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MSC Group Australia  
MSC Abacus  
MSC Advisory  
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MSC Capital  
MSC Trustees

27 NOVEMBER 2020

House of Representatives  
Standing Committee of Tax and Revenue

By Email: [taxrev.reps@aph.gov.au](mailto:taxrev.reps@aph.gov.au)

Dear Committee members,

**Re: THE HOUSE OF REPRESENTATIVES COMMITTEE ON TAX REVENUE  
DEVELOPMENT OF THE AUSTRALIAN RETAIL CORPORATE BOND MARKET**

We refer to the standing committee on tax and revenue enquiry into the Australian Corporate Bond Market and the public hearing held on Friday 13 November 2020 (**Public Hearing**).

Melbourne Securities Corporation Limited (**MSC**) provided information, as part of the Public Hearing, with regards to the application of ASIC's internal policy when approving applications to act as Trustee under s283GB of the Corporations Act (2001) Cth (**Corporations Act**).

The information below outlines ASIC's current internal policy (**ASIC Policy**) and the inconsistency in application of this policy as requested by the Chair of the Committee.

## **1. ASIC INTERNAL POLICY**

The below table sets out the financial conditions that are imposed on Trustees when making an application under s 283GB Corporations Act.

### For unlisted debenture issuers

- (a) \$250,000 in net current assets per trusteeship; and
- (b) professional indemnity insurance (PI Insurance) equivalent to:
  - i) if the total value of debentures issued per trust is:
    - (A) \$5 million or less, the PI Insurance must be held at the total value of debentures issued; or
    - (B) more than \$5 million, the PI Insurance must be held for the greater of:
      - (I) \$5 million; or
      - (II) 25% of the total value of debentures issued;
  - ii) for multiple trusteeships, the applicant must maintain a level of PI Insurance that would allow it to claim on each separate trust; and
  - iii) any PI Insurance to be held for the applicant's actions as debenture trustee must be in addition to any PI Insurance that the body corporate is required to hold under its AFS licence obligations.



For listed debenture issuers

In order to be granted approval to act as trustee for listed debenture issuers a body corporate must:

- (a) only act as trustee for listed debenture issuers who do not, at the time the trustee is appointed, have a 'going concern' audit qualification or an emphasis of matter paragraph in their most recent financial report; and
- (b) possess:
  - i) net tangible assets of at least \$5 million; and
  - ii) PI Insurance covering aggregate claims of a minimum of \$100 million, in addition to any PI Insurance that the body corporate is required to hold under its AFS licence obligations.

## **2. APPLICATION TO TRUSTEE TYPE**

MSC's understanding is that the ASIC Policy and the related financial conditions is only applied to professional trustees and is not applied to traditional trustees. Both traditional trustees and professional trustees are subject to the financial compensation requirements regulated by the Corporations Act and outlined in RG 126. However, professional trustees are then subjected to ASIC's policy over and above the Corporations Act requirements. As such, traditional trustees are not subject to the same professional indemnity requirements as professional trustees that apply under Chapter 2L, due to ASICs internal policy regarding professional indemnity insurance only applying to the latter. The financial conditions with regards to professional indemnity insurance are significantly more onerous on professional trustees as a result.

MSC has also obtained anecdotal evidence in the market that ASIC has not applied the financial conditions of its own policy consistently to the professional trustees. This inconsistency in application of the policy has had a significant detrimental financial impact on some market participants. The detrimental impact has been exasperated by the deteriorating market environment for professional indemnity insurance.

## **3. POLICY CHANGES AND POLICY APPLICATION**

ASIC's policy provides for different financial conditions where the issuer is unlisted versus listed. The financial conditions outlined in ASIC's policy have been amended, without notice, over time.

### NTA

On MSC's first application in 2016, the NTA requirement was \$250k per transaction until the NTA reached \$5m. Since that time, ASIC amended the policy requiring for unlisted issuer transactions \$250k per transaction and listed issuer transactions an NTA of \$5m.

For each application, MSC has ensured that it has maintained NTA of \$250k per transaction and ASIC has applied this condition regardless of the issuer being listed or unlisted. For more



recent applications, each time MSC has needed to engage with ASIC to apply consistent application of policy application. As a result of the inconsistent application and changing policy requirements, there is no certainty with regards to the outcome of each application and how ASIC will apply policy from application to application regardless of the issuer being listed or unlisted.

#### PI Insurance

The ASIC Policy insurance requirements have varied overtime between requiring 100% of the total value of notes on issue to 25% of the total value of notes on issue and then later introducing a cap to PI insurance of \$100m.

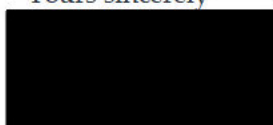
MSC note that only the larger financial institutions in the Australian market are required to hold PI insurance of \$100m. In addition, the issuers themselves are not subject to insurance requirements of this size based on the levels of note issuance.

#### **4. CONCLUSION**

There is a clear inconsistency in the application of financial conditions that are applied to professional trustees compared to traditional trustees that are over and above Corporation Act requirements. There is also clear inconsistency in how ASIC policy has been applied to professional trustees. This has resulted in trustees exiting the market and new trustees not willing to enter the market.

The need to engage with ASIC on the policy application for each application creates uncertainty on the conditions of approval and results in uncertainty for the issuer, impacting market disclosure and certainty over the ability to issue and timing of issuance.

Yours sincerely



**Shelley Brown**

Chief Compliance Officer and Company Secretary  
Melbourne Securities Corporation Ltd (MSC Trustees)