



Corporate Finance Liaison



ASIC

Australian Securities &
Investments Commission

November 2012

Commission

Commissioner John Price

Corporations

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Our Work

- Grant relief, review documents, provide guidance and undertake surveillance in relation to:
 - control transactions;
 - fundraising;
 - related party transactions; and
 - corporate governance

November 2012

Fundraising – Policy and project update

November 2012

Fundraising: Debentures

- ASIC regulation of unlisted debenture issuers
- Recent collapse of Banksia Securities has led to the creation of an internal taskforce to:
 - Consider whether disclosure regime at its limits for debentures, and to consider law reform proposals to put to Treasury for this sector
 - Monitor progress of Banksia receivership
 - Further impress on gatekeepers their obligations



Fundraising: General observations

- Complex products:
 - Continued focus on disclosure of features and risks
 - Issued a public alert: 12-207MR: ASIC's hybrids warning: don't be dazzled, be wary of the risks
 - Analysis of sales processes
- Vanilla bonds:
 - Treasury work on vanilla bonds
 - Commonwealth Government Securities Legislation (Retail Trading) Act 2012 has been enacted to facilitate retail trading of Commonwealth Government securities



Fundraising: General observations

- Underwriting:
 - Is the assumption of risk by the underwriter for the unsubscribed shares of an offer
 - Where an offer includes a termination clause which removes or significantly removes this risk ASIC may find describing the offer as underwritten misleading
 - Our policy is set out in RG 228.156 -158
 - Disclosing a change of circumstances because of termination may lead to an issuer being required to offer withdrawal rights



Fundraising: Electronic disclosure project

- Project to review and refresh:
 - CO 00/44: Electronic disclosure documents, electronic application forms and dealer personalised applications
 - RG 107: Electronic prospectuses
- Intention to reflect the current law and practices as well as technological advances
- Project does not countenance electronic lodgment of documents
- Consultation expected first half of 2013



Fundraising: Further Corporations projects

- Emerging Market Issuers:
 - Project to determine the size of the emerging issuer population on the ASX and identify recurring trends or risks in this population
 - To assist ASIC in the performance of our everyday work by providing a better understanding of our market
- ASX rules for Mid-Caps:
 - Project to review placements made in reliance on the new rules in the coming year
 - Focus on control and related party transactions



Corporate Governance

November 2012

Consultation: Operating and financial review

- In September, ASIC issued CP 187: Effective disclosure in an operating and financial review
- Presently these reviews do not generally provide analytical information to assist a member to understand the:
 - Underlying drivers of financial performance
 - Information about expected future performance
- Guidance has been drafted to promote better communication of useful information to investors, and to assist directors in complying with s299A
- Consultation close 23 November 2012



Executive remuneration

- Remuneration reports and the two-strike rule:
 - Monitoring AGM results of companies which recorded a first strike in 2011, speaking to proxy advisors and assessing member complaints
 - Note the CSA “Guidelines for managing the requirements of a second strike”
 - Presently ASIC is not intending to issue any guidance on this process or disclosure requirements, but will consider following the close of the 2012 AGM season
 - Reiterate our guidance in 12–34MR: ASIC calls for better executive remuneration disclosure



Executive remuneration

- Employee share schemes:
 - Project to consult and refresh our policy in:
 - CO 03/184: Employee share schemes
 - RG 49: Employee share schemes
 - Consultation issues will include:
 - Non-executive directors' exclusion (even if they hold salaried employment)
 - The character of performance rights
 - Where offers are made to some ineligible employees



Continuous disclosure

- In October the ASX issued its much anticipated consultation on Guidance Note 8 and proposed revisions to the listing rules
- Considers, among many other things:
 - What is meant by 'immediately'
 - When a company should use a trading halt
- Consultation closes on 30 November 2012



Reporting of mineral and oil and gas resources and reserves – Policy update

November 2012

ASX amendments to Chapter 5 of Listing Rules, and new JORC Code

- Listing rule amendments have been approved by the Minister
- JORC Code 2012 expected to be launched in December
- Revisions require oil and gas companies to report and classify in accordance with SPE-PRMS [Petroleum Resources Management System]
- Consistent with our policy in RG 170: Prospective financial information, there must be reasonable grounds for forecasting a production target
- Listing rules now define production targets



ASX amendments to Chapter 5 of Listing Rules, and new JORC Code

- Other terms have been defined in the JORC Code itself, which are internationally standardised terms
- There is enhanced reporting of the technical basis underpinning announcements
- The rules restore the balance between the competence of a person making the statements with equally important principles of transparency and materiality
- There is a 12 month transition period for both the revised listing rules and the JORC Code



Takeovers – Policy and project update

November 2012

Takeovers policy review

- On 14 November ASIC published Consultation Paper 193: Update and consolidation of ASIC guidance on takeovers, compulsory acquisitions and substantial holder notices and the associated draft regulatory guides on:
 - Relevant interest and substantial holding notices
 - Exceptions to the s606 prohibition
 - Takeover bids
 - Compulsory acquisitions and buy-outs



Takeovers policy review

- Some key matters for consultation:
 - Rights issues and underwriting arrangements which have potential control implications
 - Benefits that may be an inducement to accept an offer
 - Acceptance facilities including relevant interests arising from options or warrant contracts
 - Share splitting in proportional bids
 - Simultaneous compulsory acquisition and buy-out rights
- Consultation closes 22 February 2013



Takeovers law reform

- In October this year Treasury released a scoping paper on 4 areas of proposed takeovers law reform
- These 4 areas are:
 - creeping acquisitions (item 9, s611)
 - use and disclosure of equity derivatives
 - clarity of takeover proposals (s631)
 - Associations



Further policy update

November 2012

Policy initiatives for brief mention

- Report 299: ASIC enforcement outcomes: January to June 2012
- 12-224MR: ASIC releases surveillance snapshot and new service charter
- Financial reporting by companies in external administration:
 - RG 174: External administered companies: Financial reporting and AGMs
 - 12-225MR: Info sheet on financial reporting compliance of insolvent public companies
 - INFO 163: Financial reporting compliance by administrators of insolvent public companies
 - CO 03/392 Externally administered companies: Financial reporting relief



Policy initiatives for brief mention

- Financial reporting matters:
 - Pro-forma historical information in prospectuses
 - Licensing and disclosure requirements for investigating accountant reports [Corporations Regulation 7.1.29(3)]
 - Notes to financial statements in prospectuses



Questions?

Next Meeting: May / June 2013

