



ICGN

International Corporate Governance Network

Ms Mavis Tan
Senior Executive Officer, ASX Markets Supervision
Australian Securities Exchange

By email: mavis.tan@asx.com.au

19th November 2013

Dear Ms Tan,

RE: Review of the ASX Corporate Governance Council Principles & Recommendations

The International Corporate Governance Network (ICGN) welcomes the opportunity to respond to the above consultation issued on 16th August 2013.

As an investor-led organisation of governance professionals, ICGN's mission is to inspire and promote effective standards of corporate governance to advance efficient markets and economies world-wide. We achieve this through three core activities: influencing corporate governance policy; informing dialogue through guidance and education; and connecting peers at international conferences. ICGN members are based in over 50 jurisdictions and include investors responsible for assets under management in excess of US\$18 trillion. For more information on the ICGN, please visit www.icgn.org.

The ICGN commends the Council and its 22 constituent members for having made significant further improvements to what was already a very impressive collaborative effort in codifying corporate governance best practices in Australia's listed securities market. ICGN, like the ASX CGC, is a broadly-based group of governance professionals representing a variety of professional domains and disciplines, but with a common interest in promoting effective standards of corporate governance to advance efficient markets and economies world-wide.

In this context, we note the Consultation Draft echoes principles that underpin ICGN's guidance in our core policy streams, being:

- Shareholder rights and responsibilities
- Corporate reporting and audit
- Corporate risk oversight and business ethics
- Board and shareholder communications

ICGN statements and guidelines developed by ICGN Policy Committees under the above headings are available on our website at <https://icgn.org/best-practice>. In broad terms these are complementary to those espoused in the ASX CGC Principles & Recommendations, although in some cases framed at a broader level to accommodate different regulatory approaches and disclosure cultures in different markets.

Accordingly, rather than provide detailed assessment of each of the ASX CGC Principles & Recommendations against its equivalent policy in ICGN's schema, our comments below are focused on a few particular highlights that we believe warrant special attention, and which ICGN sees as positive precedents for consideration in other jurisdictions as well.

Principle 1: Lay solid foundations for management and oversight

Board and senior executive gender diversity

ICGN commends the proposed migration of the gender diversity content out of Principle 3 (“Promote Ethical and Responsible Decision-Making”) and in to Principle 1 (“Lay Solid Foundations for Management and Oversight”). This is not merely a rhetorical change, but a very appropriate decision to recognise gender diversity as a fundamental value driver in business rather than as an ‘ethical’ consideration alone.

ICGN’s position on gender diversity is reflected in Principle 2.2 of the ICGN Global Corporate Governance Principles (2009) which states:

“Boards need to generate effective debate and discussion around current operations, potential risks and proposed developments. Effective debate and discussion requires...that there is a sufficient mix of relevant skills, competence, and diversity of perspectives within the board to generate appropriate challenge and discussion...”

In June 2013, ICGN members approved a more specific statement on gender diversity on boards (copy attached), which advocates a principles-based approach to improvement and acknowledges that diversity, of gender and more broadly, is a key strategic issue. The ICGN encourages companies to disclose their objectives in this respect and, in cases of non-compliance, encourages investors to hold companies accountable for justifying this.

Specifically, the ICGN recommends the following disclosure requirements:-

- (a) Every company should disclose specific and measurable targets for achieving greater female representation within its senior management and board, and appropriately measure and report on progress in achieving such targets.
- (b) Companies should maintain and disclose an up-to-date skill matrix used to assess the current board; to consider the need for recruitment; and against which director candidates are assessed.
- (c) Companies should disclose the process for board succession planning, and the timeframe over which this is considered.
- (d) Companies should disclose their gender diversity policies for the board, senior management and across all operations, which should include policies on flexible talent management and encouragement of female inclusion in hiring and promotion. This should be emphasised with a statement about why the board believes diversity is beneficial to the company and/or how it is part of the business strategy.
- (e) Boards should provide oversight on diversity throughout the organisation and ensure that there is a discussion of diversity strategy and reporting across the organisation. It would also be advantageous for companies to specify who is ultimately accountable for implementing steps to achieve greater gender balance on their respective boards.
- (f) Companies should communicate to shareholders their aims and achievements in implementing gender diversity policies. In each annual report to shareholders, companies should disclose their progress in effecting female inclusion across all operations, including stating what specific policies have been put in place to develop gender diverse talent at all ranks of the company.

In short, gender diversity is a competitiveness issue for a company as a whole and a critical dimension of governance, both in the board’s oversight of the enterprise and in the board’s

own composition and talent management. Increasing the representation of skilled and competent women on corporate boards will strengthen the corporate governance culture and ultimately contribute to value for all stakeholders.

Whilst phrased somewhat differently and referencing some specific regulatory requirements that naturally only apply in the Australian jurisdiction (e.g. the Australian Commonwealth *Workplace Gender Quality Act* reporting requirements), the proposed Recommendation 1.5 of the ASX CGC Principles & Recommendations strongly reflects these underlying principles and (along with parallel reforms in other key markets such as the Ontario Securities Exchange) is therefore welcomed as an exemplar in gender diversity disclosure practices globally.

Principle 2: Structure of the board to add value

Board member capacity and effectiveness

We welcome the focus on the word ‘effectiveness’ in relation to the functioning of the board. In this regard, ICGN’s Global Corporate Governance Principles (Principle 2.4.1) clarify that:

‘The board should consist of directors with the requisite range of skills, competence, knowledge, experience and approach, as well as a diversity of perspectives, to set the context for appropriate board behaviours and to enable it to discharge its duties and responsibilities effectively.’

We would add that emphasis on the ability of directors to dedicate sufficient time to board meeting preparation and attendance would be advantageous and we note ICGN’s Global Corporate Governance Principle 2.4.2 in this respect:

“All directors need to be able to allocate sufficient time to the board to perform their responsibilities effectively, including allowing some leeway for occasions when greater than usual time demands are made. They should assess on an ongoing basis if new activities may limit their ability to carry out their role at the company, and boards should make substantive disclosures regarding the results of these regular assessments.”

Principle 7: recognise and manage risk

Economic, environmental, social and governance risk disclosures

ICGN welcomes the proposed inclusion in Principle 7 of the ASX CGC Principles & Recommendations (concerning recognition and management of risk) of a specific recommendation concerning disclosure of economic, environmental and social sustainability risks (proposed Recommendation 7.4), as follows:

“A listed entity should disclose whether, and if so, how, it has regard to economic, environmental and social sustainability risks.”

This recommendation, and its inclusion in the risk management section of the document, reflects contemporary good practice in disclosure of environmental, social and governance investment risks, exemplified by the introduction in recent years of similar measures in other jurisdictions including South Africa, Hong Kong, the UK and Brazil. At the same time, the non-prescriptive nature of the Recommendation should provide sufficient flexibility for companies to make their own assessment of how (or indeed whether) these risks are material in their own business situations, and for investors to receive targeted and relevant disclosures that meet their information needs.

In these respects, the proposed Recommendation 7.4 is a good catalyst for listed companies in Australia to meet the “basic requirements from a shareholder and investor perspective” that are enumerated in ICGN’s Statement and Guidance on Non-Financial Business Reporting (copy attached), as well as important aspects of the more comprehensive reporting framework that is currently emerging through the International Integrated Reporting Council (IIRC) consultation process.

We also note that the IIRC reporting framework is itself likely to gain significant momentum over coming months with the imminent finalisation of the draft framework that has been the subject of intensive consultation over the course of 2013. As this will occur during the timeframe envisaged by the Council’s updated Principles & Recommendations, it is important that the ASX CGC document has a sufficient ‘anchor’ for their implementation, both for ESG reporting and other aspects. The proposed Recommendation 7.4 does appear to achieve this goal, and is therefore supported.

General considerations

As noted earlier, there are many other areas in which the Council’s Principles & Recommendations are similar to ICGN guidelines, particularly in areas such as board composition, financial reporting integrity, remuneration policy and risk management. We have not attempted to undertake a detailed reconciliation of each policy item at a granular level, other than to make the observation that the ASX CGC Principles & Recommendations are broadly consistent with those espoused by the ICGN and we view this as an excellent example of collaboration among industry players and articulation of sound governance practices.

We also support the “if not, why not” status of the ASX CGC standards. Members of the ICGN are strong supporters of the flexible application of standards (known variously around the world as ‘apply or explain’, ‘comply or explain’ or ‘if not, why not’), and expect that the ICGN’s own best practice guidelines will be applied with flexibility and understanding of the specific circumstances of individual companies and their markets.

We are grateful for the opportunity to comment on the Council’s consultation and should you wish to discuss any of the points that we have raised, please feel free to contact Kerrie Waring, the ICGN’s Head of Secretariat, by email at kerrie.waring@icgn.org or by telephone on +44 (0) 207 612 7098.

Yours faithfully,



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Rita Benoy Bushon
Co-Chair,
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Cc: ICGN Board Member
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