	Title	Media release	Date issued
REP 650	<i>Overview of licensing and professional registration applications: July 2018 to June 2019</i>	19-356MR	16 December 2019
REP 656	<i>Response to submissions on CP 301 and CP 315 on foreign financial services providers</i>	20-058MR	10 March 2020
RG 176	<i>Foreign financial services providers</i>	20-058MR	10 March 2020

Table 2: Legislative instruments on licensing relief made during the report period

Instrument name	Amends or replaces	Effective date
ASIC Corporations (Amendment) Instrument 2019/1145	Amended ASIC Corporations (Professional Standards—Transitional) Instrument 2018/894 to provide a three-year exemption to all licensees from the obligation to ensure that their financial advisers are covered by a compliance scheme	15 November 2019
ASIC Corporations (Foreign Financial Services Providers—Foreign AFS Licensees) Instrument 2020/198	Provides relief from certain licensing requirements of Ch 7 of the Corporations Act for foreign AFS licensees who provide financial services in Australia to wholesale clients	1 April 2020
ASIC Corporations (Foreign Financial Services Providers—Funds Management Financial Services) Instrument 2020/199	Provides relief for foreign providers of financial services from Ch 7 of the Corporations Act in relation to inducing certain types of Australian professional investors to use the funds management financial services they provide	1 April 2022
ASIC Corporations (Amendment) Instrument 2020/200	Amended instruments: <ul style="list-style-type: none"> • ASIC Corporations (Repeal and Transitional) Instrument 2016/396; • ASIC Corporations (Foreign Financial Services Providers—Limited Connection) Instrument 2017/182; and • ASIC Corporations (CSSF-Regulated Financial Services Providers) Instrument 2016/1109, so that the licensing relief they afford to FFSPs is extended to 31 March 2022	17 March 2020

B Disclosure relief

Key points

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

- the requirements of Ch 6D to provide prospectuses and other disclosure documents; and
- the Ch 7 requirements to provide product disclosure statements (PDSs) and financial services guides (FSGs).

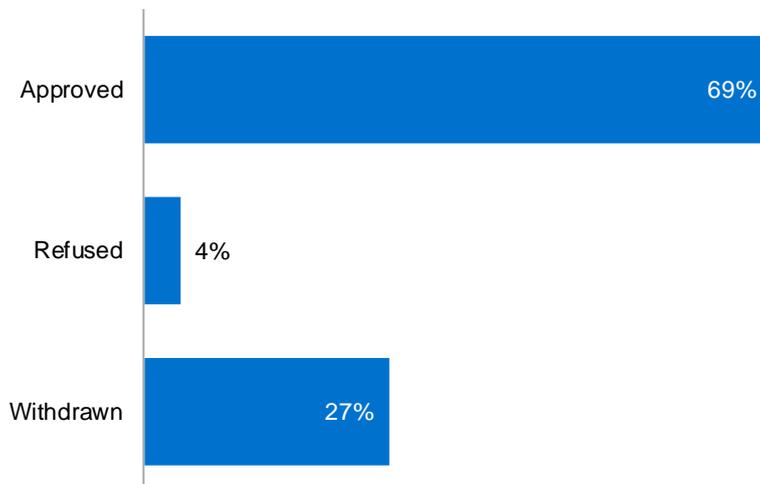
We also outline the publications we issued in relation to disclosure relief during the period of this report.

Key statistics

35

We have set out a summary of the outcomes of applications for disclosure relief that we determined in this period: see Figure 4.

Figure 4: Outcome of disclosure relief applications determined in the report period



Note: See Table 16 in Appendix 2 for the data shown in this figure (accessible version).

Small-scale offerings exemption

Refusal to modify the small-scale offerings exemption

- 36 We refused to grant relief to an unlisted public company to modify the small-scale offerings exemption in the Corporations Act by increasing the investor ceiling threshold from 20 to 67.
- 37 The company sought relief to allow it to issue shares to 67 prospective investors who had made non-refundable monetary contributions to the company for its acquisition of a large industry asset. The prospective investors worked within, and had intimate knowledge of, the particular industry and the future prospects and intentions of the company. The company was unable to prepare an offer information statement due to its limited operating history.
- 38 We refused the relief because the small-scale offerings exemption is available to entities solely on the basis of the size of the fundraising being undertaken and not the prior knowledge of prospective investors. The sophistication of an investor and their ability to understand an investment is considered when applying other disclosure exemptions available under the Corporations Act (e.g. offers to professional investors or offers to people associated with the body).
- 39 We also considered it inappropriate to widen the ambit of the small-scale offerings exemption by increasing the 20-investor ceiling threshold. Our policy in relation to small-scale offerings is longstanding and has been consistently applied. The number and size of small-scale offers have been reviewed on multiple occasions and we see these limits as being at the appropriate level to afford adequate protection to investors.

Application of due diligence and reasonable reliance defences

Refusal of declaratory relief to apply due diligence and reasonable reliance defences to new civil penalty provision

- 40 We refused relief to extend the due diligence and reasonable reliance defences under s731 and 733 of the Corporations Act to contraventions of the new civil penalty provision of s728(4) of the Corporations Act to two companies, each proposing to make an offer under a prospectus.
- 41 In March 2019, the *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019* (amending Act) added a new s728(4), creating a new civil penalty provision for the contravention of s728(1) to complement the existing criminal and civil liability provisions of s728(3) and 729 of the Corporations Act. Section 728(4) establishes a civil penalty for an offer of securities under a disclosure document if there is a misleading or

deceptive statement, a material omission, or a new circumstance that would have otherwise required disclosure, that is materially adverse from the point of view of an investor.

- 42 The amending Act also added a new ‘mistake of fact’ defence in s1317QC as a general statutory defence for contravention of any civil penalty provision. However, the amending Act made no consequential changes to the due diligence and reasonable reliance defences, with the effect that the due diligence and reasonable reliance defences do not apply to s728(4) of the Corporations Act.
- 43 We refused relief because we considered that granting relief may amount to legislative reform.

PDS and exit statement relief for superannuation fund transfer

Transfer between two superannuation funds with different trustees

- 44 We granted disclosure relief for a proposal to transfer members’ superannuation benefits between two superannuation funds with different trustees in circumstances where there was no legal requirement to obtain the members’ consent.
- 45 We had previously provided similar disclosure relief for a proposal to transfer members’ superannuation benefits between two superannuation funds with the same trustee.

Note: This relief decision is detailed in [Report 602](#) *Overview of decisions on relief applications (April 2018 to September 2018)*.

- 46 Although we had not previously granted disclosure relief for a proposal to transfer members’ benefits between two superannuation funds with different trustees, the transfer was to occur within the same corporate group. There was also to be no change in the administration system or manner in which members’ superannuation benefits would be administered and the circumstances were similar to those of the previous relief decision.
- 47 Upon transfer, members would hold a superannuation product with the same features as the product they held in the transferring fund. The transfer did not involve changes that could properly be described as requiring transferring members to make an investment decision. Furthermore, the transfer would only occur if the trustee was satisfied that it was in the best interests of the transferring members.
- 48 Accordingly, we provided relief from the requirement that the trustee give transferring members a PDS relating to the transferee fund. We also granted relief from the requirement to provide members with an exit statement after the transfer.

- 49 We imposed similar conditions to relief as in the previous relief decision. These conditions included the trustee providing:
- (a) a notice under s1017B of the Corporations Act, together with an information booklet, at least 30 days before the transfer took effect if it involved an increase in fees or charges for transferring members, or otherwise a reasonable time before the transfer; and
 - (b) a final exit report for the members' interest in the transferring fund in the periodic statement for the reporting period that would have applied but for the transfer.
- 50 The relief applies where the Australian Prudential Regulation Authority has granted the trustee relief under the *Superannuation Industry (Supervision) Act 1993* in the form of a variation to the definition of 'successor fund' under the Superannuation Industry (Supervision) Regulations 1994.

Publications

- 51 We issued the following publications on disclosure relief during the report period: see Table 3 and Table 4.

Table 3: Updated regulatory documents on disclosure relief issued during the report period

Type and number	Title	Media release	Date issued
CP 328	<i>Initial public offers: Relief for voluntary escrow arrangements and pre-prospectus communications</i>	20-044MR	24 February 2020

Table 4: Legislative instruments on disclosure relief made during the report period

Instrument name	Amends or replaces	Effective date
ASIC Corporations (Amendment) 2019/1056	Amended Class Order [CO 14/443] to defer the time by which a trustee of a registrable superannuation entity must comply with the portfolio holdings disclosure requirements in relation to a reporting day	30 October 2019
ASIC Corporations (Trading Suspension Relief) Instrument 2020/289	Amended Ch 6D and Pt 7.9 of the Corporations Act to temporarily enable listed companies whose securities have been suspended for a total of up to 10 days to make certain offers under the low documentation disclosure regime	2 April 2020

Instrument name	Amends or replaces	Effective date
ASIC Corporations (Amendment) Instrument 2020/290	Amended ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547 to temporarily increase the permissible total trading suspension to 10 days per 12-month period	2 April 2020

C Managed investment relief

Key points

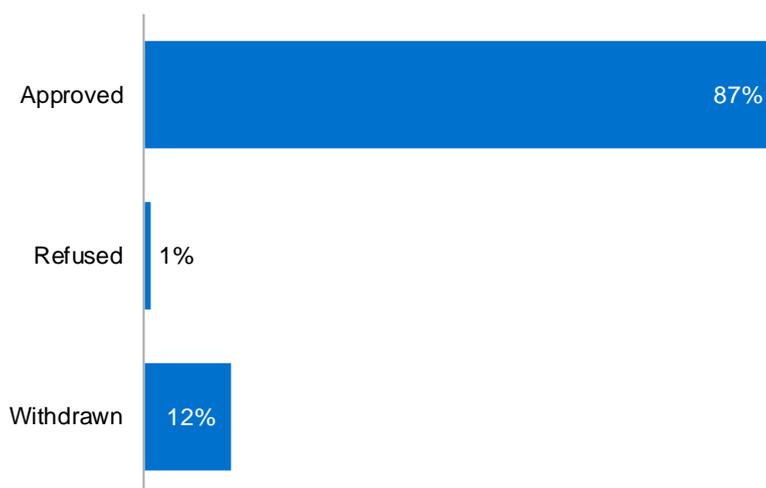
This section sets out some of the circumstances in which we have granted or refused relief from the provisions of Ch 5C of the Corporations Act.

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

Key statistics

52 We have set out a summary of the outcomes of applications for managed investment relief that we determined in this period: see Figure 5.

Figure 5: Outcome of managed investment relief applications determined in the report period



Note: See Table 17 in Appendix 2 for the data shown in this figure (accessible version).

Foreign collective investment schemes

Refusal of ongoing relief to the operator of an FCIS to remove the 30% limit on Australian resident investment

53 We refused ongoing managed investment and licensing relief to the operator of a US-domiciled exchange traded fund (foreign collective investment scheme or FCIS) cross-listed on the AQUA market from the requirement to take all reasonable steps to ensure that no more than 30% of all interests (by value) in the FCIS were held by persons resident in Australia.

- 54 The operator relied on a relief instrument previously granted by ASIC to offer CHESS Depositary Interests (CDIs) over the shares in the FCIS to Australian residents without the need to register the exchange traded fund (ETF) as a managed investment scheme (MIS) or hold an AFS licence. The 30% limit on Australian investment was a condition to relief. At the time of the application, Australian investment in the FCIS was nearing the 30% limit. The operator requested that ASIC remove the 30% limit.
- 55 We refused relief because:
- (a) where an FCIS is predominantly comprised of Australian investors, those investors should have access to the rights and remedies provided under the Corporations Act; and
 - (b) the prospect of the FCIS breaching the 30% limit was reasonably foreseeable, and preventative steps could have been taken to avoid it.

Transitional relief granted to the operator of an FCIS to permit an increase to the 30% limit on Australian resident investment

- 56 In the matter referred to in paragraphs 53–55, we granted transitional managed investment and licensing relief to the operator of the FCIS to permit a temporary increase to the limit on Australian investment, from 30% to 50%.
- 57 The operator of the FCIS was nearing the 30% limit and the operator sought relief to facilitate a restructure under which an Australian registered MIS would be established, with the CDIs being converted to units in a new Australian-domiciled ETF, which would in turn invest in the US-domiciled ETF.
- 58 We granted transitional relief for a period of 10 months to permit an increase to the limit on Australian investment from 30% to 50% because:
- (a) temporary relief would provide the FCIS with the necessary time required to implement the restructure; and
 - (b) it would protect investors with existing CDIs from the potentially adverse impacts on price and liquidity of breaching the Australian resident holdings limit.

Publications

- 59 We issued the following publications on managed investment relief during the report period: see Table 5 and Table 6.

Table 5: Updated regulatory documents on managed investment relief made during the report period

Type and number	Title	Media release	Date issued
RG 97	<i>Disclosing fees and costs in PDSs and periodic statements</i>	19-328MR	29 November 2019

Table 6: Legislative instruments on managed investment relief made during the report period

Instrument name	Amends or replaces	Effective date
ASIC Corporations (Conditional Costs Schemes) Instrument 2020/38	Provides relief to enable the temporary operation on a litigation funding scheme, or a proof of debt funding scheme, that is funded by a conditional costs agreement, without compliance with the requirements of Chs 5C and 7 of the Corporations Act, until 31 January 2023	22 January 2020

D Mergers and acquisitions relief

Key points

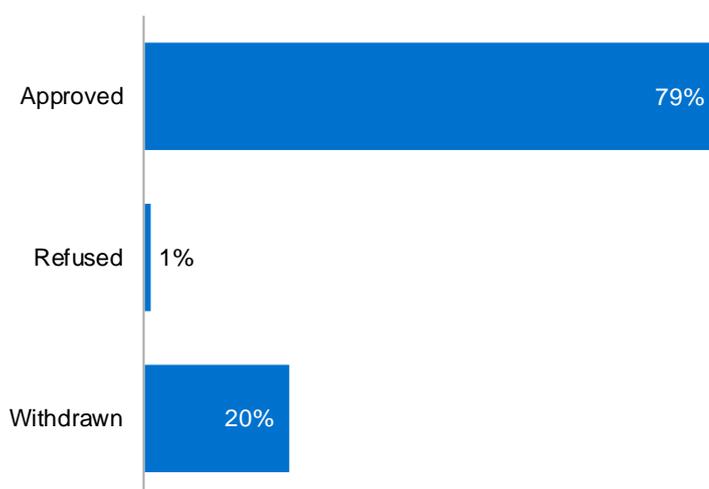
This section outlines some of the circumstances in which we have granted or refused relief from the provisions of Ch 6.

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

Key statistics

60 We have set out a summary of the outcomes of applications for mergers and acquisitions relief that we determined in this period: see Figure 6.

Figure 6: Outcome of mergers and acquisitions relief applications determined in the report period



Note: See Table 18 in Appendix 2 for the data shown in this figure (accessible version).

Selective buy-back of stapled securities

Relief to increase a relevant interest under a selective stapled security buy-back

61 We granted relief from the prohibition of the acquisition of relevant interests in the Corporations Act, to allow a shareholder to increase their existing interest in a stapled group as a result of the company's off-market selective buy-back of its stapled securities.

- 62 The buy-back was for up to 10% of the issued securities by way of a tender offer, and was to be conducted immediately after the stapling of shares in the company to units in the managed investment scheme had taken place. The shareholder could not rely on the buy-back exception as stapled securities are not covered by Ch 6 of the Corporations Act.
- 63 We granted relief because we were satisfied that the principles in Ch 6 of the Corporations Act would not be offended for the following reasons:
- (a) the buy-back would not proceed without approval by a special resolution of shareholders in accordance with s257D of the Corporations Act;
 - (b) the selective buy-back was structured so that all stapled security holders would have an equal opportunity to participate in the buy-back; and
 - (c) the Notice of Meeting clearly disclosed the potential control implications relating to the position of majority holders.
- 64 We were comfortable to grant the relief based on the applicant's factual circumstances. Specifically, we were satisfied on the facts that the buy-back would not significantly distort control in the stapled group and did not amount to unacceptable circumstances.
- 65 The shareholder was still required to comply with the substantial holding provisions of the Corporations Act once its relevant interest increased as a result of the buy-back.

Transfer of relevant interest between charities

Relief granted to not-for-profit entity to address issues created by charitable bequest

- 66 We granted relief to permit a transfer of securities between two charities registered with the Australian Charities and Not for Profits Commission that would result in the transferee charity acquiring a relevant interest in more than 20% of the voting securities of a listed entity.
- 67 The transferor charity had acquired a substantial relevant interest in a listed entity as a result of a bequest under item 15, s611 of the Corporations Act. However, by reason of the transferor charity's treatment under the *Taxation Administration Act 1953* (Tax Act), it was prevented from achieving its charitable objectives. Due to a misunderstanding at the time the will was drafted, the benefactor was not aware the transferor charity was an inappropriate vehicle to receive and administer the bequest.
- 68 In order to properly achieve the testamentary wishes of the benefactor, relief was sought to enable the transfer between the two charities without having to seek item 7, s611 approval. The Australian Parliament enacted specialised provisions under the Tax Act to facilitate the transfer.

- 69 In considering whether to grant the relief, we gave procedural fairness to the listed entity, whose securities were the subject of the proposed transfer. The listed entity had no objections to the proposed transfer. We granted the relief because we were satisfied that:
- (a) the purpose of the transfer was to rectify an error and give effect to the benefactor’s testamentary wishes;
 - (b) there was no effective change of control as both charities carried out substantially the same charitable objectives and were both controlled by the same individuals; and
 - (c) the transfer would not offend the purpose of Ch 6, as outlined in s602 of the Corporations Act.

Publications

- 70 We issued the following publication on mergers and acquisitions relief during the report period: see Table 7.

Table 7: New regulatory documents on mergers and acquisitions relief issued during the report period

Type and number	Title	Media release	Date issued
CP 326	<i>Chapter 6 relief for share transfers using s444GA of the Corporations Act</i>	20-009MR	16 January 2020

E Conduct relief

Key points

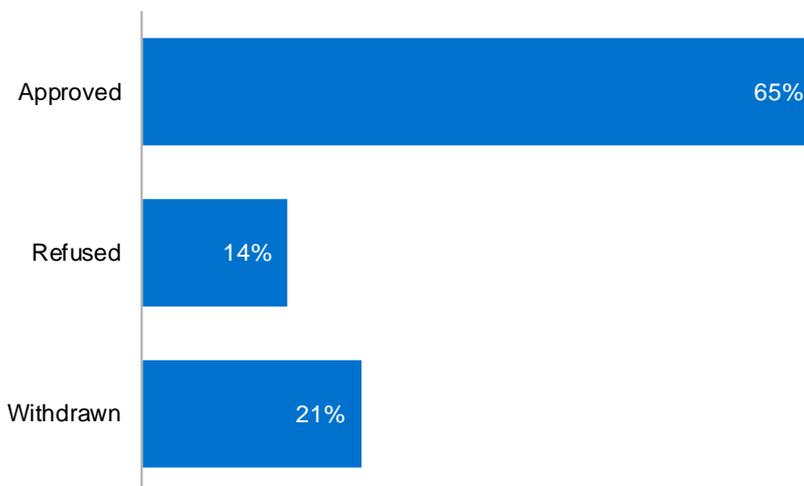
This section outlines some of our decisions to grant relief from the conduct obligations imposed by Chs 2D, 2G, 2M, 5C and 7.

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

Key statistics

71 We have set out a summary of the outcomes of applications for conduct relief that we determined in this period: see Figure 7.

Figure 7: Outcome of conduct relief applications determined in the report period



Note: See Table 19 in Appendix 2 for the data shown in this figure (accessible version).

Financial reporting relief

Financial reporting relief for ASX-listed foreign registered companies

72 We granted relief from the financial reporting requirements of certain registered foreign companies that are:

- (a) bodies incorporated or formed in Delaware and Washington in the United States;

- (b) not subject to any periodic and current reporting requirements under the *US Securities Exchange Act of 1934*; and
 - (c) disclosing entities whose securities are listed solely on the ASX as a standard ASX listing.
- 73 Under s601CK of the Corporations Act, unless exempted by ASIC, a registered foreign company must lodge its balance sheet, profit and loss statement and cash flow statement (each made up to the end of the last financial year) in the form the company is required to prepare under the laws applicable in its place of origin.
- 74 As the applicants are not required under the laws of Delaware, Washington or the United States to prepare financial statements, they were therefore required to prepare and lodge financial statements (as if it were an Australian public company) in accordance with Australian International Financial Reporting Standards (AIFRS). However, the ASX allowed the applicants to meet their financial reporting obligation under the ASX Listing Rules by accepting financial reports prepared and audited in accordance with Generally Accepted Accounting Principles in the United States (US GAAP).
- 75 We granted relief to allow the registered foreign companies to lodge audited financial statements prepared in accordance with US GAAP in lieu of preparing financial statements in accordance with AIFRS because:
- (a) there is an equivalence of information of financial statements prepared in accordance with US GAAP and AIFRS;
 - (b) financial statements prepared in accordance with US GAAP are accepted in Australia for other purposes, including in prospectuses and takeover documents;
 - (c) investors who participated in the initial public offering of securities in the registered foreign companies were made aware that future financial reports were intended to be prepared in accordance with US GAAP;
 - (d) importantly, the foreign registered companies are subject to the continuous disclosure requirements of the Corporations Act and ASX Listing Rules; and
 - (e) the additional costs of compliance associated with preparing and auditing dual sets of accounts would impose an unreasonable burden in the circumstances.

Notice that company does not need to prepare and lodge reports after ceasing to be a wholly-owned entity

- 76 We gave notice to a group of companies that had been relying on our financial reporting relief under [ASIC Corporations \(Wholly-owned Companies\) Instrument 2016/785](#) that they did not need to prepare and lodge financial reports for the previous financial year after they ceased to be wholly-owned entities of the same holding company.

- 77 Under section 7(3) of [ASIC Corporations \(Wholly-owned Companies\) Instrument 2016/785](#), if a wholly-owned company that has been relying on the relief ceases to be a wholly-owned entity of the holding entity, then it must prepare and lodge a financial report and directors' report for the last financial year that it relied on the relief. It must do this within two months after ceasing to be a wholly-owned entity unless an exception applies. Failure to comply with this condition means that the company will be unable to re-apply the relief to future financial years.
- 78 The exceptions to this requirement include where the company becomes a party to a new deed of cross-guarantee within one month of ceasing to be a wholly-owned entity, or where ASIC gives notice that a company does not have to prepare and lodge the relevant financial report and directors' report.
- 79 Under a transaction, the group of companies were acquired by a new holding company, but they did not become party to a new deed of cross-guarantee for approximately one and a half months due to the Christmas period and an administrative oversight.
- 80 We gave notice that the group of companies were not required to prepare and lodge financial reports and directors' reports for the last financial year that they relied on our relief because they became parties to the new deed of cross guarantee shortly after the end of the one-month period contemplated in [ASIC Corporations \(Wholly-owned Companies\) Instrument 2016/785](#).

Extension of time for Chinese-based company to lodge annual report due to audit delays relating to COVID-19

- 81 We granted a listed public company a one-month extension of time to lodge the auditors' report for the year ended 31 December 2019.
- 82 The company's operations are primarily located in the Hainan Province of the Peoples Republic of China (PRC), while its auditors are located in the Special Administrative Region of Hong Kong. The COVID-19 pandemic and the associated response measures have made travel between the two regions difficult.
- 83 We granted the extension because:
- (a) the company was able to lodge its financial report (i.e. the unaudited financial statements, including notes to the financial statements and the directors' declaration) by the due date of 31 March 2020;
 - (b) we were satisfied that the company's auditors were unable to complete the auditor report due to governmental travel restrictions put in place in the PRC prior to 31 March 2020, as well as other delays related to COVID-19;
 - (c) the company had already lodged its Preliminary Final Report (Appendix 4E) with the ASX by the due date;
 - (d) we were satisfied that the company and its directors had taken all reasonable steps to prepare the statutory reports in the usual way and

within the usual timeframes. We were also satisfied that, but for COVID-19, the preparation of the auditor's report would not have been delayed; and

- (e) the company did not delay in applying for an extension of time, which gave us sufficient time to consider the application.

Extension of time for Malaysian-based company to lodge annual report due to delays relating to COVID-19

84 We granted a listed public company a one-month extension of time to lodge its annual report for the year ended 31 December 2019.

85 A subsidiary of the company, which accounts for the majority of its assets and operations, is based in Malaysia. As a result of the Malaysian government's shutdown order to address COVID-19, the company and its auditor were unable to complete their reports by 31 March 2020.

86 We granted the extension of time as:

- (a) we were satisfied that the company was unable to complete its financial report and directors' report, as well as obtain an auditor's report due to the travel restrictions, business shutdown and other COVID-19-related circumstances in Malaysia prior to 31 March 2020;
- (b) the company had already lodged its Preliminary Final Report (Appendix 4E) with the ASX by the due date;
- (c) we were satisfied that the company and its directors had taken all reasonable steps to prepare the statutory reports in the usual way and within the usual timeframes. We were also satisfied that, but for COVID-19, the preparation of the statutory reports would not have been delayed; and
- (d) the company did not delay in applying for an extension of time, which gave us sufficient time to consider the application.

Publications

87 We issued the following publications on conduct relief during, and subsequent to, the report period: see Table 8 and Table 9.

Table 8: New regulatory documents on conduct relief issued during, and subsequent to, the report period

Type and number	Title	Media release	Date issued
CP 325	<i>Product design and distribution obligations</i>	19-369MR	19 December 2019
N/A	<i>Guidelines for meeting upcoming AGM and financial reporting requirements</i>	20-068MR	20 March 2020

Type and number	Title	Media release	Date issued
N/A	<i>ASIC to further extend financial reporting deadlines for listed and unlisted entities and amends 'no action' position for AGMs</i>	20-113MR	13 May 2020

Table 9: Legislative instruments on conduct relief made during, and subsequent to, the report period

Instrument name	Amends or replaces	Effective date
ASIC Corporations (Extended Reporting and Lodgment Deadlines—Unlisted Entities) Instrument 2020/395	Amended the Corporations Act to allow certain unlisted entities up to one additional month to complete financial reports and have those reports audited	25 April 2020
ASIC Corporations (Amendment) Instrument 2020/396	Amended ASIC Corporations (Exempt Proprietary Companies) Instrument 2015/840 to preserve the grandfathered status of certain proprietary companies that use the relief in ASIC Corporations (Extended Reporting and Lodgment Deadlines – Unlisted Entities) Instrument 2020/395	25 April 2020
ASIC Corporations (Extended Reporting and Lodgment Deadlines – Listed Entities) Instrument 2020/451	Amended the Corporations Act to allow certain listed entities up to one additional month to complete financial reports and have those reports audited	21 May 2020
ASIC Corporations (Amendment) Instrument 2020/452	Amended instruments: <ul style="list-style-type: none"> • ASIC Corporations (Exempt Proprietary Companies) Instrument 2015/840; • ASIC Corporations (Disregarding Technical Relief) Instrument 2016/73; • ASIC Corporations (Wholly-owned Companies) Instrument 2016/785; and • ASIC Corporations (Extended Reporting and Lodgment Deadlines—Unlisted Entities) Instrument 2020/395, to allow certain listed and unlisted entities additional time to report and have audits	21 May 2020

F Credit relief

Key points

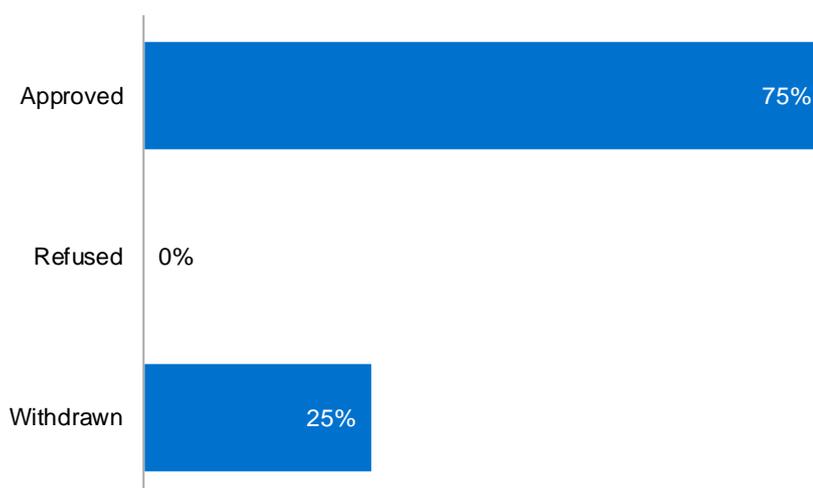
This section outlines a summary of the outcomes in relation to applications for relief under the National Credit Act.

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

Key statistics

88 We have set out a summary of the outcomes of applications for credit relief that we determined in this period: see Figure 8.

Figure 8: Outcome of credit relief applications determined in the report period



Note: See Table 20 in Appendix 2 for the data shown in this figure (accessible version).

89 There is no novel or significant decision on credit relief application to report for this period.

Publications

90 We issued the following publications in relation to credit relief during the report period: see Table 10.

Table 10: Legislative instruments on credit relief made during the report period

Instrument name	Amends or replaces	Effective date
ASIC Credit (Litigation Funding– Exclusion) Instrument 2020/37	Provides relief to enable the temporary operation of a litigation funding arrangement, and a proof of debt funding arrangement, without compliance with the requirements of the National Credit Act until 31 January 2023	22 January 2020
ASIC Credit (Amendment) Instrument 2020/148	Amended ASIC Class Order [CO 14/41] to extend the relief it provided for simple arrangements for a further two-year period to 1 March 2022	27 February 2020

G Other relief

Key points

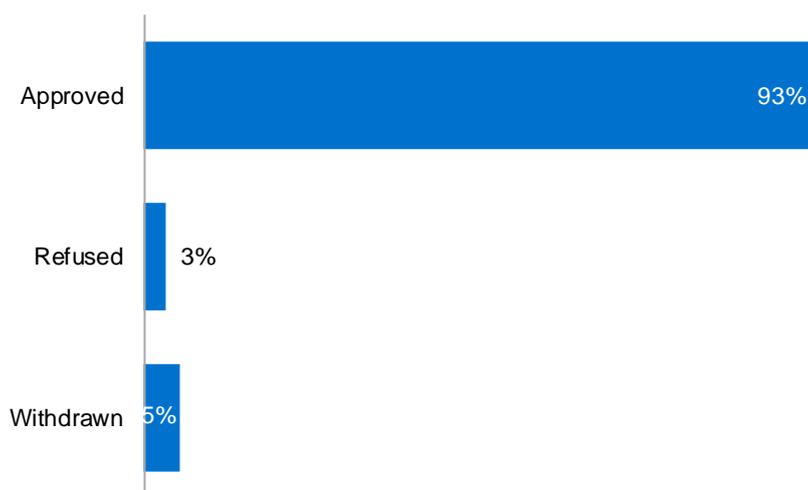
This section outlines decisions we have made that do not fall within any of the categories mentioned in previous sections, and that may be significant to participants in the financial services and capital markets industry.

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

Key statistics

91 We have set out a summary of the outcomes of applications for other relief that we determined in this period: see Figure 9.

Figure 9: Outcome of other relief applications determined in the report period



Note: See Table 21 in Appendix 2 for the data shown in this figure (accessible version).

Closure of registered office

No-action letter provided for closure of registered office due to COVID-19 restrictions

92 We granted a no-action letter to a public company, and its public company subsidiaries, in relation to the temporary closure of its registered office.

- 93 The Corporations Act requires the registered office of a public company to remain open to the public for a set number of hours each business day.
- 94 The company sought relief on the basis that it had asked all non-essential staff (including reception staff) to work from home, in line with Government directives issued in response to the COVID-19 pandemic. As a result, the registered office of the public company would be closed to the public.
- 95 We considered that it would serve a clear regulatory purpose to grant the no-action letter and would facilitate business during the COVID-19 pandemic. We were satisfied that the company had implemented adequate measures to mitigate any regulatory detriment resulting from the closure of its registered office, including:
- (a) placing signage on the reception doors notifying the public:
 - (i) that the registered office was temporarily closed as a result of COVID-19;
 - (ii) providing contact details at which members of the public could make inquiries of the company; and
 - (iii) providing an email address at which the company would accept service of any document or process for so long as the office remained closed;
 - (b) publishing the above information on the company's official website, as well as any official websites of its public company subsidiaries;
 - (c) monitoring all mail sent to the registered office address while the registered office remained closed; and
 - (d) making available for inspection, either electronically or by appointment, the books and register of the company.
- 96 The no-action position was limited to the duration of the COVID-19 restrictions and was provided on the condition that the company maintains the above mitigation measures throughout the closure of the registered office.

Publications

- 97 We issued the following publications in relation to other relief during the report period: see Table 11.

Table 11: Legislative instruments on other relief made during the report period

Instrument name	Amends or replaces	Effective date
ASIC Corporations (Amendment) Instrument 2019/958	Amended ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844 to provide conditional continued time-limited exemptive relief for the industry for three elements of relief ('Entity information', 'Privacy—Consent for historical counterparties' and 'Privacy—Foreign privacy restrictions')	1 October 2019
ASIC Corporations (Whistleblower Policies) Instrument 2019/1146	Provides relief to public companies limited by guarantee that operate on a not-for-profit basis and have annual consolidated revenue of less than \$1 million from the requirement to have a whistleblower policy under s1317A(1) of the Corporations Act	1 January 2020
ASIC Corporations (Amendment) Instrument 2020/149	Amended ASIC Corporations (Derivative Clearing Exemption) Instrument 2018/209 to delay the commencement of central clearing requirements under the ASIC Derivative Transaction Rules (Clearing) 2015 in relation to Australian dollar forward rate agreement until 2 April 2022	24 March 2020
ASIC Corporations (Amendment) Instrument 2020/242	Amended the ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844 to provide conditional time-limited exemptive relief for the industry for two elements of relief ('Trade identifier' and 'Entity information')	1 April 2020

Appendix 1: ASIC relief instruments

98 Table 12 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](#)—except for credit instruments (marked with asterisks), which are published on our [Credit relief webpage](#).

Table 12: ASIC relief instruments

Paragraph number	Entity name	Instrument number (Gazette number if applicable)	Date executed	Power exercised and nature of relief
16	Revolut Limited	19-1123 (A46/19)	1 November 2019	Section 926A(2)(a) of the Corporations Act An extension to existing individual relief from the requirement in s911A(1) to hold an AFS licence to provide financial product advice and deal in a facility through which a person makes a non-cash payment
44	N.M. Superannuation Proprietary Limited	20-0448 (A20/20) & 20-0580	12 May 2020 & 19 June 2020	Section 1020F(1) of the Corporations Act Exemptions from the requirements to prepare PDSs and exit statements in the context of a successor fund transfer between superannuation funds where other disclosure documents have been provided
56	VanEck Investments Limited & VanEck Vectors ETF Trust	19-0443 (A22/19)	13 May 2019 Note: This relief decision was made before the report period	Sections 601QA(1)(a) and 911A(2)(l) of the Corporations Act A revision to an existing individual relief instrument from the prohibition on operating an unregistered MIS under s601ED(5) and the requirement in 911A(1) to hold an AFS licence

Paragraph number	Entity name	Instrument number (Gazette number if applicable)	Date executed	Power exercised and nature of relief
61	CVC Limited	20-0325 (A15/20)	3 April 2020	Sections 655A(1)(b) and 673(1)(b) of the Corporations Act Relief from Ch 6 to allow the shareholder to increase its relevant interest under a selective share buy-back, with modification to Ch 6C requiring compliance with the substantive holder provisions
66	Paul Ramsay Foundation Limited	19-0934 (A02/20)	17 September 2019 Note: This relief decision was made before the report period	Sections 655A(1)(a) and 673(1)(b) of the Corporations Act Relief from the prohibition of s606 to not acquire a relevant interest in the voting shares of a listed company
72	Imricor Medical Systems, Inc. Life360, Inc. Limeade, Inc. & Sezzle, Inc.	20-0296 (A14/20), 20-0423 (A18/20), 20-0071 (A17/20) & 20-0247 (A16/20)	30 March 2020, 29 April 2020, 22 April 2020 & 17 April 2020	Section 601CK(7) of the Corporations Act Relief from the requirements of s601CK to prepare and lodge financial statements as if the companies were incorporated under the Corporations Act

Appendix 2: Accessible versions of figures

99 This appendix is for people with visual or other impairments. It provides the underlying data for the figures in this report.

Table 13: Outcome of all relief applications received before and during the report period

Outcome	Received before period	Received during period	Total
Approved	150	469	619
Refused	15	17	32
Withdrawn	45	68	113
<i>All applications decided in the period</i>	<i>210</i>	<i>554</i>	<i>764</i>
Decided outside this period	0	171	171

Note: This table sets out the data in Figure 1.

Table 14: Outcome of all relief applications determined in the report period

Outcome	Percentage
Approved	81%
Refused	4%
Withdrawn	15%

Note: This table sets out the data in Figure 2.

Table 15: Outcome of AFS licensing relief applications determined in the report period

Outcome	Percentage
Approved	88%
Refused	3%
Withdrawn	9%

Note: This table sets out the data in Figure 3.

Table 16: Outcome of disclosure relief applications determined in the report period

Outcome	Percentage
Approved	69%
Refused	4%
Withdrawn	27%

Note: This table sets out the data in Figure 4.

Table 17: Outcome of managed investment relief applications determined in the report period

Outcome	Percentage
Approved	87%
Refused	1%
Withdrawn	12%

Note: This table sets out in the data in Figure 5.

Table 18: Outcome of mergers and acquisitions relief applications determined in the report period

Outcome	Percentage
Approved	79%
Refused	1%
Withdrawn	20%

Note: This table sets out the data in Figure 6.

Table 19: Outcome of conduct relief applications determined in the report period

Outcome	Percentage
Approved	65%
Refused	14%
Withdrawn	21%

Note: This table sets out the data in Figure 7.

Table 20: Outcome of credit relief applications determined in the report period

Outcome	Percentage
Approved	75%
Refused	0%
Withdrawn	25%

Note: This table sets out the data in Figure 8.

Table 21: Outcome of other relief applications determined in the report period

Outcome	Percentage
Approved	93%
Refused	3%
Withdrawn	5%

Note: This table sets out the data in Figure 9.