



**CHARTERED SECRETARIES
AUSTRALIA**

Leaders in governance

20 July 2007

Malcolm Starr
General Manager, Regulatory and Public Policy
Australian Securities Exchange
Level 7
20 Bridge Street
SYDNEY NSW 2000

Dear Mr Starr

ASX Omnibus Listing Rule amendments 2007

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. Our members 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.

Executive summary

CSA acknowledges that, to a large extent, these proposed amendments are of a minor or technical nature, or have been the subject of prior consultation. Our comments below are offered in the spirit of ensuring that the proposed amendments achieve the policy outcome.

CSA recommends that amendment is required to the Exposure Draft concerning:

- the disclosure requirement in Listing Rule 3.18 to ensure it does not apply to listed entities who are prudentially regulated
- the relationship between Listing Rules 5.1 and 5.2
- the application of Listing Rule 5.2
- what the disclosure requirement set out in Listing Rule 5.2.3 refers to
- what the new requirement in paragraph 1 of Appendix 6.A (to disclose whether there is any foreign conduit income attributed to the dividend) actually requires
- the maintenance of any prescribed fees for off-market transfers or shunts at cost-recovery levels.

Lack of clarification of Listing Rule 10.14

CSA is particularly disappointed that the 2007 Listing Rule amendments do not address Listing Rule 10.14, following consultation on this listing rule in the Exposure Draft of the ASX Corporate Governance Council guidelines.

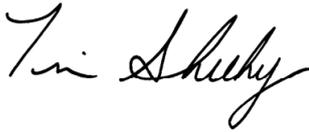
CSA had lodged a submission on Listing Rule 10.14 recommending that:

- 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.

CSA notes that clarification of Listing Rule 10.14 would be welcomed at this point in time, given the current debate on shareholder approval of equity-based remuneration for executives who are not directors, and whether any such shareholder approval, if sought, should cover only the issue of new shares or also the on-market purchase of shares. CSA believes that it would be opportune to clarify Listing Rule 10.14 as recommended in the ASX Omnibus Listing Rule Amendments 2007, and that further delay in clarifying this Listing Rule will serve only to heighten the debate rather than settle any ambiguity.

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

A handwritten signature in black ink, appearing to read "Tim Sheehy". The signature is written in a cursive, flowing style.

Tim Sheehy
CHIEF EXECUTIVE

Listing Rule 1.1, condition 13: Corporate Governance

CSA supports the proposal to introduce a new condition of admission to listing rule 1.1, to ensure that newly listed entities provide the market with relevant corporate governance disclosures at the time of admission on a par with existing listed entities.

CSA agrees that this proposed amendment will align the corporate governance reporting requirements for newly listed entities with those of existing listed entities.

Listing Rule 3.2 and 3.3: Disclosure of % shares held

CSA supports the proposal to remove Listing Rule 3.2 requiring disclosure of the percentage of shares held when a takeover is made and extended.

CSA also supports the proposal to remove Listing Rule 3.3 requiring disclosure of the percentage of the target shares held at the end of a takeover and whether compulsory acquisition will proceed.

CSA agrees that this proposed amendment will reduce unnecessary overlap between the listing rules and the Corporations Act.

Listing Rule 3.18: Disclosure of loan information

CSA does not support the proposed amendments to listing Rule 3.18.

The proposed amendment means that where the aggregate amount of loans provided by an entity is material to the entity, then the entity is now required to disclose details of each loan that they provide.

This causes a lot of problems for financial institutions who have major businesses providing loans to customers and would mean that they would need to disclose their entire loan books, therefore disclosing a lot of competitive and confidential information, let alone potentially breaching the privacy rights of their customers.

Given that financial institutions are comprehensively prudentially regulated by APRA, CSA believes that this is an unintended consequence of the proposed amendment, which should be aimed at companies that are not providing finance, and believes that the unintended consequences of the current drafting set out above can be resolved by redrafting.

CSA recommends that the amendment to Listing Rule 3.18 be redrafted to make clear that the disclosure requirement does not apply to listed entities that are prudentially regulated.

Listing Rules 4.1, 4.2, 4.3 and 4.4 and Appendix 4B

CSA supports the proposal to remove Listing Rules 4.1, 4.2, 4.3 and 4.4 relating to the lodgement of financial reports (half-yearly or preliminary final reports) for periods ending before 30 June 2003, as well as the proposal to remove Appendix 4B, the pro forma announcement in use for periods ending before 30 June 2003. CSA notes that Listing 4.2A, 4.3A and 4.4A will remain in force and that references to periods "ending on or after 30 June 2003" will also be removed from these rules.)

CSA agrees that the proposed amendment will remove redundant rules.

Listing Rules 4.2BA, 4.3BA and 4.4BA

CSA supports the proposal to remove Listing Rules 4.2BA, 4.3BA and 4.4BA that introduced a temporary extension of time (from two months to 75 days after the end of a financial period) for half-yearly and preliminary final reports during the transition to A-IFRS.

CSA agrees that the proposed amendment will remove redundant rules.

Listing Rule 5.2.3: Mining Tenements

Listing rule 5.2.3 requires disclosure of certain information from an entity which has acquired an interest in a mining tenement, if ASX asks for the information. ASX proposes to remove its discretion to request disclosure of the information, and to amend the rule to require disclosure of this information if the tenement is a material asset.

CSA notes that there is an issue of the relationship between Listing Rules 5.1 and 5.2 that has not been addressed in this proposed amendment. Most mining producing entities (that are subject to Listing Rule 5.1) would have an interest in mining tenements (and therefore would also be subject to Listing Rule 5.2, as if they were a mining exploration entity). Presumably the proposed materiality reference intends to address this issue, but CSA finds that the relationship between Listing Rules 5.1 and 5.2 still seems unclear.

CSA also has a query as to the application of Listing Rule 5.2. CSA queries whether it applies only when the entity has acquired an interest in a material tenement in the previous quarter, or for the duration of the period that the entity holds an interest in a material tenement. The rule clearly refers to the 'entity having acquired an interest in a tenement' as opposed to the entity 'having an interest in a tenement'.

A further query is whether the disclosure requirement set out in Listing Rule 5.2.3 relates to all tenements the entity owns, or only to the tenement that is material to the entity. CSA would hope that the disclosure requirement applies only to the latter, but notes that the current wording of the Listing Rule in the Exposure Draft seems to suggest otherwise.

CSA recommends that the amendment to Listing Rule 5.2.3 be redrafted to clarify its intention.

Listing Rule 5.6 - 5.16: Oil & Gas Reserve Reporting

CSA supports the proposal to update ASX's minimum reporting requirements and to move to a disclosure-based rule rather than a prescriptive rule, and the proposal to remove ASX's current definitions of different reserve-types, and allow companies to adopt industry standards. CSA also supports the provision of an additional Guidance Note to support the new rules.

CSA agrees that this proposed amendment will ensure ASX's rules remain aligned with major reporting standards and that investors will receive additional information about the methodology used to estimate reserves, while companies will have greater flexibility to adopt appropriate methodologies.

Appendix 6A, paragraphs 1 and 2

CSA notes that its members are uncertain what the new requirement in paragraph 1 of Appendix 6.A (to disclose whether there is any foreign conduit income attributed to the dividend) actually requires. CSA seeks further advice from ASX as to what this new requirement is meant to capture.

CSA supports the proposal to amend the mandatory period for quoted debt securities between the record date and the payment date for interest payments from eight to seven calendar days in paragraph 2 of Appendix 6.A. CSA agrees that this proposed amendment clarifies ASX's interpretation of this timetable.

CSA recommends that Appendix 6A be redrafted to clarify its intention.

Listing Rules 7.26, 7.39: Forfeited Shares

CSA supports the removal of both Listing Rule 7.26, which provides for cancellation of forfeited shares and waiver of unpaid liability by limited liability companies on certain conditions, and Listing Rule 7.39, which provides for auction of forfeited shares subject to conditions and a parcel size limit.

CSA agrees that this proposed amendment will reduce unnecessary overlap between the listing rules and the Corporations Act.

Appendix 7A, paragraph 5: Reduction of capital timetable

CSA supports the proposal to amend the timetable in paragraph 5 of Appendix 7A so that the last day of cum-return of capital trading will be on the day after, rather than the day of, shareholder approval?

CSA agrees that this proposed amendment will add certainty to the capital returns timetable which has flow-on benefits for the accurate pricing of ETOs.

Listing Rule 8.14: Off Market Transfers and Shunts

CSA supports the proposal for ASX to remove the prohibition on an entity from charging a fee for "...registering paper-based transfers in registrable form" and "...effecting shunts between registers".

CSA agrees that the market has changed considerably from when the rule was introduced. In response to these changes and that companies and registries should have the ability to recover their costs associated with processing these transfers. CSA notes that such transfers should be undertaken on the basis of user-pays, as if the user does not pay, such transfers are not free — they are paid for by other shareholders. CSA believes that all shareholders should not bear the cost of individual actions, which are to the individual's benefit.

CSA also believes that the end user should pay for such transactions, rather than the issuer. CSA also understands that there is potential for fraud in such transfers, and that fraud protection can only be instituted at a cost.

CSA recommends that, if prescribed fees are put in place, they are kept at a reasonable level to recover costs only.

Listing Rule 12.7: Audit Committee Requirements

CSA supports the proposal to refer to companies in the A&P/ASX 300 index to simplify the definition of which companies constitute the "top 300" and which companies are required by the listing rules to have complying Audit Committee. CSA notes that the definition will be added to Listing Rule 19.2 and that ASX will introduce a transitional arrangement.

CSA agrees that this proposed amendment will clarify the cut-off and make it simpler for companies to determine whether they are required to have a complying Audit Committee.

Listing Rule 14.2.2: Proxy Forms

CSA supports the proposal to remove Listing Rule 14.2.2 that says that a proxy form must provide for the appointment of the security holder's choice, but may specify someone if a choice is not made.

CSA agrees that this proposed amendment will reduce unnecessary overlap between the listing rules and the Corporations Act.

Listing Rule 15.3.1: Electronic document lodgment

CSA supports the proposal to remove ASX's discretion to form an opinion that the entity has not complied with the requirement in Listing Rule 15.3.1 for lodging a document with ASX electronically.

CSA agrees that this proposed amendment will provide greater certainty in relation to rule application.

Listing Rule 15.16: Management Agreements

CSA supports the proposal to remove Listing Rule 15.16 that currently limits the use of management agreements by passive investment entities. CSA also supports the proposal to regulate management agreements using a disclosure-based approach, and the introduction of a new Guidance Note explaining the new regulatory framework. CSA notes that ASX retains the discretion to refuse admission to entities which are considered unsuitable for listing under Listing Rule 1.1 (the entity's structure and operations must be appropriate for a listed entity).

CSA agrees that companies will retain flexibility to enter into management agreements that they believe are appropriate and beneficial, and that investors will receive far greater detail, in simpler terms, of the effects of any such agreement. CSA also notes that there will also be more consistency going forward, as investment entities will not need to apply for a rule waiver from Listing Rule 15.16 in order to list with an agreement of more than five years' duration.

Listing Rule 17.5: Compulsory suspension for non-lodgment of periodic reports

CSA supports the proposal to amend Listing Rule 17.5, which mandates the suspension from quotation of an entity's securities when it misses the deadline for lodging certain periodic reports required by the Listing Rules, by deleting references to the deleted rules in Chapter 4.

CSA agrees that this is a technical amendment that will ensure consistency within the listing rules.

Listing Rule 19.12: Definitions

CSA supports the proposal to amend Listing Rule 19.12, which contains definitions of various terms used in the Listing Rules, as follows:

- correct a misprint in the definition of "related party" (from which two paragraphs of the Corporations Act definition were accidentally omitted in the printing of the 2005 Listing Rule amendments)

- introduce a definition of S&P/ASX 300 in connection with the amendment to Listing Rules 1.1 condition 13 and 12.7.

CSA agrees these are technical amendments that will ensure consistency within the listing rules.

Conclusion and recommendations

CSA recommends that amendment is required to the Exposure Draft concerning:

- the disclosure requirement in Listing Rule 3.18 to ensure it does not apply to listed entities who are prudentially regulated
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