

# Raising Capital in Australia

2020



# Overview

This guide summarises the key components of each of the main secondary capital raising options available in the Australian public market. It is specifically designed to assist senior executives of ASX listed entities to understand the capital raising options available to them, and to set out some of the key considerations for determining the most appropriate capital raising method in a particular circumstance.

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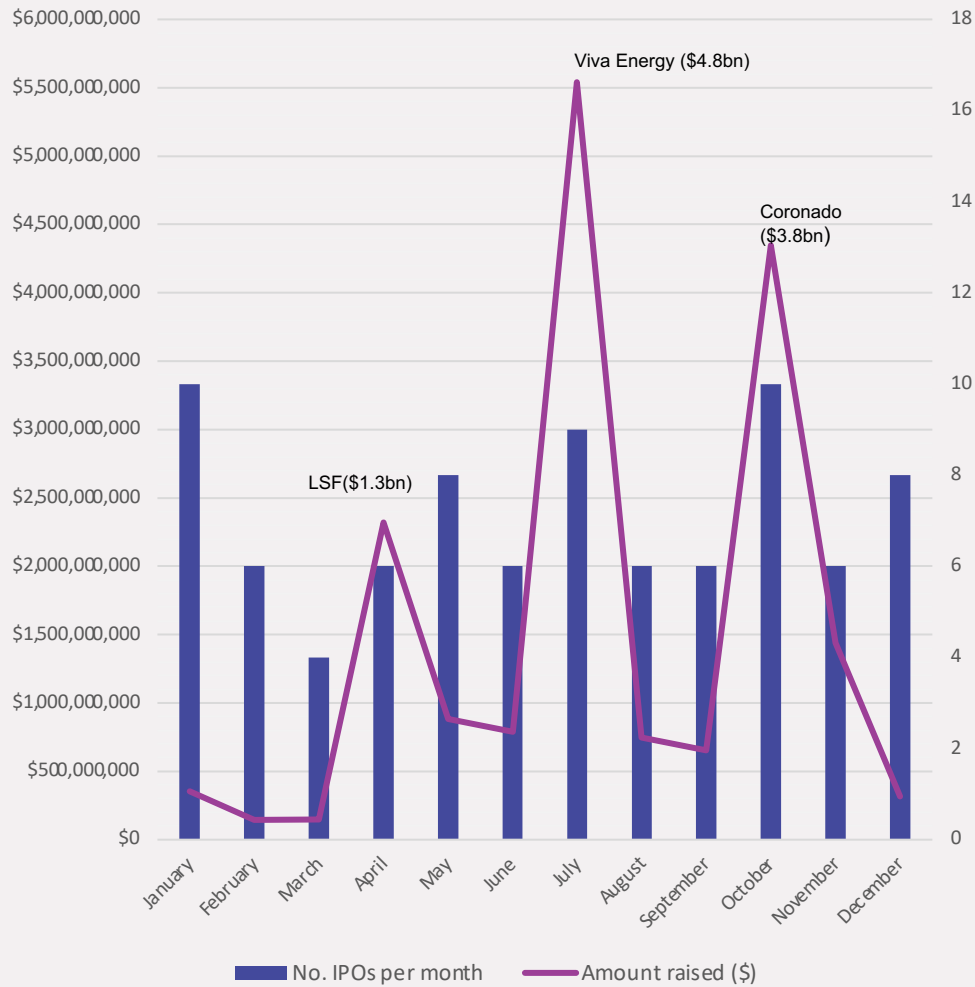
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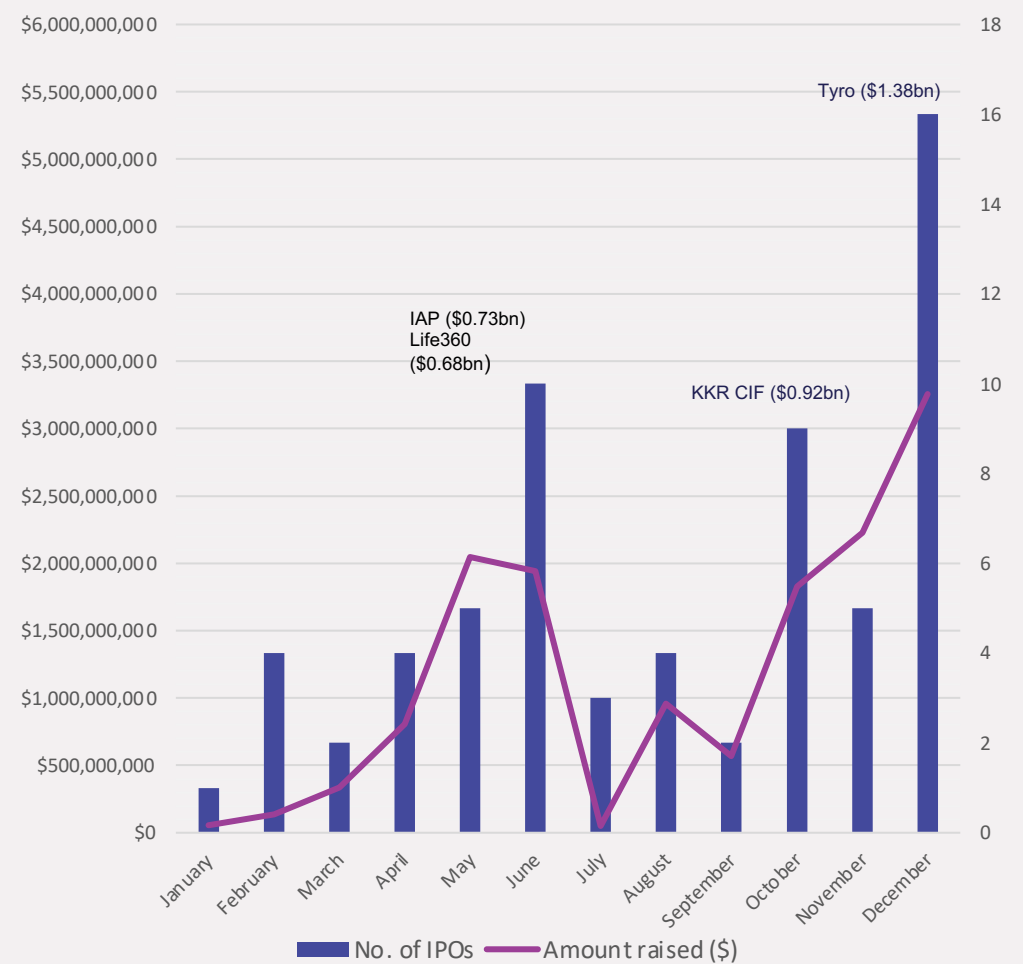
# 1. Market snapshot

# Initial Public Offerings (2018 and 2019)

## INITIAL PUBLIC OFFERINGS (> \$10m) (2018)

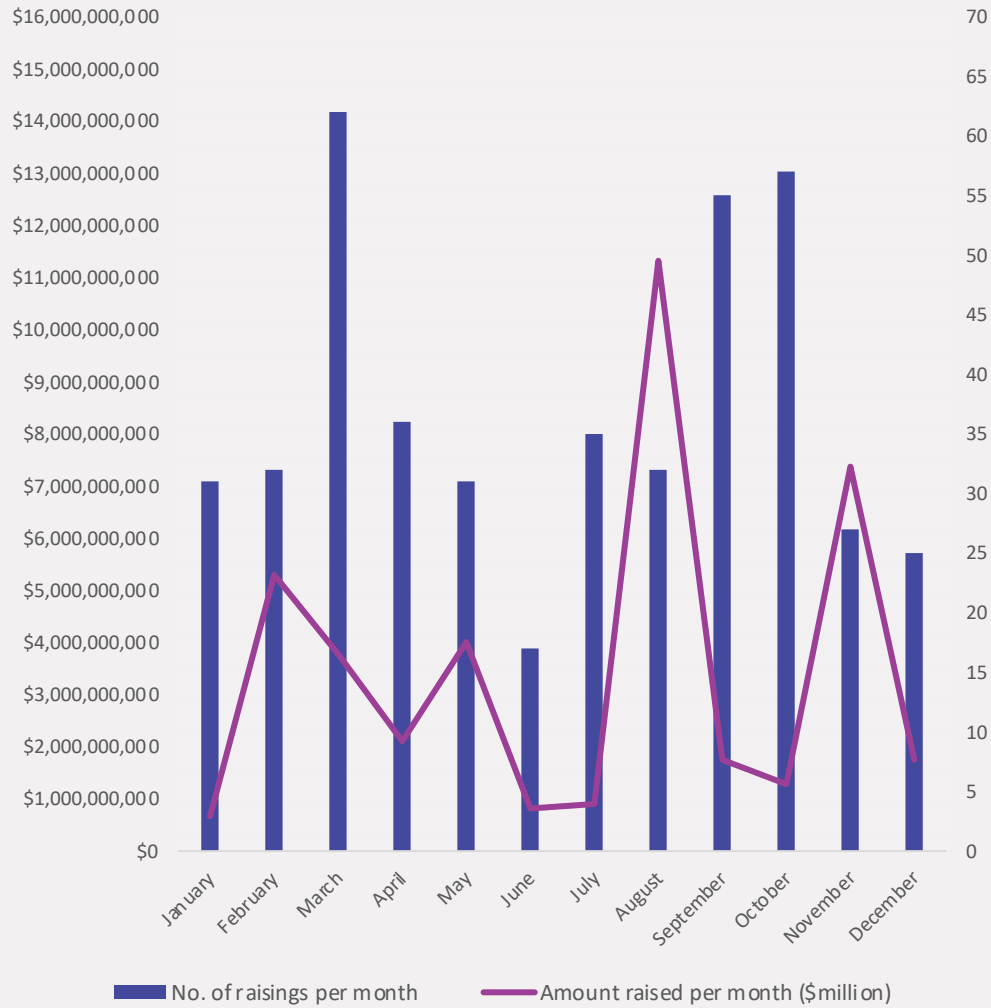


## INITIAL PUBLIC OFFERINGS (> \$10m) (2019)



# Secondary Raisings (2018 and 2019)

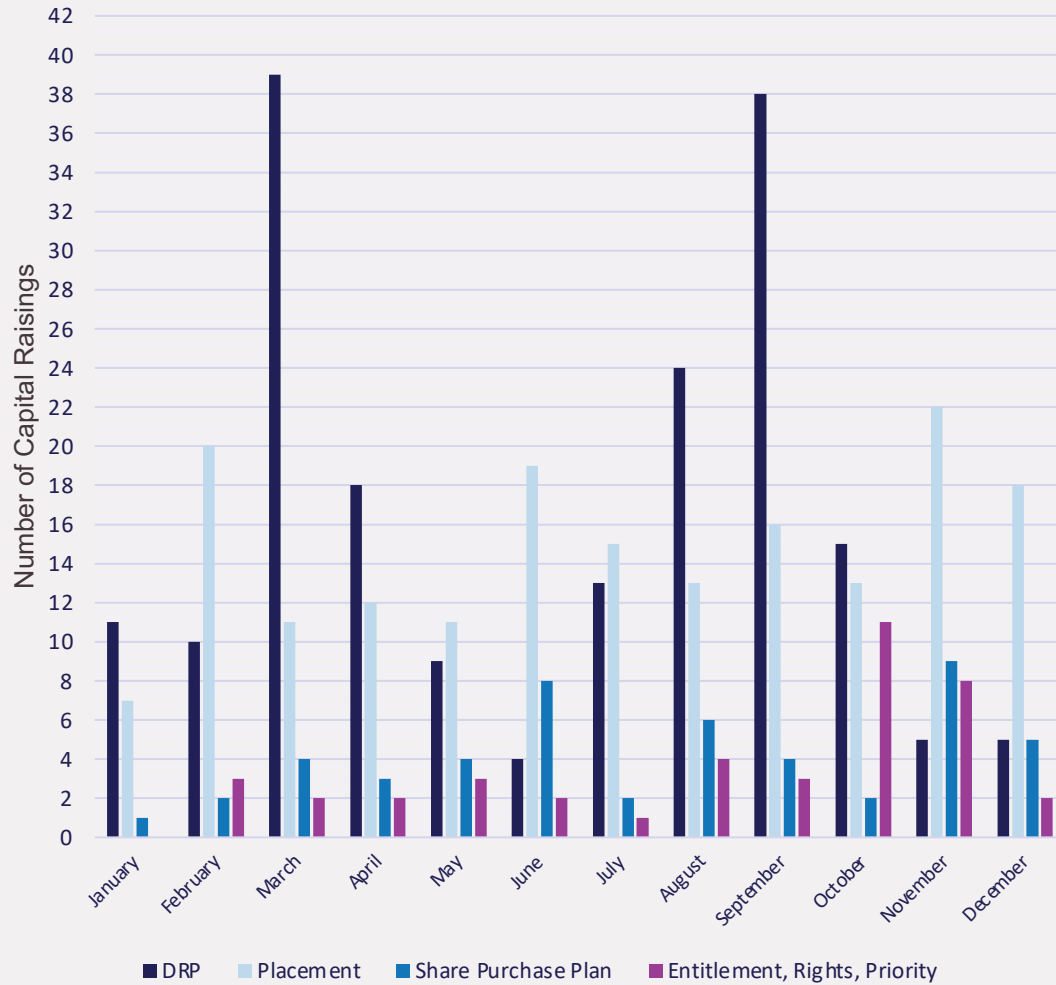
## ASX ALL ORDINARIES SECONDARY RAISINGS (2018)



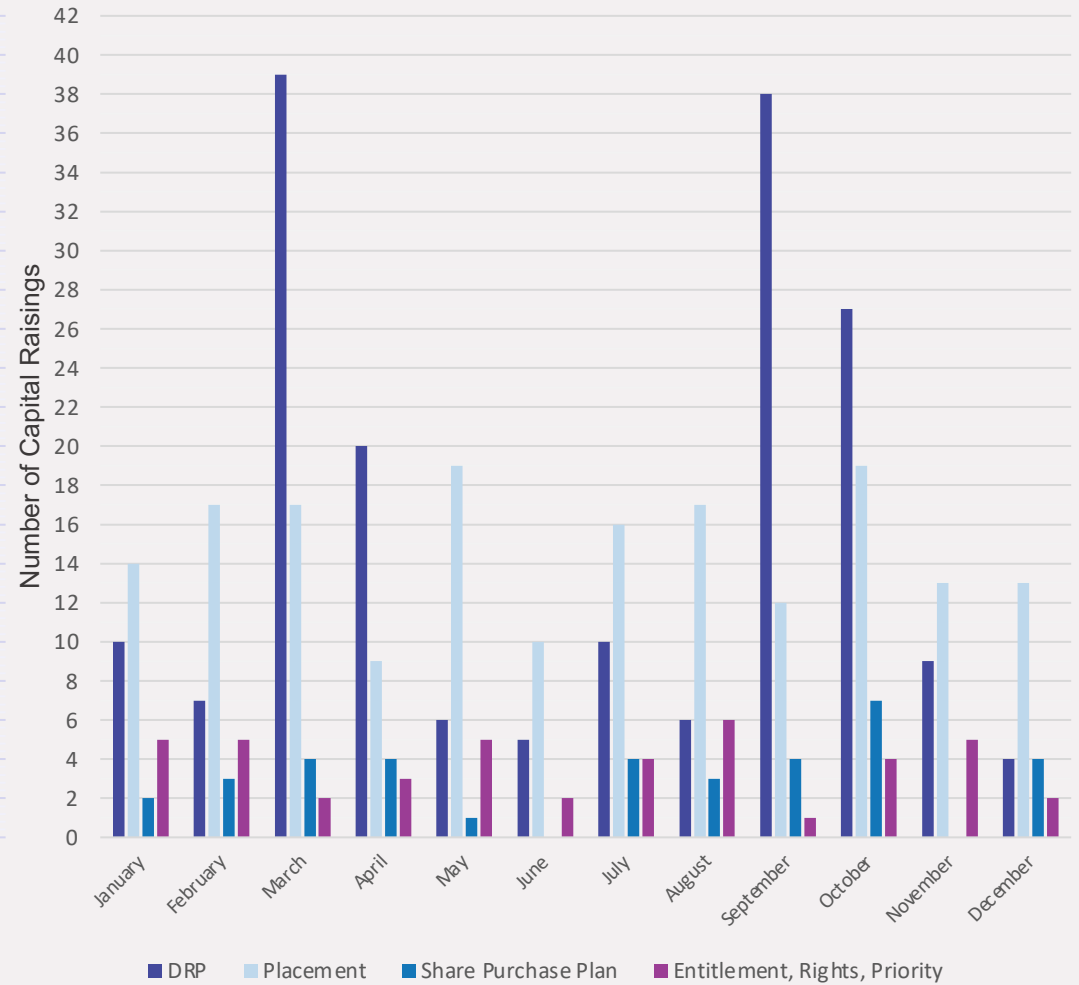
## ASX ALL ORDINARIES SECONDARY RAISINGS (2019)



# Split of capital (2018 and 2019)

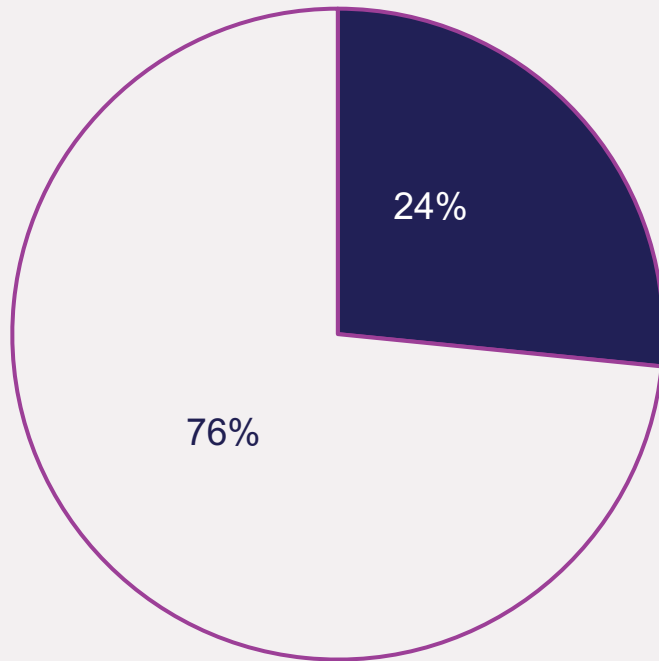


## ASX ALL ORDINARIES SECONDARY RAISINGS (2019)



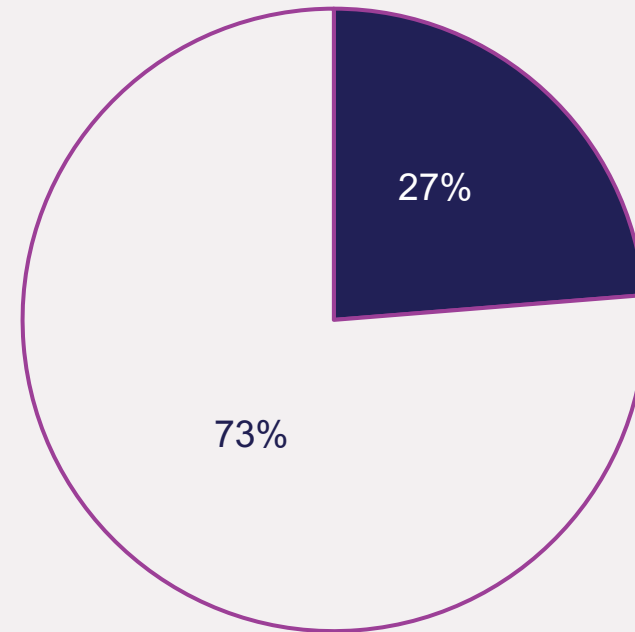
# IPOs vs Secondary Raisings (2018 and 2019)

2018



■ IPOs (\$17.58m) □ Secondary Raisings (\$48.55 m)

2019



■ IPOs (\$14.41m) □ Secondary Raisings (\$46.33 m)





# Market Volatility - Key observations (2018)

Leading economic indicators show weakness in Europe and China.

## Brexit (June/July)

- Geopolitical risks failed to diminish.
- Widespread market uncertainty.
- UK Government resignations.

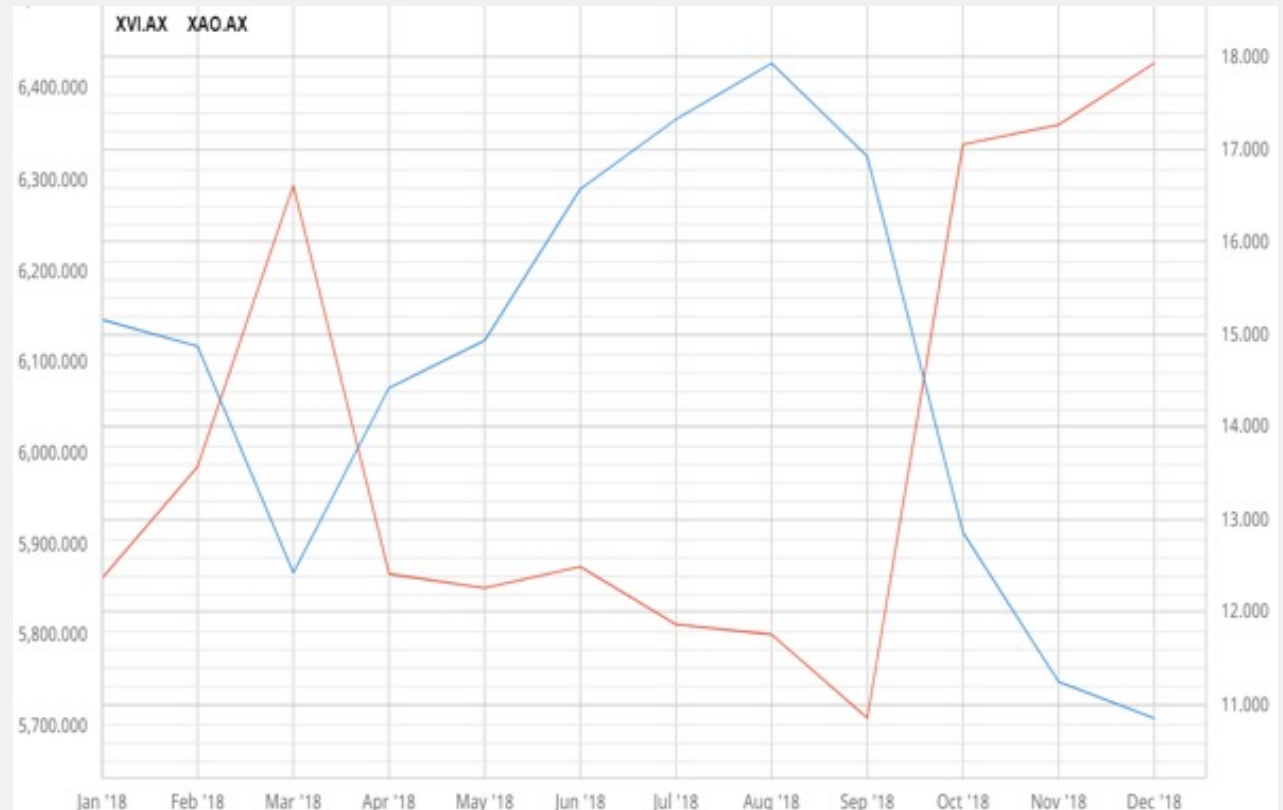
## US/China trade war (August/September)

- Trade related risks perceived as a threat to growth.
- Higher uncertainty about trade policy, influencing future investment decisions.
- US has set a higher levy on Chinese imports. China retaliated against US tariffs by devaluing the yuan to its lowest level in more than a decade. This made China's exports cheaper, partially offsetting the impact of US tariffs on Chinese imports.

## Wall Street sell off/correction (October)

## Political activism in Europe (e.g. Gilets Jaunes protest) (November)

Falling oil prices and widespread uncertainty in global equities impacted Australian energy stocks



— S&P/ASX200 Volatility Index (XVI)

— ASX All Ordinaries (XAO)



# Market Volatility - Key observations (2019)

## Notably fewer ASX IPOs raising over \$1bn than in 2018

**Middle East attacks** – Markets again focused on the Middle East and a retaliatory strike by Iran (January).

### China/US trade deal

Concerns over increasing tension led to market uncertainty in May.

Hopes for a trade deal in October lead to improved market sentiment.

US/China tensions in November caused global concern which negatively impacted markets.

### Global fears of recession (August)

A market panic caused by a bond market phenomenon known as the "inverted yield" (i.e. when interest rates on America's long-term (10-year) government bonds fall below short-term (2-year) rates).

This event has been regarded as a reliable predictor of US recessions in the past (last occurring prior to GFC) and caused global selling as fears of a recession spread.

Signs of recession in Germany and a possible continued weakening of Chinese growth fueled concern.

**Positive US Data (November)** – Australian shares rose as upbeat US economic data helped boost markets, including increased economic growth and less steep decline in business investment.

**December volatility** – Market volatility amidst concerns about the global trade environment following Donald Trump dismissing reports of progress in the trade talks between China and the US.

“Deterioration in fundamentals has not been as severe as what the decline in sentiment and financial markets has been”

Macquarie Wealth Management Investment Strategy Team, 31 January 2019



— S&P/ASX200 Volatility Index (XVI)

— ASX All Ordinaries (XAO)



# Market Volatility - Key observations (2020)

## Strong start to 2020

The ASX saw a strong start to the year, with Healthcare and IT sector stocks performing well.

The S&P/ASX 200 hit a record high in February.

## Coronavirus Pandemic

The escalation of the COVID-19 pandemic had a significant impact on businesses and corporations as restrictions were put in place around the world.

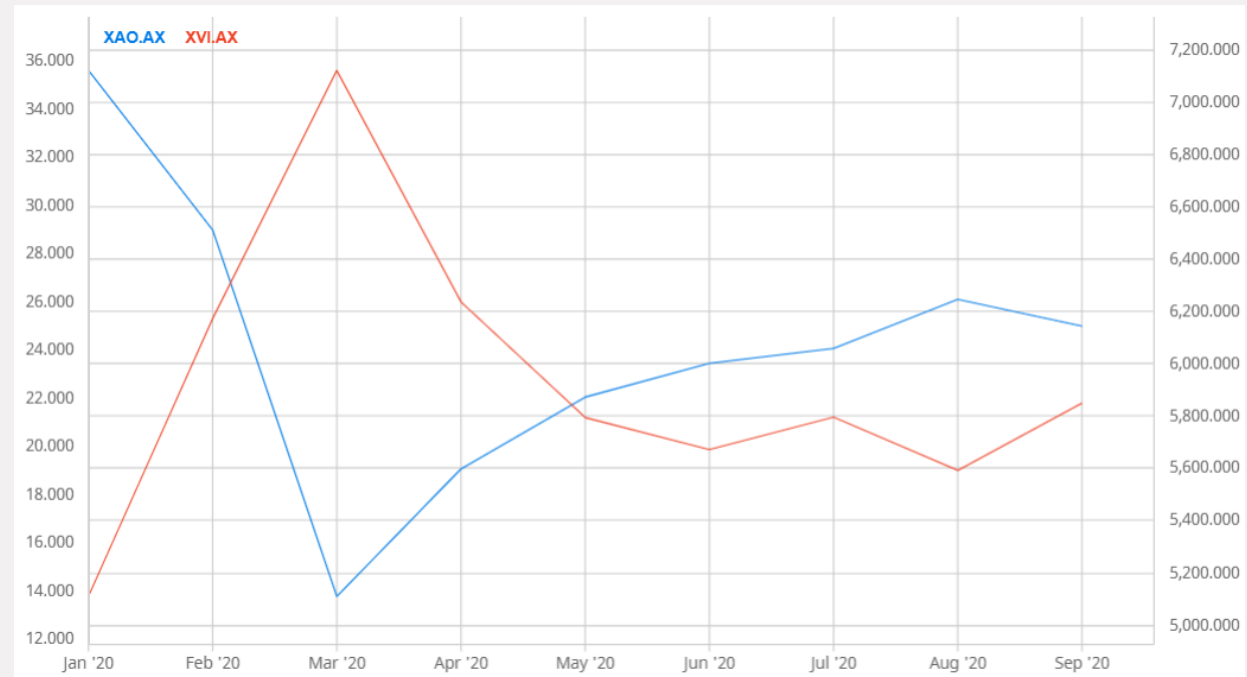
Increased volatility seen as investors panic sell amidst uncertainty and fear as to the impact on the widespread economy.

The pandemic has resulted in large scale unemployment and significant financial stress for businesses on a global scale.

The ASX entered a bear market in March.

## Oil price war

Oil price war between Saudi Arabia and Russia as they fought for market share, which resulted in WTI crude price going negative for the first time in history.



— S&P/ASX200 Volatility Index (XVI)

— ASX All Ordinaries (XAO)



## 2. Capital raising options - Listed entities

# Placements Frequently asked questions



## What is it?

Placements involve an offer of securities to selected institutional investors, which may include existing security holders and new institutional, strategic or cornerstone investors.

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## Who can participate?

Institutional placements are typically marketed to institutions in Australia (and New Zealand) and selected other jurisdictions including, for example, Singapore, Hong Kong, the European Economic Area and the UK. With appropriate legal input, larger placements can include offers in the US market.

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## What is the timing?

Execution timeframes for placements are still the shortest of all the types of equity capital raisings. A trading halt/public announcement to settlement can be as short as 3-4 business days.

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## What are the costs?

Generally a placement involves lower transaction costs – management/underwriting fees are the single biggest expense.

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## What are the demands on management?

Typically less management time is involved with placements than the alternatives, particularly where advisers/underwriters are familiar with the issuer.

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# Placements Frequently asked questions continued



## What offer materials are required?

A 'cleansing notice' must be released to the ASX for the securities to be freely on sold in the 12 months following the issue without the need for a prospectus/product disclosure statement.

The cleansing notice must confirm the issuer is in compliance with its continuous disclosure obligations and certain financial reporting obligations and that it has no "excluded information" i.e. non-public price sensitive information (e.g. information being withheld from disclosure to the market under a carve-out from ASX Listing Rule 3.1) – if such information does exist, it is generally disclosed to the market in a market announcement or investor presentation prior to release of the cleansing notice. There are a number of technical requirements for an issuer to satisfy in order to be eligible to use a cleansing notice, including a requirement that its securities must not have been suspended from trading for more than 5 days in the last 12 months.

Further, where material information has been selectively given to potential investors (e.g. in seeking preliminary views / interest for the capital raising), that information may need to be disclosed to avoid potential contravention of the insider trading provisions.



## What is the offer price?

The offer price under a placement is typically at a discount to the closing price the day before announcement of the offer.



## What are some examples of common structuring?

Placements are often conducted alongside a share purchase plan (see page 18) or an accelerated entitlement offer (see pages 24 and 31). Combining a placement with a retail offer is often considered to be a more equitable structure and can help to reduce dilution experienced by retail shareholders.



## Who is involved?

It is common for an issuer to retain one or more investment banks to manage a placement and to "sell" the offer to existing and new investors. Investment banks may agree to underwrite all or part of the placement or alternatively offer settlement support (settlement support is where the investment bank agrees to pay funds owing by an accepting investor who fails to settle).



# Placements Frequently asked questions continued



## What are some of the legal and regulatory considerations?

- ASX listed entities can conduct placements (and other non pro-rata offers) of up to 15% of the issuer's total issued capital each 12-month period.
- An 'eligible entity' that is not included in the S&P/ASX300 Index and has a market capitalisation of less than the amount prescribed by the ASX from time to time (A\$300 at the time of publication) and has obtained the approval of securityholders at its AGM, may raise an additional 10%.
- Placements to individuals must observe takeover thresholds and foreign participants must observe FIRB thresholds as well as any applicable industry-specific legislation.
- Placements to directors and other related parties and certain other persons in a position of influence, require securityholder approval.



## What is the liability regime?

Liability potentially arises if investors are misled. No statutory due diligence defences are available, however liability risks can be mitigated by the conduct of due diligence (centered around a management questionnaire).



## What regulatory approvals are required?

If a trading halt is sought (e.g. because a bookbuild process is expected to take place over the course of a trading day), ASX approval is required. It is common market practice for trading halts to be granted in the context of a placement.

However, the general principle the ASX applies when it receives a request for a trading halt is that interruptions to trading should be kept to a minimum. The ASX will not grant a trading halt in all circumstances.



## What are the COVID-19 temporary capital raising reforms?

Refer to Section 3 of this booklet for some temporary reforms introduced to facilitate capital raisings during COVID-19 that are expected to remain in place until 30 November 2020.



# Placements Pros and cons

## Pros

- Quick execution and settlement.
- Typically no prospectus.
- Typically lower transaction costs than other alternatives.
- Discount attractive to institutions.
- Opportunity to attract new investors.
- Flexibility to upsize/downsize depending on market reaction.

## Cons

- No due diligence defence if investors misled by statements made.
- Discount may impact amount that can be raised (i.e. the 15% limit).
- Post-placement market price may move towards or below discount offer price.
- Dilution for investors not participating (e.g. retail investors).





# Placements Recent examples

ASX Code	Company Name	Date Listed	Issue Type	Issue Price	Amount Listed	Discount to final day price
NAB	National Australia Bank Ltd	01-05-20	Ords	\$14.15	\$3,000,000,010.00	8.5%
RHC	Ramsay Health Care Ltd	28-04-20	Ords	\$56.00	\$1,200,000,032.00	12.9%
QBE	QBE Insurance Group Ltd	20-04-20	Ords	\$8.25	\$1,200,000,005.00	9.4%
NCM	Newcrest Mining Ltd	06-05-20	Ords	\$25.60	\$1,000,000,000.00	7.0%
AIA	Auckland International Airport Ltd	15-04-20	Ords	\$4.50	\$999,999,997.00	10.7% (NZX)
LLC	Lendlease Group	04-05-20	SSec	\$9.80	\$950,000,005.00	8.2%
COH	Cochlear Ltd	31-03-20	Ords	\$140.00	\$880,000,100.00	16.7%
NAB	National Australia Bank Ltd	26-03-20	Ords	\$21.34	\$749,999,990.00	0.6%
NXT	NextDC Ltd	08-04-20	Ords	\$7.80	\$671,693,279.00	15.0%
ORI	Orica Ltd	25-02-20	Ords	\$21.19	\$500,000,003.00	5.0%
MTS	Metcash Ltd	24-04-20	Ords	\$2.80	\$300,000,002.00	7.9%
NSR	National Storage REIT	11-05-20	SSec	\$1.57	\$300,000,001.00	7.1%
CQR	Charter Hall Retail REIT	01-05-20	Units	\$2.90	\$275,000,002.00	7.9%



# Share purchase plans\* Frequently asked questions

\* For simplicity, the term share purchase plan or SPP includes interest purchase plans (being the equivalent form of offer of interests to existing members of a managed investment scheme listed on ASX).



## What is it?

Share Purchase Plans (**SPPs**) are a useful method of raising equity capital from existing investors without the need for a prospectus or product disclosure statement provided certain requirements are satisfied.

Whilst an SPP is sometimes undertaken on a standalone basis, it is often conducted in conjunction with a placement.



## Who can participate?

Existing securityholders who hold shares/units the business day before the issuer announces the SPP.



## What is the timing?

There is an ASX timetable that sets out certain dates that must be followed unless otherwise agreed with ASX. The length of time the SPP may be kept open, is at the discretion of the Board of Directors. Commonly, an SPP may be kept open for between 3 and 6 weeks.



## What are the costs?

Generally, a SPP involves lower transaction costs. Where it is non-underwritten and therefore there are no management/underwriting fees, the fees are primarily limited to legal costs associated with preparation of a short SPP booklet, and liaison with ASX.



## What are the demands on management?

Typically less management time is involved compared with alternative structures.



# Share purchase plans **Frequently asked questions continued**



## What offer materials are required?

A short SPP booklet and a cleansing notice (refer to page 14 for a description of what is required in a cleansing notice).

The SPP booklet must include certain disclosures including (i) the method used to calculate the issue price; (ii) the relationship between the issue price and the market price; and (iii) the risk that the market price may change between the date of the offer and the date when the securities are issued.

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## What is the offer price?

- ASIC requirement - The issue price must be less than the market price during a specified period determined by the issuer in the 30 days before either the date of the offer or the date of the issue).
  - ASX requirement - Issue price is at least 80% of the average market price of securities in that class (calculated over the last five days the securities were traded on ASX before the announcement date or the issue date).
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## What is the offer size?

Up to a dollar cap of \$30,000 per securityholder in any 12-month period, irrespective of the size of an individual securityholder's stake. Directors may determine a minimum application size (e.g. at least \$1,000, or an overall cap for the SPP, or a cap per eligible shareholder).

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## Who is involved?

Unless the SPP is underwritten (which is uncommon), generally the only third-party adviser involved in an SPP is the issuer's legal counsel.



# Share purchase plans Frequently asked questions continued



## What are some of the legal and regulatory considerations?

There are a number of conditions imposed by ASIC that an issuer must satisfy in order to undertake a purchase plan without a prospectus or product disclosure statement (ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547):

- securities being offered must be in a class quoted on ASX;
- issuer must not have contravened the financial reporting, continuous disclosure or prospectus disclosure rules in the Corporations Act 2001 (Cth) (**Corporations Act**) in the last 12 months;
- offer must be made to all securityholders in jurisdictions in which it would be lawful and practical to make the offer;
- each securityholder must receive an offer on similar terms and conditions and on a non-renounceable basis;
- the issue price must be less than the market price during a specified period determined by the issuer in the 30 days before either the date of the offer or the date of the issue.

An issue of securities under a SPP is exempt from the standard 15% limit on placements (ASX Listing Rule 7.1) and the restriction on offering securities to persons in a position of influence (e.g. related parties, persons holding 30% or more in the issuer and persons holding 10% or more in the issuer who have nominated a director to the board of the issuer pursuant to an agreement which gives them the right or expectation to do so) provided:

- the number of securities to be issued is not greater than 30% of the number of fully paid ordinary securities already on issue; and
- the issue price of the securities is at least 80% of the volume weighted average market price for securities in that class calculated over the last 5 days on which sales in the securities were recorded, either before the day on which sales in the securities were recorded, either before the day on which the issue was announced or before the day on which the issue was made.

The ASX exception noted above (ASX Listing Rule 7.2, Exception 5) and ASX Listing Rule 10.12, Exception 4) do not apply to an issue of securities under an agreement to underwrite the shortfall on a SPP.



## What is the liability regime?

Liability potentially arises if investors are misled. Provided the issuer satisfies the conditions imposed by ASIC under the ASIC instrument noted above and can conduct the SPP without a prospectus or product disclosure statement, no statutory due diligence defences are available, however liability risks can be mitigated by the conduct of due diligence (centered around a management questionnaire).



# Share purchase plans Frequently asked questions continued



## What regulatory approvals are required?

The issuer will need to agree the SPP timetable with the ASX prior to launch of the SPP.



## What are the COVID-19 temporary capital raising reforms?

Refer to Section 3 of this booklet for some temporary reforms introduced to facilitate capital raisings during COVID-19 that are expected to remain in place until 30 November 2020.



# Share purchase plans Pros and cons

## Pros

- Typically no prospectus, however cleansing notice must be issued.
- Typically lower transaction costs than other alternatives.
- Can be used when an issuer has conducted an institutional placement to allow retail securityholders a simple way to participate at the same price as the institutional placement.
- Simple way for small securityholders to increase their securityholding without brokerage cost.
- Exception from ASX Listing Rule 7.1 (ie 15% placement limitation).

## Cons

- Longer timetable to execution and settlement.
- No due diligence defence if investors misled by statements made.
- Not pro rata as the amount to be raised is fixed at a particular dollar figure per securityholder (and not by reference to the size of a securityholders holding).
- Potentially dilutionary for some securityholders.
- There is a limit on the aggregate amount that can be raised by reference to the number of securityholders an entity has on its register.



# Share Purchase Plan Recent examples

ASX Code	Company Name	Date Listed	Issue Type	Issue Price	Amount Listed	Discount
COH	Cochlear Ltd	01-05-20	Ords	\$140.00	\$220,019,380.00	2% to 5 day VWAP
AIA	Auckland International Airport Ltd	05-05-20	Ords	\$4.66	\$199,999,996.00	2.5% to 5 day VWAP
NXT	NextDC Ltd	08-05-20	Ords	\$7.80	\$190,323,588.00	9.4% to 5 day VWAP
BOQ	Bank of Queensland Ltd	03-01-20	Ords	\$7.27	\$89,668,914.00	2% to 5 day VWAP
NST	Northern Star Resources Ltd	05-02-20	Ords	\$9.00	\$49,998,555.00	28.2% to LTP
REH	Reece Ltd	05-05-20	Ords	\$7.60	\$47,207,506.00	9.42% to LTP
BEN	Bendigo and Adelaide Bank Ltd	25-03-20	Ords	\$6.72	\$44,756,665.00	2.0% to 5 Day VWAP
APT	Afterpay Ltd	31-01-20	Ords	\$23.00	\$33,011,785.00	39.0% to LTP
RSG	Resolute Mining Ltd	05-03-20	Ords	\$1.10	\$23,334,022.00	7.0% to 5 day VWAP
ORI	Orica Ltd	26-03-20	Ords	\$15.93	\$17,297,601.00	2.0% to 5 day VWAP



# Traditional / standard rights issues

## Frequently asked questions



### What is it?

A rights issue is an offer of securities to existing holders in proportion to their existing holdings (with the exception of certain overseas holders outside New Zealand). A rights issue may be renounceable or non-renounceable.

Renounceability involves the quotation on ASX of the rights to subscribe for securities in the rights issue so that there is in theory a market for existing securityholders to sell, and realise value for their rights if they don't wish to take them up.



### Who can participate?

Existing holders of securities in proportion to their existing holdings (with the exception of certain overseas holders outside New Zealand).



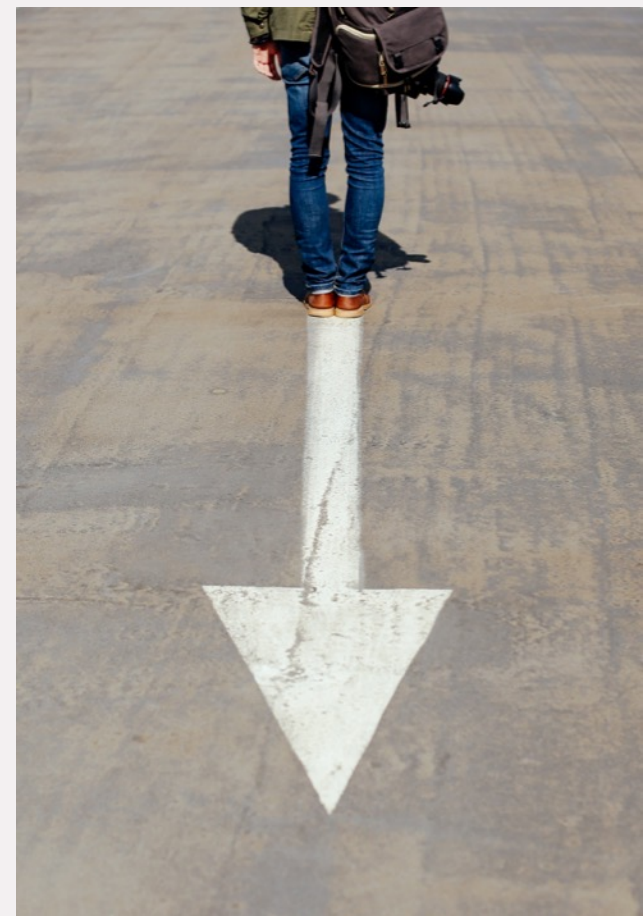
### What offer materials are required?

Typically undertaken with an ASX announcement; an offer booklet; and a cleansing notice, however if an issuer is unable to use a cleansing notice, a prospectus must be prepared. In addition to the points noted on page 14 as to what a cleansing notice must contain for a placement, in the context of a rights issue / entitlement offer, the cleansing notice must describe the effect of the offer on control of the issuer.



### What is the timing?

Time necessary to prepare and verify the offer materials, plus at least 18 days from announcement to trading (but can be longer if there is a longer offer period). The ASX has mandated offer timetables, which are set out in Appendix 7A of the ASX Listing Rules. Prior to launching an offer, issuers will need to agree the timetable with ASX (even if the ASX mandated timetable is strictly adhered to).





# Traditional / standard rights issues **Frequently asked questions continued**



## What are the costs?

Legal, accounting and underwriting fees can be significant, although legal and accounting fees will be less where a prospectus is not required.

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## What are the demands on management?

Typically more demanding than a placement. Preparation for the offer typically involves the conduct of a due diligence committee (**DDC**) process. The DDC is usually comprised of members of management/directors only. Unless the rights issue involves the issue of a prospectus, advisers typically do not sit on the DDC as members but attend DDC meetings as observers.

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## What is the offer price?

The ASX Listing Rules provide that generally the offer price must not contain a fraction of a cent. The ASX Listing Rules also require that the ratio of securities must not be greater than one security for each security held unless the offer is renounceable, and the issue price is not more than the VWAP for securities in that class calculated over the last 5 days on which sales in the securities were recorded before the day on which the offer is announced.

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## Who is involved?

It is common for an issuer to retain one or more investment banks to manage the rights issue and to “sell” the offer to existing and new investors. Investment banks may agree to underwrite all or part of the placement or alternatively offer settlement support. The issuer’s lawyers will typically design and implement the due diligence process for the offer and attend DDC meetings as observers. Depending on the financial disclosures, the issuer may appoint an investigating accountant who may conduct financial due diligence and/or produce a private report.

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## Traditional / standard rights issues **Frequently asked questions continued**



### What are some of the legal and regulatory considerations?

If an entity is undertaking more than one corporate action, it must not have a record date to identify holders entitled to participate in a subsequent one until it has updated its register in relation to the preceding one. An entity must not have a record date for any purpose until at least 3 business days after its last record date.

An offer of securities to holders of ordinary securities under a rights issue is exempt from the ASX Listing Rule 7.1 – 15% (or 25%) limit on placements. In addition, the exception extends to an issue of securities to make up the shortfall provided the directors of the entity have stated as part of the offer that they reserve the right to issue the shortfall and what their allocation policy will be in relation to the shortfall. The issuer must complete the issue to make up the shortfall no later than 3 months after the close of the offer and the price must not be less than the price at which the securities were offered under the rights issue.

Persons in a position of influence (e.g. related parties, persons holding 30% or more in the issuer and persons holding 10% or more in the issuer who have nominated a director to the board of the issuer pursuant to an agreement which gives them the right or expectation to do so) may not participate in the shortfall of a pro rata issue without shareholder approval.

An issue of securities under an agreement to underwrite the shortfall (including by a person in a position of influence) in a rights issue/entitlement offer is also exempt from the ASX Listing Rule 7.1 – 15% (or 25%) limit on placements provided specific details of the underwriting have been disclosed in the Appendix 3B or other market announcement, and the issue is made no later than 15 business days after the close of the offer.



# Traditional / standard rights issues Frequently asked questions continued



## What 'CONTROL' considerations should an issuer keep in mind?

- It is not unexpected that in times where capital is harder to obtain, a number of rights issues/entitlement offers have involved “control” issues. Most typically this has been where an offer has been underwritten or sub-underwritten by a significant securityholder, cornerstone or strategic investor and, depending the level of shortfall, the party concerned may move to a point where it controls the entity or consolidates pre-existing control.
- In some cases, a professional underwriter might be prepared to underwrite an offer only if the underwriting risk is wholly or substantially sub-underwritten away. In such cases, the only sub-underwriters available may be an existing securityholder or a related party (such as a board member or an entity controlled by or associated with a director) or a strategic or cornerstone investor.
- Such sub-underwriting has been necessary to provide the certainty of an underwritten rights issue and that certainty has in turn improved the prospects of existing holders, particularly institutions, participating in the rights issue.
- Normally for an investor to move beyond the 20% threshold (or increase a holding which is already over 20%) it would need to make a takeover bid for all securities, unless the acquisition was within the 3% in six months creep exception, or unless non-associated target securityholders approved the acquisition in a general meeting.
- However, the Corporations Act creates a specific exception to the takeover rules for securities taken up by holders, underwriters and sub-underwriters in rights issues, and, with ASIC modifications, accelerated entitlement offers.
- There is also a separate exception to the 20% threshold for securities taken up by underwriters in fundraisings generally (not only rights issues) where there is a formal prospectus (or PDS) lodged with ASIC.
- In the case of most rights issues, the rights issue exception mentioned above will apply so long as an ASIC approved nominee is appointed to sell the “rights” of ineligible foreign securityholders.
- It is recognised that rights issues could be deliberately structured and used as a mechanism to effect a change of control without having to make a takeover bid for all securities or, alternatively, obtain securityholder approval. Indeed the Takeovers Panel has determined that some rights issues that have come before it, which technically fell within specific Corporations Act exceptions, nevertheless gave rise to “unacceptable circumstances”.
- The Takeovers Panel has issued Guidance Note 17 which sets out the indicators of when it will be concerned about control impacts and the factors an entity should consider when proceeding with a rights issue that could have an effect on control or the acquisition of a substantial interest in the issuer (see page 28).an



# Traditional / standard rights issues Frequently asked questions continued



## What does the Takeovers Panel say about rights issues? (see Takeovers Panel Guidance Note 17)

Issuers should have regard to Takeovers Panel Guidance Note 17 where a rights issue has or is likely to have an effect on control or the acquisition of a substantial interest in the issuer.

Many rights issues will not affect control. Further, in the absence of other issues, if the rights issue is structured appropriately and there is an appropriate dispersion strategy in place, then a rights issue that results in a control effect will not generally be unacceptable where there is a clear need for funds.

Issuers may rely on specific exceptions set out in section 611 of the Corporations Act (i.e. item 10 – Rights issues, item 10A – Accelerated rights issues and item 13 – Underwriting of fundraising), or alternatively may seek informed approval by non-associated securityholders of acquisitions in accordance with item 7 of section 611 of the Corporations Act.

Directors should carefully consider whether there is potential for a rights issue to affect control and what reasonable options are available to mitigate the effect. In Guidance Note 17, the Takeovers Panel has provided guidance as to certain mitigation measures an issuer may undertake, for example making a rights issue renounceable where an active market for the rights is likely, offering a shortfall facility, or using a similarly effective shortfall dispersion strategy. Additionally, an appropriate dispersion strategy may include using several non-associated sub-underwriters, the underwriter and sub-underwriters only receiving securities after all other applications have been satisfied, sufficient time being given to securityholders and other investors to assess the offer and external investors being able to take up securities under the dispersion strategy.

In considering whether a rights issue gives rise to unacceptable circumstances, the Panel looks at the effect of the rights issue taking into account the following:

- the issuer's situation – e.g. the need for funds (the amount needed may influence what is reasonable for it to accept as a potential control effect), methods of raising funds that are available and whether alternatives were considered, and market factors before and during the rights issue;
- the structure of the rights issue – e.g. size, price, discount, underwriting/sub-underwriting, renounceability, and existence of a dispersion strategy;
- the effect of the rights issue – e.g. any effect on control or the acquisition of a substantial interest, the steps taken by the board to minimise the potential control effects.

Disclosure is of critical importance. Where a rights issue has a greater potential control effect (e.g. an increase in a persons voting power from 10% to 40%) then an issuer is expected to provide more disclosure than a lesser effect (e.g. an increase in voting power from 51% to 55%).

Should the Takeovers Panel determine that a rights issue is not appropriate or contravenes any requirements, then it has wide powers to make orders, for example to prevent the rights issue from proceeding, to require further disclosure, divest shares acquired under the rights issue, require shareholder approval or require different underwriting arrangements.



# Traditional / standard rights issues Frequently asked questions continued



## What is the liability regime?

Liability potentially arises if investors are misled. Provided the issuer satisfies the conditions set out in section 708AA or section 1012DAA of the Corporations Act, and can conduct the rights issue without a prospectus or product disclosure statement, no statutory due diligence defences are available, however liability risks can be mitigated by the conduct of due diligence (centered around the DDC process and the production of a management questionnaire).



## What regulatory approvals are required?

The issuer will need to agree the rights issue timetable with the ASX prior to launch of the rights issue. If the issuer needs to appoint a nominee in accordance with s611 item 10 then it will need ASIC's approval to the nominee prior to launch of the offer.



## What are the COVID-19 temporary capital raising reforms?

Refer to Section 3 of this booklet for some temporary reforms introduced to facilitate capital raisings during COVID-19 that are expected to remain in place until 30 November 2020.

	Prospectus offer	'Low doc' offer
Statutory due diligence defences potentially available?	Yes	No
Potential civil liability if documents misleading/deceptive (including by omission)?	Yes (defences potentially available)	Yes (no defences potentially available)
Potential criminal liability?	Yes (strict liability if misleading / deceptive (including by omission) and materially adverse – defences potentially available)	Yes (for materially misleading statements where failure to take reasonable steps/ought reasonably to have known of the defect – no defences potentially available)
Liability position for issuer / directors / underwriters?	Same for each (deemed liability)	Differs (liability position of issuer directors / underwriter is different to issuer. Only liable if personally misled or deceived or "involved" in conduct of another)
Potential liability for conduct outside the offer documents?	Yes (same as 'low doc' offer)	Yes (same as prospectus offer)



# Traditional / standard rights issues Pros and cons

## Pros

- Typically the discount is attractive to securityholders.
- Typically no prospectus, however cleansing notice must be issued.
- Enables all securityholders (apart from ineligible securityholders from certain foreign jurisdictions) to participate, avoiding dilution impacts associated with a placement or, if conducted in conjunction with a placement, lessening that dilution impact.
- If it is renounceable, the rights trading enables holders to realise value for rights should they not wish to take them up.
- Exception from ASX Listing Rule 7.1 (i.e. 15% placement limitation), including the additional placement of shortfall securities to new or existing investors, and no securityholder approval required.
- No brokerage or transaction costs for securityholders who participate.

## Cons

- Timetable longer than placement.
- Typically more costly to conduct than a placement and more management time involved.
- Raising when market prices are depressed can be unattractive to issuers.



# Accelerated entitlement offers

## Frequently asked questions



### What is it?

An accelerated entitlement offer is an offer of securities to existing holders in proportion to their existing holdings (with the exception of certain overseas holders outside New Zealand). The difference between a standard rights issue and an accelerated entitlement offer is that in an accelerated entitlement offer, the offer to institutional / sophisticated investors is “accelerated” and the proceeds from that component are received on an accelerated timeframe.

There are 4 main types of accelerated entitlement offers summarised below (see also page 35 for some of the key differences between the various structures):

**ANREO (or JUMBO)** – Accelerated non-renounceable entitlement offer. “Non-renounceable” means that the securityholders have no ability to trade their rights or seek to otherwise obtain value for them. The non-renounceable nature of an ANREO encourages holders to take up their entitlements (to avoid dilution and take advantage of the discount offered because there is no possibility of receiving value from the rights to make up for dilution).

**AREO (or RAPIDS)** – Accelerated renounceable entitlement offer. “Renounceable” in the context of an AREO does not refer to ASX rights trading but means that securityholders who do not accept their entitlement or who are ineligible to do so may realise value for their rights. The potential value in the renounceable offer is realised through bookbuilds of renounced / ineligible entitlements conducted by one or more investment banks appointed to the offer. Any premium achieved in the bookbuild over the offer price, if any, is paid to the renouncing/ineligible holder.

**SAREO** – Simultaneous accelerated renounceable entitlement offer. A SAREO is a variation of the AREO structure in that the rights which have been renounced are sold through a single book-build (open only to institutional/sophisticated investors) after both the institutional and the retail offers have completed.

**PAITREO** – Accelerated renounceable entitlement offer with retail rights trading. A PAITREO is a combination of an AREO and a traditional renounceable rights issue.

In difficult underwriting conditions, ANREO’s with only the institutional component underwritten have been preferred over fully underwritten AREO structures. Where sufficient sub-underwriting support emerges in the institutional offer of an ANREO, underwriters may be willing to then underwrite the retail component of the offer.

An ANREO can deliver greater certainty of outcome for a sub-underwriting cornerstone investor than a renounceable entitlement offer since there is typically no retail shortfall bookbuild in a non-renounceable structure and the cornerstone investor may therefore receive an allocation of securities directly from the retail shortfall (rather than that shortfall being bookbuilt and allocated to general institutional investors as is customary in renounceable structures). A retail bookbuild does not guarantee that a sub-underwriting cornerstone investor will acquire any retail shortfall, and in some instances that might deter a cornerstone investor from participating.



# Accelerated entitlement offers **Frequently asked questions continued**



## Who can participate?

Existing holders of securities in proportion to their existing holdings (with the exception of certain overseas holders outside New Zealand).

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## What offer materials are required?

Typically undertaken with an ASX announcement; an investor presentation; a retail offer booklet; and a cleansing notice, however if an issuer is unable to use a cleansing notice, a prospectus must be prepared. See page 14 which describes the eligibility to use such a notice. See page 29 for an outline of the pros and cons of the prospectus versus the 'low doc' approach.

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## What is the timing?

Time necessary to prepare and verify the offer materials, plus 2-3 business days from announcement to trading for the institutional component of the offer, and approximately 18-22 days from announcement to normal trading under the retail component of the offer (but can be longer if there is a longer retail offer period). The ASX has mandated timetables set out in Appendix 7A of the ASX Listing Rules. Prior to launching an offer, issuers will need to agree the timetable with ASX (even if the ASX mandated timetable is strictly adhered to).

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## What are the costs?

Legal, accounting and underwriting fees can be significant, although legal and accounting fees will be less where a prospectus is not required.

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## What are the demands on management?

Typically more demanding than a placement. Preparation for the offer generally involves the conduct of a due diligence committee (**DDC**) process. The DDC is typically comprised of members of management/directors only. Unless the rights issue involves the issue of a prospectus, advisers do not sit on the DDC as members, but attend DDC meetings as observers.





# Accelerated entitlement offers **Frequently asked questions continued**



## What is the offer price?

The ASX Listing Rules provide that generally the offer price must not contain a fraction of a cent. The ASX Listing Rules also require that the ratio of securities must not be greater than one security for each security held unless the offer is renounceable and the issue price is not more than the VWAP for securities in that class calculated over the last 5 days on which sales in the securities were recorded before the day on which the offer.

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## Who is involved?

It is common for an issuer to retain one or more investment banks to manage the rights issue and to “sell” the offer to existing and new investors. Investment banks may agree to underwrite all or part of the placement or alternatively offer settlement support. The issuer’s lawyers will typically design and implement the due diligence process for the offer and attend DDC meetings as observers. Depending on the financial disclosures, the issuer may appoint an investigating accountant who may conduct financial due diligence and/or produce a private report.

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## What are some of the legal and regulatory considerations?

If an entity is undertaking more than one corporate action it must not have a record date to identify holders entitled to participate in a subsequent one until it has updated its register in relation to the preceding one. An entity must not have a record date for any purpose until at least 3 business days after its last record date.

An offer of securities to holders of ordinary securities under an entitlement offer is exempt from the ASX Listing Rule 7.1 – 15% (or 25%) limit on placements. In addition, the exception extends an issue of securities to make up the shortfall provided the directors of the entity have stated as part of the offer that they reserve the right to issue the shortfall and what their allocation policy will be in relation to the shortfall. The issuer must make the issue to make up the shortfall no later than 3 months after the close of the offer and the price must not be less than the price at which the securities were offered under the entitlement offer.

Persons in a position of influence (e.g. related parties, persons holding 30% or more in the issuer and persons holding 10% or more in the issuer who have nominated a director to the board of the issuer pursuant to an agreement which gives them the right or expectation to do so) may not participate in the shortfall of a pro rata issue without shareholder approval.

An issue of securities under an agreement to underwrite the shortfall (including by a person in a position of influence) in an entitlement offer is also exempt from ASX Listing Rule 7.1 – 15% (or 25%) limit on placements provided specific details of the underwriting have been disclosed in the Appendix 3B or other market announcement and the issue is made no later than 15 business days after the close of the offer.

See also “Control” considerations and Takeovers Panel Guidance described on pages 27 and 28.



## Accelerated entitlement offers **Frequently asked questions continued**



### What is the liability regime?

Liability potentially arises if investors are misled. Provided the issuer satisfies the conditions imposed by ASIC Corporations (Non-Traditional Rights Issues) Instrument 2016/84 and can conduct the rights issue without a prospectus or product disclosure statement, no statutory due diligence defences are available, however liability risks can be mitigated by the conduct of due diligence (centered around the DDC process and the production of a management questionnaire).

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### What regulatory approvals are required?

The issuer will need to agree the rights issue timetable with ASX prior to launch of the rights issue. If the issuer needs to appoint a nominee in accordance with s611 item 10 then it will need ASIC's approval to the nominee prior to launch of the offer.

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### What are the COVID-19 temporary capital raising reforms?

Refer to Section 3 of this booklet for some temporary reforms introduced to facilitate capital raisings during COVID-19 that are expected to remain in place until 30 November 2020.



# Accelerated entitlement offers

## key differences between structures

	ANREO	AREO	SAREO	PAITREO
Issuer receives institutional proceeds quickly	Y	Y	Y	Y
Renounceable (i.e. bookbuild premium returned to renouncing / ineligible holders)	N	Y	Y	Y
Sometimes combined with a placement	Y	Y	Y	Y
Can be conducted without a prospectus (assuming the issuer satisfies the relevant cleansing notice criteria)	Y	Y	Y	Y
Commonly undertaken at a discount	Y	Y	Y	Y
Ability to accept oversubscriptions	Y	Y	Y	Y
Ability to offer at a ratio of more than 1:1	N	Y	Y	Y
Can be used by listed managed investment schemes and stapled entities	Y	Y	Y	Y
Involves ASX rights trading	N	N	N	Y
Securityholders incur brokerage	N	N	N	N
ASX waivers or confirmations required Note: if an issuer wants to 'supersize' a placement that is being undertaken at the same time as the entitlement offer (ie where the placement exceeds the pre-entitlement offer "15%" of "25%" placement capacity set out in ASX Listing Rule 7.1, an ASX waiver will be required)	N	N	N	N
ASIC relief or modifications Note: if there are control issues, an ASIC application may be required	N	N	N	N



# Accelerated entitlement offers

## Pros and cons

### Pros

- Typically the discount is attractive to securityholders.
- Typically no prospectus, however cleansing notice must be issued.
- Accelerated timetable means that the issuer can manage risk and receive institutional proceeds quickly.
- Accelerated timetable benefits institutions who come off risk more quickly and similar benefit to underwriters if the institutional component is the only component underwritten.
- Enables all securityholders (apart from ineligible securityholders from certain foreign jurisdictions) to participate, avoiding dilution impacts associated with a placement or, if conducted in conjunction with a placement, lessening that dilution impact.
- If it is renounceable, including where there is retail rights trading, holders may be able to realise value for rights should they not wish to take them up.
- Exception from ASX Listing Rule 7.1 (i.e. 15% placement limitation), including the additional placement of shortfall securities to new or existing investors, and no securityholder approval required.
- No brokerage or transaction costs for securityholders who participate.

### Cons

- Timetable longer than placement.
- Typically more costly to conduct than a placement and more management time involved.
- More complicated to execute than a traditional rights issue or placement.
- Retail securityholders are not offered the ability to take up securities on an accelerated basis.
- Raising when market prices are depressed can be unattractive to issuers.



# Accelerated entitlement offers

## Recent examples

ASX Code	Company Name	Date Listed	Issue Type	Issue Price	Amount listed	Discount
OSH	Oil Search Ltd	05-05-20	Priority	\$2.10	\$1,159,934,504.00	23.1% to LTP
FLT	Flight Centre Travel Group Ltd	11-05-20	Priority	\$7.20	\$701,416,606.00	23.7% to LTP
REH	Reece Ltd	04-05-20	Priority	\$7.60	\$600,018,533.00	12.5% to LTP
ERA	Energy Resources of Australia Ltd	26-02-20	Rights	\$0.15	\$476,048,720.00	8% to TERP
WEB	Webjet Ltd	29-04-20	Priority	\$1.70	\$345,782,574.00	32.2% to TERP
GEM	G8 Education Ltd	11-05-20	Priority	\$0.80	\$301,215,245.00	25.9% to LTP
QUB	Qube Holdings Ltd	12-05-20	Priority	\$1.95	\$263,533,834.00	11.8% to LTP
KMD	Kathmandu Holdings Ltd	27-04-20	Priority	\$0.49	\$202,824,802.00	51% to LTP
SXL	Southern Cross Media Group Ltd	05-05-20	Priority	\$0.09	\$168,578,287.00	45.5% to LTP
OML	oOh!media Ltd	24-04-20	Priority	\$0.53	\$168,063,925.00	37% to LTP
DCN	Dacian Gold Ltd	11-05-20	Priority	\$0.30	\$98,351,251.00	79% to LTP
EHL	Emeco Holdings Ltd	24-02-20	Priority	\$2.07	\$65,025,314.00	10% to LTP
MVF	Monash IVF Group Ltd	06-05-20	Priority	\$0.52	\$64,840,680.00	26.8% to LTP
VGL	Vista Group International Ltd	24-04-20	Priority	\$1.05	\$51,349,345.00	25% to LTP (NZX)



# Dividend reinvestment plans

## Frequently asked questions



### What is it?

If an entity is paying dividends or distributions, a dividend or distribution reinvestment plan (**DRP**) presents another way for the listed entity to retain equity.



### Who can participate?

Existing securityholders who hold securities in the issuer and who have elected to participate in the **DRP** by the record date for the **DRP**. Note that eligibility of foreign securityholders to receive shares under a **DRP** can be an issue, and generally all foreign shareholders (apart from securityholder residents in New Zealand) are excluded from participation.



### What offer materials are required?

Offers of securities to securityholders under a **DRP** do not require a prospectus or product disclosure statement. The key document is the rules of the **DRP** which set out the necessary terms and conditions including how pricing is determined; logistics of operation of the plan; and how securityholders elect to participate.

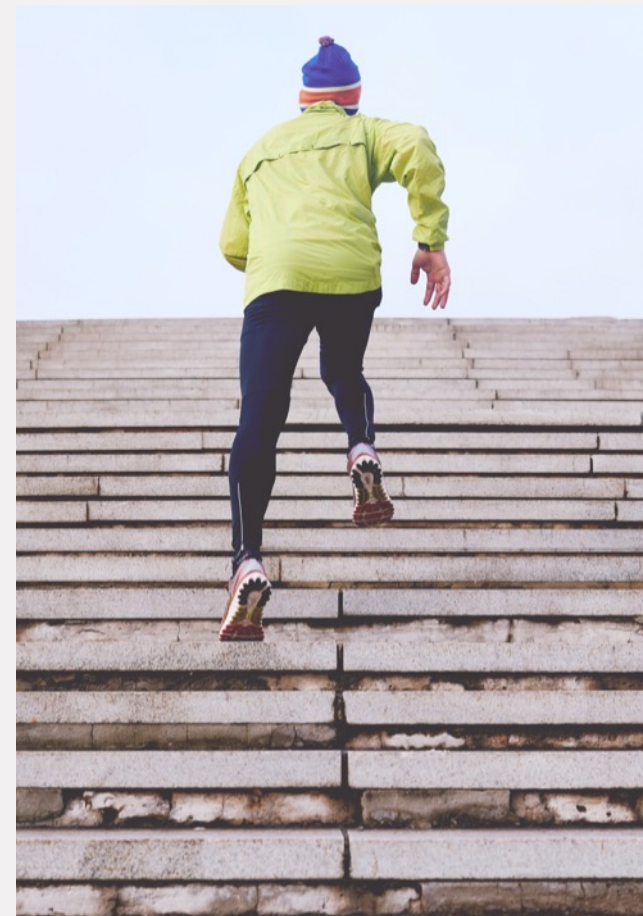
Before the launch of an entity's initial **DRP** offer, it is normal practice for an entity to send to each eligible securityholder a letter inviting their participation, setting out a summary of the rules and attaching the rules themselves.

Unless the **DRP** is underwritten there is no requirement to publish a "cleansing notice", however issuer's must be careful that the market is fully informed to avoid insider trading offences.



### What is the timing?

ASX needs to be informed as to the introduction and operation of a **DRP**. ASX Appendix 6A includes a timetable for dividends/distributions that also covers issues under a dividend reinvestment plan.



# Dividend reinvestment plans **Frequently asked questions continued**



## What is the offer size?

The final amount “raised” through a DRP will be dependent on: (a) the number of participating securityholders; (b) the price at which securities are offered under the DRP; (c) the size of the dividend declared by the issuer; and (d) the extent of the underwriting (if any).

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## What are the costs?

The costs of implementing a DRP can be relatively minimal; without the potential prospectus and roadshow costs associated with many other types of capital raisings.

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## What are the demands on management?

Minimal demands on management.

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## Can it be underwritten?

Having a DRP underwritten can provide an entity with certainty and significantly boost the amount of capital ultimately raised. Typically the underwriter will take up an agreed portion of the securities that are not nominated by securityholders to participate in the DRP. If necessary, proceeds from the underwritten portion can then be used by the issuer to fund the cash dividend to be paid to securityholders.

Where the underwriter has signed the underwriting agreement before the pricing period has run (and so only the dollar value of the underwrite is known), the underwriter can manage its underwriting risk by borrowing existing stock and selling the underwritten amount progressively over the pricing period at or better than the per share underwritten price under the underwriting agreement. On the issue date the underwriter then applies the funds received from the sales of borrowed stock during the pricing period to subscribe for the DRP shortfall securities and disposes of those securities by returning them to the original stock lenders. In times of volatility, an underwriter may insist on the DRP price being determined before it signs any underwriting agreement.

The issue of securities to an underwriter of a DRP will require the issuer to release a cleansing notice on ASX.

Some issuers / institutional investors disapprove of underwritten DRPs. Some of the criticisms include that underwriting a DRP can result in the price of the securities being pushed down dramatically; that it is dilutive or that it signals that an issuer is unable to afford its dividend.



# Dividend reinvestment plans **Frequently asked questions continued**



## What is the offer price?

Careful consideration must be given in respect of the appropriate pricing period. The price is determined by taking the average of the daily VWAP over a period between the announcement date and the dividend payment date. The issuer has the flexibility to choose a pricing period that is short or long (i.e. the pricing period could be 3 business days or it could be 20 business days – it is entirely flexible) and occur before or after the record date (i.e. when the security holder elections for the DRP must be submitted).

Issuers may consider offering a discount to the price determined by the pricing period. Typically discounts range from 0-5%.



## Who is involved?

A professional underwriter (if underwritten).



## What are some of the legal and regulatory considerations?

If an entity's constitution expressly disallows a DRP, security holder approval will be required to alter the constitution.

An offer of shares under a DRP is exempt from ASX Listing Rule 15% (or 25%) limit on placements, provided the DRP does not impose a limit on participation. In addition, an issue of securities under an agreement to underwrite the shortfall of a DRP is also exempt from the placement limitations provided details of the underwriting agreement are disclosed prior to the date for payment of the dividend or distribution and the entity makes the issue within 15 business days after the date for payment of the dividend or distribution.

An offer of shares under a DRP may also be made to people in a position of influence (e.g. related parties, persons holding 30% or more in the issuer and persons holding 10% or more in the issuer who have nominated a director to the board of the issuer pursuant to an agreement which gives them the right or expectation to do so) provided the DRP does not impose a limit on participation and the person in a position of influence is not underwriting the shortfall.

Securityholders participating in a DRP are exempt from the 20% takeover threshold with respect to securities acquired under the DRP, so long as the DRP is available to all Australian resident securityholders. Unlike the rights issue exception, the dividend reinvestment plan exception does not extend to acquisitions by persons as Underwriters. ASIC may grant case-by-case relief for underwriters of a DRP, where they may breach the 20% threshold with respect to securities acquired under the DRP, provided the Underwriter is acting as a bona fide underwriter and on the condition that at the time the dividend reinvestment plan is announced, securityholders have received adequate information about: (a) the key terms of the underwriting; (b) the identities of any sub-underwriters; (c) any associations between the underwriter or sub-underwriter and a controller or one or more substantial holders. ASIC's policy in this regard is set out in *ASIC Regulatory Guide 6 Takeovers: Exceptions to the general prohibition*.





# Dividend reinvestment plans Pros and cons

## Pros

- Allows an issuer to retain capital whilst remaining attractive to investors as a dividend payer and can improve debt to equity ratios.
- The use of a DRP by an issuer can be flexibly managed. For example, it can be suspended at the discretion of the issuer and reactivated at a later date.
- Allows an issuer to raise equity in circumstances where credit markets are constrained.
- No brokerage or other transaction costs.
- Securityholders who participate derive dividends on new shares at the next dividend payment date.
- DRP may be structured with a small discount to the market price.

## Cons

- A growing equity base may lead to a deterioration of the issuer's earnings per share and a dilution of holdings for some securityholders.
- Can sometimes signal issues over health of the issuer.
- A reinvested dividend is subject to tax but without the benefit of any attaching franking credits.
- The amount that can be "raised" is ultimately limited by the size of the dividend and the number of securityholders who agree to participate.



# Dividend reinvestment plans

## Recent examples

ASX Code	Company Name	Date Listed	Issue Type	Issue Price	Amount Listed
WPL	Woodside Petroleum Ltd	24-03-20	Ords	\$25.61	\$309,207,043.00
BLD	Boral Ltd	17-04-20	Ords	\$2.10	\$111,362,131.00
WOW	Woolworths Group Ltd	15-04-20	Ords	\$37.46	\$70,040,014.00
SKI	Spark Infrastructure Group	18-03-20	SSec	\$2.02	\$46,236,704.00
ABP	Abacus Property Group	04-03-20	SSec	\$3.70	\$30,227,697.00
TCL	Transurban Group	19-02-20	SSec	\$15.49	\$30,101,601.00
AFI	Australian Foundation Investment Company Ltd	25-02-20	Ords	\$6.93	\$28,088,385.00
SCP	Shopping Centres Australasia Property Group	31-01-20	Ords	\$2.71	\$27,939,189.00
IPL	Incitec Pivot Ltd	10-01-20	Ords	\$3.12	\$23,875,553.00
BEN	Bendigo and Adelaide Bank Ltd	06-04-20	Ords	\$6.40	\$22,459,654.00
ARG	Argo Investments Ltd	07-03-20	Ords	\$8.82	\$21,871,254.00
MFF	MFF Capital Investments Ltd	21-02-20	Ords	\$3.62	\$21,445,541.00
GNE	Genesis Energy Ltd	08-04-20	Ords	\$2.31	\$18,358,979.00
OML	oOh!media Ltd	06-04-20	Ords	\$0.53	\$18,179,306.00



# Hybrids and retail notes

## Frequently asked questions

### Overview

ASX listed entities can offer debt or hybrid securities and in certain scenarios, these offers can be extended to retail investors with the securities quoted on the ASX. More commonly, debt securities and hybrid securities are offered only through the international debt capital markets to institutional investors and the securities are not quoted on ASX.

Because hybrid securities and retail notes may be commercially considered an alternative to the equity offers discussed previously in this booklet, we have included a brief overview of them.



### What is it?

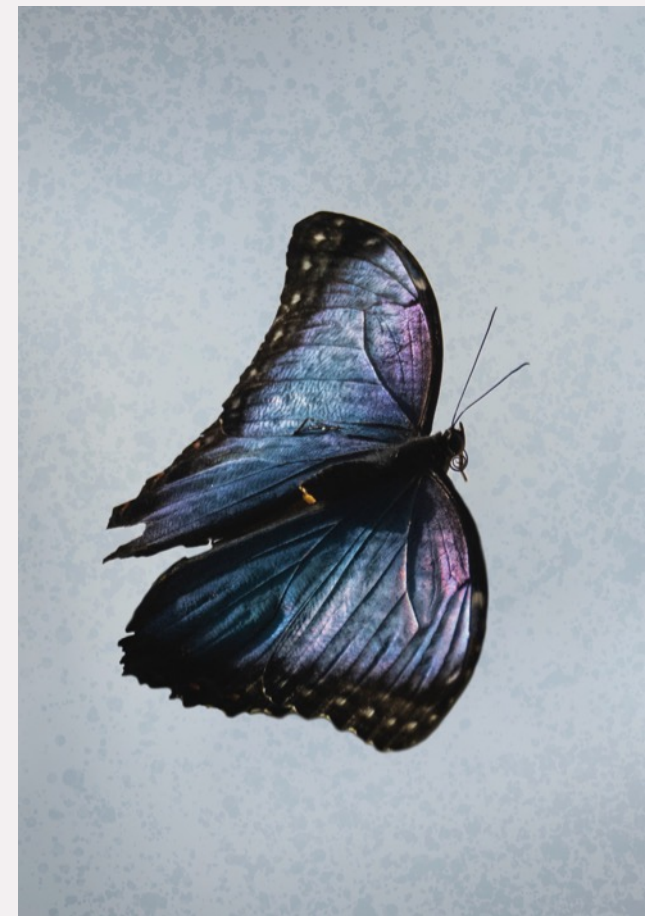
Retail notes is a term that covers a subset of interest rate securities offered by ASX listed entities to the public for quotation on the ASX. They primarily involve a debt in the form of a loan from investors to an entity in return for periodic interest payments, and eventually repayment of the principal. They can also involve other features or enhancements. Interest may be calculated using a fixed rate (e.g. corporate bonds) or using a variable rate that is calculated as a base rate plus a margin that moves in line with general level of interest rates.

Retail notes may have a term or be perpetual and, in some cases, they may convert into underlying securities of the issuer (i.e. convertible notes), and/or the interest rates may be deferrable or discretionary. These additional features that make the retail notes more 'equity' like, are typically referred to as 'hybrid securities'.



### Who can participate?

Typically all Australian public investors that participate in ASX securities investments, including retail investors.



# Hybrids and retail notes **Frequently asked questions continued**



## What offer materials / advice / approvals are required?

Prospectus (or product disclosure statement), note / hybrid security terms and conditions, trust deed (in the case of a debenture), tax advice (including private rulings), rating agency ratings and ASX confirmations in relation to terms.

Issuers can have regard to the nature of the securities when determining what matters must be included in the offering document. In the case of a company issuing a retail note, for example, investors would reasonably expect to be told different information than if they were investing in that company's shares. For example, an investor may be less interested in an issuer's growth prospects when the investor is investing in retail notes.



## What is the timing?

The time to prepare for an offer of retail notes or hybrid securities is similar to the time taken to prepare for a typical initial public offering and can take upwards from 2 months. If an issuer is seeking a credit rating or private tax ruling, this typically will extend the preparation timetable. Once launched, offers are typically open for 2-4 weeks after close of the exposure period.



## What are the demands on management?

Typically imposes relatively high demands on management as may be the case in an initial public offering.



## What is the offer price?

Typically 1 note or preference share is \$100 and minimum investments start at \$5,000, although this can differ from offer to offer.



## Who is involved?

Issuers engage lawyers, investment banks, accountants and tax advisers and often engage with rating agencies.



## What are some of the legal and regulatory considerations?

Retail notes are typically classified as "debentures" under the Corporations Act, and an authorised trustee company is appointed to act as trustee for investors, and a trust deed is prepared.

Preference shareholders rank ahead of ordinary shareholders but behind creditors in the event of a winding up of a company. As holders of retail notes are creditors, their claims will rank ahead of shareholders in a winding up scenario. Retail notes are often subordinated to other creditors.



# Hybrids and retail notes Frequently asked questions continued



## What is the liability regime?

The liability regime and defences for offers of debentures is the same as for offers of other securities. The due diligence process is therefore typically the same for an offer of retail notes or hybrid securities and emulates the due diligence committee process common in an initial public offering of securities.

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## What regulatory approvals are required?

ASX will need to approve the terms of the notes or securities, and ASIC will consider the form of the prospectus (or product disclosure statement) and in some circumstances, the terms, during the exposure period.



# Comparison between ordinary shares, subordinated notes, convertible preference shares and bonds

	Ordinary shares	Subordinated Notes	Convertible Preference Shares	Bonds
Legal form	Shares	Unsecured, subordinated debt	Preference share	Notes or debentures
Ranking	Rank behind all other securities and obligations	Rank ahead of ordinary shares, equally with equal ranking obligations and behind all creditors and all other classes of shares	Ranks lower than subordinated notes and all creditors but higher than ordinary shares	Typically unsubordinated, meaning that they rank ahead of all subordinated creditors and all classes of shares
Term	Perpetual (unless bought back)	Flexible, depends on terms (e.g. can be 60 years)	Perpetual (subject to scheduled conversion into ordinary shares)	Typically 3 to 15 years
Call date(s)	Not applicable	Flexible, depends on terms (e.g. from year 5)	Flexible, depends on terms (e.g. from year 5)	Typically none
Payment amounts	Based on issuer's level of profitability and boards dividend policy	Flexible, depends on terms (eg a floating interest rate equal to the sum of the Bank Bill Rate plus a margin)	Flexible, depends on terms (e.g. a floating interest rate equal to the sum of the Bank Bill Rate plus a margin)	Based on a floating or fixed interest rate
Payment accumulation	None	Depends on terms (e.g. any deferred interest payments may be cumulative and compounding)	Depends on terms	Any unpaid interest payments are cumulative and compounding
Participation in issuer's profits on issuer's winding up	Yes	No	Yes	No
Rights to be repaid at end of term	Not applicable	Yes	Not applicable	Yes
Voting rights at a general meeting of the issuer's shareholders	Yes	No	No except in certain limited circumstances	No
Transferrability and liquidity	Yes, quoted on ASX – likely to be more liquid than notes and bonds	Yes, quoted on ASX – likely to be less liquid than ordinary shares	Yes, quoted on ASX – likely to be less liquid than ordinary shares	Yes, although typically not quoted – likely to be less liquid than ordinary shares



# Hybrids and retail notes

## Recent examples

ASX Code	Company Name	Date Listed	Issue Type	Security type	Issue Price	Amount listed
NAB	National Australia Bank Ltd	27-03-19	Placement	Capital Notes	\$100.00	\$1,874,058,200.00
CBA	Commonwealth Bank of Australia	19-11-19	Placement	PERLS	\$100.00	\$1,650,000,000.00
MQG	Macquarie Group Ltd	02-04-19	Placement	Capital Notes	\$100.00	\$750,000,000.00
SUN	Suncorp Group Ltd	20-12-19	Placement	Capital Notes	\$100.00	\$389,000,000.00
AMP	AMP Ltd	31-12-19	Placement	Capital Notes	\$100.00	\$275,000,000.00
KBC	Keybridge Capital Ltd	25-02-19	Placement	CRPN	\$1.00	\$3,598,953.00
MFD	Mayfield Childcare Ltd	03-04-19	DRP	CULS	\$0.97	\$843,558.00



# PIPEs

## Frequently asked questions

### Overview

Other capital raising options for listed entities include private equity or other private capital investment in listed company shares by way of structured PIPES transactions.



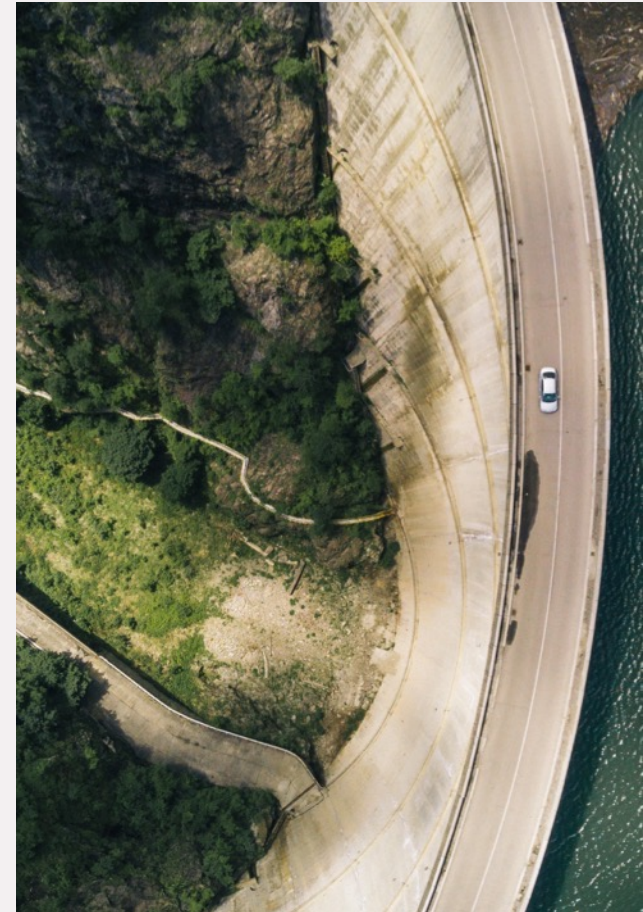
### What is it?

Private investment in public entities (**PIPE**) transactions provide opportunities for cashed up institutions and sponsors with appropriate mandates to investment in public entities. They can take various forms including institutional placements, entitlement offers underwritten by the private investor, preferred security issues or convertible notes. In volatile markets, it is more common to see them structured as convertible notes because investing by way of convertible notes provides downside protection and may be a more popular investment instrument in times of volatility.



### Key legal considerations?

1. Chapter 6 of the Corporations Act – 20% takeovers rule: limits a person acquiring a relevant interest that leads to voting power exceeding 20% of a listed entity without obtaining securityholder approval or complying with another exception, such as launching a takeover or scheme of arrangement. This rule limits the size of the private investment that may be made without launching a takeover bid.
2. ASX Listing Rule placement capacity – listed entities are prohibited from issuing new securities representing more than 15% of their issued capital in any 12 month period without shareholder approval or otherwise satisfying an exception. A PIPE transaction can be structured to permit a larger equity holding if the convertibility element of the instrument is conditional on shareholder approval.
3. Related parties and substantial holders – the Corporations Act and ASX Listing Rules may include additional restrictions on the issue of securities to private investors who are related parties of the issuer or already substantial holders.





# PIPEs

## Pros and cons

### Pros

- Permits a rapid capital raise from a single investor when access to equity placement at an attractive price is more challenging, for example, due to price volatility.
- Can be structured as a hybrid to permit more capital to be raised than traditional equity (in excess of the placement capacity) where the conversion is conditional on shareholder approval.
- Can be structured to protect the downside (for example, as a convertible note) which also may permit pricing to avoid excessive dilution in times of volatility – a PIPEs capital raising is often used as a ‘bridge’ to a later equity raising when better equity pricing can be achieved.
- The source of private capital that provides the PIPE may provide other benefits, such as industry expertise or access to other markets and additional capital for growth.

### Cons

- The PIPE instrument is more complex than a traditional placement, that makes for a more difficult and more lengthy negotiation of terms than an equity placement.
- A PIPEs instrument is less well understood by the market and requires more explanation than a traditional equity raising.
- If it is structured as a convertible note, it is debt and increases the notional leverage ratios for the listed entity, which may require waivers or consents from the entity’s bank.
- If it is structured as convertible preference equity, it is not debt, but the coupon is less likely to be deductible.
- A hybrid structure often involves more debt-like control features than traditional equity, such as covenants (although typically less than bank debt).



# 3. COVID-19 - temporary capital raising reforms

# COVID-19 – temporary regulatory reform to facilitate capital raisings

With market volatility continuing to be driven by the economic and social upheaval caused by COVID-19, the number of entities that are finding themselves with a need to raise capital continues to grow and we expect that entities that rely on revenue/earnings for cash flow (and who have not already gone to market) will need to consider raising debt or equity capital in the months ahead, particularly as government stimulus and support tapers off.

As discussed in Section 2, the key methods for raising secondary capital in Australia are:

- Placements;
- Rights issues;
- Share purchase plans; and
- Dividend reinvestment plans.

At the beginning of the COVID-19 crises, we queried whether the investor market would be as supportive of the same type of discounted placement and rights issue capital raisings undertaken by a number of entities during the GFC? We suspected there would be a number of market participants seeking out value.

During the early stages of the GFC, companies raising equity capital favoured the use of placements because of the short timeframe to settlement minimising market risk at a time when retail investor appetite was low. Towards the later stages of the GFC, the ‘accelerated’ non-renounceable rights issue became a popular method for raising equity capital.

By the time market conditions had begun to stabilise, the accelerated rights issue was a way to access the majority of capital from institutional investors up front whilst also providing retail investors with the opportunity to participate in the offer on similar terms.

It is said that Australia had strong macroeconomic fundamentals going into the GFC, strong fiscal stimulus measures and robust monetary policy responses, and a strong financial sector. Our experience of equity capital raising by listed entities in Australia during the GFC was that the opportunities remained despite market volatility. It was a very busy time for the capital markets. ASX reports that during 2009, over half of all ASX listed companies raised some equity capital totaling in aggregate of \$98.6 billion.

Fast forward now to the COVID-19 crisis, and in the calendar year to 30 June 2020, \$34.9 billion has been raised by ASX listed companies.



# COVID-19 – temporary regulatory reform to facilitate capital raisings continued

On 31 March 2020, ASIC and the ASX introduced temporary measures intended to facilitate rapid capital raisings during COVID-19: [ASIC 20-075MR](#) and [ASX Compliance Update No 03/20](#). These temporary measures were supplemented by further guidance released by the ASX on 22 April 2020, 1 May 2020 and 17 June 2020 (available [here](#)), and by ASIC on [14 April 2020](#), [23 April 2020](#), [13 May 2020](#). The ASX extended measures to 30 November 2020 on 13 July 2020, with further guidance being released on 7 August 2020 (available [here](#)). ASIC extended its relief on [12 June 2020](#) by 6 months to early October 2020. [ASIC released further guidance on 7 July 2020](#) and [27 August 2020](#).

## ASIC developments

ASIC's temporary relief enables 'low doc' offers (i.e. non-prospectus offers) including rights issues, placements and share purchase plans to be made to investors, even where the entity does not meet all the normal requirements for issuing a cleansing notice. This temporary relief allows a listed entity to undertake a 'low doc' offer where it has been suspended from the ASX for a total of up to 10 days in the last 12 month period. The previous requirement was that an entity intending to undertake such an offer could not have been suspended for more than five days in the last 12 months.

With the benefit of the new relief, entities that otherwise satisfy the cleansing notice requirements will be able to undertake a 'low doc' offer:

- even if they have been suspended for up to 10 days in the 12 months before the offer; and
- provided they were not suspended for more than five days in the period commencing 12 months before the offer and ending 19 March 2020 (Note: The 19 March 2020 was when the Federal Government changed its travel advice to the most severe Level 4 warning: 'do not travel' overseas).

In the early days of COVID-19, we observed a relatively large number of entities going into voluntary suspension as they endeavored to understand the impact of COVID-19 on their business operations. Other entities in the process of undertaking capital raisings during these uncertain times have needed to move from a trading halt into voluntary suspension to allow them more time to execute the relevant capital raising, and even then, have had difficulties executing the capital raising without remaining in suspension for more than 5 days. The effect of a longer suspension being that they can no longer undertake a 'low doc' offer but would instead be required to prepare a prospectus. We therefore expect certain market participants might welcome the additional time afforded by this measure.

## Back-to-back trading halts

The ASX's temporary relief includes permitting an entity to request two consecutive trading halts, totaling 4 trading days, to assist the entity to execute any form of capital raising. In its request for such a trading halt, the entity must state that the 4 day halt is for the purpose of considering, planning and executing a capital raising. Consecutive trading halts are not permitted for any other purpose.

If an entity simply requests a regular trading halt, the ASX will only grant it a single trading halt for a maximum of up to two trading days and will not consider a subsequent application from the entity for a second consecutive trading halt.

If the capital raising cannot be executed within that timeframe, an entity can request voluntary suspension which can now be for a period of 10 days without limiting the ability of an entity to raise capital through a 'low doc' offer (see ASIC's new measures as noted).



# COVID-19 – temporary regulatory reform to facilitate capital raisings continued

## Non-renounceable Offer Ratios waiver

The ASX is waiving the one-for-one cap on non-renounceable entitlement offers and instead listed entities are expected to choose a ratio for their non-renounceable entitlement offer that meets their capital raising needs and that is fair and reasonable in the circumstances.

## Temporary Extra Placement Capacity waiver (increase in the 15% placement capacity to 25%)

The ASX will lift the size of a potential placement in any 12 month period from 15% to 25% (**Temporary Extra Placement Capacity**), subject to the entity undertaking the placement in conjunction with a pro rata entitlement offer or a SPP – in each case, at the same or lower price than the placement price. The normal ‘supersize’ waiver is also included in the class order waiver.

A 25% placement capacity is already available to entities that fall outside the ASX 300, have a market capitalisation equal to or less than \$300 million, and have sought shareholder approval to increase their placement capacity at their AGM under ASX Listing Rule 7.1A. Entities that are already eligible to use this additional placement capacity will be able to use their additional placement capacity or the Temporary Extra Placement Capacity (but not both) and must clearly disclose what portion of its placement capacity it is using and whether it is relying on the waiver.

The ASX has noted that this is a one-off measure that can only be used for one placement and entities cannot replenish or ratify the placement under the listing rules. Entities that wish to do more than one placement using their Temporary Extra Placement Capacity will need to approach the ASX for an individual waiver to permit this.

Under the amended terms of the Temporary Extra Placement Capacity waiver, the ASX requires the entity to do the following within 5 business days of completing the relevant placement:

- announce to the market: (a) the results of the placement; (b) reasonable details of the approach that the entity took in identifying investors to participate in the placement and the key objectives and criteria it followed in determining their respective allocations (including whether one of the objectives was a best effort to allocate pro-rata to existing holders, and any significant exceptions/deviations from those); and (c) that, as far as the entity is aware, no securities were issued or agreed to be issued in the placement to any person referred to in ASX Listing Rule 10.11 without complying with one of the exceptions set out in ASX Listing Rule 10.12 (e.g. the placement being conditional on shareholder approval).
- supply ASIC and the ASX (in the ASX’s case, not for release to the market) a detailed allocation spreadsheet that shows full details of the persons to whom securities were allocated in the placement including the name, existing holding, number of securities the investor applied for at or above the final price or was offered in the placement and the final allocations; and full details of persons who applied for securities at or above the final price and who did not receive an allocation in the Placement (including their existing holding and the amount of securities applied for at or above the final price).



# COVID-19 – temporary regulatory reform to facilitate capital raisings continued

In its media release 20-097MR dated 23 April 2020, ASIC has stated that it will be reviewing the allocation spreadsheets provided by issuers and monitoring the disclosures made by companies about placements, rights offers and SPPs to ensure they are accurate, sufficiently detailed and provide meaningful, rather than ‘boiler plate’ disclosure. ASIC has stated that, for example, the following disclosures would require additional information to be provided:

- ‘largely on a pro-rata basis to existing shareholders’ should also include reasons why some existing investors were treated differently; and
- ‘80% to existing holders’, does not explain the basis for that allocation or whether it was done on a pro-rata basis.

Interestingly, ASIC has stated that it considers the enhanced disclosure required under ASX’s Temporary Extra Placement Capacity waiver is also appropriate for other capital raisings that do not need to rely on the waiver and therefore encourages entities to make these types of disclosures for all placements and SPP’s.

## Temporary reforms relating to SPPs

In relation to SPPs, the ASX is waiving the usual restrictions around SPP price and number of securities that may be issued under the SPP, and instead will simply require that the follow on SPP occurs at a price equal to or lower than the placement price. Further, if an SPP is undertaken without a placement, ASX is waiving the pricing restrictions usually set out in the ASX Listing Rules and allowing the SPP to be undertaken at any price determined by the board.

In addition:

- if there is a limit on the amount to be raised under the SPP, the entity must use all reasonable endeavours to ensure the SPP participants have a reasonable opportunity to participate equitably in the overall capital raising and must disclose why a limit is in place and how the limit was determined in relation to the total proposed fundraising;
- the existing provisions requiring the scale-back arrangements for SPP offers to be applied on a pro rata basis to all participants now allow that to be based either on the size of their existing security holdings or the number of securities they have applied for; and
- parties covered by listing rule 10.11 (including directors and related parties) are permitted to participate in an SPP on the same terms as other security holders.

## Process requirements for use of temporary ASX class waivers

A listed entity wishing to take advantage of the Temporary Extra Placement Capacity waiver or the Non-renounceable Offer Ratio waiver must, before the entity undertakes the relevant capital raising, provide a confidential notice to the ASX that clearly sets out the circumstances of the capital raising, including whether the capital raising is proposed to be made to raise urgently needed capital to address issues arising in relation to the COVID-19 crisis and/or its economic impact, or if the capital is needed for some other purpose.

## Timeframe for temporary regulatory reforms

The class waivers are now scheduled to expire on 30 November 2020. However, the ASX may withdraw the class waivers from an individual listed entity at any time and for any reason by giving the entity written notice to that effect. It may also withdraw the class waivers for all listed entities prior to the scheduled date of expiry with notice to the market to that effect.



# COVID-19 – temporary regulatory reform to facilitate capital raisings continued

## Application of the temporary regulatory reforms

Many entities have already taken advantage of the measures introduced on 31 March 2020 and we expect many more entities are likely under funding pressure, coupled with the need to raise capital rapidly to survive. However, when structuring capital raisings, entities must remember their obligations to consider fairness between shareholders – both institutional and retail – and to structure offers where possible to help achieve fairness. This requires directors to balance a range of considerations, such as the need for quick and certain capital, and the cost to, and possible dilution of, existing securityholders – an important reminder highlighted by both ASIC and the ASX in their earlier market releases and further evident by the updates to the temporary measures released on 22 April 2020.

By including a condition that placements utilising the Temporary Extra Placement Capacity waiver must be undertaken in conjunction with a capital raising that is made available to retail investors, the ASX is ensuring retail securityholders have an opportunity to participate in the offer at the same or a lower price to institutional investors. However, this only assists to an extent, and even where retail investors have the appetite to participate in the retail component of such an offer, which at this point in time may be low, the practical effect is still likely to be significant dilution for retail investors. Boards will need to take care to consider properly and document properly the process by which it is decided to take advantage of the increase in placement capacity, given the potential for adverse effect on minority shareholders.

We expect the temporary measures will have the desired effect to help facilitate capital raisings, however this may be tempered by the temporary tightening of the FIRB restrictions (More information available [here](#)).



# 4. COVID-19 - ASIC's Interim Corporate Plan for 2020-21



# COVID-19: ASIC's Interim Corporate Plan for 2020-21

ASIC has adapted its 2020-21 strategic planning process (see pages 58 to 63) and will focus on the following five priorities to tackle the challenges presented by the COVID-19 pandemic:

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1. Protecting consumers from harm at a time of heightened vulnerability – e.g.
  - Cross-ASIC working groups on scams, unlicensed advice and misleading advertising
  - Disrupting the mis-selling of harmful products and provision of poor advice to consumers
  - Engaging with industry stakeholders to ensure fair business standards are maintained

---
2. Maintaining financial system resilience and stability – e.g.
  - Responding to market dislocation, disorder or abuse and engaging with infrastructure providers to ensure continuous operation of markets
  - Supporting the efficient administration of companies in insolvency
  - Continuing to monitor and enforce adherence to continuous disclosure requirements to ensure the market is informed

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3. Supporting Australian businesses to respond to the effects of COVID-19 – e.g. providing relief in relation to capital raising, shareholder meetings and reporting, and financial advice

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4. Continuing to identify, disrupt and take enforcement action against the most harmful conduct – e.g. targeting opportunistic behaviour that exploits the COVID-19 environment or leads to significant consumer harm

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5. Continuing to build our organisational capacity in challenging times – e.g.
  - Building capacity to meet increased demands on work whilst supporting staff working remotely
  - Coordinating quickly with domestic or international regulators to respond to crisis as they develop
  - Ensuring readiness to resume or adjust paused or suspended work as circumstances develop

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# 5. Regulatory focus – COVID-19 and Beyond

# ASIC focus – Interim Plan (2020-21)

**ASIC's strategic priorities responding to the COVID-19 pandemic, which are anticipated to account for a substantial amount of its regulatory activities throughout 2020-21:**

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1. Protect consumers from harm at a time of heightened vulnerability

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2. Maintain financial system resilience and stability

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3. Support Australian businesses to respond to the effects of the COVID-19 pandemic

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4. Continue to identify, disrupt and take enforcement action against the most harmful conduct

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5. Continue to build our organisational capacity in challenging times

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# ASIC's strategic priorities for 2019/20

## 1. Protect consumers from harm at a time of heightened vulnerability

- Taking swift and effective action against predatory lending.
- Disrupting the mis-selling of armful products and the provision of poor advice to consumers affected by COVID-19.
- Acting against scams in a coordinated way.
- Taking action to help ensure firms offer appropriate support and services to customers, hardship assistance is provided fairly, and insurance claims are processed efficiently and in good faith.
- Ensuring entities give accurate information to consumers, in particular relating to early release of superannuation.

## 2. Maintain financial system resilience and stability\*

- Responding promptly to market dislocation or disorder.
- Supervising market infrastructure providers to ensure smooth and continuous operation of markets.
- Supporting the efficient administration of companies in insolvency.
- Continuing to monitor and enforce adherence to continuous disclosure requirements to ensure the market is accurately informed.
- Enabling the sound and fair operation of managed investments.

\*Due to the COVID-19 pandemic, ASIC has suspended its enhanced on-site supervisory work such as the CCM program. ASIC has also immediately suspended a number of near-term activities which are not time-critical, including consultation and regulatory reports and reviews.

## 3. Support Australian businesses to respond to the effects of the COVID-19 pandemic

Providing various forms of temporary relief to facilitate operations of businesses at a time of potential financial stress, such as:

- Equity capital markets – enabling certain 'low doc' offers to be made to investors even if they do not meet normal requirements.
- Shareholder meeting measures – providing 'no action' position on upcoming AGMs that need to be deferred or held online.
- Lodgment of financial reports – extending deadlines for lodgment for listed and unlisted entities.



# ASIC's strategic priorities for 2019/20 continued

## 4. Continue to identify, disrupt and take enforcement action against the most harmful conduct

- ASIC continues to receive and act on reports of misconduct and whistleblower reports, including those related to the COVID-19 pandemic.
- ASIC is committed to its “Why not litigate?” discipline.
- Continuing work on previously prioritised enforcement matters arising from the Financial Services Royal Commission and other high-deterrence matters.

In particular, ASIC is targeting:

- Misconduct arising from behavior seeking to exploit the COVID-19 environment.
- Opportunistic conduct, such as scams and unlicensed conduct.
- Failure to disclose material negative information.
- Opportunistic and misleading market announcements.
- Egregious governance failure within corporations.

## 5. Continue to build our organisational capacity in challenging times

- Ensuring internal culture continues to reflect ASIC's core values.
- Supporting staff engagement, managing productivity and enhancing wellbeing.
- Effectively mobilising staff.
- Coordinating quickly and effectively with domestic and international regulators to respond to crisis impacts as they develop.
- Continuing to build longer term capacity, including data, communications and the responsiveness of the organization.
- Ensuring ASIC is ready to resume paused or suspended work as circumstances develop.



# ASIC Focus – Beyond COVID-19 (2020-24)

## Key regulatory actions taken to address longer term threats and harms over next four years

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### Changing behaviours to drive good consumer and investor outcomes

- Promoting fairness, professionalism, strong governance controls and robust reporting
  - To be achieved through policy advice, government initiatives, using new tools and powers, engaging with regulated entities
  - Other focuses include Financial Accountability Regime, high deterrence enforcement action and developing robust industry standards and issuing new revised guidance
- 

### Acting against misconduct to maintain trust and integrity in the financial system

- Office of Enforcement will continue to identify, prioritise and be accountable for the most important enforcement matters across ASIC, including the Royal Commission, illegal phoenix activity and misconduct by Board level individuals
  - Continuing work towards regulating superannuation, including provision of inappropriate products, disclosures and trustees failing to act in best interests of members
- 

### Promoting strong and innovative development of the financial system

- Facilitating advancements in technology that benefit consumers, investor and markets,
  - mitigating potential harms of technological change, contributing to / implementing law reform and government initiatives, and facilitating cross-border financial activities and collaboration
- 

### Helping Australians to be in control of their financial lives

- Leading the National Financial Capability Strategy, providing trusted information to consumers and driving financial capability research
  - Encouraging financial education in schools and the tertiary education sector
  - Promoting financial advancement where additional support is needed, such as via the Indigenous Outreach Program
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# ASIC Focus – Beyond COVID-19 (2020-24)

As part of its longer-term focus, ASIC will also focus on the following areas:

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Promoting confident participation in the financial system to support long-term economic recover

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Deterring poor behaviour and misconduct through its ‘Why not litigate?’ discipline and driving cultural change using all of its regulatory tools

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Improving entities’ management of key risks to prevent and mitigate harms to consumers and promote a healthy financial system and economic growth

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Addressing consumer harm as a result of elevated debt levels and hardship, with a focus on predatory lending

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Reducing poor product design and restricting mis-selling

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Reducing misconduct by company directors and professional service providers

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Delivering as a conduct regulator for superannuation

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# ASX focus 2020 – Updated rules & guidance

## New disclosure requirements

<b>Assets test – working capital calculation</b>	Entities can no longer include budgeted revenue and budget administration costs in its working capital calculation.
<b>Quarterly reports</b>	<p>Certain entities (in particular start-up entities) will now be required to complete a "quarterly activities report" which:</p> <ul style="list-style-type: none"> <li>• report against the use of funds statement in its listing prospectus or expenditure program provided to ASX that covers the relevant period, and explain any material variances; and</li> <li>• disclose details of, and the reasons for, any related party payments.</li> </ul> <p>These quarterly activities reports must be lodged immediately once the information is available for release to the market (i.e. once the report has been properly compiled, verified and approved by the board).</p>
<b>Listed investment companies ("LIC") and listed investment trusts ("LIT")</b>	<ul style="list-style-type: none"> <li>• LICs and LITs must disclose month-end net tangible asset (NTA) backing per security immediately once it is available for release to the market, not later than 14 days after month-end.</li> <li>• LICs and LITs that do not disclose its monthly NTA by the due date will be automatically suspended from quotation on the ASX.</li> </ul>
<b>Director nominations</b>	Entities (excluding externally managed trusts) are required to tell ASX the date of the meeting at which directors may be elected and the closing date for the receipt of director nominations at least 5 business days before that closing date.
<b>Underwriting Agreements</b>	Entities are required to disclose additional information regarding underwriting agreements, including the name of the underwriter, the extent of the underwriting, any fees or commission payable under the agreement, and a summary of significant events that could lead to its termination.
<b>Voting</b>	<ul style="list-style-type: none"> <li>• Voting exclusions: Amendments with respect to resolutions under Listing Rules 10.1 and 10.11 (related party transactions), 11.1.2 and 11.2 (significant changes to nature or scale) and 11.4 (no disposal of major asset without offer) so these apply to persons 'who will receive a material benefit as a result of the transaction'.</li> <li>• Voting results: Entities will be required to disclose extensive voting information regarding the result, including but not limited to the number and description of the resolution, whether it was passed or not, whether it was decided on a show of hands or a poll.</li> </ul>
<b>Distribution schedules</b>	The distribution schedule in an entity's annual report will be required to include both the number of security holders and the total percentage of securities held by holders in each category.





# ASX focus 2020 – Updated rules & guidance

## Market integrity improvements

<b>Market announcements</b>	ASX announcements must be sent to ASX with a covering letter that includes the entity's name, address and corporate logo, and contact details of the person responsible / who securityholders and other interested parties can contact if they have questions.
<b>Good fame and character</b>	The good fame and character test has been extended to non-director CEOs and CFOs (in addition to directors) for new listings.
<b>Listing rules compliance course</b>	From 1 July 2020, persons who are responsible for communication with the ASX on listing rule issues will be required to undertake and obtain an acceptable pass mark in an approved listing rule compliance course.
<b>Placement capacity</b>	Entities will not be able to make an issue under their additional 10% placement capacity for non-cash consideration. ASX has provided clarity on how to calculate an entity's placement capacity, including pro-forma worksheets in ASX Guidance Note 21, and further detail on the exceptions that can be relief on provided that certain details are disclosed.

## Simplification and efficiency measures

<b>Related party transactions</b>	An entity are now required to seek security holder approval under Listing Rule 10.11 before issuing securities, or agreeing to issue securities, to: <ul style="list-style-type: none"><li>• any person who is, or was at any time within 6 months before the issue or agreement a substantial (30%+) holder in the entity;</li><li>• any person who is, or was at any time within 6 months before the issue or agreement a substantial (10%+) holder in the entity and who has nominated a director to the board of the entity pursuant to a relevant agreement which gives them the right or expectation to do so; and</li><li>• an associate of any of the above.</li></ul>
<b>Notification of CDIs</b>	Dual listed entities with CDIs issued over their quoted securities are required to notify ASX of the number of CDIs on issue on a monthly basis via a new Appendix 4A.
<b>Corporate transaction timetables</b>	Updated timetables for corporate transactions, which includes a new timetable for mergers or takeovers effected via scheme of arrangement.
<b>Announcement and application for security quotation</b>	To standardise information, ASX has introduced a new smart form Appendix 2A (Application for Quotation of Securities) and a new smart form Appendix 3B (Notification of Proposed Issue of Securities). Entities will also need to complete the new form Appendix 3G for the issue of securities that are to be unquoted.
<b>Escrow regime</b>	"Significant holders" of restricted securities (such as related parties, promoters, substantial holders and their associates) must execute Appendix 9A restriction deeds. Controllers must also execute these deeds.  Other holders can provide a new Appendix 9C 'restriction notice', provided that the entity's constitution provides for that regime to be legally enforceable against those restricted holders.



# ASX focus 2020 – Updated rules & guidance

## Enhancing ASX powers

<b>No-action letters</b>	The power to impose conditions on no-action letters which entities must comply with
<b>Requests for information</b>	New powers to request information (including verified under oath) with respect to compliance with the Listing Rules or that ASX reasonably requires to perform its obligations as a market operator
<b>Power to censure</b>	Power to formally censure an entity that is in breach of the Listing Rules and publish the reasons for it to the market

## Key takeaways & practical measures to be taken

Update templates for market announcements

Understand the new Appendix 2A, Appendix 3B, Appendix 3G and (if dual listed with CDIs) Appendix 4A

Quarterly reporting entities will need to comply with the new quarterly activities report requirements

Consider amending company constitution to allow for the new escrow regime to be enforced

Update your distribution schedule to include the number of security holders and the total percentage of securities held in each category in your next annual report

Understand the new voting exclusion requirements and update your template for disclosure of voting results

ASX's position is that all listing rule resolutions must be decided by poll before you circulate your next notice of meeting



# About Hamilton Locke

# About Hamilton Locke

Hamilton Locke is a law firm with a difference. We make use of technology to remove bureaucracy, find creative solutions for complex client problems and hire and develop the best talent from across the globe.

With our main offices in Sydney and Melbourne, our clients are located across Australia and internationally. We are able to look after our clients, no matter where they are located, in an efficient and seamless manner.

Our team closed more than 90 deals in 2019 worth more than \$5 billion. We are also consistently recognised by leading legal research publications, with over 70 different recognitions, including MergerMarket, Doyle's, Australasian Lawyer, Best Lawyers, and Chambers and Partners.



We are true industry experts focused on solving complex client problems. We create an environment that attracts and retains the best legal experts who work smart and have interests aligned with clients.



We have invested in state-of-the-art systems, including automation, process mapping and outsourcing to deliver the most efficient and effective service and create products tailored to the unique needs of our clients.



We develop the best pricing approaches with our clients to strike the right balance of fairness, certainty and risk-sharing.



We invest time at our cost to understand our clients' objectives, risk appetites and operating styles.



We have experience in a broad spectrum of industry sectors, including software, retail, financial services, technology, food and agribusiness, healthcare, and childcare

# Areas of expertise



# Our senior team



Nick Humphrey  
Managing Partner



Hal Lloyd  
Deputy Managing Partner



Gordon McCann  
Partner  
Corporate M&A and  
Private Equity



Zina Edwards  
Partner  
Restructuring and  
Insolvency; Finance



Brent Delaney  
Partner  
Corporate M&A and  
Private Equity



Cristin McCoy  
Partner  
Corporate M&A and  
Private Equity



James Delesclefs  
Partner  
Corporate M&A and  
Private Equity



Patricia Paton  
Partner  
Capital Markets



Brendan Ivers  
Partner  
Funds and Financial  
Services



Nicholas Edwards  
Partner  
Restructuring and  
Insolvency



Brad Allen  
Partner  
Finance



John Frangi  
Partner  
Property



Marcus Cutchey  
Partner  
Property



Eric Braun  
Partner  
Litigation Dispute  
Resolution



Brit Ibanez  
Partner  
Litigation Dispute  
Resolution



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