ASIC
Australian Securities & Investments Commission

REPORT 446

ASIC regulation of corporate finance: January to June 2015

August 2015

About this report

This report is for companies, lawyers, corporate advisers and compliance professionals working in corporate finance.

It highlights and discusses key statistical information, observations and our work in the regulation and oversight of fundraising, mergers and acquisitions transactions, corporate governance, and other general corporate finance areas for the period 1 January to 30 June 2015.

About ASIC regulatory documents

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

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

Regulatory guides: give guidance to regulated entities by:

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

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

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

Disclaimer

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

Document history

Paragraph 121 was amended on 25 August 2015 to clarify a reference to scrip-for-scrip rollover tax relief.

Previous reports on regulation of corporate finance

Report number	Report date
REP 406	August 2014
REP 423	February 2015

Contents

Overview

Regulation of corporate finance activity

1 ASIC is responsible for the regulation and oversight of corporate finance activity in Australia, with a particular focus on corporate transactions such as fundraising, takeovers, schemes of arrangement, share buy-backs, compulsory acquisitions, employee incentive schemes and financial reporting.

2 Within ASIC, the Corporations and Emerging Mining and Resources (EMR) teams are responsible for regulating disclosure and conduct by corporations in Australia in these areas. As part of this work, we:

(a) assess applications to ASIC for relief from certain parts of the *Corporations Act 2001* (Corporations Act), including Chs 2M, 6 and 6D; and

(b) review certain documents lodged with ASIC relating to various corporate transactions.

3 We also engage with stakeholders, conduct targeted surveillances of identified risk areas, publish regulatory guides, and conduct enforcement activities in relation to corporate finance.

4 The EMR team is located in Perth and has a particular focus on small capital and mining exploration companies. The Corporations team is based in Sydney, Melbourne and Brisbane.

Corporate Finance Liaison meeting

5 We hold a twice-yearly Corporate Finance Liaison meeting to engage with stakeholders and provide insight into our current policy and regulatory approaches regarding corporate fundraising, mergers and acquisition activity, and other corporate transactions. At these meetings, Corporations and EMR staff present on current topics in the marketplace and answer questions from the audience.

6 Corporate Finance Liaison meetings are held in Sydney, Melbourne, Brisbane, Perth and Adelaide. Lawyers, corporate advisers and compliance professionals working in corporate finance and mergers and acquisitions are welcome to attend these meetings.

7 This report covers issues to be discussed at our August–September 2015 Corporate Finance Liaison meetings.

The purpose of this report

8 The purpose of this report is to provide greater transparency about the role that ASIC plays in the regulation of corporations in Australia.

9 The report highlights and discusses key statistical information, observations and our work in the regulation of fundraising, mergers and acquisitions, corporate governance, and other general corporate finance areas for the period of 1 January to 30 June 2015 (this period).

10 The report provides limited commentary on applications for relief from certain parts of the Corporations Act. Please see our regular reports on our relief decisions for more detailed information on novel relief applications.

11 We published the most recent report on our relief decisions in May 2015: see Report 435 *Overview of decisions on relief applications (October 2014 to January 2015)* (REP 435).

A Fundraising

Key points

This section sets out statistics and observations from our work in relation to fundraising. We review prospectuses and process applications for relief from Ch 6D of the Corporations Act.

Excluding replacement and supplementary documents, fewer disclosure documents have been lodged with ASIC than in the previous period.

We have intervened in a significant number of cases to improve the disclosure provided to help investors make an informed investment decision.

In this period we undertook a number of regulatory initiatives in relation to emerging market issuers, behavioural economics and due diligence surveillances. We are also continuing our work on the sunsetting of class orders.

Statistics and observations

12 In this period there was a 23.6% decrease in the number of disclosure documents[1] lodged with ASIC (compared to the period 1 July to 31 December 2014 (previous period)), and a slight decrease in applications for relief from Ch 6D: see Figure 2. For details of historical lodgements, see Figure 9–Figure 11 in Appendix 1.

13 Table 1 depicts the top 10 public fundraising transactions by value of the offer, based on disclosure documents lodged with ASIC in this period. Similarly to the previous period, hybrid securities again make up a notable portion of these fundraisings.

Table 1: Top 10 primary fundraising transactions under a prospectus by value (1 January to 30 June 2015)[2]

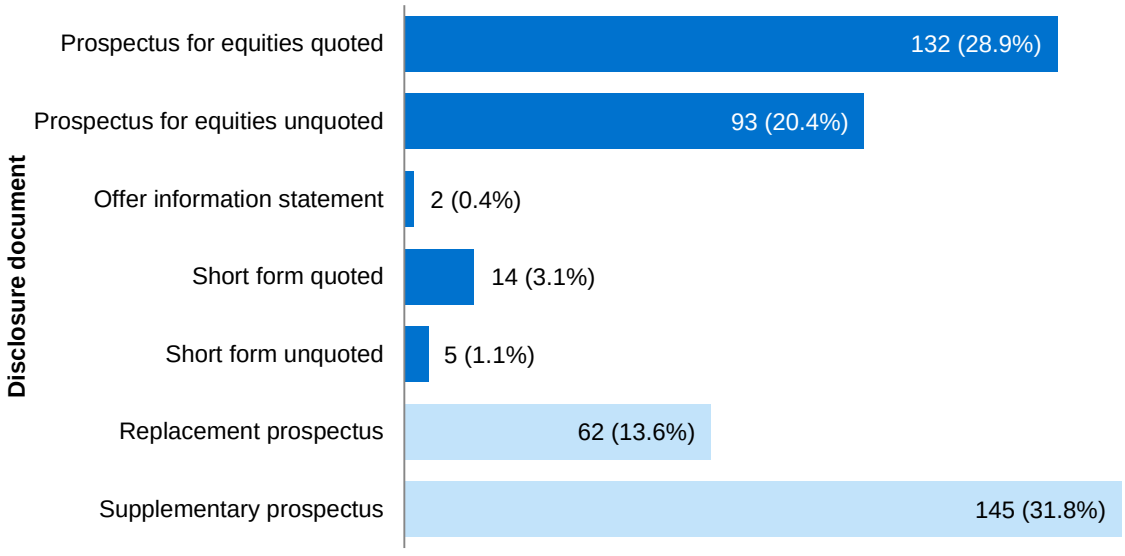
Issuer	Date of lodgement	State	Value	Industry	Security type
Australia and New Zealand Banking Group Ltd	23/01/2015	Vic.	$850m	Banks	Hybrid securities
MYOB Group Ltd	31/03/2015	NSW	$833m	Software and services	Shares

[1] This excludes replacement and supplementary disclosure documents.
[2] This table excludes the $984 million prospectus lodged with ASIC by Greenstone Limited on 25 May 2015, because the transaction did not proceed. This table also excludes low document fundraisings conducted by listed entities.

Issuer	Date of lodgement	State	Value	Industry	Security type
National Australia Bank Ltd	17/02/2015	Vic.	$750m	Banks	Hybrid securities
Costa Group Holdings Ltd	25/06/2015	NSW	$637m	Food and staples retailing	Shares
Future Generation Global Investment Company Ltd	26/06/2015	NSW	$550m	Diversified financials	Shares and attaching options
Crown Resorts Ltd	17/03/2015	Vic.	$400m	Consumer services	Hybrid securities
Gateway Lifestyle Operations Ltd / One Managed Investment Funds Ltd	21/05/2015	NSW	$390m	Real estate	Stapled securities
Eclipx Group Ltd	26/03/2015	NSW	$252m	Diversified financials	Shares and attaching options
Westpac Banking Corporation	22/06/2015	NSW	$221m	Banks	Shares
Adairs Limited	29/05/2015	Vic.	$218m	Retailing	Shares

14 Figure 1 illustrates the number of disclosure documents (by type) lodged with ASIC in this period. Sixty initial public offering (IPO) disclosure documents were lodged during this period, and rights issues and entitlement offer prospectuses were the most common type of disclosure documents lodged with ASIC.

Figure 1: Number of disclosure documents by type (1 January to 30 June 2015)

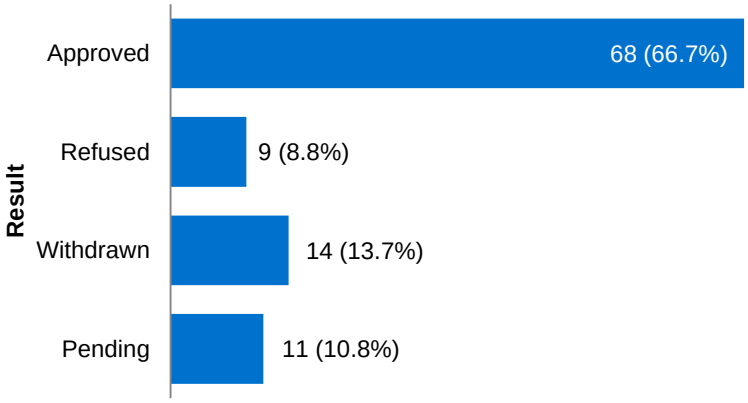


Note: Original lodgements are shown in dark blue, with documents supplementing the original lodgements shown in light blue.

Applications for relief

15 During this period, we received 102 applications for relief under s741. Of the 102 applications, we granted relief for 68 applications (66.7%): see Figure 2.

Figure 2: Results of applications under s741 (1 January to 30 June 2015)



16 We publish a regular report that provides an overview of decisions made on novel relief applications, including those made in relation to fundraising transactions. Our most recent report is REP 435.

ASIC's review of prospectuses

17 The Corporations and EMR teams review prospectuses and other disclosure documents for offers of securities, which are required to be lodged with ASIC under Ch 6D.

Intervention by obtaining amendment, extension of exposure period and stop orders

18 As a result of our review of prospectuses and offer documents lodged with ASIC under s718, in this period we:

(a) raised disclosure concerns with over 23% of the documents lodged—subsequently, changes were made to over 79% of the documents where concerns were raised (or over 18% of all documents lodged);

(b) extended the exposure period 30 times—down from 31 times in the previous period, but up from 21 times in the first six months of 2014;

(c) issued 24 interim stop orders in relation to 17 offers[3] (6.9% of all offers) and eight final stop orders[4] (3.2% of all offers)—we issued 27 interim stop orders and seven final stop orders in the previous period; and

(d) revoked 14 interim stop orders[5]—we revoked seven interim stop orders in the previous period.

19 Overall, we extended slightly fewer exposure periods and issued fewer interim stop orders, and slightly more final stop orders, in this period than the previous period. This is partly due to a general decrease in fundraising activity.

Disclosure concerns

20 In our review of prospectuses lodged with ASIC during this period, we noted concerns, requested amended disclosure, or intervened in offers of securities where there was:

(a) inappropriate disclosure of financial information and company solvency (almost 15% of all prospectuses lodged, which is consistent with the previous period); and

(b) improper disclosure of forecast financial information (in 4.8% of prospectuses lodged, down from 11.8% in the previous period).

21 We discuss our expectations around disclosure of financial information in prospectuses further at paragraphs 26–32.

22 We noted concerns, requested amended disclosure or intervened in a number of offers due to insufficient disclosure about the structure of the offer. For example, in all prospectuses lodged during this period:

(a) control issues were identified in over 10% of prospectuses (up from 4% in the previous period). These concerns are primarily identified in prospectuses for rights offers and backdoor listings; and

(b) related party issues were evident in over 2% of prospectuses (down from 4% in the previous period).

[3] The interim stop orders were issued to Global Payment Solutions Limited, Isignthis Ltd, Martin Aircraft Company Limited, Red Gum Resources Limited, IQ3Corp Ltd, Fat Hen Ventures Ltd, Ensurance Ltd, SHKL Group Limited, Activistic Limited, Viculus Limited, Mazu Alliance Limited, FX Primus Group Limited, Wolfstrike Rentals Group Limited, Auto Innovations Group Limited, Omni Market Tide Ltd, QMS Media Limited and Dongfang Modern Agriculture Holding Group Limited.
[4] The final stop orders were issued to Red Gum Resources Limited, Australia International Financial Holding Group Limited, Bridge Global Capital Management Limited, Fat Hen Ventures Ltd, Auto Innovations Group Limited, FX Primus Group Limited, SHKL Group Limited and Bitcoin Group Ltd.
[5] We revoked the interim stop orders on Australia Santia Jinnai Culture Development Holdings Group Limited, Martin Aircraft Company Limited, Yonder & Beyond Group Limited, Dalmatia Avenue Syndicate Limited, Isignthis Ltd, Global Payment Solutions Limited, IQ3Corp Ltd, Viculus Limited, Ensurance Ltd, Activistic Limited, Red Fox Capital Ltd, Omni Market Tide Ltd and QMS Media Limited.

23 We also raised a number disclosure concerns in this period regarding:

(a) funding or financing (in over 8% of prospectuses lodged, down from 9.5% in the previous period);

(b) compliance with industry reporting codes, such as the Australasian Code for Reporting of Explorations Results, Minerals Resources and Ore Reserves (JORC Code) in mining prospectuses (1.2% of prospectuses lodged).

24 We identified a number of other common disclosure concerns, such as:

(a) companies failing to adequately disclose their business model;

(b) poor disclosure about a company's capital structure and substantial holders;

(c) poor quality information on directors' interests, benefits and employment history, and their relationship with the company; and

(d) inadequate risk disclosure, which is either insufficiently prominent in the prospectus or is not tailored to the company's circumstances.

25 In most instances, changes were made to the disclosure in response to our concerns.

Financial information in prospectuses

26 We continue to raise concerns about the quality and quantity of historical financial information provided to prospective investors in a significant proportion of offers. It is difficult for investors to make an informed decision about an offer without sufficient reliable financial information.

27 Many prospectuses we review contain very limited historical financial information, even though the underlying business has traded for a reasonable period of time. Some prospectuses contain either partially audited or unaudited financial information, meaning that little independent verification of financial information has been conducted.

28 Regulatory Guide 228 *Prospectuses: Effective disclosure for retail investors* (RG 228) was released in November 2011 and contains guidance on our expectations for historic financial disclosure in prospectuses.

29 We are considering clarifying our policy on disclosure in prospectuses and potentially updating RG 228. Prospectuses lodged without two-and-a-half to three years of audited financial information where there is a business with a 'relevant' operating history are likely to be heavily scrutinised by us. This applies:

(a) to both frontdoor and backdoor listings;

(b) regardless of ASX admission route (i.e. profits or asset test admissions); and

(c) whether or not the legal entity making the offer has existed only for a short time.

Pro forma financial information

30 In our last report—Report 423 *ASIC regulation of corporate finance: July to December 2014* (REP 423)—we observed that where a prospectus contains forecast financial information, the investment overview will often contain multiples such as 'earnings before interest and taxes' or 'earnings before interest, taxes, depreciation and amortisation'.

31 We reiterate that where a company elects to disclose these multiples, we generally consider that *all* forecast periods should appear in the investment overview. This includes years where a mix of actual and forecast results has contributed to the calculation of the multiples.

32 We will continue to raise this concern on prospectuses that we review.

ASIC's power under s713(6) of the Corporations Act

33 ASIC has the power under s713(6) to prevent a company from relying on the reduced disclosure rules if they breach certain statutory obligations designed to ensure material information is provided to investors.

34 In this period, we took action under s713(6) twice: see paragraphs 35–36.

Kaboko Mining Limited

35 In May 2015, we made a s713(6) determination that Kaboko Mining Limited may not use a short-form prospectus for a period of 12 months. The determination was made on the basis that Kaboko had contravened provisions in Ch 2M by failing to comply with its financial reporting lodgement obligations for three financial periods.

Pluton Resources Limited

36 In January 2015, we made a s713(6) determination that Pluton Resources Limited may not use a short-form prospectus for 12 months. The determination was made on the basis that Pluton failed to comply with its continuous disclosure obligations and various financial reporting requirements.

Fundraising trends

Backdoor listings

37 With the downturn in the resources sector, we continue to see an increasing number of technology and service companies 'backdoor listing' through struggling resource companies.

38 Many of the businesses seeking listing this way involve start-up technology companies with innovative business plans. Given the nature of the technology industry, these businesses can have unique and technical product or service offerings, complex corporate structures, high proportions of intangible assets, and/or operations and assets in emerging market jurisdictions. Disclosure to existing shareholders (via a notice of meeting) and to potential investors (via a prospectus) about these kinds of issues needs to be readily understandable and the associated risks prominently disclosed.

39 We have identified significant concerns with the majority of backdoor listing transactions. Common deficiencies in disclosure, either to existing shareholders or to potential investors, include:

(a) lack of audited financial information (see paragraphs 26–29);

(b) insufficient information about the valuation of the business or intangibles;

(c) insufficient information about the business model of the incoming company; and

(d) insufficient information about the roles of the key people involved in the business.

40 We have responded to these issues by increasing our regulatory focus on these transactions. Where necessary, we will take action such as interim and final stop orders on prospectuses and requesting amendments to shareholders meeting materials.

Emerging market issuers

41 We have maintained a focus on public fundraisings from issuers whose business and management is primarily located in an emerging foreign market. In 2013 we released on report on this topic: see Report 368 *Emerging market issuers* (REP 368).

42 While Australia provides a very open capital raising market, we have identified a number of concerns in this area. In REP 368, we identified that poor prospectus disclosure is a key risk of emerging market issuers. We also identified other risks, such as inadequacy of corporate governance practices, lack of verification of overseas operations, potential fraud, high levels of related party transactions, conflict of laws issues and noncompliance with regulatory regimes in the listing country.

43 During this period we continued to see a number of offers to Australian investors involving issuers from emerging markets, including businesses based in mainland China.

44 In response, we have started to:

(a) increase the number of due diligence surveillances of these offerings (see paragraphs 50–56);

(b) more tightly focus our review of these fundraising documents; and

(c) monitor compliance with ongoing obligations following listing, including continuous disclosure requirements.

45 Some additional areas of focus for us in the emerging market issuer area are discussed at paragraphs 46–49.

Spread requirement

46 We have also noted that an increasing number of these offers have shareholdings overwhelmingly concentrated in the hands of a small number of foreign investors. This can make it more difficult for these issuers to meet the shareholder spread requirements contained in the relevant exchange's listing rules.

47 In response we are looking at the practices employed to obtain requisite shareholder spreads, including those employed by licenced advisers working mainly with emerging market issuers, and we have engaged with ASX on this issue.

Language barriers

48 It is a requirement of the Corporations Act that directors consent to the lodgement of prospectuses, which includes ensuring the accuracy of their content. This can be a challenge with emerging market issuers, where directors might be located overseas and may have insufficient English language skills to understand a prospectus in its lodged form.

49 Directors must be aware that they are responsible under the Corporations Act for ensuring the accuracy of the content of prospectus documents. Directors must ensure that they are provided with sufficient information on the content of the document to properly consent to its lodgement. Generally we will expect that a translation of the prospectus has been provided to non-English speaking directors before they consent.

Surveillance work

Due diligence surveillances

50 In RG 228 we note that, based on our experience, where a prospectus is defective it is often the case that the issuer cannot demonstrate appropriate due diligence and verification procedures.

51 We remain concerned that due diligence practices in our market can vary widely, with the result that in some instances we have questioned the reliability of the information provided in a prospectus.

52 As foreshadowed in REP 423, we have been conducting detailed reviews of due diligence practices in a selection of offers. To date, we have conducted surveillances on issuers located in each major Australian city. We have been particularly focused on emerging market issuers and also on offers where the quality of disclosure has given rise to possible concerns about the due diligence conducted.

53 Our expectation is that issuers and their advisers (including lawyers, accountants and underwriters) will have conducted appropriately rigorous due diligence, focusing on the verification of substantive information provided in the prospectus.

54 In some instances we have been disappointed with the thoroughness of due diligence practices. In these cases we have warned issuers and their underwriters that the due diligence liability defence in s731 may not be available.

55 We have also required changes to prospectus disclosure as a result of conducting this work.

56 We will continue to conduct these surveillances, including in connection with our ongoing work on emerging market issuers.

Action on marketing of offers

57 We have recently noticed an increase in companies making statements to the public about an offer or intended offer of securities in the lead up to the issue of a prospectus or while an offer is open. In some cases, these types of statements can contravene the prohibition on advertising and publicity in s734. Guidance on how we deal with such contraventions can be found in Regulatory Guide 158 *Advertising and publicity for offers of securities* (RG 158).

58 This has become an area of focus for us and we will continue to perform targeted reviews of advertising material connected with public offers. Some examples of our work during this period on the marketing of offers are discussed at paragraphs 59–64.

Publications made on social networks

59 We issued a stop order on Bitcoin Group Limited in February 2015 after becoming aware that the company published materials on a popular online social network seeking expressions of interest for a proposed IPO.

60 The publications were made before the lodgement of a disclosure document with ASIC, in breach of the pre-prospectus advertising and publishing prohibitions under the Corporations Act. Our stop order prohibited any publications by the company about offers of securities requiring a disclosure document before such a document is lodged with ASIC.

61 For further information, see Media Release (15-025MR) *ASIC issues stop order on pre-prospectus publications by Bitcoin Group Limited* (13 February 2015).

Public retraction of advertising

62 We took action in one instance to require an issuer to make a public retraction of advertising material that was sent to members of a popular online investor forum. The advertising material was not consistent with information contained in the prospectus. We required the retraction to be sent to all the individuals that had received the original advertising material.

Selling by brokers

63 Our focus on marketing extends to considering the manner in which brokers and promoters sell securities to retail investors. During the period, we targeted certain offers and used ASIC's compulsory information gathering powers to review selling methods employed by brokers.

64 We will continue to undertake this work to ensure that appropriate marketing strategies are employed.

Enforcement action

FX Primus Group Limited

65 FX Primus Group Limited lodged a prospectus in April 2015. We had a number of concerns with the prospectus disclosure and placed an interim stop order on the prospectus to provide time for FX Primus to adequately address these concerns.

66 At the same time, we investigated whether entities within the FX Primus group were providing unlicensed financial services to Australian investors. We undertook an enforcement investigation and found that an FX Primus entity had hundreds of Australian investors but did not have an Australian financial services (AFS) licence.

67 We also found that a website for FX Primus appeared, in our view, to contain:

(a) various statements and material that specifically targeted Australian investors; and

(b) representations that suggested FX Primus was authorised to deal in financial products in Australia (when in fact it was not).

68 Following action by us, FX Primus agreed to make changes to its websites and to notify its Australian clients that it was not licensed to provide them with financial services.

69 Subsequently a final stop order was placed on the prospectus and, as a result, no offers, issues, sales or transfers of shares in FX Primus Group Limited can be made under that document.

70 For further information, see Media Release (15-120MR) *ASIC requires FX Primus to cease targeting Australian investors* (21 May 2015).

71 Other enforcement outcomes in this period are discussed in Report 444 *ASIC enforcement outcomes: January to June 2015* (REP 444).

ASIC policy initiatives

Hybrid securities and behavioural economics

72 We recently turned to behavioural economics to help us understand retail investment in hybrid securities.

73 Behavioural economics techniques and research can help us better understand the wide variety of investor needs and capabilities. It can also help us design regulatory interventions that are more efficient and effective.

74 As discussed in Report 365 *Hybrid securities* (REP 365), we have worked with hybrid securities issuers and the brokers that sell hybrid securities to ensure that the complex features and risks of these investments are clearly disclosed and the products are not being mis-sold.

75 To complement this work, we engaged external researchers to examine the cognitive biases that may influence the appeal of hybrid securities to retail investors. The objective of this pilot study was to identify the behavioural biases that impact investors' allocation to hybrid securities within their overall portfolio and how risk was perceived compared with shares and bonds.

76 We published the results of this study in Report 427 *Investing in hybrid securities: Explanations based on behavioural economics* (REP 427) in March 2015. Notably, the study found:

(a) participants who showed an illusion of control bias chose the higher share of their portfolio in hybrid securities investments relative to those without this bias. This bias reflects a belief of the participant that they

may be able to influence an outcome even though such an influence isn't possible;

(b) framing and overconfidence biases are positively related to the share of the portfolio that is in hybrid securities investments. Framing bias relates to the way in which the situation is described and presented leading to different decisions by investors, and overconfidence is evident when participants overestimate the accuracy of their knowledge;

(c) the framing effect is likely to be more pronounced for hybrid securities, as many of the risks are not immediately apparent, making the risk–return trade-off more appealing than shares and bonds;

(d) where the exact possibility of a decision involving uncertainty is unknown (ambiguity aversion bias), less of the portfolio is allocated to hybrids; and

(e) surprisingly, the recognisability of the brand name of the issuer did not influence the investment choice. The experiment used well-known Australian brands as well as unknown Norwegian brands and familiarity with the name did not affect investment in hybrid securities.

Crowdsourced equity fundraising and other corporate law reform

77 The Australian Government is currently considering law reform to facilitate crowdsourced equity fundraising.

78 On 4 August Treasury released the consultation paper *Facilitating crowd-sourced equity funding and reducing compliance costs for small business*. The paper sets out a detailed model for crowdsourced equity fundraising by public companies and a number of proposed exemptions from corporate law requirements, including the audit requirement. The Government expects to introduce this law reform to Parliament in the Spring 2015 sittings.

79 Submissions are due by 31 August 2015.

Proposed crowdsourced equity funding model

80 The proposed model is limited to Australian public companies that have not previously raised funds under a disclosure document. It permits issuers to raise up to $5 million in a 12-month period with reduced disclosure.

81 The proposed model includes a number of features that aim to protect investors. This includes:

(a) annual investment caps for retail investors ($10,000 per offer, $25,000 for total crowd-sourced equity fundraising investments);

(b) a requirement for retail investors to provide risk acknowledgement; and

(c) a cooling-off period (retail investors can withdraw their acceptance up to five days after acceptance).

82 Intermediaries hosting crowd-sourced equity fundraising will need to hold an AFS licence and undertake some prescribed checks on issuers.

Other related initiatives

83 Treasury's consultation paper also:

(a) proposes giving new public companies some exemptions from corporate compliance for up to five years;

(b) seeks feedback on a number of proposals that would make fundraising easier for proprietary companies; and

(c) examines several ways to potentially reduce regulatory requirements for small proprietary companies that are unrelated to fundraising.

Sunsetting of class orders and update to Ch 6D regulatory guides

84 Under the *Legislative Instruments Act 2003,* all legislative instruments, are repealed automatically, or 'sunset', after 10 years, unless action is taken to exempt or preserve them. Sunsetting ensures that legislative instruments, such as class orders, are kept up to date and only remain in force while they are fit for purpose, necessary and relevant.

85 We have issued an array of class order relief in relation to the fundraising provisions in Ch 6D. Approximately 30 of these class orders are scheduled to sunset over the next few years.

86 This has provided us with an opportunity to undertake a review of these class orders. Where our review finds an existing class order to be operating efficiently and effectively, we intend to remake it as an ASIC instrument without substantive changes; our focus will primarily be making sure the new instrument is clear and user friendly.

87 We will also, where possible, simplify and rationalise class order content and conditions. For example, we will remove or reduce an obligation or burden in a legislative instrument if we are able to do so without undermining our regulatory priorities.

88 In circumstances where our review finds that a sunsetting class order is no longer required, we intend to repeal the relevant instrument.

89 Along with our review of these class orders, we are revisiting some of our regulatory guidance relating to fundraising. For example, we intend to update and consolidate our guidance relating to the procedure for offering securities for issue or sale under a disclosure document.

90 We anticipate consulting publicly with our stakeholders on all of our proposals relating to these sunsetting class orders and the update of our related regulatory guidance in September 2015.[6]

Share and interest purchase plan limits

91 During the period we considered whether we should review our class order relief for share and interest purchase plans in Class Order [CO 09/425] *Share and interest purchase plans.*

92 In particular, we conducted research on whether there is a need to increase the $15,000 maximum subscription limit in our relief. This limit has been in place since 2009 and before then the limit was set at $5,000.

93 Our research indicates that less money has been raised under share and interest purchase plans since the maximum subscription limit was increased in 2009 than in years when the limit was lower. We also note that smaller listed entities that utilise the share and interest purchase plan regime can raise amounts that are significant when compared to the size of the company.

94 On this basis we do not see a pressing need to increase the limit at this time but will continue to monitor feedback about this limit in the future.

[6] Please see Appendix 2 for a list of all of the corporate finance related class orders that we are intending to consulting on in the second half of 2015.

B Mergers and acquisitions

Key points

This section sets out statistics and observations from our work in relation to mergers and acquisitions. As part of ASIC's regulatory function, we review disclosure and monitor conduct in takeover transactions.

In addition to reviewing bid and scheme transactions during this period, we also worked on the repeal of certain market integrity rules relating to takeovers, and we conducted surveillances on experts to determine their independence.

We initiated two Takeovers Panel applications during this period.

Statistics and observations

95 The number of public merger and acquisition transactions in this period has decreased compared to the previous period.[7] Compared to the previous period, there has been:

(a) a decrease in the number of bidder's statements lodged;

(b) a slight decrease in the number of scheme explanatory statements lodged;

(c) a significant decrease in the use of scrip acquisitions;

(d) a slight increase in merger and acquisition applications; and

(e) an increase in transaction size.

96 Table 2 sets out the top 10 control transactions by value, where disclosure documents were formally lodged with ASIC in this period.

Table 2: Top 10 control transactions by value where documents lodged with ASIC (1 January to 30 June 2015)

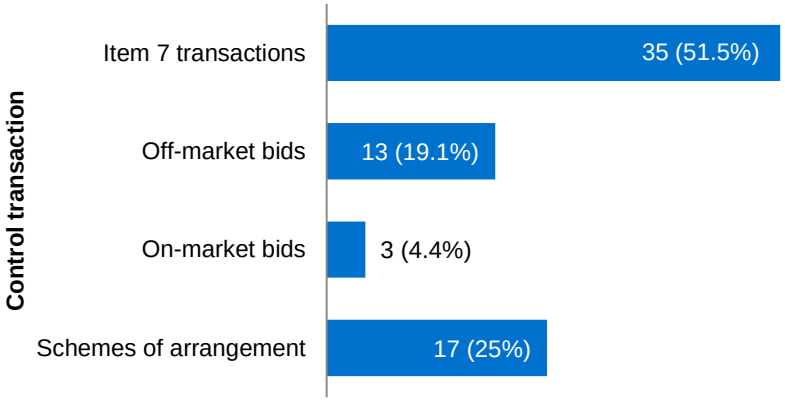
Target	Bidder	Type	Industry	Value
Novion Property Group (Novion Ltd and Novion Trust)	Federation Centres Ltd	Scheme	Real estate	$11000m
Toll Holdings Ltd	Japan Post Co. Ltd	Scheme	Transportation	$6400m
iiNet Ltd	TPG Telecom Ltd	Scheme	Telecommunication services	$1570m

[7] For details of historical bidders' statement and scheme booklet lodgements, see Figure 10–Figure 11 in Appendix 1.

Target	Bidder	Type	Industry	Value
Guangdong Rising H.K. Holding Limited	Panaust Limited	Bid	Mining	$853m
Amcom Telecommunications Ltd	Vocus Communications Ltd	Scheme	Telecommunication services	$678m
Tandou Ltd	Webster Ltd	Bid	Consumer staples	$114m
Nido Petroleum Ltd	BCP Energy International Pte. Ltd	Bid	Energy	$90m
Cue Energy Resources Ltd	NZOG Offshore Limited	Bid	Energy	$69m
Peter Lehmann Wines Ltd	Casella Wines Pty Ltd	Bid	Food, beverage and tobacco	$57m
Guildford Coal Ltd	Sino Construction Ltd	Bid	Energy	$48m

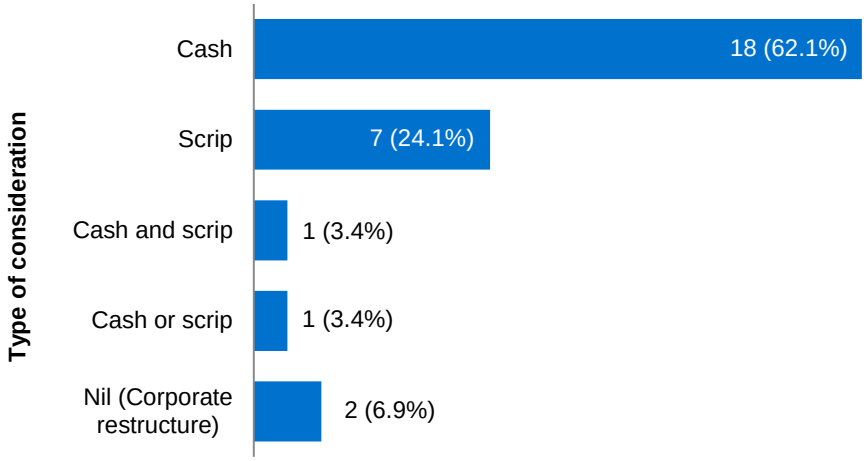
97 Figure 3 illustrates that transactions approved under item 7 of s611 (item 7 transactions) were the most common (51.5%) type of control transaction notified to ASIC in this period. The number of item 7 transaction documents provided to ASIC for review in this period (35) decreased slightly, from 42 in the last period. Although one less scheme of arrangement was lodged than the previous period (17, down from 18), more schemes were lodged in this period than in the comparative January to June 2014 period, where 11 schemes were lodged. Three on-market bids were made this period, up from two in the previous period.

Figure 3: Control transactions lodged with ASIC by type (1 January to 30 June 2015)



98 Figure 4 illustrates a breakdown of the types of consideration offered in control transactions (excluding item 7 transactions) that commenced in this period. There were seven scrip acquisitions proposed in this period, which is a marked decrease from 20 scrip acquisitions in the previous period.

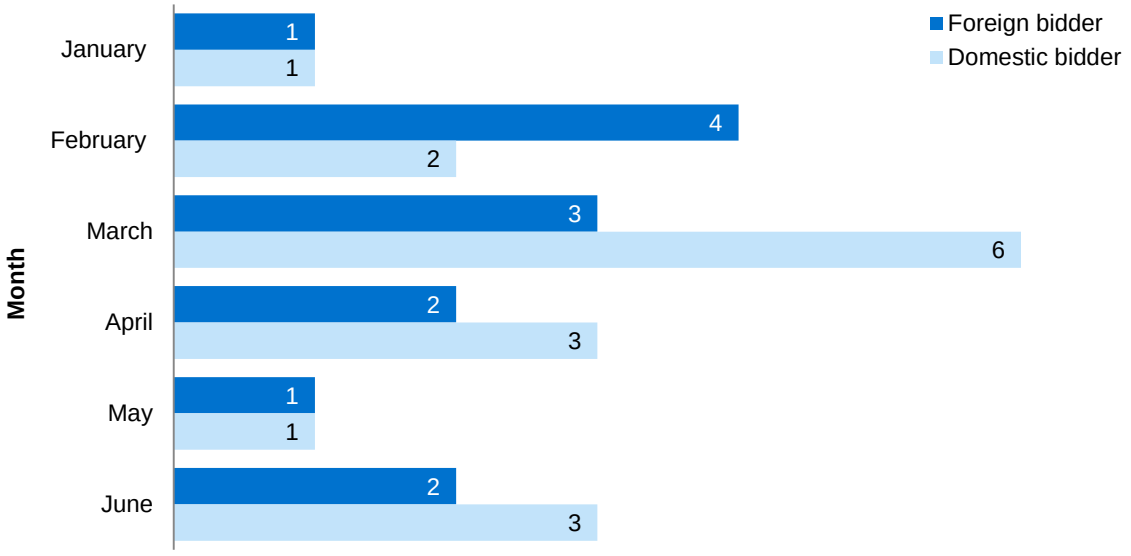
Figure 4: Type of consideration offered in bids and schemes (1 January to 30 June 2015)



Note: Graph excludes item 7 transactions.

99 Figure 5 illustrates the continued takeover activity undertaken by foreign bidders.[8] During this period, 13 out of 29 (44.8%) schemes of arrangement and takeover bids involved foreign acquisition of ASX-listed entities. This is a notable increase from the last three years, where foreign acquisitions as a proportion of all acquisitions have consistently been around 35%–40%.

Figure 5: Number of foreign and domestic bidders (in schemes and bids) by month (1 January to 30 June 2015)

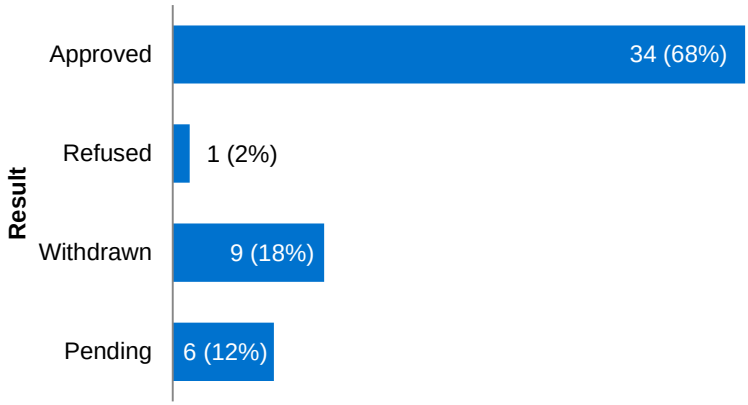


[8] Our definition of a 'foreign bidder' includes bidders that are Australian entities controlled or incorporated by a foreign parent entity to undertake the takeover.

Applications for relief

100 We received 49 applications for relief under s655A, and one under s669 during this period: see Figure 6. This is consistent with the 48 s655A applications and one s669 application received in the previous period.

Figure 6: Results of applications under s655A and s669 (1 January to 30 June 2015)



101 We publish a regular report that provides an overview of decisions made on novel relief applications, including those made in relation to mergers and acquisitions transactions. Our most recent report is REP 435.

Takeovers Panel

102 We initiated two Takeovers Panel applications during this period for:

(a) PAYCE Consolidated Limited; and

(b) Richfield International Limited.

PAYCE Consolidated Ltd

103 In December 2014 an ASX-listed property developer, PAYCE Consolidated Ltd, announced an equal access share buy-back where it proposed to buy back all of it shares except for those held by its largest shareholder. That shareholder was a company related to one of PAYCE's directors.

104 As a result of the buy-back, the major shareholder could have acquired up to 100% of the shares of PAYCE.

105 The buy-back consideration was to be a mix of cash (paid now and in the future) and the issuance of an unlisted, non-voting preference share with discretionary dividend rights.

106 The shareholder meeting materials did not contain an independent expert report or an appropriate valuation of the consideration by independent directors. As a result we were concerned that shareholders did not have sufficient information to make an informed decision about the buy-back.

107 We consider that the level of disclosure in these circumstances should be similar to that of a takeover, given a shareholder could acquire full control of the company under the buy-back: see Regulatory Guide 110 *Share buy–backs* (RG 110).

108 Reliable and independent information about the valuation of the offer is especially important where, as was the case here, the transaction involves related parties and the consideration is not easy for shareholders to value themselves.

109 We also noted that in this instance the major shareholder controlled (with its associates) in excess of 30% of the ordinary shares of the company, a factor that would result in an independent expert report being required if the transaction were conducted by way of a takeover bid.

110 We also had concerns that the major shareholder and its associates were able to vote on the buy-back resolution under the proposal, given the control-related benefits that might flow to them.

111 On the basis of these concerns, in January 2015 we made an urgent application to the Takeovers Panel seeking interim orders adjourning the shareholders meeting to vote on the buy-back resolution and a declaration of unacceptable circumstances. The Panel granted the interim orders.

112 PAYCE subsequently cancelled the meeting with the intention of commissioning an expert to value the transaction. Accordingly we withdrew our Takeovers Panel application.

113 In response to our concerns about voting, the major shareholder also undertook to ASIC that it and its associates would refrain from voting at the meeting.

114 Following further consultation with us on the transaction and independent expert report, PAYCE announced a modified share buy-back to shareholders in April 2015. This buy-back was structured such that the:

(a) major shareholder would hold less than 50% of PAYCE's ordinary shares if the buy-back was fully subscribed;

(b) the offer provided increased cash consideration; and

(c) the meeting materials contained a revised independent expert report setting out the opinion that the transaction was fair and reasonable.

Richfield International Limited

115 In March 2015, we lodged an application with the Takeovers Panel seeking orders that Richfield International shares held by certain parties be vested in ASIC. We alleged that there was a previously undisclosed association

ASIC. We alleged that there was a previously undisclosed association between these parties, who held a combined total of 35.77% of Richfield International's voting power.

116 The Takeovers Panel made a declaration of unacceptable circumstances in April 2015 and made orders to:

(a) vest 15.77% of the shares in question in ASIC for sale; and

(b) restrict all dealing and voting in the remaining 20% of the shares in question until four associated substantial holders disclosed their interest in Richfield International.

We were also awarded costs in this matter.

117 In May 2015 the substantial holders disclosed substantial holding information on ASX to our satisfaction and the Takeovers Panel lifted its voting and dealing restrictions. We are now in the process of selling the Richfield International shares.

ASIC's review of takeover documents

118 We review disclosure and monitor conduct in takeover transactions to ensure that adequate information is being provided and all relevant parties act in a way that promotes a fair, orderly and transparent market.

119 Where concerns are raised by us, they are often addressed by the issuer making amendments to the offer structure or taking some other action. Some of the issues we have seen in this period are discussed in paragraphs 124–138.

'Scale backs' in schemes of arrangement

120 We have observed instances where acquirers structure their offers so that target holders are able to elect to receive a form of consideration (e.g. the acquirer's scrip) which is subject to a limited cap. If the cap is reached, the acquirer will scale back the chosen consideration and substitute with an alternative (e.g. cash).

121 The potential for scale back imposes a level of uncertainty for shareholders choosing the capped consideration. Depending on the severity of the scale back and relative values of the different forms of consideration, investors may receive vastly different consideration (both in terms of value and nature) from what they chose. For example, a highly limited cap on a more valuable scrip alternative may leave shareholders who are attracted by the possibility of a full scrip alternative actually receiving only a small amount of scrip, in circumstances where they may no longer be eligible for scrip-for-scrip rollover tax relief for the full consideration received.

122 In these circumstances, ASIC may have concerns about the scale back based on the policy underlying the prohibition on maximum acceptance conditions, which applies to takeover bids. This provision prohibits terms that terminate the offer, or reduce the maximum consideration payable by the bidder, if a cap or other trigger relating to the level of acceptances is reached. The underlying policy of the provision and our approach is set out in Regulatory Guide 9 *Takeover bids* (RG 9), which notes that we will consider each scale back on a case-by-case basis, taking into account the value of the alternative consideration, setting of the cap and relevant disclosure.

123 Our policy in RG 9 also broadly applies to schemes of arrangement. However, the scheme context permits greater flexibility in addressing our concerns where they arise. In a recent case we were prepared to accept a cap that would otherwise be of concern, provided the terms of the scheme required elections to take place and the outcome of the scale back to be publicly announced before shareholders voted on the scheme. This ensured that shareholders subject to a potentially significant scale back were able to vote on the scheme fully aware of the effect of the cap on the consideration they were to receive.

Last and final statements

124 In this period we raised concerns with a bidder regarding its proposal to change the consideration offered under a takeover bid after a last and final statement had been made that the bidder would not improve the consideration offered.

125 We refused to facilitate the bidder's proposal because of concerns about the contravention of the truth in takeovers principle, and that relief would compromise the operation and policy behind s602.

126 We will take a practical approach to assessing whether a proposed change to a bid results in an improvement in consideration. We will generally not be persuaded by technical legal arguments.

127 We consider that bidders who make a last and final statement should be held to it, as holders of securities in the target and the rest of the market are entitled to expect that bidders will act consistently with their last and final statement.

128 If a bidder intends to reserve the right to depart from its statement when a particular event occurs, it must clearly qualify its statement. Otherwise the bidder risks regulatory action by us for contravention of the misleading or deceptive conduct provisions, or an application by us or another party to the Takeovers Panel for a declaration of unacceptable circumstances. We will continue to focus on compliance with last and final statements in the next period.

Acquiring and divesting interests during a scheme of arrangement

129 During this period we identified and considered an instance where the acquirer under a scheme of arrangement, who had an interest in shares in the scheme company, disposed of its interest during the course of the scheme.

130 In considering schemes, we seek to ensure that transactions in relation to scheme company securities involving the acquirer, or their associates, under a proposed scheme do not undermine the principles underlying the takeover provisions of the Corporations Act, or the integrity of the scheme process as a method for effecting a control transaction. This includes, for example, a scheme acquirer selling to persons it knows will, or are likely to, vote in favour of the scheme, or disposing of the securities on terms with similar effect. Dealings of this kind during the course of a scheme have the potential to compromise the voting process by which independent shareholders indicate their approval of the scheme proposal.

131 In considering such dealings we will make inquiries and consider the purpose for which the scheme acquirer's interests were first acquired, as well as any divestment process, in order to satisfy ourselves that the conduct is appropriate and that the integrity of the scheme process has been maintained. We would be particularly concerned if a scheme acquirer's interest in the target shares were acquired and disposed of to potentially increase the overall vote in favour of a scheme.

132 In the instance identified we were satisfied that the impetus for disposal was the emergence before the scheme meeting of a competitor taking a stake apparently designed to block the scheme. Given the unique circumstances prompting the disposal and the nature of the limited exceptions in s654A(2) to the prohibition on similar disposals during bids, we were prepared to provide a no-objection letter for the scheme.

Conditional dividends and schemes of arrangements

133 In this period we considered the implications of an acquirer in a scheme of arrangement announcing a conditional dividend to its shareholders that was dependent on the scheme of arrangement involving a target company becoming effective. We were concerned to ensure that, where there were common shareholders in the acquirer and the scheme company, the conditional dividend did not inappropriately induce those shareholders to vote in favour of the scheme.

134 We look at the overall circumstances of the benefit when considering whether it is likely to induce acceptance or influence the voting at a scheme meeting, to ensure shareholders have not been adversely affected by a

control transaction being implemented by way of a scheme rather than a takeover bid.

135 We did not take further action in this instance but will carefully consider similar arrangements based on their particular facts.

Currency of independent expert reports

136 During our oversight of a recent takeover we noted that information in an independent expert report in the target statement had been superseded by the subsequent release of a preliminary financial report. We formed the view that the new information about the target's liabilities may have been material, since it appeared to be used for the valuation of the target. We brought the matter to the attention of the independent expert.

137 Our actions resulted in the target issuing a supplementary target statement:

(a) attaching a supplementary independent expert report that stated that the expert's opinion was that the offer was not fair and not reasonable to shareholders (the expert's opinion was originally fair and reasonable); and

(b) in which the independent directors stated they could no longer recommend that shareholders accept the offer.

138 We consider that when either the expert or commissioning party becomes aware of a significant change affecting the information in the expert report, this party should notify the other and consider what impact it may have on the original report: see Regulatory Guide 111 *Content of expert reports* (RG 111) at RG 111.102.

Independent expert reports

Independence reviews

139 We have visited a number of firms of independent experts in the past 12 months to review workpapers, primarily in relation to the experts' independence. We have noted some issues but overall the files reviewed have been of an acceptable standard. We envisage visiting more firms in the next 12 months to review workpapers, focusing on independence and any other issues relating to particular transactions.

Description of opinion

140 We have concerns in some cases about the way that the findings of independent experts are described in the attached notice of meeting or explanatory memorandum, particularly where the actual opinion reached by the expert is that the transaction is 'not fair but reasonable'.

141 We have noted these findings described in some cases as 'reasonable' or 'in the best interests'. The former description represents only part of the expert's opinion and the latter is only appropriate when the transaction is a scheme of arrangement.

142 The meeting documents may describe what a 'not fair but reasonable' opinion means, as long as it is consistent with RG 111.

143 We recommend that independent experts review meeting materials to ensure that any description of their opinion fairly represents their view and the guidance contained in RG 111.

Enforcement action

144 As discussed in REP 423, we are continuing to focus on identifying takeovers matters that may warrant enforcement action during our day-to-day surveillance and monitoring of transactions.

145 We seek to address concerns identified in takeover documents in the most cooperative and least commercially disruptive manner that the circumstances, and our regulatory objectives, allow. However, ASIC's Enforcement teams will consider enforcement action when we consider further action is necessary.

Mariner Corporation Limited

146 In REP 423 we referred to the civil penalty proceedings commenced by ASIC against Mariner Corporation Limited and its three directors. The trial took place in November 2014.

147 In those proceedings we alleged that Mariner's bid for Austock Group Limited was reckless and that the directors breached their duties by failing to give sufficient consideration to the steps that needed to be taken before making the bid announcement.

148 The Federal Court handed down its judgement in June 2015 and found in favour of the defendants.[9] Given the facts of the particular case, the court's decision was partly based on a finding that a bidder need not have certain or unconditional funding arrangements in place at the time a takeover bid is announced. Further, it found that whether an announcement is 'reckless' will depend whether the company is actually aware of a substantial risk that it will be unable to perform its obligations under the bid, rather than this being something it ought to have known.

[9] For more information, see *Australian Securities and Investments Commission v Mariner Corporation Limited* [2015] FCA 589.

149 This is contrary to the approach taken by the Takeovers Panel in Guidance Note 14 *Funding arrangements*, and we are giving careful consideration to the implications of the court's decision. We have decided not to appeal the decision.

ASIC policy initiatives

Repeal of market integrity rules

150 During this period we repealed a number of obligations under the ASIC market integrity rules to reduce the compliance burden on market participants.

151 Among other things, the changes remove rules that applied to certain transactions such as special crossings during takeovers, schemes of arrangement and buy-backs. These rules were repealed primarily on the basis that the Corporations Act adequately regulates crossings during these transactions. The Corporations Act's restrictions include a prohibition on collateral benefits during a takeover bid, limits on the way a bidder can acquire more than 20% of a company and rules that apply to buy-backs.

152 For further information, see Media Release (15-097MR) *ASIC repeals select market integrity rules* (4 May 2015).

Sunsetting of class orders

153 As part of the class order sunsetting work we are undertaking, we are reviewing six class orders relating to control transactions.[10]

154 Subject to the outcome of our consultation process we propose to remake all six class orders without substantial policy changes, with only minor revisions, to better reflect the current mergers and acquisition environment.

155 We will also update related regulatory guides to reflect any minor amendments.

156 Consultation Paper 234 *Remaking ASIC class orders on takeovers and schemes of arrangement* (CP 234) was released on 4 August 2015. We appreciate responses from stakeholders and encourage your participation in the consultation process. The consultation period closes on 2 October 2015.

[10] Please see Appendix 2 for a list of all of the corporate finance related class orders that we intend to consult on in the second half of 2015.

C Corporate governance

Key points

This section sets out statistics and observations from our work in relation to corporate governance matters, including:

- related party transactions;
- employee incentive schemes; and
- collective action by institutional investors.

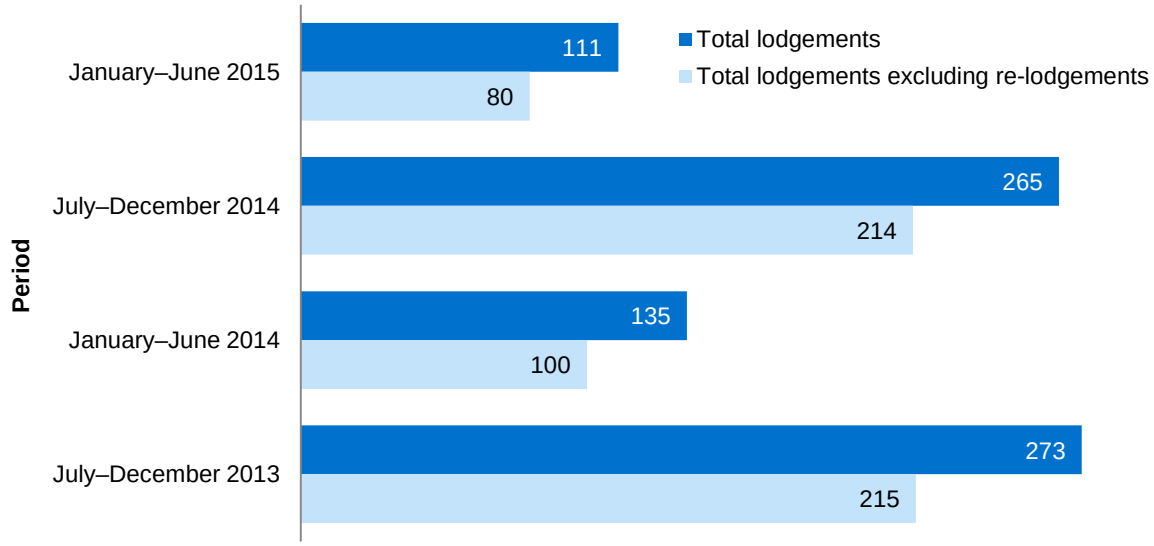
Statistics and observations

Related party notices

157 In this period, we received 111 related party approval notices under s218, of which 84 (75.6%) requested we abridge the 14-day review period. Although the number of related party approval notices lodged with ASIC is down from the previous period, the percentage of abridgement applications associated with these lodgements is fairly consistent between the periods.

158 Figure 7 sets out the number of related party approval notices we received in this period and previous periods.

Figure 7: Related party approval notices (July 2013 to June 2015)



Enforcement action

159 We monitor the conduct of directors and other important gatekeepers in the financial system. Where necessary, we will refer matters to ASIC's Enforcement teams to take action against those who do not meet their obligations.

160 For more information on corporate governance enforcement action in this period, see REP 444.

Winding up companies with poor culture and practices

161 Our Enforcement teams are taking an active approach to listed companies that are in breach of their statutory obligations or disregarding the interests of shareholders, by having those companies placed into liquidation by court order. This includes companies that show poor corporate culture and governance practices.

Reeltime Media Limited

162 Reeltime Media Limited is a listed company involved in digital marketing whose shares have been suspended from trading on ASX since 2008.

163 Following ASIC's investigation into allegations of corporate governance failures by Reeltime and its subsidiaries over a number of years, in April 2015 we applied to the Supreme Court (NSW) to wind up the company, along with five of its wholly owned subsidiaries.

164 Subsequent to the filing of our winding up application, these companies appointed administrators.

165 The administrators recommended that creditors execute a deed of company arrangement and establish a creditors trust for Reeltime and one of its subsidiaries, but that the other subsidiaries be wound up. The administrators' recommendations were accepted by creditors in July 2015.

166 We continue to closely monitor the situation.

Planet Platinum Limited

167 In June 2015 we successfully applied for the appointment of a provisional liquidator to Planet Platinum Limited, an adult entertainment business, on the grounds that related party transactions were not properly approved or recorded, prejudicing the interests of minority shareholders.

168 In addition the company did not have the required number of directors and had failed to comply with requirements to hold annual general meetings (AGMs) and to lodge annual and half-year reports.

Sino Strategic International Limited

169 During this period, we also petitioned for the winding up of Sino Strategic International Limited because of its involvement in multiple contraventions of the Corporations Act, including failing to lodge financial reports and convene AGMs. We contended that Sino Strategic's continued failure to comply with the basic regulatory requirements of a listed company was contrary to the interests of the company's shareholders.

170 Sino Strategic was placed into liquidation on 13 July 2015.

ASIC policy initiatives

Employee incentive schemes

Tax treatment of employee incentive schemes

171 Recent changes to the tax treatment of employee incentive schemes took effect on 1 July 2015. Among those changes, there are new tax concessions and assistance for start-up companies. The Australian Taxation Office (ATO) recently released a set of standard documents to help start-up companies who are eligible for the new tax concessions to establish and operate an employee incentive scheme that relates to offers of options to acquire newly issued ordinary shares.

172 Throughout this period we have worked with the ATO on an instruction guide that accompanies and explains the standard employee incentive scheme documents developed by the ATO. The instruction guide includes information about the key obligations for companies making offers under an employee incentive scheme under the Corporations Act.[11]

Amendments to ASIC relief

173 Since the release in October 2014 of our new relief for employee incentive schemes, we have received several queries about the operation of Class Order [CO 14/1000] *Employee incentive schemes: Listed bodies* and Class Order [CO 14/1001] *Employee incentive schemes: Unlisted bodies*.

174 We are in the process of amending these instruments to clarify certain issues. We are also amending Regulatory Guide 49 *Employee incentive schemes* (RG 49) to clarify our policy intention in light of queries received. These proposed amendments will not alter our policy on employee incentive schemes.

[11] ATO, *Employee share schemes: start-up companies—Instructions for using the standard documentation* (PDF, 398Kb), instruction guide, July 2015.

175 We expect to release the amendments to RG 49, [CO 14/1000] and [CO 14/1001] in the second half of 2015.

Collective action by investors

176 In June 2015 we reissued Regulatory Guide 128 *Collective action by investors* (RG 128), following consultation in February 2015. RG 128 provides guidance to help investors understand how they may take collective action to actively influence the corporate governance of companies in which they have invested, without contravening the takeover and substantial holding provisions in the Corporations Act.

177 The guidance has been updated to reflect current engagement practices. It includes:

(a) illustrative examples of conduct that is unlikely or more likely to give rise to an association or an acquisition of a relevant interest;

(b) an outline of our approach to enforcement in the context of collective action by investors; and

(c) an overview of some other legal and regulatory issues that can arise in relation to investor engagement.

178 The updated guidance aims to encourage engagement by investors where it is for the purposes of furthering corporate governance and does not undermine the principles underlying Chs 6 and 6C.

D Other corporate finance areas

Key points

This section sets out statistics and observations from our work in other corporate finance areas.

A number of policy, surveillance and enforcement initiatives in relation to financial reporting have been undertaken by ASIC in this period and are set out below.

Statistics and observations

Financial reporting relief applications

179 During this period, we received 119 applications for financial reporting relief (down from 142 in the previous period). These included:

(a) 92 applications under s340;

(b) two applications under s111AT; and

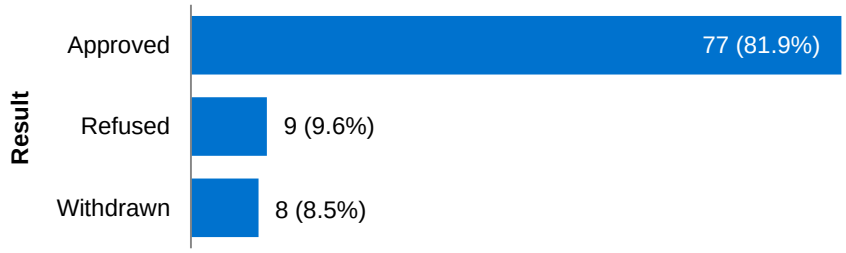
(c) 25 applications for a no-action letters for financial reporting breaches.

180 Of the applications received under s340 and s111AT, 12 were from companies with external administrators appointed (down from 42 in the previous period, and 14 from the first six months of 2014). We approved 11 of the 12 applications from external administrators.

181 Of the 25 applications for a no-action letter, we received three applications from companies with external administrators appointed. We approved all three of these applications.

182 We approved 77 of the 94 applications received under s340 and s111AT: see Figure 8.

Figure 8: Results of applications under s340 and s111AT (1 January to 30 June 2015)



Share buy-backs

183 There was $2.2 billion worth of share buy-backs undertaken by 86 companies in this period. In the previous period, share buy-backs totalled $1.63 billion.[12]

184 We received 17 applications for relief for share buy-backs during this period. Nine applications were approved, four were refused and four are yet to be decided. The majority of the relief granted was to treat selective buy-backs as equal access schemes—for example, where a small number of foreign shareholders were excluded from the offer.

ASIC policy initiatives

Relief for externally administered companies and registered schemes being wound up

185 In May 2015 we reissued Regulatory Guide 174 *Relief for externally administered companies and registered schemes being wound up* (RG 174). It provides guidance to help externally administered companies and external administrators to understand when we will grant relief from the financial reporting and AGM obligations.

186 RG 174 also helps responsible entities, or other persons who have responsibility for winding up a registered scheme, understand when we will grant relief from the financial reporting and compliance plan audit obligations. It will also assist externally administered companies (including responsible entities) that are or have been AFS licensees to understand when we will grant relief from any of the AFS licensee financial reporting obligations.

Relief

187 To give effect to our updated policy settings, we have issued a new instrument giving relief from the financial reporting, AGM and AFS licensing provisions in specified circumstances: see ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251.

188 In particular, this new instrument:

(a) provides extensive relief for companies with a liquidator appointed, including financial reporting and AGM relief;

[12] Figures based on data from the monthly *Equity capital raised report*, which is available from ASX Market Information (an online subscription service run by ASX).

(b) provides deferral relief from the financial reporting obligations in Pt 2M.3 to companies that have an administrator, managing controller or provisional liquidator appointed so that the company does not have to comply with any financial reporting obligations for six months; and

(c) exempts certain registered schemes being wound up from the financial reporting obligations in Pt 2M.3 where the registered scheme is taken to be insolvent subject to certain conditions.

Individual relief

189 We have retained our policy basis for individual relief for companies in external administration. Companies applying for financial reporting relief must still satisfy us that compliance with the financial reporting obligations imposes unreasonable burdens.

190 However, we have decided to change our approach to the form and the duration of the individual financial reporting relief that we may grant to externally administered companies.

191 Previously, our policy provided individual exemption relief to externally administered companies where members had 'no ongoing economic interest' and up to six months deferral relief in other cases.

192 Our updated policy now states that we will consider granting individual relief that will defer the company's financial reporting obligations for up to 24 months at a time. We will not generally provide exemption relief to these companies.

193 Externally administered companies that have deferral relief, either through an instrument or individual relief, must either comply with their deferred financial reporting obligations by the end of the deferral period or obtain further relief from ASIC.

Report on submissions

194 Report 434 *Response to submissions on CP 223: Relief for externally administered companies and registered schemes being wound up—RG 174 update* (REP 434) summarises the six submissions we received during the consultation period and our response to the matters raised.

Directors and financial reporting responsibilities

195 Financial reports provide investors and other users with important information about the financial performance and position of the company. We are focused on ensuring that companies and their directors understand their obligations in this area.

196 To assist directors, we recently released two information sheets on directors' financial responsibilities:

(a) Information Sheet 183 *Directors and financial reporting* (INFO 183) explains the financial reporting responsibilities of directors; and

(b) Information Sheet 203 *Impairment of non-financial assets: Materials for directors* (INFO 203) explains the responsibilities of directors in connection with the testing of non-financial assets for impairment in the financial report of a company.

197 We also recently published on our website a financial reporting quiz for directors, which tests knowledge of technical elements of financial reporting.

Cyber resilience

198 Our work continues to be guided by the types of risk that emerge in the market. One of the major risks that has affected our regulated population is cyber attacks.

199 In March 2015, we published Report 429 *Cyber resilience: Health check* (REP 429) to help our regulated population improve cyber resilience.

200 In our report we note that the electronic linkages within the financial system mean the impact of a cyber attack can spread quickly—potentially affecting the integrity and efficiency of global markets, and trust and confidence in the financial system. This can result in the loss of confidential information and disruptions to business that may ultimately erode value.

201 Cyber resilience issues will be incorporated into our surveillance programs and we will focus on the types of controls and cyber-related governance measures that companies have in place.

ASIC Innovation Hub

202 We have recently launched an online innovation hub that provides relevant content for financial technology (fintech) businesses that are developing innovative financial products and services.

203 Through this work we will:

(a) participate in other external fintech initiatives where appropriate;

(b) streamline our approach to facilitating new business models;

(c) increase our accessibility to new types of businesses;

(d) adopt a coordinated approach to implementing any reforms that may apply to fintech business in the future; and

(e) establish a Digital Finance Advisory Committee.

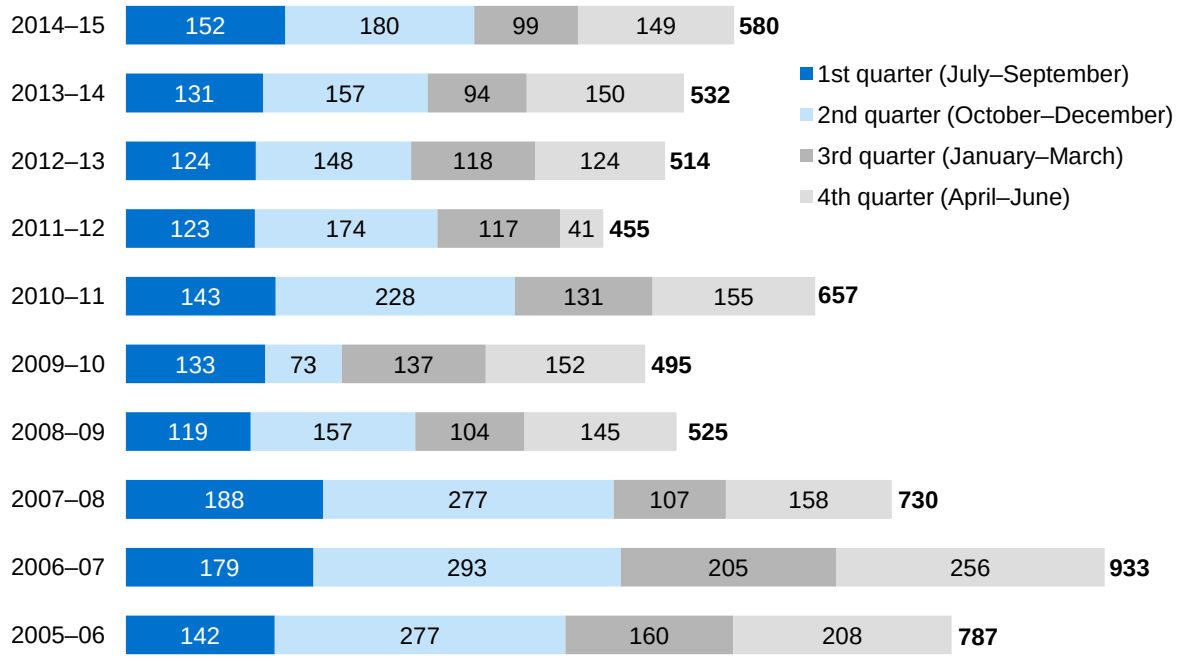
204 The Innovation Hub will assist fintech start-ups and businesses to more easily navigate the regulatory system we administer.

205 We are committed to encouraging innovation that has the potential to benefit our market. We are equally committed to ensuring that the regulation of new products and services is appropriate, effective and promotes investor and consumer trust and confidence.

Appendix 1: Historical statistics

Fundraising statistics

Figure 9: Total original fundraising documents lodged with ASIC by quarter (2005–06 financial year to 2014–15 financial year)



Note: This graph includes mutual recognition offer documents lodged with ASIC, accounting for the difference compared to original fundraising documents shown at Figure 1.

Control transaction statistics

Figure 10: Total bidder's statements lodged with ASIC by quarter (2001–02 financial year to 2014–15 financial year)

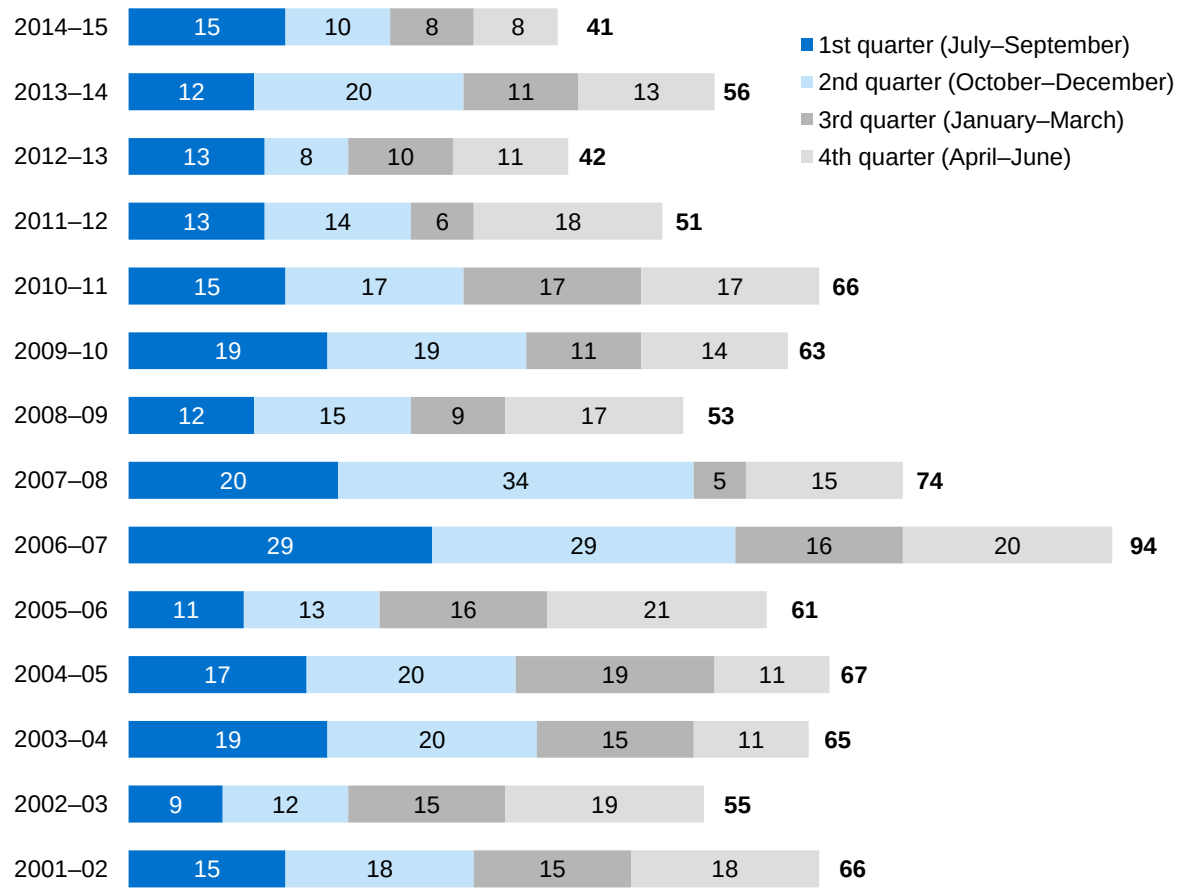
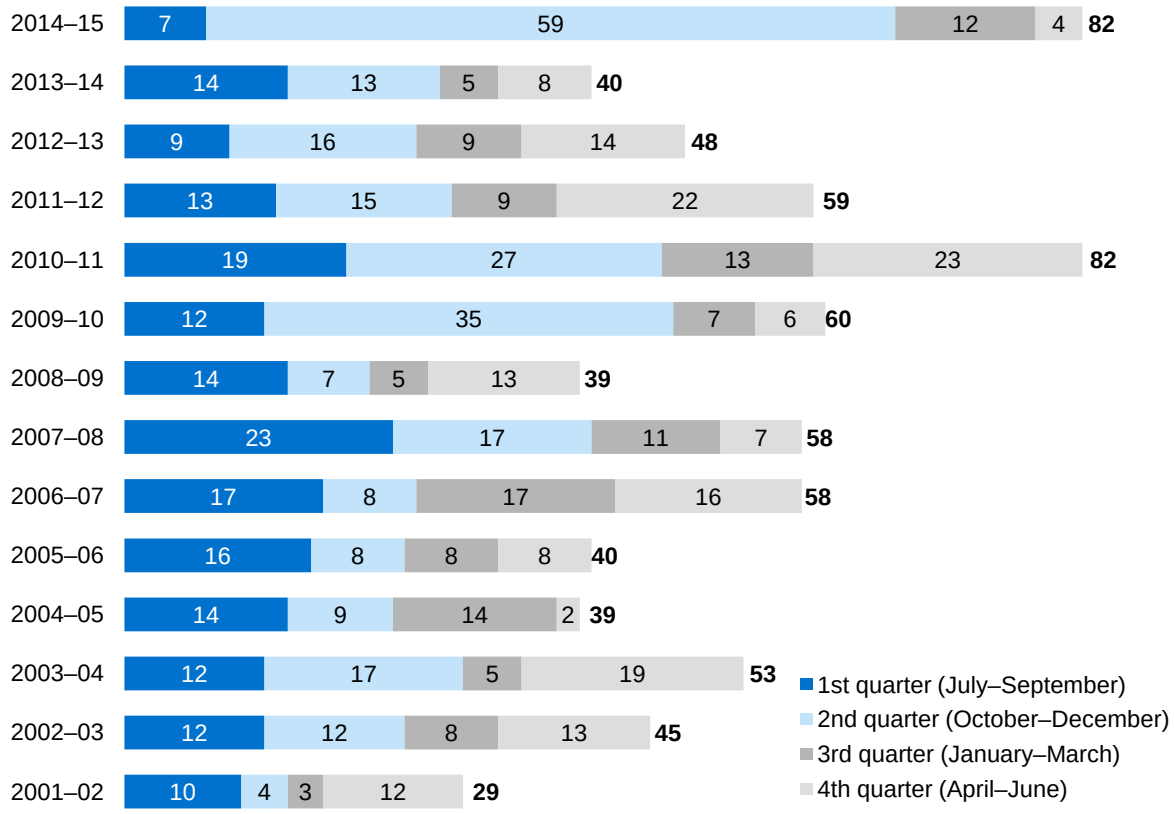


Figure 11: Total scheme booklets lodged with ASIC by quarter (2001–02 financial year to 2014–15 financial year)



Note: This figure shows the total number of scheme booklets lodged. The 2014--15 figures are distorted by four restructure schemes in the second quarter, which involved multiple entities in the one consolidation.

Appendix 2: Current and upcoming sunsetting class order consultation

Class orders on Ch 6D

[CO 00/167] *Relief from exposure period: profile statements*

[CO 00/168] *Relief from exposure period: quoted securities*

[CO 00/169] *Relief from exposure period: Supplementary and replacement prospectuses*

[CO 00/172] *Offer information statements: relief in relation to financial statements*

[CO 00/173] *Debenture prospectuses: incorporation of information on application forms*

[CO 00/174] *Debenture prospectuses: updating of interest rate and term information*

[CO 00/175] *Pre-prospectus roadshow presentations*

[CO 00/176] *Pre-prospectus market research*

[CO 00/177] *Fundraising exemption: NZ prospectuses*

[CO 00/190] *Substituting and consolidating supplementary disclosure documents*

[CO 00/195] *Offer of convertible securities under s713*

[CO 00/222] *Employee share schemes—miscellaneous fundraising relief*

[CO 00/229] *Solicitors mortgage investment companies*

[CO 00/238] *Dividend reinvestment plans*

[CO 00/656] *Announcements to securities exchanges about offers by subsidiaries of the listed body*

[CO 00/843] *Options over listed securities: exposure period relief*

[CO 00/1092] *Application form relief for bonus issues of options*

[CO 01/1455] *Continuously quoted securities*

[CO 02/138] *Announcements to financial markets by holding companies about financial products other than securities*

[CO 02/141] *Experts: citing in Product Disclosure Statements*

[CO 02/143] *Financial product market research*

[CO 02/145] *Relief from exposure period: managed investment products able to be traded on a licensed market*

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

[CO 04/672] *Extension of on-sales exemption*

[CO 07/428] *Consent to quote: Citing credit ratings, trading data and geological reports in disclosure documents and PDS*

[CO 07/429] *Consent to quote: Citing credit ratings agencies, trading data and geological reports in takeovers*

[CO 07/571] *Disclosure exemption for rights issues*

[CO 08/25] *Sale offers within 12 months after controller sales*

[CO 08/35] *Disclosure relief for rights issues*

[CO 10/322] *On-sale for convertible notes issued to wholesale investors*

[CO 13/523] *Citation of experts and consent to quote*

Class orders on takeovers and schemes of arrangement

[CO 00/2338] *Relief from the minimum bid price principle—s621(3)*

[CO 02/249] *Approved overseas financial markets: s257B(7)*

[CO 02/259] *Downstream acquisitions: foreign stock markets*

[CO 04/523] *Investor directed portfolio services takeover relief*

[CO 05/850] *Unsolicited offers under a regulated foreign takeover bid*

[CO 09/459] *Takeovers relief for accelerated rights issues*

Key terms

Term	Meaning in this document
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act Note: This is a definition contained in s761A.
AGM	Annual general meeting
ASIC	Australian Securities and Investments Commission
ASX	ASX Limited or the exchange market operated by ASX Limited
ATO	Australian Taxation Office
Ch 6D	A chapter of the Corporations Act (in this example numbered 6D), unless otherwise specified
[CO 09/425] (for example)	An ASIC class order (in this example numbered 09/425)
Corporations Act	*Corporations Act 2001,* including regulations made for the purposes of that Act
CP 234 (for example)	An ASIC consultation paper (in this example numbered 234)
employee incentive scheme	A scheme that is designed to support interdependence between a body and its eligible participants for their long-term mutual benefit
EMR team	Emerging Mining and Resources team
fintech	Financial technology
INFO 183 (for example)	An ASIC information sheet (in this example numbered 183)
IPO	Initial public offering
item 7 transactions	Control transactions that fall under the exception in item 7 of s611 of the Corporations Act
JORC Code	Australasian Code for Reporting of Explorations Results, Minerals Resources and Ore Reserves
previous period	1 July to 31 December 2014

Term	Meaning in this document
REP 435 (for example)	An ASIC report (in this example numbered 435)
RG 228 (for example)	An ASIC regulatory guide (in this example numbered 228)
s713(6) determination	A determination made by ASIC under s713(6) of the Corporations Act to exclude a disclosing entity from the ability to use transaction-specific disclosure. ASIC can use this power if, in the previous 12 months, the entity has failed to comply with certain disclosure obligations
s741 (for example)	A section of the Corporations Act (in this example numbered 741), unless otherwise specified
this period	1 January to 30 June 2015

Related information

Headnotes

conduct, corporate finance, corporate governance, disclosure, enforcement action, fundraising, mergers and acquisitions, prospectuses

Class orders and legislative instruments

[CO 09/425] *Share and interest purchase plans*

[CO 14/1000] *Employee incentive schemes: Listed bodies*

[CO 14/1001] *Employee incentive schemes: Unlisted bodies*

ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251

Regulatory guides

RG 9 *Takeover bids*

RG 49 *Employee incentive schemes*

RG 110 *Share buy-backs*

RG 111 *Content of expert reports*

RG 128 *Collective action by investors*

RG 158 *Advertising and publicity for offers of securities*

RG 174 *Relief for externally administered companies and registered schemes being wound up*

RG 228 *Prospectuses: Effective disclosure for retail investors*

Legislation

Corporations Act, Ch 2M, 6, 6C and 6D, Pt 2M.3, s111AT, 218, 340, 602, 611, 654A(2), 655A, 669, 713(6), 718, 731, 734 and 741

Legislative Instruments Act 2003

Cases

Australian Securities and Investments Commission v Mariner Corporation Limited [2015] FCA 589

Consultation papers and reports

CP 234 *Remaking ASIC class orders on takeovers and schemes of arrangement*

REP 365 *Hybrid securities*

REP 368 *Emerging market issuers*

REP 423 *ASIC regulation of corporate finance: July to December 2014*

REP 427 *Investing in hybrid securities: Explanations based on behavioural economics*

REP 429 *Cyber resilience: Health check*

REP 434 *Response to submissions on CP 223: Relief for externally administered companies and registered schemes being wound up—RG 174 update*

REP 435 *Overview of decisions on relief applications (October 2014 to January 2015)*

REP 444 *ASIC enforcement outcomes: January to June 2015*

Media releases

15-025MR *ASIC issues stop order on pre-prospectus publications by Bitcoin Group Limited*

15-097MR *ASIC repeals select market integrity rules*

15-120MR *ASIC requires FX Primus to cease targeting Australian investors*

Information sheets

INFO 183 *Directors and financial reporting*

INFO 203 *Impairment of non-financial assets: Materials for directors*

Other documents

ASX Market Information, *Equity capital raised report*

ATO, *Employee share schemes: start-up companies—Instructions for using the standard documentation*

Takeovers Panel Guidance Note 14 *Funding arrangements*

Treasury, *Facilitating crowd-sourced equity funding and reducing compliance costs for small business*