



1 March 2019

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Dear Kevin

## **ASA Submission - Simplifying, clarifying and enhancing the integrity and efficiency of the ASX listing rules**

The Australian Shareholders' Association (ASA) represents its members to promote and safeguard their interests in the Australian equity capital markets. The ASA is an independent not-for-profit organisation funded by and operating in the interests of its members, primarily individual and retail investors, self-managed superannuation fund (SMSF) trustees and investors generally seeking ASA's representation and support. ASA also represents those investors and shareholders who are not members, but follow the ASA through various means, as our relevance extends to the broader investor community.

We refer to ASX's paper titled 'Simplifying, clarifying and enhancing the integrity and efficiency of the ASX listing rules' (the Exposure Draft Listing Rule Amendments) dated 28 November 2018. In this submission we respond to Items 2.5, 2.6, 2.7, 2.9, 3.4, 3.5 and 5.12 in the Exposure Draft, which deal with the disclosure of voting. As such, we also refer to ASA's letters dated 4 December 2017 and 26 March 2018 setting out our proposals for reform of the ASX Listing Rules to provide for standardised disclosure of proxy and direct voting results at general meetings of listed companies and disclosure of participation in capital raisings respectively. Both letters are attached to this submission.

ASA is supportive of the intention to simplify, clarify and enhance the integrity and efficiency of the ASX listing rules.

### **Disclosure of voting results**

We welcome the proposed changes outlined at Item 2.5. As noted in our 2017 letter calling for reform, at present, public listed companies all use different formats for disclosure of voting at general meetings. At times it can be challenging to ascertain the voting results, given the range of disclosure formats in place. Many companies use a template that they have had in place for many years, and that has not necessarily been subject to question as to whether it provides the best form of transparency to investors as to voting results.

ASA has also seen a number of instances where the disclosure formats currently utilised obscure clarity as to voting results, rather than providing transparency. Our proposal for reform is aimed at ensuring there is transparency of voting results, in order to ascertain and recognise the will of all shareholders on all resolutions. This gives effect to a key shareholder right.

We therefore strongly support the disclosure of the open or undirected proxies held by the chair, and open or undirected proxies held by someone other than the chair of the meeting. We believe the proposed changes will make the meeting and voting outcomes clearer with respect to disclosing whether or not a “first” or “second” strike occurred in relation to the remuneration report resolution, conveying information of withdrawn resolutions and disclosure as to how open proxies to the chair and others are voted.

We recommend an added requirement to the Listing Rules to advise the percentage of shareholders that voted for and against resolutions, with the disclosure of the aggregate number of securities voted by proxy and poll. Many companies already include percentages in their reports of voting results and it allows the level of support by shareholders of particular resolutions to be gauged without resorting to a calculator.

We are also of the view that investors should be able to find the results of voting at general meetings easily on the ASX announcements platform, without having to cross-check other documentation. Standardised voting results should appear on a template issued by ASX with the heading “Voting results of meeting” so that they can be found easily by investors.

### **Disclosure of retail participation in capital raisings and other measures**

We strongly support:

- item 2.7 which expands the existing requirement for current and proposed directors to be of good fame and character to include the current and proposed CEO
- item 2.6 aiming to achieve consistent disclosure of the key features of underwriting agreements
- item 2.9 ensuring voting by an employee incentive scheme is not directed by someone who is otherwise excluded from voting by the listing rules.

We support the amendments recommended under items 3.4 and 3.5, relating to the additional 10% placement capacity in rule 7.1A which clarifies issues of equity securities without security holder approval.

In relation to item 5.12 on Equal access buy backs, we recommend the addition of the following words (in bold) to the final sentence: “That time limit will be **no more** than 5 business days after the offer closing date.:

We are disappointed that there was no inclusion of a requirement for additional information to be disclosed when companies issue capital in terms of the participation of the retail shareholders, as suggested in our letter of 26 March 2018.

While retail shareholders are often small in terms of the proportional investment they offer, they frequently constitute the largest number of shareholders involved and it would be a benefit to retail shareholders if companies were to report in terms of:

- what proportion of rights were taken up by the retail shareholders, and
- what proportion of rights was sold on markets and similar statistics.

We note that Woodside and Transurban have both provided good examples of this disclosure and we refer to them as a model of how such disclosure can be effected.

In summary, ASA is supportive of the intention to simplify, clarify and enhance the integrity and efficiency of the ASX listing rules, but recommend the additional requirements set out above.

Should you have any queries, please do not hesitate to contact me.

Kind regards

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

Judith Fox

Chief Executive Officer



4 December 2017

Kevin Lewis  
Chief Compliance Officer  
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Dear Kevin

### **Standardised disclosure of voting results at general meetings**

The Australian Shareholders' Association (ASA) represents its members to promote and safeguard their interests in the Australian equity capital markets. The ASA is an independent not-for-profit organisation funded by and operating in the interests of its members, primarily individual and retail investors, self-managed superannuation fund (SMSF) trustees and investors generally seeking ASA's representation and support. ASA also represents those investors and shareholders who are not members, but follow the ASA through various means, as our relevance extends to the broader investor community.

ASA is seeking reform of the ASX Listing Rules to provide for standardised disclosure of proxy and direct voting results at general meetings of listed companies.

#### **Background to reform proposal**

At present, public listed companies all use different formats for disclosure of voting at general meetings. At times it can be challenging to ascertain the voting results, given the range of disclosure formats in place. Many companies use a template that they have had in place for many years, and that has not necessarily been subject to question as to whether it provides the best form of transparency to investors as to voting results.

The ASA has also seen a number of instances where the disclosure formats currently utilised obscure clarity as to voting results, rather than providing transparency. Our proposal for reform is aimed at ensuring there is transparency of voting results, in order to ascertain and recognise the will of all shareholders on all resolutions.

#### **Proposal for reform**

The overall proxy and direct vote position on each resolution should be disclosed, showing:

- how many and percentage of shareholders have voted "for"
- how many and percentage of shareholders voted "against"
- how many and percentage of shareholders voted "open"

- how many and percentage of shareholders voted “abstain”
- the undirected proxies held by the chairman
- the undirected proxies held by the ASA
- the undirected proxies held by proxy collectors other than the chairman and the ASA
- whether or not a “first” or “second” strike occurred.

The proposal for reform ensures that the voting outcome is disclosed by votes and voters. It also provides transparency as to how “open” proxies are voted, as well as whether a remuneration report received 25% or more votes “against”.

Below we provide a number of examples of how the different formats currently utilised obscure voting results rather than providing transparency to investors.

ASA’s proposal for reform is aimed at ensuring transparency as to the exercise of a key shareholder right.

### **Examples of poor disclosure of voting results**

#### ***“Open” proxies***

Many companies do not disclose proxies given to the chairman in a “chairman’s proxy discretion” column, but include them in the “for” and “against” columns. It is important to ascertain how many open proxies were held by the chairman, given how important these open proxies may have been in determining the outcome of the vote, particularly on any contentious resolution.

From the company’s point of view, “open” proxies directed to the chairman also represents a vote of confidence in the board on the part of shareholders, which should be disclosed.

Equally important is to have transparency as to how many open proxies were held by other proxy collectors, such as the ASA. The open proxies held by the ASA or other proxy collectors also reflect shareholder sentiment, and voting results should provide evidence of this.

#### ***Voting on a poll or by a show of hands***

Determining whether the vote on resolutions, including the remuneration report, was carried out by a poll or a show of hands at the meeting is not always immediately apparent. There have been instances of disclosures of proxy voting only, which would seem to indicate that voting was held on a show of hands. However, in various instances (see Ardent and Harvey Norman in 2016), voting on a poll was conducted at the general meeting, despite voting results on the ASX announcements platform disclosing proxy votes only.

Some disclosures which fail to indicate whether or not there was a poll show a percentage without the numbers “for” or “against”. If a company has held a poll there should be two sets of figures relating to voting on the resolution: one will be the proxy voting (received prior to the meeting) and the second will be the voting on the poll held at the meeting.

Disclosures should always show both proxy voting and voting on a poll results.

ASA is strongly of the view that at voting should not be held on a show of hands, given that the shareholders present at the general meeting represent a tiny portion of the total shareholders. A poll reflects the wishes of shareholders present at the meeting as well as those shareholders who have lodged proxies. Deciding the vote on resolutions by poll provides transparency and preserves the integrity of the voting. ASA accepts that mandating voting on a poll requires reform of the Corporations Act and is not a matter for the ASX Listing Rules.

We also note that the results of direct voting need to be accommodated, and this can only be done by showing the results of a poll.

### ***Disclosure of a “first” or “second” strike***

Many voting results disclosures carry a description of a vote of between 25% and 50% against a remuneration report as “passed” or “carried”, given that carriage of an ordinary resolution requires a 50% vote in favour. However, while the resolution on the remuneration report is an ordinary resolution, a vote of 25% or more “against” a remuneration report means that a first strike has occurred.

Most companies will not expressly disclose that a first or second strike has taken place, with investors having to decipher this from the numbers. Disclosure of whether a strike has occurred should form part of transparent disclosure. It is also irrelevant to disclose that the resolution was ‘carried’ where more than 50% vote in favour of the remuneration report and so this disclosure should be discouraged.

### ***Description of resolution***

The voting results of the meeting in some instances do not describe each resolution, but simply number them. This requires investors to return to the notice of meeting to determine how voting proceeded on various resolutions, including the remuneration report resolution.

Transparency as to which resolution achieved which voting result should be a key aspect of voting disclosure.

### ***Ease of access to voting results on ASX announcements platform***

At times it can be challenging to find the voting results of general meetings on the ASX announcements platform. In the majority of cases, companies title the announcement “results of meeting” or similar, but this practice is not universal. This therefore means that investors are required to check the notice of meeting and the date of the general meeting and then review announcements for the company made on or just after that date to find the results of voting.

Investors should be able to find the result of voting at general meetings easily on the ASX announcements platform, without having to cross-check other documentation.

Standardised voting results should appear on a template issued by ASX with the heading “Voting results of meeting” so that they can be found easily by investors.

### **Conclusion**

ASA’s reform proposal is designed to provide transparency to the market as to the outcome of voting at all general meetings. The Australian Supreme Court has set a precedent that the outcome of a shareholder vote must be truly representative of the collective will of shareholders.

Transparency of voting results through standardised disclosure ensures that the collective will of shareholders is readily apparent and accessible.

The ASA provides a template on the following page for such standardised disclosure.

ASA notes that it is a shareholder right to appoint someone other than the chairman as their proxy and that other parties collect undirected proxy votes. The shareholder in these instances has elected to transfer their right to attend and vote to the other party.

The ASA is a collector of proxy votes. At other meetings, there are other parties collecting proxies. Greater transparency would be afforded to shareholders if the voting results included not only information on the votes exercised at the chairman's discretion but also those votes exercised at ASA's or other proxy collector's discretion.

While we have not included such columns in our template, the ASA recommends that consideration be given to including two further columns as follows:

- number and percentage of votes exercised at ASA's discretion
- number and percentage of votes exercised at other proxy collector's discretion.

Should you have any queries, please do not hesitate to contact me.

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



## Standardised disclosure of voting results

### Voting results

The following information is provided in accordance with section 251AA(2) of the *Corporations Act 2001* (Cth). The details of proxy votes received and the actual votes cast on each resolution put to a poll are set out below.

Resolution details		Instructions given to validly appointed proxies (as at proxy close)				Number of votes cast on the poll			Resolution result
Resolution	Resolution type	For	Against	Chair's proxy discretion	Abstain*	For	Against	Abstain*	Carried/Not Carried
1: Election of director A	Ordinary resolution	No. %	No. %	<b>No.</b> %	No. %	No. %	No. %	No.	Carried/Not Carried
2: Re-election of director B	Ordinary resolution	No. %	No. %	<b>No.</b> %	No. %	No. %	No. %	No.	Carried/Not Carried
3: Issue of incentive rights to Person C	Ordinary resolution	No. %	No. %	<b>No.</b> %	No. %	No. %	No. %	No.	Carried/Not Carried
4: Remuneration report	Ordinary resolution	No. %	No. %	<b>No.</b> %	No.%	No. %	No. %	No.	Strike/No Strike

\*Votes cast by a person who abstains are not counted in calculating the required majority on a poll





26 March 2018

Kevin Lewis  
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Dear Kevin

## **Standardised disclosure of retail participation in capital raisings**

The Australian Shareholders' Association (ASA) represents its members to promote and safeguard their interests in the Australian equity capital markets. The ASA is an independent not-for-profit organisation funded by and operating in the interests of its members, primarily individual and retail investors, self-managed superannuation fund (SMSF) trustees and investors generally seeking ASA's representation and support. ASA also represents those investors and shareholders who are not members, but follow the ASA through various means, as our relevance extends to the broader investor community.

ASA wrote to ASX on 4 December setting out our proposals for reform of the ASX Listing Rules to provide for standardised disclosure of proxy and direct voting results at general meetings of listed companies. This letter sets out a further proposal for reform of the Listing Rules, one that is also predicated on maximising shareholder information and engagement through data releases of the number of shareholders participating in capital raisings, including trading renounceable rights.

ASA's proposal for reform is aimed at ensuring transparency as to the exercise of a key shareholder right.

### **Background to reform proposal**

ASA has long been concerned that capital raisings provide new equity at discounted prices to large shareholders, leaving individual retail shareholdings, and retail shareholdings in aggregate, to be diluted. To offset this tendency, we strongly support pro rata renounceable capital raisings and PAITREO structures.

Retail shareholders provide a stabilising effect on the share register; however, the investment circumstances and time available to review various capital raisings vary. At any given time, a number of retail shareholders will not be able to participate in a raising, either due to not having the time available, or the funds. We encourage companies to undertake any capital raising with this in mind. A PAITREO will allow a large proportion of funds to be raised in a speedy manner, while allowing the balance to be raised to a more retail-friendly timetable.

### **Disclosure of retail shareholder participation in capital raisings**

We encourage companies to disclose retail participation in capital raisings as a means of supporting greater engagement of and participation by shareholders. An example of the disclosure being sought is demonstrated by the Transurban ASX announcement "*Close of Retail Entitlement*

Offer" released 29 January 2018 and available via this link:

<https://www.asx.com.au/asxpdf/20180129/pdf/43r3l1mpb2t8dw.pdf>

Woodside made a similarly detailed disclosure about retail rights trading and participation rates after its recent PAITREO on 12 March 2018:

<https://www.asx.com.au/asxpdf/20180312/pdf/43scb6chzlj72k.pdf>

In addition to this becoming standard practice, we also would like to see companies be required to disclose how many shareholders participated in a share purchase plan, as Argo has now done on eight occasions over the past decade. See 2016 example here:

<https://www.asx.com.au/asx/statistics/displayAnnouncement.do?display=pdf&idsId=01788106>

On the question of shareholder approval of placement capacity resolutions, it would be useful if issuers were required to say how many new shares could be issued over the subsequent 12 months if the resolution was approved. For example, see p27 of the 2017 Macquarie Group notice of meeting: <https://www.asx.com.au/asxpdf/20170615/pdf/43jymz1s80wsmj.pdf>

If there was such a listing rule requirement, it would require Macquarie to add additional commentary along the lines of: "If this resolution is approved, Macquarie Group will have the capacity to place 51 million new ordinary shares over the subsequent 12 month period without seeking further shareholder approval."

It would also be worthwhile ASX considering requiring companies to spell out the maximum issuance of shares possible under a share purchase plan, being 30% of issued capital.

ASA has rarely seen companies do this, although an example was provided by Mincor last year when its SPP documentation outlined that the maximum issuance was 56,666,528 shares raising \$18.13 million. See p2 of the offer document for how this was presented:

<https://www.asx.com.au/asxpdf/20171218/pdf/43q82t5vplq0dj.pdf>

## Conclusion

ASA is seeking reform of the ASX Listing Rules to provide for standardised disclosure of retail participation in capital raisings. Companies should maximise shareholder information and engagement through data releases of the number of shareholders participating in capital raisings, including trading renounceable rights.

ASA's proposals for reform are aimed at increasing retail shareholders' familiarity with and confidence in investment options and corporate actions, as well as supporting retail shareholder participation in capital raising and stabilising company share registers.

Should you have any queries, please do not hesitate to contact me.

Kind regards



Judith Fox  
Chief Executive Office