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Committee Secretary
Senate Legal and Constitutional Affairs Committee
Department of the Senate
Parliament House
Canberra ACT 2600

By email: legcon.sen@aph.gov.au

Dear Secretary

Inquiry into the provisions of the Anti-Money Laundering and Counter Terrorism Financing Bill 2006

On behalf of Computershare Limited and its related bodies corporate, I would like to bring to the attention of the Committee two issues.

1. Background

Computershare Limited together with its related bodies corporate ('Computershare') is the global leader in securities registration, employee equity plans, proxy solicitation and specialised financial and communications services. Many of the world's largest corporations employ our innovative solutions to maximise the value of their relationships with investors, employees, customers and members.

2. Overview of businesses potentially impacted by the provisions of the Bill discussed below

Computershare Investor Services Pty Limited ('CIS')

A major function of CIS is the establishment and on going maintenance of registers of security holders in accordance with the Corporations Act 2001. CIS provides this service for companies and registered schemes. In relation to an initial public offering of securities, whether that be undertaken by a company or registered scheme, the functions of CIS are similar. Using the information contained within the application form, CIS will record details of the applicants (name, address and number applied for) and keep track of any transactions involving the securities. Where necessary, CIS will manage the refund of application moneys to unsuccessful applicants in an initial public offering.

Computershare Plan Managers Pty Ltd ('CPM')

CPM is a specialist division responsible for the management and administration of employee share and option plans. In the context of Trust based plans, one service that is provided is for a Computershare Trustee company to hold securities on behalf of plan participants, in accordance with the rules of the particular plan.

Computershare Funds Services Pty Limited ('CFS')

CFS provides securities registration services to the unlisted funds management sector. Similar to the services provided by CIS, CFS establishes and maintains the record of name, address and holding balance for holders of unlisted managed investment products.

3. Item 35 of Table 1 of section 6 - Securities issued by a trust

In the second draft of the Bill the corresponding item (item 36 of the same table) had been amended to exclude specified securities issued not only by a company but also specified securities issued by a trust. These exclusions were added to the item following comments (from us as well as other organisations) made in connection with the first draft.

In the Bill as it has been presented to Parliament, the exclusion in relation to securities issued by trusts has been removed.

While there may be public policy considerations that have lead to the further amendment of this item, we believe the exclusion should be reinstated, at least in respect of securities issued by a trust that has been admitted to the official list of an Australian securities market.

As noted in our earlier submission, it is the practice of professional registries (such as CIS), to accept only payments accompanying applications by way of cheque, direct credit or BPay. Cash is not accepted.

It was also noted that in the case of entities that are raising capital and intending to list on (for example) the Australian Stock Exchange, details of applicants for the new securities can be provided to the registry through the Clearing House Electronic Subregister System (CHESS), administered by the ASX Settlement and Transfer Corporation Pty Ltd as the prescribed settlement facility. This is in addition to the more traditional method of passing information; that being through completion by the applicant of a hard copy application form.

In cases where details of the applicants are passed through CHESS, CHESS participants (typically securities brokers) will arrange with their clients for the CHESS participant to receive the funds. The application amounts are then passed to the securities issuer via the CHESS settlement process.

Regardless of the method by which the funds are passed from the applicants to the issuer, there would have already been an identification process carried out and in some cases it may have been already duplicated. That identification could have been carried out by the bank on which a cheque for the application money has been drawn. If the applicant has made arrangements with a CHESS participant for the CHESS participant to lodge the application, the CHESS participant would have also carried out a customer identification process.

To add in a requirement that the issuer of the security (in this case the issuer of the units in the trust) also to carry out an identification, is an unnecessary and costly duplication.

Whilst it could be argued that the issuer could discharge its obligation by entering into an arrangement with, for example, each CHESS Participant that passes applicant details through CHESS, establishment of such agreements would be time consuming and could as a result increase the risks associated with the issue.

Further, it has the potential to require the establishment of two differing processing requirements; one similar to the existing processing requirement where it is securities of a company being issued in the initial public offering and one incorporating the additional layer of customer identification where it is securities of a trust that are being issued in the initial public offering.

We would also note that in recent times there have been a number of initial public offerings involving what has become known as ‘stapled securities’. In these instances, two or more securities are issued by (usually) two or more different issuers. However, they are structured in such a way that the securities can only be traded together; hence the term stapled securities.

In many of the recent initial public offerings that have involved stapled securities, the securities stapled together have included a share and a unit.

If the exclusion of trusts (or at least those that are to be listed on an Australian securities exchange) from the operation of item 35 of Table 1 of section 6, is not reinstated, where there is an issue of a stapled security that involves a share and a unit, a longer application period may need to be implemented to cater for the additional identification requirements.

4. Custodial Services

As noted earlier, CPM is a specialist division responsible for the management and administration of employee share and option plans.

For some of the employee share plans, there is a need for a trustee to hold the securities that are subject to the plan, pending the expiration of a vesting period. In some cases the trustee of the plan will be a subsidiary of the issuer. However, in an increasing number of cases, due to specialised nature of the function and as a cost limitation measure the issuer will outsource the trustee function to a third party.

CPM has a number of clients for which it provides this type of service. In doing so, the securities are held by a company established for that specific purpose. As a result that entity is providing custodial services for a number of different entities.

We have made submissions previously to the effect that where the custodial service is being provided as part of the administration and management of an employee share plan, the provisions of (what is now) item 46 of Table 1 of section 6, should not apply. The predominant reason for that being the only persons who can participate in the plans are persons who the employer/issuer would have already identified.

Unfortunately that amendment has not been made.

We have considered whether the expanded definition of "designated business group" would assist. However, whilst it allows the grouping of entities, it does require that a member cannot be a member of another designated business group.

Thus, in the case of organisations such as CPM, the nominee providing custodial services in relation to a number of plans, cannot take advantage of the expanded definition as it would, by necessity need to be a member of more than one "designated business group".

Given there has been encouragement to employers to establish schemes to assist and provide incentives to employees to participate in the ownership of the business they are employed by (for example by provisions in the Income Tax Act) the imposition of a measure that impacts on the efficient operation of these schemes would be counter productive.

If there are any questions or comments relating to this submission, please contact me on (02) 8234 5129.

Yours sincerely,

Martin Jones

Senior Manager Compliance