



**ASIC**

Australian Securities & Investments Commission

**REPORT 406**

# **ASIC regulation of corporate finance: January to June 2014**

August 2014

## **About this report**

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

It highlights and discusses key statistical information, observations and ASIC's work in the regulation and oversight of fundraising, mergers and acquisitions transactions, corporate governance, and other general corporate finance areas for the period 1 January to 30 June 2014. This report also provides information on the topics discussed at ASIC's twice-yearly Corporate Finance Liaison meeting, last held in May 2014.

### About ASIC regulatory documents

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

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

**Regulatory guides:** give guidance to regulated entities by:

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

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

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

### Disclaimer

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

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# Overview

## Regulation of corporate finance activity

- 1 ASIC is responsible for the regulation and oversight of corporate finance activity in Australia, with a particular focus on corporate transactions such as fundraising, takeovers, schemes of arrangement, share buy-backs, compulsory acquisitions, employee share schemes and financial reporting.
- 2 Within ASIC, the Corporations and Emerging Mining and Resources (EMR) teams are responsible for regulating disclosure and conduct by corporations in Australia in these areas. As part of this work, we:
  - (a) assess applications to ASIC for relief from certain parts of the *Corporations Act 2001* (Corporations Act) including Chs 2M, 6 and 6D; and
  - (b) review certain documents lodged with ASIC relating to various corporate transactions.
- 3 ASIC also engages with stakeholders, conducts targeted surveillances of identified risk areas, publishes regulatory guides, and conducts deterrence activities in relation to corporate finance.
- 4 The EMR team is located in Perth and has a particular focus on small capital and mining exploration companies.

### Corporate Finance Liaison meeting

- 5 ASIC holds a twice-yearly Corporate Finance Liaison meeting to engage with stakeholders and provide insight into our current policy and regulatory approaches regarding corporate fundraising, mergers and acquisition activity, and other corporate transactions. At these meetings, Corporations and EMR staff present on current topics in the marketplace and answer questions from the audience.
- 6 Corporate Finance Liaison meetings are held in Sydney, Melbourne, Brisbane, Perth and Adelaide. Lawyers, corporate advisers and compliance professionals working in corporate finance and mergers and acquisitions are welcome to attend these meetings.

## The purpose of this report

- 7 The purpose of this report is to provide greater transparency about the role that ASIC plays in the regulation of corporations in Australia. ASIC also

plays a significant role in facilitating business while ensuring the confidence of the investment community is maintained.

- 8 The report highlights and discusses key statistical information, observations and our work in the regulation of fundraising, mergers and acquisitions, corporate governance, and other general corporate finance areas for the period of 1 January to 30 June 2014 (this period). It also discusses the issues raised at the May 2014 Corporate Finance Liaison meeting.
- 9 The report provides limited commentary on applications for relief from certain parts of the Corporations Act. Please see our regular reports on ASIC's relief decisions for more detailed information on novel relief applications. The most recent report is Report 395 *Overview of decisions on relief applications (October 2013 to January 2014)* (REP 395), which was published in May 2014.
- 10 This is the first time we have published this report. To ensure that future reports are relevant, we welcome any feedback or comments on its content and structure. All feedback can be sent to:

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## A Fundraising

### Key points

This section sets out statistics and observations from our work in relation to fundraising. ASIC reviews prospectuses and processes applications for relief from Ch 6D of the Corporations Act.

In this period there were a number of policy initiatives underway at ASIC, focused on electronic disclosure, complex products, CHES Depositary Interests (CDIs) and the sunseting of class orders.

### Statistics and observations

- 11 In this period there has been a small decline in the number of prospectuses lodged with ASIC (compared to the period 1 July to 31 December 2013 (previous period)); however, we have seen an increase in applications for relief from Ch 6D of the Corporations Act.
- 12 Table 1 depicts the top ten public fundraising transactions by value based on prospectuses lodged with ASIC in this period.

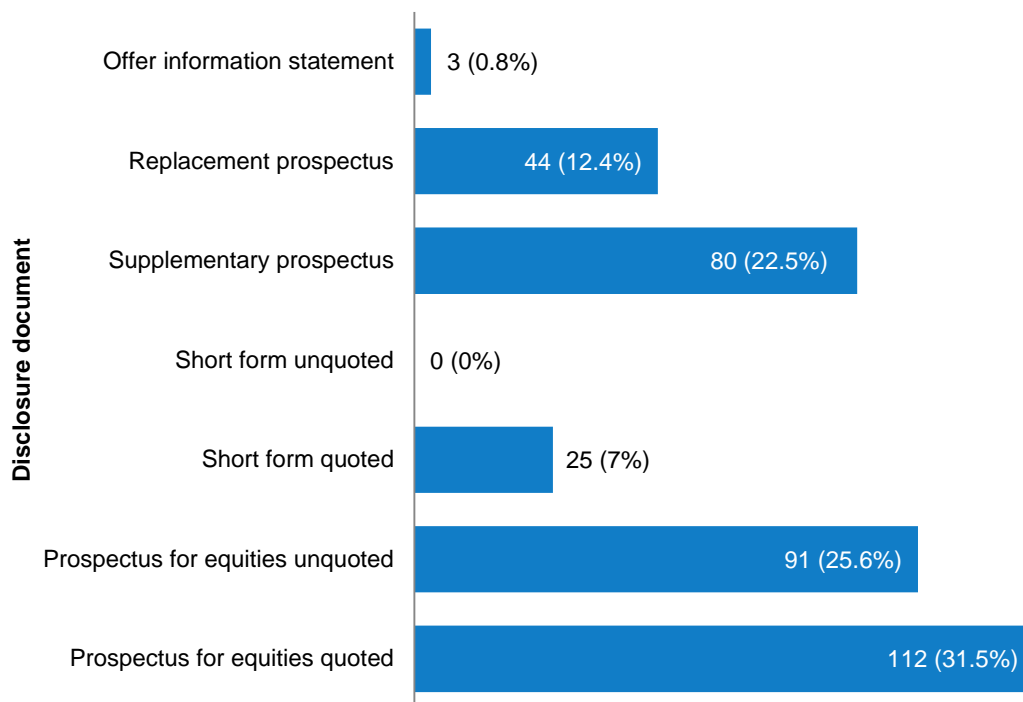
**Table 1: Top 10 primary fundraising transactions by value (1 January to 30 June 2014)**

Issuer	Date of lodgement	State	Value	Industry	Security type
Healthscope Limited	30/06/2014	Vic.	\$2574m	Health	Shares
Westpac Banking Corporation (Capital Notes II)	15/05/2014	NSW	\$1310m	Banking	Hybrid securities
Spotless Group Holdings Limited	28/04/2014	Vic.	\$1150m	Commercial and professional services	Shares
Genworth Mortgage Insurance Australia Limited	23/04/2014	NSW	\$754m	Insurance	Shares
Asaleo Care Limited	02/06/2014	Vic.	\$633m	Household and personal products	Shares
Japara Healthcare Limited	04/04/2014	Vic.	\$450m	Health care equipment and services	Shares
Monash IVF Group Limited	05/06/2014	Vic.	\$317m	Pharmaceuticals, biotechnology and life services	Shares

Issuer	Date of lodgement	State	Value	Industry	Security type
3P Learning Limited	19/06/2014	NSW	\$283m	Consumer services	Shares
iSentia Group Limited	19/05/2014	NSW	\$283m	Software and services	Shares
Suncorp Group Limited	31/03/2014	NSW	\$250m	Insurance and banking	Hybrid securities
Mantra Group Limited	30/05/2014	NSW	\$239m	Consumer services	Shares

13 Figure 1 illustrates the number of disclosure documents (by type) lodged with ASIC in this period. Initial public offering prospectuses for equities to be listed were the most common disclosure documents lodged with ASIC.

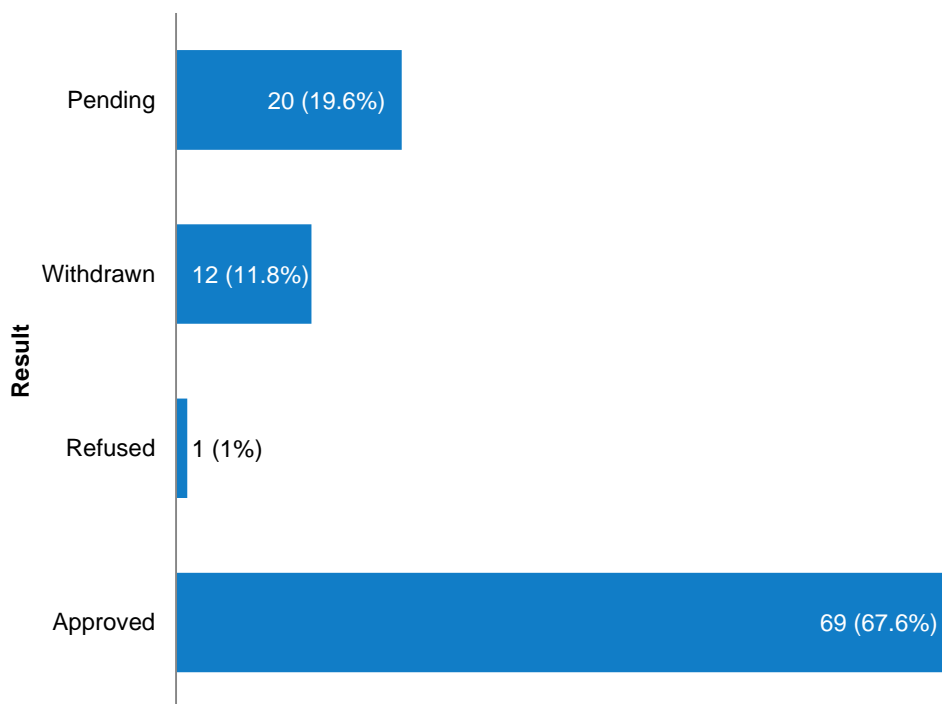
**Figure 1: Number of disclosure documents by type (1 January to 30 June 2014)**



Note: This graph has been adjusted to exclude 119 supplementary prospectuses lodged by one entity due to changes to the structure of the product offered.

### Applications for relief

14 During this period, ASIC received 102 applications for relief under s741. Of these, we granted relief in 69 applications (67.6%): see Figure 2.

**Figure 2: Results of applications under s741 (1 January to 30 June 2014)**

15 ASIC publishes a regular report that provides an overview of decisions made on novel relief applications, including those made in relation to fundraising transactions. ASIC's most recent report is REP 395.

## ASIC's review of prospectuses

16 The Corporations and EMR teams review prospectuses for offers of securities, which are required to be lodged with ASIC under Ch 6D of the Corporations Act.

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

17 As a result of our review of prospectuses lodged with ASIC under s710, in this period we:

- raised disclosure concerns with over 31% of the prospectuses lodged—subsequently, changes were made to over 25% of the documents;
- extended the exposure period 21 times—down from 31 times in the period 1 July to 31 December 2013 (the previous period);



- (c) issued eight interim stop orders<sup>1</sup> and two final stop orders<sup>2</sup>—we issued seven interim stop orders and three final stop orders in the previous period; and
- (d) revoked five interim stop orders<sup>3</sup>—we revoked three interim stop orders in the previous period.

18 An overview of the types of disclosure concerns raised in our review of prospectuses in this period is discussed at paragraphs 29–33.

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

### Disclosure concerns

- 21 When reviewing prospectuses in this period, among other things, we focused on:
- (a) adequate disclosure in the ‘investment overview’ section (see paragraphs 22–25); and
  - (b) due diligence practices of companies with significant foreign exposure (see paragraphs 26–27).

### Investment overview

- 22 ASIC considers the investment overview section to be a critical part of a prospectus. As noted in Regulatory Guide 228 *Prospectuses: Effective disclosure for retail investors* (RG 228), the investment overview should be the first substantive section of the document and should highlight the key information about the offer and the issuer.
- 23 When reviewing prospectuses, we have focused on ensuring that the disclosure in the investment overview appropriately highlights the key

<sup>1</sup> The interim stop orders were issued to Connexion Media Limited, Invest Nexus Limited, Atech Holdings Limited, Victory Mines Limited, Migme Limited, INT Corporation Limited, Montech Holdings Limited, and Guvera Limited.

<sup>2</sup> The final stop orders were issued to Invest Nexus Limited and Guvera Limited.

<sup>3</sup> We revoked the interim stop orders on Connexion Media Limited, Atech Holdings Limited, Migme Limited, INT Corporation Limited and Montech Holdings Limited.

information of an offer of securities to help retail investors make informed investment decisions.

24 We are concerned that if the guidance in RG 228 is not followed, investment overview sections may become too lengthy and will cease to be a useful summary for investors.

25 We have reminded companies and their advisers to take care when drafting the investment overview section of a prospectus and to pay close attention to the guidance in RG 228.

### **Due diligence by companies with significant foreign exposure**

26 In recent times there has been an increase in initial public offerings by foreign companies or by companies with significant foreign shareholders or assets seeking listing on Australian markets.

27 In August 2013, ASIC published Report 368 *Emerging market issuers* (REP 368), which outlined key observations from our review of publicly available information on entities listed on Australian markets with a substantial connection to emerging markets.

28 Following this, we have continued to focus on reviewing offers of securities by such companies. We will inquire into the due diligence practices of foreign companies through the use of ASIC's notice powers where appropriate.

### **Other disclosure concerns**

29 In our review of prospectuses lodged with ASIC during this period, we noted concerns, requested amended disclosure, or intervened in offers of securities because of one or more of the following:

- (a) concerns about the appropriate disclosure of financial accounts and company solvency (over 15% of all prospectuses lodged); and
- (b) improper disclosure of forecast financial information (over 10% of all prospectuses).

30 We also noted concerns, requested amended disclosure, or intervened in a number of offers due to insufficient disclosure about the structure of the offer; for example, in all prospectuses lodged during this period:

- (a) control issues were evident in more than 8% of prospectuses; and
- (b) related party issues were evident in 9.5% of prospectuses.

31 We also raised a number disclosure concerns in this period in relation to:

- (a) funding or financing (more than 5% of prospectuses lodged);
- (b) valuation (more than 3% of prospectuses lodged); and

- (c) compliance with industry reporting codes, such as the Australasian Code for Reporting of Explorations Results, Minerals Resources and Ore Reserves (JORC Code) in mining prospectuses (1.3% of prospectuses lodged).
- 32 In most instances, changes were made to the disclosure in response to our concerns.
- 33 The figures in paragraphs 30–31 are consistent with the previous period.

## Enforcement action

- 34 In May 2014, ASIC's investigation and enforcement action against a former Perth director of Aluminex Resources Limited was successfully concluded, with the director sentenced to 14 months imprisonment for providing false and misleading information to ASX in connection with an initial public offering and as part of the application for listing. In particular, the director falsely advised ASX that the company had met the minimum subscription requirement when it had not.
- 35 For more information on this matter, see Media Release (14-103MR) *Former Perth director jailed for providing false and misleading information* (16 May 2014). This matter, together with other enforcement outcomes in this period, are discussed in Report 402 *ASIC enforcement outcomes: January to June 2014* (REP 402).

## ASIC policy initiatives

### Electronic disclosure

- 36 In March 2014, we published our updated Regulatory Guide 107 *Fundraising: Facilitating electronic offers of securities* (RG 107). We had previously released Consultation Paper 211 *Facilitating electronic offers of securities: Update to RG 107* (CP 211) in June 2013, to consult on updating our guidance on electronic prospectuses. We also released Report 385 *Response to submissions on CP 211 Facilitating electronic offers of securities: Update to RG 107* (REP 385).
- 37 Our updated RG 107 notes that we are of the view that electronic disclosure documents can be distributed without the need for ASIC relief, provided that the electronic disclosure document:
- (a) is identical in format and content to the lodged paper document—for example, where it is a PDF version of the lodged disclosure document; or

- (b) where the electronic document contains the same information in the same sequence and with the same prominence as the lodged disclosure document. This means that hypertext links and formatting changes to allow the document to display on a webpage or portable device are permitted.

38 Our updated guidance also:

- (a) includes an explanation of our view on the way the internet and other electronic means can be used in making offers of securities;
- (b) sets out good practice principles to assist offerors, distributors, publishers and other parties involved in distributing electronic disclosure documents; and
- (c) indicates certain circumstances where we may be willing to consider granting individual relief to facilitate the use of electronic disclosure documents.

39 Also in March 2014, we revoked our relief that addressed the uncertainty in the market after the introduction of the *Corporate Law Economic Reform Program Act 1999* about whether electronic disclosure documents were permitted under Ch 6D: see Superseded Class Order [SCO 00/44] *Electronic disclosure documents, electronic application forms and dealer personalised applications*. In addition, there is no longer a need for lodging parties to provide a USB or CD copy of the electronic disclosure document when lodging the paper copy.

40 We also issued Class Order [CO 14/26] *Personalised or Australian financial services licensee created application forms*, which continues the other aspects of the relief in [SCO 00/44].

### **Complex products including hybrids**

41 In February 2014 we updated the MoneySmart consumer finance website with information to help investors understand the risks and complexities of hybrid securities. Using everyday language, the updated information explains the differences between bank and corporate hybrids, and the features and risks common to each (including the new ‘non-viability’ clauses found in recent bank hybrids).

42 We also developed a quiz for investors to help them comprehend the terms of these offers and encourage them to be fully informed before they invest. The quiz received over 800 unique visitors in the two months following its launch.

43 While prospectus disclosure for offers of hybrid securities has been a focus for ASIC, hybrid securities are only one of the many complex financial

products that fall within ASIC's regulatory perimeter, and which have recently been considered by a dedicated Complex Products Working Group.

44 On 31 January 2014, we published Report 384 *Regulating complex products* (REP 384). The report:

- (a) examines the risks posed to retail investors by complex products—in particular, that product complexity can increase the likelihood that retail investors will not have a sufficient understanding of the risks associated with a product to make an informed decision. This can lead to an investor acquiring a product that is not aligned with the level of risk they are willing to tolerate, which can in turn have a negative effect on investor confidence if unexpected losses occur;
- (b) sets out our recent and current work in regulating complex products, including considering the whole of the product lifecycle—development, distribution, sale and post-sale; and
- (c) identifies opportunities for further work, including working with industry where appropriate.

45 REP 384 encourages financial services businesses involved in the development and distribution of complex products, and the provision of financial advice on complex products, to consider the risks outlined in the report in the context of their own business.

46 Eight submissions were received in response to REP 384. The submissions were generally supportive of the approach we adopted, offering a small number of more specific suggestions which are currently being considered, and on which we expect to comment further in the near future: see Report 400 *Responses to feedback on REP 384 Regulating complex products* (REP 400).

47 On a related note, the Financial Conduct Authority (FCA) in the United Kingdom has recently used its new temporary product intervention powers to temporarily restrict firms from distributing contingent convertible instruments (commonly known as 'CoCos') to the mass market from 1 October 2014, ahead of consultation on permanent rules later this year.

48 CoCos are hybrid capital securities that absorb losses when the capital of the issuer falls below a certain level. They are highly complex instruments and pose particular risks of inappropriate distribution to ordinary retail consumers.

49 The action taken by the FCA reinforces ASIC's view that Australian retail investors should be cautious before investing in complex products such as hybrid securities.

## CHESSE Depositary Interests

50 In May 2014, we released Consultation Paper 220 *Fundraising: Facilitating offers of CHESSE Depositary Interests* (CP 220), which outlined our proposals to issue new class order relief and regulatory guidance to help foreign companies make offers of CHESSE Depositary Interests (CDIs) over their shares to investors in Australia.

51 Although CDIs have been a feature of Australian exchange markets since the mid-1990s, there is continuing uncertainty in the market about how offers of CDIs over foreign shares are regulated under the Corporations Act. As a result, there are differing views about how CDIs are characterised, which disclosure regime applies to offers of CDIs, and who offers and issues CDIs.

52 Due to the uncertainty in the market, foreign companies have had to apply to ASIC for individual relief for offers of CDIs over their shares.

53 The key parts of the proposed class order relief include:

- (a) clarifying that foreign companies, and not the depositary nominee, are responsible for providing disclosure to retail investors for offers of CDIs under Ch 6D;
- (b) ensuring that the disclosure provisions in Ch 6D operate effectively for offers of CDIs over shares in a foreign company; and
- (c) providing relief so that the foreign company that issues the underlying foreign shares is not required to hold an Australian financial services (AFS) licence for arranging for others to deal in CDIs over its shares.

54 In CP 220, we also proposed to issue new guidance to help foreign companies to comply with the disclosure requirements in Ch 6D and to provide effective disclosure to retail investors for offers of CDIs.

55 We received seven submissions during the consultation period, which were overall supportive, with some submissions suggesting that we broaden the scope of the proposed class order relief. We expect to release the new guidance by the end of 2014.

## Sunsetting of class orders

56 Under the *Legislative Instruments Act 2003*, legislative instruments cease automatically after 10 years, unless action is taken to exempt or preserve them. This process is known as ‘sunsetting’. ASIC is one of a number of government agencies affected by this legislation.

57 The purpose of sunseting is to ensure that instruments (including ASIC class orders) are kept up to date and only remain in force while they are fit for purpose, necessary and relevant.

58 To preserve its effect, a legislative instrument must be remade before its expiry. If it is necessary to remake a legislative instrument, our focus is on making it clear and user friendly. Where possible, we will also simplify and rationalise its content and conditions. For example, we will remove or reduce an obligation or burden in a class order if we are able to do so without undermining ASIC's priorities of ensuring investors and financial consumers are confident and informed, and markets are fair and efficient.

### **Impact on stakeholders**

59 There are 84 ASIC class orders due to sunset in 2015 and 2016, and a further 157 will sunset in 2017. The Corporations and EMR teams are responsible for around a third of these class orders.

60 A number of these class orders have been considered in the context of particular policy projects. For example, 17 class orders were remade or repealed through our takeovers policy project last year. Individual class orders are also being considered in the context of our policy projects on employee incentive schemes and CDIs.

61 We are currently reviewing the class orders associated with Regulatory Guide 72 *Foreign securities prospectus relief* (RG 72). These relate to giving disclosure relief to foreign companies where the foreign companies' shares are quoted on an approved foreign market. We expect to release a consultation paper by the end of 2014.

62 Another project involves reviewing the class orders on other prospectus disclosure relief, including the class orders covered by:

- (a) Regulatory Guide 55 *Statements in disclosure documents and PDSs: Consent to quote* (RG 55);
- (b) Regulatory Guide 66 *Transaction-specific disclosure* (RG 66); and
- (c) Regulatory Guide 152 *Lodgement of disclosure documents* (RG 152).

63 In total, 26 class orders will be considered as part of this project. This is a major policy project that is expected to take one to two years.

64 What this means for stakeholders of the Corporations and EMR teams, and of ASIC generally, is that there will be a number of consultation papers released by ASIC in the coming years as a result of the sunseting process. We appreciate responses by stakeholders and encourage participation in the process.

## B Mergers and acquisitions

### Key points

This section sets out statistics and observations from our work in relation to mergers and acquisitions. As part of our regulatory function, ASIC reviews disclosure and monitors conduct in takeover transactions.

In this period there were a number of policy initiatives in relation to mergers and acquisitions, focused on the independence of experts and substantial holder notices.

We continue to identify matters that may warrant enforcement action arising from our day-to-day surveillance and monitoring of control transactions.

### Statistics and observations

- 65 There has been a decline in public merger and acquisition transactions in this period. Compared to the previous period, there has been a:
- (a) slight decrease in bidder's statements lodged;
  - (b) decline in the number of scheme explanatory statements lodged; and
  - (c) decline in mergers and acquisitions applications.
- 66 Table 2 sets out the top 10 control transactions by value, where the bidder's statements were lodged with ASIC in this period.

**Table 2: Top 10 control transactions by value (1 January to 30 June 2014)**

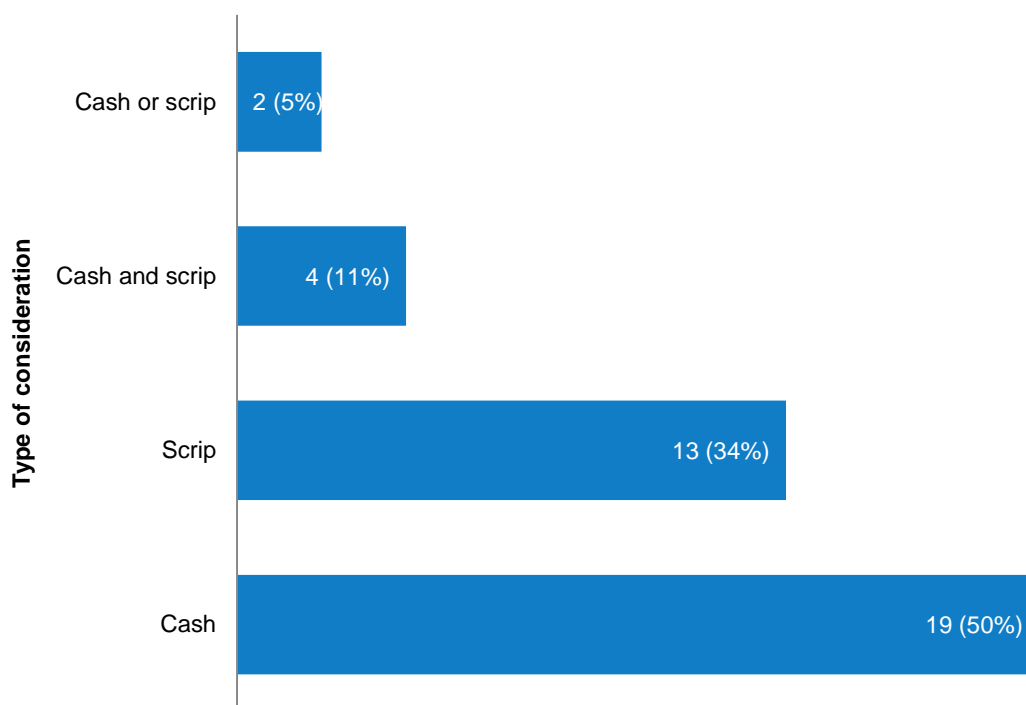
Target	Bidder	Type	Industry	Value
Envestra Ltd	Cheung Kong Group	Bid	Utilities	\$2371m
David Jones Ltd	Vela Investments Pty Ltd	Scheme	Retailing	\$2148m
Aurora Oil & Gas Ltd	Baytex Energy Corp	Scheme	Energy	\$1884m
Aquila Resources Ltd	Baosteel Resources Australia Pty Ltd	Bid	Metals and mining	\$1412m
Leighton Holdings Limited	HOCHTIEF Australia Holdings Limited	Bid	Construction	\$1150m
SFG Australia Ltd	IOOF Holdings Ltd	Scheme	Financials	\$630m
Papillon Resources Ltd	B2Gold Corp	Scheme	Metals and mining	\$615m



Target	Bidder	Type	Industry	Value
Challenger Diversified Property Group	Challenger Life Company Ltd	Bid	Real estate	\$586m
Reef Casino Trust	Aquis Casino Acquisitions Pty Ltd	Bid	Consumer services	\$216m
Westside Corporation Limited	Landbridge Energy Australia Limited	Bid	Metals and mining	\$177m

67 Figure 3 illustrates a breakdown of the types of consideration offered in control transactions (excluding those approved under item 7 of s611 (item 7 transactions)) that commenced in this period. Cash was the most popular at 50%.

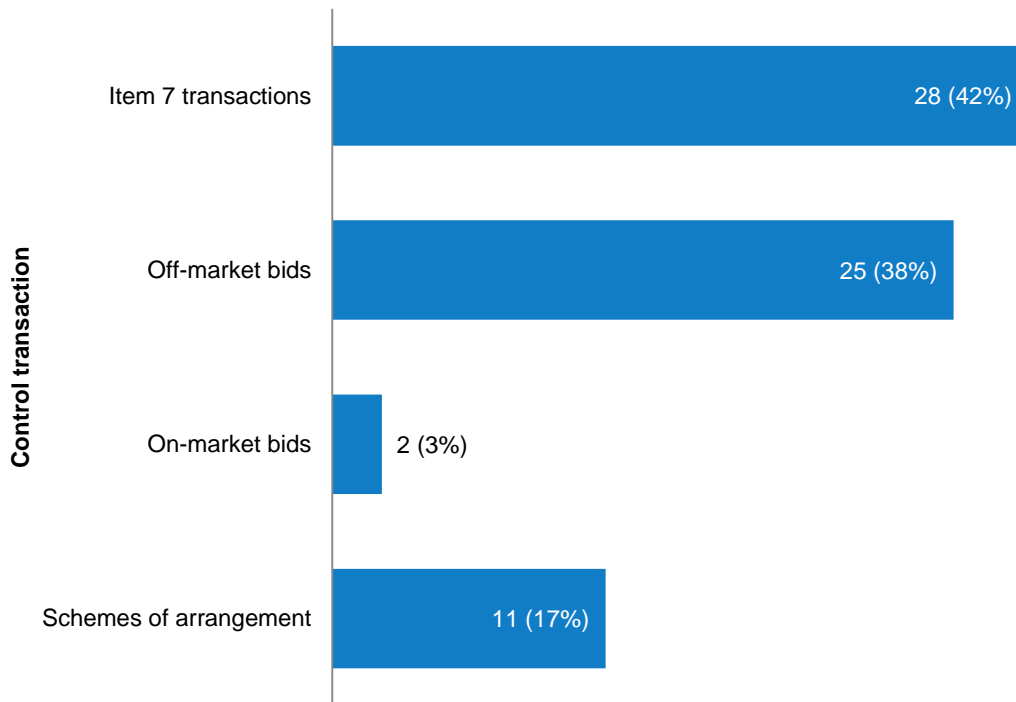
**Figure 3: Type of consideration offered in control transactions (1 January to 30 June 2014)**



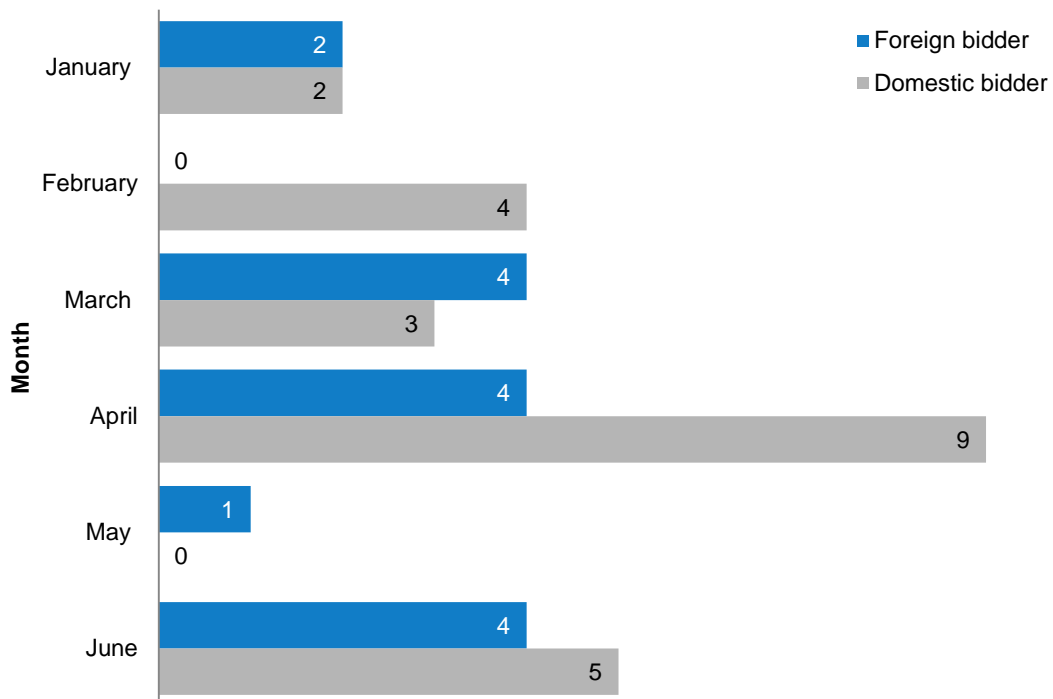
Note: Graph excludes item 7 transactions.

68 Figure 4 illustrates that item 7 transactions were most common (42%), closely followed by off-market bids.

**Figure 4: Control transactions by type (1 January to 30 June 2014)**



**Figure 5: Number of foreign and domestic (by bidder) schemes and bids by month (1 January to 30 June 2014)**



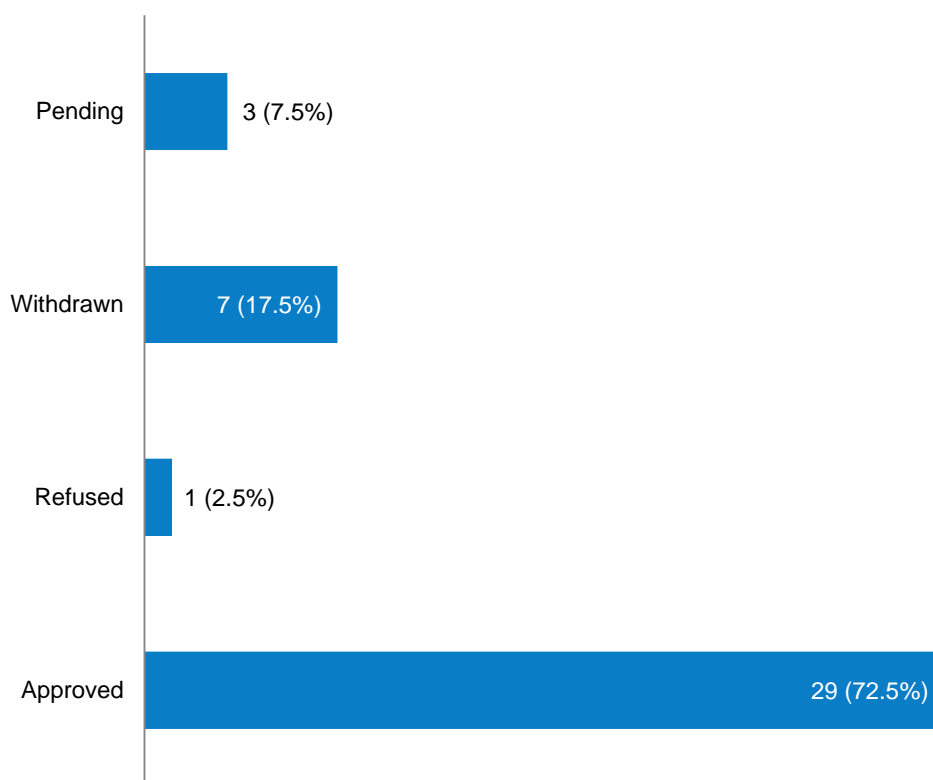
69 During this period, 15 out of 38 (39%) schemes of arrangement and takeover bids involved foreign acquisition of ASX-listed entities. In the last three years, foreign acquisitions as a proportion of all acquisitions have consistently been around 35% to 40%. Of those 15 foreign acquisitions, the

main countries of bidder origin were China (three), Singapore, South Africa, and Hong Kong (two each), the United Kingdom, Germany, the United States, Canada, Jersey, and the British Virgin Islands (one each).

### Applications for relief

70 We received 40 applications for relief under s655A during this period. This is down from 61 applications received in previous period, which is consistent with the decline in public mergers and acquisitions activity seen in this period.

**Figure 6: Results of applications under s655A (1 January to 30 June 2014)**



71 ASIC publishes a regular report that provides an overview of decisions made on novel relief applications, including those made in relation to mergers and acquisitions transactions. ASIC's most recent report is REP 395.

### Court appearances in relation to schemes of arrangement

72 In addition to our usual document review process, during this period we made two court appearances to make submissions relating to the David Jones Limited scheme of arrangement. We made submissions regarding our concern that a collateral benefit was being offered to one David Jones shareholder, and that this offended the equal opportunity principle in s602(c). We also made

submissions regarding the content of the supplementary disclosure to be provided to David Jones shareholders, in particular that an independent expert report should be provided.

- 73 We also appeared in court in relation to the merger of Westfield Retail Trust with Westfield Group's Australian and New Zealand business to raise concerns about security holders being given sufficient time to consider new material information.

### **Takeovers Panel**

- 74 We made submissions in all of the 13 applications to the Takeovers Panel lodged in this period. The applications were in relation to the following matters:

- (a) PaperlinX SPS Trust;
- (b) Tranzact Financial Services Limited;
- (c) Agricultural Land Trust;
- (d) Dragon Mining Limited;
- (e) Lantern Hotel Group;
- (f) Argosy Minerals Limited;
- (g) Bullabulling Gold Limited;
- (h) Gondwana Resources Limited;
- (i) Dampier Gold Limited;
- (j) Northern Iron Limited;
- (k) Ambassador Oil and Gas Limited [No 1];
- (l) Sherwin Iron Limited; and
- (m) Ambassador Oil and Gas Limited [No 2].

- 75 We did not initiate any Takeovers Panel applications during this period.

### **ASIC's review of takeover documents**

- 76 We review disclosure and monitor conduct in takeover transactions to ensure that adequate information is being provided and all relevant parties act in a way that promotes a fair and efficient market.

- 77 Where concerns are raised by us, they are often addressed with amendments to the offer structure or other action taken by the issuer. Some of the issues we have seen in this period are discussed in paragraphs 78–93.

## Abuse of takeover exceptions

- 78 In this period we encountered a number of novel transaction structures that sought to rely on an exception in s611 in a way that is technically possible, but gives rise to concerns regarding whether it meets the underlying purposes of the exception or Ch 6 generally.
- 79 We also identified a significant number of control concerns in s713 prospectuses, particularly when entities rely on the rights issue exception in item 10 of s611 and/or the underwriting exception in item 13 of s611.
- 80 Usually these structures place technical reliance on the following exceptions in s611:
- (a) item 10—we had concerns that some participants in rights offers had control intentions. This is an abuse of the rights issue exception;
  - (b) item 13—we had concerns that some underwriting arrangements involved little assumption of risk by the underwriter or the underwriter had control intentions;
  - (c) item 4—we had concerns that some scrip takeovers resulted in a reverse takeover by a person; and
  - (d) item 14—we had concerns that some downstream acquisitions may have resulted in an inappropriate change of control.
- 81 In this period, we raised concerns about pro rata rights offers when:
- (a) entities did not have a reasonable dispersion strategy implemented to minimise the extent of any potential shortfall or control being passed to an underwriter or substantial holder; and
  - (b) foreign nominees attempted to waive their liability if they fail to sell the rights or shares issued to them under the offer. As foreign nominees are required under the Corporations Act to sell the rights or shares issued to them, this liability cannot be waived.
- 82 However, our concerns are not limited to transactions that rely on these exceptions.
- 83 As an example, during this period we raised concerns with an announced proportional cash bid that was at a discount to market price. The bidder's statement noted that the bidder had agreed to offset the debts of a particular target shareholder and associates in lieu of payment for shares accepted by that holder in to the bid. We queried the pre-bid arrangements and raised concerns that the transaction was in fact more in the nature of an acquisition from the debtor that would usually be approved by shareholders under item 7.
- 84 We also raised concerns when deal proponents sought to rely on different exceptions in combination. An example, noted in Regulatory Guide 74

*Acquisitions approved by members* (RG 74), is where a placement to an acquirer to be approved under item 7 is inter-conditional with another control transaction, such as a bid by the acquirer.

85 In most instances, changes to the offer structure were made in response to our comments.

86 When we consider transactions that may affect control of an entity, we will take into account broader structural issues as well as disclosure issues. We encourage parties proposing potentially novel deal structures to consult with us early in the process.

## **Independent expert reports in item 7 transactions**

### **'Not fair but reasonable' opinions**

87 Historically, when providing their reports in item 7 transactions, experts have simply compared the effective issue price of the capital raising with the control value of the security, rather than considering the *actual position* of the non-associated shareholder before (on a control basis) and after the transaction (on a minority basis) to reflect that control is passing.

88 We have communicated our concerns about the approach taken when considering the 'fairness' opinion. We have noted that experts are now applying the latter methodology, which is more consistent with Regulatory Guide 111 *Content of expert reports* (RG 111).

89 As a result, during this period we have seen an increase in 'not fair but reasonable' findings for item 7 transactions. We continue to carefully review these types of reports to ensure appropriate valuation methodologies are being applied.

### **Valuation of convertible notes**

90 ASIC has observed that some mining companies in financial distress are being recapitalised using convertible notes with control implications. These instruments have unique and complex features; not only can the holder gain control through conversion, there are additional costs to the company (and indirectly other shareholders), such as various 'arrangement' fees and interest payments. In addition, the extent and timing of possible dilution can be variable and uncertain.

91 We continue to monitor these types of expert reports to ensure that experts are fully considering all these potential valuation issues.

## Disclosure of professional fees

- 92 As with bidder's statements, we expect explanatory statements for schemes of arrangement to disclose a breakdown of all professional and adviser fees when the offer consideration is scrip.
- 93 It is not acceptable for advisers to remove references to their names in the explanatory statement to circumvent this requirement, and we have raised this issue with advisers during this period.

## Enforcement action

- 94 Following on from the release of our updated takeovers guidance in 2013,<sup>4</sup> during our day-to-day surveillance and monitoring of transactions we are continuing to focus on identifying takeovers matters that may warrant enforcement action.
- 95 We seek to address our concerns relating to takeovers in the most cooperative and least commercially disruptive manner that the circumstances, and our regulatory objectives, allow. However, our teams will refer matters to our Enforcement teams when we consider further ASIC action is necessary.
- 96 A number of significant enforcement matters from this period are set out in paragraphs 97–104.

### Choiselat

- 97 In December 2013 ASIC brought a number of charges against Paul Choiselat, a former director of Q Ltd and Jumbuck Entertainment Ltd, including charges alleging that disclosure of Mr Choiselat's interests were false because the disclosure excluded interests held through offshore entities registered in the British Virgin Islands and managed from Hong Kong. Proceedings have not yet commenced. For more information, see Media Release (13-327MR) *Managing director charged with 'share warehousing' and market manipulation offences* (6 December 2013).

### Mariner

- 98 In April 2014, ASIC commenced civil penalty proceedings against Mariner Corporation Limited and its current and former directors, seeking financial penalties and disqualification orders in connection with Mariner's bid for Austock Group Limited. ASIC is alleging that:
- (a) Mariner's bid was reckless because the company didn't have the resources to meet its obligations under the bid;

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<sup>4</sup> Media Release (13-148MR) *ASIC releases consolidated guidance on takeovers* (21 June 2013).

- (b) the bid announcement was misleading because the bid was at a price less than permitted by the minimum bid price rule; and
- (c) the directors breached their duties by failing to give sufficient consideration to the steps that needed to be taken before making the announcement.

99 For more information, see Media Release (14-067MR) *ASIC takes civil action against Mariner and its directors* (3 April 2014).

### **Northwest Resources**

100 ASIC brought civil proceedings some time ago in relation to a substantial parcel of shares in Northwest Resources Limited, an ASX-listed entity.

101 In April 2014, ASIC obtained orders from the Federal Court under s1325A cancelling 15 million shares in Northwest Resources (over 11% of the issued capital), in which no person claimed to have a relevant interest.

102 The holding was registered in the name of a Hong Kong based company. In response to beneficial tracing notices issued by ASIC, the Hong Kong company stated that it was a nominee and that two people had relevant interests in, or had given instructions in relation to the parcel. However, in response to further tracing notices issued to those two people, both stated that they did not have relevant interests in the parcel.

103 ASIC's action in this case was prompted by our concern that the market was not fully informed about the identity and dealings of people who may have influence over the affairs of a listed company.

104 For more information, see Media Release (14-076MR) *ASIC obtains orders cancelling 15 million shares held in Northwest Resources Limited* (11 April 2014).

## **ASIC policy initiatives**

### **Independence of experts**

105 We have renewed our focus on our policy in Regulatory Guide 112 *Independence of experts* (RG 112).

106 We are concerned that some experts may not be routinely keeping adequate records of communications with commissioning parties and their advisers, which can demonstrate how the expert has maintained independence throughout the course of an engagement. These records can be vital if independence is called into question.



- 107 It is important that all staff involved in engagements are aware of their responsibilities as they apply to independence, and it is vital that they understand how to preserve independence in a practical sense throughout the various stages of a transaction. Independence must be preserved through the entire course of an engagement, irrespective of any transaction or engagement pressures.
- 108 To review compliance with RG 112, we have and will continue to randomly select engagement files across independent expert firms throughout 2014. These reviews examine communications between the expert and commissioning parties. To minimise the impact on transactions, these are undertaken following completion of an engagement, unless independence appears to be an issue during the course of the transaction.
- 109 In March 2014, letters were sent to all active independent expert firms making them aware of these reviews.

### **Substantial holder notices**

- 110 Following the release of guidance on substantial holding disclosure in Regulatory Guide 5 *Relevant interests and substantial holding notices* (RG 5) last year, we have continued our focus on this area through surveillance activities and stakeholder engagement. In particular, we have made submissions in relation to applications to the Takeovers Panel that have focused on substantial holder notices.
- 111 A primary concern we have identified relates to disclosure of the nature of a person's relevant interest in the securities, including the capacity in which the person holds their relevant interest. If a person holds their relevant interests in a number of different capacities, the disclosure must include a detailed breakdown of each portion of the overall holding, listing the nature of each relevant interest, to provide meaningful information about the nature and extent of a substantial holder's relevant interests in, and influence over, the securities forming part of the substantial holding.
- 112 Another issue has been the need for substantial holding notices to be accompanied by copies of the agreements that created the relevant interest. When we engage with substantial holders on this issue, we consider the guiding principle is to provide disclosure that is helpful to the market about the interests and dealings of persons who have the ability to control or significantly influence the affairs of a listed entity.
- 113 Revisions to the substantial holding forms prescribed by the Corporations Act have recently been considered by ASIC in connection with our deregulation focus, and are discussed at paragraph 156(b)(iv) of this report.

## C Corporate governance

### Key points

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

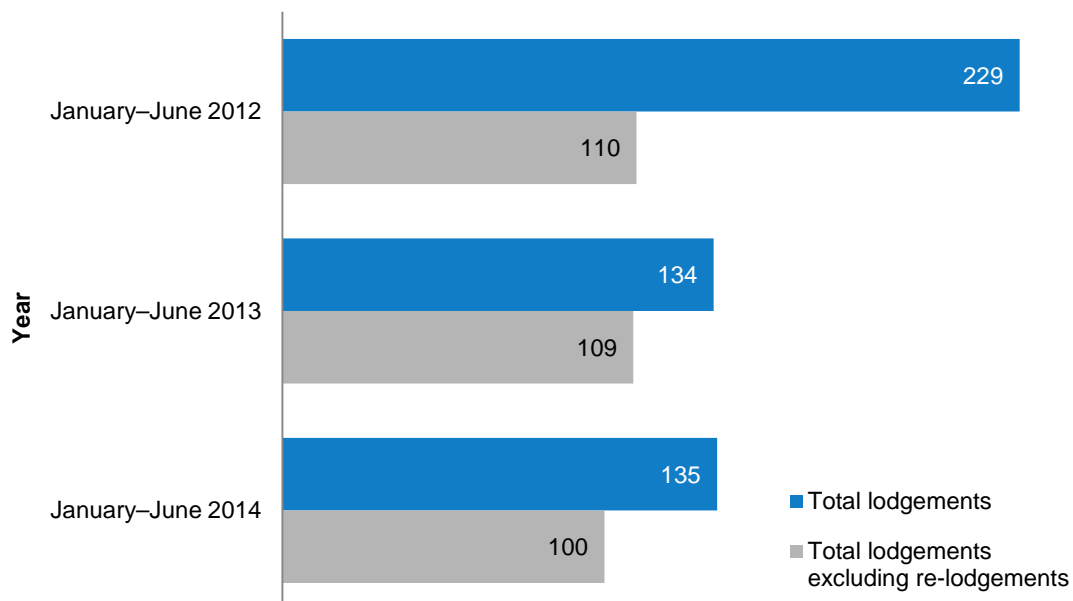
- related party transactions;
- director share trading;
- analyst briefings and confidential information;
- employee incentive schemes; and
- collective action by institutional shareholders.

### Statistics and observations

#### Related party notices

- 114 In this period, we received 135 related party approval notices under s218, of which a significant number requested we abridge the 14-day review period.
- 115 Figure 7 sets out the number of related party approval notices we received in this period.

**Figure 7: Related party approval notices (1 January to 30 June)**



## Industry liaison

### Director share trading

- 116 At the request of the then Assistant Treasurer, the Hon Arthur Sinodinos AO, ASIC held a roundtable on 14 March 2014 to consider:
- (a) current market practice regarding director share trading in Australia and related aspects of market integrity; and
  - (b) forthcoming ASIC findings on the handling of confidential information by listed companies.<sup>5</sup>
- 117 The roundtable was held at ASIC's offices at 100 Market Street, Sydney, and was attended by ASX and a number of industry professional bodies.
- 118 ASIC was requested to report to the then Assistant Treasurer on the outcomes of the roundtable. This report was forwarded in May 2014. At present, the contents of the report are not public.
- 119 Independent of the roundtable, we have set out the following key messages in relation to director share trading:
- (a) Directors who seek to trade shares in the company need to be careful; because of their position they may well have access to market-sensitive information about the company. Before trading, directors should determine whether they have material, market-sensitive information that is not generally available. We expect directors to understand their obligation not to engage in insider trading.
  - (b) Directors play an important role in ensuring that our market is fair and efficient. Trading behaviour by directors can damage market confidence as well as the director's own reputation.
  - (c) We encourage directors to apply the 'front page' test regarding any trading.<sup>6</sup> Share trades by directors are subject to more scrutiny because of the expectation that they have material, market-sensitive information the rest of the market does not. Perceptions that directors are profiting unfairly from their position negatively affects market confidence.
  - (d) Companies should have a share trading policy that sets out when directors and key executives are prohibited from trading shares. As well as understanding the policy, directors and those administering the policy need to understand and act in accordance with the rationale underlying the policy.

<sup>5</sup> The Hon Arthur Sinodinos AO, Assistant Treasurer, Media Release No. 008-2014, *ASIC roundtable on corporate governance*, 18 February 2014, <http://axs.ministers.treasury.gov.au/media-release/008-2014/>.

<sup>6</sup> Trading will pass the front page test if the director, their company and the market would be comfortable for news of it to be published on the front page of a major newspaper.

- (e) Compliance with a share trading policy is not the same as compliance with the law. Trading outside of a blackout period or within a trading window does not absolve directors of their liability for insider trading—directors still need to be sure that they do not have material, market-sensitive information that is not generally available.

### **Mining, oil and gas industries**

- 120 Since the release of the 2012 edition of the JORC Code and the implementation of Chapter 5 of the ASX Listing Rules on 1 December 2012, ASIC has worked, and continues to work, closely with the industry to ensure their understanding and compliance with the Corporations Act, JORC Code and the ASX Listing Rules.
- 121 ASIC's involvement on these matters was generally in response to lodged transactions or complaints, and was related to production targets, forecast financial statements and the deeming provisions in s728(2) and 769C of the Corporations Act.

### **Enforcement action**

- 122 We monitor the conduct of directors and other important gatekeepers in the financial system. Where necessary, we will refer matters to ASIC's Enforcement teams to take action against those who do not meet their obligations. For more information on corporate governance enforcement action in this period, see REP 402.

### **ASIC policy initiatives**

#### **Analyst briefings and confidential information**

- 123 In 2013 we undertook a review of:
- (a) briefings given by listed entities to analysts and institutional investors; and
  - (b) the handling of information by listed entities and their advisers prior to the announcement of a market-sensitive corporate transaction.
- 124 Our review was designed to look at two of the many possible situations where leakage of unannounced, material information is a risk.
- 125 Report 393 *Handling of confidential information: Briefings and unannounced corporate transactions* (REP 393) was published in May 2014 and sets out our findings.

- 126 We found that the existing guidance provided by ASIC, ASX and industry bodies on the handling of confidential information, is largely sound. As such, the challenge for listed companies and their advisers is to implement this guidance in accordance with its spirit.
- 127 However, we identified some concerns about how listed entities and their advisers handled confidential information prior to the announcement of a market-sensitive corporate transaction. Our concerns and recommendations are detailed in REP 393.
- 128 Two of our observations from the transactions we reviewed were that:
- (a) most of the listed entities at the smaller end of the market relied heavily on advisers to decide how information about the transaction was dealt with. We remind companies that delegation of responsibility has risks and encourage listed entities to take ownership of this issue; and
  - (b) we were concerned by the timing and number of soundings conducted by underwriters before either the announcement of the rights offer or a trading halt being requested. We consider that this is a significant risk area for leaks and insider trading.
- 129 We have engaged with industry bodies and other stakeholders about our findings.
- 130 In relation to briefings of sell-side analysts, during this period ASIC finalised its investigation into Newcrest Mining Limited and, as a result of ASIC enforcement action in July 2014, the Federal Court imposed \$1.2 million in penalties on Newcrest for breaches of continuous disclosure laws arising from selective briefings of analysts. For more information, see Media Release (14-148MR) *Newcrest ordered to pay \$1.2 million for breaching continuous disclosure laws* (2 July 2014).
- 131 In the coming months ASIC will undertake a targeted review of sell-side analysts by looking at the kind of information a sample of analysts have access to immediately prior to a material change in their reports.
- 132 ASIC will also continue our focus on the detection of insider trading and other market misconduct through our enhanced market surveillance system, Market Analysis and Intelligence.

### **Employee incentive schemes**

- 133 We are currently revising our policy in relation to employee share schemes: Regulatory Guide 49 *Employee shares schemes* (RG 49) and Class Order [CO 03/184] *Employee shares schemes*.
- 134 In late 2013 we released Consultation Paper 218 *Employee incentive schemes* (CP 218), which proposed to widen the scope of class order relief

from the disclosure, licensing, advertising, hawking and on-sale requirements for offers of financial products to a broader range of employee incentive schemes.

135 We received 20 responses to CP 218 from law firms, specialist remuneration consultants, service providers to issuers and industry associations. We are currently considering these responses. We anticipate publishing our revised class order and regulatory guide by the end of 2014. We are also considering the length of the transition period to our new class order.

### **Collective action by institutional shareholders**

136 We are reviewing our policy under Regulatory Guide 128 *Collective action by institutional shareholders* (RG 128), including the relief granted under Class Order [CO 00/455] *Collective action by institutional shareholders*.

137 RG 128 sets out our view on when institutional investors that hold shares in a company can collectively discuss their intentions about voting at a meeting of that company without becoming associates or entering into a relevant agreement, which could result in a breach of s606 of the Corporations Act.

138 It also discusses class order relief that we have granted from the takeovers and substantial holding provisions to allow two or more institutions that hold shares in a company to enter into an agreement about voting at a meeting of that company.

139 We are considering the settings of this relief in light of:

- (a) current practices of institutions and other shareholders in terms of engagement with companies; and
- (b) the need to balance the ability of shareholders to engage effectively with companies with the preservation of the right of all shareholders to a premium on the passing of control of the company.

140 We plan to issue a consultation paper in relation to the regulatory guide and class order relief towards the end of 2014.

## D Other corporate finance areas

### Key points

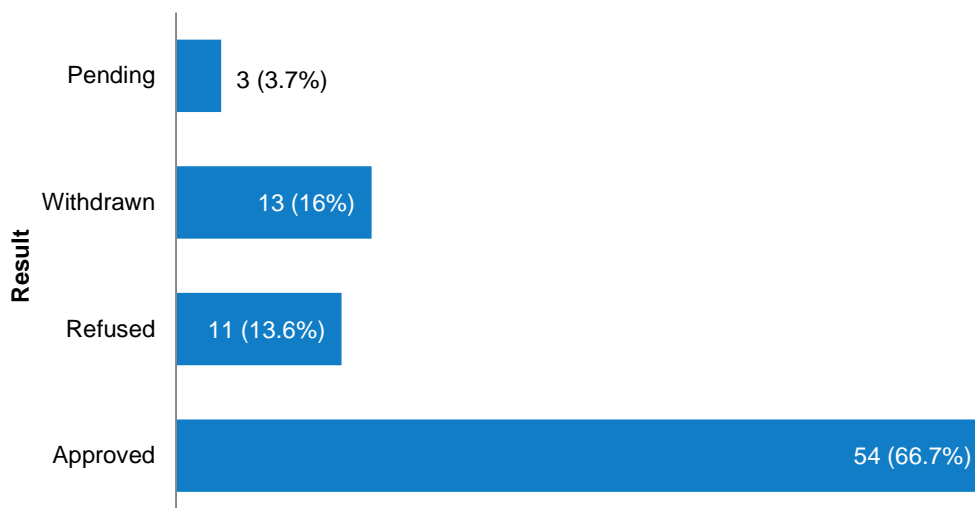
This section sets out statistics and observations from our work in other corporate finance areas that were discussed at our most recent Corporate Finance Liaison meeting held in May 2014.

### Statistics and observations

#### Financial reporting

- 141 During this period, ASIC received 100 applications for financial reporting relief (down from 148 in the previous period). These included:
- (a) 81 applications under s340;
  - (b) two applications under s111AT; and
  - (c) 17 applications for a no-action letters for financial reporting breaches.
- 142 Of the applications received under s340 and s111AT, 14 were from companies with external administrators appointed (down from 31 in the previous period, and down from 22 for the first six months of 2013). We approved 11 of the 14 applications from external administrators.
- 143 Of the 17 applications for a no-action letter, we received two applications from companies with external administrators appointed (one was approved).
- 144 We approved 54 of the 81 applications received under s340 (66.7%): see Figure 8.

**Figure 8: Results of applications under s340 (1 January to 30 June 2014)**



## Share buy-backs

- 145 There were \$3.3 billion worth of share buy-backs undertaken by 66 listed companies during this period.
- 146 We received four applications for relief in relation to share buy-backs during this period. Three applications were approved, and one was withdrawn. The relief granted included relief to treat a selective buy-back as an equal access scheme so that the buy-back could occur without shareholder approval.
- 147 In the previous year, share buy-backs totalled \$3.3 billion.

## ASIC policy initiatives

### Financial reporting

- 148 In this period, the ASIC Financial Reporting and Audit team has pursued policy initiatives relating to audit quality and auditor resignations.

### Audit quality

- 149 In March 2014, ASIC released Information Sheet 196 *Audit quality: The role of directors and audit committees* (INFO 196), which provides assistance to directors and audit committees in their role in ensuring the quality of the external audit of a financial report. It explains:
- (a) why audit quality is important;
  - (b) the responsibilities of the auditor;
  - (c) the roles of directors and audit committees;
  - (d) the responsibilities of directors for auditor independence;
  - (e) who should manage the appointment of auditors;
  - (f) what matters should be considered in setting audit fees; and
  - (g) what directors and audit committees can do to promote audit quality.
- 150 INFO 196 is relevant to audit committee members and to directors, whether or not they are members of a company's audit committee.

### Auditor resignations

- 151 Under s329(6), the auditor of a public company can only resign with our consent. ASIC's current policy is to consent to the resignation of an auditor at the next annual general meeting, unless there are exceptional circumstances. In May 2013, ASIC released Consultation Paper 209 *Resignation, removal and replacement of auditors: Update to RG 26* (CP 209), which sought comments on whether we should change the policy



so that auditors may resign at any time, unless there is some evidence (such as disagreements with management on accounting treatments) to suggest that we should not give consent to the resignation.

152 We have decided to change our policy approach. Consent would be conditional on disclosures to the market or members about the details of both the resigning and incoming auditor, and the reason for the change.

153 This would allow more flexibility for public companies. We also proposed similar improvements for changes of auditors of managed investment scheme financial reports and compliance plans, AFS licensees and credit licensee trust accounts.

154 The Financial Reporting and Audit team is currently finalising our policy and intend to release an updated Regulatory Guide 26 *Resignation of auditors* (RG 26) later this year.

### **Deregulation initiatives**

155 In May 2014, ASIC published Report 391 *ASIC's deregulatory initiatives* (REP 391) which outlined ongoing and new initiatives to cut red tape and lower compliance costs for the regulated population.

156 While many of the initiatives are in areas such as financial services licensing and business names registration, there are a number of proposals that may be relevant to stakeholders of the Corporations and EMR teams:

- (a) To reduce regulatory burden for individuals and businesses, we are considering streamlining ASIC's forms. A preliminary analysis has identified that approximately 10% of forms could be removed, consolidated or streamlined.
- (b) We have identified a number of potentially redundant or no longer justified legislative and regulatory provisions, and provisions that might be reformed to reduce business compliance costs. Some of the initiatives we are pursuing that would require legislative reform are:
  - (i) the simplification of the financial reporting relief for wholly owned entities subject to a deed of cross guarantee, currently in Class Order [CO 98/1418] *Wholly-owned entities*, by incorporating this relief into the legislation;
  - (ii) consulting on whether there is a need for a legislative amendment to allow market stabilisation activities in appropriate circumstances. We note that this would be consistent with a number of other jurisdictions, such as the United States, Hong Kong, New Zealand and the United Kingdom;

- (iii) replacing the requirement for an unlisted disclosing entity to lodge continuous disclosures with ASIC with a requirement to instead publish disclosures on the entity's website; and
  - (iv) exploring whether the content of the substantial holding forms prescribed by the Corporations Act can be amended so that the forms provide information necessary for the market in a way that is simpler to understand and easier to complete.
- (c) We are exploring the regulatory and commercial barriers that inhibit electronic delivery of disclosure.
- (d) Our class order sunseting project, which is discussed at further paragraphs 56–64 and in REP 391.
- 157 REP 391 invited initial feedback from businesses and individuals about the effectiveness of the measures we have adopted and what further actions or initiatives could be taken. ASIC received 27 submissions on the report, most of which were supportive of our initiatives. Several additional forms for possible streamlining were identified, along with approximately 70 new deregulatory ideas. We are currently considering this feedback.

## Relief applications and lodgement

### ASIC's report on relief applications

- 158 We published our periodic report on relief applications in May 2014. REP 395 covers relief decisions considered during the period 1 October 2013 to 31 January 2014 by teams throughout ASIC. It is intended to provide examples of decisions that demonstrate how we have applied our policy in practice.

### Cost savings

- 159 ASIC is participating in a broader government initiative to understand the role we play in assisting the business community in doing business in Australia. We have been asking for information about costs that companies believe will be saved by obtaining relief.

### Self-service kiosks

- 160 On 1 July 2014, ASIC Service Centres in all ASIC offices became a kiosk-based service for lodging online or dropping off documents.
- 161 These self-service kiosks provide:
- (a) access to computers to transact online;

- (b) a hotline to the Client Contact Centre;
- (c) transitional support; and
- (d) online user guides.

162 There is also a secure lodgement box for paper lodgements at the kiosk, which is cleared several times a day.

163 Documents lodged with ASIC are deemed to have been received on the date they are placed in the lodgement box and are stamped with that date. However, no receipts are provided at the kiosks.

164 The kiosk will not accept cash over the counter or in the lodgement box. Payments can only be made in cheque.

## Key terms

Term	Meaning in this document
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services  Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act  Note: This is a definition contained in s761A.
ASIC	Australian Securities and Investments Commission
CDI (CHES Depository Interest)	A unit of beneficial ownership in a financial product of a foreign body, where the underlying financial product is registered in the name of a depository nominee for the purpose of enabling the foreign financial product to be traded on ASX
Ch 6D	A chapter of the Corporations Act (in this example numbered 6D), unless otherwise specified
[CO 14/26]	An ASIC Class Order (in this example numbered 14/26)
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
CP 211 (for example)	An ASIC consultation paper (in this example numbered 211)
employee incentive scheme	A scheme under which offers of eligible products may be made to participants, where the objective of the offer is not fundraising, but to support the interdependence between employees and their employer
EMR team	Emerging Mining and Resources team
FCA	Financial Conduct Authority (UK)
item 7 (for example)	An item of s611 of the Corporations Act (in this example numbered 7)
item 7 transactions	Control transactions that fall under the exception in item 7
JORC Code	Australasian Code for Reporting of Explorations Results, Minerals Resources and Ore Reserves
previous period	1 July to 31 December 2013
REP 391 (for example)	An ASIC report (in this example numbered 391)
RG 228 (for example)	An ASIC regulatory guide (in this example numbered 228)

<b>Term</b>	<b>Meaning in this document</b>
s674 (for example)	A section of the Corporations Act (in this example numbered 674), unless otherwise specified
this period	1 January to 30 June 2014

## Related information

### Headnotes

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

### Class orders

[CO 98/1418] *Wholly-owned entities*

[CO 00/455] *Collective action by institutional shareholders*

[CO 03/184] *Employee shares schemes*

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

[SCO 00/44] *Electronic disclosure documents*

### Regulatory guides

RG 5 *Relevant interests and substantial holding notices*

RG 49 *Employee share schemes*

RG 55 *Statements in disclosure documents and PDSs: Consent to quote*

RG 66 *Transaction-specific disclosure*

RG 72 *Foreign securities prospectus relief*

RG 74 *Acquisitions approved by members*

RG 107 *Fundraising: Facilitating electronic offers of securities*

RG 111 *Content of expert reports*

RG 112 *Independence of experts*

RG 128 *Collective action by institutional shareholders*

RG 152 *Lodgement of disclosure documents*

RG 228 *Prospectuses: Effective disclosure for retail investors*

### Legislation

Corporations Act, Ch 2M, 6, 6D, s111AT, 218, 329(6), 340, 602(c), 606, 611, 631, 655A, 710, 713(6), 728(2), 741,769C, 1325A

*Legislative Instruments Act 2003*

## **Consultation papers and reports**

CP 209 *Resignation, removal and replacement of auditors: Update to RG 26*

CP 211 *Facilitating electronic offers of securities: Update to RG 107*

CP 218 *Employee incentive schemes*

CP 220 *Fundraising: Facilitating offers of CHESS Depository Interests*

REP 368 *Emerging market issuers*

REP 384 *Regulating complex products*

REP 385 *Response to submissions on CP 211 Facilitating electronic offers of securities: Update to RG 107*

REP 391 *ASIC's deregulatory initiatives*

REP 393 *Handling of confidential information: Briefings and unannounced corporate transactions*

REP 395 *Overview of decisions on relief applications (October 2013 to January 2014)*

REP 400 *Responses to feedback on REP 384 Regulating complex products*

REP 402 *ASIC enforcement outcomes: January to June 2014*

## **Media and other releases**

13-148MR *ASIC releases consolidated guidance on takeovers*

13-327MR *Managing director charged with 'share warehousing' and market manipulation offences*

14-067MR *ASIC takes civil action against Mariner and its directors*

14-076MR *ASIC obtains orders cancelling 15 million shares held in Northwest Resources Limited*

14-103MR *Former Perth director jailed for providing false and misleading information*

14-148MR *Newcrest ordered to pay \$1.2 million for breaching continuous disclosure laws*