

Commonwealth Bank

Commonwealth Bank of Australia
ACN 123 123 124

Secretariat

GPO Box 2719
Sydney NSW 1155

Telephone (02) 9118 7110
Facsimile (02) 9118 7192
Email margaret.taylor@cba.com.au

Margaret Taylor
Group Company Secretary

15 November 2013

ASX Corporate Governance Council
Exchange Centre
20 Bridge Street
Sydney NSW 2000

Australian Securities Exchange
By email: mavis.tan@asx.com.au



Dear Sir/Madam,

Submission from Commonwealth Bank of Australia (“CBA”) in response to Consultation Paper on the draft third edition of the ASX Corporate Governance Council’s Corporate Governance Principles and Recommendations (“Principles and Recommendations”) and ASX Public Consultation Paper on Proposed Changes to ASX Listing Rules and Guidance Note 9

We set out below our comments, by reference to the issues raised in paragraph 13 of the ASX Corporate Governance Council’s Consultation Paper, on the draft third edition of the Principles and Recommendations.

We also set out below our feedback on the proposed changes to the ASX Listing Rules.

1. CONSULTATION PAPER ON THE COUNCIL’S PRINCIPLES AND RECOMMENDATIONS

Whether stakeholders support the move by the Council to afford greater flexibility to listed entities to make their corporate governance disclosures on their website rather than in their annual report.

CBA strongly supports this proposal.

Whether the structural changes proposed to the Principles and Recommendations will make it easier for listed entities to understand and report against the Principles and Recommendations.

Subject to the comments set out below, CBA supports the Council’s proposed structural changes to the Principles and Recommendations. We agree that the proposed format for the third edition significantly improves the usability of the document.

Where the Council is proposing to elevate items of commentary in the current edition (which do not trigger any reporting obligations) into recommendations in the third edition (which listed entities must report against under Listing Rule 4.10.3 on an “if not, why not” basis), whether stakeholders agree with that treatment and, if not, why not.

Generally we do not have an issue with the proposed elevation of the various items of commentary into recommendations. However, as entities will then be required to report against those matters, some of the terminology used in the commentary in question should be reviewed prior to the commentary being elevated into a recommendation. The same concern applies where it is proposed that the commentary be expanded once elevated into a recommendation. Consistency of terminology with that used in the Corporations Act 2001 Cwlth or the ASX Listing Rules should be achieved where possible, rather than creating yet another definition, which entities need to administer, which covers largely the same ground as a definition used elsewhere but which may differ in a minor respect.

For example:

- In connection with proposed Recommendation 1.3, is there any reason why the term “senior executives” has been used rather than “Key Management Personnel”?, and
- Rather than using the expression “close family ties” in Box 2.1, it might be more appropriate to utilise the terminology and/or all or parts of the definition of “closely related party” in the Corporations Act or the definition of “related party” in the Listing Rules.

Where the Council is proposing wholly new recommendations, whether stakeholders agree with those recommendations and, if not, why not.

In relation to Recommendation 8.3, without commenting on the merits or otherwise of a clawback policy, we query whether such a recommendation should be introduced at a time when there is no statutory backing for this initiative – that is, whether the introduction of Recommendation 8.3 should await the enactment of clawback legislation along the lines of that proposed by the previous Federal Government. We are concerned that the Council is seeking to pre-empt legislation, and we are not certain that this is appropriate.

A similar comment applies in respect of proposed Recommendation 4.2 (although we note that this is not a wholly new recommendation). While CBA does not have an issue with the concept of a section 295A declaration being required in respect of each reporting period and not just the financial year, we query whether the Council is seeking to introduce a concept that is more appropriately dealt with through legislation – that is, why it is not more appropriate that such a requirement in respect of the half-year be dealt with by way of amendment to the Corporations Act so that there is one legislative source that covers the field in this respect. Once that legislative change has been made, Recommendation 4.2 in its current form would then be appropriate.

Whether the level of commentary in the draft third edition is appropriate and whether stakeholders would like more guidance on any particular recommendations.

Except as provided above, CBA has no further comments.

Whether there are any other gaps or deficiencies in the Principles and Recommendations that have not been addressed by the proposed changes in the draft third edition.

CBA is not aware of any other gaps or deficiencies that should be addressed in the third edition of the Principles and Recommendations.

2. ASX CONSULTATION PAPER ON PROPOSED CHANGES TO ASX LISTING RULES

New Listing Rule 3.19B "On-market purchases by or on behalf of employees or directors"

CBA does not support the ASX's proposed new listing rule 3.19B. It appears to be drafted on the assumption that an on-market acquisition for the purposes of an employee incentive plan occurs as a block purchase on a single day. This does not reflect market practice.

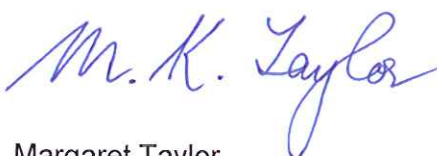
CBA is concerned that this new listing rule would increase the administrative burden on large listed entities without any evidence of a corresponding benefit to investors. CBA has four trading windows each year (CBA updates the market after the September quarter and the March quarter) and a number of employee incentive plans. It is common practice for CBA to purchase parcels of securities each day during a trading window on behalf of employees and directors. This new listing rule would mean that CBA would have to make disclosures to ASX every day during the trading window - in addition to reporting on a yearly basis in its annual report and filing an Appendix 3Y as required.

Having regard to an entity's obligation to lodge an Appendix 3Y within five business days of a change in a director's notifiable interest, it is not apparent what proposed listing rule 3.19B.3 achieves other than administrative burden and duplication without any corresponding benefit for investors.

Large listed entities like CBA make on-market purchases over long periods of time to avoid impacting CBA's share price. CBA is concerned that the disclosure of daily purchases to meet employee share plan obligations throughout a trading window could create confusion for investors.

If the ASX does proceed with adoption of new listing rule 3.19B, notwithstanding the concerns we have noted above, we request that the ASX consider permitting entities to lodge disclosures within five business days after completion of the purchase process – that is, within five business days of the end of the relevant trading window.

Yours sincerely,



Margaret Taylor
Group Company Secretary