



**ASIC**

Australian Securities & Investments Commission

## REGULATORY GUIDE 173

# Disclosure for on-sale of securities and other financial products

**Related instruments:** [CO 02/1180], [CO 04/671]

**Chapter 6D — Fundraising**

**Chapter 7 — Financial Services and Markets (Part 7.9)**

*Reissued: 21/12/2004*

*Previous versions: Superseded Policy Statement 173 [SPS 173] (issued 3/12/2002) and Superseded Policy Statement 173A [SPS 173A] (issued as proof version 1/7/2004).*

*Superseded versions are published in the ASIC Digest on CD-ROM.*

*From 5 July 2007, this document may be referred to as Regulatory Guide 173 (RG 173) or Policy Statement 173 (PS 173). Paragraphs in this document may be referred to by their regulatory guide number (e.g. RG 173.1) or their policy statement number (e.g. PS 173.1).*

---

## Contents

<b>What this policy statement is about .....</b>	<b>2</b>
<b>A Our general policy on relief.....</b>	<b>3</b>
<b>B Disclosure-based relief.....</b>	<b>7</b>
<b>C Exemption-based relief.....</b>	<b>11</b>
<b>Key terms.....</b>	<b>18</b>
<b>Related information .....</b>	<b>19</b>

---

## What this guide is about

---

RG 173.1 This guide sets out what relief is available from the disclosure requirements under the *Corporations Act 2001* (the Act) for the on-sale of securities and other financial products ('on-sale provisions').

RG 173.2 This guide sets out:

**A** our general policy on relief from the on-sale provisions

*see RG 173.4-RG 173.20*

**B** what relief is available where retail clients have, through some alternative means, the benefit of disclosure comparable to that which might otherwise have been contained in a prospectus or Product Disclosure Statement (PDS) ('disclosure-based relief'), and ASIC's power to exclude an entity from relying on this relief

*see RG 173.21-RG 173.42*

**C** what relief is available to ensure that products issued to persons including retail clients under separate disclosure exemptions may be readily on-sold ('exemption-based relief')

*see RG 173.43-RG 173.75*

RG 173.3 This guide does not deal with direct or indirect off-market on-sales of financial products by controllers regulated under s707(2) and (5) and s1012C(5) and (8) of the Act.

**Important note:** The contents of this guide are based on the law as at 21 December 2004. Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements. This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act applies to you. It is your responsibility to determine your obligations under the Corporations Act.

## A Our general policy on relief

---

### Our policy

RG 173.4 This policy discusses relief we have provided from the on-sale provisions in certain circumstances: see Class Order [CO 04/671].

Note: Class Order [CO 02/1180] continues to provide transitional relief until 1 July 2005 for securities and financial products issued before the commencement of the *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004* (the CLERP 9 Act) (i.e. before 1 July 2004).

RG 173.5 There are two types of relief:

- (a) *Disclosure-based relief*: While the Act itself facilitates cost-effective fundraising in wholesale markets where the interests of retail clients are not adversely affected, in some circumstances we provide additional relief. This is where retail clients have, through some alternative means, the benefit of disclosure comparable to that which might otherwise have been contained in a prospectus or PDS: see Section B.
- (b) *Exemption-based relief*: This relief ensures that products issued to persons including retail clients under separate disclosure exemptions may be readily on-sold: see Section C.

RG 173.6 This policy also discusses our power to make a determination to exclude an entity from relying on the statutory on-sale exemptions where the entity has contravened certain provisions of the Act ('exclusion power').

### Underlying principles

RG 173.7 We consider that relief from the on-sale provisions should be provided in these circumstances because the relief facilitates fundraising and on-sales without compromising the investor protection that the on-sale provisions provide to retail clients.

### Explanation

RG 173.8 In considering whether to provide relief and the nature of this relief, we have sought to balance the commercial

considerations relevant to wholesale capital markets against the retail client protection provided by disclosure under the on-sale provisions

RG 173.9 We believe that any significant relief from the on-sale provisions can only be justified if a comparable level of protection is otherwise available to retail clients who acquire financial products by way of transfer within 12 months of their issue.

### ***What is the purpose of the on-sale provisions?***

RG 173.10 The *Financial Services Reform Act 2001* (the FSR Act) largely came into effect on 11 March 2002. Among other things, it amended the provisions that regulate the on-sale of financial products within 12 months of their issue, specifically:

- (a) securities (under s707(3) and (4)); and
- (b) non-securities (i.e. other financial products) (under s1012C(6) and (7)).

RG 173.11 The on-sale provisions are designed to minimise the opportunity for issuers of securities or other financial products to avoid giving disclosure to retail investors by first issuing the financial products to an intermediary for whom disclosure is not required, who then on-sells them to retail investors. These provisions seek to ensure that, regardless of whether financial products are issued directly to retail clients or indirectly:

- (a) retail clients receive adequate disclosure for what is in substance an issue of financial products; and
- (b) the issuer is liable to retail clients for the efficacy of that disclosure.

### ***Why is relief needed?***

RG 173.12 Shortly before the on-sale provisions commenced, arguments were put to ASIC that their operation would cause practical difficulties for activities that were up to then regarded as unexceptional. These difficulties particularly related to provisions requiring disclosure in a PDS or prospectus for the on-sale of securities or other financial products into the retail market merely because of an intention of the initial acquirer to on-sell.

RG 173.13 Feared adverse consequences included that:

- (a) ordinary placements of equities or other financial products might be unduly impeded; and

- (b) retail clients who were issued financial products without disclosure under a specific exemption from the disclosure provisions (eg for dividend reinvestment plans or as consideration for a takeover offer) might not be able to on-sell those products within 12 months of their issue.

RG 173.14 Further legislative amendments were made upon the commencement of the CLERP 9 Act to improve the practical operation of the placement market and the on-sale provisions in the Act. Our relief is designed to complement these changes. The Explanatory Memorandum to the CLERP 9 Bill notes that the legislative amendments do not inhibit our ability to otherwise provide relief from the on-sale provisions.

### ***Balancing commercial considerations and investor protection***

RG 173.15 The issue of financial products to wholesale investors is an important feature of the Australian capital market. Generally, such issues can be completed more quickly and at a lower cost than issues made to retail clients due to a combination of factors, including economies of scale and fewer regulatory requirements.

RG 173.16 Many of the products issued in the wholesale market are of the same kind as those issued or traded in the wider markets. In such cases, financial products issued to wholesale investors could be on-sold to retail clients. Such transactions, being secondary in nature, usually do not attract an obligation to issue a disclosure document or PDS. This is because disclosure requirements in the Act (e.g. prospectus disclosure under Pt 6D.2 and PDS disclosure under Pt 7.9) generally apply to the issue of financial products and not to their on-sale, unless the sale occurs within 12 months of the issue and the on-sale provisions apply.

RG 173.17 Financial products issued in the wholesale market are likely to be on-sold into the retail market in the ordinary course of wholesale investors carrying on their investment activities. In such transactions, avoiding disclosure to retail clients will usually not be a relevant motive.

RG 173.18 However, the differences in the regulatory requirements between wholesale and retail markets necessarily raises the potential for:

- (a) financial products issued in the wholesale market to be on-sold to retail investors within 12 months of their issue (this may

undermine the requirements for disclosure for retail offers of financial products); and

- (b) opportunities for abuse of those differences by persons who are inclined to exploit them.

RG 173.19 Consequently, anti-avoidance provisions have long been a feature of Australian law. By enacting the on-sale provisions, Parliament intended to tighten the operation of their anti-avoidance effect.

RG 173.20 In considering relief, it would generally not be appropriate for us to exercise our discretionary powers to make fundamental changes to the settings determined by the Parliament. However, we can exercise our powers to enable the legislation to operate more appropriately in particular circumstances that may not have been envisaged, or to ameliorate apparently unintended outcomes.

## **B Disclosure-based relief**

---

### **Our policy**

RG 173.21 The Act itself provides certain exemptions from the on-sale provisions. The on-sale exemptions apply where investors have the benefit of information that is comparable to that otherwise available in a prospectus or PDS. However, the on-sale exemptions do not extend to some stapled securities. To facilitate the secondary sale of stapled securities, we have provided class order relief on terms similar to the on-sale exemptions available for other financial products: see Class Order [CO 04/671]. We also have provided class order relief to enable issuers to rely on the on-sale exemptions even if they also rely on certain technical accounting relief: see Class Order [CO 04/672].

RG 173.22 We may provide other case-by-case or class order relief in circumstances falling outside the on-sale exemptions.

RG 173.23 We will generally exercise our exclusion powers to prevent an entity from relying on the on-sale exemptions where an issuer has contravened certain provisions of the Act. Before exercising these exclusion powers we will generally offer the body an opportunity to make submissions about whether the determination should be made.

### **Underlying principles**

RG 173.24 As noted earlier, the purpose of the on-sale provisions is to ensure adequate disclosure to retail clients acquiring financial products as a result of on-sales that are, in effect, indirect issues of those products. We consider that relief should be provided where retail clients have the benefit of broadly equivalent disclosure to that required under the Act through alternative means, resulting in a comparable degree of overall protection.

RG 173.25 Consistent with this, we will use our exclusion powers in a way that provides an incentive to ensure that full, accurate and timely disclosure is provided to the market and to investors.

## Explanation

### ***On-sale exemptions***

RG 173.26 Sections 708A and 1012DA operate as exemptions from the on-sale provisions and set out requirements for the content and method of disclosure needed to qualify for these exemptions.

RG 173.27 Generally speaking, under these exemptions there are two methods by which information can be made available to investors:

- (a) a notice to the market that the issuing entity has provided a full release of information to the market under s708A(5) or 1012DA(5); or
- (b) a prospectus or PDS for a retail issue that is more or less contemporaneous with an institutional placement under s708(11) or 1012DA(11).

RG 173.28 A notice to the market under s708A(5) or 1012DA(5) verifies that the issuer has complied with its continuous disclosure and reporting obligations, and provides the market with information that is excluded from continuous disclosure to ensure investors receive disclosure equivalent to that ordinarily available under a prospectus or PDS.

RG 173.29 Sections 708A(11) and 1012DA(11) recognise that investors may also receive relevant information through a prospectus or PDS that, while not issued for a placement, contains current information on the same class of financial products as the placement.

RG 173.30 The on-sale of certain securities or other financial products placed with underwriters (or their nominees) are also exempt from the on-sale provisions under s707(12) and 1012DA(12).

### ***Relief granted by ASIC***

RG 173.31 The legislative exemptions provided by s708A and 1012DA do not inhibit our ability to provide relief from the on-sale provisions under our existing exemption and modification powers. The following are examples of where we have provided either class order or case-by-case relief.

### ***Stapled securities***

RG 173.32 The disclosure exemptions provided by s708A apply to 'quoted securities', which are defined by s9 as 'a security that is quoted on a prescribed financial market'. This definition does not

include stapled securities and, therefore, s708A does not apply to stapled securities.

RG 173.33 We have provided disclosure-based relief for the sale of stapled securities on terms similar to s708A: see Class Order [CO 04/671]. We can see no reason why the exemptions in s708A should not apply to stapled securities merely because the quoted security offered is stapled to another financial product.

#### **Accounting relief**

RG 173.34 Sections 708A(5)(d) and 1012DA(5)(d) prevent an entity from relying on the on-sale exemptions where relief has been granted under certain provisions of the Act including relating to accounts. We have given class order relief (in Class Order [CO 04/672]) to enable a body to rely on the on-sale exemptions even where it also relies on certain technical accounting relief. We consider the technical accounting relief does not detract from the level of information available to the market, and so relief from the on-sale provision should be extended.

#### **Other relief**

RG 173.35 In considering other relief, we will not exercise our discretionary powers to make fundamental changes to the settings determined by the Parliament. However, we may grant relief where the policy rationale for the on-sale exemptions is satisfied and where granting relief would ameliorate apparently unintended outcomes.

RG 173.36 For example, we may grant relief from the on-sale provisions on the basis of an explanatory statement provided to investors and the market to effect a restructure. This is where there is a change of structure for an existing business (but where the entity's underlying assets are unchanged) and the explanatory statement otherwise contains information equivalent to that which would be included in a prospectus for an offer of the post-restructure securities.

#### **Exclusion power**

RG 173.37 We have the power to make a determination removing the benefit of s708A and 1012DA if an issuer has contravened relevant provisions of the Act in the previous 12 months: s708A(2) and 1012DA(2).

RG 173.38 The on-sale exemptions are not available to those entities that, at the time when the relevant securities are issued, are the subject of a determination made by ASIC: s708A(1)(c) and 1012DA(1)(d).

RG 173.39 We may make a determination if we are satisfied that in the previous 12 months the body has not complied with any of the provisions set out in:

- (a) s708A(2) if the product offered is a security; or
- (b) s1012DA(2) if the product offered is a financial product other than a security.

RG 173.40 Before exercising our exclusion powers, we will generally offer the body an opportunity to make submissions about whether the determination should be made. We will not usually regard it as a sufficient argument against making a determination that the breach of the relevant obligation has since been rectified in some way.

RG 173.41 A determination must be in writing, and will generally be in the form of Pro Forma [PF 211]. Each determination is required to be published in the *Gazette*: s708A(3) and 1012DA(3). We will also send the determination to the operator of the market on which the entity is listed to ensure the operator is aware of the determination for its supervision of listed entities and for market transparency.

Note: A disclosing entity should consider, at the time it becomes aware of its failure to comply with the provisions and after a determination is made, whether it has an obligation to disclose any information to comply with its continuous disclosure obligations.

### **Period of exclusion**

RG 173.42 A determination made by us under either s708A(2) or 1012DA(2) will generally exclude an entity from accessing disclosure relief for a period of 12 months from the date of the instrument of exclusion.

## C Exemption-based relief

---

### Our policy

RG 173.43 We have provided seven categories of exemption-based relief from the on-sale provisions:

- (a) Category 1: Employee share schemes;
- (b) Category 2: Share purchase plans;
- (c) Category 3: Options, convertible securities or products;
- (d) Category 4: Dividend reinvestment or bonus share plans;
- (e) Category 5: Compromises and arrangements;
- (f) Category 6: Takeovers; and
- (g) Category 7: Securities of exempt public authorities.

*Note 1:* This relief is contained in Class Order [CO 04/671].

*Note 2:* Category 8 of [CO 04/671] also provides limited relief of a transitional nature for certain executive offers made on or before 29 November 2002 under a previous class order. We have not provided ongoing relief for this category as it may lead to possible abuses.

### **Category 1: Employee share schemes**

RG 173.44 We have provided relief from the on-sale provisions for the on-sale of securities issued:

- (a) under class order relief for employee share schemes (e.g. Class Order [CO 03/184]), or any other case-specific relief similar to this class order; and
- (b) on the exercise of any options issued under that relief.

### **Category 2: Share purchase plans**

RG 173.45 We have provided relief from the on-sale provisions for the on-sale of securities and other financial products issued under class order relief for share purchase plans and interest purchase plans (i.e. Class Orders [CO 02/831] and [CO 02/832]), or any other case-specific relief similar to these class orders, or any similar relief provided for managed investment product plans.

### ***Category 3: Options, convertible securities or products***

RG 173.46 We have provided relief from the on-sale provisions for the on-sale of underlying securities or other financial products issued on the exercise of options or the conversion of convertible securities or other convertible financial products where:

- (a) the option or convertible security or other convertible financial product was issued with disclosure; and
- (b) the exercise of the option, or the conversion, did not involve any further offer.

### ***Category 4: Dividend reinvestment or bonus share plans***

RG 173.47 We have provided relief from the on-sale provisions for the on-sale of:

- (a) securities issued without disclosure to existing members under a dividend reinvestment plan or a bonus plan (i.e. under the statutory exemption in s708(13)); and
- (b) financial products issued to clients holding a financial product of the same kind under a distribution reinvestment plan (i.e. under the statutory exemption in s1012D(3)).

### ***Category 5: Compromises and arrangements***

RG 173.48 We have provided relief from the on-sale provisions for the on-sale of securities issued as part of a compromise or arrangement under Pt 5.1 (i.e. under the statutory exemption in s708(17)).

### ***Category 6: Takeovers***

RG 173.49 We have provided relief from the on-sale provisions for the on-sale of securities issued as consideration for a takeover bid under Ch 6 that is accompanied by a bidder's statement (i.e. under the statutory exemptions in s708(18) or 1012D(7)).

Note: We have provided other technical class order relief from the on-sale provisions for offers by a nominee appointed by the bidder to sell scrip consideration on behalf of foreign holders under s619(3): see Class Order [CO 04/653].

## ***Category 7: Securities of exempt public authorities***

RG 173.50 We have provided relief from the on-sale provisions for the on-sale of securities of an exempt public authority (i.e. securities issued under the statutory exemption in s708(21)).

### **Underlying principles**

RG 173.51 We have provided relief for the circumstances listed in Categories 1 to 7 because:

- (a) the basis for exemption from disclosure for the issue of these financial products extends to the on-sale of the products; and
- (b) any relief would not erode the anti-avoidance effect of the on-sale provisions.

### **Explanation**

#### ***Why is relief needed?***

RG 173.52 As discussed in Section A, the on-sale provisions are an anti-avoidance mechanism to prevent indirect issues of financial products to retail clients. However, they may apply to all financial products that are issued directly to retail clients without disclosure. Examples are financial products that are issued under:

- (a) ASIC relief for employee share plans and share purchase plans; and
- (b) the statutory exemptions available for dividend reinvestment or bonus plans.

RG 173.53 Retail clients who acquire financial products under these exemptions may have a purpose of on-selling. In this case, the on-sale provisions may apply to any on-sale by these clients within 12 months after the issue. Unless they sell under a disclosure exemption, these clients will not be able to on-sell their investments within 12 months of the issue without disclosure.

RG 173.54 For example, some of the statutory disclosure exemptions available for offers of financial products for issue in schemes of arrangement and takeover bids can attract the on-sale provisions. These offers are subject to specific alternative disclosure requirements and accordingly do not seem to give rise to the avoidance issues contemplated by the on-sale provisions.

RG 173.55 In our relief, we have not included all categories of exemptions. For example, we have excluded the exemption available for small-scale offers under s708(1) because that exemption is expressly excluded from application to on-sales.

### **Category 1: Employee share schemes**

RG 173.56 We have exempted from Pt 6D.2 disclosure the issue of securities and options by listed companies under employee share schemes (ESS), including related managed investment product plans:

- (a) in recognition of the need to foster better productivity by increasing opportunities for employees to invest in their employer; and
- (b) on the basis of:
  - (i) information available to employees as a result of their special relationship with the issuer;
  - (ii) information available to the market through the continuous obligations of the issuer; and
  - (iii) tailored transaction-specific information made available to the employee.

RG 173.57 We consider that relief from the on-sale provisions for the on-sale of these securities is warranted because:

- (a) the cost of disclosure under the on-sale provisions is likely to act as a disincentive for employers to establish, and employees to participate in, ESS;
- (b) the anti-avoidance effect of the on-sale provisions is not significantly eroded by any relief, because the primary purpose of ESS is not fundraising, but fostering better relations between employers and employees to increase productivity; and
- (c) the exemptions that we provide for an issue under ESS are conditional on the issuer implementing various specific measures for better investor protection.

RG 173.58 For similar reasons, we consider that relief from the on-sale provisions is warranted in the case of the on-sale of securities on the exercise of options that are issued to employees without disclosure because of our relief for ESS.

RG 173.59 Relief for securities issued under ESS will also be available for employees who receive the securities offshore, if the securities were issued in accordance with one of our ESS class orders.

## ***Category 2: Share purchase plans***

RG 173.60 We have provided class order and other individual relief to enable listed issuers to make offers of shares and interests in managed investment schemes to existing members up to the value of \$5000 without prospectus disclosure under a share purchase plan (SPP). This relief is provided on the basis that the small scale of the offers involved does not justify the cost of prospectus disclosure.

RG 173.61 In the same way, we consider that relief from the on-sale provisions for the on-sale of such securities issued without disclosure under an SPP is warranted. If the on-sale provisions apply, then the cost savings for issuers and retail clients (which is the underlying reason for the relief from the disclosure provisions for an SPP) will be lost. Further, the purpose of such offers is to allow existing shareholders to make further investments in the issuer, rather than to avoid disclosure through indirect offers to retail clients. Therefore, we believe that relief for the on-sale of securities issued under an SPP will not undermine the anti-avoidance purpose of the on-sale provisions.

## ***Category 3: Options, convertible securities or products***

RG 173.62 An offer of an option for the issue of a financial product requires disclosure under Pts 6D.2 or 7.9, unless it is subject to a specific exclusion. If no further offer is involved in exercising the option, then further disclosure is not required at the time of exercise. A new financial product is issued as a result of the exercise of the option.

RG 173.63 Even where a prospectus or PDS is provided for the offer of an option, the issue of the underlying product on the exercise of the option arguably involves an issue without disclosure for the purposes of s707(3) or 1012C(6) (as the case may be). This is because the prospectus or PDS relates to the offer of the option rather than to the underlying product, even though it is difficult to envisage that the document would not include information that is relevant to the underlying security: see s702 and 1011C. In these circumstances, a product issued on the exercise of an option may be affected by s707(3) if the issuer or acquirer had the requisite on-sale purpose.

RG 173.64 The legislative policy appears to be to require disclosure at the point where the option is issued, rather than at the time of exercise. It seems consistent with that policy to provide relief from the on-sale provisions for the on-sale of products issued on the exercise of the options, where there had been disclosure under Pts 6D.2 or 7.9 at

the time of the issue of the options. Such an outcome appears to be broadly consistent with Note 1 to s702 of the Act, which states:

‘If a disclosure document is needed for the option and there is no further offer involved in exercising the option, the issue or sale of the underlying securities on the exercise of the option does not need a disclosure document.’

RG 173.65 Similar considerations apply for financial products issued on the conversion of a convertible or converting product.

#### ***Category 4: Dividend reinvestment or bonus share plans***

RG 173.66 Issuers can issue shares to existing shareholders under dividend reinvestment or bonus plans without prospectus disclosure under the exemption in s708(13). The underlying reasons for this statutory exemption appear to be that the need for and the cost of prospectus disclosure is not warranted because of:

- (a) the information available to existing members; and
- (b) the limited or small-scale nature of the capital raising involved.

RG 173.67 Although on-sales are not limited to existing members, we consider that the cost considerations that underpin the statutory exemption should extend to any on-sale by shareholders within 12 months of the issue. Therefore, we consider that relief from the on-sale provisions is warranted.

RG 173.68 Similar considerations apply to other financial products issued under distribution reinvestment plans under s1012D(3).

#### ***Category 5: Compromises and arrangements***

RG 173.69 Securities issued as part of a compromise or arrangement under Pt 5.1 of the Act do not require prospectus disclosure, if the compromise or arrangement was approved at a meeting held as a result of an order under s411(1) or (1A): see s708(17). A court-approved explanatory statement is required for such meetings. That statement must include, among other things, information that is material to the making of a decision by a creditor or member about whether or not to agree to the compromise or arrangement.

RG 173.70 The specific disclosure obligations for compromises and arrangements are in effect a substitute for the requirement for a prospectus, in so far as the compromise or arrangement involves an

offer of securities. We consider that avoidance of disclosure obligations is not an issue in this situation. However, technically the on-sale provisions are capable of applying to securities issued under a compromise or arrangement, and, therefore, we consider that relief from the operation of the on-sale provisions is warranted.

### ***Category 6: Takeovers***

RG 173.71 Where securities are issued as consideration for a takeover bid under a bidder's statement, the issue does not require disclosure because of s708(18) (if securities) or s1012D(7) (if managed investment products). In those circumstances, the bidder's statement itself must include the information that would be required to be included in a prospectus or a PDS for the offer of the securities or products: see s636(1)(g) and 636(1)(ga).

RG 173.72 Given that equivalent disclosure is required, as with compromises and arrangements, we consider that avoidance of the disclosure obligations is not an issue. However, the on-sale provisions are technically capable of applying to securities or products issued as consideration for a takeover, and again we consider that relief from the on-sale provisions is warranted.

### ***Category 7: Securities of exempt public authorities***

RG 173.73 An offer for issue of securities of an exempt public authority of a state or territory does not require disclosure under Pt 6D.2: see s708(21). These authorities are generally statutory bodies or other agencies of government. Some of them engage in fundraising from time to time—for example, debt securities may be issued by a government agency to fund government programs. Those persons acquiring the securities may have an on-sale purpose.

RG 173.74 Because the offer of these securities for issue to any person does not require disclosure, it would not seem appropriate to require disclosure for their on-sale.

RG 173.75 Similarly, disclosure is not required for offers of debentures by authorised deposit-taking institutions and registered life insurance companies, and offers of securities of exempt bodies: see s708(19) and (20). However, it is unnecessary for us to provide relief for the on-sale of these securities, because the statutory exemptions in s708(19) and (20) already provide relief for both issue and on-sale.

## Key terms

---

RG 173.76 In this guide, terms have the following meaning:

**Act** The *Corporations Act 2001*, and includes regulations made for the purposes of that Act

**ASIC** The Australian Securities and Investments Commission

**ASX** The Australian Stock Exchange Ltd

**CLERP 9 Act** The *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004*

**CLERP 9 Bill** or **Bill** The Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003, as introduced into the House of Representatives on 4 December 2003

**[CO 02/272]** (for example) A class order issued by ASIC (in this example the class order numbered 02/272)

**disclosure document** Has the same meaning as given in s9 of the Act

**ED securities** Has the same meaning as given in s111AD of the Act

**ESS** Employee share purchase plans, and includes related managed investment product plans

**exclusion power** The power in s708A(2) and 1012DA(2) to preclude an entity from relying on the on-sale exemptions

**FSR Act** The *Financial Services Reform Act 2001*

**on-sale exemptions** The exemptions in s708A and 1012DA of the Act

**on-sale provisions** Sections 707(3) and (4) and s1012C(6) and (7) of the Act

**PDS** A Product Disclosure Statement required under Pt 7.9 of the Act

**quoted ED securities** Has the same meaning as given in s111AM of the Act

**retail client** Has the same meaning as given in s761G of the Act

**s707** (for example) Refers to a provision of the Act (in this example section 707)

**SPP** A share purchase plan

## Related information

---

RG 173.77

### Headnotes

Placements, prospectus, disclosure, disclosure-based relief, exemption-based relief, on-sale, on-sale provisions, anti-avoidance, employee share schemes, share purchase plans

### Class orders

Class Order [CO 02/831] *Share purchase plans — disclosure relief for securities*

Class Order [CO 02/832] *Interest purchase plans — disclosure relief for securities*

Class Order [CO 02/1180] *Disclosure for on-sale of securities and other financial products — transitional relief*

Class Order [CO 03/184] *Employee share schemes*

Class Order [CO 04/671] *Disclosure for on-sale of securities and other financial products*

Class Order [CO 04/672] *On-sale of securities and other financial products — accounting relief*

Class Order [CO 04/681] *Disclosure for on-sale of securities and other financial products — amendment*

### Legislation

*Corporations Act 2001*, Chs 2L, 2M and 6CA, Pts 5.1, 6D.2 and 7.9, s411(1), 411(1A), 674(2), 675(2), 707(3), 707(4), 708(12), 708(17), 708(19), 708(20), 708(21), 708A, 710, 713, 1012C(6), 1012C(7), 1012DA, 1016, 1016E, 1021E; former *Corporations Law* s1030, 1030(1A); *Australian Securities and Investments Commission Act 2001*; *Financial Services Reform Act 2001*

### Consultation papers

CP 32 *Secondary sales of securities that require disclosure under s707(3) and (4)*, 21 December 2001

CP 33 *Disclosure for on-sale of securities and other financial products*, 27 June 2002

CP 48 *CLERP 9 Bill: Product disclosure*, April 2004