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22nd November 2012

Dear Commissioner Price,

Re: Consultation Paper 187 Effective disclosure in an operating and financial review (“CP 187”).

Thank you for ASIC’s invitation to comment on effective disclosure in an operating and financial review (OFR). We are writing on behalf of the International Corporate Governance Network (ICGN). The ICGN is a global membership organisation of over 600 institutional and private investors, corporations and advisors from 50 countries. Our investor members are responsible for global assets of US$18 trillion.

The ICGN’s mission is to raise standards of corporate governance worldwide. In doing so, the ICGN encourages cross-border dialogue at conferences and influences corporate governance public policy through its Committees. We promote best practice guidance, encourage leadership development and keep our members informed of emerging issues in corporate governance through publications and the ICGN website. Information about the ICGN, its members, and its activities is available on our website: www.icgn.org.

The purpose of the Corporate Risk Oversight Committee (CROCO) is to influence the development of national and international corporate governance policies and proposals relating to corporate risk oversight on behalf of ICGN members. This includes: guidelines on what constitutes best practice in corporate risk oversight, the
responsibilities of shareholders and companies with respect to corporate risk oversight, and the communications between shareholders and companies regarding corporate risk oversight.

The ICGN wishes to express our support for the ASIC's dedicated and continuing endeavour to enhance the relevance and value of the OFR. We believe that the suggestion made in the CP187 strikes a good balance between the investor's need for more insightful information and analysis with a company's ability to produce such information. In particular, we are encouraged by the ASIC's inclusion of practical guidance on what it views as useful disclosure for investors. We are pleased to provide some general comments as well as comments on the specific questions in the document.

General comments

Making the OFR and other company reporting more informative and useful to investors is consistent with the ongoing objectives of ICGN. The ICGN agrees with the ASIC that investors are looking for more informative and insightful analyses in company reporting. Specifically, investors are requesting information that provides an informed view of how the company is being run by management and overseen by its board of directors.

We believe that while proposed guidance makes an effort towards improving the quality of disclosure and discourse among companies and investors; the effectiveness of the guidance will continue to be limited until such time as there are safe harbour provisions that will provide management and boards with an environment in which they can feel more confident about disclosing specific elements of strategy and the risks related to the company's strategy. Currently, most managements and boards of directors are reluctant to provide insightful disclosure on the risks that they perceive pose the largest threat to a company's strategy. In an environment where directors have personal liability, and where class actions can be mounted for failures in disclosure, either real or perceived, the lack of a safe harbour provision is a hindrance and precludes them from making high value disclosures. For example, boards will disclose a long list of generic risks, for fear that the one risk not disclosed becomes the one that hinders the achievement of objectives. Therefore, what results is either very little information produced or information that is too generic to provide any meaningful insight to investors. If the companies and boards were able to rely more on a set of safe harbor provisions, it would provide them with the ability to discuss more insightfully the risks of and to a company's strategy, how those are being managed by management, and ultimately overseen by the board of directors.

In further support of the proposed guidance, CROCO would like to suggest that the guidance in CP 187 include more references to other leading practice guidance in the area of investor and company dialogue on the issue of risk oversight. With that in mind, we have taken the liberty of sending you a copy of the ICGN Corporate Risk Oversight Guidelines (Guidelines). The Guidelines were developed to help formulate a framework for companies and investors to use as a tool to engage on the topic of corporate risk oversight. Specifically, the Guidelines provide
suggestions to companies on how and what they might disclose to investors about their specific approach and practices related to risk oversight. We believe that the Guidelines and other similar guidance can help inform management, investors, and boards about what meaningful disclosure should consist of and how to go about providing more informative disclosure in a company’s periodic reports to investors.

The proposed guidance in CP 187 could also go further in providing greater connectivity to current guidance on company reporting. For example, the specific aspects related to company disclosure of strategy and risk appear to be addressed at least in part by the requirements of Principle 7, “Recognise and Manage Risk” of ASX Corporate Governance Council’s “Principles of Good Corporate Governance and Best Practice Recommendations.” CP 187 could be enhanced by establishing more concrete connections to Principle 7, allowing for companies to combine reporting under Principle 7 and CP 187, and further expanding the guidance in CP 187 regarding the interaction between the reporting requirements under Principle 7 and CP 187. This would help investors and companies in their efforts to receive and provide the most high quality information without having to repeat similar information in meeting the reporting obligations under the various requirements.

Feedback C5Q1:

We believe that the proposed guidance is helpful in supporting the objective of more meaningful and useful disclosure about a company’s strategy and risks to that strategy. The guidance is consistent with what is included in the ICGN’s Corporate Risk Oversight Guidelines. We would find the guidance in CP 187 to be enhanced by including further requirements to disclose more about the process by which strategy and risk are set, managed, and monitored. In disclosing this information, investors would be well served to understand not only the role of management in the process, but also the role of the board of directors in overseeing management’s processes. Disclosures should describe the enterprise’s approach to risk within the context of current corporate strategy, the process used to set parameters of the company’s risk tolerance, the frequency with which these parameters are reviewed, and whether any limits on risk-taking are imposed on management. While it is certainly useful to know what management considers to be the risks of and to the strategy at a point in time; we find it to be of more value to investors if there is clear disclosure on how the company’s processes are designed and carried out, such that investors are able to ascertain how emerging risks are being identified, evaluated, and managed. We believe that this will result in investors being provided with information that is pertinent beyond the as of reporting date and should focus company’s efforts more on the meaningful substance of what they do to manage and oversee strategy and its related risks, as opposed to compiling an all-inclusive list of risks described using boilerplate compliance focused language.

As suggested earlier, we believe that establishing more concrete connections to Principle 7 by allowing companies to refer to existing reporting under Principle 7, which is already contained in the annual report, would save on any duplication of reporting in this regard.
If you would like to discuss any of these points, please do not hesitate to contact Kerrie Waring, Acting Head of Secretariat of the ICGN, at +44 207 612 7079 or kerrie.waring@icgn.org. Thank you for your attention and for your consideration of the points above.

Yours sincerely,

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Cc: ICGN CROCO