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The Secretary
Parliamentary Joint Committee on Corporations
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By email: corporations.joint@aph.gov.au

Dear Dr Marinac,

Exposure Draft Bill - Corporations Amendment Bill (No. 2) 2005 (the Bill)
Response by Australian Stock Exchange Limited (ASX)

I refer to your invitation of 21 February 2005 addressed to Mr D'Aloisio to make a submission to the Committee on the draft amendment bill. Thank you for the opportunity.

ASX plays an important role in Australia's capital markets. While most of the proposals do not directly affect ASX, ASX supports a legislative approach which advances the interests of individual or groups of shareholders, but which also gives adequate weight to the efficiency and cost implications for the affected companies. These efficiency and cost implications are also the concern of shareholders.

ASX supports the principles expressed in the Explanatory Memorandum to the Bill and the lateral approach taken to encouraging shareholder participation in their companies' affairs.

The following background may be of interest to the Committee in considering the impact of the proposals on affected companies:

ASX has 1604 listed entities as at 31 March 2005 (excluding debt issuers). These entities have market caps which range from an average of $3.65 billion for the top 300 and $2.25 billion for the top 500 down to our lowest cap entities, which at the bottom 100 have an average of $1.3 million. ASX listed entities are therefore by no means uniform in relation to size, facilities and access to resources necessary to accommodate shareholders in relation to general meetings, resolutions and shareholder statements.

The size of companies' shareholder base also varies dramatically. There are minimum shareholding requirements for our listed entities (although from time they may fall below these limits). These requirements mean that the entities generally have a minimum of 400 to 500 shareholders.

ASX does not have information on the total shareholding for each company. This information is held in a combination of registers, the CHESS subregister and the issuer register which is operated directly by the company's registry. However by way of indication:

- In the companies with the largest shareholding base, such as IAG, AMP, Telstra and the Commonwealth Bank, there would be at least a million shareholders.
- For entities in the ASX 100, there would generally be over 50,000 shareholders
- Outside the top 300 companies there would be less than 5,000, down to the minimum shareholding of 400 to 500.
- Outside the top 300 there would be little if any institutional shareholding.

Executive Summary

- ASX supports the repeal of the 100 member rule – section 249D.
- ASX has concerns relating to the proposal to reduce the threshold from 100 members to 20 members in respect of member's resolutions to be brought to Annual General Meetings – section 249N.
- ASX has concerns in relation to the proposal to reduce the threshold for distribution of members' statements by the company along with notices of meetings – section 249P.
- ASX supports the proposals to facilitate electronic circulation of members' resolutions and members' statements – section 250A(4) and (5).
- ASX supports the proposals to ensure the voting intentions of members are carried out by appointed proxies by preventing "cherry-picking" – sections 250A(4) and (5).
- ASX supports the proposals relating to disclosure of proxy votes – section 250J(1A).
- ASX has no objection to the proposal to remove the requirement for companies to report information disclosed to overseas exchanges – section 323DA.

Section 249D – 100 member rule

ASX supports the proposal to remove the 100 member rule from section 249D of the Corporations Act and substitute it with new subsection (1) providing for requisition of a general meeting by shareholders representing 5% of the votes that may be cast at the general meeting, which is the current alternative.

ASX believes the proposal strikes an appropriate balance between the rights of shareholders and the interests of companies in efficiently managing their affairs.

We note that amendments appear to apply only to companies and not to managed investment schemes. Since 1998 managed investment schemes have been subject to the same requirements under section 252B of the *Corporations Act*. ASX submits that the 100 member rule should also be deleted from this section.

Section 249N – members' resolutions for Annual General Meetings

ASX acknowledges the importance of shareholders being able to raise issues to be considered at a general meeting, which is a primary avenue of communication for shareholders.

The proposal to reduce the current threshold from 100 to 20 members may increase costs for companies without commensurate shareholder benefit. The number of resolutions to be considered at any meeting could increase substantially. This is likely to be of little benefit to shareholders generally, and may only mean that an annual general meeting will extend for many more hours in order to debate and consider each resolution. At the extreme the reduction of the threshold could result in a large number of futile or irrelevant resolutions being put forward.

Section 249p - Distribution of Members' Statements

A review of lodgements over the past several years indicates that members' statements mechanism has not been taken up by listed company shareholders.

However, ASX considers that a reduction of the threshold from 100 members to 20 members may result in costs to companies which are not balanced against demonstrated shareholder benefits. This is because a threshold of 20 members is very low and it may facilitate the dissemination of unnecessary, vexations or potentially defamatory statements by very small groups with a vested interest. The issue of concern to these small groups may well be of limited importance to the company or its shareholders generally.

Additionally, ASX has concerns that the potential increase in the number of members' statements may result in increased exposure of ASX to the risk of actions for defamation because:

- Listed companies are required to release communications with shareholders to the market (Listing Rule 3.17);

- ASX will 'publish' members' statements over its company announcements platform;

- Members' statements are outside the usual ambit of continuous disclosure. They are not drafted by the company, will not necessarily be 'material' in terms of the Listing Rule 3.1 or s674(2) of the Corporations Act and are more likely to contain statements which could expose ASX to the risk of allegations of defamation than those drafted by the company.

- The operation of s1100B of the Corporations Act in providing qualified privilege to ASX is uncertain. In particular, it is not clear that the protection would extend to members' statements released under Listing Rule 3.17. It may be arguable for example that such information is not "necessary to ensure that the market operates in a fair, orderly and transparent way".

ASX's preference is that the threshold remain unchanged.

In the event that the threshold is reduced to 20 members, ASX requests that the protection of s1100B be clarified. More generally ASX would welcome a review of s1100B to clarify the extent of the defence.

Proxy Matters

ASX supports the proposal to repeal the subsection in 250J(1A) which provides that the Chair must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast. The provision has been of limited usefulness given the inherent uncertainties identified in the explanatory memorandum.

Section 323DA – Disclosure of Information Filed Overseas

ASX supports the repeal of the provision and notes that where such information is material it must be disclosed under listing rule 3.1. ASX's experience has been that material information is disclosed by those companies that are affected.

Thank you again for the opportunity to comment.

Yours sincerely,

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