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Manager
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The Treasury
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CORPORATIONS AMENDMENT (VIRTUAL MEETINGS AND ELECTRONIC COMMUNICATIONS) BILL
2020

Consultation Comments — Making permanent reforms in respect of virtual meetings and electronic document execution

Institutional Shareholder Services (ISS) thanks the Australian Government and the Treasury for the opportunity to provide our comments on the proposals released in the recent Exposure Draft materials on the above topic (the Consultation).

ISS Introduction

ISS is the world's leading provider of corporate governance and responsible investment solutions, market intelligence and fund services, and events and editorial content for institutional investors and corporations, globally. This includes corporate governance and voting-related research, analytics, and voting recommendations for institutional investors. Covering more than 44,000 company meetings annually, we have over 2,000 clients globally who rely on ISS' expertise to help them make informed investment and voting decisions, and to execute their votes.

We have over 35 years of experience in corporate governance, and our team of more than 1,000 research, data, voting operations, technology, and client service professionals are located in financial centres worldwide, including in Sydney, Singapore, Tokyo, Manila, London, Paris, Brussels, Berlin, Stockholm, New York, Boston, San Francisco, and Toronto.

ISS has been a long-standing participant in the corporate governance community in Australia and internationally and has over the years worked closely with various stakeholders, including regulators and institutional investors in Australia and around the globe.

Our comments on the Consultation represent our views in our capacity as a proxy advisor and thought leader in the area of corporate governance and shareholder voting. They are not necessarily the views of our clients and are not presented as such.

ISS Comments

Our comments in this response are focused only on the proposed changes regarding virtual-only shareholder meetings.

We note that the Consultation covers a number of areas of great importance to both companies and shareholders. Unfortunately, the consultation period is relatively short and happens to be held during the presently busy Australian annual general meeting season. Aside from our own work for our clients on more than 1,000 ASX-listed entities during this busy season, many institutional investors and other shareholders are also extremely busy in fulfilling their proxy voting activities. Based on our discussions with various clients, we are concerned that many investors have not been aware of, nor are they easily able to respond to, the Consultation at this time. We express our concern that there is a risk of under-representation of comments from investors and shareholders under these circumstances. You have advised that the Treasury has already received feedback on virtual meetings prior to the commencement of the Consultation, however, we believe it would be unfortunate if that feedback does not include the considerable involvement of institutional shareholders, who are important (and in some cases the largest) owners of the corporations which might move towards virtual-only shareholder meetings.

With the majority of 2020 Australian annual general meetings still to be held, Australian companies and their shareholders have not yet had a full year's experience with the operation of virtual-only shareholder meetings. For this reason, we consider it is too early to make any permanent change in law, as proposed, which would give companies and their boards the permanent ability to convene virtual-only shareholder meetings. We recognise that due to COVID-19 restrictions and health risks, the current ability to hold virtual meetings is a necessity as legislated by Treasurer, Josh Frydenberg, in the Corporations (Coronavirus Economic Response) Determination (No. 1) Bill 2020. We believe that the temporary relief provisions are presently appropriate and sufficient, and that companies and their shareholders should be given the opportunity to experience and weigh up the benefits and potential downside risks of virtual meetings before any permanent changes are made to the Corporations Act in this regard.

Our initial analysis of Australian annual general meetings of companies in the S&P/ASX300 index presently finds that approximately one in four companies is seeking shareholder approval to amend its constitution to permit virtual-only meetings. Voting results for these special resolutions, which require 75 percent support to be passed, are not yet fully available for closer scrutiny. We have also seen statements in the explanatory notes as part of the relevant notices of meeting that justify these proposals on the grounds that the Corporations Act does not presently permit virtual-only meetings, which in our view could potentially mislead domestic and global investors. In short, we raise concern that shareholders have not been given adequate time to understand and consider the implications of virtual-only meetings held in this annual general meeting season.

ISS 2020 Global Policy Survey Results

ISS undertakes a global annual survey to understand the views of investors, companies and other stakeholders on topical issues. This year, the ISS 2020 Global Policy Survey, the results of which were released last month, found that a significant majority (77 percent) of investor respondents supported the hybrid shareholder meeting format, which provides for concurrent physical and virtual attendance. Only 11 percent of investor respondents supported virtual-only meetings. Having regard to this fact, we consider that the hybrid format provides for the greatest flexibility for shareholders and for companies, while preserving necessary corporate governance protocols and protecting the rights of shareholders.

The fundamental corporate governance concern stemming from virtual-only meetings is that they can serve to limit the ability of shareholders to publicly engage with corporate officials, raise questions, and engage in meaningful debate in holding company directors accountable to the shareholders that they represent, and to whom they owe fiduciary duties. The virtual-only format creates a genuine risk to the transparent expression of views and all shareholders' rights to participate in an annual general meeting without prior vetting or "curating" of questions by corporate officials. Examples of such concerns have already been raised by investors who attended some of the

earliest virtual-only meetings in recent months, including anecdotal claims of restrictions being imposed on certain shareholders who were apparently prevented from asking questions, and had reduced ability to participate fully in any robust exchange of views with directors or other shareholders.

The issues already being raised by some shareholders this year, affirm concerns that virtual-only shareholder meetings can have the effect of diminishing shareholder participation and rights. Concerns about proceeding to permanently legislate virtual-only meetings are exacerbated when sufficient shareholder protection provisions have not been fully contemplated. Accordingly, we re-iterate that we consider the present Consultation to be premature, and that the proposed changes have not allowed for considered feedback of shareholders who are still experiencing and weighing up the reality of virtual-only meetings this year.

ISS Conclusion

ISS respectfully encourages the Treasury to allow companies and their shareholders to complete this annual general meeting season, which has for the first time been conducted under the temporary relief provisions, and then conduct a comprehensive consultation to fully include the views of shareholders to ensure that those critical voices are fully taken into account and their interests are adequately addressed and protected, before proposing any changes.

Thank you again for the opportunity to provide our comments on this Consultation. Please contact the undersigned in relation to any questions or if the Treasury seeks any further information regarding these comments.

Yours sincerely



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