Spark Infrastructure

Friday, 26 November 2010

The Manager
Company Announcements
Australian Stock Exchange Limited
20 Bridge Street
SYDNEY NSW 2000

Dear Sir / Madam

SPARK INFRASTRUCTURE RESTRUCTURE PROPOSAL – UPDATE ON ATO CLASS RULING

Attached are materials which will be mailed to Spark Infrastructure securityholders providing an update on the Australian Taxation Office Class Ruling application in relation to the Restructure Proposal as set out in the Explanatory Memorandum dated 3 November 2010.

Yours faithfully,

Alexandra Finley
Company Secretary

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SparkInfrastructure

26 November 2010

Dear Securityholder

Letter to Securityholders – Restructure Proposal: Update on ATO Class Ruling

As you are aware, Spark Infrastructure Group ("**Spark Infrastructure**") has proposed a Restructure, the details of which are set out in the Explanatory Memorandum dated 3 November 2010.

As noted in the Explanatory Memorandum (in particular, in Section 8 "Taxation"), Spark Infrastructure is seeking a Class Ruling from the Australian Taxation Office ("**ATO**") to confirm certain taxation matters relating to the Restructure for Securityholders.

The possibility that the Class Ruling would not be issued by the ATO before Securityholders meet to vote on the Restructure was also noted in the Explanatory Memorandum. As of the date of this letter, it appears likely a Class Ruling will not be issued in time.

To ensure that Securityholders have as much information as possible in deciding how to vote on the Restructure, Spark Infrastructure is providing more detailed guidance to Securityholders on the determination for tax purposes of the amount of consideration received by them in respect of the Note Scheme. As noted in Sections 8.2A and E of the Explanatory Memorandum, there is uncertainty on this issue. This issue should only be relevant to a Securityholder on a future disposal of Spark securities.

Please find attached a guidance note which supplements Section 8 "Taxation" of the Explanatory Memorandum (in particular, sections 8.2A and E).

Once a Class Ruling has been issued by the ATO, Spark Infrastructure will update Securityholders by announcement to the ASX.

The Independent Expert, Lonergan Edwards & Associates Limited, has considered the attached guidance note and concluded that the proposed Restructure remains in the best interests of Securityholders. A copy of their letter is also attached.

Spark Infrastructure considers that the Restructure remains the best available option for Securityholders and is proceeding with the Restructure.

Securityholders are encouraged to read this letter, the attached guidance note, the Independent Expert's letter and the Explanatory Memorandum carefully and in full. If Securityholders have any questions, they should consult their own legal, investment, taxation or other professional adviser(s).

Yours faithfully,

Alexandra Finley
Company Secretary

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Spark Infrastructure – Restructure Proposal

Guidance Note - Taxation

Note: Terms used in this Guidance Note have the same meaning given to them in the Explanatory Memorandum.

This Guidance Note should be read together with Section 8 "Taxation" of the Explanatory Memorandum, which provides a general summary of the Australian taxation implications of the Restructure for Securityholders. It is noted that the comments in Section 8 only apply to certain Securityholders as described in the Explanatory Memorandum, and that the comments in this Guidance Note also only apply to those Securityholders.

The tax implications for Securityholders may differ depending on their individual circumstances. Securityholders should not rely on this Guidance Note only and should seek appropriate independent professional advice that considers the taxation implications applicable to their own specific circumstances.

Consideration received by Securityholders for tax purposes in respect of the Note Scheme

Under the Note Scheme, Spark Trust will repay $0.60 of the principal amount owing on each Loan Note on condition that the repayment amount is applied to subscribe for additional Units in Spark Trust.

As noted in Sections 8.2(A) and (E) of the Explanatory Memorandum, it is not clear whether a Securityholder should be regarded as having received for tax purposes:

A. the nominal amount of the Loan Note repayment from Spark Trust (being $0.60); or

B. the market value of the additional Units received under the Note Scheme (determined on the Implementation Date).

Spark is seeking confirmation of the ATO's approach

Spark Infrastructure's view is that if the Restructure is implemented, in determining the taxation outcomes on a future disposal of dual stapled Securities, it would be reasonable for a Securityholder to treat the amount received as being the market value of the additional Units received under the Note Scheme (i.e. alternative B).

However, as noted in the Explanatory Memorandum, there is a risk that the ATO may adopt a different view. It is possible that the ATO may regard a Securityholder who participates in the Note Scheme as having received under the Note Scheme the nominal amount of the Loan Note repayment (i.e. alternative A).

As noted in the Explanatory Memorandum, Spark Infrastructure is seeking confirmation of the ATO's view on this issue as part of the Class Ruling. If the Class Ruling is not issued by the ATO before the Meetings on 9 December 2010, Securityholders may not have certainty as to the taxation consequences of a future disposal of dual stapled Securities if the Restructure proceeds.

In the absence of a ruling from the ATO that confirms Spark Infrastructure's view on this issue, Securityholders should:

- consider the implications of both alternatives; and
- in making a decision on how to vote on the Restructure, assume that alternative A is the view that the ATO ultimately adopts.

If the ATO adopts alternative A, Spark Infrastructure will consider an appropriate course of action in the best interests of Securityholders, which may include applying for a private ruling to enable the issue to be further tested through the relevant ATO review processes.

Key consequences for Securityholders

Securityholders should note that:

- This issue will only be relevant if and when they dispose of their securities at a price less than $1.25.

- At that time, the taxable gain/loss on disposal will also depend on:
  - the price paid to acquire their securities;
  - the consideration received in respect of the disposal of those securities; and
  - the value allocated to the Loan Notes at that time.

- If the ruling confirms that Alternative A is applicable, the key impact is that Securityholders may realise an assessable gain on their Loan Notes and a capital loss on their units. The tax consequences will depend on your own particular tax circumstances. In particular:
  - the gain and loss may not be able to be offset against each other;
  - however, in those circumstances, the capital loss may be offset against other capital gains in the same or a later income year.

- Depending on a taxpayer's individual circumstances, the total level of taxable income (including capital gains and losses) payable on a future disposal of Spark securities may be the same regardless of whether Alternative A or B is used.

To assist Securityholders in this regard, Spark Infrastructure is providing worked examples which illustrate how the tax outcomes may differ depending on the approach adopted by the ATO and the price a Securityholder paid to acquire its securities (refer to Appendix).

If Securityholders have any questions, they should consult their own legal, investment, taxation or other professional advisers(s).

APPENDIX - Comparison of tax outcomes on a future disposal of dual stapled Securities if the Restructure proceeds

Note: The examples assume a disposal price for the securities of $1.15, noting that the market price as at close of trading the business day before the date of this letter was $1.105.

The following examples illustrate the possible tax outcomes under alternatives A and B, assuming:

- You have taken the view that the acquisition cost and sale proceeds of a dual stapled Security should be allocated first to the principal amount outstanding on the Loan Note (i.e. $1.25 currently, and $0.65 post-Restructure).
- The market value of the additional Units issued under the Note Scheme on Implementation Date is $0.50 (i.e, the difference between the market value of the dual stapled Securities on Implementation Date (assumed to be $1.15) and the principal amount of the Loan Notes ($0.65)). You dispose of your dual stapled Securities for $1.15 and allocate $0.65 of the sale proceeds per security to the Loan Note and the remaining $0.50 to the Spark Trust Unit.

Example 1: You acquired your Spark securities for $1.00

	Alternative A Nominal adjustment of $0.60	Alternative B Market value adjustment of $0.50
Assessable income on disposal of Loan Notes		
Original acquisition cost of Loan Note	$1.00	$1.00
Reduction in acquisition cost under Note Scheme	($0.60)	($0.50)
Adjusted acquisition cost of Loan Note	$0.40	$0.50
Gain included in assessable income (sale proceeds = $0.65)	**$0.25**	**$0.15**
Capital gains tax		
Original cost base of Spark Security	$1.00	$1.00
Allocation of cost base post-Restructure		
Loan Note	$0.40	$0.50
Unit	$0.60	$0.50
Gain on disposal of Loan Note (sale proceeds = $0.65)	$0.25	$0.15
Less amounts included in/deducted from assessable income*	($0.25)	($0.15)
Capital gain on disposal of Loan Note	$0.00	$0.00
Capital loss on disposal of Unit (sale proceeds = $0.50)	($0.10)	$0.00
Net capital gain/(loss)	**($0.10)**	**$0.00**

* Note: For CGT purposes, a capital gain is generally reduced by amounts already included in assessable income as a consequence of the CGT event. Similarly, a capital loss is effectively reduced by amounts already deducted from assessable income (by excluding that amount from the reduced cost base of the asset)

Example 2: You acquired your Spark securities for $1.25

Note: To the extent your acquisition cost exceeds $1.25, the excess should form part of the tax cost base of your Unit (assuming you allocated the acquisition cost first to the principal amount then outstanding on the Loan Note (i.e. $1.25)). Consequently, the taxable gain/loss you make on disposal of the Loan Note should be as set out in the example below, but the taxable gain/loss in respect of the Unit may change

	Alternative A Nominal adjustment of $0.60	Alternative B Market value adjustment of $0.50
Assessable income on disposal of Loan Notes		
Original acquisition cost of Loan Note	$1.25	$1.25
Reduction in acquisition cost under Note Scheme	($0.60)	($0.50)
Adjusted acquisition cost of Loan Note	$0.65	$0.75
Gain included in assessable income (sale proceeds = $0.65)	**$0.00**	**($0.10)**
Capital gains tax		
Original cost base of Spark Security	$1.25	$1.25
Allocation of cost base post-Restructure		
Loan Note	$0.65	$0.75
Unit	$0.60	$0.50
Gain on disposal of Loan Note (sale proceeds = $0.65)	$0.00	$0.10
Less amounts included in/deducted from assessable income*	($0.00)	($0.10)
Capital gain on disposal of Loan Note	$0.00	$0.00
Capital loss on disposal of Unit (sale proceeds = $0.50)	($0.10)	$0.00
Net capital gain/(loss)	**($0.10)**	**$0.00**

* Note: For CGT purposes, a capital gain is generally reduced by amounts already included in assessable income as a consequence of the CGT event. Similarly, a capital loss is effectively reduced by amounts already deducted from assessable income (by excluding that amount from the reduced cost base of the asset)

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The Directors
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Spark Infrastructure RE Limited
as responsible entity of Spark Infrastructure Trust
Level 6
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Sydney NSW 2000

26 November 2010

Subject: Proposed restructure of stapled securities

Dear Directors

Introduction

1 On 22 September 2010 the Spark Infrastructure Group (Spark Infrastructure) announced a proposal to simplify the existing stapled security structure (the Restructure), involving:

(a) a partial repayment of the principal amount outstanding on the loan notes issued by the Spark Infrastructure Trust (SIT) by $0.60 per security, with the amount repaid to be applied to the issue of additional units in SIT[1]. As a result the loan notes will have a face value of $0.65 per loan note and will pay a correspondingly lower interest entitlement per security[2]; and

(b) the simplification of the existing Spark Infrastructure Australian Securities Exchange (ASX) listed security from five stapled securities with four issuers to an ASX listed dual stapled security with SIT as the sole listed issuer.

2 Due to delays in the receipt of a Class Ruling from the Australian Taxation Office (ATO) we understand that Spark Infrastructure will not likely be in a position to confirm the tax consequences of the Restructure for securityholders before the securityholder meetings on 9 December 2010.

3 Accordingly, Spark Infrastructure is providing securityholders on 26 November 2010 with further supplementary disclosure (the Supplementary Disclosure) in relation to certain possible tax consequences of the Restructure for securityholders.

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1 Effectively, that portion of the loan note principal repaid will be converted from debt to equity in SIT.

2 The interest rate on the loan notes (which was due to reset on 30 November 2010 if Spark Infrastructure elected to do so) will be left unchanged at 10.85% per annum for the next five years pursuant to the Restructure.

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Scope

4 You have requested that we review this Supplementary Disclosure and advise whether this information has any impact on the view expressed in our report dated 3 November 2010 that the Restructure is in the best interests of securityholders taken as a whole.

5 **For the reasons set out below, we remain of the view that the Restructure is in the best interests of Spark Infrastructure securityholders taken as a whole.**

Taxation consequences

6 The Supplementary Disclosure sets out the impact of the Restructure on the tax cost base of the loan notes and units (assuming the Restructure is implemented). The impact will depend on whether a securityholder is regarded as having received for tax purposes either:

(a) a loan note repayment from Spark Trust of $0.60 per loan note (referred to as Alternative A); or

(b) the market value of the additional units received under the Note Scheme, which would be determined on the implementation date (referred to as Alternative B).

7 Depending on securityholders individual tax profiles, the taxation outcomes for securityholders following implementation of the Restructure on a future disposal of their units and loan notes may differ depending on:

(a) whether Alternative A or B is regarded as the consideration received in respect of the Note Scheme

(b) the price paid by a securityholder to acquire their stapled securities; and

(c) the consideration received by a securityholder in respect of the disposal of their securities.

8 Based on our review of the Supplementary Disclosure we note that:

(a) the total level of taxable income (including capital gains and losses) payable on a future disposal is the same regardless of whether:

(i) the Restructure is or is not implemented; and

(ii) Alternative A or B is used to derive the gain or loss assuming the Restructure is implemented

(b) if the Restructure is implemented the cost base of the loan notes and units will differ depending on whether Alternative A or B is applied by the ATO. Some securityholders may need to have other taxable income and/or capital gains in order to offset any resulting income or capital loss arising from a future disposal of Spark Infrastructure stapled securities in order to be in the same after tax position.

9 It is important to note that the Supplementary Disclosure only compares the tax outcomes upon a **future disposal** of Spark Infrastructure stapled securities. We understand that implementation of the Restructure is not expected to crystallise any upfront tax liability for securityholders as rollover relief should be available, resulting in any capital gain or loss in respect of implementation of the Restructure being disregarded.

10 Further as noted in our Independent Expert's Report dated 3 November 2010, in the absence of the Restructure, Spark Infrastructure management have indicated that there is a heightened risk that some deferral of loan note interest may need to occur in the regulatory period to FY15. Those investors in Spark Infrastructure who are required to lodge tax returns on an accrual basis may therefore have to declare taxable income from Spark Infrastructure in excess of the cash distribution received if the Restructure is not implemented. Such an outcome is clearly undesirable for Spark Infrastructure securityholders.

Conclusion

11 Having regard to the Supplementary Disclosure and the above, in our opinion, the proposed Restructure remains in the best interests of securityholders taken as a whole.

12 The ultimate decision whether to approve the Restructure should be based on each Spark Infrastructure securityholder's assessment of their own circumstances. If in doubt about the action they should take in relation to the Restructure or matters dealt with in this report, securityholders should seek independent professional advice.

Yours sincerely

Craig Edwards
Director

Martin Holt
Director

Appendix A

Financial Services Guide

Lonergan Edwards & Associates Limited

1 Lonergan Edwards & Associates Limited (ABN 53 095 445 560) (LEA) is a specialist valuation firm which provides valuation advice, valuation reports and independent expert's reports (IER) in relation to takeovers and mergers, commercial litigation, tax and stamp duty matters, assessments of economic loss, commercial and regulatory disputes.

2 LEA holds Australian Financial Services Licence No. 246532.

Financial Services Guide

3 The Corporations Act 2001 authorises LEA to provide this Financial Services Guide (FSG) in connection with its preparation of this letter.

4 This FSG is designed to assist retail clients in their use of any general financial product advice contained in the letter. This FSG contains information about LEA generally, the financial services we are licensed to provide, the remuneration we may receive in connection with the preparation of the letter, and if complaints against us ever arise how they will be dealt with.

Financial services we are licensed to provide

5 Our Australian Financial Services Licence allows us to provide a broad range of services to retail and wholesale clients, including providing financial product advice in relation to various financial products such as securities, derivatives, interests in managed investment schemes, superannuation products, debentures, stocks and bonds.

General financial product advice

6 This letter contains only general financial product advice. It was prepared without taking into account your personal objectives, financial situation or needs.

7 You should consider your own objectives, financial situation and needs when assessing the suitability of the letter to your situation. You may wish to obtain personal financial product advice from the holder of an Australian Financial Services Licence to assist you in this assessment.

Fees, commissions and other benefits we may receive

8 LEA charges fees to produce reports, including this IER. These fees are negotiated and agreed with the entity who engages LEA to provide a report. Fees are charged on an hourly basis or as a fixed amount depending on the terms of the agreement with the entity who engages us. LEA is entitled to receive a fee estimated at $8,000 plus GST for the preparation for this letter.

9 Neither LEA nor its directors and officers receives any commissions or other benefits, except for the fees for services referred to above.

10 All of our employees receive a salary. Our employees are eligible for bonuses based on overall performance and the firm's profitability, and do not receive any commissions or other benefits arising directly from services provided to our clients. The remuneration paid to our directors reflects their individual contribution to the company and covers all aspects of performance. Our directors do not receive any commissions or other benefits arising directly from services provided to our clients.

11 We do not pay commissions or provide other benefits to other parties for referring prospective clients to us.

Complaints

12 If you have a complaint, please raise it with us first, using the contact details listed below. We will endeavour to satisfactorily resolve your complaint in a timely manner.

13 If we are not able to resolve your complaint to your satisfaction within 45 days of your written notification, you are entitled to have your matter referred to the Financial Ombudsman Services Limited (FOS), an external complaints resolution service. You will not be charged for using the FOS service.

Contact details

14 LEA can be contacted by sending a letter to the following address:

Level 27
363 George Street
Sydney NSW 2000
(or GPO Box 1640, Sydney NSW 2001)

Qualifications, declarations and consents

Qualifications

1 LEA is a licensed investment adviser under the Corporations Act. LEA's authorised representatives have extensive experience in the field of corporate finance, particularly in relation to the valuation of shares and businesses and have prepared more than 100 independent expert's reports to shareholders.

2 This report was prepared by Mr Edwards and Mr Holt, who are each authorised representatives of LEA. Mr Edwards and Mr Holt have over 16 years and 25 years experience respectively in the provision of valuation advice.

Declarations

3 This report has been prepared at the request of the independent directors of Spark Infrastructure to accompany the Explanatory Memorandum to be sent to Spark Infrastructure securityholders. It is not intended that this report should serve any purpose other than as an expression of our opinion as to whether or not the Restructure is in the best interests of Spark Infrastructure securityholders .

Interests

4 At the date of this report, neither LEA, Mr Edwards nor Mr Holt have any interest in the outcome of the Restructure. With the exception of the fee shown in Appendix A, LEA will not receive any other benefits, either directly or indirectly, for or in connection with the preparation of this report.

Indemnification

5 As a condition of LEA's agreement to prepare this report, Spark Infrastructure agrees to indemnify LEA in relation to any claim arising from or in connection with its reliance on information or documentation provided by or on behalf of Spark Infrastructure which is false or misleading or omits material particulars or arising from any failure to supply relevant documents or information.

Consents

6 LEA consents to the inclusion of this report in the form and context in which it is included in the Spark Infrastructure Explanatory Memorandum.