Market impact and the role of litigation funders in securities class action: A Pitch

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1. Introduction

This letter discusses an application of the pitch template developed by Faff (2015) to a regulatory relevant project investigating into the Australia market for securities class actions. In addition, we believe that this application shows that the pitch template can be used by more experienced and senior researchers as well as prior pitch papers that were completed by PhD students (see Beaumont, 2014; and Unda, 2014).

The research team for this project is Chapple, Clout and Tan. The pitch template was completed during a 2-day period (approximately 8 hours total). The research team are all ideally placed to undertake a project of this nature and are interested in the regulatory regime around corporate disclosure in Australia. Chapple, Clout and Tan (2014) used a matched sample approach to test for the relative levels of corporate governance of firms subject to securities class actions (SCAs). The evidence suggested that the SCA firms did have lower levels of corporate governance compared to non-SCA firms (matched by size and industry).

Faff (2015) pitch paper template has assisted us in focusing on the contribution and merits of this paper for a regulatory audience; in particular to refine how this paper extends our prior published research (see Table 1). We were attracted to continue researching in this area post the publication of our first joint work, Chapple, Clout and Tan (2015), as there is a need for further investigation into securities class actions in the Australian market.

The pitch was initially worked on by the two junior co-authors at UNSW and then on a visit between one junior co-author and the senior co-author at QUT. We sought to re-understand what the original purpose of the paper and the pitch template was an effective focusing tool. We believe that the pitch table can have a wide application for researchers who are not just

early career researchers. There is a no-where-to-hide element with the table as the blanks must been all worked on to fill them in and the less sexy aspects of the paper simply can't be ignored by the co-authors (see Table 1 for completed table). For example, one co-author is much more comfortable in just a methods section and without the template guidance might ignore the 'risk' assessment section. It can be that researchers might take the view that worrying about competitors is not an issue while we see that those same researchers find they have been too slow to make a move and claim that particular idea, whether it be presenting at a conference or posting a working paper on SSRN. The pitch template encourages a holeistic view of a paper, analysing internal as well as external potential threats. Faff (2015) has clearly thought through the tough questions that we should ask ourselves in determining whether the paper has legs to stand on.

2. Brief Commentary on the Application of the Pitch Template

The CIFR conference has provided the impetus to reconvene the successful research team comprising Chapple Clout & Tan. As researchers in accounting and finance in Australian Universities who prefer to make observations regarding the incentives of participants in regional capital markets, we are overwhelmed by the pervasiveness of research based on US data (Benson et al., 2014, Benson et al., 2015). Our capital market, particularly the information environment, is one of the most tightly controlled securities markets in the developed world. (Brown, 2013).

Completing the pitch template for this exercise particularly focusses the research project on the ultimate test – so what? The regulatory angle in this exercise has enabled us to differentiate our paper from prior research and to focus our attention away from the technical aspects of constructing research to the important dissemination question of why we do it.

Experienced researchers still very much treat the ‘so what’ question as implicit. In our project, focussing regulation in Australian capital market allows us to engage our empirical findings with contemporary policy debate. Our project, examining a natural population of litigated firms, occurs in the context of the more prosaic enforcement debate – in particular, private litigation taking on the role of enforcement of state regulation (Boros, 2009). In this sense, a study of the litigated firms contributes to the empirical literature that has examined firms’ compliance with continuous disclosure and the efficacy of continuous disclosure: Brown, Taylor, Walter (1999). The “effectiveness” of continuous disclosure is a matter that continues to interest researchers and policy makers, especially given reforms over the last decade to public enforcement: Hsu, 2009; Chan, Faff, Ho and Ramsay, 2007.

Our successful research team comprises Clout with accounting qualifications, Tan with finance qualifications and Chapple with securities market regulation experience. We are interested in how Australian firms respond to and comply with the regulatory imperatives, and how the firms are disciplined and sanctioned by the market, their investors and the regulators, for their disclosure decisions.

We also sought external advice and assistance from Ms Stacey Beaumont in completing the pitch document, recognising Stacey’s considerable expertise as an early adopter of the technique (see Beaumont, 2014).

3. Personal Reflection on the Pitch Exercise

As experienced researchers, and using this project as our first pitch exercise, we can see how it clearly focuses attention on the core aspects of the project. It forces a serious discussion and agreement by the researchers as to our mutual purpose. The no-where-to-hide aspect also means researchers face each other on these matters rather than deferring more awkward

discussion later. Even at a practical level, the criteria around risk and resources allowed frank discussion that we are the experts in the area and the best qualified to perform the research.

We took encouragement from the other Pitch letters we read and have learned how valuable a tool the Faff (2015) Pitch template can be. The co-authors have taken to using the template for other projects with much success and will recommend to other researchers to use the template as well. The team found it particularly useful to reflect on what the regulatory aspects of the paper are and if we could obtain data or assistance from a regulatory body, what would we ask for. The pitch template enables the research team to now have a solid framework for developing the paper further. Also, seeking guidance from experienced researchers is facilitated as we can send them our Pitch.

4. Conclusion

This letter contains the pitch of Chapple, Clout and Tan for project investigating the market impact and the role of litigation funders in securities class actions. This pitch was developed by the co-authors in accordance with Faff (2015). The creation of the pitch template allowed the co-author team to ask themselves the most important questions – like ‘so what’. We found the process to be beneficial and will indeed be recommending the Faff (2015) pitch framework to more than just early researchers – i.e. we found that more established researchers are able to reap benefits too. This preparation of a written pitch for the CIFR conference has brought together a great research team to contribute to the knowledge about the Australian capital market and the rise of securities class actions.

Team: Chapple Clout Tan	FoR: 1502 (Regulation/public policy)	Date template completed: 25 February 2015
(A) Working Title	**Market impact and the role of litigation funders in securities class actions**.	
(B) Basic Research Question	**What impact does the incipient market for litigation funding have on the enforcement of mandatory corporate disclosure, as tested through the market impact, over time, to securities class actions.**	
(C) Key paper(s)	Humphery-Jenner (2012) JFI Chapple, Clout and Tan (2014) AJM Kim & Skinner (2012) JAE	
(D) Motivation/Puzzle	To date there has been a sizable increase in SCAs in the Australian environment since 1999, post the introduction of this legal option and greater number after litigation funds were allowed in the market in 2006. Australia is described as one of the most liberal for class action rules in the world (Miller, 2009). Prior literature suggests that increased levels of disclosure result in more accurate share prices, benefiting shareholders, reducing cost of capital and enhancing the participation in stock markets. In a market where disclosures are made private information gathering does not need to take place, information asymmetry is reduced, and greater liquidity – investors can more accurately analyse firm valuation. Thus, a channel that encourages enhanced disclosure is a benefit to the market as a whole. The Australian market is different to other developed securities markets given the following set of factors: the continuous disclosure regime, the relatively under-funded regulators and the relatively fewer information intermediates per firm.	
THREE		
(E) Idea?	Does the market reaction to the commencement of SCAs change over time, given the increase in frequency of SCAs and the increasing likelihood of settlement? If so, private litigation would appear to be a substitution enforcement mechanism for enforcement of disclosure laws by public regulators. In this case, the role of litigation funders in enabling private enforcement action Australia warrants scrutiny.	
(F) Data?	**(1) Country/setting:** Australian firms subject to class actions – as there has been a recent rise in securities class actions following the lifting of restrictions on this type of litigation. (2) Expected **sample**: Approximately 40 litigated firms and 80 non-litigated firms matched by size and industry. For the period 1999 to 2014. (3) Data **source(s)**: The identity of SCA firms, the litigation funders and law firms involved was hand collected from media releases (SIRCA's *Australian Company Announcements* database) and from newspaper articles (*Factiva*). Financial firm data obtained from Morningstar *DatAnalysis* and share price data from SIRCA's *AusEquities*. **Timeframe**: SCA firms identified at this point and collection of additional data will take no more than 1 week, UNSW subscribes to the above mentioned databases. Researcher assistance needed?: 'minor' level assistance for collation of data, Funding/grants? Not essential for viability. (4) **Standard of data** – High quality standard data from all databases and skilled expertise used for the identification of SCA firms. (5) **Missing data?** An SCA firm will be required to have share price data around the time of the announcement of the class action and also a pre- and post-earning announcement. (6) Will the test variables exhibit adequate ("meaningful") variation to give good power? The expectation based on prior studies is yes.	

(G) Tools?	CAR to be estimated using MathLab and regressions with CAR as the dependent variable will be run using STATA. Pooled regression analysis containing firms that have been subject to a securities class action. Analysis will also take place with SCA firms and non-SCA firms matched by size and industry.
TWO	
(H) What's New?	To date there has been very little scholarly research on the economic impact in Australia of securities class actions. This is new given the unique regulation of Australia's financial markets.
(I) So What?	Given the policy debate between private enforcement of public law obligations of corporate disclosure, policy makers, regulators and investors are interested in the drivers of litigation and the role of the new intermediaries, the litigation funders.
ONE	
(J) Contribution?	This study will provide useful evidence on the **market impact of securities class actions** in Australia **and the role of litigation funders in** driving investor demand to privately fund a disclosure enforcement action.
(K) Other Considerations	Is **Collaboration** needed/desirable? -*Idea*: assembled an strong academic team with track record across 2 universities and relevant disciplines - *Data*: collected from publicly available sources - *Tools*: required expertise is already available in the assembled team (i.e. econometrics software packages) - Is there a *role* for a *relevant regulatory body* to be directly engaged in this project?: Absolutely – issues of enforcement of mandatory disclosure rules are of primary concern to ASIC. Ideally we will be well positioned to inform ASIC on an important matter of market regulation based on the evidence and findings produced. -Are there funding issues? As there is no database available in Australia of securities litigation, identification of the sample is highly specific intensive hand collected exercise. This requires resources to maintain and update. -Can your pitch a **"value add"** to a relevant regulatory body that would convince them to make $/in-kind contributions to the research? Are there needed data that a relevant agency might provide? If so, under what circumstances? Are there any other major issues that particularly relate to the policy/regulation dimension of this pitch? – Ideally access to ASIC investigations data on disclosure breaches would provide richer information for our dataset on sample SCA companies. **Target** Journal(s)? Do you have a "dual" publication strategy? – Yes we believe the research findings cross disciplines – a target journal is accounting and finance and a target journal in securities law. "**Risk**" assessment: - "*no result" risk* – LOW; - "*competitor" risk*: LOW – as this is hand-collected data that requires expertise to find the SCA companies. - *risk of "obsolescence"*: LOW – as the number of companies subject to an SCA is expanding and this will continue to be regulatory dimension for some time to come for the Australia. - *other risks?* None Is the **scope** appropriate? – the scope is ideal for an academic paper of this level.

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