Law Council
OF AUSTRALIA

Business Law Section

23 January 2023

Corporations Team
Australian Securities and Investments Commission
GPO Box 9827
BRISBANE QLD 4001

By email: asic.takeovers.policy.submissions@asic.gov.au

Dear Corporations Team

Class orders on takeovers, compulsory acquisitions and relevant interests—response to ASIC Consultation Paper 365

1. The Corporations Committee of the Business Law Section of the Law Council of Australia (the **Committee**) welcomes the opportunity to provide feedback on ASIC's proposed modifications to the class orders on takeovers, compulsory acquisitions and relevant interests outlined in ASIC Consultation Paper 365 dated 30 November 2022 (the **Instruments**).

2. The Committee's submissions on the proposed modifications to the Instruments are set out in the final column of the table included in the Schedule to this letter (**Submission**).

3. All references to the 'Corporations Act' in the Submission are references to the *Corporations Act 2001* (Cth) and references to specific sections are to sections of that Act.

4. The Committee notes that the Submission contains some commentary and submissions from the Financial Services Committee of the Business Law Section. References to submissions by the Financial Services Committee should be distinguished from submissions by the Committee.

5. The Committee would be pleased to discuss any aspect of this Submission.

6. Any queries can be directed to:
   - Andrew Rich on [redacted] or at [redacted]
   - Malika Chandrasegaran on [redacted] or at [redacted]
   - Guy Alexander on [redacted] or at [redacted]
   - Andrew Wong on [redacted] or at [redacted]
   - Robert Sultan (Chair of the Committee) on [redacted] or at [redacted]

Yours faithfully,



Philip Argy
Chairman
Business Law Section

Telephone +61 2 6246 3737 • ***Fax*** +61 2 6248 0639 • ***Email*** jessica.morrow@lawcouncil.asn.au
GPO Box 1989, Canberra ACT 2601, DX 5719 Canberra • 19 Torrens St Braddon ACT 2612
Law Council of Australia Limited ABN 85 005 260 622
www.lawcouncil.asn.au

Schedule—Submission

ASIC Proposal	Requested Feedback	Committee Response
Class Order [CO 12/1209] *Relevant Interests ASIC and ASIC Chairperson* **B1:** To preserve its effect beyond the sunset date of 1 April 2023, we propose to continue the relief currently given by [CO 12/1209] in a new legislative instrument without any significant changes: see draft *ASIC Corporations (Relevant Interests, ASIC and ASIC Chairperson) Instrument 2023/XXX* at Attachment 1 to this consultation paper. The only change proposed is to update Regulatory Guide 5 Relevant interests and substantial holding notices (RG 5) to reflect the updated instrument name.	**B1Q1:** Is [CO 12/1209] operating effectively and efficiently, or are there issues or improvements that should be considered to improve its operation?	The Committee does not have any issues to raise or improvements to propose in respect of this instrument.
	B1Q2: Should the remade instrument remain in force for five years or for a different period of time?	The Committee considers that each proposed remade instrument addressed in the Consultation Paper should (in keeping with all relevant existing instruments) be in force for the maximum period of 10 years. The Committee is not supportive of legislative instruments being remade/renewed by ASIC for only 5 years. It considers this would only: • undermine market certainty as to the ongoing and consistent operation of the modifications effected by those legislative instruments, which are important to (and in many cases now long-standing and well-understood features of) the efficient operation of the market for corporate control; and • mean that ASIC and market participants will just have to revisit the same instruments (most of which have been in place in substantively the same form for well over 20 years, without any controversy), and go through the same process that is currently being experienced in five years' time—this is not a good use of anyone's time (noting in particular ASIC's limited time and resources).

ASIC Proposal	Requested Feedback	Committee Response
		The Financial Services Committee considers that it would be preferable for modifications to the Corporations Act (which have been made by class orders which are not controversial and have been operating effectively for a considerable period of time) to instead be incorporated into the Corporations Act as part of the Treasury Law Improvement Program (which supports the regulatory stewardship of Treasury portfolio legislation and incorporates a regular minor and technical amendments process).
Class Order [CO 13/519] *Changing the responsible entity* **B2:** To preserve its effect beyond the sunset date of 1 October 2023, we propose to continue the relief currently given by [CO 13/519] in a new legislative instrument that reflects current drafting practice, without any significant changes: see draft *ASIC Corporations (Changing the Responsible Entity) Instrument 2023/XXX* at Attachment 2 to this consultation paper. The only change proposed is to update Regulatory Guide 9 *Takeover bids* (RG 9) to reflect the updated instrument name.	**B2Q1:** Is [CO 13/519] operating effectively and efficiently, or are there issues or improvements that should be considered to improve its operation?	The Committee supports the continuation of this relief and does not have any issues to raise or improvements to propose in respect of this instrument. The Financial Services Committee also supports the continuation of the relief, but encourages ASIC to consider whether it would be desirable to give corresponding relief in respect of members of a corporate collective investment vehicle (**CCIV**) voting at a meeting of members on a resolution to remove the corporate director of a listed CCIV under section 1224U of the Corporations Act.
	B2Q2: Should the remade instrument remain in force for five years or for a different period of time?	See response to B1Q2.

Class Order [CO 13/520] *Relevant interests, voting power and exceptions to the general prohibition* **B3:** To preserve its effect beyond the sunset date of 1 October 2023, we propose to continue the relief currently given by [CO 13/520] in a new legislative instrument that reflects current drafting practice, with minor amendments: see draft *ASIC Corporations (Relevant Interests, Voting Power and Exceptions to the General Prohibition) Instrument 2023/XXX* at Attachment 3 to this consultation paper. The only changes proposed are to: (a) update RG 5; (b) amend the money lending exception in subsection 609(1) to apply only where the lender does not have other relevant interests in securities of the entity; (c) provide class relief for voluntary escrow arrangements in relation to securities issued to parties selling a business or assets to the entity; and (d) re-enable subsection 609(3) by moving the modification in [CO 13/520] to a new subsection.	**B3Q1:** Should the money lending exception in subsection 609(1) be amended to apply only where the lender does not have other relevant interests in securities of the entity?	No. The Committee considers that this would be a very substantial change to the current operation of the exception in subsection 609(1) as modified by [CO 13/520] and will have significant and adverse impacts on financiers and credit markets in Australia. The Committee does not believe that there is a sound policy justification for such a change. The Committee notes ASIC's comment that it is consulting on this matter as it arose for consideration in *Donaco International Limited* [2019] ATP 11 (***Donaco***), which related to certain arrangements in connection with non-bank lending. While the Committee does not support changes being made to the current operation of the exception, even in the context of non-bank lending arrangements, it notes that ASIC's proposal appears to also go considerably beyond the circumstances raised and considered by the Takeovers Panel in *Donaco*. The Committee submits that, if similar circumstances to those in *Donaco* arise in the future, the appropriate way for those circumstances to be dealt with is via the Takeovers Panel again (noting that the facts and circumstances of every case will be different). It is difficult to assess and provide meaningful comment on exactly how ASIC intends this amendment to the money lending exception in subsection 609(1) to operate, as the relevant draft instrument attached to the Consultation Paper as Attachment 3 does not actually appear to contain any proposed language addressing this proposal.

ASIC Proposal	Requested Feedback	Committee Response
		Assuming, however, that it may operate as broadly as suggested in the Consultation Paper—i.e. may disentitle a lender from relying on the exception in subsection 609(1) if that lender has any other interests in the securities of the relevant entity—then the Committee considers that this proposed change will have a very (and perhaps unintentionally) broad effect. Consider, for example, a hypothetical 'traditional' lender such as a major bank that, in addition to its lending operations, also has a funds management business. Through that funds management business (and, in a corporate group, the application of section 608), that lender would hold relevant interests in the securities of listed entities. That lender would also have security interests in securities of those same listed entities under general and standard security arrangements entered into to secure amounts lent to corporate and individual borrowers. If ASIC were to make this proposed change to the application of subsection 609(1), it would no longer apply to those security interests in listed entity securities—which is likely to (among other things) add significant complexity to that lender's monitoring and reporting of substantial security holdings, as this would now need to include 'holdings' of securities that would have previously and otherwise been covered by the exception in subsection 609(1).

ASIC Proposal	Requested Feedback	Committee Response
		If ASIC considers the circumstances and issues raised in *Donaco* to be a matter appropriate to be addressed by modification of subsection 609(1) rather than law reform, the Committee strongly suggests that—given the potentially substantial effects such changes could have on both 'traditional' and 'non-traditional' lenders and credit markets in Australia—this would more appropriately be the subject of a separate, extensive consultation process that allows all relevant stakeholders the opportunity to consider the details of such proposed modification, and comment on its likely effects.
	B3Q2: Should ASIC provide class relief for non-IPO voluntary escrow arrangements on the same conditions set out in RG 5, particularly in relation to securities issued to parties selling a business or assets to the entity?	Yes. Such class relief would, as noted in the Consultation Paper, be consistent both with RG 5 and with ASIC's practice of providing such relief on an individual basis when sought. The Committee agrees that, as ASIC has observed in the Consultation Paper, the objectives and benefits of such voluntary escrow arrangements are the same as those of escrow arrangements required under the listing rules—for which class relief is already provided.

ASIC Proposal	Requested Feedback	Committee Response
	B3Q3: Should the modification to subsection 609(3) be moved into a new subsection and the original relief in subsection 609(3) be re-enabled?	Yes. As the Consultation Paper acknowledges, ASIC's current modification in Class Order 13/520 of subsection 609(3) (Holding of securities by financial services licensee) has the effect (in certain circumstances) of narrowing the application of subsection 609(3) as enacted by Parliament—specifically, by removing the ability of a person who holds (either themselves or through a third party, such as a custodian) securities for another person (in the ordinary course of a financial services business) to rely on the exemption in subsection 609(3). ASIC's explanatory materials[1] currently state that this change is because the exemption is largely intended to apply to "dealers" who rarely hold securities. However accommodating this should not require the 'original' form of this section to be replaced. In this regard, the Committee notes that, while paragraph (d) of proposal B3 in the Consultation Paper states that ASIC does propose to "re-enable subsection 609(3) by moving the modification in [CO 13/520] to a new subsection", the relevant draft instrument attached to the Consultation Paper as Attachment 3 does not actually appear to reflect this—paragraph 7(b) of that draft instrument still refers to omitting subsection 609(3) and inserting the modified

[1] ASIC Regulatory Guide 5 at [5.79] – [5.87].

ASIC Proposal	Requested Feedback	Committee Response
		form of subsection 609(3) currently included in Class Order 13/520. The Financial Services Committee agrees.
	B3Q4: Should RG 5 be updated to clarify matters following enactment of IPO voluntary escrow relief under the legislative instrument?	Yes. This would make the availability of this class relief clear to market participants and their advisers (so that there should not be a need to, in relevant circumstances, seek individual relief).
	B3Q5: Is [CO 13/520] operating effectively and efficiently, or are there issues or improvements that should be considered to improve its operation?	Other than as noted above, the Committee does not have any issues to raise or improvements to propose in respect of this instrument.
	B3Q6: Should the remade instrument remain in force for five years or for a different period of time?	See response to B1Q2.

ASIC Proposal	Requested Feedback	Committee Response
Class Order [CO 13/521] *Takeover bids* **B4:** To preserve its effect beyond the sunset date of 1 October 2023, we propose to continue the relief currently given by [CO 13/521] in a new legislative instrument that reflects current drafting practice, with minor amendments: see draft ASIC Corporations (Takeover Bids) Instrument 2023/XXX at Attachment 4 to this consultation paper. The only changes proposed are to: (a) extend the declaration in paragraph 4(a) substituting subsection 617(2) to expressly cover derivatives; (b) extend the declaration in paragraph 4(a) substituting subsection 617(2) to include bid class securities issued after the date set under subsection 633(2); (c) amend the declaration in paragraph 4(d) to clarify that a bidder can include in its offer terms a shorter period for payment of bid consideration than required under subsection 620(2); and	**B4Q1:** Should the declaration in paragraph 4(a) substituting subsection 617(2) be extended to expressly cover derivatives? If so, should any form/s of derivatives be expressly excluded from subsection 617(2)?	Yes. The Committee supports these changes to ensure that all kinds of performance rights (and similar instruments) are covered by subsection 617(2), regardless of whether they may be regarded as "securities" or "derivatives". The Committee also supports the consequential modifications of subsection 636(1)(j) and (in particular) section 641 in order to facilitate the extension of takeover offers to securities that come to be in the bid class as the result of a conversion of relevant derivatives. The Committee also suggests that in its updates to RG 9, ASIC clarify that the terms "convert" and "convertible" (in the modified forms of subsection 617(2) and subsection 641, respectively) are intended to, and do, cover all of the ways that securities may come into the bid class in satisfaction of relevant rights under performance rights or other applicable derivatives (e.g. the issue of bid class securities upon satisfaction of the conditions of a performance right). The Financial Services Committee agrees.

ASIC Proposal	Requested Feedback	Committee Response
(d) update RG 9.	**B4Q2:** Should the declaration in paragraph 4(a) substituting subsection 617(2) be extended to bid class securities issued after the date set in subsection 633(2)?	Yes. As ASIC has noted in the Consultation Paper, ASIC has granted such relief on a case-by-case basis. The Committee submits that adopting such relief on a class basis will ensure that bidders can extend their bids to all securities which come into the bid class during the offer period, which would be to the benefit of both bidders and of holders of such securities (who would otherwise be unable to accept the bid in respect of them). The Committee notes that the relevant draft instrument attached to the Consultation Paper as Attachment 4 does not actually appear to reflect a change in this regard.
	B4Q3: Should the declaration in paragraph 4(d) substituting subsection 620(2) be amended to permit the bidder to promise in its offer terms a shorter period of payment of bid consideration than required by subsection 620(2)? If so, should any limitations be imposed on the bidder's choice of a shorter period?	Yes. To the extent that there is any doubt as to whether it is possible for a bidder to commit to a shorter consideration payment period as a term of its offer, the Committee considers that it would be appropriate (and would be to the benefit of target shareholders) for this to be clarified. The Committee notes that the relevant draft instrument attached to the Consultation Paper as Attachment 4 does not actually appear to reflect a change in this regard.

ASIC Proposal	Requested Feedback	Committee Response
	B4Q4: Is [CO 13/521] operating effectively and efficiently, or are there issues or improvements that should be considered to improve its operation?	Other than as noted above, the Committee does not have any issues to raise or improvements to propose in respect of this instrument. ***Compulsory acquisition*** The Committee considers that to give full effect to the changes in respect of performance rights and derivatives described above (see B4Q1 above), ASIC should also make modifications to Chapters 6 and 6A to expressly clarify that references to "securities" include rights to acquire bid class securities (including all types of performance rights)—in particular to clarify that post-bid compulsory acquisition under subsection 661A, as (currently) modified by Class Order 13/522, and that the general compulsory acquisition regime in Part 6A.2 extends to such rights. The High Court has recognised that ASIC has the power to make this type of modification.[2] In other words, ASIC should make modifications to Part 6A.1 and Part 6A.2 to remove any doubt as to a person's ability to compulsorily acquire performance rights. This would be entirely consistent with Parliament's stated intention that the CLERP amendments should facilitate the acquisition of all economic interests in a company.[3] Parliament's intention is currently being frustrated by the doubt that has been expressed as to the ability to compulsorily acquire performance rights. In the Committee's view, it

[2] *See ASIC v DB Management Pty Ltd* (2000) 199 CLR 321 at 341 [46]-[47].
[3] See the Explanatory Memorandum to the *Corporate Law Economic Reform Bill 1998* (Cth) – available here. See, in particular, 40-42 [7.30]-[7.45].

ASIC Proposal	Requested Feedback	Committee Response
		is important that ASIC addresses this issue and gives effect to Parliament's intention. For a further discussion in relation to this issue, see item 14 on page 23 of the Committee's 6 June 2022 submission in response to Treasury's consultation paper on possible reforms to the takeover bid and scheme of arrangement regimes (the **Treasury Submission**).[4] ***The two-month rule—section 631*** The Committee considers that the 'two-month rule' in section 631, which requires a bidder to send takeover offers to target shareholders within two months after it "publicly proposes to make a takeover bid", should be refined by ASIC instrument to expressly distinguish between: • announcements of offers that are subject to pre-conditions (which do not start the two-month clock running), as is the case with non-binding indicative offers; and • announcements of firm intentions to make an offer (which do start the two-month clock running). Even if ASIC is unwilling, in the context of the current consultation process, to consider modifications to section 631 to address this issue, the Committee recommends that, at a minimum, ASIC should consider and further consult in the near future on changes to the guidance in (what is now) Regulatory Guide 59. This

[4] See the Law Council of Australia Business Law Section, *Corporate control transactions in Australia* (Consultation Paper) submission (2022)– available here.

ASIC Proposal	Requested Feedback	Committee Response
		Regulatory Guide dates back to 1995 and pre-dates the CLERP 9 changes to the Corporations Act and the introduction of Part 7.10—which, as noted in the Treasury Submission, the Committee considers provides the more appropriate framework for addressing potentially misleading public announcements by potential bidders. The Committee's views on section 631 are set out in further detail on pages 17–19 (see item 9) of the Treasury Submission.[5]
	B4Q5: Should the remade instrument remain in force for five years or for a different period of time?	See response to B1Q2.

[5] See the Law Council of Australia Business Law Section, *Corporate control transactions in Australia* (Consultation Paper) submission (2022), 17–19—available here.

ASIC Proposal	Requested Feedback	Committee Response
Class Order [CO 13/522] *Compulsory acquisitions and buyouts* **B5:** To preserve its effect beyond the sunset date of 1 October 2023, we propose to continue the relief currently given by [CO 13/522] in a new legislative instrument that reflects current drafting practice, with minor amendments: see draft *ASIC Corporations (Compulsory Acquisitions and Buyouts) Instrument 2023/XXX* at Attachment 5 to this consultation paper. The only changes proposed are to: (a) provide that securities acquired on-market by the bidder in reliance on the exemption provided in item 2 of section 611 are included for the purposes of the 75 per cent calculation in subparagraph 661A(1)(b)(ii); and (b) update Regulatory Guide 10 *Compulsory acquisitions and buyouts* (RG 10).	**B5Q1:** For the purposes of the 75 per cent calculation in subparagraph 661A(1)(b)(ii), should securities acquired on-market by the bidder between the date of announcement of the bid and the start of the offer period in reliance on the exemption provided in item 2 of section 611 be included?	Yes. The Committee supports this proposed change, on the basis that it is appropriate for any securities a bidder may acquire under item 2 of section 611 to be treated in the same way for the purposes of, and so included in, the '75 per cent calculation', irrespective of whether relevant acquisitions are made before the offer period has commenced. The Committee submits that this would (as noted in the Consultation Paper) also be consistent with individual relief that ASIC has previously granted to bidders.
	B5Q2: Is [CO 13/522] operating effectively and efficiently, or are there issues or improvements that should be considered to improve its operation?	Other than as noted above (including in response to B4Q4), the Committee does not have any issues to raise or improvements to propose in respect of this instrument.
	B5Q3: Should the remade instrument remain in force for five years or for a different period of time?	See response to B1Q2.

ASIC Proposal	Requested Feedback	Committee Response
Class Order [CO 13/524] *Bidder giving substantial holding notice* **B6:** To preserve its effect beyond the sunset date of 1 October 2023, we propose to continue the relief currently given by [CO 13/524] in a new legislative instrument that reflects current drafting practice, without any significant changes: see draft *ASIC Corporations (Bidder Giving Substantial Holding Notice) Instrument 2023/XXX* at Attachment 6 to this consultation paper. The only change proposed is to update RG 5 to reflect the new legislative instrument name.	**B6Q1:** Is [CO 13/524] operating effectively and efficiently, or are there issues or improvements that should be considered to improve its operation?	The Committee does not have any issues to raise or improvements to propose in respect of this instrument.
	B6Q2: Should the remade instrument remain in force for five years or for a different period of time?	See response to B1Q2.
Class Order [CO 13/525] *On-sale disclosure relief for scrip bids and schemes of arrangement* **B7:** To preserve its effect beyond the sunset date of 1 October 2023, we propose to continue the relief currently given by [CO 13/525] in a new legislative instrument that reflects current drafting practice, without any significant changes: see draft *ASIC Corporations (On-sale Disclosure Relief for Scrip Bids and Schemes of Arrangement) Instrument 2023/XXX* at Attachment 7 to this consultation paper. The only change proposed is to update RG 9, Regulatory Guide 60 *Schemes of arrangement* (RG 60) and Regulatory Guide 173 *Disclosure for*	**B7Q1:** Is [CO 13/525] operating effectively and efficiently, or are there issues or improvements that should be considered to improve its operation?	The Committee does not have any issues to raise or improvements to propose in respect of this instrument.
	B7Q2: Should the remade instrument remain in force for five years or for a different period of time?	See response to B1Q2.

ASIC Proposal	Requested Feedback	Committee Response
on-sale of securities and other financial products (RG 173) to reflect the new legislative instrument name.		
Class Order [CO 13/526] *Warrants: Relevant interests and associations* **B8:** To preserve its effect beyond the sunset date of 1 October 2023, we propose to continue the relief currently given by [CO 13/526] in a new legislative instrument that reflects current drafting practice, without any significant changes: see draft *ASIC Corporations (Warrants: Relevant Interests and Associations) Instrument 2023/XXX* at Attachment 8 to this consultation paper. The only changes proposed are to: (a) update references to *Chi-X Australia Pty Ltd to Cboe Australia Pty Ltd*; and (b) update RG 5 to reflect the new legislative instrument name.	**B8Q1:** Is [CO 13/526] operating effectively and efficiently, or are there issues or improvements that should be considered to improve its operation?	The Committee does not have any issues to raise or improvements to propose in respect of this instrument.
	B8Q2: Should the remade instrument remain in force for five years or for a different period of time?	See response to B1Q2.

ASIC Proposal	Requested Feedback	Committee Response
Class Order [CO 13/528] *Changes to a bidder's statement between lodgement and dispatch* **B9:** To preserve its effect beyond the sunset date of 1 October 2023, we propose to continue the relief currently given by [CO 13/528] in a new legislative instrument that reflects current drafting practice, with minor amendments: see draft *ASIC Corporations (Changes to a Bidder's Statement between Lodgment and Dispatch) Instrument 2023/XXX* at Attachment 9 to this consultation paper. The only changes proposed are to: (a) update RG 9; (b) remove the requirement to lodge a supplementary bidder's statement in order to lodge and dispatch a replacement bidder's statement; (c) retain the minimum 14-day period before a replacement bidder's statement may be dispatched to target holders; (d) allow the lodgement and dispatch of a replacement target's statement; and (e) clarify the timing for dispatch of the target's statement in a market bid where a replacement bidder's statement is lodged.	**B9Q1:** Should ASIC remove the requirement that a supplementary bidder's statement needs to be lodged as a prerequisite for relying on the relief in [CO 13/528] to lodge and dispatch a replacement bidder's statement?	Yes. The Committee considers that the requirement for a bidder to lodge a supplementary bidder's statement as well as (and in order to enliven the ability to lodge and despatch) a replacement bidder's statement currently creates unnecessary duplication of lodgement requirements and increased costs for bidders (in relation to the preparation of the supplementary bidder's statement).
	B9Q2: Should ASIC reduce or remove the minimum 14-day period before a replacement bidder's statement can be dispatched to target holders?	Yes. In the experience of Committee members, the replacement bidder's statement regime added by Class Order 13/528 is often not used by bidders—in large part because lodging a replacement bidder's statement 'resets' the 14 day 'clock'/waiting period for dispatch of offers. In such a case, Committee members have observed that target securityholders instead receive a supplementary bidder's statement with the 'original' bidder's statement, with both documents having to be read together to be properly understood. Quite plainly, it would be preferable if a target securityholder received a single document, as a single document is more likely to be "clear, concise and effective" than two documents which have to be read together.

ASIC Proposal	Requested Feedback	Committee Response
		From a policy perspective, it is also unclear to the Committee why a bidder (and target securityholders) should be required to wait up to 14 days to send (and receive) a replacement bidder's statement—and therefore for the bidder's offer to open—when no such additional waiting period would apply if the bidder simply sent the original bidder's statement and a supplementary bidder's statement containing the same changes and additional information (noting ASIC's comments regarding the natural limit as a result of the general requirement not to despatch misleading takeover documents). In this sense, the Committee submits that this change would align with that referred to at B9Q1 above—i.e. both would allow for more efficient use of the replacement bidder's statement regime in the Class Order. In relation to the potential reasons for retaining the "minimum 14-day period" as outlined in paragraph 102 of the Consultation Paper, the Committee respectfully submits: • The fact that a target can consent to a shorter period for dispatch of the replacement bidder's statement will in many circumstances be of no assistance to a bidder. For example, in the case of a takeover offer not (yet) recommended by the target's board, the target is highly unlikely to provide such consent—even if only for purely 'tactical' reasons and where there is no real basis for the target having concerns about any changes from the original bidder's statement.

ASIC Proposal	Requested Feedback	Committee Response
		• While ASIC can also consent to a waiver of the 14-day period, ASIC's stated policy[6] is that it "may" do so only where such changes are "insubstantial" or "the result of negotiations with the target". Again, this will be of little assistance to many bidders: the latter requirement will necessarily (also) be inapplicable in the case of a non-recommended takeover bid (leaving the bidder with no ability to shorten the 14-day period in such a scenario); while the former will be inapplicable where the bidder has increased the consideration offered under its bid, reduced the period for payment of the consideration offered under the bid, and/or waived or otherwise removed defeating conditions applying to its bid. • In any case, should they have any concerns with the content of a replacement bidder's statement, ASIC and the target would still have the opportunity to immediately raise these concerns with the bidder, and to seek to initiate Takeovers Panel proceedings in relation to the content should that fail to resolve their concerns—as they would in relation to any supplementary bidder's statement.

[6] See ASIC Regulatory Guide 9 at [9.446].

ASIC Proposal	Requested Feedback	Committee Response
		• Again, the general requirement not to issue misleading takeover documents will act as an impediment to bidders deliberately "lodging [a] poorer quality bidder's statement" and then seeking to use the replacement bidder's statement regime to subsequently 'fix' any defects in the initial version of the bidder's statement. On this basis, the Committee supports ideally removing, or at a minimum significantly reducing (to no more than 7 days), the 'reset' period in the current Class Order—noting that in most cases, 14 days is an excessive, unnecessary delay to target shareholders receiving the bidder's offer and acts as a very strong disincentive for bidders to prepare a replacement bidder's statement.
	B9Q3: Should ASIC extend the relief under [CO 13/528] to allow for a similar regime relating to the lodgement of replacement target's statements?	Yes. The Committee submits that the same logic applies in respect of both bidder's and target's statements amended between lodgement and dispatch—and it is appropriate for targets to have the benefit of class relief that is equivalent to that applying to bidder's statements, rather than having to obtain individual relief to issue a replacement target's statement.

ASIC Proposal	Requested Feedback	Committee Response
	B9Q4: Should ASIC amend item 13 of subsection 635(1) to clarify that, in a market bid where a bidder relies on section 635A, the target must send its target's statement no later than the time for sending the replacement bidder's statement, rather than within 14 days of the original announcement (and bidder's statement)?	In making any such clarifying changes, the Committee notes that it will be important to ensure that they align, and do not 'clash', with the operation of any changes made to the current Class Order wording to reflect the removal or reduction of the 14-day period for dispatch of replacement bidder's statements (as referred to in B9Q2 above).
	B9Q5: Is [CO 13/528] operating effectively and efficiently, or are there issues or improvements that should be considered to improve its operation?	Other than as noted above, the Committee does not have any issues to raise or improvements to propose in respect of this instrument.
	B9Q6: Should the remade instrument remain in force for five years or for a different period of time?	See response to B1Q2.