



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 101

On-market buy-backs by ASX-listed schemes

December 2007

About this guide

This is a guide for responsible entities of ASX-listed managed investment schemes, their advisers and investors involved in or affected by buy-backs of interests in such schemes.

This guide explains the relief ASIC has given in Class Order (CO 07/422) *On-market buy-backs by ASX-listed schemes* from certain provisions of the *Corporations Act 2001* and what a responsible entity should do in conducting an on-market buy-back.

About ASIC regulatory documents

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

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

Regulatory guides: give guidance to regulated entities by:

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

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

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

Document history

This version was issued on 13 December 2007 and is based on legislation and regulations as at 13 December 2007.

Disclaimer

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

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

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A Overview

Key points

ASIC has given relief from certain requirements in the Corporations Act to enable responsible entities of certain managed investment schemes to carry out on-market buy-backs of interests in those schemes: see RG 101.1–RG 101.2 and RG 101.5–RG 101.6.

Our relief is subject to a number of requirements: see Table 1.

Overview of relief under CO 07/422

- RG 101.1 Class Order (CO 07/422) *On-market buy-backs by ASX-listed schemes* gives relief from certain requirements in the *Corporations Act 2001* (Corporations Act) to enable responsible entities of certain managed investment schemes to carry out on-market buy-backs of interests in those schemes.
- RG 101.2 CO 07/422 gives relief from:
- (a) the requirement for the scheme's constitution to specify the right to withdraw and set out adequate procedures for making and dealing with withdrawal requests under s601GA(4) (see RG 101.9–RG 101.11);
 - (b) the withdrawal procedures for non-liquid schemes in Pt 5C.6 (see RG 101.12–RG 101.16); and
 - (c) the takeovers prohibited acquisition provisions in s606 (see RG 101.17).
- RG 101.3 This relief is available provided all of the requirements in Table 1 are satisfied.
- RG 101.4 The relief only applies to on-market buy-backs by responsible entities of managed investment schemes listed on the Australian Securities Exchange Limited (ASX) that have no more than one class of interests: see RG 101.18–RG 101.22.

Table 1: Summary of requirements of relief under CO 07/422

	Key requirement	Explanation
A	Scheme's constitution must give the responsible entity power to buy back interests in the scheme	The buy-back must be carried out in accordance with the scheme's constitution and the requirements of relief summarised in this table: see RG 101.25–RG 101.26.
B	Buy-back must not materially prejudice scheme creditors	The buy-back must not materially prejudice the responsible entity's ability to pay the scheme's creditors: see RG 101.27.
C	Buy-back must be in ordinary course of trading	The buy-back must be carried out in the ordinary course of trading on ASX. Special crossings and priority crossings are not permitted: see RG 101.28–RG 101.30.
D	Buy-back must comply with the ASXLRs	The responsible entity must comply with the ASX Listing Rules (ASXLRs) in relation to an on-market buy-back of interests as if the scheme were a company listed on ASX, including: <ul style="list-style-type: none"> • ASXLR 3.8A, which requires that appropriate ongoing disclosure be made to ASX; • ASXLR 7.29, which requires that transactions in the scheme's interests are recorded on ASX on at least five days in the three months before the buy-back; and • ASXLR 7.33, which requires the buy-back price to be no more than 5% above the average of the market price for the interests (or stapled securities): see RG 101.31–RG 101.34.
E	Interests bought back must not be disposed of and must be cancelled upon registration of transfer	The responsible entity must not dispose of the interests it buys back and must ensure that, immediately after registration of the transfer to the responsible entity of the interests bought back, the interests are cancelled: see RG 101.35–RG 101.36.
F	Buy-back exceeding the 10/12 limit requires member approval	If the buy-back exceeds the 10/12 limit, member approval must be obtained. Members must be given all information known to the responsible entity that is material to the decision on how to vote on the resolution. Member approval can only be relied on for 12 months after it is given: see RG 101.37–RG 101.49.
G	Buy-back within the 10/12 limit must be announced to ASX	If the buy-back is within the 10/12 limit, member approval is not required, but the buy-back must not commence until at least 14 days have elapsed after the date of making an announcement to ASX of the intention to carry out the buy-back. A notice to ASX can only be relied on for 12 months after it is given. The buy-back must commence within two months of the date the buy-back was announced to ASX (or, if a date is specified for the commencement of the buy-back in the notice to ASX, within two months of that date): see RG 101.50–RG 101.57.
H	Exercise of discretions in determining the buy-back price must be documented and must be reasonable	The responsible entity must document the exercise of any discretions in relation to the setting of the buy-back price. The discretions must be exercised reasonably: see RG 101.58–RG 101.60.

Rationale for relief

- RG 101.5 In granting relief from the provisions listed in RG 101.2, we intend to:
- (a) enable listed schemes to utilise a cost-effective, transparent and fair means of returning capital to members;
 - (b) avoid placing listed schemes at a regulatory disadvantage to listed companies in relation to capital management techniques where there is no regulatory reason for different treatment of listed schemes and listed companies; and
 - (c) ensure that the special regulatory protections that Parliament intended for registered schemes are not undermined but operate in a commercially sensible manner.
- RG 101.6 Our policy in relation to on-market buy-backs by ASX-listed schemes is consistent with our policy on on-market buy-backs by listed companies.

B Scope of relief

Key points

CO 07/422 gives relief from s601GA(4), Pt 5C.6 and s606 of the Corporations Act: see RG 101.7–RG 101.17.

The relief only applies to responsible entities of ASX-listed registered schemes that have no more than one class of interests: see RG 101.18–RG 101.22.

What relief is available under CO 07/422?

- RG 101.7 CO 07/422 gives relief from:
- (a) the requirement for the scheme's constitution to specify the right to withdraw and set out adequate procedures for making and dealing with withdrawal requests under s601GA(4) (see RG 101.9–RG 101.11);
 - (b) the withdrawal procedures for non-liquid schemes in Pt 5C.6 (see RG 101.12–RG 101.16); and
 - (c) the takeovers prohibited acquisition provisions in s606 (see RG 101.17).
- RG 101.8 It will still be necessary for the responsible entity of an ASX-listed scheme carrying out an on-market buy-back to comply with its general duties under s601FC(1) of the Corporations Act and its obligations as an Australian financial services licensee in relation to the buy-back. This includes s601FC(1)(c), which requires the responsible entity to act in the best interests of members and, if there is a conflict between the members' interests and its own interests, to give priority to the members' interests.

Rationale for relief

Relief from the requirements of s601GA(4)

- RG 101.9 Section 601GA(4) requires that if members have a right to withdraw, the scheme's constitution must specify the right and set out adequate procedures for withdrawal in a way that is fair to all members. However, the right to withdraw in an on-market buy-back arises from the market contract rather than being specified in the constitution.
- RG 101.10 We also consider that s601GA(4) requires the constitution to include an independently verifiable method for calculating the withdrawal price: see

Regulatory Guide 134 *Managed investments: Constitutions* (RG 134). However, we are aware that in determining the particular buy-back bid price at any particular time, a responsible entity and its advisers may properly consider a number of factors.

- RG 101.11 Consequently, we have given relief from s601GA(4) because we accept that compliance with this provision would be impracticable for an on-market buy-back.

Relief from withdrawal procedures in Pt 5C.6

- RG 101.12 Payments by a responsible entity out of scheme property to members in return for a member's rights in the scheme being terminated may be a withdrawal for the purposes of Pt 5C.6. If the right to withdraw may be exercised while the scheme is non-liquid, the constitution must provide for the right to be exercised in accordance with the withdrawal procedures in Pt 5C.6.
- RG 101.13 Many schemes listed on ASX may be classified as non-liquid schemes for the purposes of Pt 5C.6 because of the nature of the assets held by the scheme. Property trusts and infrastructure funds are examples of non-liquid schemes.
- RG 101.14 The withdrawal procedures in Pt 5C.6 cannot operate consistently with the ASX Market Rules (ASXMRs) because offers to sell for transactions on ASX's market are filled on the basis of price and time priority rather than proportionately.
- RG 101.15 In the absence of relief, s601KD may have the effect of preventing a non-liquid listed scheme from engaging in an on-market buy-back.
- RG 101.16 We consider the important policy objectives of Pt 5C.6 to be less relevant for non-liquid schemes that are listed because all members are likely to have the ability to liquidate their investment by selling on-market at any time. The terms of the relief also provide an alternative means of ensuring fairness between members and for members to have a reasonable opportunity to accept offers of withdrawal under the buy-back.

Takeovers relief

- RG 101.17 We have given consequential relief from the prohibition in s606 on certain acquisitions of relevant interests in registered schemes that are listed. This is to achieve consistency with the takeovers exemption for regulated share buy-backs: see item 19 of s611. Consequently, an acquisition of relevant interests in a listed scheme's voting interests that results from an on-market buy-back of interests complying with the terms of our relief is exempt from the prohibition in s606.

What schemes does the relief apply to?

Relief only applies to ASX-listed schemes

- RG 101.18 The relief under CO 07/422 only applies to on-market buy-backs by registered schemes listed on the financial market of ASX, including schemes that form part of a listed stapled group.
- RG 101.19 The relief does not apply to other prescribed financial markets because we are not aware of a commercial need to extend our policy to other prescribed financial markets at this stage.
- RG 101.20 We will consider case-by-case relief for schemes listed on other prescribed financial markets, taking into account the financial market's operating rules, the level of market liquidity of the particular prescribed financial market and the historical and recent trading volume of interests in the particular scheme.

Relief only applies to schemes with one class of interests

- RG 101.21 The relief under CO 07/422 does not apply to ASX-listed schemes that have more than one class of interests.
- RG 101.22 We have limited the relief under CO 07/422 in this way because there is a risk that on-market buy-backs by schemes with more than one class of interests might dilute the value of holdings of members of another class and might not be fair to all members. In addition, we are not aware of a commercial need to extend our relief to schemes with multiple classes of interests at this stage. We will consider case-by-case relief for ASX-listed schemes that have more than one class of interests.

Schemes that form part of a stapled group

- RG 101.23 Schemes that form part of a listed stapled group involving a company and that propose to undertake an on-market buy-back of stapled securities will need to take account of Div 2 of Pt 2J.1 (the buy-back provisions) and Regulatory Guide 110 *Share buy-backs* (RG 110), as well as this regulatory guide.

C Requirements of relief

Key points

In carrying out an on-market buy-back of interests in an ASX-listed scheme, the responsible entity must:

- ensure that the scheme's constitution gives the responsible entity power to buy back interests in the scheme (see RG 101.25–RG 101.26);
- ensure that the buy-back does not materially prejudice scheme creditors (see RG 101.27);
- carry out the buy-back in the ordinary course of trading on ASX and not as a priority crossing or special crossing (see RG 101.28–RG 101.30);
- comply with the ASXLRs (see RG 101.31–RG 101.34);
- ensure that interests bought back are not disposed of and are cancelled upon registration of transfer (see RG 101.35–RG 101.36);
- have obtained member approval for larger buy-backs within the previous 12 months (see RG 101.37–RG 101.49);
- not commence smaller buy-backs until at least 14 days have elapsed after the date of making an announcement to ASX of the intention to carry out the buy-back (see RG 101.50–RG 101.57); and
- have documented policies regarding the exercise of discretions in setting the buy-back price (see RG 101.58–RG 101.60).

We may take enforcement action if we become aware of a buy-back proceeding in breach of these requirements: see RG 101.61–RG 101.63.

A responsible entity carrying out an on-market buy-back is not required to directly lodge any notices with ASIC: see RG 101.64–RG 101.66.

- RG 101.24 The responsible entity of an ASX-listed scheme must satisfy all of the requirements set out in RG 101.25–RG 101.60 in order to carry out an on-market buy-back of interests in the scheme. The purpose of these requirements is to ensure that the special regulatory protections that Parliament intended for registered schemes are not undermined by our relief.

Power to carry out buy-back must be in scheme constitution

- RG 101.25 An on-market buy-back of interests may only be carried out if a scheme's constitution gives the responsible entity power to buy back interests in the scheme.
- RG 101.26 This is to ensure that members have agreed that the responsible entity may buy back interests in the scheme when permitted by law. This is consistent with the protections Parliament intended for members of registered schemes

in so far as s601GA(4) provides that where there is a right to withdraw, there must be provision in the scheme's constitution.

Buy-back must not materially prejudice scheme creditors

RG 101.27 It is a requirement of the relief under CO 07/422 that the responsible entity may only carry out an on-market buy-back of interests if the buy-back does not materially prejudice the responsible entity's ability to pay scheme creditors. The responsible entity will be liable for scheme debts, but is usually entitled under the constitution to be indemnified from scheme property where it acts in the proper performance of its duties. A buy-back could therefore adversely affect creditors of the responsible entity, and this might impact on the ability of the responsible entity to operate the scheme and therefore adversely affect continuing members.

Buy-back must be in the ordinary course of trading

RG 101.28 An on-market buy-back of interests must be carried out in the ordinary course of trading on ASX. A responsible entity must not purchase interests through special crossings or priority crossings when carrying out an on-market buy-back.

Note: The terms 'special crossing' and 'priority crossing' are defined in the 'Key terms' at the end of this guide.

RG 101.29 We consider that buying back interests in the ordinary course of trading on ASX is a fair procedure because trades on ASX's trading system operate according to price-time priority. This results in the better-priced orders taking priority and if there is more than one order at the same price, the order that was placed first takes priority.

RG 101.30 Trades carried out by way of special crossings and priority crossings are exceptions to the price-time priority rule. The ASXMRs do not permit special crossings for on-market buy-backs: see ASXMR 20.9.1. The ASXMRs do not expressly prohibit priority crossings during on-market buy-backs. There is some doubt as to whether priority crossings are in the ordinary course of trading. Even where crossings might be considered to be in the ordinary course of trading, they might not be consistent with the policy objective of the provisions in Pt 5C.6 relating to withdrawals from non-liquid schemes, which is to ensure that all members have sufficient time and a reasonable opportunity to participate in the buy-back.

Buy-back must comply with the ASXLRs

- RG 101.31 The responsible entity of a listed scheme must comply with the ASXLRs in relation to an on-market buy-back of interests as if the scheme were a company listed on ASX, including:
- (a) ASXLR 3.8A, which requires that appropriate ongoing market disclosure be made to ASX (see RG 101.32);
 - (b) ASXLR 7.29, which requires that transactions in the scheme's interests are recorded on ASX on at least five days in the three months before the buy-back; and
 - (c) ASXLR 7.33, which requires the buy-back price to be no more than 5% above the average of the market price of the interests (see RG 101.33–RG 101.34).

Ongoing market disclosures

- RG 101.32 The responsible entity of a listed scheme must make appropriate ongoing disclosure to ASX to:
- (a) comply with the continuous disclosure requirements of the Corporations Act and the ASXLRs; and
 - (b) assure the market it is not buying back interests while possessing inside information in breach of the insider trading provisions (s1043A).

Maximum buy-back price

- RG 101.33 The buy-back price must not exceed the ASX price ceiling—i.e. the buy-back price must not be more than 5% above the average of the market price for interests (or stapled securities, if applicable), where the average is calculated over the last five days on which sales in the interests were recorded before the day on which the purchase is made.
- RG 101.34 Buying back interests for an amount that exceeds their value might dilute the value of holdings of those members who do not participate in the buy-back. However, we accept the view that a buy-back offer price exceeding the prevailing market price might be in the best interests of members. This is because remaining members might benefit by many prospective sellers being taken out of the market and because higher returns might be able to be derived by the scheme on the remaining funds than would be derived on the funds applied in the buy-back.

Interests bought back must not be disposed of and must be cancelled

- RG 101.35 Interests bought back must not be disposed of and must be cancelled upon registration of the transfer to the responsible entity.
- RG 101.36 This is to ensure that when scheme property is used to buy back interests in the scheme, the scheme receives the benefit of having fewer interests on issue that have rights in relation to the scheme.

Buy-back exceeding the 10/12 limit requires member approval

- RG 101.37 An on-market buy-back of an interest that will cause the responsible entity to exceed the 10/12 limit requires member approval by way of ordinary resolution. The 10/12 limit refers to 10% of the smallest number, at any time during the last 12 months, of interests in the scheme. Section 253E imposes voting restrictions in certain circumstances.
- RG 101.38 For member approval to be effective, the resolution must approve a transaction the consequences of which were known at least to those who voted for it.

Note: See *ANZ Nominees Pty Ltd v Wormald International Ltd* (1988) 13 ACLR 698 at 704–5 and *NSCS v Consolidated Gold Mining Areas NL (No 2)* (1985) 1 NSWLR 622 at 625.

Rationale for member approval

- RG 101.39 On-market buy-backs that exceed the 10/12 limit are more likely to give rise to significant control and dilution issues.
- RG 101.40 The greater the size of the buy-back, the greater the amount of scheme property that will be required to fund the buy-back and, depending on the buy-back price, the greater the risk of dilution of the value of interests of those members who do not sell into the buy-back. Furthermore, the greater the size of the buy-back, the greater the risk that it will entrench the responsible entity's control if the responsible entity and its associates hold interests in the scheme and they choose not to sell into the buy-back.
- RG 101.41 Members should have a right to vote on buy-backs that raise these control and dilution issues.

What needs to be disclosed to members

- RG 101.42 The notice of meeting or the explanatory material accompanying it must include all information known to the responsible entity that is material to the decision how to vote on the buy-back resolution. The responsible entity need

not disclose information if it would be unreasonable to do so because the responsible entity had previously disclosed the information to members of the scheme.

RG 101.43 We consider that the information in RG 101.44–RG 101.45 is material to a member’s decision whether to vote in favour of a resolution or accept a buy-back offer.

When seeking member approval

RG 101.44 We expect a responsible entity to provide the following information to scheme members when seeking their approval:

- (a) an explanation of how an on-market buy-back works, including that the responsible entity must purchase interests in the ordinary course of trading on ASX and may offer to purchase interests at a price or prices determined by the responsible entity but that cannot be greater than the ASX price ceiling;
- (b) the number of interests on issue;
- (c) the number and percentage of interests to be bought back (or, if it is not possible to specify the exact number and percentage of interests to be bought back, the maximum proportion of the scheme’s interests to be bought back within the scope of the approval);
- (d) the reasons for the buy-back—as a matter of best practice, this should include a short description of why other ways of returning excess funds have not been chosen;
- (e) the interests of the responsible entity and any associate of the responsible entity who may participate in the buy-back;
- (f) the financial effect of the buy-back on the scheme;
- (g) the source of funds for the buy-back (e.g. existing cash reserves of the scheme, borrowings, or sale of scheme assets);
- (h) the advantages and disadvantages of the buy-back;
- (i) the date the buy-back offer will commence and close (or, if the buy-back will be open for an indefinite period of time until a certain number and percentage of interests, or maximum proportion of the scheme’s funds, are bought back, a statement of that fact: see RG 101.49 if that buy-back period might exceed 12 months);
- (j) the scheme’s latest set of audited financial statements (unless they have recently been given to scheme members); and
- (k) information regarding the current market price of the interests and any additional information that the ASXLRs require to be disclosed.

Note: The information listed above is similar to the information we expect a company to provide to shareholders when seeking shareholder approval and making offers under a share buy-back: see RG 110.18.

Additional disclosures when buying back a significant percentage of interests

- RG 101.45 If a responsible entity proposes to buy back a significant percentage of interests, it should consider including:
- (a) a report by any of its directors who are independent about whether scheme members should vote in favour of the buy-back, particularly having regard to how much the responsible entity is paying for the interests; and
 - (b) an independent expert report with a valuation of the interests.

Note: For our policy on expert reports, see Regulatory Guide 111 *Content of expert reports* (RG 111) and Regulatory Guide 112 *Independence of experts* (RG 112).

- RG 101.46 For buy-backs of a significant proportion of the interests in a scheme, it is usually appropriate for members to have the benefit of independent advice on whether to vote for a buy-back.

When previously disclosed information is overtaken by events

- RG 101.47 If an event occurs in the 12 months after members approve the buy-back that makes any previously disclosed information misleading or deceptive, the responsible entity can no longer rely on that approval to carry out a buy-back permitted by our relief.

Confidential information

- RG 101.48 If a responsible entity is concerned about disclosing confidential information in relation to the scheme, the responsible entity or an expert may summarise this information for scheme members. However, our relief does not permit the responsible entity to omit detailed information that would influence the decision to vote on a buy-back or accept a buy-back offer.

12-month limit on approval

- RG 101.49 A responsible entity cannot use member approval to give itself an open-ended 'blank cheque' to buy back interests. After 12 months we consider that approval of a buy-back will be 'stale' (i.e. the approval will likely no longer provide the intended protection for shareholders and creditors). A 12-month period is also consistent with the 10/12 limit.

Process where buy-back is within the 10/12 limit

- RG 101.50 An on-market buy-back of interests that is within the 10/12 limit will not require member approval.
- RG 101.51 Even though member approval will not be required for buy-backs within the 10/12 limit, the responsible entity must disclose to ASX the information required by ASXLR Appendix 3C (Announcement of buy-back). This information must include the interests of the responsible entity and any associate of the responsible entity who may participate in the buy-back, and the source of funds for the buy-back. A new disclosure complying with that requirement must be made to ASX if the buy-back is to continue after 12 months from the date of the previous disclosure.
- RG 101.52 The buy-back must not commence until at least 14 days have elapsed after announcing the buy-back through ASXLR Appendix 3C.
- RG 101.53 The process outlined in RG 101.50–RG 101.52 will help to ensure that scheme members are given sufficient time to be made aware of the intended buy-back when they will not have notice through a requirement for member approval. This is intended to promote a reasonable opportunity to participate in the buy-back, having regard to the fact that the responsible entity is not required to send a withdrawal notice to scheme members under Pt 5C.6. The 14-day period is consistent with the on-market share buy-back requirements under s257F(1).

When previously disclosed information is overtaken by events

- RG 101.54 If an event occurs in the 12 months after ASX is notified of the buy-back that makes any previously disclosed information misleading or deceptive, the responsible entity can no longer rely on that notice to carry out a buy-back permitted by our relief.

Confidential information

- RG 101.55 If a responsible entity is concerned about disclosing confidential information in relation to the scheme, the responsible entity or, if there is one, an expert may summarise this information for scheme members. However, our relief does not permit the responsible entity to omit detailed information that would influence the decision to accept a buy-back offer.

Expiry of notice after two months

- RG 101.56 If a responsible entity has not commenced buying back interests two months after notifying ASX of a buy-back, we will regard that notice as having expired. We will calculate the two-month period from:

- (a) the date specified, if the disclosure to ASX specifies a date for the proposed buy-back (ASXLR Appendix 3C); or
- (b) if no such date is specified, the date the buy-back is announced through ASXLR Appendix 3C.

If, at the expiration of that two-month period, the responsible entity has not commenced buying back interests, it must lodge a fresh notice for any subsequent buy-back.

RG 101.57 After two months, members may reasonably expect that a buy-back is not proceeding. The expiry of notice after two months is also consistent with s631(1) for announcements about proposed takeovers.

Pricing discretions must be documented

RG 101.58 We expect that the responsible entity may wish to buy at a higher price than the market price as set by previous transactions to which it was not a party. If the responsible entity exercises discretions, it must:

- (a) have a documented policy dealing with how it proposes to exercise each discretion; or
- (b) if there is no documented policy or the discretion was exercised in a way that departs from that policy, prepare a document that, among other things, explains why it was reasonable to exercise the discretion the way it was exercised.

RG 101.59 We think it is appropriate for the responsible entity to have a documented policy regarding discretions it exercises in setting the buy-back bid price at any particular time during the course of an on-market buy-back. In our view, documenting the pricing policy will help ensure that the responsible entity exercises any discretions appropriately and in the best interests of scheme members.

RG 101.60 The policy or document must be kept for seven years after it ceases to be current. The responsible entity will need to consider if it is under any obligation to disclose information about the policy or discretions to:

- (a) members under the continuous disclosure provisions; or
- (b) prospective members in a Product Disclosure Statement.

ASIC's role and non-compliance

RG 101.61 If the responsible entity of an ASX-listed scheme carries out an on-market buy-back but does not comply with the requirements set out above and summarised in Table 1, it will breach the Corporations Act as modified by

CO 07/422. Responsible entities and their officers may be subject to civil and criminal consequences.

- RG 101.62 If we become aware of non-compliance, we may take appropriate action by:
- (a) asking the responsible entity to take remedial action;
 - (b) taking civil or criminal action in the courts against the responsible entity or the officers who are involved; or
 - (c) applying to the Takeovers Panel.
- RG 101.63 We will not pre-vet notices of meetings or other documents relating to buy-backs. We will post-vet some documents as part of surveillance activities or in response to complaints.

Lodgement of notices with ASIC

- RG 101.64 A responsible entity carrying out an on-market buy-back is not required to directly lodge any notices with ASIC. All relevant notices relating to the commencement, ongoing status and completion of the on-market buy-back must be made through ASX in accordance with the ASXLRs.

Note: See ASXLR 3.8A and Appendix 3C (Announcement of buy-back), Appendix 3D (Changes relating to buy-back), Appendix 3E (Daily share buy-back notice) and Appendix 3F (Final share buy-back notice).

- RG 101.65 We will be made aware of the commencement, ongoing conduct and completion of any on-market buy-back (including notices of meetings to consider a buy-back resolution and any explanatory material accompanying a notice of meeting) through notices that the responsible entity is required to give ASX and that ASX releases to the market through the company announcements platform.
- RG 101.66 ASX provides ASIC with any information about a listed scheme that ASX makes available to participants in the market: s792C. Existing arrangements are in place between ASIC and ASX to facilitate this flow of information.

Key terms

Term	Meaning in this document
10/12 limit	The 10/12 limit is 10% of the smallest number of interests that are on issue at any time during the previous 12 months
ASX	Australian Securities Exchange Limited
ASXLRs	ASX Listing Rules
ASXMRs	ASX Market Rules
buy-back	A buy-back of interests in a managed investment scheme that is listed on ASX
buy-back price	The amount to be paid to a member whose interest in the managed investment scheme is being purchased by the responsible entity of the scheme
Corporations Act	The <i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
crossings	A crossing means a transaction in which an ASX market participant who has permission to enter trading messages in a trading platform offered by ASX acts: <ul style="list-style-type: none"> • on behalf of both buying and selling clients on the transaction; or • for the buying or selling client and is the principal within the meaning of ASXMR 7.3.5 on the other side of the transaction
priority crossing	A crossing of cash market products (as defined in ASXMR 2.10) carried out in accordance with ASXMR 17.2.4
registered scheme	A registered scheme as defined in s9
responsible entity	A responsible entity as defined in s9
RG 110 (for example)	An ASIC regulatory guide (in this example, numbered 110)
s601GA(4) (for example)	A section of the Corporations Act (in this example, numbered 601GA(4))
special crossing	A crossing effected in accordance with ASXMR 22.3 or section 18 of the ASXMRs
withdrawal price	See 'buy-back price' above

Related information

Headnotes

10/12 limit, buy-back price, disclosure, discretion, managed investment schemes, market price, member approval, on-market buy-back, withdrawal procedures, withdrawal requests

Class orders

CO 07/422 *On-market buy-backs by ASX-listed schemes*

Regulatory guides

RG 110 *Share buy-backs*

RG 111 *Content of expert reports*

RG 112 *Independence of experts*

RG 134 *Managed investments: Constitutions*

RG 136 *Managed Investments: Discretionary powers and closely related schemes*

Legislation

Corporations Act Div 2 of Pt 2J.1, Pt 5C.6, s253E, 257F(1), 601FC(1)(c), 601GA(4), 601KD, 606, item 19 of s611, 631(1), 792C, 1043A

Cases

ANZ Nominees Pty Ltd v Wormald International Ltd (1988) 13 ACLR 698

NSCS v Consolidated Gold Mining Areas NL (No 2) (1985) 1 NSWLR 622

Consultation papers

CP 77 *On-market buy-backs by ASX-listed schemes*

Information releases

IR 06-44 *ASIC consults on policy on listed managed investment scheme buy-backs* (19 December 2006)