

28 March 2014

Ms Mavis Tan
ASX Limited
Exchange Centre
20 Bridge Street
Sydney NSW 2000

By email: mavis.tan@asx.com.au

Mavis

Dear ~~Ms Tan~~,

Proposed Governance-Related Listing Rule Amendments – Supplementary Consultation

The Australian Institute of Company Directors (Company Directors) welcomes the opportunity to comment on the Proposed Governance-Related Listing Rule Amendments – Supplementary Consultation (Supplementary Consultation).

Company Directors is the principal professional body representing directors in Australia and is the second largest member-based director association worldwide. We offer world class education services and provide a broad-based director perspective to current director issues in the policy debate. Our individual members are directors of a wide range of corporations: publicly-listed companies, private companies, not-for-profit organisations, charities, and government and semi-government bodies. As at April 2013, around 43% of ASX200 directors are members of Company Directors. Around 50 ASX listed company directors currently serve on our national policy committees, which assist with the development of our policy positions.

We are committed to ensuring that corporate governance in Australia continues to be of a high standard and we encourage the development of clear, strong corporate governance principles that assist companies to implement efficient and effective governance practices.

Broadly speaking, Company Directors supports the changes proposed under the Supplementary Consultation that relate to governance. In particular, we strongly support the move away from requiring the disclosure of on-market purchases under an employee incentive scheme on an ongoing basis to only requiring this disclosure to be made as a one-off annual disclosure in the company's Annual Report covering all purchases made during the reporting period.

We also support the proposed removal of the requirement to include a "chairman's box" in proxy forms. This change will enable a greater number of shareholder votes to be counted that would have otherwise needed to have been disregarded merely because the shareholder appointing the chairman did not appreciate the need to tick the chairman's box.

Our specific comments in relation to the proposed changes under the Supplementary Consultation are as follows:

Listing Rule 10.17 – Payments to directors

In our view, the redrafted Listing Rule 10.17 – Payments to directors needs to be amended to clarify the following:

1. The types of payments and other benefits that need to be disclosed in the notice of meeting under the third dot-point of the redrafted Listing Rule 10.17 should be clarified. Under the existing drafting, Listing Rule 10.17 does not require any similar disclosure to be made in the notice of meeting and we note that a reason for requiring this in the redrafted rule has not been provided in the Supplementary Consultation. The example provided under the redrafted Listing Rule 10.17 suggests that the amendment is intended to require disclosure of equity payments to non-executive directors that are in addition to their directors' fees. We do not see why this additional disclosure is warranted, particularly given that this information is already required to be provided elsewhere, for example in the company's Annual Report. .

Nonetheless, if the disclosure is to be required under the redrafted Listing Rule 10.17, we do not think that it should be drafted on such broad terms that could potentially capture unintended payments (for example, it is arguable that the reimbursement of a directors out-of-pocket expenses in accordance with the constitution, which has been approved by shareholders could be captured under the proposed drafting – we doubt, however, that is what was intended to be captured).

We suggest that the redrafted Listing Rule 10.17 be amended so that the disclosure requirement is limited specifically to:

“details of any securities that have been issued by the entity or any child entity, with the approval of the holders of the entity's ordinary securities under rule 10.11 or 10.14 to the entity's non-executive directors over and above their directors' fees at any time within the preceding 3 years.”

2. We agree that directors' fees should include those payments made to a non-executive director for participating in a standing board committee meeting, such as being a member of the audit committee, remuneration committee or nomination committee. However, we do not agree that payments made to a non-executive director to participate in committees that are set up on an ad hoc basis to deal with a specific issue should be included. Such payments should instead be properly categorised as “special exertion” fees and excluded from the directors' fee cap approved under Listing Rule 10.17. This should be clarified by making appropriate amendments to the text of Listing Rule 10.17 and also in Note 3 to the rule.

Listing Rule 19.12 – definition of “associate”

We agree with the submissions made to the ASX in response to the amendments that were originally consulted upon with respect to the definition of “associate” under Listing Rule 19.12 (as summarised in Annexure A to the Supplementary Consultation). In particular, we agree that it is not appropriate for the definition to “deem” a related party of a director or officer to be their associate. While our preference would be for this last sentence to be removed from the definition, the proposed approach under the Supplementary Consultation to allow a director or officer to establish that a particular

related party is in fact not an associate by providing a statutory declaration to that effect provides a practical solution to the issues raised.

If you would like to discuss any aspect of our views please contact Senior Policy Advisor, Gemma Morgan on (02) 8248 6600.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J. H. C. Colvin', followed by a long horizontal flourish.

John H C Colvin
Chief Executive Officer &
Managing Director