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Mavis Tan
ASX Limited
20 Bridge Street
Sydney NSW 2000

14 November 2013

Dear Ms. Tan,

ASX Public Consultation: Review of the Corporate Governance Principles and Recommendations

Publish What You Pay (PWYP) Australia welcomes the opportunity to provide this submission in response to the ASX's Review of the Corporate Governance Principles and Recommendations, specifically regarding **Recommendation 7.4: A listed entity should disclose whether, and if so how, it has regard to economic, environmental and social sustainability risks.**

PWYP Australia is a coalition of 30 humanitarian, faith-based, environmental, anti-corruption, research and union organisations campaigning for greater transparency and accountability in the extractive industries that enjoy broad support across the Australian community. PWYP Australia works with the international PWYP network of over 700 civil society organisations to ensure that mining and oil and gas revenues are used for economic development and poverty reduction in resource-rich countries.

PWYP Australia is advocating for the introduction of rules that require **extractive companies listed in Australia to disclose all payments made to governments on a country-by-country and project-by-project basis** in line with United States, European Union and forthcoming Canadian legislation. We previously made a submission, along with 17 other organisations, on this issue in response to the ASX's consultation on reserves and disclosure rules for extractive companies in January 2012.ⁱ

With the increasing presence of Australian mining companies overseas, including in countries where resource extraction can exacerbate poverty and instability, there is growing global expectation that the industry demonstrates best practice in relation to revenue transparency. Analysis of ASX-listed companies shows low levels of disclosure in this regard.ⁱⁱ The introduction of payment disclosure legislation for extractive companies would help:

- Ensure Australian companies' extractive activities lead to economic development in resource-rich developing countries by enabling citizens to hold their governments to account for the spending of resource revenues.

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Actionaid Australia | AID/WATCH | Anglican Overseas Aid | Australian Conservation Foundation
Australian Council for International Development | A Billion Little Stones | Burma Campaign Australia | Caritas Australia
Catholic Mission | ChildFund Australia | Columban Mission Institute | CAER – Corporate Analysis. Enhanced Responsibility.
Conservation Council of Western Australia | CFMEU – Mining and Energy | Economists at Large | Friends of the Earth Australia
Global Poverty Project | Human Rights Law Centre | Jubilee Australia | Mineral Policy Institute | Oaktree Foundation
Oxfam Australia | SEARCH Foundation | SJ Around The Bay | Tear Australia | Transparency International Australia
Union Aid Abroad – APHEDA | Uniting Church in Australia | World Vision Australia

- Combat corruption in resource-rich countries and foster more stable operating environments for companies.
- Assist investors with risk assessment when making decisions to invest in extractive projects.

The Financial Services Council, which represents over 130 members that invest \$2 trillion per year, and the Australian Council of Superannuation Investors, which represents members with more than \$350 billion in funds under management, support such disclosure in Australia as it will enable their members to compare and evaluate Australian companies, using the same type and level of information, with those listed on competing global markets.ⁱⁱⁱ

Payment disclosure requirements for extractive companies have become mainstream across a growing number of competitive markets:

- Since 2010 the Hong Kong Stock Exchange has required prospective mining and oil and gas companies to disclose payments to governments in their listing applications.
- In July 2010 President Obama signed into law Section 1504 of the Dodd Frank Wall Street Reform and Consumer Protection Act, which requires all extractive industry companies registered with the United States Securities and Exchange Commission to report payments made to governments on a country-by-country and a project-by-project basis.
- On 12 June 2013 the European Parliament voted to adopt new Accounting and Transparency Directives that require all public and large private extractive and logging companies in the European Union to report their payments to governments on a project-by-project basis.
- On 12 June 2013 Prime Minister Stephen Harper announced that Canada would establish mandatory reporting standards for extractive companies that are consistent with existing international standards.
- Norway has committed to implementing payment disclosure legislation for extractive industry companies by 1 January 2014.
- On 11 June 2013 the Swiss Parliament adopted a resolution calling on the Federal Council to draft transparency rules that are in line with the US and EU laws for private and publicly traded companies, and to include commodities traders as well as extractive companies.

The United States, European Union and Canadian legislation will cover 70% per cent of the global extractive market, including companies that represent just under \$300 billion in market capitalisation on the ASX, and there is the risk in the near term, as data from these requirements begin to flow, that Australian issuers will attract less investment if they do not disclose comparable data.^{iv}

In this period of intense competition for access to natural resources, especially in countries that fall among the lowest in global rankings of poverty, economic growth, governance and political instability and as the tax affairs of multinational businesses come under ever greater scrutiny, transparency of payments to governments provides extractive companies with the means to demonstrate the economic contributions they make in the countries where they operate.

In PWYP Australia's recent report, [*Australia: An Uneven Playing Field - Extractive industry transparency on the ASX 200*](#), we found that the level of payment information voluntarily disclosed by ASX 200-listed companies is limited despite strong Australian investor support for this type of disclosure. However, we did identify a small number of 'stand out' companies that do disclose some payment information. These companies included Paladin Energy Limited which disclosed payments to the Malawian Government in its 2012 sustainability report.

Recently, however Norwegian Church Aid and its Malawian partner organisation, the Catholic Commission for Justice and Peace brought to our attention their report, *Malawi's Mining Opportunity*^v, which claims that there are discrepancies between Paladin's public reporting and internal figures with regards to payments made to the Malawian Government, see excerpt from page 3:

Internal figures from Paladin obtained by the authors indicate that Paladin itself paid taxes of just MK 444 million (\$1.6 million) in FY 2012, based on exports worth \$127 million. This excludes payroll taxes paid by employees of the company not the company itself, which if added bring the tax total to MK 1.55 billion (\$5.75 million) in FY 2012. Yet in Paladin's 2012 Annual Report, the company claims that it paid \$9.6 million to the Government in 'a variety of Government taxes'. It is unclear how the company arrived at this higher figure in its public report. Our analysis is also that Paladin paid even less than the 1.5 per cent royalty rate for its first three years of operation, as specified in the 2007 agreement. Figures show royalty payments of only \$2.58 million based on export sales of \$295.5 million – a rate of just 0.87 per cent.

We note that a third figure of \$7.8 million was put forward by a Paladin spokesperson as total tax paid to the Malawi government in a Fairfax article from 6 July, *Out of Africa, tax tricks emerge*.^{vi}

Further claims in the report include disclosure of procurement spending not adding up and the value of uranium exports declared by Paladin not always tallying with UN figures on exports or imports.

Paladin issued a response^{vii} to these claims but PWYP Australia does not find the response satisfactory as we have been informed by Paladin that the sustainability report was not audited. Without independent assurance of the figures, the local community and investors are unable to establish what Paladin's true contribution to the Malawian economy was in 2012 and this, fairly or unfairly, could affect the company's reputation and social license to operate.

PWYP Australia believes this case provides a powerful example of why standardised, disaggregated and audited reporting of payments should be considered by the ASX. Indeed, payment disclosure is required in all major extractive markets in order to level the playing field and to protect those companies that act within the law from unfair competition and potential accusations of corruption that could lead to reputational damage. The ASX Corporate Governance Council's proposed recommendation 7.4 and its aversion to prescribing what should be disclosed does not meet stakeholder expectations with regards to payments made by extractive companies to governments.

PWYP Australia therefore recommends:

- 1. The ASX urgently holds a consultation on country-by-country and project-by-project disclosure of payments by extractive companies to governments.**
- 2. The ASX requires any disclosure of payments by companies to governments to be audited.**

I look forward to hearing what the next steps of the consultation process will involve in due course.

Yours sincerely,



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ⁱ Publish What You Pay Australia submission to the ASX consultation on Reserves and Resources Disclosure Rules for Mining and Oil & Gas Companies, 27 January 2012:

www.publishwhatyoupay.org/sites/publishwhatyoupay.org/files/PWYP%20Aus%20ASX%20submission%20January%202012.pdf

ⁱⁱ Publish What You Pay Australia, *Australia: An Unlevel Playing Field - Extractive industry transparency on the ASX 200*, May 2013

ⁱⁱⁱ ACSI submission to the ASX consultation on Reserves and Resources Disclosure Rules for Mining and Oil & Gas Companies, 27 January 2012:

www.acsi.org.au/images/stories/subs_pres_speeches/12%20Submission%20to%20ASX%20Listing%20Rules%20Review%20Paper.pdf

FSC letter to the ASX, 29 September 2011:

www.fsc.org.au/downloads/file/SubmissionsFile/2011_0928_LettertoAustSecuritiesExchangereAustralianImplementationofExtractiveIndustriesTransparencyInitiative.pdf

^{iv} Publish What You Pay Australia, *Australia: An Unlevel Playing Field - Extractive industry transparency on the ASX 200*, May 2013

^v Norwegian Church Aid and the Catholic Commission for Justice and Peace, *Malawi's Mining Opportunity*, July 2013

^{vi} www.smh.com.au/business/out-of-africa-tax-tricks-emerge-20130705-2pha5.html#ixzz2YPOu2Hvc

^{vii} Paladin Energy Limited, *Response to the Norwegian Church Aid/ Catholic Commission for Justice and Peace Report*, August 2013 available at: www.paladinenergy.com.au/default.aspx?MenuID=247#265