CHARTERED SECRETARIES
AUSTRALIA

Leaders in governance

1 May 2008

David Sullivan
The Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Suite SG.64
Parliament House
CANBERRA ACT 2600

By email to: corporations.joint.@aph.gov.au

Dear Mr Sullivan

Inquiry into shareholder engagement and participation: submission following public hearing on 16 April 2008

Chartered Secretaries Australia (CSA) welcomes the opportunity to provide further information to the Parliamentary Joint Committee on Corporations and Financial Services (the Committee) on the issues discussed at the public hearings held in Sydney on 16 April 2008, as requested by the Committee.

Regulatory information overload

CSA had recommended in its original submission (14 September 2007) that the Parliamentary Joint Committee assess and articulate via this Inquiry the total sum of mandated information that is sent to shareholders and check whether there is ongoing justification for the information to be mandated.

The Committee in turn requested CSA to nominate which areas of mandated information should be streamlined.

CSA members support disclosure and transparency as fundamental cornerstones of good governance. The information that is currently mandated allows shareholders to ascertain the deployment of and return on their investment.

CSA contends that the Committee could achieve the objectives of ensuring that shareholders have access to mandated information, yet are not burdened by such information if it is too technical or not of interest to them, by supporting the expansion of the provision of information to shareholders electronically.

For example, the 2007 amendments to the Corporations Act to allow companies to elect to distribute annual reports by making them available on their websites ensured that shareholders had access to as much or as little information as they required. The amendments provided

shareholders with greater flexibility as to what information they wish to review, given that the information needs can differ substantially between individual shareholders and groups of shareholders (such as retail and institutional shareholders).

In similar fashion, CSA has recently lodged a submission with the Australian Securities Exchange (ASX), proposing an amendment to the ASX Listing Rules requirement relating to the provision of an independent expert's report to shareholders when a shareholder resolution on a corporate transaction is required. CSA has recommended to the ASX that Listing Rule 10.10.2 be amended to require that companies ensure the full independent expert's report is available on the company's website and easily accessible and provide a hard copy of the full independent expert's report, free of charge, to any shareholder upon request. As with annual reports, CSA believes such an amendment will ameliorate the shareholder experience of being burdened with unwanted amounts of hard copy corporate information in the mail, while at the same time providing a large benefit to the environment.

CSA notes that supporting the expansion of the provision of information electronically covers both generic information that is applicable to all shareholders and information that is specific to particular shareholders or requiring action on the part of shareholders. CSA believes that generic information which is applicable to all shareholders (for example, annual reports, Australian Securities Exchange announcements, independent experts' reports) should be available on the company's website with a hard copy available to any shareholder, free of charge, on request, while information that is specific to particular shareholders or requiring action on the part of shareholders (for example, dividend statements, notices of meeting, takeover offers, buybacks) should be sent to them, either electronically or in hard copy, depending on shareholder choice. In the instances of corporate actions such as takeovers and buybacks, CSA believes that the forms should be sent to shareholders, while the detailed documentation (often amounting to many pages) should be available on the company's website.

CSA therefore recommends that the Committee support the provision of information required by statute to shareholders in electronic form, providing shareholders with the flexibility to choose the information and format that is appropriate and relevant to their individual needs.

Continuous disclosure

The Committee asked CSA to consider a suggestion that it could be possible to apply the intent of continuous disclosure regulation to all information relevant to shareholders, such that all information contained in an annual report would be released on a continuous basis.

CSA strongly opposes this suggestion.

At present, the continuous disclosure provisions (s 674) of the *Corporations Act* and the requirement under Listing Rule 3.1 to disclose any information that is material and price-sensitive are in place to keep the investing public informed of events and circumstances that could affect the price or value of a company's securities. Continuous disclosure regulation is designed to ensure that investors have timely and equal access to price-sensitive information in relation to traded securities.

CSA notes that there is no evidence of shareholders seeking a continuous update of information found in annual reports — which are by their nature annual.

Furthermore, by applying the intent of the continuous disclosure provisions to all information, *regardless of whether it is material or not*, the regulatory outcome would, in effect, force companies to take on the role of newspapers. The regulatory burden would be immense, with companies forced to engage staff to continuously disclose information about every aspect of the company's undertakings at all times. The impact on company activities and performance would

be immense. CSA can point to no benefit to shareholders, but can point to loss of shareholder value. Regulating ongoing continuous disclosure of non-material information needs to be balanced against the cost of providing it.

CSA is also concerned that the suggested expanded disclosure would have the effect of making it more difficult for investors to easily and quickly identify the information that is price sensitive. So much information would be disclosed that investors would have great difficulty identifying the information that is important to them on a time-critical basis.

The continuous disclosure regime was implemented to enhance confident and informed participation by investors in the securities market. It provides timely and equal access by investors and stakeholders to information that could affect, either favourably or unfavourably, on the price or value of holdings. To expand the regime to all information currently dealt with in the annual report would be to undermine the foundation stone of continuous disclosure, which is materiality.

Shareholder privacy

In its September 2007 submission, CSA had recommended that the law be reformed to provide increased privacy and protection to shareholders in relation to accessing and using their details on the register of members.

The Committee suggested to CSA that one means of achieving increased privacy for shareholders, particularly retail shareholders who are most at risk of predatory offers for their shares, is to amend the Corporations Act to provide for two registers:

- one held by the company, subject to standard privacy requirements to ensure that shareholders' privacy is not infringed, that is not made public, and
- one available publicly, which does not disclose the names, addresses and shareholdings of those shareholders with small holdings, say below five per cent.

Shareholders with five per cent or more of holdings would continue to have their details made available on the public register. This aligns with the substantial shareholding provisions in the Corporations Act (s 671B in Part 6C1), which provide a mechanism to require any shareholder with more than five per cent of shares to publicly disclose their interest in the company.

CSA also supports the retention of existing rights embedded in the legislation providing for shareholders to contact other shareholders as well as the mechanisms to make offers to shareholders as part of a takeover bid as set out in Part 6 of the Corporations Act.

CSA welcomes and supports the Committee's suggestion that two registers could be maintained, with the public register providing information only on those shareholders with substantial holdings. Access to the register held by the company that is not available publicly, with details of all shareholders, would apply only where specifically permitted by the Corporations Act, for example takeover bids and shareholder communication.

Direct voting

CSA has been advocating direct voting for some years, but notes that as at the end of 2007, only 13 per cent of the top 200 public listed companies had amended their constitutions to provide for it.

The Committee suggested that a recommendation could be introduced into the ASX Corporate Governance Council *Principles and Recommendations of Corporate Governance* in relation to direct voting, operating on the 'if not, why not' basis. The Committee asked CSA to comment on

whether this would assist in turning companies' attention to this particular means of enhancing shareholder engagement and participation in general meetings.

CSA welcomes and supports the Committee's suggestion and believes such a move would assist companies to introduce direct voting, and therefore would enhance shareholder engagement and participation in general meetings.

Virtual AGMs

The Committee suggested that virtual AGMs would assist in enhancing shareholder engagement and participation.

CSA strongly opposes mandating virtual AGMs.

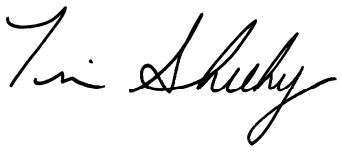
Our reasons for this are that:

1. There is no evidence that a lack of virtual AGMs is a significant barrier to shareholder engagement.
2. CSA does not believe that the technology can support virtual AGMs without fail at present. Should the technology fail, there are questions as to whether the meeting is valid.
3. An AGM is both a discussion and a decision-making forum. CSA does not believe that it is feasible to manage the simultaneous interactivity of thousands (or in some cases millions) of shareholders, both those online and those present at the meeting, and achieve a discussion forum that provides for true engagement and participation. CSA supports access by shareholders to AGMs via webcasting, but believes that a virtual meeting which involves vast numbers of shareholders cannot facilitate discussion. CSA contends that a virtual meeting attempting to provide for such a discussion could also hinder decision-making.

CSA notes that webcasting the AGM has proved very useful for larger companies and encourages all companies to provide either a live webcast or an archive of the AGM, to ensure a large range of shareholders have access to the general meeting. CSA does not recommend that webcasting should be mandated, as CSA notes that issues of cost may prevent companies from taking up webcasting at this point in time, and forcing additional costs on companies affects shareholder value.

Our comments in this second submission to the Committee are offered to further assist the Committee's deliberations in this inquiry.

Yours sincerely



Tim Sheehy
CHIEF EXECUTIVE