



ASIC

Australian Securities & Investments Commission

REPORT 483

Overview of decisions on relief applications (October 2015 to March 2016)

June 2016

About this report

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

This report outlines some of our decisions on relief applications during the period from 1 October 2015 to 31 March 2016. It summarises examples of situations where we have exercised, or refused to exercise, our exemption and modification powers from the financial reporting, managed investment, takeovers, fundraising or financial services provisions of the *Corporations Act 2001* and the *National Consumer Credit Protection Act 2009*.

It also refers to a number of publications issued by us during the period from 1 October 2015 to 31 March 2016 that may be relevant to prospective applicants for relief, including legislative instruments, consultation papers, regulatory guides and reports.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the *Corporations Act 2001*)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

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

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

Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the *Corporations Act 2001* and/or the *National Consumer Credit Protection Act 2009* and other applicable laws apply to you, as it is your responsibility to determine your obligations.

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Overview

- 1 We have 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 our exemption and modification powers under the provisions of the following chapters of the Corporations Act: Chs 2M (financial reports and audit), 5C (managed investment schemes), 6 (takeovers), 6D (fundraising) and 7 (financial services and markets).
- 2 We have powers to give 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 our 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 2015 and ending 31 March 2016. During this period we received 1031 applications. We granted relief in relation to 622 applications and refused to grant relief in relation to 51 applications; 172 applications were withdrawn. The remaining 186 applications were decided outside of this period.
- 5 This report does not provide details of every single decision made in the period. It is intended to provide examples of decisions that demonstrate how we have applied our policy in practice. We use our discretion to vary or set aside certain requirements of the law where the burden of complying with the law significantly detracts from its overall benefit, or where we can facilitate business without harming other stakeholders.
- 6 In this report, we have outlined matters in which we refused to exercise 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.
- 7 To ensure that applications are assessed as quickly and efficiently as possible, we will be more strictly enforcing our policy to refuse applications for relief where information needed to make a decision is not provided. Where we have asked for additional information within a specified time period—and a reasonable explanation is not provided for any delay—we may refuse your application for relief.

- 8 The appendix to this report details the individual relief instruments we have executed for matters referred to in the report. Legislative instruments are available from our website via www.asic.gov.au/co. Individual relief instruments are published in the *ASIC Gazette*, available via www.asic.gov.au/gazettes, or under ‘[credit relief](#)’ on our website (for credit instruments). A register of waivers, including class rule waivers, granted under ASIC market integrity rules is published on our website via www.asic.gov.au/markets under ‘[market integrity rules](#)’. For media releases on the matters and publications referred to in this report, see www.asic.gov.au/mr.
- 9 This report refers to a number of publications issued by us during the period that may be relevant to prospective applicants for relief. These include legislative instruments, consultation papers, regulatory guides and reports.
- 10 We also publish a number of reports on a periodic basis that have not been summarised in the body of this report, but are published on our website via www.asic.gov.au/reports. The periodic reports published during the period of this report are:
- (a) [Report 450](#) *Market integrity report: 1 January to 31 June 2015* (REP 450);
 - (b) [Report 456](#) *Insolvency statistics: External administrators’ reports (July 2014 to June 2015)* (REP 456);
 - (c) [Report 461](#) *Audit inspection program report for 2014-15* (REP 461);
 - (d) [Report 466](#) *ASIC’s work to reduce red tape* (REP 466), which focuses on our work since the release of Report 391 *ASIC’s deregulatory initiatives* (REP 391) in May 2014;
 - (e) [Report 467](#) *Overview of decisions on relief applications (June to September 2015)* (REP 467);
 - (f) [Report 469](#) *ASIC regulation of corporate finance: July to December 2015* (REP 469); and
 - (g) [Report 476](#) *ASIC enforcement outcomes: July to December 2015* (REP 476).

A AFS licensing relief

Key points

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

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

AFS licence requirements

Refusal of application for AFS licensing relief

- 11 We refused to grant relief from the requirement to hold an AFS license to an entity that proposed to provide consumers with a rating for various aspects of different financial products. We considered that the rating of products constituted providing financial product advice.
- 12 [Regulatory Guide 167](#) *Licensing: Discretionary powers* (RG 167) explains the factors we consider when deciding whether to give relief from the licensing provisions including that we will consider giving relief to address atypical or unforeseen circumstances and unintended consequences of the licensing provisions of the Corporations Act.
- 13 Applicants for AFS licensing relief should also refer to [Regulatory Guide 51](#) *Applications for relief* (RG 51).
- 14 In refusing relief, we considered that the application was not within our policy (including RG 167 and RG 51) because:
- (a) the regulatory detriment was neither minimal nor clearly outweighed by the resulting commercial benefit;
 - (b) granting relief would have had a significant regulatory detriment, as:
 - (i) we expect persons in similar circumstances to hold an AFS licence; and
 - (ii) the licensing provisions also impose other important duties on AFS licensees. For example, Div 3 of Pt 7.6 of the Corporations Act requires that AFS licensees:
 - (A) do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly;

- (B) have in place adequate arrangements for the management of conflicts of interest;
 - (C) comply with the conditions on the licence and the financial services laws; and
 - (D) have a dispute resolution system complying with s912A(2); and
- (c) the applicant had not demonstrated that compliance with Ch 7 would result in unforeseen circumstances or unintended consequences of the licensing provisions of the Corporations Act. In particular, the applicant did not show that a reasonable person would think that the predominant purpose of the product was not a financial product purpose.

Relief from holding an AFS licence until licence granted

- 15 We refused to grant relief from the requirement to hold an AFS licence to an entity engaging in a potential business transaction requiring the holding of an AFS licence.
- 16 The applicant sought temporary relief from the requirement to hold an AFS licence under s911A of the Corporations Act, until such time as we granted a licence. The applicant sought relief in relation to providing financial product advice, dealing in financial products, and making a market for the following financial products: derivatives, Australian carbon credit units, eligible international emissions units, and miscellaneous financial risk products.
- 17 The applicant initially provided information to us in support of its ability to meet the financial requirements imposed on AFS licensees. However, after a period of discussion between us and the applicant, the applicant subsequently provided information that raised concerns about whether it could comply with those requirements, including the adjusted surplus liquid funds requirement.
- 18 We refused to grant relief because we were not satisfied that our policy considerations for granting relief under RG 51 were satisfied. In particular:
- (a) the applicant did not provide all relevant information necessary to support the application;
 - (b) the basis on which we were ultimately asked to consider the application for relief was materially different to the grounds initially submitted in the application; and
 - (c) the information ultimately provided raised uncertainty as to whether the applicant would be in a position to meet key requirements imposed on AFS licensees.

Foreign financial service providers

Advice on provision of partnership agreement for partnerships incorporated under the *Limited Liability Partnerships Act 2000* (UK)

- 19 [Class Order \[CO 03/1099\]](#) UK regulated financial service providers provides exemption relief from the requirement to hold an AFS licence, subject to specified conditions, to a foreign company that is either a body corporate incorporated in the United Kingdom (UK) or a partnership formed in the UK.
- 20 We provided external advice to an applicant that a partnership agreement did not need to be provided to us by a foreign financial service provider incorporated as a limited liability partnership in the UK for it to rely on [CO 03/1099].
- 21 We advised that this was the case provided that a certificate of incorporation of the partnership under the *Limited Liability Partnerships Act 2000* (UK) (or a certified copy of this) has been provided to us. We formed this view based on a legal submission on behalf of the applicant about UK law relating to limited liability partnerships and our consideration of how this is best reconciled with the requirements of [CO 03/1099].
- 22 This advice applies only to UK limited liability partnerships (and not to other jurisdictions), so long as the *Limited Liability Partnerships Act 2000* (UK) continues to provide that the limited liability partnership is a body corporate (with legal personality separate from that of its members) and a certificate issued by the registrar is conclusive evidence that the limited liability partnership has been incorporated.

Publications

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

Legislative instruments

ASIC Corporations (Effect of Licensing Exemptions) Instrument 2015/1115

- 24 [ASIC Corporations \(Effect of Licensing Exemptions\) Instrument 2015/1115](#) modifies the Corporations Act to ensure that s911B(1) operates in the same way for any licensing exemption we grant irrespective of the source of the power we use to grant the exemption. In particular, the modification ensures that s911B(1) operates in respect of an exemption under s926A(2)—which

provides us with discretionary powers in relation to the application of Pt 7.6—in a similar manner to the operation of s911B(1) in respect of an exemption under s911A(2).

ASIC Corporations (Amendment) Instrument 2015/991 (superseded)

25 [ASIC Corporations \(Amendment\) Instrument 2015/991](#) (superseded) amended the licensing exemptions for financial counsellors in [Class Order \[CO 03/1063\]](#) *Licensing relief for financial counselling agencies* to allow those counsellors to continue to rely on the existing relief when they receive payments on behalf of a client from the Commonwealth or a State or Territory.

26 Refer also to [ASIC Credit \(Financial Counselling Agencies\) Instrument 2015/992](#) discussed below at paragraph 194.

ASIC Corporations (Foreign Licensees and ADIs) Instrument 2016/186

27 [ASIC Corporations \(Foreign Licensees and ADIs\) Instrument 2016/186](#) has remade and consolidated the following class orders relating to foreign entities that hold an AFS licence (foreign licensees) without significant changes:

- (a) [Class Order \[CO 03/823\]](#) *Relief from licensing, accounting and audit requirements for foreign authorised deposit-taking institutions*; and
- (b) [Class Order \[CO 06/68\]](#) *Conditional relief for foreign licensees from financial reporting and record keeping obligations*.

28 Under the *Legislation Act 2003* (Legislation Act), those class orders were due to expire ('sunset') if not remade.

29 The new instrument:

- (a) exempts foreign licensees from certain record-keeping obligations and the need to lodge financial statements and have them audited, provided it lodges certain documents with us; and
- (b) exempts foreign authorised deposit-taking institutions (ADIs) from the requirement to hold an AFS licence in specified circumstances when dealing in derivatives and foreign exchange contracts on their own behalf.

30 The new instrument was made following public consultation through [Consultation Paper 241](#) *Remaking ASIC class orders on foreign licensees and ADIs: [CO 06/68] and [CO 03/823]* (CP 241). Submissions on CP 241 were due on 30 October 2015.

Consultation papers

CP 244 Remaking ASIC class orders on dealing in underlying investments

31 [CP 244](#) sets out our proposals to remake our class orders on dealing in underlying investments. Under the Legislation Act, these class orders will sunset if not remade.

32 We sought feedback from superannuation trustees and responsible entities of registered managed investment schemes on our proposals to remake, without significant changes, the following class orders:

- (a) [Class Order \[CO 02/1073\]](#) *Financial Services Guide: Dealing in underlying investments by responsible entities*;
- (b) [Class Order \[CO 02/1074\]](#) *Financial Services Guide: Dealing in underlying investments by superannuation trustees*; and
- (c) [Class Order \[CO 02/1161\]](#) *Limited relief (dealing) for public offer superannuation entities*.

33 Submissions on CP 244 were due on 15 February 2016.

CP 245 Retail life insurance advice reforms

34 [CP 245](#) sets out our proposals to implement the retail life insurance industry reforms by making a legislative instrument that will set out:

- (a) the maximum levels of upfront and ongoing commission payments to be paid to advisers; and
- (b) the amount of upfront commissions to be repaid to life insurers under ‘clawback’ arrangements.

35 CP 245 also sets out the information we propose to obtain from life insurance providers (life insurers) to enable us to monitor the impact of the reforms.

36 We sought feedback on our proposals from life insurers, AFS licensees and their representatives (including authorised representatives) who are authorised to provide life insurance advice, and consumers.

37 Submissions on CP 245 were due on 29 January 2016.

CP 247 Client review and remediation programs and update to record-keeping requirements

38 [CP 247](#) sets out our proposed guidance on review and remediation programs conducted by AFS licensees who provide personal advice to retail clients. It also sets out our proposed amendments to the AFS licensee record-keeping requirements when providing personal advice to retail clients.

39 We sought feedback on our proposals from AFS licensees and their representatives, external dispute resolution schemes and consumers.

40 Submissions on CP 247 closed on 26 February 2016.

CP 251 Remaking ASIC class order on financial product advice: Exempt documents—[CO 03/606]

41 [CP 251](#) sets out our proposals to remake our class order on financial product advice (exempt documents). Under the Legislation Act, the class order will sunset if not remade.

42 We sought feedback on our proposal to remake, without significant changes, [Class Order \[CO 03/606\]](#) *Financial product advice—Exempt documents*.

43 Submissions on CP 251 closed on 18 March 2016.

CP 254 Regulating digital financial product advice

44 [CP 254](#) sets out our proposed approach to the regulation of digital financial advice in Australia. We sought the views of AFS licensees and their representatives who provide financial product advice to retail clients, and other interested parties.

45 Specifically, we sought feedback on our proposals relating to:

- (a) how the organisational competence obligation applies to AFS licensees in a digital advice context; and
- (b) how AFS licensees should monitor and test the algorithms underpinning digital advice.

46 Our proposed guidance is set out in a draft regulatory guide attached to CP 254.

47 Submissions on CP 254 closed on 16 May 2016.

CP 256 Remaking and repealing ASIC class orders on trustee company common funds

48 [CP 256](#) sets out our proposals to address two class orders relating to trustee companies. Under the Legislation Act, these class orders will sunset if not remade.

49 We sought feedback from trustee companies and other AFS licensees on our proposals:

- (a) to remake, without significant changes, [Class Order \[CO 04/1063\]](#) *Section 981B money in cash common funds*; and
- (b) to repeal [Class Order \[CO 00/199\]](#) *Trustee companies' common funds*.

50 Submissions on CP 256 closed on 27 April 2016.

Regulatory guides

RG 67 *Real estate companies*

51 We updated [RG 67](#) to reflect our consolidated and updated relief relating to real estate companies.

52 [ASIC Corporations \(Real Estate Companies\) Instrument 2015/1049](#) remade and consolidated the following class orders, without significant changes, before they were to sunset under the Legislation Act:

- (a) [Class Order \[CO 00/213\]](#) *Real estate companies*, which gave conditional relief from the disclosure and licensing requirements of the Corporations Act for persons who sell or are involved in selling shares in a real estate company; and
- (b) [Class Order \[CO 05/1243\]](#) *Licensing relief for valuers providing valuations of shares in real estate companies*, which gave unconditional relief from the licensing requirements of the Corporations Act for persons who provide financial product advice where the advice is, or is incidental to, a valuation of shares in a real estate company.

53 The new instrument continues the substantive effects of both class orders with some minor amendments, which include:

- (a) clarifying that the disclosure relief applies to general advice and dealing and the licensing relief applies to general advice only; and
- (b) giving relief from s707 and 911A(1) and covering vendors, real estate agents and valuers of real estate companies.

54 The new instrument was made following public consultation through [Consultation Paper 237](#) *Remaking ASIC class orders on real estate companies: [CO 00/213] and [CO 05/1243] (CP 237)*.

RG 167 *Licensing: Discretionary powers*

55 We updated [RG 167](#) in connection with the following updates to our relief for generic financial calculators and securitisation special purpose vehicles:

- (a) [ASIC Corporations \(Generic Calculators\) Instrument 2016/207](#) remade [Class Order \[CO 05/1122\]](#) *Relief for providers of generic calculators* that was due to sunset under the Legislation Act without significant changes. This instrument continues the relief from the provisions in the Corporations Act that would apply to the provider of a financial calculator that provides financial product advice. A change under the new instrument is that if a financial calculator makes an estimate of a future return, it must be adjusted for inflation using an assumed rate of

inflation of 2.5% (the mid-point of the Reserve Bank of Australia's target range for inflation over the cycle); and

- (b) [ASIC Corporations \(Securitisation Special Purpose Vehicles\) Instrument 2016/272](#) remade [Class Order \[CO 04/1526\]](#) *Securitisation special purpose vehicles* that was due to sunset under the Legislation Act without significant changes. This instrument extends conditional relief to securitisation businesses from the need to hold an AFS licence. The instrument has the same effect as relief that we granted in [CO 04/1526], with the omission of one condition on the ground that it did not appear to be relied on. This condition previously required an AFS licensee to enter into an irrevocable deed poll agreeing to be liable for the securitisation entity's acts or omissions.

56 The updated guidance and relief follow public consultation through [Consultation Paper 246](#) *Remaking ASIC class order on securitisation special purpose vehicles: [CO 04/1526]* (CP 246) and [Consultation Paper 249](#) *Remaking ASIC class order on generic financial calculators: [CO 05/1122]* (CP 249). Submissions on CP 246 were due on 29 January 2016 and submissions on CP 249 were due on 12 February 2016.

57 [Report 477](#) *Response to submissions on CP 249 Remaking ASIC class order on generic financial calculators: [CO 05/1122]* (REP 477) highlights the key issues that arose out of the submissions received on CP 249 and details our responses to those issues.

RG 185 Non-cash payment facilities

58 We updated [RG 185](#) in connection with updates to our relief relating to non-cash payment facilities.

59 [ASIC Corporations \(Non-cash Payment Facilities\) Instrument 2016/211](#) remade and consolidated the following class orders, some of which were due to sunset under the Legislation Act:

- (a) [Class Order \[CO 02/1075\]](#) *Travellers' cheques and confirmation of transactions*;
- (b) [Class Order \[CO 03/705\]](#) *Non-cash payment facilities—licensing exemption*;
- (c) [Class Order \[CO 05/736\]](#) *Low value non-cash payment facilities*;
- (d) [Class Order \[CO 05/737\]](#) *Loyalty schemes*;
- (e) [Class Order \[CO 05/738\]](#) *Gift facilities*;
- (f) [Class Order \[CO 05/739\]](#) *Road toll facilities*; and
- (g) [Class Order \[CO 05/740\]](#) *Prepaid mobile facilities*.

60 In preserving the relief provided by those class orders, ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211 continues existing

exemptions from the normal obligations for the following classes of payment products: travellers' cheques, loyalty schemes and road toll facilities, prepaid mobile facilities and some non-reloadable gift facilities, and low value payments products. It also preserves existing relief for financial services licensees from the need to hold a payment product authorisation in order to advise their clients on conventional payments products they may use to pay third parties for goods and services.

B Disclosure relief

Key points

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

- the requirements in Ch 6D of the Corporations Act to provide prospectuses and other disclosure documents; and
- the 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.

Relief associated with prospectuses

Refusal of disclosure relief for a company undertaking a ‘top-hatting’ restructure

- 61 We refused disclosure relief for a company undertaking a pre-IPO restructure that involved the ‘top-hatting’ of the group with a new holding company. Relief was requested under s741(1)(b) of the Corporations Act (so that disclosure under Pt 6D.2 would not be required).
- 62 In considering the application for relief, we considered two restructure proposals by the company. The application was initially put to us on the basis of Proposal 1 (in November 2015). Proposal 1 was later set aside, and the application for relief amended, to reflect Proposal 2 (in February 2016).
- 63 Proposal 1 involved a ‘top-hatting’ restructure—through the creation of a parent holding company—and an internal restructure of the ownership of subsidiary entities. The company distributed materials to its investors explaining the proposed restructure with a share sale deed to be executed and returned to communicate acceptance.
- 64 Our relief in [Regulatory Guide 188](#) *Disclosure in reconstructions* (RG 188) provides that we may give case-by-case relief for reconstructions involving no change to the underlying assets or business. Any relief we may give would be restricted to changes in the form of the entity rather than the substance of its business.
- 65 In relation to Proposal 1, we indicated that certain additional disclosure should be provided before we would grant relief.
- 66 However, instead of making that additional disclosure and proceeding with Proposal 1, the company subsequently put forward Proposal 2, which

involved a vanilla 'top-hatting' restructure through the creation of a parent holding company but with no other changes to the group structure.

67 We were therefore asked to consider the relief application on the basis of Proposal 2, and not Proposal 1. When amending its relief application to reflect Proposal 2, the company proposed to send an information update sheet to investors and:

- (a) to give investors who had already accepted Proposal 1 through executing share sale deeds the right to withdraw their acceptances; and
- (b) to permit those investors who had not yet accepted the restructure to do so by executing the share sale deed provided to them for Proposal 1.

68 We refused to grant relief for Proposal 2 because we considered an offer to have already been made when information material and share sale deeds were provided to investors in association with Proposal 1. On that basis, relief could not be provided for an offer already made.

69 Relief for Proposal 2 would only be applicable to fresh share sale deeds provided to investors with updated information after the date of relief. The company elected not to pursue this relief and its application was refused.

Relief to facilitate a foreign takeover bid for a dual-listed entity involving partial scrip consideration

70 We made an in-principle decision to grant technical relief to facilitate a partial scrip takeover bid for a foreign incorporated entity. The takeover bid was to be conducted under the laws of a foreign takeovers regime. However, the proposed consideration under the foreign takeover bid involved the offer of scrip in the Australian bidder to the Australian shareholders of the target, which requires disclosure under Ch 6D. The bidder requested relief from Ch 6D and the requirement to lodge a prospectus because certain technical provisions of Ch 6D could not be complied with under the foreign takeover laws.

71 We were minded to refuse to grant relief from the whole of Ch 6D and the requirement to prepare a prospectus, as we did not consider this to be necessary. We considered that the bidder could prepare a combined offer document that satisfied the disclosure requirements of the foreign takeovers regime and constituted a prospectus for the purposes of Ch 6D.

72 However, due to certain technical aspects of the foreign takeovers regime conflicting with the prospectus regime in Ch 6D, we intended to provide the bidder with technical relief from certain provisions of Ch 6D.

73 Ultimately relief was not granted as the transaction did not proceed and the application for relief was withdrawn.

Refusal of on-sale relief for a foreign company to be admitted under a foreign exempt listing

- 74 We were minded to refuse relief to enable the securities of a foreign company to be on-sold to Australian retail investors without a disclosure document, in circumstances where the entity was considering seeking admission as a foreign exempt listing on the market operated by ASX Limited (ASX).
- 75 The entity sought relief to allow controller on-sales and the on-sale of any securities issued without disclosure in the future provided that the entity first gives the ASX a ‘cleansing notice’. The notice would include similar information to that found in a notice given under s708A(5) of the Corporations Act but would do so by reference to the financial reporting and continuous disclosure obligations applicable in the jurisdiction of the entity’s primary listing. Corresponding relief to facilitate rights issue offers of the kind provided for under s708AA was not sought.
- 76 We were minded to refuse relief having regard to the purpose of the on-sale provisions in s707 of ensuring that adequate disclosure is made to retail investors regardless of whether securities are offered to them directly or made available through an intermediary. We were concerned that relief would facilitate the entity indirectly raising funds from Australian retail investors in circumstances where adequate disclosure may not be provided.
- 77 In particular we were concerned that the use of a modified cleansing notice, in conjunction with the entity’s continuous disclosure obligations, may be inadequate in the circumstances because:
- (a) unlike in New Zealand—a foreign jurisdiction for which we have previously granted a similar form of on-sale relief: see [Report 467 Overview of decisions on relief applications \(June to September 2015\)](#) (REP 467) at paragraphs 37-40—there was no legal framework in the entity’s home jurisdiction comparable to the cleansing notice on-sale regime in s708A, and there would therefore be no similar regulation of indirect fundraising in the entity’s home jurisdiction;
 - (b) it would be difficult for us to regulate the entity’s continuing use of any ‘superimposed’ cleansing notice regime (including, for example, deciding whether to make a disqualifying determination similar to that provided for under s708A(2)), because the entity would be subject to the continuous disclosure and financial reporting requirements of its home jurisdiction, rather than those of Australia; and
 - (c) the information to be provided in connection with the entity’s continuous disclosure obligations is not necessarily comparable to the information that would otherwise be made available in a prospectus or PDS for an offer made to retail investors in Australia.

78 The application for relief was ultimately withdrawn.

Statements of Advice

Relief to provide a Statement of Advice incorporating information disclosed in an earlier document issued by a different licensee

79 We granted relief under s951B(1)(a) for a 12 month period to modify reg 7.7.09B(2) of the Corporations Regulations 2001 (Corporations Regulations) to enable a licensee to issue a Statement of Advice (SOA) to clients transferred from another licensee, that incorporates information disclosed in an earlier document issued to those clients by the other licensee, without the need to provide the document again.

80 The relief was required because, as a result of a transfer of advisers to the applicant licensee, a large number of clients would be transferring and would require new SOAs even though there would be few substantive changes associated with the transfer for the clients.

81 We granted relief because:

- (a) there would be consumer and commercial benefit in granting the relief and minimal regulatory detriment; and
- (b) granting the relief was consistent with precedent.

Unsolicited offers

Relief to facilitate a reinvestment offer in connection with an offer of simple corporate bonds

82 We granted relief from the unsolicited offer provisions in Div 5A of Pt 7.9 of the Corporations Act to allow a listed company to make a reinvestment offer to existing holders of notes previously issued by the company in connection with a new offer of simple corporate bonds (SCBs).

83 Under the reinvestment offer, eligible holders of existing notes who elected to apply under the SCB offer would fund their subscription for SCBs by selling some or all of their existing notes to the company, in exchange for a monetary amount equivalent to the face value of the SCBs plus any accrued interest in respect of their notes.

84 Relief was required because the reinvestment offer may constitute an unsolicited offer to which Div 5A of Pt 7.9 applies.

- 85 We granted relief because we were satisfied that:
- (a) the reinvestment offer was not a ‘low-ball’ offer intended to be regulated by the unsolicited offer provisions, as there was a readily available and reliable market price for the existing notes (which were quoted on ASX); and
 - (b) holders of existing notes were able to make a fully informed investment decision with regards to the reinvestment offer—as adequate disclosure would be provided by way of a prospectus in relation to the offer of SCBs.

Relief to facilitate an unregulated takeover offer for a foreign company

- 86 We granted relief modifying the unsolicited offer provisions in Div 5A of Pt 7.9 of the Corporations Act to allow two separate bidders to make variations to their respective takeovers bids for a foreign company listed on ASX. Identical relief was extended to both bidders (one was a listed company and the other was an unlisted foreign company).
- 87 The takeover bids were ‘unregulated’ as neither Ch 6 of the Corporations Act nor any relevant foreign takeover laws applied to the target. However, the takeover bids were unsolicited offers to which Div 5A of Pt 7.9 applies.
- 88 Relief was required because the bidders were prohibited under the unsolicited offer provisions—namely, s1019H—from varying their bids.
- 89 Further, relief was required because the class order relief in [Class Order \[CO 05/850\] *Unsolicited offers under a regulated foreign takeover bid*](#)—since remade as [ASIC Corporations \(Unsolicited Offers—Foreign Bids\) Instrument 2015/1070](#)—was not available to the bidders because, even though the target was incorporated in the UK, the relevant UK takeovers laws did not apply.
- 90 Relief was granted by way of:
- (a) a modification to s1019H of the Corporations Act to enable variations of the takeover bids that have the effect of increasing the consideration offered, extending the offer period or waiving defeating conditions; and
 - (b) further modifications importing the statutory requirements for varying off-market takeover bids in Div 2 of Pt 6.6 of the Corporations Act, specifically the requirements in s650A-650G, 624 and 630.
- 91 We granted relief because we were satisfied that:
- (a) the takeover bids were not ‘low-ball’ offers intended to be regulated by the unsolicited offer provisions—as the target was listed on ASX, there was a readily available and reliable market price for the target’s securities and the takeover bids were at a premium to market price;

- (b) target shareholders would be able to make an informed decision in relation to the takeover bids—as an adequate level of disclosure would be provided by way of a target statement containing an independent expert’s report in relation to the bids; and
- (c) target shareholders would be provided with protections that are equivalent to those that apply for variations of off-market takeover bids under Ch 6 of the Corporations Act. In addition, the statutory protections under Div 5A of Pt 7.9—namely, withdrawal rights under s1019K—would continue to apply.

Publications

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

Legislative instruments

ASIC Corporations (Amendment) Instrument 2016/56 (superseded)

- 93 [ASIC Corporations \(Amendment\) Instrument 2016/56](#) (superseded) amends [Class Order \[CO 12/749\]](#) *Relief from the shorter PDS regime* to postpone the expiry date from 30 June 2016 to 30 June 2017 and thereby extends the relief in [CO 12/749] for a further 12 months. [CO 12/749] excludes superannuation platforms, multi-funds and hedge funds from the shorter PDS regime (although superannuation platforms and multi-funds may elect to be included in the regime). We have extended the relief pending a future Australian Government decision on the application of the shorter PDS regime to superannuation platforms, multi-funds and hedge funds.

Consultation papers

CP 253 *Remaking and repealing ASIC class orders on dollar disclosure*

- 94 [CP 253](#) sets out our proposals to remake our class orders on dollar disclosure. Under the Legislation Act, these class orders are due to sunset if not remade.
- 95 We sought feedback from AFS licensees on our proposals to remake, without significant changes, the following class orders:
- (a) [Class Order \[CO 04/1431\]](#) *Dollar disclosure: Costs of derivatives, foreign exchange contracts, general insurance products and life risk insurance products;*
 - (b) [Class Order \[CO 04/1433\]](#) *Dollar disclosure: Non-monetary benefits and interests; and*

- (c) [Class Order \[CO 04/1435\]](#) *Dollar disclosure: Amounts denominated in a foreign currency.*

96 We also sought feedback from AFS licensees on our proposals to repeal:

- (a) [Class Order \[CO 04/1430\]](#) *Dollar disclosure: Unknown facts or circumstances;* and
- (b) [Class Order \[CO 04/1432\]](#) *Dollar disclosure: Interest payable on deposit products.*

97 Submissions on CP 253 closed on 30 March 2016.

CP 255 Remaking ASIC class orders on financial services disclosure requirements

98 [CP 255](#) sets out our proposals to remake our class orders relating to specific financial services disclosure requirements. Under the Legislation Act, these class orders are due to sunset if not remade.

99 We sought feedback from the financial services industry on our proposals to remake, without significant changes, the following class orders:

- (a) [Class Order \[CO 02/1072\]](#) *Product Disclosure Statements: Top-up relief for managed investment schemes;*
- (b) [Class Order \[CO 07/10\]](#) *Technical disclosure relief for reconstructions and capital reductions;*
- (c) [Class Order \[CO 03/237\]](#) *Updated information in Product Disclosure Statements;* and
- (d) [Class Order \[CO 03/1092\]](#) *Further relief for joint Product Disclosure Statements.*

100 Submissions on CP 255 closed on 26 April 2016.

Regulatory guides

RG 49 Employee incentive schemes

101 We updated [RG 49](#) to provide further guidance on our relief relating to employee incentive schemes and to reflect amendments made to [Class Order \[CO 14/1000\]](#) *Employee incentive schemes: Listed bodies* and [Class Order \[CO 14/1001\]](#) *Employee incentive schemes: Unlisted bodies* to address some technical drafting issues. There were no significant changes to the underlying policy.

RG 97 Disclosing fees and costs in PDSs and periodic statements

102 We updated RG 97 to incorporate amendments made necessary by the Stronger Super reforms. For superannuation and managed investment

products, the guide was also updated to explain the key fee and cost disclosure requirements of Schs 10, 10D and 10E of the Corporations Regulations, as clarified in amended [Class Order \[CO 14/1252\]](#) *Disclosing Fees and Costs in Product Disclosure Statements and periodic statements*. The amendments to [CO 14/1252] were made by [ASIC Corporations \(Amendment and Repeal\) Instrument 2015/876](#).

103 The revised guidance and law amendments follow our review of fee and cost disclosure practices, including the effect of the Stronger Super reforms on fee and cost disclosure requirements, in [Report 398](#) *Fee and cost disclosure: Superannuation and managed investment products* (REP 398).

104 RG 97 was updated following our release of a draft version of the guide on 12 December 2014, along with a request for feedback from industry on the key proposals and revisions outlined. At the same time, we also proposed and consulted on amendments to [CO 14/1252].

105 [REP 457](#) *Response to submissions on draft RG 97 Disclosing fees and costs in PDSs and periodic statements* (REP 457) highlights the key issues that arose out of the submissions received on the draft version of RG 97 and the proposed amendments to [CO 14/1252] and details our responses to those issues.

RG 221 Facilitating digital financial services disclosures

106 We made minor changes to [RG 221](#) that:

- (a) refer to our modification of the ePayments Code;
- (b) indicate that our general guidance on digital disclosure is also relevant to information given under the ePayments Code; and
- (c) update our guidance to include recent technical amendments made to the [ASIC Corporations \(Facilitating Electronic Delivery of Financial Services Disclosure\) Instrument 2015/647](#).

107 Our modification of the ePayments Code includes changes that will make it easier for businesses to give information to their customers in a digital form. Under the changes, subscribers to the ePayments Code will be able to give information to their customers by making it available electronically and notifying the consumer. This follows similar changes made last year to the Corporations Act.

108 We also made [ASIC Corporations \(Amendment\) Instrument 2016/103](#) (superseded) that amends [ASIC Corporations \(Facilitating Electronic Delivery of Financial Services Disclosure\) Instrument 2015/647](#) to:

- (a) simplify the disclosure notification involved in the ‘publish and notify’ method of disclosure;

- (b) enable default superannuation fund trustees to use the ‘publish and notify’ method of disclosure, using an employer-provided electronic address; and
- (c) ensure that successor funds can use an employer-provided email address provided to a predecessor fund.

109 ASIC Corporations (Facilitating Electronic Delivery of Financial Services Disclosure) Instrument 2015/647 enables a provider to make financial service disclosures electronically to investors provided it has first sent a notice to the investor of its intention to do so and the investor has not opted out of receiving disclosures electronically within 7 days of the notice (the ‘publish and notify’ method).

RG 254 Offering securities under a disclosure agreement

110 [RG 254](#) is a new regulatory guide for issuers who are required to prepare and lodge a disclosure document under Ch 6D of the Corporations Act. It updates and consolidates our fundraising regulatory guidance previously set out in 11 different regulatory guides. The guide is intended to help issuers and their advisers understand our interpretation and administration of the procedural elements of Ch 6D.

111 We also repealed 31 class orders relating primarily to the fundraising provisions in Ch 6D of the Corporations Act and that were due to sunset under the Legislation Act if not remade. Of these, 26 have been consolidated in or superseded by 13 new legislative instruments and we considered that the other five class orders were no longer required.

112 The 13 new legislative instruments are:

- (a) [ASIC Corporations \(Consents to Statements\) Instrument 2016/72](#);
- (b) [ASIC Corporations \(Disregarding Technical Relief\) Instrument 2016/73](#);
- (c) [ASIC Corporations \(Exposure Period\) Instrument 2016/74](#);
- (d) [ASIC Corporations \(Debenture Prospectuses\) Instrument 2016/75](#);
- (e) [ASIC Corporations \(Offer Information Statements\) Instrument 2016/76](#);
- (f) [ASIC Corporations \(Options: Bonus Issues\) Instrument 2016/77](#);
- (g) [ASIC Corporations \(Substituted Supplementary Disclosure Documents\) Instrument 2016/78](#);
- (h) [ASIC Corporations \(Market Research and Roadshows\) Instrument 2016/79](#);
- (i) [ASIC Corporations \(Sale Offers That Do Not Need Disclosure\) Instrument 2016/80](#);
- (j) [ASIC Corporations \(Sale Offers By Controllers\) Instrument 2016/81](#);

- (k) [ASIC Corporations \(Sales Offers: Securities Issued on Conversion of Convertible Notes\) Instrument 2016/82](#);
- (l) [ASIC Corporations \(Offers of Convertibles\) Instrument 2016/83](#); and
- (m) [ASIC Corporations \(Non-Traditional Rights Issues\) Instrument 2016/84](#).

113 We also issued two new legislative instruments aimed at reducing business costs:

- (a) [ASIC Corporations \(Minimum Subscription and Quotation Conditions\) Instrument 2016/70](#), which modifies s723 and 724 of the Corporations Act to:
 - (i) provide a mechanism for issuers to vary the minimum subscription and quotation conditions that may apply to an offer of securities under a disclosure document, including by extending the relevant time periods by which these conditions must be satisfied; and
 - (ii) clarify how these time periods are calculated where a supplementary or replacement document, or a refresh disclosure document, has been lodged; and
- (b) [ASIC Corporations \(Regulatory Capital Securities\) Instrument 2016/71](#), which modifies s9, 708A and 713 of the Corporations Act to:
 - (i) allow the offer of regulatory capital securities to be made using a prospectus that complies with s713, rather than s710, and provides on-sale relief for the underlying securities issued on conversion or exchange; and
 - (ii) provide on-sale relief for the underlying securities issued on conversion or exchange of regulatory capital securities offered without disclosure under Pt 6D.2, where a notice containing prospectus-like disclosures was provided at the time the regulatory capital securities were issued.

114 RG 254 and our updated relief were released following public consultation through [Consultation Paper 239](#) *Disclosure documents: Update to ASIC instruments and guidance* (CP 239).

115 [Report 473](#) *Response to submissions on CP 239 Disclosure documents: Update to ASIC instruments and guidance* (REP 473) highlights the key issues that arose out of the submissions received on CP 239 and details our responses in relation to those issues.

116 We also updated the following regulatory guides in connection with the changes proposed by CP 239:

- (a) [Regulatory Guide 55](#) *Statements in disclosure documents and PDSs: Consent to quote* (RG 55);

- (b) [Regulatory Guide 66](#) *Transaction-specific disclosure for PDSs* (RG 66);
- (c) [Regulatory Guide 173](#) *Disclosure for on-sale of securities and other financial products* (RG 173); and
- (d) [Regulatory Guide 189](#) *Disclosure relief for rights issues* (RG 189).

117 Further information on our consolidation of fundraising documents and guidance is available on our website via www.asic.gov.au/regulatory-resources/fundraising/consolidation-of-fundraising-instruments-and-guidance/ and in Media Release ([16-076MR](#)) *ASIC releases consolidated instruments and guidance on fundraising* (17 March 2016).

Reports

REP 472 Response to submissions on CP 232 Remaking ASIC class orders on superannuation

118 [REP 472](#) highlights the key issues that arose out of the submissions received on [Consultation Paper 232](#) *Remaking ASIC class orders on superannuation: [CO 04/1574] and [CO 06/636]* (CP 232) and details our responses to those issues.

119 CP 232 sought feedback on our proposals to remake, without significant changes, the following class orders due to sunset under the Legislation Act if not remade:

- (a) [Class Order \[CO 04/1574\]](#) *Application form and cooling-off relief for certain transfers of members between financial products and interests within a superannuation fund*; and
- (b) [Class Order \[CO 06/636\]](#) *Superannuation: Delivery of product disclosure for investment strategies*.

120 The substantive effect of the relief provided by those class orders is now provided by the following legislative instruments:

- (a) [ASIC Corporations \(Superannuation: Accrued Default Amount and Intra-Fund Transfers\) Instrument 2016/64](#) extends the scope of the previous relief under [CO 04/1574] from the application form and cooling-off requirements to a superannuation trustee to cover all transfers of an accrued default amount to a MySuper product, regardless of whether the MySuper product is in a different fund. The existing relief for intra-fund transfers (that are not movements of an accrued default amount) will continue with non-substantive changes; and
- (b) [ASIC Corporations \(Superannuation: Investment Strategies\) Instrument 2016/65](#) continues the previous relief under [CO 06/636] with minor and technical changes that accommodate, where applicable, the operation of the shorter PDS provisions.

C Managed investment relief

Key points

We did not make any relevant relief decisions during the period of this report in which we granted or refused to grant relief, under s601QA, from the provisions of Ch 5C of the Corporations Act.

This section outlines the publications we issued in relation to managed investment relief during the period of this report.

Publications

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

Legislative instruments

ASIC Corporations (Employee redundancy funds relief) Instrument 2015/1150

- 122 [ASIC Corporations \(Employee redundancy funds relief\) Instrument 2015/1150](#) remakes [Class Order \[CO 02/314\]](#) *Employee redundancy funds: relief* without significant changes. Under the Legislation Act, [CO 02/314] was due to sunset if not remade. The new instrument provides interim relief until 1 October 2018 to employee redundancy funds from the managed investment and associated provisions in the Corporations Act.
- 123 The new instrument was made following consultation through [Consultation Paper 238](#) *Remaking ASIC class order on employee redundancy funds: [CO 02/314]* (CP 238).
- 124 [REP 463](#) *Response to submissions on CP 238 Remaking ASIC class order on employee redundancy funds: [CO 02/314]* (REP 463) highlights the key issues that arose from the submissions received on CP 238 and details our responses to those issues.

Consultation papers

CP 242 Remaking ASIC class orders on horse racing syndicates and horse breeding schemes

- 125 [CP 242](#) sets out our proposals to remake our class orders on horse racing syndicates and horse breeding schemes. Under the Legislation Act, these class orders will sunset if not remade.

- 126 We sought feedback on our proposals to remake, without significant changes, the following class orders:
- (a) [Class Order \[CO 02/172\]](#) *Horse breeding schemes: private broodmare syndication*;
 - (b) [Class Order \[CO 02/178\]](#) *Horse breeding scheme: private stallion syndication*; and
 - (c) [Class Order \[CO 02/319\]](#) *Horse racing syndicates*.

127 We also intend to update Regulatory Guide 91 *Horse racing and breeding* (RG 91) to reflect any changes in the remade instruments.

128 Submissions on CP 242 were due on 18 December 2015.

CP 250 Remaking ASIC class orders on property, strata and management rights schemes

129 [CP 250](#) sets out our proposals to remake our class orders on property, strata and management rights schemes. Under the Legislation Act, these class orders will sunset if not remade.

130 We sought feedback from industry associations in the Australian property and managed investment sector on our proposals to remake the following class orders:

- (a) [Class Order \[CO 99/463\]](#) *Serviced strata scheme valuations*;
- (b) [Class Order \[CO 02/182\]](#) *Real property rental schemes*;
- (c) [Class Order \[CO 02/185\]](#) *Sale of strata units for \$500,000 or more*;
- (d) [Class Order \[CO 02/245\]](#) *Closed schemes*;
- (e) [Class Order \[CO 02/303\]](#) *Management rights schemes—amendment*;
- (f) [Class Order \[CO 02/304\]](#) *Management rights schemes*;
- (g) [Class Order \[CO 02/305\]](#) *Management rights schemes*; and
- (h) [Class Order \[CO 07/189\]](#) *Management rights schemes where the strata unit cannot be used as a residence*.

131 We also sought feedback on our proposal to repeal [Class Order \[CO 02/183\]](#) *Small property syndicates*.

132 Submissions on CP 250 closed on 8 March 2016.

CP 252 Remaking ASIC class order on share and interest sale facilities: [CO 08/10]

133 [CP 252](#) sets out our proposal to remake [Class Order \[CO 08/10\]](#) *Share and interest sale facilities* without significant changes. Under the Legislation Act, the class order will sunset if not remade.

134 Submissions on CP 252 closed on 18 March 2016.

Regulatory guides

RG 134 *Managed investments: Constitutions*

135 We updated [RG 134](#) to replace references to [Class Order \[CO 05/26\]](#) *Constitutional provisions about the consideration to acquire interests* with references to [ASIC Corporations \(Managed investment product consideration\) Instrument 2015/847](#).

136 In September 2015, we made this instrument to continue the substantive effect of [CO 05/26] with some minor amendments. Under the Legislation Act, the class order was due to sunset if not remade. The new instrument was noted in [Report 467](#) *Overview of decisions on relief applications (June to September 2015)* (REP 467) at paragraphs 96 and 97.

137 Minor amendments have also been made to the format of the guide.

D Mergers and acquisitions relief

Key points

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

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

CHESSE Depository Interests (CDIs)

Minimum bid rule where bid consideration includes CDIs

- 138 We granted relief for the purposes of the minimum bid price rule in s621(3) of the Corporations Act to allow a bidder to value bid consideration, consisting of CDIs over foreign securities, using the market price of those foreign securities quoted on the New York Stock Exchange (NYSE).
- 139 Subsection 621(4A)—as was notionally inserted by [Class Order \[CO 00/2338\] Relief from the minimum bid price principles—s621\(3\)](#), which has now been superseded—allowed a bidder to value securities offered as bid consideration using a two day volume-weighted average based on the trading price of the securities on an approved financial market. The bidder could not rely on this provision as, although the securities underlying the CDIs were quoted on the NYSE and the Toronto Stock Exchange—both of which were approved financial markets for the purposes of [CO 00/2338]—the CDIs themselves would not be quoted on ASX until after the offers were made.
- 140 We granted relief because we were satisfied that the trading price of the underlying securities on the NYSE was an appropriate proxy for the value of the CDIs in the circumstances.

Joint schemes

Relief to allow rival bidders to propose joint scheme

- 141 We granted relief to allow the members of two rival consortia to enter into an agreement to facilitate their joint acquisition of a target company by way of a scheme of arrangement. One consortium had made a takeover bid for the company while the other had announced its intention to make a rival bid

that the target board had assessed to be a superior proposal. Relief was required as the two consortia had acquired stakes in the target amounting in aggregate to approximately 39% of the target's shares.

- 142 We granted relief subject to conditions designed to ensure any further rival proposal is not unduly deterred, as outlined in our joint bid policy in Section L of [Regulatory Guide 9 Takeover bids](#) (RG 9). These conditions included:
- (a) a requirement that the consortia match or accept any alternative takeover bid offering consideration that is 5% higher than that offered under the joint proposal or any subsequent proposal by the joint acquirers (higher rival offer) where the bid is:
 - (i) effectively unconditional other than as to 'prescribed occurrence' conditions;
 - (ii) announced prior to termination or court approval of the joint scheme proposal; and
 - (iii) made within six weeks of the termination of the joint scheme proposal (or the end of the bid period if a matching bid is made);
 - (b) a restriction on any consortium member or its associates voting against any higher rival offer to be made via a scheme of arrangement proposed prior to court approval of the joint scheme or within six weeks of the termination of the joint scheme;
 - (c) restrictions on the disposal of shares that may be subject to the match or accept and voting conditions to ensure they can be complied with at all relevant times; and
 - (d) ancillary conditions relating to amendments to the scheme terms, voting on the joint scheme and the reliance on creep entitlements by joint acquirers and their associates.

- 143 We also granted relief to defer the obligation of the consortia that had announced, but not yet made, the rival bid to make offers under that bid within two months of the announcement in accordance with s631 of the Corporations Act. A deferral was granted pending resolution of the scheme proposal on the basis that the consortium's obligation would re-enliven in the event the scheme proposal was terminated.

Relevant interests

Relief from s606 to exercise options

- 144 We were minded to refuse to grant relief to allow a major shareholder of a company to increase its relevant interest in the company above the

thresholds set out in s606 of the Corporations Act without having to rely on one of the exceptions in s611 (e.g. by seeking shareholder approval under item 7 of s611 or satisfying the ‘3% creep’ exception under item 9 of s611).

- 145 The applicant wished to exercise options that had been issued to all shareholders of the company along with shares under a prospectus almost two years earlier, prior to their upcoming expiry. To the extent that not all other option holders exercised their options during the exercise period, the major shareholder may not have been able to exercise all of their options without contravening s606. The applicant submitted that relief should be granted as the circumstances were analogous to the rights issue exception in item 10 of s611.
- 146 We considered that relief would contravene the principles of s602 and infringe the rights of current shareholders to make a decision about a transaction having significant control implications. We did not consider the circumstances analogous to the rights issue exception in item 10 of s611 because the current shareholder base may have significantly changed since the issue of the options and the options were also listed and able to be traded separately in that period. This meant that current shareholders may no longer have the right to exercise the options and maintain their voting power.
- 147 The application was subsequently withdrawn.

Terms of a takeover

Relief to permit dispatch of a bidder’s statement on varied terms

- 148 We granted relief to a bidder to dispatch offers under a takeover bid on terms that varied from those in the bidder’s statement lodged with us. Relief was required after we raised concerns with a number of the offer terms contained in the lodged version of the bidder’s statement. This included terms relating to:
- (a) the effect of the *Foreign Acquisitions and Takeovers Act 1975* (FATA) approval condition (including whether shareholders would be able to withdraw their acceptances prior to the bidder receiving approval under FATA);
 - (b) the ability of the bidder to receive and offset rights—including a proposed special dividend—received by target holders; and
 - (c) the statutory quotation condition in s625(3)(c) of the Corporations Act.
- 149 Item 6 of s633(1) of the Corporations Act—as notionally modified by [Class Order \[CO 13/528\]](#) *Changes to a bidder’s statement between*

lodgement and dispatch—requires that offers under a takeover bid must be made on the same terms as those set out in the bidder’s statement lodged with us under item 2 of s633(1). For this reason, it was not possible for the bidder to effectively vary the proposed terms of the takeover bid. Given their nature, the variations would also have required us to grant relief even if the offers had already been made, due to the requirements of s650A.

150 Relief was granted to ensure that our concerns with the offer terms could be addressed in a timely fashion.

Publications

151 We issued the following publications on mergers and acquisitions relief during the period of this report.

Legislative instruments

ASIC remakes class orders on takeovers and schemes of arrangement

152 We made the following legislative instruments to preserve and continue relief that applies to certain domestic and foreign takeover bids, accelerated rights issues, investor directed portfolio services (IDPS), share buy-backs and downstream acquisitions without significant changes:

- (a) [ASIC Corporations \(IDPS—Relevant Interests\) Instrument 2015/1067](#) replaced [Class Order \[CO 04/523\]](#) *Investor directed portfolio services takeovers relief*;
- (b) [ASIC Corporations \(Minimum Bid Price\) Instrument 2015/1068](#) replaced [Class Order \[CO 00/2338\]](#) *Relief from the minimum bid price principle—s621(3)*;
- (c) [ASIC Corporations \(Takeovers—Accelerated Rights Issues\) Instrument 2015/1069](#) replaced [Class Order \[CO 09/459\]](#) *Takeovers relief for accelerated rights issues*;
- (d) [ASIC Corporations \(Unsolicited Offers—Foreign Bids\) Instrument 2015/1070](#) replaced [Class Order \[CO 05/850\]](#) *Unsolicited offers under a regulated foreign takeover bid*; and
- (e) [ASIC Corporations \(Approved Foreign Financial Markets\) Instrument 2015/1071](#) replaced [Class Order \[CO 02/249\]](#) *Approved overseas financial markets: s257B(7)* and [Class Order \[CO 02/259\]](#) *Downstream acquisitions: foreign stock markets*.

153 The class orders were remade following public consultation through [Consultation Paper 234](#) *Remaking ASIC class orders on takeovers and*

schemes of arrangement (CP 234). Under the Legislation Act, those class orders were due to sunset, if not remade.

E Conduct relief

Key points

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

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

Financial reporting

Financial reporting relief from auditor's independence declaration

- 154 We granted relief from the obligation of a lead auditor under s307C(3)(d)(ii) of the Corporations Act to declare a contravention of any applicable code of professional conduct in relation to an audit review.
- 155 The relief was sought in relation to a failure to declare a breach of the [Code of Ethics for Professional Accountants](#) (APES 110) of the Accounting Professional and Ethical Standards Board. That breach related to the acquisition of shares by the spouse of a partner of the audit firm, where the partner shared an office with the lead auditor of the fund being audited.
- 156 We granted the relief because:
- (a) the breach was inadvertent;
 - (b) the breach was rectified immediately on identification;
 - (c) a quality control system was in place and the breach was discovered as part of that quality control system;
 - (d) the breach was communicated to the partner immediately on discovery;
 - (e) the partner was not a service provider to the audit client;
 - (f) the breach was reported to those charged with governance at the fund in accordance with the reporting requirements of APES 110; and
 - (g) those charged with governance at the fund agreed that independence had not been impaired and that action had been taken that satisfactorily addressed the consequences of the breach.

Future of Financial Advice

No-action letter for benefits that may be conflicted remuneration

- 157 We granted a no-action letter to entities involved in the distribution of white-labelled non-cash payment products in connection with the provisions on conflicted remuneration in Divs 4 and 5 of Pt 7.7A of the Corporations Act.
- 158 Regulation 7.7A.12H of the Corporations Regulations provides that a benefit given in relation to financial product advice is not conflicted remuneration, subject to meeting particular conditions, for providers of financial advice who are:
- (a) agents or employees of an Australian ADI; or
 - (b) otherwise acting by arrangement with an Australian ADI under the name of the Australian ADI.
- 159 The distributors provided general advice in marketing and promotional materials. As a result, it was possible that the payments from the product issuer to the distributors were conflicted remuneration. The parties could not rely on reg 7.7A.12H because the white-labelled nature of the products meant that the distributors were not acting in the name of an ADI.
- 160 We granted a conditional no-action letter because:
- (a) there was a level of uncertainty about whether the payments were conflicted remuneration; and
 - (b) in the circumstances, we did not consider that strict compliance with the conflicted remuneration rules would improve the quality of advice or consumer outcomes.

Market conduct

Short selling relief for deferred settlement trading

- 161 We granted comfort relief from the prohibition in s1020B(2) of the Corporations Act to allow members who elected to receive scrip consideration in the form of CDIs under a scheme of arrangement to trade the CDIs on a deferred settlement basis on ASX. The deferred trading period would occur between the date the scheme received court approval under s411(4) and the implementation date of the scheme.
- 162 While we have granted relief in the past—particularly in the context of initial public offerings—in respect of deferred settlement trading where there

is some remaining conditionality in the provision of the underlying securities to a potential seller, we have not previously been asked to consider relief in relation to deferred settlement trading following approval of a scheme where members are unconditionally entitled to receive scrip consideration under the terms of the scheme and associated deed poll.

163 We decided to grant comfort relief in this instance on the basis the scheme members may not be able to sell the CDIs they are unconditionally entitled to during the deferred settlement period without contravening s1020B(2), as the members or any subsequent transferee may not have a presently exercisable right to vest the CDIs in the relevant purchaser at the time of sale because the CDIs would not be issued to members until the implementation date of the scheme in accordance with the proposed terms of the scheme.

164 In reaching this decision, we considered the proper construction of s1020B(2) and (3), and in particular whether at the time of making a deferred settlement sale scheme members would have a ‘presently exercisable’ right to vest the CDIs in purchasers. We also considered the operation of the exemption in s1020B(4). On balance, we decided to provide comfort relief to ensure that scheme members who have elected to receive CDIs as scheme consideration are allowed to trade the CDIs during the deferred settlement period.

No-action letter in relation to market stabilisation of securities

165 Subject to conditions, we granted a no-action letter in relation to market stabilisation activities proposed to be undertaken to address any potential price volatility upon the listing of securities of a demerged entity. The proposed market stabilisation activities involved two stabilisation managers across two financial markets (as the securities were to be listed on both ASX and a foreign financial market).

166 The applicant had applied for a no-action letter in relation to the market misconduct prohibitions contained in s1041A–1041C, 1041H and 1043A of the Corporations Act. Under the market stabilisation arrangements, each stabilisation manager could undertake transactions that may have the effect of supporting the market price of securities at a level higher than that which might otherwise prevail in the open market. Stabilisation would be managed as one book across both markets. Given the time difference between markets, the trading period of each market would not overlap, and the maximum stabilisation price would be adjusted each night to reflect currency movements.

167 A no-action letter was granted consistent with our policy, discussed in [Consultation Paper 63 Market stabilisation \(CP 63\)](#), not to take action in

limited circumstances and on defined conditions against persons involved in market stabilisation, where such stabilisation:

- (a) facilitates the offer of securities; and
- (b) does not lead to, or is unlikely to, create a false, misled or uninformed market in the securities.

Remuneration reports

Declaratory relief under s250R(6) for voting by member of key management personnel (KMP) not granted

- 168 We refused to grant relief under s250R(6) of the Corporations Act to allow the chairperson of the applicant company—who was therefore a member of the KMP—to cast a vote on the adoption of the applicant company’s remuneration report in his capacity as a corporate representative of a shareholder.
- 169 Under s250(4), a vote on the resolution must not be cast (in any capacity) by or on behalf of either a member of the KMP whose details are included in the report or a closely related party of such a member. However, s250R(5) provides that a person may still vote on the resolution if they are either:
- (a) appointed as proxy by writing that specifies the way they are to vote on the resolution; or
 - (b) although the appointment does not specify how they are to vote on the resolution, they are the chair of the meeting and their appointment as proxy expressly authorises them to exercise the proxy even if the resolution is connected directly or indirectly with the remuneration of a member of the KMP.
- 170 The chairperson had been appointed as corporate representative with instructions to vote in favour of the remuneration report. However, the appointments of a proxy and of a corporate representative are different at law—see *Cordiant Communications (Australia) Pty Ltd v The Communications Group Holdings Pty Ltd* [2005] NSWSC 1005 per Palmer J at [76]—and, as a result, the exception in s250R(5) does not apply to an appointment as corporate representative.
- 171 We refused to provide relief because:
- (a) section 250R(4) prohibits a member of the KMP from casting a vote on the adoption of the remuneration report ‘in any capacity’ subject only to the proxy exception and relief granted by us;
 - (b) the shareholder could have appointed the chairperson as proxy and relied on the proxy exception;

- (c) we could not be satisfied that relief would not cause unfair prejudice to the interests of other members of the Company;
- (d) our general policy is not to give relief that may take away the future consequences of past conduct even where relief is not clearly retrospective; and
- (e) we did not consider that excluding corporate representatives as an exception to the prohibition was a result of legislative oversight.

Treatment of client money

Treatment of unclaimed client money from previous merger

- 172 We refused to grant relief to allow an AFS licensee (Licensee A) to transfer certain client money, without a client's written direction, to another AFS licensee (Licensee B). The licensees were related bodies corporate, and Licensee A was being integrated into Licensee B.
- 173 Licensee A was holding client money (Previous Merger Client Money) transferred to it from a previous merger in reliance on relief previously provided by us. The previous relief was granted because, despite its attempts, the licensee could not obtain written consent from persons entitled to the Previous Merger Client Money. That relief required Licensee A, where it ceased to carry on a financial services business, to pay these amounts to us to be held as unclaimed monies under Pt 9.7 of the Corporations Act.
- 174 In the context of the current merger between Licensee A and Licensee B, Licensee A had again attempted to obtain written directions from persons entitled to the Previous Merger Client Money. We refused to grant relief because we were not satisfied that:
- (a) the grounds underpinning the requested relief supported a departure from the policy position established in our previous relief, which specifically accounted for the circumstances surrounding the requested relief;
 - (b) compliance with the previous relief would cause a disproportionate compliance burden or commercial burden for Licensee A or Licensee B; and
 - (c) granting the requested relief would result in a net regulatory benefit or that the resulting commercial benefit of granting relief would outweigh the regulatory detriment. In particular:
 - (i) we were concerned that the requested relief would create remoteness from the original holder of the money; and

- (ii) it was more appropriate for client money to be dealt with as unclaimed money under Pt 9.7 of the Act and this would also allow clients to be entitled to any interest accrued from this sum as per s1341(3A) of the Act.

Publications

- 175 We issued the following publications during the period of this report.

Legislative instruments

ASIC Corporations (Amendment) Instrument 2016/45 (superseded)

- 176 [ASIC Corporations \(Amendment\) Instrument 2016/45](#) (superseded) amended [Class Order \[CO 14/632\]](#) *Key management personnel equity instrument disclosures*, which provided conditional relief in relation to equity instrument disclosures relating to key management personnel. The instrument extends the operation of [CO 14/632] for a period of 12 months to apply in relation to financial years ending on or before 31 December 2016 and provide certainty to disclosing entities with financial years ending within that period.
- 177 [CO 14/632] was made by us to address anomalies in key management personnel disclosure requirements that were moved from accounting standard [AASB 124: Related Party Disclosures](#) into the Corporations Regulations. The class order was intended to address these issues on an interim basis and originally applied in relation to financial years ended on or before September 2014. [CO 14/632] has since been repealed on 14 May 2016.

ASIC Corporations (Electronic Lodgment of Financial Reports) Instrument 2016/181

- 178 [ASIC Corporations \(Electronic Lodgment of Financial Reports\) Instrument 2016/181](#) has remade and consolidated the following class orders on electronic lodgement of reports and dual lodgement relief:
- (a) [Class Order \[CO 00/2451\]](#) *Electronic lodgement of certain reports with the ASX—approval;*
 - (b) [Class Order \[CO 06/6\]](#) *Dual lodgement relief for NSX-listed disclosing entities;* and
 - (c) [Class Order \[CO 98/104\]](#) *Dual lodgement relief for ASX-listed entities.*
- 179 Under the Legislation Act, those class orders were due to sunset if not remade.

- 180 The new instrument relieves listed disclosing entities who are companies or registered schemes from the obligation to lodge directors' reports, financial reports and auditors' reports with both the market operator and us. The reports can be lodged electronically with the market operator where the operator has been approved as agent for us. The entity must keep a signed copy of the reports for a period of at least seven years following electronic lodgement.
- 181 In addition, the instrument extends the approval to lodge reports electronically to include entities listed on SIM Venture Securities Exchange and Sydney Stock Exchange.
- 182 The new instrument was made following public consultation through [Consultation Paper 243](#) *Remaking ASIC class orders on electronic lodgement of financial reports and dual lodgement relief* (CP 243). Submissions on CP 243 were due on 18 December 2015.
- 183 We intend to update [Regulatory Guide 28](#) *Relief from dual lodgment of financial reports* (RG 28) in connection with these changes.

Consultation papers

CP 240 *Remaking ASIC class orders on rounding, directors' reports, disclosing entities and other matters*

- 184 [CP 240](#) sets out our proposals to remake certain of our class orders relating to financial reporting. Under the Legislation Act, these class orders were to sunset if not remade.
- 185 We sought feedback from stakeholders on our proposals to remake, without significant changes, the following class orders:
- (a) [Class Order \[CO 98/100\]](#) *Rounding in financial reports and directors' reports*, which has since been remade, without significant changes, as [ASIC Corporations \(Rounding in Financial/Directors' Reports\) Instrument 2016/191](#);
 - (b) [Class Order \[CO 98/101\]](#) *Members of companies, registered schemes and disclosing entities who are uncontactable*;
 - (c) [Class Order \[CO 98/2395\]](#) *Transfer of information from the directors' report*;
 - (d) [Class Order \[CO 98/96\]](#) *Synchronisation of financial year with foreign parent company*;
 - (e) [Class Order \[CO 98/2016\]](#) *Entities which cease to be disclosing entities before their deadline*; and
 - (f) [Class Order \[CO 08/15\]](#) *Disclosing entities—half-year financial reporting relief*.

186 Submissions on CP 240 were due on 30 October 2015.

**CP 248 Remaking ASIC class orders on reporting by foreign entities:
[CO 98/98] and [CO 02/1432]**

187 [CP 248](#) sets out our proposals to remake our class orders relating to reporting by foreign entities. Under the Legislation Act, these class orders will sunset if not remade.

188 We sought feedback on our proposals to remake the following class orders:

- (a) [Class Order \[CO 98/98\]](#) *Small proprietary companies which are controlled by a foreign company but which are not part of a large group in Australia; and*
- (b) [Class Order \[CO 02/1432\]](#) *Registered foreign companies – financial reporting requirements.*

189 Submissions on CP 248 were due on 29 February 2016.

F Credit relief

Key points

This section outlines some of our decisions to grant relief under the National Credit Act.

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

Relief associated with credit contracts

Relief to facilitate novation of credit card contracts

- 190 We gave relief from a number of requirements under the National Credit Act and the National Credit Code to facilitate the transfer of a credit card portfolio from an existing credit provider (the transferring credit provider) to a new credit provider by novation. The relief given was:
- (a) an exemption from various requirements that need to be complied with before entry into a credit contract—being the responsible lending inquiry, verification and assessment requirements, pre-contractual disclosure requirements, and the requirement to give a Key Facts Sheet; and
 - (b) a declaration that modifies the provisions in relation to credit limit increase invitations, to enable the new credit provider to rely on consents to receive credit limit increase invitations that had been given by consumers to the transferring credit provider.
- 191 This relief was required because novation of a credit contract involves ending the existing contract and entry into a new contract on the same terms with the new credit provider. The entry into the new contract triggers a number of requirements under the National Credit Act and National Credit Code. We gave relief from these requirements because:
- (a) from the perspective of the consumer, the contracts that would be held after the transfer were effectively the same as their existing contracts and so the transaction is more akin to a continuation of an existing contract, rather than an entry into a new contract;
 - (b) if the responsible lending processes needed to be completed prior to the transfer, there would be a significant cost impost for the new credit provider which would be likely to affect the viability of the transfer, and also involve a significant disruption for consumers under existing contracts; and

- (c) requiring new consumer consents to credit limit increase invitations would involve significant additional costs, which would be disproportionate in the context of the consumer's perception of a continued contract rather than a new contract.

192 We included restrictions and conditions on the relief to minimise any risk to consumers. These restrictions and conditions included requirements that:

- (a) the new credit provider execute an irrevocable deed poll to support continued access for consumers to remedies in the event that the transferring credit provider had failed to comply with the responsible lending obligations in relation to a transferred contract;
- (b) where consumers are identified as being in a more vulnerable group (i.e. in significant level of default or with a hardship agreement on foot), their contracts may only be transferred with the benefit of the relief where the consumer cannot draw down credit to incur a further liability, under either the existing contract or the new contract, until they are able to meet their contractual obligations; and
- (c) correspondence sent to consumers with the novation offer include specified information, including information about how the offer may be accepted (with a list of conduct that would be taken as acceptance of the offer), who to contact about loss or damage suffered after the transfer, notification that credit limit increase invitation consents previously given to the transferring credit provider will continue and how the consumer can cancel those consents after the transfer, information about the deed poll, and, for consumers identified as being in a more vulnerable group, a reminder of hardship rights that are available to those consumers under their new contract.

Publications

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

Legislative instruments

[ASIC Credit \(Financial Counselling Agencies\) Instrument 2015/992](#)

194 [ASIC Credit \(Financial Counselling Agencies\) Instrument 2015/992](#) amends the existing licensing exemption for financial counsellors in the National Consumer Credit Protection Regulations 2010 (National Credit Regulations) to allow financial counsellors to continue to rely on that exemption when they receive payments on behalf of a client from the Commonwealth or a State or Territory.

195 Refer also to [ASIC Corporations \(Amendment\) Instrument 2015/991](#) (superseded) discussed above at paragraph 25.

ASIC Credit (Amendment) Instrument 2016/62 (superseded)

196 [ASIC Credit \(Amendment\) Instrument 2016/62](#) (superseded) amends and extends the relief granted by [Class Order \[CO 14/41\]](#) *Extension of transitional credit hardship provisions*—which extends the transitional exemptions in regs 69A and 69B of the National Credit Regulations—for a further two years until 1 March 2018.

197 Regulations 69A and 69B were introduced to minimise the administrative burden on industry as a result of the amendment of the National Credit Act and National Credit Code by the *Consumer Credit Legislation Amendment (Enhancements) Act 2012*, which introduced a number of reforms to the regulation of hardship variations. Those regulations were originally extended by [CO 14/41] to allow us time to consult with stakeholders in developing a recommendation to Treasury regarding what obligations credit providers and lessors should have.

198 [Class Order \[CO 15/130\]](#) *Amendment of Class Order [CO 14/41]* previously extended the relief granted by [CO 14/41] from 1 March 2015 to 1 March 2016, as previously discussed in [Report 449](#) *Overview of decisions on relief applications (February to May 2015)* (REP 449).

199 We extended the exemption for a further interim period in order to:

- (a) resolve the issue of how hardship arrangements should be reflected in the repayment history information in a consumer's credit report, given recent changes to credit reporting under the *Privacy Act 1998*;
- (b) subject to the resolution of that issue, allow us to provide recommendations to Treasury regarding the transitional exemptions;
- (c) allow Treasury to consider our recommendations and reform the law if and how it considers appropriate; and
- (d) allow credit providers and lessors to update their systems in accordance with any amendments made.

ASIC Credit (Updated details for prescribed disclosure) Instrument 2016/200

200 [ASIC Credit \(Updated details for prescribed disclosure\) Instrument 2016/200](#) modifies the prescribed Reverse Mortgage Information Statement in Sch 5A of the National Credit Regulations and prescribed warnings in relation to small amount credit contracts in Schs 7 and 9 of the Regulations to update contact details and information that is no longer correct.

G Other relief

Key points

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

We also outline further publications that we issued during the period of this report.

Buy-back relief

Refusal of relief for tender invitation buy-back

- 201 We refused to grant relief from the shareholder approval requirements of s257D of the Corporations Act, to enable an applicant to conduct a selective buy-back as an equal access scheme in circumstances where the buy-back involved buying back shares at different prices under a two-step tender invitation process.
- 202 The applicant, which was a proprietary company limited by shares, proposed a buy-back under which:
- (a) shareholders would be invited to tender some or all of their shares at a price nominated by the shareholder;
 - (b) shareholders who tendered at the largest discount would have shares bought back at their nominated price, in priority to other shareholders; and
 - (c) shareholders who tendered at the next largest discount would then have shares bought back at their nominated price, with this process continuing until the buy-back limit was reached.
- 203 Our reasons for refusing relief included that:
- (a) we did not consider a buy-back under which some participating shareholders would be paid a different amount per share than other participating shareholders to be in essence an equal access scheme, which is the policy basis for relief in [Regulatory Guide 110 Share buy-backs](#) (RG 110);
 - (b) we were not satisfied the proposed buy-back would ensure fairness to all shareholders; and
 - (c) we were not satisfied there were exceptional circumstances to justify relief.

Unsolicited distribution of cashless debit cards

No-action letter in relation to unsolicited distribution of debit cards and potential breaches of the anti-hawking provisions in the Corporations Act

- 204 We provided a no-action letter to an ADI to allow it to send cashless Visa debit cards to Centrelink welfare recipients on an unsolicited basis as part of the Commonwealth Government's restricted, cashless debit card account program being trialled by the Department of Social Services (DSS).
- 205 Section 12DL of the *Australian Securities and Investments Commission Act 2001* (ASIC Act) generally prohibits a person sending another person a credit card or a debit card that has not been requested in writing, unless it is to renew, replace or be substituted for a card of the same type.
- 206 Under the *Social Security Legislation Amendment (Debit Card Trial) Act 2015*, the DSS is to implement a trial of a new program involving the issue of a debit card account and cashless debit card in up to three locations. Under the statutory scheme, the mandatory trial participants (identified by the DSS) do not have a choice about participation.
- 207 The ADI's role in the program is to establish the account, with related non-cash payment facilities for access to funds including BPAY, direct entry facilities and a debit card. The ADI would also undertake all customer service activities in relation to the account as per a typical financial institution and customer relationship.
- 208 We granted the no-action letter to allow debit cards related to the account to be sent to participants in the trial on an unsolicited basis because:
- (a) the delivery of the debit cards to participants in the trial is a necessary related part of the broader trial accounts. Receipt of the cards is essential to continued access by trial participants of their welfare payments that are paid into the account established under this statutory scheme;
 - (b) in the circumstances of the broader statutory scheme, the sending of debit cards without a specific request by trial participants does not offend the policy basis of the prohibitions in s12DL of the ASIC Act on the unsolicited sending of debit cards; and
 - (c) consumer protection policy issues had been adequately addressed by the ADI, including by contractual agreement to comply with provisions in the ePayments Code and robust activation procedures for debit cards to limit the risk of unauthorised access to money held in the related account.

Publications

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

Legislative instruments

ASIC Corporations (Amendment) Instrument 2015/1073 (superseded)

210 [ASIC Corporations \(Amendment\) Instrument 2015/1073](#) (superseded) amends [Class Order \[CO 10/630\]](#) *Long-term superannuation returns* to allow the existing relief provided by that class order to continue beyond 31 December 2015 indefinitely, in order to allow additional time for the proposed amending regulations to be made.

ASIC Corporations (Division 4 Financial Products) Instrument 2015/1030

211 [ASIC Corporations \(Division 4 Financial Products\) Instrument 2015/1030](#) is a declaration that facilitates a class of financial products specified in the declaration to be transferred through ASX Settlement Pty Ltd. It also extends the statutory warranties and indemnities provided for in Pt 7.11 of the Corporations Act to the financial products specified in the instrument.

212 This instrument replaces, and continues the relief that was provided by, [Class Order \[CO 02/312\]](#) *Part 7.11, Division 4 financial products for ASTC*. Under the Legislation Act, that class order was due to sunset if not remade. The decision to continue and extend the relief provided by that class order follows public consultation through [Consultation Paper 236](#) *Remaking ASIC class orders on dematerialised securities and CHESS units of foreign securities* (CP 236).

213 This instrument also extends the policy that was underlying [\[CO 02/312\]](#) to include warrants and interests in managed investment schemes that are not required to be registered, that will be admitted to quotation and traded on the market operated by Chi-X Australia Pty Ltd, in the classes of financial products that may be transferred through ASX Settlement Pty Ltd.

ASIC Corporations (Derivative Transaction Reporting) Amendment Instrument 2015/0925 (superseded)

214 [ASIC Corporations \(Derivative Transaction Reporting\) Amendment Instrument 2015/0925](#) (superseded) amends [ASIC Instrument \[14/0633\]](#) *Transitional exemptive relief for Phase 3 Reporting Entities from elements of the ASIC Derivative Transaction Rules (Reporting) 2013* to provide temporary transitional relief to extend the commencement date for reporting by Phase 3B Reporting Entities to 4 December 2015.

ASIC Superannuation (Amendment) Instrument 2015/1098 (superseded)

215 [ASIC Superannuation \(Amendment\) Instrument 2015/1098](#) (superseded) amends [Class Order \[CO 14/541\]](#) *RSE licensee s29QC SIS Act disclosure exemption* to extend an exemption for RSE licensees until 1 February 2017 from compliance with s29QC(1) of the *Superannuation Industry (Supervision) Act 1993* (SIS Act).

216 Section 29QC(1) of the SIS Act relates to the obligation under that Act on RSE licensees to give consistent information to the Australian Prudential Regulation Authority.

ASIC Corporations (Amendment and Repeal) Instrument 2016/0043 (superseded)

217 [ASIC Corporations \(Amendment and Repeal\) Instrument 2016/0043](#) (superseded) varies [ASIC Corporations \(Derivative Transaction Reporting Exemption\) Instrument 2015/844](#) to extend the expiry date of Exemption 7 (regarding trade identifiers) from 31 January 2016 to 31 January 2017.

218 ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844 provides time-limited exemptive relief from the requirement—imposed on Reporting Entities under Rule 2.2.1 of the [ASIC Derivative Transaction Rules \(Reporting\) 2013](#)—to report information about transactions and positions in OTC Derivatives to a licensed or prescribed derivative trade repository.

219 Exemption 7 was extended until 31 January 2017 in light of ongoing implementation issues and after acknowledging that the establishment of a globally consistent format for trade identifiers that are universal transaction identifiers or single transaction identifiers is an issue that will be resolved at an international level and is outside the control of any one Reporting Entity.

Rules**ASIC Derivative Transaction Rules (Clearing) 2015**

220 The [ASIC Derivative Transaction Rules \(Clearing\) 2015](#)—which introduced mandatory central clearing of OTC interest rate derivatives in Australia—commenced on 12 December 2015. The commencement marks Australia's implementation of the second Group of Twenty (G20) mandate in relation to OTC derivatives reform.

221 The mandatory central clearing regime will assist to reduce systemic risk in OTC derivatives markets and applies to transactions in OTC interest rate derivatives denominated in Australian dollars, US dollars, euros, British pounds and Japanese yen between OTC derivatives dealers. In line with overseas mandatory clearing requirements, the regime also provides the

basis for substituted compliance or sufficient equivalence determinations by foreign regulators.

- 222 The rules follow public consultation through [Consultation Paper 231](#) *Mandatory central clearing of OTC interest rate derivative transactions* (CP 231).
- 223 [Report 460](#) *Response to submissions on Consultation Paper 231 Mandatory central clearing of OTC interest rate derivative transactions* (REP 460) highlights the key issues that arose out of the submissions received on CP 231 and details our response to those issues.

Market integrity rule waivers

ASIC Market Integrity Rules (ASX Market) 2010: [Class Rule Wavier \[CW 15/932\]](#)

- 224 We have made [\[CW 15/932\]](#) under Sub-Rule 1.2.1(1) of the ASIC Market Integrity Rules (ASX Market) 2010.
- 225 The waiver relieves certain market participants from the obligation under Rule 3.5.8(1) to perform daily reconciliations of their clients' segregated accounts (CSA) by 7:00 pm on the next trading day, subject to the condition that the reconciliation be performed by 12:00 pm on the second trading day. It applies to market participants that rely on information from overseas parties to perform these reconciliations. It also requires those market participants to report any issues with the CSA reconciliations to us within one business day.

ASIC Market Integrity Rules (ASX 24 Market) 2010: [Class Rule Waiver \[CW 15/933\]](#)

- 226 We have made [\[CW 15/933\]](#) under Sub-Rule 1.2.1(1) of the ASIC Market Integrity Rules (ASX 24 Market) 2010.
- 227 The waiver relieves certain market participants from the obligation under Rule 2.3.2(1) to perform daily reconciliations of their clients' segregated accounts (CSA) by 7:00 pm on the next business day, subject to the condition that the reconciliation be performed by 12:00 pm on the second business day. It applies to market participants that rely on information from overseas parties to perform these reconciliations. It also requires those market participants to report any issues with CSA reconciliations to us within one business day.

Amendments for the launch of the Chi-X Australia investment product market

- 228 We have amended the [ASIC Market Integrity Rules \(Competition in Exchange Markets\) 2011](#), the [ASIC Market Integrity Rules \(Chi-X Australia Market\) 2011](#) and some existing ASIC relief instruments in connection with Chi-X Australia Pty Ltd's (Chi-X) proposal to commence the quotation and trading of warrants and exchange traded funds (ETFs) on a new investment product market. The changes were made to ensure warrants and ETFs admitted to quotation on the new Chi-X investment product market are subject to an appropriate regulatory regime.
- 229 Specifically, we amended the following market integrity rules:
- (a) the ASIC Market Integrity Rules (Competition in Exchange Markets) 2011 were amended by [ASIC Market Integrity Rules \(Competition in Exchange Markets\) Amendment 2015 \(No. 1\)](#);
 - (b) the ASIC Market Integrity Rules (Chi-X Australia Market) 2011 were amended by [ASIC Market Integrity Rules \(Chi-X Australia Market\) Amendment 2015 \(No. 2\)](#);
 - (c) the ASIC Market Integrity Rules (ASX Market) 2010 were amended by [ASIC Market Integrity Rules \(ASX Market\) Amendment 2015 \(No. 2\)](#):
 - (i) to incorporate the relevant changes to the ASIC Market Integrity Rules (Chi-X Australia Market) 2011; and
 - (ii) to amend the definition of 'ETF' and 'Managed Fund' to incorporate the recent changes to the ASX Operating Rules.
- 230 [ASIC Corporations \(Amendment\) Instrument 2015/963](#) (superseded) also amended the following class orders by extending the relief provided to warrants that are quoted and traded on the financial market operated by Chi-X:
- (a) [Class Order \[CO 02/608\]](#) *Warrants: relief from PDS requirements for secondary sales*;
 - (b) [Class Order \[CO 03/957\]](#) *ASX managed investment warrants—disclosure and reporting exemptions*;
 - (c) [Class Order \[CO 10/1034\]](#) *Margin lending relief for ASX-traded instalment warrants*; and
 - (d) [Class Order \[CO 13/526\]](#) *Warrants: Relevant interests and associations*.
- 231 The amendments were made following public consultation through [Consultation Paper 235 Proposed amendments to ASIC market integrity rules and instruments for the Chi-X investment product market \(CP 235\)](#). Submissions on CP 235 were due on 9 September 2015.

- 232 CP 235 also proposed some minor changes to:
- (a) ASIC market integrity rules for the ASX market, in response to amendments to the ASX Operating Rules. These changes were made together with the changes to the market integrity rules described above; and
 - (b) individual relief instruments for ASX-quoted ETFs and managed fund products, to bring them under existing class order relief. These changes have not yet been made.
- 233 [Report 453](#) *Response to submissions on CP 235 Proposed amendments to ASIC market integrity rules for the Chi-X investment product market* (REP 453) highlights the key issues that arose in the submissions received on CP 235 and details our responses to those issues.

Appendix: ASIC relief instruments

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

Table 1: ASIC relief instruments

Para no.	Entity name	Instrument no. (Gazette no., if applicable)	Date executed	Power exercised and nature of relief	Expiry date
79-81	JBWere Limited	16-0294 (A19/16)	7 April 2016	Relief under s951B(1)(a) of the Corporations Act to provide a conditional exemption from reg 7.7.09B(2) of the Corporations Regulations, to enable a licensee to issue Statements of Advice to clients—who transferred from a licensee—that incorporate information disclosed in earlier documents issued to those clients without the need to provide those documents again	10 April 2017
82-85	Australian Unity Limited	15-1043 (A48/15)	9 November 2015	Relief under s1020F(1)(a) of the Corporations Act to provide a conditional exemption from Div 5A of Pt 7.9, to allow a listed company to conduct a reinvestment offer to existing holders of notes previously issued by the company in connection with a new offer of simple corporate bonds	
86-91	Ichor Coal N.V.	15-1128 (A51/15)	25 November 2015	Relief under s1020F(1) of the Corporations Act to modify or vary Div 5A of Pt 7.9 to permit variations of a takeover offer (not regulated under Ch 6) for shares/CDIs in a foreign company listed on ASX, to allow the offeror to improve the consideration, extend the offer period and free the offer of defeating conditions	

Para no.	Entity name	Instrument no. (Gazette no., if applicable)	Date executed	Power exercised and nature of relief	Expiry date
86-91	Coal of Africa Limited	15-1129 (A51/15)	26 November 2015	Relief under s1020F(1) of the Corporations Act to modify or vary Div 5A of Pt 7.9 to permit variations of a takeover offer (not regulated under Ch 6) for shares/CDIs in a foreign company listed on ASX, to allow the offeror to improve the consideration, extend the offer period and free the offer of defeating conditions	
138-140	Brookfield Infrastructure Partners L.P. Nitro Corporation Pty Ltd	15-1107 (A50/15)	23 November 2015	Relief under s655A(1)(b) of the Corporations Act to modify s621—as notionally modified by (now) Superseded Class Order [SCO 00/2338] <i>Relief from the minimum bid price principles—s621(3)</i> —to permit Brookfield Infrastructure Partners L.P. (BIP) to value BIP CDIs (being scrip consideration offered in its proposed bid for Asciano Limited) by reference to the price of the underlying BIP Interests traded on the New York Stock Exchange for the purposes of the minimum bid price rule	

Para no.	Entity name	Instrument no. (Gazette no., if applicable)	Date executed	Power exercised and nature of relief	Expiry date
141-143	<p>Qube Holdings Limited</p> <p>Global Infrastructure Management Australia Pty Limited</p> <p>Perpetual Corporate Trust Limited</p> <p>Canada Pension Plan Investment Board</p> <p>CIC Capital Corporation</p> <p>Global Infrastructure Management, LLC</p> <p>Beijing Shunrong Investment Corporation</p> <p>Brookfield Infrastructure Partners L.P.</p> <p>Brookfield Infrastructure Partners Limited</p> <p>Asciano Investment Company</p> <p>bclMC Nitro Trustee Inc.</p> <p>BIF II GP Bermuda Limited</p> <p>Buckland Investment Pte Ltd</p>	16-0203 (A13/16)	14 March 2016	<p>Relief under s655A(1) of the Corporations Act to:</p> <p>(a) enable the entry into an agreement to propose a joint scheme of arrangement to acquire all the shares in a company where the joint acquirers hold more than 20% of the scheme company; and</p> <p>(b) allow for the deferral of the obligation under s631 of the Corporations Act to make offers under a publicly proposed bid where the announced bidders are parties to a proposed joint scheme of arrangement</p>	

Para no.	Entity name	Instrument no. (Gazette no., if applicable)	Date executed	Power exercised and nature of relief	Expiry date
148-150	Brookfield Infrastructure Partners L.P. Nitro Corporation Pty Ltd	15-1172 (A52/15)	10 December 2015	Relief under s655A(1)(b) of the Corporations Act to modify s633(1) and 633A—as notionally modified or inserted by Class Order [CO 13/528] <i>Changes to a bidder's statement between lodgement and dispatch</i> —to permit the variation of offer terms in relation to a takeover	