



ASIC

Australian Securities & Investments Commission

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Dear Ms Fox

Submission to the Governance Institute: *Improving engagement between ASX-listed entities and their institutional investors*

1. ASIC welcomes the opportunity to make submissions on the Governance Institute's Guidelines on *Improving engagement between ASX-listed entities and their institutional investors* (**Guidelines**).
2. The following submissions relate to the Guidelines as a whole, but particularly in relation to guidelines 13, 14, and 15 and the associated discussion in the Background Paper.
3. We believe the Governance Institute should consider modifying the Guidelines to give greater prominence to the continuous disclosure obligations of listed entities and the related risks that flow from engagement with a select group of investors.

Importance of engagement

4. ASIC recognises the importance of listed entities actively engaging with their shareholders and the investment community. We consider that effective engagement can enhance long-term performance and corporate value.
5. However, our experience is that engagement that is primarily focussed on a select group of shareholders (such as institutional investors) and/or their intermediaries can be a significant risk area for selective disclosure of price-sensitive information.

Primacy of the continuous disclosure regime

6. The continuous disclosure regime that applies to listed entities is fundamentally important to the integrity of our markets. It ensures that all investors receive price-sensitive information at the same time.
7. Engagement with institutional investors (or their intermediaries) should not be viewed as a way in which those investors can gain additional price sensitive information to that which is already disclosed to the market as a whole. This type of engagement should instead focus on institutional investors and their intermediaries providing the listed entity with feedback regarding previously disclosed information or information that is clearly not price sensitive.
8. We note that quotes of the following kind are used in the Guidelines:

"...Boards want to talk about long-term issues ... They want to talk about strategy and the direction of the company ..." (page 16)

"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 ..." (page 26)

9. The use of these sorts of quotes might lead to an impression that information concerning the longer term outlook of a listed entity is not price-sensitive and not subject to continuous disclosure rules. This type of information is clearly valuable and, as such listed entities, need to think carefully about engaging in a "two-way" discussion of this sort. Even if the information discussed has already been disclosed or if it is not price sensitive, selective engagement with particular shareholders can also lead to perceptions of unfairness particularly amongst retail investors. This further highlights the need for strong controls within listed entities around this sort of engagement.

Conduct of listed entities

10. We recommend the Guidelines give greater prominence to the risks that selective engagement can pose to continuous disclosure obligations.
11. We also consider it would be useful if the Guidelines set out examples of ways in which listed entities could reduce that risk. For example, listed entities should be encouraged to:
 - a. consider posting information divulged at these meetings/discussions on their website;
 - b. make access to any group engagement as broad as possible;
 - c. keep records of the engagement, such as voice recordings or detailed notes;
 - d. nominate people within the entity that are authorised to participate in this type of engagement and provide appropriate training about their obligations;
 - e. ensure that more than one person from the entity attends/participates in the engagement;
 - f. have clear internal guidelines about what can and cannot be discussed;

- g. report all engagement to the person within the entity who has executive responsibility for continuous disclosure obligations;
- h. have procedures in place for reviewing information disclosed through the engagement to ensure that continuous disclosure obligations have been complied with;
- i. regularly test that internal procedures are being complied with.

12. We would be happy to meet further with the Governance Institute on these examples.

13. ASIC looks forward to seeing the outcome of the consultation and the revised Guidelines. We would welcome the opportunity to discuss our views in greater detail. Please contact me on (02) 9911 2602 or Jane Eccleston on (02) 9911 2183 should you wish to do so.

Yours sincerely



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