



**CHARTERED SECRETARIES
AUSTRALIA**

Leaders in governance

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Lisa Rayner
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Australian Securities & Investments Commission
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By email to: policy.submissions@asic.gov.au

Dear Ms Rayner

Facilitating online financial services disclosure

Chartered Secretaries Australia (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. We represent over 8,000 governance professionals working in public and private companies, many of whom are involved in the provision of financial services disclosure.

CSA supports the online delivery of financial services information to consumers. In particular, our members note that online delivery leads to more timely disclosure and provides more opportunities for event-based and set-piece disclosure. Moreover, online delivery of financial information provides both environmental cost savings and significant cost reductions for companies (which in turn are significant cost reductions for shareholders). The ability of technology to search through such documents for relevant information also makes electronic communication timely and efficient for consumers.

As a general principle, CSA believes that the same principles concerning online disclosure should apply throughout the Corporations Act.

CSA recommends that the Corporations Act should provide for electronic provision of information as the default position to provide generic financial services information under Pts 7.6—7.9 of the Corporations Act, as well as under Ch 6D relating to fundraising and Ch 6 relating to takeovers, subject to statutory obligations on companies to:

- deliver a hard copy, free of charge, of the financial services disclosure to any consumer who requests it
- retain a master copy of the financial services disclosure which can be definitively identified at any given time as the original, so that any hard copies requested can be generated from this master copy.

Proposed guidance on the use of electronic delivery

CSA notes that the discussion paper, on p 9 (proposed guidance in proposal A1), proposes that consent to the electronic delivery of financial services disclosure should be positive, that is, it would be an opt-in regime.

However, **CSA recommends** that the principles governing the distribution of annual reports to shareholders under s 314 be applied throughout the Corporations Act, where the financial services disclosure is generic (the same information is supplied to all consumers). That is, online financial services disclosure should be automatic, unless consumers request a hard copy. It would be an opt-out regime.

Generic information, applicable to all consumers, includes:

- financial services guide (FSR)
- product disclosure statement (PDS)
- ongoing disclosure of material changes and significant events (s 1017B(3)(b))
- additional information provided by a superannuation trustee (regs 7.9.5A(3)(b) and 7.9.5B(1)(c))
- unsolicited offers to purchase financial products off-market (s 1019E(1), s 1019J(2) and s 1019G(3)).

CSA believes that, while providers should allow clients to change their mind about receiving financial services disclosures electronically at any time and at no cost, the move to hard copy provision of such information should not be retrospective, that is, it will apply to all financial services disclosure provided as of the date the consumer changes their preference to hard copy receipt and does not apply to any information already provided electronically prior to that date.

However, where financial services disclosure is personalised, and not applicable to all consumers, **CSA recommends** that the provision of such information should be requested by the consumer, that is, the consumer would opt in. This is analogous to the regulation of the provision of dividend statements to shareholders, which requires a positive choice on the part of the shareholder to receive the information electronically.

Personalised information, applicable to individuals rather than to all consumers, includes:

- statement of advice (SoA)
- periodic statements for retail clients for financial products that have an investment component (s 1017D(6)(b))
- confirmation of transactions (s 1017F(6)(a)(ii)).

CSA notes that, while marketing information relating to financial services could be considered generic, an opt-in approach should apply to such information. An opt-in approach is consistent with the Spam Act which prohibits sending commercial electronic messages without consent and the Privacy Act which requires that companies only use personal information for the purpose for which it was provided or for a purpose that the individual would reasonably expect the information to be used for or with the individual's consent.

In relation to the proposed guidance in A1(d) concerning delivery, **CSA recommends** that, if financial services disclosure delivered electronically is undelivered, dead email addresses should be treated similarly to lost shareholders, whose addresses have changed without notification to the company. That is, **CSA recommends** that delivery cannot be an overarching obligation on providers, and any obligation on the delivery of financial services information electronically should not be more onerous than in hard copy.

On the question of compliance costs, CSA believes that the individual providers of financial services will take their own decisions as to the provision of financial services disclosure in

electronic or hard copy form, as will individual users of the services take their decisions as to preference of format for receipt of such information. For example, in the case of some smaller companies who may not have their own corporate websites, the provision of all financial services disclosure in hard copy would remain as an alternative for them. Therefore, CSA believes that compliance costs will depend on market forces. The level of take-up of options will be driven by demand.

CSA recommends that any guidance provide as much flexibility as possible to allow both providers and consumers to ascertain what is required in individual circumstances, and not attempt to impose a 'one-size-fits-all' regime. CSA notes that there will be a back-end cost in providing consumers with greater choice, and therefore recommends that relief and guidance provide for greater flexibility without mandating it.

Proposed relief to use email and the internet to send information

CSA agrees with and supports the proposed relief set out in the discussion paper on p 10 (Proposal in B1). CSA also believes that the benefits of allowing disclosures to be delivered electronically outweigh the risks.

In relation to the risk of internet scams or fraud, CSA notes that it is incumbent on providers to take the appropriate steps to mitigate these risks. CSA notes that the distinction between generic and personalised information outlined above is useful in this regard, as CSA suggests that more sophisticated consumers, accustomed to password use for protection of personalised information, are more likely to opt-in to electronic receipt of personalised financial services disclosure.

On the question of whether the proposed relief will discourage consumers from reading financial services disclosure, CSA notes that the incentives to read such disclosures are far more related to clarity and volume than to the method of delivery. CSA therefore does not believe that the proposed relief increases the possibility that consumers will not read financial services disclosure.

CSA reiterates that the proposed relief should apply throughout the Corporations Act and, on that basis, recommends that relief from Ch 6 and Ch 6D be implemented.

Proposed requirements of relief to use email and the internet to send information

CSA supports the proposed relief requirements set out in Table 2 on p 12 of the discussion paper.

CSA does not support unconditional relief being provided or relief subject to only some of the protections. CSA notes that the general principles of protection set out in Table 2 are sound, and that if industry associations wish to develop further guidance within the context of these principles, they can do so.

Proposed relief for annual superannuation information

Please see our comments above under 'Proposed guidance on the use of electronic delivery', and in particular our comments relating to additional information provided by a superannuation trustee (regs 7.9.5A(3)(b) and 7.9.5B(1)(c) and periodic statements for retail clients for financial products that have an investment component (s 1017D(6)(b)).

Proposed requirements for relief

CSA supports the proposed relief requirements set out in Table 3 on p 15 of the discussion paper.

Research on uptake of hard copy annual reports under s 314

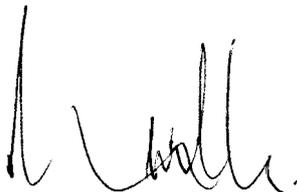
In 2007, the *Corporations Legislation Amendment (Simpler Regulatory System) Act 2007* was introduced, which provided for companies to publish annual reports on their websites as the default method of delivering them. Research conducted by CSA at the end of 2007¹ showed that, on average, only ten per cent of shareholders in the top 200 ASX-listed companies elected to receive a hard copy of the annual report. CSA contends that this research supports the proposed guidance and relief, indicating that consumers of financial information are happy to have such information made available electronically.

Conclusion

CSA supports the online delivery of financial services information to consumers. As a general principle, CSA recommends that the same principles concerning online disclosure should apply throughout the Corporations Act, with the distinction between generic and personalised information we outline in this submission applied to whether consumers opt out or opt in to receive financial services information electronically.

When preparing this submission, CSA drew in particular on the expertise of its national Legislation Review Committee and Corporate and Legal Issues Committee.

Yours sincerely

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

Chris Wells
PRESIDENT

¹ Chartered Secretaries Australia, *Benchmarking Governance in Practice in Australia*, 4th Survey, April 2008