



Telephone: (02) 6263 3962
Facsimile: (02) 6263 2770

THE TREASURY

Corporations & Financial Services Division
The Treasury
Langton Crescent
PARKES ACT 2600

15 August, 2003

Dr Sarah Bachelard
Acting Secretary
Senate Economics Legislation Committee
Parliament House
CANBERRA ACT 2600

Dear Dr Bachelard

FINANCIAL SERVICES REFORM AMENDMENT BILL 2003

At Treasury's appearance before the Committee in relation to the above Bill on 30 July 2003, certain questions from Senator Conroy were taken on notice.

These questions related mainly to matters pertaining to ASIC, and we have therefore sought ASIC's comments in responding. ASIC's response is attached.

The only comments we would add are as follows:

- We would like to highlight the fact, as described in ASIC's letter, that the granting of relief by ASIC through the use of its exemption and modification powers involves several layers of examination and evaluation of applications for relief. It is not action that ASIC takes lightly, or without policy consideration at very senior levels in the organisation.
- In relation to the use of the words "industry concessions" in paragraph 3.39 of the Explanatory Memorandum to the Bill (question 4 in the attached letter from ASIC), as mentioned in our evidence before the Committee, use of the word "industry" in this context was intended to convey the notion that relief could be directed at individual industry participants, or could be more broad in its application, such as the use of class order relief as described in ASIC's response. The expression was not intended to suggest that financial sector industry-wide exemptions from the requirements of the legislation were contemplated.

I trust this information will be useful to the Committee.

Yours sincerely

Michael Rosser
Manager
Investor Protection Unit

Enc.

14 August 2003

Mr Michael Rosser
Manager - Investor Protection Unit
Treasury
Langton Crescent
PARKES ACT 2600

Dear Michael

**Financial Services Reform Amendment Bill 2003 – Appearance before the Senate
Economics Legislation Committee**

I refer to your letter of 31 July 2003 in which you asked ASIC to provide answers to four questions taken on notice by Treasury at its appearance before the Senate Economics Committee on 30 July 2003.

In this letter we provide answers to the four questions to the extent ASIC is able to provide such responses. Further, we provide these answers on the assumption that Treasury will consider them when replying to the Committee.

As the Committee was considering amendments to the FSRA provisions of the Corporations Act (the Act), I also note that our answers have focussed on ASIC's exemption and modification powers in Chapter 7 and Part 10.2 of the Act (the E&M powers).

By way of background, Attachment 1 sets out the policy basis upon which ASIC considers applications for relief from the FSRA provisions and the process by which ASIC determines such applications.

Responses to the four questions follow:

- 1. Which of ASIC's existing exemption and modification (E&M) powers involved declarations/exemptions that are disallowable instruments?**

We confirm that determinations made under ss1438(6)(opt-in disclosure requirements) and 1445(1)(transitional matters) of Part 10.2 of the Act are disallowable. We note that these powers are unlike any others in the Act and that they apply to transitional matters only.

2. How many exemptions and modifications to the law has ASIC made?

Since the commencement of the FSRA provisions (ie: 11 March 2002) and as at 7 August 2003, ASIC has received 438 applications for relief raising new issues and seeking use of ASIC's E&M powers.

Of these 438 applications, ASIC has approved 191 applications for use of our E&M powers. Of the remaining applications – 24 have been refused, 48 withdrawn and 175 under consideration.

As most requests for relief from financial service providers involve use of more than one E&M power of ASIC, the actual approved applications resulted in far fewer instruments of relief being issued (ie: typically an instrument may relate to one provider but involves the use of several E&M powers). Further, the greater majority of these approved applications involved the granting of minor or technical relief as described in Attachment 1 (ie: within the contemplation of existing policy).

In some cases, individual requests for relief (including those made by an industry association) have raised issues generic to a class of financial service providers. In the cases where such applications are approved, ASIC has issued 33 class order instruments under our E&M powers. Attachment 2 briefly describes in a table the class orders issued to date that deal with new issues arising from the FSRA provisions.

The figures above do not include class order instruments issued by ASIC using its E&M powers where such instruments were issued simply to rollover relief reflecting policy that existed before the commencement of the FSRA provisions. Details of these instruments are set out in ASIC Policy Statements 167 and 169.

3. Could practical examples be provided of how the current limitations in the E&M powers constrain ASIC?

There are currently two key limitations to ASIC's exemption and modification powers in Chapter 7 and Part 10.2 of the Act. These limitations are:

- (a) the existing E&M powers prevent ASIC from doing certain kinds of modifications to the FSRA provisions; and
- (b) unlike ASIC's other E&M powers in Chapter 7, ASIC's power in Part 7.6 does not permit it to apply conditions or issue instruments that modify the provisions of that Part.

Each of these are considered in turn below.

A Limitations in existing exemption and modification powers

The current E&M powers are limited in that they do not permit ASIC to grant a modification that would have the result of a provision applying to a person to whom it would not otherwise apply (s951B, 992B, 1020F, 1075A, 1437, 1442). While this limitation may appear, on first glance, to be desirable or appropriate, in practice it is burdensome and restrictive.

Further, this limitation is not present in ASIC's existing powers under the Act outside Chapter 7 and Part 10.2.

As you are aware, a number of examples of how this limitation creates practical difficulties are included in the Explanatory Memorandum to the FSR Amendment Bill (paras 3.30-3.79). Two of these examples are discussed further below.

Class of financial product in reg 10.2.74

The detail of this example is set out in paras 3.76-3.79 of the Explanatory Memorandum to the FSR Amendment Bill. In this example, we were eventually able to grant relief to overcome a technical drafting error and reflect the intention of these provisions dealing with offer documents during the FSR transition period. However, given the limitations on our modification powers, we were not able to prepare such an instrument in an efficient and timely manner.

The modification was contained in a particularly complex instrument that is both unnecessarily difficult to prepare and for users to understand. We estimate that the instrument (which actually took six pages) could have been drafted in a straightforward and easily understandable way (in about ½ page), had the above limitation to the powers not been present (see attachment 3 for an illustration of the actual instrument and the likely short-form instrument that could have been used if the power was not limited in this way). Further, the resources involved in designing and drafting this complex instrument resulted in significant delays. We understand that some of the affected industry participants put the issue of further financial products on hold until the relief was granted (ie giving certainty to the intent of the law).

This transitional relief example illustrates the kind of practical issues that may arise under our general E&M powers in Chapter 7.

Insurance broker renewals

The detail of this example is set out in paras 3.69-3.71 of the Explanatory Memorandum to the FSR Amendment Bill. In this example, the limitations in our powers meant we were not able to overcome the technical issues in an ideal manner. In this case, the limitations raised issues of effectiveness, not just timeliness and efficiency in the preparation of the relief.

In this example, insurance brokers who had inadvertently failed to re-register (under the IABA annual renewal regime) were automatically subject to the new FSRA regime. As these brokers didn't hold an AFS licence, technically they were not permitted to continue in business. While placing these brokers back under the IABA regime appeared a relatively non-contentious solution, we were unable to achieve this result as a direct result of the limitations above. To place the brokers back under IABA during the transition period (as opposed to the FSRA regime to which they were now subject) would have meant applying to these brokers a set of provisions to which they were no longer subject. Hence we were unable to achieve an otherwise simple result. Instead, we issued an instrument that provided that people who might at some time in the *future* fail to renew their registration would have a 'grace period' of 8 weeks to remedy the situation (we were unable to address the situation of brokers who had *already* failed, at the time of the instrument, to renew their registration). This was a partial solution only.

Potential future anomalies

While the two examples above are transitional examples, the same issues may well apply in relation to legitimate use of ASIC's general E&M powers under Chapter 7. We expect that after the transition, if the limitations to ASIC's general powers in Chapter 7 remain, other complex instruments will be required to address similar non-contentious issues under those provisions. In this sense, the transitional examples are illustrative of a wider potential problem in the future. These are also likely to be resource intensive and involve delays for the applicants for relief involved.

B Proposed exemption and modification powers for Part 7.6

Unlike other parts of Chapter 7, ASIC does not presently have a general exemption and modification power in Part 7.6 of the Act. Further, the government does not have a broad regulation-making power in Part 7.6. Both ASIC and the government have a limited licensing exemption power in s911A.

In a number of cases, ASIC has been asked to modify or clarify aspects of Part 7.6 but have been unable to do so. Some of these matters are being addressed in the FSR Amendment Bill 2003. For example:

- (a) questions about on which documents a licensee must include its licence number (s912F); and
- (b) exemptions from the requirement to notify us of the appointment of staff in relation to some call-centre and other low-impact general advice staff (s916F).

There are some other issues we are aware of where minor exemptions or modifications to provisions in Part 7.6 may be appropriate but ASIC is unable to be consider at present. For example:

- (a) technical issues about the broad reach jurisdictional test in s911D that result in an unlevel playing field (between local and foreign service providers);
- (b) addressing the situation of temporary staff and notifications to ASIC (Technically all appointments of authorised representatives need to be notified to us, even where the appointment is for 1 day. It seems to us that an exemption for very short term staff may be appropriate but is unable to be given) (s916F);
- (c) the ability to address the situation where there may be no external dispute resolution schemes available for a particular industry sector (s912A(2)(g)).

We anticipate that as the end of the transition draws near and greater numbers of industry participants obtain an AFS licence, other technical issues and anomalies with Part 7.6 will be identified (as they will in other Parts of Chapter 7). Without one or both of a regulation-making powers or ASIC exemption and modification powers, there will be no efficient and timely means to address these likely Part 7.6 issues.

4. What is meant by the expression "industry concessions" as used in the explanatory memorandum to the Bill?

It is more appropriate that Treasury answers this question since it raises interpretation of the Explanatory Memorandum.

However, we make the following observations on the use of ASIC class orders that are designed to provide relief typically to an industry sector.

ASIC receives requests from both individuals and groups of participants in the financial services industry seeking application of ASIC's exemption and modification powers to the circumstances of specific cases. Due to the principle based nature and wide application of the FSRA provisions it is not surprising that the law may impact different industry sectors in anomalous or unintended ways. Depending upon the merits of the request for ASIC to use its powers, ASIC may (where appropriate) grant relief to an individual participant or "class order" relief to a group of participants or industry sector. Attachment 2 lists FSRA related class orders that have been issued to date and which deal with new issues arising under the FSRA provisions.

We should stress that industry sector related relief generally involves conditional exemptions from and/or modifications to the law in a manner to produce similar regulatory outcomes as intended under the Act and to provide greater compliance certainty for industry. Please refer to Attachment 1 on how ASIC approaches the use of its exemption and modification powers.

Please contact Mark Adams on (02) 9911 2622 or Pam McAlister on (03) 9280 3450 if you have any questions on the contents of this letter.

Yours faithfully

Ian Johnston
Executive Director
Financial Services Regulation

Attachment 1

Exemption and modification powers – ASIC policy and process

ASIC policy

With the benefit of ASIC's regulatory experience, it has developed policies for dealing with applications for exemptions and modifications of the provisions of Chapter 7 and Part 10.2 ("**applications**"). The key policies in this area are:

- Policy Statement 51 *Applications for relief* [PS 51]
- Policy Statement 167 *Licensing: Discretionary powers and transition* [PS 167]
- Policy Statement 169 *Disclosure: Discretionary powers and transition* [PS 169]

Our key policy on when ASIC might consider use of its FSR licensing exemption and modification powers is set out in PS 167. It states

"[PS 167.3] We will consider giving relief under s911A(2)(l), 951B and 992B to address atypical or unforeseen circumstances and unintended consequences of the licensing provisions of the Corporations Act. We may give relief on our initiative or on application."

"[PS 167.5] We will only exercise our powers to give relief in a way that is consistent with Parliamentary intention. The Corporations Act as amended by the FSR Act is intended to harmonise and raise standards of conduct. We will give weight to the value of promoting international harmonisation where relevant."

"[PS 167.6] We will take into account whether:

- (a) strict compliance with the new regulatory regime would be impossible or disproportionately burdensome;
- (b) persons to whom financial services are provided would still have the protection intended by Parliament; and
- (c) those to whom the relief applies will receive any benefits."

"[PS 167.9] Any exercise of power has to be justified by the net benefits that will arise. We will carefully consider the impact of any relief on consumer protection."

PS 169 sets out, in similar terms to PS 167, how ASIC considers the use of its product disclosure exemption and modification powers in Part 7.9 of the Act.

ASIC processes

ASIC's Financial Services Regulation Directorate assesses all applications in the first instance. Applications that are not minor and technical as described in PS 51 (ie within the confines of existing formal policy) are considered by ASIC's policy decision making body, the Regulatory Policy Group ("RPG"). RPG is chaired by the Executive Director of Policy and Markets Regulation, and comprising of eight senior ASIC staff (including two members of ASIC's Commission).

Before submission to RPG, applications are analysed in detail by officers of the Financial Services Regulation Directorate and by ASIC's Regulatory Policy Branch. An options paper is submitted to RPG, setting out an analysis of the application and the issues involved, the options available, and the advantages and disadvantages of each option. Each ASIC Directorate potentially affected by the application is generally consulted and their views are included in the options paper. For example, in most FSR applications, the views of the Consumer Protection Directorate (considering the impact of an application on consumer interests) are included.

Typically, most substantive class order uses of ASIC's exemption and modification powers are a result of the issue of an ASIC policy statement. ASIC's policy statement development cycle is comprehensive and the development process can take, on average, between 8 and 12 months. Initial policy proposals are developed by ASIC staff (generally after internal and external consultation) and approved for release by RPG. They are set out in a policy proposal paper with a series of proposals and options for dealing with a particular issue. It will also attempt to draw out stakeholder consultation on the more controversial issues.

Following consultation, stakeholder comments are reviewed. The policy proposals are then refined into a draft policy statement, where further consultation may be required if necessary. All draft policies are again evaluated and scrutinised by ASIC's RPG to ensure that ASIC is making sound consistent policy decisions before final policy is released.

The policy development process often includes the preparation of a RIS (Regulatory Impact Statement) that is sent to the Office of Regulatory Review (part of the Productivity Commission). The RIS process scrutinises proposed regulatory changes to check that there has been adequate public consultation, that the benefits of the proposed action outweigh the benefits (for industry, consumers and the economy generally) and all relevant options have been examined.

In addition, ASIC's use of its exemption and modification powers is subject to a number of safeguards to ensure that the powers are not abused, including administrative review by the Administrative Appeals Tribunal, judicial review and consideration in appropriate circumstances by the Commonwealth Ombudsman.

Attachment 2 - FSRA related ASIC Class Orders dealing with new issues

Class Order #	Title	Description
[CO 02/191]	Product disclosure — requirements for issuers of financial products who lodge opt-in notices	This determination sets out the requirements that issuers who lodge a notice with ASIC to opt in early to the PDS disclosure regime must comply with under s1438(3). The determination requires product issuers to inform people about the notice and its significance.
[CO 02/212]	Product disclosure — requirements for issuers of financial products who lodge variation notices	The determination sets requirements that issuers who lodge a notice with ASIC under s1438(5)(a) of the Act (a variation notice) must comply with. It provides details about what a person needs to do to vary the "opt in" date to the FSR disclosure regime they have previously identified.
[CO 02/213]	Product disclosure — requirements for issuers of financial products who lodge revocation notices	The determination sets requirements that issuers who lodge a notice with ASIC under paragraph 1438(5)(b) of the Act (a revocation notice) must comply with. It allows someone to revoke an earlier notice that they had given to "opt in" early to the FSR disclosure regime.
[CO 02/286]	Obligation to provide Product Disclosure Statement: section 1012B(4)	This provides clarification that were ASIC has granted other class order PDS relief s1012B(4) does not negate the effect of that relief.
[CO 02/434]	FSR Act transition — regulated activities and securities	This class order clarifies how the transitional provisions in FSR apply to people advising and dealing in: <ul style="list-style-type: none"> • equitable rights or interests in debentures; • equitable rights or interests in managed investment schemes; and • superannuation.
[CO 02/435]	FSR Act transition — regulated activities and insurance brokers	This class order clarifies how the transitional provisions in FSR apply to insurance broker's activities includes dealing in, and advising on, insurance products of the kind in respect of which the person was registered under Part III of the Insurance (Agents and Brokers) Act 1984.
[CO 02/437]	Eligible applications — relief from s1016A(2)(a) for managed	Class Order [CO 02/437] allows a responsible entity of a registered managed investment scheme to accept PDS application forms without the applicant's date of birth. This

Class Order #	Title	Description
[CO 02/641]	investment products Hawking — securities and managed investments	exemption is provided on the condition that that form requires an applicant who is a natural person to state that he or she is at least 18 years of age. Class Order [CO 02/641] clarifies that s992A does not apply to securities (which are covered by s736) or interests in managed investment schemes (which are covered by s992AA).
[CO 02/734]	FSR Act transition — insurance broker registrations	This class order provides that an insurance broker formerly registered under the Insurance (Agents and Brokers) Act 1984 (IABA) continues to be regulated under IABA for up to 8 weeks after their registration lapses. It means that where a broker's registration has inadvertently lapsed they can still use a streamlined process to get their license under FSRA.
[CO 02/779]	Responsible entities holding futures brokers licences	Class Order [CO 02/779] applies to the responsible entity of a registered scheme which holds a futures brokers licence permitting it to deal in futures contracts on behalf of the members of the registered scheme. Some responsible entities needed a futures brokers licence under the old Act, as they were considered to be dealing on behalf of another person. On 1/10/2002 SFE no longer recognised associate participants on its market and these people now trade through full participants on the SFE market. The class order exempts the responsible entity from the requirement to be a member of a futures organisation under s1148 of the Corporations Act (as in force on 10 March 2002), subject to certain conditions to enable affected people to transition to an AFSL under FSRA.
[CO 02/803]	Overseas futures brokers and securities dealers: exemption from requirement to hold an AFS licence	Class Order [CO 02/803] grants an exemption from the requirement to hold an Australian Financial Services Licence for an overseas person who on behalf of another overseas person, arranges for a holder of a dealers licence or a futures brokers licence (within the meaning of the old Corporations Act) to deal in a financial product.
[CO 02/930]	Interim licensing relief for operators of pooled development funds	Class Order [CO 02/930] gives interim relief to operators of pooled development funds from the Australian financial services licensing requirements in the Corporations Act 2001.
[CO 02/1013]	Sydney Futures Exchange	Class Order [CO 02/1013] applies to persons who until 30 September 2002 were

Class Order #	Title	Description
	Limited — associate participants	associate participants of the Sydney Futures Exchange Limited. From 1/10/2002 SFE no longer recognised participants and redeemed their membership of SFE. The class order exempts such people from the requirement to be a member of a futures organisation under s148 of the Corporations Act (as in force on 10 March 2002), subject to certain conditions. People relying on this class order may then transition to an Australian Financial Services Licence in accordance with the transitional arrangements in the Corporations Act 2001. (One of the conditions is that the people comply with the requirements of the SFE's rules, however some entities have advised ASIC that they are having difficulty in obtaining PI insurance)
[CO 02/1072]	Product Disclosure Statements — top-up relief for managed investment schemes	Class Order [CO 02/1072] provides relief from the requirement to provide a Product Disclosure Statement for the acquisition of further interests in the same class in the same managed investments scheme. The relief applies where the investor has previously paid a total of at least \$500,000 for the purchase of the same class of interests in the scheme. The relief applies to interests in registered and unregistered schemes. It is consistent with relief available for securities.
[CO 02/1073]	Financial Services Guide — dealing in underlying investments by responsible entities	Class Order [CO 02/1073] provides relief to responsible entities of registered managed investment schemes from the requirement to provide a Financial Services Guide (FSG). The entity will not have to provide an FSG merely because the entity deals in financial products that are the underlying investments of the scheme concerned.
[CO 02/1074]	Financial Services Guide — dealing in underlying investments by superannuation trustees	Class Order [CO 02/1074] provides relief to superannuation trustees from the requirement to provide a Financial Services Guide (FSG). The entity will not have to provide an FSG merely because the entity deals in financial products that are the underlying investments of the fund concerned.
[CO 02/1075]	Travellers' cheques and confirmation of transactions	Class Order [CO 02/1075] disapplies the confirmation requirements in s1017F of the Corporations Act 2001 in relation to transactions involving travellers' cheques. This relief is provided on the basis that as a matter of standard practice receipts are provided to customers when they purchase or dispose of travellers' cheques.
[CO 02/1084]	Australian financial services	For the avoidance of doubt, Class Order [CO 02/1084] gives transitional relief for the

Class Order #	Title	Description
	(AFS) licence numbers in prospectuses	citing of the AFS licence number in prospectuses, as may be required under s912F of the Corporations Act 2001. AFS Licensees will not be required to update prospectuses prepared before their AFS licence is granted to include the AFS licence number. The relief ceases to apply at the end of the two-year financial services reform transitional period.
[CO 02/1145]	Declaration regarding overseas student health insurance	Class Order [CO 02/1145] declares that an overseas student health insurance contract issued before 31 March 2003 is not a financial product for the purposes of Chapter 7 of the Corporations Act. This declaration was made to cure an identified anomaly pending a regulation to the same effect.
[CO 02/1161]	Limited relief from requirement for dealing authorisation for public offer superannuation entities	Class Order [CO 02/1161] removes the need for the trustee of a public offer entity to apply for an authorisation to deal in financial products (other than an interest in the entity) on behalf of the members of the entity in the course of the operation of the entity. Dealings by these trustees in financial products may occur when they invest the assets of the fund or trust to meet its obligations under its governing rules or during the normal operation of the fund. These activities are subject to prudential regulation carried out by the Australian Prudential Regulation Authority.
[CO 02/1176]	Credit union member shares	Class Order [CO 02/1176] provides relief for certain registered credit unions from certain obligations under the Corporations Act 2001 with respect to a share that entitles you to membership of the credit union. The relevant obligations are: <ol style="list-style-type: none"> 1. the requirement to obtain an Australian financial services licence; 2. the requirement to confirm transactions; and 3. the requirements relating to financial services disclosure in Part 7.7.
[CO 02/1296]	ASX managed investment warrants — FSR Act transition	Class Order [CO 02/1296] extends transitional relief from Part 7.9 to the issue, sale and on-sale of managed investment warrants that are already regulated by ASX.
[CO 02/1297]	Warrants: relief from PDS requirements for secondary sales	Class Order [CO 02/1297] ensures that transfers of ASX quoted warrants as a result of a secondary sale are not treated as the issue of a derivative and hence potentially subject to the requirements for the provision of a Product Disclosure Statement. Amends [CO 02/608]

Class Order #	Title	Description
[CO 02/1298]	Clarification of Corporations Regulation 10.2.74	Class Order [CO 02/1298] is intended to help remove uncertainty arising in relation to the operation of Corporations Regulation 10.2.74. This regulation identifies what is a "class of financial products" for the purposes of the product disclosure transitional provisions. It amends [CO 02/1071]
[CO 02/1399]	Operators of IDPS-like managed investment schemes — variation of old law licence	Class Order [CO 02/1399] applies to licensees who are currently licensed under the pre-FSR regime to operate IDPS-like managed investment schemes. The relief modifies the transitional provisions of the Corporations Act to allow these licensees to vary their old law licence to enable them to operate an IDPS.
[CO 03/237]	Updated information in product disclosure statements	Class Order [CO 03/237] provides exemption from the requirement to include updated information in addition to or in substitute for any information the PDS contains at the time it is given, where certain requirements are met.
[CO 03/244]	Licensing relief for financial services offered because of Regulation 7.1.33C(1)	Class Order [CO 03/244] provides relief from the need to hold an AFS licence for some offers (otherwise regulated under the Corporations Act). Without relief those offers would constitute a financial service because of Corporations Regulation 7.1.33C(1) dealing with unsolicited offers.
[CO 03/448]	Relief to permit a combined Financial Services Guide and Product Disclosure Statement	Class Order [CO 03/448] permits a Financial Services Guide and Product Disclosure Statement to be combined into one document (a "combined FSG and PDS") in certain circumstances. The combined FSG and PDS must be divided into two parts, one containing the FSG information and one containing the PDS information. The providing entity and the issuer will be responsible and liable for the entire combined document.
[CO 03/578]	Financial Services Guide exemption for market making services on a licensed market	Class Order [CO 03/578] provides relief to financial services licensees and their authorised representatives from the requirement to provide a Financial Services Guide where they conduct the service of making a market of a financial product through a licensed market.
[CO 03/606]	Financial product advice — exempt documents	Class Order [CO 03/606] exempts a person from the requirement to hold an Australian Financial Services License for the provision of financial product advice where that advice is general advice, and the advice is contained in a document that is required by, and prepared by the person as a result of a requirement in the Corporations Act 2001 (the

Class Order #	Title	Description
[CO 03/645]	FSR Act transition – regulated activities – deposit products and insurance products	Act) or the Superannuation Industry (Supervision) Act 1993. It repeals a former class order that did a similar thing – [CO 03/175]
[CO 03/653]	Pooled development funds: licensing exemptions for dealing in, and general advice on, own securities	Class Order [CO 03/645] ensures that an applicant who is able to streamline an application in relation to a product which forms part of one of the specified financial products is able to be authorised to provide financial services in relation to all of the relevant specified products under the streamlined application procedure. Class Order [CO 03/653] exempts a pooled development fund (PDF) from the requirement to hold an Australian financial services license for the provision of a financial service before 11 March 2004 that consists only of dealing in or providing general advice on the PDF's own securities. It extends the transitional relief in [CO 02/930]
[CO 03/654]	Periodic statements under s1017D - amendment	Class Order [CO 03/654] provides interim relief from the requirements in Corporations Regulation 7.9.75(2)(b) in relation to reporting common fund deductions in periodic statements includes statements to the effect that: (a) amounts for fees, expenses or charges have been deducted from the common fund to which the product relates; and (b) these deductions are borne indirectly by the holders of the product and may affect the return to the holders; and (c) further information about the deductions can be obtained by contacting the issuer of the product. Such interim relief has effect for each periodic statement required by s1017D of the Corporations Act 2001 for a reporting period ending on or before 30 June 2003 or 31 December 2003. Amends [CO 03/485].

Attachment 3

Likely mock-up alternative instrument to ASIC [CO 02/1071]

**Australian Securities and Investments Commission
Corporations Act 2001 – Paragraph 1442(2)(b) – Declaration**

Under paragraph 1442(2)(b) of the *Corporations Act 2001* (the Act), the Australian Securities and Investments Commission hereby declares that regulation 10.2.74 of the *Corporations Regulations 2001* applies to all persons who issued any financial product before FSR commencement as if the words “if and” were inserted before the words “only if” (wherever occurring) in that regulation.

Interpretation

In this instrument, “FSR commencement” has the same meaning as in subsection 1410(1) of the Act.

Dated this **** day of ***** 2002

Signed by Brendan Byrne
as a delegate of the Australian Securities and Investments Commission



ASIC

Australian Securities & Investments Commission

[CO 02/1071]

**Clarification of Corporations Regulation
10.2.74**

Issued 9/10/2002

Class Order [CO 02/1071] is intended to help remove uncertainty arising in relation to the operation of Corporations Regulation 10.2.74. This regulation identifies what is a "class of financial products" for the purposes of the product disclosure transitional provisions.

Australian Securities and Investments Commission
Corporations Act 2001 – Subsection 1020F(1) – Declaration

Under subsection 1020F(1) of the *Corporations Act 2001* (the Act) and for the avoidance of doubt, the Australian Securities and Investments Commission hereby declares that Part 7.9 has effect in relation to the class of financial products referred to in the Schedule as if Division 6 of Part 7.9 were modified or varied by inserting at the end of that Division provisions in the terms of sections 1438 to 1441 modified or varied as follows:

1. in subsection 1438(2), omit "Part 7.9 of the amended Corporations Act" and substitute "this Part";
2. omit the notes following subsections 1438(3) and (6);
3. omit paragraph 1438(7)(a);
4. after subsection 1438(8), add the following subsections:
“(9) For the purposes of this section:
 - (a) a managed investment product is in the same class as another financial product if and only if:
 - (i) (A) the other financial product is a managed investment product;

- (B) both products are interests in registered schemes that have the same responsible entity; and
 - (C) at the FSR commencement, the responsible entity's licence to operate registered schemes would have authorised the operation of both registered schemes; or
 - (ii) the other financial product is an interest in the same registered scheme;
 - (b) subject to paragraph (k), a derivative is in the same class as another financial product if and only if:
 - (i) the other financial product is a derivative; and
 - (ii) both products are issued by the same person; and
 - (iii) either:
 - (A) each of the derivatives was entered into or acquired on a financial market; or
 - (B) none of the derivatives was entered into or acquired on a financial market;
 - (c) a life risk insurance product is in the same class as another financial product if and only if the other financial product is a life risk insurance product and both products are issued by the same person;
 - (d) an investment life insurance product is in the same class as another financial product if and only if the other financial product is an investment life insurance product and both products are issued by the same person;
 - (e) an insurance product (other than a life risk insurance product or an investment life product) is in the same class as another financial product if and only if:
 - (i) the other financial product is an insurance product other than a life risk insurance product or an investment life product; and
 - (ii) both products are issued by the same person and:
 - (A) provide the same kind of cover; or

- (B) provide cover in relation to the same kind of asset (for example, a motor vehicle);
- (f) a superannuation interest is in the same class as another financial product if and only if the other financial product is a superannuation interest and both products are issued by the same person;
- (g) an RSA product is in the same class as another financial product if and only if the other financial product is an RSA product and both products are issued by the same person;
- (h) a deposit product is in the same class as another financial product if and only if the other financial product is a deposit product and both products are issued by the same person;
- (i) a facility for making non-cash payments that is related to a deposit product is in the same class as another financial product if and only if the other financial product is a facility for making non-cash payments that is related to a deposit product and both products are issued by the same person;
- (j) a financial product mentioned in paragraph 764A(1)(k) is in the same class as another financial product if and only if the other financial product is a financial product mentioned in paragraph 764A(1)(k) and both products are issued by the same person; and
- (k) a warrant is in the same class as another financial product if and only if the other financial product is a warrant and both products are issued by the same person.
- (10) A determination by ASIC (at any time after FSR commencement) for the purposes of subsection 1438(6) is, while it remains in force for that purpose, taken also to be a determination for the purposes of subsection (6) with such modifications as are necessary.
- (11) A thing purported to be done (at any time after FSR commencement) for the purposes of, or in accordance with, section 1438 in relation to a product to which this section applies has the same significance for the purpose of this section as it would have had for the purposes of section 1438 if that section applied to the financial product.
- (12) A thing purported to be done (at any time after FSR commencement) for the purposes of, or in accordance with, a determination for the purposes of subsection 1438(6) (the

subsection 1438(6) determination) in relation to a product to which this section applies has the same significance for the purpose of a determination made for the purposes of subsection (6) as it would have had for the purposes of the subsection 1438(6) determination if that determination applied to the financial product.

(13) In this section:

deposit product means a deposit-taking facility made available by an ADI (within the meaning of the *Banking Act 1959*) in the course of its banking business (within the meaning of that Act), other than an RSA product;

FSR commencement has the same meaning as in subsection 1410(1); and

superannuation interest has the same meaning as in subsection 10(1) of the Superannuation Industry (Supervision) Act 1993.”;

5. in subparagraph 1439(1)(a)(ii), omit the reference to “1438(3)(b)” and substitute a reference to “1020H(3)(b)”;
6. in paragraph 1439(1)(d), omit the reference to “1440” and substitute a reference to “1020J”;
7. in subsection 1439(2), omit the text “affairs.” and substitute the following text:

“affairs; and

“**FSR commencement** has the same meaning as in subsection 1410(1).”;

8. convert section 1440 into subsection (1) of that section;
9. add at the end of section 1440 the following subsections:

“(2) To the extent that this section provides for a provision of this or another Act (the **preserved provision**), as in force immediately before the FSR commencement, to continue to apply to or in relation to a person, thing or matter:

- (a) the preserved provision so continues to apply only to the extent (if any) to which it is expressed in terms that cover the person, thing or matter; and
- (b) this section is not taken to extend the scope of the preserved provision (otherwise than by giving it a continued operation).

- (3) In this section, *associated provisions*, *FSR commencement* and *old Corporations Act* have the same meanings as in subsection 1410(1).”;
- 10. in paragraph 1441(a), omit the text “principal;” and substitute the text “principal (within the meaning of section 1430).”;
- 11. renumber the 4 sections inserted at the end of Division 6 of Part 7.9 as sections 1020H to 1020K respectively; and
- 12. add, after section 1020K, the following section:

“1020L Additional operation of regulations

- (1) If a regulation made for the purposes of section 1444 (at any time after FSR commencement) affects the operation of any of sections 1438 to 1441 in relation to any financial products to which those sections apply, by force of this subsection the operation of sections 1020H to 1020K is affected to the same extent and in the same way in relation to any financial products to which sections 1020H to 1020K apply.
- (2) If a regulation made for the purposes of section 1444 (at any time after FSR commencement) otherwise affects when any of the new product disclosure provisions referred to in section 1438(2) start to apply, or when any of the provisions referred to in section 1440 cease to apply, to a financial product to which section 1438 applies, this subsection produces the same effect in relation to a financial product to which section 1020H applies.
- (3) A thing purported to be done (at any time after FSR commencement) for the purposes of, or in accordance with a regulation referred to in subsection (2) in relation to a financial product to which section 1020H applies has the same significance for the purposes of subsection (2) as it would have had for the regulation, if the regulation applied to the product.
- (4) If the purported lodgement of a notice with ASIC (at any time after FSR commencement) in accordance with paragraph 1438(3)(b) would have a significance for a regulation referred to in subsection (2) in relation to a financial product to which section 1020H applies, that lodgement has the same significance for the purpose of

subsection (2) as it would have had for the purposes of the regulation if section 1438 applied to the product.

- (5) In this section *FSR commencement* has the same meaning as in subsection 1410(1).”.

SCHEDULE

All applicable financial products issued by a person other than financial products:

- (a) to which section 1438 applies (irrespective of whether the transition period for the product has ended); or
- (b) in respect of which both of the following applied immediately before the date of this instrument:
 - (i) a Product Disclosure Statement had been given to someone in a recommendation, issue or sale situation; and
 - (ii) no notice had been lodged with ASIC in accordance with paragraph 1438(3)(b).

Interpretation

In this instrument:

1. “applicable financial product” means a managed investment product, a derivative, an insurance product, a superannuation interest, an RSA product, a deposit product, a facility for making non-cash payments that is related to a deposit product, a financial product mentioned in paragraph 764A(1)(k) or a warrant;
2. “deposit product” means a deposit-taking facility made available by an ADI (within the meaning of the *Banking Act 1959*) in the course of its banking business (within the meaning of that Act), other than an RSA product;
3. “recommendation situation”, “issue situation” and “sale situation” have the meanings given in sections 1012A to 1012C;
4. “superannuation interest” has the same meaning as in subsection 10(1) of the Superannuation Industry (Supervision) Act 1993;
5. “transition period” has the meaning given in subsection 1438(3); and
6. references to provisions are references to provisions of the Act.

Dated this 9th day of October 2002

Signed by Brendan Byrne
as a delegate of the Australian Securities and Investments Commission