

Ph: +61 2 90217701 E: info@ellerstoncapital.com W: ellerstoncapital.com

Sydney NSW 2000

5 June 2023

The Manager, Company Announcements Australian Securities Exchange Limited Exchange Centre, 20 Bridge Street Sydney NSW 2000

ELLERSTON ASIAN INVESTMENTS LIMITED (ASX: EAI) - Update

Ellerston Asian Investments Limited (EAI) provides the following update in relation to the Transaction with Ellerston Asia Growth Fund (ASX:EAFZ) (EAFZ).

Capitalised terms in this document, unless otherwise defined, have the meanings given to them in the Shareholder Booklet dated 19 April 2023 (Shareholder Booklet).

Update Class Ruling Application and discussions with ATO

EAI is currently in discussions with the Australian Taxation Office (ATO) in relation to the potential Class Ruling regarding the Transaction as further described in the Shareholder Booklet.

The discussions with ATO are continuing, including in relation to the proposed new measures that could potentially apply to the Transaction (contained in Part 2 of Schedule 4 of the Treasury Laws Amendment (2023 Measures No. 1) Bill 2023 (the Bill)), to the extent the Bill is enacted in its current form, as a result of its retrospective effect of such proposed new measures.

In the context of the discussions, ATO has requested that EAI consider providing investors an update in relation to the matters which ATO is considering, as further described in the attached letter from ATO. EAI notes that the discussions have ATO have not concluded and, as indicated in the letter from the ATO, EAI has received no views from the Commissioner in relation to the matters referred to in the letter.

EAI will provide shareholders with further updates as and when they become available.

For any questions, please contact our Investor Relations team on 02 90217701 or info@ellerstoncapital.com

Authorised by Ian Kelly, Company Secretary.



ELLERSTON ASIAN INVESTMENTS LIMITED C/- ERNST & YOUNG GPO BOX 2646 SYDNEY, NSW, 2001

Attention:

Our Reference: Contact Officer:

1052126057994

Phone: Client ID:



2 June 2023

Class Ruling Request for Ellerston Asian Investments

Dear George Stamoulos

We refer to draft class ruling request dated 5 May 2023 (Draft Ruling Request) from you on behalf of Ellerston Asian Investments Limited (EAI) in relation to the proposed restructure of EAI to merge with Ellerston Asia Growth Fund (EAGF) and convert to a dual-structure exchange traded managed fund on the Australian Securities Exchange (ASX) AQUA market (the Transaction).

Noting:

- the step plan to implement the Transaction as described in the Draft Ruling Request, the Shareholder Booklet provided to EAI shareholders and resolutions approved by EAI shareholders are all consistent with the delisting of EAI post completion of the Special Dividend and Selective Capital Reduction amounts being distributed to EAI shareholders (the original step plan); and
- subsequent decision by EAI (as conveyed by you on 29 May 2023) after direct expression
 by us on 18 May 2023 as to the possible application of announced new selective share
 cancelation measures,¹ to change the sequencing of the Transaction implementation steps
 to bring forward the delisting of EAI before the distribution of Special Dividend and
 Selective Capital Reduction amounts (the revised step plan)

it would be inappropriate, in advance of the Effective Date of the Transaction (5 June 2023), to make a class ruling or otherwise provide comfort as to the taxation consequences. A ruling could only be made on the basis of the law as it stands, but it's likely that the law may alter with retrospective effect. Under the proposed new law, there is a real difficulty.

The change in the sequencing of the Transaction from the original step plan to revised step plan looks as if it may be intended to circumvent the application of the new measures in order to ensure that franking benefits flow through to the investors. Because this result happens under new law, and in novel circumstances, before expressing any concluded opinion the Commissioner would ordinarily seek advice from the GAAR Panel as to the possible application of section 177EA to deny the imputation benefit to the EAI shareholders.

A ruling presently would therefore be premature and could reasonably be expected to mislead those impacted EAI shareholders.

In the interests of ensuring the investors in EAI are not misled, we suggest consideration be given to advising the investors that the possibility exists that the transaction could be affected by the operation of s.177EA. Please note, however, that at this point the Commissioner has no view as to whether this is an appropriate case for an application of that section.

If you have any questions, please contact

Russel on (03) 9275 5481

Yours sincerely,

Deputy Commissioner of Taxation

¹ Contained in Part 2 of Schedule 4 of the Treasury Laws Amendment (2023 Measures No. 1) Bill 2023 (the Bill) to the extent the Bill is enacted in its current form.