



Investment & Financial Services Association Ltd

ACN 080 744 163

8 April 2005

The Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Department of the Senate
Parliament House
CANBERRA ACT 2600

Dear Sir

**Parliamentary Joint Committee on Corporations and Financial Services Inquiry into
Exposure Draft Corporations Amendment Bill (No.2) 2005**

We refer to the Inquiry of the Parliamentary Joint Committee on Corporations and Financial Services into the Exposure Draft of the Corporations Amendment Bill (No.2) 2005 and the request for submissions.

IFSA represents the retail and wholesale funds management and life insurance industry and has over 100 members who are responsible for investing approximately \$A760 billion on behalf of over nine million Australians. Our members account for over 90 percent of Australia's funds management industry and holds approximately 30 percent of the ASX capitalisation.

We note that the proposed amendments are limited to companies under Part 2G.2 of the Corporations Act 2001 (**the Act**) and do not apply to the equivalent managed investment scheme provisions under Part 2G.4 of the Act. We strongly submit that there is no case for differentiating between companies and registered managed investment schemes in this regard.

Our comments below apply equally to companies and managed investment schemes. The equivalent managed investment scheme provision is identified in each of the comments.

1. Section 249D - Calling of General Meeting by Directors when requested by Members

IFSA supports the removal of the 100 member rule in section 249D(1)(b). The position of IFSA members has consistently been that the existing provision in the law enabling as few as 100 shareholders or scheme members to call a meeting of a large public company or managed investment scheme is inappropriate. This provision can result in significant costs to shareholders and members in response to minority activism. It also potentially provides an opportunity for abuse by allowing minority interests in large organisations to disrupt management from the

proper performance of its duties. It should be noted that there are already significant legal and fiduciary obligations imposed in relation to the management of managed investment schemes.

The IFSA policy position in regard to the calling of general meetings is that shareholders and members should only be able to call a meeting where at least 5% of members that are entitled to vote request the meeting. The 5% formula effectively operates as a sliding scale regardless of the size of the company or managed investment scheme.

[The equivalent managed investment scheme provision is **section 252B – Calling of Meeting of Members by Responsible Entity Where Requested by Members**]

2. Section 249N – Members’ Resolutions

IFSA generally supports the entitlement for 100 shareholders to be able to notify the company of a resolution that they propose to move at a meeting of the company. We believe that reducing the requirement in section 249N(1)(b) to 20 members is counter productive and may only operate to make meetings unmanageable.

As the law currently operates, fewer than 100 and, indeed, fewer than 20 members could under the 5% rule in section 249N(1)(a) give notice to a company of resolutions to be moved at the meeting where the company or managed investment scheme had less than 400 members.

The proposed amendment is, in our view, unnecessary particularly given that the law also allows further flexibility under section 249N(1A) and enables a different number or percentage of members to be prescribed by regulation for a particular company or class of companies. However, we consider that this additional legislative flexibility is optional and we have no issue with the repeal of section 249N(1A) as proposed, merely relying on:

- the 5% sliding scale to enable fewer than 100 members to place a resolution on a meeting agenda for institutions with less than 2000 members; or
- the 100 member rule to cap the minimum member requirement for members to place a resolution on a meeting agenda of large institutions.

[The equivalent managed investment scheme provision is **section 252L – Members’ Resolutions**]

3. Section 249O – Company Giving Notice of Members’ Resolutions

The equivalent managed investment scheme provision is **section 252M – Responsible Entity Giving Notice of Members’ Resolutions**.

4. Section 249P – Members’ Statements to be Distributed

The equivalent managed investment scheme provision is **section 252N – Members’ Resolutions**

5. Section 250A – Appointing a Proxy

It is unclear whether section 250A(4)(d) actually prevents “cherry picking”. Our reading of the provision is that it applies to each and every individual proxy appointment but, where a person is the holder of more than one proxy, the provision does not require all proxies held to be voted if any one proxy is voted.

It would put the provision beyond doubt if it included a simple statement that, where a person holds more than one proxy in respect of a particular resolution then all proxies held by that person must be voted if they vote on the resolution on a poll.

6. Section 250J – How Voting is Carried Out

We note that section 250J is a replaceable rule and is, therefore, mandatory only where a company constitution does not provide otherwise. It is our view that voting on a show of hands should be limited to procedural matters in the conduct of the meeting only and that all resolutions should otherwise be put to a poll. To permit voting on a show of hands in other than procedural matters effectively disenfranchises a large number of members who have lodged proxies. Additionally, we consider that with the adoption of technological solutions, electronic proxy voting will eventually become the norm.

Consideration should, in our view, be given to mandating voting on a poll other than for the determination of procedural matters in the course of a meeting.

We would be pleased to discuss any aspect of the comments made, or provide further information if necessary.

Yours sincerely

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

Richard Gilbert
Chief Executive Officer