



Australian Securities and Investments Commission

Business compliance costs for proposed class order relief for sale facilities

The following is an assessment of the business compliance costs for ASIC's proposal to facilitate the operation of certain sale facilities and related purchase facilities by granting class order relief from the following provisions of the *Corporations Act 2001* (the Act):

- the prohibition on unsolicited offers in s1019F of the Act; and
- for the avoidance of doubt, the managed investment provisions in Chapter 5C, the licensing provisions in Part 7.6, and the Product Disclosure Statement provisions in Part 7.9 of the Act.

Number of businesses affected by the proposal

The proposed relief will cover:

- product issuers that offer a sale facility,
- financial services licensee engaged by the product issuers to sell product on a financial market, and
- the product issuer's share registry.

The proposed relief will only apply to certain sale facilities—e.g. facilities where the licensee sells the shares or interests at a price that is determined in the ordinary course of trading on a licensed market or approved foreign market.

We estimate that approximately 14 sale facilities are likely to be operated per year. This estimate is based on the average number of sale facilities for which ASIC has received individual relief applications over the past four years. We do not expect any significant change in the number of sale facilities offered following the proposed class order relief.

We anticipate that all of these sale facilities would be operated through one of the two major share registries that operate in Australia. This is based on our experience dealing with past individual relief applications.

Assessment of business compliance costs

Up-front costs

We estimate that up-front costs to access the class order relief would be borne by the two share registries that assist their clients to provide sale facilities. The estimated costs are \$20,000 for designing of disclosure documents, legal advice and system modifications. This estimate is based on information provided by one of the registries in response to Consultation Paper 85 *Share and unit sale facilities* (CP 85) (the other registry supported the proposal but did not provide any cost information). As the registries provide services in relation to a number of sale facilities, we would expect these would be one-off costs that they would recoup from a number of clients, and not a cost that recurs for each sale facility with which the registry is involved.

Ongoing costs

For each sale facility operated by an issuer, it will incur costs in complying with the proposed disclosure condition (e.g. legal, printing and distribution costs). However, we do not think the proposal will significantly increase these costs for issuers because:

- the invitation that issuers send out will usually already contain most of this information; and
- the disclosure condition will not have a significant impact on printing or distribution costs—these are costs that issuers will incur regardless of whether ASIC imposes the disclosure condition.

We estimate the total additional cost each time an issuer offers a sale facility will be approximately \$160 for legal advice on compliance with the terms of the class order. This estimate is made on the basis that the class order will be about 3-5 pages long and would be likely to involve about two hours of legal services. Cost of an in house lawyer (five years post admission) estimated to be about \$80 per hour (source: Mahlab lawyer salary survey). This cost will be incurred by approximately 14 issuers per year (see above under 'Number of business affected by the proposal').

Cost savings

The cost impact of not giving the proposed class order would involve making individual applications for relief.

We estimate that the cost savings of the proposed class order relief will be:

- statutory application fees of approximately \$4620 (per issuer) – this estimate is based on the fees typically payable for relief applications received by ASIC over the last four years; and
- legal costs of approximately \$400 (per issuer) – this estimate is made on the basis that preparing an application and responding to any queries from ASIC is likely to involve approximately five hours of legal services. Cost of an in house lawyer (five years post admission) estimated to be about \$80 per hour (source: Mahlab lawyer salary survey).