



**CHARTERED SECRETARIES
AUSTRALIA**

Leaders in governance

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Malcolm Starr
General Manager, Regulatory and Public Policy
ASX Regulatory and Public Policy Unit
Level 7, 20 Bridge St
SYDNEY NSW 2000

By email: regulatorypolicy@asx.com.au

Dear Mr Starr

Omnibus Listing Rule Amendments

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.

Executive summary

CSA believes that the proposed amendments will provide benefits as set out in the consultation paper. CSA particularly commends ASX for seeking to introduce amendments that will bring benefits to companies with a market capitalisation of \$100 million or less (SMEs), which make such an important contribution to the economic development of Australia, without compromising the regulatory model provided at present.

Our comments on the following pages are offered in the spirit of ensuring that the proposed amendments achieve the policy outcome.

CSA supports the proposals:

- to introduce a requirement that companies offering a share purchase plan (SPP) must ensure that it is open to all shareholders on the register the business day before the SPP is announced
- to amend the ASX admission rules and introduce several new ongoing listing rules to enable the listing of strategic investment vehicles (SIVs)
- that ASX allow SMEs to obtain at their AGM a shareholder mandate to raise capital up to 25 per cent (rather than 15 per cent as at present) of the amount of issued capital for a period only of 12 months from the date of the AGM provided issues are at no greater than 20 per cent discount to the market price
- that companies seeking listing have at least 200 shareholders (currently 400), each with holdings of at least \$2,000 worth of shares and net tangible assets of at least \$4 million (currently \$2 million)

- that companies seeking listing no longer be subject to the requirement that at the time of initial listing the issue price or sale price of all the securities for which the entity seeks quotation (except options) must be at least 20 cents.

Lack of clarification of Listing Rule 10.14

CSA notes that this is the second set of Listing Rule amendments issued by ASX since the consultation on Listing Rule 10.14 in the Exposure Draft of the ASX Corporate Governance Council guidelines, issued in December 2006. CSA is disappointed that, yet again, Listing Rule 10.14 is not dealt with in these proposed amendments.

CSA had lodged a submission on Listing Rule 10.14 recommending that:

- Listing Rule 10.14 be redrafted to clarify the precise nature of its intended application, and
- a Guidance Note be issued on Listing Rule 10.14 to clarify the underlying philosophies and particular interpretations that will be applied under certain circumstances.

When preparing this submission, CSA drew in particular on the expertise of its national Legislation Review Committee, comprising members working in listed companies with the responsibility to interpret this Listing Rule.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Chris Wells', written in a cursive style.

Chris Wells FCIS
PRESIDENT

1. Share Purchase Plans (SPPs)

CSA supports the proposal to introduce a requirement that companies offering a SPP must ensure that it is open to all shareholders on the register the business day before the SPP is announced.

CSA believes that setting the day prior to the announcement of the SPP as the criterion for eligibility as a shareholder to participate ensures that individual investors are dealt with fairly.

CSA recommends that this requirement of determining entitlement to participate in the SPP should apply when the decision to implement a specific SPP has been taken and the details of that offer has been announced.

CSA members do not believe that this proposal will affect costs or the decision by companies to conduct a SPP.

2. Strategic Investment Vehicles (SIVs)

CSA supports the proposal to amend the ASX admission rules and introduce several new ongoing listing rules to enable the listing of SIVs.

Admission requirements

Requirements for listing

CSA supports an asset test NTA of \$500 million after deducting the costs of fundraising and believes this is an appropriate size threshold, given the nature of the vehicle.

Investment mandate

CSA believes that SIVs would not want to be restricted in terms of investment opportunity. CSA does not believe that the Listing Rules should work to pre-define how companies wish to focus their investments and are concerned that any such specification of key elements of investment choice would work to restrict the SIV, in the same manner in which objects in company constitutions used to restrict companies. CSA notes that such objects in company constitutions are no longer favoured and can find no argument to support such restrictions being applied to SIVs. Further, CSA notes that the prospectus will clarify for investors what the SIV intends to focus on and therefore recommends that no further guidance is required.

Directors' and managers' experience

CSA notes that a broad range of experience and qualifications could be relevant for directors and managers of SIVs, and that previous fund management experience might not be all that is required. For example, a SIV with a focus on investment in infrastructure could well look to those with infrastructure experience to be directors or managers. CSA therefore believes that it would be inappropriate to restrict director and manager experience to only those with fund management experience. CSA believes that disclosure of the policy on risk spread and diversification is the key to the rule concerning director and manager experience. CSA recommends that the Listing Rules for SIVs should state:

Must satisfy ASX that both directors and fund managers (if separate entities) have appropriate experience.

Governance

CSA supports 'if not, why not' ASX Corporate Governance Council disclosures for SIVs, as these are relevant to the investors of all listed entities.

Disclosure

CSA supports the application of Listing Rule 3.1 to SIVs and believes that all listed entities should comply with continuous disclosure requirements. CSA cannot discern any issues specific to SIVs other than those already covered by the exemptions to Listing Rule 3.1 that would create the need for separate rules for these vehicles.

Investment policy/mandate

CSA believes that requiring shareholder approval to make changes to the investment mandate would restrict the ability of SIVs to respond to investment opportunities quickly. For example, a SIV could have an investment focus in water, and decide to pursue an opportunity to invest in a pipeline should such an opportunity arise. CSA notes that in such circumstances the SIV would be required to make an announcement to the market. However, if shareholder approval of the investment mandate was required, an extraordinary general meeting would need to be convened, which would delay the response to the investment opportunity. CSA believes that continuous disclosure requirements are sufficient to ensure transparency of decision-making in relation to investment.

Specific SIV disclosures

CSA believes that monthly reporting is too frequent and is concerned that monthly reporting could see managers' attention focus on reporting rather than on running the entity. CSA notes that this would defeat the criteria for listing as outlined in the consultation paper, which is that the investment vehicle is not passive. CSA further notes that if an investment is material, the entity would be required to make an immediate disclosure under Listing Rule 3.1 and believes that this captures all relevant information. CSA recommends that SIVs report quarterly.

Significant transactions

CSA reiterates that it does not support shareholder approval of the investment mandate and notes that on this basis there is no need to provide an exception for a transaction that falls within the investment mandate.

Annual report disclosures

CSA supports the disclosure in the annual report of SIVs of the information listed in the consultation paper. CSA believes that SIVs should be required to disclose in their annual reports not only the information listed in the consultation paper, but also the same information that is required from companies, that is, financial statements, directors' report, remuneration report (in the directors' report) and corporate governance statement.

Continuous disclosure

CSA believes that guidance on the operation of the continuous disclosure rules for SIVs is covered by the existing requirements under Listing Rule 3.1. CSA notes that the decision of when exactly to disclose price-sensitive information is different for every company, and recommends that such disclosure for SIVs is dealt with on a case-by-case basis by ASX. CSA does *not* recommend tailoring a version of the continuous disclosure requirements for SIVs.

3. Capital raising rules

CSA supports ASX allowing SMEs to obtain at their AGM a shareholder mandate to raise capital up to 25 per cent (rather than 15 per cent as at present) of the amount of issued capital for a period only of 12 months from the date of the AGM provided issues are at no greater than 20 per cent discount to the market price.

CSA notes that in this context 'market price' is not defined in the discussion paper. However, CSA recommends that the definition used in Listing Rule 7.3.3 be used to calculate market price under this proposal.

CSA suggests that these details be provided to shareholders in any explanatory materials sent to them prior to a general meeting being held.

CSA believes that this proposal will provide SMEs with a more appropriate level of flexibility regarding capital raisings while still providing protection for those shareholders concerned about dilution. CSA notes that the proposal does not give the company the discretion to issue shares but retains shareholder control of whether companies are empowered to issue shares in excess of the 25 per cent limit.

Will the proposal alleviate the problems faced by SMEs with respect to capital raisings?

CSA believes that the proposal will alleviate some of the problems faced by SMEs with respect to capital raisings, but not all of them.

Will shareholders be sufficiently protected by the requirement that a shareholder mandate be obtained every 12 months and in any event for any capital raising in excess of 25 per cent of a company's capital?

CSA believes that the proposal provides a sound balance between shareholder protection and the need for smaller companies to raise larger amounts of capital more quickly. CSA notes that SMEs generally have small administrative functions and that the overhead involved in seeking shareholder approval is high. CSA further notes that the costs of organising a general meeting are material compared to the capital being raised.

4. New initial spread requirements

CSA supports the proposal that companies seeking listing have at least 200 shareholders (currently 400), each with holdings of at least \$2,000 worth of shares and net tangible assets of at least \$4 million (currently \$2 million).

5. Removal of the 20c rule

CSA supports the proposal that companies seeking listing no longer be subject to the requirement that at the time of initial listing the issue price or sale price of all the securities for which the entity seeks quotation (except options) must be at least 20 cents.

CSA agrees that this proposal brings the ASX Listing Rules in line with the trend of many other major international exchanges in relation to setting a minimum issue price and believes it to be sensible and non-contentious.