

INVESTOR ROADSHOW BRIEFING PRESENTATIONS IN AUSTRALIAN SCHEMES OF ARRANGEMENT

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Legal Briefings - By **Rodd Levy and William Kunstler**

We consider ASIC's recent comments in its latest corporate finance report regarding the use of investor roadshow briefing presentations in schemes of arrangement.

IN BRIEF

- ASIC has recently observed the use of a briefing presentation to shareholders ahead of a scheme meeting.
- ASIC has suggested that certain safeguards be met before undertaking briefing presentations.

BACKGROUND

There is a precautionary rule that scheme companies should generally avoid providing scheme related materials to their shareholders in addition to the scheme booklet, unless those materials have been first approved by the Court.

This rule is consistent with the structure of the legislation, which contemplates a Court-approved explanatory statement going to shareholders, and nothing else, so as to not interfere with the Court-approved 'message' (*Re Centro Retail Ltd* [2011] NSWSC 1321 at [11]; *Re Investa Listed Funds Management Ltd* [2016] NSWSC 344 at [4]; *Re Walsh & Company Investments Ltd* [2020] NSWSC 1746 at [66]).

We have seen this rule applied in the context of two recent demerger schemes of arrangement (*Tabcorp* and *AGL*), where Court approval was sought and obtained for a briefing presentation to be made to shareholders and released on the ASX ahead of the relevant scheme meeting.

ASIC'S POSITION ON BRIEFING PRESENTATIONS

In its latest corporate finance report, ASIC has recognised that scheme companies may wish to make briefing presentations to shareholders ahead of a scheme meeting. In our experience, it is common for scheme companies to do so, particularly in the context of demerger schemes and acquisition schemes involving scrip consideration.

ASIC has advised that, if scheme companies seek to engage shareholders before a scheme meeting, they should take care and ensure that:

- they advise the Court of any proposed briefing presentation and information sessions at the first court hearing;
- they do not interfere with the Court-approved 'message' before the meeting; and
- they keep records of any information presented by way of briefing presentation or other communications, and make those records available to ASIC before the second court hearing and to the Court.

ASIC has said it will seek to review and provide comments on any briefing presentations that are to be put to the Court. Further, ASIC has said it may wish to review other proposed communications to shareholders.

COMMENTARY

Up until the *Tabcorp* and *AGL* demerger schemes referred above, it was unclear if investor roadshow materials could be published without being scrutinised word by word by ASIC and the Court. There was a concern that, in contrast to the scheme booklet, which is usually detailed and carefully worded, a high-level investor roadshow presentation may be regarded as glossing over details and therefore not acceptable.

The fact that ASIC and the Court have, in the *Tabcorp* and *AGL* demerger schemes, allowed for briefing presentations to be made to shareholders is a welcome development. ASIC's comments confirm that it will take a reasonable position to communications made by scheme companies outside the scheme booklet, provided some safeguards are met (such as there being no interference with the Court-approved 'message').

In our view, it is abundantly clear that briefing presentations are a useful resource for shareholders and other stakeholders wishing to distil the key details of a scheme and should be viewed as promoting the investor protection goals of the legislation. Provided the briefing presentations are not misleading, we think they should be encouraged. In fact, there is a good question as to whether briefing presentations should be subject to *any* mandated scrutiny by ASIC or the Court, given there is no such scrutiny mandated in respect of materials issued in transactions which do not involve a scheme of arrangement.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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