

7 July 2021

Email: [businesscomms@treasury.gov.au](mailto:businesscomms@treasury.gov.au)

The Manager  
Market Conduct Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Dear Sir/Madam

## **USING TECHNOLOGY TO HOLD MEETINGS AND SIGN AND SEND DOCUMENTS**

The Stockbrokers and Financial Advisers Association (SAFAA) is the professional body for the stockbroking and investment advice industry. Our members are Market Participants and Advisory firms that provide securities and investment advice, execution services and equity capital-raising for Australian investors, both retail and wholesale, and for businesses. Practitioner Members are suitably qualified professionals who are employed in the securities and derivatives industry.

Thank you for the opportunity to provide feedback on the *Treasury Laws Amendment (Measures for Consultation) Bill 2021: Use of technology for meetings and related amendments* (the Bill) .

### **Execution of company documents**

SAFAA supports amendments to the Corporations Act that provide for companies to execute company documents, including deeds, electronically.

COVID-19 threw into relief the challenge of executing documents when people are working remotely, as they are not available to apply a 'wet ink' signature. Financial advisers working with clients also found that in many instances their clients were unable to print, execute, scan and return documents from home. Uncertainty about the legality of companies executing documents electronically under the Corporations Act was a constraint on the provision of financial advice and SAFAA supported the Treasurer's Determination enabling companies to execute documents electronically.

We welcome the provisions in the Bill that will make permanent amendments to the Corporations Act enabling companies to execute documents, including deeds, electronically. These changes are long overdue and will provide much needed clarity and certainty.

### **Virtual general meetings**

As the providers of stockbroking and financial advice to significant numbers of retail clients, with assets under management representing the savings of a vast number of Australians, SAFAA is keen to represent the position of retail investors.

SAFAA welcomes changes to the bill that provides that a company can hold a wholly virtual meeting if this is expressly permitted or required by its constitution. This allows shareholders to decide the format of the company AGM, given that amendments to the constitution must be passed by special resolution requiring 75% of member votes in favour of the amendments. SAFAA had recommended that shareholders be able to decide the format of the AGM in our submission on the earlier consultation on AGMs.

We welcome the provisions that require that all meetings, regardless of how they are held, must give members a reasonable opportunity to participate, including giving members the opportunity to exercise their existing rights to speak or ask questions orally or in writing.

To be provided with a reasonable opportunity as a whole at the meeting to ask questions about or make comments on the management of the company is an important shareholder right. The AGM is a cornerstone of a governance framework as the one time of the year when boards are required to front shareholders and give them the opportunity to ask questions (regardless of whether shareholders take up that opportunity).

Importantly, the AGM is considered the one time of the year when retail shareholders can engage with the board and senior management to discuss company performance and prospects. Such engagement takes place with institutional shareholders throughout the year, but the AGM is primarily the forum for retail shareholders.

The value of a physical general meeting is that shareholders can ‘eyeball’ the directors. The planning for an AGM focuses a company’s board and executives on its shareholders. It has been said to compel boardroom behaviour.

In a physical meeting, the board and management cannot constrain shareholders from asking questions or filter questions from shareholders, as these are heard by all other shareholders during the meeting. There is transparency about how the board deals with questions. For example, a board may choose not to answer a question that has been asked before or that deals with matters covered in the chair or CEO presentation. However, in a virtual meeting, boards and management can filter questions, choosing to answer only some while ignoring others. In the 2020 AGM season under the Temporary Determination, shareholders experienced boards omitting, rephrasing and reinterpreting shareholders’ questions in virtual meetings.

It is important that the right of shareholders to ask questions or make comments are not diluted by reason of a meeting being held virtually and, to the extent possible, the ability to ask questions that are heard by other shareholders at a physical meeting is replicated at a virtual meeting. An important aspect of the existing section 250 S of the Corporations Act is that the questions or comments are made *at the meeting*. Any solution that provides for a company to make questions or comments available to shareholders after the meeting has concluded does not satisfy this important requirement.

**SAFAA recommends** that section 249S of the Bill be amended to provide that as part of the reasonable opportunity to participate in the meeting, a right to speak or ask questions at the meeting may be exercised orally or in writing by making the question or comment available to the other members during the course of the meeting.

This is satisfied at a physical meeting by the shareholder asking the question or making the comment orally from the floor or at the microphone.

This can be satisfied in a virtual meeting by various means, including:

- arranging for the shareholder to submit the question or comment via digital means and having it read out to the meeting by an independent party or placed on a screen visible to those attending virtually

- enabling the shareholder to dial in to the meeting via telephone link and speaking in person.

As meeting technology evolves, innovative ways of enabling shareholders to engage with the meeting will be developed.

This change will ensure that shareholder questions and comments whether they are oral or written will be made available to the whole meeting while it is taking place.

SAFAA emphasises that unless this amendment is made, a vital shareholder right will be diluted. Providing for innovation in the use of technology to hold general meetings of shareholders should not diminish shareholder rights.

If you require additional information or wish to discuss this submission in greater detail please do not hesitate to contact SAFAA's policy manager, Michelle Huckel, at [michelle.huckel@stockbrokers.org.au](mailto:michelle.huckel@stockbrokers.org.au).

Kind regards

A handwritten signature in black ink, appearing to read 'J Fox', with a long horizontal stroke extending to the right.

Judith Fox  
Chief Executive Officer