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Terrence Kouls
Senior Manager
Corporations
Australian Securities and Investments Commission
Level 5, 100 Market Street
SYDNEY NSW 2000

By email: 444GA.submissions@asic.gov.au

Dear Sir

CHAPTER 6 RELIEF FOR SHARE TRANSFERS USING S444GA OF THE CORPORATIONS ACT

I refer to the ASIC Consultation Paper 326 and enclose my submissions below in relation to following proposals:

Proposal B1

- a) B1Q1 - I agree that ASIC should require an IER to be prepared in accordance with RG111 and that the IER and explanatory materials should be provided to shareholders before a hearing.
- b) B1Q2 - I do not consider any situations where might an IER might be unnecessary.
- c) B1Q3 - Given the current legislations and relevant case law, it is appropriate to retain both IER and administrator's reports as each are stand-alone reports and need to be considered by all relevant parties.

Shareholders need to receive an independent and objective analysis when considering whether complex transactions are fair and reasonable and in their best interest.

Creditors require detailed information from an administrator's report when making an informed decision regarding a company's future.

IER provide more detailed information requirement compared with an administrator report. Administrator's reports usually contain sufficient information to give creditors an understanding when making an informed decision about a company's future.

Registered Liquidator Business Planning Consultant
Fellow of the Association of Chartered Certified Accountants www.accaglobal.com
Member of the Australian Restructuring Insolvency and Turnaround Association www.arita.com.au
Member of the Institute of Public Accountants www.publicaccountants.org.au

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IER disclose multiple valuation methods and all the material assumptions underlying those methods. In certain circumstances an administrator may not wish to publicly disclose a valuation of an individual asset or class of assets for commercial confidentiality reasons.

Proposal B2

- a) B2Q1 - I agree with this proposal.
- b) B2Q2 - There are reasons for and reasons against whether an independent expert (IE) should consider potential recoveries from voidable transactions when carrying out a liquidation valuation as a result of considering information in an administrator's report.

I consider there would be strong arguments against an IE providing opinions regarding potential recoveries as follows:

- a. The IE opinion may be subjective and may be biased towards a group of creditors or shareholders, potentially jeopardising a company's future if a DOCA were to be considered.
 - b. The IE expertise could be challenged on the basis the IE has no relevant insolvency experience and cannot determine what transactions are considered voidable transactions.
 - c. The IE independence could be challenged on the basis they are not acting impartially and in an objective manner.
- c) B2Q3 - The going concern approach is useful as it regularly used in business valuation information provided by a voluntary administrator.
 - d) B2Q4 - Depending on the circumstances it is up to ASIC's discretion when refuse relief.
 - e) B2Q5 - No other factors to suggest.

Proposal B3

- a) B3Q1 - I agree with this view.
- b) B3Q2 - I agree that the concepts of independence should be based on RG 112.
- c) B3Q3 - I believe that any member of the administrator's firm, including its separate advisory/consulting arms or party associated with the firm should be precluded from preparing the IER and being the independent expert.

ASIC notes in the Consultation Paper 326 that it is aware larger insolvency practices may be able to use separate advisory/consulting arms to prepare an IER. ASIC considers it is more consistent with maintaining the appearance of independence if a totally separate expert is engaged.

Firms evaluate and self-review conflicts management and threat to independence before accepting any consulting engagement. It appears uncertain whether creditors, shareholders and interested parties can challenge the independence of an expert on the grounds of inter firm dependence based on the risks identified.

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Regulatory Guide 112 is clear regarding the requirements for an expert to identify relationships and interests that may, or be perceived to affect, the expert's ability to prepare an independent report. The Corporations Act and case law is also clear in this regard.

Should you have any queries please regarding the proposed submissions, please do not hesitate to contact me on [REDACTED].

Yours sincerely,

[REDACTED]

Simon Roger Coad
Registered Liquidator

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