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14 August 2012

Attention: Ms Diane Lewis  
Regulatory and Public Policy  
ASX Limited  
20 Bridge Street  
Sydney NSW 2000

Via email: [regulatorypolicy@asx.com.au](mailto:regulatorypolicy@asx.com.au)      [diane.lewis@asx.com.au](mailto:diane.lewis@asx.com.au)

Re:      SUBMISSION TO THE CONSULTATION PAPER  
  
          MODERNISING THE TIMETABLE FOR RIGHTS ISSUES: FACILITATING EFFICIENT AND  
          TIMELY RIGHTS ISSUES

Dear Ms Lewis,

Please find enclosed a submission paper drafted by the members of the Australian Custodial Services Association's (ACSA) Corporate Actions Working Group.

The membership of this group extends beyond custodians and includes associate ACSA members representing share registries and service providers. The responses provided in this paper primarily represent the view of the custodian members within ACSA.

We understand that organisations represented within this group may also respond separately to the consultation paper.

The ACSA Corporate Actions Working Group would welcome the opportunity to discuss this paper further with the Australian Securities Exchange. Please contact either Andrew Gibson via phone (03) 8643 9137 or email [andrewgibson@citi.com](mailto:andrewgibson@citi.com) or Sandra Powell via phone (02) 9006 5648 or email [sandrapowell@hsbc.com.au](mailto:sandrapowell@hsbc.com.au).

Regards,

A handwritten signature in black ink, appearing to read 'Andrew Bastow', is written over a horizontal line.

Andrew Bastow

Director and Executive Sponsor

**ACSA Corporate Actions Working Group**

## A. From announcement of issue to ex date

1. *With advancements in communications technology and operational systems, is it feasible to reduce the cum entitlement trading period to 1 business day and still provide the ability for foreign shareholders to trade in or out of the securities on a cum entitlement basis?*

### Response:

The consensus amongst the custodian members within ACSA is that a reduction to the cum entitlement trading period to one day won't provide the ability for all foreign shareholders to trade securities on a cum entitlement basis. In particular shareholders in some locations such as the USA and Europe will be prevented from trading due to time zone differences. Consideration also needs to be given to the multiple layers of intermediaries that exist between the custodian and the end beneficiary as reducing the cum entitlement trading period from 2 to 1 business day will reduce an already tight timeframe for a shareholder to make a decision on their securities i.e. trade in or out of the event. As a result ACSA members do not support the proposal to reduce the cum trading period to 1 business day.

2. *What are your views on the trade-off between shortening the standard timetable for all market users and a security being placed in a trading halt in the unlikely event that there is an information processing error made in changing the basis of quotation?*

### Response:

As outlined in our response to question 1 the consensus is not to support reducing the cum entitlement trading period to 1 day. Conceptually we don't see any concerns with the use of a trading halt to accommodate the unlikely event of an information processing error occurring.

3. *What are your views on whether the introduction of intra-day market information dissemination would mitigate the impact of reducing the cum entitlement trading period?*

### Response:

The introduction of intra-day market information dissemination would not mitigate the impact of reducing the cum entitlement trading period. The reasons outlined in our response to question 1 would still apply. Custodians require timely release of market information and continue to work with the ASX on initiatives such as the ASX STP Industry Working Group to achieve an efficient end to end announcement process.

4. *What are the impacts of reducing the cum entitlement trading period to 1 business day on common market transactions, for example, stock lending arrangements?*

### Response:

As outlined in our response to question 1 the consensus is not to support reducing the cum entitlement trading period to 1 day. Whilst we don't believe that this would cause a material impact on other transactions there is a view from some ACSA members that the reduction of the cum entitlement trading period to 1 business day in conjunction with a reduced ex-record date period from

5 to 3 days may have an impact on the ability to effectively recall stock loans prior to the record date. This is more likely to have an impact on a non-resident investor.

5. *Would the introduction of a separate standard timetable for dividends and capital returns that is different to the standard timetable for all other corporate actions create significant complexity or other compliance issues for market users?*

**Response:**

The view of ACSA members is that there should be consistency with the timetables for all corporate action events. Inconsistency with the timetables leads to client confusion, in what is already perceived as a complex market. It can also result in an increase in operational risk in an area where errors can result in significant financial losses.

## **B. From ex date to and including record date**

6. *What is the impact on reducing the period between the ex date and the record date on the settlement systems and processes of market users?*

**Response:**

ACSA members do not expect there to be an impact on settlement systems and processes as a result of a reduction of the period between ex date and the record date from 5 to 3 days. As outlined in our response to question 5 the view of ACSA members' is that timetables should be consistent across all corporate action / income events so it is critical that the change in period between ex date and the record date from 5 to 3 days applied to other entitlement events such as bonus issues, dividends, etc. Of particular importance is that a reduction of the ex to record period for dividend reinvestment plans (DRP) must be accompanied with an election date that is two days after the record date. Without a DRP election date subsequent to the record date a shortened period will be unworkable for custodians and their clients.

7. *What are the impacts of reducing the period between the ex date and the record dates to 3 business days on common market transactions, for example, stock lending arrangements?*

**Response:**

A reduction to the period between the ex date and the record date to 3 business days may impact on the ability to affect timely loan recalls, however this move to a shorter timeframe brings the ex-date & record date period in line with the settlement cycle and with other international markets. The current timetable of a 2 day cum entitlement trading period (assuming this isn't moved to 1 day) also allows for stock movement to be made within the required timeframe.

8. *What are your views on the recommendation put forward by ACSA for the date for dividend reinvestment plan elections being mandated as 2 settlement days after the record date?*

**Response:**

ACSA fully supports the recommendations put forward by our Group for a mandated dividend election date that is 2 days after the record date. The proposal to reduce the ex-date and record date period from 5 to 3 days across all events is supported on the condition that a dividend election date 2 days after the record date is mandated.

## **C. From day after record date to and including date that documents are sent to shareholders**

9. *What are your views on the feasibility of sending out offer documentation in more than one stage, based on more than one "cut" of the share register, on condition that only shareholders on the register on the record date would be entitled to participate in the rights issue?*

**Response:**

The custodian members of ACSA have no issues with documentation being sent out to shareholders in more than one stage. ACSA members would like to point out that this concept may require the custodian to amend application forms to reflect changes in entitlements and therefore request confirmation that the lodgement of an amended application form would not compromise the validity of this form i.e. acceptance by share registry. Alternatively, ACSA would see benefit in being able to access personalised application forms on-line.

10. *What other process or technology changes may be adopted to facilitate a reduction in the period between the record date and the date that documents must be sent out?*

**Response:**

The custodian members of ACSA support the electronic delivery of documentation and would welcome the implementation of a paperless application process, which provided an electronic method of acceptance and payment i.e. removing the need for application forms altogether. Whilst an electronic payment concept does exist with one registry today (on a user pays basis) the preference is for a consistent market mechanism that supports this approach for all listed companies.

11. *What are your views on whether the period between the record date and the date that documents must be sent out could be reduced from 4 business days to 2 or 3 business days?*

**Response:**

The custodian members of ACSA support any reduction in the period between the record date and the date that documents must be sent out; noting that we are reliant on ASX market announcement to communicate events to our client and not the receipt of physical documentation.

## **D. From day after date that documents are sent to shareholders to and including acceptances close date**

*12. What are your views on the trade-off struck between the benefits of reducing the timetable and costs of reducing the time available to investors to make their investment decision in the proposal to reduce the period between the date that documents must be sent to the acceptances close date?*

### **Response:**

From a custodian perspective this is not an issue as our clients investing in the security would have received the details of the event when the issue was originally announced and this should provide them with sufficient time to make an investment decision. We wish to re-enforce that providing electronic methods of acceptance and payment will maximise the ability for custodians to extend internal instruction deadlines versus the market deadline as it removes the need for the physical delivery of application forms and manual payments (bank cheques), which can reduce the timeframe the investor has to make a decision by 1 day.

*13. If you do not think it is feasible to reduce the disclosure period from 10 business days to 7 business days, what are your views of a smaller reduction in this period from 10 business days to either 8 or 9 business days?*

### **Response:**

Not applicable. As per our response to question 12 from a custodian perspective we support the reduction in the disclosure period from 10 business days to 7 business days.

*14. What are your views on whether the increasing use of low-documentation offers using a cleansing notice and of electronic methods of acceptance and payment support the case for reducing the disclosure period?*

### **Response:**

On the provision that all necessary information is included within the documentation released (including but not limited to foreign restrictions, oversubscriptions and eligibility at the beneficial owner level where shares are being held by a custodian), then we see no issues with the issuance of this type of documentation. Ensuring all necessary information is contained in this document can be achieved with standardising the information that needs to be provided by a company when making an announcement, which can be mandated by the ASX. As highlighted throughout this paper we fully support electronic methods of acceptance and payment and would welcome the implementation of system infrastructure by the ASX that provides this capability for all listed companies i.e. rather than being determined by which share registry the company uses.

## **E. From day after acceptances close date to and including issue of securities**

*15. Given the general acceptance and use of electronic acceptance of offers and electronic methods of payments by shareholders, what are your views on whether a greater reduction in the number of business days in the period between the acceptances close date and the issue date than the 3 business day reduction canvassed in the proposal can be achieved (that is, whether 2 business days would be sufficient for this part of the timetable)?*

### **Response:**

ACSA supports the earlier dispatch of entitlements resulting from the acceptance of a capital raising and sees this reduction in timeframe as a benefit to the Australian market. As highlighted throughout this paper ACSA would support the usage of electronic acceptance mechanisms to support the share registries achieving this outcome.

It is worth noting that there are some circumstances where a registry needs to contact the custodian (in relation to such issues as disclosure, oversubscriptions and shortfall offers), which may require the custodian to seek clarification from their client. It is paramount that where required this process still occurs and the shortened timeframe should not compromise any additional processes performed today to ensure that the allocation of entitlement shares is 100% correct. Some flexibility around this date within the timetable may be required in these limited cases.

*16. What are your views on whether a reduction in period between the acceptances close date and the issue date from 6 business days to 3 business days, or even 2 business days, provides sufficient time for finalising the details of the securities to be issued and to announce any under-subscriptions?*

### **Response:**

As outlined in our response to question 15 ACSA supports the earlier dispatch of entitlements resulting from the acceptance of a capital raising on the condition that any investigative processes required to ensure the accuracy of the allotment is not compromised. With a reduction in the timeframe that securities are issued ACSA members would welcome further discussion with the ASX around the review and potential to remove deferred trading given that it adds a further layer of complexity to our market.

## **F. Additional changes for renounceable rights issues timetable – rights trading**

*17. What are your views on the reduction in the period of rights trading which would result from the implementation of the proposals to shorten the standard timetable discussed in this paper?*

### **Response:**

ACSA does not support a rights trading period where the rights cease trading 3 business days prior to the applications close date. Under this proposal rights trades would be settling on the application close date, which cannot be achieved under the current environment where bank cheques are being prepared and attached to completed application forms and in some cases then being sent interstate to share registry offices.

Whilst electronic acceptance and payment will assist this process allowing rights to settle on the applications close date does not provide enough time for those engaging in trading to be certain of their rights holding when lodging their application. This becomes more of an issue when custodians are dealing with non-resident clients and may need to seek instructions on rights trades that have just been settled into their account. Given the segregation of trading, settlement and corporate action areas within a majority of organisations a non resident client may not be aware that there is an uninstructed rights position until this has been communicated to them by the custodian. Sufficient time is required for this to occur, which is why the 5 day period between rights cease trading date and applications close date in existence today works well. Similar to the themes in the ACSA discussion paper on dividend election dates released in May 2012 a minimum of 2 days is required between the time an entitled position is finalised and the election on this position needs to be submitted.

*18. What are your views on the approach of maximising the rights trading period in the reduced timetable, by reducing the period between the end of rights trading and the acceptances close date? Do you think that the benefit of extending the rights trading period outweighs the loss of time for those investors who bought rights on the last day of rights trading to lodge application forms and payments?*

### **Response:**

As outlined in our response to question 17 extending the rights period is not workable and in our view the risks significantly outweigh the benefits from this proposed change. ACSA does not support the proposed changes to reduce the period between rights cease trading and applications close date from 5 to 3 days.

*19. What are your views on the inability in the reduced timetable to extend the rights trading period if the acceptances close date is extended on the minimum notice proposed to be required? Is this an appropriate trade-off for providing companies with as much time as possible under the reduced timetable to assess the progress of the rights issue and decide if an extension in the offer period is required?*

### **Response:**

In line with our responses to question 17 & 18 we do not believe that this matter warrants consideration as our view is that the period between rights cease trading and applications close date

should not be shortened. As a general comment should there ever be a timetable change to an event then this must be communicated with at least 48 hours notice to add certainty to the applications closing date.

## **Longer term considerations**

### **Retrospective record date**

ACSA's main concern around retrospective record dates relates to the inability of stock loan transactions to be unwound before the calculation of entitlements. This concern is in the context of standard stock lending agreements whereby the borrower must 'protect' (i.e. make good) the lender on events such as rights offers. Many participants tend to unwind all or some types of stock loan transactions before the record date as a matter of course to avoid the costs involved in one party having to protect the other. However the ability to unwind stock loan transactions before the calculation of entitlements is especially critical for accelerated offers because under such offers the owner of the stock in the eyes of the issuer is deemed to be the party that holds the stock on the record date – i.e. the borrower. However if the borrower is a resident of an ineligible country and is treated as the owner of the stock they will be excluded from participating on any on hand holding and will not be in a position to make the lender good under the terms of the offer. This leads to the borrower being exposed directly as a result of the offer having a retrospective record date.

Unless specific clauses are introduced for all offers as standard to cater for the above conflict then retrospective record dates should not be allowed for any rights issues.

### **Electronic dissemination of disclosure documentation and electronic payment**

As highlighted throughout this paper ACSA is fully supportive of any improvement to infrastructure that supports the electronic dissemination of disclosure documentation and in particular the electronic method of acceptance and payment.

ACSA would welcome further discussions concerning applying this type of infrastructure across all events in an effort to decrease cost & risk and create efficiencies in the Australian market.