

The Secretary
Financial System Inquiry
GPO Box 89
Sydney, NSW 2001
Australia



ICGN

International Corporate Governance Network

Via Email only: fsi@fsi.gov.au

9th October 2014

Dear Sir or Madam,

Re: ICGN Response to the Financial System Inquiry (FSI) Interim Report

The International Corporate Governance Network (ICGN) submits these comments in support of the 26 August 2014 submission by the Australian Council of Superannuation Investors (ACSI) regarding (a) the influence of superannuation fiduciaries as owners of public equity and (b) the capital raising practices of Australian companies.

We recognise that our submission is past the formal deadline for responses to the FSI's Interim Report, but trust you will accept our need to co-ordinate our response across our extensive international membership base, which in this case entails a Committee representing corporate governance leaders in 18 countries around the world.

The ICGN is a global investor-led organisation of governance professionals with members including institutional investors responsible for assets under management in excess of US\$18 trillion. Our members are based in over 50 countries and, in addition to investors, represent all parties interested in the field of corporate governance, including company directors and secretaries, professional advisors and academia. We have a number of Australian members (see annex below), and nearly all ICGN investor members are affiliated with organisations that invest in the Australian market.

As an investor-led organisation of governance professionals, ICGN's mission is to inspire and promote effective standards of corporate governance and to advance efficient markets and economies world-wide. One of the ways we seek to do this is by providing policy makers with a reliable source of practical knowledge and experience on corporate governance issues, thereby fostering sound regulatory frameworks. ICGN has also developed model practices and guidelines that offer the collective wisdom of our global membership.

Implications of Growth of Superannuation Funds as Owners of Public Equities

(Interim Report § 2-28 to 2-85)

The ACSI submission notes that the amount of assets managed by Australian superannuation funds exceeds the nation's GDP. This growing economic influence of pension fiduciaries is not unique to Australia. The Organization of Economic Cooperation and Development (OECD)

reported that the weighted average ratio of pension assets to GDP across OECD countries is now 77 percent.

The ACSI submission also highlights how this broad ownership of pension fiduciaries has created a symbiotic relationship between pension success and systemic economic health. Many commentators have observed that this trend is moving the economy toward a new age of fiduciary capitalism. As long-term universal owners, the actions of institutional asset owners affect the markets and the whole economy.

ICGN sees these points as critical to any review of the financial system. ICGN guidance principles for asset owners that were developed by our membership, explain why:

"Following the financial crisis, there is also an increasing focus on the risk to asset owners of investment approaches which generate systemic risk and the opportunities from those generating systemic benefits. Asset owners are exposed to financial markets generally and so are unlikely to benefit over the long run from investment strategies which produce returns by generating systemic risks that jeopardise the efficient functioning of a particular market or markets more generally. Asset owners thus have an interest in ensuring that their fund managers help to foster well-functioning markets and do not risk undermining them through their investment approach or actions." [ICGN Model Mandate Initiative, s. 1.2.]

"Asset owners are increasingly considering (not least because of the proliferation of stewardship codes and their equivalents) the value potentially to be gained for long-term investment performance from behaving as an active owner of the assets in which they are invested, whether this is companies held through equity or bond portfolios, or real estate through property or infrastructure mandates. In essence, stewardship is working with the underlying assets to ensure that they focus on delivery of risk-adjusted value over the time horizons that matter to long-term owners and taking into account risks and other issues that matter to long-term owners." [ICGN Model Mandate Initiative, s.1.4.]¹

Capital Raising Practices of Australian Listed Companies

(Interim Report § 2-93)

The ACSI submission also expresses concern about the dilution of incumbent shareholders during capital raisings, noting that this affects superannuation as well as retail investors. ACSI notes that Australian practice lags the standard set in other developed markets, such as the UK, where pre-emption principles help to preserve the entitlements of current shareholders by creating a presumption in favour of pro-rata entitlements in new share issues. ACSI cites research showing unusually high underwriting fees in the Australian market and requests additional disclosures.

We support the ACSI recommendations. They are consistent with ICGN model practices, which seek to provide flexibility in raising new capital while recognizing that pre-emption rights promote a more stable shareholder base. ICGN's Global Governance Principles provide the following guidance.

¹ The Model Mandate is available on the ICGN website at: https://www.icgn.org/images/ICGN/files/icgn_main/Publications/best_practice/SHREC/ICGN_Model_Man_date_2012_re-printApr2013_FULL.pdf.

“The board should be mindful of dilution of existing shareholders and provide full explanations where pre-emption rights are not offered.” [ICGN Global Governance Principles, s.9.2]²

We hope these comments will be helpful in the ongoing Financial System Inquiry. Thank you for the opportunity to provide comments on the interim report. Should you wish to discuss our comments further, please contact Kerrie Waring, ICGN’s Managing Director, by email at: kerrie.waring@icgn.org or by telephone on +44 (0) 207 612 7079.

Yours Faithfully,

Erik Breen

Chair, ICGN Board of Governors

Niels Lemmers

Co-Chair, ICGN Shareholder Responsibilities Committee

Carol Drake

Co-Chair, ICGN Shareholder Responsibilities Committee

Cc: ICGN Board Members

ICGN Shareholder Responsibilities Committee Members

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Annex: ICGN Australian members

| Member Name | Company |
|-----------------------|---|
| John Harte | Integrity Governance |
| Amanda Wilson | Regnan – Governance Research and Engagement |
| Charles Macek | Wesfarmers Ltd |
| Kumudini Heenetigala | Victoria University |
| Ann Byrne | Independent |
| Louise Davidson | Cbus |
| David Atkin | Cbus |
| Anne-Marie Corboy | HESTA Super Fund |
| Robert Fowler | HESTA Super Fund |
| Joanne Saleeba | HESTA Super Fund |
| Peter Lunt | VicSuper |
| Oscar Fabian | VicSuper |
| Adam Kirkman | AMP Capital |
| Karin Halliday | AMP Capital |
| Ian Woods | AMP Capital |
| David Neal | Future Fund |
| Will Hetherton | Future Fund |
| Joel Posters | Future Fund |
| Ron Davis | SAS Trustee Corporation |
| John Livanas | SAS Trustee Corporation |
| Lisbeth Rasmussen | SAS Trustee Corporation |
| Talieh Williams | UniSuper |
| Simon Hudson | UniSuper |
| Mark Himpoo | UniSuper |
| Pru Bennett | BlackRock |
| Julian Poulter | Asset Owners Disclosure Project |
| Gordon Hagart | Australian Council of Superannuation Investors |
| Gerard Noonan | Australian Council of Superannuation Investors |
| Paul Murphy | Australian Council of Superannuation Investors |
| Rob Elliot | Australian Institute of Company Directors |
| Eva Scheerlinck | Australian Institute of Superannuation Trustees |
| Mavis Robertson | Australian Institute of Superannuation Trustees |
| Tom Garcia | Australian Institute of Superannuation Trustees |
| Philomena Leung | Macquarie University |
| Alexander Easterbrook | Easterbrook Consultancy |
| Anona Armstrong | Victoria University |