15th July 2008

Mr Tim Sheehy
Chief Executive
Chartered Secretaries Australia
Level 10, 5 Hunter Street
Sydney NSW 2000

Dear Mr Sheehy,

1. Introduction

1.1. Regnan is responding to a request to provide comment on the suggestions for AGM reform offered by the discussion paper "Rethinking the AGM" issued by Chartered Secretaries Australia (CSA) and Blake Dawson.

1.2. Regnan is a specialist governance research and engagement entity operating in Australia. It is owned by eight leading institutional investors who are responsible for approximately A$350 billion of invested funds. At the time of this submission, Regnan is retained by 12 institutional investors with a mandate to proactively identify potential governance risks and engage companies in relation to these risks.

1.3. Regnan clients invest around A$70 billion in S&P/ASX200 companies (approximately one in six dollars invested by institutions in the Australian stock market).

1.4. It should be noted that Regnan is not a proxy voting agency and does not directly participate in the voting process at AGMs.

1.5. This submission reflects the views of Regnan and does not necessarily represent its client organisations.

2. Comment on Suggestions for AGM Reform

2.1. Comment on 4.1 Separate the deliberative and decision-making functions of the AGM

2.1.1. Regnan supports the separation of the deliberative and decision-making functions of the AGM.

2.1.2. Regnan considers that value is added by the deliberative aspect of an AGM because of its ability to act as a catalyst for meaningful consideration by investors of proposed

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company resolutions, and because it provides a forum in which investors can interact and debate important issues both with each other and with company directors.

2.1.3. The observation that the current format of AGMs is akin to holding an election debate after the votes have been cast is one we agree with, and common sense suggests separation of the deliberative and decision-making functions of the AGM can be a useful option if the AGM is to regain its relevance.

2.1.4. Comment on 4.1a How formal voting would work if it was not completed by the close of meeting

2.1.4.1. Regnan broadly supports the alternative framework described in 4.1a of the "Rethinking the AGM" discussion paper.

2.1.5. Comment on 4.1b The optimal time to keep polls open after the meeting

2.1.5.1. Regnan agrees with the principle of keeping polls open after the AGM, however has not formed a view on what the timeframe should be.

2.1.6. Comment on 4.1c Mandating the separation of the deliberative and decision-making AGM functions

2.1.6.1. Regnan does not support the mandating of separation of deliberative and decision-making functions of an AGM.

2.1.6.2. Regnan supports including a recommendation to separate the deliberative and decision-making functions of an AGM in the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations*. "If not, why not" ensures all S&P/ASX200 companies enjoy a flexible approach, with "why not" allowing the market to be informed. Smaller companies that find a separation of deliberation and decision-making overly burdensome would particularly benefit from the opportunity to opt out by explaining to investors why such a practice is inappropriate for their company.

2.1.7. Comment on 4.1d Should Chairmen be required to disclose votes received by proxy prior to the discussion on resolutions

2.1.7.1. Regnan supports the requirement for the company chair to disclose votes received by proxy prior to discussion. Such information provides a valuable insight to investors and removes the current information asymmetry that exists between investors and company representatives.

2.1.7.2. Regnan suggests that the company chair should also be required to indicate what proportion of proxies has been lodged at the same time as disclosing their results. This would address the risk that a small number of lodged proxies may be misleading, without depriving investors of equal access to information which is already available to company representatives.

2.1.8. Comment on 4.1e Extending the voting would dispense with voting by a show of hands

2.1.8.1. Regnan supports dispensing with voting by a show of hands on grounds that it is inconsistent with the motives for separating the deliberative and decision-making functions of the AGM.

2.1.9. Comment on 4.1f Should webcasting of the AGM be mandated

2.1.9.1. All listed companies should have an obligation to provide full disclosure to all share holders of the proceedings of an AGM.

2.1.9.2. Regnan believes that webcasting is a viable method for immediate distribution of AGM proceedings for all S&P/ASX200 companies. In the case of companies for which webcasting is not viable then provision of a transcript of the AGM via the company website is the preferred substitute. In the absence of evidence showing transcript provision is prohibitive for companies, then Regnan would advocate for transcript provision as a mandated minimum for disclosing AGM proceedings to all shareholders.

2.1.9.3. Transparency and disclosure by companies is vital to maintaining the relationship between company representatives and shareholders. Measures such as full disclosure of AGM proceedings serve shareholder best interests particularly during times when contentious issues require dealing with via the AGM, and should not rejected on the basis of the short-term cost imposition.

2.1.10. Comment on 4.1g Should a specified minimum time be required for discussion on each resolution at the AGM

2.1.10.1. Regnan does not support a specified minimum time for discussion of each resolution at an AGM. A company chair should be in a position to gauge when debate has run its course, and should also be operating with goodwill toward investors so as not to stifle valid debate.

2.1.10.2. If a company chair does seek to stifle debate then time following the AGM would allow for investors to liaise amongst themselves and for public debate (via media and other forums), and this circumstance should be taken into account when deciding on the optimal time to keep polls open after the AGM.

2.2. Comment on 4.2 Different meeting rules for public listed companies and unlisted public companies

2.2.1. Regnan's investment universe is S&P/ASX200 companies only.

2.3. Comment on 4.3 Extend the statutory timeframe for holding an AGM

2.3.1. Regnan does not believe extending the statutory timeframe for holding an AGM to three months will increase shareholder engagement and participation; a more relevant AGM format should fulfil this need.

2.3.2. It is worth noting that few investors actually invest in anywhere near 1,500 companies. Regnan does not believe the quantity of AGMs taking place during results season is the main barrier to shareholder engagement, but rather that the AGM format is discouraging shareholders (hence this discussion paper). Mandatory distribution of AGM proceedings (see 2.1.9) should also assist those investors who do experience a temporary higher workload due to multiple AGMs taking place.

2.4. Comment on 4.4 Encourage committee chairs to report to shareholders and answer questions on the committee report

2.4.1. Regnan supports a higher level of engagement of directors with shareholders, and believes that participation in the AGM by committee chairs is a suitable method. The vast majority of shareholders have two primary windows of insight into a director's skills and ability, those being the short biography available in the Annual Report and the short biography provided prior to any re-election. These existing avenues provide limited insight, and enhancing shareholder insight via more directors attending AGMs to answer questions would increase informed shareholder voting.

2.4.2. Regnan agrees that such access should not be mandated as there will always be circumstances where it is not appropriate or practical for some directors to attend an AGM. However Regnan believes that all directors should make an effort to attend AGMs, making use of remote conferencing technology to do so if extensive travel is a barrier to such attendance. Including access to committee chair directors at AGMs as a recommendation in the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations* is considered appropriate by Regnan, on the basis that companies would then be required to explain to shareholders why denying them access to committee chair directors at the AGM is appropriate.

2.5. Comment on 4.5 Encourage directors standing for re-election to answer questions

2.5.1. Regnan believes that director re-elections held without dialogue occurring directly between directors and shareholders are bad for governance, because shareholders are being asked to elect a director with whom they have not had an opportunity to engage and as a result the director's mandate from shareholders is fundamentally weak. Standard operating procedure should be for dialogue to occur between directors and shareholders prior to a director's re-election in order to strengthen this mandate from shareholders, which would be beneficial for shareholders and for directors.

2.5.2. Regnan agrees that such action should not be mandated but believes that it should be issued as a recommendation in the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations*, on the basis that companies would

then be required to explain why not allowing shareholders to hear from directors prior to their re-election is in their best interests.

3. Summary

3.1. Regnan is supportive of the move to reform the AGM, and believes that the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations* is the appropriate avenue through which changes to the AGM should be issued.

3.2. The AGM in its current format does not enable meaningful engagement between shareholders and the representatives of their company - the directors. It is perverse that shareholders need to argue for access and dialogue with the directors that represent them on the board of their companies, as the current absence of meaningful engagement between the two parties is a barrier to shareholders exercising their fiduciary duty over companies which they own.

Regards,

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