



ASIC

Australian Securities & Investments Commission

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REGULATORY GUIDE 151

Fundraising: Discretionary powers

Chapter 6D — Fundraising

Issued 17/2/2000

From 5 July 2007, this document may be referred to as Regulatory Guide 151 (RG 151) or Policy Statement 151 (PS 151). Paragraphs in this document may be referred to by their regulatory guide number (e.g. RG 151.1) or their policy statement number (e.g. PS 151.1).

What this guide is about

RG 151.1 This guide explains:

- A** which of our regulatory guides, class orders and pro formas will apply to the fundraising and debenture provisions of the Corporations Law (Law) after the commencement of the *Corporate Law Economic Reform Program Act 1999* (CLERP Act), which policies are no longer relevant and when interim relief will be given

see RG 151.2–RG 151.27

- B** when we will continue to require compliance with disclosure obligations by managed investment schemes in situations where we have given relief from Chapter 5C of the Law

see RG 151.28–RG 151.36

- C** when we will give exemptions from, or make modifications to, the Law
see RG 151.37–RG 151.40
- D** how our regulatory guides, class orders and individual instruments apply to prospectuses lodged before the commencement of the CLERP Act.
see RG 151.41–RG 151.44

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A Application of our current policies

Our policy

Continuing policies

RG 151.2 We will generally apply the policies we applied before the CLERP Act commenced where the CLERP Act effects no or only minor change to the Law.

RG 151.3 We will also generally apply the policies we applied before the CLERP Act commenced to fundraisings after 13 March 2000 if:

- (a) the changes made to the Law by the CLERP Act do not affect the original rationale for our policy; and
- (b) we consider that review of our policy is not otherwise required.

RG 151.4 Where our policies provide for relief, it will, as far as practicable, be available on the same terms as before 13 March 2000. Some necessary or incidental changes may result from the changes in the Law.

RG 151.5 The policies released before 13 March 2000 which still apply are listed in Table 1 at RG 151.12.

RG 151.6 Regulatory Guide 56 *Prospectuses* RG 56 will continue to apply as outlined in Table 2 at RG 151.16.

Interim relief

RG 151.7 The following policies are being continued on an interim basis as they are either currently subject to a review or we intend to review them:

- (a) foreign collective investment schemes [SPS 65], [IR 99/17] (interim relief only to 1 July 2000);
- (b) business matching services (RG 129);
- (c) participating property syndicates (RG 77);
- (d) electronic prospectuses (RG 107);
- (e) employee share schemes (RG 49); and
- (f) time-sharing schemes [SPS 66].

Superseded policies

RG 151.8 Some policies we released before the CLERP Act commenced are no longer relevant. These policies are listed under Table 3 at RG 151.27.

Underlying principles

RG 151.9 We want to minimise any unnecessary disruptions to fundraising that might otherwise result from changes to the Law effected by the CLERP Act. We will endeavour to facilitate a smooth transition to the new fundraising provisions and to promote certainty regarding compliance with these provisions. To this end we have attempted to retain those policies which can be applied appropriately under the new Law.

RG 151.10 We will exercise our discretionary powers in relation to the new fundraising provisions introduced by the CLERP Act on a basis similar to that which applied to the old fundraising provisions. We consider that such an approach is appropriate as the fundamental purposes of the fundraising provisions will remain the same.

Explanations

Continuing policies

RG 151.11 Existing exemptions to and modifications of the Law given to prospectuses and secondary sale notices which were lodged with ASIC before 13 March 2000 will continue to apply to those prospectuses and notices after 13 March 2000 (see s1475(2)). However, offers of securities made pursuant to a disclosure document lodged after 13 March 2000 must comply with the CLERP Act.

RG 151.12 We consider that the policies in Table 1 should continue with only necessary or incidental modifications because the grounds for these policies continue to be valid.

Table 1: Continuing policies

Type of scheme of relief	Policy before CLERP Act
Film investment schemes	RG 19
Regular savings plans	[SPS 27] (transitional relief until 28/2/2001 then the policy will be withdrawn)
Paperless issues under a global debenture	RG 30 (except RG 30.7–RG 30.10)
Limited partnerships	RG 41
Underwriting	RG 61
Debenture and prescribed interest registers	RG 63

Type of scheme of relief	Policy before CLERP Act
Real estate companies	RG 67 (only in respect of licences and secondary sales of the controller)
Foreign securities prospectus relief	RG 72 (except RG 72.22–RG 72.25 and RG 72.45–RG 72.49)
Property trusts and property syndicates	RG 77
Prescribed interests not for money	RG 80
Charities	RG 87
Horse racing and breeding schemes	RG 91
Member discretionary master funds	[SPS 94] (transitional relief until 28/2/2001 then the policy will be withdrawn)
Quotation of securities	RG 99 (RG 99.4–RG 99.7, RG 99.14–RG 99.15, RG 99.19–RG 99.28, and RG 99.39–RG 99.74 only)
Small offers to existing shareholders	RG 125
Additional investments in managed investment schemes	RG 127
Serviced strata schemes	RG 140
Offers of securities on the internet	RG 141
Mortgage investment schemes	RG 144
Investor directed portfolio services	RG 148
Nominee and custody services	RG 149
Electronic applications and dealer personalised applications	RG 150
Reconstruction meetings	[SPN 40]
Valuation reports	RG 12
Citing experts and statement of interests	RG 55 (the current drafts of revised RG 55 issued September 1997 also continue to provide guidance)
Discretionary powers and application fees	RG 21
Updating prospectuses	RG 23 (except RG 23.4–RG 23.5,

Type of scheme of relief	Policy before CLERP Act
	RG 23.17–RG 23.24, RG 23.28–RG 23.33, RG 23.58–RG 23.64)
Crown immunity	[SPN 62] (except [SPN 62.5]–[SPN 62.11] and except for provisions dealing with the Crown in right of the Commonwealth)
Accounting and disclosure	[SPN 64]
Transaction specific prospectuses	RG 66
Financial forecasts	[SPN 67] (except [SPN 67.32])
Cash box prospectuses	RG 70

Prescribed interest policies

RG 151.13 A number of the policies referred to in Table 1 relate to prescribed interests. As such they continue to have effect in relation to those interests because the Corporations Law as in force immediately prior to the commencement of the Managed Investments Act 1998, continues to apply by virtue of s1454. How the policies apply to managed investment schemes is set out in Regulatory Guide 136 *Managed investments: Discretionary powers and closely related schemes* RG 136.

Existing individual instruments

RG 151.14 Persons who have an individual exemption from or modification to the old Law under policies that are continuing have been invited to contact us: [IR 00/6]. We will consider whether the issue of a corresponding exemption or modification under the Law as amended by the CLERP Act is necessary and issue new instruments as appropriate.

Regulatory Guide 56 — Prospectuses

RG 151.15 The ongoing application of RG 56 is identified in Table 2 below. Where paragraphs of RG 56 restate policy contained in other regulatory guides specifically dealing with an area, reference should also be made to that guide.

RG 151.16 Paragraphs of RG 56 which provide policy guidance or assistance in interpretation not found elsewhere in our policies are classified as “continuing” or “superseded”.

Table 2: Ongoing application of Regulatory Guide 56

Paragraph reference	Status
RG 56.32 Each person to whom a \$500,000 offer or invitation is made	Continuing
RG 56.36 Short-term money market deposits	Continuing
RG 56.67 Lloyds of London	Continuing
RG 56.69 Transfer and settlement of foreign securities through CHES	Continuing
RG 56.72 Extension of the dividend reinvestment plan exemption to convertible notes	Continuing
RG 56.81 Extension of the exemption for offers of debentures to existing debenture holders	Continuing
RG 56.88 Extension of the executive officers exemption to a private trust associated with a partnership	Continuing
RG 56.92 Extension of the licensed dealer exemption to a wholly-owned subsidiary	Continuing
RG 56.9697 Offers of option contracts (warrants)	Continuing
RG 56.138 Mining experts' reports	Continuing
RG 56.159 Debentures issued by a unit trust	Superseded
RG 56.173 Rights issues	Superseded
RG 56.175 Prospectuses consisting of several documents	Continuing
RG 56.240 Exempt stock markets	Continuing

RG 151.17 Our policy on warrants in RG 56.96–RG 56.97 continues notwithstanding that Chapter 6D applies to options to buy securities as:

- (a) the Explanatory Memorandum to the CLERP Bill acknowledges that there is a question whether some securities covered by Chapter 6D should instead be covered by the disclosure regime being developed in the context of the Government's CLERP 6 reform proposals (para 8.90);

- (b) in this context, it is noted that in respect of fundraising ASIC “will be able to provide relief from certain requirements where appropriate” (Explanatory Memorandum, para 8.91);
- (c) the ASX Business Rules provide an appropriate alternative regulatory structure pending finalisation of the CLERP 6 proposals; and
- (d) granting relief in the interim will ensure all warrant issues would be governed by the same regulatory regime rather than requiring a dual regulatory system with offers of call warrants over securities regulated under Chapter 6D and all other warrants regulated under the ASX Business Rules.

Class orders

RG 151.18 The class orders to give effect to the continuing policies referred to in Tables 1 and 2 above will be available on the internet on the Policy and Practice page of the ASIC internet home page on <http://www.asic.gov.au>. They will also be published progressively in the *ASIC Digest*.

Interim relief

RG 151.19 In the cases set out in RG 151.7 the relief we are giving should be considered interim in nature pending the outcome of the reviews we are or will be conducting.

RG 151.20 Where we have not already done so, we will give reasonable notice of when the interim relief expires. When reviewing our policies, we will consider the position of parties with existing relief and those that obtained relief given during the interim period.

Foreign collective investment schemes

RG 151.21 We will continue to grant interim relief under Superseded Policy Statement 65 *Foreign collective investment schemes* [SPS 65] on a case by case basis until 1 July 2000: see RG 136 at para (b) of RG 136.34. We are currently determining the scope for a more general review of the policy: see Information Release [IR 99/17].

Business matching services

RG 151.22 Although the new fundraising provisions include extensive measures to facilitate fundraising by small to medium enterprises, they do not replicate all aspects of our relief as currently provided in Regulatory Guide 129 *Business introduction or matching services* (RG 129). We propose to review RG 129 within 12 months after the commencement of the CLERP Act to determine which aspects

of this relief should continue and whether relief in other areas may be necessary. During the interim period, we will replicate existing relief to the extent that it is not superseded by the new fundraising provisions.

Participating property syndicates

RG 151.23 The relief in Regulatory Guide 77 *Property trusts and property syndicates* RG 77 for participating property syndicates will continue to apply on an interim basis. We propose to review RG 77 within 12 months after the commencement of the CLERP Act to determine whether, and on what terms, the relief will be continued. During the interim period we will replicate existing relief.

Electronic disclosure documents

RG 151.24 Although the new fundraising provisions facilitate the distribution of electronic disclosure documents, they may not be co-extensive with all aspects of our current relief for electronic prospectuses in Regulatory Guide 107 *Electronic prospectuses* RG 107. Further, in the context of the new fundraising provisions we may consider that new relief is appropriate to facilitate the distribution of electronic disclosure documents. We propose to review RG 107 within 12 months after the commencement of the CLERP Act to determine which aspects of the policy should continue and whether relief in other areas may be justified. During the interim period, we will replicate existing relief to the extent that it is not superseded by the new fundraising provisions.

Employee share schemes

RG 151.25 We will be reviewing Regulatory Guide 49 *Employee share schemes* RG 49 in light of the new fundraising provisions of the CLERP Act. In the interim class order relief will continue. We will also review the policy taking into account the report of the House of Representatives Standing Committee on Employment Education and Workplace Relations inquiring into employee share ownership in Australian enterprises.

Time-sharing schemes

RG 151.26 Superseded Policy Statement 66 *Time-sharing schemes* [SPS 66] is being reviewed separately and we have issued a policy proposal paper identifying issues for comment: see [MR 99/449] and our paper *Time-sharing schemes* (December 1999).

Superseded policies

RG 151.27 The following table sets out policies which are no longer relevant because of changes made by the CLERP Act.

Table 3: Superseded policies

Type of scheme of relief	Policy before CLERP Act
Horse racing schemes	[SPS 20] (incorporated into RG 91)
Pathfinders	[SPS 8]
Securities advertising (prospectus date)	[SPS 9]
Paperless issues under a global debenture	RG 30 (RG 30.7–RG 30.10)
Pre-prospectus advertising	[SPS 54] (replaced by RG 158)
Real estate companies	RG 67 (secondary trading commentary where the seller is not a controller)
Debentures — Australian banks and life companies	[SPS 68]
Foreign securities	RG 72 (RG 72.22–RG 72.25 and RG 72.45–RG 72.49)
13 month prospectuses	[SPS 96]
Debenture prospectuses	[SPS 97] (replaced by RG 155)
Quotation of securities	RG 99 (RG 99.1–RG 99.3, RG 99.8–RG 99.13, RG 99.16–RG 99.18 and RG 99.29–RG 99.38)
Prospectus advertising	[SPS 101] (replaced by RG 158)
Secondary trading	[SPS 105]
Concise prospectuses	[SPS 137] (replaced by [SPS 153])
Securities for sale — allotment conduct	[SPN 12]
Fundraising transition issued	RG 21
Updating prospectuses	RG 23 (RG 23.4–RG 23.5, RG 23.17–RG 23.24, RG 23.28–RG 23.33 and RG 23.58–RG 23.64)
Crown immunity	[SPN 62] ([SPN 62.5]–[SPN 62.11]) and provisions dealing with the Crown in the right of the Commonwealth)
Incorporation by reference	[SPN 63]
Financial forecasts	[SPN 67] ([SPN 67.32])

B Disclosure obligations for unregistered managed investment schemes

Our policy

RG 151.28 Where appropriate, we will give relief from Chapter 5C of the Law to managed investment schemes on condition that there are obligations to comply with the relevant disclosure provisions under the CLERP Act. This condition will apply to those schemes requiring disclosure:

- (a) that currently have relief from Chapter 5C; or
- (b) which are new schemes established after 13 March 2000.

RG 151.29 We may do this by imposing a condition that scheme operators provide investors with all the information that the investors and their professional advisers would reasonably require to make an informed assessment of:

- (a) the rights and liabilities attaching to the securities offered; and
- (b) the assets and liabilities, financial position and performance, profits and losses and prospects of the scheme.

RG 151.30 Persons preparing such disclosure information would not be governed by the fundraising provisions in Chapter 6D but would be liable to investors in accordance with the principles set out in s995 dealing with misleading and deceptive conduct.

RG 151.31 Alternatively, we may require that a managed investment scheme be registered with us but provide relief from the operative aspects of the managed investment provisions (eg Pro Forma 71 [PF 71] used for foreign collective investment schemes). The disclosure provisions in Chapter 6D will apply in these circumstances.

RG 151.32 We may impose other conditions for relief from Chapter 5C to ensure investors receive appropriate disclosure.

Underlying principles

RG 151.33 In some instances it will be appropriate to provide relief from the requirements to register as a managed investment scheme but nonetheless ensure that investors are provided with proper disclosure.

Explanations

RG 151.34 Where a managed investment scheme is not registered then offerings do not need to comply with the new fundraising provisions of the Law as amended by the CLERP Act because the definition of “securities” in s92(3) only includes interests in a registered scheme.

RG 151.35 In some instances it is not appropriate that schemes are given relief from all disclosure requirements merely because they have been granted relief under Chapter 5C. In these cases we may require disclosure as set out in RG 151.28.

RG 151.36 In other cases (eg some relief in RG 19 (film schemes), RG 91 (horse racing), RG 77 (property trusts), RG 80 (prescribed interests not for money) and RG 87 (charities)), relief is given from both the managed investment provisions of the Law (Chapter 5C) and the old fundraising provisions of the Law (Part 7.12). This relief will be continued where it is required in accordance with the principles discussed in RG 151.2–RG 151.4.

C Exemptions and modifications

Our policy

RG 151.37 We will consider granting exemptions or modifications to the new fundraising provisions applying after commencement of the CLERP Act according to the same fundamental criteria as adopted by us in relation to the current fundraising provisions: see Regulatory Guide 51 *Applications for relief* RG 51.

Underlying principles

RG 151.38 We will exercise our discretionary powers under s741 in line with existing policy to assist a smooth transition to the new provisions and to promote certainty regarding compliance with these new provisions.

Explanations

RG 151.39 We expect to receive applications from parties asking us to exercise our discretion under s741. When giving relief we will be careful to avoid changing the intended policy underlying the new Law.

RG 151.40 If you want to apply for relief, refer to RG 51. Conditions may apply to any relief. If possible, and where appropriate we will give relief by class orders so that you do not have to apply for it. Relief from the provisions of the Law may be conditional upon compliance with different obligations or restrictions.

D Transitional prospectuses

Our policy

RG 151.41 We will continue to apply the policies we applied before commencement of the CLERP Act to prospectuses and secondary sale notices lodged before that commencement and to the consequent offers, issues and transfers of securities.

RG 151.42 The class orders and individual instruments that were in force immediately prior to the commencement of that Act continue to have effect in relation to those prospectuses, notices, offers, issues and transfers.

Underlying principles

RG 151.43 The regulatory framework applicable to prospectuses and notices lodged prior to the commencement of the CLERP Act should generally continue to apply for the life of the prospectus or notice.

Explanations

RG 151.44 Section 1475(2) applies the old Law to prospectuses and secondary sale notices lodged before the commencement of the CLERP Act and the associated offers, issues and transfers of securities. To that extent, we consider it appropriate to also continue our existing policies. We also consider that the operation of class orders and individual instruments in force immediately before the commencement of the CLERP Act is preserved by s1475(2) in relation to the prospectuses and secondary sale notices to which that subsection applies.

Key terms

RG 151.45 In this guide, a reference to:

“the CLERP Act” means the Corporate Law Economic Reform Program Act 1999;

“the Law” means the Corporations Law;

“discretionary powers” means ASIC’s powers to give exemptions and grant modifications under s741 of the Law in relation to fundraising and s260MA of the Law in relation to debentures;

“ASIC” means the Australian Securities and Investments Commission;

“s741” (for example) is to a section of the Law;

“old Law” means the Law as it stood immediately prior to the commencement of Schedule 1 of the CLERP Act.

Related information

RG 151.46

Headnotes

Fundraising provisions, CLERP Act, exemptions, modifications, discretionary powers, unregistered managed investment schemes, foreign collective investment schemes, business matching services, participating property syndicates, electronic disclosure documents, electronic application forms, employee share schemes, time-sharing schemes, warrants

Class orders and pro formas

see RG 151.18

Regulatory guides

RG 51 *Applications for relief*

RG 56 *Prospectuses*

Legislation

Chapter 5C, Chapter 6D

Consultation papers

Fundraising: Profile statements,

Fundraising: Disclosure document lodgment

Fundraising: Discretionary powers

Media and information releases

[IR 00/6], [MR 00/69], [MR 99/247], [MR 99/303]