Australian Shareholders' Association

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Director
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By email: OMSBBpublicconsultation@treasury.gov.au

AUSTRALIAN SHAREHOLDERS' ASSOCIATION – CONSULTATION ON IMPROVING THE INTEGRITY OF OFF-MARKET SHARE BUY-BACKS

Dear Madam/Sir

The Australian Shareholders' Association (ASA) represents its members to promote and safeguard their interests in the Australian equity capital markets. The ASA is an independent not-for-profit organisation funded by and operating in the interests of its members, primarily individual and retail investors, self-managed superannuation fund (SMSF) trustees and investors generally seeking ASA's representation and support.

Thank you for the opportunity to submit comments to the *Consultation on Improving the integrity of off-market share buy-backs* (exposure draft).

Importance of stable policy for retirement incomes

ASA supports the maintenance of a sustainable retirement incomes policy and confidence in an individual's ability to navigate the self-funding of their retirement, and urges a cessation of piecemeal changes to the system and the completion of broad-based review. As indicated in the **Alliance for fairer retirement submission to Retirement Income Review**, the capacity for individuals to voluntarily save for retirement, depends on stable policy settings, less complex policies, and ones that provide incentives. And in our **submission to** the **Retirement Income Review** lodged in February 2020, we emphasised the importance of a healthy share market to support the accumulation of funds, which also requires stable policy settings.

It is disappointing that the Retirement Income Review has stopped at the data gathering stage.

Piecemeal changes disrupt confidence

As we expressed in our recent submission on the consultation on **Treasury Laws Amendment (Measures for a later sitting) Bill 2022: Franked distributions funded by capital raisings**, the unintended consequences of that proposal as well as this one may include companies favouring funding dividends with debt, and retail shareholders concentrating their investments even further in the shares of regular dividend paying companies.

And we have a number of concerns regarding the proposed legislation in regard to the potential impact on holders of exchange traded securities, especially retail shareholders, and on the companies themselves:

- The announcement in the Budget and consequent short consultation time of around three weeks during a busy time for corporate entities and investors;
- Piecemeal revisions of taxation law and retirement incomes policy rather than a holistic review of the Australian tax and retirement income framework/system;
- The potential for unintended consequences such as a capital return being classified as selective capital return due to investors from other jurisdictions needing to be excluded as their local laws don't permit such transactions (ineligible shareholders);
- The reduced incentive for companies to create franking credits if the franking credits are likely to be unable to be distributed; and
- A lower preference for shares in Australian tax paying companies as they accumulate undistributable franking credit balances.

Retrospective franking debit for "selective" reductions of capital

We are also concerned with the backdating of amendments made by this Schedule to apply to a cancellation of a membership interest by a listed public company if both (i) the cancellation is announced to the market at or before the time the cancellation occurs; and (ii) the cancellation is first announced to the market after 7:30 pm, by legal time in the Australian Capital on 25 October 2022.

At the announcement of these measures in the Federal Budget on 25 October 2022, it was not apparent that the item addressed in the Exposure draft at Schedule 2, item 2, item 9B of the table in subsection 205-30(1) ITAA 1997 and at paragraph 1.29 in the Explanatory material "Franking debit for selective share cancellations" would be inserted in the Bill, so effectively this is retrospective application of a later announcement (as with the issuance of the consultation paper on 17 November 2022.)

The insertion will impose a franking debit in a listed public company's franking account in respect of selective reductions of capital.

Paragraph 1.30 in the Explanatory material continues: If a listed public company makes a distribution that is consideration for the cancellation of a membership interest in itself, as part of a selective reduction of capital, a franking debit arises in the company's franking account. The amount of the debit is equal to the debit that would have arisen if the

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company were not a listed public company and the distribution were a frankable distribution (because the whole or part of the purchase price were not debited to the company's share or non-share capital account) that was franked at the company's benchmark franking percentage, or at a franking percentage of 100% if the company doesn't have a benchmark franking percentage for the franking period.

Some of our members find an off-market share buy-back provides them with a good way to sell shares and generate cash flow to fund their living expenses as a self-funded retiree.

Retail shareholders may be building their wealth and/or saving for retirement. The legislative framework and any changes to it needs to acknowledge the transfer of the risks associated with longevity and sustaining retirement incomes to individuals with the rise of compulsory superannuation. The laws associated with owning shares, which include taxation legislation, need to be clear and easily understood by individuals. Any change to legislation needs to be easy to navigate for individuals especially those who may be older and navigating the pension phase of self-funded retirement.

These ad hoc changes make it difficult for investors to confidently save for their future, and while a measured and informed holistic review of the Australian tax and retirement income system and proposal for changes takes time, engagement and rigour, we would welcome it.

If you have any questions about these comments or other matters, please do not hesitate to contact me (ceo@asa.asn.au), or Fiona Balzer, Policy & Advocacy Manager (policy@asa.asn.au).

Yours sincerely

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