



**CHARTERED SECRETARIES  
AUSTRALIA**

*Leaders in governance*

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Dear Ms Mackay

**Consultation Paper No 91:  
Non-traditional rights issues**

Chartered Secretaries Australia (CSA) is the peak professional body delivering accredited education and the most practical and authoritative training and information on governance, as well as thought leadership in the field. We represent over 8,000 governance professionals many of whom work in public listed companies and who bear prime responsibility for rights issues and continuous disclosure.

CSA welcomes the Consultation Paper on non-traditional rights issues and its clear exposition of the circumstances where the Australian Securities and Investments Commission (ASIC) may find it appropriate to grant relief for non-traditional rights issues to use the disclosure exemption recently introduced by the Corporations Legislation Amendment (Simpler Regulatory System) Act 2007. As noted in the Consultation Paper, where features of a non-traditional rights issue do not offend the spirit of providing securities holders with equal opportunity to participate, the disclosure exemption should be allowed to apply.

CSA believes that the ASIC Consultation Paper contains sensible recommendations on specific circumstances in which it might be appropriate for ASIC to provide relief to allow non-traditional rights issues to use the disclosure exemption.

**Timing of offer and allotment**

CSA supports the provision of relief to facilitate accelerated rights issues of securities and interests under the disclosure exemption by disregarding mere differences in timing of when the offer opens and closes.

CSA also supports the provision of relief to allow institutional holders to be allotted securities or interests before retail holders, provided that retail holders are given the option of being allotted their securities or interests at the same time and on the same basis (retail holders may also have the option to have their securities or interests allotted at a later date).

CSA agrees with the definition that an accelerated rights issue is a non-traditional rights issue, which could also be called an institutional placement.

CSA sees no practical problems arising from giving retail holders the opportunity to have their securities or interests allotted at the same time as institutional holders. However, CSA believes that retail holders need sufficient time to receive and properly assess any offer and respond accordingly. On this basis, CSA recommends that the traditional timetable should be the minimum time period that retail holders should be given, as this is in the best interests of both the company and the retail holders.

CSA notes that there are no commercial factors that would prevent allotment to retail and institutional holders from occurring simultaneously.

CSA does not believe that allowing institutional holders to receive securities or interests before retail holders gives them an unfair advantage if the price of allotment is the same, that is, the offer is made on the same basis to all holders. The timing of the offer should not then be a concern.

#### Multiple cleansing notices

CSA supports the provision of relief so that if a cleansing notice that meets the requirements of s 708AA(2)(f) or 1012DAA(2)(f) has been lodged on the commencement of rights trading (Day 0 under the timetable at paragraph 3 of Appendix 7A to the ASX Listing Rules), it is not necessary to lodge a subsequent cleansing notice under s 708A, 708AA, 1012DA or 1012DAA unless there is new information that is required to be disclosed. CSA fully supports that this relief should apply regardless of:

- whether the actual offers are made
- whether there are separate offers to retail and institutional holders, or
- whether the issuer is relying on s 708A or 1012DA.

CSA notes that ASIC's proposed relief does not create an information gap, as companies are still bound by the requirements of continuous disclosure.

CSA notes that a second cleansing notice is not desirable before trading begins on the basis that companies are bound by the continuous disclosure requirements. If new information is available it must be released, as the availability of such information is central to the requirements of continuous disclosure. In such circumstances, it would therefore be reasonable for ASIC to require that a subsequent cleansing notice be lodged.

Under continuous disclosure regulation, companies are required to keep the market informed if new price-sensitive information becomes available. It could be argued that it defeats the purpose of continuous disclosure regulation to require companies to lodge a further cleansing notice if there is nothing to disclose. Lodging a notice when each and every offer is made, despite the absence of any new information, imposes a regulatory burden which brings no benefit to any party.

#### Disposing of shortfall

CSA strongly agrees that ASIC should give relief to enable issuers to deal with the shortfall without prospectus or PDS disclosure. CSA notes that, otherwise, the purpose of no longer requiring a prospectus for a rights issue is effectively defeated by requiring a PDS disclosure to deal with the shortfall.

CSA does not believe that there are circumstances where ASIC should not give relief to enable issuers to deal with the shortfall without prospectus or PDS disclosure. CSA notes that, if there is material price-sensitive information that needs to be disclosed, then it would already need to be disclosed under the continuous disclosure requirements and relief would not be obtainable.

#### Offer to convertible noteholders

CSA supports the provision of relief to allow issues where the term of issue of securities that convert into the class of securities offered under the rights issue (such as convertible notes) require a rights issue to extend to holders of the convertible securities to take advantage of the disclosure exemption.

CSA supports ASIC making the relief wider. This would allow the issuer to choose to extend the issue, while noting that the terms of the issue itself may limit such choice.

#### Offer of options

CSA supports the recommendation that relief *not* be granted to extend the disclosure exemption to cover options.

#### Application of the takeover provisions

CSA supports the provision of relief from s 708AA and s 1012DAA so that an issuer who wishes to follow the procedure in s 615 for foreign holders as an alternative to the procedure in s 9 is able to rely on the disclosure exemption.

#### Other technical issues

CSA supports the provision of additional technical relief as set out in the Consultation Paper.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tim Sheehy', written in a cursive style.

Tim Sheehy  
CHIEF EXECUTIVE