14 August 2012

Ms Diane Lewis
Regulatory & Public Policy
ASX Limited
20 Bridge Street
Sydney NSW 2000

By email: regulatorypolicy@asx.com.au

Dear Ms Lewis

Modernising the timetable for rights issues

ACSI would like to make the following submission in response to ASX's July 2012 Discussion Paper entitled "Modernising the timetable for rights issues: Facilitating efficient and timely rights issues".

We appreciated the opportunity to discuss our views in our telephone consultation with you on 27 July. This submission seeks to confirm and expand upon the key points we raised in that discussion.

About ACSI

The Australian Council of Superannuation Investors (ACSI) represents 39 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.

Key Principles

One of ACSI's core principles is that, wherever practicable, the pre-emptive rights of existing shareholders should be protected in cases where established companies are seeking to raise new capital. Unless extraordinary circumstances require otherwise, shareholders should not have their equity diluted without their express agreement, and in cases where such dilution does occur, existing shareholders should be compensated, most obviously via a rights premium.[1]

These principles are most clearly achieved via rights issues, particularly where rights are renounceable.

[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

We also recognise, however, that the current regulatory framework for rights issues can entail considerable administrative costs, time delays and underwriting risks for issuers, reducing their attractiveness relative to other, more expedient forms of capital-raising.

ACSI therefore commends the ASX for seeking to streamline the process and timetable for rights issues, and welcomes the opportunity to comment on the specific measures proposed.

Support for ASX Immediate-Term Proposal

The centrepiece of the ASX's proposal is to reduce the time taken to complete a standard rights issue from 26 to 16 business days, by streamlining various notification periods and administrative requirements of the current regulatory process (but within the confines of the existing legislative framework).

ACSI strongly *supports* the ASX's proposal, on the basis that these streamlined arrangements should:

- Lead to rights issues being adopted more often in preference to placements;
- Make it easier for boards to respect existing shareholders' pre-emptive rights - in particular by undertaking more renounceable rights issues; and
- Contribute to a material reduction in underwriting and management fees because of a reduced exposure to market risk. As such, these measures should lead to shareholders having more of their financial resources invested in the company rather than being paid in fees to financial intermediaries.

Our only proviso is that the ASX needs to ensure sufficient room is retained to accommodate *renounceable* as well as non-renounceable rights issues. We understand from discussions with custodians that the additional process steps required for successful management of renounceable issues might require up to two days to be added back into the standard timetable, to facilitate settlements following the cessation of rights trading (a step that is of course not required in the case of non-renounceable issues).

We encourage ASX to take this detail into account in formulating its final approach, as we would not favour an outcome that had the effect of disadvantaging renounceable issues.

ACSI also considered whether certain aspects of the ASX proposal (such as the shortening of the cum-entitlement period) might potentially inhibit other mainstream activities of institutional investors, such as securities lending arrangements and participation of offshore investors in Australian rights issues.

On balance, however, we concluded that the impacts of the proposed change will be minimal in practice given that short-term trading strategies such as cum-entitlement trading are relatively unusual for long-term investors such as ACSI members and their external managers.

Moreover, we believe that any adverse impacts that may be experienced in particular cases are outweighed by the improved outcomes expected for shareholder generally, described above.

Support for Longer-Term Reforms

Aside from these immediate-term proposals, the ASX has sought comment on some further reforms to take the rights issues timetable to under a week. These further reforms would be contingent on legislative changes, principally to:

- Introduce a *retrospective record date* (i.e. participation to be confined to investors already on the register at a date prior to the announcement of the rights issue); and
- Mandate the use of online communication and e-commerce technology to reduce delays inherent in the current process (e.g. the requirement for rights allocations to await bank clearance procedures for cheque payments).

In principle, ACSI supports the adoption of these additional measures to further streamline the rights issue process.

In the case of the retrospective record date, we understand that there are likely to be some issues around the potential impact on borrowers of stock under securities lending arrangements. We expect this concern to be raised by other respondents to the ASX consultation, and agree that it is a matter that should be considered in any subsequent formal reform proposals. Nevertheless, ACSI's preliminary view is that the benefits that would accrue to all investors in terms of further timetable reductions are still likely to outweigh any detriment likely to be suffered by particular investors. Indeed, if anything, the retrospective record date would be more equitable in that it would remove the scope for short-term opportunistic arbitrage strategies around rights issues.

ACSI is also strongly supportive of the ASX and ASIC promoting the greater efficiencies that can be gained through wider take-up of electronic communication mediums and payments. Whilst a reasonable opportunity would be needed for some investors to transition from hard copy documents and payments, the overwhelming majority already use electronic documents and payments, and there is a common interest among all investors in stripping unnecessary costs and inefficiencies out of the system.

We would also point out that the ASX's general intent in this area is consistent with other current initiatives in the area of e-commerce and channel migration for individuals' interaction with public agencies – for example, in the area aspects of health insurance, and the SuperStream reforms in the superannuation industry.

Broader Context - Capital Raising Reforms and Disclosure Framework

ACSI recognises that ASX is undertaking this consultation in the context of a broader, staged reform of capital raisings in Australia. We understand that proposals regarding other capital raising mechanisms (e.g. accelerated rights issues and placements) are scheduled to be released for consultation by the ASX within the next few months as part of this process.

In this context, ACSI would like to foreshadow some broader concerns we have about the overall capital raising framework in Australia, to place our support for the current ASX proposal and possible future changes in their appropriate context.

As noted in the introduction, ACSI's underlying concern in the realm of capital raising is the protection of existing shareholders' pre-emptive interests. The improvements that should stem

from the ASX's current proposals are certainly welcome in principle and underlying intent in advancing these interests. Nevertheless, we believe that these improvements will not necessarily eventuate in practice if company boards continue to eschew traditional rights issues in favour of other, more expedient methods of raising capital.

In this regard, ACSI notes that under current rules, the disclosure standard required for companies to undertake selective institutional placements remains significantly lower than it is for pro-rata rights issues. 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, notwithstanding the reforms that are currently being proposed.

ACSI recognises of course that it is not the role of ASX or of regulators to direct or to intervene in particular decisions made by boards of listed companies. However, we do believe scope exists to improve the overall *disclosure framework* around capital raising rules, to allow shareholders to more effectively monitor decisions made by directors of the companies in which they invest.

In this broader context, ACSI believes that the appropriate regulatory response would be to promote improved comparability of disclosure requirements between rights issues and placements, such that where companies utilise 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; and
- how the placement participants were chosen and by whom

Second, we believe that investors' ability to scrutinise the *costs* of placements among ASX listed companies could be improved by introduction of disclosure requirements specifying:

- The identity of advisors and underwriters (if applicable)
- The fees paid to advisors and underwriters
- A differential in the fees paid to underwriters and those paid to sub-underwriters (if applicable)

It would in our view be reasonable for this information to be disclosed after the placement is undertaken to retain the relative administrative ease of conducting placements.

These improvements in disclosure would enable shareholders to effectively monitor and scrutinise the capital raising decisions of companies. They could, we understand, be implemented by changes to the Listing Rules and Appendices without necessarily requiring legislation.

ACSI appreciates that these issues are outside the immediate scope of the ASX's current review of rights issues as such. However, we raise them here to foreshadow what we see as important issues of principle that we encourage the ASX to take into account in its forthcoming reviews of other capital raising mechanisms. We look forward to the opportunity to expand on these points in subsequent consultations.

Conclusion

ACSI would like to thank ASX for its proactive approach to consulting with asset owners on this proposal, and we are happy to lend our support to the particular measures proposed. We also look forward to ASX's upcoming consultations on other capital raising mechanisms.

ACSI always welcomes the opportunity to engage in constructive discussions with the ASX, ASIC and Government representatives on these issues.

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