

Submission to the Parliamentary Joint Standing Committee on Corporations and Financial Services' Inquiry into Shareholder Engagement and Participation

Introduction

Boardroomradio welcomes the opportunity to make submissions to the Parliamentary Joint Standing Committee on Corporations and Financial Services' Inquiry into Shareholder Engagement and Participation ("the Committee").

This paper approaches the need for reform along two branches, firstly, the requirement for regulatory change and secondly, policy recommendations to improve shareholder engagement and participation, particularly from the standpoint of retail investors.

In respect to regulatory amendments, Boardroomradio suggests review of the ASX listing rules to alter the mode in which companies comply with reporting and disclosure obligations, with a view to enhancing investor confidence and facilitating broader access to timely market information of the highest quality. Regarding policy changes, Boardroomradio comments on the changing landscape of share ownership in Australia and how this shift necessitates improved education and information flow for investors.

About Boardroomradio

Boardroomradio is an Australian company offering audio and video web casting services to ASX and NZX listed companies, assisting in delivering a company's message to the market. Boardroomradio operates a website which provides the public with free access to news and announcements from companies, brokers, economists and market analysts. Visitors to the Boardroomradio site also have free access to a comprehensive company events calendar encompassing important dates for all listed companies in Australia and New Zealand.

Listed companies subscribe to Boardroomradio and use the website and web casting services as an investor relations platform through which they can create and disseminate audio and video presentations to, and interact with, a vast range of professional and retail investors. Boardroomradio's content is also distributed through an extensive network of partnership sites (refer to Annexure A). All Boardroomradio content is available free of charge to the public and no registration is required to access the content.

Boardroomradio was founded with a desire to provide retail investors with the same level of access to market information as professional investors enjoy, effectively levelling the playing field for retail investors to rectify the information imbalance currently evident between retail and professional investors. Boardroomradio seeks to achieve this through:

- Utilising web casting technology to modernise and enhance existing methods of distributing information to the market;

- Providing free information in a readily useable and easily accessible format and;
- Delivering the information in a timely and relevant manner to end users.

The Case for Reform

Boardroomradio submits that the existing market disclosure regime:

- Does not adequately embrace existing technology, reducing the effectiveness of communication between a company and its members, causing delays and excessive costs in the process of information dissemination;
- Favours professional and institutional investors over retail investors; and
- Fails to embrace best practice improvements evident in overseas markets.

The extent of share ownership in Australia is well documented in a number of the submissions already before the Committee and requires no reiteration. With more participants in the market it is essential to continuously re-evaluate the means of efficiently communicating market sensitive data to investors. The mode of share ownership is equally important to the extent of share ownership, as is the method in which those securities are traded. Amendments to the taxation provisions have resulted in a surge in the number of self managed super funds (SMSF's).¹ SMSF's assets have risen to approximately \$33 billion as of June 2007². Research reveals concerning facts about the passive approach trustees are adopting to their SMSF's, citing a lack of diversification and lax monitoring of the investment as two key problems³.

Online trading platforms are readily accessible and almost universally adopted by retail investors. Increasingly, these online platforms offer complex trading instruments such as CFD's to non-sophisticated investors. The high levels of leverage permitted heightens the complexity involved. Retail investors frequently operate without professional advice and are highly dependent on the quality and timeliness of information from listed companies.

A strictly enforced and robust continuous disclosure regime is a core principle of efficient capital markets. The pitfalls of opaque markets have been well documented and require no reiteration in this submission. Shareholder engagement is an essential element towards creating informed and thus logical and efficient capital markets. To make informed decisions, shareholders require unimpeded access to information as soon as possible and adequate opportunity to engage with company directors to apply that information.

¹ Reports estimate approximately 3800 SMSF's are created every month in Australia.

² *ibid*

³ "Self-managed super needs to diversify" Anna Fenech, *The Australian* 11 December 2007, p21

The ASX states that “*timely disclosure must be made of information which may affect security values or influence investment decisions, and information in which security holders, investors and the ASX have a legitimate interest*”⁴.

In light of the changing nature of share ownership and trading in Australia, it is imperative that disclosure regimes and avenues for shareholder engagement evolve to keep pace with the shifting landscape.

Additionally, company Annual General Meetings (AGM’s), once a cornerstone of good corporate governance, are in danger of practical extinction. Attendance rates are currently at an average of 28% and show signs of continual decline⁵. The AGM process requires reinventing in order to breath life back into an important and useful institution that has slipped into disrepair.

A Globally Competitive Market

In an era characterised by the global integration of markets it is imperative that Australian exchanges, and the regulatory framework that underpins them, remain abreast of technological and innovative developments on the global arena. In the context of this submission, this means market participants and intermediaries must constantly examine the best possible methods of disseminating information and engaging shareholders.

Boardroomradio submits that Australian regulations should adopt the more progressive and expansive approach of the Unites States Securities Exchange Commission (SEC) for disclosure of market sensitive information. The SEC does not mandate one particular form or mode of disclosure. It allows companies to exercise discretion in choosing a method that is reasonably calculated to make effective, broad and non-exclusionary public disclosure⁶.

The NASDAQ has embraced the open approach to communication encouraged by the SEC, citing conference calls, press conferences, news wire services or other means of electronic communication as acceptable mediums to convey market sensitive information. Importantly, investors must be given clear instruction on how and when to access conference calls and web casts.

The NYSE mandates that market sensitive news must, in addition to being filed with the SEC, be released to a national business and financial newswire service. This simple yet important listing rule greatly enhances the dissemination of information to all investors.

A system of simultaneous distribution of price sensitive information to newswire bodies in addition to the exchange exists in a number of other markets, including;

- Sweden (OM Stockholm Exxhange)

⁴ ASX Guidance Note 8 – Continious Disclosure

⁵ Efrat, p21

⁶ SEC Regulation Fair Disclosure (2000)

- Greece (Athens Stock Exchange)
- France (Euronext Paris)
- Finland (Helsinki Stock and Derivatives Exchange)
- Belgium (Euronext Brussels)
- Austria (Wiener Borse)
- Germany (Deutsche Borse).

Australia's existing disclosure, whereby company releases must first clear through the ASX prior to release to news and media sources, causes undue delay and stifles the broader distribution of the release to all market participants. Adjusting the Australian regulatory framework to more expansive approach adopted by US and European exchanges will help place Australian companies stay in line with worldwide best practice information disclosure.

Comments in Relation to the Terms of Reference

1. Barriers to the effective engagement of all shareholders in the governance of companies

1.1 Access to Information

The ability of shareholders to engage with companies essentially hinges on two factors; firstly, access to the requisite information, and secondly, appropriate avenues to influence the decision making processes of the board.

Brokers and analysts have ready access to investor briefings, conference calls and importantly, informal access to management that retail investors do not share. The resulting time lapse for important information flow to retail shareholders is significant. Traditional sources of information for retail investors; print and television media, do not disseminate data rapidly enough to be of value to investors. By the time a retail investor reads price sensitive company information in their local daily, the market has invariably moved on the news.

Boardroomradio supports reforms allowing companies to take advantage of universally adopted technology; broadband internet, email and media player style software; to deliver important information to ALL investors in a free, easy to access and user friendly medium.

1.2 Time Restrictions

The issue of information imbalance is intrinsically linked to time, or lack thereof. Professional investors focus on a selection of companies and are often closely associated with management. Retail investors cannot devote significant resources to monitoring companies within their portfolio in light of their existing employment commitments and geographical restraints. By allowing certain classes of investors

superior access to information and avenues of discourse with companies, the decision making process is in danger of capture by special interest groups and/or becoming unrepresentative of the overall shareholder base⁷.

Technology exists to allow part time investors to efficiently collate market sensitive information from companies, however its adoption has been ad hoc to date. Mandating simple and extremely cost effective processes such as email alerts to shareholders for all company announcements would assist in levelling the playing field for all investors. Web casting of AGM's enables investors to participate remotely and is a matter discussed in more detail below. Furthermore, these mechanisms require minimum time, funds and effort from company management.

1.3 Apathetic Investors

The fragmented nature of small scale retail investors creates a degree of apathy amongst the group, who feel their small share parcels and commensurate voting power precludes meaningful involvement in the corporate governance process. This sentiment is evident in the low participation rates at company AGM's.

Furthermore, a sense of alienation between retail investors and company directors exists that is not as prevalent with institutional investors whom experience more interaction and consultation with management.

The ever widening gulf between retail investors and company directors was articulated in a recent interview with seasoned company Director David Gonski who stated "*Shareholders and Directors have drifted apart...We need to show that we are decent people, interested in the company and we want the company to survive and prosper*"⁸.

Boardroomradio does not profess to possess the solution to passive shareholder behaviour, however, by utilising available technology (for example web casting) to enable investors to remotely participate in company events and interact with company management, companies can move towards creating a more active and informed shareholder base. Bridging the gulf between the company and its ultimate owners can help reignite debate and active engagement to ensure capital is managed effectively and in a transparent and open environment.

1.4 Format and Delivery of Information

Given the sheer volume of information that a continuous disclosure regime generates, investors with a diversified portfolio often find it difficult to process lengthy releases and reports. It is rare that retail investors will go to the trouble of accessing all significant announcements that a company makes throughout the year.

Utilising email alerts and pod casting technology to deliver information to investors faster and in a format that is easily digestible should be a priority for companies concerned with conveying their message to ALL shareholders rather than purely

⁷ Boros, p 2

⁸ Efrat, Zilla quoting David Gonski, "Reconnecting with Shareholders" *Company Director*, v23 November 2007, p21

institutional investors. These proposals will be discussed under Term Of Reference 4 below.

3. Best practice in corporate governance including; the conduct of annual general meetings (AGM's).

3.1 The Importance of AGM's

Despite extensive criticism of the AGM and its contemporary relevance, there is strong sentiment amongst government, industry and investor bodies for retention. Boardroomradio endorses this approach and submits that with appropriate reforms life can be breathed back into AGM's and they can resume their place as an important element of good corporate stewardship. As David Gonski recently stated "*I don't believe that small companies shouldn't have AGM's. It is said they aren't useful. Well, make them useful and people will come*"⁹.

The AGM should be retained as a cornerstone of a company's good governance practice, but it must be procedurally reinvented so as to remain relevant. The AGM is essential, but the current manner in which it is conducted is influenced by outdated legislative concepts drafted at a time when physical gatherings were the only type of meetings possible or indeed envisaged. The patchwork reform that has occurred from these original Victorian foundations has created a legal framework that is often inadequate for embracing technological advances for better business outcomes.

3.2 Adopting Technology to Enhance the Utility of AGM's

The lack of investor involvement in AGM's has been evident for some time. Shareholders are voting with their feet with AGM attendances at record lows. The AGM must be reinvented to become relevant and accessible for investors. Adopting technology to host "virtual" AGM's is critical to this revival.

The term "virtual meeting" refers to a meeting that does not involve a physical gathering but rather a meeting of the minds via web casting, telephonic or other technological means. Members are able to engage in remote electronic voting or by registering proxy votes online.

Two primary justifications exist for mandating AGM's; firstly, as a forum for face-to-face accountability for stewardship, and secondly, as a forum of deliberation and debate of motions.¹⁰ Neither of these functions are in any way diminished by hosting virtual AGM's. In fact, given the greater levels of participation virtual AGM's would achieve, these objectives will be greatly enhanced.

⁹ Company Director magazine, p 20

¹⁰ Boros, p16

Reports estimate the cost of AGM's at around \$4m for large companies¹¹. Attendance numbers at AGM's are commonly very low, especially for small to mid cap companies whom are often least able to sustain the cost of the event. As the meetings are held during work hours, few retail investors are able to attend, and generally elect to vote via proxy at the Chairman's discretion. Retail investors are unlikely to travel interstate to attend AGM's as the cost and inconvenience is rarely justifiable.

Institutional investors are also increasingly reluctant to use AGM's as an avenue of discourse with company directors, instead preferring to rely on direct contact and broker presentations as a means of influencing management decisions¹².

Hosting a virtual meeting allows shareholders to participate remotely, from their computers at work or home, eliminating the need to travel and take leave from their normal employment. Hosting virtual AGM's also benefits professional investors and analysts who often find it impossible to attend AGM's due to "timetable clashes" during the busy AGM season.

In many respects, an online or virtual AGM is a more efficient and precise means of accommodating and responding to investor queries. By allowing orderly submission of questions (either in written form via email or audio through Voice Over Internet Protocol) company management has an opportunity to address matters in a structured and clear manner rather than the disorderly approach displayed at many AGM's.

From a technological perspective, hosting virtual AGM's is a relatively simple exercise, utilising proven and commonly adopted software and systems that are readily available through a number of suppliers and service providers. A company can choose to employ audio or audio and video feeds to listeners through a previously distributed URL that is also generally hosted on the company's website.

3.3 Regulatory Changes Regarding the Conduct of AGM's¹³

The Australian Corporations Law and Regulations do not expressly permit a virtual AGM, although the legislation does provide for a meeting to be held in more than one place.¹⁴ In 2001 NRMA successfully conducted an electronic ballot via the internet for a half board election. The legal foundation for doing so is uncertain, however the process worked, and the outcome was binding, indicating the current legislative framework simply requires some further tinkering to make virtual AGM's possible.

¹¹ Reference point 22 in Dept of Treasury Submission

¹² Boros, 2

¹³ The recommendations and submissions pertaining to AGM's are equally applicable to EGM's and all other forms of shareholder meetings.

¹⁴ Boros, p6

The state of Delaware, a leading company law innovator, has enacted legislation that allows companies to host virtual AGM's, dispensing with the requirement for a physical meeting¹⁵.

It is important to remain ahead of the curve and introduce reform early to allow companies to evolve AGM's rather than wait until the model is dead and try to revive it through drastic regulatory change. If the framework is put in place, companies will be able to innovate and reinvent the AGM to suit the contemporary needs of members.

Suggested amendments to the legislative framework are an expansion of the definition of "*meeting*" found in section 9 of the *Corporations Act 2001* to encompass meetings hosted in multiple locations (with no ceiling imposed on the number of locations). Furthermore, Part 2G.2 Division 5 of the *Corporations Act* would be an appropriate place to clearly empower companies to host virtual AGM's, by amending section 249S.

Section 249S of the *Corporations Act* already permits companies to hold members meetings concurrently in multiple venues using "*any technology that gives the members as a whole a reasonable opportunity to participate*". Section 252Q permits a similar allowance for registered schemes. Section 248D permits directors meetings to be held using conferencing or web casting technology. The AGM is arguably the one mandatory meeting that would benefit most from the adoption of technology, yet it remains the last vestige of the traditional physical meeting.

A degree of ambiguity exists as to the proper meaning of "*2 or more venues*" in section 249S. It is unclear whether this permits a company to host an AGM from their boardroom and, for example, video webcast the proceedings to hundreds or thousands of shareholders sitting in front of their computers. A less expansive interpretation of the provision would most likely reach the conclusion that the legislature envisaged a situation whereby the meeting might be held concurrently in conference rooms in a number of capital cities using appropriate technology, with members attending the most convenient venue. It is perhaps a stretch (although by no means a quantum leap) of the provision to treat "*a venue*" as an individual members home or office, viewing the proceedings over the internet. Clear legislative guidance is required.

Adopting provisions to allow virtual AGM's is by no means revolutionary legislative amendment, yet the benefits would be vast and at the very least facilitate an opportunity for companies to take advantage of the technology available to host more accessible and relevant AGM's. The focus when considering regulatory review and policy change on this topic should be towards achieving the most effective way to create a "meeting of the minds" of the participants rather than merely corraling participants. A meeting of the minds can be achieved through a virtual meeting, for a fraction of the cost and without any of the inconvenience of a physical meeting. Any legislative amendments to meeting requirements would require commensurate amendments to the ASX listing rules to give practical effect to the changes.

¹⁵ *General Corporation Law*, 8 DEL CODE ANN 211(a)(1)(1999) – permits the directors to determine that a meeting will be conducted entirely by electronic means.

3.4 Electronic Voting

A further advantage of the virtual meeting is the ability to keep polls for resolutions open for 24 hours after the close of the AGM through the acceptance of electronic votes. This system allows members to consider the merits of resolutions on the basis of director's presentations and debate at the meeting, rather than casting their vote via proxy before all the facts are available. Closing polls 24 hours after the meeting will serve to enhance the quality and significance of debate at the AGM and help abolish the often rubber stamp procedure for resolutions that characterises many AGM's.

4. The effectiveness of existing mechanisms for communicating and getting feedback from shareholders.

A number of simple mechanisms exist that would significantly enhance the way in which companies communicate and interact with members.

4.1 Email Alerts

Mandating that companies acquire and maintain a current email contact list for all shareholders is an effective and cost efficient method of ensuring members are provided with up to the minute access to important company information that may otherwise go unnoticed. The penetration of email in Australia varies between reports, but the low end estimates ranges from 45-60% of the population. The undisputable consensus is that the rate of email usage continues to grow rapidly. It is a cheap, rapid and simple means of communication that companies should use to communicate with members.

4.2 Releasing Information in Audio Format

Permitting the release of market sensitive information in both written and audio form (for example an MP3 file submitted to the ASX electronically) would allow investors to receive podcasts of the release and listen to it on their computers or portable devices at convenient times. An audio release would allow a company to relay information in a more conversational and easy to understand format which would particularly benefit retail investors.

5. The particular needs of shareholders who may have limited knowledge of corporate and financial matters.

Listed companies are not and should be responsible for educating their shareholders. The existing ASX disclosure rules and published Guidance Notes already establish that companies are to report information in a clear and



straightforward manner. However, it is in a company's best interests to ensure its message is conveyed to and understood by all investors.

Permitting a company to satisfy its disclosure obligations by releasing information in the form of a podcast/webcast (rather than a written document) would allow directors to explain and contextualise complex information in a more conversational and accessible medium.

Thank you for the opportunity to make submissions to the Committee.

Yours Faithfully

Boardroomradio

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