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31 August 2017

Ms Rhonda Luo
Senior Specialist
Market Infrastructure
Australian Securities and Investments Commission
Level 5, 100 Market Street
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Dear Ms Luo

CONSULTATION PAPER 293
REVISING THE MARKET LICENCE REGIME FOR DOMESTIC AND OVERSEAS OPERATORS
SUBMISSION BY CRAIG CAPITAL

Please find attached Craig Capital's submission in relation to Consultation Paper 293.

Please contact me should you wish to discuss any part of the submission.

Yours faithfully

Ian Craig
Director

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CONSULTATION PAPER 293

REVISING THE MARKET LICENCE REGIME FOR DOMESTIC AND OVERSEAS OPERATORS

SUBMISSION BY CRAIG CAPITAL

We refer to Consultation Paper 293 (the 'Paper') and welcome the opportunity to provide comments as part of the consultation process.

About Craig Capital

Craig Capital is a specialist firm providing assistance to small and micro cap companies in relation to stock exchange listing and governance.

The team at Craig Capital has extensive experience in capital markets, funds management and compliance spanning decades. Its clientele include both domestic and offshore companies.

About this submission

Craig Capital's comments reflect Craig Capital's business of assisting small and micro cap companies with stock exchange listings. We do not comment directly on impacts upon other trading forums described in the Paper.

Our comments are confined to:
- general comments regarding the proposed tiered approach; and
- detailed comments regarding listing principles contained in the appendix to draft RG172.

Comments

The proposed tiered approach

Craig Capital submits the tiered approach to risk assessment and regulation as put forward in the Paper will lead to sub-optimal outcomes and will sanitise diversity in stock exchanges in Australia.

Putting all listing markets (ASX, SSX and NSX) on one tier and unregulated, wholesale and crowd source platforms on another will necessarily make it harder for smaller exchanges to compete with either the dominant ASX market or the less regulated second tier. It will push smaller companies to platforms with lesser standards and lesser investor protections.

Companies seeking a stock exchange listing in Australia currently have three alternatives. Two of those exchanges, SSX and NSX, are developing niches for foreign companies, particularly from Asia, and smaller domestic companies. They have rule books which differ from ASX's and offer a different listing service.

The Corporations Act provides key investor protections including periodic disclosure and continuous disclosure and these standards are applicable across all exchanges. However differences in rule books allow differentiation between exchanges thus giving companies and their shareholders choice of listing venue and service.

Should all exchanges in Australia be treated identically to ASX both in their regulation and the listing standards that apply, Australian capital markets will offer less choice, less competition and, ultimately, less innovation. That outcome is negative for shareholders, companies, markets and Australia's standing internationally.

The current RG172 promulgates "flexible regulation" (RG172.11). We submit flexible regulation is as relevant today as it was when RG172 was released and that flexibility within

the stock exchange category of markets is necessary to maintain broad, relevant capital markets.

Small and micro cap companies by their nature raise small amounts of money. Should the framework of the Paper be put in place, it may make sense for smaller companies with modest capital raising requirements to avoid the higher compliance and governance standards of stock exchanges in favour of lower tier solutions.

Craig Capital proposes SSX and NSX not be included in the same tier as ASX but, reflecting their constituency, rather they be allowed to continue their diverse offerings under flexible regulation whilst all the while affording shareholders the benefits and protections of the Corporations Act as provided in the listing rules.

Listing Principles - Appendix 1 to draft RG172

Minimum standards that are clear, concise and provide basic undeniable protections while fostering competition and diversity in capital markets are welcomed. However a number of the principles for admission criteria described in the appendix to the draft regulatory guide are, on that scale, problematic.

Currently minimum standards are effectively contained in the Corporations Act. The draft regulatory guide seeks to expand the standards without amending the Act.

The principles for admission criteria are at times confusing, unworkable and eliminate a key point of differentiation between exchanges.

Further, we submit the fact that one major draft admission standard (RG172.226) has already been implemented across exchanges prior to the conclusion of the consultation process calls into question the integrity of that process.

RG172.224 requires a legitimate intent to access capital markets. “The entity’s reasons for accessing the Australian capital market are to raise capital to support genuine business plans for growth and innovation.”

This requirement does not cover the range of legitimate reasons for seeking admission to a stock exchange. Legitimate reasons include
- to provide an arm’s length trading venue;
- to submit to the highest governance standards so as to promote investor confidence;
- to get an independent (market) valuation;
- to provide currency (scrip) for corporate transactions;
- to provide an orderly exit for pre listing shareholders; and of course
- to raise capital.

Growth and, in particular, innovation should not necessarily form part of the criteria. Many businesses are neither innovative nor necessarily targeting growth but can still generate profits and have a legitimate reason for listing based upon one or more of the reasons above.

RG172.225 requires genuine secondary market liquidity. “The entity can demonstrate genuine and robust investor interest at the point of listing.” With respect, we submit this is potentially an impossible standard to meet. At the time of application for listing, the point of listing is often three months away. Any public offering has not occurred. Whether or not there will be genuine and robust investor interest at the point of listing can only be a matter of speculation when the listing application is lodged.

If instead this requirement is aimed at ensuring exchange requirements for shareholder spread are met, we submit that each exchange already has listing rules specifying shareholder spread requirements. These requirements range from hundreds to merely fifty shareholders. An applicant company could conceivably meet spread requirements but, with only fifty shareholders, expect little or no liquidity. Such an outcome would not be symptomatic of a market failing but rather recognising that companies and shareholders can derive benefits from listing without significant liquidity.

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RG172.226 removes the ability for an applicant to use an unregulated document as a listing document in all but extreme circumstances. This will have a material negative impact on companies seeking listing, especially on NSX where many listings based upon information memoranda have occurred.

An information memorandum listing allows smaller companies a much cheaper and quicker route to market in circumstances where no capital is being raised. Directors remain under statutory and common law duties for propriety and do not enjoy the protection of the due diligence defence.

RG172.226 removes choice for companies seeking listing, adds complexity and time to market and ultimately increases the cost borne by shareholders.

We submit the draft criteria described above be amended or deleted.

Craig Capital
August 2017