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Ms Sophie Trumble  
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Australian Securities & Investments Commission  
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Dear Ms Trumble,

### **ASIC Consultation Paper 103 - Share Purchase Plans**

In August 2008, the Securities & Derivatives Industry Association wrote to ASIC to request an increase in the value of shares able to be offered under Share Purchase Plans (SPPs) under Class Order 02/831 from the present \$5,000 to \$20,000.

We were therefore delighted to see Consultation Paper 103 released in December 2008, proposing an increase in SPPs to \$15,000.

#### **Background**

In 1991, ASIC started giving company-by-company relief for SPPs, permitting offers to existing shareholders of \$2,400 worth of shares per annum<sup>1</sup>.

In 1997, ASIC allowed SPPs generally, making Class Order 97/74 which allowed SPPs with a limit of \$3,000 per annum for ASX listed companies.

In 2002 Class Order 02/831 increased the level to \$5,000.

#### **ASIC Regulatory Guide 125**

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<sup>1</sup> Instrument 91/444, granting relief for the CSR Limited SPP, discussed in ASIC RG 125.3

RG125 sets out the history of the relief that ASIC and its predecessor gave for share purchase plans and the rationale for the decision to grant the Class Order<sup>2</sup>.

In relation to the (\$3,000) level, it states:

*RG 125.18 The limit of \$3000 per investor is arbitrary. It has been adopted for continuity, to limit the risk to individual shareholders and because the amount that could be raised is likely to be low compared to the issuer's total issued capital. Small shareholders will derive the most benefit from schemes limited in this way.*

### **Policy Underpinning SPP relief**

The main policy reasons for the decision to grant relief were Issuer costs, Shareholder convenience and access to offers, explained as follows:

#### *Issuers costs*

*RG 125.11 Where the amount to be raised from each investor is quite small, the cost of preparing, printing and distributing a prospectus for a share purchase plan may be quite high, compared to the amount being raised. The ASC recognises that issuers would be less likely to offer share purchase plans if a prospectus was required.*

#### *Shareholder convenience*

*RG 125.12 Share purchase plans generally provide existing shareholders with a convenient means of obtaining additional shares, often at a discount to the market and without brokerage fees or stamp duty. By participating in share purchase plans, shareholders are able to acquire smaller parcels of shares than it would normally be economic to purchase on the market.*

#### *Access to offers*

*RG 125.13 Without relief from the prospectus provisions of the Law, it is unlikely that such schemes would be offered, disadvantaging the smaller investors who are the most likely to participate in them and obtain the most benefit from them.*

These policy reasons remain important considerations in the decision to increase the limit.

### **Reasons for Proposed Increase**

In our letter of 20 August 2008 (attached), we put forward four reasons for an increase:

- market performance
- overall share ownership
- growth in self-managed superannuation funds, and
- difficult funding conditions.

We are very pleased to see that ASIC appears to have been persuaded by our arguments, since it is now proposing an increase in SPP relief to \$15,000 in

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<sup>2</sup> We note however that RG125 appears to pre-date CO 02/831, because only the earlier relief to the value of \$3,000 is discussed.

CP103. Without restating our arguments in full, we summarise our earlier points as follows:

### **1. Market Performance: 2002 - 2008**

Even with the correction in the markets over the last 15 months, the increase in the value of shares generally and retail participation in particular would justify an increase in the level for SPPs.

### **2. Overall share ownership**

While there has been a slight reduction, share ownership by Australians has remained at significant levels since the last increase in SPP levels in 2002.

According to the 2006 ASX Share Ownership Survey, 46% of Australians own shares,

- 22% of which own shares directly,
- 16% of which own shares both directly and indirectly, and
- 8% owning shares indirectly only.

The 2002 Survey showed 50% of Australians owned shares directly or indirectly, including:

- 37% owning shares directly, and
- 13% directly or indirectly.

In CP103 ASIC also makes the point that in the 2006 Survey the average share parcel traded was worth over \$14,000. The 2006 Survey also found that the knowledge and interest of direct investors in shares was increasing. Share knowledge increased by 12%, and 63% said that they intended to increase their share investments as a proportion of their investments.

The proposed increase would facilitate and may encourage share ownership by Australians, while preserving the necessary protections, including continuous disclosure of significant matters.

### **3. Growth in SMSFs**

The last decade has seen huge growth in Self Managed Superannuation Funds. Figures compiled by APRA and the ATO for the 12 years to 2008<sup>3</sup> show that the

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<sup>3</sup> Statistics in this submission are taken from the following references: APRA *Insight* February 2007; ATO *Speeches by Ian Read, Assistant Deputy Commissioner for Taxation, ICAA SMSF Conference* 22 February 2008 & *Taxation Institute WA State Convention* 28 August 2008; and ATO *Self-Managed Super Fund Statistical Report* 15 October 2008. (Available at [www.ato.gov.au](http://www.ato.gov.au).)

value of assets held in SMSFs has grown more than twelve-fold, from \$28.2bn (June 96) to \$347.5bn (Sept 08).

There are now almost 400,000 SMSFs in Australia, representing the interests of almost 800,000 individuals, more than half of which are at or nearing retirement. Unless they hold over \$10m in assets, SMSFs are treated as retail clients. Accordingly, they are ineligible for institutional placements, a common way for companies to raise capital quickly, usually at a discount to market.

#### 4. Difficult funding conditions

In these times of credit tightening, funding through capital raising is at the forefront. Together with new issues, institutional placements and DRP schemes, from the company perspective a modest increase in the levels of SPPs would also facilitate capital raising using this option.

The following table sets out recent major capital raisings, with the maximum level of SPPs, if offered as part of the raising:

Company	Amount raised (\$bn)	SPP detail
NAB	3	\$10,000
Westfield	2.9	-
Wesfarmers	2.8	-
Westpac	2.5	\$10,000
CBA	2	-
QBE	2	\$5,000
GPT	1.1	-
ANZ	1	-
Alumina	1	-
Newcrest	0.75	-
Bluescope	0.55	\$5,000
Qantas	0.5	\$10,000

(Source: The Australian \$3bn Westfield capital raising 4 Feb 09 p.31; ASX Company Announcements)

It is noted that three companies - NAB, Westpac and Qantas - offered SPPs above the maximum \$5,000 prescribed by ASIC via individual relief from ASIC. Key considerations for granting such relief appear to be whether there is a concurrent offer to institutional and sophisticated investors, and whether it is APRA-regulated<sup>4</sup>. (We note that the latter does not apply to Qantas).

<sup>4</sup> CP103 page 13 paragraph 35

An increase in the SPP level for all listed companies to a more meaningful level (which we maintain is \$20,000) would mean that companies would be less likely to need individual relief for particular offers, thus saving cost for the company. Moreover it would introduce regulatory certainty for all issuers.

### **What is the appropriate level for SPPs?**

In proposing \$15,000, ASIC has taken into consideration two matters:

- o the average trade value (\$14,200) from the 2006 ASX Shareholder Survey, and
- o the definition of ‘small investment advice’ (<\$15,000) in relation to exemptions from the requirement to give a Statement of Advice in *Corporations Act s946AA*.

In relation to these matters we note:

- o the average trade value figure is out of date, and even with the market downturn could now be higher, and
- o while it may be convenient to refer to the ‘small investment advice’ threshold, it relates to the giving of advice by a financial services licensee, not the offering of financial products by an issuer.

*Indexation?* We also note that, unless ASIC incorporates an indexation mechanism, the question will inevitably arise in the future whether a further increase is necessary. This will mean a further review of policy by ASIC. Accordingly, ASIC should consider an indexation component to its class order relief, so that the limit automatically increases with time. This should be set at no lower than the Consumer Price Index, or some other appropriate level.

However, if ASIC is not willing to consider indexation, it should set the new limit as high as possible, providing it conforms to the policy criteria of *Issuer Costs*, *Shareholder Convenience*, and *Access to Offers* noted above.

We maintain that increasing the SPP level to \$20,000 would provide a more meaningful level of investment for retail investors, including SMSFs wanting to build retirement savings.

### **ASIC CP103 Specific Questions**

In reference to the specific questions posed in the Paper, we provide the following responses:

<b>B1Q1 Do you agree that we should increase the monetary limit for share purchase plans?</b>	Yes, we support an increase in the monetary limit for SPPs, suggesting \$20,000 for the reasons discussed above
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<b>B1Q2</b> If so, do you agree with the proposed limit of \$15,000? If not, what do you think should be the new limit? Why?	See B1Q1
<b>B1Q3</b> Should the increased monetary limit be restricted to certain types of companies (e.g. Australian ADIs)? If so, why?	No
<b>B1Q4</b> We also propose to extend this relief to offers for the issue of interests in a listed managed investment scheme (i.e. interest purchase plans). Is there any reason why the relief should not be extended to interest purchase plans?	We see no reason not to extend this relief to offers for the issue of interests in a listed managed investment scheme
<b>B2Q1</b> Do you agree that issuers should be required to lodge a cleansing notice on ASX as part of a share purchase plan offer? If not, why not? If the cost of preparing a cleansing notice is a factor please provide as much detail as possible.	We are supportive of the proposal for companies to lodge a cleansing notice when conducting a SPP, for any amount
<b>B2Q2</b> More generally, do you think information is lost to investors and the market by relying only on the continuous disclosure regime and a cleansing notice?	No
<b>B2Q3</b> If you agree that issuers should lodge a cleansing notice as part of a share purchase plan offer, do you think cleansing notices should be required for all share purchase plans, whatever the offer amount? If not, why not?	We are supportive of the proposal for companies to lodge a cleansing notice when conducting a SPP, for any amount
<b>B2Q4</b> Do you think we should also require that there be a concurrent share placement with a share purchase plan? Why?	No. The company may not need to raise that much additional funding, also the level of funding raised in that year can affect whether or not shareholder approval will be required to be sought.

	Companies should have flexibility to select the appropriate method of capital raising to meet its requirements.
<b>B2Q5 Should relief also be conditional on the relevant securities not being suspended for more than 5 days in the last 12 months, similar to s708AA(2)? Why?</b>	Yes, relief should be conditional on securities not being suspended for more than 5 days in the last 12 months similar to s708AA to ensure consistency across regulations as well as investor protection and in keeping with the spirit of limiting risk for small investors.
<b>B2Q6 If we impose a cleansing notice requirement, should we include provisions in the relevant class orders similar to s708AA(2)(d) and (e)?</b>	Yes provisions should be similar to s708AA again to ensure regulatory consistency
<b>B2Q7 More generally, should there be any other changes to the technical requirements of the relevant class orders?</b>	No comment
<b>B2Q8 Is there any reason why a cleansing notice regime should not be extended to interest purchase plans?</b>	There is no reason why a cleansing notice regime should not be extended to interest purchase plans.

Once again, following our earlier submission, we are grateful for ASIC's consideration and review of its SPP policy and are pleased to be part of the review process.

Please contact me or Doug Clark, Policy Executive if you require further information on [dclark@sdia.org.au](mailto:dclark@sdia.org.au) .

Yours sincerely



**David W Horsfield**  
**Managing Director/CEO**