

29 October 2020

Manager
Market Conduct Division
The Treasury
Langton Crescent
Parkes ACT 2600

By email: businesscomms@treasury.gov.au

To Treasury

CORPORATIONS AMENDMENT (VIRTUAL MEETINGS AND ELECTRONIC COMMUNICATIONS) BILL 2020

The Stockbrokers and Financial Advisers Association (SAFAA) is the professional body for the stockbroking and investment advice industry. Our members are Market Participants and Advisory firms which provide securities and investment advice, execution services and equity capital-raising for Australian investors, both retail and wholesale, and for businesses. Practitioner Members are suitably qualified professionals who are employed in the securities and derivatives industry.

We welcome the opportunity to comment on the Corporations Amendment (Virtual Meetings and Electronic Communications) Bill 2020 (the Bill).

Execution of company documents

SAFAA supports amendments to the Corporations Act that provide for companies to execute company documents, including deeds, electronically.

COVID-19 threw into relief the challenge of executing documents when people are working remotely, as they are not available to apply a 'wet ink' signature. Financial advisers working with clients also found that in many instances their clients were unable to print, execute, scan and return documents from home. Uncertainty about the legality of companies executing documents electronically under the Corporations Act was a constraint on the provision of financial advice and SAFAA therefore welcomed the Treasurer's Determination enabling companies to execute documents electronically earlier in the year, which was then extended. SAFAA welcomes the Bill that provides for measures to enable companies to execute documents electronically to become permanent through amendments to the Corporations Act.

However, we note that reluctance to execute deeds electronically could remain in the financial services sector, as there are different laws regarding the use of digital signatures at the state level. In order for the amendment to the Corporations Act for the use of digital signatures to apply on a primary basis, SAFAA notes that every jurisdiction will need to allow for their usage on the same basis. With clients located across the country and many firms with offices in different states, it can be difficult to decide in which jurisdiction to execute a deed. This will play into a degree of reluctance to utilise digital signatures. We note that the Federal Government does not have the capacity to amend state laws and that efforts to harmonise laws tend to be long-term with no guarantee of a successful outcome. SAFAA also notes that there is no regulatory direction as to how records will be kept and managed.

SAFAA is of the view therefore that acceptance of digital signatures and record keeping is likely to be tested in the Courts once the amendments have passed.

Virtual general meetings

As the providers of stockbroking and financial advice to significant numbers of retail clients, with assets under management representing the savings of a vast number of Australians, SAFAA is keen to represent the position of retail investors. We acknowledge the work of the Australian Shareholders Association, but can add the voice of significant further numbers of retail shareholder to the finalisation of public policy concerning general meetings of shareholders.

SAFAA acknowledges that the institution of the general meeting is steeped in history and has remained (relatively) unchanged. It was created in an era of horse and coach; pen and ink; limited printing and a fledgling postal service, all of which dictated that members (or their duly appointed representatives) would physically meet with directors annually. Shareholders could gather physically without difficulty, and a large company would be one consisting of 100 shareholders.

SAFAA acknowledges therefore that the law governing general meetings therefore needs to be brought into the 21st century. Shareholders now frequently number in the hundreds of thousands and are dispersed across the nation and also globally. Utilising technological advances as a means of enhancing the participation of shareholders who cannot participate physically in a general meeting is, in principle, sound.

However, it is important to remember for whose benefit the general meeting is held. The general meeting is a cornerstone of a governance framework, as the annual general meeting is the one time of the year when boards are required to front shareholders and give them the opportunity to ask questions (regardless of whether shareholders take up that opportunity). The concept of virtual general meetings should therefore not be viewed in terms of assisting the company to reduce costs, as this is not the objective of a general meeting. It is shareholder money that is spent on the general meeting in order to ensure that shareholders can meet directors and ask questions of them.

Importantly, the annual general meeting is considered the one time of the year when *retail* shareholders can engage with directors. A general meeting provides retail shareholders with access at the meeting to engage with the board and senior management to discuss company performance and prospects. Such engagement takes place with institutional shareholders throughout the year, but the annual general meeting is primarily the forum for retail shareholders. Of course, institutional shareholders attend a general meeting when there are concerns about the governance and/or performance of the company. In circumstances where there are such concerns, a physical meeting holds directors accountable far more than a virtual one.

The value of a physical general meeting is that shareholders can ‘eyeball’ the directors. The planning for an AGM focuses a company’s board and executives on its shareholders. It has been said to compel boardroom behaviour.

SAFAA acknowledges that the bill provides for companies to choose whether to hold a virtual, hybrid or physical general meeting. SAFAA also acknowledges that, in order to improve transparency, companies choosing to hold a meeting virtually will be required to record and give members’ access to all questions and comments submitted before or during a meeting that are intended to be covered during the meeting.

In a physical meeting, the board and management cannot constrain shareholders from asking questions or filter questions from shareholders, as these are heard by all other shareholders during the meeting. However, in a virtual meeting, boards and management can filter questions, choosing to answer only some while ignoring

others. In the 2020 AGM season under the Temporary Determination, shareholders have experienced boards omitting, rephrasing and reinterpreting shareholders' questions in virtual meetings.

While the Bill provides for the recording and publication of questions, and access by members after the meeting, it does not specify that directors need to answer the questions from shareholders at the meeting. It is vital that the amendment to the Corporations Act to provide for the option to hold a virtual meeting includes the further protection of ensuring that all shareholder questions are not only recorded but responded to during the meeting.

SAFAA therefore recommends that the Bill should be amended to provide that companies choosing to hold a meeting virtually will be required not only to record and give members access to all questions and comments submitted before and during a meeting, but that directors must answer questions submitted during a meeting and cannot omit, rephrase or reinterpret shareholder questions submitted before and during a meeting.

SAFAA also questions the exclusion of shareholders from the decision-making process as to whether to hold a physical or virtual meeting. As stated earlier, companies seeking to reduce costs is not the objective of a general meeting and should not be the reason for holding a virtual meeting. Given that companies frequently refer to the cost of holding an AGM, it is likely that cost will be used by companies as the reason to hold a virtual meeting.

It is shareholders who should decide the format of the meeting. Shareholders are likely to agree to a virtual meeting where there are no contentious issues, but are likely to seek a physical or hybrid meeting where they wish to raise concerns with governance and/or performance.

SAFAA therefore recommends that companies seek input from shareholders as to the format of the general meeting and that companies not be the sole determiner of the format of the general meeting.

SAFAA appreciates the opportunity to provide feedback on the Bill.

Yours sincerely

A handwritten signature in black ink, appearing to be 'J Fox', with a stylized flourish extending from the top of the 'F'.

Judith Fox
Chief Executive Officer