



**CHARTERED SECRETARIES  
AUSTRALIA**

*Leaders in governance*

19 November 2004

Ms Catherine Officer  
Legal Counsel & Manager, Issuers & Quoted Products  
Australian Stock Exchange Limited

By email: [catherine.officer@asx.com.au](mailto:catherine.officer@asx.com.au)

Dear Catherine

**Proposed ASX Listing rule amendments 30 September 2004**

Thank you for the opportunity to comment on the proposed amendments to the Listing Rules. We appreciate the early distribution of the proposals to allow for adequate comment and welcome the tidying up of outdated and redundant items.

As in previous submissions, we do not see it as our role to address issues which relate to the admission of new companies or the quotation of foreign securities. We believe both matters should remain the sole responsibility of ASX.

We comment as follows:

**Section 1 Meetings – Chairman’s open proxies**

CSA welcomes the steps being taken to clarify the operation of Rule 14.2.3. As we have pointed out in previous submissions, the existing Rule has created considerable confusion in areas such as the remuneration of the Chief executive and other executive directors, where the Chairman has no direct interest in the outcome.

Despite the changes which ASX is now proposing, CSA believes that there is still need for an expanded guidance note to clarify what is intended and particularly to define the term “Chairman of the Meeting.”

In our experience, the Chairman normally stands aside during the meeting where he or she has a direct interest in a matter eg. the Chairman’s own remuneration. The proposed amendment gives the impression that it will only apply where the chairman will be absent from the whole meeting, rather than for part or parts of a meeting when a resolution / resolutions are put. This clearly is not always the case.

As a minimum, CSA submits that the final paragraph on page 5 should conclude with the words “for the relevant resolution/s” to put the matter beyond doubt. We suggest that the guidance note should also include specific examples of when the box applies and when it is clearly not required, eg a grant of shares/options to the CEO.

**Election of directors – nominations.** We strongly support this deletion. As the exposure draft recognises, the existing provision has caused considerable difficulties for a number of companies, and on at least one occasion has necessitated the mailing of an amended notice of meeting / proxy form at significant cost to both the company and its shareholders

**No casting vote by chairman.** We agree with this deletion.

## **Section 2 Debt listings**

No comment other than the requirement for 250 copies of the disclosure document. We believe this is excessive and is contrary to the Exchange's own policy of insisting on electronic lodgement and availability of documents on company websites. If copies are required, surely up to 5 would be adequate.

## **Section 3 Financial Reports & Related matters**

Listing rule 4.6 distribution of annual report. We agree that the 17-week period is unnecessary as it overlaps with the Corporations Act requirement. No other comment in relation to the items in this section.

## **Section 4 Capital reorganisations and restricted securities**

No comment

## **Section 5 Percentage options**

No comment

## **Section 6 Matters related to issue of securities to related parties**

Proposed amendment to Rule 10.14. A number of our members have stressed the need to recognise shares acquired on exchanges other than ASX to accommodate companies with overseas employees. This can be achieved by adding the words "or other approved overseas exchanges" after "ASX" in the exemption clause. Otherwise no comment on the items in this section.

## **Section 7 Transfers and registrations**

We support the deletion of the irrelevant rules referring to certificates. We note however that it is not always practical to include information on options on the holding statement.

## **Section 8 Dispatch of certificates & holding statements**

We support the proposed amendments.

## **Section 9 Dividend Record dates**

We note and support the policy behind this proposed amendment. Indeed we believe there may be greater benefit in encouraging issuers to include details of the ex-dates for dividends. Whilst ASX assists issuers by providing the timetable of non- trading and business days in advance, the decision on ex-dates is solely taken by ASX, and may be affected by a public holiday in one or more states. Requiring a company to seek confirmation in advance from ASX of its ex-date/s prior to publishing its record date would, we believe, be seen as a positive initiative.

## **Section 10 Warranties**

No comment.

## **Section 11 Recognition of beneficial owners**

We believe strongly that the matters such as voting and participation in dividend share issues by nominees are more properly contractual matters between the beneficial owner and the nominee. Experience has shown that there can be several layers of nominees above the beneficial owner. As many institutions lodge their proxy forms close to voting deadlines, there is no possibility of the company or its registry checking for or obtaining written confirmation before the voting closes. If an amendment is to be made, it should be to the terms of the agreement between the nominee and the beneficial owner.

## **Section 12 Exchange traded funds**

No comment.

## **Section 13 Redundant provisions**

No comment.

## **Section 14 Minor corrections**

No comment, except in relation to the proposed amendment of Rule 15.4 requiring companies to give ASX two hard copies of their annual report. We believe that this is unnecessary and runs counter to the Exchange's own policy of requiring companies to lodge all documents and announcements electronically and promoting the electronic distribution of documents to shareholder. Whilst it may be "useful", it is hardly efficient or good practice and the amendment should not proceed as proposed. Insertion of the words "on request" would allow ASX to obtain hardcopies in those cases where they are required.

We again thank you for this opportunity to comment on the Exposure Draft and confirm that we are available to meet with you to discuss any of these items.

Yours sincerely



Tim Sheehy  
Chief Executive