

ASIC

Australian Securities & Investments Commission
National Office, Sydney
135 King Street, Sydney
GPO Box 4866 Sydney NSW 1042

Telephone (02) 9911 2000
Facsimile (02) 9911 2066

30 April 1999

INQUIRY INTO EMPLOYEE SHARE OWNERSHIP IN AUSTRALIAN ENTERPRISES

I refer to your letter to Ms. Debra Russell dated 19 March 1999 advising of the above inquiry and inviting a submission from the Australian Securities and Investments Commission (ASIC) on:

“The extent to which employee share ownership schemes have been established in Australian enterprises and the resultant effects on:

- (a) workplace relations and productivity in enterprises; and*
- (b) the economy.*

ASIC does not have any direct information in order to comment on either matters (a) or (b).

However, since employee share schemes are regulated by ASIC under the Corporations Law, I thought it may be useful to provide you with some information about our policy and its current status.

Background

The prospectus provisions of the Corporations Law apply to employee share schemes because they are offers and invitations to subscribe for or purchase securities of a corporation.

ASIC's policy on employee share schemes is set out in Policy Statement 49 (copy enclosed).

1992 - ASC Public Hearing

In February 1992 the ASC (as it was then called) held a public hearing into the promotion and sale of foreign securities in Australia.

As a result of the hearing, ASIC recognised that the nature of an offer to employees to participate in the ownership of a corporation was different and distinct from the interests of a mere shareholder. Namely, the primary aim of such an offer was not

fundraising, but to foster the commitment and interdependence of the employer and employee for their long term mutual benefit.

In addition ASIC recognised that foreign issuers making offers under multi-national employee share schemes may run into difficulties when it was necessary to comply with prospectus provisions for the benefit of relatively few Australian employees.

ASIC concluded that if relief from the Law was not given, Australian employees may not receive employment related benefits which their employers (domestic or foreign) might otherwise offer.

1993 - Issue of Policy Statement 49

Policy Statement 49 provides for conditional relief from the prospectus provisions for offers made under employee share schemes where the corporation is listed on the ASX or on an approved foreign exchange¹.

Rather than providing a prospectus, the employer must provide the employee with an offer document which sets out the relevant terms and conditions as well as a copy or summary of the rules of the scheme. These documents must be lodged with ASIC within 7 days of making the offer (but they are not available on the public register).

1995 - Review of Policy

In 1995 Policy Statement 49 was reviewed and amended in line with prospectus changes to the Corporations Law (namely, the introduction of the continuous disclosure provisions). Once again the purpose of these amendments was to facilitate the making of offers under employee share schemes while ensuring that the employee retained basic investor protections provided for under the Law.

Current status of ASIC Policy Statement 49

Policy Statement 49 is currently being reviewed in light of the emergence of new types of employee share plans, particularly “salary sacrifice schemes” as opposed to the more traditional “contribution plans”² referred to in PS 49. It is apparent that these schemes have been developed in line with major changes under the Income Tax Assessment Act designed to prevent double taxation of benefits under employee share acquisition schemes.

¹ Current approved foreign exchanges are the New York Stock Exchange, the American Stock Exchange, the London Stock Exchange, the Tokyo Stock Exchange, the Frankfurt Stock Exchange, the Bourse de Paris, the Toronto Stock Exchange, the Zurich Stock Exchange, The Amsterdam Stock Exchange, the Milan Stock Exchange, The Stock Exchange of Hong Kong Ltd, the Stock Exchange of Singapore Limited or the New Zealand Stock Exchange provided that, if any such exchange has more than one board on which securities are quoted, securities shall only be taken to be quoted on that exchange if quoted on the main board of that exchange; or the NASDAQ National Market.

² In a “contribution plan” as contemplated under PS 49 employees make regular salary deductions towards paying for shares offered under the plan. In a “salary sacrifice scheme” monies for the shares are deducted first ie paid directly from the employer to the plan company rather than paid to the employee who then deducts the amount regularly from their salary.

In addition, Policy Statement 49 will also be affected by the provisions of the Corporate Law Economic Reform Bill 1998. According to the Explanatory Memorandum to the Bill, the purpose of the reforms is to minimise the costs of fundraising while improving investor protection. These are issues ASIC will focus on when further assessing Policy Statement 49 if the new provisions come into effect.

Statistical information available to ASIC

As I mentioned at the beginning of this letter, ASIC has no statistical information on the Inquiry's terms of reference.

The only information in the ASIC database relates to the number of employee share plans lodged in our various regions around Australia pursuant to the class order relief that we provide under the Policy.

If you feel that this information may be of benefit to your inquiry, please let me know and I will forward it on to you.

If you would like to discuss any issues further please ring me on (02) 9911 2680 or Ms. Vesna Zuro on (02) 9911 2664.

Yours sincerely,

Malcolm Rodgers
Director, Regulatory Policy Branch