

27 February 2020



Terence Kouts  
Senior Manager  
Corporations  
Australian Securities and Investment Commission  
Level 5, 100 Market Street  
Sydney NSW 2000

## Consultation Paper 326

Dear Terrence,

Our comments on the above-mentioned consultation paper are provided below.

### B1 Requirement to provide IER

#### Q1

We agree with ASIC's proposal that an IER should be prepared and provided to shareholders. In order to address some of the concerns noted at paragraph 26 of ASIC's consultation paper, it may be appropriate for the IER to cross refer to information in an administrator's report rather than duplicating that information.

#### Q2

While there may be situations where an IER is not necessary such as when it is incontrovertible that there is no residual value, we are not aware of any other situations at present.

#### Q3

We do not consider this would be appropriate. The administrator's report is prepared for a different purpose to the IER. The skills required from an Independent Expert in preparing an IER are different to those of the administrator. In addition, creditors are a different group to shareholders and may have different considerations in any given transactions.

### B2 Basis of valuation

#### Q1

We agree with ASIC's proposal to require a liquidation basis. As noted at Q3 this may encompass a going concern business value.

#### Q2

Yes, these matters should be considered. However, we note the practical difficulty obtaining reliable estimates of these matters on a timely basis.

#### Q3

We believe that whether or not a going concern valuation is relevant depends on the circumstances. As noted at paragraph 30 of ASICs consultation paper, if there is a realistic possibility of a business being transferred as a going concern, then this should be considered as part of the overall analysis.

#### Q4

If the expert has concluded that a going concern approach is relevant, then we believe the comparison to be made by ASIC should be value of the shares assuming the proposal is approved compared to the value if it is not. We believe a broader considering is needed rather than simply a comparison of value.

## Q5

There may be additional factors that should be considered, similar to a takeover that is not fair but reasonable. For example, if an expert concludes an appropriate sale process has been undertaken and no better offers are available, then it would seem to be appropriate to grant the relief.

## B3 Who should prepare the IER

### Q1, Q2

We agree with ASIC's proposal.

### Q3

We do not believe a member as described would be independent. There are often significant fees at stake for administrators in the situations contemplated by the consultation paper. A member as described will have a pecuniary interest in the outcome through the profit-sharing arrangements of the professional partnership. A situation where another member of the administrator's firm is also permitted to prepare an Independent Expert's report would be contrary to current best practice to avoid conflicts of interest.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Richard Norris', written in a cursive style.

Richard Norris  
Director