



ASIC

Australian Securities & Investments Commission

REPORT 489

ASIC regulation of corporate finance: January to June 2016

August 2016

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 from 1 January to 30 June 2016.

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.

Previous reports on regulation of corporate finance

Report number	Report date
REP 469	February 2016
REP 446	August 2015
REP 423	February 2015
REP 406	August 2014

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Overview

ASIC's regulation of corporate finance activity

- 1 ASIC is responsible for the regulation and oversight of public corporate finance activity in Australia. We monitor corporate transactions such as fundraising, takeover bids, schemes of arrangement and share buybacks, as well as financial reporting and market disclosure.
- 2 ASIC's Corporations team has responsibility for regulating disclosure and conduct by corporations in these areas. Our work includes:
 - (a) reviewing transaction documents lodged with ASIC;
 - (b) assessing applications for relief from certain parts of the *Corporations Act 2001* (Corporations Act), including Chs 2M, 6 and 6D;
 - (c) engaging with stakeholders;
 - (d) publishing regulatory guidance;
 - (e) conducting targeted surveillance of identified risk areas; and
 - (f) assisting with enforcement activities.

Corporate Finance Liaison meetings

- 3 We host Corporate Finance Liaison meetings twice a year in Sydney, Melbourne, Brisbane, Perth and Adelaide to engage with stakeholders and provide insight into our current policy and regulatory approach.
- 4 Lawyers, corporate advisers and compliance professionals working in corporate finance and mergers and acquisitions are welcome to attend these meetings. This report covers issues to be discussed at our meetings in August and September 2016.

Stakeholder team restructure

- 5 As a result of an internal restructure, ASIC's Emerging, Mining and Resources (EMR) team has been merged with the Corporations team, effective from 1 July 2016.
- 6 The EMR team, based in Perth, had similar regulatory responsibilities to the Corporations team, and the two teams previously worked closely together. We anticipate that our Perth staff will continue to remain keenly focused on issues relevant to mining and exploration companies, which represent a significant proportion of our stakeholder base in Western Australia.

The purpose of this report

- 7 This report aims to provide greater transparency about the role that ASIC plays in the regulation of corporations and corporate transactions in Australia.
- 8 The report highlights and discusses key statistical information and observations from our work in the regulation of fundraising, mergers and acquisitions, corporate governance, and other general corporate finance areas for the period from 1 January to 30 June 2016 (the period).
- 9 We provide limited commentary in this report on applications for relief from certain parts of the Corporations Act. For more detailed information on novel relief applications, see our regular reports on our relief decisions. We published the most recent of these reports in June 2016: see [Report 483](#) *Overview of decisions on relief applications (October 2015 to March 2016)* (REP 483).
- 10 This report also provides an overview of some enforcement action that may be of interest to our stakeholders. For more detailed information on enforcement action conducted by ASIC, see our regular reports on enforcement outcomes. We published the most recent of these reports in March 2016: see [Report 476](#) *ASIC enforcement outcomes: July to December 2015* (REP 476).

A Fundraising

Key points

This section sets out key observations and statistics from our work in relation to fundraising.

We review prospectuses and consider applications for relief from Ch 6D of the Corporations Act. We have intervened in a number of cases to improve the disclosure provided to help investors make an informed investment decision.

In the period, we issued or consulted on guidance on:

- offering securities under a disclosure document;
- financial information disclosure in prospectuses; and
- forward-looking statements in the mining and resources sector.

Key observations and statistics

Fundraising under disclosure documents

- 11 In the period, there were 235 original disclosure documents lodged with ASIC, raising over \$7 billion.
- 12 Table 1 outlines the top 10 public fundraisings by value, under disclosure documents lodged with ASIC in the period. The top three fundraisings were each hybrid security offers—continuing the strong representation of these offers in domestic fundraising activity.

Table 1: Top 10 primary fundraising transactions by value (under a prospectus lodged from 1 January to 30 June 2016)

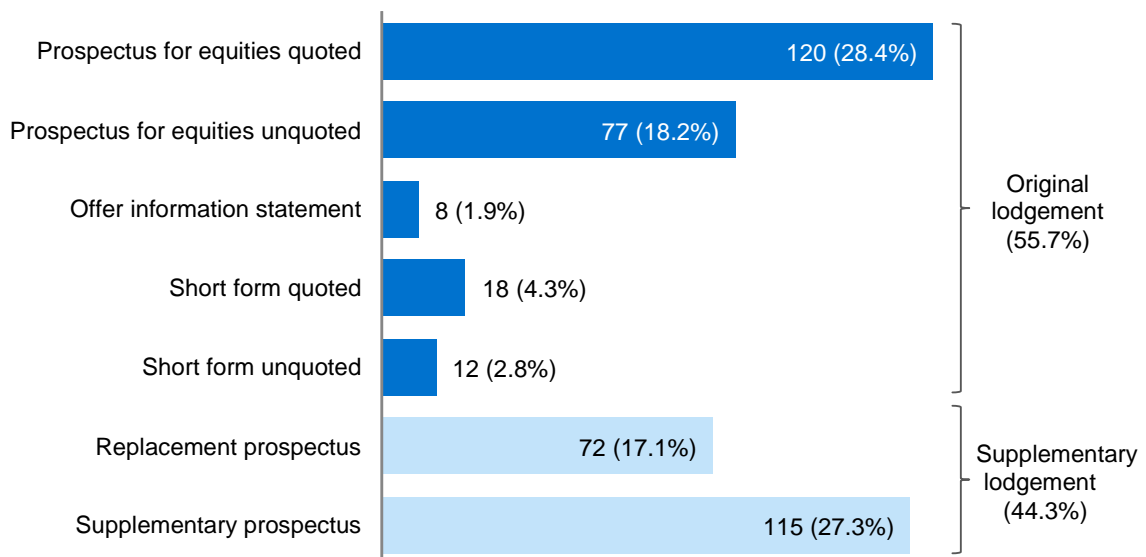
Issuer	Date of lodgement	Value (\$m)	Industry	Security type
Westpac Banking Corporation	17/05/2016	1,750	Banking	Hybrid securities
National Australia Bank Limited	31/05/2016	1,500	Banking	Hybrid securities
Commonwealth Bank of Australia	16/02/2016	1,450	Banking	Hybrid securities
Reliance Worldwide Corporation Limited	11/04/2016	918	Building products	Ordinary shares
WAM Leaders Limited	04/04/2016	394	Capital markets	Shares and attaching options
Tegel Group Holdings Limited	31/03/2016	344	Food products	Ordinary shares

Issuer	Date of lodgement	Value (\$m)	Industry	Security type
Scottish Pacific Group Limited	22/06/2016	293	Consumer finance	Ordinary shares
WiseTech Global Limited	17/03/2016	219	Software	Ordinary shares
GTN Limited	12/05/2016	187	Media	Ordinary shares
Monash Absolute Investment Company Limited	23/02/2016	100	Capital markets	Ordinary shares

Note: Apart from fundraising transactions where hybrid securities were issued, the value of the fundraising transactions has been taken from the original prospectus lodged, and may not reflect the final total amount raised.

13 Figure 1 sets out the total number of disclosure documents lodged with ASIC in the period. Forty initial public offering (IPO) disclosure documents were lodged during the period. Rights issues and entitlement offer prospectuses were the most common type of disclosure documents lodged.

Figure 1: Number of disclosure documents by type (lodged from 1 January to 30 June 2016)



Note 1: See Table 5 in Appendix 2 for the data shown in this bar graph (accessible version).

14 Overall, in the period, there was a decrease in both the number of disclosure documents lodged with ASIC,¹ compared with the period from 1 July to 31 December 2015 (previous period), and in the number of applications for relief from Ch 6D of the Corporations Act. There was also a small decrease in the offer size compared with the previous period. For details of historical lodgements, see Figure 11 in Appendix 1.

¹ The number of disclosure documents lodged with ASIC (shown in Figure 1 as ‘Original lodgement’) excludes replacement and supplementary disclosure documents. This figure also excludes low-document fundraisings conducted by listed entities.

New ASIC guidance and report on due diligence practices

- 15 During the period, we finalised some important updates to our regulatory guidance, and released findings from our review of market practices relating to public fundraising.
- 16 In March 2016, we concluded the update and consolidation of a number of fundraising regulatory guides as part of our efforts to ensure that our guidance and regulatory policy settings continue to facilitate efficient public fundraising in Australia. In connection with the release of the revised guidance, we remade various fundraising class orders that were due to expire, and issued two new legislative instruments aimed at helping reduce business costs: see paragraphs 97–104.
- 17 In July 2016, we released a report on due diligence practices, [Report 484](#) *Due diligence practices in initial public offerings* (REP 484). The findings of REP 484 were finalised during the period following a comprehensive review of 12 IPOs between November 2014 and January 2016.
- 18 The report aims to be a useful guide for directors and advisers, outlining a number of good practice recommendations to promote effective due diligence. We discuss REP 484 and our updated guidance later in this report: see paragraphs 92–104.

Initial public offerings—Listing standards and market operator discretions

- 19 ASX recently exercised its discretion not to permit Guvera Limited to list on its financial market. Before the ASX decision, ASIC had intervened to improve the disclosure for the offer. This high-profile matter has generated much interest in the respective roles of ASIC and market operators such as ASX in connection with IPO listings.
- 20 Where a company is seeking to list through an IPO made under a prospectus, ASIC's primary role is that of disclosure regulator. We will review the prospectus and assess whether the information provided is sufficient and appropriately presented, and will seek to ascertain whether there are any material omissions or inaccuracies.
- 21 In doing so, we do not make a determination on the suitability of the company for listing or on the commercial merits of any particular offer (although we may consider issues relevant to the merits of the offer in our efforts to ensure the disclosure in the prospectus is comprehensive and appropriately balanced—including in relation to the risks of the offer).
- 22 In contrast, market operators such as ASX oversee the listing standards they have adopted, and may grant or refuse admission at their discretion. For example, under ASX Listing Rules 1.19 and 2.9, ASX has an absolute

discretion in deciding whether or not to admit an entity to the official list and to quote its securities. This discretion may be exercised even if an entity otherwise satisfies each of the listing and quotation conditions specified in the listing rules.

- 23 For more information, see the [ASX report on declined listing and waiver applications](#) for the period from 1 January to 30 June 2016.
- 24 Where a company is seeking to list on a financial market, both ASIC and the market operator will often be performing their respective roles at the same time. ASIC will often liaise closely with market operators because we recognise that the decisions made by ASIC (e.g. about prospectus disclosure) or by the market operator (e.g. about listing) may each affect the other's performance of its functions.
- 25 ASX recently consulted on a number of proposed changes to its listing requirements which are designed to ensure that the quality and integrity of its market are maintained. These changes are discussed further at paragraphs 128–131.

Technology company listings

- 26 In the period, we observed a large number of IPO prospectuses for technology companies. In reviewing these offers, we identified some common disclosure issues requiring correction. These included:
- (a) insufficient disclosure about the business model of the company, including how revenue will be generated by the company;
 - (b) inadequate explanation of the true competitors of the company. In particular, we noticed that the market in which the company operates was often too narrowly defined. This resulted in an emphasis on certain online domestic competitors, and a failure to disclose all direct online domestic competitors, international online competitors, and physical 'bricks and mortar' competitors;
 - (c) for start-up technology companies, insufficiently prominent disclosure in the prospectus outlining the limited operating history of the company and, where relevant, details of that history (see also paragraphs 49–51);
 - (d) inadequate disclosure about intellectual property rights, including the rights that the company holds, what intellectual property the company uses, how integral intellectual property is for the company, and whether third-party intellectual property rights may be infringed; and
 - (e) data and statistics included in the prospectus that were not directly relevant to the business or industry of the company, including (for example) data about worldwide internet use and speeds of wi-fi access.

27 We encourage issuers and their advisers to ensure that the disclosure in technology company prospectuses is clear, concise and effective, and appropriately tailored to reflect the nature of the company's business, the market it operates in and the risks of the investment.

Foreign exempt listings

28 In September 2015, ASX reduced the admission thresholds for New Zealand companies seeking a foreign exempt listing on ASX: see Chapter 1 of the ASX Listing Rules. In our last report, we noted that, to facilitate such listings, we would consider granting individual relief to allow placements and rights issues to be made to Australian investors under a 'cleansing notice' issued in accordance with New Zealand law, without further Australian disclosure: see [Report 469](#) *ASIC regulation of corporate finance: July to December 2015* (REP 469) at paragraphs 49–51.

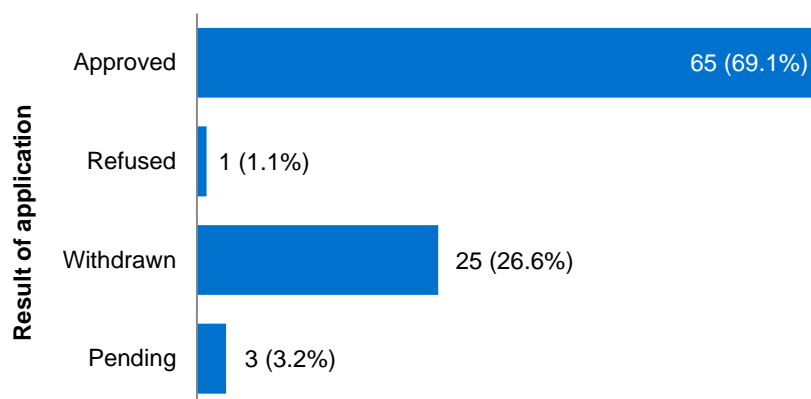
29 Two recent matters provide further clarity on when we may be prepared to grant relief in connection with a proposed foreign exempt listing. In both cases, we were minded to refuse the relief, taking into account the purpose of the on-sale provisions in s707 of the Corporations Act of ensuring that adequate disclosure is made to retail investors regardless of whether securities are offered to them directly or made available through an intermediary.

30 The first matter related to an application for relief from an entity that was not listed in a jurisdiction that had a legal framework comparable to the cleansing notice on-sale regime in s708A of the Corporations Act. We discuss our decision to decline relief in that matter in REP 483 at paragraphs 74–78.

31 The second matter involved an entity listed in New Zealand that had made a placement to institutional investors who had provided a contractual warranty that they did not have a relevant on-sale purpose. On this basis, the entity did not prepare a cleansing notice for these shares at the time of issue. Whether or not making such an offer was permissible under New Zealand law, we were concerned that providing on-sale relief in the circumstances would facilitate entities raising funds indirectly from Australian retail investors (including by enabling issuers to hold out to exempt offerees the possibility of on-selling their shares in the Australian market) in circumstances where adequate disclosure may not have been provided.

Applications for relief

32 During the period, we received 94 applications for relief under s741 of the Corporations Act. Of the 94 applications, we granted relief for 65 applications (69.1%): see Figure 2.

Figure 2: Results of applications under s741 (1 January to 30 June 2016)

Note: See Table 6 in Appendix 2 for the data shown in this bar graph (accessible version).

33 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 483.

Timing of applications

34 We often receive a variety of applications for relief before the lodgement of IPO prospectuses. Relief is generally sought in connection with:

- (a) proposed escrow arrangements;
- (b) communication to employees and existing shareholders about the IPO; and
- (c) employee incentive schemes.

35 We have noticed that some issuers apply for relief before they can provide the necessary information about the structure of the offer, details of the relief, or even confirmation that the offer will proceed. For example, companies seeking relief for escrow arrangements sometimes submit their application before they know information such as the number of shares to be offered, the percentage of escrowed shares, the identities of the shareholders or the final form of the escrow agreement.

36 Commercial drivers will often mean that the final details about the structure of an IPO and related arrangements may not be available until very close to the lodgement of the prospectus. In such circumstances, we appreciate that advisers will often wish to engage with us on any relief required as soon as possible.

37 However, before we are able to make a decision, we require a sufficient level of certainty about the basic details of the transaction and information relevant to the relief requested, including whether the IPO will proceed. Accordingly, if this information is not available, we encourage advisers to contact us before submitting an application to discuss the best approach in the circumstances.

- 38 If we consider that we are unlikely to be provided with the information required to make a decision on a relief application within a reasonable time, we may invite the applicant to withdraw their application and relodge it at a later time, or we may refuse the application.

ASIC's review and monitoring of corporate fundraisings

- 39 The Corporations team reviews prospectuses and other disclosure documents for offers of securities lodged with ASIC under Ch 6D of the Corporations Act.

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

- 40 As a result of our review of prospectuses and offer documents lodged with ASIC under s718 of the Corporations Act in the period, we:
- (a) raised disclosure concerns in almost 32% of the documents lodged—subsequently, changes were made to over 85% of the documents where concerns were raised (or over 26% of all documents lodged);
 - (b) extended the exposure period 23 times—down from 55 times in the previous period;
 - (c) issued 33 interim stop orders in relation to 23 offers² (14% of all offers) and four final stop orders (1.7% of all offers)—we issued 25 interim stop orders and four final stop orders³ in the previous period; and
 - (d) revoked 15 interim stop orders⁴—we revoked 12 interim stop orders in the previous period.

Disclosure concerns

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

² The interim stop orders were issued to Riddock International Limited, Cape Range Ltd, Freehill Mining Limited, IVS Holdings Ltd, Eastern Goldfields Limited, King of Gold Group Co. Ltd, Living Cities Development Group Limited, Stirling Products Limited, UXA Resources Ltd, Synergy Plus Limited, Cudeco Limited, Bitcoin Group Ltd, Afterpay Holdings Limited, Celsius Coal Limited, Graphex Mining Limited, Thred Limited, FE Limited, Lithium Power International Limited, Nvoi Ltd, Weststar Industrial Limited, Findex Group Limited, Pacific Ore Limited, and Elsmore Resources Ltd.

³ The final stop orders were issued to King of Gold Group Co. Ltd, Synergy Plus Limited, Celsius Coal Limited, and FE Limited.

⁴ We revoked the interim stop orders on BGD Corporation Ltd, Riddock International Limited, IVS Holdings Ltd, Eastern Goldfields Limited, UXA Resources Ltd, Living Cities Development Group Limited, Bitcoin Group Ltd, Cudeco Limited, Afterpay Holdings Limited, Graphex Mining Limited, Thred Limited, Lithium Power International Limited, Nvoi Ltd, Weststar Industrial Limited, and Syntonic Limited.

- (a) inappropriate disclosure of financial information and company solvency (in over 10% of all prospectuses lodged, which is consistent with the previous period); and
- (b) improper disclosure of forecast financial information (in over 5% of prospectuses lodged, which is similar to 4% observed in the previous period).
- 42 Our expectations for disclosure of financial information in prospectuses are discussed further at paragraphs 46–51.
- 43 We noted our concerns, requested amended disclosure or intervened in a number of offers where there was insufficient disclosure about the structure of the offer. For example, in all prospectuses lodged during the period:
- (a) control issues were identified in over 6% of prospectuses (consistent with the previous period); and
- (b) related party issues were evident in almost 4% of prospectuses (up from 3% in the previous period).
- 44 We also raised a number of disclosure concerns in the period about:
- (a) disclosure of the company’s business model (in over 10% of prospectuses lodged);
- (b) use of funds (in almost 7% of prospectuses lodged); and
- (c) risk disclosure that is either insufficiently prominent in the prospectus or is not tailored to the company’s circumstances (in almost 10% of prospectuses lodged).
- 45 In most instances, changes were made to the disclosure in response to our concerns.

Disclosure of financial information

Use of non-IFRS revenue measures such as total transaction value

- 46 We have recently noticed a trend in a number of prospectuses involving issuers with a limited history of operations, including financial technology (fintech) businesses, where financial measures such as gross transaction value or total transaction value (TTV) are prominently disclosed to indicate revenue or growth in revenue.
- 47 TTV measures may indicate ‘sales’ of millions of dollars—however, the actual revenue earned by the issuer is only a very small fraction of the headline TTV because the issuer earns revenue on a commission or agency style arrangement. Growth rates in TTV need to be considered in light of the actual amount of revenue earned by the issuer. Often the actual income is not disclosed in the overview but is included in the body of the document.

48 In these circumstances, we have sought and obtained amendments to ensure prominent disclosure of the actual revenue generated wherever TTV measures are described. We believe that the over-emphasis of these measures has the potential to significantly mislead investors.

Disclosure of key risk that the company is loss making

49 We have noted that many smaller issuers with an unprofitable trading history do not disclose a summary of their trading history in the investment overview section of the prospectus. [Regulatory Guide 228](#) *Prospectuses: Effective disclosure for retail investors* (RG 228) recommends that this information is included in the investment overview.

50 We have also observed that these issuers do not include as a key risk the fact that they have made losses, and are likely to experience continuing losses.

51 If an issuer has a limited trading history, or a history of losses, this is important factual information for an investor and should be disclosed upfront. This is particularly the case where risk disclosure does not make it clear that the company is loss making and/or a start-up. We have sought corrective disclosure in a number of these cases.

Disclosure made outside a prospectus requiring corrective disclosure

52 During the period, we raised concerns about disclosures made outside the prospectus by an issuer during a fundraising.

53 The company was conducting a non-renounceable rights issue. After lodging the prospectus, the company announced to ASX that an independent research report had been completed, which was available on the company's website. The report assigned a value to the company's shares (assuming successful completion of the offer) that was materially higher than the subscription price under the offer.

54 We were concerned that it appeared that the company considered the report to be material to investors (given that it was published on its website and attention was drawn to it in the ASX announcement). However, the valuation provided in the report was based on assumptions which did not appear to be supported by reasonable grounds.

55 We also had a number of concerns about the content of the report itself, including in relation to whether it was independent, and appropriate, in light of [Regulatory Guide 79](#) *Research report providers: Improving the quality of investment research* (RG 79). This was particularly the case because the report was commissioned by the company.

56 After we raised our concerns, the company issued an ASX announcement clarifying that the report was not considered independent and that the information in the report prepared by the author was based on the company's assumptions and did not have a reasonable basis. Accordingly, the company advised investors not to rely on this information and removed the report from its website.

57 We remind issuers that, in the course of monitoring fundraising and other transactions, we review disclosures made outside regulated documents. Information should be included in a regulated document where that disclosure may be considered relevant to, or otherwise influence decision making in relation to, a regulated transaction. Issuers should take care in ensuring that disclosure made outside a regulated document does not call into question the disclosure made in a regulated disclosure document.

Disclosure about laws and regulations affecting business operations

58 We have seen a number of online gambling prospectuses recently. The online gambling market consists of various types of products and offerings. Of concern to us is that online gambling can be illegal in many countries, including Australia (depending on various factors including the product type, structure of the business, and customer location).

59 This area is very complex as a result of the different laws applicable such as international laws, and state and federal laws in Australia. Because of the complexity involved with gambling businesses, our position is that a legal opinion should accompany a gambling prospectus to confirm the legality of the business in all the jurisdictions in which the company operates.

Downgrades of figures cited in IPO prospectuses

60 During the period, we noted that a number of companies, which had successfully listed following an IPO, subsequently released announcements downgrading profit forecasts contained in their IPO prospectus.

61 When determining whether profit forecasts may be included in an IPO prospectus, issuers have a responsibility to carefully consider the factors that may affect the company's ability to meet the forecast. Where a downgrade of profit forecasts occurs following listing, we may re-examine the prospectus and the announcement carefully to understand the cause and nature of the downgrades.

62 If we have concerns about either the prospectus or the content of the announcement, issuers and their advisers can expect further regulatory scrutiny.

Advertising for offers of securities

- 63 In the period, we raised concerns with an issuer who had arranged for an online investor forum to distribute an advertisement about the issuer's IPO by email.
- 64 The advertisement contained various statements that we considered were likely to be misleading and also contravened the advertising provisions in the Corporations Act because the advertisement did not contain the relevant statements required by s734(6). The issuer subsequently arranged for the online investor forum to retract the advertisement by email. The issuer also provided an update in relation to the retraction of the advertisement in a replacement prospectus.
- 65 As noted in REP 469 and [Regulatory Guide 158 Advertising and publicity for offers of securities \(RG 158\)](#) at RG 158.27, we will bring action if publication of an advertisement would significantly reduce investor protection and be likely to:
- (a) result in the market being drip-fed with selective information usually contained in the disclosure document;
 - (b) discourage adequate analysis of the disclosure document by individual investors and the market generally; or
 - (c) result in investment decisions being made on the basis of the advertising campaign and other publicity rather than on the basis of the disclosure document.

Enforcement action

Fundraising restrictions imposed

- 66 The fundraising provisions in Ch 6D of the Corporations Act allow companies that are listed on a prescribed financial market to rely on certain disclosure concessions when making offers of securities.
- 67 These concessions recognise the continuous disclosure and periodic reporting obligations that apply to such companies, and the enhanced price discovery associated with an active and informed market for the company's shares. They allow listed companies to:
- (a) make offers under a reduced content prospectus (see s713 of the Corporations Act); and
 - (b) utilise a 'cleansing notice' to:
 - (i) make offers under a pro rata rights issue; or
 - (ii) issue securities to exempt offerees that do not require disclosure at the time of on-sale (see s708AA(2) and 708A(5) of the Corporations Act).

68 Where we are concerned that an entity has contravened certain requirements, we may take action to remove the ability of a listed company to rely on these provisions for a time.

Black Mountain Resources Limited

69 In April 2016, we made a determination under s713(6) of the Corporations Act restricting Black Mountain Resources Limited (Black Mountain) from issuing a reduced content prospectus for 12 months.

70 The determination was made as a result of Black Mountain's failure to inform the market of details of convertible note agreements entered into by the company, and its failure to comply with its financial reporting obligations.

71 For further details, see [Media Release \(16-128MR\)](#) *ASIC restricts Black Mountain Resources from issuing a reduced content prospectus* (29 April 2016).

Continental Coal Limited

72 During the period, we also made a determination under s713(6) of the Corporations Act restricting Continental Coal Limited (Continental Coal) from issuing a reduced content prospectus.

73 Our decision was based on Continental Coal's failure to comply with its continuous disclosure obligations—including informing the market about the sale of its interests in a mining project—and the company's conduct in issuing shares under a supplementary prospectus before receiving payment. Continental Coal had also failed to hold its annual general meeting (AGM), and to lodge its annual report for 2014–15.

74 Subsequently, ASIC successfully applied to the Federal Court of Australia to have Continental Coal wound up on just and equitable grounds. We alleged, among other things, contraventions by the company of its continuous disclosure and financial reporting obligations and the requirement to hold application money received under a rights issue on trust.

75 For further details, see [Media Release \(16-061MR\)](#) *ASIC restricts Continental Coal from issuing reduced content prospectus following disclosure and financial reporting failures* (4 March 2016) and [Media Release \(16-166MR\)](#) *ASIC winds up Continental Coal* (27 May 2016).

Rhinomed Limited

76 During the period, ASIC also accepted an enforceable undertaking from Rhinomed Limited (Rhinomed) that, among other things, restricts Rhinomed from making offers under a s713 prospectus, or relying on the cleansing

notice provisions in s708A(5) or 708AA(2) of the Corporations Act, until such time as an independent expert has conducted a review of the company's disclosure practices, policies and procedures and reported to ASIC that the company has implemented any recommendations arising from the review.

- 77 The enforceable undertaking was offered in addition to Rhinomed paying a penalty following the issue of an infringement notice by ASIC for alleged failure by the company to comply with its continuous disclosure obligations in connection with the termination of an announced distribution agreement.
- 78 For further details, see [Media Release \(16-190MR\)](#) *Rhinomed pays penalty for alleged continuous disclosure breach and ASIC accepts enforceable undertaking to address continuous disclosure deficiencies* (10 June 2016).

Offers to professional investors

- 79 On 16 May 2016, the Federal Court of Australia made an order to wind up CME Capital Australia Pty Ltd (CME), Boston Pacific Capital Pty Ltd, Boston Pacific Capital Australia Pty Ltd (Boston Pacific Capital Australia), GKN Capital Pty Ltd (GKN) and IMCG Pty Ltd.
- 80 This followed an order on 17 November 2015, sought by ASIC, to freeze the assets of the companies and restrain the respective directors, Mr Petrou and Mr Grujicic, from leaving Australia; and an order on 21 December 2015 to appoint provisional liquidators to the companies.
- 81 The grounds for winding up included that:
- (a) there was a justifiable lack of confidence in the management of the companies;
 - (b) the companies were insolvent;
 - (c) the companies' records were in an unsatisfactory state; and
 - (d) there had been a number of possible contraventions of the Corporations Act.
- 82 CME, Boston Pacific Capital Australia and GKN (who did not hold Australian financial services (AFS) licences) operated websites that invited investments from the public at above market interest rates. The invitations purported to target professional investors (as defined in s9 of the Corporations Act), and by their application, investors were taken to warrant that they satisfied this definition.
- 83 We had a number of concerns, which included that the companies were operating an unsustainable investment scheme, reliant on new investor funds to pay interest to existing investors, and also that funds may have been raised from persons who were not professional investors.

84 Notably, Moshinsky J made the following comments about the professional investor exemption when he appointed the provisional liquidators:

The evidence of Mr Petrou that he believed offers to have been made only to ‘professional investors’ is not a sufficient response, at least for present purposes. The provisions of the [Corporations] Act referred to above do not require a contravenor to know that the impugned conduct constitutes a contravention of the Act in order for the contravention to be established...⁵

Offers made without a disclosure document

Astra Resources Ltd

85 In May 2016, three former directors of Astra Resources Ltd (Astra Resources) were disqualified by the Federal Court of Australia from managing corporations for periods of nine to 12 years.

86 This followed an earlier judgment that Astra Resources had raised more than \$6.5 million illegally from 281 investors during 2011 and 2012.

87 The court found that these directors had failed to take reasonable steps to prevent these contraventions.

88 For more information, see [Media Release \(16-159MR\)](#) *Former Astra Resources directors disqualified* (23 May 2016).

Barakah Properties Pty Ltd

89 In March 2016, ASIC also accepted an enforceable undertaking from Barakah Properties Pty Ltd (Barakah) following concerns that the company:

- (a) had obtained funds without the necessary disclosure;
- (b) had exceeded the maximum number of shareholders for a private company;
- (c) may have provided financial advice without an AFS licence; and
- (d) had bought back its own shares without following the procedures required under the Corporations Act.

90 The enforceable undertaking by Barakah seeks to address these concerns.

91 For more information, see [Media Release \(16-079MR\)](#) *ASIC accepts enforceable undertaking from Melbourne company* (18 March 2016).

⁵ *Australian Securities and Investments Commission v CME Capital Australia Pty Ltd* [2015] FCA 1489 at 41.

ASIC surveillance reports and policy initiatives

Release of due diligence report

- 92 On 14 July 2016, ASIC published REP 484. The report discusses our review of the due diligence practices of issuers of securities under an IPO. REP 484 summarises the key findings of our review and provides our good practice recommendations for effective due diligence.
- 93 Between November 2014 and January 2016, we conducted systematic reviews of the due diligence practices of 12 IPO issuers. These ranged from small to large offers, including a sample of offers from emerging market issuers.
- 94 The purpose of our review was to observe current market practices, report on our key findings and promote best practice. Our key findings can be summarised as follows:
- (a) issuers that demonstrated poor due diligence practices generally produced prospectuses with defective disclosure;
 - (b) there was considerable variation in the due diligence processes for the reviews that we conducted, and we found that small to medium-sized issuers generally adopted fewer due diligence processes;
 - (c) a number of issuers adopted a ‘box ticking’ approach to due diligence rather than focusing on the disclosure in the prospectus;
 - (d) even though the directors of an issuer have direct liability under the Corporations Act—and, in some cases, were actively involved in the issuer’s business—in some instances certain directors had little involvement in the preparation of the prospectus before signing off on the document;
 - (e) there were additional challenges for emerging market issuers resulting from foreign laws, language barriers and poor oversight of the inquiries conducted by foreign advisers;
 - (f) there was an inconsistent quality of contribution from the parties involved in the due diligence process; and
 - (g) a low-cost due diligence process may lead to delays and further work, and ultimately be more costly.
- 95 As a result of our due diligence reviews, in all but one instance, the prospectus issuer was required to make corrective disclosure, or amendments to the offer terms, by issuing a replacement prospectus. One review resulted in the withdrawal of the offer, and another was subject to a final stop order.
- 96 In addition to our usual work in monitoring fundraisings, we plan to carry out further review work in 2016–17. We will focus on different aspects of public company fundraising processes in order to promote good market practices.

Update and consolidation of ASIC's fundraising guidance and associated legislative instruments

- 97 In March 2016, we concluded a significant update and consolidation of our fundraising regulatory guidance. We also reissued a number of fundraising class orders, and issued two new legislative instruments aimed at helping clarify the law and reduce business costs.
- 98 As part of the update, we reviewed 31 existing class orders relating to Ch 6D of the Corporations Act ahead of their pending expiry. We reissued the relief in 26 of these class orders, which were operating efficiently and effectively, and repealed five class orders that were no longer required.
- 99 To assist users, the continuing relief has been consolidated by subject matter into 13 new legislative instruments, which have been drafted using ASIC's current style and format while preserving their effect.
- 100 In addition, to help reduce business costs, we issued two new legislative instruments which will promote commercial certainty and reduce the need for issuers to seek individual relief. These instruments:
- (a) facilitate issuers extending the time limits within which the minimum subscription and/or quotation conditions applying to an offer of securities must be satisfied, and clarify how these time periods are calculated; and
 - (b) provide relief for prudentially regulated issuers undertaking certain offers of regulatory capital securities to allow the use of a transaction-specific prospectus.
- 101 We also updated and refreshed our regulatory guidance on the procedure for offering securities for issue or sale under a disclosure document lodged in accordance with Ch 6D of the Corporations Act. This includes:
- (a) consolidating and updating seven existing regulatory guides into one new regulatory guide: [Regulatory Guide 254](#) *Offering securities under a disclosure document* (RG 254);
 - (b) updating our guidance on minimum subscription and quotation conditions and clarifying how we administer the exposure period; and
 - (c) minor updates to a further five related regulatory guides.
- 102 We publicly consulted on this updated relief and guidance in [Consultation Paper 239](#) *Disclosure documents: Update to ASIC instruments and guidance* (CP 239). We received four submissions in response to CP 239.
- 103 Respondents were generally supportive of our proposal to update and consolidate our guidance. The matters on which issues were raised, or more detailed comments were provided, differed among respondents. A summary of those issues and comments, and our responses, is provided in [Report 473](#) *Response to submissions on CP 239 Disclosure documents: Update to ASIC instruments and guidance* (REP 473).

104 We have prepared a table which cross-references parts of our previous guidance that have been consolidated into RG 254 and identifies which legislative instruments supersede particular class orders. This table is available on the [ASIC webpage ‘Consolidation of fundraising instruments and guidance’](#).⁶

New information sheet on forward-looking statements included in mining and resources disclosure

105 In April 2016, we released [Information Sheet 214 Mining and resources: Forward-looking statements](#) (INFO 214) on statements relating to future matters commonly made in the mining and resources industry—including production targets and forecast financial information.

106 Our aim was to draw together and explain the existing rules and reference sources in a useful ‘one stop shop’ reference guide and checklist, with hypertext links, to help companies reduce business costs and the risk of litigation or regulatory action.

107 Since the publication of INFO 214, we have become aware of a number of concerns around its operation.

Background to the guidance in INFO 214

108 Some market participants have raised concerns that, in the past, mining and exploration companies were permitted to publish scoping studies containing production targets and forecast financial information even if these were not based on reasonable grounds—and that certain JORC Code 2012 amendments confirmed this—but that this practice was now prohibited by INFO 214.

109 This is not correct because the law has never allowed offerors to raise money from investors on the basis of claims lacking a reasonable foundation. The requirement for reasonable grounds is also embedded in the ASX Listing Rules and guidance notes, which were implemented after close consultation and agreement with the Joint Ore Reserves Committee (JORC) and ASIC.

110 For example, the ASX guidance notes and ‘Frequently asked questions’ (FAQs) expressly caution, by reference to existing laws and ASIC regulatory guides, that scoping studies containing production targets and forecast financial information must be based on reasonable grounds, and that these grounds must be disclosed.

⁶ Available at www.asic.gov.au/regulatory-resources/fundraising/consolidation-of-fundraising-instruments-and-guidance/.

Specific clarifications

- 111 Concerns have also been raised that INFO 214 allows production targets and forecast financial information to be published only if secured funding is in place.
- 112 This is not correct. INFO 214 states that secured funding is not required, but that what is required is the disclosure of objectively reasonable grounds that support the conclusion that funding will become available as and when required by the development or production schedules. INFO 214 provides flexibility on how companies can do this, and gives a non-exhaustive list of examples.
- 113 The information sheet also does not state that production targets and forecast financial information can only be published if a company has estimated ore reserves. INFO 214 makes it clear that an entity may publish production targets and forecast financial information on the basis of mineral resources (in some cases, even on the basis of inferred mineral resources alone) and, depending on the circumstances, even a proportion of exploration targets, as set out in the ASX Listing Rules, guidance notes, and FAQs.
- 114 The only qualification is that reasonable grounds for the application of the ‘JORC modifying factors’ must be demonstrated. There is a separate obligation under the Corporations Act to have reasonable grounds for forward-looking statements such as production targets and forecast financial information. This qualification is also noted in the relevant ASX FAQs and guidance notes published in 2012.
- 115 It is also not correct that companies are unable to release any ‘technical’ scoping study information if they are too early in the development cycle to show reasonable grounds for production targets and forecast financial information. It is clear from both the ASX FAQs and INFO 214 that companies should still report relevant, reliable technical information to keep the market fully informed of the company’s prospects.
- 116 Given the concerns raised by market participants with INFO 214, we are considering whether to reissue the information sheet, after further discussions with market participants, in the interests of further clarifying our guidance on these issues.

Consultation on historical information in prospectuses

- 117 As foreshadowed in REP 469, during the period we consulted on proposed updates to our guidance aimed at improving the disclosure of historical financial information in prospectuses.

- 118 In May 2016, we released a consultation paper setting out a number of proposed changes to RG 228 to clarify the quality and quantity of information we expect to see. The proposed changes included:
- (a) subject to limited exceptions, requiring ‘full form’ prospectuses to include audited historical financial statements for 2.5 or three years for both the issuer and any business it acquires, regardless of the corporate form in which the business was carried out in the past;
 - (b) clarifying the types of audit and review opinions that may not be acceptable for satisfying the disclosure requirements;
 - (c) guidance on disclosing asset acquisitions and when financial disclosures may need to be updated; and
 - (d) clarifying the need to include cash flow statements.
- 119 For more information, see [Consultation Paper 257](#) *Improving disclosure of historical financial information in prospectuses: Update to RG 228* (CP 257). Formal consultation closed on 7 July 2016 and we received 14 submissions. We are also aware of the feedback that ASX received on its related proposals.
- 120 Overall, the consultation response has been very supportive of the proposed changes to RG 228. While most of the updates reflect existing market practices, we have received useful feedback in the following areas:
- (a) disclosure requirements for acquisitions using IPO funding and for historical acquisitions, including ‘roll up’ and ‘carve outs’;
 - (b) disclosure inconsistencies between our guidance and the ASX Listing Rules; and
 - (c) commentary on the case studies and operation of specific parts of RG 228.
- 121 We are in the process of collating the feedback and considering our position on the issues raised. We expect to release the updates to RG 228 in the second half of 2016.

Marketing of fundraising by brokers

- 122 As noted in REP 469, we are continuing our surveillance work following targeted reviews of the marketing practices of brokers and issuers in connection with IPOs to investors—including the use of social media.
- 123 We will be publishing a report on our findings from this review later in 2016.

Confidential information and conflicts report

- 124 On 9 August 2016, ASIC published [Report 486](#) *Sell-side research and corporate advisory: Confidential information and conflicts* (REP 486).
- 125 The report sets out the key observations from our review of the way financial intermediaries handle material, non-public information (MNPI) and how they manage conflicts of interest. The report also examines a sample of capital raising transactions, including IPO and secondary offerings, to see how market practice around MNPI and conflicts is applied.
- 126 While most firms have specific policies and procedures in place, the review found considerable variation in the following market practices:
- (a) *Identification and handling of confidential information:* Some organisations do not have appropriate arrangements to handle situations where staff members come into possession of confidential information. This includes the inadequate use or supervision of information barriers and restricted trading lists.
 - (b) *Management of conflicts of interest:* There is inconsistency in how conflicts of interest are managed. This includes the structure and funding of research, insufficient separation of research and corporate advisory activities (particularly the involvement of research in soliciting business during the IPO process), decisions about share allocations in capital raisings, and mixed practices in relation to the disclosure of conflicts of interest.
- 127 For more information, see REP 486.

Other policy initiatives

ASX consultation on update to listing rules

- 128 On 12 May 2016, ASX released a consultation paper titled, *Updating ASX's admission requirements for listed entities*: see [ASX consultation paper on listing requirements](#). Submissions on the consultation paper closed on 24 June 2016.
- 129 The key changes proposed under the consultation paper relate mostly to entities seeking to list in the 'ASX listing' category.
- 130 The proposed changes seek to strengthen the ASX Listing Rules framework, and to maintain an appropriate balance between the interests of issuers and investors.
- 131 We have been consulting closely with ASX on the proposed listing rule changes—particularly the requirement for three years' worth of audited financial statements—given ASIC's proposed updated guidance on this issue. For further information, see CP 257.

B Mergers and acquisitions

Key points

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

In addition to reviewing takeover bids, schemes of arrangement and other control transactions during the period, we also made, and actively participated in, a number of applications to the Takeovers Panel.

Key observations and statistics

Takeover bids and schemes of arrangement

- 132 There were noticeably fewer mergers and acquisitions under takeover bids and schemes of arrangement during the period when compared with the previous period. The overall reduction in merger and acquisition activity was significant—even accounting for the trend observed in recent years of slightly lower deal volumes during the second half of the financial year.⁷
- 133 Documents for 30 takeover bids and schemes of arrangement were respectively lodged or publicly released during the period, down from 58 in the previous period. These documents related to:
- (a) 22 separate control transactions⁸ (compared with 42 during the previous six months); and
 - (b) four separate restructures.
- 134 In total, during the period:
- (a) bidder's statements in respect of 12 bids were lodged (compared with 28 in the previous period);⁹
 - (b) draft explanatory statements and scheme terms for 15 members' or creditors' schemes of arrangement were received for ASIC review (compared with 37 in the previous period); and

⁷ For details of historical bidder's statements and scheme booklets lodged or registered with ASIC, see Figure 12 and Figure 13 in Appendix 1.

⁸ These transactions relate to the acquisition of voting shares or interests through bids or scheme booklets that are respectively lodged or registered with ASIC in the period. Multiple transactions by the same or a related bidder for the same target are counted as a single transaction. Bids and schemes that do not result in the acquisition of control (e.g. reconstructions, demergers or offers for non-voting securities) are not included.

⁹ For a list of all bidder's statements lodged with ASIC during the period, see Table 3 in Appendix 1.

- (c) explanatory statements for 18 members' or creditors' schemes of arrangement were either registered or, in the case of creditors' schemes—publicly released.¹⁰

135 There was a decrease in the overall size of control transactions utilising a bid or scheme, in comparison with the previous period, with only two relating to targets valued at over \$1 billion. One of these was the acquisition of Asciano Limited, which had been the subject of multiple takeover proposals since August 2015 and was the largest control transaction during the period by a significant margin.

136 Table 2 sets out the top 10 bids and schemes by target value in the period.

Table 2: Top 10 takeover bids and schemes of arrangement by value (lodged or registered from 1 January to 30 June 2016)

Target	Bidder	Type	Industry	Value (\$m)
Asciano Limited	Australian Logistics Acquisition Investments Pty Ltd	Scheme	Transportation	8,924
Pacific Brands Limited	Hanesbrands Inc.	Scheme	Retail	1,054
SMEC Holdings Limited	Surbana Jurong Holdings (Australia) Pty Ltd	Scheme	Engineering consulting	397
Sedgman Limited	CIMIC Group Investments Pty Ltd	Bid	Construction and engineering	242
General Mining Corporation Limited	Galaxy Resources Limited	Bid	Mining	217
Ethane Pipeline Income Fund (stapled securities)	Australian Pipeline Limited as RE of Australian Pipeline Trust (APA Group)	Bid	Utilities	130
Flinders Mines Limited	TIO (NZ) Limited	Bid	Mining	73
Colorpak Limited	Graphic Packaging International, Inc.	Scheme	Materials	60
The Search Party Ltd	Applabs Technologies Ltd	Bid	Software	51
Unity Mining Limited	Diversified Minerals Pty Ltd	Scheme	Mining	38

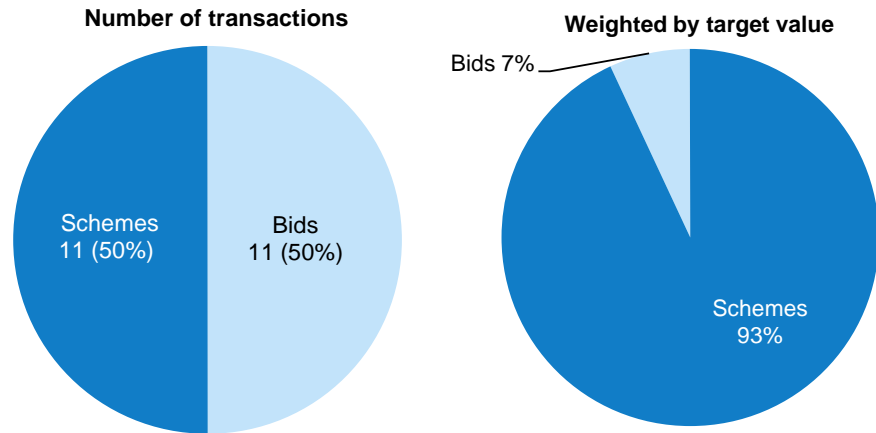
Note: Figures indicate the value of all voting securities of the target entity on issue based on the consideration offered. The total consideration payable in connection with the offer may be lower (including because the bidder/acquirer already held a number of securities in the target). The table does not include the one trust scheme during the period: see paragraph 150.

137 In terms of the number of transactions, takeover bids and schemes were generally equally preferred as a method to acquire control of a regulated entity during the period. However, when weighted against the size of the target, it is clear that the vast majority of the consideration offered to target security holders was through transactions effected by a scheme of arrangement: see Figure 3.

¹⁰ For a list of all scheme explanatory statements registered by ASIC during the period, see Table 4 in Appendix 1.

138 Control transactions utilising a scheme related to targets collectively valued at over \$10.5 billion, while the equivalent value of targets the subject of a bid was approximately \$780 million. If the Asciano Limited transaction is excluded, companies proposing a scheme represented 67% of all targets by value.

Figure 3: Control transactions (via bids and schemes lodged or registered from 1 January to 30 June 2016)

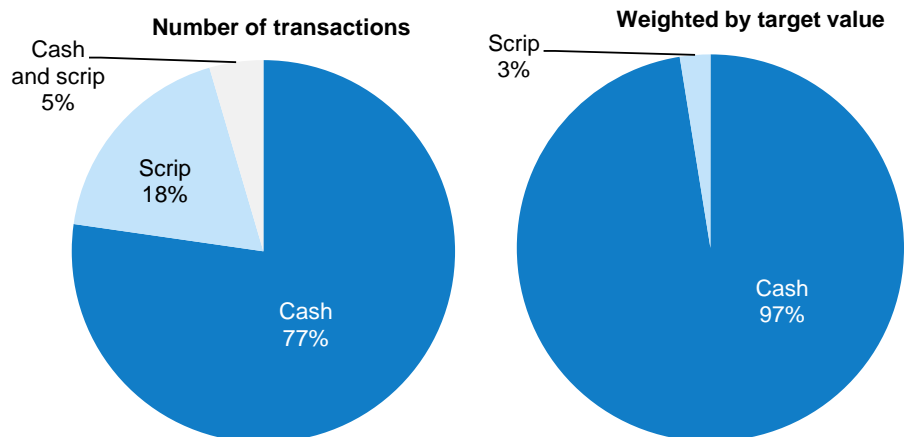


Note 1: Weightings are based on the target value calculated by reference to the bid consideration.

Note 2: See Table 7 in Appendix 2 for the data shown in these pie graphs (accessible version).

139 A clear preference for cash consideration was also observed during the period—both by reference to the number of cash-only deals and the target weighted value of cash consideration offered: see Figure 4.

Figure 4: Consideration type (control transactions via bids and schemes lodged or registered from 1 January to 30 June 2016)

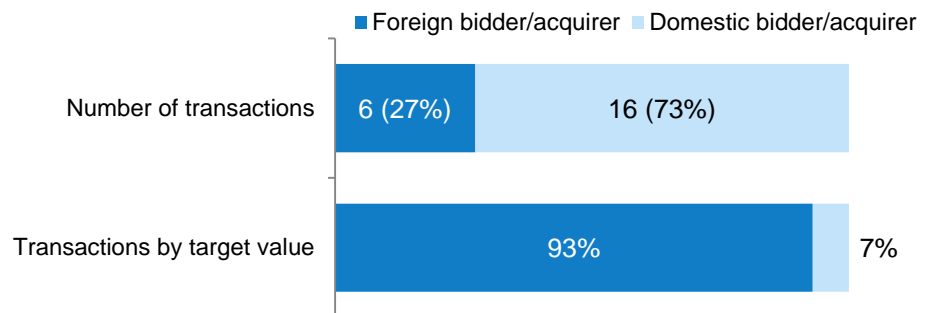


Note 1: Weightings are based on the target value calculated by reference to the bid consideration. The value of targets that are the subject of a cash and scrip offer has been allocated proportionally among the weighted cash and weighted scrip figures. There were no transactions involving alternative consideration during the period.

Note 2: See Table 8 in Appendix 2 for the data shown in these pie graphs (accessible version).

140 Domestic offerors were behind the majority of control transactions involving a bid or scheme during the period. However, while smaller in number, foreign offerors were involved in the three largest transactions—the schemes to acquire Asciano Limited, Pacific Brands Limited and SMEC Holdings Limited. As a result, overall foreign offerors¹¹ represented 93% of transactions when weighted by target value (67% if the Asciano Limited transaction is excluded): see Figure 5.

Figure 5: Foreign and domestic offerors (control transactions via bids and schemes—1 January to 30 June 2016)



Note: See Table 9 in Appendix 2 for the data shown in this bar graph (accessible version).

Asciano Limited joint scheme of arrangement

141 The largest transaction during the period was the acquisition of Asciano Limited by a consortium of domestic and international investors through a scheme of arrangement. Before the scheme proposal, the company had been the subject of a number of competing takeover proposals by two rival consortia.

142 In March 2016, we granted relief to enable members of the rival consortia to propose a joint scheme of arrangement. This was the first time ASIC had granted relief to facilitate a joint scheme subject to the joint scheme conditions (including the ‘match or accept’ and voting restrictions) set out in Section L of [Regulatory Guide 9 Takeover Bids](#) (RG 9) which was updated in 2013. For further details, see REP 483.

First scheme of arrangement under Pt 5.1 between a foreign company and its members

143 During the period, an Australian members’ scheme of arrangement was used for the first time to effect the takeover of a registered foreign company.

¹¹ Our definition of ‘foreign offeror’ includes bidders and acquirers that are Australian entities controlled or incorporated by a foreign parent entity to undertake the takeover.

144 In March 2016, the Federal Court of Australia approved a Pt 5.1 scheme between Redcliffe Resources Limited (Redcliffe)—a company incorporated in Papua New Guinea (PNG)—and its members. Under the scheme, it was proposed that Northern Manganese Limited would acquire all of the issued shares in Redcliffe.

145 In considering the matter, a key focus for both ASIC and the court was whether the scheme would be effective to bind all members and, in particular, whether the scheme would result in the valid transfer of the scheme company's shares.

146 The court concluded that, in accordance with private international law principles, Australia was the *lex situs* (legal location) of the shares, and therefore Australian laws governed the validity of transfer. In particular, the court noted that:

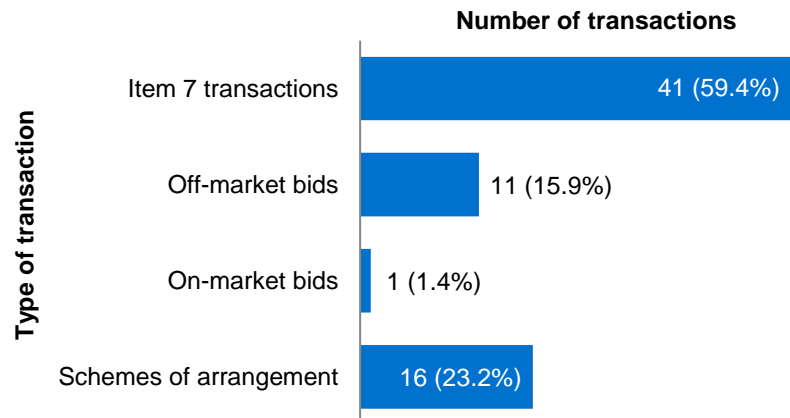
- (a) while share registers were kept in both Australia and PNG, Redcliffe had been listed on ASX for almost 20 years, and approximately 96% of its shareholders (holding around 94% of the company's shares) had registered addresses in Australia. This suggested that Australia was:
 - (i) where the shares could most effectively be dealt with, having regard to business practice; and
 - (ii) the location that shareholders would be likely to choose as a market and place of transfer; and
- (b) while s601CN(3) of the Corporations Act contemplated a procedure for the transfer of shares under PNG law, the PNG rules in turn contemplated deferral to the ASX procedure where a PNG company was listed—such that, in both places, valid transfers were governed by Australian law.

147 The court was therefore satisfied that the compulsory transfer of shares under the scheme would be binding. For further details, see *Redcliffe Resources Limited* [2016] FCA 404.

Other control transactions

148 Transactions approved under item 7 of s611 of the Corporations Act (item 7 transactions) were again the most common type of control transaction notified to ASIC in the period: see Figure 6.

149 The number of item 7 transaction documents provided to ASIC for review in the period (41) decreased from 49 in the previous period.

Figure 6: Documents lodged or received for review by ASIC, by type (1 January to 30 June 2016)

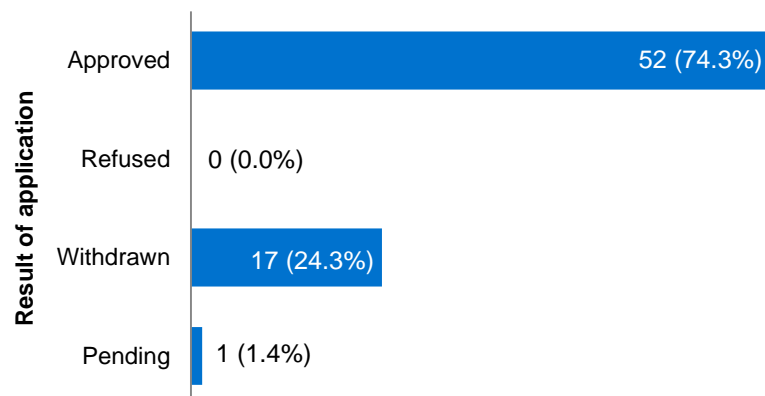
Note: See Table 10 in Appendix 2 for the data shown in this bar graph (accessible version).

Trust schemes

150 During the period, we provided relief to facilitate one trust scheme—the offer by DEXUS Property Group to acquire all of the units in the Investa Office Fund. The scheme, under which cash and scrip consideration was offered as a default, was the second largest control transaction by target value during the period at approximately \$2.5 billion. The proposal did not ultimately receive unitholder approval.

Applications for relief and approval

151 We received 70 applications during the period for relief under s655A of the Corporations Act, and no applications under s669: see Figure 7. Overall, this is a significantly higher number of applications received than in the previous period—up from 54 applications under s655A and three under s669.

Figure 7: Results of applications under s655A and 669 (1 January to 30 June 2016)

Note: See Table 11 in Appendix 2 for the data shown in this bar graph (accessible version).

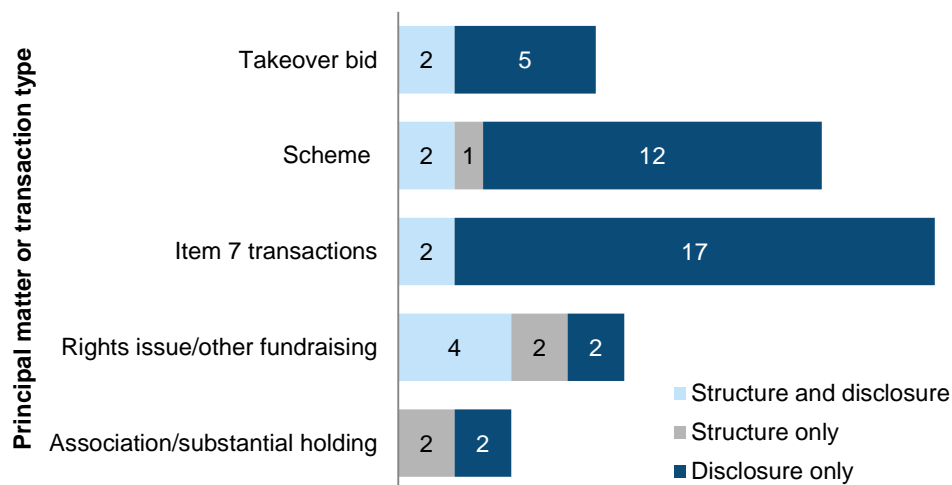
- 152 During the period, we also received 26 applications under s615(a) of the Corporations Act for approval of a nominee in connection with rights issue offers that may affect the control of the offerors.
- 153 We publish a regular report that provides an overview of decisions made on novel relief applications, including those made in relation to merger and acquisition transactions. Our most recent report is REP 483.
- 154 We discuss at paragraphs 34–38 some of our recent observations about the timing of applications made during the period.

ASIC's review and monitoring of control transactions

- 155 We review disclosure and monitor conduct in transactions that may result in a change in, or otherwise affect, the control of regulated entities. These control transactions include takeover bids and schemes of arrangement.
- 156 This section provides an insight into some of the issues we have encountered and action we have taken during the period as part of our day-to-day regulatory oversight of control transactions.

General oversight activity

- 157 Where ASIC raises concerns, these are often addressed by the issuer making amendments to the offer structure or terms, providing new or amended disclosure, or taking some other corrective action.
- 158 In the interest of facilitating a timely and effective outcome, our approaches will often be informal. In many cases, market participants may not even be aware of ASIC's intervention because our concerns are resolved without the need for any formal regulatory action.
- 159 Figure 8 sets out the number of instances during the period where ASIC's inquiries or intervention into a transaction or situation affecting the control of a regulated entity led to either a change in the structure or terms of the transaction, improvements in disclosure or another outcome.

Figure 8: Matters addressed following intervention by ASIC (1 January to 30 June 2016)

Note 1: 'Structural' changes include alterations made to an original proposal or circumstance addressing any matter other than disclosure, such as changes to the terms of an offer, changes to the features of a transaction (e.g. the introduction or alteration of a shortfall facility in a rights issue), the imposition of voting restrictions or giving of undertakings to address a breach of s606 of the Corporations Act. Findings/acknowledgement of a previously undisclosed association or relevant interest are recorded in the figure as a structural matter, while insufficient disclosure of an acknowledged association or substantial holding is recorded as a 'disclosure only' matter. Rights issue figures only include disclosure outcomes relevant to control implications of the rights issue.

Note 2: 'Matters addressed following ASIC intervention' include outcomes resulting from Panel proceedings in which ASIC was the applicant.

Note 3: See Table 12 in Appendix 2 for the data shown in this bar graph (accessible version).

Principal areas of concern

160

In our review of takeover bids and schemes of arrangement lodged with ASIC during the period, we noted our concerns, requested amended disclosure or intervened in the following circumstances:

- (a) there was inappropriate disclosure—for example, where directors' interests or the terms of an agreement were not appropriately disclosed; or where bid financing, the bidder/acquirer's historical trading price, or the implied value of the transaction was inaccurate (in over 55% of all bids and schemes lodged);
- (b) there were structural concerns—for example, where minimum bid-price rule issues arose, or where we had concerns that the offer terms were not the same for all shareholders, or were unequal (in 24% of bids and schemes lodged);
- (c) we had concerns about the content of independent expert reports (in over 20% of bids and schemes lodged). In particular, we raised concerns about inadequate disclosure of the expert's underlying assumptions, and whether the expert had reasonable grounds; and
- (d) there were issues with substantial shareholder notices (in 10% of bids and schemes lodged). We raised issues relating to substantial shareholder notices where associates were not adequately specified,

the incorrect interest or voting power was disclosed on the notice, or the substantial shareholder had failed to lodge the notice.

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

Shareholder intention statements solicited by target

162 During the period, we raised concerns that the solicitation and making of a shareholder intention statement in connection with a proposed scheme of arrangement resulted in a contravention of the general prohibition in s606 of the Corporations Act.

163 After dispatch of the scheme booklet, a hedge fund acquired a substantial holding in the scheme company, indicated its intention to vote against the proposed scheme and requisitioned a meeting to replace a majority of the company's board.

164 Subsequently, the scheme company released an announcement, attaching correspondence that indicated that:

- (a) the substantial holder had advised the scheme company that, if a public announcement was made by a specified time that the acquirer would increase the scheme consideration to a certain price, then the substantial holder agreed to:
 - (i) retain ownership of its holding and vote in favour of the scheme (in the absence of a superior proposal);
 - (ii) withdraw its requisition; and
 - (iii) allow publication of its stated intention; and
- (b) the acquirer had in turn provided an acknowledgment to the scheme company that it agreed to increase the scheme consideration 'in reliance on' the substantial holder's public statement, and to allow this to be announced.

165 We had concerns that the circumstances outlined in the scheme company's announcement evinced an overall agreement, arrangement or understanding between the acquirer and substantial shareholder that was sufficient for the acquirer to have obtained a relevant interest in the substantial holder's shares. This was the case notwithstanding that the communications by the acquirer and substantial holder were addressed to the scheme company rather than each other. Given the aggregate holdings of the acquirer and the substantial holder, we were concerned that this resulted in a breach of s606 of the Corporations Act.

166 As discussed in REP 469, we recently set out our views on shareholder intention statements in our submissions on the consultation paper which preceded the Takeovers Panel's release of [Takeovers Panel Guidance Note 23](#) *Shareholder intention statements* (GN 23). Our submissions can be found at Annexure A of the [Takeovers Panel response to consultation on Guidance Note 23](#) *GN 23 Shareholder intention statements—Public consultation response statement*.

167 While we do not object to the common practice of 'canvassing' the views of major shareholders to seek an indication of their position in relation to a proposed transaction, where the interactions between a proposed acquirer and target shareholder involve more than mere canvassing (irrespective of whether those interactions are direct or intermediated in some way), all parties must observe the limits imposed under s606—consistent with both the legal requirements of the Corporations Act and the legitimate expectations of the market (including any potential rival offerors).

168 In the relevant matter, we requested that the scheme company disclose our concerns in its supplementary explanatory memorandum and tag the votes of the substantial holder at the scheme meeting so that we would be able to ask the court to disregard those votes and/or object to the scheme if the votes were determinative.

169 We did not ultimately object to the scheme as it was passed by a sufficient majority—however, we appeared at the second court hearing to assist the court to fully understand our concerns.

170 We will continue to closely analyse shareholder intention statements to ensure that parties do not obtain any relevant interests that would result in a breach of s606 of the Corporations Act.

Public proposals to make a takeover bid

171 In the period, and the previous period, we observed instances where proposals to make a takeover bid that had been publicly announced were accompanied by statements that the proposal was not a proposal 'for the purposes of s631 of the Corporations Act'. In the more recent case, it was suggested that the proposal did not attract s631 because it was expressed to be dependent on certain conditions being met.

172 Section 631 of the Corporations Act is a market integrity provision. It operates in aid of the overall objective of Ch 6 of ensuring that the acquisition of control through takeover bids occurs in an efficient, competitive and informed market: s602(a) of the Corporations Act.

- 173 Together with the defence in s670F of the Corporations Act, s631 is part of a broader regime that requires bidders generally to assume the risk of publicly announcing their bids while retaining the ability to mitigate those risks by outlining in unambiguous terms the circumstances in which they will not be bound to proceed.
- 174 This approach recognises that, in practice:
- (a) the announcement of a proposal can have a significant effect on the market for target securities; and
 - (b) the market's reaction will generally involve an assessment of the conditionality of the proposal and any other obstacles (in whatever form) that may affect whether target security holders will ultimately be able to receive the benefits on offer.
- 175 Consistent with this underlying policy, a 'proposal to make a bid' includes proposals that are qualified or conditional. In our view, the conditionality of a proposal is relevant to the availability or otherwise of the defence in s670F, not whether the proposal is one attracting the operation of s631: see [Regulatory Guide 59 Announcing and withdrawing takeover bids \(s653 and s746\)](#) (RG 59) at RG 59.20—RG 59.22.
- 176 Accordingly it is not open to a person who in fact publicly proposes to make a takeover bid to seek to avoid the consequences of doing so by asserting that s631 does not apply to their proposal. We are concerned that statements of this kind are potentially misleading and deceptive, and are contrary to the principles underpinning Ch 6 more generally.
- 177 We raised our concerns about the statement in the public proposal and, in particular, the fact that the public proposal did not include the usual detailed list of conditions accompanying such proposals. Our inquiries were ultimately overtaken by subsequent developments.
- 178 We reiterate the importance of ensuring that any conditions are clearly and comprehensively set out in any public proposal so that the market can assess the likelihood that the bid will proceed and, in turn, the impact and significance of the proposal.

'Virtual variations' to the terms of a bid

- 179 In the period, we raised concerns about a bidder's variation of its off-market bid. The bidder submitted for lodgement a notice of variation purporting to increase the consideration offered if certain conditions were met.
- 180 Since s650B of the Corporations Act does not permit a variation that is subject to conditions, we refused to receive or register the bidder's notice of variation of its bid under s1274(8) of the Corporations Act.

- 181 In RG 9, we note that we may facilitate relief to enable increases subject to a limited set of conditions: see RG 9.454—RG 9.460. The limits on allowable conditions are imposed to ensure that any variation that departs from the strict regime in Pt 6.6 of the Corporations Act does not undermine the objectives of Ch 6 set out in s602. The Act contemplates that any variations to the terms of a bid, other than increases and extensions, should be the subject of ASIC relief: see the note to s650A(1) of the Corporations Act.
- 182 We also recognise, in RG 9, the practice of bidders announcing, without seeking relief, that a bid will be formally increased if a certain level of acceptances is achieved. This is sometimes known as a ‘virtual variation’. Our relief in RG 9 is designed to avoid any risk that, in seeking to make a ‘virtual variation’, a bidder will contravene s650A of the Corporations Act.
- 183 We remind bidders that, even if they choose to proceed by merely announcing a conditional increase, we may nonetheless take issue with the ‘virtual variation’ if it does not accord with the requirements of RG 9 and/or we believe the variation is otherwise contrary to the principles underpinning Ch 6—for example, if the bidder proposes an increase in the consideration subject to reaching a minimum acceptance threshold at a point in time before the close of the bid: see RG 9.460.
- 184 We initially raised concerns that the proposed increase was subject to conditions not contemplated by RG 9, and we considered these in the context of a subsequent relief application from the bidder.
- 185 We granted relief for the variation because we were ultimately satisfied, in the circumstances, that the additional conditions were not contrary to the principles in s602 of the Corporations Act.

Acceptance forms returnable by post

- 186 When deciding the methods by which target shareholders may accept an offer, bidders and targets should keep in mind the recent changes to delivery times by Australia Post. Delivery for a regular letter may now take up to six business days, or longer from regional areas.
- 187 During the period, we became aware of a number of instances where, as a result of postal delays, shareholders were unable to have their acceptances processed in time despite having posted their acceptance form well before the offer period closed.
- 188 We recommend that bidders consider postal timing when deciding what methods of acceptance will be made available to target shareholders, or whether the bid period should be extended—particularly where the target board changes its recommendation close to the conclusion of the bid period.

Scheme disclosures made outside regulated documents

189 During the period, we considered a members' scheme of arrangement where a director of the target company had sent supplementary information to members after the explanatory statement approved by the court had been dispatched. The supplementary correspondence was sent without having been reviewed by ASIC or approved by the court as is generally the case: see RG 60.91.

190 In considering schemes of arrangement, we seek to ensure that members of the target company are adequately informed and protected, including having access to full and candid disclosure of matters relevant to the members' decision. Where we have concerns about a scheme, we may appear as a friend of the court to assist with ensuring that all matters relevant to the court's decision are properly brought to the court's attention.

191 In this case, we decided not to provide our statement of 'no objection' to the scheme under s411(17)(b) of the Corporations Act. We were concerned that the underlying policy of the scheme process, whereby disclosure to members is reviewed by ASIC and approved by the court, would be defeated if scheme proponents were permitted to circulate information extraneous to the explanatory statement without being subject to the same regulatory standards and approval process. We appeared as a friend of the court to ensure that this matter was brought to the court's attention.

Facilitation agreements

192 During the period, we examined a facilitation agreement entered into by a bidder and the holding company of the target's responsible entity. We were concerned that a collateral benefit may have been offered to the responsible entity as a result of the agreement due to a related company selling its shares in the target to the bidder in conjunction with entry into the facilitation agreement.

193 While we note there may be potential benefits of a facilitation agreement in managing integration risks in a change of control scenario, we closely examine payments made under facilitation agreements, and expect that an independent expert report will be provided to assist with determining whether a prohibited or unacceptable benefit will be obtained as a result of the facilitation agreement.

194 As with any expert report, we also carefully examine whether there is a reasonable basis for the valuation methodology chosen for the circumstances of the specific transaction, and whether the expert has justified and clearly described the method in its report.

Rights issues and underwriting arrangements—Restrictions imposed on shortfall facilities

- 195 During the period, we made inquiries in relation to a number of rights issues and underwriting arrangements that we identified had the potential to affect the control of an issuer.
- 196 As noted in [Regulatory Guide 6](#) *Takeovers: Exceptions to the general prohibition* (RG 6), when considering the structure of a rights issue or underwriting—including when considering a request for relief or approval—we will consider whether the relevant exceptions:
- (a) may be used for control purposes in avoidance of Ch 6 of the Corporations Act; or
 - (b) are otherwise unacceptable—including because reasonable steps have not been taken to minimise the control effect of the fundraising: see RG 6.83–RG 6.88 and Table 4 at RG 6.93.
- 197 In one case, we raised concerns about a proposed rights issue in respect of which relief had been sought from the requirement to appoint a foreign nominee under item 10 of s611 of the Corporations Act. The rights issue was to be underwritten by the company’s major shareholders.
- 198 One of the concerns raised was that the issuer did not propose to include a shortfall facility. In response, the issuer proposed the inclusion of a ‘top-up facility’ that would allow shareholders to participate in the shortfall by taking up a maximum additional number of shares equivalent to their existing holding.
- 199 We considered the restrictions on the ability of shareholders to participate in the offer shortfall meant that the company had not undertaken all reasonable steps to mitigate the potential control effect of the offer being underwritten by the major shareholders.
- 200 Based on ASIC’s position, the company decided to proceed instead by seeking member approval for the underwriting arrangements under item 7 of s611 of the Corporations Act.

Takeovers Panel applications and enforcement action

- 201 Where we have been unable to resolve our concerns about a control transaction, we may consider it necessary to take further action. This may include seeking a declaration of unacceptable circumstances and orders from the Takeovers Panel.
- 202 We also seek to shape behaviour by taking an active role in proceedings before the Takeovers Panel that are brought by third parties. In many cases, these applications raise issues that we have already been pursuing or would otherwise have been inclined to consider.

Takeovers Panel applications by ASIC

203 We made two applications to the Takeovers Panel (Panel) during the period. Our applications related to the affairs of:

- (a) Ainsworth Game Technology Limited; and
- (b) Condor Blanco Mines Limited.

Ainsworth Game Technology Limited—Family associations

204 In May 2016, we applied to the Panel, seeking a declaration of unacceptable circumstances with respect to an unacknowledged association between the controlling shareholder of Ainsworth Game Technology Limited (Ainsworth) and their spouse. The controlling shareholder proposed to sell a 52.5% stake in Ainsworth to an unrelated purchaser, subject to shareholder approval under the exception in item 7 of s611 of the Corporations Act.

205 In connection with our review of the draft meeting materials, we queried whether the controller and their spouse—who held approximately 9% of the voting shares in Ainsworth—had a relevant agreement, or were acting in concert, with a view to seeing through the transaction which, if passed and completed, would result in significant monetary consideration being paid to the controller.

206 We were concerned to ensure that any shareholder approval for the transaction should not be affected by the votes of persons who, as associates, were not independent of the parties to the transaction—contrary to the principles and purposes underpinning the item 7 procedure.

207 After obtaining information through our compulsory information-gathering powers, we determined that there was sufficient evidence of an association between the controller and their spouse to warrant making an application to the Panel.

208 The Panel made preliminary findings that the controller and their spouse had a relevant agreement in relation to voting and/or were acting in concert in relation to the approval resolution.

209 Shortly after the Panel circulated its preliminary findings, the controller's spouse and the company respectively provided undertakings to refrain from voting in favour of the resolution and make further disclosures. The Panel accepted these undertakings on the basis that they sufficiently addressed its concerns. Because of the undertakings, the Panel did not consider it necessary to make our requested orders seeking revised substantial holding notices by the controller and their spouse.

210 ASIC's application was heard together with another application brought shortly afterwards by a fund manager with an interest in Ainsworth shares. The fund manager sought orders to exclude not only the controller's spouse

from voting but also other family members who together held 2.5% of Ainsworth.

- 211 The Panel’s preliminary findings, on the material available, did not reflect a view that the other family members were associates. See *Ainsworth Game Technology Limited 01 & 02* [2016] ATP 9 for further details.

Condor Blanco Mines Limited—Relevant interests in escrowed shares and undisclosed associations

- 212 In May 2016, the Panel made a declaration of unacceptable circumstances and orders in relation to the affairs of Condor Blanco Mines Limited (Condor). The application, which was brought by a shareholder in Condor, concerned two share issues (representing, at the respective times, approximately 33% and 29% of Condor’s issued capital) made to an ‘escrow agent’ pending finalisation of agreements to place those shares with various parties.
- 213 ASIC submitted, among other things, that the issue of the escrowed shares gave rise to a contravention of s606 of the Corporations Act by both Condor (on account of its power to control voting and disposal of its own shares) and the escrow agent (having regard to the operation of s606(2)). The Panel agreed and made a declaration and orders, among others, cancelling the remaining shares held in escrow.
- 214 The application also raised other concerns, including that some of the previously escrowed shares had been transferred to a number of parties who may have been associated with each other and/or Condor. The Panel invited ASIC to consider this further, referring the matter to us under reg 18 of the Australian Securities and Investments Commission Regulations 2001.
- 215 Following our inquiries, we made an application to the Panel in relation to the potentially undisclosed relevant interests and associations between a number of transferees who collectively held 24.57% of Condor. We submitted in our application that there had been contraventions of the general prohibition in s606 and the substantial holding disclosure provisions, both of which gave rise to unacceptable circumstances.
- 216 Our application was made shortly before a general meeting was due to be held to consider resolutions to remove and replace the board of Condor. Condor was placed into voluntary administration before this meeting and, as a result, after consultation with the Panel, we withdrew our application.

Takeovers Panel applications by third parties

- 217 ASIC also made submissions in each of the seven unrelated applications brought by third parties during the period, in respect of which the Panel determined to conduct proceedings.

218 The Panel declined to conduct proceedings with respect to one matter brought by a third party during the period. We did not make submissions in that matter.

Sovereign Gold Company Limited—Business associations

219 In June 2016, an application was made to the Panel by a shareholder in Sovereign Gold Company Limited (Sovereign Gold). The application alleged, among other things, that a number of investors in Sovereign Gold were associated, and had contravened the general prohibition in s606 of the Corporations Act and the substantial holding provisions.

220 Before the application, ASIC had made a number of inquiries and used our compulsory information-gathering powers to obtain information in relation to the conduct of a number of the alleged associates.

221 The Panel made a declaration and orders divesting the shares acquired in contravention of s606 of the Corporations Act for sale by ASIC, requiring disclosure of the relevant associations and preventing any reliance on the creep exemption in item 9 of s611 until six months after the Panel's order.

222 The Panel's finding in the Sovereign Gold matter is an important reminder that the directors of a company may become an associate of the company if they have an agreement, arrangement or understanding and/or are acting in concert with the company in relation to another company's affairs (including the composition of the other company's board).

Brisbane Markets Limited—Disclosure of funding arrangements and intentions by private equity bidders

223 ASIC also played an active role in inquiring into the circumstances surrounding the off-market takeover bid for Brisbane Markets Limited by a wholly owned entity of VGI Partners Pty Ltd (VGI), a private equity firm.

224 The bidder's statement indicated that the bid would be funded through a combination of funds under management and commitments from clients of VGI. During our review, we raised concerns about the failure of the bidder to disclose information required under s636(1)(f) of the Corporations Act—including the identity of the funders and details of the relevant arrangements.

225 Following our inquiries, changes were made to the structure of the funding arrangements. We were not satisfied that these changes addressed our disclosure concerns. We indicated to the bidder that we were minded to apply to the Panel for a declaration and orders.

226 Shortly afterwards, we became aware that the target was also minded to make an application in relation to the issue, and we deferred our application. We instead made a preliminary submission advising the Panel of our concerns and our view that it should conduct proceedings. We obtained

information both voluntarily and under our compulsory information-gathering powers in connection with our inquiries.

227 The Panel made a declaration of unacceptable circumstances in relation to a number of disclosure deficiencies in the bidder's statement, including with respect to the bidder's funding arrangements and its stated intentions. See *Brisbane Markets Limited* [2016] ATP 3 for further details.

Sedgman Limited—Deducting franking credits from bid consideration

228 During the period, ASIC and the Panel also had occasion to revisit the issue of whether a bidder ought to be permitted to deduct the value of franking credits from offer consideration if the target pays a franked dividend.

229 In early 2014, the Panel invited comments on a draft guidance note setting out a new policy on the issue. In our submission in response to the Panel's consultation paper, we set out our view that the value of franking credits should not be deducted from offer consideration, and that any reduction in the amount payable by a bidder attributable to the payment of franked dividends by the target should be limited to the cash amounts actually paid to, and received by, security holders.¹²

230 The Panel ultimately decided not to proceed with the draft guidance note, citing competing views on the proposal.

231 The matter was again raised in January 2016, when Sedgman Limited made an application to the Panel, raising concerns about the terms of CIMIC Group Limited's bid allowing for a franking credit deduction.

232 ASIC made a preliminary submission, which was consistent with our previously stated position—that is, that the terms should be removed. Our concerns were particularly acute in this instance because the bidder was standing in the market acquiring target shares under the exception in item 2 of s611 of the Corporations Act. Purchases by the bidder on-market would not, in effect, be subject to the potential franking credit adjustments that the offers under the bid were. We considered the risk of such adjustment was potentially coercive because target shareholders who did not sell their shares to the bidder on-market faced the possibility of receiving reduced consideration—and, in some cases, lower benefits overall—under the bid.

233 The issue was ultimately resolved when the bidder sought and obtained ASIC relief to remove the relevant term of its bid. While the Panel did not need to decide the issue, it did note that the question of the legality of deducting the value of franking credits from bid consideration remains an open question and, where a bidder seeks to do so, it is likely to have to face similar inquiries.

¹² ASIC's submissions on the Panel's consultation paper are included in the [Takeovers Panel response to consultation on dividends guidance note](#) *Proposed guidance note on dividends—Public consultation response statement* (24 July 2014).

ASIC policy initiatives

Remaking class orders due to ‘sunset’

234 We are continuing our review of legislative instruments that will automatically cease operation, in the near term, as a result of the ‘sunsetting’ provisions of the *Legislative Instruments Act 2003*. To preserve their effect, legislative instruments, such as our class orders, must be remade before their sunset date—that is, the first day in April or October occurring after the 10th anniversary of the instrument’s registration.

Relief from the need for a financial services licence for recommendations and opinions contained in exempt documents

235 In [Consultation Paper 251](#) *Remaking ASIC class order on financial product advice: Exempt documents—[CO 03/606]* (CP 251), we sought feedback on our proposals to continue the relief in [CO 03/606] without substantive changes.

236 The class order provided relief from the requirement to hold an AFS licence in connection with the provision of general advice (including a recommendation or statement of opinion) in certain documents required by, and prepared as a result of, the Corporations Act. These included:

- (a) bidder’s and target’s statements;
- (b) explanatory statements for approvals of schemes of arrangement, capital reductions, buybacks, item 7 transactions and financial assistance; and
- (c) continuous disclosure notices.¹³

237 Comments closed on 18 March 2016, with two submissions received in support of the proposals to continue providing the relief. On 1 June 2016, the [ASIC Corporations \(Financial Product Advice – Exempt Documents\) Instrument 2016/356](#) was made to preserve the relief available under [CO 03/606] without significant change.

Share and interest sale facilities

238 In February 2016, we released [Consultation Paper 252](#) *Remaking ASIC class order on share and interest sale facilities: [CO 08/10]* (CP 252), which proposed to remake [CO 08/10].

239 The new legislative instrument would continue the relief currently given by [CO 08/10] with only minor changes. One of our proposals was to extend

¹³ Relief also extended to certain foreign merger and acquisition documents.

relief to a related body corporate of the product issuer to accommodate what may often occur in practice.

- 240 We anticipate that a new legislative instrument will be registered in due course to coincide with the release of an updated [Regulatory Guide 161 *Share and interest sale facilities*](#) (RG 161).

Regulatory guide updates

- 241 We have also made minor updates to [Regulatory Guide 71 *Downstream acquisitions*](#) (RG 71) to reflect the terms of our relief in [ASIC Corporations \(Approved Foreign Financial Markets\) Instrument 2015/1071](#), which was recently remade, as well as to reflect current terminology.
- 242 We are also considering updating other takeovers regulatory guides later in 2016–17, including to ensure that references to legislative instruments that have been remade as a result of ‘sunsetting’ remain current.

Other policy initiatives

Broker handling fees

- 243 As discussed in REP 469, we have been considering the impact of the Future of Financial Advice (FOFA) reforms on practices surrounding the payment of broker handling fees of the kind referred to in the Takeover Panel’s Guidance Note 13 [Broker handling fees](#) (GN 13). In our view, broker handling fees are likely to be conflicted remuneration and are therefore prohibited under Div 4 of Pt 7.7A of the Corporations Act.
- 244 On 9 March 2016, the Takeovers Panel announced that it had amended GN 13 to note that broker handling fees appear to fall under the definition of ‘conflicted remuneration’ and are therefore prohibited unless an exception applies. The amended GN 13 sets out that market participants considering offering broker handling fees should seek professional advice on whether such fees would be allowed under Ch 7 of the Corporations Act.
- 245 The Takeovers Panel has stated that it will monitor market developments following the FOFA reforms, and may withdraw GN 13 if it becomes market practice not to offer broker handling fees.

C Corporate governance

Key points

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

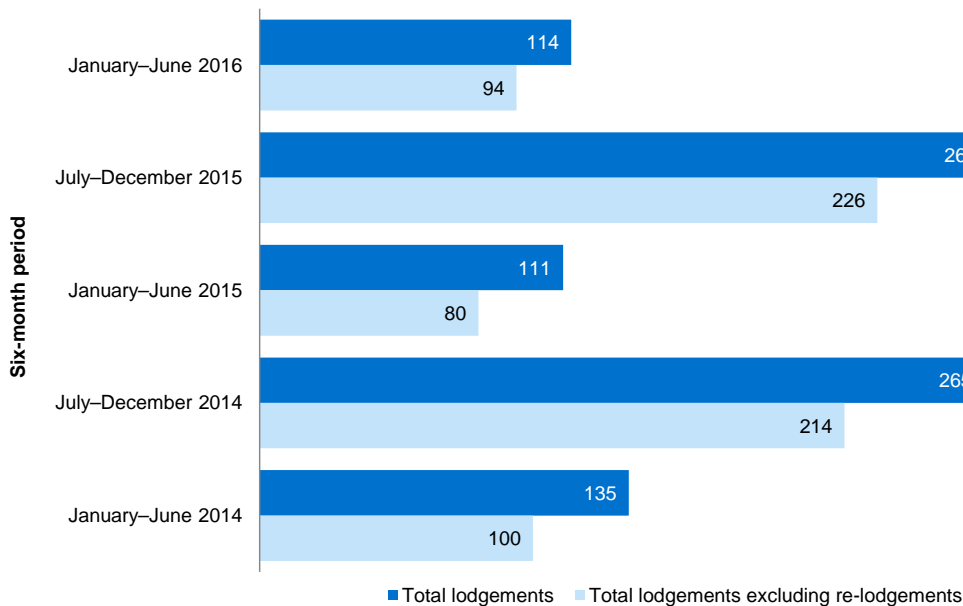
- related party notices;
- enforcement action; and
- ASIC initiatives.

Key observations and statistics

Related party notices

- 246 In the period, we received 114 related party approval notices under s218 of the Corporations Act, of which 91 (79.8%) requested we abridge the 14-day review period.
- 247 Although the number of related party approval notices lodged with ASIC is considerably lower than in the previous period, it is consistent with the January to June periods for 2014 and 2015. The percentage of abridgement applications associated with these lodgements is also fairly consistent between the same periods.
- 248 Figure 9 sets out the number of related party approval notices we received in the period and previous periods.

Figure 9: Related party approval notices (January 2014 to June 2016)



Note: See Table 13 in Appendix 2 for the data shown in this graph (accessible version).

Pointers for the upcoming AGM season

249 We actively monitor key trends arising out of each AGM season for ASX-listed companies. We would like to draw companies' attention to the following trends we observed in 2014–15, as they prepare for the upcoming AGM season.

Voting

250 As noted in REP 469, we remind companies again to consider carefully whether to conduct a vote by way of a poll rather than a show of hands.

251 We have received reports of companies voting on resolutions to adopt the remuneration report by using a show of hands rather than a poll, where proxies that had been received before the vote indicated that a 'strike' may be achieved.

252 As good corporate governance practice, we encourage companies to conduct a poll on all resolutions as a matter of course.

Earnings guidance revisions

253 We encourage companies to carefully consider the requirements in [ASX Guidance Note 8](#) *Continuous disclosure: Listing Rules 3.1-3.1B* (PDF, 801 KB) about the circumstances in which any revision to earnings guidance must be made and the timing of those revisions.

254 Many companies choose the AGM as the venue to make announcements about revisions to earnings guidance. While the AGM may be a convenient forum, delaying an announcement until the AGM may not be consistent with the company's continuous disclosure obligations.

Stock lending

255 The previous AGM season saw much media commentary about the practice of superannuation funds engaging in stock lending to facilitate short selling. We encourage any companies concerned about this practice to engage with any relevant shareholders to understand the reasons behind them engaging in such activity and to communicate the company's views to the shareholders directly.

Warranties and indemnities to protect against the outcome of shareholder votes

256 We recently engaged with an ASX-listed company seeking shareholder approval for the future payment of termination benefits that had been included in an executive's employment agreement. The agreement included a warranty and indemnity that would compensate the executive for any loss suffered as a result of the failure to receive shareholder approval.

- 257 The notice of meeting stated that, depending on the actual amount of termination benefits, it was possible that they would not be able to be paid without shareholder approval because of a requirement under the Corporations Act. However, the notice of meeting also stated that, even if shareholder approval were not obtained, the executive could be compensated under the warranty and indemnity.
- 258 The warranty and indemnity was clearly contrary to the policy behind the Corporations Act requirement for shareholder approval. It was also possible that shareholder approval would have been required to make payments under the warranty and indemnity.
- 259 The company agreed to issue a corrective announcement on ASX, 10 days before the relevant meeting, clarifying that if shareholder approval to make the payments to the executive was not obtained, no payments would be made to the executive that would have required shareholder approval under the Corporations Act.

Enforcement action

Appointment of external administrator for an improper purpose

- 260 On 21 April 2015, we filed an application with the court seeking the winding up of Planet Platinum Ltd (Planet Platinum) and the appointment of a provisional liquidator. On 4 May 2015—and before the hearing of ASIC’s application—the Planet Platinum board (consisting of John Trimble and his son, Michael Trimble) appointed Gideon Rathner as administrator of the company.
- 261 As discussed in REP 446, on 12 June 2015, the court appointed John Lindholm as provisional liquidator of Planet Platinum. The court also terminated Mr Rathner’s administration.
- 262 Following a successful application by ASIC, on 1 April 2016, the court made a declaration under s447A that the appointment of Mr Rathner as voluntary administrator of Planet Platinum on 4 May 2015 was invalid, void and of no effect.
- 263 In making the declaration, the court found that the only reason the directors had appointed Mr Rathner as administrator was for the improper purpose of stopping ASIC from appointing a provisional liquidator to the company, and not because they had formed a view that the company was insolvent, or likely to become insolvent.
- 264 The court also found that Mr Rathner failed to take reasonable steps to confirm the validity of his appointment and that, given the information he had at the time, there was an insufficient basis for him to be satisfied that Planet Platinum was either insolvent or likely to become insolvent.

ASIC initiatives

Launch of the 'corporate governance' webpages

- 265 We have updated the content of the corporate governance section of our website in order to make our messages about corporate governance more accessible to companies and their officers.
- 266 ASIC regularly comments on corporate governance issues in speeches and published articles, as well as through the more traditional avenues of our regulatory guides and information sheets. The new corporate governance web content conveniently includes all of these published corporate governance messages in one location.
- 267 Our website provides a resource for companies and their officers seeking to better understand their obligations and improve their corporate governance practices. We believe the improved content will positively influence companies' corporate governance practices, and will contribute to building investor trust and confidence in companies with good corporate governance practices.
- 268 The new [corporate governance webpages](#) can be accessed from our website at www.asic.gov.au/corporate-governance.

Update on cyber resilience

- 269 In March 2016, we released our first assessment report on the cyber resilience of ASX and Chi-X: [Report 468](#) *Cyber resilience assessment report: ASX Group and Chi-X Australia Pty Ltd* (REP 468). The report concluded that ASX and Chi-X have met their statutory obligations to have sufficient resources for the management of cyber resilience.
- 270 The report included data from a sample of other financial organisations, and called on the wider financial services sector to recognise the importance of cyber security and the need to address developing cyber threats. It also set out examples of some emerging good practices in cyber resilience.
- 271 Key areas identified for organisations to focus on included comprehensive and ongoing board engagement and responsive governance practices, as well as the proactive management of malicious cyber activity from both internal and third-party sources.

D Other corporate finance areas

Key points

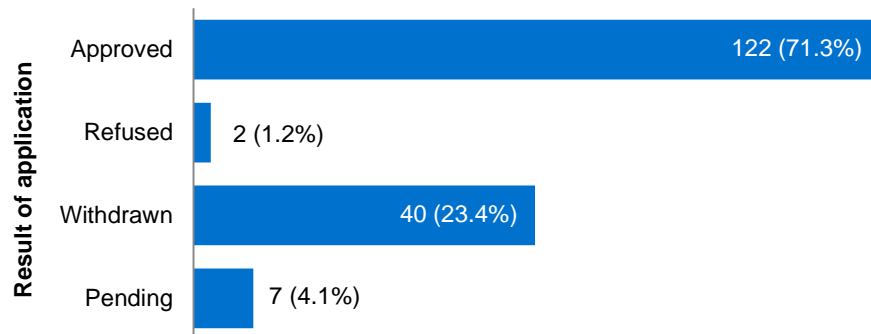
This section sets out statistics and observations from our work in other corporate finance areas.

A number of policy and enforcement initiatives have been undertaken by ASIC in the period, including the remaking of instruments, and consultation on new licensing exemptions and class orders.

Statistics and observations

Financial reporting relief applications

- 272 During the period, we received 195 applications for financial reporting relief (up from 102 in the previous period). These included:
- (a) 170 applications under s340 of the Corporations Act;
 - (b) one application under s111AT of the Corporations Act; and
 - (c) 24 applications for a no-action letter for financial reporting breaches.
- 273 Of the applications received under s340 and s111AT, 39 were from companies with external administrators appointed (up from 22 in the previous period, and up from 12 in the first six months of 2015). We approved 24 of the 39 applications from external administrators.
- 274 Of the 24 applications for a no-action letter, we received seven applications from companies with external administrators appointed. We approved two of these applications, with the remaining applications being withdrawn or refused because the companies were able to rely on our class order relief provided by [ASIC Corporations \(Externally Administered Bodies\) Instrument 2015/251](#).
- 275 We approved 122 of the 171 applications received under s340 and s111AT: see Figure 10.

Figure 10: Results of applications under s340 and 111AT (1 January to 30 June 2016)

Note: See Table 14 in Appendix 2 for the data shown in this graph (accessible version).

Share buybacks

- 276 There was over \$1.7 billion worth of share buybacks undertaken by 86 companies in the period. In the previous period, share buybacks totalled \$1.8 billion.¹⁴
- 277 We received nine applications for relief for share buybacks during the period. Four applications were approved, none were refused, three were withdrawn and two are yet to be decided. The majority of the relief granted was to treat selective buybacks as equal access schemes—for example, where buyback offers are conducted by way of a ‘Dutch auction’ tender.

Enforcement action

Sino Australia Oil and Gas Limited

- 278 On 7 March 2016, the Federal Court of Australia ordered that Sino Australia Oil and Gas Limited (Sino Australia) be wound up on just and equitable grounds.
- 279 The court found that there had been substantial and serious misconduct and mismanagement in the affairs of the company. Among other things, it was found that the company had:
- (a) permitted prospectus documentation to be issued that contained significant false and misleading statements about contracts that were allegedly held by a subsidiary;

¹⁴ These figures are based on data from ASX’s monthly *Equity capital raised report*, available from ASX Market Information (an online subscription service run by ASX).

- (b) presented false and misleading statements in its prospectus documentation in relation to the company's profit forecasts; and
- (c) contravened the continuous disclosure requirements by failing to disclose a significant profit downgrade.

280 We also commenced proceedings against Sino Australia and its former chairman, Tianpeng Shao, alleging breaches of the company's continuous disclosure obligations, and that misleading and deceptive statements were made in the company's prospectus documentation. We also alleged that Mr Shao failed to act with the proper degree of care and diligence as a director, and that he breached continuous disclosure laws.

281 On 12 August 2016, the Federal Court of Australia made declarations that Sino Australia and Mr Shao had contravened the Corporations Act. The court is yet to hand down a penalty in relation to these contraventions.

282 We remind directors that, before signing off on a prospectus, they must fully inform themselves about the content of the prospectus to ensure that the information contained in the document is accurate. This matter also highlights the need for all companies, but especially those with operations offshore, to put in place efficient internal controls and risk management systems.

283 For more information see [Media Release \(16-062MR\)](#) *Court orders the wind up of Sino Australia Oil and Gas Limited* (7 March 2016) and [Media Release \(16-255MR\)](#) *Court finds against Sino Australia Oil and Gas Limited and its former chairman Tianpeng Shao* (12 August 2016).

ASIC policy initiatives

Remake of instruments on electronic and dual lodgement of financial reports

284 On 1 April 2016, the following class orders were repealed and combined to make one single legislative instrument:

- (a) [Class Order \[CO 98/104\]](#) *Dual lodgement relief for ASX listed entities*;
- (b) [Class Order \[CO 00/2451\]](#) *Electronic lodgement of certain reports with ASX—approval*; and
- (c) [Class Order \[CO 06/6\]](#) *Dual lodgement relief for NSX listed entities*.

The new instrument is named [ASIC Corporations \(Electronic Lodgement of Financial Reports\) Instrument 2016/181](#).

- 285 Under s319(1) and 320(1) of the Corporations Act, a company, registered managed investment scheme or disclosing entity is required to lodge a financial report, a directors' report and an auditor's report for a financial year or half-year with ASIC.
- 286 Under s352(1), documents are allowed to be lodged with ASIC electronically if we have approved, in writing, the electronic lodgement of documents of that kind. Documents are taken to be lodged with ASIC if they are lodged in accordance with this approval.
- 287 The listing rules of ASX Limited, National Stock Exchange of Australia Limited, SIM Venture Securities Exchange Limited and Sydney Stock Exchange Limited require listed entities to lodge such reports under s319 or 320 with the relevant market operator at the same time that they are lodged with ASIC. This instrument allows entities listed on these exchanges to lodge reports electronically with the relevant market operator, without also having to separately lodge reports with ASIC.
- 288 A listed disclosing entity that is a company or registered scheme can lodge the reports with ASIC electronically if:
- (a) the market operator is appointed as agent for ASIC;
 - (b) the reports are lodged with the market operator as agent for ASIC; and
 - (c) the entity has adequate arrangements in place to ensure a signed copy of the reports is kept for a period of not less than seven years after electronic lodgement.

Directors' reports and financial reports

- 289 In June 2016, we announced our focus areas for financial reports for the year ended 30 June 2016 for listed entities and other entities of public interest. We continue to consider that directors and auditors should focus on applying realism and clarity to financial reports.
- 290 We consider the key focus areas for directors and auditors should include:
- (a) impairment testing of asset values and ensuring the use of appropriate models, assumptions and inputs—for example, in relation to the carrying values of goodwill, other intangibles and property, plant and equipment;
 - (b) accounting policy choices, with a specific focus on where it relates to off-balance sheet arrangements, revenue recognition, expense deferral and tax accounting; and
 - (c) material disclosures, including in relation to estimates and accounting policy judgements and impacts of new revenue and financial instrument standards.

291 During the upcoming period, we will continue to select financial reports by looking at risk-based criteria, and also by using random selection. We will also continue to proactively identify and follow up companies that are required to lodge financial reports with ASIC but have not done so.

292 For further information, see [Media Release \(16-174MR\)](#) *ASIC calls on directors to apply realism and clarity to financial reports* (2 June 2016).

Consultation on a ‘regulatory sandbox’ licensing exemption

293 In June 2016, we released [Consultation Paper 260](#) *Further measures to facilitate innovation in financial services* (CP 260), seeking feedback from financial technology businesses, financial services providers, consumers and consumer representatives, and other parties on our proposed approach to facilitating innovation in financial services.

294 We sought feedback on:

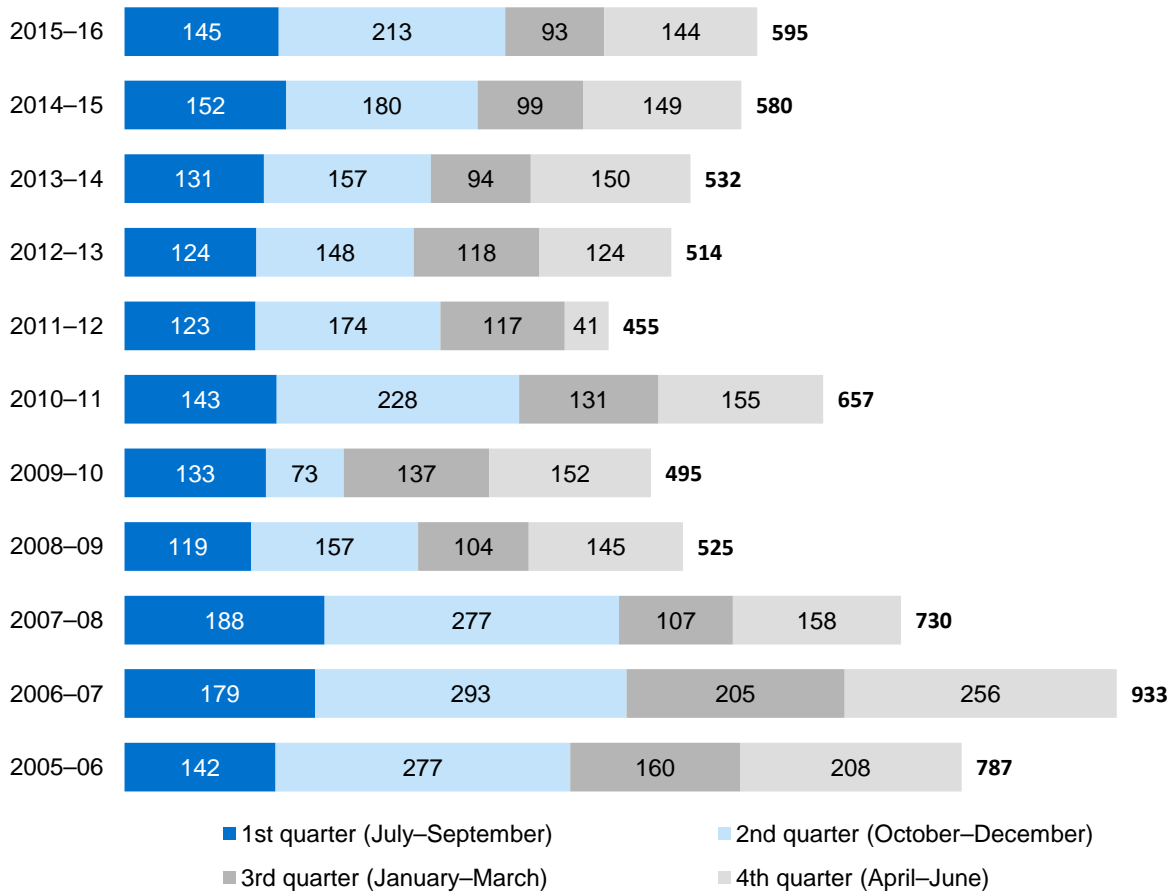
- (a) additional guidance about when we consider a responsible manager has appropriate knowledge and skills;
- (b) modifying our policies to allow some small-scale, heavily automated businesses to rely, in part, on sign-off from an appropriately experienced third party to meet their organisational competence obligation; and
- (c) a conditional, industry-wide exemption to allow new Australian businesses to test certain financial services for six months without holding an AFS licence.

295 Comments on CP 260 closed on 22 July 2016.

Appendix 1: Additional statistics

Fundraising

Figure 11: Total original fundraising documents lodged with ASIC by quarter (2005–06 to 2015–16)



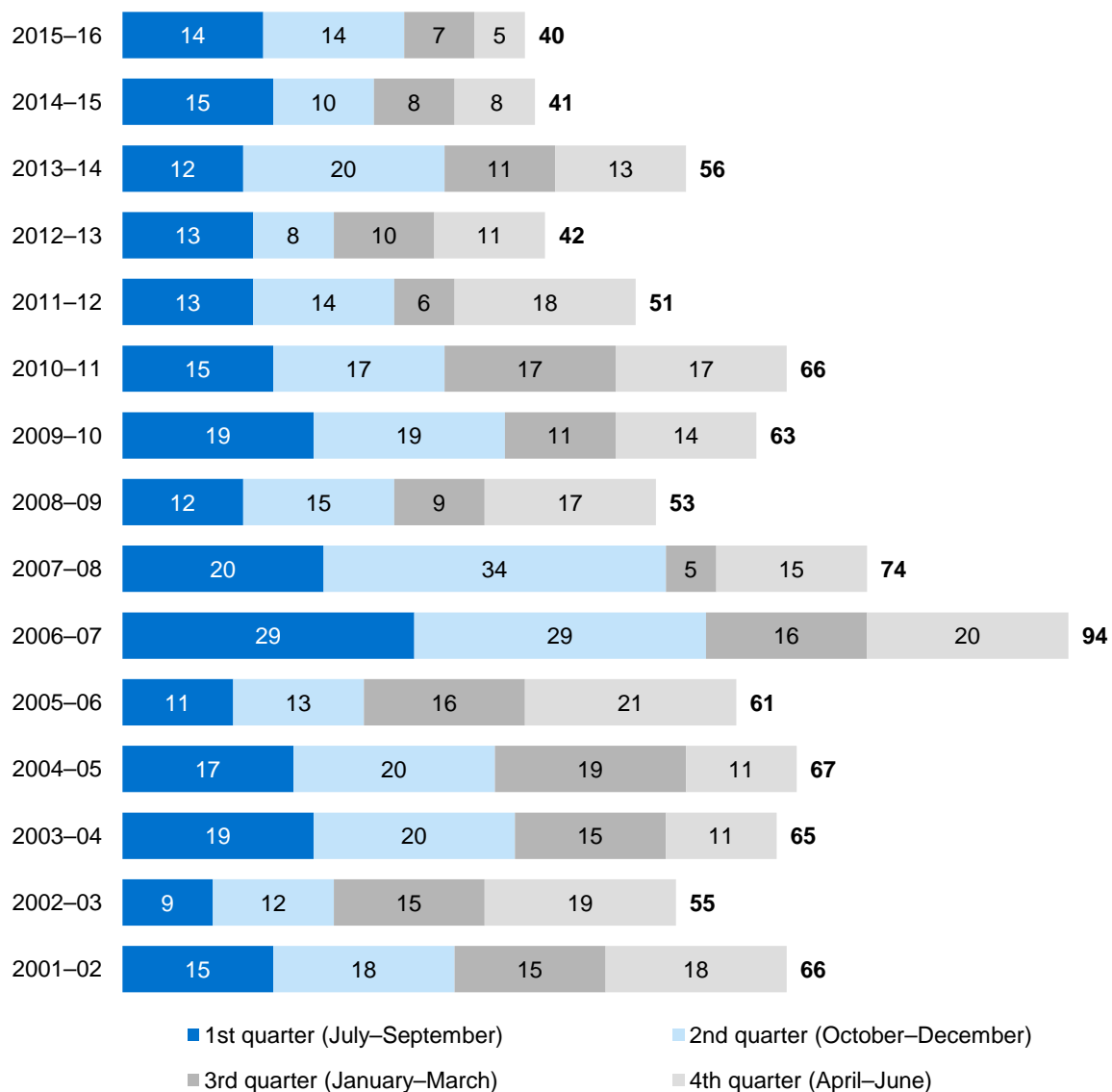
Note 1: This graph includes mutual recognition offer documents lodged with ASIC, which accounts for the differences compared with the original fundraising documents shown at Figure 1.

Note 2: See Table 15 in Appendix 2 for the data shown in this graph (accessible version).

Mergers and acquisitions

Takeover bids

Figure 12: Total bidder's statements lodged with ASIC by quarter (2001–02 to 2015–16)



Note 1: This figure shows the total number of takeover bids for which a bidder's statement was lodged with ASIC during each period.

Note 2: See Table 16 in Appendix 2 for the data shown in this graph (accessible version).

Table 3: Takeover bids (1 January 2016 to 30 June 2016)

Target	Bidder	Lodged	Type	Securities	Consideration
Sedgman Limited [SDM]	CIMIC Group Limited [CIM]	13/01/16	Off-market	Ordinary shares	Cash
World Titanium Resources Limited [WTR]	African Minerals Exploration & Development Fund II SICAR SCA	18/01/16	Market	Ordinary shares	Cash
Swings & Roundabouts Limited	Cedarfield Holdings Pty Ltd	21/01/16	Off-market	Ordinary shares	Cash
Ethane Pipeline Income Trust (stapled security of Ethane Pipeline Income Fund) [EPX]	Australian Pipeline Limited (APA Group) [APA]	07/03/16	Off-market	Unit (stapled)	Cash
Ethane Pipeline Income Financing Trust (stapled security of Ethane Pipeline Income Fund) [EPX]	Australian Pipeline Limited (APA Group) [APA]	07/03/16	Off-market	Unit (stapled)	Cash
The Search Party Ltd	Applabs Technologies Limited [ALA]	16/03/16	Off-market	Ordinary shares	Scrip
Flinders Mines Limited [FMS]	TIO (NZ) Limited (subsidiary of The Todd Corporation Limited)	17/03/16	Off-market	Ordinary shares	Cash
Flat Glass Industries Limited [FGI]	MHG Corporation Pty Limited	04/04/16	Off-market	Ordinary shares	Cash
Bill Peach Group Limited	Australian Pioneer Pty Limited	12/04/16	Off-market	Ordinary shares	Cash
Peet Forrestdale Syndicate Limited	Achates Pty Ltd	09/05/16	Off-market	Ordinary shares	Cash
Mareterram Limited [MTM]	Sea Harvest International Proprietary Limited	23/05/16	50% proportional off-market	Ordinary shares	Cash
General Mining Corporation Limited [GMM]	Galaxy Resources Limited [GXY]	22/06/16	Off-market	Ordinary shares	Scrip

Notes: This table lists each takeover bid for which an initiating bidder's statement was lodged with ASIC between 1 January 2016 and 30 June 2016 (inclusive), as reflected in ASIC's register at the date of this publication. Takeover bids must relate only to securities in a single class. Accordingly, where bids are made for more than one class of securities in a target, each is recorded above as a separate entry unless we have granted relief to treat multiple classes of securities as a single class for the purposes of the bid: see RG 9.105–RG 9.119.

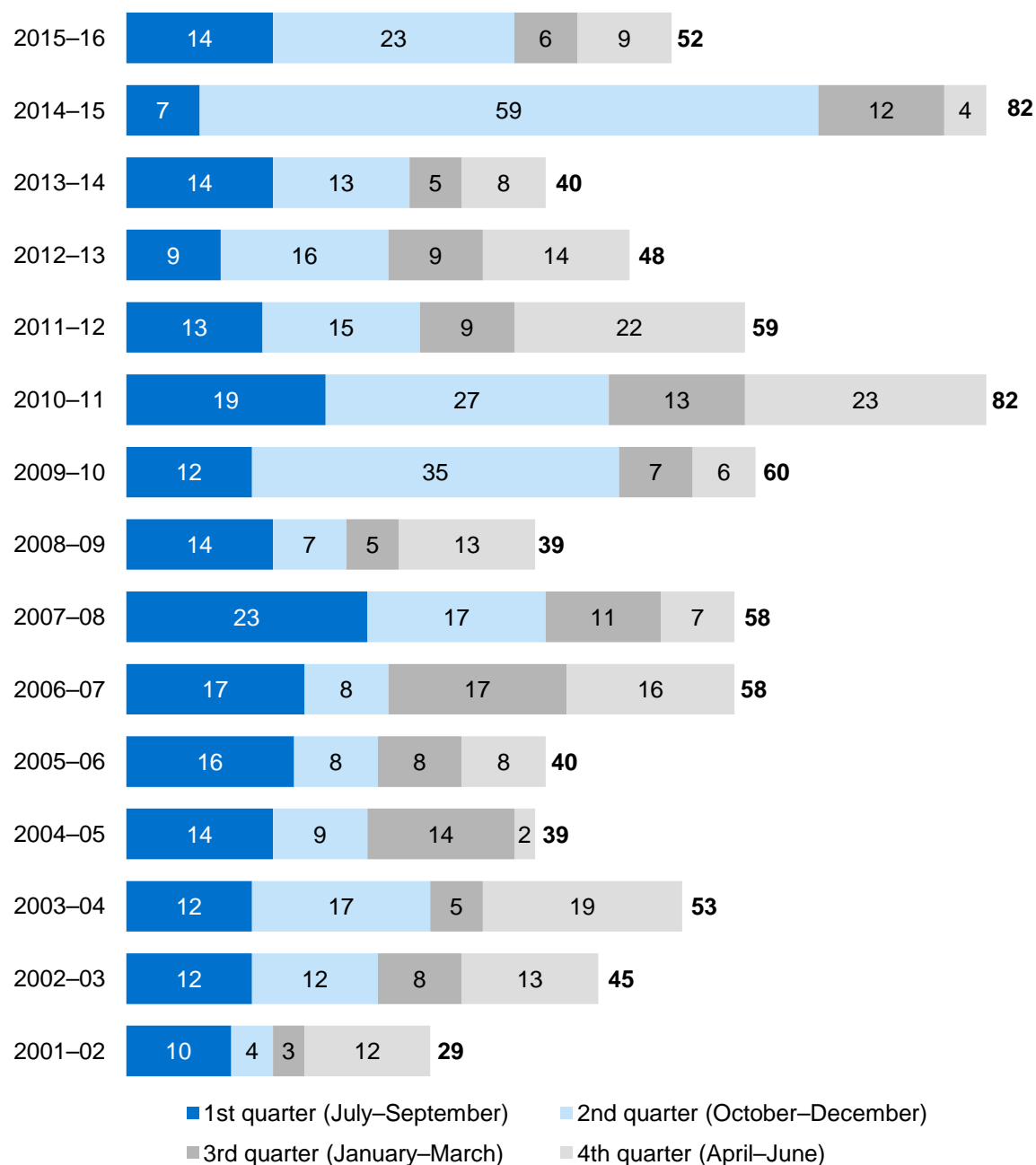
Where a bidder or target was listed on a prescribed financial market at the time of the takeover, its name above is accompanied by the ticker code under which it traded. Where a bidder is a (direct or indirect) wholly owned subsidiary of another entity, the controlling entity may be listed above as bidder.

All off-market bids are full bids unless otherwise indicated.

While every effort is made to update the above table with the most recent information to hand, the type of consideration listed may not reflect all variations occurring after lodgement of the bidder's statement.

Schemes of arrangement

Figure 13: Total scheme booklets received for ASIC review by quarter (2001–02 to 2015–16)



Note 1: This figure shows the total number of schemes for which draft scheme booklets were provided to ASIC for review during each period. The second quarter figures for 2015–16 have been revised from those reported previously. The 2014–15 figures are distorted by four restructure schemes in the second quarter, which involved multiple entities in the one consolidation.

Note 2: See Table 17 in Appendix 2 for the data shown in this graph (accessible version).

Table 4: Schemes of arrangement (1 January 2016 to 30 June 2016)

Scheme company	Acquirer	Registered	Type	Securities	Received
Lonestar Resources Limited [LNR]	N/A—Re-domiciliation	03/02/16	Members	Ordinary shares	Scrip (re-domiciliation)
Lonestar Resources Limited [LNR]	N/A—Re-domiciliation	N/A	Creditors	Options—Employee	Scrip (re-domiciliation)
Lonestar Resources Limited [LNR]	N/A—Re-domiciliation	N/A	Creditors	Options—Non-employee	Scrip (re-domiciliation)
RV Parks Australia Limited	Gateway Lifestyle Group [GTY]	04/02/16	Members	Ordinary shares	Cash
VGW Holdings Limited	Synergy Plus Limited [SNR]	17/02/16	Members	Ordinary shares	Scrip
VGW Holdings Limited	Synergy Plus Limited [SNR]	N/A	Creditors	Options	Scrip (options)
Redcliffe Resources Limited [RCF]	Northern Manganese Limited [NTM]	18/02/16	Members	Ordinary shares (foreign)	Scrip
Unity Mining Limited [UML]	Diversified Minerals Pty Ltd	19/02/16	Members	Ordinary shares	Cash
Colorpak Limited [CKL]	Graphic Packaging International, Inc.	25/02/16	Members	Ordinary shares	Cash
Signature Capital Investments Limited	SGIH Pty Limited	09/03/16	Members	Ordinary shares	Cash
Queensland Professional Credit Union Ltd	Auswide Bank Ltd [ABA]	11/03/16	Members	Ordinary shares	Cash and scrip
Atlas Iron Limited [AGO]	N/A—Debt for equity	N/A	Creditors	N/A	Scrip (debt for equity)
Asciano Limited [AIO]	Australian Logistics Acquisition Investments Pty Limited	21/04/16	Members	Ordinary shares	Cash
White Horses Pty Ltd	N/A—Reconstruction	29/04/16	Members	Ordinary shares	N/A—Reconstruction
Transcomm Credit Co-Operative Limited	CSF Pty Limited ATF MyLifeMyMoney Superannuation Fund	09/05/16	Members	Ordinary shares	Cash
Pacific Brands Limited [PBG]	Hanesbrands Inc.	20/05/16	Members	Ordinary shares	Cash
SMEC Holdings Limited	Surbana Jurong Private Limited (wholly owned by Temasek Holdings)	10/06/16	Members	Ordinary shares	Cash
Skyland Petroleum Limited [SKP]	N/A—Re-domiciliation	14/06/16	Members	Ordinary shares	Scrip (re-domiciliation)

Notes: This table lists:

- (a) each proposed compromise or arrangement for which an explanatory statement was registered by ASIC under s412(6) between 1 January 2016 and 30 June 2016 (inclusive) (members' scheme) as reflected in ASIC's register at the date of this publication;
- (b) each proposed compromise or arrangement between a Pt 5.1 body and its creditors or a class of its creditors for which an explanatory statement was considered by the court at or about the time of considering an associated members' scheme (e.g. an associated scheme to acquire issued options); and
- (c) each other proposed compromise or arrangement between a Pt 5.1 body and its creditors or class of creditors for which a draft explanatory statement, previously provided to ASIC for consideration in accordance with s411(2), to ASIC's knowledge was made publicly available on a date between 1 January 2016 and 30 June 2016.

Where an acquirer or scheme company is listed on a prescribed financial market, its name above is accompanied by the ticker code under which it trades. Where an acquirer is a (direct or indirect) wholly owned subsidiary of another entity, the parent entity may be listed above as acquirer.

While every effort is made to update the above table with the most recent information to hand, the type of consideration listed may not reflect all changes to the scheme occurring after registration or the initial public release of the explanatory statement.

The total number of schemes listed in Table 4 may not correspond with the total number of explanatory statements recorded in Figure 13, which is based on the total number of schemes for which a draft explanatory statement was provided to ASIC during the period. This may be because:

- (a) some explanatory statements provided for review during the period were subsequently withdrawn before registration or public release; or
- (b) there are explanatory statements for schemes provided for review during the period that had not been registered or publicly released by the end of the period.

Appendix 2: Accessible versions of figures

This appendix is for people with visual or other impairments. It provides the underlying data for each of the figures included in this report.

Table 5: Number of disclosure documents by type (lodged from 1 January to 30 June 2016)

Disclosure document type	Number lodged	Percentage
Prospectus for entities quoted	120	28.4%
Prospectus for entities unquoted	77	18.2%
Offer information statement	8	1.9%
Short form quoted	18	4.3%
Short form unquoted	12	2.8%
Replacement prospectus	72	17.1%
Supplementary prospectus	115	27.3%

Note 1: The replacement prospectus and supplementary prospectus supplement the lodgement of the original disclosure documents, as listed in this table.

Note 2: This is the data contained in Figure 1.

Table 6: Results of applications under s741 (1 January to 30 June 2016)

Result	Number	Percentage
Approved	65	69.1%
Refused	1	1.1%
Withdrawn	25	26.6%
Pending	3	3.2%

Note: This is the data contained in Figure 2.

Table 7: Control transactions (via bids and schemes lodged or registered from 1 January to 30 June 2016)

Number of transactions

Transaction type	Number	Percentage
Schemes	11	50%
Bids	11	50%

Weighted by target value

Transaction type	Percentage
Schemes	93%
Bids	7%

Note: Table 7 contains the data shown in Figure 3.

Table 8: Consideration type (control transactions via bids and schemes lodged or registered from 1 January to 30 June 2016)**Number of transactions**

Consideration type	Percentage
Cash	77%
Scrip	18%
Cash and scrip	5%

Weighted by target value

Consideration type	Percentage
Cash	97%
Scrip	3%

Note: Table 8 contains the data shown in Figure 4.

Table 9: Foreign and domestic offerors (control transactions via bids and schemes—1 January to 30 June 2016)**Number of transactions**

Type of bidder/acquirer	Number	Percentage
Foreign	6	27%
Domestic	16	73%

Transactions by target value

Type of bidder/acquirer	Percentage
Foreign	93%
Domestic	7%

Note: Table 9 contains the data shown in Figure 5.

Table 10: Documents lodged or received for review by ASIC, by type (1 January to 30 June 2016)

Transaction type	Number	Percentage
Item 7 transactions	41	59.4%
Off-market bids	11	15.9%
On-market bids	1	1.4%
Schemes of arrangement	16	23.2%

Note: This is the data contained in Figure 6.

Table 11: Results of applications under s655A and 669 (1 January to 30 June 2016)

Result	Number	Percentage
Approved	52	74.3%
Refused	0	0%
Withdrawn	17	24.3%
Pending	1	1.4%

Note: This is the data contained in Figure 7

Table 12: Matters addressed following intervention by ASIC (1 January to 30 June 2016)

Principal matter or transaction type	Structure and disclosure	Structure only	Disclosure only
Takeover bid	2	0	5
Scheme	2	1	12
Item 7 transactions	2	0	17
Rights issue/other fundraising	4	2	2
Association/substantial holding	0	2	2

Note: This table contains the data shown in Figure 8.

Table 13: Related party approval notices (January 2014 to June 2016)

Period	Total lodgements	Total excluding re-lodgements
January–June 2016	114	94
July–December 2015	267	226
January–June 2015	111	80
July–December 2014	265	214
January–June 2014	135	100

Note: This is the data contained in Figure 9.

Table 14: Results of applications under s340 and 111AT (1 January to 30 June 2016)

Result	Number	Percentage
Approved	122	71.3%
Refused	2	1.2%
Withdrawn	40	23.4%
Pending	7	4.1%

Note: This is the data contained in Figure 10.

Table 15: Total original fundraising documents lodged with ASIC by quarter (2005–06 to 2015–16)

Financial year	First quarter (July–September)	Second quarter (October–December)	Third quarter (January–March)	Fourth quarter (April–June)	Total
2015–16	145	213	92	143	593
2014–15	152	180	99	149	580
2013–14	131	157	94	150	532
2012–13	124	148	118	124	514
2011–12	123	174	117	41	455
2010–11	143	228	131	155	657
2009–10	133	73	137	152	495
2008–09	119	157	104	145	525
2007–08	188	277	107	158	730
2006–07	179	293	205	256	933
2005–06	142	277	160	208	787

Note: This table contains the data shown in Figure 11.

Table 16: Total bidder's statements lodged with ASIC by quarter (2001–02 to 2015–16)

Financial year	First quarter (July–September)	Second quarter (October–December)	Third quarter (January–March)	Fourth quarter (April–June)	Total
2015–16	14	14	8	5	41
2014–15	15	10	8	8	41
2013–14	12	20	11	13	56
2012–13	13	8	10	11	42
2011–12	13	14	6	18	51
2010–11	15	17	17	17	66
2009–10	19	19	11	14	63
2008–09	12	15	9	17	53
2007–08	20	34	5	15	74
2006–07	29	29	16	20	94
2005–06	11	13	16	21	61
2004–05	17	20	19	11	67
2003–04	19	20	15	11	65
2002–03	9	12	15	19	55
2001–02	15	18	15	18	66

Note: This table contains the data shown in Figure 12.

Table 17: Total scheme booklets lodged with ASIC by quarter (2001–02 to 2015–16)

Financial year	First quarter (July–September)	Second quarter (October–December)	Third quarter (January–March)	Fourth quarter (April–June)	Total
2015–16	14	23	6	9	52
2014–15	7	59	12	4	82
2013–14	14	13	5	8	40
2012–13	9	16	9	14	48
2011–12	13	15	9	22	59
2010–11	19	27	13	23	82
2009–10	12	35	7	6	60
2008–09	14	7	5	13	39
2007–08	23	17	11	7	58
2006–07	17	8	17	16	58
2005–06	16	8	8	8	40
2004–05	14	9	14	2	39
2003–04	12	17	5	19	53
2002–03	12	12	8	13	45
2001–02	10	4	3	12	29

Note: This table contains the data shown in Figure 13.

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.
AGM	Annual general meeting
ASIC	Australian Securities and Investments Commission
ASX	ASX Limited or the exchange market operated by ASX Limited
bidder	A bidder under a takeover bid as defined in s9 of the Corporations Act
bidder's statement	Has the meaning given in s9 of the Corporations Act
bid period	Has the meaning given in s9 of the Corporations Act
Ch 6D	A chapter of the Corporations Act (in this example numbered 6D), unless otherwise specified
[CO 14/1000] (for example)	An ASIC class order (in this example numbered 14/1000)
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
CP 234 (for example)	An ASIC consultation paper (in this example numbered 234)
emerging market issuer	An entity is an emerging market issuer if: <ul style="list-style-type: none"> • the entity (or its parent entity if it is a wholly owned subsidiary) is incorporated in an emerging market; or • the entity (or its parent entity if it is a wholly owned subsidiary) has a significant exposure or strong connection to the emerging market through: <ul style="list-style-type: none"> – business operations, if a significant proportion of its revenue-generating assets are located in an emerging market; – shareholders, if its shares are dominantly held (i.e. at least 50%) by persons residing in an emerging market; or, where the shareholder is an entity, the entity is an emerging market issuer; or – board/management, if at least half of its board members reside in an emerging market
fintech	Financial technology
FOFA	Future of Financial Advice

Term	Meaning in this document
foreign exempt listing	A listing on ASX by a foreign entity that complies with ASX Listing Rule 1.11
GN 13 (for example)	A Takeovers Panel guidance note (in this example numbered 13)
IPO	Initial public offering
item 1 (for example)	An item of s611 of the Corporations Act (in this example numbered 1)
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 (2012)
Legislative Instruments Act	<i>Legislative Instruments Act 2003</i>
Panel	Takeovers Panel
period	1 January to 30 June 2016
previous period	1 July to 31 December 2015
REP 469 (for example)	An ASIC report (in this example numbered 469)
RG 9 (for example)	An ASIC regulatory guide (in this example numbered 9)
s741 (for example)	A section of the Corporations Act (in this example numbered 741), unless otherwise specified
TTV	Total transaction value

Related information

Headnotes

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

Class orders and legislative instruments

[ASIC Corporations \(Approved Foreign Financial Markets\) Instrument 2015/1071](#)

[ASIC Corporations \(Electronic Lodgement of Financial Reports\) Instrument 2016/181](#)

[ASIC Corporations \(Externally Administered Bodies\) Instrument 2015/251](#)

[ASIC Corporations \(Financial Product Advice – Exempt Documents\) Instrument 2016/356](#)

[Class Order \[CO 00/2451\]](#) *Electronic lodgement of certain reports with ASX—approval*

[Class Order \[CO 06/6\]](#) *Dual lodgement relief for NSX listed entities*

[Class Order \[CO 98/104\]](#) *Dual lodgement relief for ASX listed entities*

Regulatory guides

[Regulatory Guide 6](#) *Takeovers: Exceptions to the general prohibition*

[Regulatory Guide 9](#) *Takeover bids*

[Regulatory Guide 59](#) *Announcing and withdrawing takeover bids (s653 and s746)*

[Regulatory Guide 71](#) *Downstream acquisitions*

[Regulatory Guide 79](#) *Research report providers: Improving the quality of investment research*

[Regulatory Guide 158](#) *Advertising and publicity for offers of securities*

[Regulatory Guide 161](#) *Share and interest sale facilities*

[Regulatory Guide 163](#) *Takeovers: Minimum bid price principle (s621)*

[Regulatory Guide 228](#) *Prospectuses: Effective disclosure for retail investors*

[Regulatory Guide 254](#) *Offering securities under a disclosure document*

Information sheets

[Information Sheet 214](#) *Mining and resources: Forward-looking statements*

Legislation

Australian Securities and Investments Commission Regulations 2001

Corporations Act, Chs 2M, 6, 6D, Pts 5.1, 7.7A Div 4, s111AT, 218, 319, 340, 411(2), 412(6), 602, 604, 606, 611, 618, 626, 655A, 657A, 657B, 657C(1), 657C(3)(b), 669, 708A, 708AA, 710, 713A–713E, 718, 741, 963E, 963G, 963H, 963K

Legislative Instruments Act 2003

Cases

Ainsworth Game Technology Limited 01 & 02 [2016] ATP 9

Australian Securities and Investments Commission v CME Capital Australia Pty Ltd [2015] FCA 1489

Brisbane Markets Limited [2016] ATP 3

Redcliffe Resources Limited [2016] FCA 404

Consultation papers and reports

[Consultation Paper 239](#) *Disclosure documents: Update to ASIC instruments and guidance*

[Consultation Paper 251](#) *Remaking ASIC class order on financial product advice: Exempt documents—[CO 03/606]*

[Consultation Paper 252](#) *Remaking ASIC class order on share and interest sale facilities: [CO 08/10]*

[Consultation Paper 257](#) *Improving disclosure of historical financial information in prospectuses: Update to RG 228*

[Consultation Paper 260](#) *Further measures to facilitate innovation in financial services*

[Report 468](#) *Cyber resilience assessment report: ASX Group and Chi-X Australia Pty Ltd*

[Report 469](#) *ASIC regulation of corporate finance: July to December 2015*

[Report 473](#) *Response to submissions on CP 239 Disclosure documents: Update to ASIC instruments and guidance*

[Report 476](#) *ASIC enforcement outcomes: July to December 2015*

[Report 483](#) *Overview of decisions on relief applications (October 2015 to March 2016)*

[Report 484](#) *Due diligence practices in initial public offerings*

[Report 486](#) *Sell-side research and corporate advisory: Confidential information and conflicts*

Media releases

[Media Release \(16-061MR\)](#) *ASIC restricts Continental Coal from issuing reduced content prospectus following disclosure and financial reporting failures (4 March 2016)*

[Media Release \(16-062MR\)](#) *Court orders the wind up of Sino Australia Oil and Gas Limited (7 March 2016)*

[Media Release \(16-079MR\)](#) *ASIC accepts enforceable undertaking from Melbourne company (18 March 2016)*

[Media Release \(16-128MR\)](#) *ASIC restricts Black Mountain Resources from issuing a reduced content prospectus (29 April 2016).*

[Media Release \(16-159MR\)](#) *Former Astra Resources directors disqualified (23 May 2016)*

[Media Release \(16-166MR\)](#) *ASIC winds up Continental Coal (27 May 2016)*

[Media Release \(16-174MR\)](#) *ASIC calls on directors to apply realism and clarity to financial reports (2 June 2016)*

[Media Release \(16-190MR\)](#) *Rhinomed pays penalty for alleged continuous disclosure breach and ASIC accepts enforceable undertaking to address continuous disclosure deficiencies (10 June 2016)*

[Media Release \(16-255MR\)](#) *Court finds against Sino Australia Oil and Gas Limited and its former chairman Tianpeng Shao (12 August 2016)*

Non-ASIC publications

[ASX consultation paper on listing requirements](#), *Updating ASX's admission requirements for listed entities (12 May 2016)*,
www.asx.com.au/regulation/public-consultations.htm

[ASX Guidance Note 8](#) *Continuous disclosure: Listing Rules 3.1-3.1B* (PDF, 801 KB)

[ASX Listing Rules](#), Chapter 1 (Admission), Listing Rules 1.19 and 2.9

ASX monthly market information report, *Equity capital raised report*, available from ASX Market Information (July 2016)

[ASX report on declined listing and waiver applications](http://www.asx.com.au/regulation/compliance/listings.htm), *Listing and waiver applications declined by ASX* (1 January to 30 June 2016), www.asx.com.au/regulation/compliance/listings.htm

[Takeovers Panel Guidance Note 13](#), *Broker handling fees*

[Takeovers Panel Guidance Note 23](#), *Shareholder intention statements*

[Takeovers Panel response to consultation on dividends guidance note](#) *Proposed guidance note on dividends—Public consultation response statement* (24 July 2014)

[Takeovers Panel response to consultation on Guidance Note 23](#), *GN 23 Shareholder intention statements—Public consultation response statement* (11 December 2015)