



**CHARTERED SECRETARIES  
AUSTRALIA**

*Leaders in governance*

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Dear Heidi and Ms Lobanov

***ASX SME, Mid-Cap and Micro-Cap Equity Market Review***

Chartered Secretaries Australia (CSA) is the independent leader in governance and risk management. As the peak professional body delivering accredited education and the most practical and authoritative training and information in the field, we are 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 welcomes the opportunity to comment on the consultation paper, *ASX SME, Mid-Cap and Micro-Cap Equity Market Review* (the paper). CSA supports a review of how the application of a 'one-size-fits-all' approach to operating a market may affect smaller companies, particularly when SMEs, mid-cap and micro-cap companies represent the majority of ASX listings by number.

We have drawn on our Members' experience in our submission on the consultation paper.

***Maintaining a single market structure for all entities***

CSA strongly supports the maintenance of a single market structure for all entities, notwithstanding that CSA Members are of the view that various changes could be introduced by ASX to support and better meet the needs of SMEs, mid-cap and micro-cap companies.

Australia is a small market in global terms, but its strength is that it operates as one unit. The ASX brand provides for companies to trade their securities and is an asset. CSA Members are firmly of the view that the ASX brand brings the discipline required not only for companies to list on the market but also to manage risk, raise capital and expand their businesses. As companies expand, their capacity to meet the Listing Rules enables them to undertake expansion within a known framework. That is, they do not find themselves in the position of having to respond suddenly to new Listing Rule requirements as the business grows. As noted in the paper, such business growth is essential to the success of the Australian economy generally as well as to ASX.

CSA is not supportive of a two-tiered market. CSA Members do not support tailoring listing requirements for different segments of the market, with the attendant risk of the second tier operating as 'second-class citizens'.<sup>1</sup> However, CSA is of the view that the ASX could introduce greater flexibility to better meet the needs of smaller companies. Our views on this are set out below.

### **Reporting**

CSA Members note that companies share reporting deadlines, regardless of size. In order to ensure that information provided to the market meets the needs of investors, companies of all sizes seek to release timely periodic reports.

However, the shared reporting deadlines create practical difficulties for smaller companies that find themselves granted less priority than larger companies by service providers such as auditors. The practical outcome of this is that smaller companies can find themselves unable to attract the attention of auditors in time to meet Listing Rule deadlines. In some instances, smaller companies have found themselves, through no fault of their own, suspended from trading, as a result of an auditor not having sufficient staff to cater to the needs of smaller company clients while they simultaneously cater to the needs of larger company clients. This is particularly relevant in Western Australia, where the pressure on resources can be experienced more strongly than in the Eastern seaboard states.

The consequence of the competition for resources, and the reality of smaller companies sitting 'lower in the pecking order' in terms of client priority status granted to them by service providers, is that the smaller company could find itself penalised through a suspension of trading, when the limited number of service providers and their limited number of staff available to work with clients is outside its control.

Alternatively, smaller companies can find themselves penalised by the market when they do meet Listing Rule deadlines, as the information released by the smaller companies must compete in the market with the information released by larger companies. The information from larger companies inevitably attracts the attention of the media, analysts and investors first. Having to report at the same time as larger companies can render smaller companies invisible to the market.

While CSA would not like to see any flexibility offered by ASX exploited by smaller companies, but CSA believes that it could be useful for ASX to explore flexibility in relation to not automatically suspending smaller companies from trading should they release their reports late.

**CSA recommends** that the constraints on the availability of service providers in WA is an issue that ASX could take into account in its review. CSA also notes that companies can change balance dates, which would alleviate the pressure on companies seeking access to service providers simultaneously, and that ASX may be able to provide education on this issue to smaller companies.

### **ASX deadlines based on AEDT or AEST time**

CSA notes that, in relation to capital raisings, many time limits set by the ASX require the provision of information to ASX by no later than 12.00pm Australian Eastern Standard Time (AEST) or Australian Eastern Daylight Time (AEDT).

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<sup>1</sup> CSA notes that the ASX Corporate Governance Council has always strongly supported one set of governance principles and recommendations applicable to all listed entities on the basis that all listed companies raise funds from the public and there should not be a differential standard of reporting. See ASX Corporate Governance Council, *Response to Submissions on Review of Corporate Governance Principles and Recommendations*, p 10, August 2007

CSA Members note that lodging certain information by 12.00pm AEST or AEDT can prove challenging (even impossible) for listed entities in Western Australia. When it is 12.00pm AEDT, the WA-based listed entity must lodge the information at 9.00am local time. We have included an Appendix (Appendix 1) to this submission as a recent, real-life example that sets out the circumstances wherein a WA-based company (of 12,000 members) was not able to meet the timetable set by ASX, and importantly, irrespective of any additional preparations it might undertake in a future capital raising, this entity would *never* be able to meet this timetable.

Another consequences of concern related to a Sydney-centric timetable is that smaller WA-based share registries (without the resources and national spread of, say, Computershare) will also be disadvantaged and unable to adequately service their WA-based clients under current Sydney-centric timetables. This has the potential to further concentrate share registry services, and CSA has concerns over any compliance requirement from ASX that would result in such market concentration.

**CSA recommends** that, where a deadline is known to be a demanding one (for example, as in some accelerated offer timetables), set ASX deadlines based on 'local time' in certain circumstances (for example, the notice to ASX of new shares to be quoted under a capital raising timetable has a 12.00noon AEDT deadline — this should be 12.00noon local time) to allow all companies equal and adequate opportunity to meet their obligations

### ***Characteristics of companies based on developmental stages***

CSA notes that the example provided in the paper on page 4 of a smaller company that is the focus of the review represents accurately the experiences of the majority of smaller companies.

The paper specifically questions (on page 11) whether there are key features or characteristics of WA-based entities, resource exploration and production companies, and start-up and exploration entities that need to be considered by ASX, particularly from the perspective of market segmentation.

CSA Members note again their strong support for a single market structure for all entities. CSA Members do not support tailoring listing requirements for different segments of the market.

However, Members are of the view that various changes could be introduced by ASX to support and better meet the needs of SMEs, mid-cap and micro-cap companies. CSA believes that the characteristics that the ASX needs to consider in terms of providing greater flexibility to smaller companies do not relate to geography or industry, but rather to the developmental stages of the entity lifecycle.

CSA agrees that when companies first list, they offer a high-risk investment; will seek to raise capital reasonably frequently, using a combination of placements and rights issues; and do not receive any broker analyst coverage, as noted in the paper. To this list CSA would add that when companies first list, they are also characterised in the first 12 months by the fact that they:

- frequently have a majority of executive directors on the board
- will provide exception reporting under the 'if not, why not' regime of the ASX Corporate Governance Council on many issues, as they will require 12 months in which to develop appropriate governance policies and frameworks.

CSA notes that these characteristics are applicable to technology companies as well as to resource exploration companies or those based in Western Australia. It is for this reason that CSA is of the view that the lifecycle characteristics are those that ASX needs to consider.

While CSA can see that there is merit in ASX reviewing the initiatives undertaken overseas, such as segmentation by liquidity within a single market structure, or the use of second board markets, CSA does not support ASX implementing any of these initiatives for the following reasons.

- Segmentation by liquidity — CSA is of the view that the promotion of liquidity in less liquid securities is not in a company's or ASX's control but is a matter for investors. ASX provides a platform, including for the dissemination of information, and that platform operates successfully to provide information to investors. CSA also notes that companies work very hard to achieve spread when they first list, but that as they undertake capital raisings in order to expand, the spread can change rapidly and the company can end up with unmarketable parcels of shares. This process is not in the control of the company.
- Second board markets — the paper points to the difficulties experienced by second board markets at times of market stress. The fact that the negative consequences to smaller companies were not evident until the collapse of markets points to their inherent risk, which penalises smaller companies at a time when they can least afford to suffer the consequences of such risk.

CSA does not, therefore, support using spread and capitalisation as the characteristics that should form the basis of ASX providing additional flexibility to smaller companies.

**CSA recommends** that ASX provide flexibility to smaller companies that meet the characteristics of the first 12 months of a company lifecycle as set out above. **CSA recommends** that such flexibility take the form of recognised appropriate standards and standard interpretations issued by ASX as to what it considers acceptable or otherwise, for example, in relation to exceptions to meeting timetables for capital raisings or reporting, as well as admissions, trading and future fund trading.

### **Conclusion**

In preparing this submission, CSA has sought input from its members based in Western Australia with experience in SMEs, mid-cap and micro-cap companies, including those in the resource exploration sector, and also through its national policy committee, the Legislation Review Committee.

Our key recommendations are that ASX should assist smaller companies by:

- taking into account the constraints on the availability of service providers in WA, with the possibility of providing education to smaller companies on the capacity to change balance dates
- where a deadline is known to be a demanding one (for example, as in some accelerated offer timetables), set ASX deadlines based on 'local time' in certain circumstances (for example, the notice to ASX of new shares to be quoted under a capital raising timetable has a 12.00noon AEDT deadline — this should be 12.00noon local time) to allow all companies equal and adequate opportunity to meet their obligations
- providing flexibility in the form of recognised appropriate standards and standard interpretations issued by ASX as to what it considers acceptable or otherwise, for example, in relation to exceptions to meeting timetables for capital raisings or reporting, as well as admissions, trading and future fund trading.

We would be happy to meet with you to discuss these issues and would welcome the opportunity to be involved in further deliberations.

Yours sincerely



Tim Sheehy  
CHIEF EXECUTIVE

## **APPENDIX 1 — Example experience of WA based entity**

In a recent accelerated non-renounceable entitlement offer conducted by a Perth-based listed MIS using Computershare as its registry, it was found that the accelerated timetable required by the ASX was not achievable for a WA-based company in relation to the deadline given for **notification to ASX of number of securities issued under the institutional offer**.

### **WA-based example — Perth-based MIS with 12,000 securityholders**

In the interests of equal treatment of all securityholders (a requirement under the MIS' constitution and a good governance practice), the MIS allows retail securityholders to participate in the same early close timetable (with its early allotment advantage) that is offered to institutional unitholders, provided they submit payment by BPay, RTGS or other direct debit means. (Cheques are not permitted due to the extended clearance time required).

The day after the Early Close date, Computershare requires *at least a full half-day* (possibly more depending on the volume of transactions involved) to complete all of the tasks shown in the table below, before it can advise with certainty exactly how many securities are to be allotted the following day. Please note that it is *not* possible to complete all of these tasks between COB the day before and 9.00am Perth time the next day (in order to meet the noon AEDT deadline set by ASX's current accelerated timetables).

The timetable in this example was:

<b>Date</b>	<b>ASX timetable requirement</b>	<b>Actual timetable and tasks completed</b>
Thurs 3 March	<p><b>Offer Early Close Date</b> for Institutional AND Early Retail participants (paying by BPay &amp; RTGS)</p> <p>Closing at 6.00pmAEDT [3.00pm Perth]</p>	<p><i>There is nothing Computershare can do on this day to accelerate receipt of the information it requires for reconciliation, analysis and processing the next day.</i></p>
Friday 4 March	<p><b>Day before quotation (Settlement Day)</b></p> <p>The ASX timetable requires a notification to ASX of number of securities issued under the institutional offer and total issued capital <b>by 12.00noon AEDT [9.00am Perth]</b></p> <p><i>The ASX timetable appears to be assuming that there will only be institutional DvPs for settling, but it is more complicated if there are also early offer acceptances from retail securityholders paying by BPay and RTGS. Additional clearance and processing times apply for these.</i></p>	<ul style="list-style-type: none"> <li>• Computershare Perth registry office opens early at 8.00am Perth time.</li> <li>• Computershare checks Offer bank statements and identifies BPay and RTGS payments. Reconciles all payments received with securityholders' applications.</li> <li>• Follows up with any institutions if there is an anomaly in the payments received. (There were RTGS anomalies in this example.)</li> <li>• Process the applications against the payments.</li> <li>• Send spreadsheet with processed information to analytics to review, to identify institutions who have double-dipped — this can be a lengthy process.</li> <li>• Adjust final numbers where there has been double-dipping. (One institution had double-dipped in this example.)</li> <li>• Provide notice to the company of final numbers of securities requiring quotation the next day.</li> </ul> <p><b>All of the above took from 8.00am until 12.45pm Perth time.</b></p> <p><b>The company notified ASX of corrected and final numbers at 12.49pm Perth time (having previously advised a preliminary, but incorrect, number at 11.00am Perth time in an endeavour to satisfy ASX demands.)</b></p>
Monday 7 March	<p><b>Allotment of securities (WA Public Holiday)</b></p>	<p>Computershare Perth opens on Public Holiday. Securities allotted. App 3B issued with correct number of issued securities.</p>

