On-Market BookBuilds Pty Ltd
ABN 31 140 632 024
AFSL 421 535
Level 31, Tower 2, 200 Barangaroo Ave
Sydney, NSW, 2000
OMB@onmarket.com.au
+61 2 8598 8559

16 March 2020

Remziye Hussein, Senior Lawyer
Corporations
Australian Securities and Investments Commission
GPO Box 9827
Brisbane QLD 4001

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

Dear Remziye

CP 328: Initial public offers: Relief for voluntary escrow arrangements and pre-prospectus communications

This submission covers two distinct policy issues relating to pre-prospectus communications:
1) disclosure of intentions and expectations of future liquidity events under a CSF offer; and
2) unintended consequences from market behaviour as a result of pathfinders being made available to sophisticated investors.

CSF Offers and pre-prospectus advertising

We are a licensed CSF Intermediary. As you know the purpose of the CSF regime is to provide a more cost-effective way for small companies to access equity capital, while providing alternative protections for investors.

When unlisted private companies raise equity via the CSF regulatory regime, there are extensive risk-warnings (which includes a prescriptive risk warning, outlining that the investment is unlikely to be liquid and the high-risks associated with investing in early-stage companies). Additionally, retail investors have a cooling off period and a limit of $10,000 per investment.

Investors in CSF companies are making a long-term investment, as a minority shareholder. Therefore, it is very important for them to understand management's expectations and intentions about a potential liquidity event, what time frame that may occur, and whether management prefers, or intends to take the company to IPO or trade-sale (assuming the company is successful).

CSF offers are made entirely to self-directed investors. The CSF regulations do not enable intermediation by financial planners or stockbrokers. Consequently, we believe that an exemption that enables companies to provide some guidance as to their expectations, intentions, or preferences regarding future liquidity events (be that IPO, trade sale, or simply to continue to grow as an unlisted company and pay dividends), would result in more informed investors.

It appears, to us, that there is a conflict between the intention of pre-prospectus advertising prohibition and the intention that small companies using the CSF regime provide incoming investors with a reasonable insight into the intentions of the controlling founders.

Recommendation: that ASIC provide relief to enable CSF companies to provide information about their future IPO intentions and prospects in CSF offers.

Pathfinders and s708(8) investors

The provision of pathfinders to investors under s708(8) is commonly used to enable companies to meet the 300-shareholder spread requirement without making a general public offer.

We believe that the exclusion of retail investors from IPOs is contrary to fair, transparent and efficient markets.

The current market practice enabled by the pathfinder exemption means that:

- Larger, more mature, less-risky, IPOs are pre-sold to institutions and s708(8) sophisticated investors (via a front-end bookbuild, using a pathfinder); and
- Smaller, early-stage, higher-risk IPOs are offered to retail investors (under a general public offer)

This is contrary to good public policy.

It is truly a bizarre situation where the majority of lower-risk "Initial Public Offerings" exclude the public, even though the prospectus is required to contain all the information that a retail investor would require to make an informed investment decision.

When we last examined 10 years of data of IPO-returns, the average IPO closed 14.5% higher than the issue price on the first-day of trading. The exclusion of retail investors (by virtue of the use of pathfinders), does not protect them. It simply means that retail investors pay a 14.5% higher price for fungible securities than institutions and sophisticated investors.

Recommendations:

- **At a minimum, we recommend that regulations be amended to remove the exemptions that allow s708(8) investors to subscribe under 'pathfinders'**
- **An alternative to removing the pathfinder exemption would be to require that any IPO reserve a minimum number of shares under a widely-distributed general public offer, equal to to the number issued under a pathfinder**
- **We believe the optimal outcome to achieve fair, transparent and efficient markets would be to reserve 25% of each IPO for a widely distributed general public offer (i.e. if the public does not apply for the shares on offer, those shares can be issued to institutional investors, but this way the public is not excluded, and allocations are fair, rather than being based on conflicted broking revenues). Hong Kong and Singapore provide examples of markets that have fairer regulations re IPOs.**

Please contact me if you would like to discuss further.

Yours sincerely

Ben Bucknell
CEO - OnMarket BookBuilds