



ASIC
Australian Securities &
Investments Commission



ASIC regulation of corporate finance: January to June 2019

Report 630 | September 2019

About this report

This report is for companies, lawyers, corporate advisers and compliance professionals working in corporate finance.

It discusses our key observations for the period from 1 January 2019 to 30 June 2019, and our areas of focus for the next six months.

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Overview

ASIC's Corporations team regulates public corporate finance activity and control transactions in Australia. We also play a key role in corporate governance and handle reports of misconduct about directors.

This report sets out what we did over the period 1 January 2019 to 30 June 2019 (the period). It gives key statistics and observations from our oversight of transactions during the period. This report also explains what we will be focusing on for the 1 July 2019 to 31 December 2019 period.

We host Corporate Finance Liaison meetings twice a year in Sydney, Melbourne, Brisbane, Perth and Adelaide.

This report covers issues to be discussed at our meetings in September to October 2019. We will also discuss issues that have arisen since 30 June 2019 and answer your questions.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents: consultation papers, regulatory guides, information sheets and reports.

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. Examples in this report are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

Our activity at a glance: January to June 2019

Fundraising

216	original disclosure documents lodged	117	supplementary or replacement disclosure documents lodged
\$3.95bn	sought to be raised under offers	\$3.3bn	actually raised under offers seeking more than \$30 million
27%	of fundraisings required additional disclosure		
12	interim stop orders issued	0	final stop orders issued
39	fundraising relief applications received	75%	of fundraising relief applications granted

Mergers and acquisitions

13	control transactions launched via takeover bid	15	control transactions launched via scheme and trust scheme
1	transaction via simultaneous takeover bid and scheme	\$15.7bn	value of all bids and schemes by implied target value
41	takeover relief applications received	76%	of takeover relief applications granted
15	substantial holding relief applications received	80%	of substantial holding relief applications granted
13	separate applications to the Takeovers Panel considered	15	approvals under item 7 received

Corporate governance and financial reporting

71	notices of meeting with related party benefits	35	s218 applications to reduce lodgement period
10	requests for no-action letters regarding financial reporting	1	request for no-action granted
53	financial reporting relief applications received	63%	of financial reporting relief applications granted
\$2.1bn	of share buy-backs undertaken by 87 companies		

Note 1: For fundraising, the amount 'actually raised' (\$3.3 billion) includes funds raised under original prospectuses seeking to raise \$30 million or more where the offer opened before or during the period and was completed by or on 30 June 2019, and the results of the fundraising were announced publicly. It excludes foreign mutual recognition scheme offers. The amount 'sought to be raised' (approximately \$3.95 billion) includes the amount sought for all original prospectuses lodged during the period.

Note 2: Statistics for applications for relief *received* refer to only those applications that were received during the period. Statistics for applications *granted* are based on those that were decided during the period and include a small number of applications that were received before the period. Applications that were not granted were either withdrawn or refused.

Note 3: Statistics for takeover relief applications only includes applications that were made under s655A of the *Corporations Act 2001* (Corporations Act).

Fundraising

Key statistics for the January to June 2019 period

In the period, 216 original disclosure documents were lodged, seeking to raise approximately \$3.95 billion: see Figure 1. This compares with 296 original disclosure documents lodged in the period 1 July 2018 to 31 December 2018 (previous period), seeking to raise \$7.6 billion.

Figure 1: Types of offers (January to June 2019)



Note 1: See Table 4 in Appendix 2 for the data shown in this figure (accessible version).

Note 2: This figure shows the maximum amount sought under prospectuses lodged during the period, not the amount actually raised under the prospectuses.

This period saw a significant decrease in the magnitude of the largest fundraising offers, with total amounts actually raised in the top 10 fundraisings decreasing from \$5 billion in the previous period to \$3.3 billion in this period: see Table 1.

Table 1: Top 10 fundraisings by amount raised (January to June 2019)

Company	Amount sought	Amount raised	Offer type
National Australia Bank Limited	\$1,650,000,000	\$1,874,058,200	Hybrids
Macquarie Group Limited	\$750,000,000	\$905,491,000	Hybrids
Life360 Inc.	\$145,428,127	\$145,428,437	IPO, CDIs
Prospa Group Limited	\$109,588,232	\$109,588,232	IPO
VGI Partners Limited	\$75,000,000	\$75,000,000	IPO
Pointsbet Holdings Limited	\$75,000,000	\$75,000,000	IPO
Readytech Holdings Limited	\$50,000,016	\$50,000,016	IPO
Whispir Limited	\$47,000,000	\$47,000,000	IPO
Next Science Limited	\$35,000,000	\$35,000,000	IPO
Victory Offices Limited	\$30,000,000	\$30,000,000	IPO
Total	\$2,967,016,375	\$3,346,565,885	Not applicable

Note 1: 'IPO' stands for initial public offering and 'CDIs' stands for CHESSE depository interests.

Note 2: These figures only include prospectuses that sought to raise \$30 million or more where the offer opened before or during the period and closed by or on 30 June 2019, and where the results of the fundraising were announced publicly. The figures exclude foreign mutual recognition scheme offers.

ASIC intervention in fundraising

There were a steady number of interim stop orders (12 compared with 11 during the previous period): see Figure 2.

Figure 2: Form of ASIC intervention in prospectus disclosure (January to June 2019)

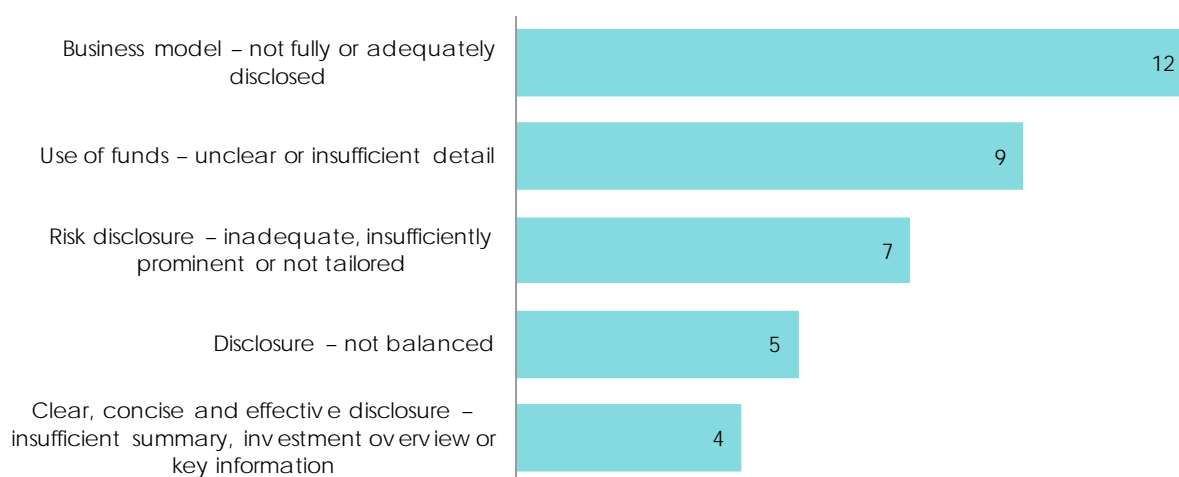


Note 1: See Table 5 in Appendix 2 for the data shown in this figure (accessible version).

Note 2: These figures relate to actions taken during the period in relation to documents lodged before or during the period.

In this period, the most common concerns we raised with prospectuses remained largely consistent with the previous period: see Figure 3.

Figure 3: Top five disclosure concerns most frequently raised (January to June 2019)

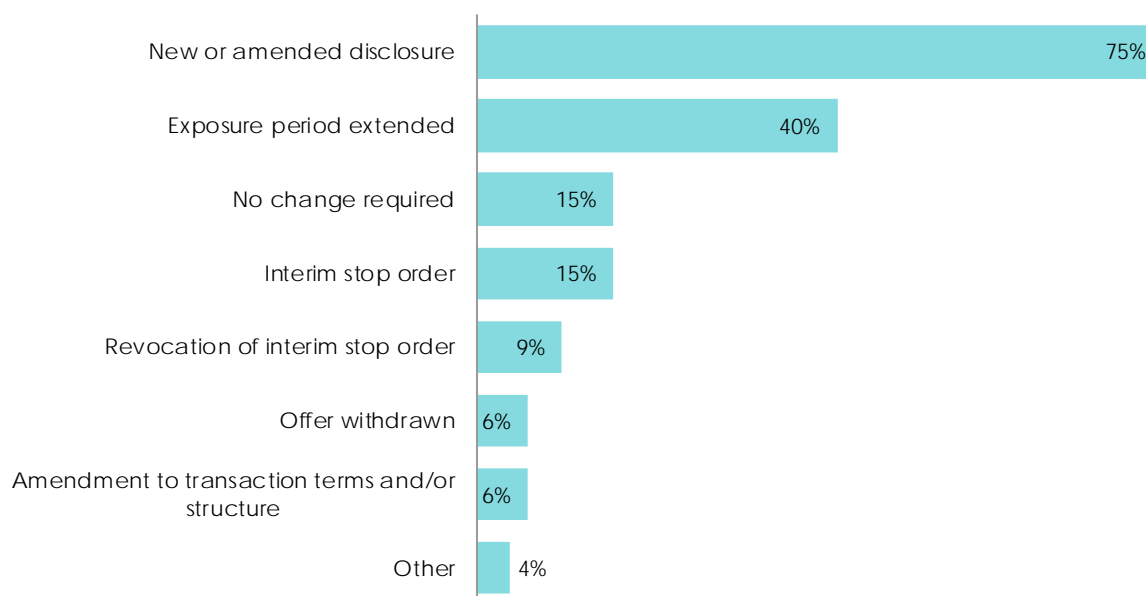


Note 1: See Table 6 in Appendix 2 for the data shown in this figure (accessible version).

Note 2: These figures relate to concerns raised during the period in relation to prospectuses lodged before or during the period.

When we raised concerns about prospectuses, the most common result was the issuer providing new or amended disclosure: see Figure 4.

Figure 4: Results of ASIC raising concerns (January to June 2019)



Note 1: See Table 7 in Appendix 2 for the data shown in this figure (accessible version).

Note 2: These figures include results achieved during the period relating to prospectuses lodged during or before or during the period.

Note 3: Percentages do not add up to 100 as more than one result was achieved in some matters.

Technology IPOs

During the period, we saw a number of IPOs by companies focused primarily on developing and manufacturing technology, or providing technology services ('tech'). Many of these companies are based in overseas jurisdictions, and are generally early-stage, loss-making, high-growth investment propositions. As such, there tends to be considerable focus in tech prospectuses on growth, including growth in revenue and customer numbers.

Focus on: Technology IPO disclosure

We have sought corrective and additional disclosure in a number of tech prospectuses in relation to customer numbers, revenue growth, summary financial information, and market segments. We encourage issuers to take note of the following recommendations when preparing their prospectuses:

- › **Customer numbers:** To give an informative and balanced picture to potential investors, issuers should disclose the number of active customers and explain the definition of 'active customer'. Measures of customer retention or 'customer churn' should also be disclosed.
- › **Revenue growth:** Issuers should avoid disclosing 'revenue annualisations' – that is, presenting revenue on an annualised basis by extrapolating quarterly or monthly revenue. Without disclosing actual revenue with equal prominence, this can give a misleading impression.

- › **Summary financial information:** Even if the business is loss making and early stage, summary financial information should be provided in the investment overview section so readers can easily assess the size of revenues and losses.
- › **Market segments:** Issuers should be careful and conservative when presenting industry or market size data. For example, it could be misleading to suggest, even implicitly, that an issuer will be able to successfully access whole parts of a particular market (like the entire US retail market), when it is clear that the product or service would realistically be relevant to only a fraction or subset of that market.

Advertising offers

ASIC actively reviews advertisements in conjunction with offers. Issuers need to ensure that they monitor advertisements by marketing agencies that they hire. If we consider that advertisements or marketing activities are misleading or deceptive, we may take action against the issuer or third party: see [Regulatory Guide 234 Advertising financial products and services \(RG 234\)](#) and [Regulatory Guide 254 Offering securities under a disclosure document \(RG 254\)](#). We have a broad range of regulatory tools and powers that we may use to address concerns with the advertising and marketing of offers, including stop-order powers, injunctive orders and penalties.

Case study 1: Misstatements in advertisements

We intervened in an IPO after an email advertisement from a web-based marketing platform involved in the IPO application process incorrectly described the offer as 'oversubscribed'.

In order to correct the misstatement, the issuer was required to ensure that the platform retracted and corrected the advertisement. As potential investors had already indicated their interest in the offer through the marketing platform, the issuer agreed to seek further positive confirmation that the investors still wished to formally apply for shares under the IPO. This resulted in a material reduction in funds raised by the issuer through this channel.

Financial reporting

Focus on: Financial reporting by registered foreign companies

We remind foreign issuers registered under Ch 5B that they are only permitted to lodge financial statements prepared in accordance with foreign accounting principles if they already have a statutory obligation to prepare such accounts in their place of incorporation or formation.

If foreign issuers don't have this statutory obligation, generally they must prepare and lodge financial statements with ASIC that comply with the Australian accounting standards under s601CK: see [Regulatory Guide 58 Reporting by registered foreign companies and Australian companies with foreign shareholders \(RG 58\)](#).

ASIC remakes purchase plan relief with increase to monetary limit

We have issued [ASIC Corporations \(Share and Interest Purchase Plans\) Instrument 2019/547](#), remaking the relief in Class Order [CO 09/425] *Share and interest purchase plans*: see [Media Release \(19-233MR\)](#) *ASIC remakes 'sunsetting' class order facilitating the offer of share and interest purchase plans* (30 August 2018). [CO 09/425] was due to sunset on 1 October 2019.

This legislative instrument provides ASX-listed issuers of shares or interests under purchase plans with relief from the requirement to prepare a prospectus or Product Disclosure Statement, provided certain conditions are met.

The instrument increases the participation limit (for each registered holder in a 12-month period) from \$15,000 to \$30,000. We consider that the increase in the purchase plan participation limit will facilitate greater retail participation in discounted secondary fundraising activities and support the efficient functioning of capital markets.

Experts

Surveillance program on experts

We reviewed three Australian financial services (AFS) licensees that are independent experts during the period, and plan to undertake further surveillance activities. We reviewed the conduct of the three experts during their engagements, with a particular focus on independence, technical capacity, adherence to regulatory policy and compliance with financial services laws.

Our reviews revealed two key findings:

- › **Inadequate or absent internal process documents:** Some experts who we reviewed had limited or no documentation of internal processes. We consider the development and active use of this documentation – including transaction-specific checklists, templates and policy documents – as key in actively mitigating regulatory and legal risks that may emerge during an engagement.
- › **Absent working papers:** There were numerous instances when the experts' working papers were insufficient to provide evidence of work undertaken and communications throughout the engagement. Examples of missing materials included conflict checks, valuation calculations and analysis, and file notes of in-person and telephone communications.

All experts should regularly review internal policies and procedures to ensure that they are sufficiently documented and applied.

When a review indicates inadequate practices, we may seek assurances from experts that they will not prepare expert reports until we complete our review. In more serious cases, we will also consider taking licensing and/or enforcement action.

Case study 2: Choice and application of valuation methodology

We reviewed an independent expert report that used a discounted cash flow valuation methodology resulting in a very broad valuation range. Further, the sensitivity of the valuation model adopted was such that even small movements to key material assumptions would result in a negative valuation of the underlying enterprise.

We raised concerns with the expert in relation to these issues because we considered that:

- › the choice of discounted cash flow valuation methodology was inappropriate to the circumstances in comparison to other methodologies
- › the valuation range itself was so broad that it was not useful in informing shareholders.

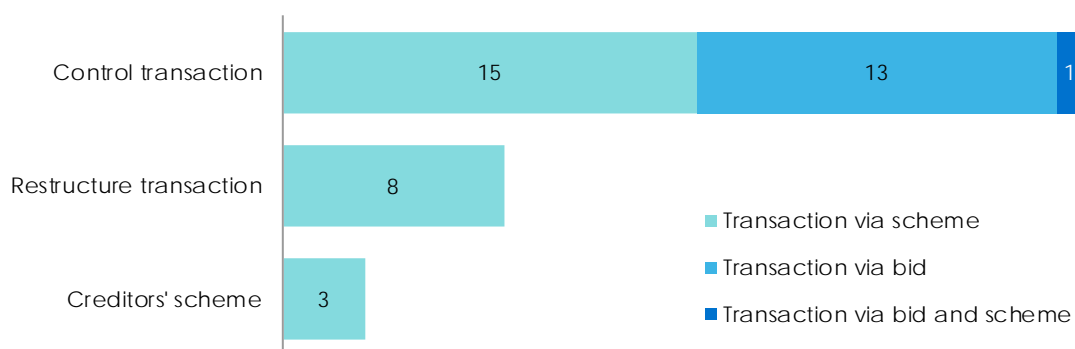
Our policy is in [Regulatory Guide 111](#) *Content of expert reports* (RG 111). When we observe potential non-compliance with our policy, we will raise concerns and request that the expert reconsider the methodology and apply necessary revisions to the report.

Mergers and acquisitions

Key statistics for the January to June 2019 period

During this period, the number of independent control transactions commenced decreased to 29, compared with 44 in the previous period. The number of independent restructure transactions also decreased to 8, compared with 10 in the previous period: see Figure 5.

Figure 5: Independent control and restructure transactions (January to June 2019)



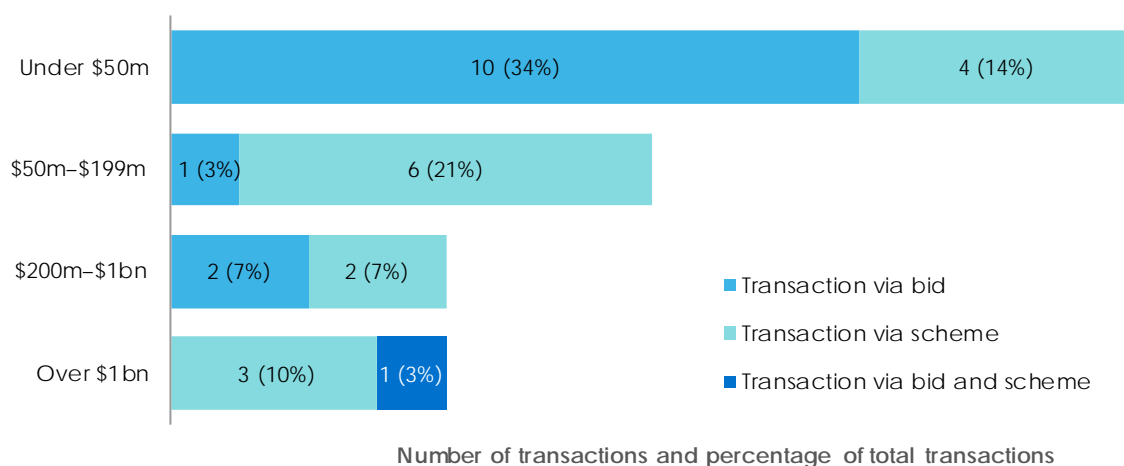
Note 1: See Table 8 in Appendix 2 for the data shown in this figure (accessible version).

Note 2: When a single transaction involved multiple schemes or bids, it has only been counted once. For example, one restructure transaction involved 23 related entities.

Note 3: One independent control transaction was undertaken via a simultaneous bid and scheme (Healthscope Limited).

While the number of control transactions that commenced via a scheme was similar to the number of control transactions that commenced via a bid, the breakdown of transactions by the implied value of the target shows that the largest control transactions were generally undertaken via a scheme: see Figure 6.

Figure 6: Control transactions by implied target size (January to June 2019)

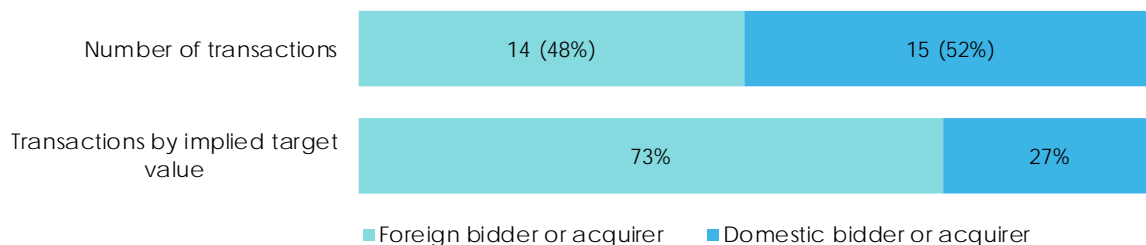


Note 1: See Table 9 in Appendix 2 for the data shown in this figure (accessible version).

Note 2: Percentages do not add up to 100 due to rounding.

Overseas bidders or acquirers were again a key driver of takeovers via bids and schemes during the period: see Figure 7. Foreign bidders or acquirers were behind 73% of all deal value (based on the collective and implied value of all targets).

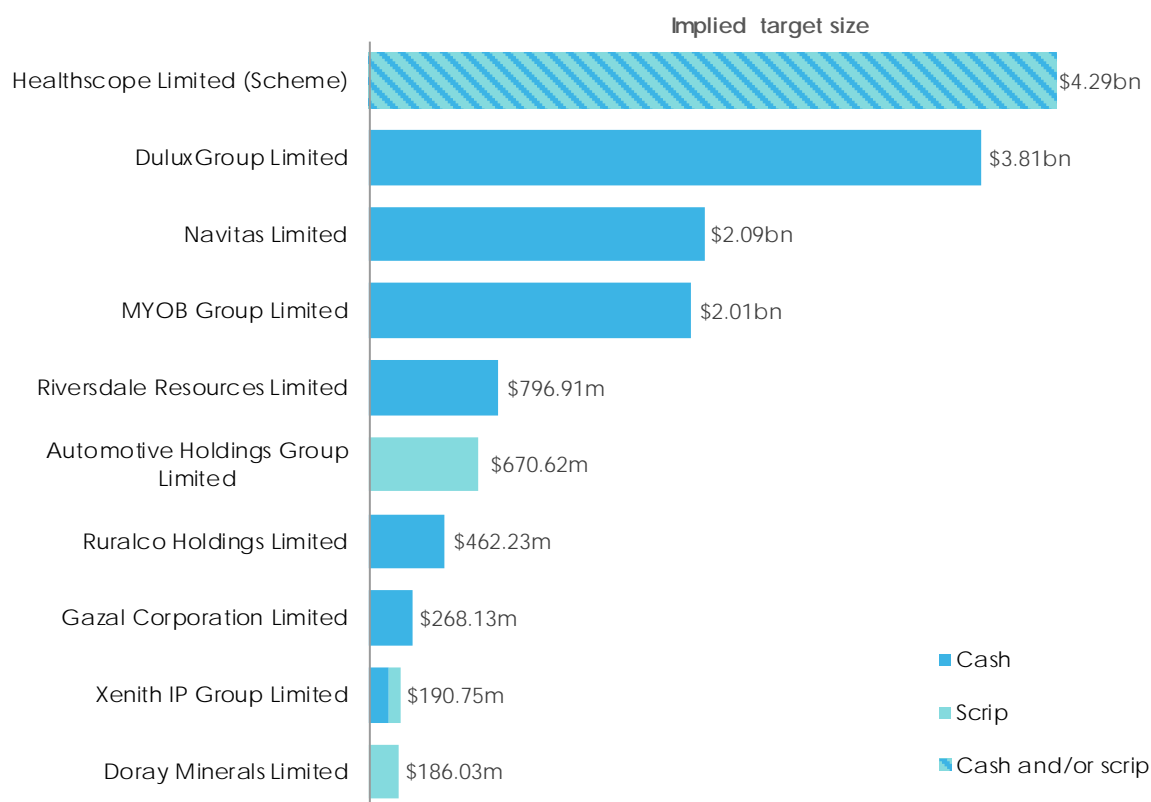
Figure 7: Foreign and domestic offerors (January to June 2019)



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

Consistent with the previous period, the largest control transactions during this period were, in most cases, offers of cash, rather than scrip, as consideration: see Figure 8.

Figure 8: Largest control transactions via bid or scheme, by implied target size (January to June 2019)



Note 1: See Table 11 in Appendix 2 for the data shown in this figure (accessible version).

Note 2: During this period there was also a cash takeover bid of \$4.12 billion for Healthscope Limited. We have not included the takeover bid in the table because the transaction was completed as a scheme.

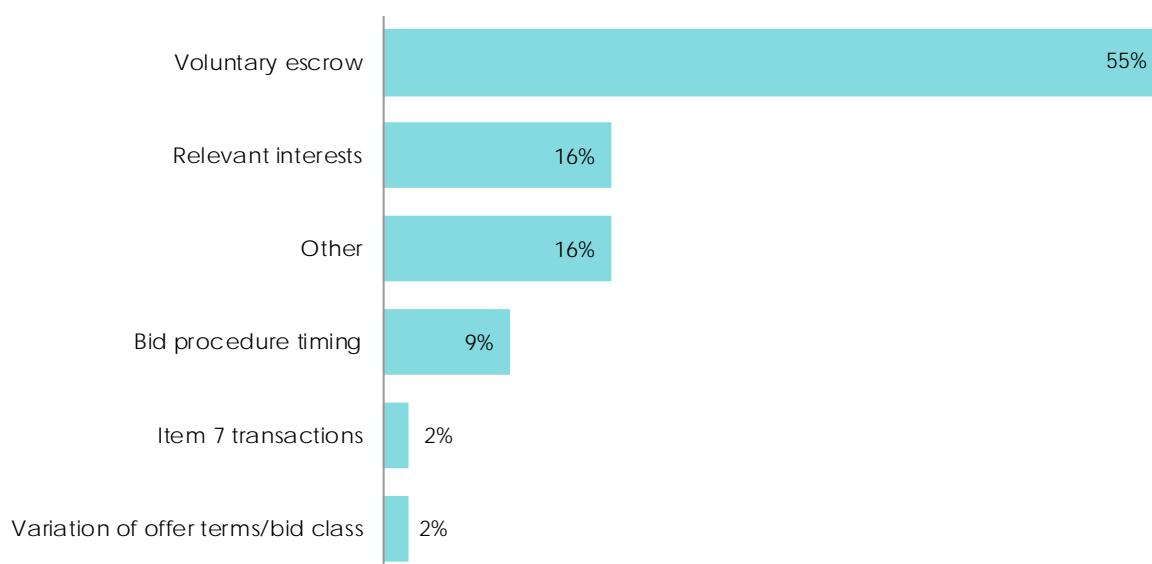
Note 3: For the Navitas Limited scheme, scrip was also issued to a separate class of scheme members.

ASIC relief and intervention in control transactions

Consistent with the previous period, voluntary escrow relief remained the most common relief sought from ASIC in relation to the takeovers provisions of the Corporations Act. Relief relating to relevant interests, item 7 transactions and variation of offer terms or bid class were the next most commonly sought relief types: see Figure 9.

Note: Voluntary escrow relief applications do not generally relate to mergers or acquisitions, but are common in IPOs. For more information, see [Regulatory Guide 5 Relevant interests and substantial holding notices \(RG 5\)](#).

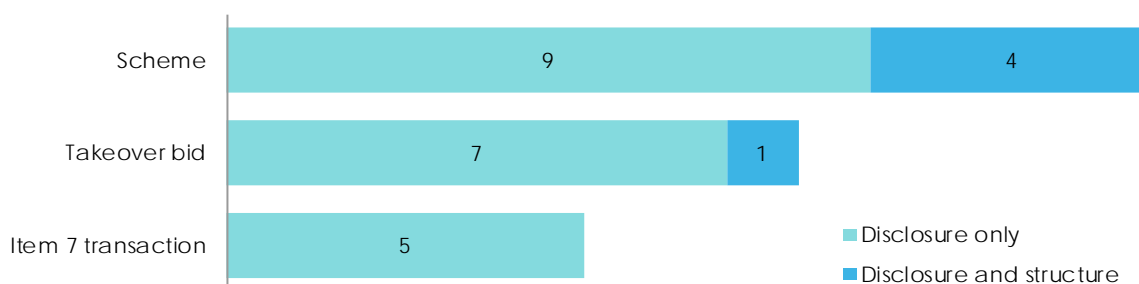
Figure 9: Applications received for relief relating to control transactions (January to June 2019)



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

Most of our regulatory interventions in control transactions this period related to schemes of arrangement: see Figure 10. We raised issues with offer terms, 'truth in takeovers' statements, shareholder classes and bid structures.

Figure 10: ASIC's regulatory interventions in control transactions (January to June 2019)



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

Schemes of arrangement

During the period we closely scrutinised mergers and acquisitions undertaken via scheme of arrangement, as part of our renewed focus on ensuring fairness and equality in these transactions. Given the flexibility of schemes, and our statutory role, we continue to raise concerns with practices and developments that we consider:

- › are contrary to the principles underlying the regulation of takeovers in s602
- › undermine the integrity of the scheme process as a mechanism for effecting takeovers.

During the past 12 months we either withheld no-objection letters or intervened to oppose approval of a scheme on four occasions. On two other occasions when others raised concerns, we attended court and provided our letter after hearing and considering the objections.

Case study 3: Benefits and classes

We intervened to oppose the convening of a scheme meeting on the basis that an interested party and its affiliates (the Group) should form a separate class.

The Group acquired a strategic investment in the scheme company via a derivative with the stated intention of pursuing the acquisition of certain scheme company assets. The scheme acquirer and scheme company subsequently entered into interlocking agreements to sell assets to the Group in connection with the proposed scheme. The Group agreed to procure that the holders of shares underlying the derivative voted in favour of the scheme.

The scheme company proposed to provide a report of votes cast by the Group to enable the court to consider the issue at the final court hearing as part of its fairness discretion. However, we sought to have the matter addressed by delineating a separate class because we considered that, commercially, the magnitude and nature of the arrangements positioned the Group similarly to a joint proponent of the deal – justifying a separate class under the traditional test.

Our suggested delineation of separate classes at the first court hearing would mean that the ability of the Group's votes to contribute to achieving the 75% approval threshold would be settled at the beginning of the scheme process. We considered this preferable, given the efficient and informed market principle in s602(a) and that a previous rival offeror had a holding sufficient to block the scheme if the Group votes were excluded.

While the court accepted that the issues ASIC raised were relevant considerations in class definition, it took the view that no separate classes were required in this case. The court noted that it retained discretion at the final court hearing to discount any votes should it be necessary.

The Group's vote was ultimately not determinative of the outcome of the scheme and ASIC did not seek to oppose approval at the final court hearing. However, as we were unable to state that we had no objection to the scheme, having regard to the principles of market efficiency and equality in s602, we did not provide a letter under s411(17)(b): see *Healthscope Limited* [2019] FCA 542 and *Healthscope Limited (No 2)* [2019] FCA 759.

Focus on: Director benefits and recommendations

Courts have recently revisited questions raised in *SMS Management & Technology Ltd* [2017] VSC 257 relating to the disclosure and consequences of ‘contingent benefits’. These are benefits received by directors that depend on the success of a scheme and are not available generally to all members or creditors, such as the payment of a cash bonus if the scheme is implemented.

ASIC’s view is that when a director will receive a contingent benefit in connection with a scheme:

- › the benefit should be prominently disclosed, including in each place where the director’s recommendation is cited in the scheme booklet and in any other communications (see *Gazal Corporation Limited* [2019] FCA 701 (*Gazal*); *Ruralco Holdings Limited* [2019] FCA 878 (*Ruralco*) and *Re Mod Resources Limited* [2019] WASC 326 (*Mod Resources*))
- › the director should carefully consider whether the contingent benefit means it may be appropriate to refrain from making their recommendation or to explain their decision – this consideration should take into account all of the circumstances in which the director is making the recommendation under the scheme, not just the type or quantum of contingent benefit involved (see *Gazal*; *Ruralco*; *Mod Resources*; *Navitas Ltd (No 2)* [2019] WASC 281; *Spicers Limited (No 2)* [2019] FCA 1110 and *Kidman Resources Limited* [2019] FCA 1226)
- › the perception of a potential conflict may be relevant when considering whether the director should chair the scheme meeting (see *Nzuri Copper Ltd* [2019] WASC 189 (*Nzuri*)).

These issues may arise even when the contingent benefit involves a pre-existing incentive scheme (e.g. because the scheme accelerates and/or de-risks the receipt of incentive payments or rights); see *Ruralco*. Consideration should be given to these issues at the time the implementation agreement is being negotiated to ensure appropriate terms are incorporated: see *Gazal*; *Nzuri* and *Mod Resources*.

Directors have an important role representing the shareholders’ interests during the negotiation, and throughout the course, of a scheme proposal. A contingent benefit may create a real, potential or perceived conflict of interest in this role. Directors must carefully consider the implications of any such conflict in the context of their fiduciary duties.

Focus on: Disclosures outside the scheme booklet

We regularly monitor disclosures made outside the scheme booklet. We will intervene if we are concerned that they do not meet the standard expected in the scheme booklet or that they warrant a supplementary dispatch.

For example, during the period a scheme company released a market announcement just over a week before the scheme meeting. The announcement advised that two proxy advisers had recommended shareholders vote in favour of the scheme. We were concerned that the announcement invited holders to simply rely on the conclusion of the proxy adviser's reports without the supporting information in the full report. Following inquiries from ASIC, the announcement was retracted: see *Netcomm Wireless Limited (No 2)* [2019] FCA 1109. See also [Regulatory Guide 112 Independence of experts](#) (RG 112).

Practitioners should note we generally consider that a declaration by an acquirer that an offer will not be increased should be sent to target holders via a supplementary dispatch – even if made relatively soon after dispatch of the scheme booklet: see *MYOB Group Limited (No 2)* [2019] FCA 668 and *Nexus Energy Ltd* [2014] FCA 558. See also [Regulatory Guide 25 Takeovers: False and misleading statements](#) (RG 25).

Market and procedural integrity

A key objective of takeover laws is ensuring that the acquisition of control takes place in an efficient, competitive and informed market. Accordingly, we are focused not only on the impact of disclosures, offer structuring and conduct on target holders, but also on the active markets in which transactions are taking place.

Case study 4: Substantial holding disclosure and relevant agreements

Under the scheme referred to in case study 3, the proposed acquirer filed a substantial holding notice on the basis it may have a relevant agreement, or be acting in concert, with a substantial holder and/or its affiliates (Group) under a particular agreement with the Group. The Group's substantial holding arose via a derivative it had entered into with an investment bank. Under the agreement that was attached to the acquirer's substantial holding notice, among other things:

- › the acquirer agreed to procure the sale of scheme company assets to the Group in connection with the scheme proposal
- › the Group agreed to exclusivity arrangements, funding assistance, and to procure that the holders of shares referenced in the derivative would vote in favour of the scheme and accept into a simultaneous takeover bid.

We were concerned that a number of related agreements entered into at the same time as the attached agreement were not included in the acquirer's notice. This included agreements between the acquirer and the scheme company relating to the asset sale contemplated in the agreement and a 'side deed' setting dollar values for the purposes of various defined terms in the agreement. We took the view that disclosure of a copy of these documents was also required under s671B(4).

The acquirer agreed to file a revised notice attaching the related agreements in response to our concerns.

Case study 5: Maximum acceptance conditions

A bidder proposed a takeover bid under which the type of consideration that it would pay depended on the level of acceptances of the bid. If the bid received less than a specified level of acceptances, it would pay consideration to accepting shareholders in cash. However, if the bid received more than that level of acceptances, the consideration would be paid in a combination of cash and quoted convertible redeemable promissory notes, with the proportion of each type of consideration paid determined by the total number of acceptances received.

Given the significant difference between the nature of the types of consideration offered and uncertainty as to the type and value of consideration that accepting shareholders would ultimately receive, we raised concerns that the structure of the bid was contrary to the letter and policy of the prohibition on maximum acceptance conditions in takeover bids under s626.

Ultimately, the bidder announced it would not be proceeding with the offer due to a defeating condition being triggered before dispatch.

Policy updates

We are currently working on a number of policy updates related to mergers and acquisitions. These include updates related to stub equity, 'truth in takeovers', securities lending by agents and substantial holding disclosure.

Stub equity

In June 2019 we issued [Consultation Paper 312](#) *Stub equity in control transactions* (CP 312) seeking feedback on proposals to limit:

- › offers of stub equity in the form of shares in proprietary companies to retail investors
- › the use of custodian arrangements when doing so enables avoidance of the application of the takeover bid and disclosing entity provisions in Ch 6 and Pt 1.2A or the 50 non-employee shareholder limit in s113(1): see [Media Release \(19-127MR\)](#) *ASIC consults on proposals to maintain investor protections by restricting retail offers of 'stub-equity' in control transactions* (4 June 2019).

Submissions have closed and we are currently considering our response.

Truth in takeovers

Work is continuing on our proposed update to the 'truth in takeovers' policy in [RG 25](#).

Securities lending by agents and substantial holding disclosure

In late July 2019, we released [Consultation Paper 319](#) *Securities lending by agents and substantial holding disclosure* (CP 319). This paper sought feedback on whether ASIC ought to give relief to agent lenders that is consistent with our policy in [Regulatory Guide 222](#) *Substantial holding disclosure: Securities lending and prime broking* (RG 222) and existing relief provided to prime

brokers in [Class Order \[CO 11/272\]](#) *Substantial holding disclosure: Securities lending and prime broking*. The consultation period has now ended, and we expect to release our response together with any relief by the end of 2019.

Criminal proceedings

Contraventions of the Corporations Act in connection with a control transaction, or the acquisition of a substantial interest in shares, can give rise to criminal liability. The matters below are being prosecuted by the Commonwealth Director of Public Prosecutions.

Case study 6: Takeover bid for Affinity Education Group Limited by G8 Education Limited

We have previously reported on various proceedings connected to the failed takeover bid by G8 Education Limited for Affinity Education Group Limited.

In July 2019, David Justin Burke was committed to stand trial on five charges of giving false or misleading information to ASIC during examinations under oath relating to his relationship with the director of a company which we allege had undisclosed arrangements with the bidder: see [Media Release \(19-194MR\)](#) *Queensland man committed to stand trial on charges of misleading ASIC* (29 July 2019).

Case study 7: Takeover bid for The President's Club Limited by Palmer Leisure Coolum Pty Ltd

In April 2018, ASIC advised of charges against Clive Frederick Palmer and Palmer Leisure Coolum Pty Ltd (formerly Queensland North Australia Pty Ltd) (PLC) relating to the failure of PLC to make an offer of securities under a takeover bid as required by s631(1): see [Media Release \(18-095MR\)](#) *Clive Palmer and his company Palmer Coolum charged over breaches of takeover law* (6 April 2018).

In January 2019, the Queensland Supreme Court ordered that claims by Mr Palmer and PLC that the charges were an abuse of process be set aside and that statements of claim be struck out: see *Palmer Leisure Coolum Pty Ltd v Magistrates Court of Queensland* [2019] QSC 8. An appeal by Mr Palmer and PLC was heard by the Queensland Court of Appeal in June, with the court reserving its decision. The criminal proceedings are listed for further mention in September 2019.

Corporate governance

Climate risk disclosure

Climate change is a complex and systemic issue that continues to be an area of increasing focus for listed companies, investors and financial regulators both in Australia and internationally. While we have adopted a consultative approach as market practices – particularly disclosure practices – evolve in this area, we stress the need for listed companies and their directors, executives and advisers to engage with entity-level implications of climate change (both physical and transitional implications) in a meaningful way, consistent with legal obligations and prudent corporate governance.

To assist our stakeholders, we recently published updates to [Regulatory Guide 228](#) *Prospectuses: Effective disclosure for retail investors* (RG 228) and [Regulatory Guide 247](#) *Effective disclosure in an operating and financial review* (RG 247). These updates clarify how our existing regulatory guidance applies to the statutory disclosure of climate-change-related risks and opportunities.

The updates to our guidance:

- › incorporate the climate change risk definitions developed by the G20 Financial Stability Board’s Task Force on Climate-related Financial Disclosures (TCFD) and highlight that climate-change-related risks may need to be disclosed in a prospectus
- › highlight climate change as a systemic risk that could affect an entity’s financial prospects for future years, which may need to be disclosed in an operating and financial review (OFR)
- › reinforce the existing policy that disclosures made outside the OFR (such as under the voluntary TCFD framework or in a sustainability report) should not be inconsistent with disclosures made in the body of the OFR.

Our review of regulatory guidance follows our 2018 publication of [Report 593](#) *Climate risk disclosure by Australia’s listed companies* (REP 593). We encourage listed companies and their directors and advisers to consider the high-level recommendations in REP 593 and, when a listed company has a material exposure to climate change, consider adopting the TCFD framework for climate risk disclosure.

We continue to participate in discussions with industry and other stakeholders on climate-change related issues, and will be conducting surveillances of the climate-related disclosure practices of select listed companies in the next 12 months.

Focus on: Responding to climate change

We encourage listed companies and their directors to:

- › adopt a probative and proactive approach to emerging risks, including climate-related risks
- › develop and maintain strong and effective corporate governance, which helps in identifying, assessing and managing risk
- › comply with the law when it requires disclosure of material risks
- › disclose meaningful and useful climate risk information to investors – the voluntary framework developed by the TCFD has emerged as the standard in this regard and ASIC strongly encourages listed companies with material exposure to climate change to consider reporting voluntarily under the TCFD framework.

Corporate governance proceedings

Case study 8: Guilty plea from former CEO of Sirtex Medical Limited

Gilman Edwin Wong, a former director and CEO of Sirtex Medical Limited, has pleaded guilty to one charge of insider trading. The sentencing date is yet to be fixed.

Mr Wong was the former CEO of Sirtex between 2005 and 2017. In September 2018, Mr Wong was charged with one count of insider trading following allegations by ASIC that he was in possession of inside information when he sold shares in Sirtex in October 2016: see [Media Release \(19-168MR\)](#) *Former CEO and director of Sirtex Medical Limited pleads guilty to insider trading* (3 July 2019).

Case study 9: Proceedings brought against former managing director and former CFO of Murray Goulburn

ASIC has commenced proceedings against the former managing director of Murray Goulburn Co-operative Co. Limited (MG) and MG Responsible Entity Limited (MGRE), Gary Helou, and former chief financial officer (CFO) of MG and MGRE, Bradley Hingle. We brought proceedings over their involvement in MGRE's failure to disclose market-sensitive information to ASX in a timely manner. ASIC has alleged that, among other things, Mr Helou and Mr Hingle breached their duties to act with reasonable care and diligence as directors and officers of MG and MGRE.

The proceedings follow the Federal Court's findings that MGRE contravened s674(2) by failing to notify ASX that MG was unlikely to achieve its forecasts: see [Media Release \(19-152MR\)](#) *ASIC commences Federal Court action against former Murray Goulburn executives Gary Helou and Bradley Hingle* (25 June 2019).

Case study 10: Sentencing of former director and CFO of Leighton Holdings Limited

In January 2017, Peter Gregg, a former director and CFO of Leighton Holdings Limited (LHL) was charged with two counts of contravening s1307(1) following an ASIC investigation that found that Mr Gregg was involved in conduct resulting in the falsification of LHL's books. On 29 August 2019, Mr Gregg was sentenced by the NSW District Court and convicted on both counts: see [Media Release \(19-196MR\)](#) *Former Leighton Holdings executive receives decision on sentence* (30 July 2019). Mr Gregg has lodged an appeal against his conviction and sentence.

Case study 11: Dismissal of sentencing appeal regarding Healthzone Limited

In October 2017, Peter David Roach, the former executive chairman and CEO of Healthzone Limited (Healthzone) was found guilty by a jury for conspiring to defraud the Commonwealth Bank of Australia and Healthzone in relation to a \$1 million loan that was made out to Healthzone. The purpose of the loan was for on-lending to Mr Roach to allow him to acquire shares in Healthzone. However, following an ASIC investigation, it was found that Mr Roach did not use the loan amount for such purposes and rather used the funds to resolve issues pertaining to his personal affairs.

As a result of these actions, Mr Roach was sentenced to four years and three months imprisonment, with a minimum term of two years and three months. Mr Roach unsuccessfully appealed the conviction and sentence: see [Media Release \(19-192MR\)](#) *Former CEO, Peter Roach, appeal dismissed* (29 July 2019).

Appendix 1: Takeover bids and schemes

Table 2: Takeover bids in respect of which bidder's statements were lodged with ASIC (January to June 2019)

Target	Bidder	Lodged	Type	Securities	Consideration
Riversdale Resources Limited	Hancock Prospecting Pty Ltd	27/02/2019	Off-market	Ordinary shares	Cash
Mareterram Limited [MTM]	Sea Harvest Group Limited	28/02/2019	Off-market	Ordinary shares	Cash
Anchor Resources Limited [AHR]	Phoenix Bridge International Holdings Group Investment Co., Limited	8/03/2019	Off-market	Ordinary shares	Cash
AIC Resources Limited [AIC]	Intrepid Mines Limited [IAU]	15/03/2019	Off-market	Ordinary shares	Scrip
Automotive Holdings Group Limited [AHG]	A.P. Eagers Limited [APE]	5/04/2019	Off-market	Ordinary shares	Scrip
Alto Metals Limited [AME]	Middle Island Resources Limited	10/04/2019	Off-market	Ordinary shares	Scrip
Medtech Global Limited	Cereus Holdings Limited	15/04/2019	Off-market	Ordinary shares	Cash
Healthscope Limited [HSO]	BCP VIG Holdings L.P. (controlled by a series of foreign limited partnerships managed and controlled by Brookfield Asset Management Inc.)	16/04/2019	Off-market	Ordinary shares	Cash
Yowie Group Limited [YOW]	Keybridge Capital Limited [KBC]	24/04/2019	Off-market	Ordinary shares	Cash and scrip
Benjamin Hornigold Limited [BHD]	John Bridgeman Limited [JBL]	3/05/2019	Off-market	Ordinary shares	Scrip
Benjamin Hornigold Limited [BHD]	John Bridgeman Limited [JBL]	3/05/2019	Off-market	Options	Scrip
QEnergy Limited	Ion Holdings Pty Ltd	7/05/2019	Off-market	Options	Cash
QEnergy Limited	Ion Holdings Pty Ltd	7/05/2019	Off-market	B-class shares	Cash
Qenergy Limited	Ion Holdings Pty Ltd	7/05/2019	Off-market	Ordinary and A-class shares	Cash
8IP Emerging Companies Limited [8EC]	Aurora Funds Management Limited as responsible entity of the Aurora Dividend Income Trust	17/05/2019	Off-market	Ordinary shares	Scrip

Target	Bidder	Lodged	Type	Securities	Consideration
Andes Resources Limited	Metminco Limited [MNC]	18/06/2019	Off-market	Ordinary shares	Scrip
Education Horizons Group Limited	Potentia Capital Pty Ltd	26/06/2019	Off-market	Ordinary shares	Scrip, cash or cash and scrip

Note 1: This table lists each takeover bid for which an initiating bidder's statement was lodged with ASIC during the period. Where a bidder or target was listed on a prescribed financial market at the time of the takeover, its name is accompanied by the ticker code under which it traded. When a bidder is a (direct or indirect) wholly owned subsidiary of another entity, the controlling entity may be listed as bidder.

Note 2: All off-market bids are full bids.

Note 3: 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.

Table 3: Schemes of arrangement in respect of which explanatory statements registered or otherwise released (January to June 2019)

Target	Acquirer	Registered	Type	Securities	Received
Tronox Limited	Not applicable – redomiciliation	8/02/2019	Members	Class A shares	N/A
Tronox Limited	Not applicable – redomiciliation	8/02/2019	Members	Class B shares	N/A
Doray Minerals Limited	Silver Lake Resources Limited [SLR]	18/02/2019	Members	Ordinary shares	Scrip
Doray Minerals Limited [DRM]	Silver Lake Resources Limited [SLR]	18/02/2019	Creditors	Options	Cash
Xenith IP Group Limited [XIP]	QANTM Intellectual Property Limited [QIP]	19/02/2019	Members	Ordinary shares	Scrip
Watermark Global Leaders Fund Limited [WMK]	Not applicable – reconstruction	6/03/2019	Members	Ordinary shares	Scrip
Watermark Market Neutral Fund Limited [WGF]	Not applicable – reconstruction	6/03/2019	Members	Ordinary shares	Scrip
Amcor Limited	Not applicable – redomiciliation and restructure	13/03/2019	Members	Ordinary shares	Scrip
MCU Limited	Firstmac Limited	13/03/2019	Members	Member shares	Cash
MYOB Group Limited [MYO]	ETA Australia Holdings III Pty Ltd (indirectly owned by KKR Asian Fund III L.P. and co-investment funds or vehicles managed or advised by Kohlberg Kravis Roberts & Co. LP. and its affiliates)	13/03/2019	Members	Ordinary shares	Cash
Angas Securities Limited	Not applicable – debt for equity	N/A	Creditors	Debentures	Scrip
Lion Nathan Pty Limited	Not applicable – reconstruction and amalgamation	21/03/2019	Members	Ordinary shares	N/A
Gazal Corporation Limited [GZL]	PVH Corp.	08/04/2019	Members	Ordinary shares	Cash

Target	Acquirer	Registered	Type	Securities	Received
Newmont Australia Pty Ltd	Not applicable – reconstruction	11/04/2019	Members	Ordinary shares	N/A
Newmont Australia Pty Ltd	Not applicable – reconstruction	11/04/2019	Members	Redeemable preference shares	N/A
Healthscope Limited [HSO]	ANZ Hospitals Pty Ltd (ultimately controlled by a series of foreign limited partnerships managed and controlled by Brookfield Asset Management Inc.)	16/04/2019	Members	Ordinary shares	Cash or scrip
Macphersons Resources Limited	Intermin Resources Limited [IRC]	17/04/2019	Members	Ordinary shares	Scrip
Verdant Minerals Limited [VRM]	CD Capital Natural Resources Fund III LP managed by CD Capital Management Group Limited and advised by CD Capital Asset Management Limited	18/04/2019	Members	Ordinary shares	Cash
NetComm Wireless Limited [NTC]	Casa Systems Inc	3/05/2019	Members	Ordinary shares	Cash
Wiggins Island Coal Export Terminal Pty Limited	Not applicable – compromise	N/A	Creditors	Junior debt	N/A
Navitas Limited [NVT]	BGH BidCo A Pty Ltd (owned by a consortium comprising AustralianSuper, a fund managed by BGH Capital Pty Ltd, entities associated with Mr Rodney Jones, British Columbia Investment Management Corporation, Sinspec Investment Private Limited, Canada Pension Plan Investment Board and Ontario Teachers' Pension Plan Board)	13/05/2019	Members	Ordinary shares	Cash
Navitas Limited [NVT]	BGH BidCo A Pty Ltd (owned by a consortium comprising AustralianSuper, a fund managed by BGH Capital Pty Ltd, entities associated with Mr Rodney Jones, British Columbia Investment Management Corporation, Sinspec Investment Private Limited, Canada Pension Plan Investment Board and Ontario Teachers' Pension Plan Board)	13/05/2019	Members	Ordinary shares	Cash and scrip
Spicers Limited [SRS]	Kokusai Pulp & Paper Co., Ltd.	17/05/2019	Members	Ordinary shares	Cash
Gindalbie Metals Ltd [GBG]	Not applicable – demerger	27/05/2019	Members	Ordinary shares	Scrip

Target	Acquirer	Registered	Type	Securities	Received
Gindalbie Metals Ltd [GBG]	Ansteel Group Co, Limited	27/05/2019	Members	Ordinary shares	Cash
Nzuri Copper Limited [NZC]	Chengtun Mining Group Co., Limited	31/05/2019	Members	Ordinary shares	Cash
Ruralco Holdings Limited [RHL]	Nutrien Ltd.	5/06/2019	Members	Ordinary shares	Cash
Dulux Group Limited [DLX]	Nippon Paint Holdings Co., Limited	17/06/2019	Members	Ordinary shares	Cash
Xenith IP Group Limited [XIP]	IPH Limited [IPH]	18/06/2019	Members	Ordinary shares	Cash and scrip

Note 1: This table lists:

- each proposed members' scheme of arrangement under Pt 5.1 for which an explanatory statement was registered by ASIC under s412(6) between 1 January and 30 June 2019 (inclusive) (members scheme)
- each proposed compromise or arrangement between a Pt 5.1 body and its creditors or a class of its creditors for which a draft explanatory statement, previously provided to ASIC for consideration in accordance with s411(2), was made available to creditors on a date between 1 January 2019 to 30 June 2019 (inclusive).

Note 2: When an acquirer or scheme company is listed on a prescribed financial market, its name is accompanied by the ticker code under which it trades. When an acquirer is a (direct or indirect) wholly owned subsidiary of another entity, the parent entity may be listed above as acquirer.

Note 3: 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.

Note 4: One reconstruction scheme, listed above as Lion Nathan Pty Limited, involved 23 schemes of arrangement, being one scheme for each of the participating 23 entities in the corporate group.

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 4: Types of offers (January to June 2019)

Offer type	Documents lodged	Funds sought to be raised
IPO	31	\$0.85 billion
Non-IPO	185	\$3.1 billion

Note: This is the data shown in Figure 1.

Table 5: Form of ASIC intervention in prospectus disclosure (January to June 2019)

Form of intervention	Number
Extension of exposure period	18
Interim order made in respect of an offer	12
Revocation of interim order	6
Final stop order made	0

Note: This is the data shown in Figure 2.

Table 6: Top five disclosure concerns most frequently raised (January to June 2019)

Disclosure concern	Number
Business model – not fully or adequately disclosed	12
Use of funds – unclear or insufficient detail	9
Risk disclosure – inadequate, insufficiently prominent or not tailored	7
Disclosure – not balanced	5
Clear concise and effective disclosure – insufficient summary, investment overview or key information	4

Note: This is the data shown in Figure 3.

Table 7: Results of ASIC raising concerns (January to June 2019)

Result	Percentage
New or amended disclosure	75%
Exposure period extension	40%
No change required	15%
Interim stop order	15%
Revocation of interim stop order	9%
Offer withdrawn	6%
Amendment to transaction terms and/or structure	6%
Other	4%

Note: This is the data shown in Figure 4.

Table 8: Independent control and restructure transactions (January to June 2019)

Transaction type	Number
Control transactions via schemes	15
Control transactions via bids	13
Control transactions via simultaneous bid and scheme	1
Restructure transactions via schemes	8
Creditors' schemes	3

Note: This is the data shown in Figure 5.

Table 9: Control transactions by implied target size (January to June 2019)

Implied target size	Scheme	Scheme and bid	Bid
Under \$50 million	4 (14%)	0	10 (34%)
\$50 million to \$199 million	6 (21%)	0	1 (3%)
\$200 million to \$1 billion	2 (7%)	0	2 (7%)
Over \$1 billion	3 (10%)	1 (3%)	0

Note: This is the data shown in Figure 6.

Table 10: Foreign and domestic offerors (January to June 2019)

Type of bidder or acquirer	Number of transactions	Transactions by implied target value
Foreign bidder or acquirer	14 (48%)	73%
Domestic bidder or acquirer	15 (52%)	27%

Note: This is the data shown in Figure 7.

Table 11: Largest control transactions via bid or scheme, by implied target size (January to June 2019)

Target (acquirer)	Implied target value	Cash value	Scrip value	Cash or scrip value
Healthscope Limited (Scheme)	\$4.29 billion	\$0	\$0	\$4.29 billion
DuluxGroup Limited	\$3.81 billion	\$3.81 billion	\$0	\$0
Navitas Limited	\$2.09 billion	\$2.09 billion	\$0	\$0
MYOB Group Limited	\$2.01 billion	\$2.01 billion	\$0	\$0
Riversdale Resources Limited	\$796.91 million	\$796.91 million	\$0	\$0
Automotive Holdings Group Limited	\$670.62 million	\$0	\$670.62 million	\$0
Ruralco Holdings Limited	\$462.23 million	\$462.23 million	\$0	\$0
Gazal Corporation Limited	\$268.13 million	\$268.13 million	\$0	\$0
Xenith IP Group Limited	\$190.75 million	\$113.56	\$77.19	\$0
Doray Minerals Limited	\$186.03 million	\$0	\$186.03 million	\$0

Note: This is the data shown in Figure 8.

Table 12: Applications received for relief relating to control transactions (January to June 2019)

Application topic	Percentage
Voluntary escrow	55%
Relevant interests	16%
Other	16%
Bid procedure timing	9%
Item 7 transactions	2%
Variation of offer terms/bid class	2%

Note: This is the data shown in Figure 9.

Table 13: ASIC's regulatory interventions in control transactions (January to June 2019)

Transaction type	Disclosure only	Disclosure and structure
Scheme	9	4
Takeover bid	7	1
Item 7 transaction	5	0

Note: This is the data shown in Figure 10.