



**CHARTERED SECRETARIES  
AUSTRALIA**

*Leaders in governance*

14 August 2012

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Dear Diane

***Modernising the timetable for rights issues: Facilitating efficient  
and timely rights issues***

Chartered Secretaries Australia (CSA) is the peak body for over 7,000 governance and risk professionals. It is the leading independent authority on best practice in board and organisational governance and risk management. Our accredited and internationally recognised education and training offerings are focused on giving governance and risk practitioners the skills they need to improve their organisations' performance and are 'first-choice' options for those intent on pursuing a C-suite career. CSA has unrivalled depth and expertise as an independent influencer and commentator on governance and risk management thinking and behaviour in Australia.

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 *ASX Consultation Paper – Modernising the timetable for rights issues: Facilitating efficient and timely rights issues* (the consultation paper) and draws upon the experience of our Members in formulating our response.

***General comments***

CSA supports the move to draw on the advances made in technology, operational processes and systems in reducing the standard timetable for rights issues. Reducing the minimum timetable for rights issues will assist in ensuring that it remains a viable form of capital raising and therefore will better accommodate the capital raising needs of the diverse range of ASX listed companies.

CSA is cognisant that a reduction in the timetable for rights issues will in some instances be outside of the control of the ASX listed entity, as changes to systems and processes may be outsourced and technical in nature, thereby requiring the input and cooperation of other stakeholders, such as share registries, custodians, market information providers, and brokers. CSA also recognises that some of the changes will require the ASX to achieve process efficiencies and implement various system changes.

Further reductions in the timetable for rights issues are also contingent on the prevailing legislative and regulatory regime which either promotes or dissuades companies from engaging in various practices. CSA notes, in this regard, the longer-term considerations outlined in chapter 10 of the consultation paper.

Further, CSA is supportive of these changes shortening the standard timetable. Companies should retain the flexibility to keep offers open for a longer period of time should they deem it appropriate for their shareholder base.

### ***Longer-term considerations***

CSA concurs with the view that changes proposed in respect of the retrospective record date and the electronic dissemination of disclosure documentation and electronic payment are issues which require legislative and regulatory reform. CSA also supports each of the proposals raised in chapter 10 of the consultation paper.

CSA does, however, recognise that each of the proposals may incur additional costs for ASX listed companies, and that there may also be some shareholder resistance during the process. CSA recognises, for example, that the proposal to implement a retrospective record date may potentially disenfranchise a shareholder who purchases securities just before the announcement of the rights issue, but within the T+3 settlement cycle. CSA is also cognisant that certain system efficiencies will also need to be achieved in order for a retrospective record date to be achievable.

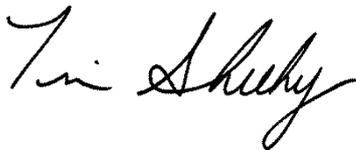
CSA is similarly supportive of the proposal to move to electronic dissemination of disclosure documentation and electronic payment. While CSA recognises that some companies have large shareholder groups who prefer hard copy communication, there has been a slow but steady shift towards the dissemination of documentation in electronic form. Research shows on average only 10 per cent of shareholders now elect to receive the annual report in hard copy, since changes in 2007 to the Corporations Act 2001 in relation to shareholders electing to receive a hard copy of the annual report.

CSA reiterates that there are efficiency increases which can be achieved through the use of electronic means, but that these need to be supported in the right regulatory and legislative framework. Supporting companies and shareholders in decreasing costs and increasing access is an important step towards promoting participation in capital raisings.

With these longer-term considerations in mind, CSA provides the following submission on the specific questions in the consultation paper.

We would welcome the opportunity to discuss any of our views in greater detail.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tim Sheehy', written in a cursive style.

Tim Sheehy  
CHIEF EXECUTIVE

## **Consultation Paper Questions**

**Question 1: With advancements in communications technology and operational systems, is it feasible to reduce the cum entitlement trading period to 1 business day and still provide the ability for foreign shareholders to trade in or out of the securities on a cum entitlement basis?**

CSA supports the move to reduce the cum entitlement trading period to one day for rights issues in line with advancements in communications, technology and operational systems.

While CSA acknowledges that timing issues may impact foreign investors, CSA notes that rights issues are predominantly geared towards rewarding existing shareholders. If a company is seeking to increase the size of its register, there are other more commonly used methods of capital raisings which can be used.

However, the move to reduce the cum entitlement trading period may also impact upon the renounceable rights issues, as the reduced period may not allow sufficient time for trades to be made.

**Question 2: What are your views on the trade-off between shortening the standard timetable for all market users and a security being placed in a trading halt in the unlikely event that there is an information processing error made in changing the basis of quotation?**

CSA understands that the move to shorten the standard timetable may result in a heightened risk of errors occurring during the cum entitlement period. CSA appreciates that technical systems will need to be upgraded and properly functioning in order to facilitate this change. However, CSA does not have enough information about the current prevalence and likely incidence of information processing errors in providing comments on this question.

**CSA recommends**, therefore, that ASX consider publishing information about the prevalence of information processing errors and advise companies of the nature and types of errors which may occur. CSA notes that if a process is introduced whereby the ASX and listed companies work together to disclose the nature and type of risks involved in reducing the standard timetable, companies will be better placed to manage any risks of a technical nature.

**Question 3: What are your views on whether the introduction of intra-day market information dissemination would mitigate the impact of reducing the cum entitlement trading period?**

CSA notes that companies are obligated to provide information to the ASX before the market opens on day zero of the timetable for rights issues. In principle, therefore, CSA has no objection to the provision of market information on a more regular basis. CSA notes, however, that the feasibility of this process is primarily reserved for market information providers.

CSA leaves it, therefore, for market information providers to comment upon the introduction of intra-day market information dissemination but notes that third parties charging fees for such services should be able to adjust to their customers' demands.

**Question 4: What are the impacts of reducing the cum entitlement trading period to 1 business day on common market transactions, for example, stock lending arrangements?**

CSA is of the view that market participants involved in derivative agreements over an issuing company's securities should take the risk of such companies embarking on corporate activities such as this.

**Question 5: Would the introduction of a separate standard timetable for dividends and capital returns that is different to the standard timetable for all other corporate actions create significant complexity or other compliance issues for market users?**

CSA does not believe that the introduction of a separate standard timetable for dividends and capital returns which is different to the standard timetable for all other corporate actions will create significant complexity for market users as there are already compliance issues with other timetables which exist. CSA notes that individual ASX listed companies are required to make an assessment on the most appropriate types of capital raising exercises which are appropriate for the circumstances of their individual organisations.

**Question 6: What is the impact on reducing the period between the ex date and the record date on the settlement systems and processes of market users?**

Given the reporting by ASX on the low level of average fail rates, CSA in principle supports the ASX proposal to reduce the period from the ex date to record date by two business days, to be consistent with the T+3 settlement cycle.

**Question 7: What are the impacts of reducing the period between the ex date and the record dates to 3 business days on common market transactions, for example, stock lending arrangements?**

CSA is of the view that market participants involved in derivative agreements over an issuing company's securities should take the risk of such companies embarking on corporate activities such as this.

**Question 8: What are your views on the recommendation put forward by ACSA for the date for dividend reinvestment plan elections being mandated as 2 settlement days after the record date?**

CSA does not support the recommendations being put forward by ACSA for the date for dividend reinvestment plan elections to be mandated as two settlement days after the record date.

The record date is a very important date in the dividend process and can have a number of implications for issuing companies, not solely related to determining dividend entitlements and DRP elections, which may include, but not limited to:

- setting foreign currency rates for payment of dividends in currencies in addition to Australian dollars
- if a DRP is being underwritten, setting the limits of the underwriters responsibilities to take up the shortfall.
- if a DRP has the capacity to do, determining the number of shares to be purchased on market to satisfy demand.

Changing participation election dates could also have a large impact on when companies set the pricing period for their DRPs. CSA notes that extending DRP elections until a couple of dates after the record date will also delay by that period of time the minimum amount of time by which companies can pay their shareholders dividends.

Mandating a different participation election date will also create complexities for registry and issuing company processes and would result in large compliance costs as all companies would need to amend the terms and conditions.

***Question 9: What are your views on the feasibility of sending out offer documentation in more than one stage, based on more than one “cut” of the share register, on condition that only shareholders on the register on the record date would be entitled to participate in the rights issue?***

CSA does not support the sending out of offer documentation in more than one stage, based on more than one ‘cut’ of the share register.

CSA notes that split mailing adds layers of cost and effort to both the company making the rights issue and the share registry. Taking a record of the company’s register at different times may result in a company making offers to people who are not entitled to participate in the rights issue which will also result in more work for the share registry in properly determining who is entitled to participate in a rights issue.

***Question 10: What other process or technology changes may be adopted to facilitate a reduction in the period between the record date and the date that documents must be sent out?***

CSA believes that the introduction of electronic processes and technologies will greatly facilitate a reduction in costs and time associated with all forms of company rights issues. CSA notes that registries will bear the burden of facilitating process and technological change, and that the migration to electronic processes requires the buy-in of the company’s shareholders. Different companies with different shareholder bases will encounter different challenges in this respect.

CSA notes, for example, that companies with an older or aged shareholder base, such as those companies that are popular with pensioners, will be required to undertake more work to assist their members with implementing and using electronic processes, and that this may create additional costs for these companies. For smaller companies, there may also be costs in introducing electronic systems to help facilitate technologically advanced processes.

***Question 11: What are your views on whether the period between the record date and the date that documents must be sent out could be reduced from 4 business days to 2 or 3 business days?***

CSA understands that the share registries have indicated that they would be able to comply with a reduction in the period between the record date and the date that documents must be sent out. CSA, therefore, similarly supports the reduction in the timetable.

**Question 12: What are your views on the trade-off struck between the benefits of reducing the timetable and costs of reducing the time available to investors to make their investment decision in the proposal to reduce the period between the date that documents must be sent to the acceptances close date?**

CSA understands that some retail investors may feel disenfranchised by a reduction in the timetable for a rights issue because it does not allow as much time for an investment decision to be made. There is also the potential for rights issues processes to occur without shareholders being properly informed, for example, through a lack of technological competency, or through shareholders being on holidays. CSA notes that companies with large retail shareholder bases are most likely to be affected.

A shorter timetable may also result in an impact on the company achieving its fundraising target as it may result in a lower level of participation from shareholders that might otherwise reasonably have been expected. Disenfranchisement of shareholders may also mean lower participation levels and CSA notes that, as a result, companies may need to revise down the expected take-up of rights issue offers.

CSA also believes that as the reduction in times in the timetable is not mandated, companies are free to make decisions as to the amount of time which they allow, based on their shareholding base. Companies who feel that their shareholders will be unable to comply with a short timetable, therefore, are free to choose longer periods in order to increase levels of participation and compliance.

**Question 13: If you do not think it is feasible to reduce the disclosure period from 10 business days to 7 business days, what are your views of a smaller reduction in this period from 10 business days to either 8 or 9 business days?**

CSA is cognisant that the reduction in the disclosure period from 10 business days to seven business days, or alternatively, a reduction from 10 business days to either eight or nine business days is again contingent on a company's shareholder base. While many of the concerns raised above would continue to be relevant, CSA also notes that it is open to listed companies to choose to have a longer period within which to receive applications.

**Question 14: What are your views on whether the increasing use of low-documentation offers using a cleansing notice and of electronic methods of acceptance and payment support the case for reducing the disclosure period?**

**Question 15: Given the general acceptance and use of electronic acceptance of offers and electronic methods of payments by shareholders, what are your views on whether a greater reduction in the number of business days in the period between the acceptances close date and the issue date than the 3 business day reduction canvassed in the proposal can be achieved (that is, whether 2 business days would be sufficient for this part of the timetable)?**

CSA notes, in response to both questions 14 and 15, that the increase in electronic methods will provide greater efficiencies and allow for a reduction in the timetable for rights issues.

However, as noted above, the issues which may arise with the implementation of electronic forms of use primarily concern the company's shareholder base. CSA notes that there are costs

associated with informing members, ensuring that they understand the processes, and have electronic access to the company, and are able to properly participate in the rights issue process. CSA believes that ensuring that these processes are able to be undertaken will result in costs for companies with shareholder bases who are resistant to the use of technology due to a lack of technical knowledge or competency or cost prohibition.

**Question 16: What are your views on whether a reduction in period between the acceptances close date and the issue date from 6 business days to 3 business days, or even 2 business days, provides sufficient time for finalising the details of the securities to be issued and to announce any under-subscriptions?**

CSA, in consultation with the share registries, does not support the reduction in period between the acceptances close date and the issue date from six business days to three business days or less. While CSA strongly supports the technological and electronic advancement of interactions between a listed entity and shareholders, we are aware that not all systems can easily accommodate these changes.

For example, CSA understands that within the current framework, the process of clearing payments can be problematic for share registries. CSA notes that many rights issues offers close at 5.00pm, whereas many banks close at 4.00pm between Monday and Thursday. If an offer is received after 4.00pm, it is usually processed the next day, and where the acceptance is paid by cheque, the process is stalled until the bank clears the funds for the cheque.

CSA notes that the reduction to three days or less does not provide sufficient flexibility for the payment process which the registries may require.

**Question 17: What are your views on the reduction in the period of rights trading which would result from the implementation of the proposals to shorten the standard timetable discussed in this paper?**

CSA supports the reduction in the period of rights trading which would result from the implementation of the proposals to shorten the standard timetable.

CSA is cognisant that a reduced period for rights trading will negatively impact upon renounceable rights issues because it will not allow time for the selling and trading of rights issues during a shortened period. However, it has been the experience of CSA Members, as noted above, that renounceable rights issues are infrequently used, and CSA would support the move to shorten the standard timetable as discussed in the consultation paper.

**Question 18: What are your views on the approach of maximising the rights trading period in the reduced timetable, by reducing the period between the end of rights trading and the acceptances close date? Do you think that the benefit of extending the rights trading period outweighs the loss of time for those investors who bought rights on the last day of rights trading to lodge application forms and payments?**

CSA is comfortable with the approach adopted by the consultation paper in response to the reducing the period between the end of rights trading and acceptances close date.

**Question 19: What are your views on the inability in the reduced timetable to extend the rights trading period if the acceptances close date is extended on the minimum notice proposed to be required? Is this an appropriate trade-off**

***for providing companies with as much time as possible under the reduced timetable to assess the progress of the rights issue and decide if an extension in the offer period is required?***

CSA is cognisant that the inability in the reduced timetable to extend the rights trading period if the acceptances close date is extended on the minimum notice proposed to be required will be perceived as a problem for some companies. However, CSA is also aware that there is unlikely to be a spike in trading associated with an extension to the rights period.

CSA notes that the issue, again, really falls to the systems and processes of those stakeholders involved in the processing of the rights issue. CSA leaves it for other stakeholders, therefore, to comment upon whether or not the reduction to three days will be technologically achievable.