



# Off-Market Share Buy-backs Symposium

## Regulatory Considerations – the ASIC perspective



**ASIC**

Australian Securities &  
Investments Commission

October 2006

# Facilitating share buy-backs

- ASIC is also a business facilitator
- We help companies offer shareholders off-market buy-backs by granting technical relief for:
  - ‘Dutch auction tenders’
  - Scale-backs
  - Priority allocations



# Why do we help?

- **Relief is consistent with the following policy objectives:**
  - **Equal access for all shareholders**
  - **Reducing unmarketable parcels**
  - **Reducing unnecessary regulatory burdens on business**
  - **Consistency with global practices**



# Let the directors decide!

- **It's up to the directors**
- **They must be satisfied that the buy-back is in the best interests of the company**
- **ASIC will intervene only where we think directors have breached their duties or where they've misled shareholders**



# Capital management

- **The directors, and not the regulator, should decide the best way to manage the capital of their companies within the legislative framework**



# Debunking the s254W myth

- Dutch auction buy-backs do not offend s254W of the Corporations Act - (ie that all shares in a class have the same dividend rights)
- A 'dividend' for tax purposes is not the same as a 'dividend' for Corporations Act purposes – tax law deems all manner of things to be taxable



# Some more myths

- **“Companies will denude their franking account balances...”**
- **No evidence of this to date – management of franking credits is just another matter for the directors**
- **“Companies should always return excess capital by a normal dividend...”**
- **Still results in tax inequity**



# Are they discriminatory?

- **Yes. There is a discriminatory element**
- **But, normal dividends see different tax outcomes according to tax status**
- **Directors must consider**
- **Dutch auction buy-backs appear to benefit both participating and non-participating shareholders**



# BHP Billiton 2006 buy-back

- Buy-back conducted at max. discount
- 3,771 shareholders sold all shares
- Share price rose 3.2% on the day buy-back results announced (Resources Index closed up 0.56% on same day)
- Buy-back didn't impact payment of ordinary dividend which increased in '06



# BHP Billiton 2006 buy-back

- **Advantages of buy-back:**
  - Improved EPS, cash flow and ROE for non-participating shareholders
  - Gave participating shareholders a greater return than the sale of their shares on market
- Buy-back wasn't criticised at AGM



# Rio Tinto Limited

- **DLC structure required shareholder vote in April 2005**
- **Results on renewing buy-back power overwhelmingly in favour**
- **Admittedly, not a classic retail stock, but nonetheless a huge level of support**



# Are they too complex?

- Dutch auction buy-backs are not inherently complex
- But, explaining the whole story does put some strain on clear, concise and effective communication
- Drivers for the buy-back need to be clearly articulated
- ASIC open to much shorter disclosure



# Who is complaining?

- **Consistent campaign in letters to the editor**
- **What about real shareholders?**
- **Rio Tinto Limited example**
- **Complain to your directors or vote with your feet**



# What if ASIC stopped giving relief?

- Companies would need to make fixed price offers or get shareholder approval under the 'selective' buy-back rules
- Little regulatory benefit
- Buy-back activity might be reduced due to increased costs – hard to assess



# ASIC's attitude going forward

- **We are listening, but are not convinced that we should be heavy-handed**
- **We'll continue to facilitate off-market buy-backs pending outcome of tax review**
- **We're committed to working with companies to simplify and shorten buy-back disclosure**



# Questions???





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