# ASIC regulation of corporate finance: July to December 2019

**Report 659 | April 2020**

**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 July 2019 to 31 December 2019, and our areas of focus for the next six months.

# Contents



# 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 July 2019 to 31 December 2019 (the period). It gives key statistics and observations from our oversight of transactions during the period. This report also provides an update on corporate finance issues relating to the COVID-19 pandemic and explains what we will be focusing on for the 1 January 2020 to 30 June 2020 period.

This report will be the last of its kind. Going forward, we will provide updates and guidance on regulatory issues in the form of a quarterly newsletter.

We usually host Corporate Finance Liaison meetings twice a year. However, due to restrictions on non-essential public gatherings during the COVID-19 pandemic, we have cancelled our meetings scheduled for April and May 2020.

**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: July to December 2019

## Fundraising

**307** original disclosure documents lodged

**108** supplementary or replacement disclosure documents lodged

**$6.93bn** sought to be raised under offers

**$5.19bn** actually raised under offers seeking more than $30 million

**13%** of fundraisings required additional disclosure

**8** interim stop orders issued

**1** final stop order issued

**70** fundraising relief applications received

**69%** of fundraising relief applications granted

## Mergers and acquisitions

**16** control transactions launched via takeover bid

**24** control transactions launched via scheme

**1** control transaction launched via trust scheme

**$9.51bn** value of all bids and schemes by implied target value

**63** takeover relief applications received

**76%** of takeover relief applications granted

**32** substantial holding relief applications received

**76%** of substantial holding relief applications granted

**1** separate application to the Takeovers Panel considered

**36** approvals under item 7 received

## Corporate governance and financial reporting

**192** notices of meeting with related party benefits

**135** s218 applications to reduce lodgement period

**15** requests for no-action letters regarding financial reporting

**5** no-action letters provided

**60** financial reporting relief applications received

**56%** of financial reporting relief applications granted

**$2.9bn** of share buy-backs undertaken by 87 companies

**Note 1**: For fundraising, the amount 'actually raised' ($5.19 billion) refers to funds raised under prospectuses seeking to raise $30 million or more where the offer opened before or during the period and was completed by or on 31 December 2019, and the results of the fundraising were announced publicly. It excludes foreign mutual recognition scheme offers. The amount 'sought to be raised' (approximately $6.93 billion) includes the amount sought for all original disclosure documents 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).

# COVID-19 pandemic impact on corporate activities

Developments relating to the COVID-19 pandemic are occurring rapidly. In this section, we provide information about the measures being taken in response to the impact of the pandemic on corporate activities. The information is current as at the date of publication of this report on 20 April 2020.

## Class order relief for low doc capital raisings

Ordinarily, companies cannot rely on the 'low doc' capital raising regime if they have been suspended for a total of more than five days in the previous 12 months.

However, we recognise that the COVID-19 pandemic may adversely affect the ability of some listed companies to rely on this regime, particularly if they have been suspended for a longer period while assessing the impact of the pandemic on their business and preparing for a capital raising. In light of this, we are providing temporary relief to allow certain listed companies to make 'low doc' placements, rights issues and share purchase plans (SPP).

This relief is only available to listed companies that:

- have been suspended for up to 10 days in the 12 months before the offer
- were not suspended for more than five days in the period commencing 12 months before the offer and ending 19 March 2020.

This relief is temporary and we will provide 30 days notice before revoking the relief.

For more details, see Media Release (20-075MR) *Facilitating capital raisings during COVID-19 period* (31 March 2020).

## ASX temporary relief for emergency capital raisings

ASX has implemented various measures to help facilitate emergency capital raisings. The measures have been made by way of temporary class order waivers (class waivers) from the ASX Listing Rules.

The measures include the following:

- ASX will permit listed entities to request two consecutive trading halts for up to a total of four trading days to consider, plan or execute a capital raising.
- ASX has increased the 15% placement capacity limit in listing rule 7.1 to 25% for placements of fully paid ordinary securities. Listed entities can use this extra capacity only once and only if they conduct a follow-on pro-rata entitlement offer or offer to retail investors under a SPP, at a price equivalent to or lower than the placement price. If entities have used some or all of their existing placement capacity under listing rule 7.1 and/or 7.1A in the preceding 12 months, that capacity will be deducted from the extra placement capacity.
- ASX has waived the one-for-one cap in listing rule 7.11.3 for accelerated non-renounceable entitlement offers and standard non-renounceable rights issues. ASX expects listed entities to select a ratio for their non-renounceable entitlement offer that meets their funding needs and is fair to all shareholders.

The temporary class waivers will expire on 31 July 2020, unless ASX otherwise removes or extends them.

For more details, see ASX Limited, *Listed@ASX Compliance Update*, media release, 31 March 2020.

## Fairness in equity raisings

During any COVID-19 related capital raising, as always, we expect directors to continue to act in the best interests of the company. This involves directors considering a range of factors, including fairness between institutional and retail shareholders in capital raisings. We consider that pro rata rights offers and SPPs can help achieve fairness between shareholders and should be used where the circumstances allow.

For more details, see *Market Integrity Update – COVID-19 Special Issue* (31 March 2020).

## Annual general meetings and financial reporting

We recognise that the COVID-19 pandemic may affect the ability of some companies to comply with their annual general meeting (AGM) and financial reporting obligations. We have summarised our current position on these matters in Table 1.

**Table 1: Our position on AGM and financial reporting obligations**

| Balance date | AGM obligations | Financial reporting lodgement obligations |
|---|---|---|
| 31 December | Formal 'no-action' position provided. We support the holding of AGMs using appropriate technology and confirm we will take no action if the AGMs are postponed for two months. | There were no widespread issues for listed entities in meeting their full-year or half-year lodgement obligations. We granted an extension of time to a small number of listed companies, primarily those who had significant operations in certain foreign jurisdictions.<br>We have extended the deadline for unlisted entities to lodge financial reports by one month for balance dates from 31 December 2019 to 31 March 2020. |
| 31 March | No formal 'no-action' position at this time; however, we will provide updated guidance over the coming months if necessary. | At present, there appear to be no widespread indications of any significant issues for listed entities with 31 March 2020 balance dates in meeting their full-year and half-year financial reporting obligations. We will consider applications to extend the reporting deadline for individual listed entities in appropriate circumstances. Where possible, any applications should be made at least 14 days before the normal reporting deadline.<br>We have extended the deadline for unlisted entities to lodge financial reports by one month for balance dates from 31 December 2019 to 31 March 2020. |
| 30 June | No formal position at this time; however, we will provide updated guidance over the coming months if necessary. | No formal position at this time; however, we will provide updated guidance over the coming months if necessary. |

The normal and extended deadlines for lodging financial reports, directors' reports and audit reports for unlisted entities after the balance date are listed in Table 2.

**Table 2: Normal and extended deadlines for reporting by unlisted entities**

| Unlisted entity and report type | Normal deadline | Extended deadline |
|---|---|---|
| Proprietary companies and public companies that are not a disclosing entity – full-year reports | 4 months | 5 months |
| Managed investment schemes – full-year reports (including compliance plan audit reports) | 3 months | 4 months |
| Unlisted disclosing entities – full-year reports | 3 months | 4 months |
| Unlisted disclosing entities – half-year reports | 75 days | 75 days plus 1 month |
| Australian financial services (AFS) licensees that are bodies corporates and also disclosing entities or registered schemes – full-year reports | 3 months | 4 months |
| AFS licensees that are bodies corporates and not also disclosing entities or a registered scheme – full-year reports | 4 months | 5 months |
| AFS licensees that are not bodies corporate – full-year reports | 2 months | 3 months |

We will continue to closely monitor the impact of the COVID-19 pandemic on market conditions and companies, and will adjust our position as the need arises.

For more details, see Media Release (20-068MR) *Guidelines for meeting upcoming AGM and financial reporting requirements* (20 March 2020) and Media Release (20-084MR) *ASIC to provide additional time for unlisted entity financial reports* (9 April 2020).

## Treasurer's powers in relation to general meetings

The recently commenced *Coronavirus Economic Response Package Omnibus Act 2020* is part of the Australian Government's response to the economic impact of the COVID-19 pandemic. The Act includes amendments that provide the Treasurer with temporary powers to exempt or modify the operation of provisions of the Corporations Act for classes of persons.

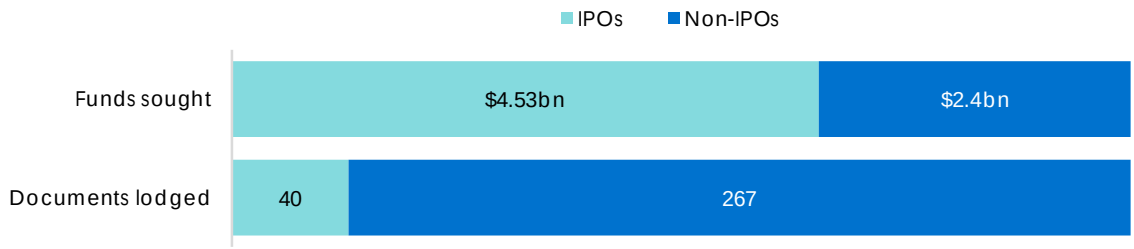
We are aware that Treasury is considering modifying provisions of the Corporations Act relating to general meetings, so that companies have greater flexibility in how they satisfy the statutory requirements for general meetings in the current climate. We will advise the market of any further developments.

# Fundraising

## Key statistics for the July to December 2019 period

In the period, 307 original disclosure documents were lodged, seeking to raise approximately $6.93 billion: see Figure 1. This compares with 216 original disclosure documents lodged in the period 1 January 2019 to 30 June 2019 (previous period), seeking to raise $3.95 billion.

**Figure 1: Types of offers (July to December 2019)**




**Note 1:** See Table 7 in Appendix 2 for the data shown in this figure (accessible version).
**Note 2**: This figure shows the maximum amount sought under original disclosure documents lodged during the period, not the amount actually raised under the original disclosure documents.

This period saw a significant increase in the magnitude of the largest fundraising offers, with total amounts actually raised in the top 10 fundraisings increasing from $2.96 billion in the previous period to $4.49 billion in this period: see Table 3.

**Table 3: Top 10 fundraisings by amount raised (July to December 2019)**

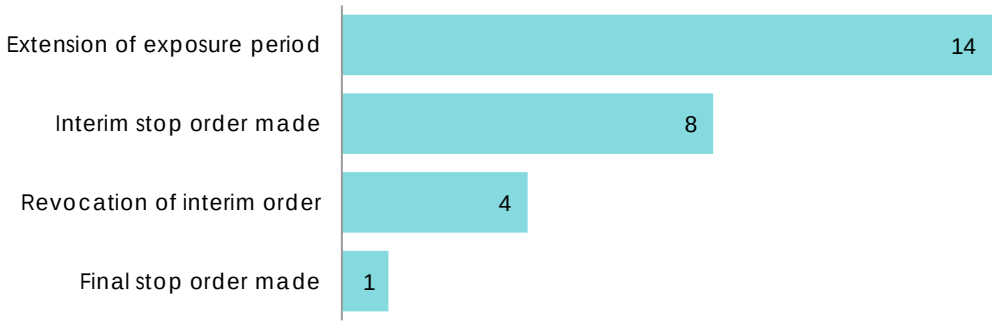
| Company | Amount sought | Amount raised | Offer type |
|---|---|---|---|
| Commonwealth Bank of Australia | $1,250,000,000 | $1,650,000,000 | Hybrids |
| VGI Partners Asian Investments Ltd | $800,000,000 | $556,550,542 | IPO |
| Suncorp Group Ltd | $300,000,000 | $389,000,000 | Hybrids |
| Virgin Australia Holdings Ltd | $325,000,000 | $325,000,000 | Unsecured notes |
| Home Consortium Developments Limited | $324,999,951 | $324,999,951 | IPO |
| Australian Unity Ltd | $300,000,000 | $322,000,000 | Bonds |
| Tyro Payments Ltd | $248,000,000 | $287,254,904 | IPO |
| AMP Ltd | $250,000,000 | $275,000,000 | Hybrids |
| Fineos Corporation Holdings plc | $210,974,732 | $210,974,732 | IPO, CDIs |
| Plato Income Maximiser Ltd | $204,312,115 | $144,238,133 | Entitlement offer |
| **Total** | **$4,213,286,798** | **$4,485,018,262** | Not applicable |

**Note 1:** 'IPO' stands for initial public offering and 'CDIs' stands for CHESS depositary interests.
**Note 2**: These figures only include prospectuses where the offer opened before or during the period and closed by or on 31 December 2019, and where the results of the fundraising were announced publicly. The figures exclude foreign mutual recognition scheme offers. The 'amount sought' includes the amount sought under original or, where relevant, supplementary/replacement prospectuses.

## ASIC intervention in fundraising

There were fewer extensions of exposure periods and interim stop orders this period (14 and 8, respectively) compared with the previous period (18 and 12, respectively): see Figure 2.

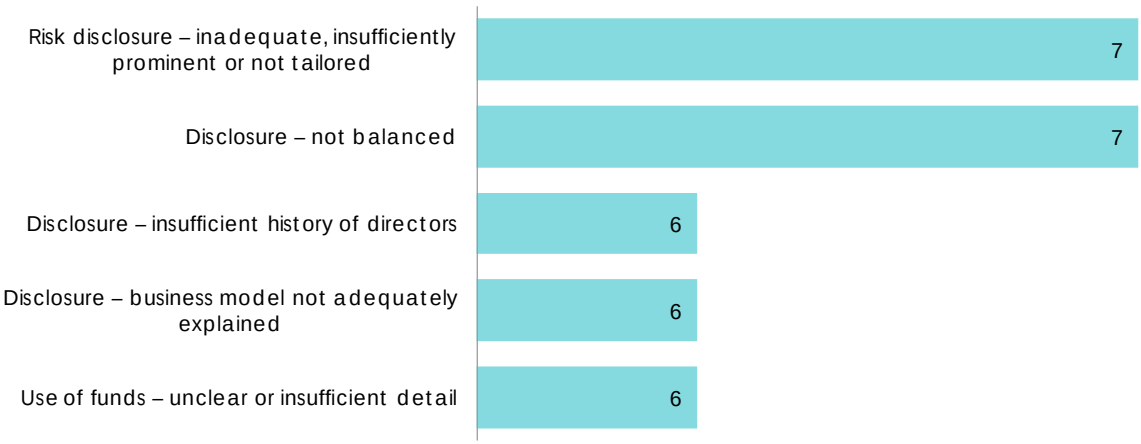
**Figure 2: Form of ASIC intervention in prospectus disclosure (July to December 2019)**




**Note 1**: See Table 8 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 was generally consistent with the previous period. Issuers should pay particular attention to their disclosure of risks as we continue to see inadequate disclosure in this area. We also remind issuers to ensure their disclosure is balanced and does not inappropriately emphasise the benefits of the offer over other relevant matters. We raised a greater number of concerns relating to the inadequate disclosure of director qualifications and history in disclosure documents in contrast to the previous period: see Figure 3.

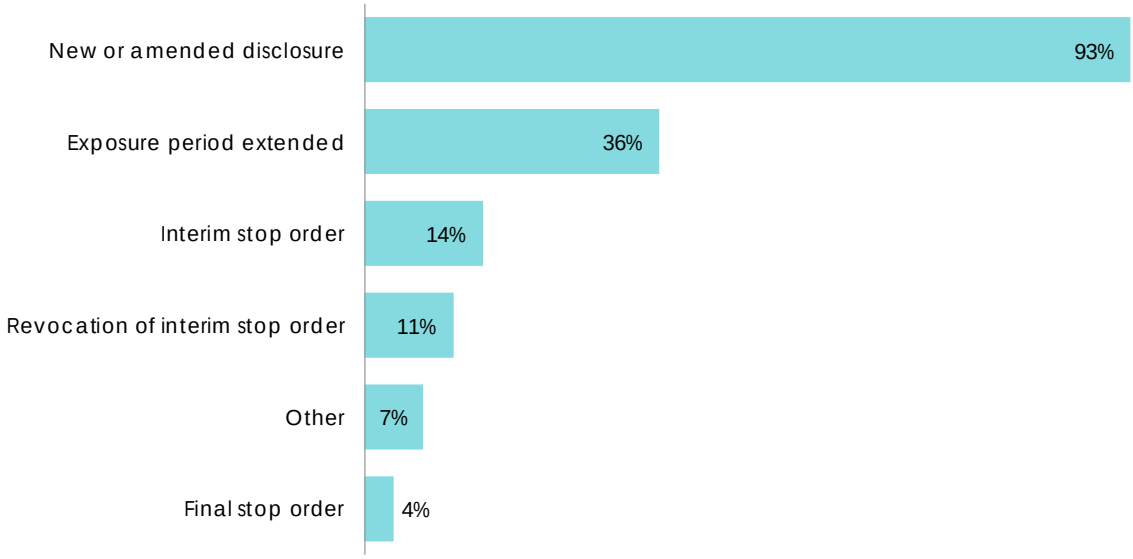
**Figure 3: Top five disclosure concerns most frequently raised (July to December 2019)**




**Note 1**: See Table 9 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 (July to December 2019)**




**Note 1**: See Table 10 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 before or during the period.
**Note 3:** Percentages do not add up to 100 as more than one result was achieved in some matters.

## Application of the significant acquisition test

A prospectus must contain audited financial information for significant businesses acquired by the issuer: see Section F of Regulatory Guide 228 *Prospectuses: Effective disclosure for retail investors* (RG 228).

The significant acquisition test applies to the 12-month period before the date the issuer lodges their disclosure document. If the issuer has made a significant acquisition in that time, then the disclosure document must contain at least two years of audited accounts for that acquisition. Importantly, this applies even if the acquisition was not significant in earlier financial periods that will form part of the financial information in the prospectus: see RG 228.104–RG 228.105.

## Prospectuses for IPOs using a SaleCo and FloatCo structure

Many larger issuers will use a 'SaleCo' and a 'FloatCo' structure for their IPO. A SaleCo is a special purpose entity that is generally set up by the issuer as a vehicle to sell the shares of vendors. It may be wound up after the float occurs. A FloatCo is the actual business of the issuer or a holding company of the actual business.

We have observed some issues with the use of this structure, which primarily relate to liability for prospectus disclosures. In some cases, Floatco may not be seeking new capital. However, we consider that there should be nominal capital raising by a FloatCo under a prospectus to ensure the legislative regime in Ch 6D of the Corporations Act applies to all appropriate persons, including the liability regime.

On a procedural note, where two offers are made in these types of IPOs, we remind issuers to lodge two prospectuses with ASIC contemporaneously, one for the SaleCo and one for the FloatCo, even if they are the same document. If the issuers do not lodge two prospectuses at the outset, and we require a second prospectus to be lodged later, this may delay the issuer's timetable.

## Individual relief from suspension requirement for low-doc rights issues

Listed companies cannot complete a rights issue without a prospectus (a low-doc fundraising under s708AA) if they cannot satisfy the suspension requirements in s708AA. However, companies can apply to ASIC for relief from this requirement.

A number of companies that made these applications in the period were still suspended. We take a range of factors into account when assessing these relief applications: see Regulatory Guide 189 *Disclosure relief for rights issues* (RG 189). However, in the absence of other compelling factors or circumstances, we are less likely to provide relief if the company is still suspended at the time of the proposed fundraising. This is because it is unlikely that we will be satisfied that an issuer's securities are adequately priced by the market or that the market is fully informed. We recognise that in the current circumstances companies may face unique and novel challenges as result of the COVID-19 pandemic. We will closely consider what impact this has had on the circumstances of individual companies when deciding whether to grant relief.

**Case study 1: Proposed accelerated rights issue while the company is still suspended**

A company applied to ASIC for relief to permit it to conduct an accelerated rights issue, even though the company's shares had been suspended for seven days in the previous 12 months. The company went into a trading halt and suspension, to provide a trading outlook update and to allow it to finalise its capital raising initiatives.

Institutional investors needed to commit while the company was still suspended and retail investors would get the benefit of up to 12 days of market trading and price discovery. Regardless, consistent with RG 189, we were not satisfied sufficient time had elapsed since the suspension and were not minded to grant relief. We were also not satisfied that there were any other compelling factors that warranted relief in this case. The company withdrew the relief application.

## Expansion of the civil penalty regime

In March 2019, the *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019* (Penalties Act) expanded the civil penalty regime in the Corporations Act. One of the changes introduced by the Penalties Act was to create a civil penalty provision for a contravention of s728(1) of the Corporations Act that is materially adverse from the point of view of an investor: see s728(4), as inserted by the Penalties Act. The new civil penalty provision complements the existing criminal (s728(3)) and civil liability provisions (s729) for a contravention of s728(1).

The Corporations Act has a set of defences known as the 'due diligence defences': see s731 and 733. These are available to people accused of committing an offence under s728(3) and a contravention of s728(1). We have outlined the defences below:

- The *reasonable inquiries defence* (s731) is applicable when a person proves they have made all reasonable inquiries and had reasonable grounds to believe that the statement was not misleading or deceptive or there were no omissions.
- The *reasonable reliance defence* (s733) is applicable where a person proves that they placed reasonable reliance on information given to them by another person, other than their own director, employee or agent in the case of a body, or other than their employee or agent in the case of an individual.

However, the Penalties Act made no consequential changes to the due diligence defences when it introduced the new s728(4). As a result, the due diligence defences do not apply to s728(4). This means persons liable for defective prospectuses will not be able to rely on the due diligence defences in a civil penalty proceeding, but will be able to rely on them in criminal and civil proceedings.

We have declined to give any form of relief that would allow an entity to rely on the due diligence defences for a potential breach of s728(4). Our present view is that this kind of significant amendment may be a matter for legislative reform.

## Amended disclosure for prospectuses with deficient financial information

We may put a stop order on a rights issue prospectus if there are material unresolved issues with the accounts.

In this period, we became aware of a rights issue where the issuer was suspended, had failed to lodge accounts, and disclosed in a s713 prospectus that the unaudited pro forma balance sheet was likely to have the auditor disclaim their opinion over material portions of the accounts once the audit was complete. In these circumstances, we were of the view that the document was deficient under s728. We therefore required the company to prepare and lodge audited accounts for its latest financial year and provide supplementary disclosure that included an explanation of the adverse opinion of the company's auditor.

## Policy updates

### Proposed legislative relief for commonly lodged IPO individual relief applications

In February 2020, we issued Consultation Paper 328 *Initial public offers: Relief for voluntary escrow arrangements and pre-prospectus communications* (CP 328). We sought feedback on proposals to grant legislative relief for:

- voluntary escrow arrangements requested by public companies, professional underwriters and lead managers in connection with an IPO
- companies' communications to employees and security holders about an IPO before lodging a prospectus.

The formal consultation period has ended, and we expect to release our response, together with any relief, by mid-2020.

### Design and distribution obligations

We released Consultation Paper 325 *Product design and distribution obligations* (CP 325) in December 2019. We sought feedback on our proposed administration of the new design and distribution obligations: see Pt 7.8A of the Corporations Act.

The formal consultation period has ended, and we expect to release a regulatory guide later in 2020.

# Financial reporting

## Implications of changes in large proprietary limited company size thresholds

Large proprietary limited companies must prepare and lodge a financial report and a director's report for each financial year. The accounts must be audited unless we grant relief.

A proprietary limited company is defined as 'large' if it satisfies at least two of the size thresholds. Recently, Parliament adjusted these thresholds. We have compared the thresholds defining whether a company is 'large' for financial years commencing before 30 June 2019 and financial years commencing on or after 1 July 2019: see Table 4.

**Table 4: Comparison of large proprietary company thresholds**

| Threshold | Before 30 June 2019 | On or after 1 July 2019 |
|---|---|---|
| Consolidated revenue for the financial year of the company and any entities it controls | $25 million or more | $50 million or more |
| Value of the consolidated gross assets at the end of the financial year of the company and any entities it controls | $12.5 million or more | $25 million or more |
| Number of employees of the company and any entities it controls at the end of the financial year | 50 or more employees | 100 or more employees |

Because of the change of thresholds, some companies that were large for financial years commencing before 30 June 2019 will cease to be large for financial years commencing after 1 July 2019. These companies may have relied on financial reporting relief provided by our legislative instruments. Some of our legislative instruments require companies that have ceased to rely on the relief to lodge an opt-out notice with ASIC within a certain period: see condition 7 of ASIC Corporations (Audit Relief) Instrument 2016/784 and condition 7 of ASIC Corporations (Wholly-owned Companies) Instrument 2016/785.

If a company fails to lodge an opt-out notice as required, it may not qualify for relief under our legislative instruments if and when it becomes a large proprietary limited company again. Companies that currently rely on our relief and that are likely to change status from large to small in the future should check the conditions of the relief and the timeframes for lodging opt-out notices (if any). This is especially important if they may need to rely on our relief again in the future.

## ASIC review of 30 June 2019 financial reports

We reviewed the 30 June 2019 full-year financial reports of 200 entities and raised inquiries with 47 entities on 80 matters. The largest number of inquiries were about impairment of non-financial assets and inappropriate accounting treatments. Directors and auditors should continue to focus on these issues to ensure that the market is properly informed about asset values and the expected future performance implied by those values.

We issued Information Sheet 203 *Impairment of non-financial assets: Materials for directors* (INFO 203) in June 2015 to help directors and audit committees consider whether the value of non-financial assets shown in a company's financial report continues to be supportable.

Directors and auditors should also focus on the impact of the new accounting standards on revenue, financial instruments, and leases, which can materially affect reported financial position and results.

For more details, see Media Release (20-026MR) *ASIC review of 30 June 2019 financial reports* (7 February 2020).

# Experts: Mining

## An inside look at mining and exploration IPOs

In 2019, we reviewed the IPO process for small-cap and micro-cap mining and exploration listings. Our observations from that review were published in Report 641 *An inside look at mining and exploration initial public offers* (REP 641).

The key findings from the report were that:

- lead managers give preference to a subset of investors
- advisers can initiate the IPO process to secure deal flow
- conflicts of interest are common and often unmanaged
- advisers may influence the share register post-listing
- promotional materials are subject to substandard compliance controls
- transaction structures can inflate market interest in the short-term following listing.

REP 641 includes guidance for lead managers and directors undertaking fundraising activities. We encourage all market participants to read the report and adopt the better practice recommendations. Going forward, we will continue to focus on conduct and conflict of interest issues involving lead managers and directors.

## Mineral asset valuation methodologies

Some assets are difficult to value using traditional valuation methodologies. During the period, we observed instances where technical specialists have invented or engineered valuation methodologies for these assets.

We do not object to technical specialists applying their skill and expertise to assets that are difficult to value. However, these novel approaches can be a technical veil for what is, in essence, an entirely subjective valuation assessment. We have observed instances where the technical specialist has 'worked backwards' from a subjective assessment of asset values and then applied novel, quasi-scientific valuation methodologies to reconcile with the subjective assessment.

We recognise there are many instances where technical specialists will have no option but to undertake a subjective analysis of asset values. However, we will raise concerns if a valuation methodology is designed or executed, or appears to be designed or executed, for the purpose of legitimising high-level subjective estimates by the expert or where we consider that a methodology has been selected solely due to the ease with which it can be applied. In circumstances where an entirely subjective valuation is completed, practitioners must ensure they clearly:

- disclose that the valuation completed is entirely subjective and not provided for in the VALMIN Code (2015). This may include following the relevant processes for transparency and non-compliance: see cl 12.1 of the VALMIN Code
- explain why none of the methodologies set out in the VALMIN Code can be applied
- describe the information relied on in arriving at the subjective valuation.

**Case study 2: Reasonable grounds required to support valuations**

During the period, we observed the inconsistent and selective application of established valuation methodologies, particularly the multiples of exploration expenditure approach and the geoscientific approach.

A technical specialist was engaged by an independent expert to provide a valuation for an item 7, s611 shareholder approval. The technical specialist prepared a technical valuation of assets relying primarily on the geoscientific ratings and multiples of exploration expenditure methods. The valuations were technical and not market valuations. The technical specialist applied subjective premiums and discounts to technical valuations without providing a basis for the adjustments applied. We raised concerns about the lack of reasonable grounds on which the technical specialist's valuations was based, the lack of empirical inputs, the reliance on unsupported assumptions and the subjective basis of preparation when more objective valuation methodologies were available. The transaction was ultimately withdrawn.

We remind market participants that we will intervene where it appears that valuation methodologies have been reverse engineered to support a subjective assessment by the technical specialist. We will be particularly concerned when those methodologies are used as both the primary and secondary methodologies, especially if market-based methodologies, supported by empirically observable inputs, were available.

## Business model disclosures

We have recently identified deficiencies in the assessment and disclosure of business model risks for entities with mineral assets. Issuers have failed to disclose the impact of prior or proposed operations on the prospects of a company and the status of their tenure. Business model disclosures have generally been limited to generic risk disclosure statements, rather than explaining the specific risks associated with the assets and circumstances of the company.

We have also observed issuers making generic statements that risks have been mitigated, even though the company has not taken active steps to mitigate those risks.

We remind practitioners that risk disclosures should be specific. The omission of information or overstatement of the mitigation of risks may render a prospectus misleading.

**Case study 3: Material risk assessment and disclosure**

A company sought to have its securities requoted following acquisition of rights to operate on a tenement held by a third party. We observed that there was a high risk that the company's existing operations had not complied with tenement conditions.

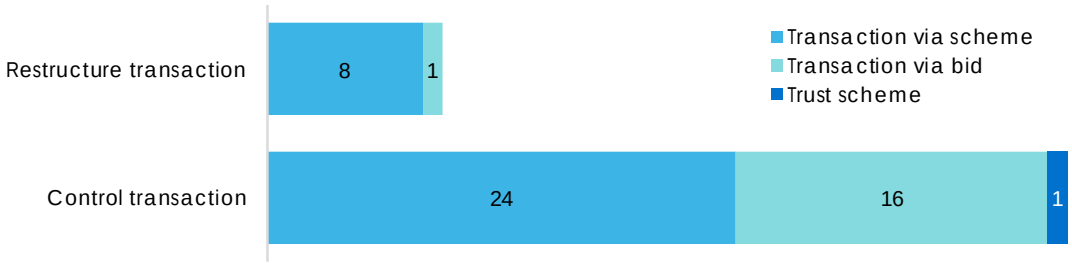
We identified numerous omissions from the prospectus and notice of meeting seeking member approval that we considered were material to existing shareholders and prospective investors. These included concerns about the legality of the company's existing operations. We required the independent expert appointed for the notice of meeting seeking member approval to send a technical expert for a site visit, to understand the existing operations.

# Mergers and acquisitions

## Key statistics for the July to December 2019 period

During this period, the number of independent control transactions commenced increased to 41, compared with 29 in the previous period. The number of unique restructure transactions increased to nine, compared with eight in the previous period: see Figure 5.

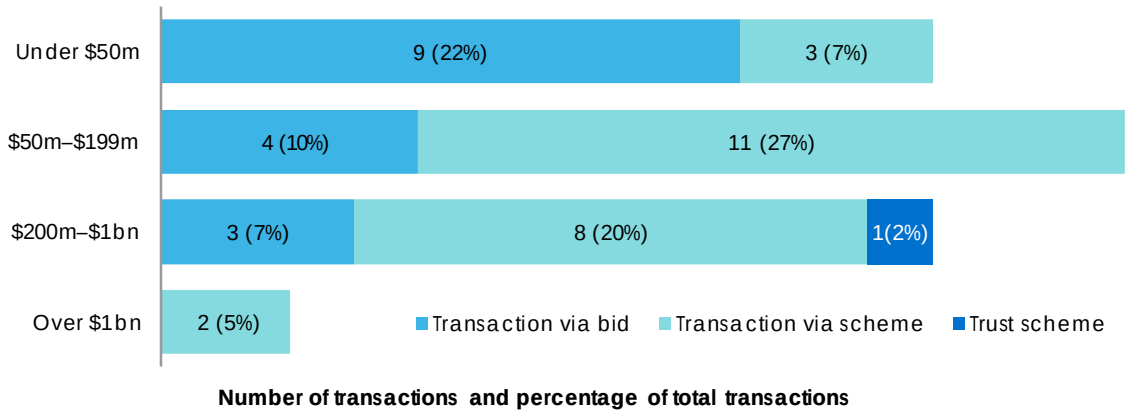
**Figure 5: Independent control and restructure transactions (July to December 2019)**




**Note 1:** See Table 11 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 16 related entities.

Continuing previous trends, a large number of control transactions were effected via a scheme of arrangement rather than a takeover bid. A breakdown of transactions by the implied value of the target also shows that the largest control transactions were generally undertaken via a scheme: see Figure 6.

**Figure 6: Control transactions by implied target size (July to December 2019)**

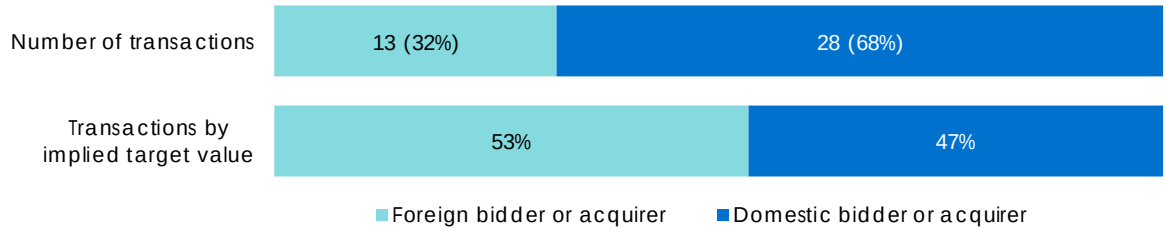



**Note 1**: See Table 12 in Appendix 2 for the data shown in this figure (accessible version).

In comparison to the previous period, there was a notable increase in the number of control transactions by domestic offerors (28 in this period; 15 in the previous period) relative to overseas offerors (13 in this period; 14 in the previous period).

Although there was increased activity by domestic offerors, foreign offerors were behind the larger control transactions. They represented 53% of all deal value (based on the collective and implied value of all targets) this period. However, in comparison to the previous period (73% of deal value), this is a notable decrease for foreign offerors and an increase for domestic offerors (who are responsible for 47% of deal value this period, compared to 27% of deal value in the previous period): see Figure 7.

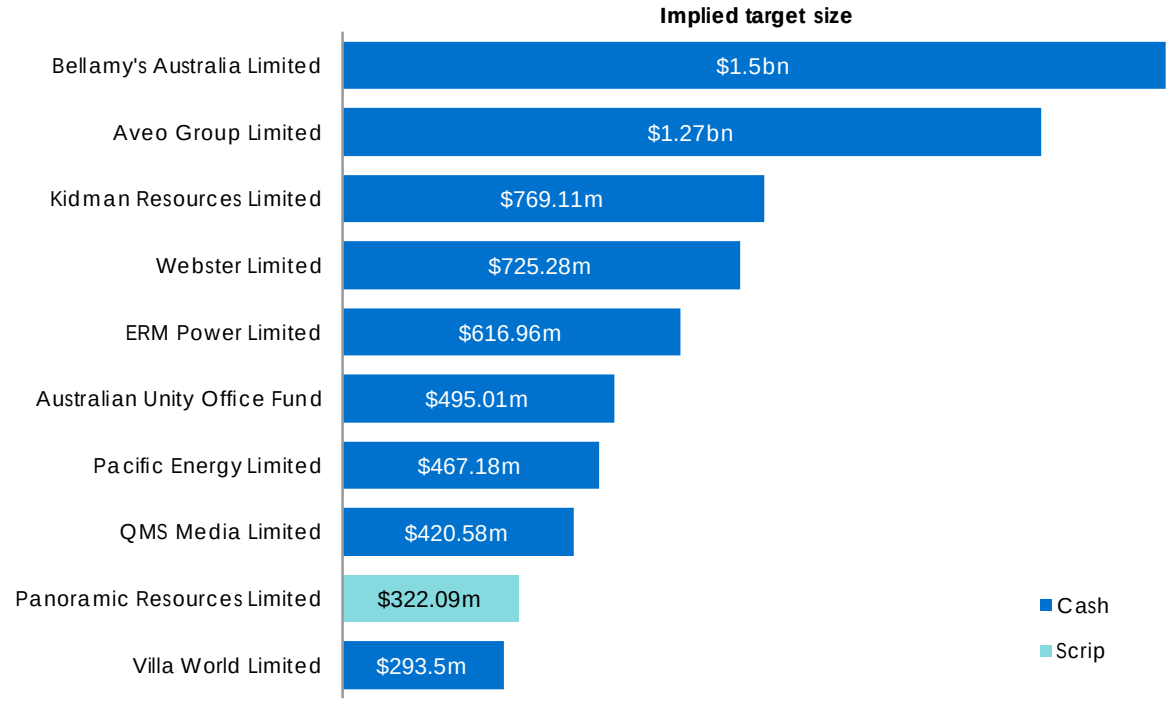
**Figure 7: Foreign and domestic offerors (July to December 2019)**




**Note**: See Table 13 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 (July to December 2019)**



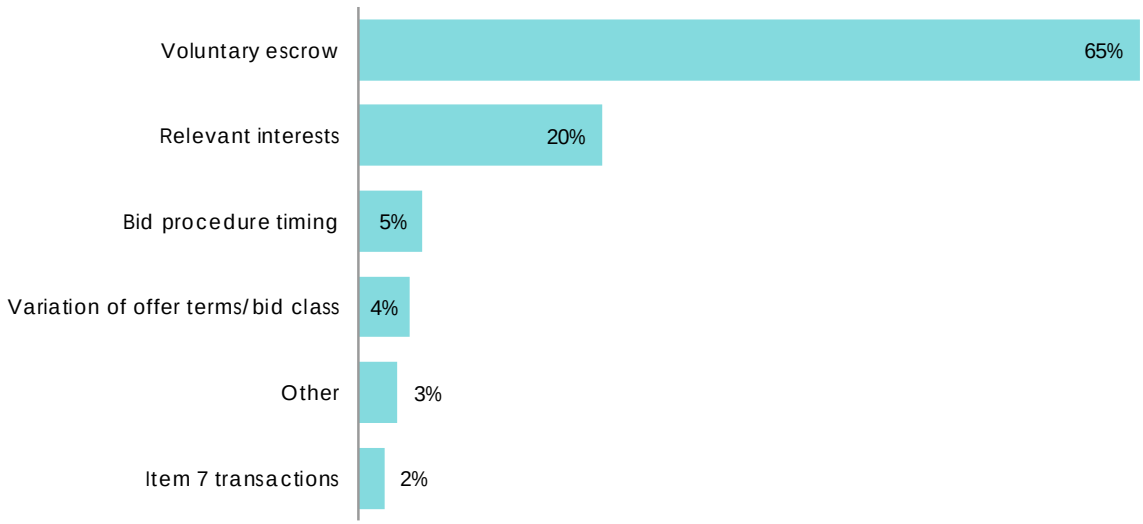

**Note 1:** See Table 14 in Appendix 2 for the data shown in this figure (accessible version).
**Note 2:** For the QMS Media Limited scheme, scrip was also issued to a separate class of scheme members
**Note 3:** The Aveo Group Limited scheme also included an optional scrip consideration component for certain eligible members.

## ASIC relief and intervention in control transactions

Consistent with the previous period, companies most commonly applied to ASIC for voluntary escrow relief from the takeovers provisions of the Corporations Act. Relief relating to relevant interests, bid procedure timing 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).

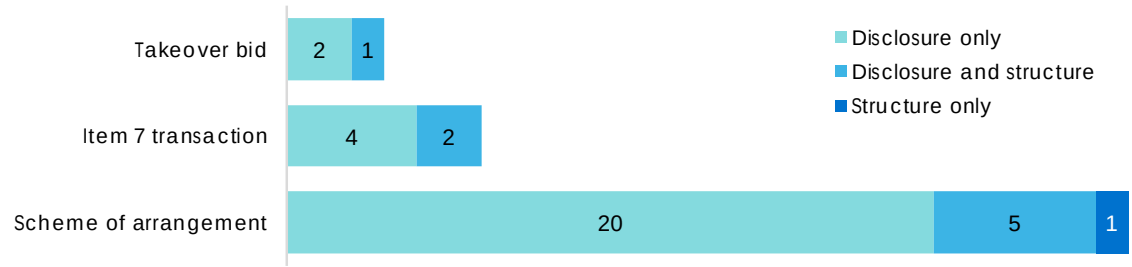
**Figure 9: Applications received for relief relating to control transactions (July to December 2019)**




**Note**: See Table 15 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, disclosure of equity derivative positions, shareholder classes and bid structures.

**Figure 10: ASIC's regulatory interventions in control transactions (July to December 2019)**




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

## Schemes of arrangement

One of our primary focuses when reviewing schemes of arrangement is to identify and address concerns about shareholder equality that flow through to class composition and fairness considerations.

### Case study 4: Association, voting and class issues

We recently reviewed a scheme implementation agreement and ancillary agreements that provided two entities associated with directors (the director entities) an opportunity to invest in a proposed joint venture into which assets of the scheme company were to be sold. The offer was conditional on the scheme being approved. The directors had recused themselves from providing a recommendation on the transaction to shareholders but proposed to vote in the same class as other members.

We considered it was inappropriate for the director entities to vote in the same class as other members given only these entities, but no other shareholders in the same class, were entitled to maintain an investment in a material portion of the scheme company's business. The arrangements also raised concerns relating to the equality principles in s602(c), and the prohibition on collateral benefits in s623.

We raised our concerns with the scheme company but did not formally intervene at either court hearing. Our concerns were allayed by:

- the director entities undertaking to ASIC, and stating in the scheme booklet, that they would not vote in favour of the scheme in the same class as other members
- full and frank disclosure of the arrangements in the scheme booklet
- an expert report stating that the opportunity to invest in the proposed joint venture provided no 'net benefit' to the director entities
- the director entities making substantial holding disclosure, including disclosure of the ancillary documents, due to the association relationship between the director entities and the acquirer.

**Case study 5: Collateral benefits**

In a recent scheme proposed by an externally managed investment company, the scheme company obtained an expert report that stated that a 'net benefit' was being given to three members who held shares in the external manager. This was because the external manager had agreed to novate for consideration its management rights and certain transitional services to the acquirer.

We were concerned these circumstances did not accord with the spirit of the equality principles in s602(c) and the collateral benefits provision in s623, which, in turn, gave rise to class composition and fairness considerations.

We note that despite the expert's opinion, the scheme company had not taken any pre-emptive steps to address these regulatory considerations.

In this matter, our concerns were mitigated as:

- we intervened and requested that two of the three members enter in deed polls providing that they would not vote any shares they held in favour of the scheme. This meant the additional benefits these members would receive would not affect the voting outcome of the scheme. We considered the fact this issue was settled and disclosed at the outset of the scheme was also important – the market was aware, throughout the transaction, that these members would not vote
- we accepted that the benefit to the other member was likely immaterial to them, relative to the size of their holding in the scheme company. It would not constitute an unacceptable inducement to vote in favour of the scheme. However, we requested that this member's votes were tagged so that, if the votes were determinative of the voting outcome of the scheme, this could be considered by the court.

We remind practitioners that we consider proactive steps should be taken by scheme proponents where these concerns arise.

## Market and procedural integrity

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

**Case study 6: Divestment of interests during scheme process**

During the period, an acquirer in a trust scheme proposal divested its existing 19.9% stake in the scheme proponent shortly before the trust scheme meeting. The acquirer divested its stake off-market, at a discount to the current traded market price and to institutional clients of the acquirer's financial adviser. We were concerned that the discounted sale by the acquirer gave the purchasers of the shares an inappropriate incentive to vote in favour of the scheme.

We applied to the Takeovers Panel for a declaration of unacceptable circumstances, as we considered the acquirer had undermined the integrity of the trust scheme mechanism and the basis for the compulsory expropriation of interests in the target if the trust scheme was to be approved. We also considered that not all securityholders would have had the same opportunity to participate in the benefits conferred under the scheme, given the nature of the discounted divestment process.

We sought final orders as follows:

- if the trust scheme was approved by securityholders, the acquirer make a cash payment equivalent to the benefit to securityholders other than those who acquired securities from the acquirer's divestment. The 'benefit' would be the difference between the sale price under the divestment and the prevailing market price or, if necessary, as otherwise determined by an independent expert, or
- the target was to determine whether the requisite majorities for the trust scheme resolutions were achieved by subtracting 19.9% of units from all votes cast in favour of the resolutions and treating those units as if they did not cast a vote.

Ultimately, we withdrew our application after the transaction was rejected by securityholders at the trust scheme meeting: see Takeovers Panel, Media Release TP19/65 *Australian Unity Office Fund – Panel receives application* (14 November 2019) and Media Release TP19/70 *Australian Unity Office Fund – Panel application withdrawn* (19 November 2019).

We will continue to carefully analyse the circumstances of any trading of target securities by an acquirer during a control transaction. We expect that all investors in a class of securities will be given an equal opportunity to participate in any benefits under a control transaction: see Report 446 *ASIC regulation of corporate finance: January to June 2015* (REP 446) at paragraphs 130–131.

## Equity derivatives and takeover bids

During the period, we continued to raise concerns about the use of certain equity swap arrangements in the context of control transactions. The taking equity derivative positions, and associated hedging, can influence both the market for, and control of, the issued capital of a company.

**Focus on: Disclosure of equity derivative positions**

As part of monitoring control transactions, we also monitor compliance with the Takeovers Panel's policy in Guidance Note 20 *Equity derivatives* (GN 20) and with the substantial holding provisions under s671B in so far as they relate to derivative positions such as equity swaps.

When we detect a failure to properly disclose an interest related to an equity swap, we will consider whether the failure has detracted from the maintenance of an efficient, competitive and informed market for the relevant securities. We will also consider whether this may give rise to unacceptable circumstances.

To remedy the failure, we may consider requiring the entity to:

- unwind all or part of the equity swap to reduce its economic exposure to less than 5%
- enter into an undertaking to not accept into, or vote in favour of, the control transaction in relation to any securities acquired from unwinding the equity swaps
- disclose to the market the entity's historical position in relation to the securities.

**Case study 7: Disclosure of equity derivative positions**

During the period, we took action in a matter that resulted in a partial divestment of physical holdings and improved disclosure to the market in relation to swap positions held by a company's major shareholder.

Our inquiries revealed:

- inadequate disclosure by the shareholder about the size of its total economic exposure acquired through various swap positions and a failure to attach relevant swap agreements required under s671B(4)
- the shares that the writer of a swap purportedly held to hedge its position were in fact held beneficially for the shareholder. This gave the shareholder a relevant interest in those shares and contributed to the shareholder breaching s606 at a previous point in time. The correct size of their relevant interest was not disclosed to the market.

In response to our concerns, the shareholder agreed to reduce its total economic interest (i.e. both physical holdings and swap positions) to below 20%. It also agreed to provide appropriate substantial holding disclosure that clarified the actual size of its relevant interest and total economic interest as a result of taking out various swap positions.

## Policy updates

### Chapter 6 relief for share transfers using s444GA of the Corporations Act

The administrator of a deed of company arrangement (DOCA) may transfer shares, either with the share owner's written consent or compulsorily (if a court grants leave): see s444GA.

If a transfer under s444GA will result in a person acquiring shares carrying voting power in a company of more than 20%, the acquisition will be prohibited by s606 if the company is subject to the takeover provisions. We may grant relief from this provision to facilitate the transaction.

In January 2020, we issued Consultation Paper 326 *Chapter 6 relief for share transfers using s444GA of the Corporations Act* (CP 326). We proposed to include guidance in Regulatory Guide 6 *Takeovers: Exceptions to the general prohibition* (RG 6) about when we will grant relief to facilitate a s444GA transfer of this type.

The requirements of our proposed relief include the deed administrator making explanatory materials available to shareholders before the s444GA hearing. The materials would include an expert report prepared:

- by an independent expert (rather than the administrator or other party associated with their firm)
- consistent with Regulatory Guide 111 *Content of expert reports* (RG 111)
- on a liquidation basis.

The consultation closed on 28 February. We expect to release our final position later in 2020.

### Stub equity

In June 2019, we issued Consultation Paper 312 *Stub equity in control transactions* (CP 312). We are considering the submissions received and anticipate that we will release our response in the coming months.

## 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 in Case study 8 and Case study 9 are being prosecuted by the Commonwealth Director of Public Prosecutions (CDPP).

**Case study 8: ASIC charges against former director of Bellamy's Australia Limited**

ASIC charged Janet Cameron, a former director of Bellamy's Australia Limited (Bellamy's) with contravening s671B(1) and 1308(2) of the Corporations Act. The contraventions related to her failure to disclose her interest in Bellamy's issued capital.

We allege that Ms Cameron's initial substantial holder notice for Bellamy's was misleading because it failed to properly disclose her true and complete relationship and association with The Black Price Foundation (Black Prince), an entity domiciled in Curacao.

Together, Ms Cameron and Black Prince had a holding of 14 million Bellamy's shares. This represented 14.74% of Bellamy's total issued capital.

The charges are listed for a mention on 24 July 2020.

For more information, see Media Release (20-033MR) *ASIC charges Jan Cameron, former director of Bellamy's Australia* (14 February 2020).

**Case study 9: Sentencing of man for making false or misleading statements to ASIC**

John Merity was convicted on two counts of giving false or misleading information to ASIC, contravening s1308(2) of the Corporations Act. Mr Merity was sentenced to two years imprisonment, with a minimum period of one year in custody.

Mr Merity made misleading statements to ASIC in response to our inquiries about interests in shares in Northwest Resources Limited held by Craigside Company Ltd and Broome Enterprises Ltd.

Our investigation was conducted under the Serious Financial Crime Taskforce: see Media Release (20-036MR) *Nowra man convicted for giving false or misleading information to ASIC about shareholding* (14 February 2020).

# Corporate governance

## Climate change disclosure surveillances

We are currently undertaking further surveillance work examining public climate change-related disclosure by a number of ASX 100 companies over the last reporting period. We are focused on companies that are reporting under the recommendations developed by the Financial Stability Board's Taskforce on Climate-Related Financial Disclosure. Our surveillance program includes both desktop research and the use of compulsory information-gathering powers. We intend to publish our observations once the surveillance is complete and provide direct feedback to the entities involved. This work will help ASIC determine whether further guidance in this area is necessary.

Separately, we continue to liaise with the Australian Prudential Regulation Authority (APRA), the Reserve Bank of Australia (RBA) and Treasury on this issue. We are all part of the Council of Financial Regulators' Climate Change Working Group. APRA is planning to conduct a climate change financial risk vulnerability assessment of Australia's largest authorised deposit taking institutions. APRA's vulnerability assessment will be designed in 2020 and executed in 2021. APRA will coordinate the design of its vulnerability assessment with both ASIC and the RBA, to ensure consistency in the application of scenario analysis and disclosure recommendations.

## ASIC's Corporate Governance team

### Review of director and officer oversight of non-financial risk

On 2 October 2019, ASIC released a report outlining the work and findings of its Corporate Governance team on board oversight of non-financial risk: see Report 631 *Director and officer oversight of non-financial risk* (REP 631).

The report sets out the governance practices across seven large listed financial institutions and highlights better and poorer practices. It also poses a series of questions boards can ask themselves about their oversight of non-financial risk. We encourage the boards of all large listed organisations (including those outside the financial services sector) to consider these questions and look closely at their own governance practices and accountability structures.

> **Key message: Oversight of non-financial risk**
>
> We observed consistent weaknesses in the execution of non-financial risk oversight, despite entities generally having appropriate governance frameworks and policies in place. In particular:
>
> - **information flows** on non-financial risks were often fragmented and lacked hierarchy and prioritisation
> - **risk appetite articulation and metrics** for non-financial risk were immature compared to financial risk
> - **board risk committees** often did not actively engage in the oversight of non-financial risks.

We recommend that boards actively execute non-financial risk oversight including by:

- taking ownership of the form and content of information to ensure they are appropriately informed to perform their duties
- holding themselves and management accountable to operate within risk appetite
- considering issues relating to non-financial risk with enough time and frequency to ensure timely and effective oversight.

# Appendix 1: Takeover bids and schemes

**Table 5: Takeover bids in respect of which bidder's statements were lodged with ASIC (July to December 2019)**

| Target | Bidder | Lodged | Type | Securities | Consideration |
|---|---|---|---|---|---|
| Chalmers Limited [CHR] | Qube Holdings Limited [QUB] | 1/07/2019 | Off-market | Ordinary shares | Cash or scrip |
| Yowie Group Limited [YOW] | Aurora Funds Management Limited as responsible entity for Aurora Dividend Income Trust | 5/07/2019 | Off-market | Ordinary shares | Scrip |
| Bligh Resources Limited [BGH] | Saracen Minerals Holdings Limited [SAR] | 8/07/2019 | Off-market | Ordinary shares | Scrip |
| Mercantile Investment Company Ltd [MVT] | Sandon Capital Investments Limited [SNC] | 18/07/2019 | Off-market | Ordinary shares | Scrip |
| CBG Capital Limited [CBC] | Clime Capital Limited [CAM] | 19/07/2019 | Off-market | Ordinary shares | Scrip |
| Egan Street Resources Limited [EGA] | Silver Lake Resources Limited [SLR] | 14/08/2019 | Off-market | Ordinary shares | Scrip |
| Alliance Resources Limited [AGS] | Gandel Metals Pty Ltd | 19/08/2019 | Off-market | Ordinary shares | Cash |
| IBNA Limited | Steadfast Group Limited [SDF] | 21/08/2019 | Off-market | Ordinary shares | Scrip |
| Macquarie Media Limited [MRN] | Nine Entertainment Co. Holdings Limited [NEC] | 30/08/2019 | Off-market | Ordinary shares | Cash |
| Echo Resources Limited [EAR] | Northern Star Resources Limited [NST] | 5/09/2019 | Off-market | Ordinary shares | Cash |
| Metgasco Limited [MEL] | Melbana Energy Limited [MAY] | 10/09/2019 | Off-market | Ordinary shares | Scrip |
| CliniCann Limited | Health House Holdings Limited | 16/09/2019 | Off-market | Ordinary shares | Scrip |
| Azumah Resources Limited [AZM] | IGIC Pte Ltd (affiliate of Ibaera Capital Fund GP Limited) | 18/09/2019 | Off-market | Ordinary shares | Cash |
| Panoramic Resources Limited [PAN] | Independence Group NL [IGO] | 4/11/2019 | Off-market | Ordinary shares | Scrip |
| Royalco Resources Limited [RCO] | Fitzroy River Corporation Ltd [FZR] | 21/11/2019 | Off-market | Ordinary shares | Cash |

| Target | Bidder | Lodged | Type | Securities | Consideration |
|---|---|---|---|---|---|
| Trans Pacific Energy Group Ltd | New Generation Minerals Limited | 5/12/2019 | Off-market | Ordinary shares | Scrip |
| Keybridge Capital Limited [KBC] | WAM Active Limited [WAA] | 13/12/2019 | Off-market | Ordinary shares | Cash |

**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:** The bidder's statement lodged by Aurora Funds Management Limited as responsible entity for Aurora Dividend Income Trust on 5 July 2019 was withdrawn prior to dispatch. The bidder's statement lodged by New Generation Minerals Limited on 5 December 2019 was in relation to a restructure transaction.
**Note 3:** All off-market bids are full bids.
**Note 4:** 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 6: Schemes of arrangement in respect of which explanatory statements registered or otherwise released (July to December 2019)

| Target | Acquirer | Registered | Type | Securities | Received |
|---|---|---|---|---|---|
| Legend Corporation Limited [LGD] | Greenland BidCo Pty Ltd (vehicle controlled by funds advised by Adamantem Capital) | 8/07/2019 | Members | Ordinary shares | Cash |
| Kidman Resources Limited [KDR] | Wesfarmers Limited [WES] | 1/08/2019 | Members | Ordinary shares | Cash |
| Silver Chef Limited [SIV] | Investment vehicles affiliated with Next Capital Pty Ltd, Next Capital (Services A) Pty Limited and Next Capital (Services B) Pty Limited | 5/08/2019 | Members | Ordinary shares | Cash and scrip |
| MOD Resources Limited [MOD] | Sandfire Resources NL [SFR] | 21/08/2019 | Members | Ordinary shares | Scrip or capped cash |
| Perth Markets Limited | Top-hatting | 26/08/2019 | Members | Ordinary shares | N/A |
| Dreamscape Networks Limited [DN8] | Web.com Group, Inc., a wholly owned entity of an affiliate of Siris Capital Group, LLC | 30/08/2019 | Members | Ordinary shares | Cash |
| Patersons Securities Limited | Cannaccord Financial Group (Australia) Pty Ltd | 2/09/2019 | Members | Ordinary shares | Cash |
| Villa World Limited [VLW] | AVID Property Group Australia Pty Limited | 6/09/2019 | Members | Ordinary shares | Cash |
| Cardno Limited [CDD] | Not applicable – demerger | 6/09/2019 | Members | Ordinary shares | N/A |
| GBST Holdings Limited [GBT] | Kiwi Holdco CayCo, Ltd | 11/09/2019 | Members | Ordinary shares | Cash |
| AIRR Holdings Limited | Elders Limited [ELD] | 18/09/2019 | Members | Ordinary shares | Cash and scrip (mix and match) |

| Target | Acquirer | Registered | Type | Securities | Received |
|---|---|---|---|---|---|
| Aveo Group Limited (stapled as part of Aveo Group [AOG]) | Hyrdra RL Bidco Pty Ltd, an entity controlled by Brookfield Asset Management Inc. on behalf of its managed funds | 27/09/2019 | Members | Ordinary shares | Cash or scrip |
| Sundance Energy Australia Limited [SEA] | Not applicable – redomicilliation | 1/10/2019 | Members | Ordinary shares | N/A |
| Pacific Energy Limited [PEA] | QGIF Swan Bidco Pty Ltd (a subsidiary of funds advised or managed by a subsidiary of QIC Limited) | 2/10/2019 | Members | Ordinary shares | Cash |
| Creso Pharma Limited [CPH] | PharmaCielo Ltd. | 4/10/2019 | Members | Ordinary shares | Scrip |
| Creso Pharma Limited [CPH] | PharmaCielo Ltd. | N/A | Creditors | Options | Scrip |
| ERM Power Limited [EPW] | Shell Energy Australia Pty Ltd | 4/10/2019 | Members | Ordinary shares | Cash |
| Wellcom Group Limited [WLL] | Innocean Worldwide Inc. | 7/10/2019 | Members | Ordinary shares | Cash |
| GARDA Capital Limited (stapled as GARDA Capital Group [GCM]) | GARDA Holdings Limited | 10/10/2019 | Members | Ordinary shares (stapled) | Scrip |
| Isis Central Sugar Mill Company Limited | Almoiz Industries Limited, Thal Industries Corporation Limited and Naubahar Bottling Company (Pvt) Ltd | 11/10/2019 | Members | Ordinary shares (35% proportional scheme) | Cash |
| Bellamy's Australia Limited [BAL] | China Mengniu Dairy Company Limited | 31/10/2019 | Members | Ordinary shares | Cash |
| Konekt Limited [KKT] | Advanced Personnel Management International Pty Ltd | 31/10/2019 | Members | Ordinary shares | Cash |
| Think Childcare Limited [TNK] | Not applicable – stapling | 1/11/2019 | Members | Ordinary shares | N/A |
| URB Investments Limited [URB] | 360 Capital FM Limited as responsible entity of the 360 Capital Total Return Fund [TOT] | 4/11/2019 | Members | Ordinary shares | Cash |
| Woolworths Group Limited [WOW] | Not applicable – restructure | 4/11/2019 | Members | Ordinary shares | N/A |
| Prime Media Group Limited [PRT] | Seven West Media Limited [SWM] | 15/11/2019 | Members | Ordinary shares | Scrip |
| Pensana Metals Ltd [PM8] | Not applicable – redomiciliation | 2/12/2019 | Members | Ordinary shares | N/A |
| Tiger Resources Limited [TGS] | Not applicable – debt for equity swap and compromise | N/A | Creditors | N/A – secured debt | N/A |
| Wollongong Coal Limited [WLC] | Not applicable – debt compromise | N/A | Creditors | N/A – sSecured debt | N/A |

| Target | Acquirer | Registered | Type | Securities | Received |
|---|---|---|---|---|---|
| QMS Media Limited [QMS] | Shelley BidCo Pty Ltd, and entity controlled by Quadrant Private Equity | 13/12/2019 | Members | Ordinary shares (held by other holders) | Cash |
| QMS Media Limited [QMS] | Shelley BidCo Pty Ltd, and entity controlled by Quadrant Private Equity | 13/12/2019 | Members | Ordinary shares (held by 'rollover shareholders') | Scrip |
| CSG Limited [CSV] | Fuji Xerox Co., Ltd | 17/12/2019 | Members | Ordinary shares | Cash |
| Webster Limited [WBA] | Public Sector Pension Investment Board | 17/12/2019 | Members | Ordinary shares | Cash |
| Webster Limited [WBA] | Public Sector Pension Investment Board | 17/12/2019 | Members | Preference shares | Cash |
| CML Group Limited [CGR] | Consolidated Operations Group Limited [COG] | 24/12/2019 | Members | Ordinary shares | Scrip or capped 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 July and 31 December 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 1July 2019 to 31 December 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:** One reconstruction scheme, listed above as Woolworths Group Limited, involved 16 schemes of arrangement, being one scheme for each of the participating 16 entities in the corporate group.

**Note 4:** The Aveo Group Limited and Garda Capital Limited schemes of arrangement listed above also involved a trust scheme component in respect of the trust entities that formed part of the stapled group.

**Note 5:** 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.

# 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 7: Types of offers (July to December 2019)**

| Offer type | Documents lodged | Funds sought to be raised |
|---|---|---|
| IPO | 40 | $4.53 billion |
| Non-IPO | 267 | $2.4 billion |

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

**Table 8: Form of ASIC intervention in prospectus disclosure (July to December 2019)**

| Form of intervention | Number |
|---|---|
| Extension of exposure period | 14 |
| Interim stop order made | 8 |
| Revocation of interim order | 4 |
| Final stop order made | 1 |

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

**Table 9: Top five disclosure concerns most frequently raised (July to December 2019)**

| Disclosure concern | Number |
|---|---|
| Risk disclosure – inadequate, insufficiently prominent or not tailored | 7 |
| Disclosure – not balanced | 7 |
| Disclosure – insufficient history of directors | 6 |
| Disclosure – business model not adequately explained | 6 |
| Use of funds – unclear or insufficient detail | 6 |

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

**Table 10: Results of ASIC raising concerns (July to December 2019)**

| Result | Percentage |
|---|---|
| New or amended disclosure | 93% |
| Exposure period extension | 36% |
| Interim stop order | 14% |
| Revocation of interim stop order | 11% |
| Other | 7% |
| Final stop order | 4% |

**Note:** This is the data shown in Figure 4.

### Table 11: Independent control and restructure transactions (July to December 2019)

| Transaction type | Number |
|---|---|
| Control transactions via schemes | 24 |
| Control transactions via bids | 16 |
| Control transactions via trust scheme | 1 |
| Restructure transactions via schemes | 8 |
| Restructure transactions via bids | 1 |

**Note:** This is the data shown in Figure 5.

### Table 12: Control transactions by implied target size (July to December 2019)

| Implied target size | Scheme | Scheme and bid | Bid |
|---|---|---|---|
| Under $50 million | 3 (7%) | 0 | 9 (22%) |
| $50 million to $199 million | 11 (27%) | 0 | 4 (10%) |
| $200 million to $1 billion | 8 (20%) | 1 (2%) | 3 (7%) |
| Over $1 billion | 2 (5%) | 0 | 0 |

**Note:** This is the data shown in Figure 6.

### Table 13: Foreign and domestic offerors (July to December 2019)

| Type of bidder or acquirer | Number of transactions | Transactions by implied target value |
|---|---|---|
| Foreign bidder or acquirer | 13 (32%) | 53% |
| Domestic bidder or acquirer | 28 (68%) | 47% |

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

### Table 14: Largest control transactions via bid or scheme, by implied target size (July to December 2019)

| Target (acquirer) | Implied target value | Cash value | Scrip value |
|---|---|---|---|
| Bellamy's Australia Limited | $1.50 billion | $1.50 billion | $0 |
| Aveo Group Limited | $1.27 billion | $1.27 billion | $0 |
| Kidman Resources Limited | $769.11 million | $769.11 million | $0 |
| Webster Limited | $725.28 million | $725.28 million | $0 |
| ERM Power Limited | $616.96 million | $616.96 million | $0 |
| Australian Unity Office Fund | $495.01 million | $495.01 million | $0 |
| Pacific Energy Limited | $467.18 million | $467.18 million | $0 |
| QMS Media Limited | $420.58 million | $420.58 million | $0 |
| Panoramic Resources Limited | $322.09 million | $0 | $322.09 million |
| Villa World Limited | $293.50 million | $293.50 million | $0 |

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

**Table 15: Applications received for relief relating to control transactions (July to December 2019)**

| Application topic | Percentage |
|---|---|
| Voluntary escrow | 65% |
| Relevant interests | 20% |
| Bid procedure timing | 5% |
| Variation of offer terms/bid class | 4% |
| Other | 3% |
| Item 7 transactions | 2% |

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

**Table 16: ASIC's regulatory interventions in control transactions (July to December 2019)**

| Transaction type | Disclosure only | Disclosure and structure | Structure only |
|---|---|---|---|
| Takeover bid | 2 | 1 | 0 |
| Item 7 transaction | 4 | 2 | 0 |
| Scheme of arrangement | 20 | 5 | 1 |

**Note:** This is the data shown in Figure 10.