Corporate Finance Liaison Committee Meeting
SUMMARY OF ISSUES
MAY 2009

Welcome

Policy Update

Share/interest purchase plans

ASIC has decided to increase the monetary limit for share purchase plans (SPP) to $15,000, and to impose a cleansing notice requirement. There are also a number of other conditions likely to apply that are similar to those that apply to the disclosure exemption for rights issues and the secondary sales exemption in s708A of the Corporations Act.

We anticipate that cleansing notice lodgement will work as follows: where a SPP is offered in conjunction with a placement, only one (1) cleansing notice must be lodged with the Australian Securities Exchange (ASX). Where a SPP is offered alone, the cleansing notice must be lodged with the ASX in the 24-hour period before the offer is made.

We are currently drafting new class orders and RG 125. We hope to issue within the next four to six weeks, and will issue a media release when this is complete. In the meantime, issuers seeking the relief will need to continue to apply for individual exemptions.

We have received a request for ASIC's view on whether, in applying a SPP, ASIC would agree to the company "looking through" nominees on its register so as to offer the share purchase plan to the legal holders sitting behind the nominee. We will consider this issue further. However in the meantime, unless the nominee has taken steps to have the holders on whose behalf it acts noted on the register, the nominee alone may participate in the SPP, not the holders that sit behind it.

Consultation Paper 105 Facilitating equity capital raising

In February 2009, ASIC issued Consultation Paper 105 *Facilitating equity capital raising* (CP 105) under which we sought comment in relation to fpur proposals designed to facilitate equity capital raising. CP 105 remained open for comment until 30 March 2009. We received 23 submissions from a variety of stakeholders including AFMA and the Law Council of Australia.

Proposals
Broadly, the four proposals were to provide:

- class order relief to:
    - remove the requirement that the issue price for interests in a managed investment scheme issued under a placement is not more than a 10% discount to the current market price of interests in the same class without member approval; and
    - enable an underwriter of a dividend reinvestment plan to take up any shortfall under that dividend reinvestment plan, even if by doing so it exceeds the takeover threshold.

- Case-by-case relief to:
    - permit rights issues and secondary sales without a full prospectus even though the entity has been suspended for more than five days in the past 12 months; and
    - enable members to be able to take up any shortfall in rights that other members have not accepted under a rights issue using a shortfall facility even if by doing so they exceed the takeover threshold. We also proposed to provide class order relief from the takeovers provision for accelerated rights issues that meet the conditions of Class Order 08/35: *Disclosure relief for rights issues*.

The next steps

- We will shortly decide whether or not to implement these proposals either on the terms proposed in CP 105 or with modifications. It is not appropriate for us to comment on the likely outcome at this stage.
- We hope to publish any relief and any associated regulatory guides within the next six to eight weeks.
- Another item we are asked to include on today's agenda was whether ASIC had considered further the application of s615 to non-renounceable rights issues. We will also consider this issue as part of the package of matters dealing with equity capital raising.

Project Updates

CORPORATIONS Projects

- **Confidential Information -** ASIC is currently undertaking a project on the handling of confidential information, primarily in the context of equity raisings and M&A transactions. The principal aim is to reduce the number of people trading with the benefit of confidential, price sensitive information prior to the announcement of significant corporate transactions and thereby enhance market integrity. We are conducting interviews with representatives of each party that receives inside information prior to an announcement. Although the interviews will be in the context of recent transactions, our purpose is to review market participants' systems as a whole and establish best practice in this area.

- **Who owns Australian companies?** - This project aims to better understand disclosure about the ownership of companies. Concerns with the current regime include: difficulties in proving that persons are associates; securities being held through nominees or overseas entities (making it difficult to obtain information about beneficial holdings or foreign nominees seeking to rely on foreign laws to resist providing beneficial holding information); where shares are held through a number of entities, obtaining beneficial ownership information can be a time-consuming process, particularly where overseas entities are concerned. We intend to review how beneficial holdings are typically structured (e.g. through prime brokers or nominees in Australia and overseas), the effectiveness of the Corporations Act in gaining information about who beneficially owns shares and how certain overseas laws regimes operate. We intend to speak with various stakeholders, including specialist providers, law firms, corporate advisors and registries and seek international assistance as appropriate. Subject to these results, we will examine whether further strategies for promoting compliance, including consideration of releasing best practice guidance, are warranted.

- **Shareholder Voting -** We are starting a project on shareholder voting. The report of the Parliamentary Joint Committee on Corporations and Financial Services, *Better Shareholders – Better Companies*, has raised doubts about the shareholder voting process. In our view, market practice in this area is not widely understood by investors. Divergent practice concerning voting appears to contribute to uncertainty about the merit of the processes. The lack of understanding and, potentially, systemic risks to the integrity of the shareholder voting process are barriers to the confident and informed participation of investors. We are at the early stages of planning a project to investigate how shareholder voting works in practice and assess whether there are systemic risks arising in relation to shareholder votes. The project also aims to improve voting practices.

- **Valuation -**. ASIC is concerned about the overall quality and consistency of valuation reports. This concern extends to the independence of experts in certain circumstances, the expert appointment process and valuation material preparation. Accordingly, ASIC has a key focus on improving the quality of valuation materials, including valuation reports prepared as part of schemes, takeover defences and the compulsory acquisition process. As part of this project, ASIC intends to upgrade its skill base in this area and identify situations where additional deterrence activity is warranted. Additionally, ASIC intends to identify which areas of the valuation process (eg independence, method of appointment, peer review, enforcement) can be improved and then work with relevant stakeholders to establish / improve best practice.

- **Unlisted, unrated debenture project -** We are in the process of finalising our second review of the unlisted unrated debenture industry. This report follows up on the 3-point-plan we outlined in 2007 to improve disclosure for retail investors so as to help them better understand unlisted, unrated debenture products. The results of our first review were released in April 2008. Our second review will be published later this month. It will include an analysis of the 'if not, why not' disclosures made by issuers against the eight benchmarks in Regulatory Guide 69 *Debentures -- improving disclosure to retail investors* (RG 69). It

will also cover recent changes to the composition of the debenture industry, investor education and compliance with ASIC's advertising standards in Regulatory Guide 156 *Debenture advertising*. We are also looking at whether, in light of the findings of our second review, any adjustments should be made to our policy under RG 69 or other aspects of regulatory framework for debentures.

Emerging, Mining and Resources(E&MR) Stakeholder Team Projects

- **Project Deliverance –** Project Deliverance is a joint project between Corporations and EM&R, originally stemming from concerns that some companies might not be fully complying with the Chapter 2E shareholder approval process for related party transactions. One of our main aims is to better understand how companies manage conflicts of interest when providing financial benefits to related parties. This includes looking at whether companies are taking an overly expansive view of the exemptions for benefits on "arm's length terms" and "reasonable remuneration". We will be contacting some entities to obtain information about the nature of their related party arrangements, the entity's compliance with Ch 2E and about how the entity managed conflicts of interest that arose from the transaction. This information will help us between understand how companies comply with Ch 2E as a matter of practice, which in turn will allow us to provide further guidance to the market if necessary.

- **Project Jumbo -** Project Jumbo aims to look at company activities as a whole, rather than transaction by transaction, to ensure that across the whole of a company's activities, consistent disclosure practices are maintained. We will be looking at company announcements, briefings and any regulated disclosure documents lodged with ASIC to assess a company's compliance with relevant disclosure benchmarks, for example JORC and forecasting and reasonable grounds guidance in RG 170 and RG 111. We are focusing on M&A, reconstruction and fundraising activities.

- **Project Zephyr -** The object of Project Zephyr is to understand our unlisted market and the risks it faces. Obviously, the unlisted population is broad and not subject to the same oversight as listed entities. We're concerned that this may heighten the risk of non-compliance with continuous disclosure obligations and may delay awareness of financial risks with these entities. Our project will seek to identify risk factors faced by companies in the unlisted market. To do this, we will be analysing companies on the basis of several criteria, including type of organisation, types of products being offered, industry sector. From our analysis, we aim to develop strategies to address any high-risk areas identified.

- **Project Wisdom -** Project Wisdom will concentrate on corporate governance in small and mid-cap companies. We will be looking to understand usual governance practices in these entities and, where necessary, to develop strategies to influence better corporate governance practices. We expect to engage directors of small and mid-cap companies as part of our reviews to ensure we understand the practicalities of governance for these entities.

Corporations/EMR Operational issues

- **Statistics –** Please see the tables in Appendix A.

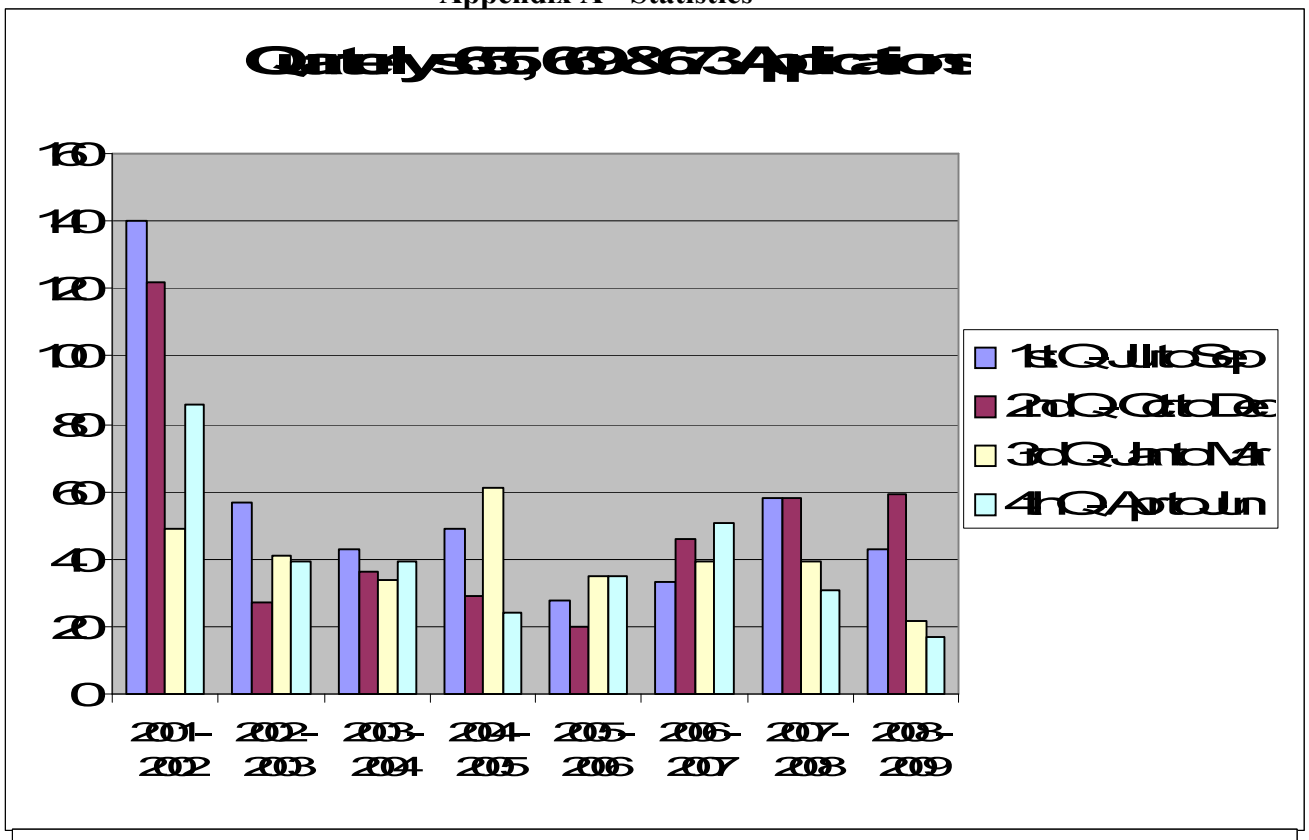
- **Prospectus reviews -** Between 1 July 2008 and 31 March 2009, 381 prospectuses and Offer Information Statements were lodged. Of these, 20 disclosure documents were stop-ordered, amendments were requested for a number, and a handful was withdrawn as a result of our concerns. We make the following observations:
    - a number contained forecasts and prospective financial information without a reasonable basis, including an independent expert's lack of disclosure on material assumptions;
    - in a couple of cases, we were concerned with the disclosure on the write down of CDOs and other assets;
    - some included inadequate disclosure about the control aspects of the issuer and related party transactions;
    - listed debt products are currently an area of focus for driving better disclosure. We encourage you to contact us at an early stage rather than focusing on using earlier lodged documents as a template. Particular areas where we would like to see early, clear and prominent disclosure are whether the products are secured/subordinated, whether they are straight bonds/floating rate notes etc and a layman's explanation of what that means for investors. We will also likely be interested in advertising. Ideally, there should description of the security including its ranking that is very

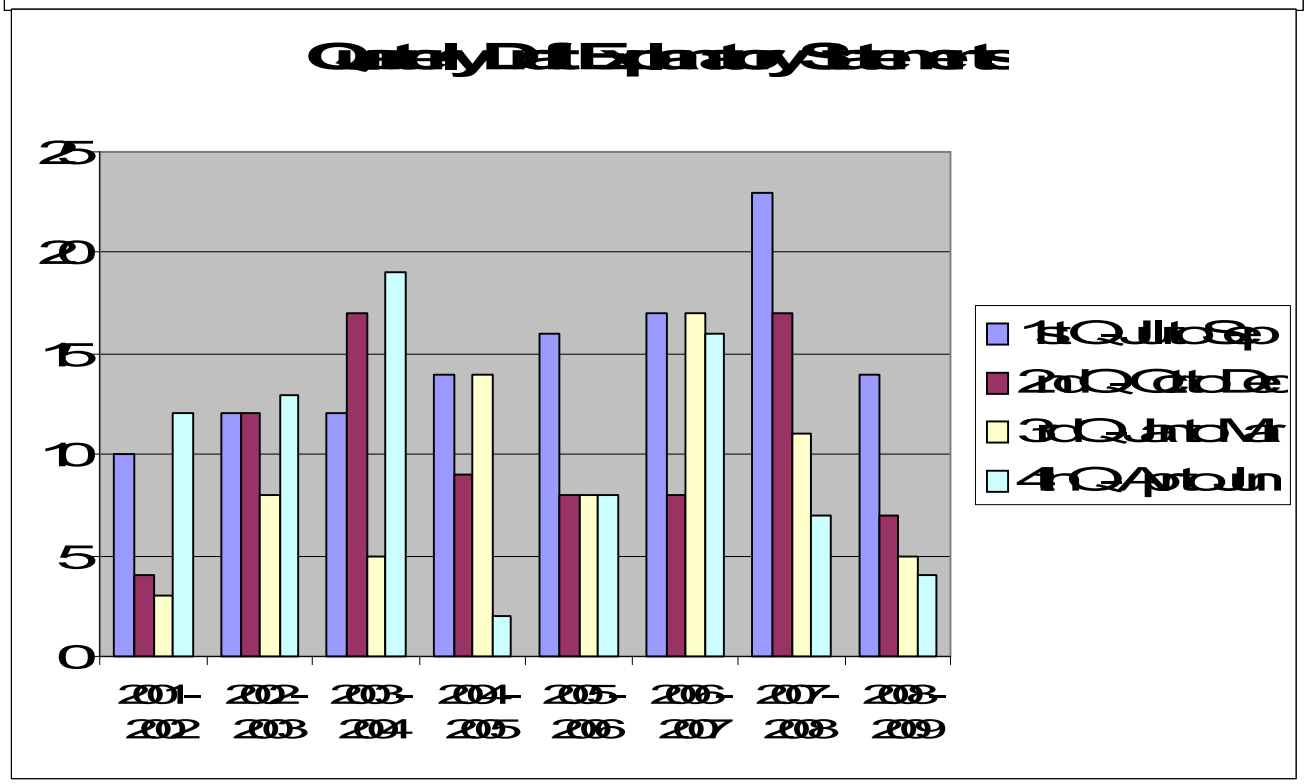
prominently available for retail investors;

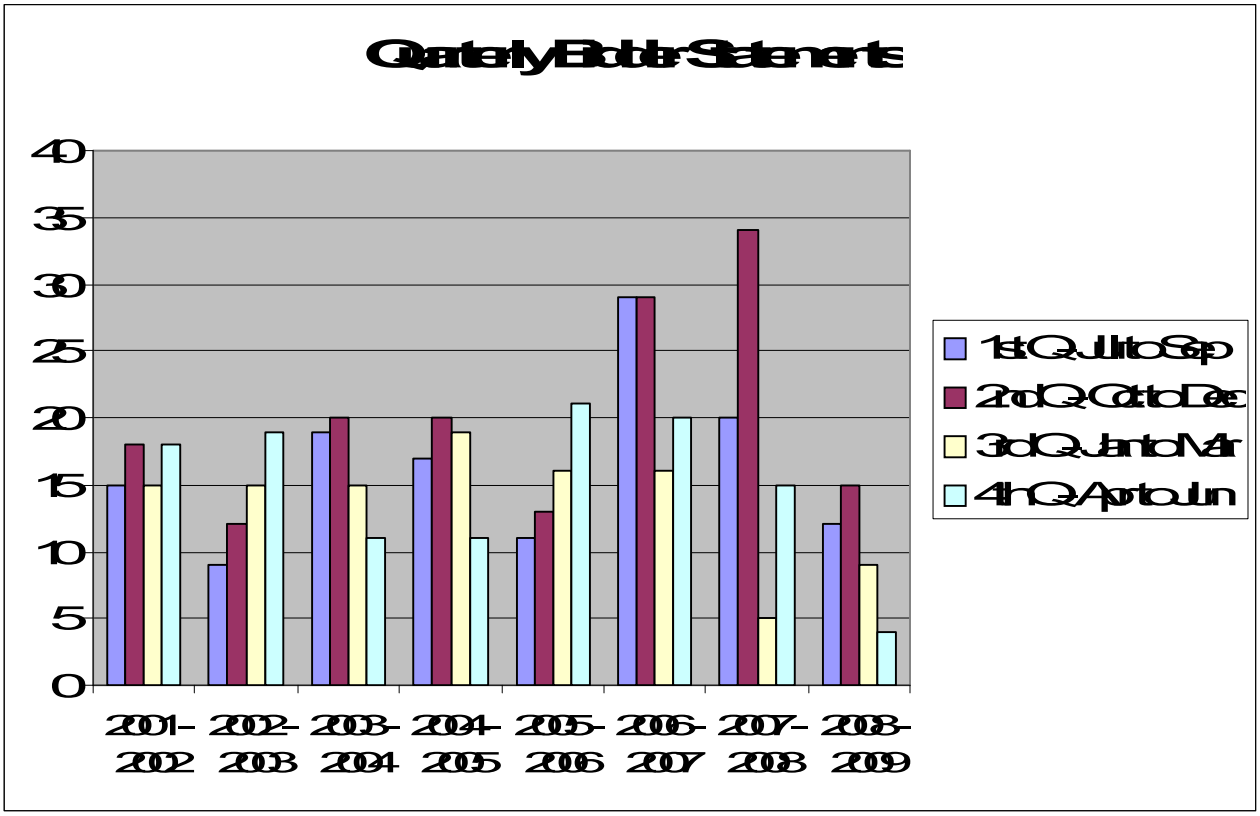
- a small number of offers had a number of structural defects (e.g. an attempt was made to issue a debenture without a trustee).

- **Chapter 8 -** Since implementation, 118 Australian offers have offered into New Zealand and six have been offered into Australia by New Zealand entities. ASIC, NZSC and NZCO have entered into protocols to monitor fund raising activities between the two jurisdictions. The requirement of Section 1200S, that an Australian issuer must notify ASIC of its intention to offer into New Zealand, is set out in Regulatory Guide 190 *Offering securities in New Zealand and Australia under mutual recognition*, as well as other matters relating to the mutual recognition regime. We are in the process of amending the ASIC offer list form, PDS in-use notice forms and an additional form to assist issuers to provide written notice to ASIC under s1200S. Also note that a New Zealand issuer offering into Australia can use the ASIC offerlist form when providing documents to ASIC under section 1200D.

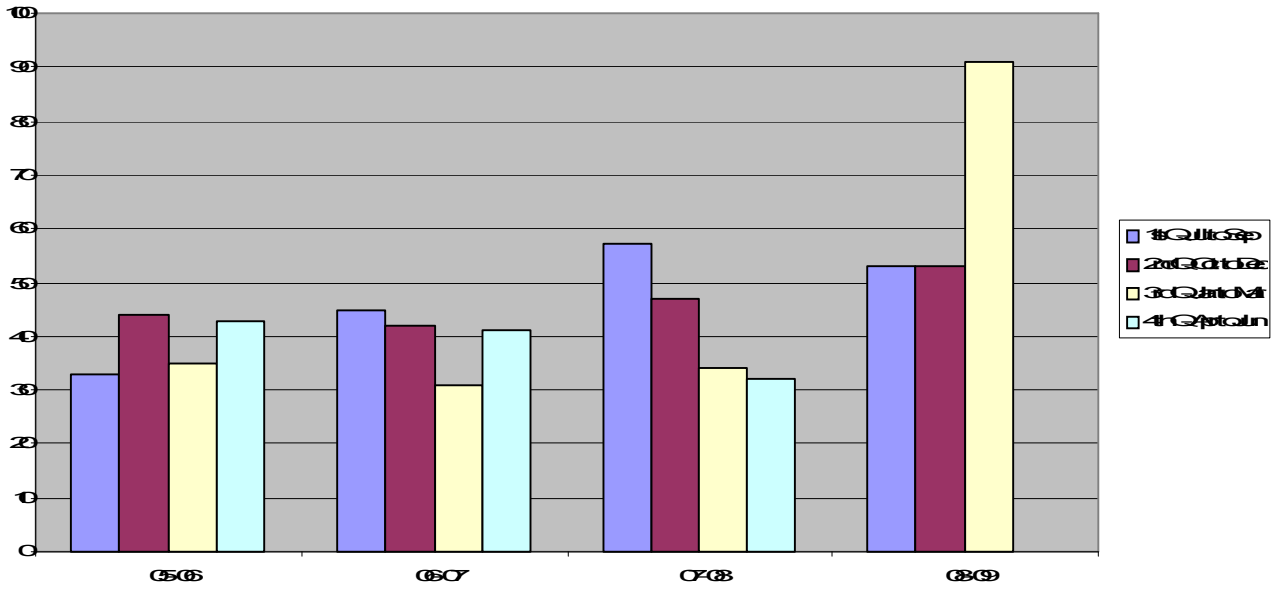
Appendix A - Statistics

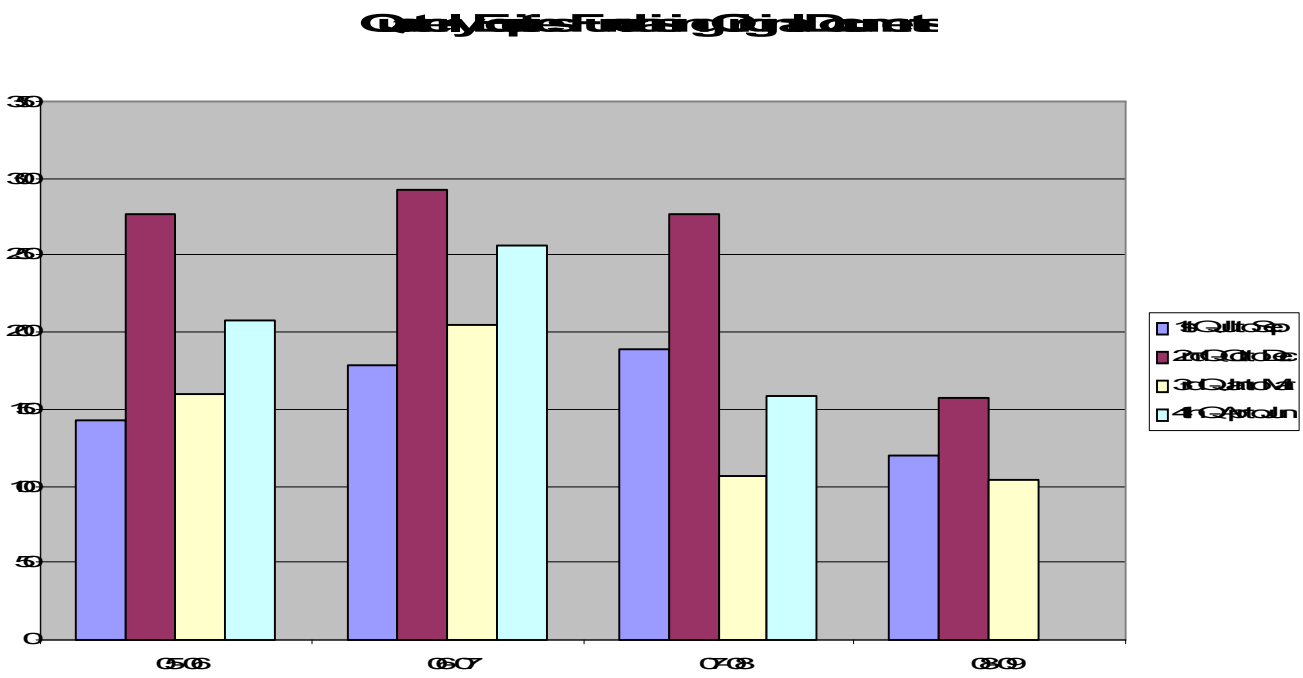






Fundraising





DISCLOSURE DOCUMENTS 07/08 AND 08/09
AS AT 28 APRIL 2009

Year	NSW	QLD	VIC	SA	WA	ACT	NT	TAS	NATIONAL
07-08	239	126	229	71	323	0	0	0	988
08-09	145	95	152	31	153	0	0	0	576