



## **AUSTRALIAN SHAREHOLDERS' ASSOCIATION — COMMENTS ON GOVERNANCE INSTITUTE OF AUSTRALIA'S EXPOSURE DRAFT: Improving engagement between ASX-listed entities and their institutional investors, and BACKGROUND PAPER**

### **Background to Australian Shareholders' Association**

The Australian Shareholders' Association (ASA) represents its members to promote and safeguard their interests in the Australian equity capital markets. ASA is an independent not-for-profit organisation funded by and operating in the interests of its members, primarily individual and retail investors, self-managed superannuation fund trustees and investors generally seeking ASA's representation and support. ASA also represents investors and shareholders who are not members but follow ASA through various means, as our relevance extends to the broader investment community.

### **ASA's comments on the exposure draft of the Guidelines and Background Paper**

ASA welcomes the opportunity to comment on the exposure draft of the Guidelines and Background Paper (Guidelines) issued by Governance Institute of Australia (GIA). In doing so we note that the Guidelines are very much directed at institutional investors and listed entities. However, we submit that retail investors, as members and customers of many of these institutions, are interested in, and need to be considered in, aspects of the Guidelines.

### **Guidelines**

In this context ASA welcomes the reference to retail investors on page 6 of the Guidelines. Is it the intention of GIA to issue a similar set of guidelines covering engagement with retail investors and, if so, can GIA indicate the likely timetable for such work? It is arguable that the need for such a code is stronger, as retail investors do not enjoy the same quality and degree of access to investee companies. Many of the principles behind the Guidelines would be applicable to retail investors (especially via their representative bodies such as ASA). We acknowledge that most of the responsibility for structured engagement with retail investors will lie with the companies, since individual investors would not have the resources (or the reporting requirements) that apply to institutions. It should also be required that access to companies by any investor group be publicised in the interest of fairness.

### **Definitions**

*Page 8.* No mention is made of entities listed on other Australian stock exchanges (APX and NSX). ASA believes that the same guidelines should apply to listed entities on any exchange with a threshold level based on market capitalisation. See Guideline 17 for further comment.

Further, do the Guidelines apply (at least as far as practicable) to foreign investors in Australian entities or to Australian investors in foreign markets? In the case of listed trusts, is the engagement to be with the board of the responsible entity (RE) or the management of the listed (operating), entity or both?

Institutional investors are defined as "asset managers and owners interested in sustained long-term performance ..." We feel that "interested in" provides a too easy and subjective opt-out mechanism. The Guidelines should be an opportunity to maximise engagement— we prefer an "if not, why not" approach; ASA suggests that the words on page 8 be tightened, but provide a reference to Guideline 10.1 to recognise that a minority of professional investors may not be suited to this process. Also, as noted on page 6, retail investors are often long-term investors who strive to be strongly engaged with their companies. The paragraph should clarify that they are not intended to be included in the term "asset owners". Perhaps the references to institutional investors throughout need to make clear that they are, inter alia, intended to mean professional investors as defined in the Corporations Act.

### ***Guideline 1***

This is an essential guideline and one which should be mandatory for all (institutional) "investors". This requires distinguishing between asset managers, asset owners and custodians, and being clear who is the decision maker on voting. This can be dealt with in investment mandates. Before taking a voting decision, investors should engage with companies to understand better the background to meeting resolutions and to indicate their concerns. Ideally, all equity holdings should be voted, irrespective of whether that process is directed by the owner or manager. Asset owners and managers must have watertight protocols in place to ensure that the voting responsibility is clear for each mandate and each stock.

All voting should be disclosed, and the reasons for supporting, voting against or abstaining from resolutions fully explained by the institutions. The voting entity should not give an undirected proxy to the chairman of the AGM, as this is an abdication of its responsibilities to its ultimate beneficial owners.

Where custodians are to be the channel for voting, they must follow the instructions given to them by the asset owner or manager. In no circumstances should the custodian have the discretion to vote, decline to vote or interrupt the voting process.

ASA has proposed elsewhere that the time frames around proxy voting need to be reviewed. In particular, such voting should continue for a period of days after an AGM to allow for information provided at the meeting (profit downgrades/upgrades or other important information) to be taken into account. This would also overcome the problems often met by custodians with their closing dates not being aligned with the current two days applying to proxies.

Guideline 1 does not address the reality that many asset managers are owned or controlled by companies in which those managers invest. Institutions must have procedures to ensure that any potential conflicts of interest are managed rigorously and transparently, by maintaining "Chinese walls" and, ideally, incorporating the views of independent investment trustees and proxy advisors to ensure that independent voting decisions can be made.

### **Guidelines 5 and 9**

All members (that is, the ultimate beneficial owners) of investing institutions should also be advised, by means of institutional websites, of the proxy voting and other governance guidelines of those institutions.

### **Guideline 10**

We agree that the disclosure elements of the Guidelines should be accessible to all interested parties, including retail investors. They should not be password protected or subject to paid subscription. The second last paragraph of Guideline 10.1 seems superfluous. The last paragraph appears to be sufficient and meets ASX Recommendation 6.1 of the Corporate Governance Principles and Recommendations (third edition).

### **Guideline 12**

The listing of the top 20 shareholders in an annual report is currently unhelpful and of little value, in that these are often not the beneficial owners of the shares, but usually the custodians through nominee companies. ASA submits that the beneficial top 20 owners should be shown, not the "legal" owners.

Page 21 of the Background Paper deals with tracing and disclosing beneficial owners on the share register. ASA questions the claim that this is difficult; however, improving this process would be worthwhile to all investors (except corporate predators) and companies, and would be likely to reveal investors potentially building a stake in a company, but not yet at the 5% disclosure point.

### **Guideline 13**

ASA agrees that companies should know and engage with certain advisers. We believe that ASA, and other bodies who represent retail investors and who are involved in regular meetings with companies, should also be included here.

### **Guidelines 14 and 15**

All institutions should be required to disclose their policies on stock lending, short selling and vote renting on their websites.

### **Background Paper**

*Page 11, Superannuation Guarantee Charge and Fiduciary Duty of Superannuation funds.* In the middle column, the sentence "The current scenario ... risky and inappropriate" (which is contrasting short- and long- term performance) is convoluted and difficult to accept. Also, trustees must consider portfolio risk, not just return.

*Page 13, Guidelines 1-4.* ASA agrees with the attributed comment from a superannuation fund ("you have to express the views of those members"), but we wonder how the members' opinions are to be ascertained when there may be tens or hundreds of thousands of fund members. Comment from members of ASA would suggest that opinions of fund members are rarely if ever sought. However, it is an excellent aspiration and ASA would welcome any suggestions by institutions to try to achieve this, even to a limited extent.

*Pages 14–15, Guidelines 1–4.* Much of the discussion here relates to superannuation funds. Is it intended to include non-superannuation funds and their managers/owners? Furthermore, the discussion appears to relate only to equities (implicitly domestic equities). Should this not also canvass alternative assets, corporate debt and international equities? All of those classes warrant investors' engagement, even if not listed companies or if formal voting occasions do not necessarily arise.

*Page 20, Guideline 10.* "The information needs of a wider set of stakeholders must be taken into account". ASA supports this view and would welcome discussion on how these needs are determined and reconciled. Our impression is that most institutions do not (yet) provide worthwhile information of this kind on their websites.

*Page 22, Guidelines 11–13.* Voting information is of interest to ASA, both as a proxy holder for many retail shareholders but also as a means of establishing the interest of shareholders generally in the business and performance of the company they have invested in. Voting results of AGM resolutions are reported to the ASX using the section 251AA (2) report. ASA believes that information regarding the number of individual holders who voted is also of value, and could usefully be included in that report.

*Page 24, Guidelines 14–15.* Should foreign investors also be considered in this item? In some countries, they may not suffer the same degree of AGM concentration (at least for their Australian investments) as local investors do; however, against that, their Australian investments may be only a small part of their portfolios and this, combined with the inconvenience of different time zones, may make their engagement more difficult than for local investors.

*Pages 30–31, Guideline 17.* The comments regarding smaller companies are pertinent. The engagement by and with smaller companies needs to improve in both directions, and with all shareholders, not just with significant investors. It will not be feasible to have such codified principles applied for companies with a market capitalisation below, say, \$50 million. The spirit of equal access should apply but the reality is that very small companies do not have the resources to comply fully.

ASA looks forward to discussing this submission and those of other interested parties. We are pleased to have been invited to contribute to this positive step in improving engagement between companies, institutions, asset managers and investors.



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