

13 September 2021

Market Conduct Division
The Treasury
Langton Crescent
Parkes ACT 2600

Submitted: Online via businesscomms@treasury.gov.au

ASA SUBMISSION – TREASURY – USING TECHNOLOGY TO HOLD MEETINGS AND SIGN AND SEND DOCUMENTS – AUGUST 2021

Dear Madam/Sir

Thank you for the opportunity to comment on the exposure draft legislation to support companies and their officers to use technology to satisfy Corporations Act 2001 requirements.

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 has previously submitted comment on virtual meetings and electronic communication of documents in relation to publicly listed companies. In brief these comments can be summarised as follows:

1. AGMs should be held as hybrid meetings, a combination of physical and virtual, not exclusively virtual
2. Electronic communications should be default with an "opt in" for mailed communications
3. Electronic execution of company documents is welcomed.

In relation to the current consultation, we make the comments below, also confined to publicly listed companies:

Schedule 1 – Facilitating the use of technology for meetings

We strongly support the proposal to have standing election for company communications to be received by physical or electronic delivery by type of communication until the standing election is revoked. The option to make a one-off request for electronic or physical delivery of a communication, where the need arises, is also strongly supported, as is the roll-over of existing elections. We support the requirement to post documents within 3 days of an ad hoc request.

We agree the condition that a document can only be given electronically if it is reasonable to expect that the document would be readily accessible so as to be useable for subsequent reference at the time that the document is given, is necessary for the documents to function as intended.

In relation to the requirement for any communication by electronic means to include advice of how to arrange to receive a hard copy form of the communication, we consider a requirement for the advice to be included on the investor section of the website and advised periodically would be sufficient. We suggest the inclusion of the advice in an annual communication such as notice of annual meeting would provide a reminder that contacting the registry will secure a hard copy document for shareholders in any publicly listed company.

We see there may be a difficulty with the timing and method of notifying of the opportunity to request physical delivery of notices of annual general meeting given the imminence of the AGM season for companies with a balance date of 30 June 2021. We ask companies to advance mail a simple opt-in request form, even though it is not legally necessary.

In relation to companies being able to, if permitted by a company's constitution, to hold a wholly virtual meeting, ASA believes companies should separate the resolution to update the constitution to allow virtual meetings from any catch-all resolution updating the constitution. This is a respectful way to seek shareholder agreement to permit wholly virtual company meetings.

We agree the amendments must allow members to exercise any pre-existing right that they may have to ask questions or make comments (such as under sections 250S and 250T) both verbally and in writing. For example, the company could satisfy this requirement by offering members both the opportunity to ask questions orally by dialling into a phone hook-up and the opportunity to type their questions into a chat function.

With respect to s250J, ASA believes publicly listed companies should hold a poll on all resolutions set out in the notice of a meeting of members of a listed company or listed registered scheme must be decided on by poll. A show of hands indicates the voting intentions of those present, but it does not usually reflect shareholder intent indicated by proxy votes or what would be achieved by a poll.

Schedule 2 — Other amendments relating to meetings and documents

We support the proposal that a member or group of members of a company or registered scheme with at least 5% of the voting power can request to have an independent person appointed to observe and/or prepare a report on a poll conducted at a members' meeting.

If you have any questions about these comments, please do not hesitate to contact me, or Fiona Balzer, Policy & Advocacy Manager on (02) 9252 4244.

Yours sincerely



Rachel Waterhouse
Chief Executive Officer
Australian Shareholders' Association