



**ASIC**

Australian Securities & Investments Commission

## REGULATORY GUIDE 233

# Indirect self-acquisition: Relief for investment funds

February 2012

### About this guide

This guide is for investment funds and similar entities and controlled entities of listed companies engaged in index arbitrage and client-driven activities involving baskets of securities.

It explains the conditional relief we may grant under s259C(2) of the *Corporations Act 2001* (Corporations Act) from the indirect self-acquisition provisions in s259C for these entities.

Note: From 27 July 2020, applications for relief should be submitted through the [ASIC Regulatory Portal](#). For more information, see [how you apply for relief](#).

### 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.

### Document history

This guide was issued in February 2012 and is based on legislation and regulations as at the date of issue. The note on the front page was inserted on 27 July 2020.

### Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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## A Overview

### Key points

Indirect self-acquisition occurs where shares (or units of shares) in a company are issued or transferred to an entity it controls.

The Corporations Act voids such an issue or transfer of shares (or units of shares) unless certain exceptions apply: s259C.

ASIC has the power to exempt a company from these provisions: s259C(2). This exemption can be subject to conditions.

We may grant conditional relief under s259C(2) in certain circumstances for:

- investment funds and similar entities; and
- controlled entities of listed companies engaged in index arbitrage and client-driven activities involving baskets of securities.

## Restrictions on indirect self-acquisition

RG 233.1 The *Corporations Act 2001* (Corporations Act) imposes certain restrictions where shares (or units of shares) in a company are issued or transferred to an entity it controls (indirect self-acquisition): s259C. Section 259C(1) states that:

The issue or transfer of shares (or units of shares) of a company to an entity it controls is void unless:

- (a) the issue or transfer is to the entity as a personal representative; or
- (b) the issue or transfer is to the entity as trustee and neither the company nor any entity it controls has a beneficial interest in the trust, other than a beneficial interest that satisfies these conditions:
  - (i) the interest arises from a security given for the purposes of a transaction entered into in the ordinary course of business in connection with providing finance; and
  - (ii) that transaction was not entered into with an associate of the company or an entity it controls; or
- (c) the issue to the entity is made as a result of an offer to all the members of the company who hold shares of the class being issued and is made on a basis that does not discriminate unfairly, either directly or indirectly, in favour of the entity; or
- (d) the transfer to the entity is by a wholly-owned subsidiary of a body corporate and the entity is also a wholly-owned subsidiary of that body corporate.

RG 233.2 The exceptions in s259C(1)(c)–(d) are subject to the condition in s259D(1) that within 12 months after the controlled entity receives the shares:

- (a) the entity must cease to hold the shares;
- (b) the entity must cease to be a controlled entity; or

- (c) the company must have received an extension of time from ASIC.

Note: For the definition of ‘controlled entity’, see s259E.

RG 233.3 ASIC has the power under s259C(2) to exempt a company from the operation of s259C(1). The exemption can be subject to conditions.

## Regulatory risks of indirect self-acquisition

RG 233.4 We consider that certain regulatory risks may arise from allowing indirect self-acquisition: see Table 1. Any relief we give under s259C(2) will be subject to conditions designed to address these risks.

RG 233.5 Controlled entities acquiring shares should be aware that an acquisition may risk an application to the Takeovers Panel for a declaration of unacceptable circumstances even though the acquisition was made in reliance on relief from ASIC.

**Table 1: Regulatory risks of indirect self-acquisition**

| Risk   | Description   |
|--|---|
| Improper attempts to consolidate or exercise control | There is a risk that the company's shares acquired by controlled entities may be inappropriately used to control the company.   |
| Increased possibility of corporate failure           | There is an increased risk of corporate failure where a company is investing its own funds in itself.   |
| Possible discrimination between shareholders         | There is a risk that self-investment may lead to a controlled entity being preferred over other shareholders in the company.  |
| Insider trading                                      | There is a heightened risk of insider trading where a controlled entity is trading in its holding company's shares.   |
| Market manipulation                                  | There is a risk that acquisitions by a controlled entity could be used to manipulate the market for the benefit of the corporate group.   |
| Price opacity  | <p>Allowing indirect self-acquisition by a controlled entity, which uses its own funds rather than investors' funds, can create difficulties in valuing the consolidated group of companies. This is because part of the assets of the group include shares in the controlling company.</p> <p>In addition and all things being equal, the greater the amount of indirect self-investment, the greater the volatility in the controlling company's share price. This is because indirect self-investment tends to exaggerate the effect of good and bad news on the share price of the company.</p> |

## Relief for investment funds

RG 233.6 We will consider giving conditional relief on a case-by-case basis to allow indirect self-acquisition by a controlled entity in its capacity as:

- (a) a responsible entity of a managed investment scheme;
- (b) a trustee of a unit trust; or
- (c) a trustee of a superannuation fund.

Note: In this guide, we refer to managed investment schemes, unit trusts and superannuation funds as 'investment funds'.

RG 233.7 We may also give relief on similar terms to operators of:

- (a) investor directed portfolio services (IDPSs); and
- (b) certain types of statutory funds of life insurance companies in particular circumstances.

RG 233.8 The relief will be subject to conditions which address the regulatory risks of self-acquisition.

## Relief for index arbitrage and client-driven activities involving baskets of securities

RG 233.9 In addition to relief for investment fund activities, we will consider granting conditional relief on a case-by-case basis to controlled entities of listed companies that engage in securities dealing for index arbitrage involving self-acquisition.

RG 233.10 We will also consider granting conditional relief on a case-by-case basis to controlled entities of listed companies engaged in client-driven activities involving baskets of listed securities.

## B Relief for investment funds

### Key points

We may grant conditional relief from s259C for investment funds and similar entities to prevent investors in those funds from being disadvantaged. This relief will be given on a case-by-case basis.

Relief will be subject to conditions to address the risks of self-acquisition including:

- improper exercise of control;
- preferential treatment; and
- insider trading and market manipulation.

### What relief is available?

- RG 233.11 We will consider giving relief to allow indirect self-acquisition by a controlled entity in its capacity as:
- (a) a responsible entity of a managed investment scheme;
  - (b) a trustee of a unit trust; or
  - (c) a trustee of a superannuation fund.
- RG 233.12 We may also give relief on similar terms to operators of:
- (a) IDPSs; and
  - (b) certain statutory funds of life insurance companies (see RG 233.14–RG 233.17).
- RG 233.13 The relief will be subject to conditions which address the regulatory risks of self-acquisition. These conditions relate to:
- (a) the proportion of the company's shares in which its controlled entities have an interest;
  - (b) how those shares may be voted;
  - (c) the manner in which the shares may be acquired; and
  - (d) disclosure of interests in the company's shares that are held by controlled entities.

### Statutory funds of life insurance companies

- RG 233.14 We may grant conditional relief for acquisitions of the company's shares by controlled life insurance companies in the following circumstances:
- (a) investments for statutory funds relating to investment-linked benefits; and
  - (b) investments relating to the participating business of a statutory fund of a life insurance company.

- RG 233.15 Holders of investment-linked and participating policies may receive benefits that, at least in part, depend on the investment performance of the pool of assets associated with that type of policy. Holders of these types of policies may be disadvantaged if the controlled life company cannot invest in the holding company's shares.
- RG 233.16 We will not usually give relief to permit investments made for the purpose of non-participating business of a life insurance company where the policy benefits are fully specified in the policy document and profits or losses on this business accrue solely to the shareholders rather than to policyholders.
- RG 233.17 We will give relief for statutory funds where the aggregate amount of assets in the statutory fund's retained profits and shareholder capital accounts that is invested in the company's shares is no more than 3% of the level of assets in those accounts that are required to satisfy any capital requirement imposed by the Australian Prudential Regulation Authority (APRA). This helps to limit the company's economic interest in its shares that are held for the relevant statutory fund.

## Purpose of our relief

- RG 233.18 The policy rationale for granting relief to these types of entities is that the relief is primarily for the benefit of third party investors that are not controlled entities. Third party investors may be disadvantaged by not having exposure to the company's shares.
- RG 233.19 Generally, our relief is likely to be used by controlled entities of listed companies in the financial services sector who may also be subject to regulation by APRA.
- RG 233.20 We will not normally give relief to a company if one of its controlled entities is primarily investing the entity's own funds in the company's shares (rather than investors' funds). This is because the risks of price opacity and the possibility of corporate failure are higher when indirect investment of a controlled entity's own funds is permitted.

## Conditions relating to improper exercise of control

### 5% limit on self-interests

- RG 233.21 Even with voting restrictions, there is still a risk that a large block of shares could be used inappropriately to control a company. For example, there is a risk that a large block of shares held by controlled entities could be used to attempt to frustrate a takeover bid.
- RG 233.22 Further, a prohibition on voting by a company's controlled entities (see RG 233.32–RG 233.34) distorts the voting power of all other shareholders in the



company. This degree of distortion is greater the more shares that cannot be voted as a result of being held by a controlled entity.

- RG 233.23 As a result, we will impose a condition on relief that the company and its controlled entities should not be able to have an interest in more than 5% of voting shares in the company.
- RG 233.24 This limit also addresses other regulatory risks in Table 1 (e.g. the risks of corporate failure and price opacity).

#### **Calculation of the 5% limit**

- RG 233.25 The risk of inappropriate exercise of control arises when the company or its controlled entities control voting or disposal of the company's shares. This may occur even where an acquisition by a controlled entity in a company's shares does not contravene s259C(1). The calculation of the 5% limit for the purposes of our relief will therefore include those company voting shares over which the company or its controlled entities have the power to control voting or disposal. This is based on the concept of relevant interest in s608(1), although it is not exactly the same.

#### **Exclusions from the 5% limit**

- RG 233.26 In limited instances, shares may be excluded from the calculation of the 5% limit. We will only allow such exclusions where the risks associated with indirect self-acquisition, including any control-related risks, are minimal. For example, shares may be excluded from the 5% limit in the following circumstances:
- (a) where the shares are acquired by a controlled entity for the purpose of a dividend reinvestment plan and will be distributed to participating shareholders within a short period of time. We will give relief to exclude these shares from the 5% limit where we are satisfied that the risks relating to control, insider trading and market manipulation are adequately addressed; and
  - (b) where shares are acquired for the purpose of employee share schemes, if we are satisfied that the control-related and other risks are minimal (see RG 233.27–RG 233.31).

#### **Exclusion of interests acquired for employee share schemes**

- RG 233.27 Some companies that rely on relief from s259C for investment fund activities may not be able to comply with the 5% limit because of interests acquired for the purpose of an employee share scheme. Some employee share schemes can give the company or a controlled entity the right to control disposal of shares held by the trustee under the scheme. This power to control disposal can arise from, for example, rights exercisable by the company or a controlled entity upon forfeiture of the employee's entitlements or in relation to certain taxation events.

- RG 233.28 We recognise that the use of appropriately designed employee share schemes can be an important element of responsible remuneration practices. However, this must be balanced against the self-control risks that may arise.
- RG 233.29 We may permit shares to be excluded from the 5% limit calculation where the following circumstances exist:
- (a) The shares were acquired for the purpose of an employee share scheme.
  - (b) The shares were not acquired in reliance on relief from s259C.
  - (c) The nature of the power over disposal is limited (see RG 233.31) and neither the company nor its controlled entities has the power to vote, or influence the voting, of the shares. This ensures that control risks are minimised.
  - (d) Employees can direct voting of shares allocated to them. This minimises any distortion of other shareholders' voting power.
  - (e) The operation of the employee share scheme permits employees to direct acceptances of shares allocated to them under the employee share scheme into a 'successful' takeover bid and the employee share scheme permits the shares to be transferred or cancelled as part of a merger by scheme of arrangement. A 'successful' takeover bid is a bid where holders of at least half of the bid class securities that are not held for employee share scheme purposes have accepted. The shares can be returned to the employee share scheme if the bid does not become unconditional.
  - (f) Shares that are not allocated to a particular employee must be reallocated or sold on-market within a short period of time and, subject to a nominal allowance, no further shares are acquired for employee share scheme purposes while there are any unallocated shares. The period of time in which the shares must be reallocated or sold will depend on the operation of the scheme, including the length of time until the next allocation date. This ensures that the company cannot stockpile shares.
  - (g) The shares acquired for the purposes of the employee share scheme are clearly identified in the company's substantial shareholder notice.
- RG 233.30 A reference to an allocated share in this context means that the share is assigned for the purposes of an award to a particular employee.
- RG 233.31 We would expect that the power over disposal referred to in RG 233.29(c) would only arise in limited circumstances under the relevant plan rules or trust deed—for example:
- (a) in the event of forfeiture by the employee;
  - (b) to facilitate payment or reimbursement of payment of tax or stamp duty;
  - (c) where applicable laws preclude or restrict the issue or transfer of shares to the employee;

- (d) where the employee is under a legal, physical or mental disability, in which case the shares would be transferred to a person to be held for the benefit of the employee;
- (e) where a new trustee is appointed; or
- (f) to transfer or sell the shares to, or in accordance with the direction of, the employee.

### **Voting restriction**

- RG 233.32 We recognise that the power to vote is an important right attaching to a share and that the responsible entities and trustees of funds will generally regard the exercise of their power to vote to be a fiduciary duty. We consider, however, that there is a risk that a controlled entity investing in the company's shares may inappropriately use those shares for control purposes.
- RG 233.33 Because of this risk, our relief will be conditional on the controlled entities and the company not exercising any voting rights, or controlling or influencing the exercise of voting rights, attached to the company's shares. This condition will only apply to those shares which, but for the operation of a s259C(2) exemption, would contravene s259C(1).
- RG 233.34 We may not apply this condition in circumstances where the company or a controlled entity is acting strictly in accordance with the directions of a third party that is not a controlled entity or influenced by a controlled entity. For example, we may not apply this condition where the company's shares have been acquired by a controlled entity under an IDPS and the votes attached to those shares are exercised in accordance with the directions of the IDPS client.

## **Conditions relating to preferential treatment**

- RG 233.35 The following conditions relating to the way in which the company's shares can be acquired only apply to those shares which, but for the operation of the s259C(2) exemption, would contravene s259C.

### **Shares acquired through a new issue**

- RG 233.36 There is a risk that indirect self-acquisition may lead to a controlled entity being preferred in any issue of securities. To address this risk, we will provide relief on condition that a controlled entity may acquire the company's shares through a new issue only if:
- (a) it satisfies one of the following exceptions in ASX Listing Rule 7.2— that is, it involves:
    - (i) participation in a pro rata rights issue;
    - (ii) the issue of shares under a takeover offer or merger by way of a scheme of arrangement;

- (iii) an issue under a dividend reinvestment plan; or
- (iv) an issue on the conversion of convertible securities in one of the circumstances outlined above;
- (b) it is approved by the company's shareholders; or
- (c) where the controlled entity is an institutional investor, it occurs under a placement that satisfies the conditions in RG 233.37.

### Placements

RG 233.37 We recognise that third party investors in investment funds may be disadvantaged if the fund is unable to participate in placements of the company's shares. Participation in a placement by controlled entities will be subject to the following conditions:

- (a) *No more than 15% of the shares issued in the placement are allocated to all controlled entities.* This condition helps to ensure that the placement terms are arm's length. We consider that a 15% limit strikes an appropriate balance between ensuring the placement terms are arm's length and not unduly fettering the ability of the controlled entities to make appropriate investment decisions.
- (b) *Participation in the placement by controlled entities is on the same or no more favourable terms as the terms for other participants.* This condition ensures that controlled entities are not able to acquire shares on preferential terms.

### Shares acquired by way of purchase

RG 233.38 Relief will generally be on the condition that purchases of the company's existing shares must be made either on-market or, in certain instances, as a result of a transaction between controlled entities.

RG 233.39 Trading on-market provides a certain level of transparency which reduces the risk of discrimination between shareholders.

RG 233.40 Transactions between controlled entities are usually subject to the following related party provisions in the Corporations Act:

- (a) Ch 2E where the acquirer is not a responsible entity; and
- (b) Pt 5C.7 where the acquirer is a responsible entity.

RG 233.41 We will only allow transactions between controlled entities that comply with the related party provisions in the Corporations Act and, in the case of a company, as if the exception for related party benefits given to or by a closely held subsidiary in s214 of the Corporations Act is taken to be omitted. This is already the case for controlled entities that are acting as responsible entities: see s601LD.

- RG 233.42 Where the risks of preferential treatment and market manipulation are low, we may allow off-market transfers to controlled entities from their clients or investors, provided the client is not a controlled entity. For example, we may allow a controlled entity that is an operator of an IDPS or a trustee of a superannuation fund to acquire existing shares in an off-market transaction from the client if it is done in accordance with the client's specific directions.

## Conditions relating to disclosure

### Public disclosure of interests

- RG 233.43 Relief will be conditional on the company disclosing:
- (a) the voting shares over which it or its controlled entities have the power to control voting or disposal ('self-interest'); and
  - (b) the net economic exposure to the company's shares the company and its controlled entities have ('net economic exposure').
- RG 233.44 This disclosure must be made at the following times:
- (a) *Periodic reporting*: Disclosure must be made within two business days of commencement of the s259C(2) exemption, with regular periodic disclosure thereafter. The period between the disclosures will be determined with the company on a case-by-case basis, but will be no longer than three months.
  - (b) *1% or more change*: Disclosure must be made within two business days of the company becoming aware of a change in the controlled group's self-interest or net economic exposure of 1% or more.
- RG 233.45 The following details should be disclosed for the company and each controlled entity that has a self-interest in the company's shares:
- (a) the entity's name and address;
  - (b) the details of the entity's self-interest in the company's shares, including the number and percentage of shares, the manner in which the self-interest was acquired and the date of the acquisition; and
  - (c) for any change of 1% or more, the size and date of the relevant change in self-interest.
- RG 233.46 The disclosure should be made by an announcement to the relevant financial market on which the company is listed.
- RG 233.47 We consider that public disclosure will provide information to the market on trading, and interests held, by controlled entities and discourage controlled entities from trading while in possession of inside information or for the purpose of market manipulation.

**Disclosure of self-interest**

- RG 233.48 The condition for disclosure of self-interest is similar to the substantial shareholding disclosure requirement in Pt 6C.1 of the Corporations Act except that:
- (a) it excludes those shares over which the controlled entities do not have the power to control voting or disposal. For example, we do not require disclosure of deemed relevant interests referred to in s608(3)(a); and
  - (b) there is no minimum threshold for disclosure.

**Disclosure of net economic exposure**

- RG 233.49 The disclosure of net economic exposure should represent the net (long exposures less short exposures) of all physical and economic exposures (including cash-settled derivatives) over the company's shares.

**Public disclosure of relief instrument**

- RG 233.50 We will normally impose a condition that the company must publicly disclose a copy of the instrument of relief. This should be done by way of an announcement to the relevant financial market on which the company is listed and done at the same time the company gives the first periodic disclosure under RG 233.44(a).
- RG 233.51 This condition is designed to ensure that the market is properly informed about the existence and nature of the relief.

**Keeping records**

- RG 233.52 Relief will be conditional on the company keeping records of trading by it and its controlled entities in the company's shares and derivatives over the company's shares. These records must be kept for one year from the date of the trade.
- RG 233.53 The following information should be readily ascertainable from the records kept for each acquisition and disposal:
- (a) date and time;
  - (b) volume;
  - (c) price; and
  - (d) the broker responsible for executing the trade.
- RG 233.54 These records will need to be open for inspection by ASIC during business hours and generally made available within five business days if a request for access is made.
- RG 233.55 These record-keeping requirements will help us to assess compliance with the conditions of relief and determine whether a contravention of the insider trading or market manipulation provisions has occurred.

## C Relief for index arbitrage and client-driven activities involving baskets of securities

### Key points

In addition to our relief for investment funds, we will consider granting conditional relief for self-acquisition on a case-by-case basis to controlled entities of listed companies for index arbitrage and client-driven activities involving baskets of securities.

### What relief is available?

- RG 233.56 We will consider granting conditional relief on a case-by-case basis to controlled entities of listed companies that engage in securities dealing for index arbitrage involving self-acquisition.
- RG 233.57 We will also consider granting conditional relief on a case-by-case basis to controlled entities of listed companies engaged in client-driven activities involving baskets of listed securities.
- RG 233.58 These activities include:
- (a) acquiring company shares as part of a portfolio of securities in exchange for or to redeem interests in an exchange-traded fund on behalf of a client;
  - (b) acquiring company shares as part of an exchange for physical transaction entered into with a client;
  - (c) hedging to address risks in issuing warrants or index and basket derivatives to a client;
  - (d) acquiring a basket of securities for a client; or
  - (e) basket securities lending activities.

### Purpose of our relief

- RG 233.59 We acknowledge that index and portfolio activity in the Australian market has increased in recent years. The policy rationale for granting relief is that it can:
- (a) promote greater liquidity and efficiency in the market for index and portfolio products;
  - (b) allow controlled entities of a company to fully hedge index and portfolio activities rather than creating synthetic long or short positions in their own stock; and
  - (c) address a regulatory barrier that places securities dealers that are controlled entities of Australian listed companies at a significant commercial disadvantage to other securities dealers.

RG 233.60 The relief is intended to facilitate client-driven activities and allow hedging of exposure to client-driven transactions. It is not intended to facilitate the ability for a controlled entity to have a net economic exposure to the listed company.

## Conditions of relief

RG 233.61 The conditions of relief may vary in each case depending on the relief required. However, we would expect certain conditions that are specific to index arbitrage and the specified client-driven activities to apply: see Table 2. The conditions in Table 2 are in addition to the conditions described in Section B of this guide.

**Table 2: Conditions of relief for arbitrage and relevant client-driven activities**

| Type of activity  | Conditions that may apply   |
|---|---|
| General conditions for index arbitrage and all activities listed in RG 233.58   | <ul style="list-style-type: none"> <li>Acquisitions of shares in the listed company must be made only in accordance with the market integrity rules and operating rules applicable to a prescribed financial market (including transactions reported to the market operator under those rules—for example, block trades and large portfolio trades) or as a result of a transaction between controlled entities (except for securities lending and borrowing).</li> <li>Shares in the listed company cannot make up more than 10% (by value) of portfolio or basket transactions (unless the listed company makes up more than 10% of the S&amp;P/ASX 200 composite index, in which case the limit will be the index weighting).</li> </ul> |
| Specific conditions for index arbitrage trading   | <ul style="list-style-type: none"> <li>The voting power of controlled entities in the listed company must not exceed 0.5% of the total number of voting shares.</li> <li>The net economic exposure of the controlled entities in the listed company must not exceed 5% of the shares held as a perfect hedge.</li> </ul>  |
| Additional condition for over-the-counter (OTC) derivatives and warrants over securities represented in an index or baskets of securities | <ul style="list-style-type: none"> <li>The controlled entities must ensure that all pricing models are created independently of trading staff and have been independently verified. There must also be segregation of duties for, and independent review of, the input of market data variables.</li> </ul>   |
| Additional conditions for securities borrowing and lending services for index and basket transactions                                     | <ul style="list-style-type: none"> <li>Acquisitions for the purpose of securities borrowing or lending for index or basket transactions may only be acquired under a securities lending agreement.</li> <li>Shares in the listed company that are acquired for the purpose of securities borrowing or lending for index or basket transactions must not be held in excess of three trading days, except where circumstances outside the entity's control cause a delay.</li> </ul>  |



## D How to apply for relief

### Key points

Applications for relief from s259C should be in writing and address the issues in this guide.

Apply early to allow time for your application to be decided.

- RG 233.62 Our general policy on applying for relief is set out in Regulatory Guide 51 *Applications for relief* (RG 51).
- RG 233.63 If you are thinking of applying for relief from s259C, you should apply as early as possible. These applications often take some time to resolve.
- RG 233.64 You should apply in writing and address the issues in this regulatory guide. If you are asking for relief which departs from our policy in this guide, you should clearly address:
- (a) the reasons why you cannot comply with our policy;
  - (b) any commercial detriment you will suffer if you were to comply; and
  - (c) how you will address any related regulatory risks.
- RG 233.65 The quickest way to have your application considered is to email a copy of the application and any attachments to [applications@asic.gov.au](mailto:applications@asic.gov.au). Then send the paper copy and the fee to:
- Manager—Applications  
Australian Securities and Investments Commission  
GPO Box 9827 in your capital city
- RG 233.66 Alternatively, send your written application and cheque to us at the above address.

## Key terms

| Term   | Meaning in this document   |
|--|--|
| APRA   | Australian Prudential Regulation Authority   |
| ASIC   | Australian Securities and Investments Commission   |
| ASX Listing Rules  | The Listing Rules of the exchange market operated by ASX Limited   |
| basket facilitation activities   | The acquisition of shares in the company as part of a basket of securities for a client  |
| basket securities lending activities   | The acquisition of shares in the company as part of a basket for a client under a securities lending arrangement   |
| Ch 2E (for example)  | A chapter of the Corporations Act (in this example, numbered 2E)   |
| [CO 02/294] (for example)  | An ASIC class order (in this example, numbered 02/294)   |
| controlled entity  | A controlled entity within the meaning of s259E of the Corporations Act  |
| Corporations Act   | <i>Corporations Act 2001</i> , including regulations made for the purposes of that Act   |
| Corporations Regulations   | Corporations Regulations 2001  |
| CP 162 (for example)   | An ASIC consultation paper (in this example, numbered 162)   |
| derivative   | A derivative within the meaning given by s761D of the Corporations Act   |
| exchange-traded fund   | A managed investment scheme or a separately managed portfolio of assets managed with the objective of investing in securities in a manner that tracks the performance of a particular financial market index in which the company's shares are represented   |
| hedging to address risks in issuing warrants or index and basket derivatives to a client | The acquisition of the company's shares for the purpose of managing, avoiding or limiting the financial consequences of issuing to a client warrants within the meaning of reg 1.02.02(1) of the Corporations Regulations or derivatives over an index or basket of securities in which the company's shares are represented |
| IDPS   | Investor directed portfolio service, which has the meaning given by Class Order [CO 02/294] <i>Investor directed portfolio services</i>  |

| Term                              | Meaning in this document   |
|-----------------------------------|--|
| index arbitrage trading           | Acquisitions of the company's shares under an investment strategy designed to profit from temporary differences between the prices of the shares comprising an index and the price of a derivative issued over that index, or the price of interests in an exchange traded fund that replicates the composition of that index. |
| investment fund                   | A managed investment scheme, unit trust or superannuation fund, for the purposes of this guide   |
| investment-linked benefit         | A benefit payable under an investment-linked contract within the meaning of s14 of the Life Insurance Act  |
| Life Insurance Act                | <i>Life Insurance Act 1995</i>   |
| over-the-counter (OTC) derivative | A derivative that is entered into over-the-counter and not through a licensed market   |
| participating business            | A life insurance business that consists of providing participating benefits within the meaning of s15 the Life Insurance Act   |
| Pt 5C.7 (for example)             | A part of the Corporations Act (in this example, numbered 5C.7)  |
| REP 275 (for example)             | An ASIC report (in this example, numbered 275)   |
| RG 51 (for example)               | An ASIC regulatory guide (in this example, numbered 51)  |
| s259C (for example)               | A section of the Corporations Act (in this example, numbered 259C), unless otherwise specified   |
| securities lending arrangement    | An arrangement within the meaning of s1020AA of the Corporations Act   |
| self-interest                     | Voting shares in the company over which the company or its controlled entities have the power to control voting or disposal  |
| statutory fund                    | A statutory fund within the meaning given by s29 of the Life Insurance Act   |

## Related information

### Headnotes

baskets of securities, controlled entities, indirect self-acquisition, investment funds, life insurance companies, index arbitrage

### Class orders and pro formas

[CO 02/294] *Investor directed portfolio services*

### Regulatory guides

RG 51 *Applications for relief*

### Legislation

Corporations Act, Ch 2E, Pts 5C.7, 6C.1, s214, 259C, 259E, 601LD, 608(1), 608(3)(a), 761D, 1020AA; Corporations Regulations, reg 1.02.02(1)

Life Insurance Act, s14, 15

### Consultation papers and reports

CP 1 *Indirect self-acquisition by investment funds*

CP 137 *Indirect self-acquisition by investment funds: Further consultation*

CP 162 *Indirect self-acquisition by investment funds: Further consultation—Employee share schemes*

REP 275 *Response to submissions on CP 137 and CP 162 Indirect self-acquisition by investment funds*