



ASIC

Australian Securities & Investments Commission

REPORT 539

ASIC regulation of corporate finance: January to June 2017

August 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 January to 30 June 2017.

About ASIC regulatory documents

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

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

Regulatory guides: give guidance to regulated entities by:

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

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

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

Disclaimer

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

Previous reports on regulation of corporate finance

Report number	Report date
REP 512	February 2017
REP 489	August 2016
REP 469	February 2016
REP 446	August 2015
REP 423	February 2015
REP 406	August 2014

Contents

Overview	4
ASIC’s regulation of corporate finance activity	4
The purpose of this report.....	4
Industry funding model	5
A Fundraising	7
Key observations and statistics	7
ASIC’s review and monitoring of corporate fundraisings.....	11
Enforcement action.....	16
ASIC surveillance reports and research	17
ASIC policy initiatives	19
Other policy initiatives.....	22
B Mergers and acquisitions	24
Key observations and statistics	24
ASIC’s review and monitoring of control transactions	29
Takeovers Panel applications and enforcement action.....	32
C Corporate governance	38
Key observations and statistics	38
Enforcement action.....	43
ASIC policy initiatives	46
Other policy initiatives.....	49
D Other corporate finance areas	50
Key observations and statistics	50
ASIC policy initiatives	51
Appendix 1: Additional statistics	56
Fundraising	56
Mergers and acquisitions.....	57
Appendix 2: Accessible versions of figures	63
Key terms	69
Related information	72

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 August and September 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 January to 30 June 2017 (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 June 2017: see [Report 530 Overview of decisions on relief applications \(October 2016 to March 2017\)](#) (REP 530).
- 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 March 2017: see [Report 513 ASIC enforcement outcomes: July to December 2016](#) (REP 513).

Industry funding model

- 9 In June this year, Parliament passed legislation enabling a more secure and accountable funding model for the regulation of Australia's corporate sector. Effective from 1 July 2017, the majority of ASIC's regulatory costs will be recovered directly from industry in the form of annual levies.
- 10 We will use a variety of communication channels to engage with our regulated populations about the introduction of annual levies but, as advisers, we would appreciate your assistance in bringing these changes to your clients' attention. We are concerned that not all stakeholders are aware that they will now need to pay an annual levy and engage with ASIC through a regulatory portal.
- 11 Some key milestones are set out in Table 1.

Table 1: Key proposed milestones in the implementation of the industry funding model

October 2017	Cost Recovery Implementation Statement (CRIS) is published, which includes levy cost pools for each subsector for the 2017–18 financial year
March 2018	Indicative levies for 2017–18 are published
June 2018	Indicative levies for 2018–19 are published
July 2018	Portal opens to stakeholders to enter 2017–18 data

October 2018	CRIS published, which includes levy cost pools for each subsector for the 2018–19 financial year
January 2019	First invoices sent to stakeholders for the 2017–18 financial year

- 12 The new arrangements are designed so that those who create the need for and benefit from regulation will bear the costs, introducing an economic incentive to drive the desired regulatory outcomes for the financial system.
- 13 In the corporate sector, the regulated populations subject to an annual levy are:
- (a) small proprietary companies;
 - (b) large proprietary companies;
 - (c) unlisted public companies;
 - (d) listed companies (including companies with stapled securities); and
 - (e) listed foreign entities.
- 14 For a summary of changes to the model since the release of Treasury’s consultation paper in November 2016, see [Report 535 ASIC cost recovery arrangements: 2017–18](#) (REP 535).
- 15 In the coming year, further work will be undertaken on the fee-for-service component of the industry funding model.
- 16 For further details, please refer to [Media Release \(17-186MR\) ASIC welcomes the dawn of a new regulatory era](#) (15 June 2017) and [Media Release \(17-235MR\) ASIC’s cost recovery framework finalised](#) (14 July 2017).

A Fundraising

Key points

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

Significant developments include:

- continuing strong numbers of initial public offerings (IPOs);
- improvement in the quality of financial information in prospectuses— however, further attention on presentation, pro-forma adjustments and valuation issues is important;
- preparation for the imminent crowd-sourced funding (CSF) regime; and
- recent research supporting both our focus on prospectus disclosure and our increasing attention on other communications about the offer as a major influence for retail investors.

In the period, we released a further report on emerging market issuers and consulted on policy for the implementation of the Government's new CSF regime for public companies.

Key observations and statistics

- 17 In the seven months since we reissued [Regulatory Guide 228 *Prospectuses: Effective disclosure for retail investors*](#) (RG 228), a high proportion of issuers have strengthened the financial information included in their prospectuses to include three years of audited financial statements, or audited statements accounting for changes in business combinations. We have been pleased to see issuers of all sizes enhance the quality of the financial information provided to the market. For further detail, please see paragraphs 46–57.

New policy developments and research

- 18 A key regulatory development in the fundraising space was the introduction of a CSF regime for public companies; consultation was subsequently undertaken by Treasury to extend the regime to proprietary companies. These regulatory changes are set out in paragraphs 95–98 and 101–104.
- 19 In October 2016, we released major regulatory changes affecting the way charities can offer investments to retail investors. Transition arrangements delay these changes taking effect until 1 January 2018 for some charities. We provided relief to allow more charities to lodge an identification statement with ASIC to obtain our transitional relief: see paragraphs 80–83.

20 We have continued to focus on the influence of varying forms of marketing and advertising on fundraising, including IPOs. We found that media—both mainstream and financial—play a key role in alerting investors to new IPOs and also guide their decision making. Further information on our work on sell-side research and investment in IPOs is set out at paragraphs 76–79 and 84–87. We also intervened in the advertising of a number of offers during the period: see paragraphs 58–64.

Document lodgements

Changes to how documents can be lodged with ASIC

21 In July 2017, we permanently closed the document lodgement boxes in each of our offices. We did this to encourage the electronic lodgement of forms that are able to be submitted online.

22 This does not affect the lodgement of transactions documents—such as prospectuses, bidders’ statements, targets’ statements and related party transaction documents—which can still be handed over the counter to reception staff in each ASIC office. We will also accept some other documents relating to share capital over the counter.

23 The same document lodgement requirements remain in place. Documents must contain an original signature and must be lodged within ASIC office hours.

Proprietary companies may not lodge fundraising documents

24 Each period, some proprietary companies seek to lodge fundraising documents with ASIC while they are in the process of converting to become public companies.

25 We will not accept any fundraising documents for lodgement from proprietary companies (other than proprietary companies offering their employees shares under s113(3)(b)). Instead, proprietary companies should lodge these documents with ASIC after their conversion to public companies has finished.

Sophisticated investor exemption

26 It is important that the sophisticated investor test is applied in a way that is consistent with the underlying purpose of the provisions. Accountants in particular need to be careful when attesting that a person is a ‘sophisticated investor’. We have made the accounting professional bodies aware of our concerns.

27 During the period we acted to stop the inappropriate use by accountants of

‘sophisticated investor’ certificates, under s708(8)(c), in relation to a live fundraising. We became aware of a small number of accountants who had acted as trustees for trusts set up for the apparent sole purpose of allowing their clients to receive an offer of shares in Kwickie International Ltd without a prospectus.

- 28 We modified the law to provide that shares in Kwickie International Ltd could not be offered via a trust structure to put it beyond doubt that the conduct was not consistent with the law.
- 29 Generally, companies offering shares to retail investors must give the investors a prospectus or other regulated disclosure document to enable them and their advisers to make an informed assessment about the company before making an investment decision. This is a key protection for retail investors under the Corporations Act.
- 30 The Corporations Act entrusts accountants with an important role. We are continuing to monitor the use of trust structures and sophisticated investor certificates for fundraising purposes. We also note that accountants need to be careful not to provide financial advice to their clients about fundraisings unless licensed to do so.
- 31 For further details, please see [Media Release \(17-228MR\)](#) *ASIC takes action over misuse of ‘sophisticated investor’ certificates* (7 July 2017).

Fundraising activity under disclosure documents

- 32 As part of our regular work, we review prospectuses and consider applications for relief from Ch 6D of the Corporations Act. We also consider other disclosures and conduct in relation to fundraising, such as the marketing of offers.
- 33 In the period, there were 210 original disclosure documents lodged with ASIC, raising over \$5.7 billion. Emerging market issuers lodged approximately 13% of these documents.
- 34 Table 2 outlines the top 10 public fundraisings by value, under disclosure documents lodged with ASIC in the period.

Table 2: Top 10 primary fundraising transactions by value (under a prospectus lodged from 1 January to 30 June 2017)

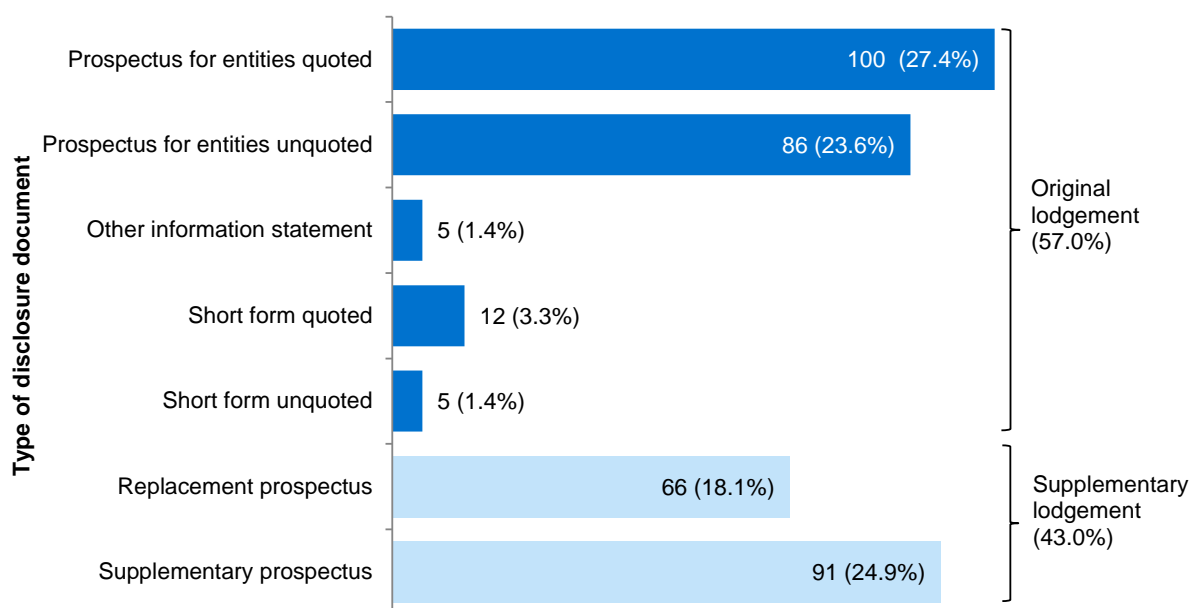
Issuer	Date of lodgement	Security type	Industry	Value
Commonwealth Bank of Australia	20/02/2017	Hybrid securities	Banks	\$1,640m
National Australia Bank Limited	8/02/2017	Hybrid securities	Banks	\$943m

Issuer	Date of lodgement	Security type	Industry	Value
Challenger Limited	28/02/2017	Hybrid securities	Diversified financial services	\$460m
Bingo Industries Limited	13/04/2017	Ordinary shares	Commercial services and supplies	\$440m
Suncorp Group Limited	27/03/2017	Hybrid securities	Insurance	\$375m
Plato Income Maximiser Limited	1/03/2017	Shares and attaching options	Capital markets	\$326m
WAM Microcap Limited	5/05/2017	Ordinary shares	Capital markets	\$154m
Contango Global Growth Limited	1/05/2017	Ordinary shares	Capital markets	\$100m
US Masters Residential Property Fund	23/01/2017	Debt securities	Equity real estate investment trusts	\$175m
URB Investments Limited	23/02/2017	Shares and attaching options	Capital markets	\$80m

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

35 Figure 1 sets out the total number of disclosure documents lodged with ASIC in the period. Issuers lodged 60 IPO disclosure documents (13% less than the previous period). For details of historical lodgements, see Figure 13 in Appendix 1.

Figure 1: Number of disclosure documents by type (lodged from 1 January to 30 June 2017)



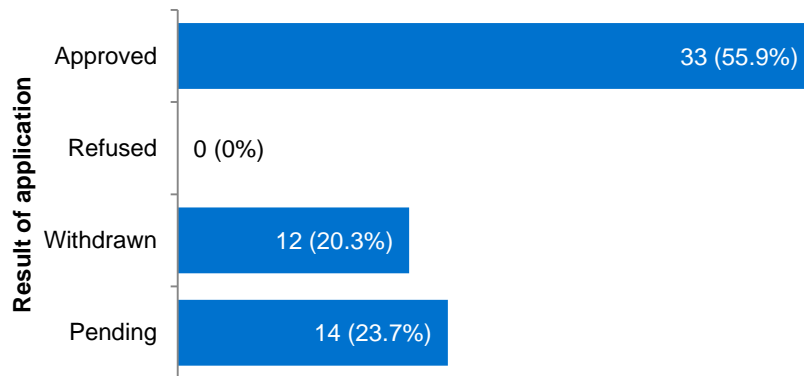
Note 1: See Table 6 in Appendix 2 for the data shown in this bar graph (accessible version).

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

Applications for relief

- 36 During the period, we received 59 applications for relief under s741. We granted relief in response to 33 of those applications: see Figure 2.

Figure 2: Results of applications under s741 (1 January to 30 June 2017)



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

- 37 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 530.
- 38 We continue to receive applications for relief from entities listed on the main board operated by NZX Limited and listed, or seeking to list, on ASX as foreign exempt listings. In particular, those companies apply for relief to allow the immediate on-sale on ASX of securities issued under a placement, rights issue, employee incentive scheme or otherwise in compliance with New Zealand law, without further disclosure.

ASIC's review and monitoring of corporate fundraisings

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

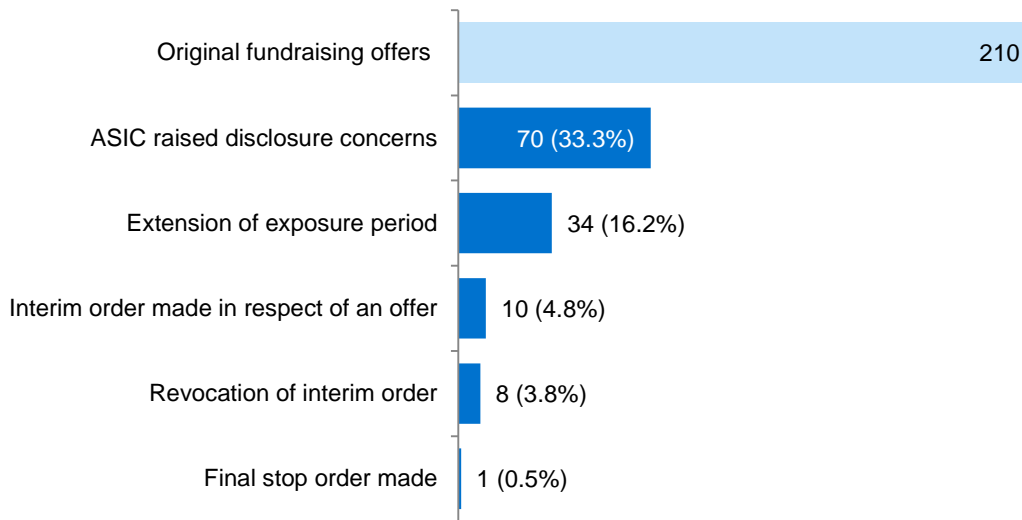
Intervention by obtaining amendment or extension of exposure period and stop orders

- 40 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 33.3% of fundraising offers—subsequently, changes were made to approximately 90.0% of the offers where concerns were raised;

- (b) extended the exposure period 34 times (16.2%)—down from 55 times (16.4%) in the previous period;
- (c) issued 14 interim stop orders in relation to 10 offers (4.8% of all offers)¹ and one final stop order (0.5% of all offers)²—we issued 23 interim stop orders and two final stop orders in the previous period; and
- (d) revoked eight interim stop orders in relation to eight offers (3.8% of all offers)³—we revoked 12 interim stop orders in the previous period.

41 See Figure 3 for a breakdown of our interventions in the period.

Figure 3: Form of ASIC intervention in prospectus disclosure (lodged 1 January to 30 June 2017)



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

Disclosure concerns

42 In our review of prospectuses lodged with ASIC during the period, we noted our concerns, requested amended disclosure or intervened in offers of securities on a number of occasions. We do this to improve the disclosure provided, to help investors make an informed investment decision.

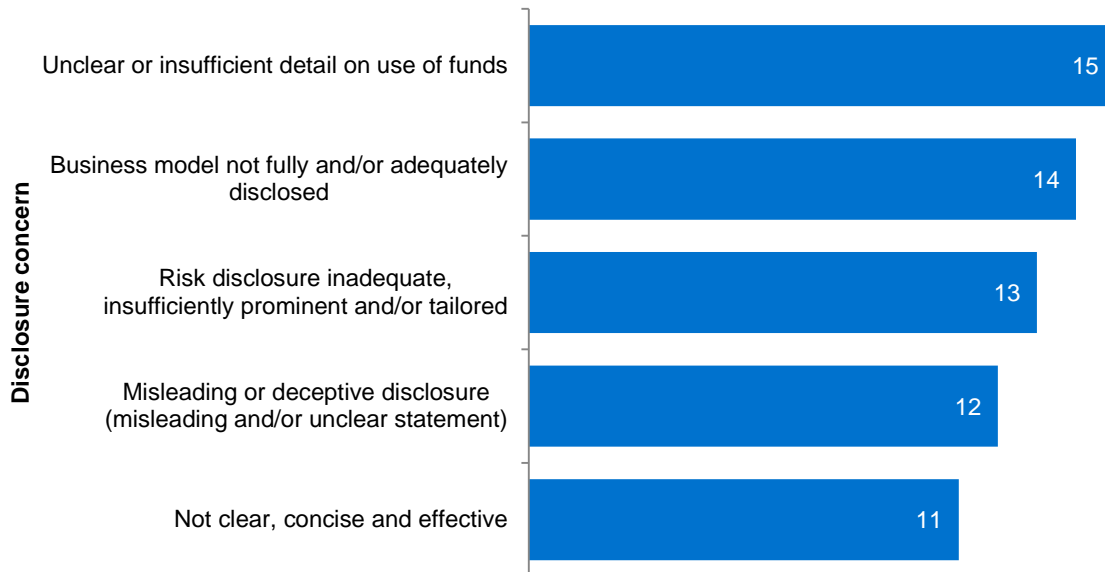
43 The top five concerns that we raised with issuers and the frequency with which we raised them are shown in Figure 4.

¹ Interim stop orders issued to Attila Resources Limited, Axiom Mining Limited, CTL Australia Group Limited, EcoMag Limited, Henry Morgan Limited, Imagion Biosystems Limited, Mineral Fertilizers Limited, Pride of our Footscray Ltd, Retech Technology Co., Limited, and Screenaway Holdings Limited.

² Final stop order made in respect of CTL Australia Group Limited.

³ Revoked interim orders made in respect of interim stop orders issued to Attila Resources Limited, Axiom Mining Limited, EcoMag Limited, Imagion Biosystems Limited, Mineral Fertilizers Limited, Pride of our Footscray Ltd, Retech Technology Co., Limited, and Screenaway Holdings Limited.

Figure 4: Top five most frequent disclosure concerns raised by ASIC with prospectuses (lodged 1 January to 30 June 2017)



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

- 44 Our concerns about the ways in which issuers disclosed financial information to investors and the market are discussed in more detail at paragraphs 49–57.
- 45 Generally, corrective disclosure was made to address our concerns.

Disclosure of financial information

Updates to RG 228 and the ASX Listing Rules

- 46 We and ASX have continued to work with issuers to ensure they are producing information in prospectuses consistent with the updated expectations of both organisations. In particular, the quality and quantity of financial information appears to have improved. Issuers have also raised various questions with us about compliance.

Note: In November 2016, we released updated regulatory guidance in [RG 228](#) specifically related to financial information in prospectuses. ASX also released a suite of changes to their Listing Rules at the same time.

- 47 We have particularly been approached by issuers who made acquisitions before the release of our revised policy and have encountered difficulties in obtaining financial information from before ownership by the listing vehicle. In these situations, we have only been convinced that circumstances exist to justify departure from our guidance where the issuer will be providing, at a minimum, two years of audited accounts. Where issuers are currently undertaking acquisitions and may want to access public capital markets in the next two to three years, we strongly urge their advisers to recommend

that their clients negotiate access to accounts. As the time from the issue of our guidance increases, we will be less likely to accept that circumstances exist to justify departure from it.

- 48 We have also received a number of minor technical queries, such as when we will consider financial information current for newly formed companies. We are currently working with ASX on a detailed table to assist issuers on these technical queries, by comparing the ASX and ASIC requirements for financial information in prospectuses and listing applications. We anticipate that this will be released later this year.

Presenting financial information in prospectuses

- 49 We noted a variety of approaches to the disclosure of historical and forecast trading financial information in prospectuses. The most common approach is to compare the financial performance of each year to the prior year in separate sections, with detailed narrative disclosures in each section. While this can provide comprehensive analysis, it can also lead to very long and complex sections.

- 50 An alternative—adopted by some issuers—is to take a more ‘due diligence’ style approach, by presenting each income statement line item and describing the trends for both historical and forecast financial information in the one place. This often includes a graphical representation of the line item (e.g. revenue), some other relevant metrics and narrative disclosure to describe the disclosed trends and illustrate the reasonableness of the forecasts. In appropriate situations, this can provide shorter and arguably more accessible financial information. We support this approach, as it aligns with the requirement for clear, concise and effective disclosure.

Forecast pro-forma adjustments to financial statements

- 51 We wish to reiterate commentary on this topic we provided in [Report 469](#) *ASIC regulation of corporate finance: July to December 2015* (REP 469) at paragraph 29, that where a prospectus includes forecast financial information, we consider the only acceptable pro-forma adjustments to that forecast information are for certain, one-off costs such as IPO-related costs.

- 52 Recently we have encountered some issuers who are in the process of changing their business model at the time of their IPO—such as from a company-owned business model to a franchised retail model—and seek to disclose their pro-forma forecasts on the basis of assuming the new business model is in place for the whole forecast period.

- 53 We reiterate that we do not consider such adjustments to be appropriate, as the pro-forma forecast is ‘hypothetical’ given the business is unable to ever realise the pro-forma forecast. This is potentially misleading and contrary to the guidance in [Regulatory Guide 170](#) *Prospective financial*

information (RG 170), which does not distinguish between actual forecasts and pro-forma forecasts. Issuers should be aware that pro-forma adjustments typically made to historical accounts are not necessarily appropriate for forecasts.

Valuation of assets

54 We expect issuers to appropriately disclose the values of assets held or acquired and their valuation model, including assumptions and inputs to be applied when valuing those assets. Many of the prospectuses we review meet these expectations.

55 However, in a number of disclosure documents this period, we raised concerns with valuations of non-current assets, unlisted investments and acquired businesses.

56 We consider that the value of assets held or to be acquired by an issuer is material information reasonably required by investors. Any valuation information provided should have a reasonable basis and be supported by an appropriate valuation methodology. This is of particular concern where the asset in question has not been subject to an ‘arm’s length’ transaction that involves a process leading to discovery of market value, or where the asset is recorded at a different value in the issuer’s financial records.

57 In particular, we have noted that some issuers have engaged in periodic and incremental revaluations of an asset over a period of time, which cumulatively leads to materially higher asset values being ascribed. We will generally raise concerns where:

- (a) the revaluations are based on underlying assumptions that do not appear to be supported by reasonable grounds; or
- (b) the asset in question has not been the subject of any market valuation and the value of the asset, if realised, could be materially different to that reported.

Restrictions on advertising and publicity

58 Where issuers, or firms associated with issuers, advertise or publicise IPOs, it is important that they comply with the advertising and publicity restrictions in the Corporations Act. This includes any marketing undertaken online or on social media.

59 During the period, we comprehensively reviewed the marketing of 24 IPOs, including material published via online forums and social media platforms. Issuers and firms for the majority of the IPOs we reviewed had complied with the advertising and publicity restrictions. This was consistent with our findings in [Report 494](#) *Marketing practices in initial public offerings of securities* (REP 494).

- 60 For five IPOs, we requested further action to amend concerning marketing material. This included the removal of video and other material, which was hosted both by issuers and firms and by third parties.
- 61 In one such instance, we took action in response to a full-page, offer-related advertisement in a national newspaper, placed by an IPO issuer. The advertisement failed to include the statutory disclosures required by s734(6).
- 62 After we intervened, the issuer drafted a retraction of the advertisement, being of a similar size and prominence as the original advertisement. The retraction was published in the same national newspaper and informed potential investors and their professional advisers that:
- (a) they should disregard the contents of the advertisement;
 - (b) they should consider the disclosure document in deciding whether to acquire securities under the offer;
 - (c) the disclosure document is available (and where it could be obtained); and
 - (d) anyone who wants to acquire the securities will need to complete the application form accompanying the disclosure document.
- 63 The issuer was also required to issue a supplementary disclosure document covering the same matters.
- 64 We remind issuers of the restrictions on advertising and publicity in s734 of the Corporations Act. Issuers electing to advertise or publicise an offer should do so within the limited statutory exceptions. Our review of disclosure documents routinely extends to examinations of communications and representations made outside of the lodged disclosure document.

Enforcement action

Fundraising restrictions imposed

- 65 In June 2017, we restricted Axiom Mining Limited from issuing a reduced content prospectus until March 2018. We made our decision because Axiom Mining gave information to the market on several occasions without disclosing a reasonable basis for the information, and we considered that the information therefore was likely to be misleading.
- 66 The fundraising provisions in Ch 6D allow companies that are listed on a prescribed financial market to rely on certain disclosure concessions when making offers of securities. This allows for more efficient and less expensive fundraising by listed issuers.

- 67 The concessions recognise the continuous disclosure and periodic reporting obligations that apply to such companies. They allow listed companies to:
- (a) make offers under a reduced content prospectus (see s713); and
 - (b) use a ‘cleansing notice’ to:
 - (i) make offers under a pro-rata rights issue; or
 - (ii) issue securities to exempt offerees that do not require disclosure at the time of on-sale (see s708AA(2) and 708(5)).
- 68 If we are concerned that a company has contravened certain requirements, we may take action to remove the ability of a listed company to rely on these provisions for a time.
- 69 The decision means that Axiom Mining must issue a full prospectus to raise funds from retail investors, ensuring that current and potential future shareholders are in a better position to assess its prospects and financial position.
- 70 For further details, refer to [Media Release \(17-210MR\)](#) *ASIC restricts Axiom Mining from issuing a reduced content prospectus* (28 June 2017).

ASIC surveillance reports and research

Emerging market issuers

- 71 In April 2017, we released [Report 521](#) *Further review of emerging market issuers* (REP 521). Many of the key challenges facing this group remain unchanged from those described in [Report 368](#) *Emerging market issuers* (REP 368), which was issued in 2013.
- 72 In the 2016 calendar year, 9% of documents lodged with ASIC by companies (either listed or seeking a listing) were lodged by emerging market issuers. Western Australia continues to be the region with the greatest volume of emerging market issuer transactions, while transaction values remain small.
- 73 While the proportion of emerging market issuer documents we raised concerns about was not greater than the remainder of the population, we tended to raise more concerns about these documents. A common area of concern was financial information disclosure.
- 74 We have reiterated the important role that gatekeepers play in protecting investors, fostering fair and efficient capital markets, and creating and maintaining confidence in capital markets. Due to the heightened risks associated with emerging market issuers, Australian advisers play a particularly important role in providing effective oversight and applying

sufficient scepticism about the due diligence work carried out by foreign legal and other advisers.

- 75 Australian advisers should 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. Without this understanding, it is difficult to effectively ensure that the due diligence process identifies all material issues and prevents misleading disclosure.

Research on investment in IPOs

- 76 We aim to support confidence in our capital markets by proactively regulating IPOs. To improve our regulation of IPOs, we have sought to improve our understanding of the current factors and types of information that investors rely on when investing in IPOs.
- 77 In late 2016, we conducted a series of interviews with large institutional investors and other financial intermediaries that play a significant role in IPOs. These interviews gave us an overview of the IPO process from the perspective of institutional investors, and allowed us to gain insights into their investment decisions. Institutional investors said they valued the prospectus because it is a regulated document that is the main source of information regarding the IPO. Access to the IPO issuer's management and the institution's own technical analysis of the offer were also very influential.
- 78 We also commissioned third-party qualitative research on the information and factors that influence retail investors when assessing an IPO investment. This market research found that financial media, including mainstream media and subscription services, were influential in both alerting retail investors to potential IPO investments and in guiding the decision-making process. The prospectus was seen as a key source of information, although many retail investors said the document was hard to read and could not be relied on to tell the whole truth about an IPO.
- 79 We will release Report 540 *Investors in initial public offerings* (REP 540) shortly (it will be available for download from [our reports page](#)). REP 540 will set out how the findings from this project will affect our regulatory approach to IPOs. Overall, based on the project's findings, we consider that our approach to IPOs is largely sound. We will continue to closely review a significant proportion of prospectuses given their importance to market integrity. We will also monitor broader sources of information that influence retail investors.

ASIC policy initiatives

Framework for charitable investment fundraisers— Deadline extended

- 80 Charitable investment fundraisers are charities that raise funds by issuing financial products such as debentures or interests in managed investment schemes. We reported on our changes to the legal obligations that apply to those charities in [Report 512](#) *ASIC regulation of corporate finance: July to December 2016* (REP 512) at paragraphs 96–99. Charities who do not comply with those obligations may have to cease raising funds by issuing financial products.
- 81 [ASIC Corporations \(Charitable Investment Fundraising\) Instrument 2016/813](#) introduced the new obligations for charitable investment fundraisers, and also provided transitional relief for those who wanted to continue to rely on [Superseded Class Order \[SCO 02/184\]](#) *Charitable investment schemes—fundraising* until the new requirements take effect. To rely on this transitional relief, charitable investment fundraisers needed to lodge an identification statement with ASIC and have us accept it before 28 February 2017. In June 2017, we modified the instrument to extend the acceptance deadline, allowing charities to continue to rely on [SCO 02/184] until 31 December 2017, so long as they lodged an identification statement with ASIC (and we accepted it) before that date.
- 82 From 1 January 2018, charitable investment fundraisers will no longer be able to rely on this transitional relief. If they wish to issue investment products to retail investors who are not associated with the charity, they may be required to hold an Australian financial services (AFS) licence. Additional obligations under the instrument will also apply.
- 83 For further details, see [Media Release \(17-179MR\)](#) *ASIC extends deadline for transitional relief for charitable investment fundraisers* (9 June 2017) and [Regulatory Guide 87](#) *Charitable schemes and school enrolment deposits* (RG 87).

Consultation on sell-side research

- 84 Sell-side research is general financial advice prepared and distributed by an AFS licensee (a research provider) to investors to help them make decisions about financial products. Its integrity directly affects the integrity of financial markets and investor confidence in those markets.
- 85 In June 2017, we released [Consultation Paper 290](#) *Sell-side research* (CP 290) to seek feedback on our proposed guidance for research providers, including on what AFS licensees should do to appropriately manage conflicts of interest at each key stage of a capital raising transaction.

Our consultation is an outcome of our findings in [Report 486](#) *Sell-side research and corporate advisory: Confidential information and conflicts* (REP 486).

- 86 In CP 290, we are particularly seeking feedback on proposals related to:
- (a) the identification and handling of material, non-public information;
 - (b) the management of research conflicts, during the capital raising process, including the preparation and production of investor education reports; and
 - (c) the structure and funding of research departments.
- 87 Comments on CP 290 are due by 31 August 2017. For further details, please see [Media Release \(17-221MR\)](#) *ASIC commences consultation on proposed guidance on sell-side research* (30 June 2017).

Consultation on disclosure relief for offers to directors and secretaries

- 88 In June 2017, we released [Consultation Paper 285](#) *Remaking ASIC class order on disclosure relief for an offer to a director or secretary: [CO 04/899]* (CP 285). CP 285 sets out and seeks feedback on our proposals to remake [Class Order \[CO 04/899\]](#) *Definition of 'senior manager'—modification*, which provides disclosure relief for an offer to a director or a secretary and is due to expire on 1 October 2017 under the *Legislation Act 2003*.
- 89 We propose to continue the relief currently given by [CO 04/899] in a new legislative instrument without significant changes. A proposed draft legislative instrument—ASIC Corporations (Disclosure Relief—Offers to Associates) Instrument 2017/XX—was attached to CP 285.
- 90 Comments on CP 285 were due by 30 June 2017.

Mining entity disclosures and INFO 214

- 91 We urge mining companies to be mindful of the relevant rules and guidance when drafting announcements that include forward-looking statements, such as production targets and forecast financial information based on production targets (i.e. net present values, internal rates of return and payback periods).
- 92 Following our reissue of [Information Sheet 214](#) *Mining and resources—Forward-looking statements* (INFO 214), we have continued to monitor and review a sample of forward-looking statements released by listed mining companies to assess how they are applying the guidance. We have identified both improvements and areas of concern.

93 Mining companies should ensure any forward-looking statements are disclosed in a manner that adequately demonstrates the reasonable grounds for those statements. In particular, based on our observations during the period, we recommend companies carefully consider their:

(a) disclosures of reasonable grounds that support the company's assumptions that project funding will be available as and when required;

(b) reliance on a high proportion of 'Inferred Mineral Resources';

Note: 'Inferred Mineral Resources' is a term defined by the JORC Code 2012.

(c) disclosures of the source and sensitivity of material assumptions; and

(d) inclusion of forward-looking statements in headline statements.

94 We will continue to raise concerns when companies seek to demonstrate reasonable grounds with generic and general statements and explanations. For example, if a company relies on information that is inherently uncertain—such as including Inferred Mineral Resources in the life of mine plan, or the availability of project finance where the funding requirement is significant in the context of the company's circumstances—we expect that disclosure of specific information that demonstrates the company's reasonable grounds will be provided.

Consultation on proposed guidance for crowd-sourced funding by public companies

95 On 29 September 2017, a new regulatory regime for equity-based crowd-sourced funding by public companies will commence. Parliament passed the legislation for the regime, the *Corporations Amendment (Crowd-sourced Funding) Act 2017*, in March 2017.

96 The CSF regime aims to facilitate access to capital for small to medium sized unlisted public companies by reducing the regulatory requirements for making public offers of shares, while ensuring adequate protections for retail investors.

Note: See the [Explanatory Memorandum to the Corporations Amendment \(Crowd-sourced Funding\) Bill 2016](#).

97 We recently released [Consultation Paper 288](#) *Crowd-sourced funding: Guide for public companies* (CP 288), which sets out our proposed guidance for public companies seeking to raise funds through crowd-sourced funding to help them understand and comply with their obligations under the new CSF regime.

Note: There is a separate consultation paper, [Consultation Paper 289](#) *Crowd-sourced funding: Guide for intermediaries* (CP 289), which sets out our proposed guidance for intermediaries seeking to operate a CSF platform.

- 98 Consultation on CP 288 closed on 3 August 2017. We plan to issue our final guidance shortly, together with a report on the submissions to CP 288.

Other policy initiatives

Employee share scheme disclosure documents

- 99 As part of the Government's National Innovation and Science Agenda, the Corporations Act was amended so that disclosure documents relating to offers of shares by eligible companies under eligible employee share schemes will no longer be made public on ASIC's register. The amendments came into effect on 5 April 2017 and apply to offers of shares to employees where the criteria in s1274(2AA) are met.

Note: The amendments—including the insertion of s1274(2AA)—were made by the *Treasury Laws Amendment (2016 Measures No. 1) Act 2017*.

- 100 To date, we have not received any lodgements of disclosure documents under the new provisions.

Treasury consultation on extending crowd-sourced funding to proprietary companies

- 101 We have continued to work closely with Treasury on the proposed introduction of a regulatory framework for CSF by proprietary companies.
- 102 In May 2017, the Australian Government released the Corporations Amendment (Crowd-sourced Funding for Proprietary Companies) Bill 2017 and the associated explanatory memorandum, for [public consultation on whether to extend the CSF regime to eligible proprietary companies](#).
- 103 The draft legislation does not propose any major changes to the obligations of companies making offers under the CSF regime or the disclosure requirements for CSF offers. However, it does propose to limit the availability of the temporary reporting and corporate governance concessions to companies that register as or convert to a public company between 29 September 2017 and the commencement of the proprietary company CSF regime. It also seeks to introduce enhanced reporting and corporate governance obligations for proprietary companies making CSF offers.
- 104 If the legislation is passed, we will amend our proposed regulatory guidance for companies (see [CP 288](#)) and may undertake further public consultation.

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

- 105 In March 2017, the Australian Government announced that it would conduct [consultation on potential reforms for cooperatives, mutuals and member-owned firms](#). Greg Hammond OAM was appointed to facilitate this process and consult with stakeholders. Comments were due by 19 May 2017.
- 106 The Government's consultation follows the publication of a report by the Senate Economic References Committee, [Cooperative, mutual and member-owned firms](#), in March 2016. The Committee considered the role, importance, and overall performance of cooperative, mutual and member-owned firms in the Australian economy.

B Mergers and acquisitions

Key points

As part of ASIC's regulatory functions, we review disclosure and monitor conduct in relation to control transactions. This section sets out statistics and observations from our work in relation to mergers and acquisitions. Issuers who are considering fundraising transactions with control implications should also review the information in this section.

Significant developments include:

- steady takeover activity, with larger transactions continuing to be implemented by way of schemes of arrangement;
- the execution of a new memorandum of understanding between ASIC and the Takeovers Panel;
- continuing issues with disclosure in the market of substantial holdings and equity derivatives;
- two Takeovers Panel applications by ASIC, in relation to Lepidico Limited and Molopo Energy Limited.

Key observations and statistics

Takeover bids and schemes of arrangement

107 On the basis of documents lodged or publicly released during the period, there were 31 separate control transactions—down from the 41 during the previous six months but more than the 22 transactions between January and June 2016. In addition, there were four 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.

108 Overall, during the period:

- (a) 19 bidder's statements for 18 bids were lodged with ASIC;

Note: For a list of all bidder's statements lodged with ASIC during the period, see Table 4 in Appendix 1.

- (b) 31 draft explanatory statements and scheme terms for 19 members' or creditors' schemes of arrangement were received for review by ASIC; and

- (c) 20 explanatory statements for 15 members' or creditors' schemes of arrangement were either registered by ASIC or—in the case of creditors' schemes—publicly released.

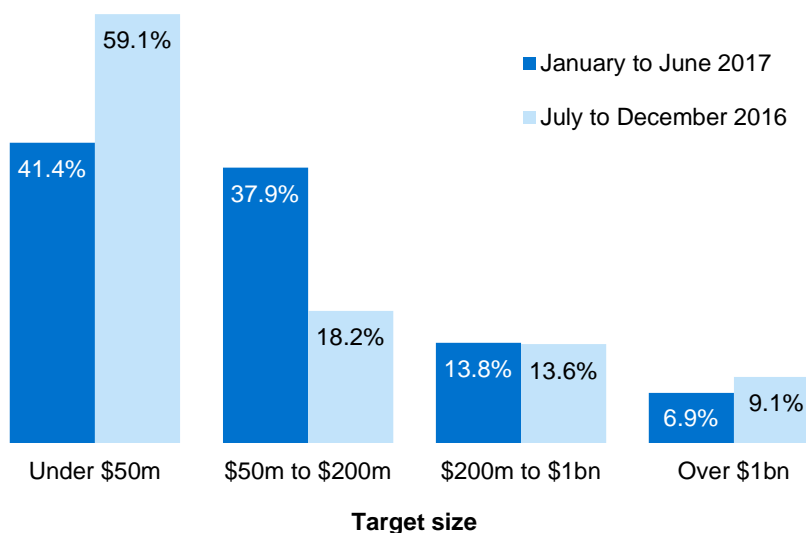
Note: For a list of all scheme explanatory statements registered by ASIC or otherwise released during the period, see Table 5 in Appendix 1. Four explanatory statements relate to schemes first received by ASIC for review in a prior period.

109 Deal volumes were slightly higher in this period than in the previous period. The number of control transactions effected via takeover bids (18) and schemes of arrangement (19) was fairly evenly split. However, the preference for schemes of arrangement in larger deals continued during the period—schemes made up 76% of all deals by target value (61% in the previous period).

110 The total value of control transactions using a bid or scheme during the period was substantially higher—\$12.4 billion, up from \$5.6 billion in the previous period. The value of control transactions being substantially higher in the second half of the calendar year is consistent with the pattern we have observed in previous calendar years.

111 There was a substantial increase in the number of offers for targets whose size was less than \$50 million and a corresponding decrease in offers for targets whose size was between \$50 million and \$200 million, compared to the previous period: see Figure 5.

Figure 5: Control transactions by target size (1 January to 30 June 2017 and previous period comparison)



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

112 Table 3 sets out the top 10 bids and schemes by target value in the period.

Table 3: Top 10 takeover bids and schemes of arrangement by target value (disclosure documents lodged or registered from 1 January to 30 June 2017)

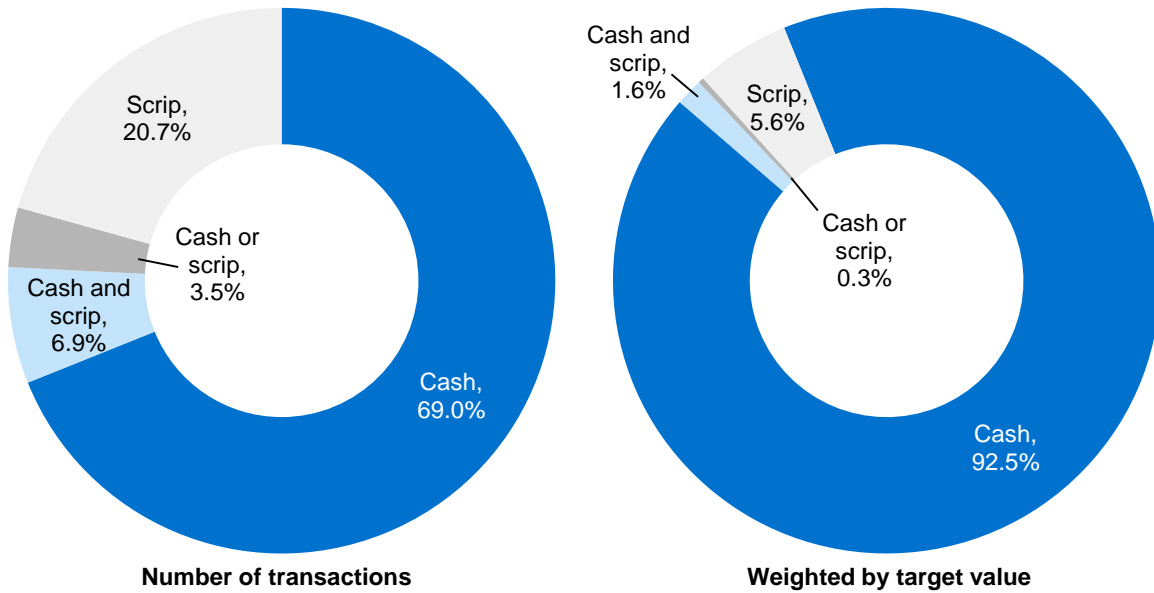
Target	Bidder	Type	Industry	Value
DUET Company Limited (Stapled as part of DUET Group) [DUE]	CK William Australia Bidco Pty Ltd (owned by Cheung Kong Infrastructure Holdings Limited, Cheung Kong Property Holdings Limited and Power Assets Holdings Limited)	Scheme	Utilities	\$7,486m
Spotless Group Holdings Limited [SPO]	Downer EDI Limited [DOW]	Bid	Commercial and professional services	\$1,263m
Cover-More Group Limited [CVO]	Zurich Insurance Company Ltd	Scheme	Insurance	\$739m
Warrnambool Cheese And Butter Factory Company Holdings Limited [WCB]	Saputo Inc.	Bid	Food products	\$698m
Generation Healthcare REIT [GHC]	NorthWest Healthcare Properties Real Estate Investment Trust	Bid	Real estate investment trusts	\$508m
Afterpay Holdings Limited [AFY]	Afterpay Touch Group Limited	Scheme	IT services	\$444m
Gray's Ecommerce Group Limited [GEG]	Eclipx Group Limited	Scheme	Internet software and services	\$179m
Macmahon Holdings Limited [MAH]	CIMIC Group Limited [CIM]	Bid	Construction and engineering	\$174m
Pulse Health Limited [PHG]	Luye Investment Group Co., Ltd	Scheme	Health care providers and services	\$121m
SMS Management & Technology Limited [SMX]	DWS Limited [DWS]	Scheme	IT services	\$112m

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).

113

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. Seven of the top 10 deals—and over 92.5% of control transactions by target value overall—offered cash consideration or an uncapped all-cash alternative: see Figure 6.

Figure 6: Consideration type (control transactions via bids and schemes lodged or registered from 1 January to 30 June 2017)

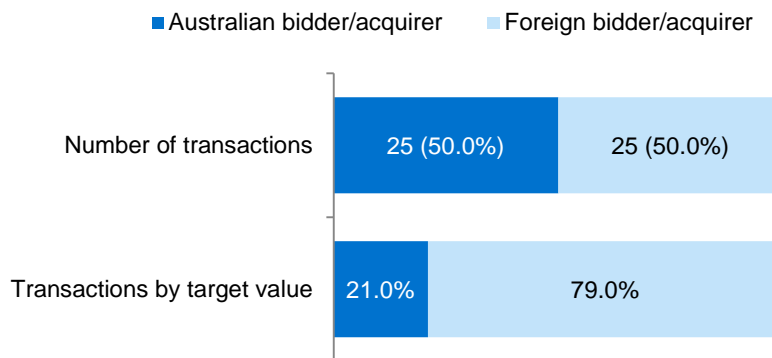


Note 1: Weightings are based on the target value calculated by reference to the bid consideration.

Note 2: See Table 11 in Appendix 2 for the data shown in these pie graphs (accessible version).

114 Control transactions conducted via bids and schemes were split equally in this period between local and foreign bidders. However the predominance of overseas bidders and acquirers in larger transactions remained consistent with the previous period, with these accounting for almost 80% by target value: see Figure 7.

Figure 7: Foreign and domestic offerors (control transactions via bids and schemes—1 January to 30 June 2017)



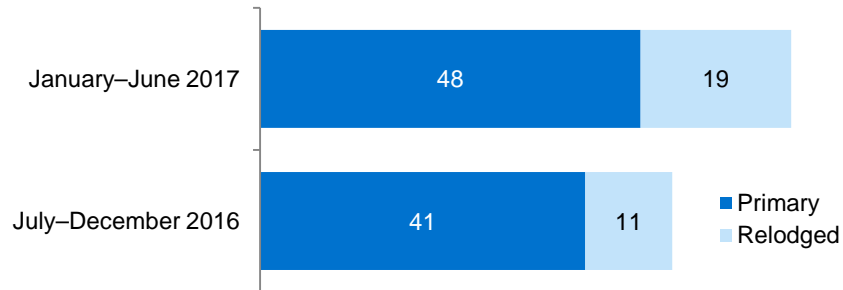
Note: See Table 12 in Appendix 2 for the data shown in this bar graph (accessible version).

Other control transactions

115 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 8.

Figure 8: Item 7 transactions in respect of which documents were received for review by ASIC (1 January to 30 June 2017)



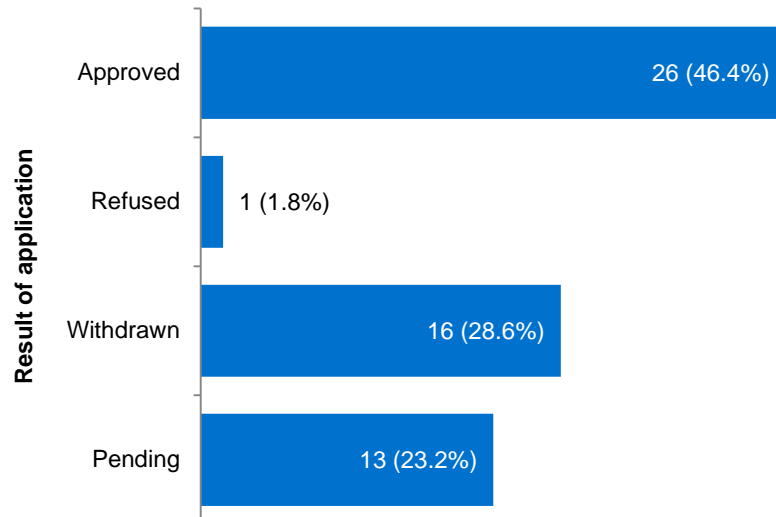
Note 1: The primary transactions displayed above reflect the total number of separate item 7 transactions for which documents were received by ASIC during the period. Some item 7 transaction documents provided for review may be subsequently amended and relodged. These related or relodged documents are displayed separately.

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

Applications for relief and approval

116 We received 55 applications during the period for relief under s655A, and one application under s669: see Figure 9. The numbers of applications received were consistent with the previous period (in which we received 57 applications under s655A and one under s669).

Figure 9: Results of applications under s655A and 669 (1 January to 30 June 2017)



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

117 During the period, we also received one application under s619 for appointment of foreign nominee by a bidder, and a further 15 applications

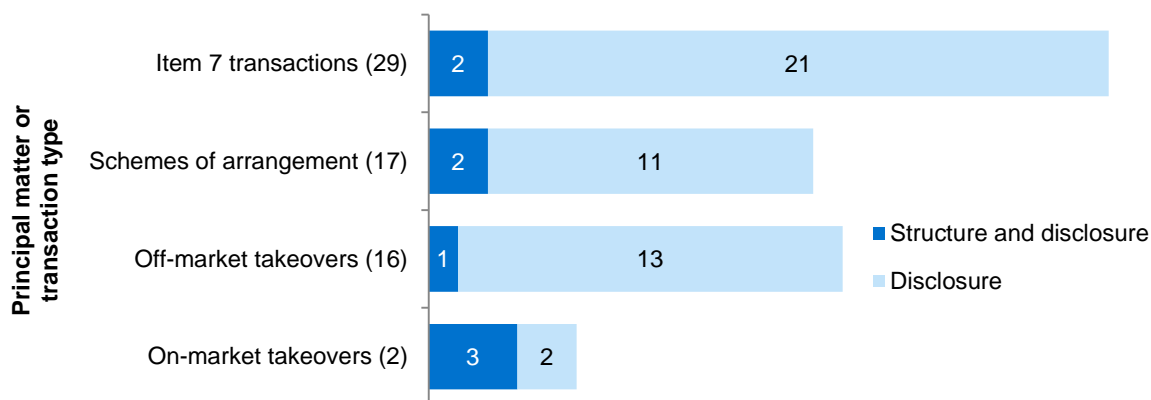
under s615(a) for approval of a nominee for rights issue offers that may affect the control of the offerors.

- 118 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 530.

ASIC's review and monitoring of control transactions

- 119 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.
- 120 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.
- 121 Figure 10 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 10: Instances where matters addressed following intervention by ASIC (1 January to 30 June 2017)



Note 1: 'Structural' changes include alterations made to a document 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 15 in Appendix 2 for the data shown in this bar graph (accessible version).

Principal areas of concern

- 122 During the period we most commonly raised concerns with bids or schemes lodged with ASIC where:
- (a) an independent expert report did not contain adequate disclosure of the expert's underlying assumptions or reasonable grounds for forward-looking statements;
 - (b) the bidder or acquirer was offering scrip consideration and there was inadequate or misleading disclosures of the historical trading prices of those securities, or of the premiums or implied value of the consideration offered; and
 - (c) public disclosures that should have been included in a supplementary bidder's or target's statement were omitted.
- 123 In almost all instances, changes were made to the disclosure in response to our concerns.

Engaging and communicating with members

- 124 We support efforts by companies to promote shareholder engagement with scheme of arrangement transactions and recognise that some companies engage proxy solicitation services in relation to their transactions.
- 125 We recently monitored the communications of one company that sought to hold member information sessions, designed to answer questions about the scheme booklet, ahead of a scheme meeting.
- 126 If a company proposing a members' scheme of arrangement seeks to engage with members ahead of the scheme meeting, they should take care and ensure that:
- (a) information other than that contained in the scheme booklet is not discussed;
 - (b) the court is advised at the first court hearing—before approving the explanatory statement and convening the scheme meeting—of the company's proposed communications and any information sessions;
 - (c) they do not interfere with the court approved 'message' before the meeting: see [Re Centro Retail Ltd](#) [2011] NSWSC 1321 at [10]–[11]; and
 - (d) they keep records of any information presented by way of those communications and make those records available to ASIC.
- 127 In monitoring communications or information sessions outside the scheme meeting, we are looking to ensure that the company does not:
- (a) give undue prominence to certain aspects of the scheme;

- (b) benefit some shareholders by providing answers to questions that may not be raised at the scheme meeting; or
- (c) otherwise affect discussion and attendance at the scheme meeting.

Independent expert reports

Multiple reports for the same transaction

128 Where circumstances require that more than one independent expert report be prepared to evaluate the same transaction—for example, two simultaneous schemes of arrangements—we are of the view that the relevant scheme booklets and takeover statements should consider both of those reports. In particular, they should contain clear disclosure addressing:

- (a) how shareholders can access other expert reports for the transaction (if publicly available);
- (b) differences in the basis of preparation of reports (e.g. valuation on a control basis versus a non-control basis);
- (c) the reasons why the attached report is preferable to those prepared by other experts;
- (d) material differences in valuation conclusions by experts for the same groups of assets; and
- (e) any other information that would assist shareholders in understanding the different reports prepared for the transaction.

129 We consider this type of disclosure necessary to ensure shareholders are adequately informed for a proposed control transaction, as explained in [Regulatory Guide 9 Takeover bids \(RG 9\)](#) and [Regulatory Guide 60 Schemes of arrangement \(RG 60\)](#): see RG 9.336 and RG 60.8.

Withdrawal rights where the target issues corrective disclosure

130 We intervened in a bid to ensure withdrawal rights were offered to members after an expert reissued their independent expert's report, following the identification of material errors. While the report formed part of the target statement, and the bidder had no involvement in the preparation or responsibility for the statements, we considered that the misstatements may have mislead members regarding acceptance and that withdrawal rights should be offered to avoid unacceptable circumstances arising.

131 We consider this an appropriate course of action, as the guiding principles of takeover law are to ensure that acquisitions of control take place in an efficient, competitive and informed market and that target holders are given enough information to enable them to assess the merits of the bid: see s602.

132 These principles are primarily concerned with the effect of the circumstances of a bid on target holders, rather than who may be responsible for bringing about those circumstances. While the culpability of a party is a relevant factor to consider in determining the appropriate remedial actions that should be taken in any case, unacceptable circumstances can arise irrespective of who may be at fault.

Underwriting arrangements

Shareholder underwriters and director nomination rights

133 We continue to raise concerns about underwriting or sub-underwriting by major shareholders where there are indicators of a control intention. As canvassed in previous reports, there are many circumstances that may give rise to concern with underwriting arrangements. We recently raised concerns about the inclusion of a right to nominate a director as a pre-condition to, or a benefit obtained from, underwriting or sub-underwriting an offer of securities.

134 While agreements giving major shareholders the right to appoint a nominee director are common, we were concerned in this instance because the prospectus stated that the right had been given 'in exchange for' the shareholder's agreement to sub-underwrite the offer. This is a strong indicator that an underwriting arrangement may not in fact be a genuine 'underwriting', but rather have a control purpose. Issuers and their advisers should be aware that this is a significant factor that we will consider when determining whether an underwriting or sub-underwriting arrangement results in an unacceptable control effect.

Takeovers Panel applications and enforcement action

135 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.

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

Updated memorandum of understanding with the Takeovers Panel

137 On 27 March 2017, ASIC and the Executive of the Takeovers Panel signed a new memorandum of understanding (MOU). The previous MOU between ASIC and the Panel was signed in August 2001. The refreshed MOU reflects

the main features of the current relationship between ASIC and the Panel Executive, including information sharing, referrals and regular liaison between staff.

138 ASIC and the Takeovers Panel each perform separate but complementary roles in regulating takeovers and other control transactions in Australia. We maintain a cooperative working relationship with the Panel. Recently, we have been able to assist the Panel by issuing notices and providing material obtained and by giving relevant analysis in matters involving allegations of undisclosed associations.

139 For further details, including a copy of the updated MOU, please see [Media Release \(17-085MR\) ASIC and the Takeovers Panel announce updated memorandum of understanding](#) (28 March 2017).

Takeovers Panel applications by ASIC

140 The Takeovers Panel conducted proceedings for two applications brought by ASIC during the period.

Note: These proceedings include *Molopo Energy Limited 01 & 02* [2017] ATP 10, in which both ASIC and Molopo Energy Limited applied to the Takeovers Panel. See paragraphs 148–155.

Lepidico Limited

141 Experts should be cautious about taking on public engagements if they are unable to be confident that they can prepare a report in accordance with [Regulatory Guide 111 Content of expert reports](#) (RG 111) and [Regulatory Guide 112 Independence of experts](#) (RG 112). This also highlights that sponsorship of media reports by a bidder may be problematic.

142 We made an application to the Takeovers Panel after we became concerned that a critique report prepared by a bidder's expert, for the purpose of challenging the opinion of the target's independent expert, was misleading. We were concerned that the report did not contain objectively reasonable grounds to provide an opinion on the takeover offer. Further, we became concerned that the bidder's expert may not be independent for the purposes of RG 112.

143 We sought withdrawal rights to address the unacceptable circumstances that may have arisen if a member accepted the offer on the basis of the critique report.

144 Following our application to the Panel, the bidder—Lithium Australia NL (Lithium)—retracted the critique report in its entirety and advised the target's—Lepidico Limited (Lepidico)—shareholders not to rely on the report when making their decision. Lithium did offer withdrawal rights to shareholders who accepted the takeover offer following the release of the

critique report. We withdrew our application when our concerns had been addressed.

145 Further to the concerns above, Lithium released the critique report to the market and dispatched a supplementary bidder's statement disclosing the expert's conclusion contained in the critique report. The critique report and the supplementary bidder's statement were also reported in a media article that had been sponsored by Lithium. Lithium further publicised the critique report and media article on social media.

146 In their decision, the Takeovers Panel noted that the use of social media and sponsorship of media reports may undermine our policy that information in bids be disseminated in formal supplementary statements, as published in [RG 9](#). We will continue to monitor sponsored content and take action as we consider necessary.

147 For further details, please see [Lepidico Limited](#) [2017] ATP 11.

Molopo Energy Limited

148 We remain concerned about undisclosed associations, particularly in the context of control transactions. It is an ongoing area of poor corporate conduct, despite a number of regulatory outcomes in recent years and our continued focus. The recent Takeovers Panel decision on Molopo Energy Limited (Molopo) highlights the work we continue to do in relation to these issues. The decision involved circumstances that gave rise to an association and also conduct that pre-dated a formal finding of association yet nonetheless amounted to unacceptable circumstances.

149 We applied to the Takeovers Panel for a declaration of unacceptable circumstances regarding the undisclosed association between Keybridge Capital Limited (Keybridge) and Aurora Funds Management Limited (Aurora) as responsible entity of Aurora Global Income Trust and Aurora Fortitude Absolute Return Fund in relation to Molopo.

150 If we have grounds to suspect a contravention of the Corporations Act we may use ASIC's compulsory information-gathering powers to gather evidence. If we are satisfied that the material received supports our suspicions, we may make application to the Takeovers Panel and ask them to draw inferences from that evidence. In this matter we submitted documents we had received under notice and asked them to draw the inference that Keybridge and Aurora were associates in relation to Molopo.

151 Our application was heard together with a similar application by Molopo itself. Molopo's application also submitted that a relationship between certain individuals had an unacceptable effect on control or was otherwise unacceptable, given the principles in s602.

152 The Takeovers Panel found there was insufficient evidence to establish that Keybridge and Aurora were associated in relation to Molopo. However, they did find that the involvement of particular individuals in both Keybridge and Aurora gave rise to unacceptable circumstances in relation to the affairs of Molopo, and accordingly made a declaration of unacceptable circumstances.

153 Keybridge and Molopo sought a review of the first Takeovers Panel decision and the review panel found that Keybridge and Aurora either had a relevant agreement or were acting in concert in relation to the affairs of Molopo and were associated under either s12(2)(b) or (c). The review panel also affirmed the initial panel's finding that the involvement of particular individuals in both Keybridge and Aurora gave rise to unacceptable circumstances.

154 The review panel made orders:

- (a) requiring the divestment of shares acquired by Keybridge and Aurora. We will provide further information about this divestment process to the market as it progresses;
- (b) requiring the disclosure of the associate relationship by way of revised substantial holder notices; and
- (c) preventing any reliance on the creep exception in item 9, s611 until six months after the Takeovers Panel's order.

155 For further details, please see [Molopo Energy Limited 01 & 02](#) [2017] ATP 10, [Molopo Energy Limited 03R, 04R & 05R](#) [2017] ATP 12 and [Molopo Energy Limited 06](#) [2017] ATP 14. Since the Takeovers Panel's decision, Aurora has also announced its intention to make an off-market takeover bid for all the fully paid ordinary shares in Molopo at a bid price of \$0.18 each.

Takeovers Panel applications by third parties

156 The Takeovers Panel conducted proceedings for six applications brought by third parties during the period. We provided submissions in relation to all of these proceedings.

Note: These proceedings include *Molopo Energy Limited 01 & 02* [2017] ATP 10, in which both ASIC and Molopo Energy Limited applied to the Takeovers Panel. See paragraphs 148–155.

Spotless Group Holdings Limited—Altering the offer terms

157 In two matters the Panel considered during this period, both in relation to Spotless Group Holdings Limited, ASIC's regulatory work conducted in parallel to the Panel was particularly important. Spotless had applied to the Panel for a declaration of unacceptable circumstances, in part in relation to the terms of the bid for Spotless by Downer EDI Services Pty Limited.

158 Separately, Downer had applied to ASIC to change the terms of the bid that were included in the bidder's statement it had lodged. The terms described in the bidder's statement had the effect of allowing target holders to withdraw their acceptance of the offer at any time before the fulfilment or waiver of all defeating conditions. Downer sought relief to vary the terms of the offer so that only the regulatory approval condition was subject to withdrawal rights.

159 Although the circumstances supported Downer's argument that there was an error in the bidder's statement, the terms clearly provided for target holders to withdraw acceptances until the offer becomes unconditional. The circumstances in which acceptances could be withdrawn were clear. There was no reason why the bid was not capable of being made in accordance with its original terms. We therefore refused the relief sought, but gave relief to allow Downer to remove terms inconsistent with the broad withdrawal rights.

160 Following our decision and given the proposed content of a replacement bidder's statement, the Panel decided not to conduct proceedings: see [Spotless Group Holdings Limited](#) [2017] ATP 5.

Spotless Group Holdings Limited—relevant interests arising from derivative arrangements

161 Following lodgement of that replacement bidder's statement and a target's statement in response, Downer applied to the Takeovers Panel for a declaration of unacceptable circumstances in relation to the affairs of Spotless. In part, that application submitted that references in the target's statement to Coltrane Asset Management's (Coltrane's) relevant interest in Spotless shares through cash-settled equity derivatives were misleading.

162 We continue to be concerned with the disclosure of relevant interests arising from derivative arrangements. We expect that the full context and description of a party's relevant interests—whether they are economic or derivative—will be disclosed to the market for it to assess their impact in a control context. This is supported by the Takeovers Panel's [Guidance Note 20 Equity derivatives](#) (GN 20).

163 In substantial holding notices given to Spotless, Coltrane had disclosed a relevant interest in 10.37% of Spotless shares, derived from equity swap agreements. The notices identified that Coltrane expected the counterparties to deliver the shares referenced in those swaps, even though the swaps were cash-settled.

164 Coltrane's relevant interest depended on those shares being held by the counterparties. Despite this, Coltrane had advised that 8.07% of its relevant interest was referable to the swaps entered into with one counterparty, who had separately disclosed a relevant interest in Spotless of 6.20%.

- 165 Following further inquiries, we required that Coltrane lodge a substantial holding notice to correct the disclosure about its voting power and explain how the swaps operated. The updated notice disclosed that Coltrane's voting power was between 8.07% and 10.64%.
- 166 Following this, in their decision in [*Spotless Group Holdings Limited 02*](#) [2017] ATP 9, the Takeovers Panel gave their view that references in the target's statement to Coltrane's relevant interest should also be corrected to reflect Coltrane's current relevant interest as being 'up to' 10.64% and qualified by an assumption as to the number of Spotless shares held by one of the counterparties.

C Corporate governance

Key points

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

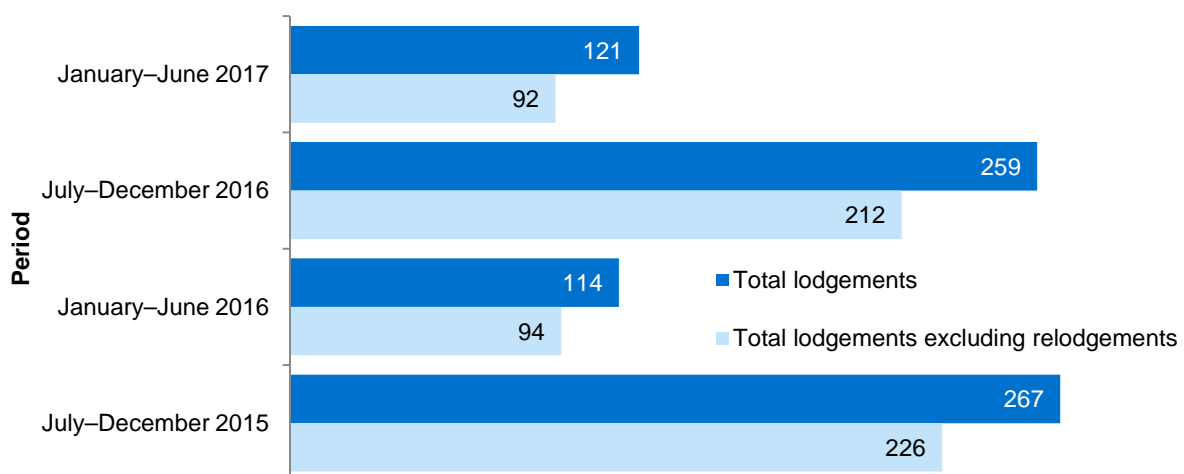
- our roundtable on proxy advisers;
- voting practices, particularly problems with the use of discretionary proxies; and
- enforcement action involving a director failing to notify the market of share trading.

Key observations and statistics

Related party notices

- 167 In the period, we received 121 related party approval notices under s218.
- 168 Although the number of related party approval notices lodged with ASIC are almost half that lodged in the previous period, it is consistent with historical trends. The percentage of abridgement applications associated with these lodgements is also fairly consistent between the same periods.
- 169 We continue to urge companies to seek ASX comments before lodging the meeting materials with ASIC, to reduce the number of documents requiring relodgement with ASIC. Figure 11 sets out the number of related party approval notices we received in the period and previous periods.

Figure 11: Related party approval notices (July 2015 to June 2017)



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

Related party issues in a spin-off transaction

- 170 It is important for directors to be mindful of the related party provisions and restrictions on the exercising of director powers in Chs 2D and 2E when structuring transactions, as those provisions provide important protections for shareholders and are an aspect of our review of all transactions involving related party benefits.
- 171 We identified issues with a prospectus for a proposed spin-off transaction where the entity to be spun off, the original holding entity, and the lead manager of the transaction all shared identical directors.
- 172 The transaction provided shares in the spun-off entity as remuneration to directors and the lead manager. We were concerned that the transaction:
- (a) would provide benefits to directors without approval from shareholders; and
 - (b) had been approved without a quorum (i.e. minimum number) of directors that did not have a personal interest in the transaction.
- 173 Ultimately, the spin-off transaction was restructured so that benefits could not pass to directors until after the transaction had completed and approval was granted by the shareholders of the spun-off entity.

Voting on change of control resolutions

- 174 Particular care needs to be taken to ensure the integrity of the voting process when a shareholder resolution is significant to the future of the company. In such circumstances, voting practices should reflect best practice and the transparency of the results is particularly important for market confidence. As we have previously commented, we consider that a vote by poll is generally better practice than a vote by show of hands.
- 175 A recent Takeovers Panel matter involving Globe Metals & Mining Limited (Globe) considered some poor voting practices in relation to a shareholder vote under item 7, s611.

- 176 At an annual general meeting of Globe in November 2013, members of Globe approved, on a show of hands, certain funding resolutions. These included the issue of shares, under item 7, s611 and Ch 2E, to Apollo Metal Investment Co. Ltd (Apollo)—which was the underwriter of a rights issue—in payment of the underwriting fee and on conversion of the convertible notes. Following implementation of the rights issue and the conversion of the convertible notes, Apollo’s shareholding in Globe increased from 0% to 52% and the shareholding of Ao-Zhong International Mineral Resources Pty Ltd (Ao-Zhong) decreased from 54% to 23%.
- 177 In April 2017, Ao-Zhong applied to the Takeovers Panel for a declaration of unacceptable circumstances in relation to the affairs of Globe. Ao-Zhong submitted that its intention was to vote against the funding resolutions at the meeting but that its corporate representative—who required a translator at the meeting—voted in favour of the resolutions under a misapprehension about the vote. Ao-Zhong submitted that this was the result of a plan for Apollo to obtain control of Globe and alleged that the order in which the funding resolutions were voted at the meeting was changed.
- 178 The Takeovers Panel observed that the resolution for approval under item 7, s611 was passed on a show of hands. Globe submitted that in the Perth market, when shareholder meetings seek member approval under s611, the method of voting at the meeting depends on the proxy position. A show of hands is generally used if proxies are strong.
- 179 Without forming a view on this, the Takeovers Panel found it difficult to conceive of circumstances in which passing a change of control resolution for a listed entity on a show of hands would be appropriate. The Panel observed that knowing who has voted and how they have voted is necessary for an acceptable level of transparency and integrity in the process.
- 180 For further details, please see the Takeovers Panel’s decision in [Globe Metals & Mining Limited](#) [2017] ATP 7.

Inadequate voting exclusion statements

- 181 Companies should ensure that their notices of meeting include the requisite voting exclusion statements and ensure—for each resolution—that these comply with all applicable requirements in the Corporations Act and the ASX Listing Rules. If companies intend to seek members’ approval for more than one purpose in a single resolution, companies and their legal advisers must either ensure that all requirements applying to that resolution are met or should otherwise consider splitting the resolution into multiple resolutions each seeking members’ approval for a single purpose.
- 182 We reviewed a number of notices of meeting that contained resolutions for members to approve related party transactions under s208 or acquisitions

under item 7, s611. In some cases, we found that notices of meeting complied with requirements in the ASX Listing Rules to exclude particular members from voting but did not fully comply with similar requirements in the Corporations Act.

183 ASX Listing Rule 14.11 permits someone who is entitled to vote to make the chair of the meeting their proxy and direct the chair to cast a vote as they decide (an undirected vote), even if the chair would be excluded from voting.

184 In contrast, neither s224 nor item 7, s611 permit proxies who would normally be excluded from voting to cast undirected votes, and do not make any exceptions for the chair of the meeting. Proxies who are excluded—including the chair—may still cast directed votes, so long as the member on whose behalf they cast the votes is not excluded: see s224(2)(a) and 250C.

ADSs and the problem of using discretionary proxies

185 The use of discretionary proxies can raise corporate governance concerns if used by a company representative in situations where a resolution has not received the requisite majority of votes from shareholders and there is no genuine decision of a shareholder to give the discretion to a particular person or office.

186 By way of background, Australian companies may use American depositary shares (ADSs) when seeking to raise funds on capital markets in the United States. Generally, the depositary holds the underlying shares in the non-US company, and issues the ADSs to investors on US capital markets (ADS holders). American depositary receipts are held by the ADS holders as evidence of their interest in the ADSs.

187 We understand that, among Australian companies that use ADSs, a common term of the depositary agreement between the company, the depositary, and the ADS holders allows for a discretionary proxy to be provided to the company when the ADS holders give no specific voting instructions to the depositary for a shareholders' meeting. Under the depositary agreement, this allows a discretionary proxy to be provided to a person designated by the company (e.g. the chair).

188 We became aware that Novogen Limited (Novogen)—an Australian company that had ADSs on issue—had relied on discretionary proxy votes to pass a resolution adopting the remuneration report that would have otherwise failed and resulted in the company receiving a 'first strike': see s250R and Div 9, Pt 2G.2. Following our inquiries, Novogen announced that they would not rely on the discretionary proxy provisions in the depositary agreement in the future.

189 Where the ordinary shares of Australian companies are traded in the United States in the form of ADSs, those companies should be mindful that—in the interests of good corporate governance—they must reflect the will of shareholders in meetings. Accordingly, in ASIC’s view they should not rely on discretionary proxies deemed to be given under standard depositary terms to carry resolutions put to shareholders.

Disclosure of climate risk

190 Companies and their boards should proactively consider reporting on climate risk as part of their annual reports, particularly within their operating and financial review. We have previously discussed this in [REP 512](#) at paragraph 235 and in [Regulatory Guide 247](#) *Effective disclosure in an operating and financial review* (RG 247) at RG 247.63.

191 In particular, listed entities must include information about their business strategies, and prospects for future financial years: s299A. They 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. As with risk disclosure generally, the prominence and extent of any disclosure of climate risk should be relative to the materiality of those risks.

192 In April 2017, the Senate Economic References Committee released its report [Carbon risk: A burning issue](#), following its inquiry into the matter of carbon risk disclosure. In June 2017, the Financial Stability Board Task Force on Climate-related Financial Disclosures (FSB-TCFD) released [Final report: Recommendations of the Task Force on Climate-related Financial Disclosures](#). The Australian Government has not yet released its response to the Committee’s report, including the recommendation that the Government commit to implementing the FSB-TCFD’s recommendations.

Directors and cyber risk management

193 We continue to view cyber resilience as a key challenge for entities operating in Australia’s financial markets.

194 On 20 April 2017, ASX released the [ASX 100 cyber health check report: Capturing the opportunities while managing the threats](#) (PDF 5.2 MB). ASX 100 companies had been invited to undergo a voluntary cyber health check to benchmark their cyber security readiness. The report found that 80% of companies surveyed expect an increase in cyber risk but recognised that there is more to be done to address this risk. Appendix B to the report sets out the survey questions that were asked by ASX. We encourage companies to use the report and these questions as a framework to evaluate their own cyber security readiness and identify areas for improvement.

Enforcement action

Responsible entities and related party benefits

- 195 A significant decision by the Federal Court of Australia has clarified the operation of the related party provisions, particularly as they apply to registered schemes. The court found that Avestra Asset Management Limited and two former directors—Paul Rowles and Clayton Dempsey—had engaged in numerous contraventions of the Corporations Act, including undertaking related party transactions without member approval.
- 196 Following the decision, people involved with the operation of managed investment schemes and responsible entities may need to seek member approval to give financial benefits to related parties of schemes and any other entities controlled by, or agents of or persons engaged by, a responsible entity (and not just related parties of the responsible entity itself).
- 197 Beach J agreed with ASIC’s submissions that he should reject a literal interpretation of s228 (as modified) as a drafting error. Instead, His Honour applied s228 (as modified) by analogy to how it would operate for public companies. Consequently, His Honour construed the definition of a ‘related party’ to include related parties of an entity controlled by, or an agent of or person engaged by, a responsible entity (as well as related parties of the responsible entity itself).
- 198 Section 208(1) (as modified by s601LC) requires member approval of any benefit given to a related party of a responsible entity. The term ‘related party’ is defined in s228, and s601LA modifies that section to apply to registered schemes by replacing references to ‘public company’ with ‘responsible entity’. Consequently, s228 (as modified) only refers to persons who are related parties of a responsible entity. On a literal interpretation, it does not include related parties of an entity controlled by, or an agent of or person engaged by, a responsible entity.
- 199 In this matter, our concerns included that Avestra had borrowed money on an unsecured basis from the property of its schemes, and invested scheme property in entities and offshore funds connected to its directors without adequate due diligence or regard for the interests of members.
- 200 His Honour considered that Mr Rowles and Mr Dempsey ‘fell significantly short of the standards expected of directors of a responsible entity and of a financial services licensee’. He declared that they had both:
- (a) failed to seek member approval of related party transactions;
 - (b) failed in their duties as officers of a company and a responsible entity;
- and

(c) submitted substantial shareholder notices that were false or misleading in a material respect.

201 Both Mr Rowles and Mr Dempsey were disqualified from managing corporations for 10 years and banned from carrying on a financial products or services business, providing financial product advice and dealing in financial products for the same period.

202 For further details, please see [Media Release \(17-140MR\)](#) *Federal Court disqualifies former directors of responsible entity* (16 May 2017) and [ASIC v Avestra Asset Management Ltd \(in liq\)](#) [2017] FCA 497, particularly at [166]–[180].

Former director fined for failing to notify market of share trading

203 The recent conviction of Angus Holt is a reminder to directors of listed public companies that s205G requires them to notify the relevant market operator within 14 days after their appointment as a director, the listing of the company or any changes in their interests. Where a director (or any other person) has a substantial holding in a listed company, they may also be required to give information about their holding to the company under s671B within two business days.

Note: Where a director of a public company listed on ASX reasonably believes the company has complied with ASX Listing Rule 3.19A—which requires similar disclosure after no more than five business days—the director may not need to comply with s205G(1): see [ASIC Corporations \(Disclosure of Directors' Interests\) Instrument 2016/881](#).

204 In March 2017, Mr Holt was convicted and fined in the Maroochydore Magistrates Court for failing to lodge notices regarding his share trading in Optiscan Imaging Limited between 13 January and 3 July 2015.

205 Mr Holt was a director and executive chairman of the company between February 2009 and July 2015. On 7 July 2015, ASX wrote to the company secretary of Optiscan Imaging Limited regarding changes in Mr Holt's notifiable interests and stating that it appeared Mr Holt may have breached s205G.

206 Mr Holt voluntarily cooperated with ASIC in the investigation of the offences, and pleaded guilty to nine charges of failing to notify ASX under s205G and three charges of failing to notify ASX under s671B. The matter was prosecuted by the Commonwealth Director of Public Prosecutions and the magistrate ordered that the 12 convictions against Mr Holt be recorded. Mr Holt was also fined \$4,500.

Former chairman convicted and sentenced for misleading the market

207 When disclosing entities fail to comply with their continuous disclosure obligations, officers or employees of those entities may also be convicted of an offence if they authorise or permit that false information be made available or given to the market or particular other persons.

208 A recent example of this is the conviction and sentencing of Benjamin Kirkpatrick in January 2017 in the Sydney District Court. As the company's former executive chairman, Mr Kirkpatrick was convicted of aiding and abetting Waratah Resources Limited to breach its continuous disclosure obligations under s674 and s1309.

209 In October 2013, Waratah announced that it had established a \$100 million trade finance facility with the Bank of China. No such facility had been established or agreed on. Mr Kirkpatrick failed to correct that announcement until 11 days later.

210 Mr Kirkpatrick pleaded guilty to the charge brought by ASIC and also admitted to an offence of having authorised false information to the market. He was sentenced to 12 months imprisonment, to be served as an intensive correction order. As a result of his conviction, he is automatically banned from managing a corporation for five years.

Former managing director of debenture issuer disqualified and banned for misleading statements

211 We have and will take action against directors who fail to exercise care and diligence in the management of companies' assets. We will also seek to disqualify directors of failed companies to safeguard the public interest.

212 In May 2017, the Administrative Appeals Tribunal (AAT) upheld ASIC's decision that Michael O'Sullivan should be disqualified from managing corporations for five years. This was qualified by allowing Mr O'Sullivan to remain a director of three proprietary companies relating to his immediate family.

213 The AAT found that the conduct of Mr O'Sullivan fell below that expected of a company director. Mr O'Sullivan had been the managing director of a debenture issuer, Provident Capital Limited, from 1998 to 2014. While he was in this role, Provident made misleading statements about the position of significant loans in their prospectus. Provident was placed in receivership on 3 July 2012 and was placed into liquidation later that year.

214 In its reasons, the AAT highlighted that 'deficient disclosure [of information] was designed to obfuscate the real position' and that this behaviour 'put at risk the funds of certain third-party investors who were

largely being kept in the dark about the precarious nature' of one of Provident's largest loans.

- 215 For further detail on the AAT's decision, please refer to [Media Release \(17-131MR\)](#) *AAT affirms ASIC's disqualification and banning of Michael O'Sullivan, the former MD of Provident Capital Ltd* (4 May 2017). Mr O'Sullivan has appealed the decision to the Federal Court of Australia. The appeal is expected to be heard towards the end of this year.

ASIC policy initiatives

Outcome of ASIC roundtable on proxy advisers

- 216 In May 2017, we hosted a roundtable event in Sydney to facilitate discussion on the engagement practices between proxy advisers and companies. The event was attended by proxy advisers, investor representatives and relevant industry groups.
- 217 We recognise the valuable role that proxy advisers play in the market by assisting investors in making voting decisions and promoting focus on corporate governance issues relevant to shareholders. Strong institutional shareholder engagement with voting is a key part of a well-functioning capital market in Australia.
- 218 Proxy advisers in Australia hold AFS licences for only a limited portion of the services that they provide (i.e. giving advice on votes that relate to dealings in financial products). Apart from those financial services, we do not otherwise directly regulate the activities of proxy advisers.
- 219 However, in light of differing views voiced in the market regarding communication between proxy advisers and companies, we offered to host a roundtable discussion between proxy advisers, investor representatives and relevant industry groups to understand whether these concerns are warranted and how they can be addressed.
- 220 During the roundtable, each of the proxy advisers outlined their engagement practices. While there was some variation, each of the proxy advisers indicated:
- (a) a willingness to engage with companies throughout the year (outside of any 'blackout' periods on such communications used by one proxy adviser), and a high number of actual engagements;
 - (b) a willingness to obtain companies' feedback on any factual matters in their reports and to correct factual errors;
 - (c) an acknowledgment of the time pressures of meeting during meeting season;

- (d) that they will not reach out to all companies, but will generally meet with a company that reaches out to them; and
- (e) that they had seen a noticeable increase in requests to engage from companies in recent years.

221 The major variations between proxy advisers included differences on:

- (a) policies regarding timing of engagement with companies—for example, one proxy adviser imposes blackout periods during the solicitation period to prevent any instances of selective disclosure. Requests for meetings by companies are rejected in this period on the basis that all material information should be in the public domain. These engagement policies are outlined on the various proxy advisers' websites;
- (b) location of resources—two proxy advisers have many of their resources located offshore, particularly those who assist during the peak meeting season;
- (c) extent of resources—proxy advisers acknowledged that, depending on resources, they may give companies shorter response times to clarify matters;
- (d) service offerings—one of the proxy advisers offered additional corporate services with physical and information barriers in place; and
- (e) fees charged—one proxy adviser charges a fee for companies to access their reports.

222 Some of the concerns expressed at the roundtable about the engagement practices of proxy advisers included:

- (a) instances where proxy advisers have appeared unwilling to engage;
- (b) instances where very short response times were provided by proxy advisers to companies to clarify issues;
- (c) instances where proxy advisers have failed to correct inaccuracies in a report—although an inaccuracy may not change the proxy adviser's recommendation, it may still affect the way in which a shareholder decides to vote; and
- (d) potential conflicts where proxy advisers also offer corporate services.

223 Importantly, institutional investors, as the commissioners and users of proxy adviser reports, were recognised as an important stakeholder in any discussion regarding the options that may be available to address concerns that have been raised in the market. Any changes that are implemented may significantly affect those investors and impose additional costs on them.

224 We understand that, for institutional investors, proxy adviser reports may be only one part of their voting decision processes. In fact, institutional investors may challenge the views of proxy advisers on a regular basis and

many seek to engage directly with companies themselves. Some institutional investors, including foreign investors, may have particular policies and views regarding certain issues that may significantly differ from that of proxy advisers. It is important to recognise that investors are ultimately responsible for making the voting decision.

225 We consider that part of the solution to concerns currently being expressed in the market is active education and engagement on the issues raised by the various participants.

226 The issue of whether a code of conduct should be adopted by proxy advisers or updated industry guidance should be issued was discussed at length—not only at the roundtable, but also in subsequent conversations we had with proxy advisers, a number of institutional investors (who individually approached ASIC following the roundtable) and other attendees. It was clear that there was generally no support from the proxy advisers for a code of conduct. In addition, it was not apparent that there was consensus of any specific areas in which existing industry guidance on the engagement process was deficient and should be updated.

227 While we encourage the development of best practice in this area, we consider that the pursuit of new industry best practice guidance will not be fruitful at this stage. We also noted the existence of guidance that already concerns engagement between companies and institutional investors and proxy advisers (e.g. the Governance Institute of Australia's guidance on [*Improving engagement between ASX-listed companies and their institutional investors: Principles and guidelines*](#), published in July 2014).

228 We will continue to monitor issues raised at the roundtable in relation to the engagement practices of proxy advisers during the next annual general meeting season. We recognise that some of these issues may be a product of the global nature of the services provided by some proxy advisers, and we will seek to address these issues directly with those proxy advisers.

229 If companies' expectations of proxy advisers' engagement practices are not being met, we encourage companies to raise these issues with proxy advisers directly. We also suggest that companies:

- (a) implement a policy of early, proactive engagement with proxy advisers; and
- (b) ensure that their disclosures to the market are clear and not overly complex, to minimise the likelihood of factual errors arising from misinterpretation of complex or unclear disclosure.

230 Greater awareness of how institutional investors, including foreign institutional investors, use proxy adviser reports may also be beneficial. Of course, it is of vital importance that companies continue to engage directly with their investors regarding any voting decisions.

Other policy initiatives

Treasury consultation on improving corporate insolvency law

- 231 In June 2017, the Australian Government introduced the Treasury Laws Amendment (2017 Enterprise Incentives No. 2) Bill 2017 into the Parliament. The Bill seeks to introduce changes to:
- (a) the insolvent trading provisions in s588G(2), by introducing a ‘safe harbour’ for directors from personal liability for insolvent trading; and
 - (b) the operation of ‘ipso facto’ clauses in contracts, to make them unenforceable in certain circumstances.
- 232 In June 2017, the Senate referred the Bill to the Senate Economics Legislation Committee for inquiry and report. Our submission to the Committee noted the importance of striking a balance between encouraging entrepreneurship, promoting good corporate governance, and protecting creditors’ interests. We observed that it was important to consider matters such as:
- (a) directors and creditors having certainty about the requirements to access ‘safe harbour’ protection. In particular, we expressed our concern that uncertainty regarding the requirement to obtain ‘appropriate advice’ from an ‘appropriately qualified entity’ might have unintended consequences of supporting growth in the unregulated pre-insolvency advice market and illegal phoenix activity; and
 - (b) the impact of legislative reform on legitimate insolvent trading claims.
- 233 On 8 August 2017, the Committee published their report, [*Treasury Laws Amendment \(2017 Enterprise Incentives No. 2\) Bill 2017 \[Provisions\]*](#), recommending that the Bill be passed and discussing the submissions received. Although several submissions similarly raised concerns about defining ‘appropriately qualified entity’, others supported a broad interpretation of the phrase as it was drafted in the Bill.

D Other corporate finance areas

Key points

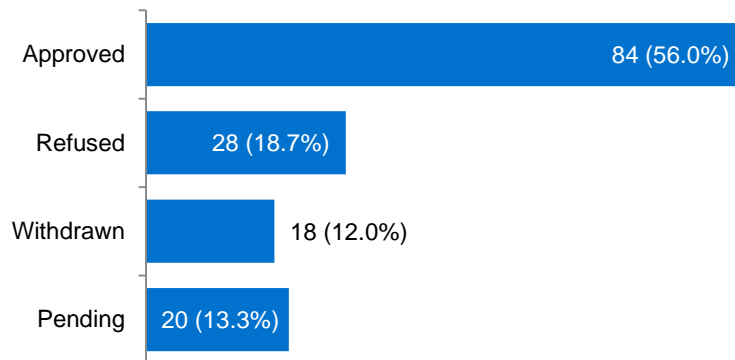
This section sets out statistics and observations from our work in other corporate finance areas.

We also discuss our work on particular policy initiatives during the period, including on distributed ledger technology, financial technology (fintech) and regulatory technology (regtech), and our areas of focus regarding financial reports for the year ended 30 June 2017.

Key observations and statistics

Financial reporting relief applications

- 234 During the period, we received 175 applications for financial reporting relief (up from 156 applications in the previous period). These included:
- (a) two applications under s111AT;
 - (b) 147 applications under s340 (66 of these related to a single corporate group);
 - (c) one application for auditor independence relief under s342AA; and
 - (d) 25 applications for a no-action letter for financial reporting breaches.
- 235 Of the applications we received under s111AT and 340, 14 applications were from companies with external administrators appointed (down from 44 in the previous period). We approved eight of the 12 s340 applications from external administrators, with three pending at the end of the period.
- 236 Of the applications we received for a no-action letter, four applications were from companies with external administrators appointed.
- 237 We approved 84 of the 150 applications we received under s111AT, 340 and 342AA: see Figure 12.

Figure 12: Results of applications under s111AT and 340 (1 January to 30 June 2017)

Note: See Table 17 in Appendix 2 for the data shown in this bar graph (accessible version).

Share buy-backs

238 There was over \$1.9 billion worth of share buy-backs undertaken by 79 companies in the period. This represents a decrease in the value of share buy-backs compared to previous periods—\$3.8 billion worth of share buy-backs were undertaken by 70 companies in the previous period and \$1.7 billion worth of share buy-backs were undertaken by 86 companies in January to June 2016.

Note: These figures are based on data from ASX's monthly *Equity capital raised* report, available from ASX Market Information (an online subscription service run by ASX).

239 We received five applications for relief for share buy-backs during the period. Two applications were approved, two were withdrawn and one is 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, please see [Regulatory Guide 110 Share buy-backs](#) (RG 110).

ASIC policy initiatives

ASIC's focus on financial reports

240 We have continued to call on companies to focus on giving information for users of financial reports that is useful and meaningful.

241 As part of our Financial Reporting Surveillance Program, financial reports are selected for review, using risk-based criteria and at random, to determine compliance with the Corporations Act and accounting standards. In May 2017, we announced our areas of focus for financial reports for the year

ended 30 June 2017 for listed entities and other entities of public interest with many stakeholders. This year, we continue our focus on asset valuation and accounting policy choices, as some companies are adopting unrealistic assumptions in testing the value of assets or applying inappropriate approaches in areas such as revenue recognition.

Note: See [Media Release \(17-162MR\)](#) *ASIC calls on preparers to focus on the quality of financial report information* (31 May 2017).

242 A number of listed entities have restated their accounts after ASIC inquiries. Many of these related to the write down of intangible assets and goodwill, which was an area of focus in the 2016 financial year.

Note: Examples of restatements during the period include:

- [Media Release \(17-038MR\)](#) *Seven West writes down Yahoo7 investment* (22 February 2017);
- [Media Release \(17-045MR\)](#) *Nine Entertainment writes down Nine Network goodwill* (27 February 2017);
- [Media Release \(17-046MR\)](#) *Pacific Star Network writes down intangible assets* (1 March 2017);
- [Media Release \(17-051MR\)](#) *Spotless writes down goodwill in half-yearly disclosure* (6 March 2017);
- [Media Release \(17-052MR\)](#) *MMA Offshore writes down property, plant and equipment* (7 March 2017);
- [Media Release \(17-096MR\)](#) *Cabcharge impairment of assets* (3 April 2017); and
- [Media Release \(17-124MR\)](#) *Shine Corporation writes down goodwill* (28 April 2017).

See also our findings from the 2016 financial reviews, which were reported in [Media Release \(17-219MR\)](#) *ASIC review of 31 December 2016 financial reports* (30 June 2017).

Consolidation of the ASIC market integrity rules

243 In January 2017, we released [Consultation Paper 277](#) *Proposals to consolidate the ASIC market integrity rules* (CP 277). CP 277 seeks feedback on our proposal to consolidate the ASIC market integrity rules and clarify existing obligations for:

- (a) management requirements and responsible executives;
- (b) dealing ‘as principal’;
- (c) block trades and large portfolio trades;
- (d) derivatives market contracts and wholesale client disclosure; and
- (e) record-keeping by market licensees.

244 In particular, we are proposing to consolidate 13 of the 14 market integrity rule books into four rule books, which will cover:

- (a) ASX, Chi-X, IR Plus, NSXA and SSX, and competition between securities markets;

- (b) ASX 24 and FEX, and competition between futures markets;
- (c) capital requirements for ASX, Chi-X, NSXA and SSX; and
- (d) capital requirements for ASX 24 and FEX.

Note: IMB has not been included in the consolidation project because of the unique nature of the IMB market (i.e. offers trading solely in IMB securities) and the bespoke nature of the [ASIC Market Integrity Rules \(IMB Market\) 2010](#).

245 The proposed draft consolidated market integrity rules were attached to CP 277. Comments closed on 7 March 2017 and we anticipate publishing a report on the submissions received later this year.

Cooperation with foreign regulators on fintech

246 We are focused on the role that fintech businesses are playing in refashioning financial services and capital markets. In addition to developing guidance about how these new developments fit into our regulatory framework, we launched our [Innovation Hub](#) in 2015 to help fintech businesses navigate the regulatory framework without compromising investor and financial consumer trust and confidence.

247 We have signed agreements with Malaysia, Japan, Hong Kong, and Indonesia to provide frameworks for cooperation to support and understand financial innovation, and to enable information sharing between ASIC and the other regulatory authorities.

248 The agreements expand our fintech cooperation network in Asia. Investment in fintech in our region has been growing exponentially in recent years, with total investment increasing from \$0.5 billion in 2013 to \$8.6 billion in 2016.

249 For further details on each agreement, please see:

- (a) [Media Release \(17-120\)](#) *ASIC signs fintech Cooperation Agreement with OJK to promote innovation in financial services* (21 April 2017);
- (b) [Media Release \(17-183MR\)](#) *Hong Kong and Australia seal agreement on fintech cooperation* (13 June 2017);
- (c) [Media Release \(17-199MR\)](#) *Japan and Australia cooperate on fintech* (23 June 2017); and
- (d) [Media Release \(17-215MR\)](#) *Malaysia and Australia seal agreement on fintech cooperation* (29 June 2017).

Distributed ledger technology

250 In March 2017, we released [Information Sheet 219](#) *Evaluating distributed ledger technology* (INFO 219). INFO 219 sets out an assessment tool for evaluating services based on distributed ledger technology (DLT) intended for use by both existing licensees and start-up businesses.

251 The assessment tool is comprised of the following six broad questions:

- (a) How will the DLT be used?
- (b) What DLT platform is being used?
- (c) How is the DLT using data?
- (d) How is the DLT run?
- (e) How does the DLT work under the law?
- (f) How does the DLT affect others?

252 These are the questions that we are likely to ask in assessing whether the use of DLT by a service provider or infrastructure operator will allow them to meet their regulatory obligations. INFO 219 provides more information on these questions and about next steps for businesses considering the use of DLT, including details of other regulators that may also be relevant.

253 INFO 219 is intended to assist our discussions with stakeholders. We want to use the assessment tool and our regulatory framework, as discussed in INFO 219, as a conversation starter as the technology continues to evolve. If you have any feedback on the issues raised in INFO 219, please email Feedback.DLT.Info.Sheet@asic.gov.au or make contact with ASIC through your normal channels.

Next steps on regtech

254 In May 2017, we released [Report 523](#) *ASIC's Innovation Hub and our approach to regulatory technology* (REP 523) to provide an update on the work of our Innovation Hub and outline our approach to fintech, regtech and related areas. Our Innovation Hub was established in March 2015 to help fintech businesses navigate Australia's regulatory system and has since expanded to include the regtech sector.

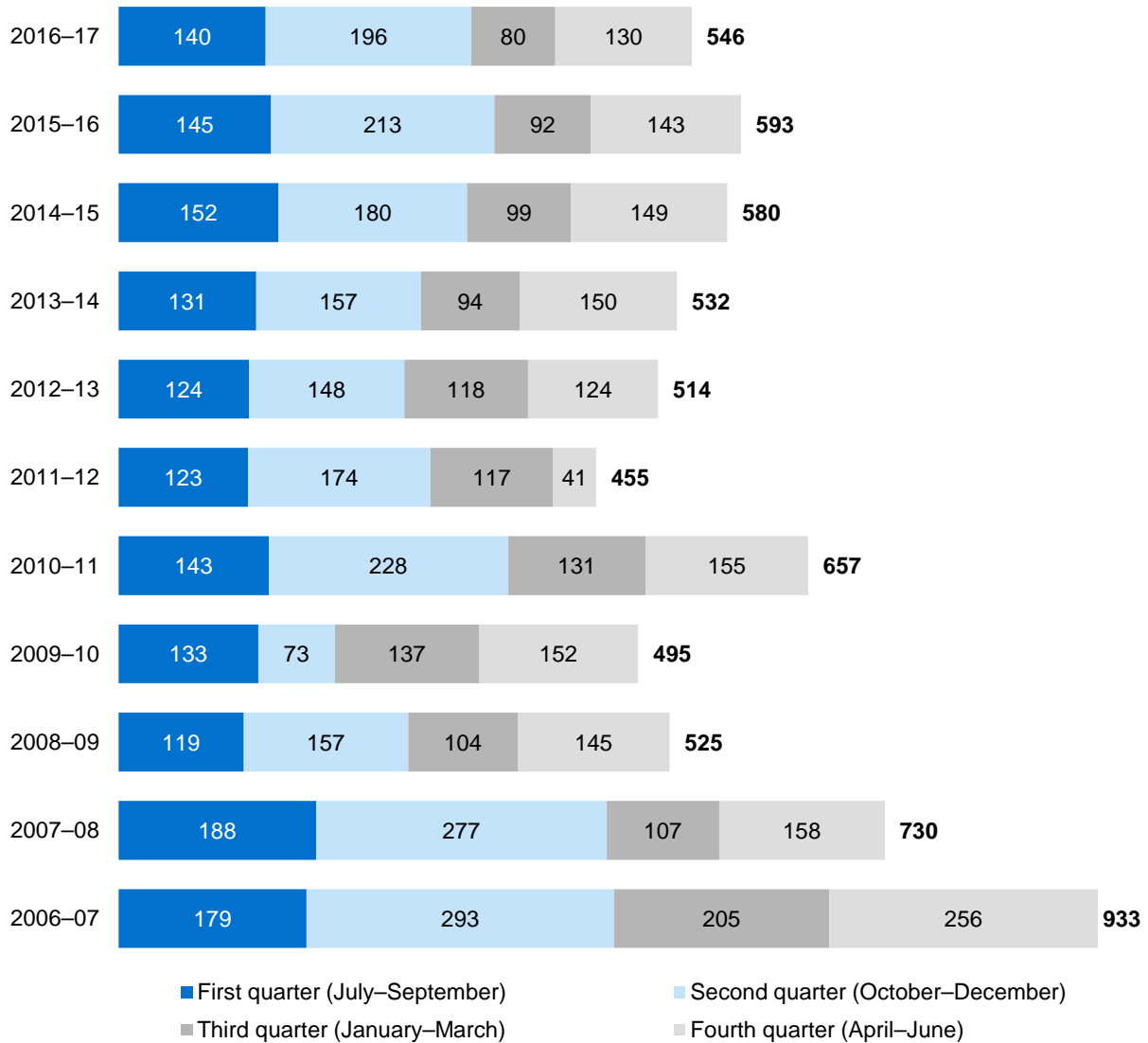
255 In February 2017, we hosted our first regtech roundtable discussions in Sydney and Melbourne to hear a variety of views on the application of regtech in Australia and future opportunities arising from its application. Following on from those discussions, we sought further feedback in REP 523 on our overall approach to regtech, the establishment of a regtech liaison group, our continued use of technology trials and our hosting of a problem-solving event (hackathon).

- 256 The consultation period for REP 523 closed on 4 July 2017 but we are always keen to hear from stakeholders. Businesses that wish to share their progress in the development and application of regtech, as well as those seeking informal assistance, can contact us by email at innovationhub@asic.gov.au.
- 257 For further details on our regtech initiatives, please see [Media Release \(17-155MR\)](#) *ASIC proposes next steps on regtech* (26 May 2017).

Appendix 1: Additional statistics

Fundraising

Figure 13: Total original fundraising documents lodged with ASIC by quarter (2006–07 to 2016–17)

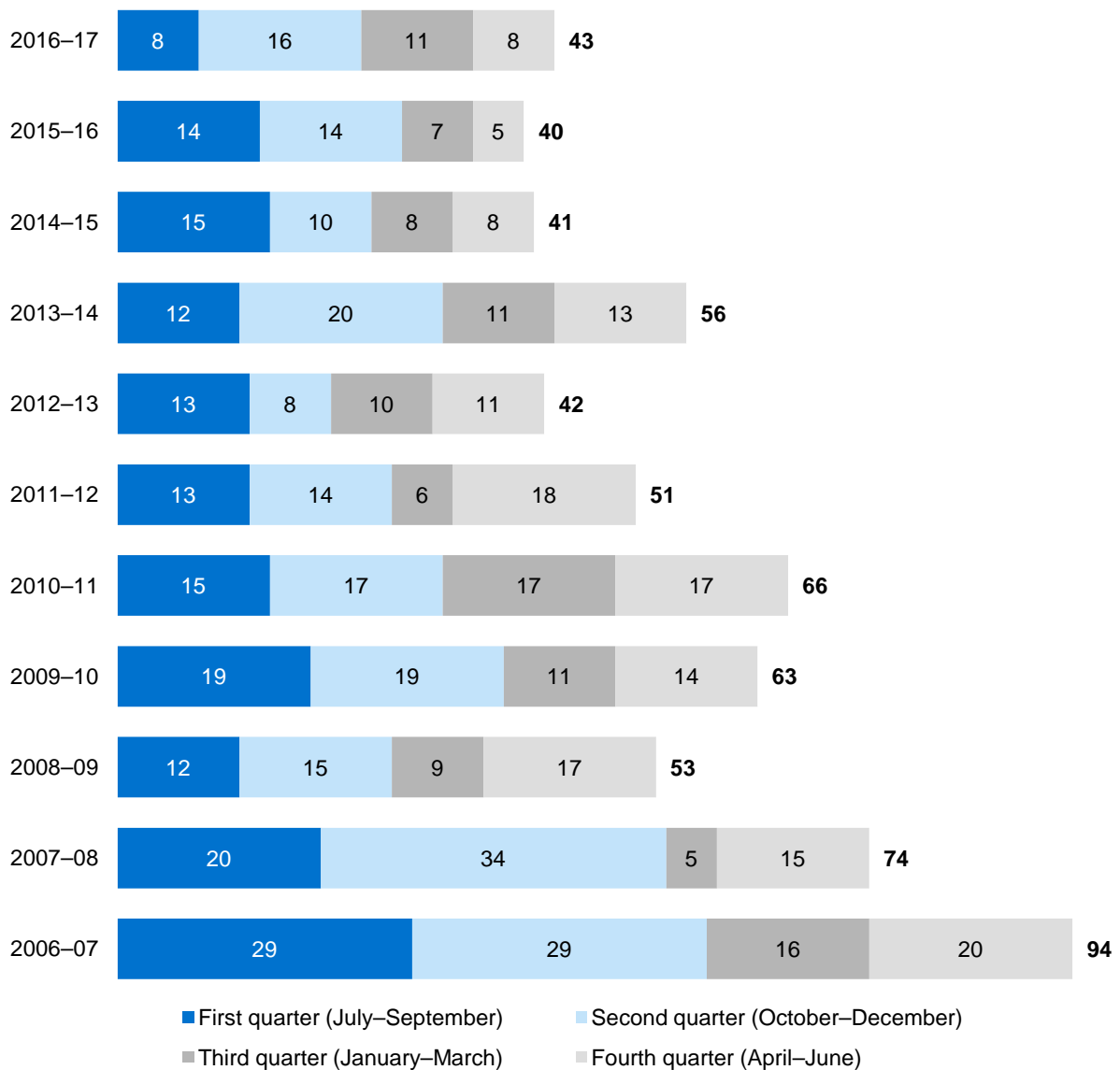


Note: See Table 18 in Appendix 2 for the data shown in this bar graph (accessible version).

Mergers and acquisitions

Takeover bids

Figure 14: 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 19 in Appendix 2 for the data shown in this bar graph (accessible version).

Table 4: Takeover bids in respect of which bidder's statements lodged with ASIC (1 January to 30 June 2017)

Target	Bidder	Lodged	Type	Securities	Consideration
Amex Resources Limited [AXZ]	Waratah International (Asia) Limited	16/03/2017	Off-market	Shares	Cash
Automotive Solutions Group Ltd [4WD]	AMA Group Limited [AMA]	23/05/2017	Market	Shares	Cash
Bligh Resources Limited [BGH]	Zeta Resources Limited [ZER]	25/05/2017	Off-market	Shares	Cash
Corona Minerals Limited	Corona Minerals Limited (top hatting restructure)	30/06/2017	Off-market	Options	Scrip
Corona Minerals Limited	Corona Minerals Limited (top hatting restructure)	30/06/2017	Off-market	Shares	Scrip
EZA Corporation Ltd [EZA]	Mercantile Investment Company Limited [MVT]	10/02/2017	Off-market	Shares	Cash
EZA Corporation Ltd [EZA]	Mercantile Investment Company Limited [MVT]	24/05/2017	Off-market	Shares	Cash
Generation Healthcare REIT [GHC]	NorthWest Healthcare Properties Real Estate Investment Trust	24/04/2017	Off-market	Units	Cash
Heemskirk Consolidated Limited [HSK]	Northern Silica Corporation	13/03/2017	Off-market	Shares	Cash or scrip
Hunter Hall International Limited [HHL]	Washington H. Soul Pattinson and Company Limited [SOL]	11/01/2017	Off-market	Shares	Cash
Hunter Hall International Limited [HHL]	Pinnacle Investment Management Group Limited [PNI]	30/01/2017	Off-market	Shares	Cash
Kula Gold Limited [KGD]	Geopacific Resources Limited [GPR]	1/05/2017	Off-market	Shares	Scrip
Lepidico Ltd [LPD]	Lithium Australia NL [LIT]	2/03/2017	Off-market	Shares	Scrip
Macmahon Holdings Limited [MAH]	CIMIC Group Limited [CIM]	24/01/2017	Off-market	Shares	Cash

Target	Bidder	Lodged	Type	Securities	Consideration
MHM Metals Limited [MHM]	Mercantile Investment Company Limited [MVT]	11/01/2017	Off-market	Shares	Cash
MHM Metals Limited [MHM]	Cadmon Ventures Pty Ltd	23/02/2017	Off-market	Shares	Cash
Spotless Group Holdings Limited [SPO]	Downer EDI Limited [DOW]	21/03/2017	Off-market	Shares	Cash
The PAS Group Limited [PGR]	Brand Acquisition Co., LLC	16/06/2017	Market	Shares	Cash
Warrnambool Cheese And Butter Factory Company Holdings Limited [WCB]	Saputo Inc.	31/01/2017	Off-market	Shares	Cash

Notes: This table lists each takeover bid for which an initiating bidder's statement was lodged with ASIC between 1 January and 30 June 2017 (inclusive), as reflected in ASIC's register at the date of this publication. Takeover bids must relate only to securities in a single class. Accordingly, where bids are made for more than one class of securities in a target, each is recorded above as a separate entry unless we have granted relief to treat multiple classes of securities as a single class for the purposes of the bid: see RG 9.105–RG 9.119.

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

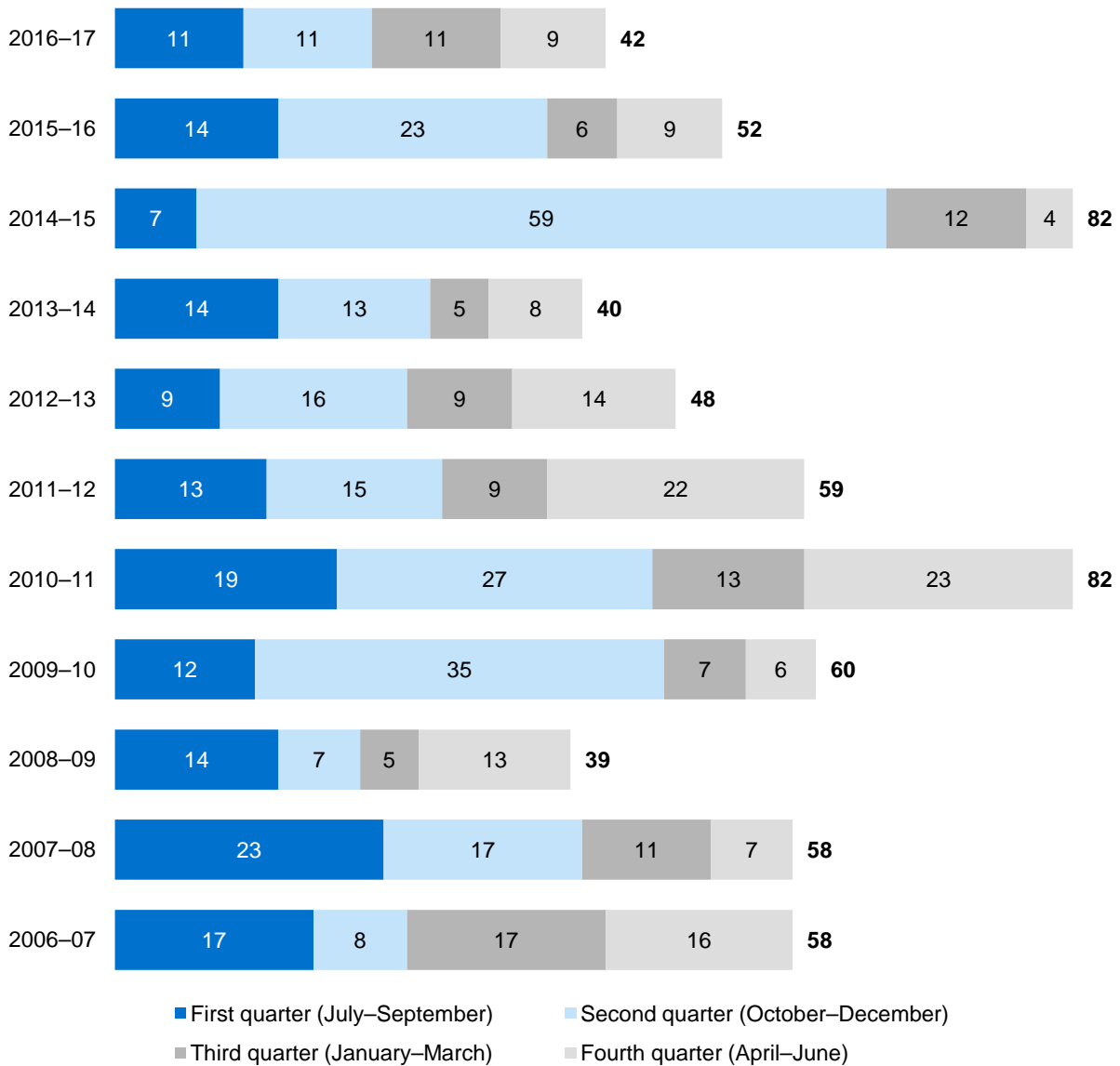
All off-market bids are full bids unless otherwise indicated.

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

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

Schemes of arrangement

Figure 15: Schemes of arrangement in respect of which explanatory statements were registered 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 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 20 in Appendix 2 for the data shown in this bar graph (accessible version).

Table 5: Schemes of arrangement in respect of which explanatory statements registered or otherwise publicly released (1 January to 30 June 2017)

Scheme company	Acquirer	Registered	Type	Securities	Received
Afterpay Holdings Limited [AFY]	Afterpay Touch Group Limited	12/05/2017	Members	Shares	Scrip
Australian Dairy Products Pty Ltd	Not applicable (internal restructure)	28/02/2017	Members	Shares	N/A
Blackgold International Holdings Limited [BGG]	Vibrant Group Limited	26/05/2017	Members	Shares	Cash
Central Petroleum Limited [CTP]	Macquarie Group Limited [MQG]	28/04/2017	Members	Shares	Cash and scrip
Cover-More Group Limited [CVO]	Zurich Insurance Company Ltd	20/02/2017	Members	Shares	Cash
Cradle Resources Limited [CXX]	Tremont Investments Limited	24/05/2017	Members	Shares	Cash
DUET Company Limited (Stapled as part of DUET Group) [DUE]	CK William Australia Bidco Pty Ltd (owned by Cheung Kong Infrastructure Holdings Limited, Cheung Kong Property Holdings Limited and Power Assets Holdings Limited)	8/03/2017	Members	Shares (stapled)	Cash
DUET Finance Limited (Stapled as part of DUET Group) [DUE]	CK William Australia Bidco Pty Ltd (owned by Cheung Kong Infrastructure Holdings Limited, Cheung Kong Property Holdings Limited and Power Assets Holdings Limited)	8/03/2017	Members	Shares (stapled)	Cash
DUET Investment Holdings Limited (Stapled as part of DUET Group) [DUE]	CK William Australia Bidco Pty Ltd (owned by Cheung Kong Infrastructure Holdings Limited, Cheung Kong Property Holdings Limited and Power Assets Holdings Limited)	8/03/2017	Members	Shares (stapled)	Cash
Ecobiotics Limited	QBiotics Group Limited	5/06/2017	Members	Shares	Scrip
Emeco Holdings Limited [EHL]	Not applicable (internal restructure)	15/03/2017	Creditors	Notes	N/A
Gray's Ecommerce Group Limited [GEG]	Eclipx Group Limited [ECX]	21/06/2017	Members	Shares	Scrip

Scheme company	Acquirer	Registered	Type	Securities	Received
Protein Technology Victoria Pty. Ltd.	Not applicable (internal restructure)	28/02/2017	Members	Shares	N/A
Pulse Health Limited	Luye Investment Group Co., Ltd	1/02/2017	Members	Shares	Cash
QBiotics Limited	Not applicable (top-hatting restructure of QBiotics Group Limited and subsidiaries)	2/06/2017	Members	Shares	Scrip
Rubik Financial Limited [RFL]	Temenos Group AG	24/03/2017	Members	Shares	Cash
Signature Gold Ltd	StratMin Global Resources PLC	21/06/2017	Members	Shares	Scrip
SMS Management & Technology Limited [SMX]	DWS Limited [DWS]	5/05/2017	Members	Shares	Cash and scrip
The Warrnambool Cheese And Butter Factory Company Limited	Not applicable (internal restructure)	28/02/2017	Members	Shares	N/A
Warrnambool Milk Products Pty Limited	Not applicable (internal restructure)	28/02/2017	Members	Shares	N/A

Notes: This table lists:

- each proposed compromise or arrangement for which an explanatory statement was registered by ASIC under s412(6) between 1 January and 30 June 2017 (inclusive) (members' scheme) as reflected in ASIC's register at the date of this publication;
- each proposed compromise or arrangement between a Pt 5.1 body and its creditors or a class of its creditors for which an explanatory statement was considered by the court at or about the time of considering an associated members' scheme (e.g. an associated scheme to acquire issued options); and
- each other proposed compromise or arrangement between a Pt 5.1 body and its creditors or class of creditors for which a draft explanatory statement, previously provided to ASIC for consideration in accordance with s411(2), to ASIC's knowledge was made publicly available on a date between 1 January and 30 June 2017 (inclusive).

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

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

The total number of schemes listed in this table may not correspond with the total number of explanatory statements recorded in Figure 15, which is based on the total number of schemes for which a draft explanatory statement was provided to ASIC during the period. This may be because:

- some explanatory statements provided for review during the period were subsequently withdrawn before registration or public release; or
- there are explanatory statements for schemes provided for review during the period that had not been registered or publicly released by the end of the period.

Appendix 2: Accessible versions of figures

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

Table 6: Number of disclosure documents by type (lodged from 1 January to 30 June 2017)

Disclosure document type	Number lodged	Percentage
Prospectus for equities quoted	100	27.4%
Prospectus for entities unquoted	86	23.6%
Offer information statement	5	1.4%
Short form quoted	12	3.3%
Short form unquoted	5	1.4%
<i>Total original lodgements</i>	<i>208</i>	<i>57.0%</i>
Replacement prospectus	66	18.1%
Supplementary prospectus	91	24.9%
<i>Total supplementary lodgements</i>	<i>157</i>	<i>43.0%</i>

Note 1: The replacement prospectus and supplementary prospectus supplement the lodgement of the original disclosure documents, as listed in this table.

Note 2: This is the data shown in Figure 1.

Table 7: Results of applications under s741 (1 January to 30 June 2017)

Result	Number	Percentage
Approved	33	55.9%
Refused	0	0.0%
Withdrawn	12	20.3%
Pending	14	23.7%

Note: This is the data shown in Figure 2.

Table 8: Form of ASIC intervention in prospectus disclosure (lodged 1 January to 30 June 2017)

Form of ASIC intervention	Number	Percentage
Original fundraising offers	210	100.0%
ASIC raised disclosure concerns	70	33.3%

Form of ASIC intervention	Number	Percentage
Extension of exposure period	34	16.2%
Interim order made in relation to an offer	10	4.8%
Revocation of interim order	8	3.8%
Final stop order made	1	0.5%

Note: This is the data shown in Figure 3.

Table 9: Top five most frequent disclosure concerns raised by ASIC with prospectuses (lodged 1 January to 30 June 2017)

Type of concern	Number of times raised
Unclear or insufficient detail on use of funds	15
Business model not fully and/or adequately disclosed	14
Risk disclosure inadequate, insufficiently prominent and/or tailored	13
Misleading or deceptive disclosure (misleading and/or unclear statement)	12
Not clear, concise and effective	11

Note: This is the data shown in Figure 4.

Table 10: Control transactions by target size (1 January to 30 June 2017 and previous period comparison)

Target size	January to June 2017	July to December 2016
Under \$50m	41.4%	59.1%
\$50m to \$200m	37.9%	18.2%
\$200m to \$1bn	13.8%	13.6%
Over \$1bn	6.9%	9.1%

Note: This is the data shown in Figure 5.

Table 11: Consideration type (control transactions via bids and schemes lodged or registered from 1 January to 30 June 2017)

Number of transactions

Consideration type	Percentage
Cash	69.0%
Cash and scrip	6.9%

Consideration type	Percentage
Cash or scrip	3.5%
Scrip	20.7%

Weighted by target value

Consideration type	Percentage
Cash	92.5%
Cash and scrip	1.0%
Cash or scrip	0.3%
Scrip	5.6%

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 6.

Table 12: Foreign and domestic offerors (control transactions via bids and schemes—1 January to 30 June 2017)

Number of transactions

Type of bidder/acquirer	Number	Percentage
Foreign	25	50.00%
Domestic	25	50.00%

Transactions by target value

Type of bidder/acquirer	Percentage
Foreign	79.0%
Domestic	21.0%

Note: This is the data shown in Figure 7.

Table 13: Item 7 transactions in respect of which documents were lodged with or received for review by ASIC (1 January to 30 June 2017)

Type of document	January to June 2017	July to December 2016
Primary	48	41
Relodged	19	11

Note 1: The primary documents displayed above reflect the total number of separate item 7 transactions for which documents were received by ASIC during the period. Some item 7 transaction documents provided for review may be subsequently amended and relodged. These relodged documents are displayed separately.

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

Table 14: Results of applications under s655A and 669 (1 January to 30 June 2017)

Result	Number	Percentage
Approved	26	46.4%
Refused	1	1.8%
Withdrawn	16	28.6%
Pending	13	23.2%

Note: This is the data shown in Figure 9.

Table 15: Instances where matters addressed following intervention by ASIC (1 January to 30 June 2017)

Principal matter or transaction type	Structure and disclosure	Disclosure
Item 7 transactions (29)	2	21
Schemes of arrangement (17)	2	11
Off-market takeovers (16)	1	13
On-market takeovers (2)	3	2

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 10.

Table 16: Related party approval notices (January 2015 to June 2017)

Period	Total lodgements	Total excluding re-lodgements
January–June 2017	121	92
July–December 2016	259	212
January–June 2016	114	94
July–December 2015	267	226

Note: This is the data shown in Figure 11.

Table 17: Results of applications under s111AT, 340 and 342AA (1 January to 30 June 2017)

Result	Number	Percentage
Approved	84	56.0%
Refused	28	18.7%
Withdrawn	18	12.0%
Pending	20	13.3%

Note: This is the data shown in Figure 12.

Table 18: 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	80	130	546
2015–16	145	213	92	143	593
2014–15	152	180	99	149	580
2013–14	131	157	94	150	532
2012–13	124	148	118	124	514
2011–12	123	174	117	41	455
2010–11	143	228	131	155	657
2009–10	133	73	137	152	495
2008–09	119	157	104	145	525
2007–08	188	277	107	158	730
2006–07	179	293	205	256	933

Note: This is the data shown in Figure 13.

Table 19: 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	11	8	43
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 14.

Table 20: 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	11	9	42
2015–16	14	23	6	9	52
2014–15	7	59	12	4	82
2013–14	14	13	5	8	40
2012–13	9	16	9	14	48
2011–12	13	15	9	22	59
2010–11	19	27	13	23	82
2009–10	12	35	7	6	60
2008–09	14	7	5	13	39
2007–08	23	17	11	7	58
2006–07	17	8	17	16	58

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

Note 2: This is the data shown in Figure 15.

Key terms

Term	Meaning in this document
AAT	Administrative Appeals Tribunal
ADS	An American depositary share—shares in a non-US company are held by a depositary that issues ADSs to investors on US capital markets
ADS holder	An investor on a US capital market that holds ADSs
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act Note: This is a definition contained in s761A.
ASIC	Australian Securities and Investments Commission
ASX	ASX Limited or the exchange 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
Ch 6D (for example)	A chapter of the Corporations Act (in this example numbered 6D), unless otherwise specified
[CO 04/899] (for example)	An ASIC class order (in this example numbered 04/899)
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
CP 277 (for example)	An ASIC consultation paper (in this example numbered 277)
CRIS	Cost Recovery Implementation Statement
CSF regime	The statutory regime for crowd-sourced funding in Pt 6D.3A of the Corporations Act regulating CSF offers
DLT	Distributed ledger technology

Term	Meaning in this document
emerging market issuer	An entity is an emerging market issuer if: <ul style="list-style-type: none"> • the entity (or its parent entity if it is a wholly owned subsidiary) is incorporated in an emerging market; or • the entity (or its parent entity if it is a wholly owned subsidiary) has a significant exposure or strong connection to the emerging market through: <ul style="list-style-type: none"> – business operations, if a significant proportion of its revenue-generating assets are located in an emerging market; – shareholders, if its shares are dominantly held (i.e. at least 50%) by persons residing in an emerging market; or, where the shareholder is an entity, the entity is an emerging market issuer; or – board/management, if at least half of its board members reside in an emerging market
fintech	Financial technology
foreign exempt listing	A listing on ASX by a foreign entity that complies with ASX Listing Rule 1.11
FSB-TCFB	Financial Stability Board Task Force on Climate-related Financial Disclosures
GN 20 (for example)	A Takeovers Panel guidance note (in this example numbered 20)
INFO 214 (for example)	An ASIC information sheet (in this example numbered 214)
IPO	Initial public offering
item 7 (for example)	An item of s611 of the Corporations Act (in this example numbered 7), unless otherwise specified
item 7 transactions	Control transactions approved by members under the exception in item 7 of s611 of the Corporations Act
JORC Code 2012 (for example)	Australasian Code for Reporting of Exploration Results, Minerals Resources and Ore Reserves (in this example, the 2012 edition)
Panel	Takeovers Panel
period	1 January to 30 June 2017
previous period	1 July to 31 December 2016
REP 368 (for example)	An ASIC report (in this example numbered 368)
RG 9 (for example)	An ASIC regulatory guide (in this example numbered 9)
s611	A section of the Corporations Act (in this example numbered 611), unless otherwise specified

Term	Meaning in this document
scheme of arrangement	A compromise or arrangement under s411(1) of the Corporations Act
swap	An equity swap agreement
regtech	Regulatory technology

Related information

Headnotes

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

Legislative instruments

[ASIC Corporations \(Charitable Investment Fundraising\) Instrument 2016/813](#)

[ASIC Corporations \(Disclosure of Directors' Interests\) Instrument 2016/881](#)

[\[CO 04/899\]](#) *Definition of 'senior manager'—modification*

[\[CO 13/520\]](#) *Relevant interests, voting power and exceptions to the general prohibition*

[\[SCO 02/184\]](#) *Charitable investment schemes—fundraising*

Regulatory guides

[RG 9](#) *Takeover bids*

[RG 60](#) *Schemes of arrangement*

[RG 87](#) *Charitable schemes and school enrolment deposits*

[RG 110](#) *Share buy-backs*

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

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

[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 214](#) *Mining and resources—Forward-looking statements*

[INFO 219](#) *Evaluating distributed ledger technology*

Legislation and explanatory memoranda

Corporations Act, Chs 2D, 2E, 2M, 6, 6D, Pt 2G.2 Div 9, 5.1, s12(2)(b)–(c), 111AT, 205G, 208, 218, 224, 228, 250C, 250R, 299A, 340, 342AA, 411(2), 412(6), 588G(2), 601LA, 601LC, 602, 606, 609(8A)(b), 611, 615(a), 619, 655A, 669, 671B, 674, 708(5), 708(8)(c), 708AA(2), 713, 718, 734, 741, 1274(2AA), 1309

Corporations Amendment (Crowd-sourced Funding) Act 2017

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

Legislation Act 2003

Treasury Laws Amendment (2016 Measures No. 1) Act 2017

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

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

Cases

[*ASIC v Avestra Asset Management Ltd \(in liq\)*](#) [2017] FCA 497

[*Re Centro Retail Ltd*](#) [2011] NSWSC 1321

[*Globe Metals & Mining Limited*](#) [2017] ATP 7

[*Lepidico Limited*](#) [2017] ATP 11

[*Molopo Energy Limited 01 & 02*](#) [2017] ATP 10

[*Molopo Energy Limited 03R, 04R & 05R*](#) [2017] ATP 12

[*Molopo Energy Limited 06*](#) [2017] ATP 14

[*Spotless Group Holdings Limited*](#) [2017] ATP 5

[*Spotless Group Holdings Limited 02*](#) [2017] ATP 9

Consultation papers and reports

[CP 277](#) *Proposals to consolidate the ASIC market integrity rules*

[CP 285](#) *Remaking ASIC class order on disclosure relief for an offer to a director or secretary: [CO 04/899]*

[CP 288](#) *Crowd-sourced funding: Guide for public companies*

[CP 289](#) *Crowd-sourced funding: Guide for intermediaries*

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

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

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

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

[REP 494](#) *Marketing practices in initial public offerings of securities*

[REP 512](#) *ASIC regulation of corporate finance: July to December 2016*

[REP 513](#) *ASIC enforcement outcomes: July to December 2016*

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

[REP 523](#) *ASIC's Innovation Hub and our approach to regulatory technology*

[REP 530](#) *Overview of decisions on relief applications (October 2016 to March 2017)*

[REP 535](#) *ASIC cost recovery arrangements: 2017–18*

REP 540 *Investors in initial public offerings*

Market integrity rules

[ASIC Market Integrity Rules \(IMB Market\) 2010](#)

Media and other releases

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

[17-038MR](#) *Seven West writes down Yahoo7 investment*

[17-045MR](#) *Nine Entertainment writes down Nine Network goodwill*

[17-046MR](#) *Pacific Star Network writes down intangible assets*

[17-051MR](#) *Spotless writes down goodwill in half-yearly disclosure*

[17-052MR](#) *MMA Offshore writes down property, plant and equipment*

[17-085MR](#) *ASIC and the Takeovers Panel announce updated memorandum of understanding*

[17-096MR](#) *Cabcharge impairment of assets*

[17-120MR](#) *ASIC signs fintech Cooperation Agreement with OJK to promote innovation in financial services*

[17-124MR](#) *Shine Corporation writes down goodwill*

[17-131MR](#) *AAT affirms ASIC's disqualification and banning of Michael O'Sullivan, the former MD of Provident Capital Ltd*

[17-140MR](#) *Federal Court disqualifies former directors of responsible entity*

[17-155MR](#) *ASIC proposes next steps on regtech*

[17-162MR](#) *ASIC calls on preparers to focus on the quality of financial report information*

[17-179MR](#) *ASIC extends deadline for transitional relief for charitable investment fundraisers*

[17-183MR](#) *Hong Kong and Australia seal agreement on fintech cooperation*

[17-186MR](#) *ASIC welcomes the dawn of a new regulatory era*

[17-199MR](#) *Japan and Australia cooperate on fintech*

[17-210MR](#) *ASIC restricts Axiom Mining from issuing a reduced content prospectus*

[17-215MR](#) *Malaysia and Australia seal agreement on fintech cooperation*

[17-219MR](#) *ASIC review of 31 December 2016 financial reports*

[17-221MR](#) *ASIC commences consultation on proposed guidance on sell-side research*

[17-228MR](#) *ASIC takes action over misuse of 'sophisticated investor' certificates*

[17-235MR](#) *ASIC's cost recovery framework finalised*

Non-ASIC publications

ASX, [ASX 100 cyber health check report: Capturing the opportunities while managing the threats](#) (PDF 5.2 MB)

ASX, [ASX Listing Rules](#), Listing Rules 3.19A and 14.11

[Explanatory Memorandum to the Corporations Amendment \(Crowd-sourced Funding\) Bill 2016](#)

FSB-TCFD, [Final report: Recommendations of the Task Force on Climate-related Financial Disclosures](#)

Governance Institute of Australia, [*Improving engagement between ASX-listed companies and their institutional investors: Principles and Guidelines*](#)

Senate Economic References Committee, [*Carbon risk: A burning issue*](#)

Senate Economic References Committee, [*Cooperative, mutual and member-owned firms*](#)

Senate Economics Legislation Committee, [*Treasury Laws Amendment \(2017 Enterprise Incentives No. 2\) Bill 2017 \[Provisions\]*](#)

[*GN 20 Equity derivatives*](#)

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

Standards

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

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

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