20 April 2006

Mr Tim Sheehy
Chief Executive
Chartered Securities Australia
Level 10
5 Hunter Street
SYDNEY NSW 2000

Dear Mr Sheehy

DIRECT VOTING: OUR RESPONSE

We are writing to confirm Link Market Services Limited support for the CSA's push for Direct Voting. Notwithstanding our support, we have a number of comments we would like to make on the discussion paper.

The 'Direct Voting' paper concludes that no legislative changes are required only a constitutional change by the company. Should a proxy system co-exist with direct voting then legislative changes will still be needed to amend the current deficiencies in the Corporations Act in respect of the "cherry picking" by proxy holders, the order of priority between a direct vote and subsequent receipt of a proxy form, information to be included in the minutes and released to the ASX and so on. A direct voting system can only be introduced in conjuction with the existing proxy system. Therefore, any proxy lodged with directed votes for the Chairman or any other proxyholder will be placed in the same position as under the current proxy system (albeit you would expect a lower level of proxy directed votes). There may also be substantial set up costs to companies with a direct voting system.

Our recommendation is to lobby for immediate changes to legislation that will effectively deem any directed proxy votes (not open votes) to be counted in the final result should the proxyholder attend the meetings and on a poll does not submit his/her voting card.

We have set out in Attachment A, a number of other comments on the paper for your consideration.

Please do not hesitate to contact me if you have any questions.

Yours sincerely

Leigh Bull
Executive, Head of Victoria

We have a number of other comments on this paper which we have set out under the following headings:

Appointing a proxy is not voting

The paper notes that a “proxy holder” has the same rights a shareholder…”. In particular, a proxyholder may speak at the meeting and/or join in the demand for a poll. Under a direct voting system, these rights are effectively lost, Companies which receive shareholder question forms prior to the meeting can pick and choose their responses – this is not the case for questions submitted on the AGM floor.

Failure to call a poll

Whilst there are some isolated incidences of this event occurring the majority of companies comply with the BCA (Business Council of Australia) guidelines to call a poll where there is likely to be a close vote. The CSA should join with the BCA in recommending that this approach form part of a code of conduct for both Company Secretaries and directors. CSA and BCA should have a discussion with the AICD (Australian Institute of Company Directors) in this respect. So as to not disenfranchise shareholders, other stakeholders such as the Australian Shareholder Association should also be encouraged to endorse the recommendation to call a poll.

Furthermore, the concern about “lack of transparency in the voting process” is of course mitigated by the requirement under section 251AA. This information must be recorded in a company’s minutes and directors, in discharging their duties (of care and diligence), simply could not approve the minutes or permit the company to make an ASX announcement if they erroneously disclosed proxy votes. Furthermore, many listed entities’ AGM results are independently audited.

The current requirement to disclose proxy votes to the ASX does mean that such instances are now discovered.

Cherry Picking

The current ability of proxyholders to “cherry pick” is an inherent weakness in the Corporations Act. This legislation needs to change immediately for the upcoming annual meeting season. We are aware that the proposed legislative changes will seek to remedy this but the introduction of direct voting via a change in the company’s constitution will not affect this deficiency.

Note – currently in practice, for most Listed Companies, proxyholders (other than the Chairman of Meeting) cannot cherry pick their directed votes. The systems operated by the 2 major Registries do not allow this to occur – if a non chairman proxyholder votes then the vote only confirms how their undirected proxies are to be directed. The direct proxies do not change.

Solicitation of proxies and proxy forms

It is debateable that, via the solicitation process, proxy forms can be return to persons seeking election, rather than to the company of the share registry. While there is not obligation to utilise the company-issued proxy form, section 250B makes it clear that a proxy form it to be received by the company and its sets out the means of such receipt. By virtue of sub-section 250B(3)(b), unless the Notice of Meeting allows a proxy form to be returned to the person

seeking election (highly unlikely), then the integrity of the collection of proxies is not in question.

Lodgement of proxies involving multiple holdings

No change in any legislation or constitution will address this issue. This is an inherent weakness with the back office processing of custodians/nominees to be able to lodge proxy votes on time (before proxy cut-off) and with the correct number of total votes. Quite often custodians will lodge total votes when they are more than their current balance at proxy cut-off time. Therefore, insufficient securities exist and their vote must be excluded.

The custodians or their agents (ISS) have a responsibility to submit votes using current balances. In this instance it is not up to the Registries to try and interpret and/or amend proxies.

Custodians/Nominees also have the current practice of lodging multiple proxy forms which are to be aggregated in registry back office processing. An educational push should be made with these organisations to force them to lodge a final proxy count with each subsequent proxy they lodge (i.e. the latest proxy lodged is their final proxy and should not be added to any previously lodged proxy).

The ease of counting direct votes

The software to tally direct votes would be an increased cost to companies – the costs incurred by the registries will be passed on to clients which is to be expected. Similarly, the labour involved in collecting and processing direct votes received via post, fax and telephone will also be an increased cost to companies. A further cost will be incurred by companies as they broaden the scope of the audit of the AGM and hence auditors' fees rise.

Improved integrity of system

Direct voting will only expedite counting votes on a poll to the extent final sign-off (by scrutineers, auditors etc) has been received. The votes will be finalised after the meeting, so that shareholders and interested parties will have to learn of the exact results via the ASX or a newspaper advertisement (the following day if printing time permits, but usually two business days after the AGM).

Direct voting will not lead to virtual meetings

Direct voting may well replace the physical meeting, or the spirit of the physical meeting. Some shareholders do not want to appoint an agent to vote on their behalf and so traditionally have attended the AGM. Direct voting which, the paper notes on serval occasions, dispenses with the concept of agency, will mean that those shareholders who have attended meetings to cast their own vote, could achieve this without leaving their home.

Direct voting will not replace the appointment of proxies

Direct voting will need to operate alongside the existence of a robust proxy system. To this extent, legislative reform will be required to clarify the priorities of appointments versus direct votes. This is further expounded below.

The AGM will not be jeopardised

Please see the above comment with regards to shareholders who traditionally have not wanted to appoint an agent.

Legislative change is not required

The statement that “a member who has cast a direct vote on a resolution will have that vote counted on a poll unless the member appoints a proxy… or personally attends the meeting” is technically misleading. Employing equitable principles, why would an action by an agent override a direct instruction from a principal?

Multiple options still exist

Costs will be incurred by a company in two respects here. Firstly, to amend a constitution requires legal input and additional typesetting, printed text and pages (and thus possible postage) with regard to the Notice of Meeting. These are direct costs to be incurred by the company.

Secondly, the proposition that direct voting and the appointment of a proxy can be included on the same form is interesting. Shareholders often complete proxy forms incorrectly (the nature of “unsophisticated shareholders”). It would seem even confusing to further complicate the existing form with more options.

The path forward

It should be noted that amendments were made to Listing Rule 14.2.3 in October 2005 to clarify use of the “box” on a proxy form.

Direct Voting in Practice

The statement “No additional costs need to be incurred, as the direct voting and appointment of a proxy can be included as alternatives on one voting form” is misleading. This statement was left in the discussion paper despite my advice to the contrary. Significant additional costs may be incurred in respect of system programming charges and additional processing fees. Without the benefit of the knowledge of what legislative changes/constitutional changes will be made it is difficult to estimate what costs will be incurred.

There are still many unanswered questions which need to be resolved. These include:

- What procedure is adopted should a shareholder who has voted directly attends the meeting and wishes to revoke his/her direct vote. A shareholder must be able to withdraw a direct vote.
- Are direct votes counted on a show of hands?
- Should a direct vote and a proxy vote be received in the same envelope which vote should be counted?
- What results are provided to the ASX after the meeting is held? Direct votes or direct votes plus proxies?

The statement

“The problems with tracking votes because of the presence or absence of intermediaries will also not apply” is also misleading. Issues with custodians collating votes on behalf of beneficiaries will still apply. As direct voting will have to co-exist with proxy voting system the issues will still apply.

Proxy Form

ATTACHMENT A

The draft direct voting/proxy form is inadequate. We would be pleased to assist in the drafting/design of the form. The rules applying to the direct vote/proxy also need some amendments.

For example:

1.2 What if proxy vote is submitted subsequent to a direct vote? Last in vote to be counted?

1.3 This rule is contrary to all common law in respect of last votes to be counted eg Solomon Lew case.
How does a shareholder revoke or supersede his original vote if he changes his mind?

2.7 Shareholders should have a 'right' to amend their direct vote at the meeting should they wish to do so.

3.1 (a) For the Chairman of the meeting, the counting of direct votes plus a show of hands is impractical. An exact count of the show of hands would need to be employed. From experience, this is neither accurate nor complete for reporting purposes.

3.2 Does "having regard to the direct votes cast" mean:

- The number of direct votes cast (by holders)
- The number of direct votes (by no of shares)
- Or both

But why exclude proxy votes in this equation.