

Inquiry	Parliamentary Joint Committee on Corporations and Financial Services, Oversight of the Australian Securities and Investments Commission, the Takeovers Panel and the Corporations Legislation No. 1 of the 46th Parliament
Agency	Australian Securities and Investments Commission
Question No.	004
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Committee member	Senator O'Neill

Question

Mr Longo: I think it's around 300 or 400 a year. They don't all get the same attention. Under the system that operates under the Corporations Act, the prospectuses above a certain value that are risk targeted—if we have particular information that would warrant us putting particular resources into a prospectus review within the short period we have, then that's what we do. I think the committee would understand that not every prospectus is the same; not every prospectus raises the same issues or risks. This prospectus, I believe, got the attention it could have gotten in the circumstances in which it was received and in the time we had to look at it. But I think it is important for the committee to appreciate the ground rules for how prospectuses are filed and what ASIC's role is in connection with them.

Senator O'NEILL: And I'm happy for you to clarify on notice for the committee what that is, but I question, given that Nuix has cost shareholders billions of dollars, that saying the system is the system is a sufficient response to those investors who've lost money. There is the imprimatur of it having been through ASIC. I'm sure you'd want to believe that that would give some assurance to people that this is a decent document. While I accept that you indicate very clearly that ASIC doesn't actually vet prospectuses, you actually received, in this instance of Nuix, a letter that not only should have, in my view, rung significant alarm bells; it actually contained serious potential allegations about fraud, tax evasion and money laundering. So, if that didn't set off bells, Mr Longo, I don't know what would.

Answer

As described in RG 254, we do not review all disclosure documents lodged with us. It is the responsibility of issuers to ensure that their disclosure documents comply with the law and are otherwise suitable for dissemination before lodging them with ASIC.

We receive approximately 600 to 800 prospectuses a year, many of which are lodged for compliance purposes and are not seeking to raise funds. These are generally considered to be of low regulatory / market risk.

Review criteria

Since 1999, when the pre-vetting regime ended, we have used various forms of risk identification criteria to determine the disclosure documents we review, and what areas we focus on. Our review procedures are designed to target prospectuses that:

- may have large market impact (such as those seeking a public listing) and / or are raising significant sums of money;
- come from certain industries / sectors which we consider display heightened risks at a point in time; and
- disclose certain characteristics that we believe elevates the risk of the offer, including any intelligence we have on the background of directors and / or the issuer.

The criteria we use are not static, are based on internal research projects and knowledge, and change based on market circumstances. We may also choose prospectuses at random, depending on our workload. While we do not reveal to the market the details of the criteria that we use, we do share areas of focus/concern with the market through our Corporate Finance newsletter.

Initial Risk Screening

All prospectuses received are initially screened by the fundraising Senior Specialist or another senior staff member of staff using the above criteria to determine if a prospectus warrants a full review. If it is determined that a full review is required it is allocated to a review team, which consists of a senior member of staff (known as the supervising officer) and a junior member of staff (known as an action officer). If we select a prospectus for review, we endeavour to conduct our review during the first seven days of the exposure period but we may commence a review at any time.

We aim to perform this screening exercise within a few hours of the document being received. We are also currently working with our Chief Data Office on a pilot program developing Natural Language Processing (NLP) capabilities to assist in this task.

Full Review

The action officer and supervising officer will individually review the prospectus using our risk-based checklist to help identify areas of risk, as well as Regulatory Guide 228: Prospectuses: *Effective disclosure for retail investors*. Key areas focused on, include:

- the prima facie reasonableness of forecasts and disclosure of material assumptions;
- the disclosure of all material aspects of the business model; and
- the quantity and audit status of historical financial information disclosed.

The review team uses all sources of available intelligence, including media searches and our internal databases that record all historical reports of misconduct against entities and directors, as well as any previous interactions with ASIC. Again, we do not reveal to the market the details of the criteria that we use in the course of a review.

We aim to have our initial review complete well within the seven-day exposure period. The review team will generally meet around day five of the exposure period and have a fulsome discussion on the prospectus based on our review checklist and regulatory guides. If the review team identifies what they consider to be misleading statements, material omissions, or requires specialist support they will generally seek the input of senior management and then engage with the issuer to seek clarification and / or corrective disclosure.

If the concerns are not resolved, ASIC can seek to extend the exposure period from seven to fourteen days and / or seek a stop order from a delegate.

Our review of the document does not consider whether the securities offered are desirable investments or the commercial merits of the offer, such as the offer price, whether the offer is good value, or the extent of vendor sell downs. However, these aspects of an offer are most definitely considered as they can help us identify potential disclosure risks.

The role of the exposure period

The exposure period is intended to provide us and market participants with the opportunity to scrutinise disclosure documents before they are used for fundraising. ASIC has the power to extend the exposure period from seven to 14 days and we will advise issuers in writing when we have decided to do so.

In the year ended 30 June 2020, we extended the exposure period 21 times.

ASIC stop order powers

ASIC's stop order powers are limited to defective disclosures and defective advertising. ASIC has the power under the Corporations Act to issue an interim stop order if we are satisfied that a prospectus is not presented in a clear, concise, and effective manner or the prospectus contains a misleading or deceptive statement or a material omission.

A stop order means that offers and issues can't be made while the order is in force. An interim order can be in force for 21 days and a hearing must be held before a final stop order can be placed on the offer.

In the financial year ended 30 June 2020, 22 interim and final stop orders were issued (20 interim and 2 final).