



**CHARTERED SECRETARIES
AUSTRALIA**

Leaders in governance

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Dear Mr Starr

Non-Voting Ordinary Shares

CSA is the peak professional body delivering accredited education and the most practical and authoritative training and information on governance, as well as thought leadership in the field. Our members 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.

CSA welcomes the opportunity to comment on the proposal that ASX amend its Listing Rules to allow companies to issue non-voting ordinary shares, which would entail holders of non-voting ordinary shares not being entitled to one vote for each fully paid security on a poll.

CSA believes that the market does attribute a value to voting rights as well as financial returns and that companies should be allowed to give investors the opportunity to invest in the right to dividends and any surplus on a winding-up, without having also to invest in voting rights. CSA contends that there is no policy reason why investors should not be allowed to decide for themselves whether they wish to purchase voting ordinary shares or non-voting ordinary shares, subject to proper disclosure in an IPO process and shareholder approval for existing listed entities.

CSA supports this proposal, subject to the following safeguards:

- If the company proposes to issue non-voting shares as part of the IPO process, the shares would need to be clearly identified as such. The IPO documents would need to clearly set out the rights attached to both classes of shares. CSA recommends that the IPO documents should remain available on both the ASX and the company's websites so that investors can inform themselves.
- Existing listed entities should be required to seek prior shareholder approval for the issue of non-voting shares, such approval to expire after 12 months (issues of non-voting shares during the 12 month period would require further shareholder approval if

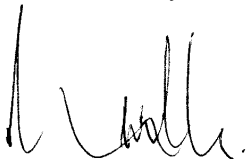
they exceeded the threshold applicable to all issues of equity securities in Listing Rule 7.1). CSA recommends that shareholder approval for the issue of non-voting shares below the threshold set out in Listing Rule 7.1 be achieved by ordinary resolution and not special resolution. CSA agrees that requiring a special resolution would add unnecessarily to the company's cost of capital raising for no clear additional regulatory benefit. CSA notes that, in this regard, an initial constitutional change would probably be required for most companies to permit the issue of non-voting shares and that this would need to be approved by special resolution. Again, CSA recommends that clear disclosure would need to be provided to set out the rights attached to both classes of shares.

- CSA recommends that the top 20 holders of both classes of shares should be disclosed separately.
- Non-voting shareholders could exercise one vote for each fully paid security where there is a proposal to wind up the company, or a proposal to reduce the voting ordinary capital. That is, they could vote on any proposal that changes their rights. However, given that, by definition, non-voting shareholders do not have voting power, CSA does not believe that non-voting shareholders should have any rights to vote in relation to a change of control. Nor does CSA believe that non-voting shareholders should have the right to vote on a proposal to buy back shares. Currently, shareholders do not vote on equal access buy backs for less than 10 per cent of the stock in 12 months and CSA cannot see any policy reason why non-voting shareholders would be granted voting rights beyond those that currently apply.
- CSA supports non-voting shares receiving a dividend *equal to* ordinary voting shareholders, as this is a straightforward model for the listing of non-voting ordinary shares. However, while CSA accepts this as a default position that allows ASX to preserve flexibility in the market, CSA recommends that ASX be able to grant waivers and modifications as it sees fit as practice develops in this area.

CSA notes that preference shares have been another form of issuing securities that achieves the objectives of enhanced capital raising flexibility and investor freedom of choice, and that preference shares have not created any difficulties for investors or the market.

In preparing this submission, CSA has drawn in particular on the expertise of its national Legislation Review Committee, comprising members working in listed companies with the responsibility to interpret Listing Rules.

Yours sincerely



Chris Wells FCIS
PRESIDENT