OWNERSHIP MATTERS

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ASX Corporate Governance Council

Email: mavis.tan@asx.com.au

RE: Submission on proposed changes to the ASX Corporate Governance Council principles & recommendations

Dear ASX Corporate Governance Council,

Thank you for the opportunity to comment on the Council's proposed fourth edition of its principles & recommendations. Ownership Matters (OM) is an Australian owned governance advisory firm serving institutional investors that was formed in 2011. The views in this submission are those of OM and not its clients.

OM is broadly supportive of the proposed changes. Proposed recommendation 5.2 makes clear that directors of a listed entity should receive price sensitive announcements released to the ASX (although it would presumably be better for them to have knowledge of these announcements before rather than after they are released to ASX) and the proposed recommendation 5.3 should strengthen continuous disclosure by reinforcing that investor presentations should be released to the market prior to the event at which they are being given. Likewise, the proposed new recommendation 6.4, that all resolutions be decided by way of a poll, should encourage more boards to ensure all votes are counted on resolutions especially in cases where the outcome of a resolution is close.

The principal purpose of OM's submission however is to encourage amendments to proposed recommendation 8.4 which states listed entities should only enter into consultancy services with directors and senior executives and their related parties after receiving independent advice, if the transaction is on arm's length terms and with "full disclosure" of the material terms.

OM supports this recommendation but suggests it be expanded to include contractual arrangements, including employment or service provider arrangements, entered into with family members of directors and senior executives. This would help address a gap in Australia's related party transaction regime where listed entities do not disclose related party transactions involving, for example, the children of senior executives or directors. Amendments to the Corporations Act to replicate the disclosure requirements levied on US-listed entities would of course be better than a 'comply or explain' addition to the Corporate Governance Council's principles & recommendations but in the absence of such changes a Council recommendation is better than nothing.

In recent years investors in ASX listed entities have discovered a range of related party transactions involving close family members of senior executives or board members. For example, the son of a long-serving CEO of an ASX 100 company was disclosed as a long serving employee and senior executive at the same company on the son's promotion while OM is aware of a number of other large companies where children of senior executives are

or have been employees. This is not to suggest such arrangements are necessarily inappropriate but simply that having them disclosed to shareholders would allow investors to assess the nature and extent of these types of relationships at each individual entity. The commentary surrounding the recommendation should also encourage listed entities to disclose indirect relationships: For example, cases where a family member of a director or executive acts as a professional advisor to the company such as being a partner of a law firm advising on an asset sale.

A suggested wording of recommendation 8.4 would be as follows, with the bold lettering indicating changes from the proposed recommendation:

> "Recommendation 8.4: A listed entity should only enter into an agreement for the provision of consultancy or similar services by a director or senior executive or by a related party of a director or senior executive **(such as a close family member)**:
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> (a) if it has independent advice that:
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> (i) the services being provided are outside the ordinary scope of their duties as a director or senior executive (as applicable) **or, in the case of close family members, are reasonable for the family member to provide**;
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> (ii) the agreement is on arm's length terms; and
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> (iii) the remuneration payable under it is reasonable; and
>
> (b) with full disclosure of the material terms to security holders.
>
> *Commentary*
>
> Directors and senior executives of listed entities are expected to bring to their role the acumen, skills, experience and connections they possess in the interests of the entity and its security holders.
>
> To pay a director or senior executive, or someone related to a director or senior executive, a consultancy or similar fee (such as an advice, facilitation or introduction fee) raises issues around conflicts management and "double-dipping" on fees and remuneration. **Similarly, employing close family members of senior executives or directors in roles within a listed entity, or to provide advice to a listed entity, may give rise to an impression that senior executives or directors are using their influence unduly on behalf of family members. Disclosure of such arrangements, above de minimis thresholds (for example $100,000), allows investors to observe the extent of related party transactions between listed entities and family members of directors and senior executives and judge the appropriateness of these for themselves.**

Please do not hesitate to contact us in relation to any matter raised in this submission.

Yours sincerely,

Dean Paatsch & Martin Lawrence

Ownership Matters Pty Ltd