IT'S HOW WE CONNECT

1 April 2014

ASX Limited
20 Bridge Street
SYDNEY NSW 2000

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

Dear Sir/Madam

Supplementary Consultation Paper – Proposed Governance-Related Listing Rule Amendments

Thank you for the opportunity to make a submission on the Supplementary Consultation Paper regarding Proposed Governance-Related Listing Rule Amendments released by the ASX on 21 February 2014 for public consultation (Supplementary LR Changes).

Telstra also wishes to take this opportunity to commend the ASX for its openness and transparency in presenting its consideration of feedback received from the initial public consultation.

Please find attached Telstra's submission in relation to the Supplementary LR 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

Supplementary Consultation Paper – Proposed Governance-Related Listing Rule Amendments

Submission by Telstra Corporation Limited

We are broadly supportive of the proposed changes set out in the Supplementary Consultation Paper and appreciate the changes made to the initial Consultation Draft in response to submissions made in November 2013. We wish to make a submission on the following Supplementary LR Changes:

- LR 4.10.22 – Disclosure of securities purchased on-market for the purposes of an employee incentive scheme; and
- LR10.15B – exception to rule 10.14.

LR 4.10.22 – Disclosure of securities purchased on-market for the purposes of an employee incentive scheme

We make the following two submissions on proposed Listing Rule 4.10.22(c):

1. We consider that the drafting of the proposed Listing Rule would benefit from some clarification; and
2. We would like the ASX to clarify the intended operation of the phrase "allocated to" as it is intended to operate in the Listing Rules.

1. Drafting clarification

We are concerned that, as currently drafted, some unintended consequences may arise in applying the proposed new disclosure requirement in LR4.10.22(c) in relation to the number of securities "purchased on behalf of, or ultimately allocated to, a director".

On our reading of LR4.10.22(c), the disclosure obligations only arises "if during a reporting period any securities are purchased on-market". In most instances, entities purchase securities on-market as part of a general pool of shares for allocation to employee incentive scheme participants (which would be disclosed under LR4.10.22(a)&(b)) and do not purchase securities "on behalf of" a specific individual or director. It is therefore unlikely that the disclosure obligation under LR4.10.22(c) will arise until the securities are "allocated to" a director. This will, most likely, occur in a different reporting period from the reporting period that the securities were initially purchased, and potentially could occur in a reporting period in which there has been no other purchases of securities by the plan trustee.

In our view, if the disclosure obligation is to be included in the Listing Rules, the two concepts in LR4.10.22(c) of securities "purchased on behalf of" and securities "allocated to" should be separated and entities be required to disclose:

A. If securities are purchased in a reporting period "on behalf of" a director (or a related party) – the name of the director (or the related party) and the number of securities purchased;

B. If, during any reporting period, securities are "allocated to" a director (or a related party) – the name of the director (or the related party) and the number of securities allocated. (We do not consider that it would be necessary in this context to use the term "ultimately").

This might be achieved by moving the requirement referred to in paragraph (A) above into a separate obligation (which would arise in any reporting period in which the allocation occurred, irrespective of when those securities were initially purchased) which is distinct from the obligations in LR4.10.22(a)&(b) and paragraph (B) above (which would arise in the reporting period in which the securities were initially purchased).

We also request that ASX make clear in the proposed Listing Rule 4.10.22, perhaps in a note, that the mere fact that a director may be a participant in an incentive scheme for multiple executives, would not bring a purchase of securities for a general pool for that scheme into the category of securities purchased "on behalf of" that director. In such circumstances, the securities purchased for the general pool are not purchased "on behalf of" the director and it is, in any event, not possible to identify the securities that may be allocated to the director once the scheme reaches its testing point.

2. Clarification of intended operation of the term "allocate"

We also note that the term "allocate" has multiple meanings. From a legal perspective, allocation (or "vesting") occurs when the participant receives beneficial ownership (eg. when the relevant performance

hurdles have been satisfied and the securities are held by the plan trustee as specific trust property (rather than as general trust property)). For accounting purposes, allocation (or "vesting") may occur at a different time (for instance, at the end of any further restriction or holding period). We request that the ASX clarify the meaning of the term "allocated to" as it is intended to operate in the Listing Rules.

Finally, we note that the Remuneration Report must disclose for each KMP (including directors) the number of securities under a share plan that 'vest' in the reporting period. For companies that purchase all underlying securities on-market, information in relation to the number of securities "allocated to" a director will already available in the Remuneration Report, resulting in duplication of reporting obligations.

LR10.15B – exception to rule 10.14

We have concerns that the new rule, as currently drafted, could be interpreted as potentially narrowing the application of the exception currently in LR10.14.

New LR 10.15B provides that the exception will apply to the issue of options or performance rights under the terms of an employee incentive plan "where the securities to be granted on exercise of the options or satisfaction of the performance rights are *required* by the terms of the employee incentive scheme to be purchased on market" (emphasis added). However, in most instances, the plan rules do not *require* that the underlying securities be purchased on-market – instead most plan rules are drafted flexibly and are permissive in terms of whether the underlying securities are sourced on-market or are satisfied by way of newly issued securities (leaving the law (including the Listing Rules) to govern which method is adopted in any given circumstance). Current LR10.14 simply refers to the rule not applying to "securities purchased on-market under the terms of a scheme that *provides for* purchase of securities by or on behalf of employees or directors" (emphasis added).

We would appreciate if the ASX could clarify the application of the exception and consider whether the phrase "provided for" should be used instead of the word "required" (as currently drafted).

Other comments

Early adoption of LR 4.7

We support the proposal to enable early adoption of the amendments to LR 4.7, which will allow an entity flexibility to choose the most effective and appropriate way to communicate its governance practices. We would, however, appreciate it if the ASX could clarify how early adoption is to work in practice - for instance (a) whether it is permissible for an entity to include the disclosures required to "be included in the corporate governance statement in the annual report" by the 2nd Edition of the ASX Corporate Governance Principles and Recommendations (which will apply for FY14) in a document which is separate from the Annual Report and (b) which checklist should be lodged with the Annual Report (as the Appendix 4G will not be applicable to the 2nd Edition).

Telstra Corporation Limited
1 April 2014