Statistics

Quarterly M&A Applications (655,669 & 673)
Statistics

Quarterly s741 Applications

- 1st Q - Jul to Sep
- 2nd Q - Oct to Dec
- 3rd Q - Jan to Mar
- 4th Q - Apr to Jun

Yearly applications from 2005 to 2011.
Statistics

Quarterly Equities Fundraising Original Documents

- 1st Q - Jul to Sep
- 2nd Q - Oct to Dec
- 3rd Q - Jan to Mar
- 4th Q - Apr to Jun

Year:
- 2005 - 2006
- 2006 - 2007
- 2007 - 2008
- 2008 - 2009
- 2009 - 2010
- 2010 - 2011

Y-axis:
- 0 to 350

X-axis:
- Years: 2005 - 2011
Statistics

All Disclosure Documents received to 30 April 2011

- NSW
- QLD
- VIC
- SA
- WA
- ACT
- NT
- TAS
- NATIONAL

Data for the years 2007-08, 2008-09, 2009-10, and 2010-11.
Improving fundraising disclosure for retail investors
## Fundraising with Prospectuses

<table>
<thead>
<tr>
<th></th>
<th>2010 financial year</th>
<th>2009 financial year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of new listings</td>
<td>93</td>
<td>45</td>
</tr>
<tr>
<td>Initial capital raised</td>
<td>$11.5 billion</td>
<td>$1.9 billion</td>
</tr>
<tr>
<td>Number of prospectuses lodged</td>
<td>879</td>
<td>776</td>
</tr>
</tbody>
</table>
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
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
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
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
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
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.
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
- Nature of bargaining process
- Impact on entity
- Other options available
- 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

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

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

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