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26 May 2008

Mr Geoff Dawson
Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
Canberra ACT 2600

By email: corporations.joint@aph.gov.au

Dear Mr Dawson

I refer to your letter dated 8 May 2008 requesting ASX's comment on amendments to Listing Rule 10.14 and ASX's practice of not disclosing management agreements.

Listing Rule 10.14

Listing rule 10.14 says shareholder approval must be sought for new issues of shares granted to directors (encompassing executive and non-executive directors) but that shareholder approval is not required for securities granted to a director where those shares are purchased on market.

Listing rule 10.14 is one of several ASX listing rules (contained in chapters 7 and 10 of the listing rules) which relate to the dilution of share holdings. These rules effectively state that where the dilution will occur as a result of a significant capital raising or in the context of new issues of securities to related parties, then shareholder approval is required.

In this context, it is difficult to justify shareholder approval where directors' securities are purchased on-market. This is because shareholders are arguably in the same position as if the director has been paid a larger cash salary and used the money to purchase shares on-market. In both scenarios, the value of existing investors' share holdings is unaffected. This can be contrasted with a new issue of shares for the director, where the rule does require shareholder approval. A new issue will dilute the value of existing holders' securities by increasing the total number of shares on issue whilst total equity remains unchanged.

A benefit of the rule is that it effectively prevents directors issuing themselves large quantities of shares which have the effect of transferring a controlling block to the directors, unless shareholder approval is obtained.

It is recognised that directors may face a potential conflict of interest in approving a new issue or on-market purchase of securities. However, ASX notes the ASX Corporate Governance Council commentary which states that a director should not be involved in determining their own remuneration. The Principles and Recommendations also contain guidance relating to the composition of the board remuneration committee, which is an additional mechanism for managing conflicts of interest.

ASX recently reviewed listing rule 10.14 and has formed the view that this rule is working effectively as ASX intended, and that no changes are required. Reasons underpinning ASX's decision to retain listing rule 10.14 in its current form are briefly summarised below:

- ASX recognises that director remuneration is regulated by the Corporations Act
    - The Act uses a "reasonableness" test. Member approval for officer benefits is not required if the benefit is reasonable, with regard to the circumstances of the company and to the responsibilities of the related party.
    - The Corporations Act requires an advisory (non-binding) remuneration vote at the company's annual general meeting.
- The listing rules, Accounting Standards and Corporations Act contain clear requirements for the disclosure of securities including options, both when issued, when exercised, and annually (regardless of activity). This adds transparency – and hence accountability – to the process.
- Listing rule 10.14 is appropriately targeted to require approval for dilutionary issues of shares to related parties.

Management Agreements

ASX typically receives copies of management agreements in the context of listing a new entity following a successful initial public offering (IPO). IPO disclosure requirements are set out in Part 6D.2 of the Corporations Act (and, in relation to offers of financial products by managed investment schemes, Part 7.9 Division 2). A prospectus must contain "all the information that investors and their professional advisers would reasonably require to make an informed assessment" of various matters identified in the Act (section 710(1)). The decision as to what should be disclosed in the Prospectus is one for the company to take. ASIC is tasked with ensuring that entities comply with their Corporations Act disclosure obligations.

ASX determined in 2007 to take steps to assist Issuers and investors in their disclosure and understanding of management agreements. In mid-2007 ASX exposed for public comment a number of listing rule changes, one of which relates to the disclosure of key terms of management agreements. The changes are currently being considered by ASIC as part of the usual rule amendment process.

The new approach will not result in automatic full disclosure of management agreements, although an Issuer may still elect to release the full management agreement to the market. ASX considered mandating full disclosure and concluded that a better alternative would be to adopt the Government's approach of encouraging shorter, clearer, simpler disclosure. Accordingly, ASX's proposal will require Issuers to disclose a concise, user-friendly summary of the terms of the management agreement in relation to 10 key areas identified by ASX. A draft guidance note setting out these 10 areas was released for public comment. This approach will be of greater benefit to investors than the release of the full (and lengthy) legal agreement. Key information will be summarised in plain English, meaning key terms and conditions (including termination clauses) can be quickly and easily located by the investor. The proposed changes can be accessed at: http://www.asx.com.au/about/pdf/exposure_draft_20jun2007.pdf

Please telephone me if you have any questions in connection with this letter.

Yours sincerely

Malcolm Starr

Malcolm Starr
General Manager, Regulatory and Public Policy