ASIC
Australian Securities & Investments Commission

REPORT 512

ASIC regulation of corporate finance: July to December 2016

February 2017

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 2016.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Previous reports on regulation of corporate finance

Report number	Report date
REP 489	August 2016
REP 469	February 2016
REP 446	August 2015
REP 423	February 2015
REP 406	August 2014

Contents

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.

Corporate Finance Liaison meetings

3 We host Corporate Finance Liaison meetings twice a year in Sydney, Melbourne, Brisbane, Perth and Adelaide to engage with stakeholders and provide insight into our current policy and regulatory approach.

4 Lawyers, corporate advisers and compliance professionals working in corporate finance and mergers and acquisitions are welcome to attend these meetings. This report covers issues to be discussed at our meetings in February and March 2017.

The purpose of this report

5 This report aims to provide greater transparency about the role that ASIC plays in the regulation of corporations and corporate transactions in Australia.

6 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 2016 (the period).

7 We provide limited commentary in this report on applications for relief from certain parts of the Corporations Act. For more detailed information on novel relief applications, see our regular reports on our relief decisions. We published the most recent of these reports in December 2016: see Report 506 *Overview of decisions on relief applications (April to September 2016)* (REP 506).

8 This report also provides an overview of some enforcement action that may be of interest to our stakeholders. For more detailed information on enforcement action conducted by ASIC, see our regular reports on enforcement outcomes. We published the most recent of these reports in August 2016: see Report 485 *ASIC enforcement outcomes: January to June 2016* (REP 485).

ASIC's Corporate Plan for 2016–17 to 2019–20

9 On 31 August 2016, we published our *Corporate Plan 2016–17 to 2019–20: Focus 2016–17* (Corporate Plan). The Corporate Plan outlines our vision to allow markets to fund the economy and, in turn, economic growth; in doing so, contributing to the financial wellbeing of all Australians. We do this by:

(a) promoting investor and consumer trust and confidence;

(b) ensuring fair and efficient markets; and

(c) providing efficient registration services.

10 Of particular relevance to this report, the Corporate Plan noted that:

(a) there was $1.7 trillion in domestic equity market capitalisation in July 2016;

(b) 6.5 million adult Australians own listed investments; and

(c) $9.7 billion was raised through initial public offerings (IPOs) and $33.3 billion through secondary raisings in 2015–16.

Note: These statistics reflect the latest available data at the date of publication of the Corporate Plan. Further details of the sources of those statistics were provided in the endnotes to that document.

11 The Corporate Plan also outlines the long-term challenges to our visions and our strategy for responding to our long-term challenges and key risks.

12 In particular, key risks that we anticipate for 2016–17 include:

(a) gatekeeper culture and conduct in markets undermining good governance practices and risk management systems;

(b) gatekeeper culture and conduct in financial services and credit resulting in poor outcomes for investors and consumers;

(c) misalignment of retail product design and distribution with consumer understanding;

(d) digital disruption;

(e) cyber threats; and

(f) cross-border businesses, services and transactions.

13 This report includes information on some of ASIC's activities in response to these risks. For example, Section C sets out statistics and observations from our work in relation to corporate governance matters, including:

(a) on climate risk and directors' duties (at paragraphs 235–238);

(b) on directors and cyber risk management (at paragraphs 239–241); and

(c) examples of our enforcement action during the period in connection with Storm Financial Limited (at paragraphs 242–243) and Hochtief AG, TZ Limited, Sino Australia Oil and Gas Ltd, Uglii Corporation Limited and Aviation 3030 Pty Ltd (at paragraphs 252–277).

14 In relation to digital disruption, stakeholders may wish to consider the discussion of our new licensing exemption for financial technology (fintech) businesses and 'regulatory sandbox' framework, which we released in December 2016: see Media Release (16-440MR) *ASIC releases world-first licensing exemption for fintech businesses* (15 December 2016).

15 For the first time, our Corporate Plan also introduced our view of 'what good looks like' for the sectors we regulate. For our corporations sector, this is that Australian public companies:

(a) treat investors fairly, including when undertaking fundraising and change of control transactions;

(b) are accountable to investors, by ensuring disclosure is accurate, complete and timely; and

(c) adopt sound corporate governance practices that support market integrity and good investor outcomes.

16 Summaries of our 2016–17 ASIC business plans by each sector are also available on our website (www.asic.gov.au/corporate-plan). Our Corporations business plan sets out information about our key projects, in addition to our usual regulatory activities, for that period in relation to:

(a) improving the quality of financial information in prospectuses (see paragraphs 64–70);

(b) reviewing the promotion of IPOs by brokers, issuers and advisers, including by social media (see paragraphs 71–81);

(c) researching and better understanding retail and institutional investor decision making;

(d) promoting better 'forward-looking statements' by mining and resource companies (see paragraphs 82–89);

(e) emerging market issuers; and

(f) supporting the development and implementation of key Australian Government law reforms for crowd-sourced equity funding (see paragraphs 112–115), directors' duties and insolvency, and employee incentive schemes.

A Fundraising

Key points

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

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

In the period, we updated our guidance on effective disclosure in prospectuses and clarified our guidance on forward-looking statements in the mining and resources industry. We also released a report on our review of methods used by firms and issuers when marketing IPOs.

Key observations and statistics

New policy developments, research and updated admission requirements

17 There were a number of key regulatory and policy developments in the fundraising space during the period, including updates to our guidance on historical financial information in prospectuses, the release of our report on marketing practices in IPOs and the update of the listing standards set by ASX Limited (ASX).

18 The updates to the ASX listing standards include a new requirement for disclosure of audited accounts which applies to assets test entities. We have updated our guidance in Regulatory Guide 228 *Prospectuses: Effective disclosure for retail investors* (RG 228) regarding the disclosure of financial information in prospectuses by issuers (whether listed or unlisted). We discuss these changes at paragraphs 64–70 and 108–111.

19 On 19 December 2016, updated admission requirements under the ASX Listing Rules came into effect, including a new requirement for assets test entities to disclose audited accounts. The update also:

(a) included increases to the requirements for prior year consolidated profits (for profits test admissions), the net tangible assets test and the market capitalisation test; and

(b) imposed a new minimum free float requirement, a single tier spread test and a standardised working capital requirement for entities admitted under the assets test.

More information about the amended ASX listing standards is provided in this report at paragraphs 108–111.

20 In September 2016, we released the results of our review of IPO marketing methods used by firms and issuers: see Report 494 *Marketing practices in initial public offerings of securities* (REP 494). This report reviewed the extent to which entities are using new forms of media to market their IPOs, and identified some areas of concern in relation to marketing practices. These are discussed in paragraphs 71–81.

Focus on disclosure of business models

21 During the period we observed a number of prospectuses (including prospectuses issued by emerging market issuers) that failed to clearly explain the business model of the issuer and/or sufficiently analyse the components of the issuer's business model. We conducted due diligence surveillances that revealed the omission of key information about the company's business model that should have been included in the prospectus.

22 As outlined in RG 228, we expect a prospectus to explain:

(a) the main components of the issuer's business model;

(b) the key assumptions underlying the model; and

(c) the associated risks.

23 We would also expect to see a substantive analysis of the components of an issuer's business model, rather than simply a description. This should also explain how the business model works (i.e. how the components relate to each other) and the issuer's ability to make money and generate income or capital growth for investors, or to otherwise meet the issuer's objectives.

24 We encourage issuers and their advisers to ensure that their prospectus clearly explains and analyses their business model so that retail investors can assess the potential risks and returns associated with an investment in an issuer's securities.

Foreign exempt listings

25 In September 2015, ASX reduced the admission thresholds for New Zealand companies seeking a foreign exempt listing on ASX: see Chapter 1 of the ASX Listing Rules. In Report 469 *ASIC regulation of corporate finance: July to December 2015* (REP 469), we noted that, to facilitate such listings, we would consider granting individual relief to:

(a) allow secondary sales to Australian investors of securities issued under placements without further disclosure; and

(b) permit rights issues to be made to Australian investors where a 'cleansing notice' (in accordance with New Zealand law) was given at the time of the relevant placement or rights issue.

26 In Report 489 *ASIC regulation of corporate finance: January to June 2016* (REP 489), we provided clarification of the circumstances where we may be prepared to grant relief for a proposed foreign exempt listing, referring to two matters where we had refused relief.

27 One recent matter has further clarified the circumstances where we may grant relief. In this matter, we granted relief to an entity listed in New Zealand that had made a placement to institutional investors under a cleansing notice issued in accordance with New Zealand law, shortly before seeking to list on ASX.

28 The entity had a history of continuous disclosure in New Zealand and demonstrated compliance with the requirements of New Zealand law, which includes a cleansing notice regime comparable to s708A of the Corporations Act, and the listing rules of the main board operated by NZX Limited.

29 Recognising that the entity had been listed for more than three months in New Zealand, we granted relief to permit:

(a) the immediate on-sale on ASX of securities that had been issued under the placement, without the need for an Australian 'compliance' prospectus (e.g. under s708A(11)); and

(b) the entity to conduct a placement or rights issue immediately after listing on ASX using a New Zealand cleansing notice for the purposes of the on-sale provisions in the Corporations Act.

Fundraising activity under disclosure documents

30 In the period, there were 336 original disclosure documents lodged with ASIC, raising over $7 billion. Emerging market issuers lodged approximately 13% of these documents.

31 Table 1 outlines the top 10 public fundraisings by value, under disclosure documents lodged with ASIC in the period. In contrast to the period from 1 January to 30 June 2016 (the previous period), we saw top fundraisings offer a number of different types of securities in a variety of industries.

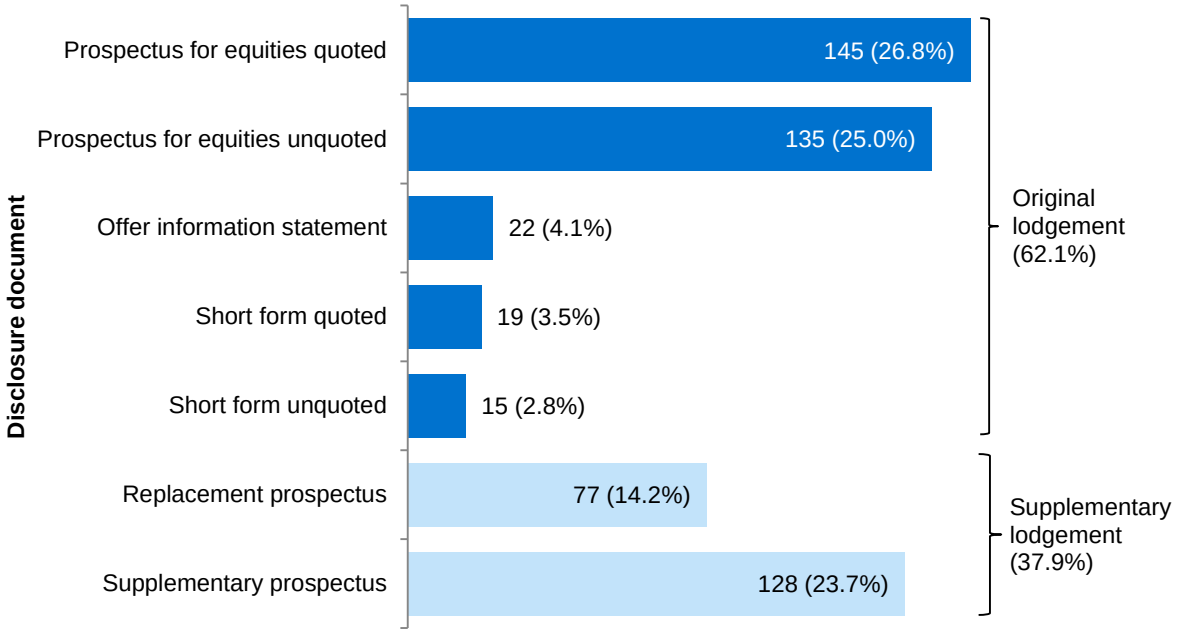
Table 1: Top 10 primary fundraising transactions by value (under a prospectus lodged from 1 July to 31 December 2016)

Issuer	Date of lodgement	Value	Industry	Security type
Australia and New Zealand Banking Group Limited	16/08/2016	$1,622m	Banks	Hybrid securities

Issuer	Date of lodgement	Value	Industry	Security type
Inghams Group Limited	12/10/2016	$1,198m	Food products	Ordinary shares
Viva Energy REIT / VIVA Energy REIT Limited	22/07/2016	$1,152m	Equity real estate investment trusts	Stapled securities
Propertylink Group	18/06/2016	$536m	Real estate management and development	Stapled securities
Insurance Australia Group Limited	21/11/2016	$404m	Insurance	Hybrid securities
Qube Holdings Limited	30/08/2016	$305m	Transportation infrastructure	Hybrid securities
Antipodes Global Investment Company Limited	22/07/2016	$220m	Capital markets	Shares and attaching options
Autosports Group Limited	28/10/2016	$159m	Specialty retail	Ordinary shares
New Energy Solar Limited	14/11/2016	$123m	Capital markets	Stapled securities
Watermark Global Leaders Fund Limited	27/10/2016	$82m	Capital markets	Shares and attaching options

32 Figure 1 sets out the total number of disclosure documents lodged with ASIC in the period. Issuers lodged 72 IPO disclosure documents during the period, an increase of 80% on the number lodged in the previous period. IPO disclosure documents were the most common type lodged, with rights issues and entitlement offer prospectuses the second-most common type.

Figure 1: Number of disclosure documents by type (lodged from 1 July to 31 December 2016)



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

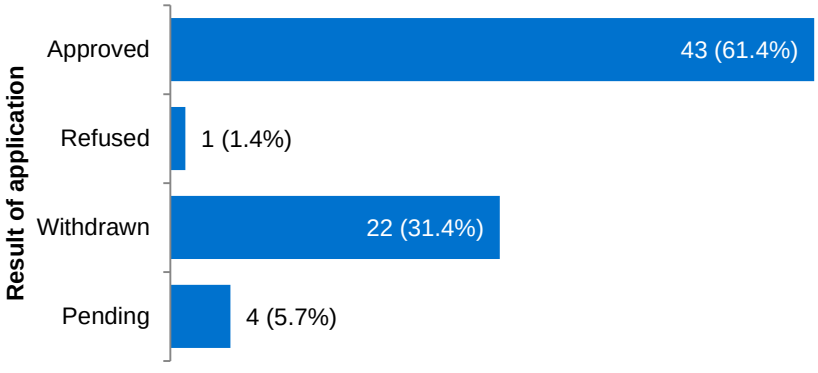
33 Overall, in the period there was an increase in the number of disclosure documents lodged with ASIC, compared with the previous period, and a decrease in the number of applications for relief from Ch 6D. For details of historical lodgements, see Figure 12 in Appendix 1.

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

Applications for relief

34 During the period, we received 70 applications for relief under s741. Of the 70 applications, we granted relief for 43 (61.4%): see Figure 2.

Figure 2: Results of applications under s741 (1 July to 31 December 2016)



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

35 We publish a regular report that provides an overview of decisions made on novel relief applications, including those made in relation to fundraising transactions. Our most recent report is REP 506.

ASIC's review and monitoring of corporate fundraisings

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

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

37 As a result of our review of prospectuses and offer documents lodged with ASIC under s718 in the period, we:

(a) raised disclosure concerns in approximately 24% of fundraising transactions—subsequently, changes were made to approximately 90% of the documents where concerns were raised (or 22% of all fundraising transactions);

(b) extended the exposure period 55 times—up from 23 times in the previous period;

(c) issued 23 interim stop orders in relation to 17 offers (5.1% of all offers)[1] and one final stop order (0.3% of all offers)[2]—we issued 33 interim stop orders and four final stop orders in the previous period; and

(d) revoked 12 interim stop orders in relation to 11 offers (3.3% of all offers)[3]—we revoked 15 interim stop orders in the previous period.

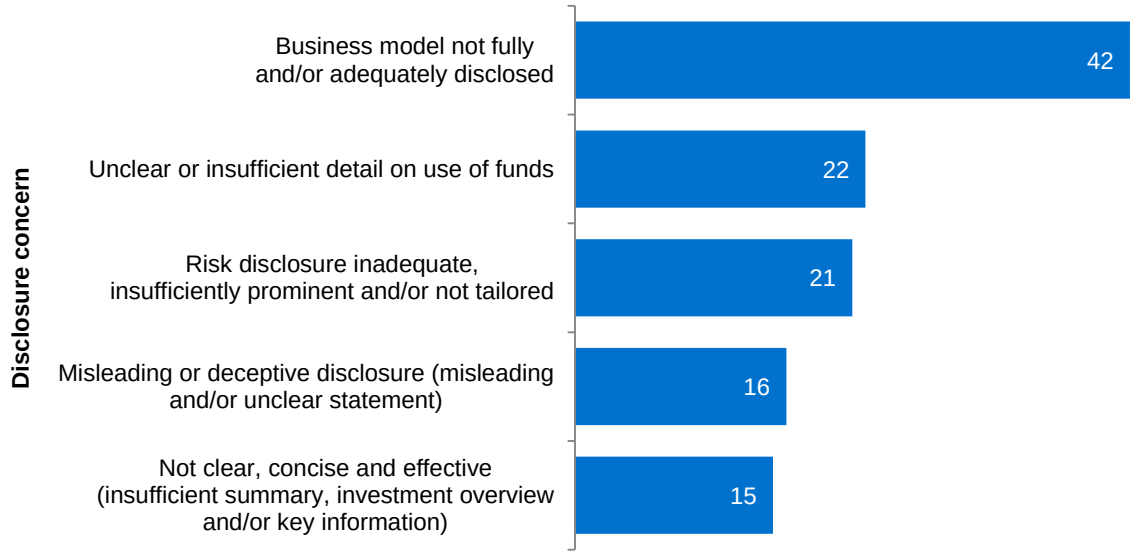
Disclosure concerns

38 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.

[1] The interim stop orders were issued to Bass Metals Ltd, Broo Ltd, HotCopper Holdings Limited, Black Mountain Resources Limited, Technology Development Investment Limited, Davenport Resources Limited, Odin Energy Limited, Dragontail Systems Limited, Cycliq Group Ltd, Blockchain Global Limited, E2 Metals Limited, Auscann Group Holdings Ltd, Celsius Resources Limited, Lifespot Health Ltd, CTL Australia Group Limited, Retech Technology Co., Limited and Screenaway Holdings Limited.
[2] The final stop order was issued to Blockchain Global Limited.
[3] We revoked the interim stop orders on Bass Metals Ltd, HotCopper Holdings Limited, Black Mountain Resources Limited, Davenport Resources Limited, Odin Energy Limited, Dragontail Systems Limited, Cycliq Group Ltd, Auscann Group Holdings Ltd, Celsius Resources Limited, Lifespot Health Ltd and Retech Technology Co., Limited.

39 The top five concerns that we raised with issuers and the frequency with which we raised them are shown in Figure 3. These were also the concerns that we raised most with prospectuses lodged by emerging market issuers.

Figure 3: Top five most frequent disclosure concerns raised by ASIC with prospectuses (lodged 1 July to 31 December 2016)



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

40 Our concerns with the ways in which issuers disclosed their business models to investors and the market are discussed in more detail at paragraphs 21–24 and 42–54.

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

Ensuring adequate disclosure

Disclosing the legal and regulatory risks of certain business models

42 We have recently reviewed several prospectuses that we considered did not provide sufficiently clear or detailed disclosure regarding the legal or regulatory risks associated with the existing or proposed business of the issuer.

43 Or particular concern during the period were disclosures surrounding the legality of businesses involving:

(a) gambling and the gaming industry; and

(b) the cultivation or manufacturing of products such as medical cannabis.

44 Similar concerns arise where businesses may not operate in compliance within the regulatory framework administered by relevant government

agencies or their stated policies (including, for example, the Australian financial services (AFS) licensing regime and associated policies administered by ASIC).

45 If an issuer proposes to operate a business in an industry that is heavily regulated—or within an exception or exemption in the law or our policy—prospectuses under which the issuer seeks to offer shares should provide clear, concise and effective disclosure to investors that the operation of the business is legal.

46 Where it is uncertain or unclear whether the operation of the proposed business will be legal, we consider that investors and their professional advisers would reasonably require that the prospectus contain a legal opinion or a summary of a legal opinion confirming the basis on which the operation of the business will be legal. In either case, the consent of the person providing the legal opinion is required. In the event that the issuer is not able to obtain such an opinion and consent, or is not otherwise able to resolve our concerns that the proposed business may not be legal, we may take action on the grounds that investors do not have sufficient information to make an informed investment decision about the offer.

IPO disclosure of historical acquisition transactions

47 We have noted a number of IPOs where the business being offered by the issuer had recently been subject to private sale or takeover and the financial details of these historical transactions had not consistently been disclosed.

48 Where a business has been subject to a transaction that involved a process leading to discovery of its market value, it is necessary to consider whether the market value determined by that process is material information reasonably required by investors. For example, where a business or company is subject to a private sale before an IPO, we expect the price paid to be disclosed in the IPO prospectus, as the transaction provides a historical market value for the business being offered.

49 When considering whether disclosure of a transaction will be required, an issuer should assess whether the business is largely the same as the one considered in the prior transaction and whether the market conditions have substantially changed. We would expect disclosure about these matters to inform disclosure of the prior transaction. Time alone should not be used as a basis for non-disclosure of a historical transaction.

Use of JORC Code 2004 references in prospectuses

50 During the period, we reviewed a number of prospectuses describing exploration results, or mineral resource or ore reserve estimates, using the reporting standard described in the 2004 edition of the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves

(JORC Code 2004) instead of the more recent 2012 edition (JORC Code 2012).

51 The JORC Code 2012 and the new disclosure rules in ASX Listing Rule 5 came into effect on 1 December 2013.

52 Under the ASX Listing Rules, an entity that publicly reported exploration results or estimates of resources or reserves that were prepared in accordance with the JORC Code 2004 pre-transition can continue to refer to those results and estimates in public reports post-transition without them being updated to comply with the new disclosure rules, provided that there has been no material change in those results or estimates.

53 However, this only applies to the entity that originally reported the results or estimates. It is the view of ASX and ASIC that generally, where an issuer is fundraising in relation to a material mining project, including where it has acquired the project from another entity (e.g. in the context of an IPO or 'backdoor' listing), any results and estimates reported in a prospectus should comply with the JORC Code 2012.

54 We consider that generally results or estimates complying with the JORC Code 2012 are the type of information that investors and their professional advisers would reasonably expect to find in a prospectus.

Issuer conduct during fundraising

Termination rights in underwriting arrangements

55 We have recently observed a number of underwriting agreements containing terms that allow an underwriter to terminate the underwriting arrangement if the market price of the issuer's shares falls below the offer price at any time during the offer—even where the offer price is at or near the market price at the time of the offer. Such events are almost certain to occur and may mean:

(a) that the arrangement is in effect an 'option' to underwrite; and

(b) the 'underwriter' is not, in substance, assuming shortfall risk.

56 Regulatory Guide 6 *Takeovers: Exceptions to the general prohibition* (RG 6) discusses our view that a central element of underwriting is the assumption of risk—specifically, the risk that investors do not take up all of the shares on offer: see RG 6.141–RG 6.156. In our view, arrangements that do not in substance involve this risk are not 'underwriting'. Issuers are reminded that this can have consequences both in terms of the availability of the underwriting exceptions in Ch 6 and their disclosure obligations.

57 Where an offer is described as 'underwritten', investors will ordinarily expect that the underwriter is in fact assuming a real shortfall risk and may decide to commit funds to the offer on this basis. Where this is not the case,

describing the offer as 'underwritten' may be misleading: see the note to RG 6.138.

58 As the need to address this issue can result in additional expenses and delay for issuers, we encourage underwriters and issuers who are considering such share price termination clauses:

(a) not to include such clauses; or

(b) if such a clause is included, to ensure that the offer is not described as 'underwritten' in any disclosures to investors and that the nature of support for the offer under any agreement is accurately explained.

59 When a termination right in an underwriting agreement is triggered, regardless of whether the agreement is appropriately described as 'underwriting', issuers must promptly disclose whether the underwriter has waived its right to terminate on the basis of the triggered clause. If the underwriter does not waive its right—and therefore has the right to terminate at any time—we will consider that the offer is no longer underwritten and the company should:

(a) offer withdrawal rights; and

(b) detail how they will deal with or use any funds raised and adopt a minimum subscription amount, if necessary.

Misuse of investor application money

60 Over the last few years, we have identified a number of instances where application money received for a capital raising, which is required to be held on trust, has been used by companies before shares have been issued to subscribers.

61 These matters have typically been brought to our attention by investors seeking a refund of application money following a failed capital raising transaction. In some of these instances, it has been suspected that the funds are being used for purposes other than those set out in the relevant fundraising disclosure document and/or before the issue of securities.

62 Under s722, if a company offers securities under a disclosure document, all application money must be held in trust until the securities are issued or transferred or the money is returned to the applicants (e.g. because the minimum level of applications is not met or the fundraising does not proceed). Section 722 creates a criminal offence by the relevant company for a breach of this requirement. Under s11.2 of the Criminal Code (set out in the schedule to the *Criminal Code Act 1995*), company officers may also be guilty of an offence where they are accessories to the company's breach and may expose themselves to other charges.

63 We have been writing to companies lodging fundraising documents to remind them of their obligation to hold application money on trust until securities are issued. We have also commenced investigations into a number of entities.

ASIC surveillance reports and policy initiatives

Updates to RG 228 and the ASX Listing Rules

64 Disclosures concerning the financial position and performance of entities are central to the decision making of investors and underpin the fairness and efficiency of our capital markets. At times of fundraising, information about the historical financial performance of the issuer, particularly where this has not been previously disclosed, is often key to ensuring investors are able to make informed investment decisions.

65 On 3 November 2016, we released updated regulatory guidance in RG 228 to help companies and their advisers improve the quality and quantity of historical financial information disclosure in prospectuses as part of their disclosure obligations. This followed on from consultation in May 2016.

66 We have affirmed that generally three years of audited financial information (or two years of audited and a half-year of reviewed information, depending on the date of the prospectus) should be included in a prospectus. This applies regardless of the corporate form of the business prior to seeking to list.

67 Clarifications in the update included that:

(a) we will generally expect disclosure of audited financial information for two financial years for significant acquisitions, given their relevance to investors (see paragraph 68);

(b) at least one year of audited financial information should be disclosed for 'roll up' listings (where an issuer plans to acquire many immaterial businesses in the same sector);

(c) some qualifications of audit and review opinions will mean that financial information is not sufficiently reliable for investors; and

(d) historical financial information may need to be updated depending on the time between its date and the date of the offer.

68 For business acquisitions made less than 12 months prior to the lodgement of the disclosure document, we introduced a 'significance' threshold, similar to that found in a number of other major foreign jurisdictions. RG 228 now provides that where an acquisition is significant (25% of the company), issuers will generally need to disclose audited historical financial information on the acquired business for the two years before the acquisition. This

provides greater certainty and flexibility for companies that make acquisitions in contemplation of, or concurrently with, a fundraising offering.

69 As described at paragraphs 108–111, ASX has also updated their Listing Rules and associated guidance. Among a suite of changes to the rules, ASX will now require audited financial information for a minimum of two years for an entity seeking admission, including any significant acquisitions, under the assets test.

70 For further detail on the updates to RG 228, see Report 502 *Response to submissions on CP 257 Improving disclosure of historical financial information in prospectuses: Update to RG 228* (REP 502).

Release of IPO marketing report

71 As the success of an IPO depends on investor interest, IPOs are inevitably marketed to investors separately from the prospectus. While marketing can be an effective tool to promote awareness of an offer, if not properly conducted it can lead to investors being misled or making less well-informed investment decisions.

72 We recently reviewed the methods used by firms and issuers when marketing IPOs to retail and higher net worth investors. In particular, we wanted to assess whether, and how, firms and issuers were using more innovative methods (e.g. social media) to market IPOs to investors and whether firms were targeting certain investor groups for specific types of IPOs (e.g. higher-risk IPOs including emerging market issuers). As set out in REP 489, we published findings from our review in Report 494 *Marketing practices in initial public offerings of securities* (REP 494).

73 We observed that all firms used some form of 'traditional' marketing methods (telephone calls, emails, roadshow presentations, websites and advertising) to market IPOs. Some small to medium-sized firms have started to use more innovative techniques to market IPOs, including social media (e.g. Twitter, Facebook, LinkedIn, WeChat and YouTube), OnMarket BookBuilds, international crowd-sourced equity funding sites, and other connecting platforms that link issuers directly with investors.

74 Overall, we found most firms and issuers adopted good marketing practices, although we did identify the following areas of concern where improvements could be made:

(a) *Oversight weaknesses*—There were some inadequacies in monitoring marketing done via telephone calls and social media, and in ensuring that marketing material is kept up to date.

(b) *Misleading communication*—There were instances of undue prominence being given to forecasts in marketing messages, and

misstating information (including ASIC's regulatory role) in the marketing of emerging market issuers.

(c) *Inadequate control on access to information*—Access to institutional roadshows was not always limited to AFS licensees, access to pathfinder prospectuses was not limited to sophisticated or professional investors, and key information about IPOs was sometimes disseminated to the public before a prospectus was lodged with ASIC.

75 Our report provided recommendations on how these concerns could be addressed by firms and issuers.

Social media

76 Our review found that social media was not heavily used to market IPOs. Firms that used social media tended to be small to medium sized and, typically, social media was used in connection with IPOs of emerging market issuers or technology companies targeting retail investors. In some instances, social media posts contained misstatements about the IPO as well as ASIC's role. We also found some instances where compliance staff at firms may not have been aware of the social media posts made by other employees.

77 We recommended that firms apply controls to social media posts similar to those in place for other marketing, such as:

(a) educating employees on using social media for marketing IPOs in compliance with the Corporations Act; and

(b) ensuring social media posts are reviewed before being posted.

Emerging market issuers

78 Our review also found that the marketing of IPOs of emerging market issuers generally targeted retail and high net worth investors with a connection to the country of the emerging market issuer. Much of the marketing material was prepared in the language of the relevant emerging market, which raised additional challenges for firms and issuers when ensuring consistency with the prospectus. We observed some instances where marketing material for emerging market issuers misstated ASIC's role (e.g. that we granted listing approval and that we approved prospectuses).

79 We recommended that firms and issuers targeting investors from a non-English speaking background should:

(a) ensure communications are clear and accurate (including any statements about the regulatory framework in Australia and about ASIC's role); and

(b) if marketing material is to be produced in a language other than English, ensure these materials are understood by the firm or issuer, including getting translations before publication (if necessary).

Further work

80 We intend to continue to monitor the marketing of IPOs as part of our usual review of prospectuses lodged. We also anticipate doing further work over the 2016–17 financial year looking at the key drivers of investor decision making in relation to IPOs.

81 For further details, see Media Release (16-315MR) *ASIC reports on review of marketing practices in IPOs* (19 September 2016) and information in the article 'ASIC reviews marketing practices in IPOs', available on our website.

Clarifications to INFO 214

82 Investors in mining and resources companies may place significant weight on forward-looking statements when considering investing in such companies. Companies that publish forward-looking statements that do not comply with the legal requirements risk litigation or other regulatory action.

83 In October 2016, we reissued an updated Information Sheet 214 *Mining and resources—Forward-looking statements* (INFO 214) on statements relating to future matters commonly made in the mining and resources industry.

84 Following consultation with industry participants—including the Australasian Joint Ore Reserves Committee, the VALMIN Committee, the Association of Mining and Exploration Companies and ASX—we made minor revisions to the original INFO 214, released in April 2016, in response to concerns and misunderstandings that arose at the time of INFO 214's initial release.

85 The matters clarified in the revised INFO 214 are that:

(a) forward-looking statements have always been required under law to be based on reasonable grounds and INFO 214 does not change this position;

(b) production targets and forecast financial information can be published even if secured funding is not in place—however, a company still needs to be able to demonstrate reasonable grounds that it can obtain the requisite project finance as and when required;

(c) production targets and forecast financial information can be published based not only on ore reserve estimates but also on mineral resource estimates, provided that there are reasonable grounds for the estimated mineralisation and each of the JORC Code modifying factors; and

(d) a company that does not have reasonable grounds for forward-looking statements—and therefore cannot make statements of this kind—should still disclose all reliable and relevant information of a technical nature (e.g. from scoping studies) to ensure the market is properly informed of the company's prospects.

86 We also note the release of *ASX interim guidance: Reporting scoping studies* (PDF 1 MB) and the accompanying disclosure checklist released in November 2016.

87 Our revised guidance in INFO 214 together with ASX's interim guidance provides the mining industry with more clarity on the legal and regulatory framework around the disclosures of production targets and forecast financial information based on production targets.

88 To continue our work in this area, we are monitoring and reviewing a sample of forward-looking statements publicly released by listed mining companies to assess how companies are applying the guidance in INFO 214.

89 For further detail, see Media Release (16-349MR) *ASIC clarifies guidance for forward-looking statements in the mining and resources industry* (12 October 2016).

Due diligence practices in IPOs

90 Due diligence processes underpin the quality of regulated disclosures made to investors. We have a broad role in monitoring the practices of various parties involved in the IPO process—including lead managers, underwriters, brokers, and financial and legal advisers—and our continuing focus on due diligence practices enables us to assess how a prospectus is prepared and complements our other activities in regulating offers of securities.

91 In July 2016, we released the results of our review of the due diligence practices of issuers in Report 484 *Due diligence practices in initial public offerings* (REP 484). As a consequence of that review and report, we recommend that:

(a) issuers should adopt a robust due diligence process containing the elements set out at paragraph 79 in REP 484;

(b) issuers and their advisers should conduct a thorough and investigative due diligence process that takes a 'substance over form' approach;

(c) as directors are responsible for the contents of the prospectus, they must make sure that a robust due diligence process has been undertaken and engage in that process; and

(d) professional and expert advisers should be engaged on the basis that they are competent and bring their own relevant skills, knowledge and experience to the preparation of the prospectus.

92 We also specifically observed that there were heightened due diligence challenges associated with emerging market issuers. Australian advisers should:

(a) provide effective oversight and apply sufficient scepticism of the due diligence work carried out by foreign legal and other advisers; and

(b) make sure that they understand the political and cultural environment in which the issuer operates, local business practices affecting the issuer, local laws affecting the issuer and the issuer's local expert advisers.

93 In addition to our review of disclosure in prospectuses, we intend to continue our focus on the due diligence and verification processes in the preparation of public disclosure documents.

94 We have and will continue to carry out more work during the remainder of the 2016–17 financial year, focusing on different aspects of public company fundraising processes to promote good market practices for fundraising.

95 For further details on REP 484, see Media Release (16-224MR) *ASIC reports on review of due diligence practices in IPOs* (14 July 2016).

Updates to framework for charitable investment fundraisers

96 Charities that wish to raise funds by issuing debentures or interests in a scheme to help them meet their objectives may need to comply with the fundraising, managed investment, debenture and licensing provisions of the Corporations Act. Regulatory Guide 87 *Charitable schemes and school enrolment deposits* (RG 87) sets out our policy on giving relief to those charities and also covers our exemption for schools accepting enrolment deposits from the fundraising provisions of the Corporations Act.

97 In September 2016, we updated RG 87 to account for revisions to our policy and regulatory framework, aimed at ensuring the policy is consistent with our objectives of confident and informed investors and fair and efficient markets. The revisions included:

(a) ASIC Corporations (Charitable Investment Fundraising) Instrument 2016/813, which replaced Class Order [CO 02/184] *Charitable investment schemes—fundraising*; and

(b) ASIC Corporations (School Enrolment Deposits) Instrument 2016/812, which replaced Class Order [CO 02/151] *School enrolment deposits* without substantive amendment.

98 The updates followed public consultation in Consultation Paper 207 *Charitable investment fundraisers* (CP 207) on a proposal to retain existing exemptions (with some modification) for new investment fundraising, but on the basis that they are only available if existing conditions and a number of

new conditions are satisfied. Report 495 *Response to submissions on CP 207 Charitable investment fundraisers* (REP 495) highlights the key issues that arose out of the submissions we received.

99 For further details, see Media Release (16-329MR) *ASIC updates regulatory framework for charitable investment fundraisers* (28 September 2016).

ASIC Corporations (Renounceable Rights Issue Notifications) Instrument 2016/993

100 In October 2016, we made ASIC Corporations (Renounceable Rights Issue Notifications) Instrument 2016/993 (to replace Class Order [CO 02/225] *Rights issue notifications—securities)* and repealed Class Order [CO 00/231] *Money market deposits*.

101 This followed the approach proposed in Consultation Paper 261 *Remaking and repealing ASIC class orders on rights issue notifications and money market deposits* (CP 261).

102 For further details, see Media Release (16-355MR) *ASIC remakes 'sunsetting' class order on rights issue notifications and repeals 'sunsetting' class order on money market deposits* (18 October 2016).

Application form requirements for spin-outs

103 In November 2016, we released Consultation Paper 274 *Remaking ASIC class orders on application form requirements* (CP 274) covering proposals to remake four class orders without substantive changes, and to incorporate two related class orders, into one new legislative instrument.

104 We reviewed the four sunsetting class orders and proposed to remake them because we consider that they are operating effectively and efficiently and continue to form a necessary and useful part of the legislative framework. Under the *Legislation Act 2003* (Legislation Act), these class orders are due to expire ('sunset') in 2017 if not remade.

105 In particular, these class orders include Class Order [CO 07/10] *Technical disclosure relief for reconstructions and capital reductions*. We proposed to remake paragraphs 4 and 8 of [CO 07/10] in the new legislative instrument. For an offer made under a reconstruction or a capital reduction offer, those paragraphs provide relief from:

(a) s723(1) and 734(2) regarding disclosure documents and the issue or sale of securities; and

(b) s1016A(2) regarding Product Disclosure Statements and the issue or sale of a financial product.

106 That relief means that an application form is not required and any advertisement referring to the securities does not need to state that an application form is required.

107 We also sought feedback on our proposals to incorporate ASIC Corporations (Options: Bonus Issues) Instrument 2016/77 and Class Order [CO 14/26] *Personalised or Australian financial services licensee created application forms* into the new instrument. For further details, see Media Release (16-407MR) *ASIC consults on remaking class orders on application form requirements* (25 November 2016).

Other policy initiatives

New IPO listing standards

108 There have been a number of important changes both to the admission requirements for listed entities in the ASX Listing Rules and to our prospectus disclosure guidance on financial information in Regulatory Guide 228 *Prospectuses: Effective disclosure for retail investors* (RG 228). Both ASX and ASIC extensively consulted with stakeholders on these changes.

109 In summary, the changes to the ASX Listing Rules include:

(a) for profit test entities, an increase in the requirement for consolidated profits for the 12 months prior to admission from $400,000 to $500,000;

(b) an increase in the net tangible assets test (assets test) from $3 million to $4 million;

(c) an increase in the market capitalisation test from $10 million to $15 million;

(d) a new 20% minimum free float requirement;

(e) a single tier spread test requiring at least 300 security holders each holding at least $2,000 of securities;

(f) new audited accounts requirements for assets test entities—the entity must disclose to the market two full financial years of audited accounts for:

(i) the entity seeking admission; and

(ii) any significant entity or business that it has acquired in the 12 months before applying or that it proposes to acquire in connection with its listing; and

(g) a standardised $1.5 million working capital requirement for all entities admitted under the assets test.

110 There is considerable overlap between the requirements for disclosure of financial information under the assets test and under RG 228 as updated in November 2016.

111 For further details of the changes to the ASX Listing Rules, see the information published on the ASX website (www.asx.com.au) on 2 November 2016 under 'public consultations'. Further details of the changes to RG 228 are described at paragraphs 64–70.

Crowd-sourced equity funding

112 We have continued to work closely with Treasury on the proposed introduction of a regulatory framework for crowd-sourced equity funding (the CSEF regime).

113 The Corporations Amendment (Crowd-sourced Funding) Bill 2016 was introduced into the Australian Parliament in November 2016. If passed, the CSEF regime for public companies is expected to commence in the third quarter of 2017 (six months after receiving royal assent).

114 While the Bill does not extend eligibility to use crowd-sourced equity funding to proprietary companies, the Australian Government has announced that it will continue to consult on a CSEF regime for proprietary companies in 2017.

115 We propose to consult on draft regulatory guidance for issuers and intermediaries following the passing of the 2016 Bill and the accompanying regulations. Our guidance for issuers will cover eligibility to use the regime, the content requirements for crowd-sourced equity funding offer documents and the corporate governance concessions for public companies using crowd-sourced equity funding.

B Mergers and acquisitions

Key points

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

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

Key observations and statistics

Takeover bids and schemes of arrangement

116 The number of control transactions under takeover bids and schemes of arrangement during the period was consistent with the deal volumes observed during the corresponding half of the previous financial year.

117 On the basis of documents lodged or publicly released during the period, there were 41 separate control transactions—up from the 22 during the previous six months but similar in number to the 42 transactions between July and December 2015). In addition, there were two separate restructures effected via scheme of arrangement.

Note: These control transactions relate to the acquisition of voting shares or interests through transactions for which a bidder's statement or an explanatory statement for a scheme of arrangement was respectively lodged or registered with ASIC during the period. Multiple transactions by the same or a related bidder/acquirer for the same target are counted as a single transaction. Takeover bids and schemes of arrangement that do not result in the acquisition of control (e.g. reconstructions, demergers or offers for non-voting securities) are not included.

118 Overall, during the period:

(a) bidder's statements in respect of 24 bids were lodged with ASIC;

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

(b) draft explanatory statements and scheme terms for 22 members' or creditors' schemes of arrangement were received for review by ASIC; and

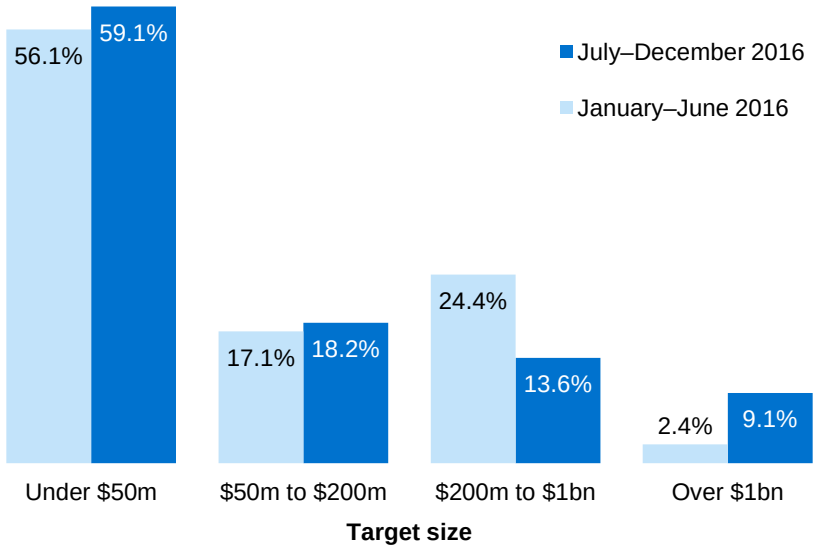
(c) explanatory statements for 25 members' or creditors' schemes of arrangement were either registered by ASIC or—in the case of creditors' schemes—publicly released.

Note: For a list of all scheme explanatory statements registered by ASIC or otherwise released during the period, see Table 4 in Appendix 1. Four explanatory statements relate to schemes first received by ASIC for review in a prior period.

119 Regardless of the higher deal volumes compared to the previous period, the total value of control transactions using a bid or scheme during the period was lower at $5.6 billion—down from $11.3 billion in the previous period.

120 There was a similar spread in terms of target size as in the previous period: see Figure 4.

Figure 4: Control transactions by target size (1 July to 31 December 2016 and previous period comparison)



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

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

Table 2: Top 10 takeover bids and schemes of arrangement by target value (disclosure documents lodged or registered from 1 July to 31 December 2016)

Target	Bidder	Type	Industry	Value
SAI Global Limited	Baring Asia Private Equity Fund VI	Scheme	Professional services	$1,014m
Bradken Limited	Hitachi Construction Machinery Co., Ltd	Bid	Machinery	$670m
UGL Limited	CIMIC Group Limited	Bid	Construction and engineering	$525m
S. Kidman & Co Ltd	Australian Outback Beef Pty Ltd	Bid	Food products	$387m
Fantastic Holdings Ltd	Steinhoff International Holdings N.V.	Scheme	Household durables	$361m
ASG Group Limited	Nomura Research Institute, Limited	Scheme	IT services	$329m

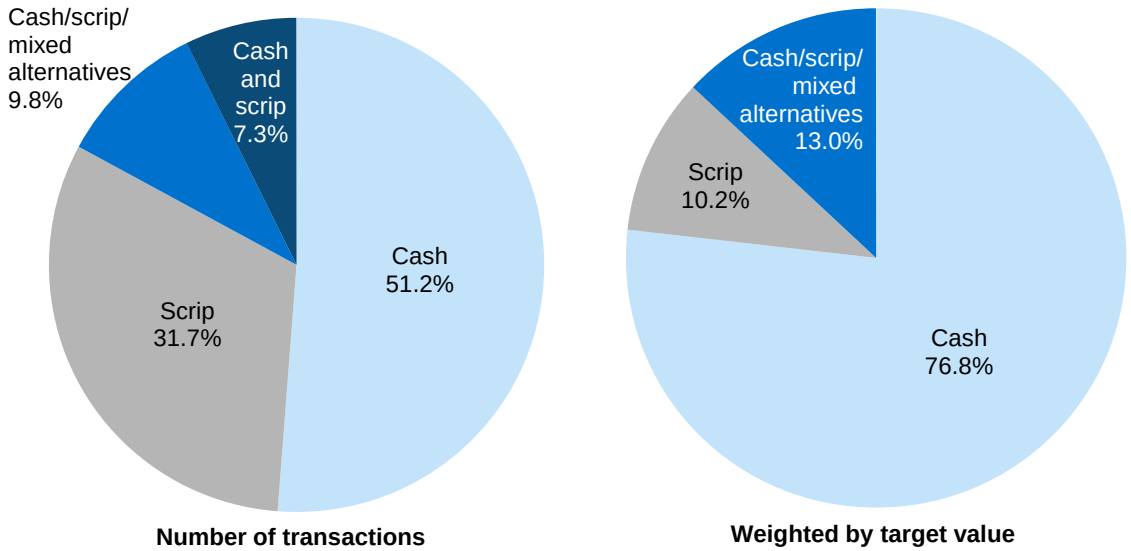
Target	Bidder	Type	Industry	Value
GPT Metro Office Fund	Growthpoint Properties Australia Limited (Growthpoint Properties Australia Trust)	Bid	Equity real estate investment schemes	$321m
Vitaco Holdings Limited	Shanghai Pharmaceuticals Holdings Co., Ltd and Primavera Capital Fund II L.P.	Scheme	Personal products	$309m
Payce Consolidated Limited	Bellawest Pty Limited	Scheme	Real estate management and development	$250m
Patties Foods Ltd	Australasian Foods Bidco Pty Limited (owned by funds managed or advised by Pacific Equity Partners Pty Limited)	Scheme	Food products	$230m

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).

122 The number of control transactions effected via takeover bids (20) and schemes of arrangement (21) was almost evenly split. However, the preference for schemes of arrangement in larger deals continued during the period—schemes made up 61% of all deals by target value (67% in the previous period if the Asciano Limited transaction is excluded).

123 Consistent with the trends observed in previous periods, the majority of control transactions via bids and schemes again involved a cash offer—particularly in the case of larger deals. Nine of the top 10 deals, and over 85% of control transactions by target value overall, offered cash consideration or an uncapped all cash alternative: see Figure 5.

Figure 5: Consideration type (control transactions via bids and schemes lodged or registered from 1 July to 31 December 2016)

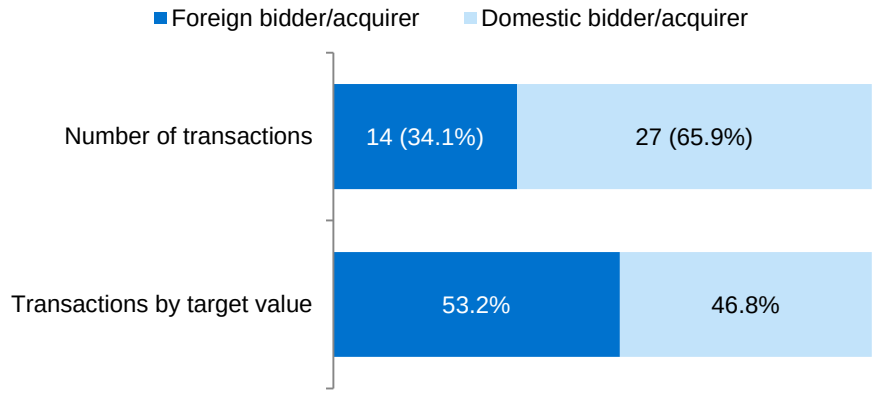


Note 1: Weightings are based on the target value calculated by reference to the bid consideration.

Note 2: See Table 9 in Appendix 2 for the data shown in these pie graphs (accessible version).

124 As in the previous period, the majority of control transactions conducted via a bid or scheme were driven by domestic interest—with local bidders and acquirers involved in around two-thirds of deals during the period. The predominance of overseas bidders and acquirers in larger transactions meant that overall there was a relatively even split of domestic and foreign bidders and acquirers when weighted by target value: see Figure 6.

Figure 6: Foreign and domestic offerors (control transactions via bids and schemes—1 July to 31 December 2016)

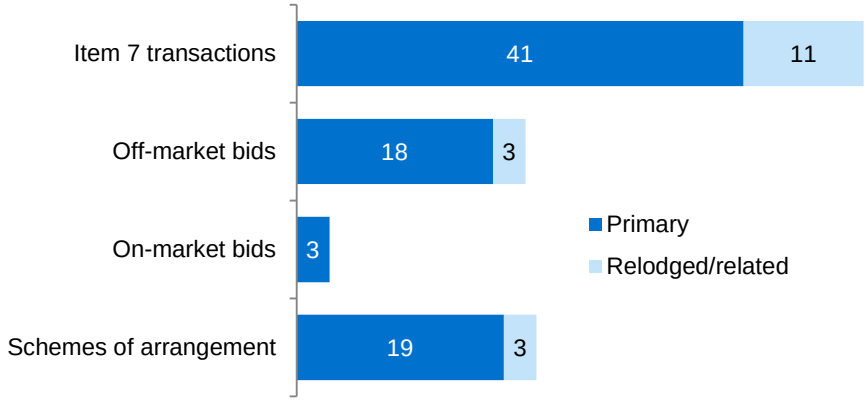


Note: See Table 10 in Appendix 2 for the data shown in this bar graph (accessible version).

Other control transactions

125 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 higher than the previous period: see Figure 7.

Figure 7: Bids, schemes and item 7 transactions in respect of which documents were lodged with or received for review by ASIC (1 July to 31 December 2016)



Note 1: The primary transactions displayed above reflect the total number of separate transactions for which documents were received by ASIC during the period. Some bids or schemes may involve related—but technically separate—transactions (e.g. simultaneous bids for shares and options in the same target). Moreover, some item 7 transaction documents

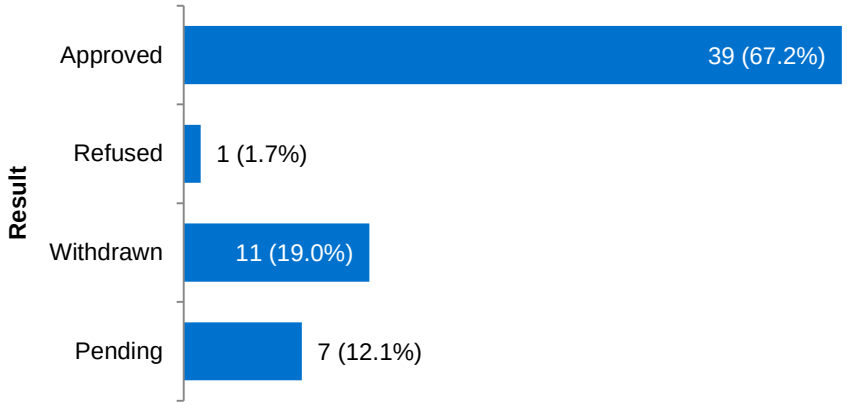
provided for review may be subsequently amended and re-lodged. These related or relodged documents are displayed separately.

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

Applications for relief and approval

126 We received 57 applications during the period for relief under s655A, and one application under s669: see Figure 8. Overall, there were fewer applications received than in the previous period—reduced from 70 applications under s655A and none under s669.

Figure 8: Results of applications under s655A and 669 (1 July to 31 December 2016)



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

127 During the period, we also received 17 applications under s615(a) for approval of a nominee for rights issue offers that may affect the control of the offerors.

128 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 506.

ASIC's review and monitoring of control transactions

129 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.

130 This section provides an insight into some of the issues we have encountered and action we have taken during the period as part of our day-to-day regulatory oversight of control transactions.

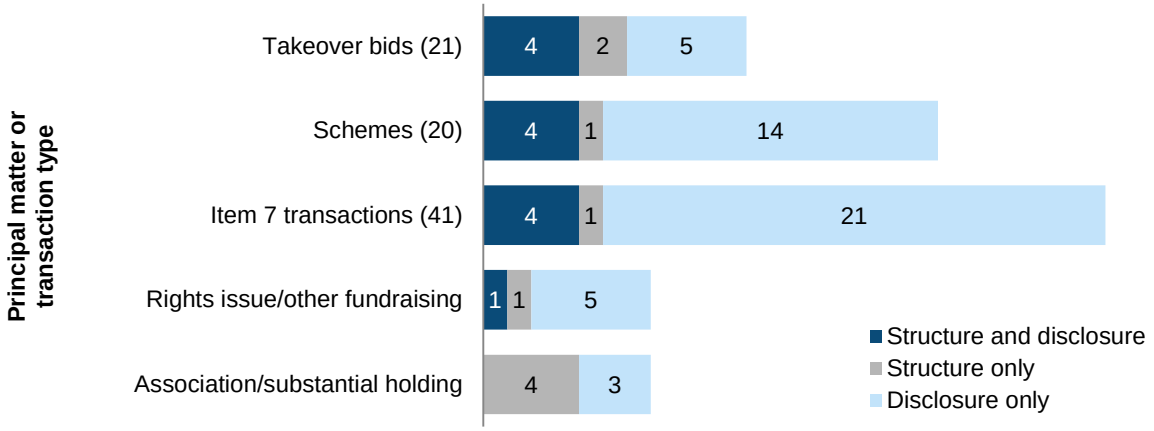
General oversight activity

131 Where we raise concerns, these are often addressed by the issuer making amendments to the offer structure or terms, providing new or amended disclosure, or taking some other corrective action.

132 In the interest of facilitating a timely and effective outcome, our approaches will often be informal. In many cases, market participants may not even be aware of our intervention because our concerns are resolved without the need for any formal regulatory action.

133 Figure 9 sets out the number of instances during the period where our inquiries or intervention into a transaction or situation affecting the control of a regulated entity led to a change in the structure or terms of the transaction, improvements in disclosure or another outcome.

Figure 9: Instances where matters addressed following intervention by ASIC (1 July to 31 December 2016)



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

Note 2: In some cases the number of instances of intervention may be higher than the number of transactions as a result of ASIC intervening on more than one occasion throughout the course of a particular transaction. The numbers in parentheses next to the headings for takeover bids, schemes and item 7 transactions reflect the total number of separate transactions of that type that we considered during the period.

Note 3: See Table 13 in Appendix 2 for the data shown in this bar graph (accessible version).

Principal areas of concern

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

(a) there was inappropriate disclosure—for example, where disclosure was not made in a balanced way or where the bidder's or acquirer's intentions were not adequately disclosed;

(b) we had concerns about the content of independent expert reports—in particular, as in the previous period, we continued to express concerns about inadequate disclosure of the expert's underlying assumptions, and whether the expert had reasonable grounds; and

(c) there were structural concerns—for example, where the voting power of acquirers and their associates was not adequately disclosed or where they were not excluded from voting (or voting was otherwise not correctly conducted).

135 In almost all instances, changes were made to the disclosure in response to our concerns.

Expert reports

136 We are concerned with the quality of some recent independent expert reports. Issues have come to our attention as part of court cases (see paragraphs 137–141) and as a result of our recent reviews of expert reports (see paragraphs 142–157).

Ensuring the quality of expert reports

137 In November 2016, shareholders of Kasbah Resources Limited (Kasbah) voted to approve a scheme of arrangement under which Asian Mineral Resources Limited would acquire all the ordinary shares in Kasbah. At the meeting, 92% of the shares were voted in favour of the scheme.

138 However, before the second court hearing Kasbah announced that there was an error in the valuation methodology used and that, as a result, the expert's conclusion changed from 'fair and reasonable' to 'not fair but reasonable'. The issue was raised after Kasbah was provided with an analysis of the expert's methodology by another expert commissioned by a group of Kasbah shareholders opposed to the scheme.

139 The court considered that the basis on which shareholders had voted in favour of the scheme had changed and it was therefore necessary to start the process afresh. Accordingly it dismissed Kasbah's request to adjourn the second court hearing to allow time to attempt to renegotiate the scheme with the scheme acquirer.

140 The outcome in the Kasbah scheme is a reminder of the need to ensure that expert reports are of a high quality, and of the risks to a transaction if there are problems with a report.

141 For further details of the court decision, see *Kasbah Resources Limited (No 2)* [2016] FCA 1518.

Assessing company information and preserving independence

142 On a number of occasions during the period our regular reviews of draft reports and our subsequent engagements with experts raised concerns that:

(a) undue reliance may have been placed on information provided by the company in circumstances where there were questions about the accuracy, completeness or reliability of that information; and

(b) experts may not have maintained their independence during an engagement, including where there is a need for the expert to revise their analysis.

143 In the course of recent reviews it appeared that some experts:

(a) may not be critically evaluating information received and may not be making reasonable inquiries to establish the truth, accuracy or completeness of this information;

(b) may be relying on forward-looking information, such as management, directors' or advisers' forecasts, with insufficient inquiries and evidence to satisfy themselves that this information is based on reasonable grounds and is therefore suitable for inclusion; and

(c) are not keeping adequate working papers supporting assumptions underpinning the expert's opinion and the use of any forward-looking information.

144 We are also particularly concerned with indications that some experts:

(a) may not be meeting appropriate standards of independence both before and during engagements;

(b) may be unduly influenced by commissioning parties and advisers in situations where the expert revises a report to take into account a change in transaction terms or commentary provided by ASIC;

(c) may accept, or continue with, engagements where the information provided is insufficient or in circumstances where there is insufficient time for the expert to complete the report to a suitable standard; and

(d) are not routinely keeping adequate records of communications with commissioning parties and their advisers exhibiting how the expert has maintained independence throughout the course of an engagement.

145 To review compliance with relevant sections of Regulatory Guide 111 *Content of expert reports* (RG 111), Regulatory Guide 112 *Independence of experts* (RG 112) and Regulatory Guide 170 *Prospective financial information* (RG 170), we will be selecting engagement files across independent expert firms throughout 2017. These reviews will examine communications between the expert and commissioning parties, and may be undertaken during engagements.

Addressing outstanding issues where our concerns not resolved

146 When reviewing expert reports we will generally seek to address any issues identified by engaging directly with the expert to talk through our concerns and to obtain further information regarding the expert's approach. This is in the interests of advancing these transactions, as it is generally the most efficient and expeditious way for us to finalise our review.

147 However, where our engagement raises concerns about the approach or independence of the expert, or we are not satisfied with the expert's responses, we may consider it necessary to take more formal steps to address our concerns—including using our compulsory information gathering powers to obtain information to assess whether further action is required.

148 In the course of considering a report commissioned for a scheme of arrangement during the period we issued notices under the *Australian Securities and Investments Commission Act 2001* (ASIC Act), requiring an expert to produce certain information relevant to a number of concerns that arose from both the expert report and the expert's approach to revising its draft report in response to our comments. The company sought, under the Corporations Regulations 2001, our consent to the report accompanying the scheme booklet.

149 As it appeared that our outstanding issues with the expert report were unlikely to be resolved before the latest available date for the first court hearing (under the scheme implementation agreement), we advised the company that, in the circumstances, we were prepared to provide our consent on condition that a letter from ASIC accompany the independent expert report. The letter was to be addressed directly to shareholders and was to provide details of the concerns identified by ASIC with the report.
We proposed to state clearly in our letter that the expert's opinion might be incorrect, together with our reasons for reaching this conclusion.

150 After receiving a draft of our proposed letter the parties to the scheme proposal agreed to extend the deadline to allow further time to resolve our outstanding concerns with the expert.

151 Parties to control transactions are reminded that where insufficient time is allowed for our concerns with an independent expert report to be resolved, or where our concerns cannot be resolved, we may decline to provide our indication of intent letter, or any requisite consents for the inclusion of the report. Alternatively, in appropriate cases we may do so subject to a condition—such as the inclusion of a letter with the report setting out our concerns.

Expert reports supporting leave under s444GA and related ASIC relief

152 Under s444GA, the administrator of a deed of company arrangement (DOCA) may transfer shares in a company without the consent of the holders of those shares by obtaining the leave of the court. The court must be satisfied that the transfer would not unfairly prejudice the interests of members of the company. ASIC relief may also be required if acquisitions of the company's shares are regulated by Ch 6 and the voting power of the recipient will increase to a point above 20%.

153 A report will generally be required for transactions of this kind, to determine whether members of the company have an ongoing economic interest that may be prejudiced by the proposed transfer. We closely consider reports prepared for this purpose when determining any application for relief, and it is generally a condition of this relief that the report is made available to members before the court hearing in order to provide them with all information necessary to determine whether to object to the transfer. We expect reports for these purposes to be prepared to the same standard as expert reports prepared in connection with other control transactions.

154 In one matter during the period, we raised a number of concerns about the adequacy of the evidence supporting an application for leave under s444GA. This included a report which set out the deed administrator's opinion that members would receive no return under either the DOCA or a liquidation scenario, but that unsecured creditors would receive a higher return in the DOCA scenario. We appeared as *amicus curiae* (friend of the court) in the relevant proceedings to assist the court.

155 Subsequently, further evidence was provided to address our concerns, including evidence from the deed administrator that explained the basis for the underlying assumptions and methodology relied on in his report and evidence from two separate independent experts with expertise in the relevant fields. As a result of the further evidence, a number of the conclusions reached by the deed administrator in his report were also revised.

156 The court approved the application, concluding that the transfer did not involve unfair prejudice to members. Given the court's determination and the further evidence provided to ASIC and the court, we granted relief from provisions of Ch 6 to enable the implementation of the transaction.

157 We note that the need to rectify the issues with the initial report in the above matter caused significant delay to the implementation of the transaction.

Fair and appropriate deal structures

Member approval requirements and reverse takeovers

158 During the period, we raised concerns with the impact of a 'reverse takeover' on control of a bidder and the process by which shareholders of the bidder were invited to approve the transaction.

159 The bidder had made an off-market scrip bid offering in aggregate up to approximately 370% of its existing issued capital. If successful, the bid would result in a major holder of the target acquiring an interest of around 30% of the voting shares in the bidder. On completion, it was intended that the bidder's board would be replaced by the target's board and the bidder would focus on the target's business.

160 As the transaction was conducted via a reverse takeover bid, the acquisition by the major holder fell within the exception in item 4 of s611 and approval was not sought under item 7 of s611. However, the bid was conditional on a number of bidder shareholder approvals necessary to implement the transaction under the ASX Listing Rules and the Corporations Act.

161 Although the bidder's shareholders would effectively have a say in the transaction by voting for or against the requisite approvals, we were concerned that the notice of meeting did not contain sufficient information for shareholders to make an informed decision about the acquisition. If item 7 approval is sought for a similar acquisition, this would usually be addressed by including an expert report valuing the transaction and providing an opinion on whether the acquisition was fair and reasonable to non-associated shareholders.

162 After we raised our concerns, the bidder agreed to adjourn the meeting in order to obtain an expert report for the benefit of shareholders. The expert concluded that the bid was not fair but reasonable to bidder shareholders.

Shareholder classes in schemes of arrangement

163 During the period we considered a proposed scheme of arrangement involving the acquisition of multiple classes of shares. In addition to ordinary and non-voting shares (which were held by the same person), the scheme company had issued:

(a) Class A shares—which entitled holders to collectively appoint three directors to the board, to access financial and other information about the company and to vote at general meetings of the company; and

(b) Class B shares—which entitled holders to collectively appoint one director to the board but carried limited voting rights and did not grant access to company information.

164 Both Class A and Class B shares had equal rights to dividends and proceeds on a winding-up of the company.

165 On review of the proposed scheme we advised the scheme company that in our view the holders of Class A and Class B shares constituted different classes for the purposes of the scheme. This is because, under the scheme, Class A and Class B shareholders would receive the same consideration shares carrying identical rights. The scheme therefore represented a material change in the balance of rights and interests between Class A and Class B shareholders, with Class A shareholders potentially giving up more valuable rights than Class B shareholders. We took the view that it was reasonable to assume that this difference was a material consideration for both classes in determining how to vote on the scheme.

166 At the first court hearing for the scheme, our view was accepted by the court and separate scheme meetings for the Class A and Class B shareholders were ordered.

Facilitation agreements

167 We continue to closely examine facilitation agreements that are sometimes entered into with the responsible entities of managed investment schemes in connection with control transactions.

168 Facilitation fees payable under such an agreement may constitute the giving or offering of an unacceptable collateral benefit in connection with a control transaction.

169 We remind parties to control transactions that when assessing the value of facilitation agreements, it is necessary not only to value the management rights being acquired but also to consider the context in which the management rights must be paid. This is the case even where other outgoing responsible entities have previously been paid facilitation payments of a similar relative amount. Such payments may nonetheless give rise to collateral benefits when considered in a different context (or may have also constituted a collateral benefit themselves).

Shareholder intention statements

170 We raised concerns that the solicitation and making of a shareholder intention statement for a takeover bid resulted in a contravention of the general prohibition in s606.

171 The bidder had announced, along with entry into a bid implementation agreement, that target shareholders holding more than 20% of shares in the target had given statements of intention to accept the takeover offer in the absence of a superior proposal. Based on the information we reviewed regarding the interactions that resulted in the making of the intention

statements, we were concerned that the bidder's indirect solicitations of these intention statements gave rise to a relevant agreement with these shareholders.

172 In order to remedy this, we were of the view that the bidder should take all necessary steps to ensure that the bidder no longer had the benefit of any agreement, arrangement or understanding that may have been entered into in contravention of the Corporations Act. Accordingly, we requested that the bidder offer target shareholders, including those target shareholders who had provided an intention statement, a right to withdraw their acceptance. We granted the bidder relief to allow this to occur.

173 We will continue to analyse shareholder intention statements closely to ensure that parties do not breach the limits imposed by s606 in seeking to build a pre-bid stake or momentum for an offer.

Disclosure

Member approval related to potential control transaction

174 We considered the disclosures made by the responsible entity of a listed fund seeking approval under item 7 for the sale of an existing holding in excess of 20% of the fund.

175 Under the transaction, a new owner would acquire the responsible entity of the fund, together with the relevant stake in the fund held by entities within the responsible entity's corporate group. The units would be acquired for a cash sum. Before agreeing the transaction, the parties had been in discussions regarding a potential merger of the fund and two indicative proposals were made by the incoming manager to acquire the entire fund via a cash and scrip offer to unitholders. The first proposal involved only the acquisition of a 19.9% stake; however, the second was conditional on the incoming manager acquiring the entire stake with unitholder approval. Ultimately, it was determined not to proceed with a merger at the time.

176 In reviewing the disclosures made in connection with the transaction, we closely considered the link between the proposed transaction and the potential control transaction the parties had been discussing. We invited the fund to consider the extent to which disclosure regarding the details of the previous offers from the new owner and the evolution of the discussions may be appropriate in the circumstances.

177 Whether details of this kind are required to be disclosed will depend on the particular circumstances of each case—including matters such as the nature, timing, specificity and materiality of the proposal if it were to proceed, the context in which it was proposed and its connection to the relevant

transaction. Some of the key factors suggesting disclosure was appropriate in this case were:

(a) an independent expert engaged to determine whether the transaction involved a 'net benefit' had assessed that the aggregate consideration received for the units being acquired was greater than the fair market values of those units;

(b) the proposed consideration offered under the second proposal had a lower cash component than the first, but was conditional on the acquisition of the additional holding of the outgoing manager for cash; and;

(c) generally, where approval is sought for an item 7 transaction involving the sale of shares or units, members (who do not directly participate in any benefits from the transaction) will often seek to assess the likelihood that the change in ownership will lead to an offer for the entire entity in the future.

178 The fund revised its disclosure to explain in more detail the circumstances leading up to the proposed transaction, including the implications of the revised structure in terms of the advantages and disadvantages for members in voting on the item 7 transaction.

Disclosures relating to the conditions of a takeover offer

179 We encourage bidders to ensure that the terms and consequences of any conditions attached to an offer are fully and accurately disclosed. In one matter during the period, we raised concerns that a bidder had described its offer as 'unconditional' with the caveat that the offer was subject to a 'prescribed occurrences' condition and had not specified a date for giving notice of the status of the condition under s630(1).

180 In recent times, we have encountered issues with defeating conditions relating to Foreign Investment Review Board approvals. These are commonly cast as pre-conditions, with the consequence that target shareholders who accept the offer may be entitled to withdraw their acceptance until the condition is fulfilled. Bidders should ensure that they clearly and prominently disclose any such withdrawal right.

181 Parties to control transactions are also reminded of the need to ensure that 'regulatory action' conditions that apply to the consequences of ASIC or Takeovers Panel action are appropriately limited. Conditions of this kind may create uncertainty and detract from an efficient, competitive and informed market if they are too broadly cast, or purport to allow a bidder or acquirer to abandon its proposed transaction due to its own non-compliance.

> Note: See the Takeovers Panel's recent decision in *Merlin Diamonds Limited* [2016] ATP 18 at [151].

Disclosing interests arising through swap arrangements

182 We have recently observed the use of equity swap agreements for control transactions that permit a proposed acquirer to direct a counterparty to vote any securities acquired as a hedge to the swap.

183 If a swap of this kind relates to more than 5% of the voting shares in the target entity, we would generally expect:

(a) the acquirer to disclose details of the swap, including (where relevant) by lodging a substantial holding notice disclosing their voting power on the basis of either:

(i) the known holding and hedge position of the counterparty in the target; or

(ii) an assumption that the counterparty has a position that would result in them acquiring the maximum voting power possible under the swap; and

(b) the counterparty, in any subsequent substantial holding notice, to identify the target securities (if any) in which they have a relevant interest that are or would be subject to the agreed voting arrangements under the equity swap (even if this may change in the future).

Note: Proposed acquirers disclosing their voting power should see our analogous position on warrants in Regulatory Guide 5 *Relevant interests and substantial holding notices* (RG 5) at RG 5.242. See also Takeovers Panel Guidance Note 20 *Equity derivatives* (GN 20).

184 Substantial holders are reminded that, in lodging the prescribed forms, they must include details of any qualification of their power to exercise, or control or influence the exercise of, the voting or disposal of the securities to which the relevant interest relates (indicating clearly the particular securities to which the qualification applies). This includes conditional qualifications.

Rights issues and underwriting

Disclosure of potential control effects of rights issues and underwriting arrangements

185 Our reviews of rights issues during the period indicated that in some cases issuers may not be providing sufficient disclosure of the potential control effect of the offer and/or associated underwriting arrangements—particularly when offers are made via cleansing notices.

186 As noted in RG 6, adequate disclosure of the potential control effects of an offer is necessary not only to satisfy the requirements of the fundraising and continuous disclosure provisions, but also the underlying principles of Ch 6—set out in s602(a) and (b). Accordingly, the level of disclosure regarding the effect of an offer on control of the issuer that should be made

is essentially the same, regardless of whether the fundraising take places under:

(a) a full prospectus (see s710);

(b) a transaction-specific prospectus (see s713(2)(a)); or

(c) a cleansing notice (see s708AA(7)(e)).

187 If, as a result of the offer (including any relevant underwriting or sub-underwriting arrangements), a current holder or an underwriter may increase their holding to a point greater than 20%, it is not sufficient to merely state that the offer is unlikely to affect control of the entity or that security holders that do not take up the offer may be diluted.

188 Clear disclosure of the possible control scenarios should be made in each case. For example, we would generally expect to see disclosure (preferably in a table) setting out the identities and maximum possible holding of each major security holder, underwriter or sub-underwriter who post-offer may have voting power of greater than 20% in the entity, as well as the outcome at various other levels of take up of the offer (e.g. 25%, 50% and 75% of other holders).

189 Issuers should also consider and comment, where relevant, on matters such as:

(a) the terms, conditions and rationale of any underwriting and sub-underwriting arrangements—including the reasons behind the choice and roles of any supporting shareholders, underwriters and sub-underwriters;

(b) the stated intentions (regarding the issuer) of persons who may obtain control, and the potential impact their influence may have on the future direction and prospects of the entity; and

(c) the terms and allocation policy applicable to any shortfall facility or other dispersion strategy, and the potential effect these may have on control.

Note: See RG 6.94—RG 6.96 and the Takeovers Panel Guidance Note 17 *Rights issues* (GN 17) at paragraph 30.

Use of underwriting to repay loan

190 During the period, we raised concerns about an underwriter seeking to rely on the exception in item 13 of s611 for a rights issue, where the rights issue appeared to be designed to give control to the underwriter.

191 Before the rights issue, the company had entered into a loan agreement with a controlling shareholder. Under the loan agreement, the controlling shareholder was to be repaid by conversion of its loan to equity in the company. The conversion was to take place by way of the shareholder underwriting an upcoming rights issue. Because the loan was to be converted in this manner, the underwriter and the company were of the view that

shareholder approval was not required as the underwriting exception in item 13 would apply.

192 We were concerned that the underwriting arrangement was not 'underwriting' for the purposes of item 13 and that the transaction as a whole (comprising the loan agreement, rights issue and associated underwriting) constituted unacceptable circumstances.

193 After we raised our concerns, the company agreed to seek member approval under item 7 in the event that, following the close of the rights offer, the underwriter was in a position to make an acquisition in breach of s606.

194 We will continue to closely review rights issues and underwriting arrangements to examine whether the arrangements might be unacceptable.

Takeovers Panel applications and enforcement action

195 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.

196 We also seek to shape behaviour by taking an active role in proceedings before the Takeovers Panel that are brought by third parties. In many cases, these applications raise issues that we have already been pursuing or would otherwise have been inclined to consider.

Takeovers Panel applications by third parties

197 The Takeovers Panel conducted proceedings for two applications brought by third parties during the period.

Merlin Diamonds Limited

198 In October 2016, a shareholder of Merlin Diamonds Limited (Merlin) made an application to the Takeovers Panel which alleged that a shareholder of Merlin was associated with a director and former director of Merlin and that shareholder approval for a placement of notes was provided in circumstances which were unacceptable.

199 During the Takeovers Panel proceedings, we used our compulsory information-gathering powers to request information from one of the parties. The information we received was material to considering whether an association existed and was subsequently provided to the Panel to assist its considerations.

200 The Takeovers Panel made a declaration of unacceptable circumstances and final orders. We also sought and were awarded our costs, with the Panel acknowledging that some information was only made known as a result of our use of ASIC's compulsory powers.

201 For further details, see *Merlin Diamonds Limited* [2016] ATP 18.

Regal Resources Limited

202 In September 2016, a shareholder of Regal Resources Limited (Regal) made an application to the Takeovers Panel alleging that Regal had rejected shortfall applications for a recent entitlement offer in a manner inconsistent with that disclosed in the prospectus and that the resulting increase in the underwriter's holding in Regal gave rise to unacceptable circumstances.

203 Regal had sought and obtained approval under item 7 to allow the underwriter to increase its holding in Regal through the underwriting arrangement. In the notice of meeting, Regal indicated that a relevant fundraising would incorporate a shortfall facility, allocation of which would be at the directors' discretion. The prospectus for the offer set out the terms of the facility and included statements that the shortfall would be allocated first to eligible shareholders and then to the underwriter, but that shares would be issued at the directors' discretion.

204 We took the view that the overall impression created by the disclosures in the notice of meeting was that a shortfall facility of the kind commonly used in a rights issue to mitigate the control effects of an offer would be made available. The Takeovers Panel agreed, noting that the general directors' discretion did not overcome the impression created by the disclosures.

205 The Takeovers Panel made a declaration of unacceptable circumstances on the basis that Regal acted contrary to its disclosure to shareholders when it sought approval of the underwriting arrangements and its disclosures in the prospectus. The Panel ordered that Regal make new offers to certain shortfall applicants and that a number of shares issued to the underwriter equivalent to the number taken up under the new offers be cancelled.

206 The matter is an important reminder for companies of the importance of ensuring:

(a) clear disclosure is given to shareholders when approval of a transaction is sought, given the potential for that the consent or approval to be limited in scope by the disclosures made; and

(b) where directors retain a discretion to place or allocate securities under a shortfall facility or other dispersion strategy, that the discretion is exercised consistently with the intended purpose of mitigating the control effect of the fundraising.

207 For further details, see *Regal Resources Limited* [2016] ATP 17.

Sovereign Gold Company Limited

208 As discussed in REP 489, in July 2016 the Takeovers Panel made a declaration of unacceptable circumstances regarding the affairs of Sovereign Gold Company Limited (Sovereign Gold) and made orders vesting shares in ASIC for sale.

209 Following the proceedings, ASIC on behalf of the Commonwealth acquired registered title to the 22,901,234 Sovereign Gold shares and appointed Morgan Stanley Wealth Management Australia Pty Ltd to facilitate the sale of the shares. These shares were sold on-market on 17 October 2016.

210 For further details, see Media Release (16-344MR) *ASIC appoints Morgan Stanley to sell shares in Sovereign Gold Company Limited* (11 October 2016).

Disclosure of interests

211 In December 2013, Paul Gerard Choiselat was charged with offences relating to market manipulation and concealing his interests in shares of listed companies. Mr Choiselat was a director of two ASX-listed companies: Q Ltd (from 2001 to 2013) and Jumbuck Entertainment Ltd (from 2004 to 2008). During most of those periods, he held the role of managing director or executive chairman.

212 We alleged that the disclosures of Mr Choiselat's interests to the market were false, as they did not include his total interests in the companies and excluded interests held through various offshore entities registered in the British Virgin Islands and managed from Hong Kong.

213 The matter included evidence obtained from the British Virgin Islands and Hong Kong and was subject to a number of adjournments, both at the committal and trial stage.

214 Judge Carmody in the County Court of Victoria in Melbourne found that there was a *prima facie* case against Mr Choiselat. However, Mr Choiselat was ultimately found to be unfit to stand trial based on the criteria set out in the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic.). Accordingly, Judge Carmody made an order under the *Crimes Act 1914* (Cth) to release Mr Choiselat on the condition that he resign effective immediately from all statutory offices of companies registered or operating in Australia and that he not take up or apply for such position with a company registered or operating in Australia for a period of three years.

215 For further details, see Media Release (16-303MR) *Jury finds former Managing Director unfit to stand trial* (13 September 2016).

ASIC policy initiatives

Reissue of our regulatory guide on takeover bids

216 In December 2016, we reissued Regulatory Guide 9 *Takeover bids* (RG 9). The principal change to RG 9 was the update and incorporation of our guidance on the minimum bid price rule in s621(3), which was previously contained in Superseded Regulatory Guide 163 *Takeovers: Minimum bid price principle (s621)* (SRG 163).

217 We rewrote our guidance to make it clearer and easier to use, and included the new section on the minimum bid price rule in RG 9 (Section D) to further consolidate our policies on takeovers.

218 Other changes we made in the reissued RG 9 include:

(a) the removal of discussion regarding broker handling fees, which are likely to be conflicted remuneration;

(b) amendments to reflect our current policy on relief to permit a bidder to disclose its voting power as at date earlier than that on which offers are first made (see RG 9.433); and

(c) updated references to regulatory guides that have been issued or reissued since RG 9 was first released, and the new legislative instruments relating to takeovers which were released in December 2015, including ASIC Corporations (Minimum Bid Price) Instrument 2015/1068.

219 For further information, see Media Release (16-423MR) *ASIC updates takeovers guidance on minimum bid price rule* (7 December 2016).

Other policy initiatives

Update to Takeovers Panel Guidance Note 4 *Remedies general*

220 On 30 January 2017, the Takeovers Panel revised Guidance Note 4 *Remedies general* (GN 4). The revisions followed the issue of *Consultation paper—Guidance Note 4 Remedies general* on 2 September 2016. For more information on the issues raised in response to the consultation, see *Amendment of GN 4 Remedies general: Public consultation response statement*.

221 The revision of GN 4 related to the Takeovers Panel's approach to considering remedies without the need for a declaration or orders, and emphasised that the Panel welcomes offers to resolve matters at any stage of

the proceedings. The Panel also sought comments on whether and when the Panel should decline to make a declaration, even if parties offer to remedy the unacceptable circumstances.

222 In our submission to the Takeovers Panel, we suggested that footnote 8 be included in the body of GN 4—to qualify the proposition that the Panel may accept an undertaking even after it has indicated it is minded to make a declaration—and that other changes be made regarding the Panel's policy of accepting undertakings in lieu of a declaration. While the Panel agreed with the former submission, it considered that, on balance, existing statements as to when it will accept undertakings were sufficient.

Update to Takeovers Panel Guidance Note 12 *Frustrating action*

223 On 1 December 2016, the Takeovers Panel revised Guidance Note 12 *Frustrating action* (GN 12). The revisions followed the issue of *Consultation paper—Guidance Note 12 Frustrating action* on 14 September 2016. For more information on the issues raised in response to the consultation, see *Re-write of GN 12 Frustrating action: Public consultation response statement*.

224 The revision of GN 12 seeks to provide clearer guidance about the Takeovers Panel's approach to frustrating action, including the circumstances in which a frustrating action is unlikely to be unacceptable. In proposing the new guidance, the Panel cited concerns from some market participants that GN 12 did not fully explain the risk attached to the various factors the Panel considers may result in a frustrating action giving rise to unacceptable circumstances and that, as a result, the policy had the potential effect of unduly restricting a target from carrying on business during a bid period.

C Corporate governance

Key points

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

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

Key observations and statistics

Related party notices

225 In the period, we received 259 related party approval notices under s218, of which 192 (74.1%) requested we abridge the 14-day review period.

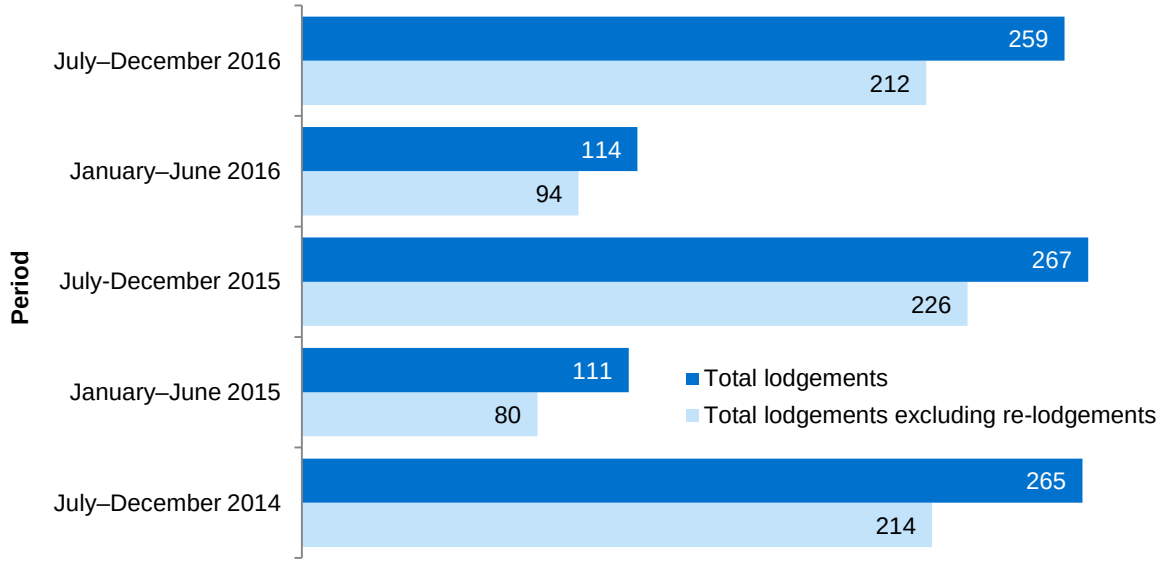
226 During the period, a number of related party approval notices were amended after being lodged with ASIC, due to changes requested by ASX.

227 It is our preference that related party approval notices not be lodged with ASIC until they are final. Consequently, such material should be considered by ASX, and any concerns raised be resolved, before the meeting material is lodged with ASIC.

228 Although the number of related party approval notices lodged with ASIC is considerably higher than in the previous period, it is consistent with the July to December periods for 2014 and 2015. The percentage of abridgement applications associated with these lodgements is also fairly consistent between the same periods.

229 Figure 10 sets out the number of related party approval notices we received in the period and previous periods.

Figure 10: Related party approval notices (July 2014 to December 2016)



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

Shareholder-requisitioned meetings

230 Shareholder-requisitioned meetings are one of the few mechanisms shareholders have to effect significant timely change in the management and direction of their company. Directors of a company that receives a valid requisition under s249D are obliged to call a meeting within 21 days and the meeting must be held no later than two months after the request is given to the company. In this context, 'holding' the meeting means that the meeting must be called and concluded within two months from the date of the request, not simply commenced within the time period.

231 There may be circumstances where a meeting is not able to be held on the date for which it was called. Where holding and concluding a meeting in the requisite time period is not possible, the directors do not have the power to extend the two month time limit. The only way a postponement or adjournment can be effected is by court order.

232 The requirements for shareholder-requisitioned meetings apply even where the directors are no longer in charge of the company. For example, where voluntary administrators are appointed, it is our view that the administrators do not have broader powers than the directors to extend the period for holding the meeting beyond the two months from the date the request is received.

233 We will closely scrutinise any attempts to frustrate the outcome of shareholder-requisitioned meetings, such as issuing securities before the meeting.

234 During the period, we also sought corrective disclosure from a company that suggested that the outcome of a meeting called by shareholders under s249F may be invalid if all of the actual and expected expenses of the company, directors and advisers were not paid by the requisitioning shareholders in advance of the meeting.

Climate risk and directors' duties

235 We have previously discussed the requirement for companies to consider the inclusion of climate risk disclosure in their operating and financial review. Regulatory Guide 247 *Effective disclosure in an operating and financial review* (RG 247) sets out our guidance on such reviews and, at RG 247.63, notes that such reviews should discuss 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.

236 In October 2016, the Centre for Policy Development and the Future Business Council released a memorandum of opinion by Noel Hutley SC and Sebastian Hartford-Davis entitled *Climate change and directors' duties* (PDF 3.34 MB) that had been commissioned by both organisations.

237 Relevantly for directors, the authors conclude at paragraph 3.5 that it is 'conceivable that directors who fail to consider "climate change risks" now could be found liable for breaching their duty of care and diligence in the future'.

238 They also state at paragraphs 4–5 that:

> Directors who do turn their minds to the impact of 'climate change risks' on their business will need to form their own assessment and make their own decisions as to what action, if any, is to be taken. This is likely to include obtaining and relying upon information and advice provided by employees or experts. …
>
> [W]hether or not they decide to act, directors who perceive that climate change does present risks to their business should also consider the adequacy of the disclosure of those risks within the company's reporting frameworks.

Directors and cyber risk management

239 Cyber resilience and risk management remains a key issue in governance and is a priority for ASIC. Directors and officers have an obligation to discharge their duties with care and diligence, and this extends to appropriately managing cyber risk. While it is not possible for businesses to protect themselves against every cyber threat, it is imperative that boards have in place procedures to prevent, manage and respond to malicious cyber activity.

240 ASX 100 companies have been invited by ASX to undergo a voluntary cyber health check, to benchmark the levels of cyber security readiness. A report on results is expected to be available in the first half of 2017.

241 We have also released Report 468 *Cyber resilience assessment report: ASX Group and Chi-X Australia Pty Ltd* (REP 468) on the cyber resilience of ASX and Chi-X. Although the report focuses on these two financial market infrastructure providers, the report contains good practice guidance along with some key questions that boards should ask themselves when thinking about their company's cyber resilience and risk management strategies. We will continue to promote awareness of cyber risk and encourage directors to prioritise and improve their company's cyber resilience.

Storm Financial Limited

242 Our action in the Federal Court of Australia against Storm Financial Limited (Storm) directors Emmanuel and Julie Cassimatis is an important reminder that directors should not cause the companies they control to breach the law. Storm provided 'one-size-fits-all' investment advice without considering investors' individual circumstances.

243 In *Australian Securities and Investments Commission v Cassimatis (No 8)* [2016] FCA 1023, the court found that Mr and Mrs Cassimatis had breached their directors' duties by failing to ensure that Storm did not breach the law by providing inappropriate investment advice. Mr and Mrs Cassimatis were the sole shareholders of the company, which was solvent at the time. However, the court rejected their argument that this meant they could pursue a risky course of action that was likely to contravene the Corporations Act and result in adverse consequences for the company.

Obligations of conflicted directors

244 In the NSW Court of Appeal's decision in *Duncan v Independent Commission Against Corruption* [2016] NSWCA 143, the court confirmed that directors' duties can impose affirmative obligations on directors who are in a position of conflict. In particular, the court confirmed the position set out in Regulatory Guide 76 *Related party transactions* (RG 76) at RG 76.56 that:

(a) the duties of directors in this position may not be satisfied by directors removing themselves from the position of conflict by declaring the conflict and abstaining from further participation in the matter; and

(b) the conflicted director may need to take steps to protect the company from suffering harm by entering into a transaction in which the director is interested.

245 At issue in this case was the failure of persons who were a director of both the bidder and the target in a takeover to inform the bidder's independent

board committee of information regarding the target that would have been relevant to the decision by the bidder to proceed with the acquisition.

Share trading by employees

246 Insider trading undermines the integrity of Australia's capital markets and deprives investors of their rightful gains. We conduct routine surveillance activities to monitor compliance with the insider trading provisions. Over the last year, these surveillance activities have identified several cases where employees, consultants or contractors of listed entities, or their related parties, have traded prior to material announcements. The trading has been of sufficient concern to us that we commenced inquiries and, in some cases, formal investigations.

247 Aside from the damage that insider trading causes to the capital markets more broadly, this conduct affects the reputation of not only the employee in question but also the company. Insider trading investigations are also time and resource intensive for all parties concerned.

248 We therefore take this opportunity to remind ASX-listed entities that ASX Listing Rule 12.9 requires that they must:

(a) have a trading policy that complies with the requirements of ASX Listing Rule 12.12; and

(b) give their trading policy to the market announcements office for release to the market.

249 ASX Guidance Note 27 *Trading policies* (PDF 241 KB) also provides guidance to help entities comply with their obligations under ASX Listing Rules 12.9–12.12.

250 To prevent insider trading and minimise the risk of ASIC raising concerns, entities should:

(a) review their share trading policies to ensure they are clear, especially when and in what circumstances approval must be sought before trading;

(b) consider if the policy has adequate coverage to meet the needs of the organisation;

(c) consider who the policy covers;

(d) communicate the policy to staff; and

(e) enforce compliance by taking action when the policy is breached.

251 Entities should also advise ASIC if the trading is suspicious. If an entity considers that a staff member or any other person has participated in insider trading, it can file a report of misconduct (www.asic.gov.au/complain).

Enforcement action

Hochtief AG

252 On 8 December 2016, the Federal Court of Australia found that Hochtief Aktiengesellschaft (Hochtief AG) had engaged in insider trading in contravention of s1043A(1)(d), and ordered Hochtief AG to pay a financial penalty of $400,000, as well as our legal costs.

253 We alleged that Hochtief AG contravened the insider trading provisions by directing its subsidiary, Hochtief Australia Holdings Limited (Hochtief Australia), to acquire shares in Leighton Holdings Limited (LEI) while Hochtief AG possessed insider information. This information was that LEI's 2013 financial results were likely to be at the high end of previous earnings guidance. Hochtief AG admitted the alleged contravention in a statement of facts agreed with ASIC.

254 In accordance with the terms of settlement, we issued Hochtief AG with an order to recover our investigation expenses of $50,000 under s91 of the ASIC Act.

255 We also accepted an enforceable undertaking from Hochtief AG, under which Hochtief AG agreed to make a voluntary contribution of $103,400 to each of:

(a) the Australian Shareholders' Association, for shareholder education or company monitoring or both; and

(b) the First Nations Foundation, for its adult financial literacy program.

256 Those voluntary contributions represent the notional profits gained by Hochtief Australia as a result of Hochtief AG's contravention.

257 The matter highlights the challenges faced by large corporate groups in establishing and enforcing information barriers. In particular, companies must diligently ensure strict compliance with such barriers to prevent their employees possessing insider information while trading. Failure to do so may have significant consequences for both companies and individual employees.

258 For further details, see Media Release (16-430MR) *Construction company Hochtief AG fined for insider trading and agrees to give up notional profits* (8 December 2016).

TZ Limited

259 On 22 November 2016, the Supreme Court (NSW) found Andrew John Sigalla—former director of TZ Limited—guilty on 24 counts of dishonest conduct under s184(2)(a).

260 The court found that Mr Sigalla used his position as a director dishonestly to gain an advantage for himself or others, by causing over $8.6 million in company funds to be transferred to either himself, his related entities or others. The funds transferred to Mr Sigalla's accounts were largely used to reduce his debt with bookmaker Tom Waterhouse or to make mortgage payments on behalf of one of his personal companies.

261 The finding concluded a 22-day trial before a jury and was the outcome of an investigation by ASIC that commenced in 2009.

262 On 10 February 2017, Mr Sigalla was sentenced to 10 years imprisonment with a six year non-parole period. As a result of the sentencing, Mr Sigalla is automatically disqualified from managing corporations for five years from the date on which he is released from prison. For further details, see Media Release (17-027MR) *Former listed public company director sentenced to ten years imprisonment for dishonest conduct* (10 February 2017).

Sino Australia Oil and Gas Ltd

263 On 8 December 2016, the Federal Court of Australia ordered that:

(a) Sino Australia Oil and Gas Ltd (Sino Australia) pay a pecuniary penalty of $800,000;

(b) its former chairman, Tianpeng Shao, be disqualified from managing corporations for a period of 20 years; and

(c) on application by the liquidator of Sino Australia, Mr Shao pay compensation to Sino Australia of $5,539,758 (being the company's estimated liability to shareholders).

264 Sino Australia was listed on ASX on 12 December 2013 after raising approximately $13.6 million under an IPO.

265 In November 2014, we commenced civil proceedings in the court against Sino Australia and its former chairman, Mr Shao. We alleged that:

(a) the company had breached its continuous disclosure obligations and made misleading and deceptive statements in its prospectus documentation during 2013; and

(b) Mr Shao had failed to act with the proper degree of care and diligence as a director and breached continuous disclosure laws.

266 We previously reported that the court had:

(a) ordered on 4 March 2016 that Sino Australia be wound up on just and equitable grounds; and

(b) declared on 11 August 2016 that Sino Australia and Mr Shao had contravened the Corporations Act.

267 In his subsequent reasons for judgement on 8 December 2016, Justice Davies said that:

> Mr Shao's explanation was that he did not understand Australia's legal requirements. If he did not understand Australia's legal requirements, his lack of knowledge demonstrated a lack of diligence and care by him in informing himself properly and fully about the company's legal obligations and a serious lack of appreciation of the importance of continuous disclosure.

268 We consider that it is vital that people contemplating entry to the Australian market familiarise themselves with and understand the rules of the market, and adhere to those rules.

269 For further details, see Media Release (16-431MR) *Court fines Sino Australia Oil and Gas Limited and disqualifies former chairman, Tianpeng Shao* (9 December 2016).

Uglii Corporation Limited and related companies

270 On 6 December 2016, the Federal Court of Australia ordered that Uglii Corporation Limited, Traralgon Technology Holdings Limited, Uglii Find Australia Ltd, BizMio Limited and Projects Discovery Services Pty. Ltd. be wound up and liquidators be appointed. A further hearing will be held on 2 March 2017 to determine whether Global Ads System Pty Ltd (formerly Uglii Ads System Pty. Ltd.) should be wound up.

271 On 14 June 2016, we applied for the court to appoint provisional liquidators to the six companies (together, the Uglii companies) under s472. In particular, we alleged that the companies had been involved in multiple contraventions of the Corporations Act and were not complying with their obligations under that legislation. We were also concerned that the companies were not being properly managed and were insolvent or likely to become insolvent. On 8 September 2016, the court ordered the appointment of provisional liquidators to the Uglii companies.

272 For further details, see Media Release (16-427MR) *Court orders wind-up of Uglii Corporation Limited and related companies* (8 December 2016).

Aviation 3030 Pty Ltd

273 On 22 August 2016, following an application made by ASIC, the Federal Court of Australia made orders limiting the ability of Aviation 3030 Pty Ltd (Aviation) to deal with the proceeds of sale of property it owned in Victoria.

274 In the course of an investigation into Aviation, we became aware that Aviation had issued shares in 2016 to companies associated with a director and a former director of Aviation, substantially diluting the interests of other investors. Aviation had purported to issue the shares under a letter dated

4 May 2011 and an option agreement dated 18 September 2012. Neither the letter nor the agreement had been disclosed to investors before their investments in Aviation and the 2016 share issue had also not been disclosed to all investors.

275 In May 2016, Aviation received an offer to purchase the Aviation property for more than $100 million. The offer was not disclosed to all investors. We were concerned that the proceeds of sale of the property would be distributed in accordance with the 2016 share issue, where investors had not been provided with proper disclosure about the dilution of their interests.

276 We therefore applied for court orders to protect the interests of investors and, specifically, to enable them to be provided with information about the 2016 share issue (and the letter and option agreement), details of the proposed property sale and an opportunity to seek independent advice. Aviation subsequently advised us that it had provided disclosure to investors on these matters and—after the court orders were made—that the offer to purchase the Aviation property had been withdrawn.

277 For further details, see Media Release (16-326MR) *ASIC acts to freeze sale of land proceeds in excess of $100 million pending disclosure to investors* (28 September 2016).

ASIC policy initiatives

Communication of audit findings

278 On 25 July 2016, we released Consultation Paper 265 *Communicating audit findings to directors, audit committees or senior managers* (CP 265).

279 The consultation followed amendments in 2012 to the ASIC Act which allow us to communicate specific financial reporting and audit findings we identify in our reviews of audit files directly to directors, audit committees or senior managers of companies, responsible entities or disclosing entities. While we have not communicated such findings on a routine basis, the ability to do so has assisted us to work cooperatively with audit firms in contacting entities where we have significant concerns with their financial reports.

280 CP 265 sought feedback from stakeholders on:

(a) our proposed criteria for determining which findings from our review of audit files we would communicate in those ways; and

(b) our proposal to let an entity's board of directors know that we will be reviewing audit files relating to the entity as part of our routine audit firm inspections.

281 Submissions on CP 265 were due on 7 October 2016. We have received a number of submissions and anticipate releasing our updated guidance and a report on the key issues arising out of the submissions by June 2017.

282 For further details, see Media Release (16-234MR) *ASIC consults on communicating audit findings to directors, audit committees or senior managers* (25 July 2016).

D Other corporate finance areas

Key points

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

A number of policy initiatives have been undertaken by ASIC in the period, including remaking instruments, updating our guidance on managed investment scheme share buy-backs and participating in the Treasury-led consultation on an industry funding model.

Key observations and statistics

Financial reporting relief applications

283 During the period, we received 156 applications for financial reporting relief (reduced from 195 in the previous period). These included:

(a) one application under s111AT;

(b) 139 applications under s340; and

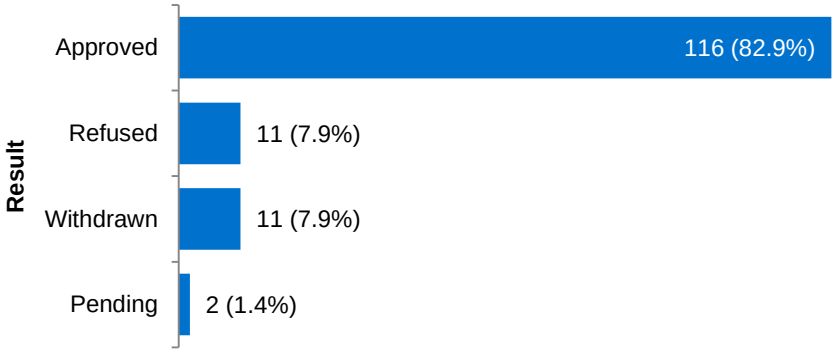
(c) 16 applications for a no-action letter for financial reporting breaches.

284 Of the applications received under s111AT and 340, 44 were from companies with external administrators appointed (up from 39 in the previous period). We approved 42 of the 44 applications from external administrators.

285 Of the 16 applications for a no-action letter, we received two applications from companies with external administrators appointed. We approved three applications for no-action letters.

286 We approved 116 of the 140 applications received under s111AT and 340.

Figure 11: Results of applications under s111AT and 340 (1 July to 31 December 2016)



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

Share buy-backs

287 There was over $3.8 billion worth of share buy-backs undertaken by 70 companies in the period. This substantial increase in both the total and average values of share buy-backs continued the trend seen in previous periods—$1.7 billion worth of share buy-backs were undertaken by 86 companies in the previous period and $1.8 billion worth by 105 companies in July to December 2015.

> 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).

288 We received seven applications for relief for share buy-backs during the period. Five applications were approved, none were refused, none were withdrawn and two are yet to be decided. The majority of the relief granted was to treat selective buy-backs as equal access schemes—for example, where buy-back offers are conducted by way of a 'Dutch auction' tender (i.e. where the company invites each shareholder to tender their shares at a price nominated by the shareholder). For more guidance on the relief we may grant for selective buy-backs, see Regulatory Guide 110 *Share buy-backs* (RG 110).

ASIC policy initiatives

Updates to our relief for proprietary companies, wholly owned subsidiaries and qualified accountants

289 On 30 September 2016, we updated Regulatory Guide 115 *Audit relief for proprietary companies* (RG 115) after making the following legislative instruments that affect financial reporting by companies and provide audit and financial reporting relief:

(a) ASIC Corporations (Audit Relief) Instrument 2016/784 replaced Class Order [CO 98/1417] *Audit relief for proprietary companies*;

(b) ASIC Corporations (Wholly-owned Companies) Instrument 2016/785 replaced Class Order [CO 98/1418] *Wholly-owned entities*; and

(c) ASIC Corporations (Qualified Accountant) Instrument 2016/786 replaced Class Order [CO 01/1256] *Qualified accountant*.

290 Under the Legislation Act, those class orders were due to sunset if not remade.

291 In addition to updating RG 115, we also updated the various pro formas associated with [CO 98/1418], reissued Information Sheet 24 *Deeds of cross-guarantee* (INFO 24) and repealed Class Order [CO 98/106] *Financial*

reports of superannuation funds, approved deposit funds and pooled superannuation trusts and Class Order [CO 99/1225] *Financial reporting requirements for benefit fund friendly societies*.

292 A consequence of remaking [CO 98/1418] as a legislative instrument is that, in order to join a company to a deed of cross-guarantee that was executed before the commencement of the new instrument, a new deed will need to be executed or the pre-existing deed varied to reflect the revised Pro Forma 24 *Deed of cross guarantee* (PF 24).

293 For further details, please also refer to Media Release (16-336MR) *ASIC remakes instruments that affect financial reporting* (30 September 2016).

Updates to other financial reporting relief

294 We also made the following further legislative instruments providing financial reporting relief:

(a) ASIC Corporations (Uncontactable Members) Instrument 2016/187 replaced Class Order [CO 98/101] *Members of companies, registered schemes and disclosing entities who are uncontactable*;

(b) ASIC Corporations (Directors' Report Relief) Instrument 2016/188 replaced Class Order [CO 98/2395] *Transfer of information from the directors' report*;

(c) ASIC Corporations (Synchronisation of Financial Years) Instrument 2016/189 replaced Class Order [CO 98/96] *Synchronisation of financial year with foreign parent company*;

(d) ASIC Corporations (Disclosing Entities) Instrument 2016/190 replaced Class Order [CO 98/2016] *Entities which cease to be disclosing entities before their deadline* and Class Order [CO 08/15] *Disclosing entities—half-year financial reporting relief*; and

(e) ASIC Corporations (Rounding in Financial/Directors' Reports) Instrument 2016/191 replaced Class Order [CO 98/100] *Rounding in financial reports and directors' reports*.

295 Under the Legislation Act, those class orders were due to sunset if not remade.

296 Consultation Paper 240 *Remaking ASIC class orders on rounding, directors' reports, disclosing entities and other matters* (CP 240) sought feedback on our proposals to remake those class orders without significant changes. Report 488 *Response to submissions on CP 240 Remaking ASIC class orders on rounding and other matters* (REP 488) highlights the key issues that arose out of the submissions we received and details our responses to those issues.

297 For further details, see Media Release (16-273MR) *ASIC remakes instruments that affect financial reporting* (26 August 2016).

Updates to ASIC's guidance on managed investment scheme buy-backs

298 On 15 December 2016, we released an updated version of Regulatory Guide 101 *Managed investment scheme buy-backs* (RG 101). RG 101 explains:

(a) the relief we have given in ASIC Corporations (ASX-listed Schemes On-market Buy-backs) Instruments 2016/1159 from certain provisions of the Corporations Act and what a responsible entity of an ASX-listed scheme should do in conducting an on-market buy-back; and

(b) our policy on applications for individual relief for scheme buy-backs.

299 It was updated:

(a) to account for ASIC Corporations (ASX-listed Schemes On-market Buy-backs) Instruments 2016/1159, which remade Class Order [CO 07/422] *On-market buy-backs by ASX-listed schemes* without significant changes; and

(b) to include our broader policy on managed investment scheme buy-backs, in addition to our policy on market buy-backs by ASX-listed schemes.

300 For further details, see Media Release (16-439MR) *ASIC releases new instrument for buy-backs for ASX-listed schemes and updates guidance for scheme buy-backs* (15 December 2016).

Other policy initiatives

Consultation on industry funding model

301 In April 2016, the Australian Government announced that it would introduce an industry funding model for ASIC. In November 2016, the Government issued two papers to refine and settle the model—a proposals paper and a supplementary technical paper—which are available from Treasury's website (www.treasury.gov.au). The Government also conducted a series of roundtables with stakeholders during the consultation period.

302 The proposals paper provides a high-level overview of how the industry funding framework could be applied. It details the proposed implementation and legislative framework. It also details the engagement, transparency and accountability mechanisms built into the model to strengthen ASIC's accountability to consumers and its regulated entities.

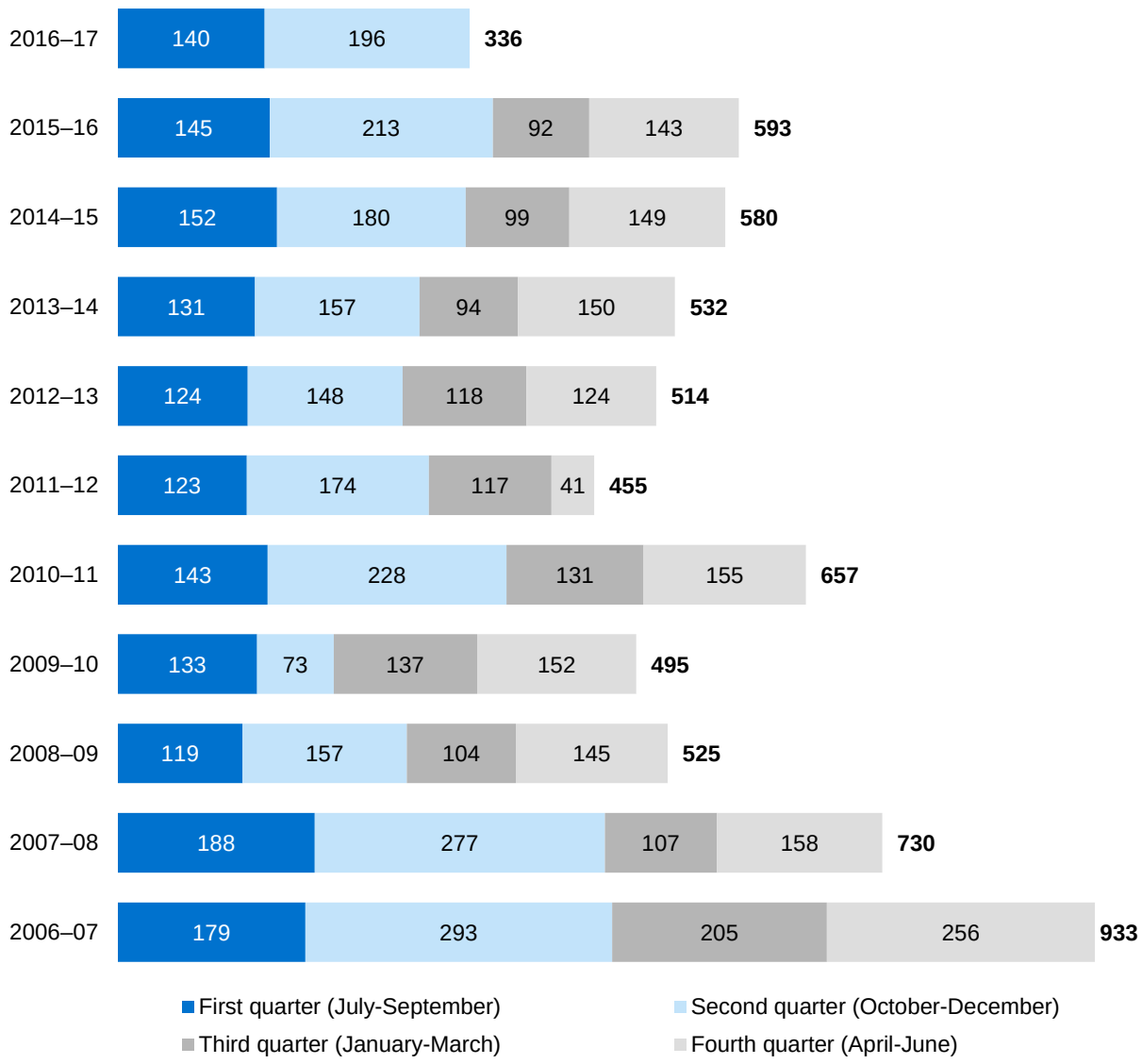
303 The supplementary technical paper provides details of our costs for regulating each sector and the metrics for how the levies could be calculated for each sector.

304 The proposed industry funding model comprises two components: annual levies and fees for service. It is intended that the industry funding model will commence on 1 July 2017 but that levies are not proposed to be payable before 1 January 2019. Implementation of the fees-for-service component of the model has been delayed until after the commencement of the levies component, pending further consultation. It is proposed that the existing fees in the *Corporations (Fees) Act 2001* and regulations will continue to apply until the new fees-for-service schedule for industry funding is introduced.

Appendix 1: Additional statistics

Fundraising

Figure 12: Total original fundraising documents lodged with ASIC by quarter (2006–07 to 2016–17)

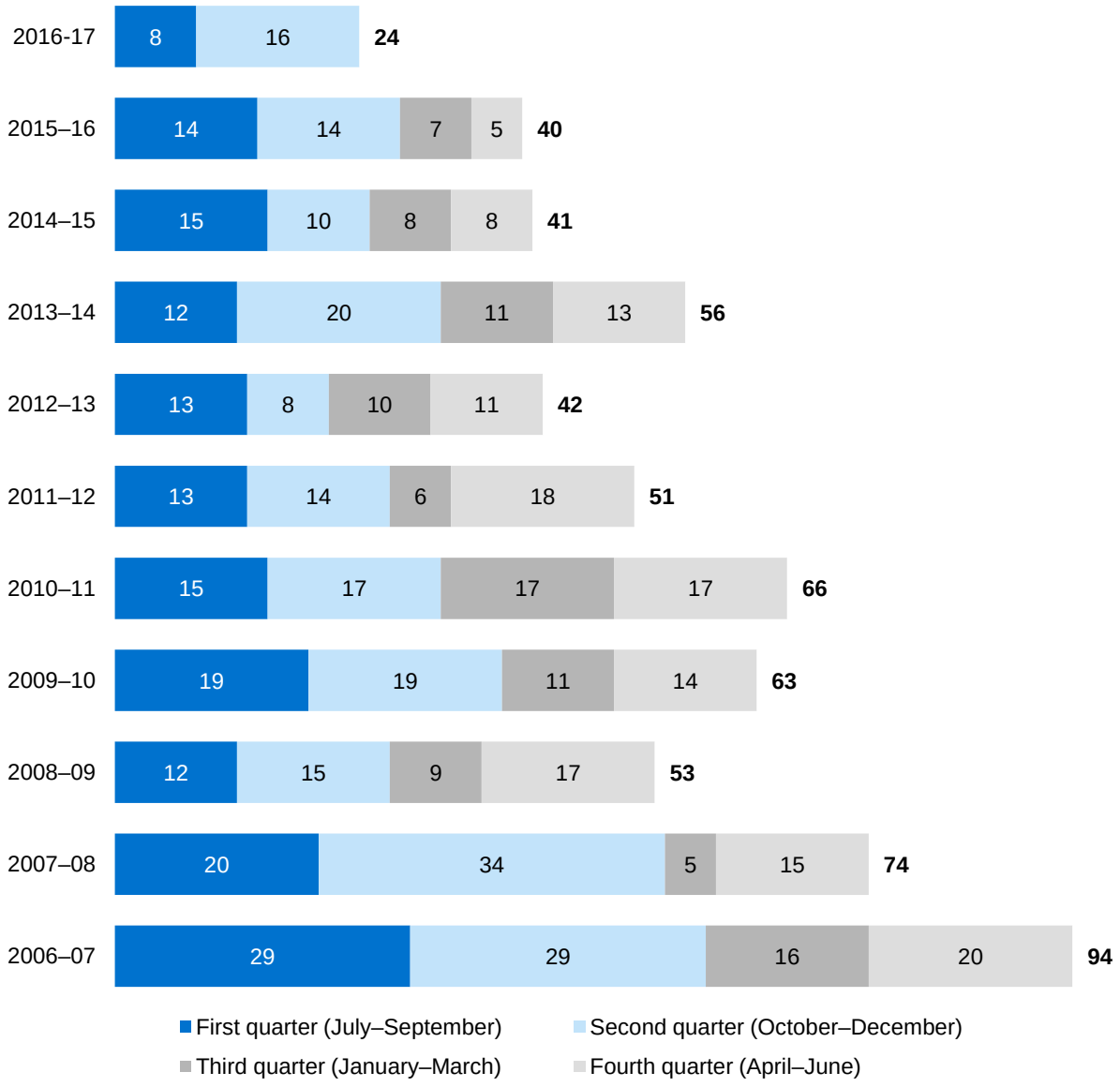


Note: See Table 16 in Appendix 2 for the data shown in this bar graph (accessible version).

Mergers and acquisitions

Takeover bids

Figure 13: Takeover bids in respect of which bidder's statements were lodged with ASIC by quarter (2006–07 to 2016–17)



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 17 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 2016)

Target	Bidder	Lodged	Type	Securities	Consideration
GPT Metro Office Fund [GMF]	Growthpoint Properties Australia Limited (Growthpoint Properties Australia Trust) [GOZ]	01/07/16	Off-market	Units	Cash and scrip
Cuesta Coal Limited [CQC]	Beijing Guoli Energy Investment Co., Ltd	18/07/16	Off-market	Ordinary shares	Cash
Richfield International Ltd [RIS]	Mercantile Investment Company Ltd [MVT]	11/08/16	Market	Ordinary shares	Cash
Renaissance Minerals Limited [RNS]	Emerald Resources NL [EMR]	19/08/16	Off-market	Ordinary shares	Scrip
BBX Minerals Limited [BBX]	Drake Private Investments LLC	06/09/16	Market	Ordinary shares	Cash
Unity Pacific Limited (stapled security of Unity Pacific Group) [UPG]	Sentinel Security Investments Limited	06/09/16	Off-market	Ordinary shares (stapled)	Cash and scrip
Unity Pacific Stapled Trust (stapled security of Unity Pacific Group) [UPG]	Sentinel Security Investments Limited	06/09/16	Off-market	Units (stapled)	Cash and scrip
Kingsgate Consolidated Limited [KCN]	Northern Gulf Petroleum Holdings Limited	16/09/16	50.1% proportional off-market	Ordinary shares	Cash
UGL Limited [UGL]	CIMIC Group Limited [CIM]	10/10/16	Off-market	Ordinary shares	Cash
Windward Resources Ltd [WIN]	Independence Group NL [IGO]	10/10/16	Off-market	Ordinary shares	Cash
Royalco Resources Ltd. [RCO]	Fitzroy River Corporation Ltd [FZR]	19/10/16	Market	Ordinary shares	Cash
Bradken Limited [BKN]	Hitachi Construction Machinery Co., Ltd	25/10/16	Off-market	Ordinary shares	Cash
S. Kidman & Co Ltd	Australian Outback Beef Pty Ltd	27/10/16	Off-market	Ordinary shares	Cash
AusCann Group Holdings Ltd	TW Holdings Limited [TWH]	31/10/16	Off-market	Ordinary shares	Scrip
Metaliko Resources Limited [MKO]	Echo Resources Limited [EAR]	04/11/16	Off-market	Ordinary shares	Scrip
Quantify Technology Ltd	WHL Energy Limited [WHN]	08/11/16	Off-market	Ordinary shares	Scrip

Target	Bidder	Lodged	Type	Securities	Consideration
Quantify Technology Ltd	WHL Energy Limited [WHN]	08/11/16	Off-market	Options	Scrip
Cellnet Group Limited [CLT]	Wentronic Holding GmbH	14/11/16	83% proportional off-market	Ordinary shares	Cash
Truffle Properties Limited	Hazel Hill Pty Ltd	14/11/16	Off-market	Ordinary shares	Cash
Plus Connect Limited	Activistic Limited [ACU]	17/11/16	Off-market	Ordinary shares	Scrip
HHY Fund [HHY]	Aurora Global Income Trust [AIB]	18/11/16	Off-market	Units	Scrip
Cascade Resources Ltd	Torian Resources Limited [TNR]	07/12/16	Off-market	Ordinary shares	Scrip
Royalco Resources Ltd. [RCO]	Fitzroy River Corporation Ltd [FZR]	14/12/16	Off-market	Ordinary shares	Cash
Saron Education Ltd	Education Horizons Group Limited	15/12/16	Off-market	Ordinary shares	Scrip

Notes: This table lists each takeover bid for which an initiating bidder's statement was lodged with ASIC between 1 July 2016 and 31 December 2016 (inclusive), as reflected in ASIC's register at the date of this publication. Takeover bids must relate only to securities in a single class. Accordingly, where bids are made for more than one class of securities in a target, each is recorded above as a separate entry unless we have granted relief to treat multiple classes of securities as a single class for the purposes of the bid: see RG 9.105–RG 9.119.

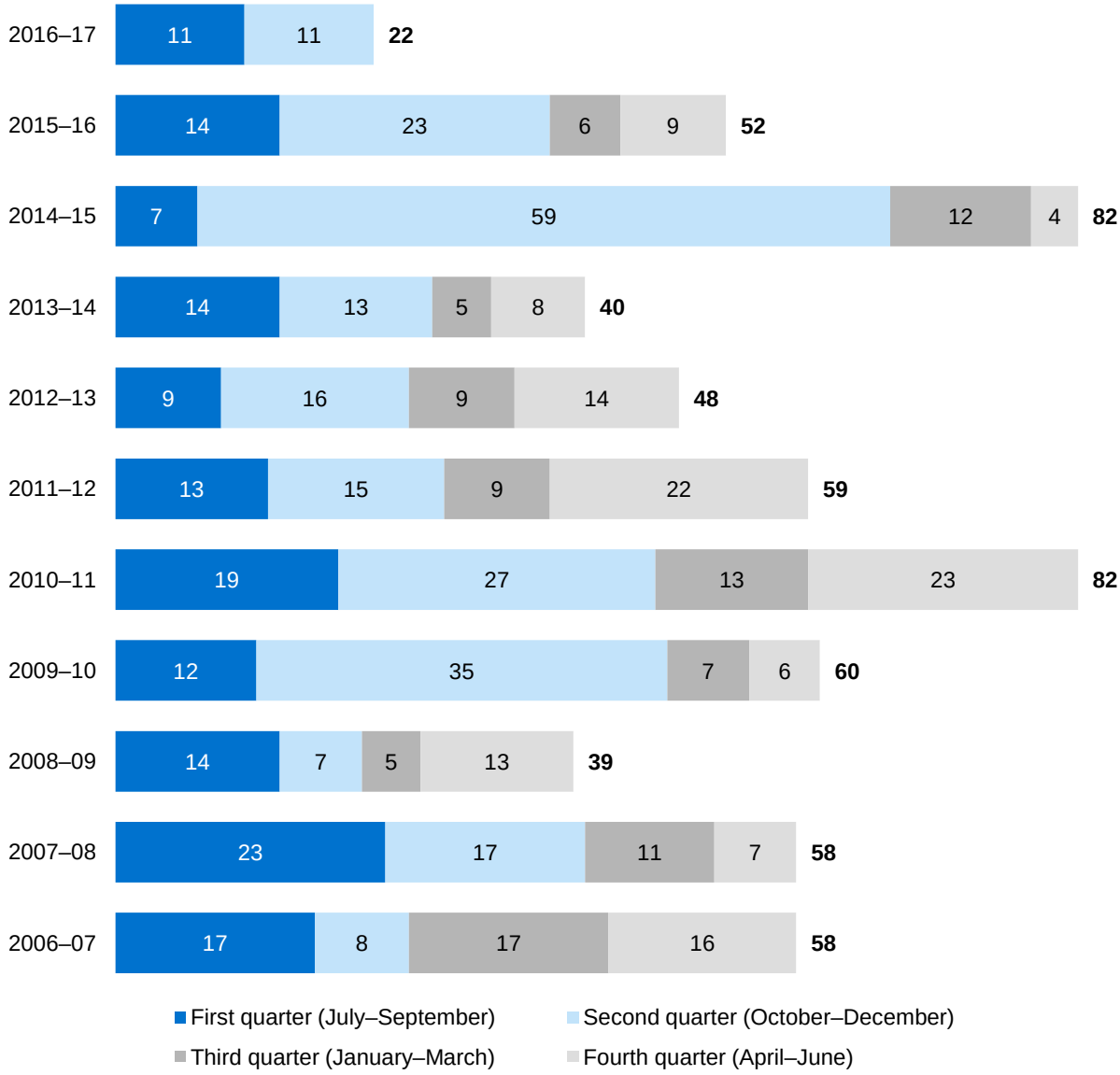
Where a bidder or target was listed on a prescribed financial market at the time of the takeover, its name above is accompanied by the ticker code under which it traded. Where a bidder is a (direct or indirect) wholly owned subsidiary of another entity, the controlling entity may be listed above as bidder.

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

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

Schemes of arrangement

Figure 14: Schemes of arrangement in respect of which explanatory statements were received for ASIC review by quarter (2006–07 to 2016–17)



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

Note 2: See Table 18 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 2016)

Scheme company	Acquirer	Registered	Type	Securities	Received
Vicwest Community Telco Ltd	Bendigo Telco Ltd [BCT]	11/07/16	Members	Ordinary shares	Scrip
Alstom Signalling Solutions Pty Ltd	N/A—Reconstruction	13/07/16	Members	Ordinary shares	Scrip
Patties Foods Ltd [PFL]	Australasian Foods Bidco Pty Limited (owned by funds managed or advised by Pacific Equity Partners Pty Limited)	18/07/16	Members	Ordinary shares	Cash or capped scrip
Ausenco Limited [AAX]	Resource Capital Fund VI L.P.	20/07/16	Members	Ordinary shares	Cash
Atlantic Ltd [ATI]	Droxford International Limited	22/07/16	Members	Ordinary shares	Cash
Diversa Limited [DVA]	OneVue Holdings Limited [OVH]	12/08/16	Members	Ordinary shares	Scrip or cash and scrip
Gryphon Minerals Limited [GRY]	Teranga Gold Corporation [TGZ]	18/08/16	Members	Ordinary shares	Scrip
Onthehouse Holdings Limited [OTH]	Macquarie Group Limited [MQG], 77 Victoria Street Venture Pty Ltd and Sandrift Pte Limited	09/09/16	Members	Ordinary shares	Cash
RESIMAC Ltd	Homeloans Limited [HOM]	14/09/16	Members	Ordinary shares	Scrip
QT Mutual Bank Limited	The Royal Automobile Club of Queensland Limited	21/09/16	Members	Ordinary shares (mutual)	Scrip
Payce Consolidated Limited [PAY]	Bellawest Pty Limited	23/09/16	Members	Ordinary shares	Cash, scrip or cash and scrip
Payce Consolidated Limited [PAY]	N/A—Selective capital reduction	23/09/16	Members	Preference shares	Cash and scrip
Intecq Limited [ITQ]	Tabcorp Holdings Limited [TAH]	23/09/16	Members	Ordinary shares	Cash
Kasbah Resources Limited [KAS]	Asian Mineral Resources Limited	18/10/16	Members	Ordinary shares	Scrip
Vitaco Holdings Limited [VIT]	Shanghai Pharmaceuticals Holdings Co., Ltd and Primavera Capital Fund II L.P.	26/10/16	Members	Ordinary shares	Cash
Simonds Group Limited [SIO]	SR Residential Pty Ltd	26/10/16	Members	Ordinary shares	Cash

Scheme company	Acquirer	Registered	Type	Securities	Received
Bigair Group Limited [BGL]	Superloop Limited [SLC]	28/10/16	Members	Ordinary shares	Scrip or capped cash
SAI Global Limited [SAI]	Baring Asia Private Equity Fund VI	01/11/16	Members	Ordinary shares	Cash
ASG Group Limited [ASZ]	Nomura Research Institute, Limited	02/11/16	Members	Ordinary shares	Cash
Fantastic Holdings Limited [FAN]	Steinhoff International Holdings N.V.	03/11/16	Members	Ordinary shares	Cash
One Way Traffic Limited	DealerMotive Ltd	03/11/16	Members	Ordinary shares, non-voting shares	Cash
One Way Traffic Limited	DealerMotive Ltd	03/11/16	Members	Class A shares	Scrip
One Way Traffic Limited	DealerMotive Ltd	03/11/16	Members	Class B shares	Scrip
Emeco Holdings Limited [EHL]	N/A—Debt for equity/ compromise	N/A	Creditors	Senior secured notes	Cash or scrip
Everlight Radiology Limited	Teleradiology International Holdings Pty Limited	17/11/16	Members	Ordinary shares	Cash

Notes: This table lists:

(a) each proposed compromise or arrangement for which an explanatory statement was registered by ASIC under s412(6) between 1 July 2016 and 31 December 2016 (inclusive) (members' scheme) as reflected in ASIC's register at the date of this publication;

(b) each proposed compromise or arrangement between a Pt 5.1 body and its creditors or a class of its creditors for which an explanatory statement was considered by the court at or about the time of considering an associated members' scheme (e.g. an associated scheme to acquire issued options); and

(c) each other proposed compromise or arrangement between a Pt 5.1 body and its creditors or class of creditors for which a draft explanatory statement, previously provided to ASIC for consideration in accordance with s411(2), to ASIC's knowledge was made publicly available on a date between 1 July 2016 and 31 December 2016.

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

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

The total number of schemes listed in this table may not correspond with the total number of explanatory statements recorded in Figure 14, which is based on the total number of schemes for which a draft explanatory statement was provided to ASIC during the period. This may be because:

(a) some explanatory statements provided for review during the period were subsequently withdrawn before registration or public release; or

(b) there are explanatory statements for schemes provided for review during the period that had not been registered or publicly released by the end of the period.

Appendix 2: Accessible versions of figures

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

Table 5: Number of disclosure documents by type (lodged from 1 July to 31 December 2016)

Disclosure document type	Number lodged	Percentage
Prospectus for entities quoted	145	26.8%
Prospectus for entities unquoted	135	25.0%
Offer information statement	22	4.1%
Short form quoted	19	3.5%
Short form unquoted	15	2.8%
Total original lodgements	*336*	*62.1%*
Replacement prospectus	77	14.2%
Supplementary prospectus	128	23.7%
Total supplementary lodgements	*205*	*37.9%*

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: Results of applications under s741 (1 July to 31 December 2016)

Result	Number	Percentage
Approved	43	61.4%
Refused	1	1.4%
Withdrawn	22	31.4%
Pending	4	5.7%

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 2016)

Type of concern	Number of times raised
Not clear, concise and effective (insufficient summary, investment overview and/or key information)	15
Misleading or deceptive disclosure (misleading and/or unclear statement)	16
Risk disclosure inadequate, insufficiently prominent and/or not tailored	21
Unclear or insufficient detail on use of funds	22
Business model not fully and/or adequately disclosed	42

Note: This is the data shown in Figure 3.

Table 8: Control transactions by target size (1 July to 31 December 2016 and previous period comparison)

Target size	July to December 2016	January to June 2016
Under $50m	59.1%	56.1%
$50m to $200m	18.2%	17.1%
$200m to $1bn	13.6%	24.4%
Over $1bn	9.1%	2.4%

Note: This is the data shown in Figure 4.

Table 9: Consideration type (control transactions via bids and schemes lodged or registered from 1 July to 31 December 2016)

Number of transactions

Consideration type	Percentage
Cash	51.2%
Scrip	31.7%
Cash/scrip/mixed alternatives	9.8%
Cash and scrip	7.3%

Weighted by target value

Consideration type	Percentage
Cash	76.8%
Scrip	10.2%

Consideration type	Percentage
Cash/scrip/mixed alternatives	13.0%

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 5.

Table 10: Foreign and domestic offerors (control transactions via bids and schemes—1 July to 31 December 2016)

Number of transactions

Type of bidder/acquirer	Number	Percentage
Foreign	14	34.1%
Domestic	27	65.9%

Transactions by target value

Type of bidder/acquirer	Percentage
Foreign	53.2%
Domestic	46.8%

Note: This is the data shown in Figure 6.

Table 11: Bids, schemes and item 7 transactions in respect of which documents were lodged with or received for review by ASIC (1 July to 31 December 2016)

Transaction type	Primary	Relodged/related
Item 7 transactions	41	11
Off-market bids	18	3
On-market bids	3	0
Schemes of arrangement	19	3

Note 1: The primary transactions displayed above reflect the total number of separate transactions for which documents were received by ASIC during the period. Some bids or schemes may involve related—but technically separate—transactions (e.g. simultaneous bids for shares and options in the same target). Moreover, some item 7 transaction documents provided for review may be subsequently amended and relodged. These related or relodged documents are displayed separately.

Note 2: This is the data shown in Figure 7.

Table 12: Results of applications under s655A and 669 (1 July to 31 December 2016)

Result	Number	Percentage
Approved	39	67.2%
Refused	1	1.7%

Result	Number	Percentage
Withdrawn	11	19.0%
Pending	7	12.1%

Note: This is the data shown in Figure 8.

Table 13: Matters addressed following intervention by ASIC (1 July to 31 December 2016)

Principal matter or transaction type	Structure and disclosure	Structure only	Disclosure only
Takeover bids (21)	4	2	5
Schemes (20)	4	1	14
Item 7 transactions (41)	4	1	21
Rights issue/other fundraising	1	1	5
Association/substantial holding	0	4	3

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

Note 2: In some cases the number of instances of intervention may be higher than the number of transactions as a result of ASIC intervening on more than one occasion throughout the course of a particular transaction. The numbers in parentheses next to the headings for takeover bids, schemes and item 7 transactions reflect the total number of separate transactions of that type that we considered during the period.

Note 3: This is the data shown in Figure 9.

Table 14: Related party approval notices (July 2014 to December 2016)

Period	Total lodgements	Total excluding re-lodgements
July–December 2016	259	212
January–June 2016	114	94
July–December 2015	267	226
January–June 2015	111	80
July–December 2014	265	214

Note: This is the data shown in Figure 10.

Table 15: Results of applications under s111AT and 340 (1 July to 31 December 2016)

Result	Number	Percentage
Approved	116	82.9%
Refused	11	7.9%
Withdrawn	11	7.9%
Pending	2	1.4%

Note: This is the data shown in Figure 11.

Table 16: Total original fundraising documents lodged with ASIC by quarter (2006–07 to 2016–17)

Financial year	First quarter (July–September)	Second quarter (October–December)	Third quarter (January–March)	Fourth quarter (April–June)	Total
2016-17	140	196	–	–	336
2015–16	145	213	92	143	593
2014–15	152	180	99	149	580
2013–14	131	157	94	150	532
2012–13	124	148	118	124	514
2011–12	123	174	117	41	455
2010–11	143	228	131	155	657
2009–10	133	73	137	152	495
2008–09	119	157	104	145	525
2007–08	188	277	107	158	730
2006–07	179	293	205	256	933

Note: This is the data shown in Figure 12.

Table 17: Takeover bids in respect of which bidder's statements were lodged with ASIC by quarter (2006–07 to 2016–17)

Financial year	First quarter (July–September)	Second quarter (October–December)	Third quarter (January–March)	Fourth quarter (April–June)	Total
2016–17	8	16	–	–	24
2015–16	14	14	7	5	40
2014–15	15	10	8	8	41

Financial year	First quarter (July–September)	Second quarter (October–December)	Third quarter (January–March)	Fourth quarter (April–June)	Total
2013–14	12	20	11	13	56
2012–13	13	8	10	11	42
2011–12	13	14	6	18	51
2010–11	15	17	17	17	66
2009–10	19	19	11	14	63
2008–09	12	15	9	17	53
2007–08	20	34	5	15	74
2006–07	29	29	16	20	94

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 13.

Table 18: Schemes of arrangement in respect of which explanatory statements were received for ASIC review by quarter (2006–07 to 2016–17)

Financial year	First quarter (July–September)	Second quarter (October–December)	Third quarter (January–March)	Fourth quarter (April–June)	Total
2016–17	11	11	–	–	22
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 second quarter figures for 2015–16 have been revised from those reported previously. The 2014-15 figures are distorted by four restructure schemes in the second quarter, which involved multiple entities in the one consolidation.

Note 2: This is the data shown in Figure 14.

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.
ASIC	Australian Securities and Investments Commission
ASIC Act	*Australian Securities and Investments Commission Act 2001*
ASX	ASX Limited or the market operated by ASX Limited
bidder	A bidder under a takeover bid as defined in s9 of the Corporations Act
bidder's statement	Has the meaning given in s9 of the Corporations Act
bid period	Has the meaning given in s9 of the Corporations Act
Ch 6 (for example)	A chapter of the Corporations Act (in this example numbered 6), unless otherwise specified
[CO 07/10] (for example)	An ASIC class order (in this example numbered 07/10)
Corporate Plan	*Corporate Plan 2016–17 to 2019–20: Focus 2016–17*
Corporations Act	*Corporations Act 2001*, including regulations made for the purposes of that Act
CP 257 (for example)	An ASIC consultation paper (in this example numbered 257)
CSEF regime	The crowd-sourced equity funding regime, currently contained in the Corporations Amendment (Crowd-sourced Funding) Bill 2016
DOCA	Deed of company arrangement

Term	Meaning in this document
emerging market issuer	An entity is an emerging market issuer if: • 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: – 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 shareholder is an emerging market issuer; or – board/management, if at least half of its board members reside in an emerging market.
fintech	Financial technology
foreign exempt listing	A listing on ASX by a foreign entity that complies with ASX Listing Rule 1.11
GN 12 (for example)	A Takeovers Panel guidance note (in this example numbered 12)
IPO	Initial public offering
item 4 (for example)	An item of s611 of the Corporations Act (in this example numbered 4)
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)
Legislation Act	*Legislation Act 2003*
Panel	Takeovers Panel
period	1 July to 31 December 2016
previous period	1 January to 30 June 2016
REP 489 (for example)	An ASIC report (in this example, numbered 489)
RG 228 (for example)	An ASIC regulatory guide (in this example numbered 228)
s741 (for example)	A section of the Corporations Act (in this example numbered 741), unless otherwise specified
scheme of arrangement	A compromise or arrangement under s411(1) of the Corporations Act

Term	Meaning in this document
sunset	In relation to an ASIC legislative instrument or class order, to expire if not remade (typically under the Legislation Act)

Related information

Headnotes

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

Legislative instruments and pro formas

ASIC Corporations (ASX-listed Schemes On-market Buy-backs) Instrument 2016/1159

ASIC Corporations (Audit Relief) Instrument 2016/784

ASIC Corporations (Charitable Investment Fundraising) Instrument 2016/813

ASIC Corporations (Directors' Report Relief) Instrument 2016/188

ASIC Corporations (Disclosing Entities) Instrument 2016/190

ASIC Corporations (Minimum Bid Price) Instrument 2015/1068

ASIC Corporations (Options: Bonus Issues) Instrument 2016/77

ASIC Corporations (Qualified Accountant) Instrument 2016/786

ASIC Corporations (Renounceable Rights Issue Notifications) Instrument 2016/993

ASIC Corporations (Rounding in Financial/Directors' Reports) Instrument 2016/191

ASIC Corporations (School Enrolment Deposits) Instrument 2016/812

ASIC Corporations (Synchronisation of Financial Years) Instrument 2016/189

ASIC Corporations (Uncontactable Members) Instrument 2016/187

ASIC Corporations (Wholly-owned Companies) Instrument 2016/785

[CO 07/10] *Technical disclosure relief for reconstructions and capital reductions*

[CO 14/26] *Personalised or Australian financial services licensee created application forms*

PF 24 *Deed of cross guarantee*

Regulatory guides

RG 5 *Relevant interests and substantial holding notices*

RG 9 *Takeover bids*

RG 6 *Takeovers: Exceptions to the general prohibition*

RG 76 *Related party transactions*

RG 87 *Charitable schemes and school enrolment deposits*

RG 101 *Managed investment scheme buy-backs*

RG 110 *Share buy-backs*

RG 111 *Content of expert reports*

RG 112 *Independence of experts*

RG 115 *Audit relief for proprietary companies*

RG 170 *Prospective financial information*

RG 228 *Prospectuses: Effective disclosure for retail investors*

RG 247 *Effective disclosure in an operating and financial review*

Information sheets

INFO 24 *Deeds of cross-guarantee*

INFO 214 *Mining and resources—Forward-looking statements*

Legislation

ASIC Act, s91

Corporations Act, Chs 2M, 6, 6D, Pt 5.1, s111AT, 184(2)(a), 218, 249D, 249F, 340, 411(2), 412(6), 444GA, 472, 602(a)–(b), 606, 611, 615(a), 621(3), 630(1), 655A, 669, 708A, 708AA(7)(e), 710, 713(2)(a), 718, 722, 723(1), 734(2), 741, 1016A(2), 1043A(1)(d); Corporations Amendment (Crowd-sourced Funding) Bill 2016

Corporations Regulations 2001

Corporations (Fees) Act 2001

Criminal Code, s11.2

Legislation Act

Cases

Australian Securities and Investments Commission v Cassimatis (No 8) [2016] FCA 1023

Duncan v Independent Commission Against Corruption [2016] NSWCA 143

Kasbah Resources Limited (No 2) [2016] FCA 1518

Merlin Diamonds Limited [2016] ATP 18

Regal Resources Limited [2016] ATP 17

Simonds Group Limited [2016] VSC 609

Consultation papers and reports

CP 207 *Charitable investment fundraisers*

CP 240 *Remaking ASIC class orders on rounding, directors' reports, disclosing entities and other matters*

CP 261 *Remaking and repealing ASIC class orders on rights issue notifications and money market deposits*

CP 265 *Communicating audit findings to directors, audit committees or senior managers*

CP 274 *Remaking ASIC class orders on application form requirements*

REP 468 *Cyber resilience assessment report: ASX Group and Chi-X Australia Pty Ltd*

REP 469 *ASIC regulation of corporate finance: July to December 2015*

REP 484 *Due diligence practices in initial public offerings*

REP 485 *ASIC enforcement outcomes: January to June 2016*

REP 488 *Response to submissions on CP 240 Remaking ASIC class orders on rounding and other matters*

REP 489 *ASIC regulation of corporate finance: January to June 2016*

REP 494 *Marketing practices in initial public offerings of securities*

REP 495 *Response to submissions on CP 207 Charitable investment fundraisers*

REP 502 *Response to submissions on CP 257 Improving disclosure of historical financial information in prospectuses: Update to RG 228*

REP 506 *Overview of decisions on relief applications (April to September 2016)*

Media and other releases

16-224MR *ASIC reports on review of due diligence practices in IPOs*

16-234MR *ASIC consults on communicating audit findings to directors, audit committees or senior managers*

16-273MR *ASIC remakes instruments that affect financial reporting*

16-303MR *Jury finds former Managing Director unfit to stand trial*

16-315MR *ASIC reports on review of marketing practices in IPOs*

16-326MR *ASIC acts to freeze sale of land proceeds in excess of $100 million pending disclosure to investors*

16-329MR *ASIC updates regulatory framework for charitable investment fundraisers*

16-336MR *ASIC remakes instruments that affect financial reporting*

16-344MR *ASIC appoints Morgan Stanley to sell shares in Sovereign Gold Company Limited*

16-349MR *ASIC clarifies guidance for forward-looking statements in the mining and resources industry*

16-355MR *ASIC remakes 'sunsetting' class order on rights issue notifications and repeals 'sunsetting' class order on money market deposits*

16-407MR *ASIC consults on remaking class orders on application form requirements*

16-423MR *ASIC updates takeovers guidance on minimum bid price rule*

16-427MR *Court orders wind-up of Uglii Corporation Limited and related companies*

16-430MR *Construction company Hochtief AG fined for insider trading and agrees to give up notional profits*

16-431MR *Court fines Sino Australia Oil and Gas Limited and disqualifies former chairman, Tianpeng Shao*

16-439MR *ASIC releases new instrument for buy-backs for ASX-listed schemes and updates guidance for scheme buy-backs*

16-440MR *ASIC releases world-first licensing exemption for fintech businesses*

17-027MR *Former listed public company director sentenced to ten years imprisonment for dishonest conduct*

Corporate Plan

Non-ASIC publications

ASX, *ASX interim guidance: Reporting scoping studies* (PDF 1 MB)

ASX Guidance Note 27 *Trading policies* (PDF 241 KB)

ASX Listing Rules

N Hutley SC and S Hartford-Davis, *Climate change and directors' duties* (PDF 3.34 MB)

Takeovers Panel, *Amendment of GN 4 Remedies general: Public consultation response statement*

Takeovers Panel, *Consultation paper—Guidance Note 4 Remedies general*

Takeovers Panel, *Consultation paper—Guidance Note 12 Frustrating action*

Takeovers Panel, *Re-write of GN 12 Frustrating action: Public consultation response statement*

Takeovers Panel GN 4 *Remedies general*

Takeovers Panel GN 12 *Frustrating action*

Takeovers Panel GN 17 *Rights issues*

Takeovers Panel GN 20 *Equity derivatives*

Treasury, Proposals paper and supplementary technical paper on industry funding model for ASIC