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Ms Claire LaBouchardiere
Senior Manager, Corporations
Australian Securities and Investments Commission
Level 5, 100 Market Street
Sydney NSW 2000

By Email: policy.submissions@asic.gov.au

ASIC Consultation Paper 220 – Fundraising: Facilitating offers of Chess Depository Interests

We thank you for this opportunity to provide comment. Please find the following submission from the NSX Group (“NSX”), which includes both the SIM Venture Securities Exchange the National Stock Exchange of Australia – the holders of two Australian Market Licences (“AML”) to operate Securities Exchanges trading equity securities, debt securities and miscellaneous investment scheme securities.

This submission is available for public release.

Contents

ASIC Consultation Paper 220 – Fundraising: Facilitating offers of Chess Depository Interests	1
Introduction	2
Summary of NSX Position	2
Comments on the Scope of Proposed Relief	2
B2Q1: response	2
B2Q2: response	3
Further Information	3

Introduction

CP 220¹ provides proposals to facilitate offers of CHESS Depository Interests (CDIs) over shares in a foreign domiciled company by offering relief from the disclosure provisions of Chapter 6D and the licensing provisions of Part 7.6 of the Corporations Act.

Summary of NSX Position

The NSX supports any efforts that are aimed at enhancing the integrity, robustness and resilience of Australia's financial markets. NSX believes that the majority of the proposals outlined by ASIC for disclosure and licensing are sensible. However NSX does have some concerns with the approach taken by ASIC and these concerns reflect long stated views held by NSX on the equality of treatment and providing a competitively neutral regulatory environment for all market operators.

In our submission we have sought to address those questions that impact on our current operations, future aspirations and where we believe we have valuable comments to provide.

Comments on the Scope of Proposed Relief

NSX operates two Australian Market Licences: National Stock Exchange of Australia (NSXA) and SIM Venture Securities Exchange (SIM VSE). Both NSXA and SIM VSE operate electronic trading and settlement of the securities listed on the respective markets. Both NSXA and SIM VSE retain the ability to operate certificated settlement of nominated securities. Both NSXA and SIMVSE are able list and trade CDIs as both markets are Recognised Stock Exchanges for the purposes of ASX Settlement rules².

Currently NSXA lists two securities that are CDIs and SIM VSE has no CDI securities.

The Scope of the Consultation paper should not exclude SIM VSE (See the response to B2Q2 below).

B2Q1: response

No.

Relief should not be confined to cases where CDN acts as nominee. If it is confirmed then the concept of regulatory neutrality would not be adhered to as a monopoly will be created.

Until recent years, CHESS by practice did not make CDIs available to other market operators as CHESS Depository Nominees Pty Ltd did not provide a business to others beside ASX. This practice changed in 2011 as other providers demonstrated that they could provide the service, from which time CDIs were available to NSXA and SIM VSE listed issuers.

In the case of a foreign issuer who applied to NSXA in 2009, CDN and thus CDIs were not available. The issuer made nominee arrangements through other parties. Without the benefit of other nominees providing the service then that issuer would not have been able to list. That issuer delisted prior to the change of practice by CHESS. Since 2011, NSXA has been able to quote CDIs and currently lists CDIs for two listed issuers.

¹ Consultation Paper 220 (CP 22) – Fundraising: Facilitating offers of CHESS Depository interests – May 2014

² Refer to recognition by ASX Settlement at <http://www.asx.com.au/cs/services-for-approved-listing-market-operators.htm>

NSXA and SIMVSE believe that any AFSL holder with an appropriate licence should be able to provide this service in competition to CDN without having to seek specific relief. The Class Order should automatically recognise those custodians that are able to provide a service. Otherwise the regulatory outcome will be to create a monopoly situation where custodians have to jump a barrier to entry. Further if CDN in the future withdraws its services from issuers on other markets or CDN imposes uneconomic fees then the other markets and its issuers will be left at a competitive disadvantage.

NSXA and SIM VSE propose that if another nominee holds the requisite AFSL, it should be considered equally and recognised automatically for relief under the Class Order without an application for specific relief.

B2Q2: response

No.

NSXA and SIM VSE contend that SIM VSE as an Australian Market Licence Holder and recognised Market Operator in CHESS should be included in the Class Order explicitly. There is no logical reason to exclude SIM VSE from the class order as SIM VSE is a licensed Australian market operator (AML holder) with a sufficiently robust market framework.

1. SIM VSE is a Recognised Market Operator for the purposes of ASX Settlement Rules (See ASX Settlement rule 4.1A)
2. SIM VSE's recognition is publicised on the ASX website³
3. ASIC, in paragraph 36 of the Class Order, also agrees that markets that are subject to ASX Settlement rules are eligible for CDIs under rule 13.2.1.

Foreign companies listed on SIMVSE may apply through SIMVSE to have their foreign shares or CDIs approved under the ASX Settlement Operating rules for CHESS settlement purposes.

On this basis SIM VSE is on an equal footing with other Australian Market Licencees,

Further Information

If you require any further clarification on this submission, please contact Mr Scott Evans on

Yours sincerely,

Scott Evans
General Manager & Company Secretary
NSX Limited

³ Ibid.