

Answer to question in writing:

HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON ECONOMICS

REVIEW OF THE ASIC ANNUAL REPORT (SECOND REPORT) 2019

ASIC07QON:

- a) Please provide a full list of the instances in which this rule has been relied upon (i.e. non-pro-rata equity raisings above 15 per cent), providing for each: name, date, and amount raised

ASIC has been maintaining a list of equity raising transactions that have raised \$10m or above since the onset of COVID-19 in mid-March 2020. A list of the companies relying on this relief is set out in Appendix A as at 7 August 2020.

- b) What is the proportion of total capital raised that went to new shareholders versus existing shareholders?

The Share Purchase Plan (SPP) / Unit Purchase Plan (UPP) and Entitlement Offer amounts are allocated to existing holders unless shareholders elect not to participate in an underwritten offer and any shortfall is allocated to the underwriter or sub-underwriters.

For placements, companies are more heavily involved in allocations and sign off on the final allocation schedule acting in the best interests of the company as a whole. We observe that allocations for placements relying on the Class Waiver are skewed towards existing shareholders. In almost all cases existing institutional shareholders are being offered pro-rata in the placement if they want it. For the amount remaining after pro-rata allocations this is typically placed with existing and new shareholders (although we note a few issuers, e.g. OilSearch, have limited the placement to existing shareholders only). In general, we observe that existing holders who want more than pro-rata receive preference over new shareholders. Some issuers use the placement as an opportunity to add new institutional investors to their register or to recognise investors (who may not be shareholders) who bid early or bid large amounts to assist to de-risk the capital raising.

A few examples of completed transactions relying on the Class Waiver:

Issuer	Placement size A\$m (A)	Placement – amount to existing holders (B)	SPP, UPP or Entitlement Offer amount (C)	Percentage of offer to existing holders (%) $[(B) + (C)] / [(A) + (C)]$
Home Consortium	140	90.5	10.6 (UPP)	67.1
Qantas	1,360	1,279.7	71.7 (SPP)	94.4
Vicinity Centres	1,200	1,032.7	32.6 (UPP)	86.4
Monash IVF	39.8	27.0	29.1 to 40.2 (EO) – see note	70.1 to 84.0 – see note
LendLease	950.0	868.4	260.0 (SPP)	93.3

Note: For Monash IVF the EO was split between the institutional portion (\$25.2m) and the retail portion (\$15m). For the institutional portion, 90% of existing holders took up their rights (\$22.7m) and for the retail portion, 43% of existing holders (\$6.4m) took up their rights or applied for more shares under the top-up facility. This left a shortfall of \$2.5m in the institutional portion (placed with institutions but not clear if existing or new holders) and \$8.6m in the retail portions (placed with the

underwriter or sub-underwriters and not clear if they are existing or new shareholders). If no existing shareholders took up the shortfalls then 70.1% of the issue was allocated to existing holders. If all of the shortfall was placed with existing shareholders then 84% of the issue was allocated to existing shareholders.

**c) What proportion of the total amount raised went to recipients who received more than their notional pro rata entitlements under the new placement regime?**

We note that SPPs or UPPs allow existing holders to acquire up to \$30,000 per eligible shareholder per annum. For example, if a shareholder holds 1 share they can apply for up to \$30,000 (or the SPP or UPP cap set by the issuer). As a result, some existing shareholders in an SPP or UPP that followed a placement received an allocation well in excess of their pro-rata amount. This was the situation pre the Temporary ASX Class Waiver. Examples where applicants under the SPP or UPP received the full amount they applied for include Qantas and NEXTDC.

Where companies have received more demand for an SPP or UPP that followed a placement than they were targeting, a number of issuers have increased the size of the SPP to cater for more existing shareholders. Examples include: Invocare, CharterHall REIT and LendLease. In some instances, this resulted in all applications being accepted.

However, where the demand for an SPP or UPP that followed a placement exceeded the amount the issuer wishes to raise scale-backs are required. The Temporary ASX Class Waiver set out that in these circumstances that scale-backs would be pro-rata either based on the size of the applicants holding pre the SPP or UPP or based on the amount they had applied for.

We also note that in some entitlement offers that followed placements allowed existing holders to apply for more than their pro-rata entitlement (i.e. a 'top-up'). Examples include Flight Centre, Oil Search and Webjet.

Feedback from brokers and from review of allocation schedules for placements relying on the Class Waiver show that in general, existing institutional shareholders are being offered pro-rata in the placement if they want it. For the amount remaining after pro-rata allocations this is placed with existing and new shareholders. Generally, we observe that existing holders who want more than pro-rata receive preference over new shareholders. These are decisions for company boards to determine how to allocate shares acting in the best interests of the company as a whole. For example, some companies may use the placement as an opportunity to add new institutional investors to their register or recognise investors who bid early or bid large amounts to assist to de-risk the capital raising

**d) What consultation did the ASX undertake with ASIC prior to the issuance of this class waiver?**

ASIC has been liaising extensively with ASX from the beginning of the pandemic on several topics, including fundraising, financial reporting and continuous disclosure.

This included liaison about ASX's intention to release the temporary class prior to its release. At the time, ASIC and ASX were already in discussions with a wide range of stakeholders such as ECM lawyers, Investment Banks and institutional investors who were calling for a relaxation in the capital raising settings due to the pandemic. On 31 March, ASX announced its temporary class waiver and ASIC announced that we had put in place a legislative instrument to allow certain 'low doc' offers (including rights offers, placements and share purchase plans) to be made to investors, even if they did not meet all the normal requirements. This ASIC legislative instrument expires on 2 October.

ASIC has been actively monitoring these transactions and any risks posed to investor confidence and market integrity. This monitoring is coupled with ongoing discussions with lead managers, underwriters, individual institutional investors and retail and institutional investor associations.

ASIC's ongoing engagement with stakeholders and ASX resulted in the ASX releasing changes to the Class Waivers that were published on 22 April 2020. ASIC also published Media Release 20-097 indicating our support for these changes.

The changes ensure the ASX receives sufficient information as to the reasons for a capital raising that rely on the Class Waivers. This has assisted with ASX determining whether to remove the ability of a particular listed entity from relying on the Class Waiver if concerns about the appropriateness of the capital raising are evident. To date, ASX has refused to allow 16 companies the use Class Waiver.

The revised waivers also provide additional public transparency in relation to capital raisings undertaken in reliance on the Class Waivers. Issuers are now required to:

- disclose how they determined the respective allocations in the institutional placement (including the key objectives and criteria that the entity adopted in the allocation process, whether one of those objectives was a best effort to allocate pro-rata to existing holders and any significant exceptions or deviations from those objectives and criteria); and
- if there is an overall limit on a retail share purchase plan, disclose the reasons why there is such a limit and how the limit was determined in relation to the total proposed fundraising.

The changes to the Class Waiver also now require the provision of detailed allocation spreadsheets to ASIC and ASX. This provides us with the full details of all persons to whom securities were allocated in a placement and the number of securities they were allocated.

**e) What consultation did the ASX undertake with ASIC prior to the recent extension of this class waiver from July 2020 to November 2020?**

ASX and ASIC had meetings with a wide range of stakeholders including: the Australian Shareholder's Association, Australian Council of Superannuation Investors, the Law Council, a number companies who had been involved in fundraisings under the Class Waiver, investment banks, institutional investors and a number of ECM lawyers from leading law firms.

There was consensus support for an extension of the regime, because:

- of the ongoing uncertainty and the potential (at the time) for a second-wave of COVID;
- the upcoming reporting season (starting in August) is traditionally a time that companies pursue fundraisings and they may still require funding flexibility in the current uncertain environment; and
- the reporting season is potentially longer as ASIC has provided a one- month extension for all companies that have been granted an extension of time to lodge accounts.

**f) Did ASIC support the recent extension of this class waiver from July 2020 to November 2020? If so, what evidence did you rely on in making that decision?**

Yes. We supported the extension based on the feedback from the consultation process received (detailed in the answer to the prior question) and the observations described below.

We have observed that some of the changes included in the Class Waiver have led to meaningful positive improvements in the fairness of fundraisings. Nearly all placements we have observed since the requirement to disclose allocation policies was included (on April 22) have been conducted on a pro-rata basis (even those not relying on the Class Waiver). Positive feedback has been received from a global index fund manager who advised that they had received pro-rata allocations in around 95% of placements which is a significant improvement from prior to the Class Waiver. This has added 7bps (or \$70 million) to their performance which benefits a large number of unitholders

(including many smaller Australian investors and SMSFs). Index funds have tended to be under allocated historically as to maintain market weight they are forced to buy in the after-market.

We also received feedback from retail brokers that the placement process had become fairer as issuers had attempted to include more eligible non-institutional shareholders in the placement. We also note feedback that from brokers (mid-sized and large) that the Class Waiver had enabled some companies (particularly those whose share price had fallen substantial) to raise the amount of equity capital they required.

Further, the requirement in the Class Waiver to disclose the method of scale back for Share Purchase Plans (SPP) has led to almost universal adoption by companies of scaling back bids when oversubscribed in proportion to shares held. This, coupled with the increase in SPP limit to \$30,000 instituted by ASIC last year, has enabled more pro-rata participation by retail shareholders. Some companies that have relied on the Class Waiver have also responded by up-sizing the size of their SPP offers to cater for more shareholders. Examples include Lend Lease, Credit Corp and Invokeare.

**g) Can ASIC quantify the cost of dilution to retail shareholders of ASX companies across all raising types (not just those relying on the new class waiver) since the new class waiver was introduced?**

From the information we have available it is not possible to calculate the cost of dilution to retail shareholders of ASX companies across all raising types. We note that since mid-March 2020 there have been over 160 capital raisings transactions raising \$10m or more. This figure would be higher if raisings of less than \$10m are added.

To be able to calculate dilution to existing retail shareholders you need to know the split of each listed company's share register between those investors who are able to participate in the placement (mainly institutional and wholesale investors) and the other (retail) investors. This information is not made publicly available or provided to ASIC.

The information that is provided about shareholders is contained in Annual Reports that listed companies provide a spread of shareholders by number of shares held by broad bands. Assumptions would need to be made as to which holders are retail and non-retail. This would be an arbitrary process and the information is around a year old. Given the elevated levels of share trading in March to June 2020 we expect significant changes to the shareholder spread in 2019 annual reports.

Even if this information were available other difficulties in calculating the information sought include:

- the treatment of shortfalls in entitlement offers. Where a shortfall is underwritten the underwriter will often have in place sub-underwriting arrangements. We do not know the identity of the sub-underwriters as they may be existing or new shareholders.
- how to calculate dilution for transactions that offer participation for existing retail investors (e.g. via a SPP or entitlement offer) but those shareholders elect not to participate. Any shareholder who elects not to participate would be diluted if the raising occurs at a discount to the last price. But given they have been provided with the opportunity to support the company but have chosen not to, it is unclear whether they should be treated as being diluted.

Appendix A – Equity raisings \$10m and above relying on the Temporary ASX Class Waiver

Placement followed by an entitlement offer

Issuer	ASX code	Sector	Date	Transaction	Size (A\$m)
Southern Cross Media	SXL	Media	Apr-20	Placement	47
Southern Cross Media	SXL	Media	Apr-20	ANREO	121
Flight Centre	FLT	Tourism	Apr-20	Placement	282
Flight Centre	FLT	Tourism	Apr-20	ANREO	419
Webjet	WEB	Tourism	Apr-20	Placement	115
Webjet	WEB	Tourism	Apr-20	ANREO	231
Oil Search	OSH	Mining/Energy	Apr-20	Placement	760
Oil Search	OSH	Mining/Energy	Apr-20	ANREO	400
Dacian Gold	DCN	Mining/Energy	Apr-20	Placement	29
Dacian Gold	DCN	Mining/Energy	Apr-20	ANREO	69
G8 Education	GEM	Education	Apr-20	Placement	134
G8 Education	GEM	Education	Apr-20	ANREO	167
New Century Zinc	NCZ	Mining/Energy	Apr-20	Placement	24
New Century Zinc	NCZ	Mining/Energy	Apr-20	ANREO	27
Micro-X	MX1	Healthcare	Apr-20	Placement	9
Micro-X	MX1	Healthcare	Apr-20	NREO	6
Monash IVF	MVF	Healthcare	Apr-20	Placement	40
Monash IVF	MVF	Healthcare	Apr-20	ANREO	40
Oncosil Medical	OSL	Healthcare	May-20	Placement	14
Oncosil Medical	OSL	Healthcare	May-20	NREO	5
Panoramic	PAN	Mining/Energy	May-20	Placement	29
Panoramic	PAN	Mining/Energy	May-20	ANREO	61
Kalium Lakes	KLL	Mining/Energy	May-20	Placement	19
Kalium Lakes	KLL	Mining/Energy	May-20	ANREO	42
FirstWave Cloud Technology	FCT	IT	May-20	Placement	4
FirstWave Cloud Technology	FCT	IT	May-20	ANREO	11
Sky Network	SKT	Media	May-20	Placement	9
Sky Network	SKT	Media	May-20	ANREO	144
Salt Lake Potash	SO4	Mining/Energy	Aug-20	Placement	43
Salt Lake Potash*	SO4	Mining/Energy	Aug-20	ANREO	55

\* Offers still open

Placement followed by a SPP or UPP

Issuer	ASX code	Sector	Date	Transaction	Size (A\$m)
NEXTDC	NXT	IT	Apr-20	Placement	672
NEXTDC	NXT	IT	Apr-20	SPP	191
Invocare	IVC	Prof Services	Apr-20	Placement	200
Invocare	IVC	Prof Services	Apr-20	SPP	74
Electric Optic Systems	EOS	Industrial	Apr-20	Placement	134
Electric Optic Systems	EOS	Industrial	Apr-20	SPP	11
Capitol Health	CAJ	Healthcare	Apr-20	Placement	30
Capitol Health	CAJ	Healthcare	Apr-20	SPP	10
Charter Hall Retail	CQR	Property	Apr-20	Placement	275
Charter Hall Retail	CQR	Property	Apr-20	UPP	30
Lendlease	LLC	Property	Apr-20	Placement	950
Lendlease	LLC	Property	Apr-20	SPP	260
Credit Corp	CCP	Financial	Apr-20	Placement	120
Credit Corp	CCP	Financial	Apr-20	SPP	35
Ingenia Communities	INA	Property	Apr-20	Placement	150
Ingenia Communities	INA	Property	Apr-20	SPP	28
National Storage	NSR	Property	May-20	Placement	300
National Storage	NSR	Property	May-20	SPP	48
Incitec Pivot	IPL	Agriculture	May-20	Placement	600
Incitec Pivot	IPL	Agriculture	Jun-20	SPP	58
Vicinity Centres	VCX	Property	Jun-20	Placement	1200
Vicinity Centres	VCX	Property	Jun-20	SPP	200
Alliance Airlines	AQZ	Tourism	Jun-20	Placement	92
Alliance Airlines	AQZ	Tourism	Jun-20	SPP	30
APN Convenience REIT	AQR	Property	Jun-20	Placement	50
APN Convenience REIT	AQR	Property	Jun-20	SPP	5
Beston Global Food	BFC	Agriculture	Jun-20	Placement	10
Beston Global Food	BFC	Agriculture	Jun-20	SPP	2
Qantas	QAN	Tourism	Jun-20	Placement	1360
Qantas	QAN	Tourism	Jun-20	SPP	500
Home Consortium	HMC	Property	Jul-20	Placement	140
Home Consortium	HMC	Property	Jul-20	UPP	30
Cann Group	CAN	Healthcare	Jul-20	Placement	14
Cann Group*	CAN	Healthcare	Jul-20	SPP	10
Perpetual	PPT	Financial	Jul-20	Placement	225
Perpetual*	PPT	Financial	Jul-20	SPP	40

\* Offers still open

Answer to question in writing:

## HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON ECONOMICS

### REVIEW OF THE ASIC ANNUAL REPORT (SECOND REPORT) 2019

**ASIC08QW:** ASIC received special funding of AUD6.8 million in the 2019 budget for a corporate governance taskforce.

- a) Of this funding, how much was spent on consultants?
- b) What deliverables were produced?
- c) What measurable impact has it had on corporate governance?

Answer:

#### A) AMOUNT OF TASKFORCE FUNDING SPENT ON CONSULTANTS

Of the funding received for ASIC's corporate governance taskforce, 90% was spent on advancing ASIC's internal capabilities and delivering the taskforce's work program.

Approximately 10% of the funding was spent on sourcing specific external expertise that ASIC needed to deliver the taskforce's key outputs within the limited time period that the taskforce was funded for. This external expertise also helped embed internal governance related capabilities and expertise within ASIC.

#### B) DELIVERABLES PRODUCED BY THE TASKFORCE

Key deliverables produced by the Taskforce included:

##### (1) Taskforce review of director and officer oversight of non-financial risk

- Individual feedback to 7 large financial services companies about identified weaknesses in how each of these institutions oversaw, monitored and managed non-financial risk, benchmarked against the better practices we found in our review (September 2019). The Taskforce's work on non-financial risk has been a cornerstone of ASIC interactions with the large banks under ASIC's Close and Continuous Monitoring program, including via direct ASIC Chair/Commissioner and CEO/CRO engagement
- Report 631: *Director and officer oversight of non-financial risk* (released October 2019): [REP 631](#)
- Report (Attachment A to Report 631) by Kiel Advisory Group *Influence of Board Mindsets and Behaviours on Effective Non-Financial Risk Oversight* (released October 2019) [Att A to REP 631](#)
- ASIC Podcast Episode 58: *Oversight of non-financial risk* (October 2019): [EPP 58](#)
- Keynote address by ASIC Chair James Shipton at the Australian Institute of Company Directors, Essential Director Update, Sydney, 2 October 2019 *Launch of ASIC's report on director and officer oversight of non-financial risk*. [Chair's Published Address](#)
- Strengthened ASIC internal governance supervisory capabilities, including developing new skills and experience.
- Expanded ASIC's knowledge of board and senior executive engagement in key financial services entities.

(2) Taskforce review of board oversight and discretion in executive variable pay schemes

- Individual feedback reports to 21 large-listed companies about each of these company's weakest governance practices when the board is over-seeing and determining executive variable pay, benchmarked against the better practices we found in our review (June 2020).
- Information Sheet 245: *Board oversight of executive variable pay decisions during COVID-19 pandemic* (released June 2020): [INFO 245](#)
- Stakeholder briefings about review findings and INFO 245: Australian Institute of Company Directors, Governance Institute of Australia, Business Council of Australia, Guerdon and Associates, PricewaterhouseCoopers, Ownership Matters, CGI Glass Lewis (Australia), Australian Council of Superannuation Investors, Future Fund of Australia and Australian Shareholders Association.
- Public report on board oversight and discretion in executive variable pay schemes (paused in March 2020 for COVID-19 pandemic, but to be released by end of 2020 calendar year).
- Further engagement with APRA and other ASIC teams where appropriate on company specific findings.
- Improved understanding of how corporate remuneration judgements are made
- Expanded ASIC's knowledge of board and senior executive engagement across seven different sectors through a focus on 21 companies in the ASX 100
- Strengthened ASIC internal governance supervisory capabilities, including developing new skills and experience.

(3) Taskforce support of ASIC's audit quality work

- contribution to ASIC's broader audit quality work through a review of post audit review and root cause analysis practices.

**C) MEASURABLE IMPACT ON CORPORATE GOVERNANCE**

- As Australia's financial markets conduct regulator, ASIC has a number of responsibilities under the *Australian Securities and Investments Commission Act 2001* (ASIC Act). These include 'monitoring and promoting market integrity and consumer protection in relation to the Australian financial system'. The taskforce proactively assessed the conduct of participants in the financial system through two thematic surveillances, the results of which can be used to:
  - (1) engage with individual companies to improve their conduct; and
  - (2) be published to encourage improvements in the conduct of the market more generally.
- In measuring the impact on corporate governance on these two groups, from the work of these two reviews, it must be recognised that governance practices need time to be embedded within the organisation to drive change. We also note the inherent challenges in measuring regulator performance, especially for pro-active supervisory programs (such as the taskforce) that seek to address issues *before* misconduct can occur. However, we provide some preliminary impacts we have observed to date.

**Governance of Non-Financial Risk:**

(1) Seven Institutions:

- Each of these companies has put in place processes to address concerns raised in ASIC's feedback, including redrafting Risk Appetite Statements, Risk Management Frameworks, implementation of improvements to risk/board reporting and revisions to the operation of the board risk committee and board oversight generally. Where we see there are gaps in the programs that have been established to improve corporate



governance practices at these institutions, we are under-taking further regulatory work to improve practices. The work has also been incorporated into work programs that were being implemented or planned by the entities.

(2) Broader stakeholder improvements:

- We received feedback that companies beyond the review entities have used the report and, specifically, the list of questions/prompts to boards to review their practices. The report was also well received by international regulators and was referenced in the Westpac Banking Corporation's Advisory Panel Review Board Governance of AML/CTF Obligations at Westpac (8 May 2020). Statistics (collated on 14 August 2020) on the number of views of outputs by stakeholders are outlined below.

Output	Release date	Times accessed
<a href="#">REP 631</a> <i>Director and officer oversight of non-financial risk</i>	2 October 2019	6,715 unique pageviews (web version) 3,719 unique downloads ( <a href="#">PDF version</a> )
<a href="#">Attachment A to REP 631</a> <i>Influence of Board Mindsets and Behaviours on Effective Non-Financial Risk Oversight</i>	2 October 2019	1,181 unique downloads
<a href="#">ASIC Podcast Episode 58</a> <i>Oversight of non-financial risk</i>	2 October 2019	1,885 downloads
<a href="#">Chair's Published Address</a> <i>Launch of ASIC's report on director and officer oversight of non-financial risk</i>	2 October 2019	5,364 unique pageviews

**Governance of Executive Variable Pay:**

(1) 21 Companies

- ASIC has received responses from companies that were subject of our review about how boards are responding to our feedback.
  - 15 boards are reviewing existing practices to determine how to address identified weaknesses in their practices
  - one board of a non-prudentially regulated company commissioned a review, independent of management, of governance practices. This has resulted in an implementation program led by the remuneration committee to uplift practices where we had identified weaknesses
  - a chair of one board has committed to over-seeing the remuneration committee's practices through attendance at these meetings as an observer
- In response to our review, companies are changing their practices to:
  - better support and inform the use of board discretion over executive variable pay decisions. For example, by introducing processes to take account of risk and conduct matters;
  - better manage the conflicts that arise from executives advising on pay outcomes in which they hold a financial interest;
  - better support the independent role of the remuneration committee in overseeing and determining variable pay of company executives through changes to meeting agendas; and

- improve transparency of executive pay outcomes through making improvements to their minute taking, such as recording the key points of discussion and rationale for the final pay decision of their executives.
- We are continuing to engage with companies to identify the governance practices that the boards are changing to improve their governance of executive pay so that they meet the identified better practices in our review. It is intended that we will report on the outcome of this engagement in our public report to be released at the end of the year.

(2) Broader stakeholder improvements:

- INFO 245 Board oversight of executive variable pay decisions during COVID-19 pandemic (released 12 June 2020) has had 2,978 page views since publication. Industry stakeholders (including companies) have viewed INFO 245 demonstrating engagement by stakeholders with some of the better practices found in our review.

## HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON ECONOMICS

### REVIEW OF THE ASIC ANNUAL REPORT (SECOND REPORT) 2019

#### QoN ASIC09QW

#### Question from Dr Andrew Leigh

In June of this year Matt Thistlethwaite MP wrote to Mr Shipton to raise the issue of 42 per cent premium increases with Comminsure products in the Colonial Super Retirement Fund.

a) The correspondence raised an individual matter which has not yet been responded to. When will this be responded to?

In general terms the correspondence raised the following issue: Colonial Super Retirement Fund has issued one of its members with AUD 500,000 worth of cover under a group term life insurance policy a policy increase from AUD 5,494 to AUD 7,804 per annum. I understand the policy contains reasonably standard group insurance provisions. The fund trustees have written to their members explaining that they have entered into a contract with the same insurer for another three years. I understand that Colonial Super Retirement Fund and its group insurance providers are related entities. To put this into perspective, a similar policy of age and quantum available to a member of Australian Super would be around AUD 4,350 per year.

b) Does ASIC see any issue with the above scenario as described?

c) Under the circumstances does ASIC believe the trustees of this fund are acting in the best interests of the fund's members?

d) Will ASIC undertake to investigate this matter?

#### Answer

Adopting the same paragraph referencing as Dr Leigh's questions, we respond as follows:

- a) ASIC Chair, James Shipton, responded by letter to Mr Thistlethwaite's correspondence regarding the premium increases with Comminsure products in the Colonial Super Retirement Fund on 9 July 2020.
- b) Whether the trustee contravened the law in any way by entering into a new three-year contract with the insurer is a matter that would require a fulsome analysis of the decision-making process of the trustee in relation to this matter. There are a significant number of complexities, and threshold steps, needed to establish an actionable contravention of the law. The mere existence of a significant price increase is not determinative of a breach in of itself.
- c) ASIC has not formed any view on this issue. APRA has primarily regulatory responsibility for enforcing the duty of fund trustees to act in the best interests of members. ASIC and APRA have a close and co-operative working relationship and we regularly share intelligence, including in relation to market practices in insurance in superannuation. ASIC

has passed on the information raised in Mr Thistlethwaite's letter to our counterparts at APRA.

- d) Based on the information supplied, and our jurisdiction in relation to a trustee's obligations under the law concerning choice of insurer, we do not propose to investigate further at this stage. ASIC continues to monitor trustee practices about insurance product changes, including premium price changes, across the industry to the extent that they relate to ASIC's regulatory remit.

Answer to question in writing:

## HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON ECONOMICS

### REVIEW OF THE ASIC ANNUAL REPORT (SECOND REPORT) 2019

#### ASIC010QON:

The following questions relate to the collapse of Pasmenco and its placement into voluntary administration in 2001.

- a. Does ASIC believe that the directors of Pasmenco in all the circumstances of the matter correctly discharged their duties to creditors and shareholders of Pasmenco when they appointed administrators?
- b. Did the directors of Pasmenco take all steps to mitigate any loss by shareholders, such as to avoid the need for appointment of any administrators?
- c. Following the administration process Pasmenco became Zinifex Limited. The Shareholders of the former entity received nothing from the process while the 39 banking industry shareholders made significant profits from the debt they held. Has ASIC ever investigated the legality of this outcome in relation to investors?
- d. Is it ASIC's belief that the directors of Pasmenco were appropriately fulfilling their directors' and officers' duties under general law and pursuant to the Corporations Act 2001 including:
  - acting with care and diligence;
  - acting in good faith, in the interest of the company and for a proper purpose;
  - not using the position of director improperly;
  - not improperly using information that gain during the course of carrying out duties as a director;
  - avoiding conflicts of interest;
  - keeping records about the financial position of the company.

#### Answer

ASIC has no reason to believe that the administration of the Pasmenco group and the transfer of assets to Zinifex were conducted other than in accordance with the requirements of the Corporations Act (Act).

Our review of ASIC databases and records from almost 20 years ago when appointment of administrators took place does not indicate that a formal legal investigation (using compulsory information gathering powers) was commenced.

However, the circumstances of the administrator's appointment and the transfer of assets to Zinifex were looked at by ASIC on various occasions having regard to publicly available materials and information provided by the administrators and the public.

Be aware that the statute of limitations would likely apply in respect of civil proceedings regarding these events. The Act notes that a declaration of any contravention, a pecuniary penalty order or a compensation order may not be started later than 6 years after the relevant events have occurred.