



**ASIC**  
Australian Securities &  
Investments Commission

<b>Committee</b>	Parliamentary Joint Committee on Corporations and Financial Services
<b>Inquiry</b>	Oversight of the Australian Securities & Investments Commission
<b>Question No.</b>	043-01
<b>Date</b>	27 October 2021
<b>Written/Spoken</b>	Written
<b>Committee member</b>	Senator Pratt

### Question

- a) In relation to how ASIC applies its “regulatory toolkit” (i.e. Supervision and surveillance; enforcement; and other regulatory activities (industry engagement through to providing policy advice); what proportion of ASIC’s budget was applied across each of these activities to the mineral exploration industry in 2019 and 2020?
- b) How many publicly listed mineral exploration and mining companies were subjected to ASIC’s (1) supervision and surveillance; (2) enforcement; and (3) other regulatory activities in 2019 and 2020?

### Answer

a) For the purposes of calculating levies under the Industry Funding Model, ASIC tracks the costs of regulating each industry subsector as defined by the cost recovery legislation. The mineral exploration industry is not one such subsector. Therefore, under the Industry Funding Model, ASIC does not track costs relating specifically to the regulation of the mineral exploration companies as a separate and distinct group. The costs for regulating mineral exploration companies is accounted for under different subsectors depending on the nature of each entity. For instance, listed mining companies may come under the listed corporations subsector.

b) The sections below set out the approximated number of companies subjected to ASIC’s direct supervision and surveillance, enforcement and other regulatory activities in 2019 and 2020 using searches for mining companies in our databases.

### **Supervision and surveillance**

ASIC conducts a range of supervision and surveillance work on entities and activities which include mining companies. We set out key examples below:

#### Fundraising

- Between 1 January 2019 and 31 December 2019, approximately 182 mining or energy companies (both already listed and to be listed companies) lodged approximately 230 original disclosure documents with ASIC.
- Between 1 January 2020 and 31 December 2020, approximately 187 mining or energy companies (both already listed and to be listed companies) lodged approximately 241 original disclosure documents with ASIC.

ASIC’s regulatory activities for fundraising by mining and energy companies includes the review of disclosure documents lodged with ASIC to identify disclosures deficiencies and contraventions of the Corporations Act. We may apply a risk-based approach in reviewing these documents.

During 2019, ASIC undertook a detailed review of a sample of mining initial public offerings that occurred between 1 October 2016 and 30 September 2018. The review considered the IPO processes from transaction origination through to on-market trading after listing and involved the collection and review of over 50,000 documents received under notice and voluntary interviews with

45 individuals. As part of this review, ASIC conducted surveillances on 17 listed mining companies. ASIC's findings from this review were published in [ASIC Report 641 An inside look at mining and exploration initial public offers](#).

#### Control transactions and schemes

- Between 1 January 2019 and 31 December 2019, approximately 17 listed mining companies were subject to takeovers or schemes of arrangements.
- Between 1 January 2020 and 31 December 2020, approximately 10 listed mining companies were subject to takeovers or schemes of arrangements.

ASIC administers the takeover provisions in Chapter 6 of the Corporations Act. As part of this, we review and monitor takeovers documentation, disclosures and conduct in relation to the takeover bids.

ASIC has a corresponding regulatory role in schemes of arrangements that enable acquisitions similar in effect to those under a bid. The coordination of our approach across both roles seeks to ensure that, as far as practicable, similar principles and protections are applied. When parties propose a scheme of arrangement under Pt 5.1, they must lodge certain documents with ASIC. We may make submissions to the court in relation to the scheme and the draft scheme booklet.

#### Acquisitions approved by shareholders

- Between 1 January 2019 and 31 December 2019, approximately 21 listed mining companies lodged documents with ASIC for acquisitions approved by shareholders.
- Between 1 January 2020 and 31 December 2020, approximately 11 listed mining companies lodged documents with ASIC for acquisitions approved by shareholders.

As part of ASIC's role in the administration of Chapter 6 of the Corporations Act, ASIC also receives drafts of disclosure documents used for acquisitions approved by shareholders pursuant to item 7 of section 611 of the Corporations Act. These documents are subject to review and, in select cases, surveillance. We may apply a risk-based approach in reviewing these documents.

#### Market announcement and disclosure reviews

- Between 1 January 2019 and 31 December 2019, approximately 5 listed mining companies were subject to market announcement and disclosure reviews.
- Between 1 January 2020 and 31 December 2020, approximately 12 listed mining companies were subject to other supervision or surveillance activities.

#### Financial reporting surveillance

ASIC conducts reviews and surveillances of financial reports of listed entities and other public interest entities on a risk basis, including mining companies.

In 2019, we reviewed the financial reports of 49 mining companies and conducted follow-up enquiries with 6 entities.

In 2020, we reviewed the financial reports of 24 mining companies and conducted follow-up enquiries with 5 entities. The lower numbers in 2020 was due our financial reporting surveillance program being focussed on larger companies operating in industries more acutely impacted by COVID-19.

#### Continuous disclosure surveillance

ASIC conducts surveillance activities across the equity market including the listed mining sector. This work includes our surveillance of how companies are meeting their continuous disclosure obligations. As part of this surveillance, we reviewed 7 entities in 2019 and 4 entities in 2020 for potential breaches of continuous disclosure obligations.

**Enforcement**

In 2020, ASIC conducted enforcement work relating to 14 mining and energy companies. This number refers to enforcement work on the conduct of the companies themselves and does not include enforcement work which may relate to individuals associated with the companies.<sup>1</sup>

As part of ASIC's role in the administration of Chapter 6 of the Corporations Act, ASIC also participates in Takeovers Panel proceedings –

- Between 1 January 2019 and 31 December 2019, approximately 6 listed mining companies were subject of Takeovers Panel proceedings.
- Between 1 January 2020 and 31 December 2020, approximately 5 listed mining companies were subject to Takeovers Panel proceedings.

In some cases, the Panel proceedings would relate to companies that are already subject to ASIC's supervision and surveillance.

**Other regulatory activities**

ASIC conducts a range of other regulatory activities such as industry engagement. In many instances, this can be a broad, sector-wide exercise. For instance, during the period in question, ASIC has also engaged with members of the mining industry in relation to the JORC Code and potential updates to it. This engagement was not specific to any particular listed mining company.

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<sup>1</sup> Due to ASIC's move to a new regulatory workflow platform in 2019–20, and the change in the way enforcement activities are recorded, we do not currently have complete data relating to the total number of mineral exploration and mining companies that were subject to enforcement work in 2019.