



ASIC

Australian Securities & Investments Commission

REPORT 567

ASIC regulation of corporate finance: July to December 2017

February 2018

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 July to 31 December 2017.

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 539	August 2017
REP 512	February 2017
REP 489	August 2016
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 The Australian Securities and Investments Commission (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 buy backs, 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;
 - (f) assisting with enforcement activities; and
 - (g) supporting the development and implementation of key Australian Government law reforms.
- 3 For further information about ASIC's approach to regulating corporations and corporate transactions, see the [Corporations 2017–18 summary business plan](#) (PDF 363 KB).

The purpose of this report

- 4 This report aims to provide greater transparency about the role that ASIC plays in the regulation of corporations and corporate transactions in Australia.
- 5 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 July to 31 December 2017 (the period).

Corporate Finance Liaison meetings

- 6 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.

- 7 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 February and March 2018.

Industry funding model

- 8 In October 2017, we released [Cost Recovery Implementation Statement: Levies for ASIC industry funding \(2017–18\)](#) (CRIS) for industry consultation, which includes estimated costs for our 2017–18 regulatory activities.

Note: See [Media Release \(17-334MR\)](#) *Industry funding: ASIC publishes estimated regulation costs for 2017–18* (6 October 2017).

- 9 The CRIS is part of ASIC’s commitment to transparency under industry funding, which took effect on 1 July 2017. As a result of laws passed in June 2017, those who create the need for, and benefit from, ASIC’s regulation will bear the costs, which will be recovered by levies on our regulated entities. The Australian Government implemented ASIC industry funding following a recommendation of the Financial System Inquiry.
- 10 Regulated entities have been categorised into 48 subsectors, covering all corporate entities subject to the Corporations Act, auditors, insolvency practitioners, credit licensees, Australian financial services (AFS) licensees, and other regulated entities and individuals.
- 11 The CRIS explains how ASIC’s costs will be allocated between these subsectors, through either a flat or graduated levy. The figures are indicative and may change when compared to ASIC’s actual costs for the period.
- 12 The method for calculating the levies regulated entities will pay was developed and refined following consultation in 2015–16.
- 13 The final CRIS will be subject to Ministerial approval and is expected to be published in early 2018.
- 14 Stakeholders can subscribe to the [ASIC Industry Funding Update](#) to receive news on the progress of implementation of ASIC’s industry funding, including forthcoming key dates.

Fees for service

- 15 In November 2017, we welcomed the release by Treasury of [Introduction of Australian Securities and Investments Commission’s fees-for-service under the industry funding model](#), a consultation paper proposing changes to fees for service. While around 90% of ASIC’s regulatory activities will now be

recovered as part of the industry funding model, the remaining 10% will be recovered via fees for service. Fees for service recover the regulatory costs attributable to a single, identifiable entity. They apply to:

- (a) licensing and professional registration services;
- (b) processing of relief applications; and
- (c) our formal compliance review of documents lodged by entities under the Corporations Act.

16 The consultation period on the paper closed in December and feedback is now being reviewed.

A Fundraising

Key points

This section sets out key observations and statistics from our work in relation to fundraising. Issuers who are considering fundraising transactions with control implications should also review the information in Section B.

In this period, we released guidance on initial coin offerings (ICOs), sell-side research, and crowd-sourced funding in relation to public companies and intermediaries. We also accepted an enforceable undertaking from an AFS licensee as a result of their failure to adequately manage their conflicts of interest as the sole lead manager of an initial public offering (IPO).

Key observations and statistics

17 We review fundraising disclosure and conduct to promote investor trust and confidence, and ensure fair and efficient markets. When we identify fundraising practices that may undermine market integrity and investor outcomes, we will intervene to protect investors.

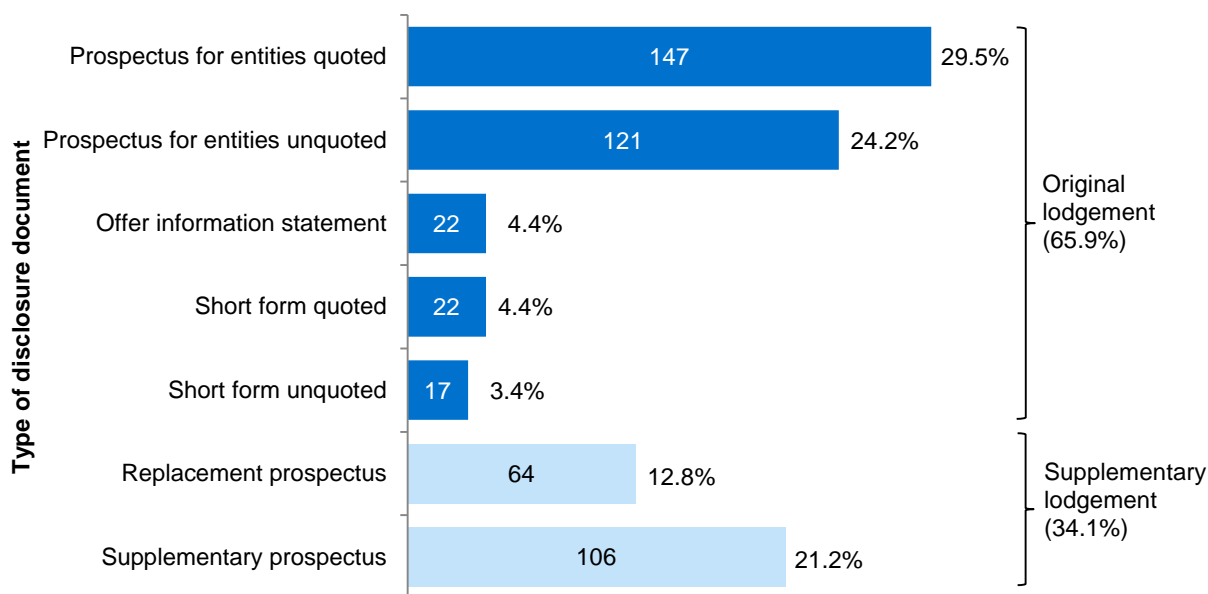
18 In the period, there were 329 original disclosure documents lodged with ASIC, raising over \$5 billion. Emerging market issuers lodged approximately 8.5% of these documents.

Note: For the top 10 public fundraisings (by value) lodged with ASIC during the period, see Table 1 in Appendix 1. For details of historical lodgements, see Figure 7 in Appendix 1.

19 Issuers lodged 72 IPO disclosure documents during the period, a 20% increase from 1 January to 30 June 2017 (the previous period). Figure 1 sets out the total number of disclosure documents lodged with ASIC in the period.

20 During the period, we received 53 applications for relief under s741. We granted relief in response to 25 of those applications.

Note: 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 [Report 556](#) *Overview of decisions on relief applications (April to September 2017)* (REP 556).

Figure 1: Number of disclosure documents by type (lodged from 1 July to 31 December 2017)

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

Note 2: This figure also excludes low-document fundraisings conducted by listed entities.

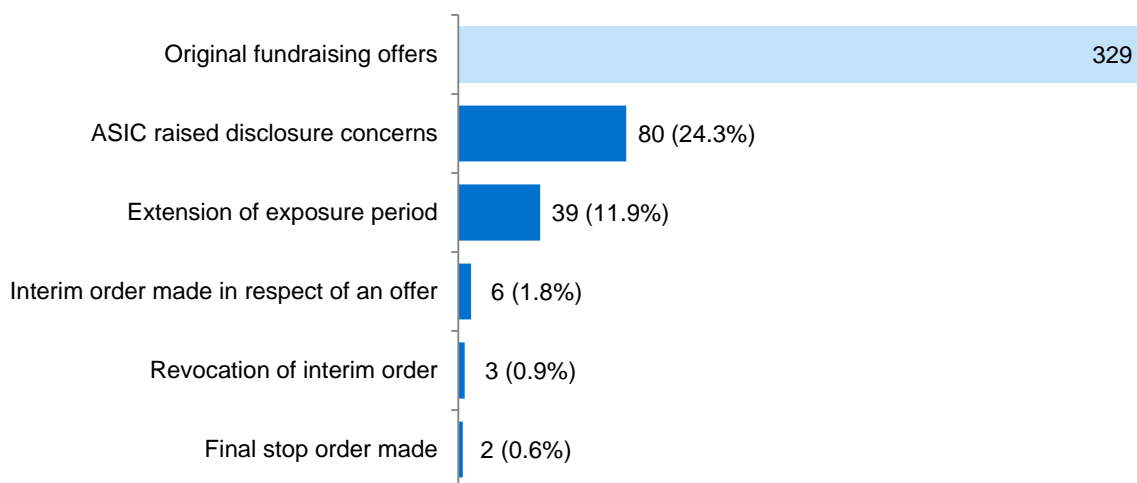
ASIC's review and monitoring of corporate fundraisings

- 21 As a result of our review of prospectuses and offer documents lodged with ASIC under s718 in the period, we:
- raised disclosure concerns in approximately 24.3% of fundraising offers—subsequently, changes were made to approximately 95.1% of the offers where concerns were raised;
 - extended the exposure period 39 times (11.9%);
 - issued 10 interim stop orders in relation to 6 offers (1.8% of all offers)¹ and two final stop orders (0.6% of all offers);² and
 - revoked three interim stop orders in relation to three offers (0.9% of all offers).³
- 22 See Figure 2 for a breakdown of our interventions in the period.

¹ Interim stop orders issued to Arrowhead Resources Limited, China Haitong Limited, Citation Resources Ltd, Raffles Capital Limited, Sing Kee Kaya Ltd and Tao Commodities Ltd.

² Final stop orders issued to Henry Morgan Limited and Titomic Limited.

³ Revoked interim stop orders issued to China Haitong Limited, Clean Global Energy Limited and Tao Commodities Ltd.

Figure 2: Form of ASIC intervention in prospectus disclosure (lodged 1 July to 31 December 2017)

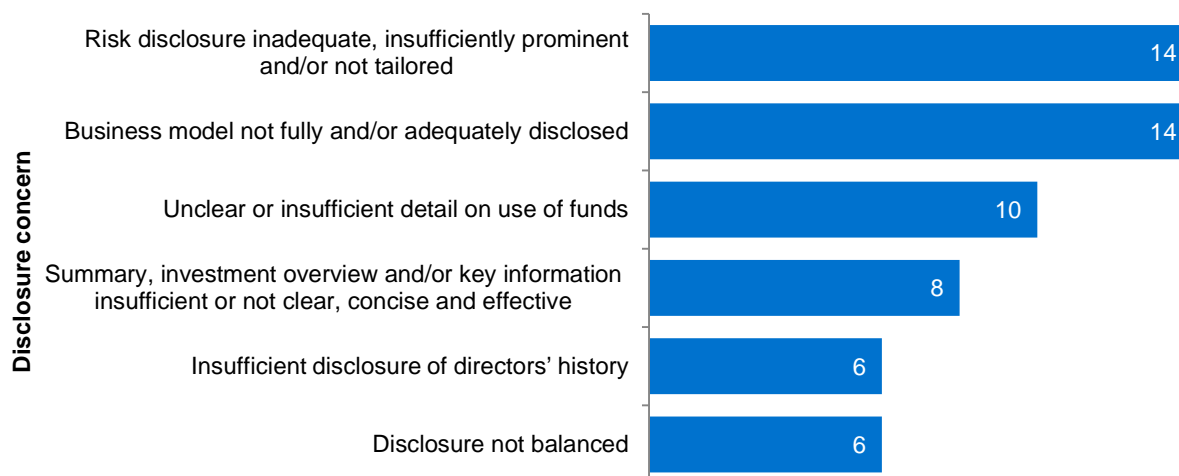
Note: See Table 6 in Appendix 2 for the data shown in this bar graph (accessible version).

Disclosure concerns

- 23 In our review of prospectuses lodged with ASIC during the period, we noted our concerns, requested amended disclosure or intervened in offers of securities on a number of occasions. We do this to improve the disclosure provided, to help investors make an informed investment decision.
- 24 During the period, the most frequent disclosure concerns we raised about prospectuses were:
- (a) inadequate risk disclosure;
 - (b) inadequate business model disclosure;
 - (c) insufficient details regarding proposed use of funds;
 - (d) lack of clear, concise and effective disclosure;
 - (e) unbalanced disclosure; and
 - (f) insufficient information about directors' history (see Figure 3).

These areas continue to be a focus for us in our efforts to protect investors.

Figure 3: Top five most frequent disclosure concerns raised by ASIC with prospectuses (lodged 1 July to 31 December 2017)



Note: See Table 7 in Appendix 2 for the data shown in this bar graph (accessible version).

- 25 In addition to these ongoing concerns, corporations and their advisers should be aware of several new developments in corporate fundraising activities, which are discussed below. We intend to monitor these developments over the next period and, where necessary, intervene to ensure investors are protected.

Disclosure of financial information

- 26 Three new accounting standards are coming into force over the next two years, which are expected to significantly affect the reporting of revenue, values of financial instruments, loan loss provisions and the impact of lease arrangements.
- 27 The three accounting standards being introduced (with early adoption permitted) are:
- (a) Australian Accounting Standard [AASB 9](#) *Financial instruments* (PDF 1.3 MB), which applies from years commencing 1 January 2018;
 - (b) Australian Accounting Standard [AASB 15](#) *Revenue from contracts with customers* (PDF 732 KB), which applies from years commencing 1 January 2018; and
 - (c) Australian Accounting Standard [AASB 16](#) *Leases* (PDF 1.5 MB), which applies from years commencing 1 January 2019.
- 28 In addition to ensuring implementation of these new standards, we consider that companies and their advisers should be careful when preparing for any transactions that will require disclosure of historical and prospective financial information that overlaps the respective implementation dates.

- 29 We will be closely reviewing disclosure practices for historical and prospective financial information. We suggest that companies and their advisers should consider:
- (a) providing appropriate disclosure of the future effect of the new accounting standards;
 - (b) the prominence given to financial information presented under the pre-existing standards and the new standards, taking into account the size and extent of the effect of applying the new standards;
 - (c) presenting historical and prospective financial information on a consistent basis, or presenting information on both bases for an overlap period;
 - (d) ensuring the effects on historical financial information are presented clearly by a general discussion, reconciliation of key items (such as profit and net assets), and/or line-by-line reconciliations for one or more years;
 - (e) disclosing key assumptions made when applying the new standards to forecast information; and
 - (f) clearly identifying whether the pre-existing or new standards have been applied to particular information.

Reconciling prospectus forecasts and year-end announcements

- 30 As part of our business plan, we have been reviewing the forecasting accuracy of issuers in the last few years. This work is still ongoing; however, we have noted a disclosure trend that we have some concerns about.
- 31 Issuers may have to downgrade their forecasts during a prospectus forecast period, as part of their continuous disclosure obligations. Some of these issuers, in their year-end announcements, state that the issuer exceeded their forecasts, without referring to the fact that the company did not actually achieve its prospectus forecasts.
- 32 To avoid misleading or confusing the market, we recommend that issuers reconcile their year-end announcements to their prospectus forecast, as well as any revised forecasts.

Restrictions on advertising

- 33 We continue to monitor the advertising of fundraising offers and engage with issuers and promoters regarding advertising that is misleading, deceptive or fails to comply with the requirements of Ch 6D of the Corporations Act.
- 34 In the period we intervened in instances where there had been promotion of a pending IPO, distribution of misleading statements concerning the prospects

of an IPO issuer and advertising published post-lodgement of a disclosure document that failed to comply with the requirements of s734(6) of the Corporations Act. In such circumstances, investors were in danger of making an uninformed investment decision based on unbalanced or potentially misleading advertising.

- 35 Our intervention resulted in advertisers and promoters removing or correcting advertising on websites, marketing platforms and social media and, in one case, providing corrective statements in a replacement disclosure document. In prior periods we have also required corrective advertising in national newspapers: see [Report 539](#) *ASIC regulation of corporate finance: January to June 2017* (REP 539).
- 36 We remind issuers and promoters to be aware of the restrictions on advertising in s734 of the Corporations Act, and to be particularly mindful of the prescriptive nature of the requirements of s734(6) once a disclosure document has been lodged: see our guidance in [Regulatory Guide 234](#) *Advertising financial products and services (including credit): Good practice guidance* (RG 234).
- 37 We will continue to monitor advertising both before and during IPO offers, and take action if we identify contraventions of Ch 6D. These actions can include requiring a cessation of advertising or corrective advertising, and use of ASIC's stop order powers under s739(1)(c) of the Corporations Act.

Concise disclosure of mineral asset information

- 38 During the period we observed an increase in the length of technical reports provided in prospectuses. A number of reports exceeded 150 pages in length and contained a high degree of technical detail and jargon. We think that, in some cases, greater care is needed around these disclosures.
- 39 This increase in the length and detail of technical reports, which are commonly inserted into disclosure documents between other relevant information and sections, creates challenges for preparers in meeting the requirement that disclosure documents to be worded and presented in a 'clear, concise and effective manner': see s715A of the Corporations Act. For guidance, we direct practitioners to [Regulatory Guide 228](#) *Prospectuses: Effective disclosure for retail investors* (RG 228), which sets out our policy considerations in assessing 'clear, concise and effective'.
- 40 One option issuers can explore—when considering how to make their prospectus more readily understandable—is including technical reports in an appendix to the prospectus, rather than in between other sections of the document.
- 41 If unique or novel issues arise when the practitioner is complying with the requirement to disclose a substantial amount of material, technical information, we invite them to engage with us early to discuss their proposed approach.

Underwriter's obligations

- 42 Underwriters play an important role in our capital markets. Although underwriters' obligations are primarily contractual, they must also be mindful of their obligations under the Corporations Act.
- 43 We recently identified several instances where the underwriter for a fundraising offer was not authorised under an AFS licence to provide underwriting services. This resulted in underwriting being removed from those offers.
- 44 Underwriters that provide underwriting as part of a financial services business will need to either hold an AFS licence that expressly includes the authorisation to underwrite, or act as an authorised representative. AFS licensees must comply with conditions under the licence and other obligations in the Corporations Act.
- 45 We remind underwriters to also consider the takeover and fundraising provisions in the Corporations Act, in addition to their licensing obligations.
- 46 For example, underwriters must be careful that their acquisition of any fundraising shortfall does not contravene the takeover prohibition in Ch 6 of the Corporations Act, and that all conditions are satisfied if they rely on an exception for underwriters.
- 47 Further, underwriters must ensure that an agreement to take up any fundraising shortfall is a genuine underwriting arrangement. [Regulatory Guide 6](#) *Takeovers: Exceptions to the general prohibition* (RG 6) discusses our view that a central element of underwriting is the assumption of shortfall risk: see RG 6.141–RG.6.142.
- 48 Finally, underwriters must play an active role in the preparation of a disclosure document and ensure that proper due diligence is undertaken. Under Ch 6D of the Corporations Act, the extent of an underwriter's liability for defective disclosure is the same as that of the company making the offer and its directors (although there may be certain defences available).

Emerging market issuer listings

- 49 We have observed an increase in emerging market issuers lodging prospectuses in the last six months. While we have written extensively about this topic in past reports, we wish to reiterate that we continue to review these prospectuses in detail.

Note: See [Report 368](#) *Emerging market issuers* (REP 368) and [Report 521](#) *Further review of emerging market issuers* (REP 521).

- 50 In the past six months, we have focused on the historical financial information contained in these documents, and the extent of work carried out

by the independent accountants. In a number of cases, we reviewed the working papers of the independent accountant to determine whether adequate work had been performed, including the review of the audit work papers by the local auditor.

- 51 Consistent with the assurance standards, our expectation is that the independent accountants thoroughly review the audit working papers of the local auditor, irrespective of their location or the language in which they have been compiled. In some cases, the independent accountant may need to re-perform some, or all, audit procedures for the financial information, including inquiry, observation and analytical procedures, and tests of details.

Prospectuses for unlisted property developments

- 52 We have observed a number of small property developers seeking funding from the public via the issue of preference shares. This may be a consequence of banks increasing pre-sale and equity funding requirements before they will lend to a project.

- 53 The offers are structured in the following manner:

- (a) Preference shares in a public holding company are issued to investors, offering a set rate of return once the development is successfully completed.
- (b) Funds are lent by the holding company to the development entity, which is a special purpose small proprietary company. The development entity obtains bank financing, constructs the project and, if successful, repays the loan with interest to the holding company.

- 54 Where this structure has been employed, we have required the following:

- (a) *prospectus disclosure*—the prospectus must contain (or include by reference):
 - (i) documentation supporting the ownership of the property in question;
 - (ii) evidence that a development application has been lodged;
 - (iii) an expert opinion on the cost of construction and a valuation of the development on an ‘as if complete’ basis; and
 - (iv) a gearing calculation; and
- (b) *financial accounts*—irrespective of whether the development company is statutorily required to compile and lodge accounts, we will exercise ASIC’s powers under s294 to direct the production and lodgement of accounts. This is to ensure transparency for investors when the project is under construction, which may not otherwise be the case, given the loan arrangement between the holding and development companies.

ASIC surveillance reports and research

Why listed companies fail

- 55 To help us better understand the market we regulate and help us determine the allocation of our resources, we decided to take a historical look at why ASX-listed companies failed. We analysed all companies that listed through an IPO or a ‘backdoor listing’ in a five year period from 1 July 2012 to 30 June 2017.
- 56 There has been extensive academic research into the topic; however, we defined ‘failure’ differently to this research. Academic research generally defines ‘failure’ as the administration or winding up of a company, whereas we defined it as a large loss in share value (i.e. an 80% decline in share price from listing). Our definition of ‘failure’ therefore captures many more companies. For those companies that had failed, we then subjectively assessed why they failed.
- 57 Our project found that:
- (a) backdoor listings represented over 30% of all listings;
 - (b) corporate failure rates are quite high—one in nine new listings failed, which rose to one in three for backdoor listings;
 - (c) 15% of failures involved alleged serious transparency or legitimacy concerns;
 - (d) emerging market issuers made up a large number of those companies that failed, and exhibited signs of poor corporate governance practices;
 - (e) many technological firms came to market well before the likelihood of commercial success could be established; and
 - (f) companies and sectors making ‘super profits’ are at heightened risk of failure.

ASIC reports on NSX’s listing standards

- 58 On 28 August 2017, we released [Report 538](#) *Assessment of National Stock Exchange of Australia Limited’s listing standards* (REP 538). The report concludes that National Stock Exchange of Australia Limited (NSX) should make a number of changes to improve compliance with its statutory obligations.
- 59 NSX, and its parent company NSX Limited, agreed to a number of actions designed to ensure that:
- (a) persons who can influence NSX are of good repute, are sufficiently knowledgeable, and will act in the best interests of the NSX market as well as the wider Australian market;

- (b) the NSX market attracts issuers with legitimate motives and connection to Australia and ensures listings occur under Australian-regulated disclosure documents; and
- (c) the NSX market operates with integrity and its users are informed.

60 These actions also address serious questions about the rationale for some foreign listings on NSX.

61 The assessment also identified that some listings had a disproportionately large number of trades occurring off-market following very thin trading on NSX. This activity is not unique to NSX, so we will separately conduct a wider market review across all Australian equity markets.

Enforcement action

Conflicts of interest management

62 We accepted an enforceable undertaking from Foster Stockbroking Pty Limited (FSB) over the stockbroker's capital markets and research businesses, following an ASIC investigation into management of conflicts of interest in FSB.

63 We were concerned that FSB failed to adequately manage conflicts between the commercial and personal interests of FSB and its directors, and the interests of FSB's clients.

64 FSB is an AFS licensee that was the sole lead manager for the IPO of Reffind Limited (RFN), a small market capitalisation technology company, in July 2015. The IPO was oversubscribed by at least 385%.

65 We found that:

- (a) FSB scaled back IPO subscription bids made by FSB's directors disproportionately less than subscription bids made by other investors, including FSB retail clients;
- (b) FSB did not fully disclose to RFN the shares allocated to FSB directors;
- (c) there was no effective separation of FSB's research function from its other functions;
- (d) a research report about RFN was written by the Head of Investment Banking at FSB, who had an ongoing corporate advisory role with RFN;
- (e) at the time of the publication of the report, both the Head of Investment Banking and associates of FSB had significant holdings in RFN that were not adequately disclosed in the research; and
- (f) statements contained in the research about FSB's objectivity were potentially misleading.

- 66 FSB agreed to make a number of changes to its systems and controls and appoint an independent expert to evaluate the adequacy and implementation of these changes. FSB also agreed to make a community benefit payment of \$80,000 to The Ethics Centre.

Note: See [Media Release \(17-404MR\)](#) *ASIC accepts enforceable undertaking from Foster Stockbroking following ASIC investigation into conflicts of interests* (24 November 2017).

ASIC policy initiatives

Guidance on sell-side research

- 67 In December 2017 we released [Regulatory Guide 264](#) *Sell-side research* (RG 264). This followed on from consultation we carried out in the middle of the year (see [Consultation Paper 290](#) *Sell-side research* (CP 290)) and a review we conducted in 2016 (see [Report 486](#) *Sell-side research and corporate advisory: Confidential information and conflicts* (REP 486)).
- 68 RG 264 focuses on managing conflicts of interest and inside information when providing sell-side research (research reports prepared by AFS licensees to help their clients, or potential clients, make investment decisions).
- 69 A key focus of RG 264 is how conflicts of interest are managed—and, where necessary, avoided—to ensure research has credibility and integrity, and can reasonably be relied on directly or indirectly by investors.

Initial coin offerings

- 70 In September 2017, we released [Information Sheet 225](#) *Initial coin offerings* (INFO 225), which provides guidance on the potential application of the Corporations Act to businesses that are considering raising funds through an ICO.
- 71 We are aware of the global interest in the use of ICOs by businesses to raise funds. A number of international regulators have issued guidance on the application of their securities and financial services laws on ICOs.
- 72 While we recognise that ICOs provide another option for businesses seeking to raise funds, an ICO must be conducted in a manner that promotes investor trust and confidence, and complies with the relevant laws. Whether the Corporations Act applies to an ICO will depend on the type of ICO offering and what rights attach to the coins from the ICO itself, underlying coins, or tokens used in the ICO. Investors should be aware that ICOs are often highly speculative and volatile investments.

Guidance on crowd-sourced funding for public companies and intermediaries

- 73 The new equity-based crowd-sourced funding (CSF) regime for public companies commenced on 29 September 2017. The CSF regime aims to facilitate access to capital for small to medium sized unlisted public companies by reducing regulatory requirements for making offers of shares, while ensuring adequate protections for retail investors.
- 74 In September 2017, we released:
- (a) [Regulatory Guide 261](#) *Crowd-sourced funding: Guide for public companies* (RG 261) to assist public companies seeking to raise funds through crowd-sourced funding to understand and comply with their obligations under the new regime; and
 - (b) [Regulatory Guide 262](#) *Crowd-sourced funding: Guide for intermediaries* (RG 262) to assist CSF intermediaries seeking to provide a crowd-funding service to understand their unique gatekeeper obligations.
- Note: See paragraphs 88–90 for current developments in the CSF regime.
- 75 In January 2018, we licensed the first CSF intermediaries seeking to provide a crowd-funding service under the new regime. The CSF intermediaries have been issued with AFS licence authorisations to act as intermediaries able to provide a crowd-funding service.
- 76 Eligible public companies may now use the CSF regime to raise capital via the online platform of one of these intermediaries.
- 77 We are monitoring offers under the new regime and will continue to engage with intermediaries and companies, before and during offers, about any queries they have or concerns we identify regarding their obligations under the new regime.
- 78 To date, we have worked with one intermediary and two companies on the following issues:
- (a) advertising CSF offers on social media and complying with the requirement to include in the advertisement:
 - (i) a prescribed statement directing investors to the CSF offer document; and
 - (ii) a general CSF risk warning;
 - (b) the presentation and prominence of the general CSF risk warning and offer document on the intermediary's platform; and
 - (c) the presentation of information about the offer and company on the intermediary's platform, including the need to ensure information on the platform is balanced and includes both the risks and benefits of the offer, to ensure investors are not misled.

No-action position for trading during deferred settlement periods

- 79 To clarify any uncertainty in the market, in late December 2017 we adopted a limited no-action position for arguable breaches of s1020B(2) of the Corporations Act—that is, trading in products that are yet to be issued during deferred settlement periods.
- 80 The no-action position includes the on-sale of those products. Various corporate actions can result in the issue of products, including securities, by way of a disclosure document or PDS, via a compromise or arrangement under Pt 5.1 of the Corporations Act, a rights issue, a dividend or distribution reinvestment plan, or a bonus issue.
- 81 These products may already be trading on an exchange, or commence trading for the first time, before the actual issue date. Under s1020B, a person can only sell these products if they have a ‘presently exercisable and unconditional right’ to vest them in the buyer at the time of the sale. Where the sale occurs before the products have been issued, this could be in breach of s1020B(2).
- 82 This no-action position is subject to the seller only selling unissued products if they or the person selling on their behalf believe on reasonable grounds that they have an unconditional entitlement to the products. It does not apply where the market operator has declared a ‘conditional market’ for trading in the products. In those circumstances, the seller will need to consider whether individual relief is required.
- 83 The no-action position applies until withdrawn and includes the sale of products that have already taken place.
- 84 We have decided to adopt this position while we consider whether a legislative instrument should be granted. We expect to consult on the terms of a legislative instrument in the first half of 2018.
- 85 Our approach to this no-action position is generally consistent with [Regulatory Guide 108](#) *No-action letters* (RG 108)—in particular, RG 108.12–RG 108.19.

Other policy initiatives

ASX Guidance Note 1

- 86 On 1 December 2017, ASX released an updated version of [Guidance Note 1](#) *Applying for admission—ASX listings* (GN 1) (PDF 527 KB), which now includes Annexure B. Annexure B contains a table that summarises the different accounts requirements an applicant for listing must meet under the ASX Listing Rules and under [RG 228](#).

87 The annexure covers 14 common scenarios to help issuers determine the historical financial information requirements for admission and prospectus disclosure purposes. As it is a summary only, applicants should carefully consider the applicable provisions in the ASX Listing Rules and RG 228.

Treasury consultation on extending crowd-sourced funding to proprietary companies

88 The Corporations Amendment (Crowd-sourced Funding for Proprietary Companies) Bill 2017, which seeks to extend the CSF regime to eligible proprietary companies, was introduced to Parliament in September 2017. If the legislation is passed, eligible proprietary companies will also be able to raise capital under the CSF regime.

89 The Government has also released [exposure draft regulations providing further detail on the extension of the CSF regime to proprietary companies](#). Consultation by Treasury on the draft regulations closed on 2 February 2018.

90 If the legislation is passed, we will amend our guidance for companies in RG 261 and RG 262 as appropriate.

Treasury consultation on reforms to support cooperatives, mutuals and member-owned firms

91 In November 2017, Treasury released [Australian Government response to the Senate Economics References Committee report: Cooperative, mutual and member-owned firms](#), which addressed the committee's recommendations for potential reforms to support cooperatives, mutuals and member-owned firms in Australia.

92 ASIC, along with a number of other Australian Government agencies, is currently addressing the progressing work on the recommendations.

Managed funds—Corporate collective investment vehicles and the Asia Regions Funds Passport

93 The proposed corporate collective investment vehicles (CCIVs) regime is an optional alternative to the managed investments regime in Ch 5C of the Corporations Act. Under this proposal, a CCIV will be a collective investment vehicle that is a public company and is structured as an umbrella fund incorporating one or more sub-funds.

94 The Australian Government sought submissions on the draft Treasury Laws Amendment (Corporate Collective Investment Vehicle) Bill 2017 and explanatory materials on 20 December 2017. Submissions closed on 2 February 2018.

- 95 The Asia Region Funds Passport will provide a multilaterally agreed framework to facilitate the cross-border marketing of passport funds across participating economies in the Asia region. It is intended to support the development of an Asia-wide funds management industry through improved market access and regulatory harmonisation.
- 96 To date, Australia, New Zealand, Japan, Korea and Thailand have signed the Memorandum of Cooperation on the Establishment and Implementation of the Asia Region Fund Passport, which took effect on 30 June 2016.
- 97 We released [Consultation Paper 296 Funds management](#) (CP 296) on 26 October 2017, which sought feedback on our proposed guidance on CCIVs and the Asia Regions Funds Passport. Comments closed on 8 December 2017.

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. Issuers who are considering fundraising transactions with control implications should also review the information in this section.

During the period we reviewed takeover bids, schemes of arrangement and other control transactions, and actively participated in applications made to the Takeovers Panel. We also conducted surveillances on independent experts to review their practices, methodologies and independence.

Key observations and statistics

- 98 As part of ASIC's regulatory functions, we review disclosure and monitor conduct in relation to control transactions. When we identify practices that may undermine market integrity and investor outcomes, we will intervene to protect investors.

Takeover bids and schemes of arrangement

- 99 On the basis of bidder's statements lodged and scheme documents released, during the period there were:
- (a) 20 independent control transactions via 24 takeover bids;
 - (b) 11 independent control transactions via 11 members' schemes of arrangement; and
 - (c) 6 independent restructure transactions via 12 members' and/or creditors' schemes of arrangement.

Note 1: The number of independent control transactions are calculated by counting multiple takeover bids or schemes involving the same or a related bidder/acquirer for securities in the same target or a stapled target as one transaction. For a list of all bids lodged during the period, see Table 3 in Appendix 1.

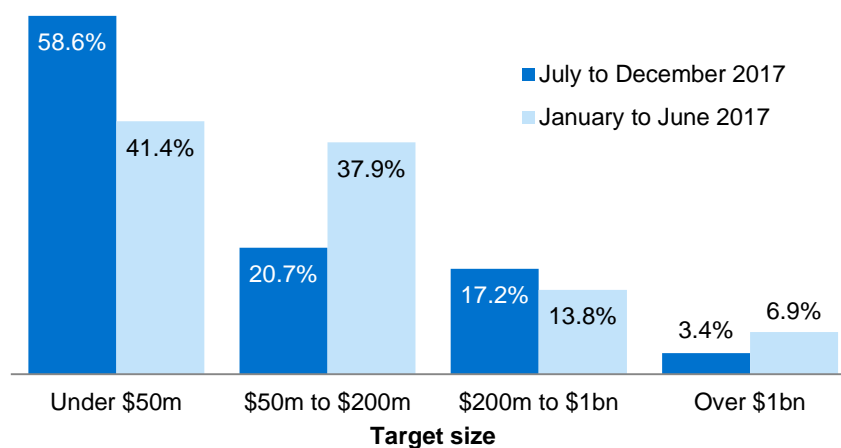
Note 2: Restructure transactions include internal group restructures, 'top hatting' restructures, redomiciliations, demergers and acquisitions of non-voting securities not related to a control transaction. The number of independent restructure transactions are calculated by counting interdependent schemes in relation to multiple securities in the same entity or related entities as one transaction. For a list of all scheme explanatory statements registered by ASIC or otherwise released during the period, see Table 4 in Appendix 1. Note that one restructure transaction involving two schemes is counted above but not listed in the table, as it was not publicly released.

100 The 31 independent control transactions were similar in number to the previous period. The number of independent control transactions using takeover bids (20) was significantly larger than the number effected via schemes of arrangement (11). The total value of control transactions using a bid or scheme during the period was substantially lower than the previous period—\$4.5 billion, down from \$12.4 billion. Only one scheme related to a target valued at over \$1 billion. This was the acquisition of Tatts Group Limited, which was the largest control transaction during the period by a significant margin.

Note: See Table 2 in Appendix 1 for a list of the top 10 takeover bids and schemes of arrangement by target value.

101 Compared to the previous period, there was a substantial increase in the number of offers for targets whose size was less than \$50 million, and a corresponding decrease in offers for targets whose size was between \$50 million and \$200 million: see Figure 4.

Figure 4: Control transactions by target size (1 July to 31 December 2017 and previous period comparison)



Note: See Table 8 in Appendix 2 for the data shown in this column graph (accessible version).

102 Consistent with the trends observed in previous periods, the majority of control transactions via bids and schemes again involved an offer of cash.

Note: See Table 2 in Appendix 1 for details of the top 10 takeover bids and schemes of arrangement by target value. Additionally, Figure 8 in Appendix 1 outlines details of consideration type for control transactions via bids and schemes lodged or registered during the period.

103 Control transactions conducted via bids and schemes were predominantly from Australian-based bidders (77.6%) compared to foreign bidders (22.4%).

Note: See Figure 9 in Appendix 1 for details of the proportion of foreign versus domestic offers during the period.

Other control transactions

104 Transactions approved by members under the exception in 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. The number of documents provided to ASIC for review as part of item 7 transactions in the period was significantly lower than the previous period.

Figure 5: Item 7 transactions in respect of which documents were received for review by ASIC (1 July to 31 December 2017)



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

Applications for relief and approval

105 We received 41 applications during the period for relief under s655A, and one application under s669. During the period, we also received three applications under s619 for appointment of a foreign nominee by a bidder, and a further 19 applications under s615(a) for approval of a nominee for rights issue offers that may affect the control of the offerors.

106 We publish a regular report that provides an overview of decisions made on novel relief applications, including those made for merger and acquisition transactions. Our most recent report is [REP 556](#).

ASIC's review and monitoring of control transactions

107 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. We do this to help ensure that investors can make informed decisions about whether to support the change in control.

108 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.

Classes and fairness in schemes of arrangement

109 On 22 August 2017, the Supreme Court (NSW) approved creditors' schemes of arrangement for Boart Longyear Limited and associated entities, following substantial alterations to the terms of the schemes. Even though the court was of the view that the classes of creditors were properly constituted, the court ordered mediation during the second court hearing, strongly indicating that it was unlikely to approve the schemes as originally formulated, on fairness grounds.

110 At a practical level, we recommend companies and their advisers take a conservative approach to the constitution of classes to avoid uncertainties about whether the scheme is fair.

Timing for schemes of arrangement

111 We raised concerns during the period about the timetabling of scheme transactions that are subject to approvals and other conditions precedent when there is significant uncertainty regarding the likely timing of those conditions being satisfied. This is something we have been concerned about increasingly in recent times.

112 It is incumbent on scheme proponents to ensure the currency of:

- (a) the disclosure in the explanatory memorandum for a scheme at the time of the scheme meeting; and
- (b) the vote of the scheme company's members or creditors' at the time of the second court hearing.

As a result, proponents should aim to schedule the scheme meeting shortly before the time the court will likely be in a position to approve the scheme—taking into account, among other things, any need to ensure relevant preconditions are satisfied before the second court hearing. We have found scheme proponents generally do follow such a timetable.

113 It is not uncommon in the course of a scheme that, as a result of intervening or unexpected events, a scheme meeting will need to be postponed after a scheme booklet is dispatched and supplementary disclosure provided. However, we consider that scheme proponents should take into account the desirability of avoiding the need for supplementary or piecemeal disclosures in determining at what time it is appropriate to seek orders at the first court hearing.

114 In connection with our review of the scheme terms and disclosure, we may query scheme proponents on any uncertainty regarding, and their progress towards, the conditions precedent before the first court hearing.

Attorney appointment provisions

- 115 In [Report 469](#) *ASIC regulation of corporate finance: July to December 2015* (REP 469) we highlighted our concerns that accepting target security holders were required to appoint the bidder as attorney, to exercise the rights and powers attaching to the securities, prior to an offer becoming unconditional.
- 116 We have noticed that some recent control transactions have included such terms, and we remind parties of our view that an attorney appointment or proxy voting term that may operate while there is still uncertainty about whether the offer will become unconditional is generally contrary to the principles underlying item 1 of s611.

Takeovers Panel applications and enforcement action

- 117 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.
- 118 We also seek to shape behaviour by taking an active role in proceedings before the Takeovers Panel that are brought by third parties.

Takeovers Panel applications by third parties

- 119 The Takeovers Panel received 10 applications brought by third parties during the period.

Note: Additionally, there were three new applications made in relation to Molopo Energy Ltd.

- 120 Of these matters, the Takeovers Panel declined to conduct proceedings in eight instances, declined to make a declaration in one, and made a declaration of unacceptable circumstances in one matter.

MMA Offshore Limited

- 121 In November 2017, the Takeovers Panel made a declaration of unacceptable circumstances and accepted an undertaking in relation to an application by Halom Investments Pte Ltd in relation to the affairs of MMA Offshore Limited (MMA): see Takeovers Panel, [Media Release TP17/56](#) *MMA Offshore Limited—Panel receives application*, 17 November 2017.
- 122 When the Panel accepted this undertaking from MMA in relation to the application (in lieu of making orders), it highlighted concerns about the timetable initially adopted by MMA for its accelerated rights issue, and

expressed that it would be concerned if such a timetable were to occur again in another instance.

- 123 MMA proposed to hold its 2017 annual general meeting (AGM) on 30 November 2017, noting that part of the business to be considered included resolutions regarding changes to the MMA board, which were requisitioned by Halom Investments Pte Ltd.
- 124 On 16 November 2017, MMA announced an accelerated rights issue to raise approximately \$74.6 million (the retail entitlement offer), and a \$22.4 million institutional placement to existing and new investors (the placement and institutional entitlement offer).
- 125 A timetable for the two components to the equity raising meant that shares issued under the placement and institutional entitlement offer could be voted at the AGM while shares issued under the retail entitlement offer could not.
- 126 The Takeovers Panel considered that the timing of, and the number of, new shares issued under the placement and institutional entitlement offer would have the effect of disenfranchising part of the share register of MMA. The Panel considered that the circumstances were unacceptable.
- 127 MMA agreed to postpone their AGM to 19 December 2017 and to extend the proxy cut-off and entitlement to vote times, to enable the new retail shareholders to participate.
- 128 We have previously warned against this type of conduct and we remind companies that we may make an application to the Takeovers Panel if we have control concerns: see RG 6.80.

Molopo Energy Limited

- 129 In the previous reporting period, we highlighted the outcome of our application to the Takeovers Panel for a declaration of unacceptable circumstances regarding the undisclosed association between Keybridge Capital Limited (Keybridge) and Aurora Funds Management Limited, as responsible entity of Aurora Global Income Trust and Aurora Fortitude Absolute Return Fund (Aurora), in relation to Molopo Energy Limited. In particular, the Panel made orders requiring ASIC to appoint a broker and divest certain shares held by Keybridge and Aurora.
- 130 In September 2017, Aurora applied to the Federal Court of Australia for a judicial review of the Takeovers Panel's decision. The Federal Court made interim orders suspending the operation of the Panel's divestment orders until the final determination of the judicial review proceedings. We will inform the market if any divestment process recommences after the determination of these proceedings.

Other policy initiatives

ASX changes to listing rule requirements for reverse takeovers

- 131 In October 2017, ASX released [Reverse takeovers: Final listing rule amendments](#) (PDF 511 KB).
- 132 Of particular note are changes to ASX Listing Rule 7.2, which now require shareholder approval for the issue of securities by a bidder in the context of a reverse takeover.
- 133 A reverse takeover is defined as a takeover bid, or a merger by way of scheme of arrangement, where:
- (a) an entity is proposing to acquire securities of another body; and
 - (b) the aggregate number of equity securities issued or to be issued by the entity—under the takeover bid or scheme and/or to fund the cash consideration payable under the takeover bid or scheme—is equal to or greater than the number of fully paid ordinary securities on issue in the entity at the date of announcement of the takeover bid or scheme.
- 134 Additionally, a new listing rule has been added (Listing Rule 7.3.10), requiring a notice of meeting to approve an issue of securities under, or to fund, a reverse takeover to disclose information ‘in relation to the reverse takeover’. ASX advised that they will publish guidance on the information they will expect to be disclosed.

Independent expert reports

Ongoing monitoring

- 135 During the period we conducted four surveillances of independent expert report providers. We identified a number of significant concerns regarding expert firms that provide independent expert reports. This resulted in one AFS licensee voluntarily applying to vary the terms of their licence to remove their authorisation to provide independent expert advice: see [Media Release \(18-010MR\) ASIC accepts voluntary licence variation from HLB Mann Judd Corporate Finance Pty Ltd to cease providing ‘independent expert’ advice](#) (17 January 2018).
- 136 Our review of HLB Mann Judd Corporate Finance Pty Ltd identified concerns that the licensee:
- (a) had not met its obligations as an AFS licensee; and

(b) was not compliant with relevant regulatory guidance on the provision of independent expert reports.

137 More broadly, we are concerned that some experts may not be complying with their AFS licence requirements and our policy, including [Regulatory Guide 111](#) *Content of expert reports* (RG 111), [Regulatory Guide 112](#) *Independence of experts* (RG 112), [Regulatory Guide 74](#) *Acquisitions approved by members* (RG 74) and [Regulatory Guide 76](#) *Related party transactions* (RG 76).

138 We remind all AFS licensees that provide independent expert reports of their responsibilities as financial system gatekeepers.

139 We are continuing our surveillance activities and will consider the use of licensing and enforcement actions where necessary.

Engaging technical specialists

140 During the period we identified an increasing number of disclosure issues in reports prepared by specialists—in particular, geology and mining reports prepared with reference to the JORC Code 2012 and Valmin Code.

141 We were primarily concerned about the adequacy of disclosure of assumptions, compliance with relevant industry codes, and demonstration of a reasonable basis for assumptions and conclusions drawn by specialists.

142 We remind AFS licensees providing independent expert reports that reports prepared by a specialist to accompany an independent expert report are also subject to the requirements of the Corporations Act and the guidance provided in RG 111 and RG 112. In particular, we note it is the responsibility of AFS licensees to:

- (a) ensure staff preparing and supervising the preparation of a report have sufficient skill, knowledge and experience to perform their roles;
- (b) ensure specialists are competent in their field; and
- (c) critically review a specialist report and have reasonable grounds for believing the report is not false or misleading.

143 While we do not expect AFS licensees to be experts in all areas for which a specialist is engaged, we expect licensees to have sufficient familiarity with relevant industry codes to critically assess reports. This includes assessing and evaluating the reasonableness of the assumptions and judgements of a specialist, particularly where there is limited empirical analysis and information to support their conclusions.

144 Where there is a high reliance on particular assumptions or judgements adopted by a specialist or prevailing doubt in the mind of an AFS licensee of

the reasonableness of assumptions following discussion with the specialist, this should be clearly disclosed in the independent expert report.

145 If we are concerned that an AFS licensee is failing to critically review or assess a technical report relied on for an independent expert report, we will consider taking additional review steps—including, but not limited to, a review of the licensee’s work papers and other surveillance.

C Corporate governance

Key points

This section sets out statistics and observations from our work in relation to corporate governance matters, including our observations from the 2017 AGM season, related party notices and climate risk disclosures.

Key observations and statistics

2017 AGM season

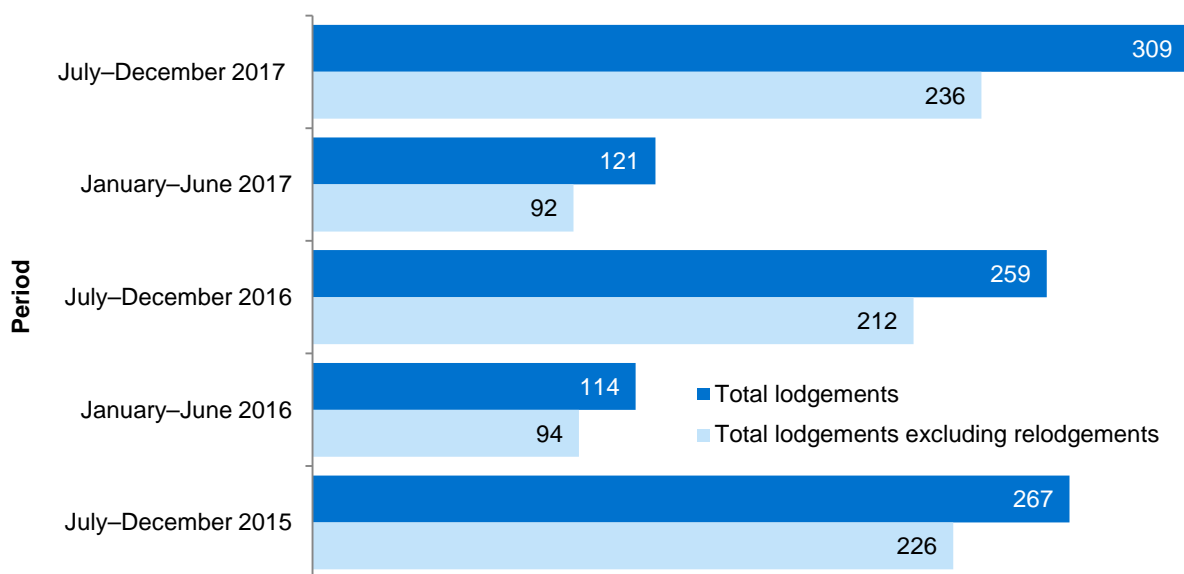
- 146 We actively monitor AGMs held between October and December each year to identify emerging trends and corporate governance issues, as well as observe the extent to which AGMs are used by companies as a forum to meaningfully engage with their members. These observations inform our ongoing regulatory work in corporate governance.
- 147 In January 2018, we released [Report 564](#) *Annual general meeting season 2017* (REP 564). The report provides an overview of the AGM season in 2017 for S&P/ASX 200 listed entities that held their AGMs by 31 December 2017. It contains a number of statistics and sets out key observations and related good governance messages.
- 148 In particular, some of the key observations about the 2017 AGM season include that:
- (a) there was a high level of shareholder engagement, evident from:
 - (i) changes to remuneration structures by companies resulting in fewer second strikes on remuneration reports;
 - (ii) an increase in the number of ‘close calls’ (attracting an ‘against’ vote of over 20%) in terms of strikes on remuneration reports; and
 - (iii) greater director accountability through increased material ‘against’ votes (over 10%) for the election of directors or the withdrawal of nominations by companies;
 - (b) there was continuing media and corporate commentary on the activities of proxy advisers, who continued to actively scrutinise the governance practices of companies and issued a number of ‘against’ recommendations;
 - (c) there was a continuing focus on gender diversity and specific environmental, social and governance issues (such as climate change), with diversity issues resulting in ‘against’ recommendations from proxy

- advisers and environmental, social and governance issues generating shareholder-requisitioned resolutions;
- (d) while some companies adopted strategies to enhance meaningful engagement, widespread structural changes to AGMs (e.g. hybrid AGMs where shareholders are able to attend, vote or ask questions physically or online) were not widely adopted; and
 - (e) of concern, a relatively high number of companies continued to decide resolutions using a show of hands, rather than by conducting a poll.

Related party notices

- 149 In the period, we received 309 related party approval notices under s218.
- 150 Although the number of related party approval notices lodged with ASIC are over double that lodged in the previous period, it is consistent with historical trends. The percentage of abridgement applications associated with these lodgements is also fairly consistent between the same periods.
- 151 We continue to urge companies to seek ASX comments before lodging the meeting materials with ASIC, to reduce the number of documents requiring relodgement with ASIC. Figure 6 sets out the number of related party approval notices we received in the period and previous periods.

Figure 6: Related party approval notices (July 2015 to December 2017)



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

Disclosure of climate risk

- 152 Environmental and other sustainability risks (including climate risk) generally require a proactive approach to strategy and risk management by

all directors. Directors need to understand and continually reassess the emerging risks that may be applicable to their business and ask the relevant questions of management.

153 The Corporations Act requires that a directors' report for a listed entity must contain information that members of the listed entity would reasonably require to make an informed assessment of the operations of the entity reported on, the financial position of the entity reported on, and the business strategies and prospects for future financial years of the entity reported on: see: s299A(1). This is generally referred to as the operating and financial review (OFR).

154 We published guidance in [Regulatory Guide 247](#) *Effective disclosure in an operating and financial review* (RG 247) expressing our view that an OFR should include a discussion of environmental and other sustainability risks where those risks could affect the entity's achievement of its financial performance or outcomes disclosed, taking into account the nature and business of the entity and its business strategy. Directors may also like to consider whether it would be worthwhile to disclose additional information that would be relevant under integrated reporting or sustainability reporting where that information is not already required for the OFR.

155 Risk disclosure also forms a critical component of other forms of regulated documents, a key example being a disclosure document. We consider it prudent and appropriate for persons involved in the preparation of disclosure documents to carefully consider climate risk in the context of the issuer's business model and future strategies and prospects, and make necessary disclosures where required. Further information about our general views on risk disclosure in prospectuses can be found in [RG 228](#).

Other policy initiatives

Treasury consultation on improving corporate insolvency law—Insolvency safe harbour

156 In September 2017, the Australian Government made amendments to the insolvent trading civil penalty provisions in s588G(2) of the Corporations Act, to create a 'safe harbour' for directors.

157 The safe harbour applies where directors start developing one or more courses of action that are reasonably likely to provide a better outcome for the company than liquidation or administration. It protects directors from liability under s588G(2) arising from debts incurred directly or indirectly in connection with any course of action.

- 158 The safe harbour is not available if employee entitlements and taxation payments have not been paid.
- 159 The legislation sets out a non-exhaustive list of steps that a director should take, when determining whether a course of action is reasonably likely to lead to a better outcome, to create a safe harbour. Directors should:
- (a) properly inform themselves about the company's financial position and take steps to ensure that appropriate financial records are maintained;
 - (b) take appropriate steps to prevent misconduct that could adversely affect the company's ability to pay debts;
 - (c) obtain advice from an appropriately qualified person; and
 - (d) develop a plan for restructuring the company to improve its financial position.
- 160 The safe harbour does not affect any obligations of the company to comply with its continuous disclosure obligations, nor does it protect directors from actions brought for breaches of other legal requirements, including directors' duties: see paragraphs 1.15 and 1.34, Explanatory Memorandum to Treasury Laws Amendment (2017 Enterprise Incentives No. 2) Bill 2017.
- 161 We encourage all directors seeking to rely on the safe harbour to carefully consider the circumstances in which the safe harbour is applicable, as well as their obligations under other applicable laws.

D Other corporate finance areas

Key points

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

It also sets out a number of policy and surveillance initiatives in relation to financial reporting that we have undertaken in the period.

Key observations and statistics

Financial reporting relief applications

- 162 During the period, we received 130 applications for financial reporting relief (down from 175 applications in the previous period). These included:
- (a) one application under s111AT;
 - (b) 90 applications under s340;
 - (c) five applications under s601CK; and
 - (d) 34 applications for a no-action letter for financial reporting breaches.
- 163 Of the applications we received under s111AT and 340, 18 applications were from companies with external administrators appointed (consistent with the number in the previous period). We approved 14 of the 18 s340 applications from external administrators, with two pending at the end of the period.
- 164 Of the applications we received for a no-action letter, 15 applications were from companies with external administrators appointed.
- 165 We approved 32 of the 91 applications we received under s111AT and 340.

Share buy-backs

- 166 There was over \$4.2 billion worth of share buy-backs undertaken by 108 companies in the period. This represents an increase in the value of share buy-backs compared to previous periods—\$1.9 billion worth of share buy-backs were undertaken by 79 companies in the previous period and \$3.8 billion worth of share buy-backs were undertaken by 70 companies in July to December 2016.

Note: 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).

ASIC's review and monitoring of other corporate finance areas

Auditor independence

167 During the course of reviewing a recent IPO, we identified that the independent accountant's report included in the IPO was completed by the same firm and partner that completed the entity's financial report audit for the period ended 30 June 2017. We were concerned that it may be potentially misleading to refer to the independent accountant's report as 'independent'.

168 After meeting with ASIC, the audit partner agreed to discuss within the firm whether there should be additional disclosure about:

- (a) the firm undertaking both roles (i.e. auditor and independent accountant report preparer); and
- (b) why they consider there are no independence issues or self-review threats.

169 The matter was raised with the firm's national risk committee, ultimately concluding that the firm had met their technical and ethical obligations. We remain concerned that this view is not best practice and that investors may be misled, due to the report being described as 'independent'. We will continue to very carefully monitor such transactions for this issue.

Findings from 30 June 2017 financial reports

170 During the period we released the results from our review of the 30 June 2017 financial reports of 220 listed and other public interest entities: see [Media Release \(17-437MR\)](#) *Findings from 30 June 2017 financial reports* (15 December 2017).

171 As a result of that review, we made inquiries into 50 entities on 54 matters, seeking explanations of accounting treatments.

172 The largest number of our findings continue to relate to impairment of non-financial assets and inappropriate accounting treatments. Directors and auditors should continue to focus on values of assets and accounting policy choices in preparing their 31 December 2017 financial reports.

173 In December 2017, we announced our focus areas for reviewing 31 December 2017 financial reports: see [Media Release \(17-423MR\)](#) *ASIC calls on preparers to focus on financial report quality and new requirements* (8 December 2017). Companies should aim to give information to users of financial reports that is useful and meaningful, and to address the effect of the new accounting requirements. We have previously highlighted the need to address the new accounting requirements: see paragraphs 26–29, and [Media Release \(16-442MR\)](#) *Companies need to respond to major new accounting standards* (16 December 2016).

ASIC policy initiatives

Cyber resilience of firms in Australia's financial markets

- 174 Over 100 firms, operating across Australia's financial markets, completed a self-assessment report on their cyber resilience. The respondents to the survey included stockbrokers, investment banks, market operators, post-trade infrastructure providers and credit rating agencies, and the results show that there is a growing understanding of cyber risks, but still some progress to be made: see [Report 555](#) *Cyber resilience of firms in Australia's financial markets* (REP 555).
- 175 Cyber resilience is now widely regarded as one of the most significant concerns for the financial markets sector and the economy at large. Given the central role financial markets firms play in our economy, the cyber resilience of our regulated population is a key focus for ASIC.
- 176 While REP 555 shows greater engagement by firms on the issue, there is disparity between firms and insufficient investment in cyber resilience measures.
- 177 We encourage all financial markets firms to consider and discuss the information in REP 555 as they develop or enhance their cyber resilience frameworks.

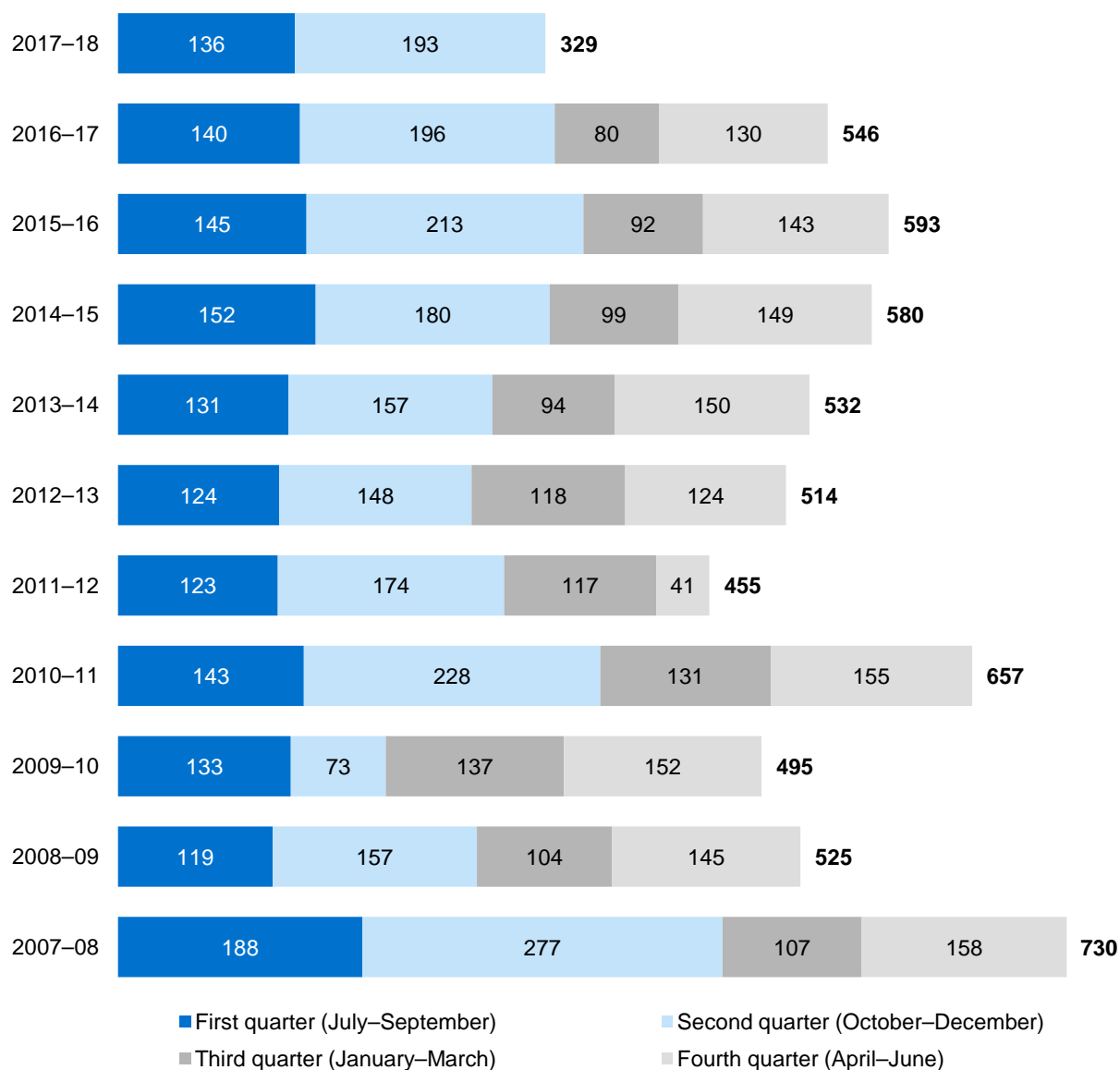
Appendix 1: Additional statistics

Fundraising

Table 1: Top 10 primary fundraising transactions by value (under a prospectus lodged from 1 July to 31 December 2017)

Issuer	Date of lodgement	Security type	Industry	Value
Australia and New Zealand Banking Group Limited	16/08/2017	Hybrid securities	Banks	\$931m
Vgi Partners Global Investments Limited	19/07/2017	Ordinary shares	Diversified financials	\$550m
Suncorp Group Limited	23/10/2017	Hybrid securities	Insurance	\$375m
Bank of Queensland Limited	22/11/2017	Hybrid securities	Banks	\$350m
Bendigo and Adelaide Bank Limited	16/10/2017	Hybrid securities	Banks	\$322m
Netwealth Group Limited	24/10/2017	Ordinary shares	Diversified financials	\$264m
New Energy Solar Limited	02/11/2017	Stapled securities	Utilities	\$202m
Wagners Holding Company Ltd	20/11/2017	Ordinary shares	Materials	\$196.8m
Propel Funeral Partners Ltd	25/10/2017	Ordinary shares	Consumer services	\$131.2m
Johns Lyng Group Limited	02/10/2017	Ordinary shares	Construction and engineering	\$95.8m

Note: Figures reported in this table reflect funds raised as announced to ASX after offers closed. These may not reflect values in the original prospectuses lodged.

Figure 7: Total original fundraising documents lodged with ASIC by quarter (2007–08 to 2017–18)

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

Mergers and acquisitions

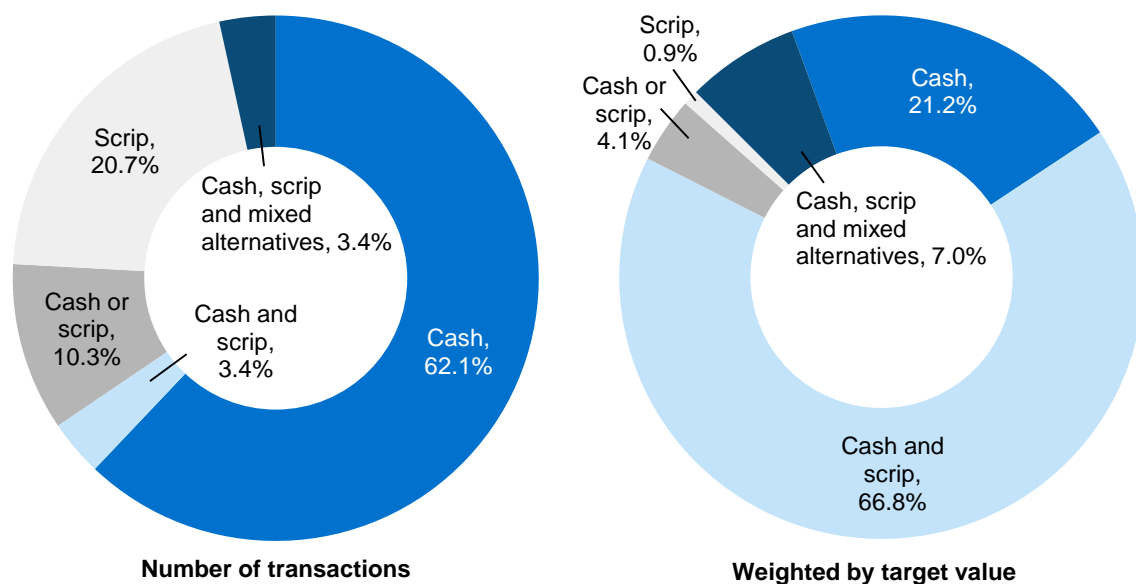
Takeover bids

Table 2: Top 10 takeover bids and schemes of arrangement by target value (disclosure documents lodged or registered from 1 July to 31 December 2017)

Target	Bidder	Type	Industry	Value
Tatts Group Limited [TTS]	Tabcorp Holdings Limited [TAH]	Scheme	Hotels, restaurants and leisure	\$6.4bn
Programmed Maintenance Services Limited [PRG]	PERSOL Holdings Co. Ltd	Scheme	Commercial services and supplies	\$777m
Pepper Group Limited [PEP]	Red Hot Australia Bidco Pty Ltd (owned by funds clients or accounts managed or advised by KKR Credit Advisors (US) LLC or affiliates)	Scheme	Thriffs and mortgage finance	\$663.6m
Integral Diagnostics Limited [IDX]	Capitol Health Limited [CAJ]	Bid	Health care providers and services	\$332.3m
Asia Pacific Data Centre Group [AJD]	360 Capital Group [TGP]	Bid	Equity real estate investment trusts	\$224.3m
Asia Pacific Data Centre Group [AJD]	NEXTDC Limited [NXT]	Bid	Equity real estate investment trusts	\$215m
Royal Wolf Holdings Limited [RWH]	GFN Asia Pacific Holdings Pty Ltd (subsidiary of General Finance Corporation)	Bid	Commercial services and supplies	\$184m
Finders Resources Limited [FND]	Eastern Field Developments Limited (a company jointly owned by Procap Partners Limited, PT Saratoga Investama Sedaya Tbk and PT Merdeka Copper Gold Tbk)	Bid	Metals and mining	\$175.1m
SMS Management & Technology Limited [SMX]	ASG Group Limited (a subsidiary of Nomura Research Institute, Ltd)	Scheme	Metals and mining	\$123.4m
Seymour Whyte Limited [SWL]	VINCI Construction International Network	Scheme	Construction and engineering	\$113m

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).

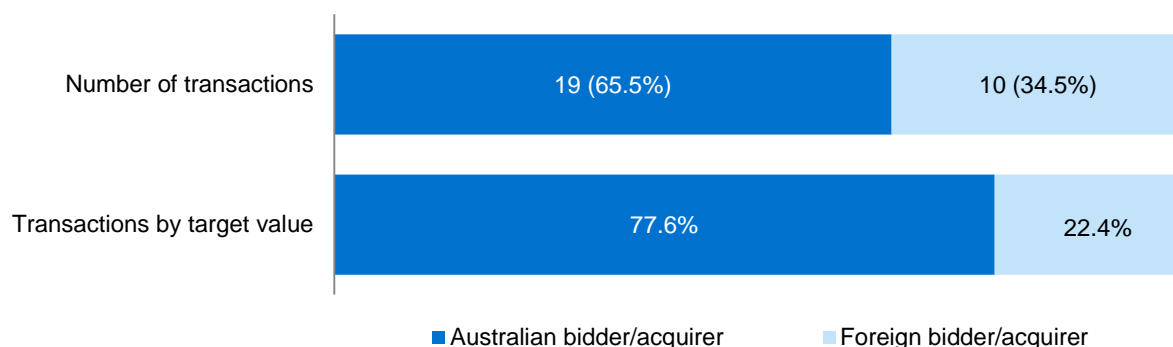
Figure 8: Consideration type (control transactions via bids and schemes lodged or registered from 1 July to 31 December 2017)



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

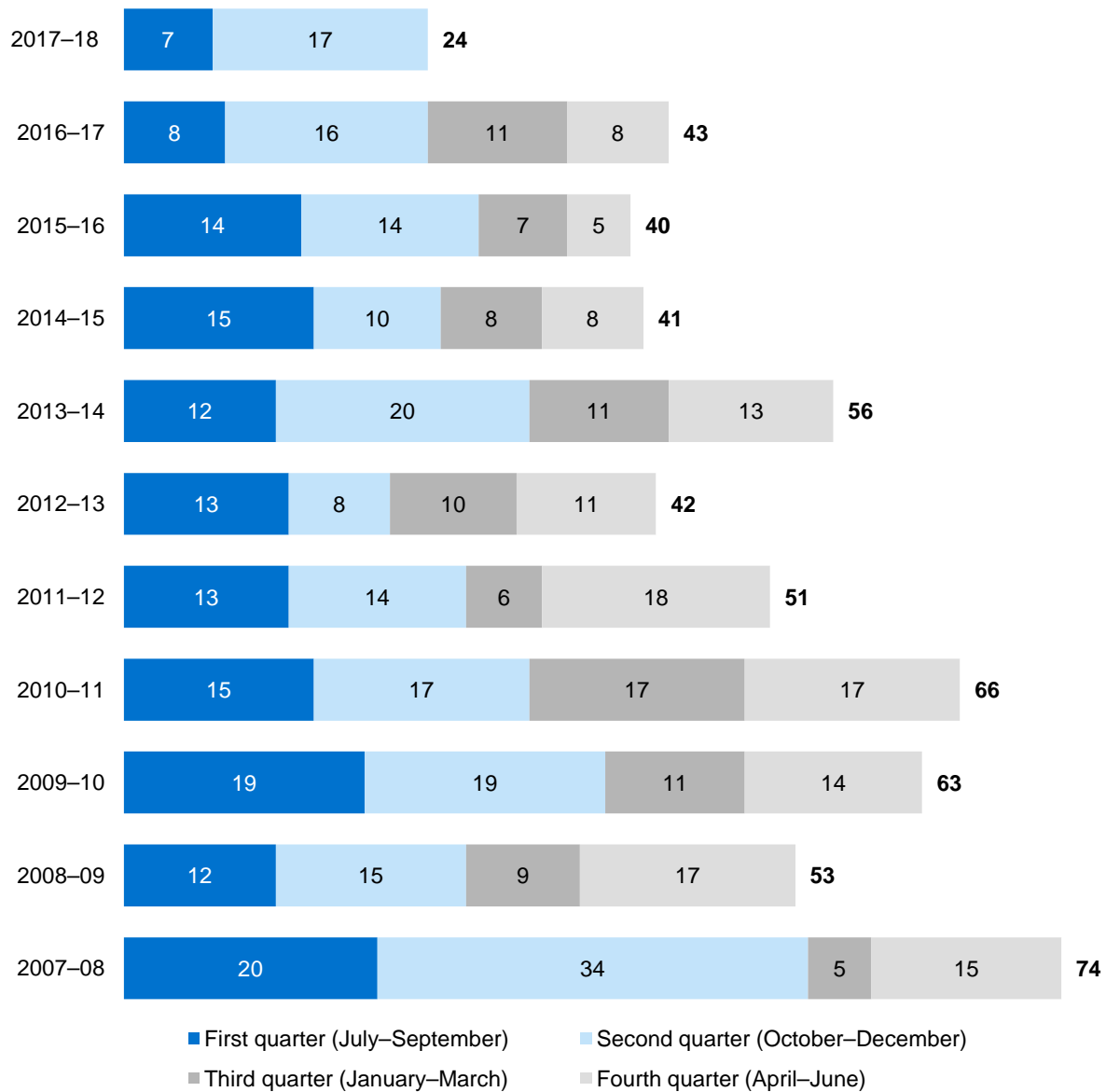
Note 2: See Table 12 in Appendix 2 for the data shown in these doughnut graphs (accessible version).

Figure 9: Foreign and domestic offerors (control transactions via bids and schemes—1 July to 31 December 2017)



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

Figure 10: Takeover bids in respect of which bidder’s statements were lodged with ASIC by quarter (2007–08 to 2017–18)



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 14 in Appendix 2 for the data shown in this bar graph (accessible version).

Table 3: Takeover bids in respect of which bidder’s statements lodged with ASIC (1 July to 31 December 2017)

Target	Bidder	Lodged	Type	Securities	Consideration
Royal Wolf Holdings Limited [RWH]	GFN Asia Pacific Holdings Pty Ltd (subsidiary of General Finance Corporation)	19/07/2017	Off-market	Ordinary shares	Cash

Target	Bidder	Lodged	Type	Securities	Consideration
Asia Pacific Data Centre Holdings Limited (stapled as part of Asia Pacific Data Centre Group) [AJD]	NEXTDC Limited [NXT]	31/07/2017	Off-market	Ordinary shares (stapled)	Cash
Asia Pacific Data Centre Trust (stapled as part of Asia Pacific Data Centre Group) [AJD]	NEXTDC Limited [NXT]	31/07/2017	Off-market	Units (stapled)	Cash
Tian An Australia Limited [TIA]	Tian An China Investments Company Limited	11/08/2017	80% proportional off-market	Ordinary shares	Cash
RNY Property Trust [RNY]	Aurora Property Buy-Write Income Trust [AUP]	28/08/2017	Off-market	Units	Cash
Asia Pacific Data Centre Holdings Limited (stapled as part of Asia Pacific Data Centre Group) [AJD]	360 Capital Group [TGP]	26/09/2017	Off-market	Ordinary shares (stapled)	Cash
Asia Pacific Data Centre Trust (stapled as part of Asia Pacific Data Centre Group) [AJD]	360 Capital Group [TGP]	26/09/2017	Off-market	Units (stapled)	Cash
Goldfields Money Limited [GMY]	Firstmac Limited	16/10/2017	Market	Ordinary shares	Cash
MaxSec Group Limited [MSP]	Future Fibre Technologies [FFT]	18/10/2017	Off-market	Ordinary shares	Scrip
Finders Resources Limited [FND]	Eastern Field Developments Limited (a company jointly owned by Procap Partners Limited, PT Saratoga Investama Sedaya Tbk and PT Merdeka Copper Gold Tbk)	23/10/2017	Off-market	Ordinary shares	Cash
Molopo Energy Limited [MPO]	Aurora Fortitude Absolute Return Fund [ABW]	26/10/2017	Off-market	Ordinary shares	Cash or scrip

Target	Bidder	Lodged	Type	Securities	Consideration
Automotive Solutions Group Limited [4WD]	AMA Group Limited [AMA]	1/11/2017	Off-market	Ordinary shares	Cash
Indo Mines Limited [IDO]	PT Rajawali Corpora	14/11/2017	Off-market	Ordinary shares	Cash
Peanut Company of Australia Limited	Bega Cheese Limited	14/11/2017	Off-market	Ordinary shares	Cash
Bauxite Resources Limited [BAU]	Mercantile Investment Company Limited [MVT]	21/11/2017	50% proportional off-market	Ordinary shares	Cash
Bullet Proof Group Limited [BPF]	Macquarie Telecom Group Limited [MAQ]	23/11/2017	Off-market	Ordinary shares	Cash
Bioglobal Limited	George St Holdings Ltd	28/11/2017	Off-market	Ordinary shares	Scrip
Strategic Minerals Corporation NL [SMC]	QGold Pty Ltd	4/12/2017	Market	Ordinary shares	Cash
Queensland Mining Corporation Limited [QMN]	Moly Mines Limited	15/12/2017	Off-market	Ordinary shares	Cash
Heathcote Ridge Vineyard Limited	National Vineyard Fund of Australia Limited	18/12/2017	Off-market	Ordinary shares	Scrip
Heathcote Ridge Vineyard Limited	National Vineyard Fund of Australia Limited	18/12/2017	Off-market	Class A shares	Scrip
National Vineyard Fund of Australia (No. 4) Limited	National Vineyard Fund of Australia Limited	18/12/2017	Off-market	Ordinary shares	Scrip
Integral Diagnostics Limited [IDX]	Capitol Health Limited [CAJ]	22/12/2017	Off-market	Ordinary shares	Cash or scrip
National Vineyard Fund of Australia (No. 4) Limited	National Vineyard Fund of Australia Limited	18/12/2017	Off-market	Class A shares	Scrip

Notes: This table lists each takeover bid for which an initiating bidder's statement was lodged with ASIC between 1 July and 31 December 2017 (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 [Regulatory Guide 9 Takeover bids](#) (RG 9) at 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.

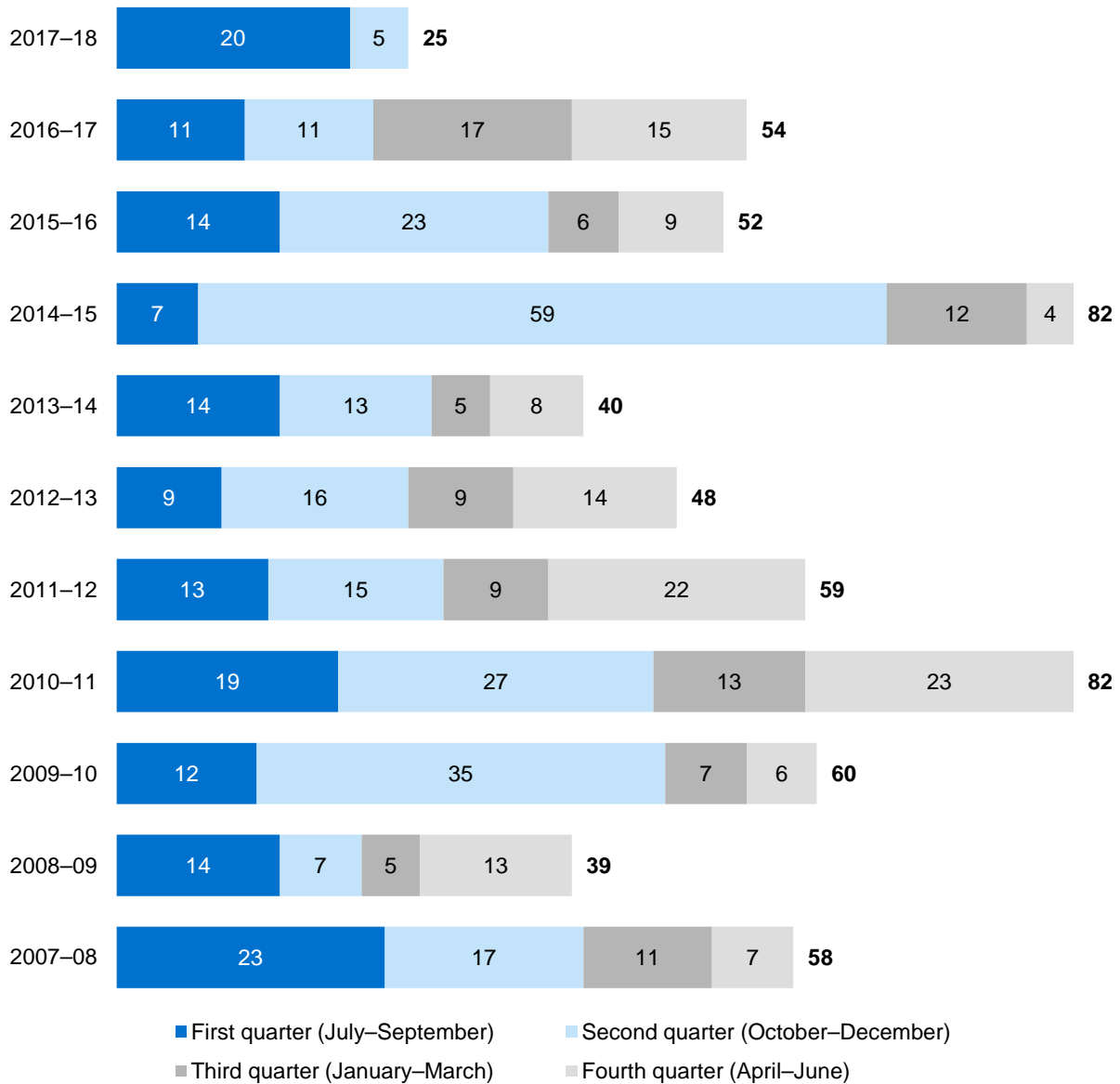
All off-market bids are full bids unless otherwise indicated.

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.

A 'top hatting restructure' involves interposing a holding company above the existing operating company.

Schemes of arrangement

Figure 11: Schemes of arrangement in respect of which draft explanatory statements were received for ASIC review by quarter (2007–08 to 2017–18)



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 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 15 in Appendix 2 for the data shown in this bar graph (accessible version).

Table 4: Schemes of arrangement in respect of which explanatory statements registered or otherwise publicly released (1 July to 31 December 2017)

Scheme company	Acquirer	Registered	Type	Securities	Received
SMS Management & Technology Limited [SMX]	ASG Group Limited (a subsidiary of Nomura Research Institute Ltd)	27/07/2017	Members	Ordinary shares	Cash
Exterra Resources Limited [EXC]	Anova Metals Ltd [AWV]	11/08/2017	Members	Ordinary shares	Scrip
AurionGold Pty Ltd	Barrick (PD) Australia Limited Restructure	16/08/2017	Members	Ordinary shares	N/A—restructure
Barrick (Australia Pacific Exploration) Pty Limited	Delta Gold	16/08/2017	Members	Ordinary shares	N/A—restructure
Barrick (Granny Smith) Pty Limited	Barrick (PD) Australia Limited	16/08/2017	Members	Ordinary shares	N/A—restructure
Barrick (GSM) Pty Limited	Delta Gold	16/08/2017	Members	Ordinary shares	N/A—restructure
Barrick (Kalgoorlie) Pty Limited	AurionGold Pty Ltd	16/08/2017	Members	Ordinary shares	N/A—restructure
Delta Gold Pty Limited	AurionGold Pty Ltd	16/08/2017	Members	Ordinary shares	N/A—restructure
Seymour Whyte Limited [SWL]	VINCI Construction International Network	22/08/2017	Members	Ordinary shares	Cash
Programmed Maintenance Services Limited [PRG]	PERSOL Holdings Co. Ltd	31/08/2017	Members	Ordinary shares	Cash
Tatts Group Limited [TTS]	Tabcorp Holdings Limited [TAH]	08/09/2017	Members	Ordinary shares	Cash and scrip
Pan Pacific Petroleum NL [PPP]	Zeta Resources Limited [ZER]	13/09/2017	Members	Ordinary shares	Cash or scrip
Kore Potash Limited [K2P]	N/A—redomiciliation	21/09/2017	Members	Ordinary shares	Scrip (redomiciliation)
Fairfax Media Limited [FXJ]	N/A—demerger	22/09/2017	Members	Ordinary shares	N/A—demerger
Medical Australia Limited [MLA]	ICU Medical Inc	05/10/2017	Members	Ordinary shares	Cash

Scheme company	Acquirer	Registered	Type	Securities	Received
Viscopy Limited	Copyright Agency Limited	06/10/2017	Members	N/A—limited by guarantee	Membership rights
Cobalt One Limited [CO1]	First Colbalt Corp	13/10/2017	Members	Ordinary shares	Scrip
Pepper Group Limited [PEP]	Red Hot Australia Bidco Pty Ltd (owned by funds clients or accounts managed or advised by KKR Credit Advisors (US) LLC or affiliates)	13/10/2017	Members	Ordinary shares	Cash or scrip alternatives
Signature Gold Limited	StratMin Global Resources PLC	02/11/2017	Members	Ordinary shares	Scrip
Aphrodite Gold Limited [AQQ]	Spitfire Materials Ltd [SPI]	13/11/2017	Members	Ordinary shares	Scrip
Slater & Gordon Limited	N/A—Claimant compromise	N/A	Creditors	N/A	Cash
Slater & Gordon Limited	N/A—Debt for equity	N/A	Creditors	N/A	Scrip

Notes: This table lists:

- each proposed compromise or arrangement for which an explanatory statement was registered by ASIC under s412(6) between 1 July and 31 December 2017 (inclusive) (members' scheme) as reflected in ASIC's register at the date of this publication;
- 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
- 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 and 30 June 2017 (inclusive).

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 the 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 this table may not correspond with the total number of explanatory statements recorded in Figure 11, 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:

- some explanatory statements provided for review during the period were subsequently withdrawn before registration or public release; or
- 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 July to 31 December 2017)

Disclosure document type	Number lodged	Percentage
Prospectus for equities quoted	147	29.5%
Prospectus for equities unquoted	121	24.2%
Offer information statement	22	4.4%
Short form quoted	22	4.4%
Short form unquoted	17	3.4%
<i>Total original lodgements</i>	<i>329</i>	<i>65.9%</i>
Replacement prospectus	64	12.8%
Supplementary prospectus	106	21.2%
<i>Total supplementary lodgements</i>	<i>170</i>	<i>34.1%</i>

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 shown in Figure 1.

Table 6: Form of ASIC intervention in prospectus disclosure (lodged 1 July to 31 December 2017)

Form of ASIC intervention	Number	Percentage
Original fundraising offers	329	100.0%
ASIC raised disclosure concerns	80	24.3%
Extension of exposure period	39	11.9%
Interim order made in respect of an offer	6	1.8%
Revocation of interim order	3	0.9%
Final stop order made	2	0.6%

Note: This is the data shown in Figure 2.

Table 7: Top five most frequent disclosure concerns raised by ASIC with prospectuses (lodged 1 July to 31 December 2017)

Type of concern	Number of times raised
Risk disclosure inadequate, insufficiently prominent and/or not tailored	14
Business model not fully and/or adequately disclosed	14
Unclear or insufficient detail on use of funds	10
Summary, investment overview and/or key information insufficient or not clear concise and effective	8
Insufficient disclosure of directors' history	6
Disclosure not balanced	6

Note: This is the data shown in Figure 3.

Table 8: Control transactions by target size (1 July to 31 December 2017 and previous period comparison)

Target size	July to December 2017	January to June 2017
Under \$50 million	58.6%	41.4%
\$50 million to \$200 million	20.7%	37.9%
\$200 million to \$1 billion	17.2%	13.8%
Over \$1 billion	3.4%	6.9%

Note: This is the data shown in Figure 4.

Table 9: Item 7 transactions in respect of which documents were received for review by ASIC (1 July to 31 December 2017)

Type of document	January to June 2017	July to December 2017
Lodged	29	48

Note 2: This is the data shown in Figure 5.

Table 10: Related party approval notices (July 2015 to December 2017)

Period	Total lodgements	Total excluding re-lodgements
July–December 2017	309	236
January–June 2017	121	92
July–December 2016	259	212
January–June 2016	114	94

Period	Total lodgements	Total excluding re-lodgements
July–December 2015	267	226

Note: This is the data shown in Figure 6.

Table 11: Total original fundraising documents lodged with ASIC by quarter (2007–08 to 2017–18)

Financial year	First quarter (July–September)	Second quarter (October–December)	Third quarter (January–March)	Fourth quarter (April–June)	Total
2017–18	136	193	N/A	N/A	329
2016–17	140	196	80	130	546
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

Note: This is the data shown in Figure 7.

Table 12: Consideration type (control transactions via bids and schemes lodged or registered from 1 July to 31 December 2017)

Number of transactions

Consideration type	Percentage
Cash	62.1%
Cash and scrip	3.4%
Cash or scrip	10.3%
Scrip	20.7%
Cash, scrip and mixed alternatives	3.4%

Weighted by target value

Consideration type	Percentage
Cash	21.2%
Cash and scrip	66.8%
Cash or scrip	4.1%
Scrip	0.9%
Cash, scrip and mixed alternatives	7.0%

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

Note 2: This is the data shown in Figure 8.

Table 13: Foreign and domestic offerors (control transactions via bids and schemes—1 July to 31 December 2017)

Number of transactions

Type of bidder/acquirer	Number	Percentage
Australian	19	65.5%
Foreign	10	34.5%

Transactions by target value

Type of bidder/acquirer	Percentage
Australian	77.6%
Foreign	22.4%

Note: This is the data shown in Figure 9.

Table 14: Takeover bids in respect of which bidder's statements were lodged with ASIC by quarter (2007–08 to 2017–18)

Financial year	First quarter (July–September)	Second quarter (October–December)	Third quarter (January–March)	Fourth quarter (April–June)	Total
2017–18	6	14	N/A	N/A	20
2016–17	8	16	11	8	43
2015–16	14	14	7	5	40
2014–15	15	10	8	8	41
2013–14	12	20	11	13	56
2012–13	13	8	10	11	42

Financial year	First quarter (July–September)	Second quarter (October–December)	Third quarter (January–March)	Fourth quarter (April–June)	Total
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

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

Note 2: This is the data shown in Figure 10.

Table 15: Schemes of arrangement in respect of which explanatory statements were received for ASIC review by quarter (2007–08 to 2017–18)

Financial year	First quarter (July–September)	Second quarter (October–December)	Third quarter (January–March)	Fourth quarter (April–June)	Total
2017–18	14	6	N/A	N/A	20
2016–17	11	11	11	9	42
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

Note 1: This data shows the total number of schemes for which draft scheme booklets were provided to ASIC for review during each period. The 2014–15 figures are distorted by four restructure schemes in the second quarter, which involved multiple entities in the one consolidation.

Note 2: This is the data shown in Figure 11.

Key terms

Term	Meaning in this document
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act Note: This is a definition contained in s761A.
AGM	An annual general meeting of a company that s250N of the Corporations Act requires to be held Note: This is a definition contained in s9.
ASIC	Australian Securities and Investments Commission
ASX	ASX Limited or the exchange market operated by ASX Limited
Australian Competition Tribunal	A tribunal that reviews determinations by the Australian Competition and Consumer Commission. The tribunal was established under the <i>Trade Practices Act 1965</i> and continues under the <i>Competition and Consumer Act 2010</i>
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
CCIV	A corporate collective investment vehicle—a company that is registered as a corporate collective investment vehicle under the Corporations Act Note: This is a definition contained in s9 of the Corporations Act.
Ch 6D (for example)	A chapter of the Corporations Act (in this example numbered 6D), unless otherwise specified
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
CP 290 (for example)	An ASIC consultation paper (in this example numbered 290)
CRIS	Cost Recovery Implementation Statement
CSF	Crowd-sourced funding
CSF regime	The statutory regime for crowd-sourced funding in Pt 6D.3A of the Corporations Act regulating CSF offers

Term	Meaning in this document
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
GN 1 (for example)	An ASX guidance note (in this example numbered 1)
ICO	Initial coin offering
INFO 225 (for example)	An ASIC information sheet (in this example numbered 225)
IPO	Initial public offering
item 7 (for example)	An item of s611 of the Corporations Act (in this example numbered 7), unless otherwise specified
item 7 transactions	Control transactions approved by members under the exception in item 7 of s611 of the Corporations Act
JORC Code 2012 (for example)	Australasian Code for Reporting of Exploration Results, Minerals Resources and Ore Reserves (in this example, the 2012 edition)
NSX	National Stock Exchange of Australia Limited or the exchange market operated by NSX Note: NSX was formerly known as Stock Exchange of Newcastle Limited.
OFR	An operating and financial review—the part of the directors' report that must contain the information required under s299A of the Corporations Act
Panel	Takeovers Panel
period	1 July to 31 December 2017
previous period	1 January to 30 June 2017
REP 555 (for example)	An ASIC report (in this example numbered 555)
RG 9 (for example)	An ASIC regulatory guide (in this example numbered 9)

Term	Meaning in this document
s611	A section of the Corporations Act (in this example numbered 611), unless otherwise specified
scheme of arrangement	A compromise or arrangement under s411(1) of the Corporations Act
Takeovers Panel	The panel established under s171 of the ASIC Act and given various powers under Pt 6.10 of the Corporations Act
Valmin Code	Code for the Technical Assessment and Valuation of Mineral and Petroleum Assets and Securities for Independent Expert Reports

Related information

Headnotes

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

Regulatory guides

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

[RG 9](#) *Takeover bids*

[RG 74](#) *Acquisitions approved by members*

[RG 76](#) *Related party transactions*

[RG 108](#) *No-action letters*

[RG 111](#) *Content of expert reports*

[RG 112](#) *Independence of experts*

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

[RG 234](#) *Advertising financial products and services (including credit): Good practice guidance*

[RG 247](#) *Effective disclosure in an operating and financial review*

[RG 261](#) *Crowd-sourced funding: Guide for public companies*

[RG 262](#) *Crowd-sourced funding: Guide for intermediaries*

[RG 264](#) *Sell-side research*

Information sheets

[INFO 225](#) *Initial coin offerings*

Legislation and explanatory memoranda

Corporations Act, Chs 2D, 2E, 2M, 5C, 6, 6D, Pt 5.1, s111AT, 218, 294, 299A(1), 340, 411(2), 412(6), 588G(2), 601CK, 611, 615(a), 619, 655A, 669, 674, 715A, 718, 734, 739(1)(c), 741, 1020B

Corporations Amendment (Crowd-sourced Funding) Act 2017

Corporations Amendment (Crowd-sourced Funding for Proprietary Companies) Bill 2017

Draft Treasury Laws Amendment (Corporate Collective Investment Vehicle) Bill 2017

Explanatory Memorandum to Treasury Laws Amendment (2017 Enterprise Incentives No. 2) Bill 2017

Explanatory Memorandum to the Corporations Amendment (Crowd-sourced Funding) Bill 2016

Cases

MMA Offshore Limited [2017] ATP 21

Molopo Energy Limited 01 & 02 [2017] ATP 10

Molopo Energy Limited 03R, 04R & 05R [2017] ATP 12

Molopo Energy Limited 06 [2017] ATP 14

Molopo Energy Limited 07 [2017] ATP 17

Molopo Energy Limited 08 [2017] ATP 20

Molopo Energy Limited 09 [2017] ATP 22

Re Boart Longyear Limited (No 2) [2017] NSWSC 1105

Tap Oil Limited [2017] ATP 23

Consultation papers and reports

[CP 290](#) *Sell-side research*

[CP 296](#) *Funds management*

[REP 368](#) *Emerging market issuers*

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

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

[REP 521](#) *Further review of emerging market issuers*

[REP 538](#) *Assessment of National Stock Exchange of Australia Limited's listing standards*

[REP 539](#) *ASIC regulation of corporate finance: January to June 2017*

[REP 555](#) *Cyber resilience of firms in Australia's financial markets*

[REP 556](#) *Overview of decisions on relief applications (April to September 2017)*

[REP 564](#) *Annual general meeting season 2017*

Media releases

[16-442MR](#) *Companies need to respond to major new accounting standards*

[17-334MR](#) *Industry funding: ASIC publishes estimated regulation costs for 2017–18*

[17-404MR](#) *ASIC accepts enforceable undertaking from Foster Stockbroking following ASIC investigation into conflicts of interests*

[17-423MR](#) *ASIC calls on preparers to focus on financial report quality and new requirements*

[17-437MR](#) *Findings from 30 June 2017 financial reports*

[18-010MR](#) *ASIC accepts voluntary licence variation from HLB Mann Judd Corporate Finance Pty Ltd to cease providing ‘independent expert’ advice*

Other ASIC publications

[Corporations 2017–18 summary business plan](#) (PDF 363 KB)

[Cost Recovery Implementation Statement: Levies for ASIC industry funding \(2017–18\)](#)

Non-ASIC publications

ASX, [ASX Listing Rules](#)

ASX, [GN 1](#) *Applying for admission—ASX listings* (PDF 527 KB)

ASX, [Reverse takeovers: Final listing rule amendments](#) (PDF 511 KB)

JORC, [JORC Code 2012](#) (PDF 1.5 MB)

Asia-Pacific Economic Cooperation, Memorandum of Cooperation on the Establishment and Implementation of the Asia Region Fund Passport

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Treasury, [*Australian Government response to the Senate Economics References Committee report: Cooperative, mutual and member-owned firms*](#)

Treasury, [*Introduction of Australian Securities and Investments Commission's fees-for-service under the industry funding model*](#)

Valmin, [*Valmin Code*](#)

Standards

[*AASB 9 Financial instruments*](#) (PDF 1.3 MB)

[*AASB 15 Revenue from contracts with customers*](#) (PDF 732 KB)

[*AASB 16 Leases*](#) (PDF 1.5 MB).