

2 November 2018

Remziye Hussein

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Australian Securities and Investments Commission
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Dear Ms Hussein

Australian Custodian Services Association – Submission on Consultation Paper 304 (CP 304) proposing to remake ASIC’s Class Order (CO 09/425) on share and interest purchase plans.

The Australian Custodian Services Association (ACSA) is the peak industry body representing members of Australia’s custodial and administrator sector. Collectively, the members of ACSA hold securities and investments in excess of \$3.6 trillion in value in custody and under administration. Members of ACSA include BNP Paribas, Bank of America, Citi Securities, National Australia Bank Asset Servicing, JP Morgan, HSBC, State Street, RBC Investor Services and Northern Trust.

The views expressed in this letter are prepared by ACSA for the purposes of consideration by the Australian Securities and Investments Commission (ASIC) of the issues raised in Consultation Paper 304 and should not be relied upon for any other purpose. The comments in this letter do not comprise financial, legal or taxation advice and should not be regarded as the views of any particular member of ACSA

ACSA believes that a number of improvements can be made to assist with the efficient functioning of the current Class Order.

ACSA acknowledges that the current Class Order provides all holders of a security an opportunity to participate, within the limitation of any foreign or other restrictions, in Share and Interest Purchase Plans thereby creating a level playing field for all eligible holders. ACSA also appreciates the intention of the requirement to provide the Beneficial Owner Schedule (BO Schedule), however believes that the theoretical intent and the practical application of this requirement are no longer aligned.

ACSA member custodians hold assets on behalf of substantial numbers of underlying beneficial owners, with the majority of member firms supporting multiple intermediary clients (overseas custody banks, platforms and other aggregators).

The requirement currently exists for custodians to provide the Beneficial Owner Schedule at the time of the final application under any Share or Interest Purchase Plan. The collation of the BO Schedules, where information about underlying beneficial owners is being supplied to custodians via multiple intermediary holders, creates a significant resource overhead and is a particularly cumbersome and manual process for ACSA members with intermediary clients (the bulk of ACSA's membership base).

The BO Schedule requirement also creates a host of additional consequences related to data privacy and protection (including GDPR, which has become more onerous) as well as opening up unintended screening obligations for AML/CTF.

Accordingly, these requirements add to the direct cost of collating BO Schedules by adding further inefficiency and operational risk. They can also add further time pressures in processing client instructions (for example, through the assessment and resolution of false positives from sanctions screening).

Over the period that the current Class Order has been in operation, few, if any, applications have been rejected due to the foreign domicile of an applicant or for an application that would, if processed, lead to the underlying beneficial owner exceeding the annual \$15,000 maximum limit. Although the lack of rejected applications may be interpreted as a measure of the success of this BO Schedule process, ACSA members are of the view that the effort and risk undertaken to achieve this outcome is substantial, and potential options exist that may achieve a similar outcome with significantly less resource impact.

ACSA believes an alternate option to make this process more efficient is for custodians, at the time of the lodgement of a Share or Interest Purchase Plan application, to provide an attestation to the issuing entity that all underlying beneficial owners applying under the offer are meeting the requirements of the legislation. To provide such an attestation, custodians with intermediary clients would naturally require the same from their underlying clients, right through the holding chain to the underlying beneficial owner. This "back to back" attestation could provide the same outcome but in a far more streamlined and efficient manner. ACSA members are willing to engage with ASIC in any discussions on how this option may work in practice.

ACSA also holds the view that the current Class Order could be clearer regarding its applicability to foreign and domestic underlying beneficial holders, given that custodians will generally have a registered address in Australia as nominee, however will often hold assets on behalf of foreign individuals or entities. On occasion, an inconsistency can occur between offers in regards to the application of foreign restrictions. This inconsistency requires significant time and effort to manage, and ACSA feels that this could be improved by clearer articulation of the applicability based on residency within the reviewed Class Order.

Class Order CO 09/425 is also silent on whether a share or interest purchase plan can close early. The potential of an early close means that custodians are required to lodge applications on an "as received" basis to ensure that their underlying clients are not disadvantaged. However, when

combined with the need to lodge the underlying BO Schedule (as discussed earlier) the likelihood of multiple lodgements is increased, as is the workload. A fixed close date would simplify this process.

As an outcome of the review of CO 09/425, ACSA also believes that an obligation should apply to underlying issuers to explicitly identify whether their current offer meets the conditions of the class order and state this in their Share or Interest Purchase Plan offer documentation. CO 09/425 does not place this requirement on the issuer, however to assist with the transparent operation of any offer, ACSA members believe this would be a welcome clarification.

ACSA appreciates the opportunity to submit to ASIC its thoughts on the operation of the current class order (CO 09/425). The knowledge and experience ACSA members have gained via the application of the existing class order since its inception allows us to provide what we believe are informed comments that may improve the class order's operation into the future.

CONTACT INFORMATION

ACSA looks forward to ASIC completing its review and welcomes any opportunity to participate in discussion based on any possible enhancements identified above or from other industry submissions.

If you have any questions in relation to this letter, please direct those questions to the Chair of the ACSA Operations Working Group, Scott Oakland (03 9633 4361, scott.oakland@jpmorgan.com).

Yours sincerely

David Knights

David Knights
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