



Stockbrokers and Investment
Advisers Association

Serving the interests of investors

1 May 2024

Elizabeth Johnstone
Chair
ASX Corporate Governance Council
20 Bridge St
Sydney NSW 2000

Dear Elizabeth

ASX Corporate Governance Council Principles and Recommendations 5th Edition: Consultation Draft

The Stockbrokers and Investment Advisers Association (SIAA) is the professional body for the stockbroking and investment advice industry. Our members are Market Participants and Advisory firms that provide securities and investment advice, execution services and equity capital-raising for Australian investors, both retail and wholesale, and for businesses.

The history of the stockbroking profession in Australia can be found [here](#).

SIAA has been a member of the ASX Corporate Governance Council (the Council) since its inception. Accountability is central to corporate governance frameworks and that accountability is viewed in general as accountability to investors. Since the release of the first edition in 2003, the *Corporate Governance Principles and Recommendations* (Principles and Recommendations) have played a vital role in providing investors with transparency as to the stated and 'lived' corporate governance practices of Australian listed entities as well as improving those practices with the release of each edition.

We concur with the Council's decision that, in light of domestic and global issues in corporate governance that have emerged and continue to emerge since the publication of the 4th edition, it is appropriate that the Principles and Recommendations are reviewed. They were last updated in 2019. Ensuring that they remain fit-for-purpose is key to maintaining investor confidence, as investor expectations have evolved significantly over the past five years, particularly with respect to corporate conduct, culture, risk management, stakeholder management, reporting and key management personnel remuneration.

General comments

SIAA is supportive of the revised and new Recommendations but is concerned that they tend to be viewed as mandatory by a range of parties, including at times investors, rather than as guidance about good practice. The ‘if not, why not’ framework is intended to provide listed entities of varying size and market capitalisation the flexibility to determine that a particular recommendation is not suitable for them (and provide reasons for not following the recommendation).

SIAA recommends that further explanation of the ‘if not, why not’ framework could be included in the final document, particularly to provide guidance around what acceptable disclosure would look like.

We note that a trend has been observed in the annual reports of some listed entities to provide additional pages to their governance reports at cost to the pages allocated to the report on their business. For investors, transparency about the business is key and we encourage the Council to also clarify in the final document that disclosure of practice against the Recommendations should not come at cost to quality of disclosure about the entity’s business.

In light of the global trend of listed entities transitioning to private ownership, arguments have been put forward that increased regulation hinders growth strategies. Indeed, a recent article in the *Australian Financial Review* noted a warning from the Reserve Bank of Australia of ‘Private equity’s relentless rise risks undermining the size and diversity of the Australian share market, as privatisations handily outnumber floats’.¹

SIAA notes that companies seeking alternative sources of capital in the private domain also means that there is less scrutiny of management and less transparency of company actions — the very issues governance principles seek to address.

We are of the view therefore that further emphasis on the ‘if not, why not’ framework and clarification that the Recommendations should not be treated as mandatory would assist companies when developing their disclosures as well as investors when engaging with those disclosures.

Structure

SIAA supports the preservation of eight Principles and the elimination of overlapping or duplicated recommendations found in Australian laws and regulations, including those concerning whistleblowing, anti-bribery and corruption, electronic communications and remuneration.

In relation to whistleblowing, SIAA notes that the adequacy of whistle-blower policies is a particular focus of ASIC’s.

SIAA also supports references throughout the 5th edition designed to align with incoming climate and sustainability reporting requirements. This anticipates the introduction of mandatory climate and sustainability reporting without introducing duplication.

¹ Aaron Weinman, ‘Private equity risks leaving ASX behind, RBA warns’, *AFR*, 18 April 2024

SIAA supports Recommendation 1.5 (diversity) now being dealt with in Recommendations 2.3 (board diversity) and 3.4 (diversity and inclusion policy).

Recommendation 2.2

SIAA supports the increased emphasis in Recommendation 2.2 on transparency relating to the board.

Investors welcome the Recommendation proposing disclosure so that investors can make a more informed assessment of:

- the board's skills and how they add value to oversight of the entity's business, and
- how a listed entity assesses that its directors hold particular skills, and how those skills are defined.

Such assessment by investors is obscured to a large degree at present yet is essential to judgment by investors as to the suitability of board composition to safeguard the future oversight of the entity and its strategy.

Recommendation 2.3

SIAA supports the recommended objective for board composition of entities in the S&P/ASX300 Index of at least 40% women, 40% men, and up to 20% of any gender, replacing the 30% target for women directors in the 4th edition.

While supportive of enhancing diversity in the broadest sense, SIAA is of the view that identifying gender diversity as a specific area of focus is appropriate. A significant body of research has shown that progress towards gender balance on the boards of listed entities remains slow, despite improvements in board composition since gender diversity was first introduced to the Principles and Recommendations (approximately 35% of all S&P/ASX300 directorships are women). The *Board Diversity Index 2024* from the Governance Institute and Watermark shows that, although there is more gender diversity on Australian boards than ten years ago, they remain predominantly male. The report notes that gender parity is yet to be achieved on most individual boards, all-male boards are not extinct and women remain under-represented in chair roles. This research needs to be considered in the context of women making up 50% of the population, which means a significant portion of the talent pool is not being utilised.

SIAA therefore is also very supportive of the Recommendation that entities disclose a timeframe for, as well as progress in, achieving the measurable objective for achieving gender diversity in the composition of the board.

Taking into account our earlier comments about the importance of support for the 'if not, why not' framework, we note that in some specialist sectors gender diversity can be challenging when seeking board candidates with the skills the entity requires. For example, engineering is a male-dominated profession, which means there is less gender diversity in the pipeline of senior executives with an engineering background, which expertise may be important for achieving the board skills matrix. Therefore it is likely that there will be fewer potential female board candidates with those skills. We

note that a range of male-dominated professions are actively working to improve gender balance (indeed stockbroking and investment advice is one such profession), but changing the balance cannot be achieved overnight.

Investors are keen to see boards attract the necessary skills for the business and do not want to see diversity targets set at the expense of achieving the board skills matrix. We also note that our comments are not intended to offer an ‘excuse’ for not seeking to add diversity to the board, even in specialist sectors. Rather, they are aligned with our earlier comments about the importance of the Council clarifying that the ‘if not, why not’ framework should be utilised by boards to explain their decisions to investors.

Recommendation 2.3 (c)

SIAA supports the proposed disclosure of any other relevant diversity characteristics (in addition to gender) which are being considered for the board’s membership.

Boards need to decide what a more culturally or ethnically diverse board means for the individual entity. For example, they could be looking to reflect the diversity of the entity’s customer base, or seeking directors who are attuned to the cultural complexities relevant to different countries in which the entity operates. It is also important for investors to understand how the board is considering these matters, given their potential impact on strategy and the value of the investment.

While SIAA supports the emphasis in the consultation draft on gender diversity — recommendations on this front have been in place for more than a decade — we also note that the Governance Institute and Watermark *Board Diversity Index 2024* shows that there has been no progress toward increasing cultural diversity on ASX300 boards. In fact, the report highlights that in 2024, the proportion of seats held by people of Anglo-Celtic background stands at 91.2% (higher than the 90.5% it was seven years ago in 2017). In light of the cultural diversity of the Australian population, SIAA is of the view that setting the expectation that listed companies disclose their consideration of broader board diversity characteristics can assist in supporting progress on increased diversity and introducing diversity of thought to board deliberations.

Recommendation 2.4

SIAA supports increasing the security holding reference included in Box 2.4 (factors relevant to assessing the independence of a director) from a substantial holder (5% or more) to a 10% holder (10% or more).

The proposed change recognises that a person who has a greater than 10% shareholding interest in an ASX-listed company will be able to prevent a majority shareholder from moving to 100% ownership through compulsory acquisition, because the compulsory acquisition threshold is set at 90%. This factor is relevant to assessing the independence of directors.

Recommendation 3.2(c)

SIAA supports the new recommendation for listed entities to disclose (on a de-identified basis) the outcomes during the last reporting period of actions taken by the entity in response to material breaches of the code of conduct.

While an entity's code of conduct sets the standards of behaviour, actions and decisions expected of its directors and senior executives, it is challenging for investors to assess the degree to which individuals are held accountable should such standards be breached. The Recommendation provides a degree of transparency for investors as to whether breaches of the code of conduct have consequences. Disclosure (on a de-identified basis) of outcomes taken by the entity in response to material breaches of the code of conduct strengthens investor confidence in the governance of the entity.

SIAA notes that guidance on materiality or the perception of materiality could well be sought by entities and their boards and the Council may consider whether it has a role to play in this regard.

Principle 3 and Recommendation 3.3

SIAA supports the references to an entity's stakeholders in Principle 3.

SIAA also supports amendments to Recommendation 3.3 focused on listed entities needing to have regard to the interests of the entity's key stakeholders, including processes to engage with a broad range of stakeholders and report material issues to the board.

We note that:

- recognising that stakeholder interests exist is a matter of good risk management
- an elaboration of interests that the directors could take into account would not only improve the quality of corporate decision-making as various interests are weighed, prioritised or reconciled, but also assists in aligning corporate behaviour with changing investor and community expectations
- the Recommendation does not specify how directors should take into account the interests of other stakeholders, only that they consider them — as such it is relatively benign and those companies that already take this view will not be affected, while it provides an educational function for those companies that have not yet reached this view
- mismanagement of stakeholder interests by a company can have longer-term implications for the value of the investment, which concern the Recommendation addresses.

SIAA therefore also supports the emphasis on stakeholder engagement echoed in the commentary in Recommendations 1.1, 3.2 and 7.4.

Recommendation 3.4(c)

SIAA supports the Recommendation that listed entities disclose the effectiveness of an entity's diversity and inclusion practices. Stated objectives have no weight until they are measured and transparency of achievement of progress towards their achievement is gained through reporting.

Recommendations 4.1, 4.2, and 4.3

SIAA supports the amendments to Recommendations 4.1, 4.2 and 4.3, as they address increased investor expectation concerning an entity's capacity to demonstrate audit integrity.

Investors are particularly supportive of the disclosure of tenure of the listed entity's audit firm and the audit engagement partner, when the appointment of the external auditor was last comprehensively reviewed and the outcomes from that review. Investors are keen to understand whether the audit firm's independence is impaired by long firm tenure and whether concerns about a lack of independence are mitigated by partner rotation and comprehensive review of the external auditor.

Recommendations 6.2 and 6.3

SIAA supports the new commentary on general meetings in this Recommendation, including investor expectations that specific engagement should be undertaken in response to any significant 'against' vote at a shareholder meeting and hybrid meetings should be utilised for large listed entities.

Noting the challenge of engagement where shareholders on the register number in the thousands, it may be helpful for the Council to include wording to the effect that engagement could take the form of listing the concerns expressed by investors in any 'against' vote and the actions taken in response to those concerns.

Principle 6

We query footnotes 74 and 77 in Principle 6, which notes that references to the recommendation that listed entities communicate and interact with investors includes communicating and interacting with the beneficial owners of securities, where the securities are held by custodians or nominees.

The Principles and Recommendations apply to listed entities and have no force with custodians or nominees, who are those responsible for forwarding communications to the beneficial owners and who may or may not distribute those communications. Furthermore, they may or may not disclose who the beneficial owners are, which would mean it would not be possible for the listed entity to interact with them.

We recommend deletion of this footnote.

Recommendation 7.4

SIAA supports the expansion of Recommendation 7.4 from disclosure of the entity's environmental and social risks to cover all material risks.

SIAA is of the view that the entity is best placed to consider its material risks, and that avoiding the provision of a 'shopping list' of risks in the Principles and Recommendations is the appropriate approach. We welcome the removal of the distinction between financial and non-financial risk, with resultant recognition of how they interconnect, as well as the continued emphasis on ESG risks.

SIAA also supports reference in the commentary to governance risk, noting that the 4th edition's focus on environment and social risk had the inadvertent consequence of downplaying the importance of governance risk which can encompass environmental and social risk.

The clarification in the 5th edition that risks can span different categories of risk is welcome, as is the statement that 'Entities that believe that their prospects may not be impacted by any material environmental, social or governance risks should consider carefully their basis for that belief'.

An entity's capacity to consider thoughtfully its material risks is central to its capacity to sustain long-term value for investors. It is for the market to pass judgment on the governance practices of listed entities, including an entity's capacity to consider material risk, and disclosure of said consideration is key informed assessment.

Recommendations 8.2 and 8.3

SIAA supports the inclusion of the two new Recommendations that:

- non-executive directors should not receive performance-based remuneration or retirement benefits, and
- entities should have remuneration structures that can clawback or otherwise limit performance-based remuneration to senior executives should their actions have resulted in unethical or potentially illegal outcomes.

These new Recommendations do not duplicate legislative obligations, but clarify that governance of remuneration is a key issue requiring transparency. The new Recommendations can assist board members to examine critically their decision making on these matters and also provide for accountability.

Recommendations for entities established outside Australia

SIAA supports the inclusion of new Recommendations for entities established outside of Australia, on the basis that these Recommendations generally reflect expectations under Australian law.

It is appropriate that expectations of sound governance practice are consistent across all listed entities.

Externally managed entities

SIAA does not support the proposed new or amended Recommendations applying differently to externally managed entities.

Effective date

SIAA supports an effective date for the 5th edition of the first reporting period commencing on or after 1 July 2025, noting that it will not be feasible for early adoption of the 5th edition.

Application of Principles and Recommendations to entities listed on Cboe Exchange

In April 2024 Cboe Exchange issued a consultation paper proposing a global listing platform for Australian companies. Submissions closed on 17 April. Complete draft listing rules are expected to be released for public consultation in the latter part of 2024. All proposals are subject to regulatory approval.

It is not known if Cboe Exchange will apply the Council's Principles and Recommendations to companies that list on its platform.

If it chooses not to do so, given the Principles are issued by a competitive exchange, Council could find that listing on Cboe Exchange is attractive, given the disclosure requirements attached to the Principles and Recommendations would no longer apply.

Kind regards

A handwritten signature in black ink, appearing to read 'J Fox', with a long horizontal stroke extending from the top of the 'F'.

Judith Fox
Chief Executive Officer