CHARTERED SECRETARIES
AUSTRALIA

Keeping good companies

12 September 2002

Ms Catherine Officer
Legal Counsel & Manager, Issuers & Quoted Products
Australian Stock Exchange Limited
Sydney NSW 2000

Dear Catherine,

Proposed ASX Listing rule Amendments – Enhanced disclosure

Chartered Secretaries Australia (CSA) appreciates the opportunity to comment on the proposed ASX Listing Rule amendments on enhanced disclosure, set out in the Exposure Draft dated July 2002. We also thank you for the time you spent discussing this important matter with a number of members of the Institute's National Legislation Review Committee. A recent survey conducted by CSA indicates that the company secretary is the nominated officer for contact with the ASX of the majority of companies listed on the Exchange. Our members therefore have a keen interest in and detailed understanding of the disclosure provisions in the Listing Rules.

Our submission covers all sections of the Exposure Draft and we should be pleased if you would forward our comments on Section 4 – Periodic Disclosure, Financial Reporting – to Mr. Paul Phenix.

We are in agreement to having the ASX publish this submission and in fact will be posting this to our website as well.

Section 1 – Overview of ASX Disclosure Framework
CSA acknowledges the substantial and positive contribution made to the disclosure debate by ASX with the detailed Analysis of continuous disclosure performance set out in Attachment 1A of the Exposure Draft. The actual data, analysis and explanation of the surveillance and referral process demonstrates a clear understanding of the market the ASX is regulating and the participants involved.

Section 2 – Continuous Disclosure
As CSA has continually indicated, it is keen to continue working with ASX in establishing a clear consistent interpretation of the Listing Rules and associated Guidelines. CSA recognises that ASX seeks to ensure an informed and orderly market. CSA members have a similar aim, but are particularly concerned that in some cases enforced premature disclosure may promote an ill-informed and unfair market despite the best intentions of both the Issuer and ASX. Whilst the carve-outs set out in Listing Rule 3.1 attempt to provide a degree of protection to disclosing issuers, there are still a number of areas that require clearer definition, including "confidential". Regrettably the proposed introduction of another carve-out, relating to a false or unfair market, which is not defined, adds to rather than reduces the area of confusion. This is compounded by its introduction as the element which over-rides compliance with the existing carve-outs

CSA believes that the substantial majority of issuers and their advisors seek to comply with both the spirit and the letter of the Listing Rule on continuous disclosure and that they work with ASX at all times to ensure that disclosure is made at the earliest appropriate time. The introduction of a provision permitting ASX to rule on whether an "false market" may be created and requiring the Issuer to disclose notwithstanding adherence to the three existing carve-out elements, without any explanation for or discussion of the "false market" is more likely to promote greater friction than a closer working relationship.

Whilst it has been argued that the proposed changes merely formalise what is current ASX practice, CSA is particularly concerned that the "false market" could be created, not through any undisclosed action by the Issuer, but through unsupported media speculation over which neither the Issuer nor the ASX have any control.

CSA notes in the examples given in the paper that ASX would take the nature and standing of the persons promoting the speculation into account when deciding whether a false market could be created. CSA does not believe that merely because information appears in a newspaper, however credible, it is necessarily sufficiently accurate to require ASX to force a company to respond. CSA's greatest concern is that there is as great a risk in creating a false market by forcing companies to respond to unsubstantiated rumours as there is in their taking an entirely plausible and supportable "no comment" stance.

CSA believes that much of the current uncertainty can be addressed by encouraging companies to "develop a disclosure regime that meets legal requirements and its own needs and circumstances" (ASIC Guidance Principles August 2000) and in developing a more positive relationship with and promoting active confidential discussions between ASX and the issuers.

CSA suggests therefore that the following matters be considered in redrafting Listing Rule 3.1

1. That the proposed new carve-out on an unfair market be separate from the existing three carve-outs and that compliance with all three of those carve-outs should not be automatically over-ridden by an ASX ruling on what is a false market, without further "pre-ruling" discussion with the Issuer. In this respect, CSA supports the submission of the Law Council of Australia.

2. That the definition of "confidential" in Listing Rule 3.1A.2 be extended to include information given to ASX in a confidential application or discussion. As the current Rule stands, any discussion with ASX could be regarded as taking the matter from being confidential to being one which is known by a third party and thus disclosable. This prevents the Issuer from being open with ASX. CSA believes the introduction of the additional element of "confidential" would promote discussion between ASX and the issuer and establish a clearer definition of the stage of negotiation at which disclosure is considered necessary. CSA believes that such confidential discussions would do much to obviate the need for ASX having to decide if a false market exists and having to circulate correspondence relating to the request to disclose and would assist ASX in being satisfied that confidentiality has been maintained.

3. We suggest also that information given to ratings agencies and to share registrars in preparation for an announcement should also be defined as confidential, as their advice and views may be as critical as that given by lawyers and accountants. Such information is only given under terms of strict confidentiality. Once any rating change is announced, CSA supports its immediate disclosure to the market, provided that the rating agency is a significant body.

4. We recommend the deletion of the words "and who acknowledge that they are not able to trade in securities of the entity until the information is released to the market" in the Note to Listing Rule 3.1A.2. Whilst provisions of this sort may be in confidentiality arrangements during negotiations, such an acknowledgement may not be available in all cases and, in any event, does not go to the essence of the concept of confidentiality.

CSA supports the inclusion of the disclosure of a change in accounting treatment adopted by an entity, provided that the change is one that would materially affect the reporting of the entity's performance and is not one which is required by a general change in policy affecting all reporting entities.

CSA is particularly concerned with the terms of the proposed Listing rule 18.7A in which ASX is empowered to disclose its correspondence to the company if it deems the company has failed to disclose as requested. CSA submits such disclosure should be complete and that the company's responses to ASX should with the company's consent also be published to provide a balanced view of the company's position. We also submit that ASX should give the company adequate notice of its intention to disclose any correspondence to allow the company to consider appropriate options.

Section 3 – Electronic lodgement of announcements and documents with ASX
CSA fully supports electronic lodgement by all listed companies and has worked closely with ASX in the development of ASX OnLine. It is our view that the use of eLodgement, and specifically filing announcements in pdf format, will contribute to a better informed market through the provision of more current, accurate and accessible information, which can be readily disseminated without the integrity of the information being jeopardised.

CSA is aware that there have been a number of minor problems with its introduction and complaints about its operations and its members have been working with ASX in identifying and correcting these. Whilst elodgement is clearly within the capabilities of the larger listed companies we believe listed companies, both large and small, will need support and guidance from the ASX in the operation of the new system in the months leading up to the mandated deadline of 1 July 2003 to ensure they have sufficient time to update their systems and familiarise themselves with the process. eLodgement uses relatively simple technology and hardware and is not prohibitive to most listed entities. CSA's recent survey disclosed however that there are many smaller listed companies for whom mandating elodgement will create a substantial cost.

CSA notes that ASX seeks to mandate lodgement by Adobe pdf. We also support the recent ASX initiative to facilitate the downloading of public announcements in formats other than pdf (e.g. word, excel and powerpoint), which will avoid the necessity for companies to purchase and be trained in Adobe Acrobat. CSA believes, however, should ASX then convert the document to pdf for release to the market, companies should retain the ability to review documents after they have been converted to pdf format by ASX in case unexpected formatting changes arise out of the conversion process.

In addition, we believe that fax lodgement should be continued as an emergency option to cover circumstances when eLodgement is unavailable or not functioning. We recognise that it may be necessary for the ASX to impose a moderate fee for fax lodgement in an attempt to discourage this practice once eLodgement has been mandated. Provision should be made for waiver of such fees where eLodgement is impractical.

We note that the mandating of pdf by ASX conflicts with the mandated lodgement of the London Stock Exchange – HTML – and of the US SEC / New York Stock Exchange – EDGAR HTML.

Section 4 – Periodic disclosure – Financial Reporting – Appendix 4B
CSA supports the move to amend Appendix 4B and in doing so, notes that the move away from a "one size first all" regime for financial reporting should apply equally to attempts by some stakeholders seeking to introduce a "tick-a-box" regime for reporting of corporate governance.

CSA recognises that the current Appendix 4B was introduced to assist investors and analysts wanting to compare financial results on a like-basis. The variety of industries and operations of companies listed on the Australian Exchange has made such common-reporting unachievable. If common reporting is still seen to be an ideal, perhaps common reporting by industry entities e.g. banks could be introduced, but only after consultation with the relevant accounting standards bodies.

In supporting the move to amend Appendix 4B, CSA submits that all such financial disclosures should comply with the current accounting standards applying at the time of disclosure. The suggested inclusion of the statutory accounts in place of, rather than in addition to, the current Appendix 4B, should greatly assist companies seeking to provide meaningful financial information.

With regard to the proposed reduction in the time required to lodge preliminary announcements, CSA, although supporting reporting at the earliest date, suggests that the reduction of the reporting time for preliminary final reports is likely to lead to circumstances where preliminary announcements contain information which may be materially different from the statutory results once final board and audit consideration are given to the statutory accounts. Few, if any, directors would be willing to approve the preliminary financial announcement with the very real possibility that they may be asked to amend the results in approving the statutory accounts some weeks later, as further information becomes available during the audit process.

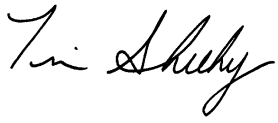
Some companies currently struggle to meet the 75-day reporting requirement. Although for most ASX listed companies, 60 days is achievable, companies with non-wholly owned subsidiaries and/or with overseas domicile reporting, may experience difficultly in meeting an earlier reporting date.

Consideration might be given to allowing certain companies which consolidate non-wholly owned subsidiary or overseas domiciled subsidiary accounts, additional days for lodgement.

In addition, a further significant barrier for smaller listed companies seeking to meet the 60 day requirement, is the availability of adequate audit resources at a time when a large number of companies, large and small, are all seeking to meet the reporting deadline within what is already a tight timeframe.

CSA members continue to support ASX in its aim of ensuring that investors are informed of matters that are relevant to their decision making in a timely manner. We would be pleased to discuss any of the matters raised in this paper.

Yours sincerely,



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