23 October 2012

Ms Diane Lewis
Regulatory & Public Policy
ASX Limited
20 Bridge Street
Sydney NSW 2000
By email: regulatorypolicy@asx.com.au

Dear Ms Lewis

ASX BookBuild Consultation Paper

ACSI would like to make the following submission in response to ASX's September 2012 consultation paper entitled *ASX BookBuild: Bringing efficiency, fairness and transparency to the primary equity market*.

In broad terms, ACSI welcomes the advent of ASX BookBuild as a new option for companies seeking to achieve their legitimate capital raising needs. However, we also believe that this initiative needs to be considered in the context of Australia's overall capital raising policy and regulatory framework, which we believe still requires some significant improvements to better protect long-term portfolio investors including superannuation funds.

1. About ACSI

The Australian Council of Superannuation Investors (ACSI) represents 38 profit-for-members superannuation funds who collectively manage over $350 billion in investments on behalf of Australian superannuation fund members.

As long-term fiduciary investors, ACSI's members believe that transparent, fair and accountable market practices are essential to sustained wealth creation and capital market integrity. Companies, investors, regulators and policy-makers alike have a responsibility to pursue equity among all market participants, as well as promoting the expansion of companies and increasing transaction volumes and liquidity of markets.

2. Key Principles

As noted in our previous submissions on various aspects of the ASX's recent capital raising reform proposals, one of ACSI's core principles is the protection of pre-emptive rights of existing shareholders to participate in new capital raisings by companies. In a nutshell, this means that, unless extraordinary circumstances require otherwise, incumbent shareholders should not have their equity diluted without their express agreement. In cases where such dilution does occur, existing shareholders should be fairly compensated, most obviously via a rights premium.[1]

[1] The full text of ACSI's policy on protection of pre-emptive rights can be found at Section 17.5 of our Corporate Governance Guidelines, available at
http://www.acsi.org.au/images/stories/ACSIDocuments/cg_guidelines_2011_final_version_22.06.11.pdf

These principles are most clearly achieved through companies using pro-rata, renounceable rights issues to raise capital – a form of capital raising that is outside the direct scope of the current consultation.

We also recognise, however, that rights issues can entail considerable administrative costs, time delays and underwriting risks and costs for issuers, so more expedient forms of capital raising such as private placements are sometimes necessary. In this context, ACSI welcomes the advent of the ASX On-Market BookBuild initiative, as it should (in cases where placements are indeed justified) provide a mechanism to:

- Reduce the dilution suffered by existing investors, relative to the experience in conventional placements managed through investment banks.
- Minimise the direct costs paid to intermediaries to reflect the actual value delivered.
- Maximise the price for renounced rights (if the mechanism is extended to renounceable rights issues), thereby maximising the compensation if incumbent shareholders elect not to participate.

Notwithstanding some reservations noted below, ACSI believes that the current proposal (as it relates to placements) is a positive step in achieving these objectives.

Sections 3 to 5 discuss ACSI's views on the current proposal against the three points above as they apply to placements in more detail. Section 6 offers a brief comment on the application of ASX BookBuild to initial public offerings (IPOs). Section 7 offers ACSI's position on the role of shareholders to ensure efficient and equitable capital raisings how disclosure requirements can be improved to further advance investors' interests.

3. Minimising the discount for placements

In the media release accompanying the consultation paper, one of the purported benefits of ASX BookBuild is "greater capital raising efficiency with lower discounts". This statement is no doubt premised on the belief that facilitating more demand for a fixed supply of shares should naturally increase the price for those shares, and consequently decrease the discount to the trading price.

Whilst this argument appears reasonable in principle, there is of course no empirical information as yet to establish that this benefit will eventuate in practice. It has previously been argued (at least in in the case of IPOs)[2] that competition between investment banks (or other managers) is already putting sufficient pressure to achieve optimal results, while the international experience does not provide conclusive evidence that an on-market open process will necessarily yield lower discounts in all cases.[3]

Ultimately, given that the use of ASX BookBuilds will be voluntary for companies, the actual price outcomes achieved from using it will determine whether it achieves its stated goals. It is therefore incumbent on ASX to substantiate the link between the on-market bookbuild facility and reduced discounts, and this will be an ongoing requirement once the new service becomes operational.

[2] For example, Wilhelm Jr, W.J.(2005) 'Bookbuilding, Auctions, and the Future of the IPO Process', *Journal of Applied Corporate Finance,* 17 (1), 2-13.
[3] Ljungqvist, A. et al (2003) 'Global Integration in Primary Equity Markets: The Role of U.S. Banks and U.S. Investors', *Review of Financial Studies,* 16 (1), 63-99.

4. Minimising the direct cost

Whilst recognizing that the main source of value-leakage for existing investors who do not participate in placements is generally the size of the discount rather than direct costs, ACSI believes that issuer companies should still seek to minimise those direct costs, in order to ensure the fees paid to intermediaries reflect actual value delivered and risks actually incurred.

In this regard, ACSI notes that details of the proposed costs of ASX BookBuild to companies have not been included in the consultation material. Given that ASX BookBuild appears to be a relatively streamlined and automated process, ACSI would expect costs to issuers to be reasonable. ASX should be open and transparent in disclosing the pricing of ASX BookBuild.

5. Maximising the price delivered for renounced rights

The ASX's proposal in its present form does not apply to bookbuilds for renounced rights in a renounceable rights issue, but this is a specific area upon which the consultation paper is seeking feedback (question 5).

Again, ACSI's view is guided by our preference for renounceable rights issues and for maximising compensation for dilution if incumbent shareholders do not participate. In the current context, ACSI supports any process which ensures that efficient pricing occurs by maximising the rights premium for renounced rights.

As such, in principle ACSI supports using ASX BookBuilds as a mechanism for pricing and distributing renounced rights as well as placements and IPOs. However, the same caveats apply as above as to the need for practical evidence that the on-market bookbuild process delivers its intended outcomes of maximising the price, once it is operational.

6. Use of ASX BookBuild for IPOs

While ACSI's comments above largely relate to placements, it is recognised that ASX BookBuild is intended to be used for IPOs as well.

Broadly, ACSI supports the application of ASX BookBuild to IPOs to the extent that it will make public listing more attractive to private companies by allowing them to realise a better price for their company and reduce the extent of systemic IPO underpricing.

7. Empowering shareholders by improving disclosure rules for placements

The cost and discount outcomes of placements for investors are obviously driven by the *process* of capital allocation and in this regard ACSI sees ASX Bookbuild as a welcome addition to the tools at the disposal of issuers to achieve a good outcome.

However, echoing our comments in previous submissions on capital raising issues, ACSI would like to reiterate that mandating *stronger disclosure requirements* will also drive better outcomes.

Currently, placements are under a significantly weaker disclosure regime than rights issues. In particular, rights issues require disclosure of both parts of Appendix 3B, whereas placements require compliance with Listing Rule 3.10.3 on announcement, then only Part A of Appendix 3B.

This disclosure discrepancy will still in our view incentivise companies to routinely adopt placements even though there are few if any compelling reasons to do so ahead of rights issues. Moreover, when placements are adopted, it does not enable investors to scrutinise the selection process for participants and how the discount and costs were determined.

In this context, ACSI believes the appropriate regulatory response would be to strengthen the disclosure requirements for placements, in addition to encouraging innovation in the products and services offered by the ASX or other market operators to manage the process. In this regard, ACSI proposes that where companies undertake placements, they should be required to clearly explain to their shareholders (at least retrospectively):

- Why it was necessary to waive pre-emptive rights (in other words, why a rights issue was not used).
- How the placement was priced.
- How the placement participants were chosen and by whom (this could include why a particular bookbuild process was chosen).
- The identity of placement participants who increase their ownership interest above a material threshold because of their selective participation in the placement (for example, increases of more than 2% of the company's total shareholder base).

Further, investors' ability to scrutinise the *direct costs* of placements could be improved by introduction of disclosure requirements specifying (if applicable):

- The identity of advisors and underwriters.
- The fees paid to advisors and underwriters.
- A breakdown of the fees paid to underwriters and those paid to sub-underwriters.

It would be reasonable for this information to be disclosed retrospectively to retain the relative administrative ease and speed of conducting placements.

Disclosure of these salient facts will empower shareholders to more effectively monitor capital raising decisions made by directors of the companies in which they invest. It will strengthen director accountability for their capital raising decisions and also push their intermediaries to drive better outcomes.

Thus, improving disclosure should result in smaller discounts, less dilution and lower fees for investors.

8. Conclusion

ACSI would like to thank ASX for its on-going proactive approach to consulting with asset owners on this proposal. Notwithstanding some concerns yet to be addressed, we are happy to lend our in principle support to the particular measures proposed. We look forward to ASX continuing to inclusively consult on other capital raising reforms.

Please do not hesitate to contact me or Paul Murphy, Manager Institutional Investments if you would like to discuss our submission in more detail.

Yours sincerely,

Ann Byrne
Chief Executive Officer

Appendix: Answers to specific feedback sought on p. 13 of Consultation Paper

1) **Are there any operational matters that should be taken into account for the purposes of ASX BookBuild®?**

   ACSI has no specific comments on operational aspects of the proposal other than the following.

   If ASX BookBuild is extended to selling renounced rights, the issuer should not be required to sign up to ASX BookBuild until after the initial allocation occurs and the amount of renounced rights is known.

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2) **Are there any operational reasons why you would not be able to use ASX BookBuild®?**

   No comment.

   ACSI is not itself an investor so this question is not applicable in our situation.

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3) **In relation to the random timer discussed in paragraphs 3.17 and 3.18 do you think it is appropriate for there to be a period of 10 minutes added to the random timer in circumstances where the TLM has changed a public bookbuild parameter?**

   No comment.

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4) **Are you aware of any internal costs that you or your organisation would incur in using ASX BookBuild®?**

   No comment.

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5) **Can you suggest any future improvements or enhancements to ASX BookBuild® (e.g. allowing ASX BookBuild® to be used for a bookbuild of renounced rights in a rights issue)?**

   Please refer to Sections 5-7 of our Submission, relating to the extension of the facility to rights entitlements in rights issues and to IPOs, and new disclosure requirements that we believe would improve capital raising practices in Australia generally.
