



2 July 2008

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Dear Mr Sheehy

### **Comments on Rethinking the AGM**

The Institute of Chartered Accountants in Australia (Institute) appreciates the opportunity to comment on your discussion paper, *Rethinking the AGM*. The Institute agrees with your views that historically the main function of the AGM has been in relation to stewardship. Changes in the way some boards communicate with shareholders, ie through online annual reports and continuous disclosure, has meant that approving the lodgement of the accounts is a formality, thereby changing the role of the AGM.

The focus of the AGM to provide more accountability to shareholders of the board's decisions, is seen by the Institute as a positive approach to encourage shareholder engagement. More shareholders are now focused on the strategy and direction of the company. We note that large institutional investors often have other mechanisms for obtaining the information they require from a company outside of the AGM. Therefore changes to the structure of the AGM should be made with the retail investors in mind. The AGM is the key method for the board to engage with retail shareholders and changes should improve the effectiveness of this engagement process.

We have provided responses where appropriate to your questionnaire in the appendix to this letter. In principle, we agree with the proposals for reform and prefer providing this through best practice guidance and encouragement to adopt, rather than mandating the changes and creating additional legislation. Listed companies vary significantly in their size and the corporate resources they have access to. Therefore it is important that the proposals do not put unreasonable demands on smaller listed companies.

Should there be any questions regarding these comments, please do not hesitate to contact Bill Palmer on 02 9290 5613

Yours sincerely

**GRAHAM MEYER**  
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## Appendix

### Responses to the guiding questions

1. Should the deliberative function of the AGM be separated from the decision-making function? How do you believe this would improve shareholder engagement and participation at general meetings?
  - > We believe the separation could be beneficial to shareholders, however the structure of this change needs to ensure it does not impose increased administration on smaller public companies.
  - > We recommend that once separated, the deliberative function is more structured in its format to increase the engagement of shareholders at the meeting. Shareholders should be required to respond to an invitation to the AGM so that companies can know the numbers attending and can ensure the venue is appropriate. Shareholders should also submit their questions in advance of the meeting to enable the Board to prepare its response. Questions on the day should still be permitted but only in relation to the discussion on the response to the pre-determined questions. The questions and answers should be provided on the website following the AGM for shareholders who were unable to attend. The Chairman should also be able to deny shareholders questions where they are irrelevant, for example on union matters.
2. If you agree that decoupling the discussion from the formal voting is reform that would improve shareholder engagement and participation in general meetings, do you believe that the polls should stay open for 48 hours, or one week or two weeks after the close of the meeting? Why do you believe that one of these periods is more suitable than another?
  - > We don't consider we are best placed to comment on the timeframe although we agree it would be beneficial to allow voting after the meeting to enable shareholders to consider the discussion before voting.
3. Should the decoupling of the deliberative function from the decision-making function be mandated via amendment to the Corporations Act or should it be a recommendation in the ASX Corporate Governance Council guidelines against which listed companies must report? Please provide your reasons for recommending one option or the other.
  - > We don't think it is appropriate to mandate this change, this should be optional and hence ASX Corporate Governance Council guidelines would provide this flexibility for companies to opt for decoupling by following the practical guidelines or report under the 'if not, why not' recommendation. However, it is important that key principles for the decoupled meetings should be legislated to protect the rights of shareholders if companies choose this option.
4. Should there be a requirement on chairmen to announce proxies received prior to discussion on each resolution if voting is extended beyond the close of the meeting? Why do you believe such a requirement should or should not apply?
  - > We think it is important for shareholders to know whether the discussion will impact the voting. Discussion on a resolution may be seen as a waste of time if the proxy votes have already determined the outcome and shareholders will not feel engaged in the decision making process. However, as noted in your paper, as the investors become accustomed to the separation of the two functions of the AGM, votes may be held until after the meeting to enable consideration of the discussion at the AGM. It may be appropriate to consider a threshold approach, such that if proxy's have been received for over x% of the votes, they should be disclosed.
5. If voting is decoupled from deliberation, should there be an expectation that the meeting be webcast, and maintained on the website for all investors to look at until voting closes? Should webcasting be encouraged rather than mandated, given that the cost of investment in webcasting may be prohibitive for smaller companies? Please give your reasons for your recommendation.
  - > We agree that webcasting should be encouraged rather than mandated as this may be difficult for some companies, especially if their technology cannot support webcasting. A transcript of the discussion could be provided as an alternative.

## Appendix

6. Should a specified minimum time be required for discussion on each resolution at the AGM if the discussion is separated from the voting? If you think that a minimum time should be mandated, what is the appropriate time? Please provide your reasons why a specified minimum time would improve shareholder engagement. If you do not think that a specified minimum time should be mandated, please provide your reasons.
  - > It is important that the AGM generates meaningful and useful discussion on the resolutions. Some resolutions may be considered 'black and white' by shareholders and require little deliberation. Specifying a minimum time would force discussion on unnecessary areas. However, as raised in the paper, it is important that the chairman does not close down discussion on a particular topic which interests the shareholders too soon. We don't believe it is appropriate to mandate a minimum time.
7. Should the statutory period for holding the AGM be extended by one month, to provide a three-month window instead of the current two-month window? Please clarify how you think this would improve shareholder engagement if you support an extension of time, and how you think it would undermine shareholder engagement if you do not support an extension of time.
  - > We believe an important consideration is why so many listed companies have June year-ends. If there was more flexibility permitted in this regard, this would reduce the burden on companies and professionals at critical times of the year.
8. Is the one-size-fits-all approach to AGMs suitable for all public companies? Please provide your reasons why you believe the one approach should be taken for all public companies, or why you believe different approaches are required.
  - > As noted in our letter, the some of these changes to the AGM may add to the administrative burden for small listed companies. As in the ASX Principles of Corporate Governance, these should be put forward as practical guidelines rather than via legislation.
9. Should all directors be encouraged to sit on the dais? Should committee chairmen be encouraged to present the report of their respective committees, and also take questions on the committee report as appropriate? Why do you believe this practice should be encouraged? Alternatively, why do you believe it should not be encouraged?
  - > We do believe that all directors should attend the AGM and, where relevant, present and answer questions on their committee. However, such questions should be relevant and appropriate for the director to answer. We recommend that guidance be provided on appropriate subjects for questions of a committee chairman, in a similar form to that provided as guidance for questions of the external auditor.
10. Should directors standing for re-election answer relevant questions from shareholders? How do you think this would facilitate shareholder engagement? How do you think it would work against improving communication between shareholders and directors?
  - > As the paper suggests, increased communication between shareholders and directors should be encouraged but not mandated.