



# Corporate Finance Liaison



**ASIC**

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Australian Securities &  
Investments Commission

**November 2011**

# Takeovers – Policy and project update

November 2011

# Improving pre-bid disclosure and behaviour in control transactions

- ASIC is undertaking a project to examine:
  - Pre-bid disclosure issues
  - Pre-bid structural issues (e.g. lock-up devices)
  - Association concerns
- Project deals with important and topical market integrity issues
- Focus will be on ASIC's review of transactions rather than on new policy or guidance



# Downstream Acquisitions

## CP 170: Aim of guidance

- ASIC has released CP 170 which proposes updates to our guidance in RG 71: Downstream acquisitions, which was last revised in 1996
- The aim of our proposals are to update and consolidated our guidance on when the exemption in item 14 will apply and our approach to relief applications
- We have also proposed some specific revisions to our guidance on some aspects of our policy



# CP 170: Key Proposals

1. Revise our guidance on our approach to relief applications, including the factors we will take into account when considering an application for relief
2. Revise our guidance on the main purpose test of control (relevant to whether we will grant relief):
  - new test will be whether control of the downstream company may be regarded as a **significant purpose** of the upstream acquisition



# CP 170: Key Proposals

3. Revise our guidance on the conditions that may apply to our relief including:
  - propose changes to our standstill and voting conditions; and
  - propose a new sell-down condition as a potential alternative to a downstream bid condition

## Consultation process:

- Paper released on 11 November 2011
- Open for comment until 16 January 2012
- Submissions to: [policy.submissions@asic.gov.au](mailto:policy.submissions@asic.gov.au)



# RG 74: Exception 7 to section 611

## Shareholder approval

- Consulted on updated draft guidance earlier in the year under CP 159 and aiming to publish revised guidance later this year
- Subsequently observed transactions emerging which combine an item 7 placement with an inter-conditional takeover bid
- This is of concern as in some situations likely will be contrary to item 7's voting exclusions
- Consult with ASIC early should your clients wish to utilise this structure



# Takeovers policy review

Proposed Regulatory Guides	Relevant interests and substantial holding notices	Exceptions to the section 606 prohibition	Compulsory acquisitions	Takeover bids
<b>Incorporates policy from these existing Regulatory Guides</b>	<p>RG 5: Relevant interests in unissued share capital</p> <p>RG 9: Relevant interests in shares</p> <p>RG 48: Takeovers aspects of options over shares</p> <p>RG 143: Takeovers provisions: Warrants</p> <p>RG 171: Anomalies and issues in the takeover provisions</p>	<p>RG 31: Acquisitions and disposals by a broker acting as principal</p> <p>RG 61: Underwriting – application</p> <p>RG 88: Trustee and nominee companies of exemptions</p> <p>RG 159: Takeovers, compulsory acquisitions and substantial holdings</p> <p>RG 171: Anomalies and issues in the takeover provisions</p> <p>RG 199: Broadening the rights issue and dividend reinvestment plan exceptions for takeovers</p>	<p>RG 159: Takeovers, compulsory acquisitions and substantial holdings</p> <p>RG 171: Anomalies and issues in the takeover provisions</p>	<p>RG 6: Variation of takeover offers</p> <p>RG 10: Classes of shares</p> <p>RG 11: Disclosure of offerors' intentions in takeover documents</p> <p>RG 27: Takeovers: minimum acceptance conditions</p> <p>RG 35: Collateral benefits in takeovers</p> <p>RG 37: Takeovers – financing arrangements</p> <p>RG 145: Collateral benefits – takeovers funding and pre-bid purchases</p> <p>RG 159: Takeovers, compulsory acquisitions and substantial holdings</p> <p>RG 171: Anomalies and issues in the takeover provisions</p>





# Fundraising – Policy and project update

**November 2011**

# RG 228: Prospectus disclosure: Effective disclosure for retail investors

- The guide was published on 10 November 2011
- Emphasis that our guidance is general and is not prescriptive



# RG 228: Changes from CP 155

- ❖ Financial Ratios
  - ❖ Historical Financial Information
  - ❖ Risk Disclosure
  - ❖ Directors' Track Record
  - ❖ Commercially Sensitive Information
  - ❖ Photographs
- See Report 261 for summary of submissions received and ASIC's response



# Low-doc fundraising project

- Project to review quality of disclosure in low documentation offerings including rights issues, share purchase plans and small scale non-public offers
- Focus on highly dilutive offerings
- Considering adequacy of continuous disclosure preceding the offering, as well as the offer material



# Debenture policy update

- Consultation Paper 151: Debt securities: Modifying the naming provisions and advertising requirements
  - New debenture category called 'secured notes' and advertising requirements
  - ASIC's no action position in respect of naming of debentures will expire on 1 February 2012
- Revised guides to be published in coming months



# Further policy update

**November 2011**

# CP 150: Disclosing financial information other than in accordance with accounting standards

- Guide still being finalised but there will be some changes from the initial draft guide including:
  - It is now likely these figures will be known as 'non-IFRS' financial information;
  - Additional guidance on what equal and greater prominence means;
  - More relaxed position on presenting pro-forma to EBIT / EBITDA where the company's funding structure is not stable
- Intention to maintain general prohibition on disclosure of alternative profits in the financial statements
- The final regulatory guide should be out in early 2012



# Executive remuneration

- Government has now introduced legislation – *Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011*
- Will amend section 250R(5) to allow chairman to vote undirected proxies, and will take effect from Royal Assent
- CSA has recently released guidance on managing voting exclusions in remuneration related resolutions
- Encourage your clients to consider whether a resolution should go to a poll to enhance transparency





# Related party transactions

- We have observed an improvement in the quality related party disclosure in notices of meeting and prospectuses
- Note that ASIC has an obligation to maintain a public register of documents, and meeting materials are to be made available on the register without delay
- Should ASIC require material changes to a notice of meeting will require you to reodge, and apply for an abridgement of notice to ASIC (if required)
- Documents need:
  - An original (not digital) signature of an authorised person (s351); and
  - Where it is a final document incorporating any comments from the ASX



# Closing Comments

**November 2011**

# Summer School

- To be held Monday 20 and Tuesday 21 February 2012, at the Hilton Sydney
- Theme – Building resilience in turbulent times

Day 1: Recession, Risk & Regulation – Building resilience in markets

Session 1: Turbulent times and the international regulatory response

Session 2: Consumer decision making in turbulent times

Day 2: Emerging and evolving markets: opportunities and threats

Session 3: Asia-Pacific capital markets

Session 4: Major market developments

Session 5: ASIC's future direction – staying ahead of changes, being proactive and effective

- Registrations have opened for external delegates who can register through the ASIC web site at [www.asic.gov.au/summerschool](http://www.asic.gov.au/summerschool)



# Questions?

We would appreciate you taking the time to complete our questionnaire before you leave today. This will help us as we plan for future meetings.

Thank you

**Next Meeting: May 2012**

