CHARTERED SECRETARIES AUSTRALIA

Leaders in governance

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Dear Ms Trumble

Review of share purchase plan threshold: consultation paper

Chartered Secretaries Australia (CSA) is the independent leader in governance, risk and compliance. As the peak professional body delivering accredited education and the most practical and authoritative training and information in the field, we are focused on improving organisational performance and transparency. Members of CSA deal on a day-to-day basis with the Australian Securities and Investments Commission (ASIC) and have a thorough working knowledge of the operations of the financial markets, the needs of investors and the Corporations Act.

Current regulatory framework

As noted in the consultation paper, generally an offer of securities requires a disclosure document under Ch 6D of the *Corporations Act 2001* (the Act). Under s 741(1) of the Act, ASIC has the power to modify the disclosure requirements of Ch 6D. ASIC *Class Order (CO 02/831) Share purchase plans* grants disclosure relief for offers to existing investors of shares by a company listed on the Australian Securities Exchange (ASX) up to a limit of $5,000 in any 12-month period. In 2002, the monetary limit was increased from $3,000 to $5,000 (to reflect CPI increases and changes in market participation) and the relief was extended to apply to listed managed investment schemes.

Proposal to increase the monetary limit

CSA supports the proposal to increase the monetary limit to $15,000 for disclosure relief for offers to existing investors of shares by a company listed on the ASX in any consecutive 12-month period.

CSA notes that such an increase will:

- promote low-cost, efficient capital raising by companies
- increase the access that retail investors have to fundraising opportunities that otherwise would likely occur only via institutional placements.

CSA recommends that:

- $15,000 is an appropriate monetary limit. CSA notes that this aligns with the threshold of $15,000 for the exemption from the requirement to provide an investor with a Statement of Advice for 'small investment advice', which in turn avoids creating difficulties for financial advisers in terms of compliance obligations
- the increased monetary limit should not be restricted to certain types of companies (e.g. Australian ADIs) but be the threshold for all listed companies
- the increased monetary limit should be extended to listed management investment schemes, as applies with the current monetary limit. CSA sees no reason to exclude listed management investment schemes from a revised monetary limit.

Proposal to introduce a requirement for cleansing notices

CSA does *not* support the introduction of a cleansing notice if the monetary limit is raised to $15,000.

The hidden cost of a cleansing notice

The ASIC consultation paper states that 'The advantage of a cleansing notice is that it provides investors with additional information but in a form that is less costly and time-consuming for an issuer to prepare than a prospectus or Product Disclosure Statement'.

CSA believes that the requirement for a cleansing notice raises broader issues than simply the costs involved in the preparation of the notice and related due diligence. In some cases, the cost of preparation and due diligence may be relatively small compared to the amount of capital raised. The larger impact for many companies of the requirement for a cleansing notice is that it imposes an effective freeze on many aspects of ordinary corporate activity during the life of the share purchase plan.

Boards routinely consider potentially price-sensitive matters — potential mergers and acquisitions, capital management initiatives, product launches etc — which are not required to be disclosed by reason of the carve-outs to the disclosure requirements of Listing Rule 3.1. However, the requirements of a cleansing notice are such that in many cases boards would either need to defer or freeze all such corporate actions, or decide not to take advantage of capital raising through a share purchase plan. Neither of these outcomes is desirable for companies or their retail investors.

Freezing ordinary corporate activity and board decision-making in this way undermines the policy objective of promoting low-cost, efficient and accessible capital raising by companies through share purchase plans.

Requirements of continuous disclosure regime

CSA notes that companies taking advantage of share purchase plans are still bound by the requirements of continuous disclosure. Under continuous disclosure regulation, companies are required to keep the market informed if new price-sensitive information becomes available that could have a material impact on the share price unless the carve-outs apply. Investors acquiring shares through a share purchase plan have no better or worse access to information than investors acquiring shares on market.

Low financial risk for investors
The ASIC consultation paper does not cite any evidence of companies abusing the existing relief for share purchase plans or of investors suffering loss by reason of the lack of a requirement for a cleansing notice. CSA is not aware of any incidences of this being the case. CSA questions the need for a new regulatory requirement when there have been no known problems under the current regulatory regime.

CSA disputes the rationale set out in the consultation paper that increasing the monetary limit warrants the introduction of some form of additional disclosure. When the monetary limit was increased from $3,000 to $5,000, no cleansing notice requirement was imposed, as it was recognised that an increase in the monetary limit was required to reflect CPI increases and market participation.

With CPI increases since 2002 and a current, average on-market transaction of $15,000 requiring the introduction of a higher monetary threshold in 2009, and in the absence of a history of abuse of the current disclosure relief, CSA cannot point to any reason that could justify the imposition of additional regulation to the offer of fundraising opportunities to small investors via the mechanism of a share purchase plan.

The Federal Government has publicly declared that it is keen to ensure that regulation is fit-for-purpose and does not wish to introduce regulation that may be ineffective, overly burdensome or duplicate other regulation. CSA believes that introducing a cleansing notice, when there is no evidence of abuse in the past to warrant an extension of regulation, undermines the government's pursuit of this objective.

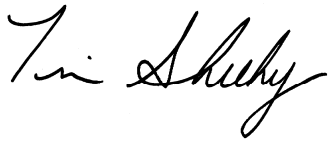
CSA recommends that a requirement for a cleansing notice *not* be introduced.

Conclusion

CSA recommends increasing the monetary limit for share purchase plans within any consecutive 12-month period to $15,000. **CSA recommends** that a requirement for a cleansing notice *not* be introduced.

In preparing this submission, CSA has drawn in particular on the experiences of its two national policy committees, comprising members working in both large and small listed companies. We would be happy to meet with you and discuss these issues further.

Yours sincerely



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