



Corporate Finance Liaison

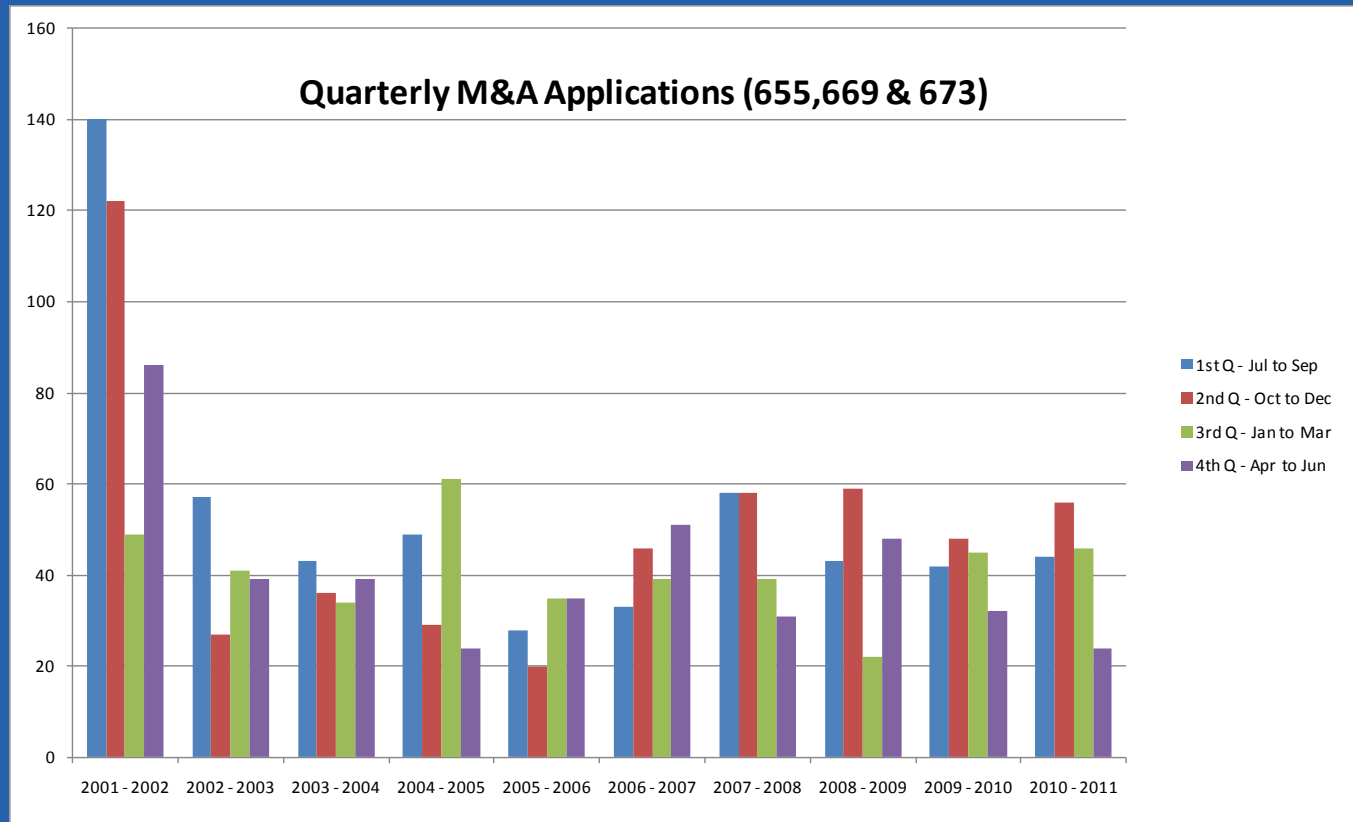


ASIC

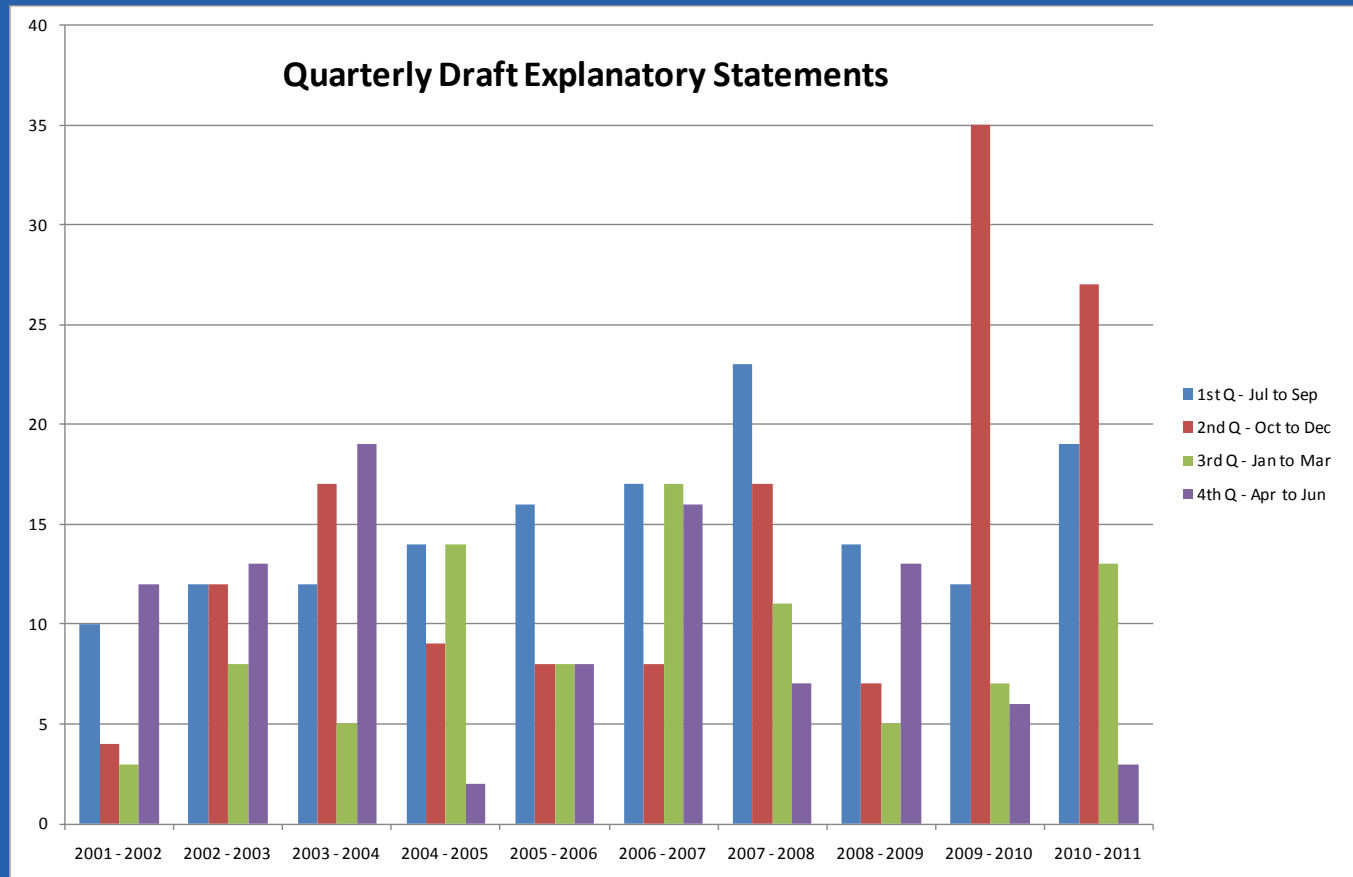
Australian Securities &
Investments Commission

May / June 2011

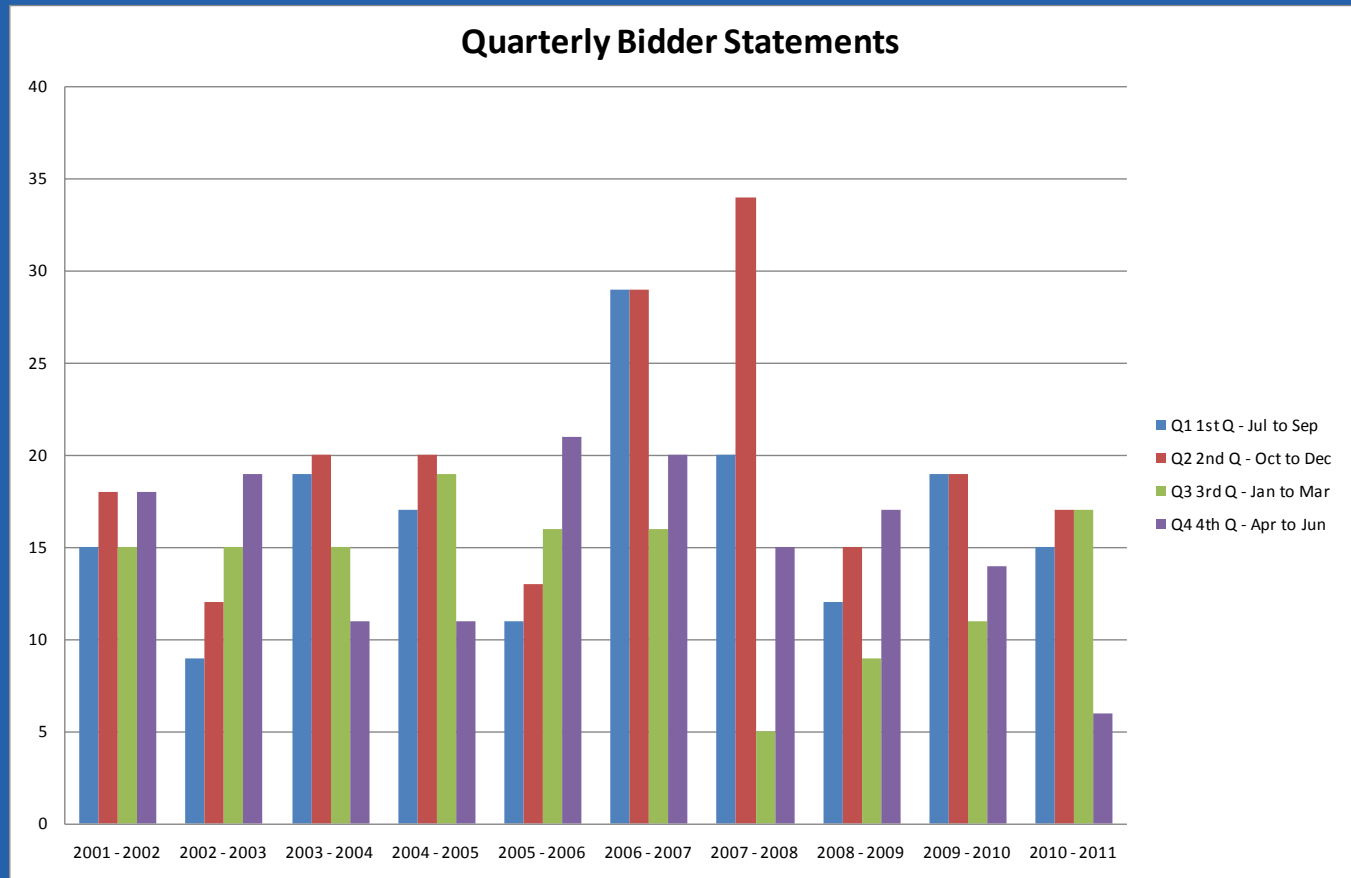
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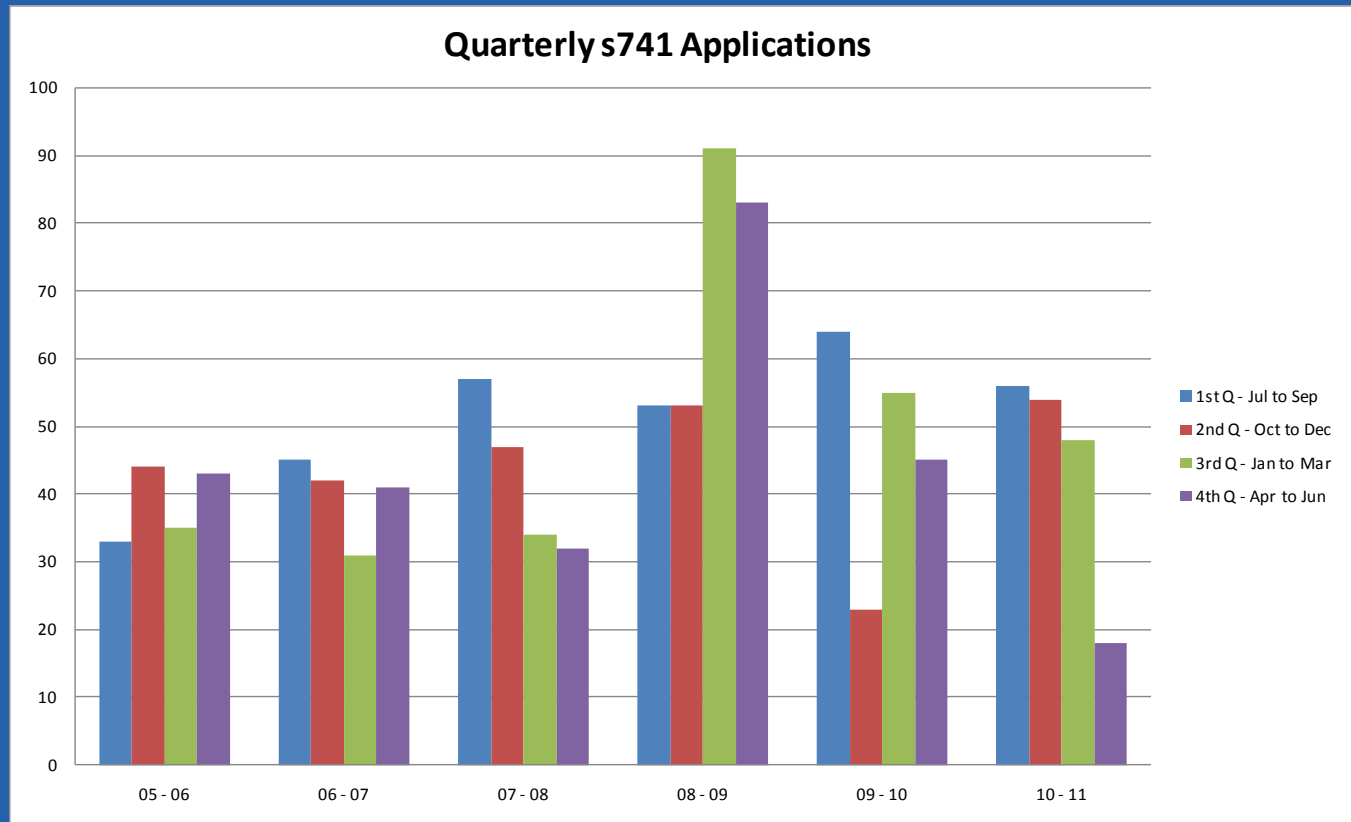
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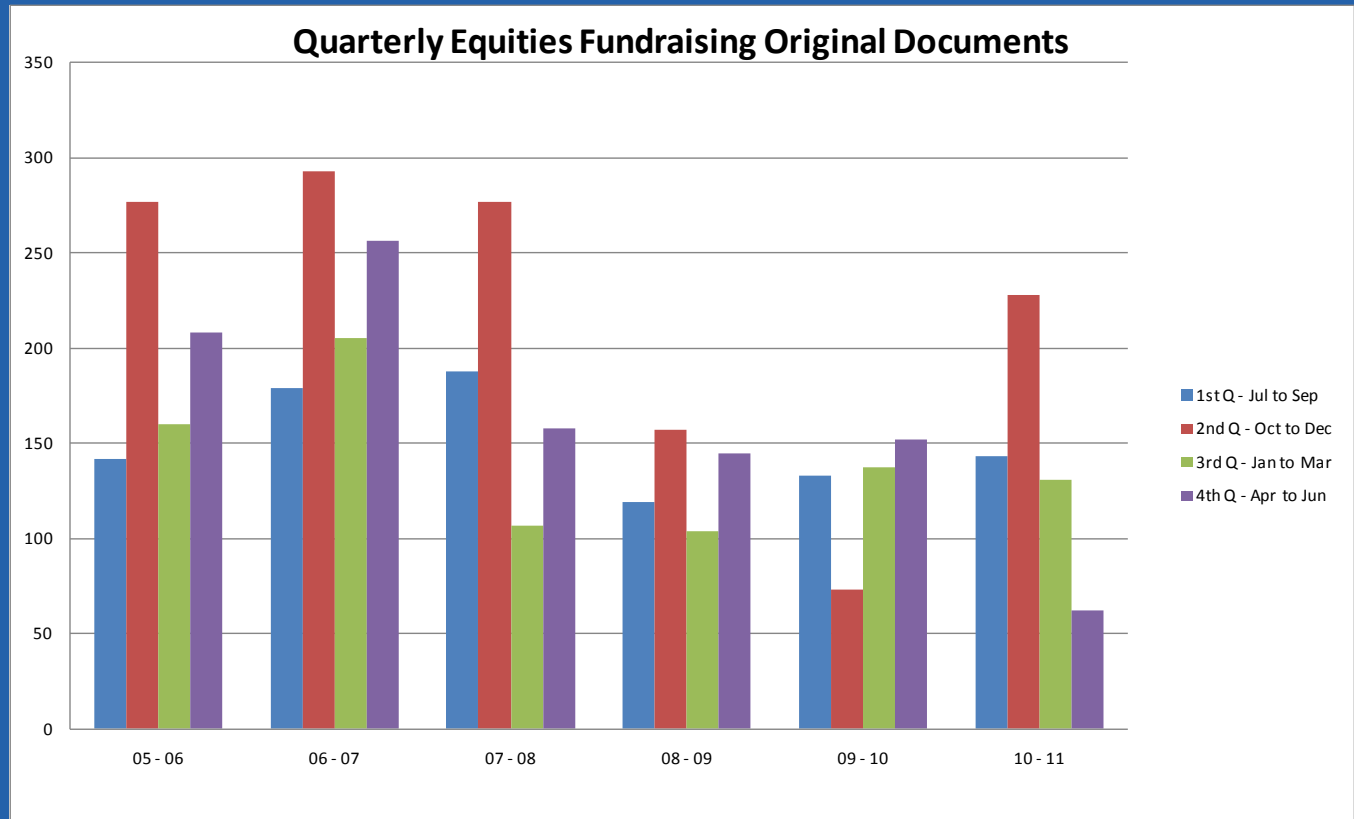
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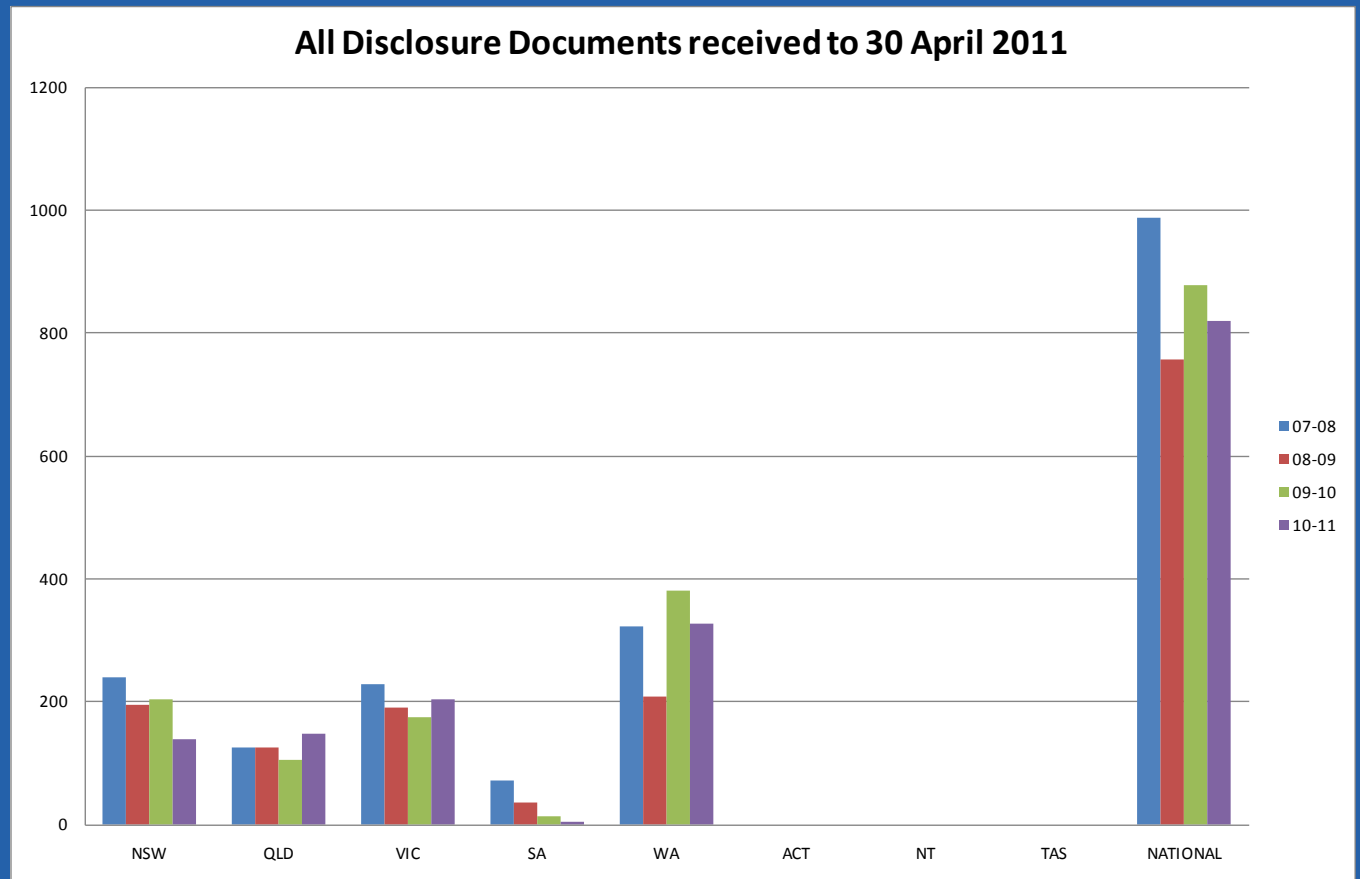
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Statistics



Statistics



Improving fundraising disclosure for retail investors

Fundraising with Prospectuses

	2010 financial year	2009 financial year
Number of new listings	93	45
Initial capital raised	\$11.5 billion	\$1.9 billion
Number of prospectuses lodged	879	776



CP 155: Aim

Helping retail investors make informed investment decisions

Prospectuses should be 'clear, concise and effective' and easy to use

Prospectuses should include information that is relevant to the investment decision – key information should be highlighted



CP 155: Key Elements

1. Single upfront investment overview

- Section should be the first substantive part of the document
- It should highlight information that is key to the investment decision, including a snapshot of:
 - the issuer's business model;
 - financial information; and
 - the significant risks.
- The investment overview is to be balanced with equal prominence given to benefits and risks



CP 155: Key Elements

2. Striking the right balance between disclosure and marketing
 - Only photos relevant to the business of the offeror should be incorporated in the fundraising document
 - These photos should only appear after the investment overview
 - To use photos otherwise may lead ASIC to form the view the document is likely to mislead or deceive



CP 155: Key Elements

3. Explaining the company's business model –

- How will the company make money (products, fees etc)?
- Involves explaining any key dependencies, what the company does, its strategy and how it is financed
- What are the key risks to making money?
- Remember:
 - Most prospectuses already include 'business model' type information
 - There is NO "confidential information carve-out" from the prospectus disclosure requirements



CP 155: Key Elements

4. Explaining and highlighting key risks

- What are the risks to the offer and the company making money?
- Give prominence to the key risks, those which will have a significant financial impact should they occur
- Don't just list risks but disclose the consequences should the risk occur



CP 155: Key Elements

5. Including information about directors' background and history

- Disclosure about directors should be balanced
- Important points to note
 - ASIC only expects disclosure of information relevant to the investment decision, and
 - Any matters which provide context to directorships of insolvent companies, could and probably should be disclosed.



CP 155: Key Elements

6. Making prospectuses shorter and clear, concise and effective.
 - Utilise the incorporation by reference provisions
 - Use direct, plain language
 - Avoid jargon
 - Will a chart, graph or diagram paint a clearer picture?



ASIC's Fundraising Disclosure Guidance

Prospectus disclosure

General –

Draft RG Prospectus disclosure:
Improving disclosure for retail investors

Specific –

RG 69 Debentures: Improving
disclosure for retail investors

RG 213 Facilitating debt raising

Fundraising without a full disclosure document

RG 66 Transaction-specific disclosure

RG 189 Disclosure relief for rights issues

PDS disclosure

General –

RG 168 Disclosure: Product Disclosure
Statements

Specific -

RG 45 Mortgage schemes

CP 133 Agribusiness MISs

CP 154 Infrastructure entities

Specific aspects of fundraising

RG 23 Updating and correcting prospectuses
and application forms

RG 99 Quotation of securities

RG 55 Consent to quote

RG 107 Electronic prospectuses

RG 158 Advertising and publicity for offers

RG 170 Prospective financial information

Related party transactions: Approvals and disclosure

RG 76: Aim of Guidance

- Improving quality of disclosure to members and investors
- Improving corporate governance processes for boards
- Ensuring the arm's length exemption is used more consistently
- Encouraging companies to obtain IERs for significant transactions



RG 76: Arm's Length Terms

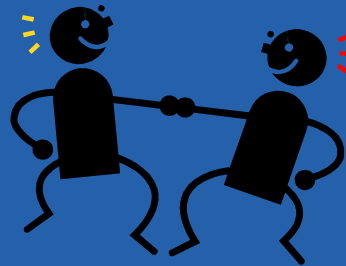
- 5 items to consider if member approval required under section 210

Comparison with other transactions

Impact on entity

Other options available

Nature of bargaining process



Was expert advice sought and received



RG 76: Arm's Length Terms

continued

- RG 76 is not exhaustive
- Relevance and weight of factors will vary
- Prudent directors should only rely on the exemption where they are convinced it applies



RG 76: What to include in Notices of Meeting

- Information that will assist members to assess the transaction and decide how to vote
- Includes:
 - Value (in \$) and nature of financial benefit
 - Identity of party and nature of relationship
 - Context in which benefit given
 - Impact of transaction on entity
 - Directors' interests in outcome
 - Directors' recommendations (including alternatives)
 - Interests of related party in the entity
 - Dilution effect of proposed transaction



RG 76: When is an Independent Experts Report required?

- May be necessary if:
 - the financial benefit is difficult to value;
 - the transaction is significant to the entity; or
 - non-interested directors do not have relevant expertise/resources



Policy Update – Items for Brief Mention

Policy Update

Topic	Issue	Release
Financial Reporting	RG 43: Financial reports and audit relief & RG 58: Reporting requirements - registered foreign companies and Australian companies with foreign company shareholders – published revised guides	27 May 2011
	CP 150: Disclosing financial information other than in accordance with accounting standard – ASIC considering submissions received	28 March 2011
Self Acquisition	CP 137: Indirect self-acquisition by investment funds - further consultation	June / July 2011
Takeovers	CP 159: Acquisitions approved by members: update to RG 74 – consultation paper released	26 May 2011
	RG 71: Downstream acquisitions – consultation paper to be released	2 nd half 2011
	Consolidation of existing takeover policy RGs	2011/ 2012



Takeovers policy review

Proposed Regulatory Guides	Relevant Interests	Exceptions to s606 prohibition	Compulsory Acquisitions	Takeovers
Incorporates policy from these existing Regulatory Guides	<p>RG 5: Relevant interests in unissued share capital</p> <p>RG 9: Relevant interests in shares</p> <p>RG 48: Takeovers aspects of options over shares</p> <p>RG 143: Takeovers provisions: Warrants</p> <p>RG 171: Anomalies and issues in the takeover provisions</p>	<p>RG 31: Acquisitions and disposals by a broker acting as principal</p> <p>RG 61: Underwriting – application</p> <p>RG 88: Trustee and nominee companies of exemptions</p> <p>RG 159: Takeovers, compulsory acquisitions and substantial holdings</p> <p>RG 171: Anomalies and issues in the takeover provisions</p> <p>RG 199: Broadening the rights issue and dividend reinvestment plan exceptions for takeovers</p>	<p>RG 159: Takeovers, compulsory acquisitions and substantial holdings</p> <p>RG 171: Anomalies and issues in the takeover provisions</p>	<p>RG 6: Variation of takeover offers</p> <p>RG 10: Classes of shares</p> <p>RG 11: Disclosure of offerors' intentions in takeover documents</p> <p>RG 27: Takeovers: minimum acceptance conditions</p> <p>RG 35: Collateral benefits in takeovers</p> <p>RG 37: Takeovers – financing arrangements</p> <p>RG 145: Collateral benefits – takeovers funding and pre-bid purchases</p> <p>RG 159: Takeovers, compulsory acquisitions and substantial holdings</p> <p>RG 171: Anomalies and issues in the takeover provisions</p>



Policy Update

Topic	Issue	Release
Experts Reports	RG 111: Content of expert reports & RG 112: Independence of experts - published revised guides following consultation	30 March 2011
Naming of Debentures	CP 151: Debt securities: Modifying the naming provisions and advertising requirements – ASIC considering submissions received	25 March 2011
Market Competition	Government Approves New Financial Markets Competitor – announcement by Treasury that the Government had granted a licence to Chi-X Australia Pty Ltd (Chi-X)	4 May 2011
	ASIC Market Integrity Rules (Chi-X Australia Market) 2011 – rules published	29 April 2011
PDS Disclosure	CP 154: Infrastructure entities: improving disclosure to retail investors - further consultation – ASIC considering submissions received	8 April 2011
Directors Remuneration	Corporations Amendment (Improving Accountability on Director and Executive Remuneration) 2011 – passed by the House of Representatives with amendments on 12 May 2011	23 Feb 2011



Next Meeting:

Sydney	Tuesday, 15 November 2011
Melbourne	Thursday, 17 November 2011
Perth	Thursday, 17 November 2011
Brisbane	Tuesday, 22 November 2011
Adelaide	Thursday, 24 November 2011

