



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 125

Small offers of shares to existing shareholders by listed companies—share purchase plans

Chapter 7 — Securities (Part 7.12)

Issued 3/3/1997

From 5 July 2007, this document may be referred to as Regulatory Guide 125 (RG 125) or Policy Statement 125 (PS 125). Paragraphs in this document may be referred to by their regulatory guide number (e.g. RG 125.1) or their policy statement number (e.g. PS 125.1).

Headnotes

Small scale fundraising, cash contribution plans, small share subscription plans of listed corporations

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Purpose

RG 125.1 This guide sets out the circumstances in which the ASC will give relief to corporations listed on the Australian Stock Exchange (ASX) so they can offer existing shareholders the opportunity to acquire small numbers of additional shares without the benefit of a prospectus (a “share purchase plan”).

RG 125.2 The relief available under this policy is additional to the exceptions in the Law¹ (eg reg 7.12.06(g) dividend re-investment plans) and other ASC policy (eg the share purchase plans offered under the ASC’s employee share schemes policy (refer to Regulatory Guide 49). It supersedes the relief described in RG 125.7.

Background — history of relief

Share purchase plans

RG 125.3 In 1991 the ASC provided relief (instrument [91/444]) to CSR Limited (CSR) for offers of additional shares to existing shareholders under a cash contribution scheme (also known as a “share purchase plan”).² Under the CSR scheme, existing shareholders could pay up to \$2400 per annum for additional shares in CSR.

Odd lot top-ups

RG 125.4 From 1993 until 1996, the ASC provided conditional relief from the prospectus provisions so that an issuer could offer additional shares to an existing holder of an odd lot (and no marketable parcels) of shares in a class quoted on ASX, to enable the shareholder to make up a marketable parcel.³

RG 125.5 This relief was given to enable shareholders holding less than one marketable parcel to sell their remaining shareholding without having to use an odd lot broker. It was not intended to facilitate fundraising.

¹ Statutory references in this guide are to provisions of the Corporations Law or the Corporations Regulations (regs).

² Refer to Superseded Policy Statement 18 and Superseded Policy Statement 56 para 13(n).

³ Refer to Superseded Policy Statement 38 para 13(n), Superseded Policy Statement 56 para 13(q) and Pro Forma 9 (withdrawn).

RG 125.6 This policy was dropped after the ASX Business Rule regarding trading odd lots was deleted as of 1 October 1995. Shareholders are now able to deal in any number of shares. Listed companies no longer need to offer “top up plans” which allow shareholders to round up their holding to a marketable parcel. (Refer to ASX News Release dated 27 September 1995.)

Interim relief

RG 125.7 For some years the ASC has given relief on a case by case basis to enable listed companies to offer share purchase plans. This position was formalised in Regulatory Guide 56 *Prospectuses* (RG 56) and Pro Forma 142, which were issued on 20 May 1996. Relief given to date has been subject to a sunset clause, pending finalisation of this guide. Pro Forma 142 has now been withdrawn and replaced with Class Order [CO 97/74].

The Law

RG 125.8 The purpose of the fundraising provisions of the Law is to ensure that investors in newly issued securities of a corporation have access to all the information which a reasonable investor would require to make an investment decision. This is complemented by s995 and s 996, which attach civil and criminal liability to those who are responsible for material misstatements or omissions from prospectuses.

RG 125.9 The primary means by which the Law endeavours to ensure that investors have access to all the information that they need to make an informed decision is by requiring a prospectus. Section 1018(1) requires a prospectus to be lodged with the ASC for all offers of securities, except excluded offers.

RG 125.10 The ASC has the power under s1084 to exempt issuers from the prospectus provisions of the Law. ASC policy is generally to do so where the cost of compliance with the Law outweighs the regulatory benefit flowing from compliance. The Law and the Regulations do not provide a general exclusion to allow fundraising via share purchase plans without a prospectus, although there is a specific exclusion for dividend reinvestment plans (reg 7.12.06(g)).

Policy considerations

Issuers costs

RG 125.11 Where the amount to be raised from each investor is quite small, the cost of preparing, printing and distributing a prospectus for a share purchase plan may be quite high, compared to the amount being raised. The ASC recognises that issuers would be less likely to offer share purchase plans if a prospectus was required.

Shareholder convenience

RG 125.12 Share purchase plans generally provide existing shareholders with a convenient means of obtaining additional shares, often at a discount to the market and without brokerage fees or stamp duty. By participating in share purchase plans, shareholders are able to acquire smaller parcels of shares than it would normally be economic to purchase on the market.

Access to offers

RG 125.13 Without relief from the prospectus provisions of the Law, it is unlikely that such schemes would be offered, disadvantaging the smaller investors who are the most likely to participate in them and obtain the most benefit from them.

Relief

RG 125.14 The ASC believes that it is appropriate to allow share purchase plans when:

- (a) the risk to the investor is limited because the amount which may be invested by each investor per annum in the scheme is restricted; and
- (b) the benefits to investors (such as savings on brokerage) outweigh the disadvantages and risks of not having full prospectus disclosure.

RG 125.15 Accordingly, the ASC has executed a class order [CO 97/74] which provides conditional relief from Div 2 and 3 of Pt 7.12 of the Law and s1078 (insofar as s1078 prohibits the use of the postal service to make an offer for subscription) to listed corporations offering share purchase plans. The relief permits issuers to offer

existing investors the opportunity to acquire additional shares in the issuer without a prospectus. Conditions attached to the relief have been designed to limit the risk to the investor. This relief is similar to the relief which has previously been given on a case by case basis to allow various share purchase plans to be offered to existing investors without a prospectus.

RG 125.16 The class order relief is limited to corporations that are listed on ASX. Investors in corporations that are listed on ASX have access to information provided under the continuous disclosure regime as well as to the current market price. Shareholders are also sent annual reports. Where quoted shares are offered under a share purchase plan, a shareholder should be able to make an adequately informed decision on whether to invest a relatively small additional amount, on the basis of that information, and without the benefit of a prospectus.

RG 125.17 The class order relief will be subject to the following conditions:

- (a) the shares that will be issued must be in a class that is already quoted;
- (b) none of the following provisions of the Law have been contravened in relation to the issuer in the previous 12 months:
 - (i) the provisions of Pt 3.6;
 - (ii) the provisions of Pt 3.7;
 - (iii) s1001A or s1001B;
 - (iv) s1023B;
 - (v) s1024;
- (c) the right to participate in the scheme is available only to existing shareholders in the company;
- (d) the method of calculation of the subscription price must be disclosed in the offer document;
- (e) the subscription price for the shares must not be more than the market price of shares of the same class; and
- (f) the maximum amount which may be raised from each shareholder under the scheme is \$3000 per annum.

RG 125.18 The limit of \$3000 per investor is arbitrary. It has been adopted for continuity, to limit the risk to individual shareholders and because the amount that could be raised is likely to be low compared to the issuer's total issued capital. Small shareholders will derive the most benefit from schemes limited in this way.

Administration and enquiries

RG 125.19 Share purchase plans which satisfy all the requirements and conditions of [CO 97/74] automatically qualify for relief from the prospectus provisions of the Law. However, where proposed schemes do not satisfy these requirements, the issuer may have to apply for relief. Applications may be made to any ASC Regional Office and should be accompanied by the appropriate application fee.

RG 125.20 Enquiries about this policy should be directed to the Regulatory Policy Branch in Sydney or in Melbourne.