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**BEST WISHES FROM MICHAEL**



On behalf of Phil, Ros, Meredith and Chris – our hard-working ACSI staff - I wish all of our members a very happy Christmas and a prosperous, high return New Year.

We have every reason to be satisfied with ACSI's growth and achievements in 2006. The settlement with News Corp, the award by the International Corporate Governance Network for corporate governance excellence, a successful proxy season with VAS pushing voting to record levels, more fine research, the highly visible and persuasive campaign to halt the hedging of unvested options, and the development of a new ESG platform for ACSI's work in the future.

We are looking forward to the challenges of 2007 not least the preservation of quality standards for the ASX corporate governance guidelines, and developing verifiable sustainability reporting by the companies in whom we invest.

We are grateful to all of the members who have participated in the Committee of Management, and the committees it has formed to develop ACSI's policies and capabilities.

ACSI remains member driven and member focussed, which I believe is the source of our strength and our healthy prospects for the future.

Sincerely and gratefully  
**Michael O'Sullivan**  
*President*

**“WALL STREET EYES HEART OF DARKNESS: GLOBAL WARMING”**

A recent article from the Washington Post says that Wall Street investors, insurance executives, state treasurers and pension fund managers are starting to focus on climate change and the associated risks.

The article discusses the conference of the Investor Network on Climate Risk, which was held on 7 December. Peter Bohan writes:

“Richard Sandor, head of the Chicago Climate Exchange, said it was up to every institutional investor to push companies to evaluate and estimate their climate risk.

Investors need to do so for three reasons: financial risk from liabilities, investing opportunity in 'green' technologies and rising public concern, said Win Neuger, chief executive at AIG Global Investment Group, a unit of insurance company American International Group Inc.”

The report also says that participants at the conference agreed to keep pushing companies to disclose their climate risk and to press the Securities and Exchange Commission to encourage such disclosure.

However, the consensus of speakers at the conference was that institutional investors are still too near-sighted to factor climate change into their investment decisions.

The full article can be found at:

<http://www.washingtonpost.com/wp-dyn/content/article/2006/12/13/AR2006121300359.html>

**CAMAC REPORT RELEASED: “THE SOCIAL RESPONSIBILITY OF CORPORATIONS”**

The Federal Government Corporations and Markets Advisory Committee (CAMAC) released its report: “The Social Responsibility of Corporations” on 12 December 2006. The Committee was asked to look at this issue in March 2005 by the Parliamentary Secretary to the Treasurer, the Hon. Chris Pearce.

The Committee was asked to consider four specific questions:

- 1 Should the Corporations Act be revised to clarify the extent to which directors may take into account the interests of specific classes of stakeholders or the broader community when making corporate decisions?
- 2 Should the Corporations Act be revised to require directors to take into account the interests of specific classes of stakeholders or the broader community when making corporate decisions?
- 3 Should Australian companies be encouraged to adopt socially and environmentally responsible business practices and if so, how?
- 4 Should the Corporations Act require certain types of companies to report on the social and environmental impact of their activities?

In answer to questions 1 and 2, the Committee did not support revising the laws relating to directors duties to take into account the interests of stakeholders or the broader community, saying that the existing

law allows directors sufficient flexibility to consider these interests.

The Committee also did not support amending the Corporations Act to require companies to report on the social and environmental impact of their activities. The Committee considered s.299A of the Corporations Act already provides an appropriate platform for listed companies to disclose relevant non-financial information, but did say that the reporting obligations in s.299A should be extended beyond listed companies to all listed entities.

In relation to the question: “Should Australian companies be encouraged to adopt socially and environmentally responsible business practices?” the Committee sees government’s role as providing the public policy settings within which companies operate. Beyond that, the Committee referred to various “light touch” means by which government can facilitate or encourage companies in recognising the benefits of appropriate engagement with the social and environmental context in which they operate.

The “light touch” methods they refer to include:

- taking a consistent “whole-of-government” and “national” approach to policy and administrative arrangements.
- leadership by example, through the governance and disclosure standards and practices of public agencies, as well as by sharing public sector experience.
- assisting companies to better understand the range of issues through providing information and, if necessary, commissioning research.
- encouraging participation by industry and other groups in the development of voluntary industry codes or other guidelines at the international level.

A member of the CAMAC committee, Professor Ian Ramsay, spoke at ACSI's 2005 conference. In his address at the conference, Professor Ramsay said that, in his view, the existing law allows directors to consider the interests of stakeholders other than shareholders. He also said that the management of the company and its directors may be justifiably concerned to ensure that the company is a good corporate citizen and that is perfectly consistent with our existing law.

In his 2005 address, Professor Ramsay also warned that, while it's appropriate for directors to continually consider the interests of all stakeholders including shareholders, we should be cautious about any reform of our corporate law that elevates the interests of other stakeholders above the interests of shareholders, as this might result in directors being less accountable.

## **OVERSEAS DEVELOPMENTS**

### **US**

#### ***Director elections still being debated***

On 30 November 2006 the Committee on Capital Markets Regulation, an independent and bipartisan group comprised of 22 leaders from the investor community, business, finance, law, accounting and academia, today issued its interim report with recommendations for changes in capital markets regulation based on the twin goals of enhancing shareholders rights while reducing excessive and overly burdensome regulation and litigation

In its report the Committee argues for the wholesale conversion of director elections to majority rule.<sup>1</sup>

The panel wants to require companies featuring staggered-term directors to put poison pills to a shareholder vote.

It asks to ease the Sarbanes-Oxley Act's Section 404 audit requirements, especially for smaller firms.

For complete details visit

[http://www.capmktreg.org/pastpress\\_releases.html#11\\_30](http://www.capmktreg.org/pastpress_releases.html#11_30)

The Securities and Exchange Commission (SEC) has postponed its 13 December 2006 hearing which would include considering whether to allow investors easier "access to the proxy" to propose challenge candidates for director at listed companies. So we will need to wait until the new year for any developments in this area.

#### ***More Firms Declassify***

An ISS study examining boards at S&P "Super 1,500" companies has found that a majority of S&P 500 firms now allow for the annual election of directors.

The use of classified board structures among S&P MidCap and SmallCap firms also is on the decline, albeit at a more modest pace than that evidenced with larger companies. Firms in those indices maintained the same percentage of classified boards in 2003 and 2004 (66 and 62 percent, respectively), but each has dropped an aggregate 3 percentage points over the last two years.<sup>2</sup>

Overall, the number of S&P 1,500 companies with staggered boards continued to decline in 2006, to 55 percent overall, down from 59 percent last year and 61 percent in 2004.

<sup>1</sup> Global Proxy Watch, 'Bargain', Vol X No 44, 1 December 2006

<sup>2</sup> ISS, Governance Weekly 'Study Finds More Firms Declassify', David Morrison, Research Analyst, 15 December 2006



Australian Council of Super Investors Inc.

## CORPORATE CITIZENSHIP NEWSLETTER

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The steady decline in the prevalence of classified boards among all S&P 1,500 companies can be attributed to the significant decline among S&P 500 firms, which is the result of shareholder scrutiny of larger, high-profile companies deploying the anti-takeover device. From 1999 to 2006, S&P 500 companies faced 258 shareholder proposals to declassify, according to ISS records. Over the same period, MidCap companies faced just 48 such proposals, and SmallCap companies just 22.

This trend may change, however, as activist investors turn their attention to smaller firms where proposals in recent years have fared well. In past years, support for shareholder proposals to declassify tended to be stronger among S&P 500 companies. But that was not the case in 2006 and 2005, the study finds. Average support for shareholder proposals to declassify among S&P 500 companies in 2006 was 65 percent, compared with an average of 71 percent among MidCaps and 82 percent among SmallCaps.

### ***The New Capitalists***

In an innovative book by Stephen Davis, president of Davis Global Advisers, Inc., Jon Lukomnik, managing partner of Sinclair Capital LLC and former deputy comptroller for New York City, and David Pitt-Watson, former chief executive of Hermes Focus Asset Management, describe the evolving market dynamics of civil ownership.

The authors note that the actual owners of today's corporate giants are millions of individual investors who have invested their life savings through various financial intermediaries. Their value systems are having a marked impact on the corporate agenda, the authors argue, with a strong emphasis on accountability to shareowners: "In this book we track the present awakening of a consciousness of civil ownership – of new capitalists – that promises to make those

traditional power brokers accountable, or kick them out of the way."<sup>3</sup>

*The New Capitalists* is available at bookstores worldwide and online at Amazon.com.

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This newsletter is correct to the best of our knowledge and belief at the time of going to press. It is, however, written as a general guide so it is recommended that specific professional advice is sought before any action is taken

<sup>3</sup> In Focus: A Look at Recent Governance Developments from GMI 'The New Capitalists: How Citizen Investors are Reshaping the Corporate Agenda' Issue 2006.6, 4 December 2006