

Australian Securities and Investments Commission

Corporate Finance Liaison Meetings

Summary of issues, November 2009

Policy Update

- **Acquisitions by a broker acting as principal for client facilitation purposes:** Regulatory Guide 31 *Acquisitions and disposals by a broker acting as principal* (RG 31) provides guidance on when we will grant relief from s606 of the Corporations Act to permit a broker, acting as principal, to acquire a large parcel of securities from a client. We have updated RG 31 and simplified the conditions to the relief so that a broker will be required to (a) reduce its voting power in the relevant entity to 20% or less within 14 days of acquisition; (b) not exercise any voting rights attached to the securities in excess of 20% without consent; and (c) facilitate wide placement (with the highest practicable price) of the securities sold. Substantial holding notice relief will no longer be given.
- **Schemes of Arrangement:** ASIC is currently working on a Regulatory Guide which will combine and update the existing Regulatory Guide 60 *Schemes of arrangement* (RG 60) and Regulatory Guide *Schemes of arrangement and ASIC review*. This is expected to be published before the end of the year.
- **Facilitating capital raisings:** Since Consultation Paper 105 *Facilitating equity capital raising* (CP 105) was issued in February 2009, class order relief has been granted with respect to managed investment scheme placements (by varying [CO 05/26]) and accelerated rights issues (see [CO 09/459]).

ASIC also announced in June 2009 that case-by-case relief will be granted to:

- allow for the use of cleansing statements despite suspensions;
- broaden the exception regarding rights issue shortfalls under item 10 of s611; and
- broaden the exception in item 11 of s611 regarding dividend reinvestment plans

Case-by-case relief from the nominee process for foreign holders of non-renounceable rights issues outlined in s615 will only be granted in very limited circumstances.

- **Share purchase plans (SPP):** Amendments will be made to [CO 09/425] *Share Purchase Plans*:
 - to facilitate participation in SPPs by: beneficial holders who hold shares/interest through multiple levels of custodians, members of superannuation master trusts, IDPS-like schemes and self managed super funds; and
 - to allow applicants to apply via electronic payment facility (e.g. BPAY) without the need to return an application form.

Emerging, Mining and Resource/Corporations issues

- **Statistics**
- **Capital and Debt raising issues**
 - Prospectus issues/surveillances. ASIC reserves the right to review prospectuses and conduct surveillances. Just because ASIC does not make queries or impose stop orders on prospectuses does not mean the document has been approved as a precedent for

similar disclosure documents lodged in the future. Guidance provided on principles to observe when preparing prospectuses and common problems ASIC sees. A particular focus for ASIC will be on complex products.

- **Other Capital Raising Disclosure (outside a prospectus)**. ASIC also reviews other disclosure documents (e.g. advertisements, investor presentations and ASX announcements). Capital raisings occurring on a low-doc basis should be made with close consideration of CP 105. To ASIC, 'low doc' does not mean 'of no interest.' Documents need to be clear about foreign holder exclusions in an offer if the document will be read by foreign holders or their custodians.
- **Facilitating debt offering to retail**: ASIC is considering options to simplify the process by which companies can offer listed corporate bonds to retail investors. A Consultation Paper will be issued if we decide to proceed.
- **Control Transactions**: ASIC requests that we be copied in on all applications to the Takeovers Panel by sending it to ASICtakeovermatters@asic.gov.au. All draft notice materials under item 7, s611 should be sent to ASIC at least 14 days before being dispatched to security holders.
- **Buy-backs**: ASIC has crystallised its policy in relation to providing relief for buy-backs at a premium. In the absence of exceptional circumstances, ASIC will refuse relief which allows buy-backs to be considered as an equal access scheme where foreign holders are excluded, if the buy-back is priced at a premium. Note: onus to prove that exceptional circumstances exist is on the applicant.
- **Financial Reporting/ Financial Information**
 - **Changes to financial reporting relief**. Forms 384 and 389 need only be lodged once by the last reporting date for the first year a company intends to rely on relief. Relief will generally not be granted for failures to lodge as deadline coincides with the last reporting date of the financial year. Form 382 still needs to be lodged annually.
 - **Financial Reporting Relief for Companies in Administration**. Exemption relief will not generally be available where the company in question is intended to be sold for a back door listing.
 - **Pro-formas in the context of schemes/takeovers with foreign "bidders"**. Historical and pro-forma financial information prepared in accordance with foreign accounting standards should generally be restated in AIFRS before being included in a scheme document and all data should be converted into \$A unless it is not the reporting currency of the Australian company. Further, financial information should be provided for the two full preceding financial years (and interim six months, where applicable). All relevant assumptions made, and methodologies used, should be disclosed.

Emerging, Mining and Resource/Corporations Projects

- **Managing confidential information**: ASIC believes there needs to be greater focus and control over how confidential information is handled by companies (both within their organisation and externally). ASIC is in the process of compiling best practice guidelines on areas such as internal information systems and controls, confidentiality agreements and insider lists. (Draft due to be published in December 2009 for comments).
- **Valuations projects**: Focus is on the role of independent experts and the content of their reports.

Areas of significant concern include non-compliance with Regulatory Guide 112 *Independence of experts* (RG 112), failure of experts to conduct critical analysis, no reasonable basis for forecast information, and inadequate working papers and/or quality assurance. When deciding which independent expert to appoint, companies should ensure that the expert is capable of producing a report that is "fit for purpose," i.e. one who is truly independent with the requisite skills, knowledge, experience and resources.

- **Debentures Consultation Paper:** ASIC has found that the 'if not, why not' disclosure regime in Regulatory Guide 69 *Debentures: Improving disclosure for retail investors* (RG 69) is working well. This is discussed in the report *REP 173 Debenture: Second Review of disclosure to investors* (released in October 2009). ASIC also released Consultation Paper 123 *Debentures: Strengthening the disclosure benchmarks* (CP 123) and is seeking comments on the proposals in CP 123 by 4 December, 2009.
- **General Disclosure:** Refers to disclosure other than through formally lodged documents. Key issues are raised regarding JORC where ASIC has concerns that through their forward-looking statements, mining/exploration companies may be in breach of the Corporations Act for misleading or deceptive conduct where they do not have a reasonable basis for forward-looking statements such as production targets.