

Divider Tab No. 1

E-MAILED

Responsible Partner [REDACTED]
Our Ref [REDACTED]

8 April 2013

The Senior Manager
Administrative Law Team
Australian Securities & Investments Commission
GPO Box 9827
SYDNEY NSW 2001

BY EMAIL: FOIrequest@asic.gov.au

Dear Sir/Madam

FREEDOM OF INFORMATION APPLICATION

We act on behalf of [REDACTED] in a claim for compensation.

Please find **enclosed** our clients authority.

[REDACTED] were clients of [REDACTED] between May 2012 and September 2012 (account number [REDACTED]). [REDACTED] executed and cleared trades on behalf of our clients.

On or about 12 July 2012 [REDACTED] closed open options positions on behalf of our clients without their consent.

We request access to all documentation held by ASIC with regard to:

1. investigations conducted by ASIC into [REDACTED] during 2012 and/or 2013;
2. interim and/or final reports prepared by ASIC in relation [REDACTED] during 2012 and 2013; and
3. recommendations made by ASIC to [REDACTED] with regard to the implementation of new procedures and/or risk management systems during 2012 and 2013.

This request is made pursuant to the *Freedom of Information Act 1982 (Cth)*.

Please attention responses to [REDACTED]

If you have any questions in relation to the above or our instructions please do not hesitate to contact [REDACTED]

Yours faithfully

[REDACTED]

Divider Tab No. 2



ASIC

Australian Securities & Investments Commission

Level 5, 100 Market Street, Sydney
GPO Box 9827 Sydney NSW 2001
DX 653 Sydney

Telephone: (02) 9917 2000
Facsimile: (02) 9911 2414
ASIC website: www.asic.gov.au

Our Ref: PMR 2013/7971
Your Ref: [REDACTED]

9 May 2013

[REDACTED]

Attention: [REDACTED]

By Email: [REDACTED]

Dear Sirs

Request under the Freedom of Information Act 1982 on behalf of [REDACTED]
[REDACTED]

I refer to your request under the Freedom of Information Act 1982 (FOI Act) dated 8 April 2013 in which you sought access to:

"...all documentation held by ASIC with regard to:

- 1. Investigations conducted by ASIC into [REDACTED] during 2012 and/or 2013;*
- 2. Interim and/or final reports prepared by ASIC in relation to [REDACTED] during 2012 and 2013; and*
- 3. Recommendations made by ASIC to [REDACTED] with regard to the implementation of new procedures and/or risk management systems during 2012 and 2013."*

I also refer to my letter dated 17 April 2013, in which I confirmed receipt of your request under the FOI Act.

I am the authorised decision-maker for the purposes of section 23 of the FOI Act.

I have determined that your request is a valid request under section 15 of the FOI Act.

Paragraph 1 of your request seeks documentation held by ASIC with regard to "Investigations conducted by ASIC into [REDACTED] during 2012 and/or 2013". Please note that I have not interpreted the word "investigation" in this paragraph as being limited to formal investigations conducted by ASIC under s13 of the *Australian Securities and Investments Commission Act 2001*.

I have identified 25 documents as coming within the terms of your request. These are listed in the Schedule to this letter.

My Decision

I advise that I have decided not to release the documents marked "Exempt" in the Schedule attached to this letter, on the grounds that the documents are exempt from release for the reasons set out below. All documents set out in the Schedule are exempt from release.

Section 42 – Documents subject to legal professional privilege

Section 42 of the FOI Act provides:

(1) A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

It is my view that the document marked 'Exempt' under this section is exempt on these grounds. The document is a communication seeking confidential legal advice and is subject to legal professional privilege.

I have considered the following elements of legal professional privilege:

1. whether there is a legal adviser-client relationship
2. whether the communication was for the purpose of giving or receiving legal advice or for use or in connection with actual or anticipated litigation
3. whether the advice given is independent
4. whether the advice given is confidential

I am satisfied that a lawyer-client relationship exists between the legal adviser and the client and confidential legal advice was provided. The dominant purpose of the document was the obtaining of legal advice.

Therefore, I find that the document identified is an exempt document pursuant to section 42 of the FOI Act.

Section 45 – Documents containing material obtained in confidence

Section 45 of the FOI Act provides:

- (1) A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency, the Commonwealth or Norfolk Island), for breach of confidence.*

It is my view that the documents marked 'Exempt' under this section are exempt on these grounds. The relevant documents contain information sent to, and received from, an external third parties in confidence.

To found an action for breach of confidence in relation to information, the following five criteria must be satisfied:

1. the information must be specifically identified;
2. the information must have the necessary quality of confidentiality;
3. the information must have been communicated and received on the basis of a mutual understanding of confidence;
4. the information must have been disclosed, or threatened to be disclosed, without authority; and
5. unauthorised disclosure of the information has or will cause detriment.

Information in documents numbered 1, 2, 3, 4, 5, 6, 7, 13, 14, 20, 21, 22 and 24 in the Schedule which is specifically identifiable, has the necessary quality of confidentiality. In particular, it is ASIC's practice to keep information reported to it, confidential as required by legal requirements under the *Australian Securities and Investments Commission Act 2001*, ASIC public policy and other related laws and policy.

The information in documents numbered 11 and 25 in the Schedule which is specifically identifiable, has the necessary quality of confidentiality in that it was communicated to and received by ASIC on the basis of a mutual understanding of confidence.

Release of this information would cause detriment to the third parties who provided it if it were to be disclosed. The unauthorised disclosure of information in the documents would found actions against ASIC for breach of confidence.

Therefore, I find that the documents identified are exempt documents pursuant to section 45(1) of the FOI Act.

Section 47C - Deliberative processes

Section 47C of the FOI Act provides:

General rule

- (1) *A document is conditionally exempt if its disclosure under this Act would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:*
- (a) *an agency; or*
 - (b) *...*
 - (c) *...*
 - (d) *....*

It is my view that the documents marked 'Exempt' under this section are exempt on these grounds. A deliberative process involves the exercise of judgment in developing and making a selection from different options.

I consider that the relevant documents that fall under this exemption disclose opinions, consultations, recommendations and deliberations which have taken place in the course of ASIC's deliberative process. Given the nature of the information contained in the documents, the release of the documents would be likely to impede or have an adverse effect on ASIC's ability to conduct confidential internal deliberations in relation to surveillances and inquiries.

I have considered whether the disclosure of the documents would, on balance, be in the public interest. Given the nature of the information contained in the documents, the release of the documents would have an effect on the capacity of ASIC to frankly, fully and properly consider matters. Furthermore, disclosure of these documents could also result in misinformation and misleading and unfair conclusions in respect of the matters therein. I am of the opinion therefore that the public interest in releasing these documents is outweighed by the factors weighing against disclosure.

Therefore, I find that the documents identified are exempt documents pursuant to section 47C of the FOI Act.

Section 47E(d) - substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Section 47E(d) of the FOI Act provides:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

- (a) *...*
- (b) *...*
- (c) *...*
- (d) *have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.*

It is my view that the documents marked 'Exempt' under this section are exempt on these grounds. I am of the view that release of the documents would have a substantial adverse effect on the proper and efficient conduct of ASIC's functions.

Documents numbered 5, 6, 7, 18, 19 and 25 in the Schedule contain information sent to or received from external third parties in confidence. ASIC must take reasonable measures to prevent unauthorised use and disclosure of information it sends and receives in confidence in connection with its statutory functions. Person or entities with whom ASIC communicates, and from whom ASIC obtains information, would be less likely to cooperate with ASIC and provide information if the information communicated could be released under the FOI Act. Further, in the context of reports of misconduct, the release of such information could result in public criticism of a third party, in circumstances where there has been no formal finding of misconduct.

I have considered whether the disclosure of the documents would, on balance, be in the public interest. I find that the public benefit in disclosing the documents is outweighed by the public interest in maintaining a process whereby material can be provided to ASIC with the knowledge that that information will remain confidential. It is also outweighed by the public interest in maintaining the confidentiality of the methods and procedures by which ASIC operates. Accordingly, I find that the disclosure of the information would not, on balance, be in the public interest.

Documents 8, 10, 12, 15, 17 and 23 contain confidential internal discussions, drafts and evaluations related to the ongoing conduct of inquiries undertaken by ASIC. Release of this information would inhibit frank discussion of these matters in the future.

I have considered whether the disclosure of the documents would, on balance, be in the public interest. I find that the public benefit in disclosing the documents is outweighed by the public interest in ensuring that a regulatory agency such as ASIC is able to frankly and freely plan its inquiries and discuss the approaches to and outcomes of such inquiries. Accordingly, I find that the disclosure of the information would not, on balance, be in the public interest.

Therefore, I find that the documents identified are exempt documents pursuant to section 47E(d) of the FOI Act.

Section 47F – Personal Privacy

Section 47F of the FOI Act provides:

- (1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).*
- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:*
 - (a) the extent to which the information is well known;*
 - (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;*

- (c) the availability of the information from publicly accessible sources;*
- (d) any other matters that the agency or Minister considers relevant.*

It is my view that the documents marked 'Exempt' under this section are exempt on these grounds.

Personal information is defined in section 4(1) of the FOI Act as information or an opinion (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

The documents identified above contain information in relation to individuals whose identities are apparent. The information includes names, details of trading accounts and, in the case of some documents, financial positions. The personal information is not well known and is not in the public domain. It is not publicly known that the individuals to whom the information relates are associated with the matters dealt with in the documents.

Having regard to the matters to which section 47F(2) of the FOI Act refers, I find that the disclosure of the documents identified above would involve the unreasonable disclosure of personal information and therefore, that those documents are conditionally exempt pursuant to section 47F(1) of the FOI Act to the extent that they would disclose the personal information.

I have considered whether the disclosure of the documents would, on balance, be in the public interest. It is my view that the documents, if released, would not promote the objects of the FOI Act, inform debate on a matter of public importance, promote effective oversight of public expenditure nor allow a person to access his or her personal information. Accordingly, I find that the disclosure of the information would not, on balance, be in the public interest.

Therefore, I find that the documents identified are exempt documents pursuant to section 47F of the FOI Act.

Section 47G – Business, Commercial or Financial Affairs of an Organisation

Section 47G of the FOI Act provides:

(1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

- (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or*

(b) could reasonably be expected to prejudice the future supply of information to the Commonwealth, Norfolk Island or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

It is my view that the documents marked 'Exempt' under this section are exempt on these grounds. This is because:

- (a) The information contained within the documents relates to the business, commercial and financial affairs of certain organisations;
- (b) The disclosure of the information contained within the documents would, or could reasonably be expected to unreasonably affect the business, commercial and financial affairs of certain organisations; and
- (c) Disclosure of the information could reasonably be expected to prejudice the future supply of information to the Commonwealth, or an agency, for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

I have considered whether the disclosure of the documents would, on balance, be in the public interest. Release of the documents could reasonably be expected to unreasonably affect the business, commercial and financial affairs of certain organisations. Disclosure of these documents could result in misinformation and lead to misleading and unfair conclusions in respect to those organisations. Furthermore, publication of information provided to ASIC in confidence will reduce the likelihood that parties will voluntarily provide information to ASIC in the future.

It is my view that the documents, if released, would not promote the objects of the FOI Act or inform debate on a matter of public importance. Accordingly, I find that the disclosure of the information would not, on balance, be in the public interest.

Therefore, I find that the documents identified are exempt documents pursuant to section 47G of the FOI Act.

Section 22 of the FOI Act

Section 22 of the FOI Act provides that where an agency or Minister decides not to grant access to a document on the grounds that it is an exempt document or that to grant access to a document would disclose information that would reasonably be regarded as irrelevant to the request: and, *"it is possible for the agency....to make a copy of the document with such deletions that the copywould not be an exempt document: and ..would not disclose such information....and it is reasonably practical for the agency or Minister, having regard to the nature and extent of the work involved in deciding on and making those deletions and resources available for the work, to make such a copy...the agency or Minister shall, unless it is apparent from the request or as a result of consultation by the agency or Minister with the applicant, that the applicant would not wish to have access to such a copy, make and grant access to such a copy"*.

I have considered whether, pursuant to section 22 of the FOI Act, access should be given to part of the exempt documents. For the reasons which I have provided as the basis of the exemptions, I believe that it would not be possible to make copies of the documents with such deletions that the documents would not be exempt documents.

Review Rights

I provide you with the following information as required by section 26 of the FOI Act.

In the event that you are dissatisfied with the decision:

1. You may, within 30 days after the day on which you have been notified of this decision, apply in writing to ASIC for a review of my decision by another ASIC officer under section 54B of the FOI Act. This request should be addressed to me or to the Senior Manager, Administrative Law GPO Box 9827 SYDNEY or by email to foirequest@asic.gov.au
2. You may apply in writing to the Australian Information Commissioner for a review of my decision under section 54N of the FOI Act. Correspondence should be addressed to the Office of the Australian Information Commissioner at GPO Box 2999 Canberra ACT 2601 OR GPO Box 5218 Sydney NSW 2001.
3. You may lodge a complaint to the Australian Information Commissioner in respect to the conduct of ASIC in the handling of this request. Correspondence should be addressed to the Office of the Australian Information Commissioner - GPO Box 2999 Canberra ACT 2601 OR GPO Box 5218 Sydney NSW 2001GPO Box 5218 Sydney NSW 2001.

Yours faithfully

Ananda Stoevelaar
(Authorised decision-maker under subsection 23(1) of the FOI Act)
for the Australian Securities and Investments Commission

Schedule – Overview of exemption provisions applied in decision

No	Description of document	Date	No. of Folios	Decision on Access	Relevant Section
1	Correspondence from Third Party to ASIC	24-Jul-12	2	Exempt	S.45 S.47G
2	Email from Third Party to ASIC	30-Jul-12	1	Exempt	S.45 S.47G
3	Attachment to above Email (no. 2)	6-Jul-12	1	Exempt	S.45 S.47G S.47F
4	Attachment to above Email (no. 2)	6-Jul-12	1	Exempt	S.45 S.47G S.47F
5	Email from Third Party to ASIC	30-Jul-12	2	Exempt	S.45 S.47E(d) S.47G
6	Attachment to above Email (no. 5)	30-Jul-12	1	Exempt	S.45 S.47E(d) S.47G
7	Attachment to above Email (no. 5)	30-Jul-12	3	Exempt	S.45 S.47E(d) S.47G
8	Internal ASIC Email	30-Jul-13	1	Exempt	S.47E(d) S.47G
9	Internal ASIC Email	30-Jul-13	1	Exempt	S.42 S.47C S.47G
10	Draft Correspondence to Third Party	?Aug-12	11	Exempt	S.47C S.47E(d) S.47G
11	Email from ASIC to Third Party	31-Jul-12	1	Exempt	S.45 S.47G
12	Internal ASIC Email	5-Oct-12	1	Exempt	S.47E(d) S.47G
13	Correspondence between ASIC and Third Party	22-Oct-12	2	Exempt	S.45 S.47G
14	Attachment to Email above (no. 13)	Aug-12	13	Exempt	S.45 S.47G
15	Internal ASIC Email	22-Oct-12	1	Exempt	S.47C S.47E(d) S.47G S.47F
16	Attachment to Email above (no. 15)	Aug-12	13	Exempt	S.45 S.47G
17	Draft Correspondence to Third Party	23-Oct-12	8	Exempt	S.47C S.47E(d)

18	Email from ASIC to Third Party	23-Oct-12	1	Exempt	S.47E(d)
19	Attachment to above Email (no. 18)	23-Oct-12	6	Exempt	S.47E(d)
20	Email from Third Party to ASIC	25-Oct-12	1	Exempt	S.45
21	Attachment to above Email (no. 20)	25-Oct-13	2	Exempt	S.45 S.47G
22	Attachment to above Email (no. 20)	Undated	3	Exempt	S.45 S.47G S.47F
23	Internal ASIC Email	26-Oct-12	1	Exempt	S.47C S.47E(d) S.47G
24	Attachment to above Email (no. 23)	Undated	3	Exempt	S.45 S.47G S.47F
25	File Note of meeting with Third Party	31-Oct-12	2	Exempt	S.45 S.47G S.47E(d)

Divider Tab No. 3



ASIC

Australian Securities & Investments Commission

Level 5, 100 Market Street, Sydney
GPO Box 9827 Sydney NSW 2001
DX 653 Sydney

Telephone: (02) 9911 2000
Facsimile: (02) 9911 2414
ASIC website: www.asic.gov.au

Our Ref: PMR 2013/7971
Your Ref: [REDACTED]

11 July 2013

[REDACTED]

Attention: [REDACTED]

By Email: [REDACTED]

Dear Sirs

Internal Review of a Decision in relation to a Request under the Freedom of Information Act 1982 on behalf of [REDACTED]

I refer to your request dated 8 April 2013 to the Australian Securities and Investments Commission (ASIC) under the Freedom of Information Act 1982 (FOI Act) (the Request) in which you sought access to:

"...all documentation held by ASIC with regard to:

1. *Investigations conducted by ASIC into [REDACTED] during 2012 and/or 2013;*
2. *Interim and/or final reports prepared by ASIC in relation to [REDACTED] during 2012 and 2013; and*
3. *Recommendations made by ASIC to [REDACTED] with regard to the implementation of new procedures and/or risk management systems during 2012 and 2013."*

I also refer to:

- (a) the letter of Ananda Stoevelaar of ASIC dated 9 May 2013 which responded to the Request (**Original FOI Decision**); and
- (b) my letter dated 17 June 2013 which acknowledged your request for an internal review of the Original FOI Decision following the notification dated 12 June 2013 by the Office of the Australian Information Commissioner (**OAIC**) to ASIC that the applicants had withdrawn a request for review of the Original FOI Decision by the OAIC.

I am the authorised decision-maker for the purposes of section 23 of the FOI Act.

I have determined that the Request is a valid request under section 15 of the FOI Act.

Paragraph 1 of the Request sought documentation held by ASIC with regard to "Investigations conducted by ASIC into [REDACTED] during 2012 and/or 2013". Please note that I have not interpreted the word "investigation" in this paragraph as being limited to formal investigations conducted by ASIC under section 13 of the *Australian Securities and Investments Commission Act 2001*.

I have identified 38 documents as coming within the terms of the Request. These are listed in the Schedule to this letter (**the Schedule**).

The Australian Information Commissioner has issued Guidelines under section 93A of the FOI Act (**Guidelines**) to which regard must be had for the purposes of performing a function, or exercising a power, under the FOI Act. Accordingly, I have referred to the Guidelines, where relevant, in this letter.

My Decision

I advise that I have decided not to release the documents marked "Exempt" in the Schedule on the grounds that the documents are exempt from release for the reasons set out below. All documents set out in the Schedule are exempt from release.

Section 42 – Documents subject to legal professional privilege (LPP)

Section 42 of the FOI Act provides:

- (1) *A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.*

It is my view that the documents marked 'Exempt' which refer to section 42 (as set out in the Schedule) are exempt under this section. Each of the specified documents has been prepared for the dominant purpose of obtaining confidential legal advice and is subject to legal professional privilege.

I have considered the following elements of legal professional privilege:

1. whether there is a legal adviser-client relationship
2. whether the communication was for the purpose of giving or receiving legal advice or for use or in connection with actual or anticipated litigation
3. whether the advice given is independent
4. whether the advice given is confidential

I am satisfied that a legal adviser-client relationship exists in connection with the documents specified above. The dominant purpose for the preparation of the documents was the obtaining of legal advice. I am satisfied that the advice given is both independent and confidential.

The Guidelines suggest that agencies should not assert LPP unless "real harm" would result from disclosure of the information. In deciding to assert LPP in relation to the documents specified above, I am satisfied that substantial prejudice (i) to ASIC's internal processes and operations and (ii) to certain third parties mentioned in such documents would result from disclosure of these documents. This is because of the nature of the contents of these documents and the context in which these documents were prepared.

Therefore, I find that the documents specified above are exempt documents pursuant to section 42 of the FOI Act and access to such documents shall not be given pursuant to section 11A(4) of the FOI Act.

Section 45 – Documents containing material obtained in confidence

Section 45 of the FOI Act provides:

- (1) A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency, the Commonwealth or Norfolk Island), for breach of confidence.*

It is my view that the documents marked 'Exempt' which refer to section 45 (as set out in the Schedule) are exempt under this section. Each of the specified documents contains information received by ASIC from an external third party in confidence.

To found an action for breach of confidence in relation to information, the following five criteria must be satisfied:

1. the information must be specifically identified;
2. the information must have the necessary quality of confidentiality;
3. the information must have been communicated and received on the basis of a mutual understanding of confidence;
4. the information must have been disclosed, or threatened to be disclosed, without authority; and
5. unauthorised disclosure of the information has or will cause detriment.

Information in the specified documents has been specifically identified and is within the scope of the applicants' request.

The documents specified above contain information that is not common knowledge or in the public domain and I am satisfied that the documents specified above have the necessary quality of confidentiality in view of the nature of the contents of such documents and the circumstances of their delivery.

For the information to have been communicated and received on the basis of a mutual understanding of confidence, both the provider of the information and ASIC need to have understood and accepted an obligation of confidence. Although certain of the documents specified above do not contain an express requirement that they be kept confidential, the nature of the information contained in such documents indicates an understanding and/or expectation by and from the provider that they be treated in confidence. From the perspective of ASIC as the recipient of such information, it is ASIC's practice to protect from unauthorised use or disclosure information which has been given to ASIC in confidence or in connection with the performance of its functions or the exercise of its powers, as required by the *Australian Securities and Investments Commission Act 2001* and as set out in relevant published statements of ASIC policy. Therefore, I am satisfied that the information in such specified documents has been communicated and received on the basis of a mutual understanding of confidence between the provider and ASIC.

The Guidelines explain that the scope of the confidential relationship will often need to be considered to ascertain whether disclosure is authorised. For example, the law may allow disclosure to other parties in the performance of an agency's functions, which will amount to authorised use and/or disclosure. However, I am satisfied that, given the information was provided by the provider to ASIC on the understanding of confidence and the provider has not consented to its disclosure, the disclosure would be unauthorised.

I must now consider whether unauthorised disclosure of the information in the documents specified above would cause detriment. In my view, disclosure of the documents specified above would result in a level of discomfort, embarrassment and/or distress for the provider of such documents and also the third parties mentioned in such documents. In addition, disclosure may expose the provider's actions to public discussion and criticism. I am satisfied that the unauthorised disclosure of the documents specified above in this case would cause detriment to the provider of such documents and the third parties mentioned in such documents.

Therefore, I find that the documents specified above are exempt documents pursuant to section 45(1) of the FOI Act and access to such documents shall not be given pursuant to section 11A(4) of the FOI Act.

Section 47C - Deliberative processes

Section 47C of the FOI Act provides:

General rule

- (1) *A document is conditionally exempt if its disclosure under this Act would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:*
- (a) an agency; or*
 - (b) ...*
 - (c) ...*
 - (d)*

It is my view that the documents marked 'Exempt' which refer to section 47C (as set out in the Schedule) are conditionally exempt under this section.

I consider that the specified documents comprise opinions, observations, consultations, recommendations and deliberations which have taken place in the course of ASIC's deliberative process. A deliberative process involves the exercise of judgment in developing and making a selection from different options. In short, deliberative processes involved in the functions of ASIC are its thinking processes.

I have considered whether the disclosure of the documents specified above would, on balance, be contrary to the public interest under section 11A(5) of the FOI Act.

Section 11B(3) of the FOI Act lists factors that favour access when applying the public interest test. In my view, none of these factors has significant weight when applied to the specified documents in the context of section 47C of the FOI Act for the purposes of this review. In addition, the Guidelines include a non-exhaustive list of further factors that favour disclosure. Having regard to that list, I do not consider there to be any such factor that strongly favours disclosure of the specified documents when applying the public interest test for the purposes of this review.

The Guidelines also include a non-exhaustive list of factors against disclosure. One of those factors is that disclosure "could reasonably be expected to prejudice the management function of an agency". In addition, a further factor against disclosure is that disclosure "could reasonably be expected to prejudice the exercise of ASIC's powers and the execution of its proper functions". Given the nature of the information contained in the documents specified above, the release of these documents would have an effect on the capacity of ASIC to frankly, fully and properly consider matters in connection with the exercise of its powers or the performance of its functions. In addition, the risk of disclosure of such documents could reasonably be expected to impede, in the future, the effectiveness of the deliberative processes which ASIC officers may apply to the issues which they consider. Further, the possibility of disclosure could impede the communication of views and opinions within ASIC on such issues. This therefore could reasonably be expected to impede the management and operational functions of ASIC.

In balancing these factors – for and against disclosure – I consider the factors against disclosure to outweigh the factors in favour of disclosure. Giving the applicant access to the documents specified above would, on balance, be contrary to the public interest for the purposes of section 11A(5).

Therefore, I find that the documents specified above are exempt documents for the purposes of section 31B(b) of the FOI Act and access shall not be given pursuant to section 11A(4) of the FOI Act.

Section 47E(d) - substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Section 47E(d) of the FOI Act provides:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

- (a) ...*
- (b) ...*
- (c) ...*
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.*

It is my view that the documents marked 'Exempt' which refer to section 47E(d) (as set out in the Schedule) are conditionally exempt under this section. I am of the view that release of these specified documents would have a substantial adverse effect on the proper and efficient conduct of ASIC's functions.

1. Documents numbered 5, 6, 7, 11, 12, 13, 14, 16, 18, 19, 20, 21, 23, 27, 28, 29, 31, 33, 34, 35, 36, 37 and 38 in the Schedule contain information received from external third parties in confidence. ASIC must take reasonable measures to prevent unauthorised use and disclosure of information it sends and receives in confidence or in connection with its statutory functions. Persons or entities with whom ASIC communicates, and from whom ASIC obtains information, would be less likely to cooperate with ASIC and to willingly provide information if the information communicated could be released and made public. Disclosure of such documents could cause significant harm if it impeded or prejudiced the willingness of persons to provide information to, or cooperate with, ASIC. Impeding the passage to ASIC of valuable and useful information which could significantly assist ASIC in the conduct of its operations could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of ASIC's operations.

Documents numbered 25 and 26 are documents which ASIC has sent to third parties. The contents of such documents may be sensitive or adverse to the recipient. The risk of disclosing such documents (or the information contained therein) could have the effect of impeding or discouraging the sending by ASIC of those or similar documents or information to a third party which, in

turn, could prejudice ASIC's operational effectiveness. The possibility of disclosure of such documents or information might also result in the recipients being less likely to cooperate with ASIC and to provide valuable and useful information to ASIC. This therefore could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of ASIC.

Further, in the context of reports of alleged breach or non-compliance, the release of such information could result in public criticism of a third party, in circumstances where there has been no formal finding of breach or non-compliance. The risk of publication could clearly deter persons from passing on such information or reports for ASIC's consideration, especially as there may be a risk that such persons' anonymity may be prejudiced in such circumstances.

I have found that the specified documents are conditionally exempt under section 47E(d) of the FOI Act. Section 11A(5) provides that, if a document is conditionally exempt, it must be disclosed "unless (in the circumstances) access to the document would, on balance, be contrary to the public interest".

Section 11B(3) of the FOI Act lists factors that favour access when applying the public interest test. In my view, none of these factors has significant weight when applied to the specified documents in the context of section 47E(d) of the FOI Act for the purposes of this review. In addition, the Guidelines include a non-exhaustive list of further factors that favour disclosure. Having regard to that list, I do not consider there to be any such factor that strongly favours disclosure of the specified documents when applying the public interest test for the purposes of this review.

The Guidelines also include a non-exhaustive list of factors against disclosure. Such factors include (i) "could reasonably be expected to prejudice an agency's ability to obtain confidential information", (ii) "could reasonably be expected to prejudice an agency's ability to obtain similar information in the future", and (iii) "could reasonably be expected to prejudice the management function of an agency". Given the nature of the information contained in the documents specified above and the fact that such documents have been sent by or received by ASIC, the release of these documents could reasonably be expected to have the effects which are described in such factors.

In balancing these factors – for and against disclosure – I consider the factors against disclosure to outweigh the factors in favour of disclosure. Giving the applicant access to the documents specified above would, on balance, be contrary to the public interest for the purposes of section 11A(5).

Therefore, I find that the documents specified in 1. above are exempt documents for the purposes of section 31B(b) of the FOI Act and access shall not be given pursuant to section 11A(4) of the FOI Act.

2. Documents 8, 9, 10, 15, 17, 22, 24, 30 and 32 contain confidential internal discussions, drafts and evaluations related to ongoing work undertaken by ASIC.

I am of the view that disclosure of such documents could reasonably be expected to inhibit frank and informed discussion of and deliberation on these matters (or on similar matters) in the future. I therefore find that disclosure of such documents under the FOI Act could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of ASIC. I therefore find that such documents are conditionally exempt under section 47E(d) of the FOI Act.

I have considered whether the disclosure of such documents would, on balance, be contrary to the public interest. I have found no compelling factors which favour disclosure (as such factors are referred to in 1. above). As for the factors against disclosure, I note the factor "could reasonably be expected to prejudice the management function of [ASIC]" as relevant to this particular public interest test. I find that the public interest in disclosing the documents is outweighed by the public interest in ensuring that a regulatory agency such as ASIC is able to freely enter into internal deliberations and discussions without the risk of such deliberations and discussions being disclosed. This also relates to the ability of ASIC to frankly and freely plan the work which it undertakes and discuss the approaches to and outcomes of such work. Accordingly, I find that the disclosure of the information would, on balance, be contrary to the public interest.

Therefore, I find that the documents specified in 2. above are exempt documents for the purposes of section 31B(b) of the FOI Act and access shall not be given pursuant to section 11A(4) of the FOI Act

Section 47F – Personal Privacy

Section 47F of the FOI Act provides:

- (1) *A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).*
- (2) *In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:*
 - (a) *the extent to which the information is well known;*
 - (b) *whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;*
 - (c) *the availability of the information from publicly accessible sources;*
 - (d) *any other matters that the agency or Minister considers relevant.*

It is my view that the documents marked 'Exempt' which refer to section 47F (as set out in the Schedule) are conditionally exempt under this section.

Personal information is defined in section 4(1) of the FOI Act as information or an opinion (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Each of the specified documents contains information in relation to individuals whose identities are apparent. The information includes names, details of trading accounts and, in the case of some documents, financial positions. The personal information is not well known, is not in the public domain and is not available from publicly accessible sources. It is not publicly known that the individuals to whom the information relates are associated with the matters dealt with in the documents.

Having regard to the matters to which section 47F(2) of the FOI Act refers, I find that the disclosure of the documents identified above would involve the unreasonable disclosure of personal information and, therefore, that those documents are conditionally exempt pursuant to section 47F(1) of the FOI Act.

Section 11A(5) provides that, if a document is conditionally exempt, it must be disclosed "unless (in the circumstances) access to the document would, on balance, be contrary to the public interest".

Section 11B(3) of the FOI Act lists factors that favour access when applying the public interest test. In my view, none of these factors has significant weight when applied to the specified documents in the context of section 47F of the FOI Act for the purposes of this review. In addition, the Guidelines include a non-exhaustive list of further factors that favour disclosure. Having regard to that list, I do not consider there to be any such factor that strongly favours disclosure of the specified documents when applying the public interest test for the purposes of this review.

The Guidelines also include a non-exhaustive list of factors against disclosure. Such factors include (i) "could reasonably be expected to prejudice an agency's ability to obtain confidential information", (ii) "could reasonably be expected to prejudice an agency's ability to obtain similar information in the future", and (iii) "could reasonably be expected to harm the interests of an individual or group of individuals". Given the nature of the information contained in the documents specified above, the release of the documents could reasonably be expected to have the effects which are described in such factors.

In balancing these factors – for and against disclosure – I consider the factors against disclosure to outweigh the factors in favour of disclosure. Giving the applicant access to the documents specified above would, on balance, be contrary to the public interest for the purposes of section 11A(5).

Therefore, I find that the documents specified above are exempt documents for the purposes of section 31B(b) of the FOI Act and access shall not be given pursuant to section 11A(4) of the FOI Act.

Section 47G – Business, Commercial or Financial Affairs of an Organisation

Section 47G of the FOI Act provides:

(1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

(a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or

(b) could reasonably be expected to prejudice the future supply of information to the Commonwealth, Norfolk Island or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

It is my view that the documents marked 'Exempt' which refer to section 47G (as set out in the Schedule) are conditionally exempt under this section. This is because:

- (a) the information contained within the documents specified above relates to the business, commercial and financial affairs of certain organisations;
- (b) the disclosure of the information contained within the specified documents would, or could reasonably be expected to, unreasonably affect the business, commercial and financial affairs of certain organisations; and/or
- (c) the disclosure of the information could reasonably be expected to prejudice the future supply of information to the Commonwealth, or an agency, for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.

The specified documents refer to matters of a sensitive and confidential nature which relate to certain organisations. In my view, disclosure of such information could reasonably be expected to unreasonably affect the business, commercial and financial affairs of the organisations named in such documents.

In addition, disclosure of such information could reasonably be expected to prejudice the future supply of information to ASIC for the purpose of its functions and powers because of the risk that any such disclosure might prejudice the willingness of persons to provide information of a similar nature to ASIC in the future and to cooperate with ASIC in relation to the matters connected with such information. I therefore find that such documents are conditionally exempt under section 47G(1) of the FOI Act.

Section 11A(5) provides that, if a document is conditionally exempt, it must be disclosed "unless (in the circumstances) access to the document would, on balance, be contrary to the public interest".

Section 11B(3) of the FOI Act lists factors that favour access when applying the public interest test. In my view, none of these factors has significant weight when applied to the specified documents in the context of section 47G of the FOI Act for the purposes of this review. In addition, the Guidelines include a non-exhaustive list of further factors that favour disclosure. Having regard to that list, I do not consider there to be any such factor that strongly favours disclosure of the specified documents when applying the public interest test for the purposes of this review.

The Guidelines also include a non-exhaustive list of factors against disclosure. Such factors include (i) "could reasonably be expected to prejudice an agency's ability to obtain confidential information", (ii) "could reasonably be expected to prejudice an agency's ability to obtain similar information in the future", and (iii) "could reasonably be expected to harm the interests of an individual or group of individuals". In addition, another factor against disclosure which ought to be considered is whether the information could reasonably be expected to harm the interests of an organisation. Given the nature of the information contained in the documents specified above, the disclosure of the documents could reasonably be expected to have the effects which are described in such factors.

In balancing these factors – for and against disclosure – I consider the factors against disclosure to outweigh the factors in favour of disclosure. Giving the applicant access to the documents specified above would, on balance, be contrary to the public interest for the purposes of section 11A(5).

Therefore, I find that the documents identified are exempt documents for the purposes of section 31B(b) of the FOI Act and access shall not be given pursuant to section 11A(4) of the FOI Act.

Section 22 of the FOI Act

Pursuant to section 22 of the FOI Act, if an agency has decided to refuse access to a document on the ground that it is exempt, the agency must consider whether it would be reasonably practicable to prepare an edited copy of the document (that is, a copy with relevant deletions) for release to the applicant.

Pursuant to section 22 of the FOI Act I have considered the nature and extent of the possible modifications to all the documents specified above which I have decided are exempt documents under the FOI Act. I have also considered the resources which are available to ASIC which would need to be applied to make the necessary modifications to these documents in order for the documents to be released to the applicants.

I have concluded that it would not be reasonably practicable for ASIC to prepare an edited copy of each of the documents specified above having regard to the matters set out in subsections 22(1)(c)(i) and (ii) of the FOI Act.

Review Rights

I provide you with the following information as required by section 26 of the FOI Act.

In the event that you are dissatisfied with the decision:

1. You may apply in writing to the Australian Information Commissioner for a review of my decision under section 54N of the FOI Act. Correspondence should be addressed to the Office of the Australian Information Commissioner at GPO Box 2999 Canberra ACT 2601 OR GPO Box 5218 Sydney NSW 2001.
2. You may lodge a complaint to the Australian Information Commissioner in respect to the conduct of ASIC in the handling of this request. Correspondence should be addressed to the Office of the Australian Information Commissioner - GPO Box 2999 Canberra ACT 2601 OR GPO Box 5218 Sydney NSW 2001 GPO Box 5218 Sydney NSW 2001.

Yours faithfully

Philip Charlton
(Authorised decision-maker under subsection 23(1) of the FOI Act)
for the Australian Securities and Investments Commission

THE SCHEDULE

Exemption provisions applied in Decision

No	Description of document	Date	No. of Pages	Decision on Access	Relevant Section
1	Correspondence from Third Party to ASIC	24-Jul-12	2	Exempt	S.45 S.47G
2	Email from Third Party to ASIC	30-Jul-12	1	Exempt	S.45 S.47G
3	Attachment to above Email (no. 2)	6-Jul-12	1	Exempt	S.45 S.47G S.47F
4	Attachment to above Email (no. 2)	6-Jul-12	1	Exempt	S.45 S.47G S.47F
5	Email from Third Party to ASIC	30-Jul-12	1	Exempt	S.45 S.47E(d) S.47G
6	Attachment to above Email (no. 5)	30-Jul-12	1	Exempt	S.45 S.47E(d) S.47G
7	Attachment to above Email (no. 5)	30-Jul-12	3	Exempt	S.45 S.47E(d) S.47G
8	Internal ASIC Email	30-Jul-13	1	Exempt	S.47E(d) S.47G
9	Internal ASIC Email	30-Jul-13	1	Exempt	S.42 S.47C S.47E(d) S.47G
10	Draft Correspondence to Third Party	?Aug-12	11	Exempt	S. 42 S.47C S.47E(d) S.47G
11	Email from Third Party to ASIC	31-Jul-12	1	Exempt	S.45 S.47E(d) S.47G
12	Attachment to above Email (no. 11)	23-Jul-12	3	Exempt	S.45 S.47E(d) S.47G
13	Attachment to above Email (no. 11)	24-Jul-12	3	Exempt	S.45 S.47E(d) S.47G
14	Attachment to above Email (no. 11)	30-Jul-12	5	Exempt	S.45 S.47E(d)

					S.47G
15	Internal ASIC Email	5-Oct-12	1	Exempt	S.47C S.47E(d) S.47G
16	Attachment to above Email (no. 15)	—	2	Exempt	S.45 S.47E(d) S.47F S.47G
17	Internal ASIC Email	23-Aug-12	1	Exempt	S.47C S.47E(d)
18	Email from Third Party to ASIC	23-Aug-12	1	Exempt	S.45 S.47E(d)
19	Attachment to above Email (no. 18)	—	1	Exempt	S.45 S.47E(d) S.47G
20	Correspondence between Third Party and ASIC	22-Oct-12	2	Exempt	S.45 S.47E(d) S.47G
21	Attachment to Email above (no. 20)	Aug-12	13	Exempt	S.45 S.47E(d) S.47G
22	Internal ASIC Email	22-Oct-12	1	Exempt	S.47C S.47E(d) S.47F S.47G
23	Attachment to Email above (no. 22)	Aug-12	13	Exempt	S.45 S.47E(d) S.47G
24	Draft Correspondence to Third Party	23-Oct-12	8	Exempt	S.47C S.47E(d) S.47G
25	Email from ASIC to Third Party	23-Oct-12	1	Exempt	S.47E(d) S.47G
26	Attachment to above Email (no. 25)	23-Oct-12	6	Exempt	S.47E(d) S.47G
27	Email from Third Party to ASIC	25-Oct-12	1	Exempt	S.45 S.47E(d) S.47G
28	Attachment to above Email (no. 27)	25-Oct-13	2	Exempt	S.45 S.47E(d) S.47G
29	Attachment to above Email (no. 27)	Undated	3	Exempt	S.45 S.47E(d) S.47F S.47G
30	Internal ASIC Email	26-Oct-12	1	Exempt	S.47C S.47E(d)

					S.47F S.47G
31	Attachment to above Email (no. 30)	Undated	3	Exempt	S.45 S.47E(d) S.47G S.47F
32	File Note of meeting with Third Party	31-Oct-12	2	Exempt	S.45 S.47E(d) S.47G
33	Document from third party	5-Oct-12	9	Exempt	S.45 S.47E(d) S.47G
34	Letter from a third party to another third party	08-Oct-12	1	Exempt	S.45 S.47E(d) S.47G
35	Letter from a third party to another third party	17-Oct-12	6	Exempt	S.45 S.47E(d) S.47G
36	Letter from a third party to another third party	30-Oct-12	2	Exempt	S.45 S.47E(d) S.47G
37	Email from a third party to another third party	31-Oct-13	1	Exempt	S.45 S.47E(d) S.47G
38	Email from a third party to another third party	1-Nov-2013	1	Exempt	S.45 S.47E(d) S.47G

Divider Tab No. 4



Confidential

Email

10 November 2011

The Senior Manager
Australian Securities & Investment
Commission

FOIrequest@asic.gov.au

Your ref 46649/11

Our ref 

Dear Senior Manager

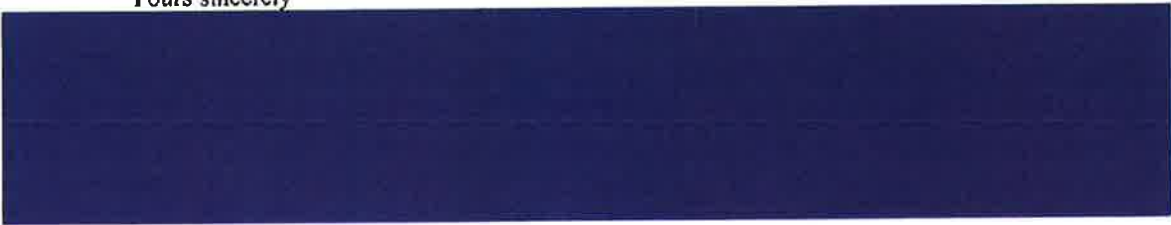
Freedom of Information Request - 

We are the Solicitors for  and note that our client was sent a Notice of Direction pursuant to s912C(1) *Corporations Act 2001* (Cth) on 2 November 2011.

We attach a Freedom of Information Request and look forward to receipt of the discloseable documents in due course or, in any event, a decision on the request by no later than 30 days after the date on which this request is received.

If you wish to discuss further, please do not hesitate to contact me.

Yours sincerely



Enc



Legal\305553551.1

**APPLICATION FOR DOCUMENTS UNDER THE COMMONWEALTH FREEDOM OF
INFORMATION ACT 1982**

Name of agency or Minister:

Australian Securities & Investment Commission (ASIC)

Name of applicant:

[REDACTED]

Your address in Australia to which notices under the Act should be sent:

All documents provided by the ASIC are to be provided by way of electronic communication to the email address listed below. In the event that the documents are voluminous or would *unreasonably* interfere with the operations at the ASIC we would require they be made available in one of the following ways, in order of preference:

- (a) Copies of the documents ought be made and sent to the address below; or
- (b) Reasonable opportunity be made available to [REDACTED] to inspect the documents.

[REDACTED]

Phone no. of applicant:

[REDACTED]

Fax no. of applicant:

[REDACTED]

I am applying for the following document/s:

Any document within the power, custody, care or control of the Australian Investment & Securities Investment Commission that contains:

- (a) the name and address of a person or entity who made any complaints, queries or provided information to the ASIC, pertaining to the company [REDACTED] relevant to the attached request by the ASIC to [REDACTED] to provide a written statement to ASIC pursuant to a Notice of Direction dated 2 November 2011.
- (b) any complaints, queries or information provided by any person or entity to the ASIC, pertaining to [REDACTED] that has caused the ASIC to request [REDACTED] to provide a

written statement to ASIC pursuant to a Notice of Direction dated 2 November 2011 (as attached).

Signature of applicant



e: (0) (1) (1)

Divider Tab No. 5



ASIC

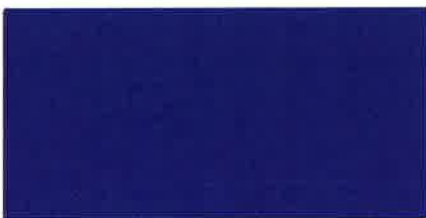
Australian Securities & Investments Commission

Level 5, 100 Market Street, Sydney
GPO Box 9827 Sydney NSW 2001
DN 653 Sydney

Telephone: (02) 9911 2000
Facsimile: (02) 9911 2414

Our Reference: PMR2011/27818
Your Reference: [REDACTED]

8 December 2011



By email: [REDACTED] and original by post

Dear [REDACTED]

Decision on Freedom of Information Request under the *Freedom of Information Act 1982* (FOI Act)

I refer to your request under the FOI Act received by the Australian Securities and Investments Commission (ASIC) on 10 November 2011 in which you sought access to any document within the power, custody, care or control of ASIC that contain:

- (a) the name and address of a person or entity who made any complaints, queries or provided information to the ASIC, pertaining to the company [REDACTED] relevant to ASIC's Notice of Direction of 2 November 2011 to [REDACTED] to provide a written statement to ASIC pursuant to the Notice of Direction.
- (b) any complaints, queries or information provided by any person or entity to the ASIC, pertaining to [REDACTED] that has caused the ASIC to request [REDACTED] to provide a written statement to ASIC pursuant to the Notice of Direction dated 2 November 2011.

I am the authorised decision-maker for the purposes of section 23 of the FOI Act.

I have identified the documents which come within the terms of your request. These are listed in the Schedule to this letter.

Although you have not specifically excluded documents authored by [REDACTED] or addressed to [REDACTED] from your request, I have assumed that you do not wish to be provided with further copies of them.

Released documents

I advise that I have decided to not release any documents.

Exempt documents

I advise that I have decided not to release the documents marked 'Exempt' in the attached Schedule, under your request, on the grounds that the documents are exempt from release for the following reasons:

Document No.: 1

Exempt under section 45 of the FOI Act

Document No.: 2, 3, 7, 8

Exempt under section 47F of the FOI Act

Document No.: 4, 6

Exempt under section 47C and section 47F of the FOI Act

Document No.: 5

Exempt under section 47C, section 47E and section 47F of the FOI Act

Section 45 – Documents containing material obtained in confidence

Section 45 of the FOI Act provides:

- (1) A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency, the Commonwealth or Norfolk Island), for breach of confidence.*
- (2) Subsection (1) does not apply to a document to which subsection 47C(1) (deliberative process) applies (or would apply, but for subsection 47C(2) or (3)), that is prepared by a Minister, a member of the staff of a Minister, or an officer or employee of an agency, in the course of his or her duties, or by a prescribed authority or Norfolk Island authority in the performance of its functions, for purposes relating to the affairs of an agency or a Department of State unless the disclosure of the document would constitute a breach of confidence owed to a person or body other than:

 - (a) a person in the capacity of Minister, member of the staff of a Minister or officer of an agency; or*
 - (b) an agency, the Commonwealth or Norfolk Island.**

Section 47C – Public interest conditional exemption – deliberative processes

Subsection 47C provides:

General rule

(1) *A document is conditionally exempt if its disclosure under this Act would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:*

- (a) *an agency; or*
- (b) *a Minister; or*
- (c) *the Government of the Commonwealth; or*
- (d) *the Government of Norfolk Island.*

Section 47E – Public interest conditional exemption – certain operations of agencies

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

- (a) *prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;*
- (b) *prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;*
- (c) *have a substantial adverse effect on the management or assessment of personnel by the Commonwealth, by Norfolk Island or by an agency;*
- (d) *have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.*

Section 47F – Public interest conditional exemption – personal privacy

Subsection 47F provides:

General rule

- (1) *A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).*

Public interest

The FOI Act provides that access must be given to a conditionally exempt document unless in the circumstances access would, on balance, be contrary to the public interest. I note that there is no public interest requirement in respect of exemptions under section 45 of the FOI Act.

As required by section 11A of the FOI Act, I have considered whether release of documents 2 – 8 would, on balance, be contrary to the public interest.

In particular, I have had regard to the following factors outlined in section 11B(3) as being factors favouring access to the documents in the public interest:

1. Access to the documents would promote the objects of the FOI Act (including all matters set out in section 3 and 3A).

I find that the adverse effects on ASIC's deliberative processes outweigh any public benefit that lies in disclosure of the documents.

2. Access to the documents would inform debate on a matter of public importance.

I do not find that disclosure of documents 2 – 8 would inform debate on a matter of public importance.

3. Access to the documents would promote effective oversight of public expenditure.

I do not find that disclosure of documents 2 – 8 would promote effective oversight of public expenditure.

4. Access to the documents would allow a person to access his or her personal information.

I do not find that disclosure of documents 2 – 8 would allow you to access your personal information.

Accordingly, I do not find that any of the above factors favour access to the documents in the public interest.

In addition, I find that the release of documents 2 – 8 would be contrary to the public interest as it could be reasonably expected to prejudice the protection of an individual's right to privacy, and prejudice ASIC's ability to obtain confidential information.

Final assessment of charges

The FOI Act provides that charges may be assessed for time spent processing your request. You have paid the preliminary charge of \$30.00 as advised in my acknowledgement and notice of charges dated 18 November 2011. There are no further charges applicable to the processing of your request in this instance.

Review rights

I provide you with the following information as required by section 26 of the FOI Act.

In the event that you are dissatisfied with the decision:

1. You may, within 30 days after the day on which you have been notified of this decision, apply in writing to ASIC for a review of my decision by another ASIC officer under section 54B of the FOI Act. This request should be addressed to me or to the Senior Manager, Administrative Law, GPO Box 9827 SYDNEY or by email to: foirequest@asic.gov.au.

2. You may apply in writing to the Australian Information Commissioner for a review of my decision under section 54N of the FOI Act. Correspondence should be addressed to the Office of the Australian Information Commissioner at GPO Box 2999 Canberra ACT 2601 or GPO Box 5218 Sydney NSW 2001.
3. You may lodge a complaint to the Australian Information Commissioner in respect to the conduct of ASIC in the handling of this request. Correspondence should be addressed to the Office of the Australian Information Commissioner – GPO BOX 2999 Canberra ACT 2601 or GPO Box 5218 Sydney NSW 2001.

Yours faithfully

Juhyun Pak

Lawyer

Consumers, Advisers and Retail Investors

(Authorised decision maker pursuant to section 23(1) of the FOI Act)

Schedule of Documents

FOI Request

No	Description of document	No of pages	Decision on access	Relevant section
1	ASIC eComplaint form dated 15 August 2011	2	Exempt	s45
2	ASIC letter to complainant dated 15 August 2011	1	Exempt	s47F
3	ASIC letter to complainant dated 21 September 2011	1	Exempt	s47F
4	ASIC internal referral document	1	Exempt	s47C, s47F
5	ASIC internal Assessment document dated 25 August 2011	6	Exempt	s47C, s47E, 47F
6	ASIC internal General Complaint database entry dated 27 September 2011	2	Exempt	s47C, s47F
7	ASIC internal Acknowledgement Letter database entry dated 15 August 2011 with document No. 2 attached	2	Exempt	s47F
8	ASIC internal Letter database entry dated 21 September 2011 with document No. 3 attached	2	Exempt	s47F

Divider Tab No. 6



[REDACTED] - Freedom of Information Request

to:
FOIrequest
04/01/2012 02:59 PM
Hide Details
From: [REDACTED]
To: <FOIrequest@asic.gov.au>,
History: This message has been replied to and forwarded.

1 Attachment



Signed FOI Requestion 03.01.2011.pdf

This email message has been processed by MIMESweeper

Dear Senior Manager,

We refer to the above matter.

We attach a Freedom of Information Request on behalf of [REDACTED]

We confirm that we are in the process of having a cheque drawn in the amount of \$30.00 which will be forwarded to you by post. We request a receipt for the cheque once it is received by ASIC.

Should you have any queries, please do not hesitate to contact me.

Kind Regards,

[REDACTED]



Please consider the environment before printing this e-mail

<<Signed FOI Requestion 03.01.2011.pdf>>

This email is confidential. If received in error, please delete it from your system.

[REDACTED]

**APPLICATION FOR DOCUMENTS UNDER THE COMMONWEALTH FREEDOM OF
INFORMATION ACT 1982**

Name of agency or Minister:

Australian Securities & Investment Commission (ASIC)

Name of applicant:

[REDACTED]

Your address in Australia to which notices under the Act should be sent:

All documents provided by the ASIC are to be provided by way of electronic communication to the email address listed below. In the event that the documents are voluminous or would *unreasonably* interfere with the operations at the ASIC we would require they be made available in one of the following ways, in order of preference:

- (a) Copies of the documents ought be made and sent to the address below; or
- (b) Reasonable opportunity be made available to [REDACTED] to inspect the documents.

[REDACTED]

Phone no. of applicant:

[REDACTED]

Fax no. of applicant:

[REDACTED]

I am applying for the following document/s:

Any document within the power, custody, care or control of the Australian Investment & Securities Investment Commission that contains:

- (a) any complaints, queries or provided information to the ASIC, pertaining to the company [REDACTED] relevant to the attached request by the ASIC to [REDACTED] to provide a written statement to ASIC pursuant to a Notice of Direction dated 2 November 2011.
- (b) any complaints, queries or information provided by any person or entity to the ASIC, pertaining to [REDACTED] that has caused the ASIC to request [REDACTED] to provide a written statement to ASIC pursuant to a Notice of Direction dated 2 November 2011.

Signature of applicant: ..

[REDACTED]

Date: 3 / 01 / 2012

Divider Tab No. 7



ASIC

Australian Securities & Investments Commission

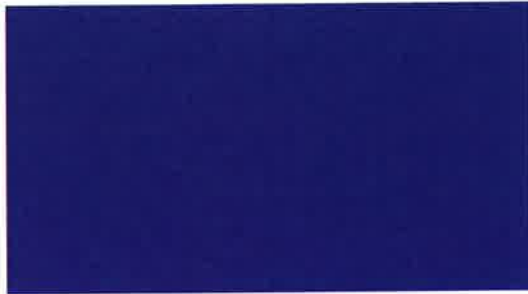
Our Ref: PMR 2012/1012

Your Ref: [REDACTED]

Commonwealth Bank Building
240 Queen Street, Brisbane
GPO Box 9827 Brisbane QLD 4001
DX 322 Brisbane

Telephone: (07) 3867 4700
Facsimile: (07) 3867 4725

17 January 2012



By email: [REDACTED]

Dear [REDACTED]

Freedom of Information Act Request

I refer to your request under the Freedom of Information Act 1982 (FOI Act) received by this office on 4 January 2012 and subsequent phone conversation today in which you seek access to:

Any document within the power, custody, care or control of the Australian Securities and Investments Commission (ASIC) that contain:

- (a) Any complaints, queries or provided information to ASIC pertaining to the company [REDACTED] relevant to a s912C Direction to [REDACTED] dated 2 November 2011
- (b) Any complaints, queries or information provided by any person or entity to ASIC pertaining to [REDACTED] that has caused ASIC to request [REDACTED] to provide a written statement pursuant to the s912C Direction.

I am the authorised decision-maker for the purposes of section 23 of the Act.

I have identified the documents which come within the terms of your request. These are listed in the Schedule to this letter.

I am making the assumption that you do not require access to any documents that have been sent to your client.

Decision

I advise that I have decided not to release the documents marked "Exempt" in the attached Schedule (which is essentially the same as your previous FOI request as we discussed today). I have located other documents and these are listed in the schedule

It was not possible to delete identifying information on the eComplaint to the extent to protect the identity of the complainant (s22 of the FOI Act)

Relevant legislation applied

S45 FOI Act – documents containing material obtained in confidence

A document is an exempt document if its disclosure under this Act would found an action by a person other than the Commonwealth for breach of confidence.

S47C – public interest conditional exemption – deliberative processes

.....opinion, advice, recommendation, obtained prepared or recorded or consultation or deliberation
.....for the purposes of, the deliberative processes involved in the functions of ... (an agency)

S47E – operations of agencies

..... A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;

.....
(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

S47F - personal privacy

.....unreasonable disclosure of personal information, taking into account then extent to which the information is well known, whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document.....

Public interest

For reasons that have spelt out to you previously in response to the November request and our telephone conversation, most importantly the adverse effects on ASIC's deliberative processes outweigh any public benefit in disclosure of the documents.

ASIC must be able to offer complainants, informants and whistleblowers assurance that information provided to ASIC will be treated in confidence and their right to privacy protected.

Review Rights

I provide you with the following information as required by section 26 of the FOI Act.

In the event that you are dissatisfied with the decision:

1. You may, within 30 days after the day on which you have been notified of this decision, apply in writing to ASIC for a review of my decision by another ASIC officer under section 54B of the FOI Act. This request should be addressed to me or to the Senior Manager, Administrative Law GPO Box 9827 SYDNEY or by email to foirequest@asic.gov.au
2. You may apply in writing to the Australian Information Commissioner for a review of my decision under section 54N of the FOI Act. Correspondence should be addressed to the Office of the Australian Information Commissioner at GPO Box 2999 Canberra ACT 2601 OR GPO Box 5218 Sydney NSW 2001.
3. You may lodge a complaint to the Australian Information Commissioner in respect to the conduct of ASIC in the handling of this request. Correspondence should be addressed to the Office of the Australian Information Commissioner - GPO Box 2999 Canberra ACT 2601 OR GPO Box 5218 Sydney NSW 2001GPO Box 5218 Sydney NSW 2001.

Yours sincerely

Pauline Kaufman
Lawyer/analyst
(Authorised decision-maker under subsection 23(1) of the FOI Act)
For the Australian Securities and Investments Commission

Schedule of Documents

FOI Request dated 4 January 2012

No	Description of document	No of pages	Decision on access	Relevant section
1	ASIC eComplaint form dated 15 August 2011	2	Exempt	s45
2	ASIC letter to complainant dated 15 August 2011	1	Exempt	s47F
3	File note discussion about complaint with senior manager financial advisers dated 25 August 2011	1	Exempt	S45
4	File note discussion with complainant dated 8 September 2011	1	Exempt	S47C
5	ASIC letter to complainant dated 12 September 2011	1	Exempt	s47F, s45
6	ASIC internal referral document	1	Exempt	s47C, s47F
7	ASIC internal Assessment document dated 25 August 2011	6	Exempt	s47C, s47E, 47F
8	ASIC internal General Complaint register entry dated 27 September 2011	2	Exempt	s47C, s45
9	ASIC internal Acknowledgement Letter database entry dated 15 August 2011	1	Exempt	s47F, s45
10	ASIC internal Letter database entry dated 21 September 2011	1	Exempt	s47F, s45
11	ASIC Internal Report Surveillance Plan for the purpose of outlining the surveillance program for [REDACTED] [REDACTED] dated 22 September 2011	7	Exempt	s47C, s47E

Divider Tab No. 8



Senior Manager
Administrative Law Team
Australian Securities & Investments Commission
GPO Box 9827
SYDNEY NSW 2001
FOIrequest@asic.gov.au

April 5, 2012

FREEDOM OF INFORMATION REQUEST

Dear Sir/Madam,

I am a business reporter working for [redacted] newspapers.

Under the FOI Act, I am seeking copies of the following documents:

- Statements of concerns relating to the prospectus issued by Man AHL Gold (AUD) Limited, document number 027709948, received by ASIC on December 5, 2011
- Statements of concerns relating to the prospectus issued by Man OM-IP 2AHL Limited, document number 023745691, received by ASIC on March 17, 2009

I plan to use the documents to prepare a news report on a matter of public interest, the use of prospectuses to raise large amounts money from retail investors.

I look forward to receiving your response as soon as practicable. I would appreciate that if any part of my request is refused that in your response you advise as follows:

- 1 Clearly and in detail identify and describe each document to which you are claiming an exemption;
- 2 Identify which particular section of the Act provides the exemption;
- 3 State all findings of fact on which you base the claim for exemption;
- 4 Identify the particulars of the public interest where relevant.

If you would like to discuss this request please do not hesitate to contact me on [redacted] or via email at [redacted]

Yours,



Divider Tab No. 9



ASIC

Australian Securities & Investments Commission

Level 3, 100 Market Street, Sydney
GPO Box 9827 Sydney NSW 2001
100033 Sydney

Telephone (02) 9911 2000
Facsimile (02) 9911 2414

31 May 2012

Also by email

Dear

FOI REQUEST FOR ACCESS TO DOCUMENTS

1. I refer to your request under the Freedom of Information Act 1982 (**FOI Act**) received by the Australian Securities and Investments Commission (**ASIC**) on 5 April 2012 in which you sought access to:
 - Statements of concerns relating to the prospectus issued by Man AHL Gold (AUD) Limited, document number 027709948, received by ASIC on December 5, 2011.
 - Statements of concerns relating to the prospectus issued by Man OM-IP 2AHL Limited, document number 023745691, received by ASIC on March 17, 2009.
2. I am the authorised decision-maker for your FOI request for the purposes of section 23 of the FOI Act.

Documents Caught By The Terms of Your Request

3. I have located the two documents requested. The documents relate to interim stop orders that ASIC imposed on the prospectuses referred to in your application.
4. The Statement of Concerns dated 20 December 2011 outlines ASIC's concerns relating to possible defective disclosure contained in the December 2011 prospectus 027709948, which were the basis for the interim stop order that ASIC issued in connection with that prospectus.

5. The Statement of Concerns dated 1 April 2009 outlines ASIC's concerns relating to possible defective disclosure contained in the March 2009 prospectus 023745691, which were the basis of the interim stop order that ASIC issued in connection with that prospectus.
6. The Statements of Concerns referred to above are referred to in this letter as the "Statements of Concerns". Man AHL Gold (AUD) Limited and Man OM-IP 2 AHL Limited are together referred to in this letter as the "Man companies".

BACKGROUND INFORMATION

ASIC's review of Prospectuses and imposition of Stop Orders

7. Section 718 of the *Corporations Act 2001* (Corporations Act) requires companies to lodge disclosure documents that seek to raise funds from retail investors with ASIC. Regulatory Guide 152 *Lodgement of disclosure documents* explains ASIC's approach to review of disclosure documents.
8. Section 739 of the Corporations Act gives ASIC the power to impose a 'stop order' on a disclosure document if ASIC is satisfied that:
 - a) information in the document is not worded and presented in a 'clear, concise and effective' manner (s715A); or
 - b) an offer of securities under the document would contravene s728 of the Corporations Act (the 'misleading or deceptive' provision).
9. A stop order, while it is in force, prevents the company from offering or issuing securities under the disclosure document. ASIC can only make a final stop order after giving the company a hearing and a reasonable opportunity to make submissions. However, s739(3) of the Corporations Act allows ASIC to make an interim stop order without first holding a hearing if the delay associated with such a hearing would be prejudicial to the public interest.
10. ASIC may make an interim stop order on an urgent basis without reference to the company if such an order is required to limit risks to the investing public: RG 152.54. Interim stop orders are usually made on an urgent basis and before the offer is open for investor acceptances.
11. Within 21 days after an interim stop order is made, ASIC must either revoke the order or hold a hearing and give interested people a reasonable opportunity to make oral or written submissions: s739(2) and (3). The hearing is held in private with typically only ASIC officers and the company present (although there is the potential to allow other 'interested people' to make submissions if the need arises). If ASIC's concerns are not resolved at this time, a further stop order will be made continuing the restriction on the company's fundraising: s739(4).

Nature of Statements of Concerns

12. Whilst stop orders are publicly available on ASIC's register, and so ensure that the market is kept informed about the status of a public offer, statements of concerns are confidential communications provided only to the issuer of a prospectus. They are provided to a company at the same time as an interim stop order and outline ASIC's concerns as to the disclosure in the prospectus and possible breaches of the Corporations Act. The statement of concerns provides the issuer of a prospectus with an opportunity to address these concerns in a private hearing before an ASIC delegate, before the making of a final stop order.
13. The statement of concerns is usually the first document given to the company that extensively sets out ASIC's concerns with the prospectus at that time (for the reasons set out at paragraph 11 above).
14. The company is invited to address the matters set out in the statement of concerns either by
 - a) the provision of submissions and/or attending a formal private hearing to address the concerns; or
 - b) providing corrective disclosure in the form of a replacement prospectus that addresses ASIC's concerns.
15. As in this instance with respect to the prospectuses issued by the Man companies, a statement of concerns issued with an interim stop order often represents ASIC's initial, preliminary and untested concerns with a company's disclosure document.
16. ASIC's opinion on the adequacy of the disclosure document may evolve with further time to review the prospectus and as the company provides ASIC with further information addressing the concerns noted. Some concerns may be adequately addressed, others may emerge. For example, ASIC may accept that certain information is not misleading in light of any clarification provided by the company. Alternatively, we may form the view that further clarification in this regard should be included in the prospectus.

DECISION

17. I have decided not to release the documents caught by the terms of your request, on the basis that:
 - they are conditionally exempt under s47C, 47E and 47G of the FOI Act; and
 - on balance, disclosure of the documents is not in the public interest pursuant to s11A(5) of the FOI Act.
18. In making this decision I have taken into consideration the submissions provided by affected third parties.
19. Explanation of the grounds for the above decision is as follows.

Conditional exemption for business information: s47G(1) of the FOI Act

20. Section 47G(1) of the FOI Act provides that a document is conditionally exempt if it would disclose information concerning the business, commercial or financial affairs of an organisation in a case in which the disclosure of the information:

- a) would, or could reasonably be expected to, unreasonably affect that organisation in respect of its lawful business, commercial or financial affairs; or
- b) could reasonably be expected to prejudice the future supply of information to the Commonwealth or an agency for the purpose of the administration of a Commonwealth law or of matters administered by an agency.

21. This exemption is intended to protect the interests of third parties dealing with government agencies: paragraph 6.161 of the Information Commissioner's FOI Guidelines October 2011 (**FOI Guidelines**).

Unreasonable effect on entity: s47G(1)(a)

22. The Statements of Concerns contain ASIC's opinion on the disclosure about the Man companies and this constitutes information concerning the business, commercial or financial affairs of the Man companies within the meaning of s47G(1)(a) of the FOI Act.

23. The Statements of Concerns were confidential communications issued on an urgent basis and represent ASIC's preliminary concerns with the Man companies' disclosure.

24. Matters raised in the Statements of Concerns were later resolved through discussion with each company and the issue of amended disclosure documents, so the Statements of Concerns do not reflect formal findings or ASIC's final position with regard to the prospectuses. Following discussions relating to ASIC's concerns, the Man companies lodged replacement prospectuses.

25. The Statements of Concerns were issued on a confidential basis to the Man companies for the purpose of providing them with the opportunity to address ASIC's concerns relating to the prospectuses. The matters addressed in the Statements of Concerns do not contain any final or determinative findings of failure to comply with the Corporations Act on the part of the Man companies. Accordingly, given the nature of the matters addressed in the Statements of Concerns I find that disclosure of them could reasonably be expected to unreasonably affect the lawful business of the Man companies. I therefore find the documents to be conditionally exempt under s47G(1)(a) of the FOI Act.

Prejudice future supply of information to agency: s47G(1)(b)

26. I also consider that giving access to the Statements of Concerns is likely to make the resolution of disclosure concerns a more adversarial process and to reduce the level of information and cooperation that companies currently give to ASIC in the

course of discussions following the issue of a statement of concerns. A company is likely to object to the voluntary provision of information which is necessary to provide corrective disclosure in order to avoid the implication that its prospectus contravened the Corporations Act in the way ASIC may have alleged in the relevant statement of concerns. I therefore find the documents to be conditionally exempt under s47G(1)(b) of the FOI Act.

Conditional exemption for operations of agency: s47E(d) of the FOI Act

27. Section 47E(d) provides that a document is conditionally exempt if its disclosure under the FOI Act could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.
28. In order to perform its investor protection role effectively, ASIC must be able to respond quickly to perceived or potential deficiencies identified in prospectuses and impose interim stop orders on an urgent basis. Given the often preliminary and sensitive matters which are addressed in statements of concerns, it is critical that these communications with companies are conducted upon the basis of strict confidentiality.
29. Companies may also be less co-operative and less prepared to make changes to their prospectuses if statements of concern are not kept strictly confidential. This is because the market may interpret corrective disclosure as an admission that the prospectus was deficient in the manner described in the relevant statement of concerns. See also paragraph 26.
30. For these reasons, I find that granting access to the Statements of Concerns would have a substantial adverse effect on ASIC's ability to effectively and efficiently regulate disclosure documents and the Statements of Concerns are therefore conditionally exempt under s47E(d) of the FOI Act.

Conditional exemption for deliberative processes: s47C of the FOI Act

31. Section 47C(1) of the FOI Act states that a document is conditionally exempt if its disclosure would disclose matter (**deliberative matter**) in the nature of, or relating to "opinion prepared ... in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency". A deliberative process involves the exercise of judgement and may include the recording or exchange of opinions: paragraph 6.62 and 6.64 of Part 6 of the FOI Guidelines.
32. The Statements of Concerns contain ASIC's initial concerns arising from review of the prospectuses lodged and information relating to the issue of the interim stop orders made under s739(3) of the Corporations Act. As set out above, the Statements of Concerns were provided to the Man companies to allow each of them to address ASIC's concerns with their prospectus by way of submissions (in writing or in person at a hearing), prior to a final stop order possibly being made (pursuant to section s739(1A)).
33. Communications with the affected company following ASIC's review of the prospectus and the issue of an interim stop order pending a final decision as to the

revocation of the interim stop order or the imposition of a final stop order form part of a confidential deliberative process relating to ASIC's function as an agency (i.e. ASIC's function of reviewing and regulating disclosure documents). The Statements of Concerns are deliberative matter because they contain ASIC's then current opinion prepared in the course of and pursuant to these deliberative processes. The Statements of Concerns are therefore conditionally exempt under s47C of the FOI Act.

Contrary to the public interest: s11A(5) of the FOI Act

34. Section 11A(5) of the FOI Act provides that an agency must give an applicant access to a document if it is conditionally exempt at a particular time unless, in the circumstances, access to the document at that time would, on balance, be contrary to the public interest. Section 11B(3) sets out factors favouring access to the document and provides that an agency must have regard to the FOI Guidelines in working out whether access to the document would be contrary to the public interest. I have considered the factors in s11B(3) of the FOI Act and paragraphs 6.25-6.29 of the FOI Guidelines.
35. The Statements of Concerns were provided to the Man companies on the basis of strict confidentiality, in order to allow the Man companies to address, through confidential submissions and/or a private hearing, issues of concern which ASIC had at that time with the prospectuses lodged.
36. Statements of concerns are very specific to the prospectus to which they relate and do not represent ASIC's general approach to prospectuses. This general approach is set out in Regulatory Guide 228 *Prospectuses: Effective disclosure for retail investors*, which is publicly available on ASIC's website. If information is required to inform a debate on ASIC's approach to regulating prospectuses (being potentially a debate on a matter of public importance as contemplated by s 11B(3)(b) of the FOI Act), relevant information is therefore publicly available in RG 228.
37. Both Man companies lodged a replacement prospectus and investors were only able to subscribe on the basis of these replacement documents. ASIC's preliminary concerns with the original prospectuses were addressed by the Man companies and are now irrelevant and superseded by the replacement prospectuses. The offer under Man AHL Gold (AUD) Limited's replacement prospectus remains open for acceptances but the offer under Man OM-IP 2 AHL Limited's prospectus is now closed. The Statements of Concerns requested are therefore not relevant to any public debate on those offers.
38. I find that confidentiality attaching to statements of concern is essential for full and forthright communication between ASIC and companies lodging disclosure documents. Preserving such confidentiality ensures that all matters of concern relating to the lodged prospectus may be fully discussed and addressed so assisting in the preparation of a prospectus which will promote the confident and informed participation of investors and consumers in the financial system.
39. I consider that providing access to statements of concern will potentially:

- a) inhibit full and forthright communication of, and discussion about, issues of concern with the issuer of the prospectus;
 - b) make the resolution of disclosure concerns more adversarial and reduce the willingness of companies to provide corrective disclosure; and
 - c) compromise ASIC's ability to respond quickly, fairly and efficiently to prospectuses that it considers are deficient.
40. These consequences are significant and would compromise ASIC's objective to promote the confident and informed participation of investors in the financial system as mandated by section 2(b) of the *Australian Securities and Investments Act 2001*.
41. For the reasons set out above, I find that the public interest in maintaining the confidentiality of the Statements of Concerns significantly outweighs the public interest in favour of granting access.

Removing exempt information from documents: s22 of the FOI Act

42. Section 22 applies if an agency decides to refuse to give access to an exempt document and it is possible for the agency to prepare an edited copy of the document, modified by deletions.
43. I have considered whether, pursuant to section 22 of the FOI Act, access should be granted to non-exempt parts of the documents you requested. I have found that all of the substantive information in the documents is exempt and therefore s22 is not applicable. If the exempt information is removed from the document, the only information remaining is a description identifying the relevant prospectus and offer made under the prospectus and an extract of relevant legislation (being s728, s710 and s715A of the Corporations Act). I note that information about the offer made under the prospectus is publicly available in the prospectus and the legislation is publicly available in the Corporations Act.

REVIEW RIGHTS

44. If you are dissatisfied with my decision not to give you access to the documents requested:
- a) You may, within 30 days after the day on which you have been notified of this decision, apply in writing to ASIC for a review of my decision by another ASIC officer under section 54B of the FOI Act. This request should be addressed to me or to the Senior Manager, Administrative Law GPO Box 9827 SYDNEY or by email to foirequest@asic.gov.au
 - b) You may apply in writing to the Australian Information Commissioner for a review of my decision under section 54N of the FOI Act. Correspondence

should be addressed to the Office of the Australian Information Commissioner at GPO Box 2999 Canberra ACT 2601 OR GPO Box 5218 Sydney NSW 2001.

- c) You may lodge a complaint to the Australian Information Commissioner in respect to the conduct of ASIC in the handling of this request. Correspondence should be addressed to the Office of the Australian Information Commissioner GPO Box 2999 Canberra ACT 2601 OR GPO Box 5218 Sydney NSW 2001 GPO Box 5218 Sydney NSW 2001.

Yours sincerely

Fiona Laidlaw

(Authorised decision-maker under subsection 23(1) of the FOI Act)
for the Australian Securities and Investments Commission

Divider Tab No. 10



New Freedom of Information request

to:

FOIrequest

17/12/2012 06:40 PM

Hide Details

From:

To: <FOIrequest@asic.gov.au>,

Please respond to

History: This message has been forwarded.

1 Attachment



ASICFOIApp17_12_12.pdf

This email message has been processed by MIMESweeper

Dear Sir or Madam,

I wish to make an application under the *Freedom of Information Act 1982* for the documents and information identified in the attachment to this email.

Notices under the Act may be sent to me in the following manner:

(Preferred) By email

(Alternate) By post:

Regards,

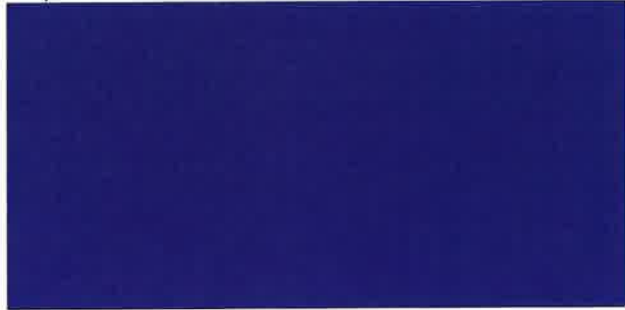
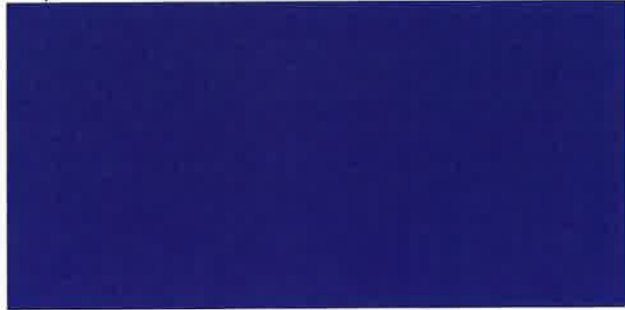
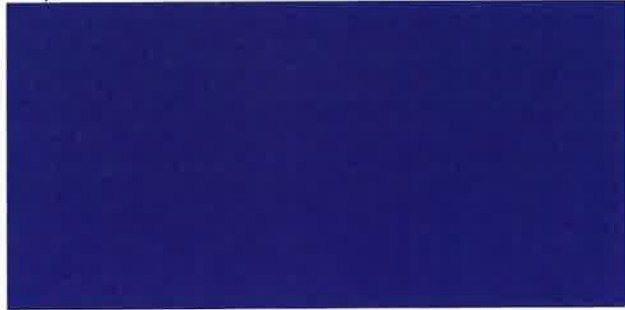
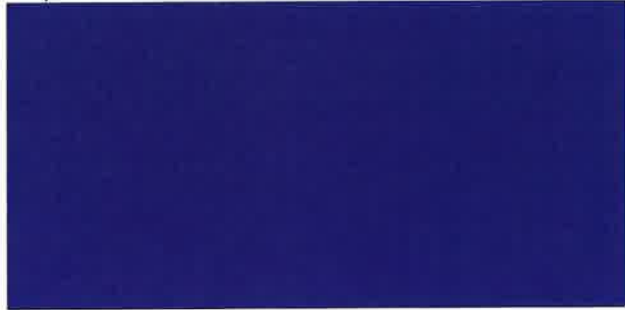
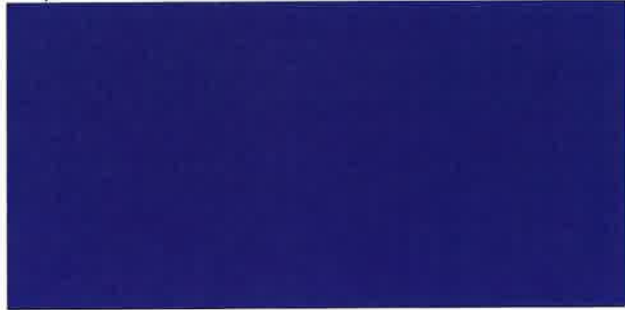
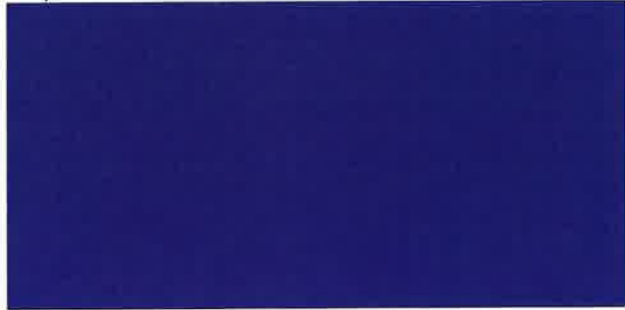
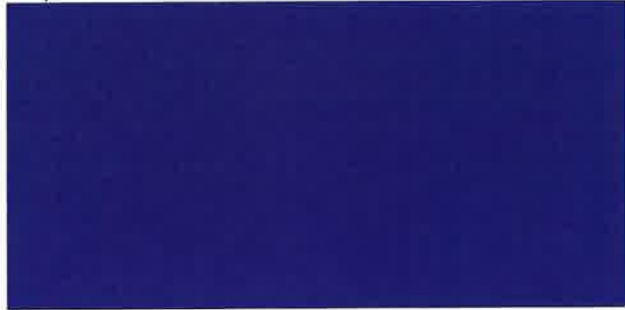
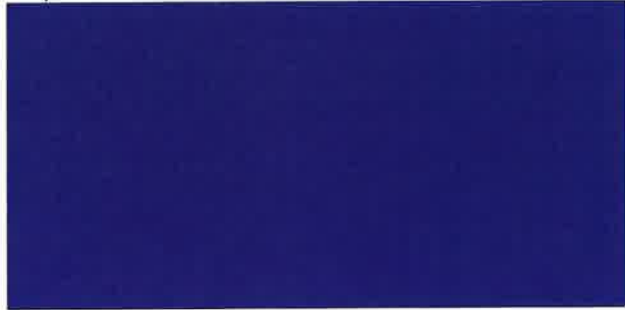
This email is for the information of the intended addressee only. It may contain sensitive legal information which is subject to legal professional privilege. If this email has been delivered to any person but the intended recipient, please immediately inform the sender of the error in delivery and then delete this email. Under no circumstances is permission given (either in full or part for the message or any attachment) for this communication to be provided to any third party. If such a transgression takes place, this warning may be produced in evidence in any court, tribunal or other disciplinary body.

Freedom of Information Application

Date: 17/12/12

By: 

For the purposes of this application, the terms "payday lending" and "payday lender" are used. These are not specific defined terms at law, and may be difficult to find. Accordingly, where difficulty in identification is determined, the term "payday" may be exchanged for "small amount credit contract" as defined in the *Consumer Credit Legislation Amendment (Enhancements) Act 2012*.

- 1 Copies of correspondence between ASIC and the following parties in regards to the payday lending industry:
 - (i) 
 - (ii) 
 - (iii) 
 - (iv) 
 - (v) 
 - (vi) 
 - (vii) 
 - (viii) 
- 2 The number of reports of misconduct made to ASIC in regards to payday lending per year since 2009. If possible, broken down into the following categories by referring party:
 - (a) Internal referral;
 - (b) Federal government agency;
 - (c) State government agency;
 - (d) Consumer advocacy body;
 - (e) Credit licensees;
 - (f) Private citizens/companies; and
 - (g) Others.
- 3 Internal policy documents and directions regarding payday lending, including the names of the authors of each document.
- 4 The number of notices issued under section 49 of the *National Consumer Credit Protection Act 2009*:
 - (a) Overall; and
 - (b) To recipients identified or considered to be "payday lenders".
- 5 The number of notices issued under section 266 of the *National Consumer Credit Protection Act 2009*:
 - (a) Overall; and
 - (b) To recipients identified or considered to be "payday lenders".

- 6 The number of notices issued under section 267 of the *National Consumer Credit Protection Act 2009*:
 - (a) Overall; and
 - (b) To recipients identified or considered to be "payday lenders".
- 7 The number of applications made for warrants under section 269 of the *National Consumer Credit Protection Act 2009*:
 - (a) Overall; and
 - (b) To recipients identified or considered to be "payday lenders".
- 8 ASIC selection criteria upon which a decision is based to send notices under:
 - (a) Section 49 of the *National Consumer Credit Protection Act 2009*;
 - (b) Section 266 of the *National Consumer Credit Protection Act 2009*; and
 - (c) Section 267 of the *National Consumer Credit Protection Act 2009*.