



**CHARTERED SECRETARIES
AUSTRALIA**

Leaders in governance

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Malcolm Starr
General Manager, Regulatory and Public Policy
Australian Securities Exchange
Level 7
20 Bridge Street
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Dear Mr Starr

Listing Rule 10.14

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. Members of CSA regularly deal on a day-to-day basis with Australian Securities Exchange (ASX) and have a thorough working knowledge of the operations of the markets, the needs of investors, the law and the Listing Rules.

Reasons for CSA submission on Listing Rule 10.14

CSA recently lodged a submission with the ASX Corporate Governance Council on its Exposure Draft of the revisions to the *Principles of good corporate governance and best practice recommendations* (the Principles). In the Exposure Draft, questions were raised in relation to Listing Rule 10.14 in conjunction with questions raised in relation to Recommendation 9.4 of the Principles.

In its response to the Exposure Draft of the revised Principles, CSA noted that it would make a separate submission to the ASX on Listing Rule 10.14,.

CSA recommendations in relation to redrafting of Listing Rule 10.14

CSA believes that the role of shareholders in approving certain equity issues is widely supported by all sections of the market. CSA also believes that the market widely supports the principle that executive remuneration is primarily the responsibility of boards, with shareholders given the right to comment on executive remuneration through the non-binding vote on the remuneration report and ultimately through their decision whether to elect or re-elect particular directors. Much of the confusion with respect to Listing Rule 10.14 has arisen as a result of proxy advisory groups and others seeking to use Listing Rule 10.14 as a means for shareholders to set directly some aspects of executive remuneration.

CSA also notes that shareholders currently approve the total amount of non-executive directors' fees under Listing Rule 10.17 and that no further shareholder approval should be required where directors choose or a company requires directors to take some part of their fees in shares purchased on-market.

On this basis, Listing Rule 10.14 should be redrafted to state more clearly that the only acquisitions of securities by directors under employee incentive schemes that require

shareholder approval are those involving an issue of new shares (or, in the case of executive directors, an issue of options and/or performance rights that will ultimately result in the issue of new shares if performance hurdles are met), and not those involving the on-market purchase of existing shares.

Companies should continue to be required to address in their remuneration reports the particulars of their share plans, including the policy behind the adoption of the share plan and the relationship between the policy and the company's performance.

CSA recommendations in relation to a Guidance Note for Listing Rule 10.14
 CSA recommends that ASX issue a comprehensive Guidance Note on Listing Rule 10.14 to clarify the Listing Rule's intended application. (CSA notes that, in December 2006, ASX issued Guidance Note 25 on the exercise of its discretions in relation to the Listing Rules, including Listing Rule 10.14, but that Guidance Note 25 does not address the issues raised here.)

CSA recommends that the Guidance Note:

- confirm that the only circumstances under which the ASX *requires* listed companies to obtain shareholder approval for share issues to directors is where the proposed allotment is of new shares as distinct from the on-market purchase of existing shares
- confirm that the underlying ASX philosophy for the approval requirement is a combination of :
 - protection of other shareholders whose shareholdings (as a percentage of issued capital) may be diluted by such 'new' issues and
 - protection of shareholders where directors may have a conflict of interest in approving such plans and share issues
- confirm that there may be special circumstances in which companies seek shareholder approval for their share plans, for example, Listing Rule 7.1, so that shareholders are not confused when they are asked to approve a particular share plan but not others.

CSA would welcome the opportunity to review a draft of such a Guidance Note and provide ASX with feedback from CSA members.

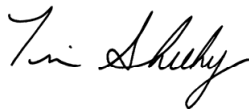
Conclusion

CSA recommends that:

- Listing Rule 10.14 be redrafted to clarify the precise nature of its intended application, and
- a Guidance Note be issued on Listing Rule 10.14 to clarify the underlying philosophies and particular interpretations that will be applied under certain circumstances.

In preparing this submission, CSA has drawn in particular on the expertise of its national Legislation Review Committee, comprising members working in listed companies with the responsibility to interpret this Listing Rule.

Yours sincerely



Tim Sheehy
 CHIEF EXECUTIVE
 cc Eric Mayne