ASIC
Australian Securities & Investments Commission

REGULATORY GUIDE 74

Acquisitions agreed to by shareholders

Chapter 6 — Acquisition of shares

Issued 8/12/1993
Updated 31/1/1994

From 5 July 2007, this document may be referred to as Regulatory Guide 74 (RG 74) or Policy Statement 74 (PS 74). Paragraphs in this document may be referred to by their regulatory guide number (e.g. RG 74.1) or their policy statement number (e.g. PS 74.1).

Headnotes

s9, 34, 615, 623, 746(4); acquisitions agreed to by shareholders; acceptable acquisitions; announcement of proposed takeover; accelerated relevant interest; deemed acquisition; directors' obligations to shareholders; Eggleston principles; fair and reasonable; pre-meeting arrangements; provision of information; premium for control; sources of information; voting of shares.

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Purpose

RG 74.1 In this guide the ASC indicates its views on the operation of s 623 of the Corporations Law (Law) and certain of its policies on the exercise of its discretionary powers in relation to s623. It also sets out its principles and considerations in determining whether to apply to the court or the Corporations and Securities Panel (Panel) for orders in connection with an acquisition of shares in purported reliance on agreement under s623. This guide replaces NCSC Releases 116 and 312.

Principles

RG 74.2 Chapter 6 of the Law is designed to ensure that certain basic rights of the shareholders of a company are protected where control of the company may change. Those rights are set out in general terms in s731.

RG 74.3 Section 623 permits an allotment or purchase of shares agreed to by shareholders. It recognises that the shareholders of a company may choose to give up one of their basic rights, namely an equal opportunity to participate in any benefits accruing to other shareholders where the acquisition or allotment may change the control of the company.

RG 74.4 However, shareholders voting on a s623 resolution are entitled to all the other rights set out in s731:

(a) to know the identity of any person who proposes to acquire a substantial interest in the company;

(b) to have a reasonable time in which to consider any proposal under which a person would acquire a substantial interest in the company; and

(c) to be supplied with sufficient information to enable them to assess the merits of the proposal.

Providing information to shareholders

Proper and full disclosure

RG 74.5 Section 623 assumes that the directors of a company will provide shareholders with proper and full disclosure to enable them to assess the merits of the proposal and decide whether to agree by

resolution to an acquisition of shares: *NCSC v Consolidated Gold Mining Areas NL* (1985) 3 ACLC 520. Where directors fail in their duty to make proper and full disclosure about an acquisition, the courts will declare the notice of meeting or the resolution to be invalid and of no effect: *Bain & Company Nominees Pty Ltd v Grace Bros Holdings Ltd* (1983) 1 ACLC 816; *Bancorp Investments Ltd v Primac Holdings Ltd* (1985) 3 ACLC 69; *Chequepoint Securities Ltd v Claremont Petroleum NL* (1986) 4 ACLC 711; *Devereaux Holdings Pty Ltd v Parry Corporation* (1985) 3 ACLC 837.

RG 74.6 Directors need not ensure all relevant facts related to the proposal are disclosed but should ensure all matters are disclosed that are material and necessary for the shareholders to make an informed decision on the resolution put to the meeting: *Winthrop Investments Ltd v Winns Ltd* (1975) 2 NSWLR 666; *Buttonwood Nominees Pty Ltd v Sundowner Minerals NL* (1986) 10 ACLR 360; *Devereaux Holdings Pty Ltd v Pelsart Resources NL* (1985) 9 ACLR 879.

RG 74.7 The directors can only meet their obligation to make proper and full disclosure if all the terms of the proposed transaction are settled and disclosed to shareholders prior to the meeting: *ANZ Nominees Pty Ltd v Wormald International Ltd* (1988) 13 ACLR 698.

RG 74.8 Current case law indicates that shareholders of a company are entitled, as a minimum, to the following information in the notice of a s623 resolution or the accompanying explanatory memorandum:

(a) the identity of the allottee or purchaser and any person who will have a relevant interest in the shares to be allotted or purchased;

(b) full particulars (including the number and the percentage) of the shares in the company to which the allotee or purchaser is or will be entitled immediately before and after the proposed acquisition;

(c) the identity, associations (with the allottee, purchaser or vendor, and with any of their associates) and qualifications of any person who it is intended will become a director if shareholders agree to the allotment or purchase;

(d) a statement of the allotee's or purchaser's intentions regarding the future of the company if shareholders agree to the allotment or purchase, and in particular:

  (i) any intention to change the business of the company;

  (ii) any intention to inject further capital into the company, and if so how;

  (iii) the future employment of the present employees of the company;

(iv) any proposal whereby any property will be transferred between the company and the allottee, vendor or purchaser or any person associated with any of them; and

(v) any intention to otherwise redeploy the fixed assets of the company;

(e) particulars of the terms of the proposed allotment or purchase and any other contract or proposed contract between the allotee or purchaser and the company or vendor or any of their associates which is conditional upon, or directly or indirectly dependent on, shareholders' agreement to the allotment or purchase;

(f) when the allotment is to be made or the purchase is to be completed;

(g) an explanation of the reasons for any proposed allotment;

(h) the interests of the directors in the resolution; and

(i) in the case of a listed company, any additional information that the Listing Rules require to be disclosed.

See *NCSC v Consolidated Gold Mining Areas NL* (1985) 3 ACLC 520; *Devereaux Holdings Pty Ltd v Pelsart Resources NL* (1985) 9 ACLR 880; *Darvall v North Sydney Brick & Tile Co Ltd* (1989) 7 ACLC 81; *Southern Resources Ltd v Residues Treatment & Trading Co Ltd* (1988) 6 ACLC 913; and s731(a) and 731(c) of the Law.

RG 74.9 Shareholders of a company should also be provided with:

(a) the identity of the directors who approved or voted against the proposal to put the resolution to shareholders and the relevant information memorandum;

(b) the recommendation or otherwise of each director as to whether non-associated shareholders should agree to the acquisition, and the reasons for that recommendation or otherwise;

(c) any intention of the acquirer to change significantly the financial or dividend policies of the company; and

(d) an analysis of whether the proposal is fair and reasonable when considered in the context of the interests of, the shareholders other than those involved in the proposed allotment or purchase or associated with such persons ("non-associated shareholders") (see para 11 to 31).

Provision of information to the target company's directors

RG 74.10 The proposed allottee or purchaser has a responsibility to provide to the directors of the company the information necessary to enable the directors to provide the above information to the non-associated shareholders. The proposed allottee or purchaser may also have an obligation to bear or share the cost to the company of holding the shareholders meeting and providing the shareholders with the information and analysis referred to in para 8 and 9. This may include the cost of any expert's report which the company commissions. In particular, this will be the case where a proposed purchaser requests the directors of the company to put the s623 resolution to shareholders.

Form of analysis of proposal

RG 74.11 The directors of a company may satisfy their obligation to provide shareholders with an analysis of a s623 proposal, by those directors not associated with the proposal ("independent directors") either:

(a) commissioning an independent expert's report; or

(b) undertaking a detailed examination of the proposal themselves (using specialist valuations if required) and preparing a report for the non-associated shareholders.

RG 74.12 Directors should only prepare a report themselves if they have sufficient expertise, experience and resources to prepare a report on which the non-associated shareholders may rely. Non-associated shareholders should not receive lesser quality information from directors than they would from an independent expert.

RG 74.13 Where a majority of the directors of a company have an interest in a s623 resolution put to shareholders, the directors will probably only be able to satisfy their disclosure obligation by obtaining an independent expert's report.

RG 74.14 Regardless of whether an independent expert's report or a directors' report is provided, shareholders should be informed of the particulars of how the proposal was examined and evaluated as well as the results of the examination and evaluation.

RG 74.15 An independent expert reporting on whether a proposal is fair and reasonable to non-associated shareholders should disclose the particulars referred to in s648(2) of the Law. He or she should use references to the offeror and the target company in s648(2) as if they

were references to the allottee and company or purchaser and vendor as the case may be: see Regulatory Guide 75 on s648 reports.

RG 74.16 Directors should not present a report to shareholders unless the expert consents to the use of his or her report and opinion in the form and context used.

RG 74.17 If two or more reports are obtained in relation to a s623 resolution, the directors should give a copy of each report to shareholders.

Section 232A — directors' personal interests

RG 74.18 Section 232A prohibits a director of a public company, who has a material personal interest in a matter being considered by the company's board, from voting on, or being present at the discussion of the proposal by the board. Because the exception in s232A(2) applies only to an interest held "*in common with the other members of the company*" a director who is either vendor or acquirer may not be present or vote on the board resolution to put the matter to the company.

RG 74.19 If less than two directors are independent of the proposal, s232A(6) may allow the directors to consider matters related to the putting of a s623 resolution to the non-associated shareholders and the commissioning of an independent expert. Under these circumstances the directors should take extra care in their selection of an expert to ensure that the shareholders receive independent advice on the proposal. See Regulatory Guide 76.

Fair and reasonable in the context of s623

RG 74.20 The issue of whether a s623 proposal is "fair and reasonable" is different from the issue confronting an expert preparing a s648 report. Under s648, an expert is required to determine whether an offer made to shareholders in a class is fair and reasonable. This comparison of the value of the target company's shares and the consideration is more straightforward than the comparison for a s623 resolution.

RG 74.21 In the context of a s623 proposal, what is fair and reasonable for non-associated shareholders should be judged in all the circumstances of the proposal. The report must compare the likely advantages and disadvantages for the non-associated shareholders if the proposal is agreed to, with the advantages and disadvantages to those shareholders if it is not. Comparing the value of the shares to be acquired under the proposal and the value of the consideration to be paid is only one element of this assessment.

RG 74.22 The expert should assist non-associated shareholders to make their decisions by providing in the report a clear summary of the possible advantages and disadvantages to them if the proposal is accepted or rejected.

Control premium

RG 74.23 The expert or independent directors should give an opinion as to whether a vendor, the company or any other person will receive any premium for control of the company as a result of the proposed acquisition. In giving their opinion on any control premium, they should:

(a) consider any intentions or transactions of the kind referred to in para 8(d) and (e) above;

(b) quantify any premium; and

(c) set out reasons for forming that opinion and why under the circumstances it is appropriate to regard the benefit as constituting a premium for control.

RG 74.24 The expert or directors should enquire whether further transactions are planned between the allottee and the company, or the purchaser and vendor, or any of their associates. If any are contemplated, the expert or directors should determine whether those further transactions will be on terms which would be likely to have been negotiated by parties dealing with each other at arm's length. If the transactions will not be on arms-length terms, an implication arises that they will compensate:

(a) the allottee for an allotment price that is too high;

(b) the vendor for a price which is too low; or

(c) the purchaser for a price which is too high.

In each case it is likely to be at the expense of the company and its shareholders.

RG 74.25 A premium for control may be paid for a purchase of existing shares. However, the expert or directors must be able to demonstrate proportionately greater benefits to non-associated shareholders if a higher control premium is paid before they will be able to conclude that the proposed transaction is fair and reasonable to the non-associated shareholders. Such benefits may come, for example:

(a) from a better long-term profit outlook because the incoming shareholder offers superior management skills; or

(b) from synergies created by merging businesses being sold into the company.

RG 74.26 If the subscription monies from an allotment of new shares are retained in the company, a higher premium for the allotment will benefit all shareholders. Such benefits may result from:

(a) new opportunities which may be exploited as a result of a capital injection;

(b) a reduction in debt and interest payments; or

(c) a needed injection of working capital into the company.

However, any such benefit must be set against any change of control from the new allotment.

Other information

RG 74.27 The expert or directors should fully explain the benefits of the intended uses of the subscription monies from an allotment.

RG 74.28 The expert or directors should consider whether the acquisition, if agreed to, may deter the making of a takeover bid for the company. For example, this may occur if the proposal would increase the company's entitlement to, or control of, shares in itself.

RG 74.29 The expert or directors should also address in the report any other information they know which is material to the shareholders' decisions on the s623 proposal. They should consider Regulatory Guide 12 on valuations.

Non-provision of report

RG 74.30 The ASC considers that, in some exceptional circumstances, a resolution may be valid, although shareholders are provided with neither an independent expert's report nor a detailed directors' report. For example, the non-associated shareholders' interests may occasionally be materially damaged by the delay or expense involved in obtaining such a report. This would normally only be the case where such delay or expense would be likely to force the company into *immediate* liquidation.

RG 74.31 Otherwise, the resolution is likely to be invalid and the acquisition made in reliance on it would be in breach of s615.

RG 74.32 The directors should inform the ASC of the proposed non-provision of such a report well prior to the dispatch of the notices of the relevant meeting.

Dispatch of information

RG 74.33 To satisfy s731(b) of the Law, the notice of meeting and information memorandum should be dispatched to shareholders not less than 21 days before the meeting.

Pre-meeting arrangements

Principles

RG 74.34 Clearly, the parties to a proposal for the sale and purchase of shares to be put to a meeting, convened for the purposes of s623, do not arrive at the proposal without negotiation. As a result of the negotiations they would agree, at least, that shareholders should be asked to agree to a particular purchase.

RG 74.35 The scope and effect of such an agreement are constrained by the operation of s34. As far as relevant, s34 operates where a person has entered into a *relevant agreement* with another person, or has a right enforceable against the other person, in respect of an issued share in which the other person has a *relevant interest*. It provides that, upon entering the agreement, the first person is deemed to have the *relevant interest* he or she would have upon the performance of the agreement or the enforcement of the right. The section operates whether the right is enforceable presently or in the future and whether on the fulfilment of a condition or not. A relevant interest acquired under s34 may be termed an *accelerated relevant interest.*

RG 74.36 Section 34 only applies to currently issued shares and therefore will not apply to an *allotment* of shares to be agreed to under s623.

RG 74.37 The decisions in *Baden Pacific Ltd v Portreeve Pty Ltd* (1989) 7 ACLC 194 and *Magnacrete Ltd v Douglas-Hill* (1988) 48 SASR 565 were given in the context of s12(g) of the *Companies (Acquisition of Shares) Act 1980* and Codes (CASA). However, they provide some guidance as to the form an agreement for the purchase of shares in accordance with s623 should take to avoid the operation of s34 and not to be in breach of s615.

RG 74.38 The decision in the *Baden Pacific* case indicates that a party to a pre-meeting agreement with respect to already issued shares to be purchased under s623 risks acquiring the shares in breach of s615. This applies even if the agreement gives rise to neither legal nor equitable rights.

RG 74.39 The court in the *Baden Pacific* case held that upon entering into the agreement the purchaser acquired an equitable interest in the shares which were to be the subject of a meeting of shareholders. It held this because the agreement provided that performance rather than the formation of the agreement was conditional upon shareholder approval.

RG 74.40 In the earlier Magnacrete case, the court held that an accelerated relevant interest did not arise in respect of a proposed acquisition of shares subject to shareholder agreement (under s12(g) of CASA). It held this on the basis that the only obligation created by the pre-meeting agreement was to hold the meeting at which shareholder agreement would be sought. This decision was made on the basis of s9(6) of CASA which, unlike s34 of the Law, required the existence of an agreement having at least legal or equitable force.

RG 74.41 The term *relevant agreement* used in s34 is defined broadly in s9. On its face, it would appear to extend to an in-principle agreement (that is, a meeting of minds) between the parties to a proposed sale of shares, regardless of the existence of a legally or equitably enforceable contract.

RG 74.42 The ASC considers that the scope of s34 must have an implied limitation for s623 to have practical operation. It considers this in light of:

(a) the requirement in s109H to prefer an interpretation of s623 which promotes the purpose or object of the section; and

(b) the suggestion of Perry J in *Magnacrete* (which was affirmed by the Full Court of the Supreme Court of South Australia in *Niord Pty Ltd v Adelaide Petroleum NL* (1990) 8 ACLC 694 at 695-6) that the effective operation of s12(g) of CASA necessarily implied a limitation on the scope of s9(6) of CASA.

RG 74.43 However, the ASC may modify s623 to remove any doubt that the terms of a proposed contract or agreement:

(a) for the sale of shares; or

(b) relating to the control over the votes attached to shares;

may be discussed and agreed with a view to non-associated shareholders voting to approve it, if the agreement meets the criteria of para 47 below.

RG 74.44 This is because, and to the extent that, the wording of s34 leaves it open to doubt that an agreement in-principle to give the voting power of shares to another person would give rise to an

accelerated relevant interest in the shares. This is open to doubt even if the sale would only be executed, or the power to vote would only be given, once the proposed agreement has been agreed to by the non-associated shareholders.

RG 74.45 Relief granted will be in the form set out in Pro Forma 88.

Enforcement policy

RG 74.46 The decisions in *Magnacrete* and *Baden Pacific*, when considered with s34, limit the area of operation of s623. However, the ASC wishes to administer the Law in a manner which has regard to its terms, gives effect to its purpose of promoting business efficiency and certainty, and also protects the interests of minority shareholders.

RG 74.47 Despite some uncertainty as to the effect of s34 on such an agreement the ASC would not normally take enforcement action where a pre-s623 meeting agreement between vendor and purchaser expressly contains certain provisions. Such an agreement must have provisions to the effect that:

(a) it is a condition precedent to the formation of the agreement or the creation of any obligation relating to voting or disposal of shares, that a resolution approving that obligation has been agreed to at a meeting held in compliance with s623 within 60 days of the date of the agreement;

(b) the vendor is free to dispose of the shares to which the agreement applies at any time before the resolution is passed;

(c) the purchaser does not have any voting power over the shares to be acquired at any time before the resolution is passed;

(d) it constitutes the sole and entire agreement between the parties; and

(e) it will be discharged if the meeting is not held within 60 days from the date of the agreement.

RG 74.48 A copy of such an agreement should be provided to the ASC for information, shortly after it is executed and well prior to the date of the meeting. In accord with its policy of not pre-vetting, the ASC will not ordinarily review or make requisitions on such an agreement prior to its execution.

Proposed takeover bid

RG 74.49 If the documents dispatched to shareholders state that, subject to shareholders' agreement to the proposal, a takeover bid for the remaining shares in the company will be made, s746(4) will apply to that announcement. The ASC may grant an extension of time under s746(4) to allow the offeror two months to dispatch offers from the date on which shareholders agree to the proposal.

RG 74.50 Shareholders may agree to a proposed acquisition following representations that a takeover bid will be made or that benefits will accrue to the company. If the bid is not made or the benefits are not provided, the ASC will consider that to be a contravention of the Law (at the least a contravention of s995). The ASC may also consider referring the matter to the Panel for a declaration under s733.

Entitlement to vote

RG 74.51 Section 623 only applies if the allottee or purchaser and vendor of the shares and any of their associates do not vote on the resolution which relates to the allotment or purchase. The essence of agreement under s623 is that it is given only by those shareholders who will not gain from the transaction (other than as ordinary members of the company) and who are not acting in concert with those who will.

RG 74.52 If shareholder agreement is sought under s623 for the sale by all shareholders of all or some stated proportion of their shareholding to a named person, there is an argument that all of the shareholders are precluded from voting at the meeting.

RG 74.53 The ASC will consider applications to modify s623 to remove any uncertainty arising in these circumstances.

Agreement to deemed acquisition

RG 74.54 Section 623 only applies to acquisitions by virtue of allotment or purchase, not to acquisitions which are deemed to be made by virtue of the tracing provisions of the Law.

RG 74.55 The ASC will consider applications to modify s623 so as to enable shareholders of a company (the downstream company) to agree by resolution to a deemed acquisition.

RG 74.56 Such a modification will incorporate a condition that no votes be cast in relation to the resolution by:

(a) the proposed deemed acquirer;

(b) any company which is part of a chain of relevant interests which links the upstream acquisition with the deemed downstream acquisition through tracing provisions such as s32, s33 or s35;

(c) any company proposing to sell or dispose of shares to the acquirer by which the acquirer would be deemed to acquire shares in the downstream company; or

(d) by an associate of any of the above.

RG 74.57 Shareholders in the downstream company in this situation have the same rights as shareholders where there is a direct acquisition. Therefore, the information requirements for shareholders considering a downstream acquisition, while not identical, are similar to those of the non-associated shareholders considering a direct acquisition in their company. The information requirements of this guide should be adapted as appropriate for a report on a deemed downstream acquisition.

Exercise of options or convertible securities

RG 74.58 Section 623 can apply to an allotment of shares to be made on the exercise of an option or convertible security. Shareholder agreement must, however, be sought to the *allotment* of shares to the option or convertible security holder, rather than solely the *grant* of the option or convertible security. Disclosure must be made of the number of shares which the option or convertible security holder will hold upon the exercise of the option or convertible security: *NCSC v Consolidated Gold Mining Areas NL* (1985) 3 ACLC 520.

RG 74.59 Where the number of shares to be allotted upon exercise or conversion of the option or convertible security is dependent upon a formula and cannot be specified as a specific number of the voting shares of the company, the ASC may modify s623 to enable shareholder agreement to be sought. The explanatory memorandum and resolution must disclose the maximum shareholding after the exercise or conversion of the option or convertible security.

RG 74.60 Approval under s623 will only have been given to the person named in the resolution. It will not have been given to any person to whom the options or convertible notes are transferred.

Acquisitions of more shares by the person between the time of shareholders giving their approval and the time of exercise of the options or conversion of the notes may invalidate the agreement. If voting shares in the company are cancelled or consolidated to alter the percentage control which the approved acquisition of shares would represent, the s623 agreement may require subsequent ratification.

RG 74.61 Shareholders asked to agree to an acquisition of shares under s623 must have a proposal which is sufficiently certain and complete to consider and approve. Shareholders cannot approve proposals which have material terms and conditions unresolved at the time of the notice: *ANZ Nominees Pty Ltd v Wormald International Ltd* (1988) 13 ACLR 698. Similarly, proposals under which agreement is sought for acquisitions of shares pursuant to the exercise or conversion of options or notes at distant times in the future may be rejected by the court as being too uncertain and indefinite for shareholders to be able to approve.

Lodging of documents with the ASC

RG 74.62 Companies will assist the ASC in the administration of its policy if they lodge copies of notices of s623 meetings and accompanying documents with the ASC before they are dispatched to shareholders.

RG 74.63 The ASC may examine and comment on documents but will not routinely conduct examinations or requisitions. The fact that the ASC does not comment does not indicate approval of the contents of the documents, nor would it stop the ASC subsequently taking action in respect of the documents or the proposals which are the subject of the documents.

Surveillance and enforcement

RG 74.64 If the ASC considers that shareholders of a company have received inadequate time or information to make their decision in relation to a s623 resolution, the ASC may either:

(a) apply to the court for a declaration that the s623 resolution is invalid, and seek appropriate remedial orders; or

(b) apply to the Panel for a declaration under s733 of unacceptable conduct or acquisition, and seek appropriate remedial orders.

RG 74.65 The ASC may examine notices of s623 resolutions and their accompanying memoranda as part of its surveillance program. It may also investigate suspected breaches of s615 which come to its notice under its market intelligence programs or by shareholder complaints.

RG 74.66 The false and misleading conduct provisions of Pt 7.11 apply equally to acquisitions made under s623 resolutions as they do to takeover bids. This is because any acquisition or disposal of shares constitutes dealing and s995(2)(a) brings any dealing within the operation of the section.

RG 74.67 The ASC's takeovers surveillance program will focus on the quality, accuracy and utility of information provided to non-associated shareholders in the explanatory documents for a s623 resolution. These documents will be closely examined in the surveillance programs because of their pivotal role in providing information and an independent opinion to non-associated shareholders on the merits of the proposed acquisition.

RG 74.68 In its surveillance and enforcement programs, the ASC may seek information from experts and persons associated with the s623 resolution under a number of provisions including s788 of the Law, and Pt 3 of the Australian Securities Commission Law (ASC Law).

RG 74.69 If it considers that there has been a breach of s615 (for example, because the resolution is invalid because of insufficient information), offerees have not received sufficient information to satisfy s731(b) or 731(c), have received materially false or misleading information, or have been misled by omission or otherwise, the ASC may:

(a) seek orders under s1323, injunctions under s1324 or other orders under s1325;

(b) initiate action under s1315 for a breach of s1308;

(c) seek remedial orders under s737;

(d) intervene in any action brought by non-associated shareholders or any other person affected by the acquisition;

(e) initiate under s50 of the ASC Law, an action under s1005 of the Law following misleading or deceptive conduct in relation to the acquisition or disposal;

(f) initiate disciplinary action against a licensed person or his or her representative under Div 5 of Pt 7.3 of the Law; or

(g) seek a declaration of unacceptable conduct or unacceptable acquisition from the Panel.

RG 74.70 The efficiency of the market will be hindered least where an acquisition under a s623 resolution, once started, is allowed to continue. Where a contravention, especially if inadvertent, is discovered early in the course of preparation for a s623 resolution and the interests of non-associated shareholders may be protected by additional disclosure, the ASC will seek such additional disclosure as a primary remedy. Such disclosure should be on a voluntary basis by the acquirer, the disposer or the company but may have to be under an order from the court. However, the ASC will not hesitate to halt an acquisition where it appears necessary.