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21 December 2006

The Hon Chris Pearce MP
Parliamentary Secretary to the Treasurer
Corporate and Financial Services Regulation Review
Corporations and Financial Services Division
The Treasury
Langton Crescent
PARKES ACT 2600

Sent by email to: CFScomments@treasury.gov.au

Dear Chris

Corporate and Financial Services Regulation Review Proposal Paper

Chartered Secretaries Australia (CSA) welcomes the proposals on a variety of corporate and financial services regulatory issues contained in the Proposal Paper released in November this year and takes this opportunity to endorse them. CSA is keen to ensure that these proposals achieve the policy objective of simplifying the regulatory system and welcomes the opportunity to comment in greater detail on some of the proposals.

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 are an independent, widely respected influencer of governance thinking and behaviour in Australia. We represent over 8,000 governance professionals working in public and private bodies, all of whom are involved in governance, corporate administration and compliance. We have drawn on their experience in the formulation of this submission.

In preparing this submission, CSA has drawn in particular on the expertise of the members of our two national policy committees.

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Chapter 1: Financial Services Regulation

CSA has no comment on Chapter 1.

2. Chapter 2: Company Reporting Obligations

2.1 Executive remuneration

CSA members fully support the proposal that the remuneration disclosure requirements for executives and directors be contained exclusively in the *Corporations Act*.

However, there is a question of whether the full remuneration report, as part of the directors' report under s 300A of the *Corporations Act*, would need to be audited. The proposal paper is admirable in bringing together the accounting standards and the *Corporations Act* on remuneration reporting, but it does specify that the *Corporations Act* will require the full remuneration report to be audited (currently only the disclosures required by the accounting standards in the remuneration report must be audited). CSA points to the difficulty posed in any attempt to audit the narrative text of the directors' report, when auditing has traditionally applied to financial information.

CSA also notes the overlap between the recommendation in the proposal paper concerning policies on the disclosure of hedging arrangements and the Exposure Draft of the revised ASX Corporate Governance Council *Principles of good corporate governance and good practice recommendations*. CSA supports the inclusion of this material in the revised *Principles of good corporate governance and good practice recommendations* rather than in the *Corporations Act*, and opposes any duplication of this disclosure requirement.

Recommendation

CSA recommends that the narrative text of the directors' report be excluded from an audit requirement.

CSA also recommends the inclusion of policies on the disclosure of hedging arrangements in the revised *Principles of good corporate governance and good practice recommendations* rather than in the *Corporations Act*, and opposes any duplication of this disclosure requirement.

2.2 Thresholds for reporting for large proprietary companies

CSA supports an increase in the revenue and asset thresholds for financial reporting of large proprietary companies. However, CSA notes that the proposal paper has reduced the need to meet two out of three threshold tests for determining whether a proprietary company is significant to meeting one out of two threshold tests (either an operating revenue or a gross asset threshold test).

The outcome of this reduction to one threshold test is that a number of subsidiary companies holding assets of more than $12 million, that are set up purely as investment vehicles, fall into the new reporting category. CSA believes that the inclusion of such investment vehicles in the new reporting category does not achieve the policy objectives of focusing regulation on the financial affairs of proprietary companies which have a significant economic influence, as such investment vehicles do not fall into this category. The collapse of such companies would not have a wider impact on the community in general, particularly in regional areas; the issue of smaller trade creditors being in a position to demand financial information before doing business with a company does not apply; and the ongoing operations of such companies do not have an

impact on employees and representative groups, as they do for those companies with a significant economic influence.

CSA supports the removal of the number of employees as a measure for achieving the threshold, but recommends that two threshold tests be retained: turnover and assets. This would ensure that subsidiary companies set up purely for investment purposes would not be captured in the new reporting category.

Recommendation

CSA recommends that both turnover and assets be retained as measures for achieving the threshold for determining whether a proprietary company is economically significant.

Relief for wholly-owned subsidiaries

CSA fully supports the proposal that the financial reporting relief for wholly-owned subsidiaries be incorporated into the *Corporations Act*.

The ASIC Class Order is designed to provide relief to wholly-owned entities from filing accounts. The public policy behind this mechanism is to allow a group structure to be viewed as one economic entity. The mechanism that the Class Order provides to achieve this outcome is a deed of cross guarantee between a parent company and one or more of its wholly-owned subsidiaries.

The larger question at stake in reviewing the current workings of deeds of cross guarantee is whether or not wholly-owned subsidiaries in corporate groups should be required to file separate accounts. CSA believes that the policy position and principle is, if the consolidated group files its own accounts and a deed of cross guarantee is in place, then there should be no need for the subsidiary companies party to the deed of cross guarantee to file separate accounts, because customers, creditors, suppliers etc can deal with the corporate group as one entity.

The current complexities associated with this mechanism have obscured this policy objective and ushered in other, unrelated complexities such as whether the subsidiary has filed accounts in the last three years. While it is understandable for ASIC to try to remind companies to file accounts, by meshing this unrelated requirement with the mechanism of ensuring that all subsidiaries and the parent company are treated as one entity, the original objective is hidden from view and a very significant administrative burden has been placed on companies for little or no public benefit.

CSA recognises that the proposed reforms to the *Corporations Act* included in the Proposal Paper, of which the proposal to incorporate financial reporting relief for wholly-owned subsidiaries into the *Corporations Act* is only one of many, may take some time to implement, and strongly encourages the government to implement this particular reform as soon as possible.

Our reasons for this go directly to the heart of the burden of excessive regulation that falls on companies. Currently, group entities will generally need to execute a new deed of cross guarantee before a new group entity can take advantage of ASIC's group accounting relief. ASIC was previously required to approve a new deed of guarantee entered into by group members. Most forms of cross guarantee provide that new group members can be joined as parties to them only under an assumption deed that has been approved by ASIC.

The amendments to the Class Order mean that ASIC will no longer approve deeds of cross guarantee and assumption deeds. The new ASIC pro forma deeds reflect this.

Therefore, to join a new group member to a deed of cross guarantee that requires ASIC pre-approval, it is necessary for all members of the group seeking to rely on the Class Order (including the proposed new group member) to enter into a new deed of cross guarantee in the current form of the ASIC Pro Forma 24.

In practice, this means that the only way in which companies can add new entities to existing cross guarantees is to revoke all existing cross guarantees and execute new ones, accompanied by a lawyer's certificate.

Revoking existing deeds and executing new ones places an exceptionally onerous compliance burden on companies. For example, some top 200 companies can have more than 100 Australian registered wholly-owned entities, and the process involved in executing new deeds of cross guarantee for each company in the group each time an entity is added or removed consumes time, staff resources and money.

Recommendation

CSA recommends that the proposal to incorporate financial reporting relief into the *Corporations Act* be introduced as soon as possible, to provide relief for companies experiencing the onerous burden of having to comply with the current system.

2.3 Notifications – change in office holders

CSA supports the proposal to amend s 205B of the *Corporations Act* so that the company is not obliged to notify ASIC of the cessation of an office holder where ASIC has already been notified under s 205A, on condition that the office holder simultaneously notify the company of their resignation.

CSA believes it is important to enable office holders to notify ASIC of their resignation as office holder if they wish, and s 205A is such an enabling provision.

However, CSA strongly recommends that any office holder should have an obligation to notify the company of their resignation, and that an amendment to s 205A is required to provide for this obligation. The office holder may then choose if they wish to notify ASIC of their resignation, under the enabling aspects of the provision.

As noted in our earlier submission on the consultation paper, CSA members are keenly aware that, in practical terms, the company can only be certain that a notification has been lodged by an office holder if it searches the ASIC database or is advised personally by the office holder. In the experience of CSA members, who have a statutory responsibility to ensure that the register of office holders held by ASIC is up-to-date, it is usually the company secretariat that advises ASIC of any change in their status as office holder and this requirement needs to remain to ensure that the company can effectively administer the appointments and resignations of its officeholders. Therefore, any removal of the apparent duplication in notifications would not reduce the workload of the company and may be unfairly prejudicial to an office holder who has resigned but where the company secretariat has not yet notified ASIC of the resignation.

Recommendation

CSA strongly recommends that any office holder should have an obligation to notify the company of their resignation, and that an amendment to s 205A is required to provide for this obligation. The office holder may then choose if they wish to notify ASIC of their resignation, under the enabling aspects of the provision.

2.4 Maintenance of registered office address

CSA supports a single process for notification of an update of a company's service address and registered office. However, CSA notes that it is important that ASIC does not link the two addresses, so that if the agent's address changes the registered office address does not necessarily also change.

While one form can be used to register the registered office and/or the agent's address, it is important that it not be seen as one process by ASIC. The proposal paper notes that ASIC will update all of the company's addresses in a single process, and CSA wishes to ensure that the use of one form does not mean that ASIC treats different addresses as one address.

Recommendation

CSA recommends that ASIC apply a degree of caution in the use of a single notification of change of address process, so that it does not change more than one address if only one change is notified on a single form.

2.5 Share and member reporting requirements

CSA supports the proposal to remove the obligation of public companies to notify ASIC of the top 20 members in each class of shares.

2.6 Simplifying voluntary deregistration

CSA supports the removal of the obligation to pay an annual review fee when a company has been approved for voluntary deregistration.

2.7 Implement of upfront payment option for ASIC annual fees

CSA supports the introduction of an upfront payment option for ASIC annual fees.

2.8 Electronic distribution of annual reports

CSA fully endorses the Federal Government's proposal to amend s 314 of the *Corporations Act* to provide that companies can satisfy the requirement for the distribution of annual reports and financial statements by providing an electronic version of the annual reports and financial statements on their corporate websites, with a statutory obligation to deliver a hard copy, free of charge, to any shareholder who requests it.

CSA strongly recommends that this reform be introduced as soon as possible, so that it can apply to the next reporting season. If this reform is delayed, it will not be able to be applied until the 2008 reporting season, with the unwelcome consequences of further costs to the environment. As noted in our endorsement of this proposed reform when it was introduced by the government in April this year, CSA research has shown that one tree produces enough paper for just 100 copies of an 83 page report (the average length of an annual report in the top 200 listed companies). However, the average print run for the top 200 listed companies is 186,000 copies, or 1,853 trees. It also takes more water to produce one ton of paper than for any other commodity. The introduction of the reform to s 314 will reduce the considerable damage to the environment that producing annual reports in hard copy causes.

Furthermore, the significant cost reductions for shareholders that moving to electronic distribution of annual reports will bring will not occur until the 2008 reporting season, if there is a delay in implementing this reform. CSA research has shown that in 2005, the average cost of producing an annual report per shareholder in the top 20 listed companies was $6.83, and in listed companies in the second tier of the top 200 it was $9.31. With listed companies legally

obliged to issue reports to shareholders who have not expressly declined to receive them (that is, three-quarters of shareholders in the top 200 listed companies), this is a very expensive exercise and an expense shareholders have to bear.

Finally, CSA also notes that the Australian Stock Exchange will need to amend the Listing Rules to accommodate the reform, and this process will also require a certain amount of time.

Recommendation

CSA strongly recommends that the reform to s 314 of the *Corporations Act* be introduced as soon as possible, so that it can apply to the next reporting season. This will provide both for environmental cost savings and significant cost reductions for shareholders.

Chapter 3: Auditor Independence

3.1 Anomalies arising from CLERP 9

CSA supports the changes made to CLERP 9 to address the nominated anomalies and welcomes their incorporation in the Regulations to the *Corporations Act*.

Chapter 4: Corporate Governance

4.1 Related party approval thresholds

CSA supports the introduction of the amount of $5,000 in relation to transactions of related parties, requiring any benefit to be paid in excess of this amount during the course of a financial year to be approved by members.

CSA notes that it would be useful to explore an exemption to related-party transactions based on any transactions being conducted with the company on normal terms and conditions. Related-party transactions would continue to require approval if not conducted on market terms. One example is a director of a financial institution, who must conduct all standard banking (for example, credit cards) with another financial institution, as otherwise all transactions are captured under the related-party regime. This can have the unintended effect of indicating that the director has no confidence in the financial institution of which they are a director.

4.2 Director amounts thresholds

CSA supports the increase of the threshold in s 213 to $5,000.

5. Fundraising

5.1 Rights issue disclosure for quoted securities and financial products

CSA supports the proposal that rights issues for quoted securities and quoted financial products not require the production of a prospectus or PDS, and also supports the specification that a cleansing notice modelled on the relevant provisions in s 708A of the *Corporations Act,* and containing appropriate information on the consequence of any potential effect of the rights issue on the control of the entity be provided before the rights issue offers are made.

5.2 Small scale offering

CSA has no comment on this section.

5.3 Secondary sale issues

CSA has no comment on this section.

5.4 Employee unlisted share schemes disclosure

CSA supports the specification that the provisions relating to the self-acquisition of shares by companies do not apply in the context of employee share schemes, subject to certain safeguards.

CSA notes that the second part of this section, the 'self-acquisition of shares', relates to the self-acquisition of shares by subsidiaries of listed companies (as well as unlisted companies). CSA is aware this is a complicated area and supports any clarification that would assist. CSA queries whether 60 days is sufficient where the trustee acquires shares as a result of forfeiture by employees to dispose, and notes this will often be the situation where the share price is less than the loan provided to acquire the shares and the company wants to hold them until the share price improves to reduce loss. CSA suggests that a longer period in that case may be required, and recommends 120 days.

5.5 Advertising rules for offers of securities requiring a disclosure document and for offers or issues of financial products

CSA supports amending the prospectus advertising provisions relating to quoted securities and advertising post-lodgment of a prospectus for unquoted securities to align them with those pertaining to financial products (other than securities).

5.6 Stapled securities disclosure

CSA has no comment on this section.

Chapter 6: Takeovers

6.1 Remove telephone monitoring during takeover bids

CSA supports removing the requirements in the *Corporations Act* that relate to telephone monitoring during takeover bids.

6.2 Remove s 665D and 665E notices (85% notices)

CSA supports the deletion of s 665D and 665E notices as they impose an administrative duty and cost for minimal benefit, if any.

Chapter 7: Compliance

7.1 Breach reporting period

CSA fully supports any move to overcome inconsistencies between breach reporting requirements.

7.2 Australian Business Number reference

CSA supports the removal of the requirement of a financial services licensee to cite the AFSL number in disclosure documents and other relevant documents with a requirement on the licensee to cite the ABN only.

7.3 Simplifying returns of company particulars

CSA supports the amendment to s 348A(1) to limit the need for return of particulars to be provided to ASIC to situations where ASIC suspects or believes that the details recorded are not correct and the amendment to s 348D(2) to extend the notification period from 28 days to two months.

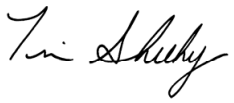
7.4 Electronic registration of charges

CSA supports the amendment to the relevant provisions in the *Corporations Act* to facilitate electronic registration of charges.

Conclusion

CSA commends the government on its proposals to simplify the regulatory system and reduce unnecessary or excessive red tape. We are happy to discuss any of our recommendations if required.

Yours sincerely



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