

ACSA Corporate Actions Working Group Bulletin – March 2009

ACSA Re-confirms the Policy on Share Purchase Plans Events

The Australian Custodial Services Association's (ACSA) policy to not offer Share Purchase Plan (SPP) events to underlying beneficial owner clients was unanimously re-confirmed by members in a recent Corporate Actions Working Group meeting.

The original policy decision on SPP events was formulated by the ACSA members in 2004. Under that directive the members agreed to not offer SPP events to the underlying clients of custodians. This ruling was made in accordance with legal advice received in relation to the Australian Securities and Investments Commission (ASIC) Class Orders 02/831 and 02/832.

In recent months however a number of listed entities have approached the custodians with an avenue for participation in SPP events. The non-standard approach primarily centred on the entity allowing custodians to submit a list disclosing details of the participating underlying beneficial owners with their SPP application. This turn of events caused confusion amongst the custodian community with some members taking up the opportunity to participate while others refrained. The ACSA members agreed to review the situation with the relevant internal and external parties to determine an appropriate future course of action.

An integral part of the review process was an approach to the market regulator ASIC. A meeting was arranged with representatives from both ASIC and ACSA and following this discussion a statement was issued via email from ASIC in respect of participation in SPP events. The statement read as follows:

“Further to my previous advice and as discussed in our telephone call today, I confirm that on the terms of Class Order 02/831, underlying beneficial holders of nominee companies that appear on a company's share register may only receive an offer under a share purchase plan where those underlying beneficial holders are expressly noted on the register of the company at the time the offer is made.”

The guidance communicated during the meeting by ASIC on the terms of Class Order 02/831 and the subsequent email statement reaffirms that the underlying client of a custodian must be 'expressly noted' on the share register at the time the offer is made in order to participate in a SPP event.

The general structure of ACSA members is to operate omnibus registered shareholdings, which does not individually identify the beneficial owner on the company share registry. Consequently ACSA members are excluded from participating in SPP events.

Following the latest ASIC guidance on this issue it was unanimously resolved by the members to cease offering SPPs to their underlying clients to ensure compliance with ASIC policy. The members agreed the effective date for this policy as Monday 2 March 2009 and this will remain in place for all SPP events unless any relevant amendments to the Class Orders are issued in the future.