SECURITIES INSTITUTE

1 April 2005

Dr Anthony Marinac
Acting Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Department of the Senate
Parliament House
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Dear Dr Marinac

EXPOSURE DRAFT BILL: CORPORATIONS AMENDMENT BILL (NO. 2) 2005

The Securities Institute of Australia, through its Markets Policy Group, is pleased to provide comments to the Government on the Exposure Draft Bill: *Corporations Amendment Bill (No. 2) 2005*. The Parliamentary Joint Committee will be aware that the SIA in a joint submission on this Bill focused on proposed amendments to s. 249D and s. 249N of the Corporations Act. We are pleased to provide the following additional comments.

General observations

The SIA generally supports the amendments to the Corporations Act as providing a better balance between participation for shareholders and efficient operation for companies. We advocate principles and processes that enhance corporate governance standards, improve corporate reporting practices and promote a corporate culture of integrity.

It is important for shareholders to have effective mechanisms to examine the affairs of the company and engage with the management of the company. Shareholder participation is essential for ensuring transparency of a company's business activities and accountability of a company's board and management.

However, while encouraging shareholder participation, especially for minority shareholders, it is also important to ensure that the associated costs to the company (and consequently through to all its shareholders) are managed.

Specific comments

1. Section 249D – Calling of a general meeting by directors when requested by members

The SIA supports the removal of the "100 member rule", which requires only 100 shareholders to requisition a general meeting. We consider that this rule gives disproportionate influence to minority shareholders and imposes significant and unnecessary costs on companies. In addition, this rule does not recognise the size differences between company registers, nor is it consistent with the approach adopted in other countries.

The "5% rule", as proposed, provides a straightforward solution that means shareholder participation is more equitable across the spectrum of small to large companies. Requiring only 100 shareholders to requisition a general meeting for a company with a registry of, say 500,000 shareholders, is unreasonable, impractical and disproportionate. We consider that where shareholders who wish to requisition a general meeting are unable to obtain support from 5% of shareholders, it is unlikely that the matter will be of relevance to the interests of the company's shareholders.

The SIA in its previous submissions to Government in 2001 and 2002 supported the "square root rule", with minor amendments, and the "5% rule", respectively. The SIA considers this proposal provides a simple mechanism that is easy for companies to apply and easy for the marketplace to understand. Furthermore, it means that relatively small numbers of shareholders cannot unduly influence companies to the detriment of all shareholders. The removal of the "100 member rule" will reduce the ability of a relatively small numbers of shareholders misusing the mechanism and acting contrary to the economic interests of the majority of shareholders.

We note that the Parliamentary Joint Committee on Corporations and Financial Services recommended the removal of the "100 member rule" in its review of the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003 ("CLERP 9").

2. Section 249N – Members' resolutions for Annual General Meeting

The SIA has concerns with the proposal to reduce the number of shareholders needed to add a resolution to an annual general meeting from 100 to 20 shareholders. While the SIA acknowledges that the "20 member rule", as proposed, aims to facilitate avenues for communication between shareholders and the company (other than through the requisition of a general meeting), we believe this change may result in minor or irrelevant matters making AGMs a less effective communication mechanism, to the detriment of all shareholders and the company.

For example, a shareholder only requiring the support of 19 other shareholders may easily put forward frivolous or vexatious proposals and impede the functioning of the AGM and inappropriately distract corporate resources. Therefore, the SIA is concerned that this change may be subject to abuse by a very small minority of shareholders with vested interests. There have been a number of examples of vexatious use of the "100 member rule", and therefore we consider introducing a "20 member rule" will allow a very small minority of shareholders to focus attention on issues that may be irrelevant or minor for a majority of shareholders.

The SIA believes that it is appropriate for the proposed amendments applicable to companies (Part 2G.4) to also be applied to managed investment schemes (Part 2G.2).

3. Section 249P – Distribution of members' statements

The SIA is also concerned with the proposal to require the company to distribute members' statements at the request of the members making the request, where the statement may be about a resolution to be moved at the general meeting or any other matter to be considered at a general meeting.

While the SIA acknowledges that the proposal aims to bring issues to the attention of the company and the shareholders, and in particular to provide unsophisticated shareholders with a better understanding of the potential complexities surrounding the resolution or matter, we believe this change may be subject to abuse by a very small minority of shareholders with vested interests. We are concerned that the proposal may result in the dissemination of frivolous, vexatious or defamatory statements.

4. Section 249O and 249P – Electronic circulation of members' resolutions and members' statements

The SIA supports the proposal seeking to promote the greater use of electronic distribution of company documentation. We consider that where a shareholder has already nominated to receive meeting notices via electronic means, that the company should also make available other company documentation (e.g. annual reports, etc) via electronic means. This proposal will facilitate more effective and efficient communication between the company and its shareholders. It will also reduce the costs associated with holding general meetings.

5. Subsections 250A(4) and 250A(5) – 'Cherry-picking' of proxy votes

The SIA supports the proposal to provide that where a proxy holder votes on a poll, that the proxy holder must vote every valid directed proxy and vote them as directed. Proxy voting provides a mechanism for shareholders that are unable to attend a general meeting to participate in the decision-making processes of the company. However, "cherry-picking" proxies not only undermines the integrity of the decision-making process, but also disenfranchises shareholders as it can unduly influence the outcome of voting. There have been a number of recent examples where there has been irresponsible administration and representation of proxy votes. This proposal will require proxy holders to vote according to shareholder instructions.

The SIA believes it is important for companies, proxy holders and shareholders to clearly understand their rights and obligations in relation to proxy voting. In our recent submission to the ASX proposed Listing Rule amendments on proxy voting, our comments aimed to facilitate improved corporate governance practices, encourage better understanding of proxy voting processes by shareholders (particularly minority shareholders), and promote greater transparency and accountability of listed companies' decision-making processes.

6. Subsection 250J(1A) – Disclosure of proxy voting

The SIA supports the proposal to remove section 250J(1A) requiring the Chair of the general meeting to disclose whether any proxy votes have been received and how the proxy votes are to be cast. We consider that there is significant uncertainty surrounding proxies, which means that it is difficult for the Chair to accurately inform the meeting how proxy votes are to be cast. Furthermore, disclosure of proxies may influence those shareholders attending and distort the voting outcome.

We note that the Chair is able to put the question to shareholders at the AGM and allow them to determine when such information is to be revealed. In addition, pursuant to section 251AA, listed companies are required to disclose certain information regarding proxy votes in the minutes of the general meeting.

7. Section 323DA – Disclosure of information filed overseas

The SIA supports the removal of the requirement for listed companies to disclose information reported to overseas exchanges. The 'continuous disclosure' obligation means that listed companies are obliged to disclose materially price sensitive information to the market. The SIA believes that it is appropriate for matters pertaining to continuous disclosure to be contained within the ASX Listing Rules.

We consider that to ensure consistent disclosure practices, the ASX should amend the Listing Rules to contain a specific obligation for listed companies to disclose information to the market that has been reported to overseas exchanges. This will ensure that Australian shareholders are kept fully informed. This is particularly important given the increasing number of ASX listed companies seeking listings on overseas exchanges and the global trend to standardise documentation across all markets.

If you have any queries about any issues raised in this submission, please contact me on (03) 9643 4187 or the SIA's Senior Manager, Policy & Government Relations, Diane Tate [(02) 8248 7556: d.tate@securities.edu.au].

Yours sincerely

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Chair, Markets Policy Group

cc: The Hon. Chris Pearce MP, Parliamentary Secretary to the Treasurer
Mr Michael Rawstron, General Manager, Corporations and Financial Services Division, Treasury