



ASIC

Australian Securities & Investments Commission

REPORT 469

ASIC regulation of corporate finance: July to December 2015

February 2016

About this report

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

It highlights and discusses key statistical information, observations and our work in the regulation and oversight of fundraising, mergers and acquisitions transactions, corporate governance, and other general corporate finance areas for the period 1 July to 31 December 2015.

About ASIC regulatory documents

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

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

Regulatory guides: give guidance to regulated entities by:

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

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

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

Disclaimer

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

Previous reports on regulation of corporate finance

Report number	Report date
REP 446	August 2015
REP 423	February 2015
REP 406	August 2014

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Overview

Regulation of corporate finance activity

- 1 ASIC is responsible for the regulation and oversight of public 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 incentive 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 We also engage with stakeholders, conduct targeted surveillances of identified risk areas, publish regulatory guides, and assist with enforcement activities in relation to corporate finance.
- 4 The EMR team is located in Perth. The Corporations team is based in Sydney, Melbourne and Brisbane.

Corporate Finance Liaison meeting

- 5 We hold 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.
- 7 This report covers issues to be discussed at our March 2016 Corporate Finance Liaison meetings.

The purpose of this report

- 8 The purpose of this report is to provide greater transparency about the role that ASIC plays in the regulation of corporations in Australia.
- 9 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 July to 31 December 2015 (this period).
- 10 The report provides limited commentary on applications for relief from certain parts of the Corporations Act. Please see our regular reports on our relief decisions for more detailed information on novel relief applications.
- 11 We published the most recent report on our relief decisions in February 2016: see Report 467 *Overview of decisions on relief applications (June to September 2015)* (REP 467).
- 12 The report provides an overview of some enforcement action that may be of interest to our stakeholders. Please see our regular reports on enforcement outcomes for more detailed information on enforcement action conducted by ASIC.
- 13 We published the most recent report in August 2015: see Report 444 *ASIC enforcement outcomes: January to June 2015* (REP 444).

A Fundraising

Key points

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

Excluding replacement and supplementary documents, a substantially greater number of disclosure documents have been lodged with ASIC than in the previous period.

We have intervened in a number of cases to improve the disclosure provided to help investors make an informed investment decision.

In this period we undertook a number of regulatory initiatives in relation to financial information, emerging market issuers, and the sunseting of class orders.

Statistics and observations

- 14 In this period there was a 39.8% increase in the number of disclosure documents¹ lodged with ASIC (compared to the period 1 January to 30 June 2015 (previous period)), and an increase in applications for relief from Ch 6D: see Figure 2. However, there was a decrease in the offer size compared to the previous period. For details of historical lodgements, see Figure 9 in Appendix 1.
- 15 Table 1 depicts the top 10 public fundraising transactions by value of the offer, based on disclosure documents lodged with ASIC in this period. Similarly to the previous two periods, hybrid securities again make up a notable portion of these fundraisings.

Table 1: Top 10 primary fundraising transactions under a prospectus by value (1 July to 31 December 2015)

Issuer	Date of lodgement	Value	Industry	Security type
Westpac Banking Corporation	27/07/2015	\$1320m	Banks	Hybrid securities
Link Administration Holdings Limited	30/09/2015	\$946m	Software and services	Ordinary shares

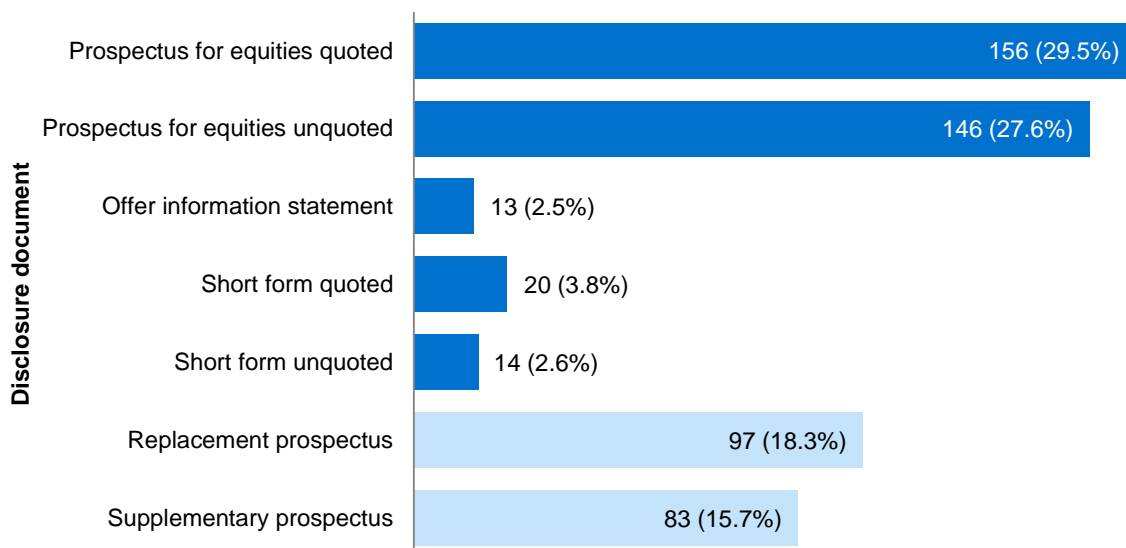
¹ This figure excludes replacement and supplementary disclosure documents. This figure also excludes low document fundraisings conducted by listed entities.

Issuer	Date of lodgement	Value	Industry	Security type
Platinum Asia Investments Limited	27/07/2015	\$600m	Diversified financials	Ordinary shares
Macquarie Group	23/11/2015	\$531m	Banks	Hybrid securities
IDP Education Limited	12/11/2015	\$331m	Consumer services	Ordinary shares
Wellard Limited	20/11/2015	\$298m	Food, beverage and tobacco	Ordinary shares
AMP Limited	26/10/2015	\$267m	Insurance	Hybrid securities
Australian Unity Limited	09/11/2015	\$250m	Life and health insurance	Bonds
Vitaco Holdings Group Limited	24/08/2015	\$231m	Household and personal products	Ordinary shares
Pepper Group Limited	17/07/2015	\$144m	Diversified financials	Ordinary shares

Note: Apart from fundraising transactions where hybrid securities were issued, the value of the fundraising transactions have been taken from the original prospectus lodged, and may not reflect the final total amount raised.

16 Figure 1 illustrates the number of disclosure documents (by type) lodged with ASIC in this period. Eighty-six initial public offering (IPO) disclosure documents were lodged during this period, and rights issues and entitlement offer prospectuses were the most common type of disclosure documents lodged with ASIC.

Figure 1: Number of disclosure documents by type (1 July to 31 December 2015)

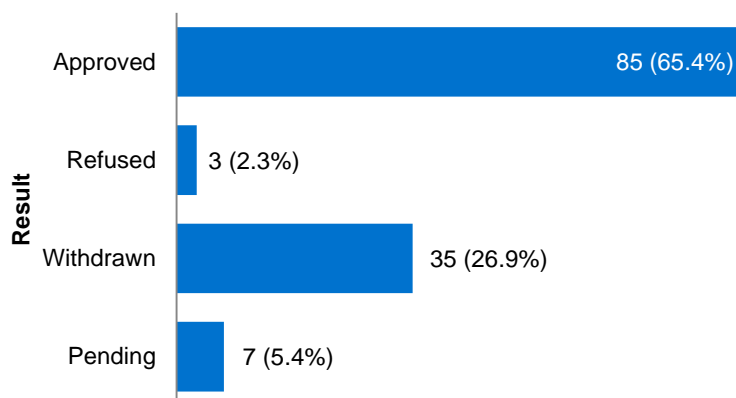


Note: Original lodgements are shown in dark blue, with documents supplementing the original lodgements shown in light blue.

Applications for relief

- 17 During this period, we received 130 applications for relief under s741 of the Corporations Act. Of the 130 applications, we granted relief for 85 applications (65.4%): see Figure 2.

Figure 2: Results of applications under s741 (1 July to 31 December 2015)



- 18 We publish a regular report that provides an overview of decisions made on novel relief applications, including those made in relation to fundraising transactions. Our most recent report is REP 467.

ASIC's review of prospectuses

- 19 The Corporations and EMR teams review prospectuses and other disclosure documents for offers of securities, which are required to be lodged with ASIC under Ch 6D.

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

- 20 As a result of our review of prospectuses and offer documents lodged with ASIC under s718, in this period we:
- raised disclosure concerns with over 37% of the documents lodged—subsequently, changes were made to over 79% of the documents where concerns were raised (or over 29% of all documents lodged);
 - extended the exposure period 55 times—up from 30 times in the previous period;

- (c) issued 25 interim stop orders in relation to 18 offers² (7.2% of all offers) and four final stop orders³ (1.2% of all offers)—we issued 24 interim stop orders and eight final stop orders in the previous period; and
- (d) revoked 12 interim stop orders⁴—we revoked 14 interim stop orders in the previous period.

21 Overall, we extended more exposure periods and issued one more interim stop order than in the previous period. Although there was a general increase in fundraising activity, we issued fewer final stop orders in this period than the previous period.

Disclosure concerns

22 In our review of prospectuses lodged with ASIC during this period, we noted concerns, requested amended disclosure or intervened in offers of securities where there was:

- (a) inappropriate disclosure of financial information and company solvency (over 10% of all prospectuses lodged, which is down from the previous period); and
- (b) improper disclosure of forecast financial information (in 4% of prospectuses lodged, slightly down from 4.8% in the previous period).

23 We discuss our expectations around disclosure of financial information in prospectuses further at paragraphs 28–34.

24 We 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 identified in over 6% of prospectuses (down from 10% in the previous period). These concerns are primarily identified in prospectuses for rights offers; and
- (b) related party issues were evident in over 3% of prospectuses (up from 2% in the previous period).

² The interim stop orders were issued to iBosses Corporation Limited, Bitcoin Group Ltd, Latitude Consolidated Limited, Siburan Resources Limited, UXA Resources Ltd, Mazu Alliance Limited, Wonhe Multimedia Commerce Ltd, P-Fuel Ltd, Koolsee New Media Group Ltd, Wild Acre Metals Limited, Recce Limited, Galicia Energy Corporation Ltd, Alphantise Limited, Riddock International Limited, IVS Holdings Ltd, BGD Corporation Ltd, Conquest Agri Limited and King of Gold Group Co. Ltd.

³ The final stop orders were issued to Mazu Alliance Limited, Latitude Consolidated Limited, Henry Morgan Limited and Wild Acre Metals Limited.

⁴ We revoked the interim stop orders on Dongfang Modern Agriculture Holding Group (interim stop order issued in previous period), Siburan Resources Limited, iBosses Corporation Limited, Bitcoin Group Ltd, Mazu Alliance Limited, UXA Resources Ltd, Koolsee New Media Group Ltd, Wonhe Multimedia Commerce Ltd, Recce Limited, Alphantise Limited and Wolfstrike Rentals Group Limited (interim stop order issued in previous period).

- 25 We also raised a number of disclosure concerns in this period regarding:
- (a) funding or financing (in almost 7% of prospectuses lodged, down from 8% in the previous period);
 - (b) 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 (2% of prospectuses lodged).
- 26 We identified a number of other common disclosure concerns, such as companies failing to:
- (a) adequately disclose their business model;
 - (b) provide ‘clear, concise and effective’ disclosure;
 - (c) disclose material contracts;
 - (d) provide adequate risk disclosure—the disclosure is either insufficiently prominent in the prospectus or is not tailored to the company’s circumstances; and
 - (e) obtain consent from an entity or individual to whom they have expressly or impliedly attributed consent.
- 27 In most instances, changes were made to the disclosure in response to our concerns.

Financial information in prospectuses

- 28 We continue to raise concerns about the quality and quantity of financial information provided to prospective investors in a significant proportion of offers. During this period, we focused on:
- (a) pro-forma adjustments made to both forecast and historical financial information; and
 - (b) the use of forward-looking statements.

Forecast pro-forma adjustments

- 29 Where a prospectus includes forecast financial information, we consider that the only acceptable pro-forma adjustments to that information are for certain, one-off costs such as IPO-related costs.
- 30 From time to time we see pro-forma adjustments to forecast financial information that seek to normalise trading in the forecast period. For example, by adjusting for planned restructuring costs to be incurred in the forecast period. By removing these costs, the issuer is attempting to show the performance of the business as if the restructuring costs had been incurred before the commencement of the forecast period, as they consider the costs to be ‘one off’. We do not consider such adjustments to be appropriate, as

the pro-forma forecast becomes 'hypothetical'. The business will never realise the pro-forma forecast. This is potentially misleading and contrary to the guidance in Regulatory Guide 170 *Prospective financial information* (RG 170), which does not distinguish between actual forecasts and pro-forma forecasts. Issuers should be aware that pro-forma adjustments typically made to historical accounts are not necessarily appropriate for forecasts.

Historical pro-forma adjustments

- 31 Many prospectuses we review include adjustments to historical financial information for material historical acquisitions. This is generally on the basis that these are one-off costs. However, where it is a part of an issuer's business model to make multiple acquisitions each year, we do not automatically accept that such an adjustment is necessarily appropriate. This is the case even where the adjustment is referred to as a 'significant item' (or similar) instead of a pro-forma adjustment.

Use of forward-looking statements

- 32 In this period we raised concerns with an issuer that it did not have reasonable grounds for forward-looking statements and prospective financial information contained in its prospectus.
- 33 The issuer agreed to provide a replacement disclosure document that removed the prospective financial information and made amendments to the forward-looking statements. The issuer also agreed to obtain an independent industry expert report on the issuer's business operations.
- 34 We are of the view that under s710, an independent industry expert report was reasonably required by investors to make an informed assessment of the prospects of the company. An issuer may need to obtain an independent industry expert report to establish reasonable grounds for prospective financial information and forward-looking statements. An independent industry expert may particularly be needed where an issuer has a limited trading history or is engaged in an industry in its infancy.

Offer information statements

- 35 As illustrated by Figure 1, only 13 offer information statements were lodged during the period. We encourage issuers to consider using an offer information statement for employee incentive schemes and other small offers. However, it would not be appropriate to use an offer information statement for offers to the public of securities that are complex and risky, such as hybrid securities. This is because offer information statements necessarily involve investors being provided with less information than would be required in a prospectus for the same offer. See Report 365 *Hybrid securities* (REP 365) for more information about hybrid prospectus disclosure.

Fundraising trends

Simple corporate bond offer

- 36 Australian Unity Limited, an ASX-listed health insurer and mutual fund, recently launched Australia's first offer of simple corporate bonds to retail investors under the new simple corporate bonds legislation.
- 37 The simple corporate bonds legislation (which is found in s713A–713E) was introduced in December 2014. It is designed to encourage the issue of corporate bonds and establish a liquid retail debt market in Australia while ensuring that investor protections are maintained.
- 38 The legislation includes simplified and streamlined disclosure requirements. These permit issuers to prepare a two-part prospectus that contains information relevant to retail investors investing in simple corporate bonds.
- 39 Under the legislation, issuers must disclose prescribed financial ratios (which include the interest cover ratio, working capital ratio and gearing ratio), calculated in accordance with the formula in the Corporations Regulations 2001. These ratios provide useful information to help investors evaluate an issuers' ability to meet their obligations under the bonds and facilitate comparability between issuers. In our reviews we will focus on whether the prescribed ratios are clearly disclosed and explained.
- 40 The simple corporate bonds legislation also permits the use of incorporation by reference to help issuers prepare prospectuses that are concise and focused on the key information that is relevant to an offer of simple corporate bonds.

Backdoor listings

- 41 We continue to see the 'backdoor listing' of technology and services companies through struggling resource companies. We saw an increase in the number of prospectuses lodged for backdoor listings in the six months to 31 December 2015. This is because many ASX-listed companies that had been suspended for long periods of time faced automatic removal from the official list of the ASX in accordance with the policy set out in ASX Guidance Note 33 *Removal of entities from the ASX official list*. Under ASX's policy, companies were scheduled to be removed from 1 January 2014, with a grace period until 1 January 2016: see ASX Listing Rule 17.12 and paragraph 3.4 of ASX Guidance Note 33.
- 42 As discussed in REP 446, we continue to identify significant disclosure concerns with the majority of backdoor listing transactions, and we are maintaining our regulatory focus on these transactions.

Emerging market issuers

- 43 During this period we continued to see a number of public fundraisings by emerging market issuers whose business and management is primarily located in an emerging foreign market. The keys risks associated with investing in emerging market issuers are discussed in Report 368 *Emerging market issuers* (REP 368) and REP 446.
- 44 An issue of focus in this period has been the use of variable interest entity (VIE) structures by emerging market issuers from China.
- 45 VIE structures are typically used by some Chinese-based businesses who operate in one of China's restricted or prohibited foreign investment industries (such as telecommunications or internet) to raise capital overseas.
- 46 VIE structures attempt to mimic ownership of the Chinese operating company through a series of complex contractual arrangements, rather than through a more traditional subsidiary structure. This means that the foreign listed company does not hold shares in the underlying Chinese operating company. Instead it enters into various contracts with the Chinese operating company and its Chinese owners with the aim of passing the economic benefits of the business to foreign investors. These arrangements rely heavily on the Chinese owners performing their contractual obligations.
- 47 The concern with VIE structures is that there is doubt about the enforceability by foreign investors of the contractual arrangements between the Chinese operating company and the foreign listed company, and because VIE structures have been developed to avoid Chinese legal restrictions. In addition to this, in January 2015 the Ministry of Commerce released a discussion draft of the Foreign Investment Law of the People's Republic of China for public comment, which may impact the viability of VIE structures.
- 48 As a result of these concerns, ASIC and the ASX, NSX and SSE have agreed to adopt a moratorium on IPOs of companies with VIE structures. ASX's moratorium on the listing of emerging market issuers using VIE structures is published in its newsletter [Listed@ASX: Compliance update 12/15](#).

Foreign exempt listings

- 49 In September 2015, ASX reduced the admission thresholds for New Zealand companies seeking a foreign exempt listing on ASX: see Chapter 1 of the ASX Listing Rules. Since then we have seen a number of New Zealand companies with a primary listing on NZX Limited's main board seeking to move from a full listing on ASX to a foreign exempt listing, or seeking to list on ASX for the first time as a foreign exempt listing.
- 50 To facilitate this we have given individual on-sale relief from the disclosure provisions in Ch 6D. This relief allows placements and rights issues to be

made to Australian investors under a ‘cleansing notice’ issued in accordance with New Zealand law, without further Australian disclosure.

- 51 In considering whether to give relief, we take into account the company’s history of continuous disclosure in New Zealand, the length of time the company has been listed, the depth of trading and pricing of the company’s securities, and whether in the circumstances the Australian market would be fully informed. Unless there are exceptional circumstances, we expect the New Zealand company to be quoted on ASX for at least three months before our relief applies, consistent with the three-month requirement in s708A and 708AA. For more information on the reasons for our decision to grant such relief, see REP 467 at paragraphs 37–40.

Surveillance work

Ongoing surveillance work

- 52 As discussed in REP 446, during the period we continued our work on the following surveillances:
- (a) detailed reviews of due diligence practices in selected capital raisings;
 - (b) discussions with bankers and brokers about the soundings conducted in selected capital raisings; and
 - (c) targeted reviews of the advertising and marketing techniques, and the use of social media, by brokers and issuers in connection with IPOs to retail investors.
- 53 We will continue to update the market with any key messages arising from these surveillances.

Advertising and publicity for offers of securities

- 54 In this period we raised concerns with an issuer who published articles on its website and on social media that contained statements we considered might be misleading or deceptive. Some of these articles were published in a different language, appearing to target foreign investors. We obtained corrective disclosure from the issuer about these statements.
- 55 As noted in Regulatory Guide 158 *Advertising and publicity for offers of securities* (RG 158) at RG 158.27, we will bring action if publication of an advertisement would significantly reduce investor protection and be likely to:
- (a) result in the market being drip-fed with selective information usually contained in the disclosure document (as opposed to information usually conveyed to customers of the issuing body);

- (b) discourage adequate analysis of the disclosure document by individual investors and the market generally; or
 - (c) result in investment decisions being made on the basis of the advertising campaign and other publicity rather than on the basis of the disclosure document.
- 56 We will post-vet advertisements where investor protection considerations demand such scrutiny: RG 158.25. Our post-vet will not be limited to standard forms of advertising. For example, we often review advertisements and publications on internet forums, social media websites and websites of issuers. Our post-vet will also not be limited to advertisements and publications in English.

ASIC policy initiatives

Historical financial information in prospectuses

- 57 As outlined in REP 446, we are currently reviewing our policy on the disclosure of historical financial information in prospectuses. We expect to consult in the first half of this year on updating Regulatory Guide 228 *Prospectuses: Effective disclosure for retail investors* (RG 228) to provide more detail about the quality and quantity of historical financial information that should be included in a prospectus.
- 58 We will continue to carefully scrutinise prospectuses that do not contain two-and-a-half to three years of audited financial information, where the company has an existing business or is acquiring a business with a relevant operating history.

Disclosure documents—Updating ASIC instruments and guidance

- 59 In September 2015 we released Consultation Paper 239 *Disclosure documents: Update to ASIC instruments and guidance* (CP 239), covering proposals designed to promote efficient public fundraising in Australia. The proposals are to remake fundraising class orders that are due to expire ('sunset') under the *Legislative Instruments Act 2003* (Legislative Instruments Act), to update and consolidate our fundraising regulatory guidance and to issue two new legislative instruments aimed at helping reduce business costs.
- 60 We reviewed 31 sunset class orders relating to Ch 6D and proposed to reissue the relief in 26 class orders that we consider are operating efficiently and effectively and repeal the five class orders that are no longer required. We proposed to assist users of this relief by consolidating subject-matter

related class orders and reissuing the relief in 15 legislative instruments. Each of these instruments has been drafted using our current style and format while preserving the effect of the sunseting class orders.

- 61 Submissions on CP 239 closed on 27 November 2015. We are currently considering the submissions received and hope to implement the proposals in CP 239 in the first quarter of this year.

Disclosure relief for foreign securities

- 62 On 3 September 2015 we remade six legislative instruments that facilitate Australian investors participating in foreign scrip offers and which were due to sunset over the next few years under the Legislative Instruments Act. The relief applies to certain rights issues, schemes of arrangement, scrip bids and small scale personal offers.
- 63 Our policy on relief for foreign offers is set out in Regulatory Guide 72 *Foreign securities: Disclosure relief* (RG 72), which was also updated.
- 64 We publicly consulted on this relief and updating RG 72 in Consultation Paper 225 *Remaking of ASIC class orders on offers of foreign securities* (CP 225). No submissions were received in response to CP 225 and we therefore remade the instruments substantially in the form consulted on.

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 ASIC's regulatory function, we review disclosure and monitor conduct in takeover transactions.

In addition to reviewing bid and scheme transactions during this period, we worked closely with the Takeovers Panel on various policy initiatives.

Statistics and observations

- 65 The number of public merger and acquisition transactions in this period has increased compared to the previous period.⁵ Compared to the previous period, there has been:
- (a) an increase in the number of bidder's statements lodged;
 - (b) a significant increase in the number of scheme explanatory statements provided for ASIC review;
 - (c) an increase in merger and acquisition applications; and
 - (d) an increase in transaction size.
- 66 Table 2 sets out the top 10 control transactions by value, where disclosure documents were formally lodged or scheme explanatory statements registered (excluding demergers) with ASIC in this period.
- 67 For a list of all bidder's statements lodged with ASIC during the period, see Table 3 in Appendix 1. For a list of all scheme explanatory statements registered by ASIC during the period, see Table 4 in Appendix 1.

Table 2: Top 10 control transactions by value (1 July to 31 December 2015)

Target	Bidder	Type	Industry	Value
Asciano Limited	Brookfield Infrastructure Partners LP	Bid	Transportation	\$8964m
Recall Holdings Limited	Iron Mountain Incorporated	Scheme	Commercial and professional services	\$2500m
Veda Group Limited	Equifax Inc.	Scheme	Commercial and professional services	\$2508m

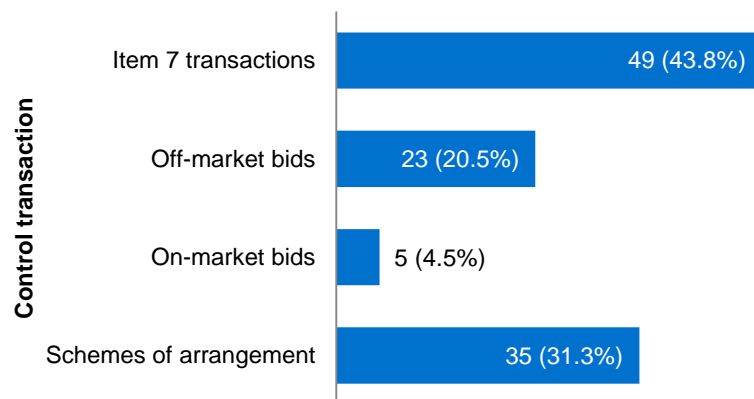
⁵ For details of historical bidders' statement and scheme booklet lodgements, see Figure 10–Figure 11 in Appendix 1.

Target	Bidder	Type	Industry	Value
M2 Group Limited	Vocus Communications Limited	Scheme	Telecommunication services	\$1949m
Energy Developments Limited	DUET Group	Scheme	Utilities	\$1407m
Sirius Resources NL	Independence Group NL	Scheme	Materials	\$1336m
iProperty Group Limited	REA Group Limited	Scheme	Software and services	\$750m
Broadspectrum Limited	Ferrovial, SA	Bid	Commercial and professional services	\$691m
UXC Limited	Computer Sciences Corporation	Scheme	Software and services	\$421m
Drillsearch Energy Limited	Beach Energy Limited	Scheme	Energy	\$391m

Note: This table does not include the proposed scheme of arrangement for the acquisition of Asciano Limited by a subsidiary of Brookfield Infrastructure Partners LP, which was registered during the period, as the proposed scheme sought to effect the same transaction as the off-market takeover bid referred to above.

68 Figure 3 illustrates that transactions approved under item 7 of s611 (item 7 transactions) were the most common (43.8%) type of control transaction notified to ASIC in this period. The number of item 7 transaction documents provided to ASIC for review in this period (49) increased from 35 in the last period. There were also significantly more scheme explanatory statements lodged than the previous period (35, up from 17), and more scheme explanatory statements were lodged in this period than in the comparative July to December 2014 period, where 18 schemes were lodged. Twenty-three off-market bids and five on-market bids were made this period, up from 13 off-market and three on-market bids in the previous period.

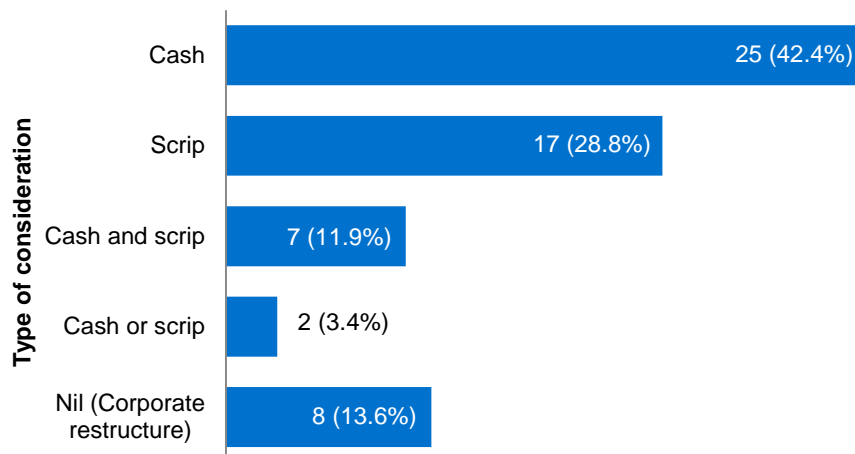
Figure 3: Control transactions lodged with ASIC by type (1 July to 31 December 2015)



69 Figure 4 illustrates a breakdown of the types of consideration offered in control transactions (excluding item 7 transactions) that commenced in this

period. There were 17 scrip acquisitions proposed in this period, which is a marked increase from seven scrip acquisitions in the previous period.

Figure 4: Type of consideration offered in bids and schemes (1 July to 31 December 2015)

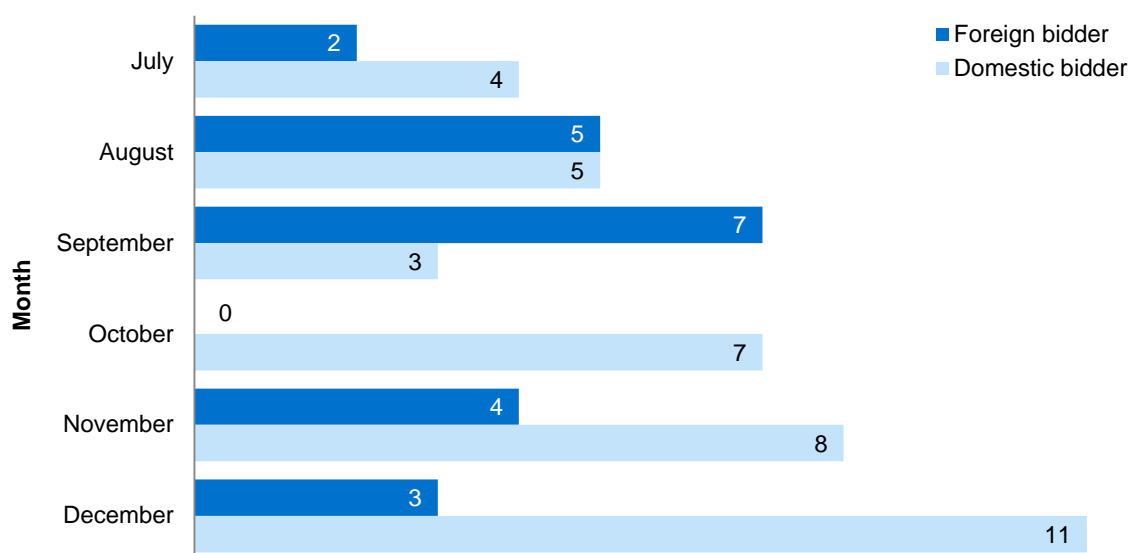


Note: Graph excludes item 7 transactions.

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Figure 5 illustrates the continued takeover activity undertaken by foreign bidders.⁶ During this period, 21 out of 59 (35.6 %) schemes of arrangement and takeover bids involved foreign acquisition of ASX-listed entities. This is consistent with the last three years, where foreign acquisitions as a proportion of all acquisitions have been around 35%–40%.

Figure 5: Number of foreign and domestic bidders (in schemes and bids) by month (1 July to 31 December 2015)

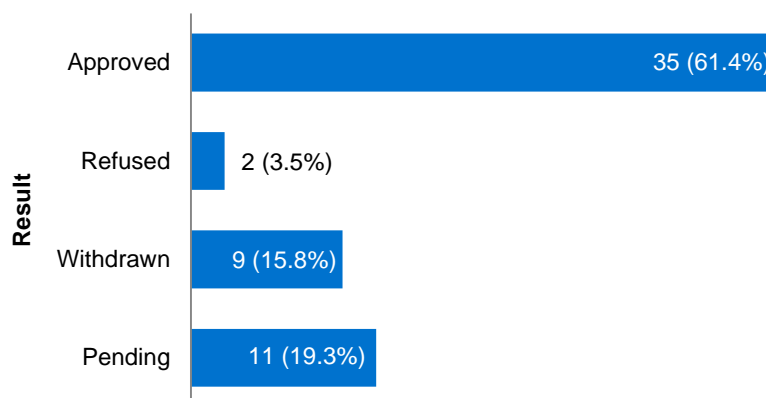


⁶ Our definition of a 'foreign bidder' includes bidders that are Australian entities controlled or incorporated by a foreign parent entity to undertake the takeover.

Applications for relief

71 We received 54 applications for relief under s655A and three under s669 during this period: see Figure 6. This is a slightly higher number of applications received than in the previous period, where we received 49 s655A applications and one s669 application.

Figure 6: Results of applications under s655A and s669 (1 July to 31 December 2015)



72 We publish a regular report that provides an overview of decisions made on novel relief applications, including those made in relation to mergers and acquisitions transactions. Our most recent report is REP 467.

ASIC's review and monitoring of control transactions

73 We review disclosure and monitor conduct in transactions that may result in a change of, or otherwise affect, control of regulated entities—including takeovers and schemes of arrangement. Our principal objectives are to ensure that adequate information is being provided to investors and that all relevant parties act in a way that promotes a fair, orderly and transparent financial market.

74 Where concerns are raised by us, they are often addressed by the issuer making amendments to the offer structure, providing new or amended disclosure, or taking some other corrective action. In the interest of facilitating a timely and effective outcome, our approaches will often be informal. In many cases market participants may not even be aware of ASIC's intervention as our concerns are resolved without the need for any formal regulatory action.

75 This section provides an insight into some of the issues we have encountered, and action we have taken, during the reporting period as part of our day-to-day regulatory oversight of control transactions.

Independent expert reports

Independence of experts

- 76 In this period we considered a ‘friendly’ control transaction where the same expert was appointed by both the acquirer and the target. After the reports were published, a rival bidder made a hostile offer for the target. We closely scrutinised the evaluation of the rival bid by the target’s expert because of the potential conflict of interest. Regulatory Guide 112 *Independence of experts* (RG 112) at RG 112.35–RG 112.38 discusses the importance of experts putting appropriate measures in place to manage potential conflicts of interest.
- 77 While in the past it has been common for the same expert to be appointed to report to two separate groups of shareholders on either side of a friendly transaction, we consider that this may result in a potential conflict of interest, particularly where a rival bidder emerges. We will closely scrutinise such reports. Independent directors for each entity should carefully consider whether the costs involved in appointing separate experts is outweighed by the need for the independent board’s recommendation to be based on (indisputably) independent advice.

Appointing experts

- 78 During the period we have seen independent expert reports prepared by entities with limited experience in preparing reports for public control transactions. We reiterate our guidance in RG 112 that commissioning parties should consider the expertise of an expert before they are selected.
- 79 We have observed that, when an expert does not regularly prepare reports for public control transactions, the reports can often be deficient. This leads to closer scrutiny by ASIC and, to the extent that changes are required, considerable delays to the transaction timetable and further expense for the commissioning party.

Attorney appointment provisions

- 80 In this period, we raised concerns with a bidder regarding a term in its takeover offers that required accepting target security holders to appoint the bidder as attorney to exercise all rights and powers attaching to the securities, including the exercise of voting rights, even before the offer became unconditional (early appointment term). The bidder disclosed an intention to exercise votes under the early appointment term against a competing proposal to acquire the target at a scheme meeting between the target and its members.

81 While we acknowledge the comments of the sitting panel in *Sydney Gas Limited 01* [2006] ATP 9, we were concerned that an attorney appointment or proxy voting term in a takeover offer that may operate while there is still uncertainty about whether the offers will become unconditional (such as the early appointment term) is contrary to the principles in item 1 of s611.

82 An offer under a takeover bid is fundamentally an ‘offer to buy securities’: s618. The takeover bid procedure is not designed or intended to be a mechanism to accumulate temporary voting power above the 20% takeover threshold for use in a way that may affect the decision making, board composition or control of an entity.

83 Our concerns were addressed in this case when the bidder agreed not to exercise the power under the early appointment term until after the bid became unconditional.

Unsolicited offers and the application of Ch 6 to unlisted managed investment schemes

84 We observed an instance where a bidder sought to acquire an unlisted stapled group (comprising shares in an unlisted company with over 50 members and units in an unlisted managed investment scheme) under a takeover bid. While the offer to acquire the shares in the company was regulated by Ch 6, the offer for the units in the unlisted managed investment scheme was not: see s602 and 604.

85 The bidder claimed that its takeover offer was only for the shares but that, as a result of the fact that the stapled securities must be issued and transferred together under their terms, acceptance of an offer for the shares would also result in the transfer of the units to the bidder.

86 We are of the view that, under the law, offers of this type constitute a takeover bid for the shares in the company and an unsolicited offer to acquire the units of the managed investment scheme.

Use of compulsory powers in connection with inquiries made in parallel with Takeovers Panel proceedings

87 During the period we played an active role in inquiring into circumstances surrounding the bid by G8 Education Limited for Affinity Education Group Limited.

88 We became concerned after two shareholders, who had purchased shares after the bid was announced, accepted the bid as soon as it opened. As the bidder had already built a full pre-bid stake, if an association existed it was possible that the acquisitions by the accepting shareholders, and another

shareholder who appeared to have structural links with G8, may have breached the prohibition in s606.

89 We made independent inquiries about the circumstances of the shareholders' acceptances, using our compulsory information-gathering powers to procure information from various parties.

90 Affinity subsequently applied to the Takeovers Panel. As in many cases of alleged association, which may be difficult to prove because they are not often documented, the target did not have access to direct evidence to prove that an agreement or understanding existed between the bidder and the shareholders. The information that we gathered using our compulsory powers informed our submissions to the Takeovers Panel. As a number of parties from whom we sought information were not directly involved in the Takeovers Panel proceedings, or had not adequately responded to the Panel's inquiries, it is unlikely that the information we obtained under notice would otherwise have been provided to the Panel.

91 The Takeovers Panel ultimately found that an association existed and that a breach of the 20% threshold and substantial holding provisions had occurred: see *Affinity Education Group Limited* [2015] ATP 9. In making its decision, the Takeovers Panel remarked that it had found our investigative efforts useful.

92 Where we use our compulsory information-gathering powers in relation to circumstances being considered in Takeovers Panel proceedings and uncover information relevant to those proceedings, we may (if appropriate in the circumstances) provide that information to the Panel.

Requests for declarations of 'acceptable circumstances'

93 We observed an instance where a company was proposing to undertake a rights issue to be underwritten by two substantial shareholders who collectively held relevant interests in over 20% of the company's issued shares.

94 At the time of announcing the transaction the company stated that it would seek a declaration from the Takeovers Panel that the circumstances were 'acceptable', given the potential effect the rights issue would have on the control of the company.

95 We are concerned that these types of statements are misleading to shareholders given the Takeovers Panel only has the power to declare the circumstances to be 'unacceptable circumstances': s657A. In addition, the Takeovers Panel can only act where an application for a declaration of unacceptable circumstances has been made: s657C(1).

Certainty in offers

Scale-backs in schemes

- 96 In REP 446 we discussed our concerns where acquirers structure their offers so that target shareholders are invited to elect to receive a form of consideration (e.g. the acquirer's scrip) which is scaled-back and substituted with another form of consideration if a limited cap is reached. The potential for scale-back introduces uncertainty for shareholders who may receive vastly different consideration (in nature and scale) from that which they elected, particularly where one form of consideration appears more attractive and is subject to a severe scale-back.
- 97 We continue to observe a number of schemes of arrangement featuring scale-backs. We will approach each transaction on a case-by-case basis. However, we expect that as a matter of general policy shareholders should, where possible, be provided with sufficient certainty in schemes offering alternative forms of consideration so that they can confidently vote on the scheme fully informed of the effect of any applicable scale-back. We also encourage early consultation with ASIC so that such issues can be addressed prior to the formal lodgement of documents. For further guidance on our policy on maximum consideration conditions, see Regulatory Guide 9 *Takeover bids* (RG 9) at RG 9.182–RG 8.183.

Minimum election conditions

- 98 We also raised concerns during this period about the terms of a scheme of arrangement that contained what we considered amounted to a prohibited maximum acceptance condition. The scheme, under which a target holder could elect to receive either cash or a cash and scrip mix, contained a condition that meant the scheme would not proceed unless the holders of at least approximately 20% of scheme company shares elected the cash and scrip alternative (minimum election condition).
- 99 A minimum election condition on one of two alternative forms of consideration amounts to a maximum election condition on the other. As discussed at RG 9.178–RG 9.181, we consider such a condition is prohibited in the context of a takeover bid as it constitutes a 'maximum acceptance condition' of the kind defined in s626. A bidder should not be entitled to hold out that it is making a bid at a certain price while at the same time indicating that it does not have the capacity to pay that price to all shareholders. Target holders in a takeover bid should not have to face the uncertainty associated with defeating conditions of this kind.
- 100 While the prohibition itself does not apply directly to schemes, we do not consider there are any features of the process for effecting a scheme of arrangement under Pt 5.1 that would mean that the policy concerns

underpinning the prohibition in s626, or the broader concerns regarding the general principle outlined in s602(a), are mitigated.

101 Our concerns were addressed by a major holder, which had a holding sufficient to alone satisfy the minimum election condition, confirming in a statement included in the scheme booklet that it would elect the cash and scrip alternative.

‘Truth in takeovers’—Statements by target shareholders

102 In the course of monitoring a takeover bid during the period, we identified a number of statements by a substantial shareholder in the press relating to the offer. The shareholder was reported to have said that they would not accept the offer or sell their shares for less than a specified value that was above the offer price.

103 Subsequently, the bidder announced that it would increase the consideration payable under the offer if it acquired a relevant interest in at least 90% of the target’s securities. We were concerned by the circumstances created by this announcement as:

- (a) the price to which the bid would be increased was less than the minimum price at which the substantial shareholder had stated they would sell their shares; and
- (b) the shareholder held more than 10% of the target’s securities.

104 As such, it was apparent that the increased consideration could only be received if the substantial shareholder departed from their statements, contrary to our truth in takeovers policy in Regulatory Guide 25 *Takeovers: False and misleading statements* (RG 25).

105 The substantial shareholder confirmed to us that they would act consistently with their statements and we notified the bidder and the target. Subsequently both the bidder and the target made further disclosures to ensure that the market was fully informed of the consequences of these statements and the fact that the increased consideration was not in fact available to target shareholders because the substantial shareholder could not accept.

106 We remind target shareholders that they may be held to the statements they make about accepting or not accepting a takeover bid, in accordance with our truth in takeovers policy in RG 25. We also remind bidders and targets that they should ensure that their announcements properly acknowledge the existence and effect of any relevant statements to ensure they are not misleading.

Contraventions of s606

- 107 During the period we reviewed notice materials for an acquisition to be approved by shareholders under item 7. In the course of our review we discovered a number of apparent historical contraventions of s606 involving the then non-executive chairman, who at the time held 70.3% of the shares in the company (the controlling parcel).
- 108 At a previous general meeting shareholders approved the issue of the controlling parcel to the chairman under item 7. However, in the days following the general meeting, the chairman entered into an informal arrangement to sell the controlling parcel to a company controlled by a client of the chairman, which led to those shares being issued directly to the client. In June 2015, the client transferred the controlling parcel to a third person without shareholder approval and in October 2015, the third person transferred the controlling parcel back to the chairman.
- 109 The company stated that the practical effect of (and intention behind) this transfer was to effectively rescind the past share allotment and transfers, so that the relevant parcel of shares would be registered to the chairman, the party originally approved by shareholders to hold this controlling stake in the company.
- 110 Even with this transfer, we remained concerned that contraventions of s606 had taken place. Following discussions with ASIC, the company and chairman agreed that the controlling parcel would be cancelled for nil consideration via a selective reduction and that the chairman would abstain from voting on the upcoming acquisition.

Voting arrangements

- 111 During this period we reviewed notice materials provided by a company as part of seeking shareholder approval, under item 7, for the issue of shares to a lender on the exercise of rights under a convertible loan. The loan agreement contained terms that two directors would execute deed polls undertaking to vote all shares they held (either directly or through controlled entities) in favour of any necessary resolutions.
- 112 We considered that the relevant terms of the loan agreement indicated an agreement, arrangement or understanding between the directors and the lender regarding voting that resulted in the lender acquiring a relevant interest in the shares held by the two directors. Accordingly, we were concerned that the lender was in contravention of the general prohibition in s606(1) and the substantial holding disclosure requirements.
- 113 Following our discussions with the company, the voting arrangements were removed from the loan agreement, the deed polls were terminated and the directors agreed to abstain from voting on the item 7 resolution.

Enforcement action

114 As discussed in REP 446, we are continuing to focus on identifying takeover matters that may warrant enforcement action during our day-to-day surveillance and monitoring of transactions.

115 We seek to address concerns identified in takeover documents in the most cooperative and least commercially disruptive manner that the circumstances, and our regulatory objectives, allow. However, ASIC's Enforcement teams will consider enforcement action when we consider further action is necessary.

Richfield International Limited

116 Following our application to the Takeovers Panel, in April 2015 the Panel made a declaration of unacceptable circumstances and ordered that shares in Richfield International Limited held by certain parties be vested in ASIC because of previously undisclosed associations between these parties: see paragraphs 115–117 in REP 446.

117 In July 2015, ASIC appointed Morgan Stanley Wealth Management Australia Pty Ltd to sell the relevant shares in Richfield.⁷

118 In August 2015, the shares were sold off-market in one block to the successful bidder after an auction process between parties who had registered their interests with Morgan Stanley. The sale was conducted in accordance with the requirements specified in the Takeovers Panel's orders. For further information, see Media Release (15-174MR) *ASIC appoints Morgan Stanley to sell shares in Richfield International Limited* (6 July 2015).

The President's Club Limited

119 In REP 423 we referred to ASIC's appearance in an appeal before the Full Court of the Federal Court of Australia in relation to The President's Club Limited. In May 2015 the Full Court gave its judgement in this matter. It allowed the appeal and found, among other things, that:

- (a) Queensland North Australia Pty Ltd (subsequently renamed Palmer Leisure Coolum Pty Ltd) had acquired voting power of greater than 20% in The President's Club; and
- (b) The President's Club's application to the Takeovers Panel in 2012 had been made out of time.

⁷ ASIC had entered into a deed of standing offer with Morgan Stanley for the provision of stockbroking services on 31 March 2015. As Morgan Stanley was able to provide ASIC with a statutory declaration that it was not aware of any conflict of interests, it was appointed to sell the Richfield shares under the standing arrangement.

120 In September 2015, the Full Court made orders remitting the matter back to the Takeovers Panel to be heard and determined according to law. The Takeovers Panel was required to reconsider the matter, as the court found that the Panel had not afforded the parties procedural fairness when making its decision to extend the time for the making of the application.

121 For more information see *Queensland North Australia Pty Ltd v Takeovers Panel* [2015] FCAFC 68 and *Queensland North Australia Pty Ltd v Takeovers Panel (No 2)* [2015] FCAFC 128.

Judicial review of remitted proceedings and extension under s657B

122 Following remittal, the Takeovers Panel again made a decision to extend the time for the making of the application under s657C(3)(b). The Takeovers Panel also made interim orders preventing Palmer Leisure Coolum from exercising more than 20% of the votes that may be cast at a meeting of The President's Club.

123 Palmer Leisure Coolum subsequently sought judicial review of the Takeovers Panel's decision to extend the time for making an application and make interim orders. ASIC appeared in the judicial review proceedings to defend the Takeovers Panel's decisions, under the Hardiman principle.

124 The Takeovers Panel also brought an application before the court, which was considered together with the judicial review application, for an order extending the time for the Panel to make a declaration of unacceptable circumstances in response to The President's Club's original application. This deadline had expired in 2012.

125 In December 2015, the Federal Court dismissed the judicial review application by Palmer Leisure Coolum. The Federal Court also extended the period in which the Takeovers Panel can make a declaration of unacceptable circumstances in the remitted proceedings. For more information, see *Palmer Leisure Coolum Pty Ltd v Takeovers Panel* [2015] FCA 1498.

ASIC policy initiatives

Broker handling fees

126 We have been considering the impact of the Future of Financial Advice (FOFA) reforms on practices surrounding the payment of broker handling

fees of the kind referred to in the Takeover Panel's Guidance Note 13 *Broker handling fees* (GN 13).⁸

- 127 The FOFA reforms prohibit Australian financial services (AFS) licensees and their representatives from accepting conflicted remuneration: see s963E, 963G and 963H. The ban on conflicted remuneration also applies to product issuers and sellers, to prohibit them from giving conflicted remuneration to AFS licensees and their representatives: s963K.
- 128 Broker handling fees, as defined in GN 13, are 'fees offered by bidders to brokers who solicit acceptances of a bid from their clients'. As the policy in GN 13 was most recently reissued prior to the FOFA reforms, it did not at the time take into account the ban on conflicted remuneration or the policy underlying the conflicted remuneration provisions of the FOFA reforms. We consider that broker handling fees are likely to be conflicted remuneration and therefore prohibited under Div 4 of Pt 7.7A.
- 129 Regulatory Guide 246 *Conflicted remuneration* (RG 246) provides further guidance on the conflicted remuneration provisions.

Sunsetting of class orders

- 130 In December 2015, following public consultation in Consultation Paper 234 *Remaking ASIC class orders on takeovers and schemes of arrangement* (CP 234) we issued the following legislative instruments, replacing class orders that were otherwise due to sunset:
- (a) ASIC Corporations (Approved Foreign Financial Markets) Instrument 2015/1071;
 - (b) ASIC Corporations (IDPS—Relevant Interests) Instrument 2015/1067;
 - (c) ASIC Corporations (Minimum Bid Price) Instrument 2015/1068;
 - (d) ASIC Corporations (Unsolicited Offers—Foreign Bids) Instrument 2015/1070; and
 - (e) ASIC Corporations (Takeovers—Accelerated Rights Issues) Instrument 2015/1069.
- 131 These instruments were remade without significant changes and have been redrafted using ASIC's current style and format while preserving the current effect of the instruments.

⁸ In June 2012, the Government introduced the FOFA reform package comprising the *Corporations Amendment (Future of Financial Advice) Act 2012*, *Corporations Amendment (Further Future of Financial Advice Measures) Act 2012* and associated regulations.

- 132 The consultation period for CP 234 closed on 2 October 2015, and we received two submissions in response. Both submissions supported our proposals to remake the legislative instruments.
- 133 For further information, see Media Release (15-375MR) *ASIC remakes instruments on takeovers and schemes of arrangement* (15 December 2015).

Other policy initiatives

GN 23 Shareholder intention statements

- 134 On 11 December 2015, the Takeovers Panel published Guidance Note 23 *Shareholder intention statements* (GN 23) following a public consultation process.
- 135 GN 23 outlines a number of matters that will guide the Takeovers Panel when considering whether a shareholder intention statement gives rise to unacceptable circumstances.
- 136 The guidance note highlights that if a shareholder makes an intention statement, there is a risk that the statement will be misleading, or at least confusing, if:
- (a) it is expressed in terms that are unclear in meaning;
 - (b) a qualification is made and that qualification is ambiguous; and
 - (c) it is published without detailed information regarding the holding(s).
- 137 GN 23 also states that, in examining a shareholder intention statement, the Takeovers Panel is concerned with whether the statement has an effect that precludes, or might preclude, the opportunity for a competing proposal. This will most often be a concern where the holdings that are the subject of the intention statement, when aggregated with the bidder's own interests, exceed the 20% threshold established by s606 (over-threshold statements).
- 138 Our view, as set out in our submission on the Takeovers Panel's consultation paper *GN on shareholder intention statements*, is that there is a significant risk that the process of securing and disclosing shareholder intention statements can result in the formation of a relevant agreement, giving a soliciting entity a relevant interest in the shareholder's shares. As a result, the soliciting and/or making of an over-threshold statement may result in a contravention of s606. GN 23 also alludes to this possibility: see paragraph 10(b). We consider that a relevant agreement formed in connection with soliciting a shareholder intention statement may give rise to an association.
- 139 Our submissions can be found at Annexure A of the Takeovers Panel's [*GN 23 Shareholder intention statements public consultation response statement*](#).

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;
- voting at meetings; and
- risk disclosure.

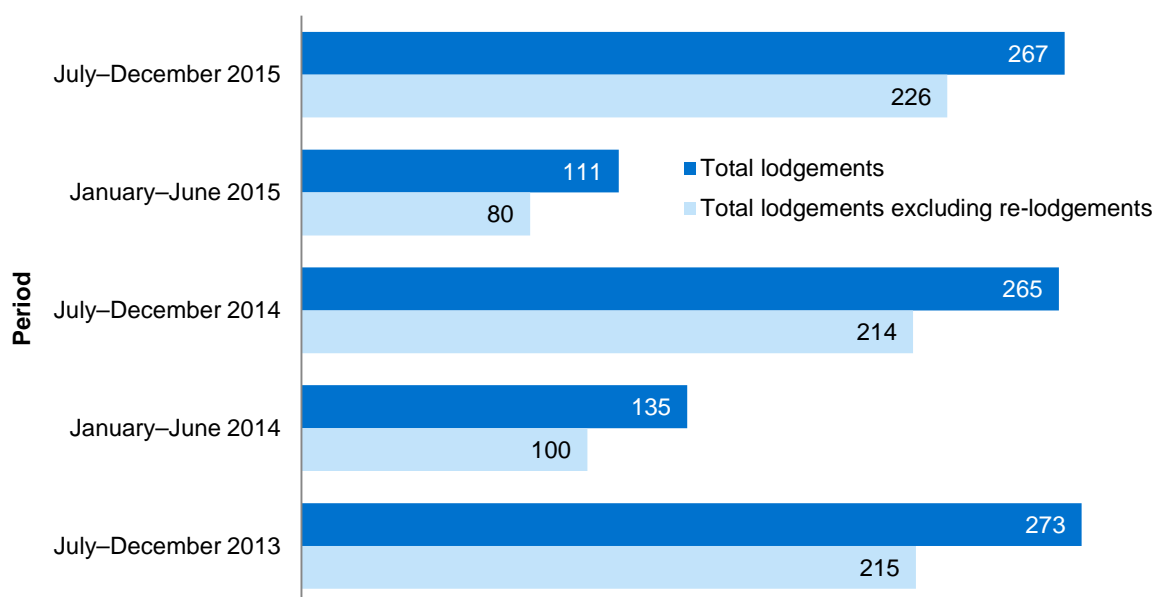
Statistics and observations

Related party notices

140 In this period, we received 267 related party approval notices under s218, of which 194 (72.6%) requested we abridge the 14-day review period. Although the number of related party approval notices lodged with ASIC is considerably up from the previous period, it is consistent with the July–December periods for 2013 and 2014. The percentage of abridgement applications associated with these lodgements is fairly consistent between the periods.

141 Figure 7 sets out the number of related party approval notices we received in this period and previous periods.

Figure 7: Related party approval notices (July 2013 to December 2015)



Voting by poll versus show of hands

142 This annual general meeting (AGM) season we received reports of companies voting on resolutions to adopt the remuneration report by way of a show of hands rather than by poll where proxies that had been received prior to the vote indicated that a ‘strike’ (a ‘no’ vote on the remuneration report of more than 25% of shareholders voting) may be achieved.

143 We shared our concerns regarding this practice last year with the Governance Institute, who published a paper entitled *Guidance on governance issues arising from the 2014 AGM season*.⁹ This paper states that:

- (a) it is the chair’s common law duty to ensure that the true will of the membership is discovered on any resolution;
- (b) in the case of a resolution to adopt the remuneration report, it is arguable that this duty extends to ascertaining whether a strike has been recorded against the company; and
- (c) a poll reflects the wishes of shareholders present at the meeting as well as those who have lodged proxies. Often only a small percentage of shareholders attend the meeting and it is not good governance for the chair to knowingly allow the wishes of this small percentage of shareholders to prevail over the wishes of a larger number of shareholders attending the meeting by proxy or casting direct votes.

Risk disclosure in the operating and financial review of a directors’ report

144 We note the recent international focus on environmental and sustainability reporting and the increasing focus on integrated reporting. We would like to remind companies of the importance of including considered risk disclosure in the operating and financial review (OFR) of a directors’ report, including about environmental, social and governance issues. As outlined in *Regulatory Guide 247 Effective disclosure in an operating and financial review* (RG 247), an OFR should include discussion of environmental and other sustainability risks where those risks could affect the entity’s achievement of its financial performance or outcomes disclosed, taking into account the nature and business of the entity and its business strategy: see RG 247.63.

Enforcement action

145 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.

⁹ Governance Institute, [Guidance on governance issues arising from the 2014 AGM season](#) (PDF, 78kb), report, March 2015.

Coal Fe Resources Limited

- 146 In mid-August 2014, Coal Fe Resources Limited (now Aus Asia Minerals Limited) lodged a notice of meeting seeking shareholder approval of a related party transaction resulting in the acquisition of a controlling interest in Coal Fe. The notice of meeting attached an independent geological consulting firm's valuation report that valued Coal Fe's Abadi Coal Project at approximately US\$300,000. Coal Fe's interim financial report for the half year ended 31 December 2013 placed a value of A\$1,897,584 on the Abadi Coal Project.
- 147 We alleged that Coal Fe was aware of the valuation report and the decreased project valuation on or by 18 July 2014, and accordingly should have announced this information on or around this date to comply with its continuous disclosure obligations and to ensure investors were confident and informed rather than waiting until it dispatched its notice of meeting.
- 148 We took action by serving an infringement notice for Coal Fe's alleged failure to comply with its continuous disclosure obligations. On 30 June 2015, Coal Fe paid a \$33,000 penalty in compliance with the infringement notice.
- 149 For further information, see Media Release (15-171MR) *Coal Fe Resources pays penalty for alleged continuous disclosure breach* (3 July 2015).

Planet Platinum Limited

- 150 As mentioned in REP 446, in June 2015 following an ASIC investigation into the management of Planet Platinum Limited, we successfully petitioned for the winding up of Planet Platinum on the grounds that related party transactions were not properly approved or recorded, prejudicing the interests of minority shareholders.
- 151 In December 2015 the Supreme Court of Victoria appointed a liquidator to Planet Platinum. The court found that while it was a serious step to wind up a solvent company the court was in no doubt that it was in the public interest.

ASIC policy initiatives

Employee incentive schemes

- 152 In November 2015, ASIC updated Regulatory Guide 49 *Employee incentive schemes* (RG 49) in order to clarify its regulatory guidance on the operation of Class Order [CO 14/1000] *Employee incentive schemes: Listed bodies* and Class Order [CO 14/1001] *Employee incentive schemes: Unlisted bodies* in response to queries received after the release of these class orders in October 2014.

153 We also made minor amendments to both [CO 14/1000] and [CO 14/1001] to address technical drafting issues. The changes do not significantly affect our underlying policy on employee incentive scheme relief.

154 For further information, see Media Release (15-328MR) *ASIC updates guidance on employee incentive schemes and amends class orders* (11 November 2015).

Cyber security

155 We continue to focus on the long-term challenge of cyber attacks, with our *Corporate Plan 2015–16 to 2018–19: Focus for 2015–16* discussing how we intend to use ASIC’s resources and powers to respond to this and other key risks in the coming year.

156 The increasing incidence, complexity and reach of cyber attacks can undermine businesses and destabilise our markets, eroding investor and financial consumer trust and confidence in the financial system and the wider economy.

157 We will be promoting cyber resilience by:

- (a) improving awareness of cyber resilience, and increasing the profile of the issues;
- (b) incorporating cyber resilience in our surveillance activities, particularly for those we regulate that provide critical services such as financial market infrastructure;
- (c) identifying potential cyber attacks in markets through real-time market monitoring—for example, by detecting anomalous trading patterns that may be the result of a cyber attack;
- (d) coordinating and engaging with other Government departments to identify cyber risks and build cyber resilience; and
- (e) continuing to monitor market developments.

158 We consider that cyber attacks are a systemic risk to the financial system. It is not possible for businesses or individuals to protect themselves against every cyber threat. However, we encourage entities to improve their cyber resilience, particularly where exposure to a cyber attack may affect individuals or market integrity.

D Other corporate finance areas

Key points

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

A number of policy and enforcement initiatives in relation to financial reporting have been undertaken by ASIC in this period and are set out below.

Statistics and observations

Financial reporting relief applications

159 During this period, we received 102 applications for financial reporting relief (down from 119 in the previous period). These included:

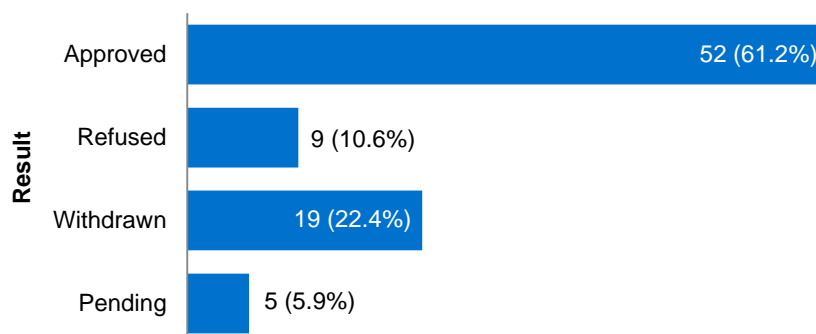
- (a) 80 applications under s340;
- (b) five applications under s111AT; and
- (c) 17 applications for a no-action letters for financial reporting breaches.

160 Of the applications received under s340 and s111AT, 22 were from companies with external administrators appointed (up from 12 in the previous period, and down from 42 from the last six months of 2014). We approved 19 of the 22 applications from external administrators.

161 Of the 17 applications for a no-action letter, we received two applications from companies with external administrators appointed. We approved both of these applications.

162 We approved 52 of the 85 applications received under s340 and s111AT: see Figure 8.

Figure 8: Results of applications under s340 and s111AT (1 July to 31 December 2015)



Share buy-backs

- 163 There was \$1.8 billion worth of share buy-backs undertaken by 105 companies in this period. In the previous period, share buy-backs totalled \$2.2 billion.¹⁰
- 164 We received nine applications for relief for share buy-backs during this period. Two applications were approved, one was refused, four were withdrawn and two are yet to be decided. The majority of the relief granted was to treat selective buy-backs as equal access schemes—for example, where a small number of foreign shareholders were excluded from the offer.

Insolvency practitioners

- 165 As discussed in REP 446, in May 2015 we reissued Regulatory Guide 174 *Relief for externally administered companies and registered schemes being wound up* (RG 174).
- 166 To give effect to our updated policy settings, we also issued a new instrument giving relief from the financial reporting, AGM and AFS licensing provisions in specified circumstances: see ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251.
- 167 Externally administered companies that have deferral relief, either through ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251 or individual relief, must either comply with their deferred financial reporting obligations by the end of the deferral period or obtain further relief from ASIC.
- 168 Since May 2015 we have observed instances where external administrators have not applied for individual relief before the end of the initial six month deferral provided under ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251, the due date of any previously deferred financial reporting obligations or the due date for any forthcoming financial reporting obligations (as relevant). We have also observed instances where external administrators have not applied for AGM relief before the time by which notices convening the AGM would normally have to be sent to shareholders.
- 169 We remind external administrators of the need to apply for relief within time. We are unable to grant retrospective relief. Regulatory Guide 51 *Applications for relief* (RG 51) sets out the process for applying for relief.

¹⁰ Figures based on data from the monthly *Equity capital raised report*, which is available from ASX Market Information (an online subscription service run by ASX).

Enforcement action

- █ [REDACTED]

█ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
- █ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ASIC policy initiatives

Remaking ASIC class orders

- 172 During this period we published the following consultation papers on remaking financial reporting class orders that were due to expire if not remade:
- (a) Consultation Paper 240 *Remaking ASIC class orders on rounding, directors' reports, disclosing entities and other matters* (CP 240) was released on 1 October 2015, with submissions due by 30 October 2015;
 - (b) Consultation Paper 243 *Remaking ASIC class orders on electronic lodgement of financial reports and dual lodgement relief* (CP 243) was released on 19 November 2015, with submissions due by 18 December 2015; and
 - (c) Consultation Paper 248 *Remaking ASIC class orders on reporting by foreign entities: [CO 98/98] and [CO 02/1432]* was released on 22 December 2015, with submissions due by 29 February 2016.

Focus on financial reports

- 173 In November 2015 we released information regarding our areas of focus when reviewing 31 December financial reports of listed entities and other entities of public interest.
- 174 We consider that directors and auditors should:
- (a) focus on values of assets and accounting policy choices;
 - (b) carefully consider the need to impair goodwill and other assets; and

- (c) base fair values attributed to financial assets on appropriate models, assumptions and inputs.

175 We have been reviewing, and will continue to review, financial reports selected randomly and through risk-based criteria. We also proactively identify and follow up with companies that are required to lodge financial reports with ASIC but have not done so.

176 For further information see Media Release (15-331MR) *Focus for 31 December 2015 financial reports* (12 November 2015).

ASIC's corporate plan

177 In August we published our *Corporate Plan 2015–16 to 2018–19: Focus for 2015–16*. The corporate plan communicates our current thoughts on how our long-term strategic priorities and challenges are shaping our strategy and responses over the 2015 to 2019 period. We see our long-term challenges as balancing a free market-based system with investor and financial consumer protection, digital disruption, structural change, financial innovation-driven complexity, and globalisation.

178 The corporate plan also identifies a number of key ASIC focuses where we see particular concerns that flow from the long-term challenges we face in 2015–16. These are in the areas of gatekeeper conduct, cyber attacks, poor financial advice, misalignment of retail product design and distribution with consumer understanding, and cross-border businesses, services and transactions.

179 For further information see Media Release (15-237MR) *ASIC's Corporate Plan 2015–16 to 2018-19 and Focus for 2015-16* (31 August 2015).

ASIC Innovation Hub

180 As mentioned in REP 446, we recently launched our online Innovation Hub. The Innovation Hub has been developed to help new financial technology (fintech) businesses navigate ASIC's regulatory system. Since the Innovation Hub's establishment in April 2015, we have:

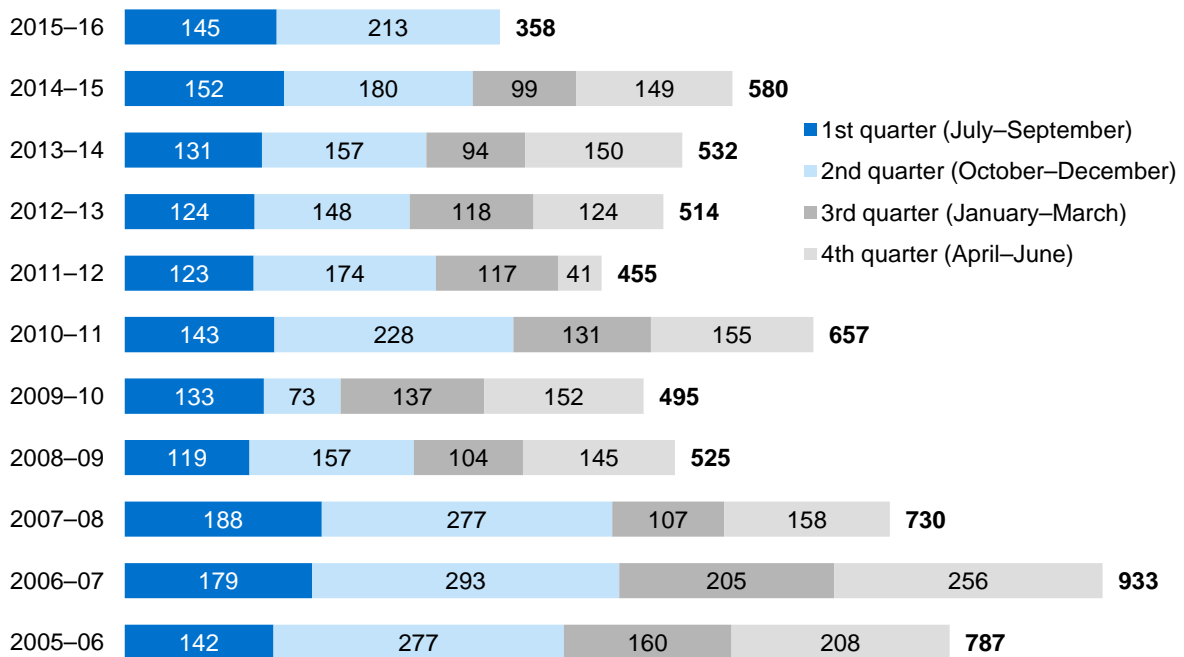
- (a) started work in relation to 22 businesses, including applications for licences and requests for guidance;
- (b) released new webpages for fintech businesses with targeted information; and
- (c) established the Digital Finance Advisory Committee—an external committee drawn from a cross-section of the fintech community as well as those with academic and consumer protection backgrounds, to provide guidance to ASIC on our engagement with the fintech sector.

- 181 As part of the Innovation Hub initiative we have also established internal working groups on automated financial advice, crowdsourced equity funding and digital marketplace lending. These working groups are overseen by our senior Innovation Hub taskforce.
- 182 We are committed to encouraging innovation, particularly where it can lead to better consumer and market outcomes. However, we will not compromise the fundamental principles of financial services regulation, and we continue to prioritise appropriate regulation to promote consumer and investor trust and confidence.

Appendix 1: Statistics

Fundraising

Figure 9: Total original fundraising documents lodged with ASIC by quarter (2005–06 financial year to 2015–16 financial year)



Note: This graph includes mutual recognition offer documents lodged with ASIC, accounting for the difference compared to original fundraising documents shown at Figure 1.

Mergers and acquisitions

Takeover bids

Figure 10: Total bidder's statements lodged with ASIC by quarter (2001–02 financial year to 2015–16 financial year)

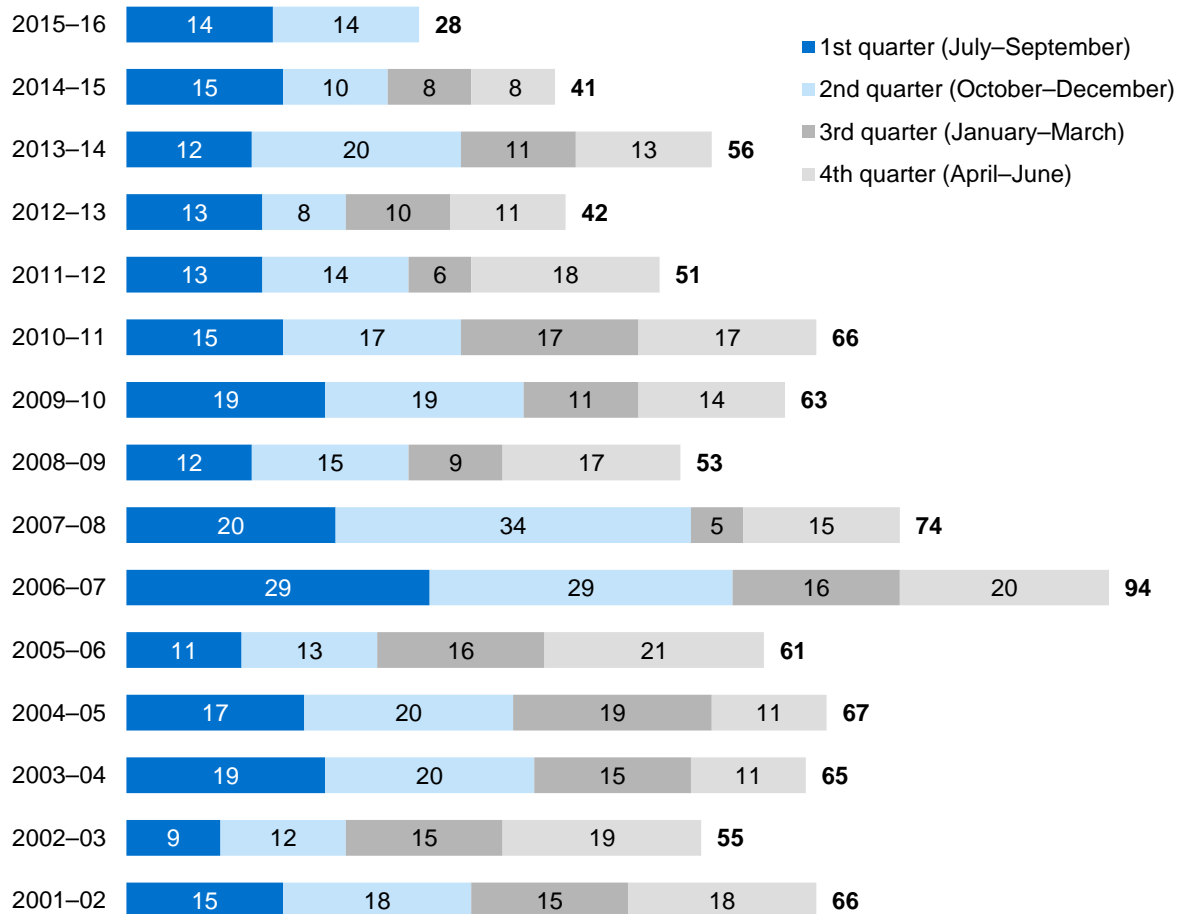


Table 3: Takeover bids (1 July 2015 to 31 December 2015)

Target	Bidder	Lodged	Type	Securities	Consideration
Vision Eye Institute Limited [VEI]	Pulse Health Limited [PHG]	06/07/15	Off-market	Ordinary shares	Scrip
Strike Resources Limited [SRK]	Bentley Capital Limited [BEL]	17/07/15	Off-market	Ordinary shares	Cash
Affinity Education Group Limited [AFJ]	G8 Education Limited [GEM]	30/07/15	Off-market	Ordinary shares	Scrip
Affinity Education Group Limited [AFJ]	G8 Education Limited [GEM]	03/08/15	Market	Ordinary shares	Cash
Quantum Power Limited	Geodynamics Limited [GDY]	05/08/15	Off-market	Ordinary shares	Scrip

Target	Bidder	Lodged	Type	Securities	Consideration
Phoenix Gold Limited [PXG]	Zijin Mining Group Co., Ltd	06/08/15	Off-market	Ordinary shares	Cash
Cokal Limited [CKA]	Pt Cakra Mineral Tbk	14/08/15	Off-market	Ordinary shares	Cash, scrip or cash and scrip
Lasseters Corporation Limited [LAS]	Kings Knight Capital Limited	27/08/15	Off-market	Ordinary shares	Cash
Armour Energy Limited [AJQ]	WestSide Corporation Limited	31/08/15	Off-market	Ordinary shares	Cash
Vision Eye Institute Limited [VEI]	Jangho Group Co., Ltd	07/09/15	Off-market	Ordinary shares	Cash
Phoenix Gold Limited [PXG]	Evolution Mining Limited [EVN]	11/09/15	Off-market	Ordinary shares	Cash and scrip
Cardno Limited [CDD]	Crescent Capital Investments Pty Ltd	14/09/15	50% proportional off-market	Ordinary shares	Cash
Atherton Resources Limited [ATE]	Auctus Chillagoe Pty Ltd	18/09/15	Market	Ordinary shares	Cash
The PAS Group Limited [PGR]	Australia Brands Investment, LLC	22/09/15	Market	Ordinary shares	Cash
4D-S Limited	Fitzroy Resources Ltd [FRY]	07/10/15	Off-market	Ordinary shares	Scrip
4D-S Limited	Fitzroy Resources Ltd [FRY]	07/10/15	Off-market	Preference shares	Scrip
Aditya Birla Minerals Limited [ABY]	Metals X Limited [MLX]	15/10/15	Off-market	Ordinary shares	Scrip
Aspen Parks Property Management Ltd	Beston Parks Land Co Pty Ltd ATF Beston Accommodation Parks Trust	23/10/15	Off-market	Ordinary shares	Cash
Coffey International Limited [COF]	Tetra Tech, Inc	06/11/15	Off-market	Ordinary shares	Cash
Brisbane Markets Limited	Produce Markets Queensland Pty Ltd	12/11/15	Off-market	Ordinary shares	Cash
Devine Limited [DVN]	CIMIC Group Limited [CIM]	12/11/15	Off-market	Ordinary shares	Cash

Target	Bidder	Lodged	Type	Securities	Consideration
Freshtel Holdings Limited [FRE]	Dominet Digital Corporation Pty Ltd	19/11/15	Market	Ordinary shares	Cash
Asciano Limited [AIO]	Nitro Corporation Pty Ltd (an indirect subsidiary of Brookfield Infrastructure Partners LP)	23/11/15	Off-market	Ordinary shares	Cash and scrip
Golden Cross Resources Ltd [GCR]	HQ Mining Resources Holding Pty Ltd	24/11/15	Off-market	Ordinary shares	Cash
Armour Energy Limited [AJQ]	AEGP Australia Pty Ltd	01/12/15	13.62% proportional off-market	Ordinary shares	Cash
Broadspectrum Limited [BRS]	Ferrovial, SA	07/12/15	Off-market	Ordinary shares	Cash
Gulf Alumina Limited	Metro Mining Limited [MMI]	10/12/15	Off-market	Ordinary shares	Scrip
Richfield International Limited [RIS]	Mercantile Investment Company Limited [MVT]	23/12/15	Market	Ordinary shares	Cash

Note: This table lists each takeover bid for which an initiating bidder's statement was lodged with ASIC between 1 July 2015 and 31 December 2015 (inclusive), as reflected in ASIC's register at the date of this publication. Takeover bids must relate only to securities in a single class. Accordingly, where bids are made for more than one class of securities in a target, each is recorded above as a separate entry unless we have granted relief to treat multiple classes of securities as a single class for the purposes of the bid: see RG 9.105–RG 9.119.

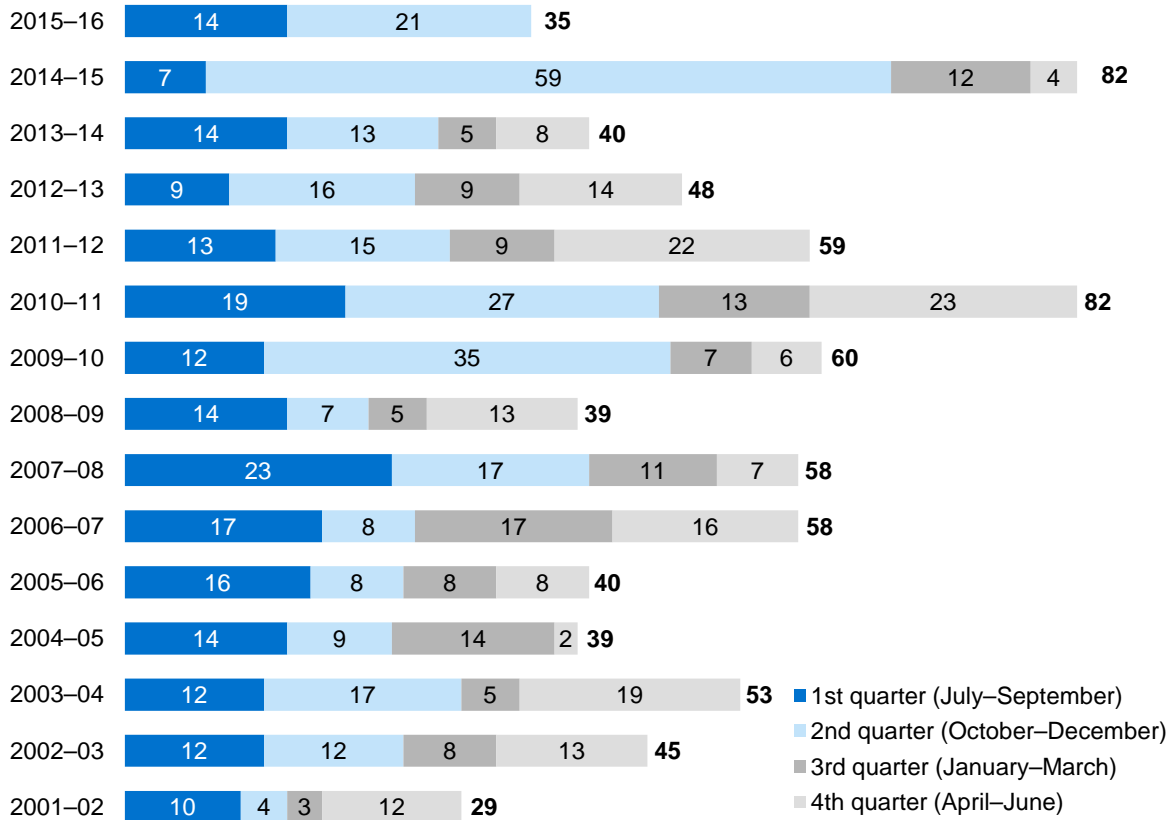
Where a bidder or target is listed on a prescribed financial market its name above is accompanied by the ticker code under which it trades. Where a bidder is a (direct or indirect) wholly owned subsidiary of another entity, the parent entity may be listed above as bidder.

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

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

Schemes of arrangement

Figure 11: Total scheme booklets lodged with ASIC by quarter (2001–02 financial year to 2015–16 financial year)



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

Table 4: Schemes of arrangement (1 July 2015 to 31 December 2015)

Scheme company	Acquirer	Registered	Type	Securities	Received
Black Range Minerals Ltd [BLR]	Western Uranium Corporation	17/07/15	Members	Ordinary shares	Scrip
Auzex Exploration Limited	Explaurum Limited [EXU]	23/07/15	Members	Ordinary shares	Scrip
Sirius Resources NL [SIR]	Independence Group NL [IGO]	31/07/15	Members	Ordinary and partly paid shares	Cash and scrip
Sirius Resources NL [SIR]	N/A—Demerger	31/07/15	Members	Ordinary and partly paid shares	Demerger (scrip)
Staging Connections Group Limited	Freeman Audio Visual, Inc.	17/08/15	Members	Ordinary shares	Cash

Scheme company	Acquirer	Registered	Type	Securities	Received
Skilled Group Limited [SKE]	Programmed Maintenance Services Limited [PRG]	21/08/15	Members	Ordinary shares	Cash and scrip
Energy Developments Limited [ENE]	DUET Group [DUE]	04/09/15	Members	Ordinary shares	Cash
Anatolia Energy Limited [AEK]	Uranium Resources, Inc. [URI]	07/09/15	Members	Ordinary shares	Scrip
Anatolia Energy Limited [AEK]	Uranium Resources, Inc. [URI]	07/09/15	Members	Performance shares	Scrip
Anatolia Energy Limited [AEK]	Uranium Resources, Inc. [URI]	N/A	Creditors	Options	Scrip
Asciano Limited [AIO]	Nitro Corporation Pty Ltd (an indirect subsidiary of Brookfield Infrastructure Partners LP)	30/09/15	Members	Ordinary shares	Cash, scrip or cash and scrip
Hyne & Son Pty. Limited	N/A—Restructure	07/10/15	Members	Ordinary shares	N/A—Restructure
Equity Trustees Limited [EQT]	N/A—Restructure	14/10/15	Members	Ordinary shares	N/A—Restructure
Affinity Education Group Limited [AFJ]	Anchorage Childcare Pty Ltd	14/10/15	Members	Ordinary shares	Cash
Recall Holdings Limited [REC]	Iron Mountain Incorporated	23/10/15	Members	Ordinary shares	Cash or cash and scrip
Aspen Parks Property Management Ltd (Aspen Parks Property Fund)	N/A—Merger with Aspen Group Limited [APZ]	03/11/15	Members	Ordinary shares	Cash or scrip
Aspen Group Limited [APZ]	N/A—Merger with Aspen Parks Property Fund	03/11/15	Members	Ordinary shares	Scrip
Ecosave Holdings Limited	N/A—Restructure	27/11/15	Members	Ordinary shares	N/A—Restructure
Ecosave Holdings Limited	N/A—Restructure	27/11/15	Creditors	Options	N/A—Restructure
National Australia Bank Limited [NAB]	N/A—Demerger	07/12/15	Members	Ordinary shares	Demerger (scrip)

Scheme company	Acquirer	Registered	Type	Securities	Received
M2 Group Ltd [MTU]	Vocus Communications Limited [VOC]	11/12/15	Members	Ordinary shares	Scrip
Veda Group Limited [VED]	Equifax Inc.	11/12/15	Members	Ordinary shares	Cash
iProperty Group Limited [IPP]	REA Group Limited [REA]	14/12/15	Members	Ordinary shares	Cash or cash and scrip
Drillsearch Energy Limited [DLS]	Beach Energy Limited [BPT]	16/12/15	Members	Ordinary shares	Scrip
UXC Limited [UXC]	Computer Sciences Corporation	21/12/15	Members	Ordinary shares	Cash
Octagonal Resources Limited [ORS]	Abbotsleigh Proprietary Limited	21/12/15	Members	Ordinary shares	Cash and scrip
Barrick Mining Services Pty Ltd	N/A—Restructure	24/12/15	Members	Ordinary shares	N/A—Restructure
Barrick (Lawlers) Pty Limited	N/A—Restructure	24/12/15	Members	Ordinary shares	N/A—Restructure
Barrick (Darlot) Pty Limited	N/A—Restructure	24/12/15	Members	Ordinary shares	N/A—Restructure
Barrick (Plutonic) Pty Limited	N/A—Restructure	24/12/15	Members	Ordinary shares	N/A—Restructure

Note: This table lists:

- each proposed compromise or arrangement for which an explanatory statement was registered by ASIC under s412(6) between 1 July 2015 and 31 December 2015 (inclusive) (members' scheme) as reflected in ASIC's register at the date of this publication; and
- each proposed compromise or arrangement between a Pt 5.1 body and its creditors or a class of its creditors for which an explanatory statement was considered by the court at or about the time of considering an associated members' scheme (e.g. an associated scheme to acquire issued options); and
- each other proposed compromise or arrangement between a Pt 5.1 body and its creditors or class of creditors for which a draft explanatory statement, previously provided to ASIC for consideration in accordance with s411(2), to ASIC's knowledge was made publicly available on a date between 1 July 2015 and 31 December 2015.

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

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

The total number of schemes listed in Table 4 may not correspond with the total number of explanatory statements recorded in Figure 11, which is based on the total number of schemes for which a draft explanatory statement was provided to ASIC during the period. This may be because:

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

Appendix 2: Data tables for figures

Table 5: Data table for Figure 1: Number of disclosure documents by type (1 July to 31 December 2015)

Disclosure document type	Number lodged	Percentage
Prospectus for entities quoted	156	29.5%
Prospectus for entities unquoted	146	27.6%
Offer information statement	13	2.5%
Short form quoted	20	3.8%
Short form unquoted	14	2.6%
Replacement prospectus	97	18.3%
Supplementary prospectus	83	15.7%

Table 6: Data table for Figure 5: Number of foreign and domestic bidders (in schemes and bids) by month (1 July to 31 December 2015)

Month	Foreign bidder	Domestic bidder
July	2	4
August	5	5
September	7	3
October	0	7
November	4	8
December	3	11

Table 7: Data table for Figure 7: Related party approval notices (July 2013 to December 2015)

Period	Total lodgements	Total excluding re-lodgements
July–December 2015	267	226
January–June 2015	111	80
July–December 2014	265	214
January–June 2014	135	100
July–December 2013	273	215

Table 8: Data table for Figure 9: Total original fundraising documents lodged with ASIC by quarter (2005–06 financial year to 2015–16 financial year)

Financial year	First quarter (July–September)	Second quarter (October–December)	Third quarter (January–March)	Fourth quarter (April–June)	Total
2015–16	145	213	–	–	358
2014–15	152	180	99	149	580
2013–14	131	157	94	150	532
2012–13	124	148	118	124	514
2011–12	123	174	117	41	455
2010–11	143	228	131	155	657
2009–10	133	73	137	152	495
2008–09	119	157	104	145	525
2007–08	188	277	107	158	730
2006–07	179	293	205	256	933
2005–06	142	277	160	208	787

Table 9: Data table for Figure 10: Total bidder's statements lodged with ASIC by quarter (2001–02 financial year to 2015–16 financial year)

Financial year	First quarter (July–September)	Second quarter (October–December)	Third quarter (January–March)	Fourth quarter (April–June)	Total
2015–16	14	14	–	–	28
2014–15	15	10	8	8	41
2013–14	12	20	11	13	56
2012–13	13	8	10	11	42
2011–12	13	14	6	18	51
2010–11	15	17	17	17	66
2009–10	19	19	11	14	63
2008–09	12	15	9	17	53
2007–08	20	34	5	15	74
2006–07	29	29	16	20	94
2005–06	11	13	16	21	61

Financial year	First quarter (July–September)	Second quarter (October–December)	Third quarter (January–March)	Fourth quarter (April–June)	Total
2004–05	17	20	19	11	67
2003–04	19	20	15	11	65
2002–03	9	12	15	19	55
2001–02	15	18	15	18	66

Table 10: Data table for Figure 11: Total scheme booklets lodged with ASIC by quarter (2001–02 financial year to 2015–16 financial year)

Financial year	First quarter (July–September)	Second quarter (October–December)	Third quarter (January–March)	Fourth quarter (April–June)	Total
2015–16	14	21	–	–	35
2014–15	7	59	12	4	82
2013–14	14	13	5	8	40
2012–13	9	16	9	14	48
2011–12	13	15	9	22	59
2010–11	19	27	13	23	82
2009–10	12	35	7	6	60
2008–09	14	7	5	13	39
2007–08	23	17	11	7	58
2006–07	17	8	17	16	58
2005–06	16	8	8	8	40
2004–05	14	9	14	2	39
2003–04	12	17	5	19	53
2002–03	12	12	8	13	45
2001–02	10	4	3	12	29

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.
AGM	Annual general meeting
ASIC	Australian Securities and Investments Commission
ASX	ASX Limited or the exchange market operated by ASX Limited
Ch 6D	A chapter of the Corporations Act (in this example numbered 6D), unless otherwise specified
[CO 14/1000] (for example)	An ASIC Class Order (in this example numbered 14/1000)
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
CP 234 (for example)	An ASIC consultation paper (in this example numbered 234)
emerging market issuer	A listed entity that has: <ul style="list-style-type: none"> material assets located in, or a revenue stream derived from operations in, an emerging market; or subsidiaries incorporated in and/or listed in an emerging market. <p>In addition, emerging market issuers may have directors or senior management based offshore in an emerging market, or engage an auditor from an emerging market</p>
employee incentive scheme	A scheme that is designed to support interdependence between a body and its eligible participants for their long-term mutual benefit
EMR team	Emerging, Mining and Resources team
fintech	Financial technology
FOFA	Future of Financial Advice
foreign exempt listing	A listing on the ASX by a foreign entity who complies with ASX Listing Rule 1.11.

Term	Meaning in this document
GN 13 (for example)	A Takeovers Panel guidance note (in this example numbered 13)
IPO	Initial public offering
item 1 (for example)	An item of s611 of the Corporations Act (in this example numbered 1)
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
Legislative Instruments Act	<i>Legislative Instruments Act 2003</i>
minimum election condition	When multiple forms of consideration are offered in a bid, a condition that the bid will fail unless at least a certain amount or proportion of one of the forms of consideration is accepted
OFR	Operating and financial review
over-threshold statement	Intention statements where the holdings that are the subject of the statement, when aggregated with the bidder's own interests, exceed the 20% threshold established by s606
previous period	1 January to 30 June 2015
REP 467 (for example)	An ASIC report (in this example numbered 467)
RG 9 (for example)	An ASIC regulatory guide (in this example numbered 9)
s741 (for example)	A section of the Corporations Act (in this example numbered 741), unless otherwise specified
strike	A 'no' vote on a remuneration report of more than 25% of voting shareholders
this period	1 July to 31 December 2015
VIE structure	Variable interest entity structure

Related information

Headnotes

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

Class orders and legislative instruments

[CO 14/1000] *Employee incentive schemes: Listed bodies*

[CO 14/1001] *Employee incentive schemes: Unlisted bodies*

ASIC Corporations (Approved Foreign Financial Markets) Instrument 2015/1071

ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251

ASIC Corporations (IDPS—Relevant Interests) Instrument 2015/1067

ASIC Corporations (Minimum Bid Price) Instrument 2015/1068

ASIC Corporations (Takeovers—Accelerated Rights Issues) Instrument 2015/1069

ASIC Corporations (Unsolicited Offers—Foreign Bids) Instrument 2015/1070

Regulatory guides

RG 9 *Takeover bids*

RG 25 *Takeovers: False and misleading statements*

RG 49 *Employee incentive schemes*

RG 51 *Applications for relief*

RG 72 *Foreign securities: Disclosure relief*

RG 112 *Independence of experts*

RG 158 *Advertising and publicity for offers of securities*

RG 170 *Prospective financial information*

RG 174 *Relief for externally administered companies and registered schemes being wound up*

RG 228 *Prospectuses: Effective disclosure for retail investors*

RG 246 *Conflicted remuneration*

RG 247 *Effective disclosure in an operating and financial review*

Legislation

Corporations Act, Chs 2M, 6, 6D, Pts 5.1, 7.7A Div 4, s111AT, 218, 319, 340, 411(2), 412(6), 602, 604, 606, 611, 618, 626, 655A, 657A, 657B, 657C(1), 657C(3)(b), 669, 708A, 708AA, 710, 713A–713E, 718, 741, 963E, 963G, 963H, 963K

Corporations Amendment (Crowd-sourced Funding) Bill 2015

Corporations Amendment (Future of Financial Advice) Act 2012

Corporations Amendment (Further Future of Financial Advice Measures) Act 2012

Corporations Regulations 2001

Legislative Instruments Act

Cases

Australian Securities and Investments Commission v Mariner Corporation Limited [2015] FCA 589

Palmer Leisure Coolum Pty Ltd v Takeovers Panel [2015] FCA 1498

Queensland North Australia Pty Ltd v Takeovers Panel [2015] FCAFC 128

Sydney Gas Limited 01 [2006] ATP 9

Consultation papers and reports

CP 225 *Remaking of ASIC class orders on offers of foreign securities*

CP 234 *Remaking ASIC class orders on takeovers and schemes of arrangement*

CP 239 *Disclosure documents: Update to ASIC instruments and guidance*

CP 240 *Remaking ASIC class orders on rounding, directors' reports, disclosing entities and other matters*

CP 243 *Remaking ASIC class orders on electronic lodgement of financial reports and dual lodgement relief*

CP 248 *Remaking ASIC class orders on reporting by foreign entities: [CO 98/98] and [CO 02/1432]*

REP 365 *Hybrid securities*

REP 368 *Emerging market issuers*

REP 446 *ASIC regulation of corporation finance: January to June 2015*

REP 423 *ASIC regulation of corporation finance: July to December 2014*

REP 467 *Overview of decisions on relief applications (June to September 2015)*

Media releases

15-171MR *Coal Fe Resources pays penalty for alleged continuous disclosure breach*

15-174MR *ASIC appoints Morgan Stanley to sell shares in Richfield International Limited*

15-237MR *ASIC's Corporate Plan 2015–16 to 2018–19 and Focus for 2015–16*

15-328MR *ASIC updates guidance on employee incentive schemes and amends class orders*

15-331MR *Focus for 31 December 2015 financial reports*

15-375MR *ASIC remakes instruments on takeovers and schemes of arrangement*

Other documents

ASX Guidance Note 33 *Removal of entities from the ASX official list*

GN 13 *Broker handling fees*

GN 23 *Shareholder intention statements*