



CHARTERED SECRETARIES  
AUSTRALIA

*Leaders in governance*

27 April 2012

The Manager  
Financial Markets Unit  
Corporations and Capital Markets Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By email: [CFR-Review-FMI@treasury.gov.au](mailto:CFR-Review-FMI@treasury.gov.au)

Dear Treasury

***Council of Financial Regulators: Report and Recommendations  
concerning Review of Financial Market  
Infrastructure Regulation***

Chartered Secretaries Australia (CSA) is the independent leader in governance, risk and compliance. As the peak professional body delivering accredited education and the most practical and authoritative training and information in the field, we are focused on improving organisational performance and transparency. Our Members have primary responsibility in listed companies to deal with the Australian Securities Exchange (ASX) and interpret and implement the Listing Rules as well as developing and implementing governance frameworks in public listed companies. Our members have a thorough working knowledge of the operations of the markets, the needs of investors and the Listing Rules, as well as compliance with the Corporations Act (the Act). We have drawn on their experience in our submission.

CSA welcomes the report and recommendations concerning the *Review of Financial Market Infrastructure Regulation* (the recommendations) by the Council of Financial Regulators (the Council) as it addresses the issue that foreign ownership of the company ASX Limited or other relevant financial market infrastructure (FMI) could compromise the Australian regulatory framework.

In its recommendations to the Hon Wayne Swan MP, Deputy Prime Minister and Treasurer, the Council of Financial Regulators states that it:

recommends legislation broadly in line with the proposals in the consultation paper, but with some refinements and clarifications to ensure that any reforms introduced include appropriate checks and balances.

CSA recognises that ASIC requires the capacity 'to influence the operations of a systemically important financial market infrastructure, particularly if that FMI serves markets in multiple jurisdictions'. CSA also agrees that appropriate checks and balances are required in order to ensure that new legislation continues to promote market integrity and investor protection in Australia's equity capital markets while also ensuring that the Australian market remains commercially attractive to those seeking to list on ASX.

### ***'Fit and proper' standard for directors***

CSA continues to broadly support the proposal that directors of FMIs must meet a 'fit and proper' test. However, **CSA strongly recommends** that the detail of any such test be exposed to public consultation. CSA notes that APRA's fit and proper prudential standards have been in place for some time and provide a good model for any such drafting.

### ***The making of Listing Rules***

CSA notes that the Council has recommended that:

ASIC be given a power to direct market operators to make listing rules with specified content. To address stakeholders' concerns about ASIC involvement in the monitoring of listing rules, enabling legislation, regulations and guidance should clarify that the directions power would be exercised only in exceptional circumstances. It would also be subject to comprehensive checks and balances; in particular, a consultation requirement and Ministerial disallowance. Primary responsibility for monitoring and enforcing listing rules would remain with market operators.

CSA is pleased to see that the recommendation of the Council is for ASIC to have the power to direct market operators to make listing rules only in exceptional circumstances, rather than recommending ASIC have unfettered power to make listing rules, as originally proposed. CSA is also pleased to see that any listing rules that ASIC may direct a market operator to introduce are to be subject to a consultation requirement. As noted in our earlier submission, a regulator's role is inherently different from that of a market operator — this necessary balance between commercial needs and investor protection cannot be achieved without consultation with stakeholders. CSA Members note that ASIC may not always appreciate the practical consequences of its proposals and actions, which the consultation process can illuminate.

As noted in our original submission, the making of listing rules without due consideration of their impact on listed entities and other stakeholders and the practical consequences that could arise from their implementation could lead to unintended consequences. CSA therefore seeks clarity as to how 'exceptional circumstances' will be defined and the terms of the consultation requirement.

**CSA recommends** that the drafting of any legislation defining 'exceptional circumstances' and introducing a consultation requirement be released for public consultation, to ensure that any direction from ASIC as to the making of listing rules achieves the necessary balance between commercial needs and investor protection. CSA notes that the 'devil is in the detail' in relation to drafting and stakeholder feedback is necessary to achieve this balance.

### ***Governance arrangements***

CSA notes that the Council did not make any recommendations on the ASX Corporate Governance Council in its report to the government. CSA is aware that this matter did not form part of the original Review.

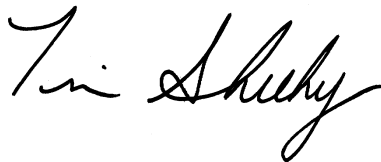
CSA notes that the ASX Corporate Governance Council is independent of ASX — it is comprised of 21 stakeholder groups, ranging from directors, CEOs, and company secretaries to retail and institutional investors. The Council's *Corporate Governance Principles and Recommendations* are given force by the ASX Listing Rule requirement to report against the recommendations.

Notwithstanding this, CSA reiterates its recommendation that ASIC and the Minister be given the power to direct ASX to consult publicly on any proposal to amalgamate or replace the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations* with the corporate governance code operated by any other entity. Our reasons are set out in our original submission.

Furthermore, CSA also recommends that ASIC and the Minister have the power to direct that the ASX Corporate Governance Council's Principles and Recommendations apply across any equity market operation. In such circumstances, the Council could be encouraged to invite other market operators to be included on the Council.

In preparing this submission, CSA has drawn on the expertise of the members of our national policy committee, Legislation Review Committee. We are more than happy to discuss with you the issues highlighted in this submission.

Yours sincerely

A handwritten signature in black ink, reading "Tim Sheehy". The signature is written in a cursive, flowing style.

Tim Sheehy  
CHIEF EXECUTIVE