CHARTERED SECRETARIES
AUSTRALIA

Leaders in governance

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Dear Heidi

Exposure Draft: Facilitating Common Forms of Capital Raising and other Rule Changes

Chartered Secretaries Australia (CSA) is the independent leader in governance and risk management. As the peak professional body in Australia delivering authoritative accredited education and the most practical training and information in the field, CSA is focused on improving organisational performance and transparency.

Company secretaries 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, as well as compliance with the Corporations Act (the Act).

CSA commented previously on the consultation paper which advanced the proposed amendments to the Listing Rules. CSA appreciates the detailed consideration that ASX provided to the CSA submission and we extend our thanks to ASX for taking on board our input, as reflected in the Exposure Draft: *Facilitating Common Forms of Capital Raising* (the exposure draft). We welcome the opportunity to comment further on the exposure draft.

CSA Members generally support the final form of the Listing Rule amendments and believe that they accurately reflect the practical considerations that publically listed corporations must negotiate in utilising the Listing Rules.

General comments

CSA Members raised many practical considerations during the initial consultation paper, and are pleased to see many of these concerns reflected in the amendments to the exposure draft. In particular, CSA Members note the refinements which:

- introduced an explicit note into rule 3.20.3 stating that the notification information would not be released publicly
- reduced the notification of a trading halt to one business day
- clarified that an entity would not be in breach of the notification of a trading halt rule if exceptional circumstances applied
- clarified that the timetable is a suggested rather than mandatory timetable

- clarified that the option of seeking a waiver from ASX remains, should there be difficulty in meeting the 'time limit' constraints
- lengthened (in many instances) the time limits in the Appendix 7A tables.

The amendments reflect the practical operations of listed entities, and CSA, therefore, will only comment on particular aspects of the amendments which require further consideration.

Proposed timetables and time limits

The current review ASX is undertaking of the equity market with a particular focus on WA-based entities provides a good opportunity for ASX to address the difficulties WA-based entities have in meeting Australian Eastern Standard Time (AEST) or Australian Eastern Daylight Time (AEDT) deadlines.

However, CSA would like to reiterate that lodging certain information by 12.00pm AEST or AEDT can prove challenging (even impossible) for listed entities in Western Australia. CSA is of the view that the challenge of meeting a Sydney-based time is such that the issue cannot wait until the review of the equity market is complete, given that listed entities will be required to comply with the amended Listing Rule. CSA has previously provided an example of how a WA firm would be unable to meet the Listing Rule requirements set out in the exposure draft.

CSA recommends that ASX move the ASX lodgement time to not less than the equivalent of 12.00pm local time in the state in which the entity is listed, to provide sufficient time for listed entities in Western Australia (and other states) to meet the demands of the proposed timetable.

Notification of trading halt where it coincides with expiry dates of Exchange Traded Options market

CSA Members note that the expiry dates related to Exchange Traded Options (ETO) are not common knowledge among many listed entities. There is a risk that a listed entity could inadvertently overlook the ETO expiry dates when undertaking a capital raising. CSA believes that further measures could be taken to assist entities with compliance with their obligations under the Listing Rule.

CSA recommends that ASX insert a reference (preferably a website link) to the ETO timetable in the notes below Listing Rule 3.20.3. CSA notes that a link appears in Appendix 7A, but is of the view that a cross-reference would enhance the capacity of listed entities to comply. A link in the footnotes would provide listed entities with a direct opportunity to check their obligations and ensure compliance.

CSA also notes that the ETO timetable document that is cross-referenced in the Appendix 7A is very difficult to understand. **CSA recommends** that ASX revisit the linked document to ensure that listed entities and others can easily understand it. We are more than happy to provide further input on any new iteration of this document, should that be of assistance.

Fee for non-compliance with trading halt notification

CSA notes the imposition of a 'fee' for non-compliance with Listing Rule 3.20.3 where notice of a trading halt is not given and where no exceptional circumstances apply. The exposure draft states that the 'fee' is $10,000.

CSA queries the role and derivation of the 'fee'.

CSA is of the view that a 'fee' of this magnitude is actually a 'fine' which incorporates a punitive or exemplary element. Further, CSA does not believe that the imposition of a fine, without a derivative basis, is an appropriate course for ASX to adopt. It establishes a precedent for fining

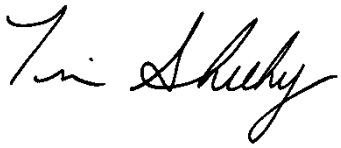
listed entities for non-compliance with ASX Listing Rules. CSA does not believe that a fine should be implemented without some consultation as to the derivation or ability to modify the level at which it is set. The fine may be disproportionate to the entity's mistake, and the suggested fine of $10,000 for non-notification of a trading halt that coincides with an ETO expiry date is certainly not proportionate to the size or ability of the offending entity to pay it. Smaller entities will find the fine burdensome.

Moreover, there is a question as to whether it is appropriate to ask listed entities to pay fees to manage the orderliness of a secondary market over their securities, which has been created without their involvement.

Notwithstanding this central question, **CSA recommends** that ASX reduce the fee to $1,000, thereby setting it at a level which is not burdensome for smaller entities. This amount is more representative of a 'fee' rather than a punitive 'fine'.

CSA would be more than happy to meet with you should you wish to discuss any of the issues raised in this submission further.

Yours sincerely



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CHIEF EXECUTIVE