

11 December 2020

Senator Andrew Bragg
Department of the Senate
“Select Committee on Financial Technology and Regulatory Technology”
PO Box 6100
Parliament House
Canberra ACT 2600

Submitted electronically: fintech.sen@aph.gov.au

Re: Levelling the playing field for retail investors

Wilson Asset Management welcomes the opportunity to provide a submission in response to the Senate Select Committee on Financial Technology and Regulatory Technology.

Wilson Asset Management manages more than \$3.5 billion on behalf of more than 90,000 retail investors. We are a passionate advocate for retail investors’ rights and hope to assist the Committee in levelling the playing field for retail investors with regard to equity capital raisings. Specifically, we propose amending Section 708 of the Corporations Act 2001 (Cth) to remove the requirement for an investor to qualify as a sophisticated or professional investor, which unfairly excludes retail investors from discounted equity capital raisings and, in many cases, dilutes their ownership in the company. Wilson Asset Management suggest a reform to Section 708 of the Corporations Act that removes the requirement for disclosure documents to investors when there is an offer of equity securities that are of the same class as quoted equity securities, that are quoted on a licensed market at all times during the three month period before the time of the offer.

Distinction between retail and wholesale investors

Section 708 of the Corporations Act 2001 (Cth) distinguishes between Retail and Sophisticated and Professional (**Wholesale**) investors, by using wealth as a proxy for financial literacy. The paternalistic policy, designed with the intent to protect retail shareholders, has unfairly created a systemic bias whereby retail investors are excluded from participating in capital raisings. Individuals have varying levels of financial literacy based on their current investments, education, demographic and experience levels. Current investor classifications grounded in wealth as a qualifier do not encapsulate the breadth of knowledge held by retail investors. The Corporations Act defines Sophisticated investors as those with net assets greater than \$2.5 million, or those who earn gross income of \$250,000, or a superannuation fund with net assets of at least \$10 million. Professional investors are those who control gross assets of \$10 million or more, or those that hold an Australian Financial Services License (AFSL). The distinction of Retail and Wholesale investors was established to highlight investors in need of regulatory protection. However, ASX capital raising activity has highlighted that the system has failed to treat retail shareholders

equitably and the regulations that were developed to protect them are now precluding retail shareholders from equitable participation in equity raisings.

Under Section 708, corporate issuers are required to issue new securities under a disclosure document, namely a prospectus, unless an issue falls within one of the specified exemptions. Exemptions include the issuance of securities to wholesale investors. Companies will typically take advantage of this exemption by undertaking a placement to wholesale investors as the cost to issue a prospectus to retail investors is considerable both in terms of direct expenses and management and board time. The main objective of the prospectus is to provide up to date disclosure about the company, and provide a level of protection to retail investors when assessing an investment in the issuance of new securities. However, for retail shareholders this is a superfluous safeguard, preventing equitable participation in capital raisings as much of the risk associated with up to date disclosure for listed entities is mitigated by the presence of protections provided under the ASX listing rules and continuous disclosure obligations.

ASX listing rules and continuous disclosure obligations ensure all relevant information is accessible to existing and potential new investors, in order to allow trading of securities in an ASX listed company, therefore providing retail shareholders with the relevant disclosures should they wish to participate in a capital raising.

The listed company disclosure requirements are expressly acknowledged in Section 708AA of the Corporations Act that allows listed companies to conduct rights issues (pro rata issuance of new securities) to its shareholders without a prospectus. Furthermore, in class order relief CO [09/425] ASIC allows a listed company to offer up to \$30,000 worth of shares per shareholder every 12 months without a prospectus. The policy reason behind Section 708AA and the class order relief is that shareholders are sufficiently informed under the ASX Listing Rules, particularly the continuous disclosure regime. If a listed entity is complying with the continuous disclosure rules in raising capital, there is sufficient information available for retail investors to ensure that they are adequately protected.

Recent ASX measures cement the continued unequal treatment of retail shareholders in ASX capital raisings

The inequitable treatment of retail investors has been evident for too long. The ASX Listing Rules allow listed companies to issue up to 15% of new equity on a non-pro rata basis per year, with a concession for smaller companies to raise new equity of up to 25% with prior shareholder approval. Legislators and regulators have long favoured wholesale investors over retail. This was evident during the Global Financial Crisis (GFC) and in the 12 years since, retail investors remained locked out of capital raisings. In response to the economic impacts of the coronavirus and uncertain business outlook, the ASX announced temporary measures to assist ASX-listed entities in navigating the disruption caused by the pandemic in relation to companies requiring urgent cash flow and strengthening balance sheets.

Inequality of access

The 2017 ASX investors study highlighted increasing participation by adult Australians in investments that are available through a financial exchange. 60% of Australian adults hold investments outside their institutional superannuation fund, with 31% of Australian adults holding shares. Australia has a strong retail investment community, with strong participation from self-managed superannuation funds (SMSFs), retirees who are often knowledgeable and passionate about investing and an increasing number of young adults participating in direct investments.

Retail shareholders are significantly disadvantaged when their wholesale counterparts are issued securities at a discount to the existing market price. Firstly, they are excluded from the opportunity to buy shares at a discounted price to the prevailing market price and their ownership of the company is diluted. This disadvantage is often compounded when the shares recommence trading, at a large premium to the issue price. Since April, ASX companies who have raised capital have seen an average increase of 16% in their share price, on the day their shares recommence trading. The average share price gain relative to the offer price once again highlights the deficiencies current measures impose on retail shareholders, who are unable to realise investment gains due to limited participation at lower valuations.

Retail shareholders provide stability to listed company share registers and can be a stable contributor of new capital and as such they should be treated fairly and given similar opportunity. Capital raised solely via the placement structure, prevents participation from retail shareholders. The framework for capital raising does not effectively consider equitable treatment of all existing investors on share registers. Detailed consideration needs to be given to capital raising measures to ensure regulation effectively creates and equally distributes investor rights and protections. Capital raising structures such as placements, have a significantly dilutive impact for retail shareholders. Listed companies seeking to raise capital rapidly, have often employed investment bankers, who habitually favour existing and new, domestic and international institutional investors, over retail shareholders.

As a wholesale investor, Wilson Asset Management is a beneficiary of the current ASX regulations, however it believes all shareholders, should be treated equitably. The framework for capital raisings has allowed for biased investment capital opportunities and unequal capital distribution, specifically for retail shareholders being systemically excluded. At a minimum, existing shareholders should be afforded equal opportunity to participate in new share issuances for companies already listed on the ASX. The ASX has seen significant recapitalisation in 2020. Since April 2020, over 175 ASX-listed companies have taken the opportunity to raise over \$37 billion of capital, at a significant discount to the prevailing market price and a meaningful penalty for existing shareholders who are not able to achieve at a minimum, pro-rata participation.

In the last seven months, placements accounted for approximately \$24 billion of the close to \$37 billion dollars of equity raised. This represents a significant missed opportunity for retail shareholders to invest in companies they already own at a discount; on average, issuances were conducted at approximately a 15% discount to the last close price.

New Zealand securities law reform – level playing field for retail investors

In New Zealand, the Financial Markets Conduct Act 2013 passed securities law reforms, that provided exemptions to the 'Wholesale Investors' classification. Schedule 1, clause 19 of the Act, covers this exemption for offers of equity securities of the same class as financial products quoted (for at least the last three months) on a licensed market that has market rules containing continuous disclosure provisions. The reforms allow for all shareholders to participate in any offer of securities that are in a class that are already traded on the New Zealand Stock Exchange (NZSX) without a prospectus, as the financial products are quoted on a licensed market which require adherence to continuous disclosure obligations. Our colleagues in the New Zealand investment community have attributed to this reform greater and fairer market participation and improved outcomes for all investors. We contend the policy rationale for the applicable Australian and New Zealand laws are the same.

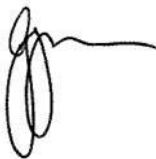
Conclusion and further information

We recognise and support the ASX and its activities in ensuring a fair process as it relates to capital raisings for all industry participants, particularly retail shareholders. The feedback outlined above is a reflection of the responsibility held by the ASX in establishing, promoting and facilitating the development of fair and equitable access for all.

Wilson Asset Management is categorised as a wholesale investor and therefore is a beneficiary of the current legislation restricting retail investors from participating in placements. We believe all shareholders (retail and wholesale) should be treated equally and equitably when investing in the Australian equity market. It is this belief that has encouraged this submission.

Thank you for the opportunity to make this submission in response to the Senate Select Committee on Financial Technology and Regulatory Technology. Should you have any questions, we welcome the opportunity to speak with you to discuss this matter further.

Yours sincerely,



Geoff Wilson AO
Chairman and Chief Investment Officer
Wilson Asset Management



Kate Thorley
Chief Executive Officer
Wilson Asset Management