Australian Council of Super Investors Inc.

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Mr David Sullivan
Committee Secretary
Parliamentary Joint Committee on Corporations & Financial Services
PO Box 6100
Parliament House
CANBERRA ACT 2600

By Email: corporations.joint@aph.gov.au

Dear Mr Sullivan,

**Inquiry into Shareholder Engagement and Participation**

We are pleased to respond to questions ACSI took on notice from members of the Joint Committee.

**1. Would it be a useful addition to corporate practice if there were an opportunity for ballot recounts and dispute mechanisms with respect to the election of directors or key material votes? What requirements should there be to store ballot papers in light of potential disputes?**

To our knowledge, there has been minimal disputation with respect to the election process pertaining to listed company directors. Usually a company board's nominating committee nominates a person whom they judge has the knowledge, skills and ability to contribute to board collegiality and effective decision making. Amongst ASX/S&P 200 companies, board supported director nominees are usually endorsed by shareholders with over 75% support of those shareholders participating in a ballot.

Whilst we would not expect that such a mechanism to be often utilized, it would not be unreasonable to introduce a dispute settlement process that provides a mechanism to 'recount' a disputed ballot at the request of a reasonable percentage of shareholders (i.e. 5% of total shareholders). This is because of the high levels of shareholder support for the board endorsed director nominees of listed Australian companies. This however should not derogate the importance of having reasonable "checks and balances" in place that can be utilised by shareholders. This would of course supplement existing powers available to the Australian Securities and Investment Commission ("ASIC") that has the power to require a recount.

With respect to the preservation of ballot papers, reforms that facilitate electronic voting, would make it relatively simple to maintain a record of ballots. However, as it currently stands with paper based proxy forms, there are practical issues regarding the reasonable storage and retrieval of ballot papers. Following further consideration of Senator Murray's enquiry on this issue, we submit that because directors are elected for three year terms, proxy forms regarding director elections should be held for the length of their term in case there is a dispute raised during the tenure of the relevant director. Keeping the proxy paper for longer than this period would not appear to serve any practical purpose.

**2. Defining 'Proper Purpose' Test**

With respect to the meaning of 'proper purpose' for a person seeking to inspect a company register, we support the position outlined by the UK based Chartered Secretaries and Administrators ("ICSA") guidance note and as outlined in page 9 of our written submission dated 14 September 2007. ICSA had proposed the guidance note as a means of applying a reasonable meaning of 'proper purpose' which is not defined by the United Kingdom Companies Act. ACSI encourages the Joint Committee to consider the UK legislation and the ICSA Guidance Note. Furthermore, we submit that "proper purpose" should also include those circumstances where shareholders have sought information on the company register in order to contact other shareholders and engage on issues that arise in the context of a general meeting. Such mechanisms would enable institutional investors to communicate and take constructive collective action on relevant governance issues.

**3. Achieving effective representation on boards**

ACSI recognises that an effective listed company board requires directors who have the requisite skills, capacity and ethical base to provide effective oversight of a company. It is integral that directors have the sufficient experience and capacity to devote sufficient time to board responsibilities.

With respect to broadening the potential 'gene pool' of directors, we firmly believe that this issue is best addressed through encouragement from key stakeholders, rather than imposing regulatory provisions that could artificially impose outcomes on board composition. It is a fact that companies often look to ex-CEOs and those persons with legal, accounting and auditing backgrounds to sit on listed company boards. We amplify our verbal submission, that the abysmal level of representation of women on Boards reflects an assumption that effective directors can only be ex-CEOs or ex-partners in major accounting and law firms. These assumptions are misplaced and need to be actively addressed by companies as they search for directors with the right skill sets.

Succession planning is a matter frequently discussed with company chairmen and directors with whom we engage. As indicated to the Committee, institutional investors may in the future wish to nominate a person for election on a listed company board. We are, however, mindful that imposing a candidate on a board, in the absence of board support may prove to be difficult should they have doubts whether a prospective director would enhance a board's approach to collegial decision making. It is for this reason that we did not support the previous Federal Government imposition of a director on the Telstra Board, in the absence of support from the board as a whole in 2007.

**4. Corporations Act requirements on non-listed small companies**

We reiterate our response provided to Senator Murray, that ACSI member superannuation funds are not direct investors or associates of the types of companies referred to by Family Business Australia. Accordingly, we do not have a view as to whether the Corporations Act requirements on these companies are unduly onerous from a compliance perspective.

Please do not hesitate to contact myself or Phil Spathis should you require further clarification on issues raised in this supplementary submission in response to the Committee's questions on notice.

Yours sincerely,

**MICHAEL O'SULLIVAN**
**President, ACSI**