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Regulatory and Public Policy
ASX Limited
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To the Regulatory and Public Policy Department

ACSI would like to make the following submission in response to the ASX Listing Rules Review Paper: Reserves and Resources Disclosure Rules for Mining and Oil & Gas Companies.

About ACSI

The Australian Council of Superannuation Investors (ACSI) represents the interests of 39 superannuation funds who collectively manage over $300 billion in investments on behalf of Australian super fund members. ACSI aims to enhance sustainable long-term value for the retirement savings that are entrusted to our members as fiduciary institutional investors. As such, ACSI works to achieve genuine, measurable and permanent improvements in the ESG performance of entities in which our members invest and in the ESG investment practices of our members and their investment advisors and managers.

Policy Context

As long-term investors, ACSI’s members believe that transparent and accountable markets are essential to sustained wealth creation. Companies, investors, regulators and policy-makers have a responsibility to tackle the challenging issues that threaten the legitimacy of markets and strive to align governance of these markets with international best practice.

In line with these principles, ACSI welcomes this review by the ASX to improve weaknesses in the public reporting of reserves, resources and exploration information for Australian extractives companies and to align domestic regulation to harmonise with international best practice. We also acknowledge that these improvements are intended to ensure the transparency and accountability of markets and facilitate ongoing access to capital.

From the perspective of long-term investors, ACSI members perceive that changes are required to the current reporting requirements placed on extractive companies if the objectives of the Review are to be achieved.

ACSI acknowledges that Part A of the Listing Rules Review Paper concerns a number of specific areas of review regarding disclosure of exploration information, Mineral Resources, Ore Reserves and associated production targets, whilst Part B pertains to enhancing consistency and confidence in the public reporting of petroleum reserves and targets, and updating the general reporting requirements in the Listing Rules.

Our submission will focus on issues relevant to general reporting as referred to in Part B of the Paper.

Recommendations

ACSI recommends that:

- In accordance with the suggestions of the Paper, the ASX adopts the best practice requirements for reporting of reserves and resources disclosure as exemplified by the Canadian disclosure requirements;

- The ASX payment disclosure rules that apply to mining and oil and gas companies be aligned with the country-by-country reporting elements of the United States and European Union requirements; and that

- This disclosure should be required of the relevant ASX listed companies on an annual basis;
ACSI makes this recommendation in light of the implementation, or proposed implementation, of similar reforms in the United States (Dodd-Frank Wall Street Reform and Consumer Protection Act, Section 1504), European Union (European Union Accounting and Transparency Directives, Amendments 25 October 2011) and Hong Kong (Hong Kong Stock Exchanges and Clearing Limited Listing Rules, Chapter 18 revision). Changes to reporting requirements in these jurisdictions are expected to affect 90% of international oil and gas companies\(^1\) including a considerable proportion of Australian extractives companies.

Considering the apparent globalisation of standards, ACSI believes that international alignment and harmonisation of Australian disclosure practices to global best practice will ensure that Australian extractives companies enjoy ongoing access to capital and reduce compliance costs associated with inconsistent reporting requirements. This is particularly the case for those companies that are dual listed in the Australian and other above mentioned markets.

Importantly, ACSI believes that the introduction of country-by-country reporting requirements for extractives companies would cement the position of the ASX as an internationally competitive exchange now and into the future.

Further substantiation of the reasons for these recommendations is as follows.

**Consistency with International Disclosure Requirements**

First, we note that a number of changes have taken place, or are due to take place, in various foreign jurisdictions in which Australian extractives companies operate that will impact upon the disclosure requirements of these companies. Specifically, changes to regulation in the United States, European Union and Hong Kong have been announced, requiring extractives companies to publicly disclose tax, royalties and other government payments made in each jurisdiction in which they operate. The Tax and Financial Transparency Bill (HC Bill 166) currently before the Parliament in the United Kingdom also discusses similar reforms. The expected changes in US and EU regulation alone will impact upon ASX-listed companies totalling over $217 billion in market capitalisation\(^2\).

When implemented, these changes are likely to impact the Australian market in a number of ways:

1. Australian companies that are dual-listed, or seek dual-listing, on exchanges within the above jurisdictions will incur increased compliance costs associated with differing reporting requirements;

2. Information available within the Australian market on local extractives companies will be inconsistent between otherwise-comparable companies;

3. Globally, investors will have access to a greater amount of information regarding extractives companies that report under other jurisdictions, creating the potential for companies listed in Australia alone to be perceived as higher risk.

ACSI believes that over the long-term these impacts will influence the ability of Australian extractives companies to secure capital investment. Failure to keep abreast of these changes threatens to impact future cost of capital.

**Transparency of Developing Country Operations**

Secondly, the extractives sector is considered to be at-risk for corrupt and illegitimate activities due chiefly to the nature of operations carried out in developing nations that have poor governance structures.

Investors are increasingly concerned about the wasted capital flows, uncertain stakeholder relationships, reputational damage and adverse impacts on the economy and society that corruption and bribery risks entail.

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2. *Submission to the ASX Consultation on Reserves and Resources Disclosure Rules for Mining and Oil & Gas Companies*, January 2012, Publish What You Pay Australia.
ACSI research into the anti-corruption and bribery policies and practices of Australian companies suggests that current disclosure does not provide adequate assurance that corruption and bribery risks are properly managed.3

ACSI recognises that other initiatives, such as the Extractives Industries Transparency Initiative (EITI) are being conducted to alleviate part of this risk. However we believe that mandatory disclosure of payments to governments among Australian extractives companies would serve to enhance the legitimacy of Australian extractives industry while formally establishing the aims of initiatives such as the EITI.

**Best Practice Reporting in Developed Mining Markets**

The regulation of reporting requirements for the extractives sector differs across different jurisdictions. As explained in the Paper, ACSI acknowledges that the Canadian reporting regime represents a best practice standard with reference to the CRIRSCO family of standards and codes and is therefore a relevant model to guide Australian reporting requirements. We also recognise that some guidance can be drawn from the South African reporting regime.

In addition to considering the Canadian and South African reporting regime, ACSI recommends that the ASX Review considers the disclosure requirements for listed extractive companies set in the United States, European Union and Hong Kong. ACSI believes that these reporting requirements, which include country-by-country disclosure of payments made to governments, reflect the information needs of investors worldwide and represent a move towards securing future access to capital for the extractives industry.

The jurisdictions referred to and respective reporting requirements are listed below:

- **United States, Dodd-Frank Wall Street Reform Act, Section 1504:**

  “each resource extraction issuer to include in an annual report of the resource extraction issuer information relating to any payment made by the resource extraction issuer, a subsidiary of the resource extraction issuer, or an entity under the control of the resource extraction issuer to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals, including – (i) the type and total amount of such payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals; and (ii) the type and total amount of such payments made to each government.”


  “(7) In order to provide for enhanced transparency of payments made to governments, issuers whose securities are admitted to trading on a regulated market and which have activities in the extractive or logging of primary forest industries should disclose in a separate report on an annual basis payments made to governments in the countries in which they operate. The report should include types of payments comparable to those disclosed under the Extractive Industries Transparency Initiative (EITI) and provide civil society with information to hold governments of resource-rich countries to account for their receipts from the exploitation of natural resources.”

- **Hong Kong, Hong Kong Stock Exchange Listing Rules, Chapter 18:** (18.05)

  “In addition to the information set out in Appendix 1A, a Mineral Company must include in its listing document: - ... (6) if relevant and material to the Mineral Company’s business operations, information on the following: - (c) compliance with host country laws, regulations and permits, and payments made to host country governments in respect of tax, royalties and other significant payments on a country-by-country basis;”

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4 www.sec.gov/about/laws/wallstreetreform-cpa.pdf

5 www.ec.europa.eu/internal_market/accounting/other_en.htm

ACSI also notes that the following bill is under review:

- **United Kingdom, Tax and Financial Transparency Bill (HC Bill 166)** currently before Parliament:

  “3. Financial Transparency: companies and trusts (1) Every company, including a parent company, incorporated in or operating in the United Kingdom must publish in its annual financial statements prepared in accordance with the requirements of the Companies Act 2006 an analysis of the consolidated turnover and profit made by it in each jurisdiction in which it has a permanent establishment for taxation purposes as defined by section 1119 of the Corporation Tax Act 2010 and the resulting taxation liability due and payment made by that company and its group (if applicable) in each such jurisdiction, without exception being made on the grounds of immateriality.

ACSI understands that amending the relevant ASX Listing Rules to mirror the requirements set out under these jurisdictions represents a challenging task. To assist in this we refer to the submission put forward by Publish What You Pay Australia, which provides detailed responses to the consultation questions in the Review with consideration to implementing country-by-country reporting.

**Conclusion**

ACSI’s recommendations have been made based on the above considerations.

ACSI supports the adoption of Canadian disclosure requirements on reporting of reserves and resources as set forth by the Paper. In addition, ACSI recommends the introduction of country-by-country reporting requirements for the payments made to governments by Australian extractives companies in order to align with best practice reporting requirements in other developed mining, oil and gas markets. We believe harmonisation with these jurisdictions will satisfy the information needs of all stakeholders and keep the ASX operating as a competitive international market with strong access to capital.

As members of the global investment community, ACSI supports the ASX in its efforts to improve the transparency and accountability of the Australian extractives sector. We appreciate the opportunity to provide our opinion and would be happy to discuss the perspectives presented in this paper further.

Yours sincerely,

Ann Byrne
CEO

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7 [http://www.publications.parliament.uk/pa/bills/cbill/2010-2011/0166/cbill_2010-20110166_en_2.htm#l1g3](http://www.publications.parliament.uk/pa/bills/cbill/2010-2011/0166/cbill_2010-20110166_en_2.htm#l1g3)

8 [http://www.publishwhatyoupay.org/where/coalitions/australia](http://www.publishwhatyoupay.org/where/coalitions/australia)