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ASA VOTING AND ENGAGEMENT GUIDELINES FOR ASX 200 COMPANIES

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Introduction

The voting and engagement guidelines of the Australian Shareholders' Association (ASA) have been developed as a basis for representing the interests and objectives of Australia's retail investors in the share market. The application of these guidelines gives a voice to millions of direct and indirect individual investors across Australia.

ASA's policies and guidelines have evolved since we formed in 1960. These voting and engagement guidelines represent ASA's current policy position. ASA's voting and engagement guidelines are most closely aligned with the Australian Council of Superannuation Investors (ACSI) governance and reporting guidelines for monitoring public companies, which were released in July 2013 and updated in November 2017.

ASA is a member of the ASX Corporate Governance Council and generally agrees with its Principles and Recommendations. We expect listed companies to abide by the letter and spirit of the ASX Listing Rules, common law and statute, and in particular, the Corporations Law and associated legislation which underline the common principles of accountability, transparency, fairness and responsibility. However, we have retail investor focused areas of interest with emphasis on fairness to and transparent communication with retail investors as a class of shareholders.

ASA policies act as a tool for assessing the existence of effective corporate governance, where its absence may signal increased risks for all stakeholders, including employees, customers, debt holders and investors. ASA is focused on the performance and governance of ASX200 companies, but our policies may be interpreted for other listed companies and managed funds. We do not give financial advice but seek to maximise the payment of sustainable dividends and returns to investors over multiple years.

In terms of board governance, ASA is interested in the workload, remuneration and performance of directors. In addition, ASA acknowledges the importance of engaging, retaining and rewarding effective management, which is entrusted with safeguarding and creating shareholder value. ASA expects that the risk-takers in a company (including debt and equity investors) are rewarded fairly. ASA's voting and engagement guidelines are a tool for establishing a direct link between appropriate executive reward structures through remuneration, with company performance and reward to shareholders. Where a company is unable to establish a direct link between the reward to shareholders (through corporate profitability, share price and dividend performance, achieved in a socially responsible manner) and the reward to management and boards through remuneration, then ASA will question the entity's corporate governance.

Australia is a great shareholding nation, but investors need to remain vigilant to ensure the system remains fair, transparent and accountable for the 6 million Australians who choose to directly invest in equity markets.

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PART A: GOVERNANCE AND TRANSPARENCY

1. Composition of boards

A majority of the board should be genuinely independent directors. Strict independence criteria includes issues such as tenure, associations and related party transactions. Where there is not a clear majority of independent directors, ASA may oppose the re-election of directors classified as "not independent". ASA is generally opposed to boards having more than one executive director.

The chair should be an independent director. ASA does not support the appointment of an executive chair, but recognizes the practice occasionally occurs with founders or majority shareholders, especially where there has been exceptional performance. A director should ideally serve on a board for at least one year before assuming the chair role and should not serve more than 10 years as chair, subject to exceptional circumstances. When a chair steps down, he/she should resign from the board completely so that the incoming chair has a clear run at any legacy issues.

At least 30% of the board should consist of female directors, and at least 30% male directors. Companies should disclose in each annual report the proportion of female employees, senior executives and directors. Geographic, ethnic, age and industry diversity of boards is also important.

2. Creating and maintaining a sustainable board

In the recruitment of new directors, the chair, along with the nomination committee, should be able to demonstrate a transparent and independent process for the selection and appointment of new independent directors. ASA discourages mechanisms by companies which serve to reduce the ability of external, non-board endorsed nominees from being elected to the board.

Companies should disclose the process for evaluating the performance of the board, its committees and individual directors, including the chair.

3. CEO transition to non-executive role

A former CEO should not return to the board as a non-executive director, although where there has been exceptional performance this may be considered after a suitable "cooling off period", preferably after at least two years, to allow the new CEO to settle in. A former executive who returns to the board will not be considered independent until after at least a three-year break. If they return to the board earlier than 3 years, they will not be classified as independent.

4. Outside directorships for executives

The CEO of an ASX200 company must not chair an unrelated listed company. Executive directors of ASX200 companies should not serve on unrelated ASX200 boards, unless they are well established in the role and transitioning away from an executive career. In these circumstances, it should be limited to one outside directorship.

5. Directors transitioning to an executive role

ASA acknowledges there are times when a professional director is recruited into an executive role. If it is only in an acting capacity for a short period of time, multiple other directorships can be retained. If it is a permanent appointment, no more than one un-related non-executive directorship should be retained.

6. Workload of non-executive directors

ASA limits our support to a director sitting on five separate and un-related listed company boards. A chair role is assessed as the equivalent of serving on two boards. Any director who chairs two public companies should, at most, serve only on one additional board. When assessing the workload of a director, government or not-for-profit positions will also be considered, as will private company ownership or management roles. For the purpose of assessing director workloads, ASA will normally treat a paid role as a director of a government, semi-government or not-for-profit organisation as the equivalent of one directorship.

7. Board duty of care regarding risk management

The Corporations Act requires a listed entity include in the operating and financial review in its directors' report, a discussion of the main internal and external risks which could adversely affect the entity's prospects in future financial years. Boards should provide shareholders with an easily understandable explanation of their assessment of risk and the implications of any risks to the business.

8. Determining director (re-)election voting

ASX-listed companies should improve and expand their disclosure about directors. For instance, the website profiles of directors should include all relevant information such as professional background, qualifications, date of appointment to board, when last elected, city of residence, any committee positions, all other directorships held, past directorships of ASX listed companies and the size of any shareholding. When a director is up for election, these details should also be included in the formal notice of meeting.

Where a director is nominated for re-election, the performance of their past and current portfolio of board seats will be taken into account in determining the voting intention. Two poorly performing companies or one company that has received a second strike on the remuneration report would lead to an "against" vote subject to the specific circumstances. If there are significant ongoing concerns with remuneration practices of a company, the chair of the remuneration committee will be opposed for re-election.

If a chair or CEO of an ASX200 company has been demonstrably responsible for key decisions which have led to poor performance over a sustained period, ASA will oppose the chair's re-election at that company. Further ASA will oppose the chair and/or the CEO's election /re-election at any other un-related companies in the future.

Directors up for election should speak to their nomination at the AGM and be prepared to engage with shareholders leading up to the AGM. The chair should encourage director candidates to answer any relevant questions at the AGM. When a director unexpectedly resigns, the company should include the reasons in the ASX announcement.

9. Tenure limits and board size

Companies should voluntarily adhere to tenure limits of no more than 12 years for independent directors and this should be formalised in board protocols and disclosed. Whilst ASA will not automatically vote against a long-serving director, we will not classify them as "independent" after 12 years of service and we will always encourage companies to maintain a majority of independent directors.

Boards should be large enough to have the diversity and skills required to direct the company, and of a size that facilitates effective decision making. We do not support a constitutional maximum number of directors, believing shareholders should have the flexibility to appoint an additional director without having to remove existing directors. We will not support resolutions seeking shareholder approval to enact a no-vacancy rule (where a company establishes a limit that is less than the maximum number of directors specified in the company constitution).

10. Relevant skills and experience of directors

While independence and diversity are important, ultimately the cohesion of the team and the relevant skills they contribute to strategic planning and risk management are the keys to success. Each director should bring a particular skillset to a board, but boards should also have multiple directors with direct relevant industry experience.

Companies should disclose a meaningful skills matrix which highlights the specific skills and competencies needed on the board, and how they align with the company's business and strategy. The matrix should disclose the current number of directors with the required skills and competencies and the detail of how this has been established for each director, as well as list any gaps.

11. Auditor rotation and performance

ASA believes good corporate governance mandates that audit firms should be changed regularly. There should be a competitive tender for the external audit every 10 years or sooner where audited accounts have been shown to be deficient, inaccurate and in breach of the accounting standards. The date of the most recent tender should be disclosed in the annual report.

12. Continuous disclosure

Companies should structure information releases in plain English with adequate explanation of complex concepts, with a view to increasing the understanding of a greater number of shareholders and stakeholders.

13. NED remuneration, including board and committee fees

The fee cap for a company should be appropriate for the size, complexity, geographic spread, lifecycle and skill-requirements of a board. The level of current shareholder approved fee pool and any proposed or actual increases in individual director fees for the current year should be disclosed in the remuneration report, as should any proposed or actual increases in individual director fees for the current year. Where a company's market capitalisation has substantially decreased, ASA would expect that individual director fees are reduced accordingly.

14. Minimum shareholding requirement

ASA believes that non-executive directors should have alignment with shareholders through a meaningful equity investment in the company. Non-executive directors should not receive options or performance rights but can be paid board fees in the form of shares, preferably purchased on-market, in lieu of cash. After three years on a board, a director should own or have invested at least one year's worth of base cash fees in the company's ordinary shares. Failure to establish a meaningful shareholding and alignment with investors after a full term on the board may lead to an "against" recommendation from ASA when the director is seeking re-election. There should be no equity ownership requirement for board candidates before they are elected a director or appointed to fill a casual vacancy.

Executive KMPs should be encouraged to have a meaningful equity investment in the company as this promotes the alignment between executive and shareholder interests. As a guideline, the CEO should own or have invested a minimum of 100% of his or her fixed annual remuneration (including vested incentive awards but excluding any unvested awards) in the company's shares after five years of their appointment, with lower shareholding levels applying to the other executives.

15. Board responsibility for political donations

ASA is opposed to cash donations and political contributions by companies out of shareholder funds unless it can be demonstrated that the contribution is a genuine fee for service. All listed companies should clearly disclose in their annual report any political expenditure, whether by cash donation, annual subscription or a fee for attending a political function. The company's policy on political contributions should also be available on the company's website.

16. Environmental, Social and Governance (ESG) reporting

Companies should disclose meaningful information in relation to any ESG issues or risks facing their business and the processes in place to manage those issues/risks. The level of disclosure ASA expects to see will consider the company's specific circumstances, regulatory requirements, industry best practice and any relevant stakeholder behaviours or concerns. The information should be clearly set out in the annual report or in a separate sustainability report.

17. Importance of annual report

Retail shareholders perceive the annual report to be a snapshot of the company that directors have agreed to be representative and audited to assert it is appropriately presented. The annual report should be written in plain English and laid out in a way which enhances retail shareholders understanding of the company and its financial data.

The history of financial performance is a critical element of the annual report. Shareholders expect annual reports to include a table showing a 5-year history that will enable them to assess the financial performance, position, financing and investing policies of the company. This should be included in the first section of the annual report or be listed in the table of contents as a separate item, with a reference to the information required to be included in the remuneration report by s300A (1AA) and S300A (1AB) of the Corporations Act:

1. Earnings before interest and tax (EBIT);
2. Earnings per share (EPS);
3. The extent of dividend franking;
4. Residual franking credits held after payment of final dividend;
5. Revenue figures with relevant divisional, geographic and commodity breakdowns;
6. The aggregate sum of significant unusual items affecting statutory profit;
7. Free cash flow, plus operating, investing and financing cash flows;
8. Gearing ratios including total outstanding interest-bearing debt;
9. Return on equity, assets and shareholder funds;
10. End of financial year share price; and
11. Annual total shareholder return (TSR) over the previous 5 years.

18. Access to the full annual report

Companies should direct their share registry to make it easy for shareholders to choose to receive a printed copy of the full annual report. Shareholders should be given a written option, complete with a reply-paid envelope, to opt to receive the full annual report by mail.

PART B: EXECUTIVE REMUNERATION

Reaching a voting recommendation on the remuneration report

A major part of the production of the Voting Intention is for the monitor to reach a decision on whether to vote For or Against the remuneration report, with the focus on the CEO's package. Very occasionally a monitor may be undecided and require more information following the pre-AGM meeting and question the Chair at the AGM to provide more detail before making a final voting decision based upon the response.

Part B: Executive Remuneration contains numbered sections from 21 to 38 and consists of the guidelines that have been agreed and refined over the years as a means of reaching a decision on how to vote. No company is likely to comply with all the guidelines and therefore a decision will be made based upon the degree of compliance. Some guidelines will carry more weight than others. The financial results of the company will be compared with the remuneration outcome and a poor result is expected to be reflected in the remuneration result. However, a good trading result does not necessarily mean a For vote, the degree of compliance of the remuneration package is important, as next year's result may be poor and a badly constructed remuneration scheme should not be condoned simply because the results are good**.**

19. Remuneration report

A remuneration report should be readable, transparent and understandable for investors.

The most important element of any remuneration structure is to attract and retain superior executive talent which operates in an environment with long-term financial alignment with shareholders.

ASA expects financial performance, corporate governance, shareholder reward and executive remuneration to have a logical relationship.

20. CEO remuneration

The CEO should have the largest component of at risk pay amongst the key management personnel. Salaries may rise with market capitalisation, but the financial performance, size, competitiveness and complexity of a company's operations should be a key determinant.

ASA requires that at least 50% of a CEO's total potential pay should be genuinely at risk, primarily through the LTI. The maximum potential STI opportunity should not exceed the CEO's fixed remuneration. Bonuses, that is variable pay associated with performance beyond target levels, should only accrue if there has been financial out-performance coupled with good corporate governance. The CEO's actual take-home remuneration as well as the target and maximum opportunity for each component of the CEO's total remuneration should be clearly disclosed. A company should clearly communicate to shareholders where a CEO is expected to be paid a portion of variable pay as well as the fixed remuneration for meeting budget. Companies should also publish a ratio of the CEO's actual remuneration against the Adult Average Weekly Total Earnings (as published by the Australian Bureau of Statistics).

The overall balance of an executive package will differ from company to company and ASA monitors take into account company specific arrangements when preparing our voting intentions.

21. Short-term incentive payments

A majority of STIs should be based on quantifiable performance metrics. Where non-financial hurdles are used, no STIs should be paid unless a financial gateway is met.

ASA expects clear disclosure of the performance hurdles and the weightings applied for each key executive. The remuneration report should set out individual outcomes for the year as measured against each metric and explain any board discretions applied, so that shareholders are able to understand the reasons for payments made. For the CEO and other executive KMP, at least 50% of any STI award, if available, should be paid in equity with a minimum 12 month holding lock. Up to 50% can be paid as cash.

22. Long-term incentive payments

From the shareholder's point of view the LTI is the most important component of any remuneration package, even though international research has shown that executives discount LTI schemes due to the uncertain outcome.

ASA will take into account performance periods together with actual performance hurdles. An LTI requires hurdles to be met on average or cumulatively over a period of a number of years, with hurdles measured at least year four but preferably at year five or later. The potential gain derived from awarding shares or converting performance rights to shares over a period of time is not considered to be an adequate substitute for hurdles, it is viewed to be a retention scheme.

23. Retesting of incentives

The ASA is opposed to "re-testing" of at-risk executive incentive schemes which fall short of performance hurdles over the performance period, which should be at least four years. Where there is retesting, it should only be for one year and require all performance hurdles over the extended period to be met, including making up any shortfall in previous years.

24. Relative TSR, negative TSR and absolute TSR

ASA requires companies to have at least two hurdles for an LTI scheme and one of them should always be based on Total Shareholder Return (TSR) which reflects share price performance plus dividends paid over the performance period of at least 4 years. There should be no out-performance bonuses paid if TSR is negative in nominal terms whether relative TSR or absolute TSR is the measure. ASA will support LTI schemes with appropriate positive absolute TSR hurdles. As an example, vesting could commence with 10% compounding annual TSR over a 4- or 5-year performance period and provide 100% vesting if annual compounding TSR exceeds 20%. However, any absolute TSR measure should only apply to a maximum of 50% of the LTI award.

When measuring relative TSR, the ASA requires comparator companies from similar industries or a specific index such as Financial Services or Resources. Any comparator group should include key competitors and preferably at least five companies, including relevant companies listed on foreign exchanges. Companies should show graphically the company's TSR performance as against the comparator group(s) in the remuneration report.

The ASA has long maintained that LTI awards based on a relative TSR hurdle should not commence unless performance is ***above*** the 50th percentile of the peer group over a minimum 4-year period. Our preferred position is 30% vesting at the 51st percentile, rising with a sliding scale of 2% vesting for each additional percentile such that only CEOs who exceed the 85th percentile will receive 100%

of the potential award. Cliff vesting structures should be avoided as they are less likely to encourage out-performance and may encourage excessive risk taking.

25. Dividends on performance rights

Dividends must not accrue on unvested shares for either an STI or an LTI. Dividends can accrue on fully vested, but deferred, equity from an STI award. Similarly, once an LTI has irrevocably vested, the executive can accrue the benefit of any dividends paid even if there is a holding lock. ASA requires the cash payment of any dividend benefit to be deferred or locked up until the vested share is also unconditionally available to the executive.

26. On-market purchases vs newly issued equity

ASA prefers that companies purchase shares on-market when incentive schemes vest, as this would prevent the dilution to shareholders that would occur if the company were to issue shares. If shares are to be issued, ASA prefers that those shares be included in the 15% cap on selective placements.

27. Opposition to underlying earnings as a performance metric

Where earnings per share (EPS) is a performance metric/hurdle for a CEO's incentive plan, ASA requires calculation of EPS to be based on statutory profit, rather than any form of "underlying" or "normalised" profit measure. Shareholders lose real money with write-downs, restructuring costs and other one-off items, so these should not be excluded from any bonus calculation.

28. Other LTI performance hurdles

A return on assets (ROA) measure may be suitable for some companies, such as banks. However it needs to be assessed in conjunction with other risk ratios, such as those for credit, interest rate margins, liquidity, foreign exchange and off balance sheet exposures.

Return on capital employed (ROCE) is a measure which is suitable for some sectors such as real estate trusts or for divisional executives in conglomerate structures, but the composition of the return if it includes revaluations from equity accounted investments should be adjusted to reflect that such revaluations may not be realised.

A return on equity (ROE) target can be appropriate where it can be demonstrated that the target hasn't been achieved by excessive gearing, or by a capital restructuring (i.e. share buyback). If this measure is chosen it should be absolute, not relative, in view of the many different capital structures across companies.

Cash generation is often the best sign of business success so an appropriate cash flow metric may also be used.

While non-financial metrics are more usually found in STI schemes, when used in an LTI scheme they should be limited to 10% to 30% of the award. The hurdles used in the LTI plan should not be the same as hurdles used in the STI plan.

Non-financial measures should be related to building long-term company value. These non-financial hurdles must be measurable, clearly explained and linked to the company's long term goals. ASA requires long-term incentives to be subject to specified hurdles in the year of vesting. ASA will generally not support incentives which are subject only to a share price hurdle or where options are allocated without a performance hurdle.

29. Executive sign-on benefits

ASA opposes the payment of sign-on benefits for newly hired executives. Where negotiations unavoidably require compensation to be paid for foregone incentive payments, the payments should be structured as deferred equity-based payments that vest upon meeting three to five year performance hurdles. The structure of the payments should be fully disclosed in the ASX announcement of the CEO contract when the executive is hired.

Where the CEO contract appears to be overly generous, ASA will be unlikely to vote for the remuneration report at the next AGM. Further ASA will also take structure of the contract into account when considering the next director re-election resolution for the Chair of the Remuneration Committee.

30. Retention payments

ASA generally opposes the use of retention payments or incentive awards which are subject only to continuing service.

31. Termination payments

ASA supports the move to rolling contracts for executive KMP. We generally oppose termination benefits which exceed the 12 months fixed pay Corporations Act requirement which, in any event, requires shareholder approval. However, we will support payments to executives of vested incentive awards that will place them over the 12 month limit, where we are supportive of the remuneration arrangements. After an initial period of appointment (i.e. two to three years) for a senior executive, notice periods should not exceed six months. If departing executives receive any pro-rata payments for unvested long term incentive schemes, these should be clearly disclosed as termination benefits. ASA opposes any ex gratia payments to departing executives over and above their contractual entitlements.

32. Treatment of incentive schemes in takeovers

ASA has been concerned by past practice which has seen CEOs and other executive KMP greatly enriched through the full vesting of incentive schemes in a takeover or “change of control” event. ASA is opposed to automatic full vesting in these circumstances as it can distort the decision-making process. We prefer pro-rata vesting based on past rewards.

Any early vesting arrangements for key management personnel in takeover or merger situations must be comprehensively disclosed when the scheme is approved and in the annual remuneration report. The premature conclusion of the contract for an executive KMP should not see automatic full vesting, but rather a pro-rata approach taken based on the time remaining, whilst also considering the performance impact of the control transaction.

ASA recognises that some board discretion is appropriate in determining the outcome of executive pay arrangements in change of control transactions.

33. Calculation and valuation of share grants

The methodology used to calculate the number of performance rights and options to be issued under an LTI plan needs to be clear and easily understood by shareholders. ASA is opposed to the use of 'fair value' discounting methods to calculate the number of performance rights to be issued, due to the resulting lower price in the calculation leading to an inflated number of rights being allocated. The number of performance rights allocated should be calculated using face value or current share price (calculated using volume weighted average share price (VWAP)). We recognise some companies use a fair value calculation to discount for the value of anticipated dividends paid during the performance period, however ASA prefers companies to provide executives with the value of any dividends that would have been paid on the shares (either in cash or in additional shares) on vesting, when the value of the dividends on the vested shares is known. Where fair value is used as the allocation method, companies should disclose the face value of the allocation in the annual report and notice of meeting for the AGM.

34. Acquisition of shares by directors under an incentive scheme

The ASX Listing Rules require shareholder approval for securities to be issued to directors, including the Managing Director and any other executive director, under a share incentive scheme. The ASA acknowledges the Listing Rules grant an exception to this requirement where the terms of the scheme permit such purchases, and the scheme was approved by shareholders within the three years prior to the issue. However, ASA's position is that companies should seek shareholder approval on an annual basis as it provides greater certainty to shareholders regarding the size and nature of the equity grant being approved. As a matter of good corporate governance, approval should be sought annually even if the company intends to purchase the shares on market.

35. Loans to executives

Whilst the move to free equity in bonus schemes has seen a reduction in company-funded loans to allow executives to buy shares, some companies still have such arrangements. ASA will view company-funded loans that are non-recourse, interest free or interest-forgiving in the face of poor performance as a negative when considering how to vote on remuneration reports and the issue of shares or rights. ASA will also examine other company-funded loans to executives or employees on similar terms.

36. Voting in relation to the "two strikes" regime

If a company receives a first strike with 25% or more of the voted shares against the remuneration report, ASA will undertake engagement with the company to secure improvements the following year. ASA supports the "two strikes" regime, but regards the decision to vote in favour of a board spill after a second strike to be a serious step only to be taken in extreme circumstances. Calling an EGM to spill an entire board can be a highly disruptive event for a company. ASA acknowledges that the threat of this happening has led to substantial pay reform in Australia. ASA's position regarding a vote on a board spill will be determined by the willingness of a board to accept the need for review and change to remuneration structures.

PART C: CAPITAL MANAGEMENT

37. Treating all shareholders equitably

When raising capital, devising dividend policy or considering other capital management issues such as buybacks, directors must always strive to treat shareholders as equitably as possible. This includes minority shareholders, retail investors, institutions, directors, executives, staff and foreign investors.

38. Dividends

ASA's position is for a majority of distributable earnings to be paid to shareholders as dividends. Boards should have a clear and consistent policy in this regard. Where franking credits have been generated, ASA believes public companies should strive to distribute as many of these as possible to Australian resident shareholders within the constraints of the company's balance sheet and cash requirements for investment. Dividend Reinvestment Plans are appropriate when companies need to retain some earnings participation encouraged through an appropriately modest discount to volume weighted average price (VWAP) formula.

39. Selective placements

ASA is opposed to selective institutional placements as these do not respect the property rights of existing shareholders to retain their proportional stake in the company. The reason for any placement should be clearly explained to retail investors. The introduction of a new strategic cornerstone investor can be secured through a placement, but only if there is a compelling commercial argument. Such issues should be priced above the prevailing market price and should not surrender the ability of shareholders to receive a subsequent change of control premium.

As a demonstration of ASA's general concern about the way selective placements do not respect the property rights of existing shareholders, ASA will generally vote against resolutions put up by companies which seek to refresh the 15% placement capacity in any 12 month period, except where the resolution relates to securities issued as part of an executive incentive scheme supported by the ASA, a capital raising conducted in conjunction with a renounceable rights issue or Pro-rata Accelerated Institutional, Tradable Retail Entitlement Offer (PAITREO) or included a Share Purchase Plan (SPP) on the same or better terms than the institutional offer.

40. Share purchase plans

Boards must offer retail investors a SPP after any selective placement, on the same or better terms than the institutional offer. Individual shareholders should be offered the maximum $15,000 investment. Participation will always be stronger and applications will arrive earlier if there is discount to Volume Weighted Average Price (VWAP) formula in addition to any fixed price component. If the size of the SPP is to be capped, it should reflect the percentage of the register owned by retail investors (i.e. if a company is seeking to raise $100 million and retail investors collectively own 40%, it should be a $60 million placement and a $40 million SPP) to minimise the prospect of retail investors being diluted as a class.

41. Renounceable pro-rata entitlement offers

ASA's preference for raising capital is to use pro-rata renounceable entitlement offers as this method treats all shareholders equally, compensates non-participants and avoids any dilution for investors who choose to participate. ASA supports companies raising capital by way of a PAITREO structure. Market evidence has demonstrated reduced differential outcomes in the institutional and retail bookbuilds when retail investors are given the opportunity to trade their rights on the ASX. The reduced size of a retail bookbuild at the conclusion of an offer also delivers lower underwriting costs for issuers.

42. ASA response to unfair capital raising structures

ASA notes that retail investors experienced dilution of more than $10 billion worth of value during the post global financial crisis capital raisings. The primary causes were discounted institutional placements with no follow-up SPP, unfairly restricted SPPs, use of non-renounceable entitlement offers, separate bookbuilds to deal with institutional and retail shortfalls and poorly marketed retail offers and limits on the ability of shareholders to apply for additional shares in entitlement offers. Having learnt all these lessons and with corporate balance sheets now rebuilt, ASA is concerned about ongoing unfair treatment of retail investors in capital raisings. When this occurs, ASA will consider opposing incumbent directors seeking re-election at the next AGM. In particularly egregious cases, ASA will consider supporting alternative candidates for the board if they are committed to the fair treatment of retail investors in capital raisings.

43. Non-renounceable entitlement offers

If an offer is to be non-renounceable, retail investors should be able to make unlimited applications for "overs" or "additional shares" to take up any lapsed entitlements from other retail investors. This facility minimises the dilution of retail shareholders as a class.

44. Disclosure of allocation and scale-back policy

When raising capital through an SPP or entitlement offer with "overs", the documentation should clearly enunciate any scale-back policy which will apply in the event of applications exceeding the new shares which are available. When disclosing the outcome of such offers, boards should clearly explain the scale-back formula including disclosures such as the number of shareholders who participated and the amounts allocated to "overs". ASA requires a scale back formula which reflects the size of a shareholder's existing holding, rather than the size of any application for new shares. Therefore, larger retail investors should receive larger numbers of additional shares than someone with an unmarketable parcel. However, there is merit in allowing the smallest investors to lift their holding to the marketable parcel threshold of $500 as a base case where "overs" or SPP applications are being scaled back.

45. Disclosure of fees paid when raising capital

ASX listed companies have at times paid excessive fees when raising capital, often with poor disclosure. Any agreements with investment banks or under-writers should be fully disclosed to the market at the time of the capital raising announcement. This disclosure should be prominent and include the total dollar figure in costs, the percentage or fixed fees to be paid for each component of the capital raising and the total costs as a percentage of the funds raised.

46. Retail shareholder access to capital raisings

ASA supports initiatives which lift retail shareholders' access to high quality capital raisings and make the capital raising process fairer and more transparent. ASA will explore legislative reform which facilitates direct retail participation in bookbuilds associated with capital raisings. Companies should facilitate retail shareholdings which provide stability to the share register, which may involve using ASX OnMarket Bookbuilds service or retail stockbrokers to raise capital.

47. Communicating with shareholders when raising capital

Many retail investors have other priorities ahead of managing their investments and may not act in their best interests when presented with an attractive in-the-money capital raising opportunity. Therefore, companies are encouraged to actively market such offers to small investors. A good example is the sending of a reminder email shortly before the offer closes. Similarly, boards should consider taking out newspaper advertisements, issuing press releases or engaging with prominent private client retail brokers if there are early signs that an in-the-money retail offer won't be fully subscribed.

48. Managing un-marketable parcels

Companies are within their rights to manage down the size of their share register, especially after demergers or takeovers which create large numbers of holders with unmarketable parcels. It is also acceptable for the default position to be that those who do nothing have their shares sold. However, the document advising of this which is sent to holders with parcels worth less than $500 should always include a reply paid envelope to make it easier for small investors to retain their shares. This is especially the case with poorly performing companies which have created unmarketable parcels through value destruction where shareholders may wish to utilise tax losses at a time of their choosing.

49. Opposition to selective buybacks

ASA believes that all shareholders should be treated equally and is generally opposed to selective buybacks, unless there is a compelling commercial proposition. Franking credits are valuable in the hands of low-tax paying Australian shareholders and any attempt to distribute these unconventionally should be by way of an equal access buyback offered to all shareholders.