

01. K Menz

Dear Sir or Madam

I wish to make a submission to the inquiry. My submission relates to shareholder class actions. My submission does not directly relate to funding of class actions, nevertheless indirectly my comments would have huge implications, if they were acted upon.

I write as a shareholder with no legal training. I am addressing the situation from an economic (or perhaps property rights) perspective. Currently it appears that shareholder class action relating to insufficient disclosure by companies are launched by parties who claim to have been financially disadvantaged. This disadvantage is claimed to result from the purchase of shares during a particular period of time (when a lack of disclosure by the company is deemed to have occurred).

However, there is no economic logic in discriminating in favour of that particular group of shareholders. **All shareholders are equally disadvantaged by lack of disclosure.** As a long standing shareholder, I am just as disadvantaged by NOT selling as is a new share purchaser in buying. I do not know what the basis is for this discrimination, but presumably there was some legal precedent set.

If all shareholders were treated equally, as logic dictates, then the whole foundation for this type of class action would crumble. It is totally unfair, and indeed it defies economic logic and common sense, that pre-existing shareholders effectively cross-subsidise new purchasers, when, in fact, all shareholders are equally affected.

If it could be recognized in law that all shareholders are equally affected, then there would be no basis for class actions of this type, since shareholders would be suing themselves. Of course this would also pull the rug from under many class action law firms. Hence my comment above about funding.

Actions against Directors who fail their disclosure duties should occur via another mechanism, not through this capricious class action system that currently applies.

Ken Menz  
Industry Fellow  
RMIT University

