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Dear Heidi

Listing Rule Amendments — new rules and timetables for common forms of capital raisings

Chartered Secretaries Australia (CSA) is the independent leader in governance and risk management. As the peak professional body delivering accredited education and the most practical and authoritative training and information in the field, we are focused on improving organisational performance and transparency.

Company secretaries have primary responsibility in listed companies to deal with the Australian Securities Exchange (ASX) and interpret and implement the Listing Rules. Our Members deal on a day-to-day basis with ASX and have a thorough working knowledge of the operations of the markets, the needs of investors and the Listing Rules, as well as compliance with the Corporations Act (the Act).

CSA welcomes the opportunity to comment on the Listing Rule amendments — *New rules and timetables for common forms of capital raisings* (consultation paper and exposure draft). CSA Members support the move away from requiring waivers to facilitate commons forms of renounceable and non-renounceable capital raisings and are generally supportive of standard timetables for such capital raisings. Our comments on the consultation paper and exposure draft relate to concerns we have with particular details of the proposed amendments.

We have drawn on our Members' experience in our submission on the consultation paper and exposure draft.

Objective of Listing Rule amendment — facilitation of the ETO market

CSA Members note that one objective of the proposals set out in the consultation paper and exposure draft is the desire to mitigate difficulties experienced by the Exchange Traded Options (ETO) market when corporate actions are undertaken and a trading halt is called.

CSA Members have strong concerns that the proposal in the consultation paper and exposure draft to require an entity to provide ASX two business days' notice of a call for a trading halt that will coincide with ETO expiry, in order to mitigate the increased risk for options holders and options writers concerning the expiry process, puts the needs of a secondary market ahead of the needs of issuers.

If an issuer provides to ASX two days' notice of a call for a trading halt, in order that ASX may notify ETO holders of the special arrangements that will apply for expiry, the issuer is releasing price-sensitive, material information that will be disclosed to a select group of recipients. In effect, this means that the new Listing Rule requirement would result in issuers being in breach of their continuous disclosure obligation to provide timely and equal access to investors and stakeholders to information that could affect, either favourably or unfavourably, the price or value of their holdings.

CSA Members strongly oppose a Listing Rule amendment that would put issuers and company officers at risk of breaching their continuous disclosure obligations under both Listing Rule 3.1 and s 674 of the Corporations Act.

CSA has further concerns that the proposal introduces a grave risk for issuers merely to facilitate a secondary market. CSA notes that the secondary market of ETO does not support listed entities or their shareholders, yet it is proposed that the needs of that secondary market should dictate how capital raisings are to be effected. Capital raisings are the largest transaction likely to be undertaken by a listed entity, and the requirements of that transaction should not be held hostage to the requirements of a secondary market.

CSA recommends that the ETO market should accept the risk that, from time to time, listed entities will undertake capital raisings and call for trading halts that cross over the ETO expiry date for ETOs listed over that entity's securities.

Fee to manage the ETO market

CSA Members also note that the consultation paper states that:

> ASX is introducing a notification requirement and a fee as a mechanism to help it manage the orderliness of associated Exchange Traded Option (ETOs) markets, where an entity intends to undertake a capital raising and the trading halt component of the raising will coincide with the monthly expiry of ETOs traded over the entity's securities.

CSA Members note that it is unclear if it is intended that issuers will attract this fee, or ETO holders and ETO writers, or both parties.

CSA strongly opposes the imposition of a fee on issuers where an entity intends to undertake a capital raising and the trading halt component of the raising will coincide with the monthly expiry of ETO traded over the entity's securities.

As noted above, CSA is of the view that facilitating the secondary market of ETO should neither dictate how capital raisings are to proceed nor introduce additional costs for issuers (apart from those that will attend the reduced timetable as set out in the consultation paper and exposure draft). The secondary market of ETO does not support listed entities or their shareholders, and the requirements of a secondary market should not impose additional risks or costs on issuers.

The 'mandating of early notice' to ASX of a trading halt

CSA notes that ASX proposes to introduce new Listing Rule 3.20.3 that mandates the giving of two business days' notice to ASX when the entity intends to rely on an exception to Listing Rule 7.1 and intends to call a trading halt over its securities that would coincide with the ETO expiry date for ETO's listed over that entity's securities.

CSA Members object to the notion of being 'required' to give early notice of a proposed trading halt when conducting a capital raising without recognition of the fact that this early notice may not always be practicable. An entity's decision to proceed with a capital raising can be dependent on a large number of interdependent factors, many of which are outside the listed

entity's control. For instance, the capital raising may be connected to a complex negotiation which is the subject of several conditions precedent, some of which may not be, and indeed often are not, resolved until the evening before or the morning of the proposed launch. Timetables are necessarily crammed and multi-faceted in the final days of a transaction, partly due to an organisation's focus on its continuous disclosure obligations, and the requirement that all things must come together at the last moment in order not to prejudice an entity's ability to raise funds at an acceptable market price. Importantly, in most instances, final board approval for the capital raising (and/or related transaction) is not granted until immediately before the launch decision is made. The board could vote against the proposal at the last moment, or one of the conditions precedent may not eventuate by the deadline. Market conditions can also become unfavourable overnight, necessitating the cancellation or postponement of the capital raising, in which case the decision to request a trading halt can be cancelled with a moment's notice.

In addition, there are times when an entity must move very swiftly to take advantage of a capital raising window of opportunity, and two business days' notice to ASX of a trading halt may not always be achievable. Listed entities should not have this flexibility to act in shareholders' best interests restricted by an early notice requirement of this nature, simply for the convenience of managing the secondary market of ETOs.

CSA Members accept that, in most instances, an entity's ASX listing officer currently has informal notice of an intention to call a trading halt for a capital raising by virtue of the timetable and advance waiver discussions with ASX. CSA Members do not object to continuing to provide this information in advance, but believe it should be on an informal basis where it is reasonable to do so. CSA Members consider that if a rule of this nature was to be introduced, it should at the very least contain provisions that acknowledge the right of the entity to withdraw that early notice of intent, without consequence (or fees), at any point in time up to the moment at which the halt was to have been called, and ensure that the entity is not prejudiced in any manner should it wish to resurrect that proposal or capital raising at some future time.

CSA Members further note that, as trading halts can be called at any time at short notice and often for reasons not related to a capital raising, the ETO market will continue to be affected at times by trading halts that will coincide with ETO expiry dates. The ETO market participants must accept that this is an inherent risk of trading in this secondary market, and it is inappropriate that this risk be mitigated at the expense of the flexibility and therefore the rights of the primary market to act at short notice and in the interests of its own members.

Timetable renounceable accelerated rights entitlement offers

CSA Members are of the view that aspects of the timetable as set out in the consultation paper and exposure draft would be extremely difficult to meet for listed entities with a large shareholder base (particularly a large retail shareholder base). CSA notes that the timetable as set out in the consultation paper is achievable for a smaller listed entity, which does not have the same logistical issues to resolve in undertaking a capital raising.

CSA is of the view that the proposed timetable penalises large listed entities on the basis of their size, as it appears that little consideration has been given to the logistics of meeting the timetable when a large retail shareholder base exists.

For example:

- If a listed entity has many thousands of shareholders, the entity will find it virtually impossible to have all documentation printed within the timeframe set out in the consultation paper. The listed entity would then need to seek a waiver from ASX, which defeats the objective of the Listing Rule amendments.
- There are two major share registries in Australia, with the two main competitors contracted to 88 per cent of the companies in the S&P/ASX200 and, more importantly,

representing 98 per cent of shareholders.[1] Should a number of large listed entities be undertaking dividend payments at much the same time, the registries will struggle to meet the demands of the timetable, given existing resources.

- In a renounceable accelerated entitlement offer, the requirement to announce the results of the institutional offer on the same day the institutional bookbuild is conducted will be difficult to meet when a number of institutions are participating in the bookbuild and time is required to properly reconcile the institutional bids and determine the final outcome.
- Similarly the requirement to announce the results of the retail offer the day after the close of the offer does not allow the share registry sufficient time where the shareholder base is large to process applications and determine the final results.
- Retail shareholders continue to exhibit a preference for using cheques. Cheques take time to clear and the one day from the close of the retail offer to the announcement of the results of the retail offer provided for in the proposed timetable is insufficient time to allow cheques to clear.

CSA recommends that the timetable applicable to retail shareholders not be reduced from the current practice.

Notwithstanding this recommendation, CSA notes that it is a protracted process seeking amendments to the Listing Rules, and therefore, should a number of large listed entities find themselves unable to meet the tightened demands of the proposed timetable, a further amendment to the Listing Rules does not provide a viable solution.

CSA therefore recommends that the Listing Rule requirements be amended to provide that the ASX is able to consider and approve modifications to timetables without the need to go through the formal approval process associated with obtaining a waiver.

Proposed timetables

CSA Members are unclear as to the exact meaning of the number of days set out in the final two columns of each timetable. It appears as if there is one timetable for a two-day trading halt and another for a three or four-day trading halt. The ambiguity of why there are different timetables proposed for different lengths of trading halts makes it difficult to respond to the proposals beyond what has been set out above in relation to renounceable accelerated rights entitlement offers.

Time limits

CSA notes that the time limits require the provision of information to ASX by no later than 12.00pm. The consultation paper and exposure draft do not specify whether this is Australian Eastern Standard Time (AEST) or Australian Eastern Daylight Time (AEDT) or local time for the member entity. However recent CSA Member experience suggests that the 12.00pm in the proposed new rule is intended to refer to Sydney time.

CSA Members note that lodging certain information by 12.00pm AEST or AEDT can prove challenging (even impossible) for listed entities in Western Australia. When it is 12.00pm AEDT, the WA-based listed entity must lodge the information at 9.00am local time. Given the reduced timetable proposed in the consultation paper and exposure draft, it becomes even more challenging for listed entities to meet the proposed timetable. We have included an Appendix (Appendix 1) to this submission as a recent, real-life example that sets out the circumstances wherein a WA-based company (of 12,000 members) was not able to meet the timetable, and importantly, irrespective of any additional preparations it might undertake in a future capital raising, this entity would *never* be able to meet this timetable.

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[1] *Australian Registry Service Provider Survey 2011*, JP Morgan and Chartered Secretaries Australia, January 2011

CSA recommends that ASX move the ASX lodgement time to not less than the equivalent of 12.00pm local time in the state in which the entity is listed, to provide sufficient time for listed entities in Western Australia (and other states) to meet the demands of the proposed timetable. Considering that the Perth exchange hosts the largest number of listed entities and is one of the fastest growing of any of the Australian exchanges, this would seem a reasonable request to make on behalf of what is a substantive proportion of the ASX client base.

Other consequences of concern related to a Sydney-centric timetable are that:

- smaller WA-based share registries (without the resources and national spread of, say, Computershare) will also be disadvantaged and unable to adequately service their WA-based clients under this timetable. This has the potential to further concentrate share registry services, and CSA has concerns over any compliance requirement from ASX that would result in such market concentration
- larger WA-based companies, such as a Wesfarmers or Woodside, with substantial shareholder numbers, would find it difficult to meet even the recommended 12.00pm local time deadline, as the processing time required by their share registries between 'offer close' and notification to ASX would be exponentially greater again.

Conclusion

While generally supportive of the move away from requiring waivers to facilitate common forms of accelerated renounceable and non-renounceable capital raisings and standard timetables for such capital raisings, CSA Members have concerns with some of the detail of the proposed Listing Rule amendments.

In summary our concerns relate to:

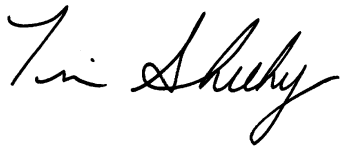
1 ASX's apparent prioritisation of the rights of the secondary market participants over the rights of the primary market participants, with potential and alarming selective disclosure consequences

2 adopting deadlines that do not acknowledge, and may not accommodate on an equitable basis, the needs of entities across all Australian time zones

3 introducing a Listing Rule that facilitates a process for the small to medium ASX-listed entities (which is commendable in itself), while neglecting to introduce a simplification mechanism for the very large entities, that is, large entities will still need to follow the existing cumbersome waiver process in order to arrive at a modified accelerated timetable that will cater for some of the logistical issues (for example, printing and processing) caused by a larger shareholder base.

We would be happy to meet with you to discuss these issues and would welcome the opportunity to be involved in further deliberations.

Yours sincerely



Tim Sheehy
CHIEF EXECUTIVE

APPENDIX 1 — Example experience of WA based entity

In a recent accelerated non-renounceable entitlement offer conducted by a Perth-based listed MIS using Computershare as its registry, it was found that the accelerated timetable required by the ASX was not achievable for a WA-based company in relation to the deadline given **for notification to ASX of number of securities issued under the institutional offer.**

WA-based example — Perth-based MIS with 12,000 securityholders

In the interests of equal treatment of all securityholders (a requirement under the MIS' constitution and a good governance practice), the MIS allows retail securityholders to participate in the same early close timetable (with its early allotment advantage) that is offered to institutional unitholders, provided they submit payment by BPay, RTGS or other direct debit means. (Cheques are not permitted due to the extended clearance time required).

The day after the Early Close date, Computershare requires *at least a full half-day* (possibly more depending on the volume of transactions involved) to complete all of the tasks shown in the table below, before it can advise with certainty exactly how many securities are to be allotted the following day. Please note that it is *not* possible to complete all of these tasks between COB the day before and 9.00am Perth time the next day (in order to meet the noon AEDT deadline set by ASX's current accelerated timetables).

The timetable in this example was:

Date	**ASX timetable requirement**	**Actual timetable and tasks completed**
Thurs 3 March	**Offer Early Close Date** for Institutional AND Early Retail participants (paying by BPay & RTGS) Closing at 6.00pmAEDT [3.00pm Perth]	*There is nothing Computershare can do on this day to accelerate receipt of the information it requires for reconciliation, analysis and processing the next day.*
Friday 4 March	**Day before quotation (Settlement Day)** The ASX timetable requires a notification to ASX of number of securities issued under the institutional offer and total issued capital **by 12.00noon AEDT** [9.00am Perth] *The ASX timetable appears to be assuming that there will only be institutional DvPs for settling, but it is more complicated if there are also early offer acceptances from retail securityholders paying by BPay and RTGS. Additional clearance and processing times apply for these.*	• Computershare Perth registry office opens early at 8.00am Perth time. • Computershare checks Offer bank statements and identifies BPay and RTGS payments. Reconciles all payments received with securityholders' applications. • Follows up with any institutions if there is an anomaly in the payments received. (There were RTGS anomalies in this example.) • Process the applications against the payments. • Send spreadsheet with processed information to analytics to review, to identify institutions who have double-dipped — this can be a lengthy process. • Adjust final numbers where there has been double-dipping. (One institution had double-dipped in this example.) • Provide notice to the company of final numbers of securities requiring quotation the next day. **All of the above took from 8.00am until 12.45pm Perth time.** **The company notified ASX of corrected and final numbers at 12.49pm Perth time (having previously advised a preliminary, but incorrect, number at 11.00am Perth time in an endeavour to satisfy ASX demands.)**
Monday 7 March	**Allotment of securities** (WA Public Holiday)	Computershare Perth opens on Public Holiday. Securities allotted. App 3B issued with correct number of issued securities.