

19 November 2013

ASX Corporate Governance Council
c/- ASX Limited
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SYDNEY NSW 2000

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By email: mavis.tan@asx.com.au

Dear Sir/Madam

Review of the ASX Corporate Governance Principles and Recommendations: Draft 3rd Edition and proposed changes to the ASX Listing Rules – Consultation Drafts

Thank you for the opportunity to make a submission on the following:

- The draft 3rd Edition of the ASX Corporate Governance Principles and Recommendations (Principles and Recommendations) released by the ASX Corporate Governance Council (CGC) on 16 August 2013 for public consultation (draft 3rd Edition); and
- Proposed changes to the ASX Listing Rules and Guidance Note 9 released by the ASX on 16 August 2013 for public consultation (Listing Rule changes).

Please find attached Telstra's submission in respect of the draft 3rd Edition and the draft Listing Rule changes.

If you have any queries or would like to discuss our submission further, please contact my office on (03) 8647 2629.

Yours sincerely



Damien Coleman
Company Secretary

Review of the *Corporate Governance Principles and Recommendations: Draft 3rd* Edition and proposed changes to the ASX Listing Rules – Consultation Drafts

Submission by Telstra Corporation Limited

General Comments

We are generally supportive of the proposed changes to the Principles and Recommendations and Listing Rules. In particular, we consider that the changes relating to the restructuring of the Principles and Recommendations has enhanced the readability of the document and provides greater flexibility to entities as to how they present information relating to their governance practices, which will assist to streamline existing disclosures. We do, however, wish to make submissions regarding certain aspects of the draft 3rd Edition of the Principles and Recommendations and proposed Listing Rule changes relating to:

Principles and Recommendations:

- Director Independence and Tenure;
- Recommendation 7.2 in relation to the 'material business risks' being within the appetite set by the Board;

Listing Rules:

- Disclosure of on-market purchases of securities;
- Use of the term 'related party' in relevant Listing Rules;
- Approval of the corporate governance statement by the Board;

Director Independence and Tenure (Principles and Recommendations)

Box 2.1 of the Principles and Recommendations lists the factors to be considered in determining whether a director is independent. It is proposed to amend this list of factors to include that service on the Board for more than 9 years may be an indicator that a director is no longer independent.

We do not support the proposal to include tenure as a factor affecting the independence of directors in Box 2.1 (ie. that a director serving for more than 9 years is considered as 'not independent' unless the Board determines otherwise). While we appreciate that under the proposed change an entity could still determine that a director is independent notwithstanding that he or she has served on the Board for more than 9 years, we do not believe that a presumption that a director would not be independent is the correct starting point for this consideration.

In our view, tenure considerations are important in the context of broader Board renewal and succession planning, and this concept should instead be reflected more generally in commentary (for instance to Recommendations 1.6 and 2.1 and elsewhere in Principle 2 in the context of Board composition, skills mix and board renewal) rather than being prescribed in the factors affecting independence set out in Box 2.1.

Recommendation 7.2 (Principles and Recommendations)

We are supportive of the changes to Principle 7, however we believe that the wording in Recommendation 7.2 should be clarified to recognise that in some instances circumstances may arise in which, notwithstanding robust processes for oversight of a company's material business risks, those risks may not remain within the appetite set by the Board at all times during a period to which a regular review of the risks relates. We consider that the revised recommendation should be amended to recognise that the dynamic emergence of new risks could result in circumstances where it is not possible to 'ensure' that material business risks remain within the appetite set by the Board. We would welcome the opportunity to discuss approaches to the drafting of the recommendation which would achieve this without detracting from the important principle which the revised recommendation encapsulates.

Disclosure of on-market purchases of securities (Listing Rules)

The ASX proposes to introduce a new Listing Rule 3.19B, which will require disclosure within 5 business days of:

- general information regarding on-market purchases of securities on behalf of employees under an employee incentive scheme (being: number of securities purchased and average price per security paid); and
- additional information where those purchases are for a director or their related parties (being: name of director/related party, the number of securities purchased for the individual and the average price per security paid).

We support of transparency and disclosure in relation to employee incentive schemes and executive remuneration arrangements and note the following disclosure requirements which currently apply in relation to this area:

- Listed entities are already required to disclose open and closing balances of 'treasury' shares in the notes to the financial statements and the costs of share acquisitions are accounted for by the entity and reflected in the financial statements;
- If a company proposes to issue new shares under its incentive arrangements to an executive director, shareholder approval is required under Listing Rule 10.14. Even if the shares are to be purchased on-market, it is common market practice for shareholder approval to be sought in relation to the executive director's LTI arrangements;
- Any allocation of securities to a CEO/managing director (or other executive director) under an incentive arrangement is already notified to the ASX as part of the Appendix 3Y disclosures; and
- Detailed disclosures are provided in the Remuneration Report in relation to the operation of an entity's incentive schemes and the participation of KMP in those schemes.

In addition, we note that most incentive schemes involve the use of a trust to hold shares for the purposes of the scheme. Shares are often purchased periodically on-market to ensure a sufficient pool is available for the trust to meet future allocations, and accordingly on-market purchases are generally not specifically referable to a particular participant (eg. to the CEO/managing director);

In light of these existing disclosures, we do not support the proposed new Listing Rule 3.19B as we are concerned that it will result in duplicative disclosures and provides no additional benefit.

In addition, we query the rationale of extending proposed Listing Rule 3.19B to apply to a director's 'related parties' (rather than 'associates') – see below.

Use of the term 'related party' in relevant Listing Rules

It is proposed that the definition of 'associate' used in the Listing Rules in relation to a director or officer is extended to include any 'related party' of that director or officer. We also note that the ASX intends to include 'related parties' within the scope of proposed Listing Rule 3.19B and Listing Rules 10.14 and 10.16.

We understand that the term 'associate' is used in many contexts in the Listing Rules (either in the substantive provisions of the Listing Rules or in the notes accompanying various Listing Rules). We are concerned that there is the potential for unintended consequences to arise if the term is extended to include 'related parties' on a 'global' basis without careful consideration as to whether the proposed change is appropriate in each context in which the term is used.

In particular, we note that the definition of 'associate' under the *Corporations Act 2001* (which has historically been adopted by the Listing Rules) is concerned with relationships of control and influence. In our view, under the proposed changes to the Listing Rules, a person may be a 'related party' even where their relationship with the relevant director or officer does not entail actual control or influence (e.g. a parent or grown child).

As a particular example, we query the rationale of extending proposed Listing Rule 3.19B and amending Listing Rule 10.14 to apply to 'related parties' (rather than 'associates') as this would require a company to make additional disclosures in relation to on-market purchases (LR 3.19B), or to obtain shareholder approval for a grant of securities (LR 10.14) to an individual that a director has no control or influence over (for example, if a director's adult child was employed by the company and participated in a general employee incentive scheme). We think the concept of 'associate' is a more appropriate term than 'related party' in this case.

In our view, further consideration of the proposed changes is required and once this has occurred, the ASX should consult further on the specific areas where there is a rationale for the change.

Approval of Corporate Governance Statement (Listing Rules)

New Listing Rule 4.10.3 requires that the corporate governance statement (CGS) be approved by the Board. We believe that this new rule would benefit from further clarification that it is permissible for the Board to delegate approval of the CGS to a committee of the Board as appropriate.

Telstra Corporation Limited
19 November 2013