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Share Register and USO Options Paper
Corporations and Financial Services Division
The Treasury
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Introduction

Insurance Australia Group (IAG) welcomes the opportunity to provide comment on the *Options Paper* – Access to share registers and the regulation of unsolicited off-market offers (May 2009).

Who is Insurance Australia Group?

IAG is an international general insurance group, with operations in Australia, New Zealand, the United Kingdom and Asia. Its current businesses underwrite more than \$7.8 billion of premium per annum. It employs more than 15,000 people of which around 9,500 are in Australia. IAG operates some of Australia's leading insurance brands including NRMA Insurance, CGU, SGIO, SGIC and Swann Insurance. IAG also distributes insurance in Victoria through the RACV brand. IAG insures approximately one in three motor vehicles, and one in four homes, in Australia.

IAG has a crucial interest in the long-term viability of insurance as a product valued by the Australian community. IAG believes that there are four principal ways in which the insurance industry can best meet these objectives. These are:

- Providing affordable products that price the risks underwritten realistically.
- Promoting risk awareness and risk reduction both for policyholders and in the community generally.
- Investing in robust risk control frameworks and management mechanisms that reduce operating expenses, make claims costs more predictable and facilitate sustainable profitability for shareholders.
- Committing to, and supporting, on a continuing basis, a comprehensive and clearly defined regulatory framework that ensures that customers understand what they are buying when they purchase a policy and protects policyholders against financial failure of an insurer.

General Comments

IAG takes the process of warning shareholders about "low-ball" offers seriously and regards this as an important part of the financial literacy education process and has taken a number of steps to try to ensure more unsophisticated shareholders are aware of the value of their shares and less prone to accept for such offers. This has included:

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- writing to all Australian shareholders individually on two occasions to warn them of potential offers that were going to be issued to them;
- writing to Australian shareholders to advise them of alternative methods for disposal of their ordinary shares at market value;
- inserting the market value of each individual's holding on their six-monthly dividend notices;
- facilitating access to an online broker via IAG's website for online trading of IAG listed securities; and
- issuing media releases and liaising with the media extensively whenever new offers are issued. We have also posted warnings on our website and on the ASX announcements platform.

It is of note under past offers for IAG shares, shareholders have foregone in excess of \$13.8 million by accepting the undervalued offers rather than selling their shares on the ASX. More than 12,000 IAG shareholders have accepted these offers, which mean they have missed out on average more than \$1,100 each.

ACCESS TO COMPANY AND SCHEME REGISTERS

Proper purpose test for access to registers	
Issue	Option A
<p>Currently there is no proper purpose test for access to share registers, only for the use of the information obtained.</p>	<p>That a proper purpose test be introduced for access to share registers.</p> <p>IAG submits that the access to the register for the purpose of making unsolicited offers to purchase the shares of members should be subject to greater constraints than is currently the case including satisfying a "proper purpose test". Many IAG members have expressed their concern that the register access provisions do not take into account the privacy of their personal information contained in the register and that there is currently no mechanism for balancing the interests of members and that of the person seeking access to the register. A proper purpose test would also offer a mechanism to consider the interests of members including the privacy of their personal information in any request for access.</p> <p>IAG believes the term "proper purpose" should be defined to provide a guide of those purposes which are considered appropriate and with sufficient breadth to enable consideration to be given to the individual circumstances of each request. One of the factors that may be considered in weighing up whether a request is for a proper purpose or not, is the privacy of members of a company.</p> <p>The <i>Corporations Act</i> currently makes no provision relating to members privacy and the register inspection requirements in fact override the Privacy Act. IAG members have objected to the provision of their personal information to third parties under the register inspection requirements of the <i>Corporations Act</i> and many have considered this to be a breach of their privacy. In particular, information regarding the share holding of members and the dates on which shares have been acquired or shares sold provides some information related to the financial position of members which is considered to be highly confidential information by many members. In some cases, members also object to the time and expense incurred by the company in providing access to their personal information with the result that unwanted correspondence is received.</p> <p>IAG also submits that the proper purpose test should also apply to any person or organisation to which the first person provides a copy of the register.</p>

Fees for copies of member registers	
Issue	Option B.1
<p>The current fee regime of 'marginal cost' has been criticised for being overly complex and difficult to apply.</p>	That the current marginal cost arrangement be retained.
	Option B.2
	That marginal cost be replaced with a concept of reasonable cost.
	Option B.3
	That a company be permitted to pass on the full cost of access to member registers.
	Option B.4
	That the fee for access be based on market cost.
	Option B.5
	That a company be required to negotiate the fee with members and third parties.
	Option B.6
That the prescribed fee for access to member registers be aligned with the takeovers prescribed fee.	
Option B.7	
That a combination of the options above be adopted.	
	<p>IAG supports Option B3. IAG does not maintain its own register and utilises the services of an outsourced provider of share registry services, Computershare. IAG has a Registry Services Agreement (Agreement) with Computershare. The Agreement, amongst other items, details the cost of providing a copy of the register to third parties.</p> <p>While this option removes the need for companies to determine a fee for access to registers based on either marginal cost or one based on reasonable cost it does not address the issue of attempting to acquire the services at the lowest possible price.</p>
Format and medium for electronic copies of registers	
Issue	Option C
<p>There is no current requirement for copies of a register to be provided in the format requested. This is particularly an issue where copies are requested in a specific electronic format.</p>	<p>That the legislation be changed to reflect the advances in technology that make it reasonable for a format request to be complied with.</p> <p>The references to outdated technology (floppy disk) be amended to a less specific format.</p> <p>Agreed. See also response to Option D.</p>

Inspection of the register on computer

Issue

There is an anomaly in the current provision that enables someone inspecting a register on a computer to request a print-off, essentially providing them with a low cost copy of the register.

Option D

That the provision be altered to reflect increased levels of computer literacy and to avoid the situation where companies are required to provide a copy of the register without being paid the appropriate fee.

A significant burden is placed upon companies with large shareholder registers in providing access to members to a hard copy of the members' register free of charge. In our experience, this hard copy can be copied by the member using whatever technology is available and without any right of companies to recoup the cost of producing the hard copy register in a facility provided by IAG.

We do not consider the interests of the other members of companies are served by bearing these costs nor do we think that the objects of the *Corporations Act 2001* in providing access to the public are well served and that, as currently drafted, those relevant sections of the *Corporations Act 2001* are clearly open to abuse.

In our view, where a register is maintained on computer, access should be in the medium in which it is maintained. There should be no right for a person or organisation to insist on the production of a hard copy. Instead, it is contended that both the company and the party requesting a hardcopy of the register *must both agree* to the provision of a hard copy of that computer based register at a prescribed fee.

The anomaly arising through the operations of sections 173 and 1300 of the Act regarding the rights to inspect and copy the register imposes a heavy burden on companies with very large members' registers and is clearly open to abuse by persons who wish to frustrate the company for their own purposes including to obtain a copy of that register without payment of a prescribed fee. Moreover, where a copy of a register is provided to a person, there is no prohibition in the *Corporations Act 2001* on that person then distributing that register to other parties.

The aim of financial sector regulation is to reduce the impact of systemic risk and information asymmetry on the stability and efficiency of the financial system. However, an appropriate balance needs to be maintained between the efficiency costs and the benefits to financial safety. It is clearly not in the interests of members that company time and expense is put to meeting repeated and/or frequent requests to inspect the register particularly a hard copy of the register maintained on computer.

It is also apparent that an anomaly exists within the Corporation Act provisions relating to rights of access and to take copies of registers. This is illustrated by a recent request to acquire a copy of IAG's ordinary share register. In simple terms the way this anomaly works is as follows:

- A member of a company may inspect the company's register without charge;
- The member's right to inspect a hardcopy of a register does not apply where the register is kept on computer unless the person and the company agree that the person may access the information on computer;
- The member exercises his/her right to not agree to access the information on computer;
- The company is required to produce a hardcopy of the register for the member's inspection (in IAG's circumstances, a hardcopy of the register is around 11,000 doubled sided pages of A4 print and costs around \$28,000 to provide) without charge;

Inspection of the register on computer	
Issue	Option D
	<ul style="list-style-type: none"> The member indicates that he/she wishes to copy the register using either digital photography or portable scanning equipment; The member reminds the company that it is obliged under the Corporations Act Regulations to ensure that the register is current (being no older than 20 business days); To avoid printing the register every 20 business days to comply with its obligations under the Regulations the company agrees to provide the register to the member for a nominal fee (eg \$250 as recently set) to obviate the costs associated with multiple re-prints of the register. <p>The anomaly highlighted above provides a means for persons wishing to access the register to make such unsolicited offers at negligible expense while imposing an unnecessarily large expense on companies in granting those access rights. In addition, companies incur the cost of dealing with member's inquiries regarding such offers particularly as they have typically used various devices to confuse members as to the nature and source of the offer to purchase their share. In other words, the remaining shareholders of a company are in effect subsidising USO organisations to put below market offers to its potentially vulnerable and uninformed shareholders.</p>

OPTIONS TO PROTECT RETAIL INVESTORS

Cooling off period	
Issue	Option F.1
No formal cooling off period applies to allow targeted shareholders to withdraw from the contract/acceptance document once they have signed.	<p>Provide a one-month cooling off period for the accepting shareholder to withdraw from the contract or acceptance document before the contract became binding.</p> <p>See response to Option F.2 below.</p>
	<p>Option F.2</p> <p>Provide up to a three-month cooling off period for the accepting shareholder to withdraw from the contract or acceptance document before the contract became binding.</p> <p>Agreed. Given that some consumers who receive these offers may be less financially literate than other market participants a longer period of three months would be more appropriate.</p>
Consumer advisory warning	
Issue	Option G
Those who accept these offers are often not aware of the risks involved.	<p>That a consumer advisory warning be included with the offer document, highlighting the risks of acceptance.</p> <p>IAG supports the option of requiring the inclusion of a warning to be prominently displayed on the offer document as this would assist shareholders in better understanding the risks involved.</p>

Inclusion of an ASIC leaflet	
Issue	Option H
Those who accept these offers are often not aware of the risks involved.	<p>That an ASIC information leaflet be included with the offer documentation setting out the risks of acceptance of the offer.</p> <p>Agree. Like the Government, IAG recognises the importance of an efficient and transparent financial services sector.</p>
Companies procure brokers to purchase shares	
Issue	Option I
Consumers who accept low value offers may not be aware that there are other low cost means of selling their shares.	<p>That a pre-emptive right be given to companies to intervene in sales that do not reflect the market value of shares. Companies would have the option of organising a broker to purchase the shares for market value, instead of the sale at the low-value price proceeding.</p> <p>While intuitively appealing this option would require issuers or their agents to track share market trades and prices. This would imply implementation of some form of surveillance system and processes to identify transactions that are traded at a discount to their market value. The risk is that such systems and processes will identify transactions which have been made at below market prices where both a willing seller and a willing purchaser are fully informed of the prevailing market price of the security. In addition, such systems and processes are likely to impose a cost burden on issuers. It is also unclear that when intervention is determined what action should issuers take without some form of consultation with and the agreement of the seller.</p>
'Do not contact' register	
Issue	Option J
Some retail investors are concerned about the accessibility of their shareholder information.	<p>That companies be encouraged to establish a register of shareholders who do not wish to receive USOs.</p> <p>Agree, however this would not be necessary if a proper purpose test was introduced.</p> <p>It would also require a flag to be added to the shareholders account indicating that their details were to remain confidential and not used in any mass mailing. To maintain a separate register and cross match it to the share register and exclude shareholders not wanting to receive unsolicited mail may impose a cost burden on issuers.</p>
Prescribe format for the offer document	
Issue	Option K
Some offer documents may be unclear and difficult to understand.	<p>That the format of offer documents be prescribed so that they can be more easily read and the risks understood.</p> <p>Agree.</p>

Alternative sale method	
Issue	Option L
Many shareholders are not necessarily aware that there are alternative means by which they can sell their shares at low cost, but at market price.	That offer documents include a list of brokers through which shareholders can sell their shares at market prices. Agree, but implementation of this solution may give rise to some practical difficulties. It is not certain how brokers would be selected for this purpose. Issuers are not best placed to determine which brokers should or should not be included on the "list". In addition, many IAG shareholders do have access to the internet where the lower cost broking services are generally available.
Aevum case changes: Offers to remain open for at least one month	
Issue	Option M
It has been highlighted that the intention of the law for USOs to remain open for one month should be clearly stated in the legislation.	That the law be amended to clarify that offers must remain open for one month. Agree.
Aevum case changes: Unconscionable conduct provisions	
Issue	Option N
The current provisions regarding unconscionable conduct are generally not able to be applied to USOs.	That USO offerors be expressly subject to the unconscionable conduct provisions in the ASIC Act. Agree.
Evum case changes: Change the meaning of financial services	
Issue	Option O
Provided that persons are meeting certain disclosure requirements, under 2C of the ASIC Regulations, that person is deemed not to be providing a financial service and therefore ASIC's unconscionable conduct provisions do not apply.	That the ASIC Act be amended to remove limitations on ASIC's ability to take a USO offeror to court. Agree.

Again, thank you for the opportunity to provide comment on the *Options Paper*. If you wish to discuss this matter or make further inquiries please contact David Wellfare, Senior Adviser, Economics and Policy on (02) 9292 8593 or me on 9292 8026.

Yours sincerely



Glenn Revell

Company Secretary

Insurance Australia Group Limited