



7 February 2014

Ms Kate O'Rourke  
Senior Executive Leader  
Corporations  
Australian Securities and Investments Commission  
Level 5, 100 Market Street  
SYDNEY NSW 2001

Dear Ms O'Rourke

### **Substantial Holding Disclosure Forms**

The Australian Financial Markets Association (AFMA) welcomes the opportunity to comment on draft pro-forma Form 603 *Notice of initial substantial holder*. Our comments on the draft pro-forma Form 603 and substantial holding disclosure more generally are provided below. Members advise that their systems for monitoring substantial holding information and reporting are automated and that forms are often pre-populated to assist in efficient reporting. As such, any changes will require IT development and testing. For this reason, we would appreciate ASIC advice on the proposed timing on which the changes will become effective.

#### **1. Details of Substantial Holder (section 1)**

Under section 671B(6)(a) of the *Corporations Act 2001*, the deadline for disclosing information on substantial holdings is within two business days after 'the person' becomes aware of the information. However the date of becoming aware is not required in the disclosure forms; only requiring the date that the holder became a substantial holder. We suggest that adding an additional field in the disclosure forms (beneath the field 'The holder became a substantial holder on') to clearly distinguish the difference between the actual date of the relevant event and the date the substantial holder became aware would be helpful. This would be consistent with reporting in other jurisdictions, such as Hong Kong<sup>1</sup>.

#### **2. Details of Relevant Interests (section 3)**

Components of the information sought in sections 3 (Details of relevant interests) and 4 (Details of present relevant interests) overlap. We suggest combining sections 3 and 4, in

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<sup>1</sup> For example, see sections 15 and 16 in Form 2, which can be accessed here:  
<https://sdinotice.hkex.com.hk/>

a way similar to how section 4 (Present relevant interests) of Form 604 is presented, would make it clearer and easier for substantial holders to complete.

In the 'Holder of relevant interest' column, not only 'Parent entity' and 'Subsidiary entities' that have direct and deemed interests to the shares are listed, but also the 'Entity Group Head'. Assuming the Parent Entity and Subsidiary entities are wholly-owned subsidiaries of the Entity Group Head, we query why the numbers in the example do not add up. If the Parent entity retains deemed interest in shares lent under securities lending agreements, would the Entity Group Head not also have deemed interest?

In most cases, a company has multiple layers of wholly-owned subsidiaries from the direct interest holders up to the ultimate parent company level. We submit that the entities in between the direct holder and the ultimate parent company should be exempted from reporting their interests as they only have a deemed interest by virtue of being a parent company of the direct holder.

In the 'Nature of relevant interest' column, there is a row (row 3) for securities lent under securities lending agreements. ASIC had previously stated in market consultations that it is appropriate for entities not to disclose any details of stock lending arrangements whereby an entity lent stock; and only disclose details where the entity had borrowed stock. We would be grateful if ASIC would confirm if its position has changed in this regard, as otherwise this row would not be required.

Also in the 'Nature of relevant interest' column, in the row for securities borrowed (row 2), there is a generic reference for all securities lending agreements to the 'power to control the exercise of a power to vote, and dispose of the securities'. The prescribed information to be provided for each individual securities lending agreement, including information relating to voting power, is set out in CO 11/272 and included in the relevant annexures to Form 603. It would be clearer if the nature of relevant interest in this row did not refer to voting power and just the power to dispose of securities so that all relevant information on voting rights could be included with respect to each individual agreement with all other prescribed information in the annexure summarising the particular securities lending agreement as required in section 671B(4A) pursuant to CO 11/272.

### **3. Details of Present Relevant Interests (section 4)**

The generic references to securities lending agreements in the 'Registered holder of securities' and 'Person entitled to be registered as holder' columns should not be required as, for the reason provided above, it is clearer if the prescribed information for each securities lending agreement is included in the relevant summary of that agreement in the annexures.

In the 'Registered holder of securities' column, row 4 suggests filling in the nominee of the borrower whose shares are lent to under a securities lending agreement. This is sometimes difficult to track, because the nominee of the borrower, or what the borrower in turn does with the shares such as on-lend to other third parties, may not be known on

the reporting day. All available information on the borrower and the type of securities lending agreement is provided in the annexures.

#### **4. Consideration (section 5)**

We query the value provided in requiring substantial holders to list all transactions in this section. Requiring all transactions to be reported can add numerous pages to the form; a member gave an example of previous forms including up to 70 pages of transactions.

We suggest that this section can be significantly reduced by requiring the disclosure of details of only the relevant event that triggered the filing, and substantial holders can separately provide additional transaction details on request from ASIC. This will bring reporting in Australia in line with other regional financial centres (eg Hong Kong and Singapore) which only require disclosure of the transaction that triggered the filing. At the minimum, substantial holders should not be required to list all individual transactions but allowed to list the date range of transactions and the average price of those transactions with any involving agreements to be separately listed as required in Annexures B to E.

#### **5. Other**

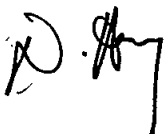
We suggest that ASIC change the form to allow an 'Authorised Signatory' to sign the form, in addition to directors and company secretaries.

In relation to related Form 604 *Notice of change of interests of substantial holder*, section 3 requires filling in all changes in relevant interests since the last substantial holding notice. This becomes quite onerous if the last substantial holding notice was submitted years prior and all changes throughout those years are required. It is with this in mind that we suggest limiting the information required to be disclosed by creating a maximum time frame such as four months, consistent with Form 603.

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Thank you for the opportunity to comment on the proposed changes to Form 603. Please do not hesitate to contact me in relation to any of the matters raised in this submission at [dhang@afma.com.au](mailto:dhang@afma.com.au) or (02) 9776 7994.

Yours sincerely



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