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Governance Institute of Australia

Improving engagement between ASX-listed entities and their institutional investors

Background Paper

February 2014

The Sponsors of this project are

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Sandy Easterbrook

Sandy Easterbrook is well-known on the Australian and international governance scene.

In the mid-1990s he founded Australia's first governance and proxy advisory firm, Corporate Governance International, now called CGI Glass Lewis and part of the international Glass Lewis group headquartered in San Francisco. Over almost two decades as a principal, director and then consultant of CGI/CGI GL, he became familiar with major institutional investors and entities listed on the Australian Securities Exchange and many of their principals, directors and senior executives. Prior to that, he was a partner for many years of the major corporate law firm now called King & Wood Mallesons. Internationally, he has a long involvement with the International Corporate Governance Network, the international investor-led organisation of governance professionals, including past service on its board and nominating committee.

Sandy is now an independent adviser in the governance area. He sees this Background Paper and the resulting Guidelines as the natural evolution at this time of his work in the area, which started with the First Edition of the Governance Guidelines of the Australian Investment Managers' Association[1] (known as 'the Blue Book') that he co-authored in 1995.

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Request for submissions

The Sponsors welcome submissions[2] on all of the matters raised in the Background Paper and Guidelines and also on any further issues related to the engagement process that are not canvassed in the material.

Please send submissions either by email to **judith.fox@governanceinstitute.com.au**

or in hardcopy to:
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If sending a hardcopy, please also email your submission as a Microsoft Word file.

Any queries may be directed to Judith Fox at judith.fox@governanceinstitute.com.au or on (02) 9223 5744, or Sandy Easterbrook at s.easterbrook@bigpond.com or on 0431 440 409.

Closing date for submissions

Please forward submissions by:
24 April 2014

The Sponsors will take the public feedback into account for the purpose of preparing a definitive set of Guidelines for best practice engagement between ASX-listed entities and their long-term institutional investors together with an accompanying consultation response paper, which they intend to issue in June 2014.

The Sponsors hope that this extended consultative process will result in widespread adoption and support of the Guidelines by both ASX-listed entities and institutional investors.

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Introduction

Purpose of the project

A healthy relationship between ASX-listed entities and their long-term institutional investors (both asset managers and asset owners) is crucial to the efficient functioning of Australia's economic system. Effective engagement between them is central to maintaining the health of the relationship. When effective engagement takes place, benefits accrue to both parties, who both want the entity to prosper and perform well over the long term.

Consequently, engagement between those entities and institutional investors is a leading edge area of corporate governance in Australia.

The purpose of this Project is to research the current status of that engagement (outlined in the Background Paper) and, on the basis of that research, develop a set of practical guidelines to improve the efficacy of that engagement.

The Background Paper (the Paper) is accompanied by an exposure draft, *Guidelines: Improving engagement between ASX-listed entities and their institutional investors* (the Guidelines) and the two should be read together.

Methodology of the project

Stage 1: Roundtable

In June 2013, the Sponsors convened a Roundtable to bring together principals from all sides of the Australian governance dialogue to look at practical ways to improve engagement, and thereby the overall relationship, between ASX-listed entities and their long-term institutional investors.

Roundtable invitees were either senior executives of major institutional investors (asset managers and asset owners) or chairmen, non-executive directors or company secretaries of ASX-listed entities.

The Roundtable took place under the Chatham House Rule[3].

Stage 2: Interviews

Following the Roundtable, the Sponsors interviewed all those who had attended the Roundtable and others with a significant involvement in or knowledge relevant to the engagement process between ASX-listed entities and institutional investors (jointly the Participants). A standard form questionnaire was issued to all Participants prior to each interview.

The interviews took place from late July through early October 2013 and were confidential in nature.

Stage 3: Draft Background Paper and Guidelines

The Sponsors issued a draft version of the Background Paper and Guidelines in light of the experience of Stages 1 and 2 and, in particular, to give effect to the most consistent themes evidenced and expressed during Stages 1 and 2.

All Participants were invited to review the draft Paper and Guidelines and provide input prior to their release for public consultation.

Stage 4: Exposure draft of Guidelines and Background Paper

The input from Participants is reflected in the exposure draft of the Guidelines and the Background Paper.

Short-termism is a huge problem throughout the entire system. We need to break this cycle. The relationship between the asset owner and the company is one way through this — communicating the long-term objectives of members.

Superannuation fund

Flow-on benefits

While the Project concentrates on ASX-listed entities and institutional investors, the extended consultative process, the resulting Guidelines and the response to them of entities and institutional investors should have wider flow-on benefits.

In particular, retail investors will thereby gain a better understanding of key aspects of the relationship between ASX-listed entities and institutional investors, including accepted best practice for engagement between them. That should correct any misconceptions of how those aspects of the market work in practice and help to improve the relationship, including engagement, between entities and investors generally.

A better approach than regulation

The Sponsors and Participants believe that this market-informed and consensus-based approach to improving engagement between ASX-listed entities and their institutional investors is better than a regulatory approach for both parties, and, consequently, better for the overall Australian economy.

Background to engagement practice

What do we mean by engagement?

In this Paper and the accompanying Guidelines, engagement refers to the ongoing structured and informal interaction — in person at a meeting, or over the phone, or even by email or letter and throughout the year, as well as in the period leading up to, and at, the AGM — of an institutional or retail investor with a company about the company. It can also be such an interaction of a third party, such as a proxy adviser or collective engagement service, used by institutional investors, with a company about the company. The interaction may be initiated by either side.

The two streams of engagement in Australia

Historically, engagement occurred between the chief executive officer (CEO), and frequently also the chief financial officer (CFO), of an entity and the (senior) investment analyst researching the entity on behalf of an asset manager. It was centred on the financial results and prospects and associated aspects of the entity and took place via results presentations, analyst briefings and roadshows to ensure the financial results were widely disseminated and understood and also as an avenue for marketing the entity to asset managers.

This first stream of engagement continues in its importance today and has developed into an established process. There is general consensus that this engagement process is well understood and effective, although it can have a relatively short-term focus.

From time to time in this first stream of engagement, the asset manager may have had a concern in relation to the governance of the entity. For understandable reasons, this was usually broached at a different senior level, often between the chief investment officer (CIO) or equivalent of the asset manager and the entity's chairman.

In the case of asset owners, voting at the entity's annual and other general meetings was outsourced to the asset manager as part of the investment mandate but often voting was undertaken as a formality or not at all.

The early 1990s ushered in a series of changes following a particular sequence of events[4], which prompted thought leaders in the funds management industry to take anticipatory actions[5] to avert expected legislative intervention. These actions had as their focus an increased emphasis on better governance, generally, and regular and better informed voting, in particular.

The result was that a separate, second stream of engagement on governance emerged between asset managers and ASX-listed entities, increasing, in particular, the chairman's participation.

The further participation, as their size and resources expanded, of the asset owners and clients of the asset managers in monitoring those issues and, increasingly, taking responsibility for voting is the latest evolvement of this second stream.

The increased focus on governance brought a change in perspective. The traditional dialogue between institutional investor and companies was dominated by sell-side (broking) analysts who were driven mainly by immediate buy/sell/hold recommendations. This type of analyst research coverage is still very important, but it is very different from the long-term perspective that drives asset owners.

The second stream is not yet as consistent and well understood on both sides as the original engagement stream.

Superannuation Guarantee Charge (SGC) and the fiduciary duty of superannuation funds

It is now around the quarter century mark since the introduction of the SGC, which requires all employers to provide a set, minimum level of superannuation each year for each employee. The result is that the Australian workforce diverts a significant and increasing amount of its wages or salary into limited options for long-term investment that, with limited exceptions, cannot be accessed until retirement.
The policy rationale of this

compulsory system is twofold (and interconnected): to ensure that the employee acquires a 'nest egg' of savings to fund, at least partially, their retirement; and to reduce the financial load on the state to contribute to that retirement.

Obviously, the larger the savings at retirement, the more the retiree will be self-funded and, correspondingly, the less impact there will be on the public purse, including on the taxes paid by subsequent generations.[6] It follows that the investment strategies for an employee's regular SGC contributions over his or her working life should be designed to achieve such a long-term objective. Indeed, investment strategies for those contributions designed to achieve shorter-term benefits during that working life are not just inconsistent with a long-term policy objective but may produce a significantly inferior long-term outcome. The employee forced to make their superannuation contributions, and the state which has to pick up any outcome shortfall, could both point to a policy failing and could have justifiable grounds for complaint against those in charge of the investment result.

Due, however, to the structure under which SGC contributions are invested, the short or shorter-term benefit of their investment tends to be what is measured, rewarded and valued. At the risk of over-generalisation and over-simplification, traditionally, the employee's SGC contributions are made to one or more approved superannuation funds, which allocate them under various specific investment mandates to, but without long-term security of mandate by, approved fund managers, whose investment performance is measured and rewarded according to a specific benchmark.[7] In the case of equities, performance against the benchmark is usually evident on a short-term basis, making it a risky career move for a fund manager to fall too far below the benchmark for any, even a comparatively short, length of time.

Publication of short-term comparative performance tables set expectations at superannuation fund and member level and work to entrench the system of short-term benchmark hugging.

The current scenario has been facilitated by the understanding at trustee/board level in many superannuation funds that they can have regard solely to the financial return of their members and, due to the fact that in the case of equities the financial return can be measured accurately in the short term but not with accepted certainty in the long term, it is accepted that a short-term performance measure is secure and appropriate while a long-term measure is risky and inappropriate. It is also understood that the ability to terminate the mandate in the short term must be retained.

In light, however, of mounting evidence[8] of the adverse impact on long-term shareholder value of various long-term risks, the narrow conception of the fiduciary duty of superannuation fund trustees/boards is increasingly being challenged. Proponents of a broader view of the fiduciary duty, which not only permits but requires long-term risks and opportunities to be appropriately and demonstrably catered for in investment strategies, are pursuing ways to endorse that view, including via litigation and statutory clarification.

The issue of short-termism in relation to financial markets and achieving long-term investment outcomes for Australians through superannuation was raised in Stage 2 interviews and there was common acceptance that it is a serious problem. How to tackle it securely and effectively is, however, unresolved. Statutory clarification of the fiduciary duty of the trustees/boards of superannuation funds would certainly assist.

Meanwhile, the developments outlined in this Paper evidence a clear trend. As a natural consequence of their increasing size, resources and sophistication, superannuation funds and other asset owners are taking greater control of, and more participation in, the investment of their members' funds.

That trend is not only economically inevitable. It will also, with appropriate leadership, be beneficial for those on whose behalf the investment is made and for the economy as a whole. In particular, it can be used to improve the long-term outlook for the investments of the beneficiaries, including their

equity investments, to better align with the long-term liability of the fund to its members, many of whom are still early in their working careers and will not retire for decades.[9]

The increasing engagement by asset owners directly with their major investee entities is part of that process. The Guidelines can be used by both parties to assist and hasten that process.

The input from Stages 1, 2 and 3

These stages have identified a number of consistent themes that are useful for improving engagement. Those themes are outlined below and form the basis for the exposure draft of the Guidelines.

Guidelines 1 — 4: Explain your position in the mosaic and keep abreast of information

While there is increasing appetite among both ASX-listed entities and institutional investors (asset managers[10] and asset owners) for constructive communication and engagement with each other, there is considerable variation both in how far each entity and each investor has progressed in that regard and in how each is set up for that purpose. Correspondingly, although understanding these matters is fundamental to constructive communication with and engagement by an entity and an institutional investor, that understanding is often imperfect.

With some exceptions, the larger organisations (both entities and institutional investors) are more advanced, competent and knowledgeable in these matters, which is generally a product of their available resources.[11]

Consequently, a number of Participants have recommended that:

- the Paper should outline for the benefit of all entities and institutional investors the current mosaic of engagement (or, in their words, 'Who's who in the zoo'), and
- the Guidelines should propose that each entity and institutional investor should explain their position in the mosaic, that is, how each conducts and is set up for engagement, including how each is resourced for that purpose, preferably by means of a discrete, publicly accessible and appropriately labelled and linked section of their website, and should keep that information up to date.

It was considered that entities, large and small, should be able to readily and easily access such fundamental information in the case of their significant or potential institutional investors; and investors should be able to similarly access corresponding information about the entity. In each case, that knowledge will enable the organisation to know whether and, if so, how it can engage constructively with the other.

'Who's who in the zoo'

Asset owners have traditionally outsourced, on the advice of their consultants, investment of their funds to panels of external asset managers with accepted expertise and experience in the selected investment area. This was mainly due to the generally small size (relative to today — a few major company-based funds were exceptions to the rule) and minimal in-house resources of those owners.[12]

The appointment of each asset manager has been pursuant to a specified mandate, under which the manager has traditionally handled all aspects of the mandate. This includes, in the case of equities, selection (including changes) of stocks, voting of those stocks and any engagement with each investee entity.

Traditionally, engagement by the asset manager has been with the entity management on financial results and prospects and operational matters but it has expanded to also cover governance and associated matters typically at entity board level, and usually with the entity's chairman. At times the chairman is accompanied in such engagement meetings by another representative of the entity (for example, the chair of the remuneration committee).

In some asset managers, all aspects of the mandate, including voting and engagement, are carried out by the investment team. In others, investment aspects are handled by the investment team and there is a separate person or team handling

Not every fund has got to the model of wanting to engage. This can also be confusing for companies. But if you have members, you have to express the views of those members to the company, and that's a long-term view. The fund might not be engaging because it doesn't want to pay for a governance person or has not yet thought it through. The question is: should it be facilitated engagement, or everything done in-house or outsourced completely?

Superannuation fund

the governance and associated matters, including voting and board-level engagement. In these latter cases, the type and extent of interaction between the investment and governance elements can vary. In other cases still, the asset manager plays no role in engagement with companies (for example, certain passive or quantitatively-driven portfolios where stock selection is driven by technical input rather than company fundamentals).

However, as the pool of compulsory superannuation contributions in Australia has increased[13], so have the size (accelerated by consolidation, for various reasons, in the industry), resources and sophistication of the asset owners that control the investment of those monies.
Some consequences of that increasing maturity are:

- Asset owners have become or are becoming increasingly active in selecting, and monitoring the performance of, their external asset managers, including, in the case of equities, the managers' performance of delegated voting and other aspects of monitoring the corporate governance of investee entities. Typically, in such cases, the asset manager has to report its activity to the owner client 'after the event' on a quarterly or other basis, including how it voted on securities owned by the client and the reasons why it took those voting decisions.
- Many asset owners have accordingly developed their in-house capacity to handle the selection and monitoring of external managers, including the manager's voting and governance activity. As in the case of asset managers, in some asset owners that work is part of the role of investment personnel; in others, there is a separate person or team handling voting and associated matters.
- In a considerable number of cases, asset owners have reserved to themselves by various mechanisms the ultimate control of voting decisions. This can range from voting on a limited number of controversial, high-profile and/or entity-specific decisions, where the asset manager has to consult in advance with the asset owner and vote as decided by the owner, through to the asset owner itself voting, via one of the available electronic proxy voting platforms, on all resolutions submitted for shareholder vote for all stocks owned by them. The latter is usually to ensure that individual stocks owned by the asset owner, which may be duplicated in asset manager portfolios, are always voted the same way and votes do not 'cancel each other out' if managers vote differently from one another.
- More recently, a growing number of larger asset owners have developed or are developing some internal funds management capability, in part to improve their capability and expertise in external manager selection and monitoring.
- Again more recently, a growing number of larger asset owners are directly engaging with selected investee entities in the asset owner's portfolio, for example, the top 20/25 stocks by value plus any other 'substantial' holdings (representing five per cent or more of the investee entity's equity capital). In turn, this limited direct engagement is selected by the asset owner to make the best use of its limited resources for direct engagement.
- A different and earlier important development has been direct engagement with entities by a body, such as the Australian Council of Superannuation Investors (ACSI) or Regnan — Governance Research & Engagement (Regnan), acting on behalf and with the authority of a client group of asset owners. In some of these cases, the asset owner client delegates engagement exclusively to the collective body and, in other cases, the owner may also conduct limited direct engagement itself.

Notwithstanding the increasing participation of asset owners in voting and engagement, as outlined above, it can still be deeply ingrained in some ASX-listed entities that those roles are outsourced to asset managers. As a result, those entities are not accustomed to including the beneficial — or asset — owner in the engagement process.

For those entities, the term 'institutional investor' compounds the difficulty, because it blurs the line between the asset manager and the latter's client, the asset owner.

This can be further compounded if the entity hears from the asset manager that the entity does not need to engage with the asset owner and, indeed, a considerable number of asset owners have not (yet) developed a model of seeking to engage or, as indicated above, have delegated engagement exclusively to a body such as ACSI or Regnan.

In summary, ASX-listed entities need to distinguish between the asset manager and its client, the asset owner, and to understand if and how the latter in each case wishes to engage.

These varying situations at both asset manager and asset owner level provide the context for the first four Guidelines.

We provide companies with an overview of who we are, how we invest and how and who is responsible for voting, key areas of concern regarding voting activity, that is, board composition, capacity, capital raisings, remuneration-related issues and approach to two-strikes. We will engage with companies at all different levels, that is, board, CEO and other staff such as investor relations/sustainability/company secretary to get a more complete view of the organisation. In terms of priorities in discussion, often it is about the board representing shareholders and ensuring the executive is accountable.

Superannuation fund

Disclosure issues

ASX-listed entities are accustomed to disclosing a variety of governance information publicly for the benefit of investors — generally this is made available on an entity's website as well as in the annual report. However, such disclosure by entities is not comprehensive or uniform across the board.

The manner in which institutional investors disclose how they manage voting; how they choose to engage, including the use of third-party engagement or other services; and how they are set up to engage on governance and associated matters is, with a few notable exceptions, much less comprehensive and is certainly not uniform.

How asset owners invest, in terms of who their asset managers are, or whether they have developed or are developing internal asset management capability, is also frequently unclear.

Don't over complicate it. Don't over engineer it. Form a relationship and hold a dialogue. It is useful to meet even if we don't have issues. The board and chairman is the defender of shareholder rights. If you get a regular dialogue everyone gets more comfortable and then if something does come up you can talk about it. Engagement is all about the people involved and whether they are competent. Boards want to talk about long-term issues. They get sick of talking about remuneration. They want to talk about strategy and the direction of the company. They're interested in where we see value not just in their company, but in the market. They're interested in our macro view. It is particularly interesting to talk to directors with more than one board seat. We know the make-up of the board and the history of the board. Often we know the history better than the directors.

Superannuation fund

You need to know who your shareholders are, obviously. But who to call is the issue. We know our shareholders but there would be five people you could call at each and you're not exactly clear who to call. This is the job of the IR person, yes, but investors could do more to clarify who to contact. This would particularly help companies further down the food chain.

Non-executive director

We acknowledge boards have a tough time satisfying diverse shareholders. When we ask long-term questions the boards like that some shareholders are focused on that. It would be good if shareholders were more cohesive but everyone's got their own mandate.

Fund manager

Accordingly, Guideline 1 proposes that institutional investors (whether asset managers or asset owners) should clearly explain such information to ASX-listed entities.

Correspondingly, Guideline 2 proposes that ASX-listed entities should keep themselves up to date on, and take appropriate account of, such institutional investor information.

Guidelines 3 and 4 are the mirror of Guidelines 1 and 2. That is, Guideline 3 proposes that ASX-listed entities should clearly explain to institutional investors how they manage engagement on governance and associated matters, in appropriate detail and should keep such information up to date[14] and Guideline 4 proposes that institutional investors (asset managers and asset owners) should keep themselves up to date on, and take appropriate account of, such information about the entity.

There is still not an understanding of what the asset owner wants. They're treating us like a fund manager. So I'm on the distribution list but relationships are more than that. Why wouldn't you ring the 10 largest super funds to say, 'I'm letting you know I'm here and what sort of relationship do you want?' At which point the fund can say, 'I don't want one' or 'Deal with ACSI' or 'I want this sort of relationship'. It's not to say that it doesn't happen at all. There are some really good practices but it has to be across the board.

Superannuation fund

I hate the term institutional investor. It blurs the line between the fund manager and the owner. And saying that the company should engage with the institutional investors does not help. We need to separate the fund manager and the asset owner. And we need to get the message across that asset owners are welcoming people.

Superannuation fund

One of the unintended benefits of the two-strikes rule is that it has provided chairmen and directors with the opportunity to shoot the breeze with investors, and we can talk about a whole bunch of issues related to the company. We have seen huge improvements in engagement and it was just coincidental with the fact that we manage a lot more money in-house.

Superannuation fund

Guidelines 5—9: Proxy voting and proxy advisers

Many institutional investors (asset managers and asset owners) have adopted guidelines (either their own guidelines or one of the publicly available industry guidelines[15]) for the voting of ASX-listed stocks in their portfolios and other aspects of the governance of those entities.

ASX-listed entities need to understand these guidelines and their implications for the entity generally and for the entity's constructive engagement with the institutional investor in particular.

Many institutional investors already provide their guidelines or a summary of the guidelines to ASX-listed entities or otherwise make those guidelines or a summary publicly available, including through disclosure on their website. However, the practice is not comprehensive or uniform across all asset managers and asset owners.

Conversely, some institutional investors remarked in their interviews that, although they had provided their guidelines to ASX-listed entities, it was apparent in engagement with some entities that they were not aware of or had given no consideration to those guidelines and were surprised when the institutional investor had voted or otherwise acted in line with those guidelines.

This provides the context for these Guidelines.

Guideline 5 proposes that institutional investors should disclose to ASX-listed entities the proxy voting and other governance guidelines, or a summary of the guidelines, that they apply to the entities in which they invest, and should keep that information up to date.

Guideline 6 further proposes that proxy advisers should similarly disclose to their institutional investor clients and to ASX-listed entities the proxy voting and other governance guidelines, or a summary of the guidelines, that they apply to the entities they research and should keep that information up to date.

Guideline 7 proposes that proxy advisers should disclose to their clients and the ASX-listed entities on which they report what periods during the year are best for the proxy adviser for engagement and whether any periods are problematic for the adviser for engagement.

Correspondingly, Guideline 8 proposes that ASX-listed entities should keep themselves up-to-date on, and take appropriate account of, investor and proxy adviser guidelines.

They should also allocate responsibility for knowledge of and dissemination within the entity of institutional investor and proxy adviser guidelines at both board and management levels. While entities should be free to nominate to which resource these responsibilities have been allocated, according to their resources and size, the company secretary and investor relations function, whether employed internally or sourced externally, are good examples of where these responsibilities may sit.

With most of our clients we vote. Some we advise. Some we have no input unless we think there's a risk they'll make a bad call as there is a serious issue. We have to form a view and support it in writing and if we disagree with proxy advice or the company we have to put that in writing. We subscribe to two proxy advisers — we read their material but form our own view. We cross-check that advice with our own thinking and make sure we're not missing something.

Fund manager

Some institutional investors, notably some based overseas and without Australian-based resources, are believed to effectively outsource the voting of ASX-listed entity stocks in their portfolios, usually through an automatic electronic process. In these cases, the stocks are voted in strict accordance either with the voting recommendations of the institutional investor's proxy adviser or the voting guidelines or policies customised for the investor by the proxy adviser or another promoter of such a service.

This one-size-fits-all practice provides the institutional investor with the cheapest proxy voting outcome. It also often includes a standard or customised electronic voting reporting system that enables the investor to report that it has carried out its own or delegated voting responsibilities in respect of all stocks in accordance with a consistent policy.

This approach should be contrasted with the well-evidenced practice of other institutional investors, notably those with significant Australian-based resources, to make their own case-by-case voting decisions. They do so by taking into account research and recommendations from a range of sources, including:

- their own proxy voting and other governance guidelines
- the voting recommendations of one or more proxy advisers — some fund managers and superannuation funds subscribe to more than one proxy advisory service — and
- other information considered relevant by the institutional investor, including information from their fund managers and the particular circumstances of the ASX-listed entity.

This approach is, of course, more resource-intensive, and therefore more costly, for the institutional investor but results in a more considered and informed voting decision in each case.

Accordingly, Guideline 9 clarifies that institutional investors should clearly explain to ASX-listed entities which of the above (or other) practices the investor uses to make and execute their voting decisions or recommendations.

Historically the investment managers were making the investment decision and lodging the vote. We're in a transition phase as we grapple with the movement of the vote to the fund. Boards and investor relations people have been very slow in picking up on this structural shift … Companies say that they don't talk to index funds, yet they have developed guidelines and large holdings and they vote. A lot of funds do have their proxy voting guidelines on their websites, but very few chairs get their investor relations people to go and look at these. They talk at the investor or the proxy adviser. But a chair should not be having a discussion with an investor without knowing what the investor guidelines say.

Service provider

We do our own voting and will override fund managers if their views do not coincide with ours.

Superannuation fund

We receive advice from two proxy advisers but these are simply inputs into our decision-making framework.

Superannuation fund

Proxy voting is a very narrow window on the sorts of issues institutional investors want to engage on in a broader sense. We do our own voting and we make our own decisions.

Superannuation fund

Guideline 10: Use technology

The provision of the governance information that Guidelines 1—9 address, and the capacity for both companies and institutional investors to easily access such information, is facilitated by the use of technology.

Accordingly, Guideline 10 proposes that entities and institutional investors should use technology to provide and update in a timely manner such information.

In particular, the use of a discrete governance section on the website of a company or institutional investor, which is easily accessible and easy to navigate, facilitates disclosure.

The exposure draft of the 3rd edition of the ASX Corporate Governance Council's Corporate Principles and Recommendations includes a new recommendation that a listed entity should provide information about itself and its governance to investors via its website. This recognises that in the digital age, market participants expect information of key stakeholders to be freely and readily available on their websites.

If an institutional investor has a valid reason not to provide any of the disclosure elements of the Guidelines on its website, it should contact the companies in which it invests to provide them with, and to update in a timely manner, that information in a user-friendly way.

During the interviews conducted with Participants, it was also noted that asset owner websites are focused properly on their members and that the focus should not be on the needs of the entities in which they invest. However, it was also noted that entity websites are not focused solely on their members — their shareholders — but are also focused on providing relevant information to customers, staff and other stakeholders. The Guidelines take the view that it is good governance practice for both entities and institutional investors to take account of the information needs of a wider set of stakeholders.

There was also agreement that consideration needs to be given to introducing further efficiencies into the process. Technology such as webinars could be used to disseminate information when an entity sought to provide information to a range of investors, for example, if it was introducing a new remuneration framework.

Guidelines 11 — 13: Know the significant parties

Companies might know who the beneficial owners are, but it is so deeply ingrained that everything is outsourced and the owner was silent, that companies just aren't used to factoring in the beneficial owner. And companies have said that the fund manager has told them that they don't need to talk to the owner. There is some turf protection here, and some of it's because that's how it's been. Fund managers have been used to controlling this. Sometimes also the company does not want to bother us, because we've outsourced it. If you outsource something, that's where it goes.

Superannuation fund

Guideline 11 states that ASX-listed entities should know who their significant[16] institutional investors are, both at asset manager and asset owner level, bearing in mind that the entity's securities owned by an asset owner may be duplicated in two or more of its asset managers' portfolios.

For this purpose, entities should know, and understand how to use, the beneficial ownership tracing provisions of the Corporations Act[17] and how those provisions can identify their significant institutional investors on a regular and systematic basis[18], including through use of one of the businesses that undertake such tracings for a fee.

Many entities already make judicious use of the ownership tracing provisions to ascertain who their significant investors are, including both asset managers and asset owners.[19] By using that information the entity can prioritise its investors for engagement and plan how and when it should engage with them, thereby best targeting its efforts and making best use of its available engagement resources.

Entities have made the point that the tracing notice regime is extremely bureaucratic and cumbersome to apply, and that in conjunction with the breadth of different types of custodians and nominees it is not as efficient in providing information on the beneficial owners of the entity as it could be.

Some asset owners appear directly and in their own name on shareholder registers, making the process straightforward for entities to identify their interests in entities. While it is important that shareholders continue to be able to structure their holdings in the manner best suited to them, which includes the capacity for the underlying beneficiary of the shares to be someone other than the shareholder whose name appears on the register, asset owners could consider the benefits of asking custodians to disclose them on the register as the beneficial owner.

Correspondingly, Guideline 12 states that institutional investors should know who their significant investee companies and also that:

- those that are asset managers (including those with passive mandates) should know enough about the businesses, governance and other relevant circumstances (including in relation to each resolution submitted for shareholder vote) of each entity in a portfolio managed by the manager to make informed voting decisions or recommendations and to undertake effective engagement in respect of the entity if their mandate includes voting and engagement
- those that are asset owners and control or make voting decisions should also endeavour[20] to know who their significant[21] investee entities are and to know enough about the businesses, governance and other relevant circumstances (including in relation to each resolution submitted for

shareholder vote) of each such entity to make informed voting decisions and to undertake effective engagement in respect of the entity.

It is for the asset owner to decide how it will access the information that will build this understanding. They may obtain advice from asset managers, or intermediaries such as ACSI and Regnan, as well as research from proxy advisory services. The interview process confirmed that many asset owners subscribe to more than one proxy advisory service, refer to that research and also take soundings from their asset managers, but make their own voting decisions.

The fact that voting the securities of ASX-listed entities appropriately requires sufficient understanding of both the entity and the issues, and how that relates to effective engagement was a theme that surfaced during interviews and provides the context for this Guideline.

Intermediaries

A further theme from interviews was the need for ASX-listed entities to know, and at appropriate times engage with, the proxy advisers and collective engagement services (such as ACSI or Regnan) operating in the Australian market and used by their significant institutional investors.

Various asset owners pointed to the fact that a number of entities do not necessarily understand that bodies such as ACSI and Regnan are authorised by asset owners to engage on their behalf. As intermediaries, their role is to act on behalf of the collective, and their business model is to understand the operations and issues of the entities in which the funds invest in order to facilitate engagement. In these instances, the asset owners that utilise such intermediaries see the collective model as more efficient than any one owner seeking to build up the requisite expertise on the business and issues of the entities in which they invest — there is an economy of scale.

Collective engagement is also undertaken on the basis that as a group they are more likely to be attended to, as well as that it is efficient and cost-effective. The asset owners also recognise that it is efficient for the entities. The collective approach will also reflect the manner in which the asset owners invests, the size of its holdings and its members and stakeholders, that is, it is fit for purpose.

Even the best-resourced asset owners require quality, independent information gathered by proxy advisory services. Accessing quality, independent information in relation to a range of issues assists institutional investors to discharge their voting responsibilities. It is the investor that seeks engagement with the entity and that may seek changes in the governance practices of the entities in which they invest. They may use the research and advice received from proxy advisory services to develop their engagement with entities.

Consequently, Guideline 13 proposes that entities should know and engage with intermediaries.

The following organisations provide governance research and advice, including recommendations relating to voting for or against proposed resolutions at general meetings:

- Australian Council of Superannuation Investors (ACSI)
- CGI Glass Lewis
- ISS Governance
- Ownership Matters

Proxy advisory services CGI Glass Lewis, ISS Governance and Ownership Matters research and analyse publicly available information on entities concerning the entities' governance practices, in order to provide independent voting and governance advice to their clients, the institutional investors.

ACSI is a governance adviser providing a proxy advisory service and a member-based body representing institutional investors in engagement with entities.

Why are we asking the question of who is on the register? Is it influence about voting? Or is it who really are our shareholders to influence buy or sell? Or is it who's who in the pecking order for meetings? It's not always clear why they want to know. But externally managed funds can be seen as the owner. If you want to know who you're long-term owners are, it's important. But you also need to know your fund managers.

Fund manager

There is a constraint on time for directors. The greatest benefit would be to illuminate the ownership.

Non-executive director

Investor relations — there are some good ones and some bad ones, and the good ones make a big difference. Often the investor relations role is not affordable in smaller companies.

Non-executive director

There is the possibility for a smart hedge fund to disguise itself on the register — this is a problem for those with offshore investors — and at times when you really want to know who they are you might not be able to find out. If the corporation is being asked for transparency then why aren't investors equally obliged? I don't think the lack of transparency is intentional in most cases — it is evolutionary … Tracing notices are available but take time.

Chairman

Guidelines 14 and 15: Have regular and meaningful engagement

Constraints on the timing of engagement

The vast majority of ASX–listed entities are companies incorporated under the Corporations Act 2001 (the Act). The Act and the ASX Listing Rules impose requirements on listed companies in relation to the release of the results and the general meeting, including:

- lodgement of results with ASX within two months after the end of the company's financial year, and lodgement of the annual report with the Australian Securities and Investments Commission (ASIC) and ASX within three months after the end of the company's financial year
- holding an AGM once a year no later than five months after the end of the company's financial year
- providing shareholders with a minimum of 28 days' notice of a general meeting.

In practice, this means that for the majority of ASX-listed entities (those with a 30 June balance date) the results are issued during August and the AGM is held on a day in the two-month period from October to November. With the majority of entities' end of financial year coinciding, this results in the majority of AGMs occurring within the same two-month period of the year. This introduces constraints into the system, as multiple annual reports and notices of meeting are issued at much the same time, requiring analysis by institutional investors and proxy advisory services within a very tight time frame. This period takes place from mid-September to mid-November. This is referred to as the 'peak period' for institutional investors and proxy advisory services.

Consequently, an institutional investor or intermediary will have difficulty finding time to communicate with entities between mid-September and mid-November unless they are seeking to engage with a particular entity in relation to specific proposed resolutions. On that basis, entities should set up meetings in advance of the reporting season, which could provide useful input into any decision-making concerning matters that will go before shareholders later in the year.

Importantly, it's an organisational relationship. It is the company and the intermediary. It's irrelevant if it is X or Y. It is not a relationship with the individual. It is not personal, including criticism. It is an organisation talking to an organisation.

Intermediary

Traditionally the company reaches out when it is bad news or it is in need. This is the wrong time. This should not be the first time that the company is knocking on the investor's door. But that's changing — it is about seeking input and testing the thinking. The ASX50 get it and the investor relations person there has the ear of the chair.

Service provider

What does not work is boards that do not understand that the time to meet is outside the proxy season.

Fund manager

The benefits of a regular engagement program

The interviews confirmed that it is a useful mindset for entities and their boards to make the time to have fruitful, non-rushed discussion with their institutional investors and their intermediaries that can influence decision making. Institutional investors and their intermediaries stressed that the engagement season runs for at least six months of the year and that it should not be 'crammed' into one month after the announcement of results or half-yearly results.

The point was also made several times that entities should not wait until a problem or controversial issue arises to attempt engagement for the first time. Asset owners noted that they would seek to meet with the chair and relevant committee chairs at least annually to discuss strategy, governance and related matters.

Efficiency

All parties expressed a desire for constructive, targeted discussion and debate based on sound evidence. Another key theme to emerge from the research is that with more parties seeking engagement, efficiency is essential.

While there was recognition that group briefings were efficient in targeting more than one institutional investor simultaneously, all parties acknowledged that these had their limitations. It was noted that such briefings tend to facilitate the provision of information by the management or chairmen of entities, but not the provision of feedback. That is, they tend to be one-way communication, as institutional investors acknowledged that their participation is likely to be less in such group briefings — they will listen, but be less inclined to ask penetrating questions. Such questions can be a source of competitive advantage for institutional investors — investors noted that they can feel that their intellectual effort is being garnered by other institutional investors in public fora, with attendant concerns about 'free-loading'.

All institutional investors noted a preference for one-on-one meetings, where they can enter into a two-way dialogue and address issues on a case-by-case basis. Institutional investors were of the view that it is not possible to introduce a standardised approach to engagement, as it would not provide for the frank, informed discussion basis that both entities and investors find is mutually beneficial. Moreover, both institutional investors and entities acknowledged that any investor currently holding one-on-one meetings will not forsake such access.

Interviews also confirmed that institutional investors have had far more access in Australia than in other jurisdictions — to both management and chairmen — and that the two-way engagement that has developed here has been

Establishing long-standing relationships is very important, to gain the trust and confidence of key investor-side people, including so that, if an issue does arise, there is a good climate for constructive dialogue. And where there is systematic one-on-one engagement on both sides — that leads to a more knowledgeable, sophisticated and nuanced dialogue. That requires consistency/continuity of personnel engaging on both sides — a change of personnel can take things back to square one in terms of knowledge and relationship. So, good succession planning of engagement personnel is important.

Non-executive director

Engagement and voting do not need to be coupled. Plan the engagement over a 12-month period. But volatility in the market can see a need for engagement in the peak period.

Superannuation fund

When you want to test your new approaches to the business, you cannot put that on the website. This has to be a one-on-one discussion to talk through the issues.

Chairman

productive for both entities and their investors. Institutional investors in particular expressed reluctance at any change that might undermine this fruitful history of engagement.

The collective engagement services already provided by some intermediaries are an efficient allocation of resources, providing focused discussion in one-on-one meetings on issues relevant to more than one institutional investor.

Institutional investors also acknowledged that they need to be informed and that if they do not have the expertise required for engagement, they need to acquire it, as otherwise it is inefficient. Entities and institutional investors both commented that if investors wish to engage with the top companies, they need to know how to engage and to have an understanding of the entity.

While both institutional investors and entities were of the view that an agenda may not always be appropriate, there was an equal understanding that, without clarity as to the purpose and expectations of each engagement, the meeting could be unfocused, ill-informed and unproductive.

Accordingly, Guidelines 14 and 15 propose that entities and institutional investors have a regular engagement program and make engagement efficient and meaningful.

When I meet chairmen I like to talk about the long-term cultural and strategic issues and where the major pressures will be from a futuristic perspective. We're long-term, stable investors — the sort a company likes. We own a certain percentage of the company now and will do in 20 years.

Superannuation fund

Directors are focused on developing relationships with investors and investors are focused on developing relationships with directors, so there is a structural challenge. It is frustrating to see practices emerging that are about developing interpersonal relationships, when the engagement should be a two-way dialogue that allows each side to ask the other for information and views. Having a relationship in itself should not be the end in itself . . . The volume of new players makes it more challenging. There is so much relationship developing going on that it is hard to get to the content/outcomes.

Intermediary

There must be respect in every meeting. Confidentiality must be respected. Some groups are better at it than others. They know the questions to ask. There is no agenda, but they have done their homework.

Chairman

There are companies that have resisted approaches from shareholders and then they have a problem and expect a relationship. They expect shareholders to jump to it.

Intermediary

It is now the norm for the chairman to go to major shareholders, not at the time of the vote — this is not a good time as it can be busy and acrimonious. I go six months earlier, usually accompanied by someone else from the company. But not the CEO. I have learnt an enormous amount from these meetings.

Chairman

For engagement to be successful, it needs to be mutually beneficial. The chair needs to get something out of it as well . . . It's got to be specific rather than generalities. When we go into a meeting we're prepared, we've done an ESG analysis and a SWOT analysis. So we know the issues for this company are X, Y and Z. We know where the risks lie for this company.

Fund manager

Group briefings make sense from a management perspective — they are more efficient. But it requires the institutional investors to want to do it that way and they like the one-on-one. They like the intimacy. If you want to change the rem structure, a small company could try a conference call or a webinar to test the changes with investors. But it depends on the magnitude of the change. You would also need a lead from the institutional investor that they were willing to do this. It might be better for investors. It would take less time and be less wastage and they can hear what others think.

Non-executive director

Some issues can work in a group briefing — environmental performance or OH&S. If the chairman wants to get a message out, a group forum can be OK. But don't expect a good level of questions.

Superannuation fund

Guideline 16: ESG issues

Boards do have a role to play in ESG to the extent that it helps get insight into the governance of the company. Whereas the fund manager is interested in the operational side and whether, say, an environmental fine might hit the bottom line, the asset owner is interested in the governance of that. Sometimes we want to meet with the CEO, but only meeting the CEO will not get us to exercising our fiduciary duty. In meeting the board we are representing our long-term members. I'm not making the decision to buy and sell but I'm wanting to make sure our investment is being looked after. Can the board control that?

Superannuation fund

Difference of view

Input to the project has been notable for the substantial commonality of view on all sides of the governance dialogue on most of the themes canvassed in relation to engagement. The Paper and the exposure draft of the Guidelines have sought to capture this alignment of perspective.

One significant area of difference that has emerged, however, is where responsibility for engagement on environmental, social and governance (ESG) issues should sit.

There is agreement that governance (G) issues must always be a board responsibility and that it makes a huge and beneficial difference in setting the culture and tone in the entity where management also demonstrably takes the lead in 'walking the G talk'.

A significant number of entity directors, however, consider that environmental and social (E&S) matters are of an operational nature, properly part of management's responsibility and that any discussions of risk attached to these areas is a CEO conversation. Institutional investors, on the other hand, have concerns about the longer-term implications of mismanagement of E&S risks for the value of the investment. Investors are of the view that, even if there is no risk at present, these broader issues can have an impact on long-term investment. Investors noted that E&S matters can be potential warning signs of poor cultural values and management of material risks generally. On that basis and in line with the increasing focus on risk management as a key aspect of governance (G), they believe it is part of the board's responsibility to oversee the proper handling of E&S matters.

The significance of key ESG risk factors such as bribery and corruption exposure and the management of labour and human rights practices in a company's supply chain, particularly for those entities with offshore operations, as well as climate risk exposure were cited as examples of where board oversight would be of interest to institutional investors in an engagement.

Importantly, institutional investors do not look on ESG matters in terms of promoting ethical or other investment values but as a matter of risk management to guard against longer-term damage to their investment's value.

Materiality can confound as can fiduciary duty when deciding where the line is in terms of the ESG responsibility of management and the board. There is a big disconnect between the asset owner and the fund manager on ESG. What the fund manager sees when they look at [an entity] is not what the asset owner might see.

Superannuation fund

The solution

A practical way forward for engagement on ESG between ASX-listed entities and institutional investors is for them to discuss their respective perspectives of ESG issues, taking advantage of all of the provisions of the Guidelines to make that engagement as effective, efficient and meaningful as possible for both parties. As part of this discussion, it would be beneficial to consider how responsibility is allocated within the entity between management and the board for particular ESG issues.

Accordingly, Guideline 16 proposes that entities and institutional investors should plan their engagements on ESG issues.

Asset owners get all the externalities. So the best interests of the company cannot just be performance at any cost.

Superannuation fund

E & S should go through the whole organisation. We ask questions of management and questions of the board. Do they match? In some larger entities they match but in others there is a disconnect. On the management side, E & S are operational but when we're thinking about the oversight of risk it is clearly a board matter.

Fund manager

E & S are all operational but the board should be on top of it. They should have policies and should ensure that the management they have in place are conscious of what risks they might be introducing into the business and be able to explain how they are on top of it . . . It's important to think about this from the value point of view and not the values point of view. Is the company managing this well? If the culture in the company is one of understanding the social licence to operate it's within their grasp.

Fund manager

From time to time we will raise [ESG issues] with chairmen. The social issues will be large — for example, fatalities, supply chain issues — and environmental ones tend to be pretty rare. These issues do sit with board oversight — they can't be flicked to management. But you have to be careful of materiality with these things.

Superannuation fund

Capital allocation decisions cannot be made in isolation anymore. They impact the environment in which members will be retiring . . . ESG is all about time horizons.

Superannuation fund

Trying to draw a distinction between what the chair should engage on and what management should engage on is blurred in smaller companies. And the smaller the company the more this is blurred. If there is a major issue the shareholders want to talk to the chair. Should the chair go with the MD when meeting with a fund manager? Often the answer is yes in a smaller company. Trust is embodied in a relationship, and a relationship is embodied in people. If the chair goes with the MD to meet institutional investors, then the relationship builds and so when the chair goes without the MD there is trust already.

Non-executive director

What do you want to engage on? Remuneration. Governance. If a company is little it may or may not get on the radar of institutional investors. It would help a lot if you could go to their website and see what policies they have on these issues. The chairs of smaller companies don't have a lot of visibility as to what institutional investors think of these matters. That is why the Stewardship Code in the UK is helpful. You can find on the investors' websites statements of principle, voting records, policies on issues. They will even report in detail, for example, 'We had a meeting with X company on this issue and this is what happened'.

Non-executive director

Guideline 17: Smaller entities

Practical difficulty on both sides

Engagement by and with the smaller ASX-listed entities[22] is the other area of difficulty that has been clarified in discussion with the Participants.

In this case, the problem is one of resources, on the parts of both smaller entities and institutional investors. Except where an institutional investor is a substantial shareholder (that is, holding a five per cent or greater equity interest) in a smaller entity, the limited engagement resources of each understandably tend to be prioritised to the core and different commitments of each.[23] That leaves little or no capacity for engagement with a wider set of institutional investors, in the case of the smaller entities, and with a wider set of smaller entities, in the case of institutional investors.

Signs of progress

There are, however, clear signs of progress. Proxy advisers and a number of institutional investors (asset managers and asset owners) have taken steps to arrange group visits to or one-on-one meetings with smaller entities on their home ground.[24] Those pre-arranged exchanges have enabled institutional investors to introduce themselves and explain their guidelines and perspectives and smaller entities to explain their own challenges and perspectives. The feedback from such meetings has been positive on both sides.

Smaller entities also are naturally aspirational to move up the index, develop, raise capital and expand their shareholder base. They recognise that, as they do so, they need to be in an increasingly better position to satisfy institutional investor scrutiny, in general, and, in nearly all cases being Australian-incorporated companies, to avoid a first strike on their remuneration report, in particular.

In addition, smaller entities are already required to consider and disclose their corporate governance practices under the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations, which have force under the ASX Listing Rules.

It makes sense, therefore, for smaller entities — as early as possible — to become familiar with expectations in relation to governance and learn to cope with institutional investor scrutiny and one of the keys to coping is to understand how to engage effectively with institutional investors and the consequent need to devote some resources to that.

In turn, where a smaller entity demonstrates that it has done its homework on that front and seeks engagement with an institutional investor, it seems reasonable for the investor to recognise that and reciprocate.

This provides the context for the final Guideline 17, which encourages:

- smaller entities to become familiar with the Guidelines and the responses of their significant institutional investors to the Guidelines, and
- institutional investors to engage with smaller entities that seek to engage with them and demonstrate that they are familiar with, and have responded appropriately to, the Guidelines.

In an ideal world, for every company we invest in the offer would be there to meet. But we don't have the resources, so it will be where we have a large holding — more than five per cent, or where there are two to three key themes, for example, a first strike. Small companies might get picked up from time to time if there are thematic issues. When we do engage with smaller companies they're often very open. If we make the effort they're keen. With small companies you have to be proactive . . . But small companies will need to do some homework to know who their institutional investors are, whether they are fund managers or asset owners, and why they are invested and who is likely to be a long-term investor going forward.

Superannuation fund

If someone wants to meet, even in peak season, I'll make myself available. But only with those top 20-25 companies. There could be other companies wanting to see me but until I have more internal resources I can't do it. We do have dedicated small and micro cap managers and they're very good on the governance side, particularly options in remuneration and related-party transactions. But how do small companies get dealt with? This is an issue in Australia.

Superannuation fund

We got proxy adviser audiences this year at a time that suited them and us. They liked what we were proposing, we were well prepared, we got good advice. The chair, the company secretary and the general counsel went and we got a good response. It is two-way education. We were learning about their role and they were learning about our industry. We went again this year, even though there were no issues, but we want to maintain the relationship as something will come up. Then there will be an understanding of our position.

Chairman

Governance in small caps can be difficult — they don't have the resources . . . The company is a minnow and then they hit the ASX300 and the level of due diligence and governance expected of them shocks them. They continually struggle with the requirements to be a larger scale company. It flushes out their standards and the fact that you need governance across the board to be successful. It affects systems, accounts, everything. Many never recover.

Superannuation fund

It is a different world in terms of resource management in smaller companies until revenue is coming in. The governance policies of investors may not match the world at that end of the market. For example, you may want to preserve cash and that may involve going with instruments for rem that investors don't like. So you set up talks and make sure you're proactive.

Chairman

Notes

1 AIMA was merged in 1998 with two other investor bodies into a single organisation that is now called the Financial Services Council (FSC).

2 Note — all submissions received will be treated as being in the public domain, unless the submission expressly states otherwise.

3 http://www.chathamhouse.org/about-us/chathamhouserule

4 These events included the introduction of the Superannuation Guarantee Charge, a series of high-profile corporate collapses in the wake of poor governance that particularly affected retail shareholders and the nearly successful attempt by one of the largest ASX-listed entities, News Corporation, to introduce a precedent-setting class of super voting shares to the Australian market.

5 Such as formation of the Australian Investment Managers Group/Association (AIMA, as it became known) to promote better governance of ASX-listed entities and better monitoring by asset managers, including regular and better informed voting, and initiation of an Australian proxy advisory service to provide independent analysis of governance and voting issues.

6 This is a significant issue of inter-generational fairness arising with a growing retirement age population and a shrinking working-age population in Australia.

7 Self-managed superannuation funds are an exception to this process and that difference may contribute to their considerable popularity.

8 There are many examples in the Australian market of the practical risk of poor governance to long-term shareholder value. On the environmental risk front, insurance companies have begun to factor into their insurance premiums the risk of climate change.

9 For example, one major superannuation fund interviewee indicated that the average age of the fund's members is under 30 and the average member balance is under $30,000.

10 Including overseas-owned managers with significant Australian-based resources.

11 It should also be recognised that engagement with their investee entities is simply not part of the business model of some asset managers. Consequently, those managers do not engage and are not resourced to do so.

12 Some asset owners are legally required to invest exclusively via third-party asset managers.

13 Superannuation investments now exceed the $1.5 trillion mark in Australia and represent the fourth largest pool of such monies globally.

14 The draft 3rd edition of the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations clarifies in Principle 6 that all ASX-listed entities should provide a clearly accessible section on their website related to corporate governance.

15 For example, those published by ACSI and FSC.

16 'Significant institutional investors' means not just the investors with the current largest equity interests in the entity but also the investors with the longest substantial continuity of significant equity interests in the entity. Those investors will often, but may not always, be the same.

17 For the beneficial ownership tracing provisions, see section s 672 of the Corporations Act.

18 A number of directors and company secretaries of ASX-listed entities mentioned in their interviews that their entity arranged for such tracings to be conducted quarterly, which seemed, from experience, to be adequate to pick up material changes.

19 Entities that do not do their own tracing employ one of the businesses that undertake such tracings to do so for them.

20 It is recognised that some hedge fund or other fund managers do not disclose the identity of investee entities to their superannuation fund clients.

21 In this Guideline, 'significant investee entities' means not just the entities representing the superannuation fund's current largest ASX-listed equity interests but also the entities with the longest substantial continuity of significant ownership by the fund. Those entities will often, but may not always, be the same.

22 The draft Guidelines define the smaller entities as those below the ASX300 but that dividing line is somewhat imprecise.

23 Smaller entities, many of which have little or no revenue and limited and stretched human resources, tend to be focused on raising and conserving capital (which requires close attention to satisfying existing, and seeking to attract further, major financial backers and/or partners) and on the daily demands of their incipient businesses; whereas institutional investors, in the case of ASX-listed entities (specialist small cap fund managers excepted) tend to be focused on the larger entities, where most of their clients' or beneficiaries' funds are invested.

24 For example, in pre-arranged out-of-proxy season visits to a Perth venue convenient for many of the smaller explorers, miners and others based in Western Australia.

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