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20 July 2017

Mark Fitt
Committee Secretary
Senate Economics Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email: economics.sen@aph.gov.au

Dear Mr Fitt

Inquiry into the Corporations Amendment (Modernisation of Members Registration) Bill 2017

Thank you for the opportunity to provide feedback to the Inquiry into the Corporations Amendment (Modernisation of Members Registration) Bill 2017 (**the Bill**).

Whilst we support legislative changes which enhance shareholder communication and engagement, we believe that the Bill does not achieve this but rather creates significant undesirable consequences for listed entities like AMP. Below are our thoughts on this matter.

By way of background on AMP's position on matters pertaining to shareholder communication and engagement and corporate reporting, we attach our submission to Treasury on the proposal paper regarding technology neutrality in distributing company meeting materials, dated 17 June 2016.

The proposal
Section 169(1)(a) of the *Corporations Act* requires the register of members to contain the member's name and address. The Bill amends this provision by inserting an email address as information that must be contained in the register of members.

For the reasons set out below, we do not support this amendment as:
- it is based on an incorrect underlying assumption
- AMP will be in breach of the proposed amendment upon the Bill's enactment, and
- there is no mechanism or framework in place to enable AMP to ever be compliant with the proposed amendment.

Underlying assumption
The explanatory memorandum and the second reading speech in support of the amendment for the Bill state that the inclusion of a member's email address takes into account that most communication between companies and members is via email. This is not the case for AMP and most, if not all, listed entities.

We regularly encourage our shareholders to provide their email address to facilitate more efficient communication and allow them to keep up to date and engaged with their AMP shares. Despite our aspirations and ongoing significant efforts to increase shareholder engagement via electronic means, we hold email address details for only 34% of our shareholders. This means that for AMP's 770,000 shareholders, we hold approximately 260,000 shareholder email addresses. This is despite AMP running campaigns over the last 10 years to increase the number of email addresses held. Last year, AMP ran a year-long campaign to collect additional email addresses of its shareholders, with only 40,000 additional shareholders providing their email address.

In addition, the average age of our shareholders is 75 years and in our experience, many older shareholders do not have an email address.

For listed entities like AMP, it is erroneous to assume that at present most communication between companies and shareholders is by email. Consequently, any change in the law stemming from such an assumption is, in our view, fraught with undesirable consequences as outlined further below. We acknowledge that the Bill is motivated in good faith by the current situation facing the members of CPA Australia and it is not surprising that CPA would hold most, if not all, of the email addresses of its members who would require an email address to undertake their profession.

Breach of the law

Under the *Corporations Act*, failure to maintain the register of members in accordance with section 169 is a strict liability offence.

The Bill, if enacted, will create a mandatory requirement for the register of all companies to contain the email addresses of all its members. As AMP holds email addresses for only 34% of its shareholders, AMP will be in breach of the proposed amendment upon the Bill's enactment and, despite its best endeavours, AMP is unlikely to ever be compliant.

We have estimated the costs associated with a separate mail out to our 500,000 shareholders, who have not provided us with an email address, requesting this information from them. This exercise is likely to cost AMP around $800,000 including printing, mailing costs and processing. This is a waste of resources which is unlikely to result in any additional email addresses being collected. As referred to earlier, last year's campaign to collect additional email addresses only resulted in 40,000 additional email addresses being collected. Therefore, the retrospective collection of this data from shareholders is not feasible.

In addition, ongoing compliance with maintaining the accuracy of shareholder emails on the register is likely to be challenging and costly for companies. We experience a bounce back rate of 5,000 emails (out of a total of 260,000 emails) after each email broadcast. This is often due to emails no longer being valid due to mail boxes being full or people changing their email addresses due to a change in internet provider. The Bill and explanatory memorandum are silent on what a company's obligations are in relation to maintaining the accuracy of email addresses on the register on an ongoing basis and what this means from a legal perspective.

It should also be noted that the majority of transactions involving the purchase of shares through a broker are electronic and require an email address. However, there is no obligation for brokers to transfer the email address details onto the share registry, and in fact do not transfer this data. Until there is a requirement for data sharing through the ASX Settlement Operating Rules, the collection of email addresses will continue to be challenging and costly for companies.

Consent of shareholders
Our shareholders have provided their email addresses to facilitate more efficient communication and allow them to keep up to date and engaged with their AMP shares. Shareholders may not consent to the addition of their email addresses on the register as this is not the purpose for which they have provided their details. If required by law to have an email address on the register, shareholders may choose to use a different email address for that purpose.

Should the Bill be enacted, we believe it will be prudent for companies to obtain the consent of their shareholders, for whom they hold an email address, to include that email address or an alternate email address on the register. This may have the unintended consequence of resulting in lower rates of email addresses being held by companies as shareholders may prefer not to provide their email address for the purpose of including this data on the register. This in turn creates additional challenges and costs in regards to a company's ability to comply with the proposed amendment.

Other legislative impacts
While the Bill requires the collection and recording of a shareholder's email address, it does not amend current default requirements in the law for companies to send certain information to shareholders in hard-copy via mail (unless they elect to receive them electronically). For example, a notice of meeting under section 249J(3) of the *Corporations Act* may only be provided electronically if a shareholder nominates an email address for that purpose.

We believe that a holistic approach to the law should be taken so that any amendments to the *Corporations Act* be technology-neutral enabling to allow for innovation in shareholder communication and engagement.

Other considerations
The addition of email addresses as a mandatory item on the register of members raises shareholder privacy and cyber security issues. It is unclear what a company's obligations and liabilities are in these circumstances and what, if any, additional steps should to be taken by companies to mitigate against these risks. We believe that a thorough examination of these matters is warranted before any changes are made to the law as contemplated by the Bill.

We would be happy to discuss this matter with you in more detail. Please do not hesitate to contact David Cullen or Vicki Vordis on [redacted]

Regards

[redacted]

David Cullen
Group Company Secretary

[redacted]

Vicki Vordis
Senior Company Secretary

Attachment: Letter to Daniel McAuliffe, Manager, Corporations & Schemes Unit, The Treasury dated 17 June 2016

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17 June 2016

Manager
Corporations & Schemes Unit
Financial Systems Division
The Treasury
Langton Crescent
Parkes ACT 2600

Attention: Daniel McAuliffe

By email: Corporations.Amendments@treasury.gov.au

Dear Daniel

Thank you for the opportunity to provide feedback on the proposal paper on technology neutrality in distributing company meeting materials. AMP is extremely supportive of efforts to improve communication with shareholders. Below are our thoughts on various points outlined in the proposal paper.

AMP's experience
We value the input of our shareholders and encourage them to be actively involved with our company. However in recent times, as with most companies, we have experienced shareholders becoming less engaged, with fewer attending our AGMs.

To encourage shareholder engagement we have implemented a number of initiatives over the past two years aimed at improving participation in our AGMs. In 2015 and 2016, we introduced a shareholder information session immediately prior to the AGM to provide shareholders with additional value for being an AMP shareholder and inspire attendance. We also enabled shareholders to participate in the AGM by providing them with an opportunity to ask questions via the webcast.

While these initiatives have increased our attendance numbers and participation via our webcast, the numbers still only represent a small percentage of total shareholders. Only 294 shareholders attended our AGM in May, out of a total of 800,000 (of which around 110,000 are based overseas), and 98 participated in the webcast. That is, less than 0.04% of our shareholders attended in person at our AGM this year. Only 30,791 shareholders, representing less than 4% of shareholders, voted by proxy at the AGM.

Costs associated with the printing and mailing of AGM materials are rapidly increasing. This year, we were required to mail the AGM materials to 570,000 shareholders, of which only around 26,000 shareholders responded by proxy. This is a significant waste of resources which is further heightened by the cost to produce and distribute the meeting materials which was approximately $1,500,000, an increase of 35% from last year due directly to recent Australia Post price increases. Our costs are likely to be higher than other companies, as AMP has the second largest shareholder base in Australia and these costs are expected to continue to increase as Australia Post has foreshadowed additional price rises.

In addition, each year, between 2,000 and 5,000 hard copy letters to shareholders containing the meeting materials are returned to us as undelivered mail. As we have two required mail-outs to shareholders every year, we receive between 4,000 and 10,000 undelivered hard copy letters

every year. This is also a significant waste of resources especially when we are required to mail shareholders in respect of whom we have already received undelivered mail.

We regularly encourage our shareholders to provide their email address to facilitate more efficient communication and allow them to keep up to date and engaged with their AMP shares. We currently distribute electronic communication materials, including our annual report and AGM materials, to approximately 230,000 shareholders who have supplied their email address. As referred to above, this year we mailed the AGM materials to 590,000 shareholders, of which only around 26,000 shareholders responded by proxy.

Following the introduction of the 'opt-in' change to annual report distribution we now only mail hard-copy annual reports to the 6,800 shareholders who have requested a copy. We believe that if we asked shareholders to 'opt-in' to meeting materials we would receive a similar level of interest. The electronic distribution of annual reports has been a tremendous success and we believe the same success can also be realised for the delivery of meeting materials. This would significantly reduce printing and mailing costs over time, benefiting both companies and shareholders, and would considerably improve the efficiency of the process.

Comments on the proposal

Technology neutrality
Given the speed of technological change, it is important that any amendments to the Corporations Act be technology-neutral enabling to allow for innovation in shareholder communication and engagement and corporate reporting, as technology evolves.

Default for distributing meeting materials
AMP agrees with the key elements of the proposal and recommends a consistent system to that adopted for annual reports would be most effective. That is, shareholders should be given the opportunity to 'opt-in' to receive meeting materials in hard copy. If they do not elect to receive a hard copy they can become aware of the meeting details through an email/text if they have provided their email address or mobile phone number, information on the company's website and the ASX announcement (in the case of listed companies).

Universal or near-universal channels of communication
Currently, the digital channel of communication preferred most by shareholders is email and yet the proposal paper excludes email as a near-universal channel of communication at the present time. Below are some additional thoughts on this matter.

As noted in the proposal paper, 94% of adults in Australia use mobile phones to make and receive phone calls and text messages. We submit that the majority of these people also use these devices to access their emails and the internet. In addition, as the proposal paper suggests that mobile phones are a near-universal channel of communication, we believe this in turn means emails and the internet are also near-universal channels of communication. Many Australians also access email from their workplace and so access to the internet extends well beyond a home internet connection.

It is important to note that, under the Corporations Act, shareholders are not required to provide their mobile phone numbers to the companies in which they invest. Consequently, while a high percentage of adults in Australia use mobile devices, few have provided their numbers to their share registry. In addition, this data is not currently collected by brokers when a share trade is completed. The retrospective collection of this data from shareholders by issuers and brokers is not feasible. We believe mobile phones are currently most effective as a medium for accessing emails and internet information from the companies in which they invest, rather than making and receiving calls or text messages.

We note the proposal paper's exclusion of website communication as a near-universal channel of communication and believe this runs counter to the current legal and regulatory framework

around continuous disclosure. Listed companies are required to comply with their disclosure obligations via ASX online announcements.

Therefore we submit that this form of communication should also constitute a near-universal channel of communication. It is the means by which a listed company most effectively communicates with its shareholders, 'promptly and without delay', on critical disclosures, including meeting materials.

Further, our ASX announcements are also posted on our company website. This is common practice amongst listed entities. Therefore we further submit that this form of communication also constitutes a near-universal channel of communication. Website communications are also easily accessed through search engines, whereby text messages are easily deleted, or may 'expire' depending on individual mobile phone plans.

Finally, it is also important to note that with ever evolving technologies, it may ultimately be difficult to achieve at any particular point in time universal channels of communication. It is for this reason that guidance from ASIC will be critical, from time to time, on what constitutes universal and near-universal channels of communication, as technologies evolve. It is important that companies and shareholders have certainty in this area and therefore we submit that ASIC's ongoing role will be pivotal to ensuring the credibility and integrity of the amendments to the law.

Our suggested approach
We strongly endorse the philosophy behind the proposal but recommend the enacting legislation specify that email, text and website communication are universal or near-universal channels of communication, with ASIC having the power to specify new and additional universal and near-universal channels of communication.

We also recommend a more simplified and streamlined approach to what is proposed in the proposals paper, that involves moving away from enabling companies to take an individualistic approach to the delivery of meeting materials as we believe this may have the effect of disenfranchising shareholders. We therefore recommend that companies be able to meet the requirement to notify shareholders of a meeting by:

- using a universal or near-universal channel of communication or a combination thereof (eg. through an email/text if they have provided their email address or mobile phone number, information on the company website and the ASX announcement (in the case of listed companies), or
- enabling shareholders to opt in to receive a copy by mail.

Notification to shareholders of the change in delivery of meeting materials should be through a one-off obligation on the company by asking shareholders to provide their email and/or mobile phone details and/or opt-in to receive future meeting materials by mail. The company should not be required to notify shareholders again if no response is received. We refer to the effective implementation of the 2007 reforms providing for the annual report to be made available by email or online rather than being mailed out, for which the notification period was the first year only. Our shareholders experienced no challenges with this and as referred to earlier we now only mail hard-copy annual reports to the 6,800 shareholders who have requested a copy. Each year this number is declining as more shareholders sign up to email communication with us.

If a shareholder does not respond, the shareholder would be deemed to have chosen to receive meeting materials from the company website and/or the ASX (for listed companies). We do not believe shareholders would be disadvantaged by this for two reasons:

- first, we refer to our comments above on the effective implementation of the 2007 reforms providing for the annual report to be made available by email or online. Since this time, shareholders have become even more accustomed to online engagement and reliance on hard copy materials is declining, and

- second, engaged shareholders are aware of the timing of their company's AGM, as this meeting takes place approximately the same time each year (and in any event most companies publish an indicative financial calendar which advises shareholders of key dates such as the full and half year results, AGM and scheduled dividend payments), and will take active steps to ensure that they participate, should they want to.

Transitional arrangements
As referred to above, companies could send a one-off communication asking shareholders to provide their email and/or mobile phone details and/or opt-in to receive future meeting materials by mail. Other transitional arrangements could include media releases from the government and companies on the change in law. Listed companies could also issue ASX announcements, encouraging shareholders to contact the company to provide their email and/or mobile phone number details.

Other considerations

Amount of notice
We endorse a reduction in the notice period from 28 to 21 days and recommend the government review this position following the introduction of the reform regarding the delivery of meeting materials.

Extension to other documents
We also support a universal and technology neutral approach being taken with respect to other shareholder documents, such as dividend statements and further recommend that the government review this position following the introduction of the reform regarding the delivery of meeting materials.

Small shareholder-base unlisted public companies
Whilst this matter has not been raised in the proposals paper, we take this opportunity to recommend a review of the law requiring all public companies with more than one member to hold an AGM. We recommend that unlisted public companies should not be required to hold such meetings if all shareholders consent (with the ability to withdraw a standing consent). For small shareholder-base unlisted public companies the holding of a general meeting seems of little value. The law should allow the AGM to be dispensed with if every shareholder agrees.

In the case of AMP, our corporate structure is such that some of our subsidiaries which are public companies (and are required to be public, rather than proprietary, for regulatory or commercial reasons) have more than one member, with members being wholly owned subsidiaries of AMP. The present law requires us to hold an AGM for these companies, which creates an administrative burden for no value.

We would be happy to discuss this matter with you in more detail. Please do not hesitate to contact David Cullen on [redacted] or Vicki Vordis on [redacted]

Regards

[redacted]

David Cullen
Group Company Secretary

[redacted]

Vicki Vordis
Senior Company Secretary