Law Council
OF AUSTRALIA

Via email: john.kluver@camac.gov.au

Mr John Kluver
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Sydney NSW 2001

Dear Mr Kluver,

Members' Schemes of Arrangement

I have pleasure in enclosing a submission which has been prepared by the Corporations Committee of the Business Law Section of the Law Council of Australia in response to CAMAC's Discussion Paper on Members' Schemes of Arrangement.

I confirm that the submission has been endorsed by the Business Law Section. Owing to time constraints it has not been considered by the Directors of the Law Council of Australia.

Should you wish to discuss any aspect of this submission, in the first instance please contact the Committee Chair, Greg Golding, on [02] 9296 2164.

Yours sincerely,

Bill Grant
Secretary-General

29 September 2008

Enc.

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Corporations and Markets Advisory Committee - Discussion Paper on Members' Schemes of Arrangement

Submission on behalf of the Law Council of Australia - Business Law Section, Corporations Committee

1 Background and content

This submission contains the response of the Corporations Committee of the Business Law Section of the Law Council of Australia (the **Committee**) to the Corporations and Markets Advisory Committee's (**CAMAC**) June 2008 Discussion Paper on members' schemes of arrangement.

The Committee welcomes the opportunity to comment on the Discussion Paper.

Please note that this submission has been endorsed by the Business Law Section. However, owing to time constraints, it has not been considered by the Council of the Law Council of Australia.

This submission contains responses to questions regarding the following topics raised in the Discussion Paper:

(a) information to shareholders (**section 2**);

(b) voting on schemes (**section 3**);

(c) regulatory and judicial powers (**section 4**);

(d) extension and simplification of schemes (**section 5**); and

(e) other aspects of members' schemes that may benefit from further consideration (**section 6**).

The Committee has been concerned to ensure that members' schemes of arrangement work predictably to enable effective class decisions to be made on a wide variety of transactions, not all of them control transactions, and that members' ability to make those decisions and have them approved by the Court is not inhibited by uncertain, outdated or anomalous provisions. This involves removing doubts as to the availability of the scheme provisions in certain cases and providing mechanisms to satisfy ASIC and the Court that an informed and appropriately constituted class has approved a scheme.

2 Information to shareholders

Feedback sought	Committee's comments
Possible changes to facilitate effective disclosure of scheme information	Harmonised disclosure is an area in which the Committee has a particular interest and strongly endorses (see attached draft paper entitled "Harmonised Disclosure Proposal").

to shareholders, including in relation to the content and method of disclosure (section 3.1)	**Introduction of a 'clear, concise and effective' requirement** The Committee supports the introduction of a clear, concise and effective requirement for scheme documentation. The Committee considers that, as the requirement currently applies to disclosure documents of a similar nature to scheme documentation, its application to scheme documentation is appropriate and would formalise market practice. **Provision for incorporation of information by reference into explanatory statements / lodgement of complete information with ASIC and provision of summary disclosure to shareholders** The Committee supports these proposals and considers that they would assist in achieving clear, concise and effective disclosure, reducing the volume of explanatory statements and reducing cost for scheme companies, while still allowing interested shareholders to access all relevant information. The Committee considers that encouraging two levels of disclosure is appropriate. This should be facilitated through the inclusion of permissive provisions in Part 5.1 which allow a scheme company to produce: • a short form explanatory statement containing material information in summary version which would be sent to shareholders; and • a long form explanatory statement or supplement containing detailed information and full copies of longer documents (including expert's and accountant's reports and implementation agreements) which would not be required to be sent to shareholders. Hard copies of long form explanatory statements and any documents incorporated by reference should be made available to shareholders on request. In the Committee's view, this approach would assist in achieving clear, concise and effective disclosure. **Omission or revision of specific disclosure obligations in Corps Regs Schedule 8 Part 3** The Committee considers that the disclosure provisions contained in Schedule 8 of the Corporations Regulations should be repealed, other than those regarding directors' recommendation and independent experts report requirements which should be incorporated into Part 5.1 of the Corporations Act. Recommendations regarding specific disclosure changes are contained in the Annexure.
Whether there should be greater statutory guidance concerning supplementary disclosure (section	The Committee considers that the introduction of a clear statement of supplementary disclosure requirements in a scheme context (applicable to the period between despatch of the explanatory statement and the scheme meeting) would clarify disclosure obligations and assist in achieving consistency of practice.

	As regards the logistics of supplementary disclosure in a Court supervised regime, the Committee considers that an appropriate approach is as follows: • **test for disclosure:** the applicable disclosure test should be comparable to the test contained in subsections 643(1) and 644(1) of the Corporations Act; • **bidder involvement**: in a takeover scheme context, only the scheme company should be permitted to make supplementary disclosure. If a bidder becomes aware of the need for supplementary disclosure, it should be obliged to notify the scheme company, as under section 670C of the Corporations Act; • **despatch**: there should be no mandatory requirement to despatch a supplementary statement to shareholders. This is consistent with takeover requirements; • **lodgment and Court involvement**: a supplementary statement should be lodged with ASIC, ASX and the Court. However no formal review of the supplementary statement by ASIC or the Court prior to despatch should be required. The Committee considers that there should be no obligation on the scheme company to apply to the Court for an order in respect or consequence of the issue of the supplementary statement. However a scheme company should be permitted to apply to the Court for orders relating to the supplementary statement at its discretion. The Committee notes that this position is consistent with supplementary disclosure requirements contained in Chapter 6 of the Act, and believes that it would assist in ensuring timely disclosure and recognises that many supplementary bidder's or target's statements are issued on a precautionary basis. The power to consider what implications (if any) the supplementary disclosure has for the scheme process should remain with the Court. For example, where material information is provided close to the date of the scheme meeting, the Court would have the power to order a deferral of the scheme meeting. ASIC could be given the power to apply to the Court for an order relating to a supplementary statement which is proposed or has been sent. Other parties would have the opportunity to raise issues relating to the supplementary statement at the second Court hearing. • **variation of scheme terms**: the Committee considers that it would be appropriate for the supplementary statement regime to be used to effect variations of certain terms of a takeover scheme (for example, those contained in section 650B of the Corporations Act), with more complex variations requiring prior Court approval.
Whether the liability and defences for disclosure breaches	The Committee considers that the current position whereby explanatory statements are covered by the general misleading and deceptive regime in sections 1041H and 1041I of the Corporations Act and not by a specific due

for schemes should be similar to those for bids (section 3.3)	diligence defence regime (such as applies to bidders' and targets' statements and prospectuses) is unsatisfactory.[1] Given the similarity of purpose and content of scheme explanatory statements to other disclosure documents which do have the benefit of statutory due diligence defences, the Committee considers that this protection should be extended to information supplied in an explanatory statement. This could be achieved through the introduction of a stand alone liability and defence regime applicable to schemes. As to which existing regime such a liability and defence regime should be modelled on, while the Committee recognises that the model contained in Part 6D.3 of the Act would be appropriate, in the Committee's view the primary goal should be to ensure consistency with the liability and defence regime applicable to Chapter 6, that is, use of the model contained in section 670D of the Act. The Committee notes that a necessary part of this proposal is that the scheme company in a takeover scheme context should be required to obtain the bidder's consent to the inclusion in the explanatory statement of material relevant to the bidder, in particular disclosure regarding securities proposed to be issued under the scheme, and that the bidder have the same defences as the scheme company.
Whether the required standard for formulation of an expert's opinion should be more consistent between bids (currently 'fair and reasonable') and schemes (currently 'in the best interests') (section 3.4)	The Committee considers that the takeover formulation of an expert's opinion of 'fair and reasonable' may not be appropriate for all schemes. For example, in respect of a demerger, the issue for shareholders is better put as whether the proposal is in their best interests, rather than whether the terms on offer are fair and reasonable. However, if consistency of opinion formulations between takeover bids and schemes is desired, the Committee considers that an appropriate alternative formulation, which would be equally applicable to bids and the various types of schemes, would be whether the expert is of the opinion that shareholders should vote in favour of, or accept, the proposal.

3 Voting on schemes

Feedback sought	Committee's comments
Comment on class voting proposals (section 4.1)	**Whether the Court should be given an express power at the first Court hearing to make a binding determination on the composition of classes and an express 'curative power' to approve schemes in the case of classes being wrongly constituted** The Committee supports these proposals and considers that giving the Court an express power to make a binding determination regarding composition of classes would add certainty to the scheme process and reduce completion risk. The Court's determination of the appropriateness of classes could only be binding based on the facts before the Court at the time. For this reason, the

[1] See also proposals in attached draft paper entitled "Harmonised Disclosure Proposal".

	Court's power to make a determination as to classes should be expressed to be subject to such terms and conditions as the Court sees fit.[2] The Committee considers that the additional flexibility associated with giving the Court an express 'curative power' at second Court hearing to approve a scheme even if classes wrongly constituted is desirable and appropriate. The Committee also considers that it would be helpful to give power to the Court in schemes to bind option holders to fix a nominal voting entitlement where there is a lack of certainty as to value of the 'debt and claims' of holders of different series of options (and therefore of their voting entitlements).[3]
	Whether the position of an intending controller in a change of control scheme be clarified by specifically disregarding any votes in favour by that person and associates The Committee considers that specifically disregarding any votes in favour of a scheme by an intending controller and its associates would create inherent difficulties. In particular, the concept of association as defined in paragraphs 12(2)(b) and (c) of the Corporations Act is not an appropriate test of eligibility to vote on a scheme. To automatically disregard the votes of any associate (of the type referred to in section 12(2)(b) or (c) of the Corporations Act) may result in the votes of certain shareholders (such as those who have entered into voting arrangements with an intended controller) being disregarded in situations where they may not be under the current class test, which focuses on community of interest within a class. Currently it is expected that an intending controller and its related bodies corporate do not vote, or vote as a separate class, as do any other members of the company who would be affected differently from the general body of members.[4] The Committee considers that this current expectation, together with the power to ask the Court to make a determination as to classes and the Court's curative power offer an appropriate level of commercial certainty in this area.
Comment on the headcount test as it applies to companies limited by shares, including the various policy options to retain, modify, dispense with or replace, this test (section 4.2.4)	The Committee considers that the headcount test should be removed,[5] leaving the voted shares test and the requirement for Court approval and agrees with the Law Council's previously communicated views on this issue as reflected in section 4.2.4 of the Discussion Paper. The Committee is of the view that modifying the voted shares test to 90% is not desirable, nor is a participation threshold. In particular, the Committee considers that the procedural protections implicit in a scheme of arrangement (namely target board approval and Court sanction) mean that it is not necessary to impose a 90% threshold as required for

[2] For example, in relation to the participation of foreign shareholders in a scheme, the Court could rule that they do not constitute a separate class, provided that certain conditions regarding their holdings and treatment under the scheme are met.

[3] This could be applied to creditors' schemes also.

[4] ASIC Regulatory Guide 142 at [RG 142.46].

[5] The Committee notes that the issues around this test related to share splitting and nominee arrangements and have been addressed to a degree by the amendments to section 411(4) in 2007 to allow the Court to approve the scheme despite the fact that the headcount test has not been strictly satisfied. However the Committee notes that there remain issues with the current legislation (as discussed in section 4.2.4 of the Discussion Paper).

	compulsory acquisition under Chapter 6A of the Corporations Act. Further, it is not possible to compare the scheme threshold (which is a percentage of shares voted on the scheme) with the takeover threshold (which is a percentage of all shares). To impose a requirement that 90% of the shares voted at the meeting be voted in favour of the scheme would have the result that any scheme could be defeated by a very small percentage of the voting shares in the company. Finally, the Committee notes that a 75% approval requirement is consistent with the established use of an appropriate 75% majority to implement key decisions regarding a company, including liquidation, changes to constitutions, variation of class rights and selective reductions of capital.
Comment on the headcount test as it applies to companies limited by guarantee (section 4.2.5)	As eliminating the headcount test leaves companies limited by guarantee without a mechanism for approval of schemes, the Committee considers that the voting requirement for companies limited by guarantee should be amended to 75% of members who vote on the resolution.

4 Regulatory and judicial powers

Feedback sought	Committee's comments
Comment on whether there should be some change to the ASIC exemption and modification powers in regard to schemes (section 5.1)	The Committee considers that it may be appropriate to give ASIC exemption and modification powers in relation to Part 5.1 corresponding with section 655A of the Corporations Act. This would be particularly important if more prescriptive procedural or disclosure requirements are incorporated in Part 5.1.
Whether section 411(17) should be repealed, retained in its present form or amended (section 5.2)	The Committee considers that section 411(17) in its current form creates undue uncertainty and 'completion' risk in a context where it is well established that a scheme can be used to effect a control transaction. The Committee agrees with Damian and Rich's suggestions (as outlined in section 5.2.2 of the Discussion Paper) that: • in addition to repealing section 411(17), a purposive statement be introduced into the scheme provisions acknowledging that schemes can be used to change control to clarify that the two regimes are true alternatives. This would assist in avoiding any uncertainty regarding the interaction between Chapters 5 and 6 of the Act; and • technical 'equality of opportunity' rules drawn from the bid provisions would be inappropriate for schemes as the combination of the class voting test, along with the disclosure of all material information and the Court's fairness discretion ensure that there is a fully informed disinterested vote. For completeness, the Committee notes that it does not support the alternative suggestions contemplated in section 5.2 of the Discussion Paper (that is, retaining section 411(17) or amending section 411(17)) for the reasons

	expressed by Damien and Rich in section 5.2.2 of the Discussion Paper.

5 Extension and simplification of schemes

Feedback sought	Committee's comments
Whether, and if so in what manner, the scheme provisions might better accommodate holders of options over unissued shares or holders of convertible notes (section 6.1)	**Whether option holders and noteholders should be given some right to participate in members' schemes** The Committee considers that the participation of option holders and noteholders in schemes of arrangement is appropriate and desirable. The Committee considers that the present uncertainty as to whether option holders are appropriately included in members' or creditors' schemes needs to be resolved. The Committee acknowledges that there are different views as to whether option holders are more appropriately included in members' or creditors' schemes, however the Committee would endorse an approach in which the legislation expressly acknowledges that option holders can be bound by a scheme of arrangement, be it a members' or a creditors' scheme. The Committee notes for completeness that, as it is widely accepted that note holders are creditors, the same issues of uncertainty do not arise in relation to note holders. For consistency, the Committee also considers that the Court's discretion to dispense with the headcount test should also apply to voting by option holders. The Committee also reiterates its views expressed in section 3 above that it would be helpful to give power to the Court in option holders' schemes to fix a nominal voting entitlement where there is a lack of certainty as to value of the 'debt and claims' of option holders (and therefore of their voting entitlements).
Whether, and if so in what manner, the scheme provisions should extend to listed managed investment schemes (section 6.2.1) and unlisted managed investment schemes (section 6.2.2)	The Committee agrees in principle with the extension of the scheme provisions to listed managed investment schemes (**MIS's**), but notes that there will likely be complexities in drafting the relevant provisions. In addition to promoting member protection by creating a supervisory role for ASIC and the Court, the Committee considers that there are a number of other advantages in extending the scheme provisions to listed MISs: **Certainty** - although Courts have held that it is appropriate and within power to amend MIS constitutions to facilitate a trust scheme of arrangement, there remains a risk of a Court finding that company law principles of fraud on the minority and oppression (including the Gambotto principle) apply in trust cases. If this was the case, informal trust schemes of arrangement would not be possible. **Extension of regulatory relief to trust schemes** - the Corporations Act relieves acquirers from the need to issue a prospectus or PDS in respect of

	consideration securities where shares are acquired under a Part 5.1 scheme of arrangement.[6] This (and ancillary relief from the on-sale provisions of the Corporations Act[7]) has not been extended to informal trust schemes and therefore, in the absence of specific ASIC relief, a regulated disclosure document is needed for a trust scheme. This produces an unbalanced result in the case of a scheme of arrangement involving a stapled group consisting of one or more companies and trusts. It would be easier to motivate an extension of regulatory relief if trust schemes become subject to Part 5.1. In addition, some foreign jurisdictions exempt acquirers from the need to issue formal disclosure documents under foreign laws where securities are issued to foreign members under an Australian Court-sanctioned scheme of arrangement.[8] A trust scheme of arrangement, however, is not sanctioned by the Court. Even if judicial advice is sought under a state based act[9], there is some doubt as to whether this will be recognised as a Court-sanctioned scheme[10]. **Consistency in treatment of stapled groups** - In theory, a Court charged with considering a Part 5.1 scheme of arrangement in relation to a company forming part of a stapled group should limit its enquiries to that part of the transaction which relates to the company. In practice, such a distinction is artificial given members are being invited to make a decision in relation to their holdings in the stapled group as a whole. In extending its jurisdiction to include stapled trusts, the Court should be formally empowered to assess the transaction in its entirety based on a single set of criteria. **Passing of title under transfer schemes** - An informal trust scheme of arrangement is implemented through an arrangement between members and the trustee (as persons who are bound by the constitution). The prospect of a successful challenge to a transfer by a creditor which has a charge or other security over a transferor's securities would seem to be higher than in the case of a Court-ordered scheme of arrangement. This is undesirable given the need for certainty and finality. It would be necessary to override contrary provisions in constituent documents if Part 5.1 was extended to listed MISs. This would be consistent with the principled position that mandatory acquisitions should occur either following the acquisition of a certain percentage of securities following a Chapter 6 takeover or under a Court sanctioned scheme of arrangement (which brings with it the protection of ASIC involvement, class voting and prescribed voting thresholds).

[6] Section 708(17) exempts an offeror from the requirement to prepare a prospectus in connection with a Part 5.1 scheme of arrangement. The Corporations Act has been modified by C0 07/9 to provide that a product disclosure statement is similarly not required where an offer or issue of financial products occurs under a Part 5.1 scheme of arrangement.

[7] ASIC CO 07/42.

[8] Reciprocal recognition is given to foreign schemes under ASIC CO 07/44.

[9] For example under section 63 of the Trustee Act 1925 (NSW), section 96 of the Trusts Act 1973 (Qld) or section 92 of the Trustees Act 1962 (WA)

[10] The purpose of judicial advice is merely to seek the Court's view on whether it is within a trustee's power to put to members a proposal which involves amending the trust's constitution to provide for a disposal of members' interests to an acquirer.

	Whether any extension of the scheme provisions should be limited to listed MISs? The Committee considers that unlisted MISs are arguably in greater need of a formal Court-sanctioned scheme of arrangement. Takeovers Panel Guidance Note 15 ameliorates a number of the less desirable features of a listed trust scheme by, for example, stipulating a certain standard of disclosure, the appointment of an independent expert and the application of voting exclusions at pain of a declaration of unacceptable circumstances[11]. The Takeovers Panel, however has no jurisdiction over unlisted schemes and therefore these protective mechanisms are not automatically available to members of such schemes.
Whether, and if so in what manner, the scheme provisions might be simplified for mergers within wholly owned corporate groups (section 6.3)	The Committee supports the proposal to simplify section 413 schemes through a short form merger process that would dispense with shareholder involvement and reduce the role of the Court, as outlined in section 6.3 of the Discussion Paper. The Committee notes that a potential difficulty associated with section 413 schemes is the impact on third party rights and the position of creditors. The Committee supports a process which involves directors approving the merger and the requirement that directors to sign a certificate that they are satisfied that the merger will not materially affect the company's ability to pay its creditors and considers that these mechanisms adequately address the third party rights and creditor protection issues.
Whether, and if so in what manner, the scheme provisions could be adapted to accommodate the possibility of schemes being initiated otherwise than by the target company (section 6.4)	The Committee is strongly opposed to any proposal which would facilitate 'hostile' schemes. Part of the justification for allowing takeovers to be conducted through the scheme mechanism is that such a takeover must attract the support and participation of the scheme company's board. The Committee does not think it appropriate for a single, unified explanatory statement to be prepared in relation to a scheme which was not supported by the board of the scheme company. The Committee also notes that a 'hostile' scheme process has the potential to lead to lower bid premiums by removing pressure on bidders to propose a scheme on sufficiently attractive terms to encourage directors to put the scheme to shareholders.

6 Other aspects of members' schemes that may benefit from further consideration

Feedback sought	Committee's comments
Section 1.5.1 (p11) - question of the extent to which creditors' schemes for solvent or	The Committee considers that creditors' schemes should be retained. However if creditors' schemes are not be retained, provision should be made to bind holders of a scheme company's convertible notes by a procedure similar to

[11] The Takeovers Panel considers that trust schemes come within its powers under Part 6.10 of the Corporations Act as they affect the control of the target trust and involve acquisitions of substantial interests that come within section 657A(2) (GN 15.14).

insolvent companies still perform a useful function, and on possible changes to facilitate or better regulate those schemes	(or part of) a members' scheme of arrangement. If creditors' schemes are to be retained, the Committee refers to its previous suggestion that the Court be given power to quantify creditors' claims, to fix voting entitlements.
Section 1.5.2 (p11) - whether section 414 still performs a useful function not performed by schemes, bids or other means to effect a change of control.	In the Committee's view, the section 414 process is rarely used, is poor policy and badly drafted and should be repealed as recommended by CASAC in its 1996 Report on Compulsory Acquisition and Buyouts and by the Simplification Task Force in its Takeovers proposal.[12] The only defensible reason for retaining it in its present form was that the section 414 procedure was available for compulsory acquisition after bids to which Chapter 6 did not apply. This was removed when Chapters 6 and 6A made provision for bids to be made in order to satisfy the requirements of section 661A, even where section 606 did not apply to the acquisition of shares under the bid.
Transfer schemes / cancellation schemes	The Discussion Paper notes that transfer schemes are now much more common than cancellation schemes. The Committee notes that the preference for transfer schemes is not solely driven by tax considerations. The other significant issue is the requirement in section 256C(2) of the Corporations Act that a selective reduction of capital (which is part of a cancellation scheme) be approved by special resolution passed at a general meeting of the company, with no votes being cast in favour of the resolution by any person 'who is to receive consideration as part of the reduction'. The issue that arises here is that if the consideration which target shareholders are receiving under the scheme is regarded as 'consideration as part of the reduction', any shareholder can vote against the transaction, but no shareholder (other than the intending acquirer with only a negligible holding) can vote in favour, so that the resolution can never be passed. In *Tiger Investments*[13], Santow J gave some tentative support on a first Court hearing to an argument that the consideration being provided under the cancellation scheme is truly consideration as part of the scheme and not consideration as part of the reduction, but the issue is far from settled. This could be simply dealt with by giving ASIC the power to amend Part 2.J1 of the Act to allow all shareholders other than the intending acquirer to vote at the general meeting where all target shareholders are getting the benefit of the consideration in the same way. This is similar to the modification granted by ASIC in relation to section 611 item 7 on a trust scheme where all target shareholders would otherwise be prevented from voting on the resolution.

[12] The Lavarch Committee recommended in 1991 that section 414 be brought into line with the predecessor of section 661A: Recommendation 10 of *Corporate Practices and the Rights of Shareholders* Report of the House of Representatives Standing Committee on Legal and Constitutional Affairs, November 1991.

[13] *Tiger Investment Company Ltd and the Corporations Law* [1999] NSWSC 1290, New South Wales Supreme Court, Santow J, 23 December 1999.

Annexure - Recommended disclosure changes

Part 5.1	Chapter 6	Recommendation
Prospectus Information		
No specific rule. The prospectus provisions are disapplied by subsection 708(17), but there is no corresponding exclusion of the PDS provisions (except by class order) and no specific requirement to provide equivalent information.	Sections 710 – 713 or 1013C – 1013FA (applied to scrip bids by paragraph 636(1)(g) or (ga)): all the information that investors and their advisors would reasonably require to make an informed assessment of the securities offered as consideration and of the issuer of those securities.[14]	Adopt paragraphs 636(1)(g) and (ga) for schemes involving scrip consideration, retain subsection 708(17) and adopt a corresponding exclusion of the PDS provisions.
Directors Interests		
Clause 8301: Directors' intentions and recommendations.	Subsection 638(3): directors' recommendations, but not intentions.	Retain but incorporate into Part 5.1.
Independent Expert's Report		
Clauses 8303, 8304 and 8306: independent expert's report, if acquirer has 30% or more entitlement[15] in scheme company. There are no provisions corresponding with subsections 648A(2) and (3) on independence.	Section 640 and subsection 648A(1): independent expert's report, if bidder has 30% or more voting power in target.	Retain, but incorporate into Part 5.1 and adopt 30% test from section 640 and subsections 648A(2) and (3).
Expert's Criterion		
Clause 8305: ASIC consent to profit forecast or asset revaluation in independent expert's report.[16]	No rule.	Repeal: the corresponding requirement for bidder's and target's statements was removed in 1991 and is not missed.
Itemised Disclosure		
Clause 8302: • directors' interests in both companies; • trading prices for scheme company securities; • update to accounts.	No rule, but trading prices and update to accounts covered by general disclosure test.	• directors' interests - retain but incorporate into Part 5.1 • trading prices - repeal as redundant • accounts - repeal as redundant.
Clause 8307: Formula for number of securities to be issued to each scheme member	Subsection 633(1) item 1 requirement to set out terms of offer.	Repeal as redundant (this must be set out in scheme itself).
Clauses 8308 and 8309: Trading prices for securities to be issued to scheme members.	No specific rule.	Repeal as redundant.
Clause 8310: Intentions of directors of scheme company regarding its future.	Paragraph 636(1)(c) or (d): intentions of bidder regarding future of target.	Incorporate into Part 5.1 and amend to refer to acquirer's intentions, like section 636 (in a control transaction context).

[14] This is based on subsection 710(1): different requirements apply if section 712 or 713 is relevant.

[15] Clause 8102 defines "entitlement" to mean an ability to exercise a percentage of the total votes that could be exercised by members. This uses elements of the current concept of voting power, but differs from both that concept and the concept of entitlement used in the Corporations Act.

[16] This applies only to the report, not to the body of the explanatory statement.