

Ms Mavis Tan
ASX Regulatory Policy
Level 6, 20 Bridge Street
Sydney , NSW 2000
Australia

15th November 2013

By email: mavis.tan@asx.com.au

Dear Ms Tan

RPMI Railpen response to ASX Corporate Governance Council's consultation on Corporate Governance Principles and Recommendations

On behalf of RPMI Railpen Investments ('RPMI Railpen'), I would like to respond to the public consultation by the ASX Corporate Governance Council ('ASX Council') on the review of their Corporate Governance Principles and Recommendations.

By way of background, RPMI Railpen is a major pension scheme in the UK, managing a total of £20 billion (Au\$35 billion) on behalf of 350,000 participants in the railways industry. Our investment portfolio includes global coverage in both equity and debt securities, including over Au\$167 million in Australian listed equities. We are a long term asset owner with a long history of advocating for robust corporate governance structures in the companies and markets in which we invest.

RPMI Railpen is an international associate member of ACSI, with whom we collaborate on issues of mutual concern regarding corporate governance and sustainability practices in the Australian and international markets. As such we endorse the ACSI Governance Guidelines and welcome that the third edition will align with those guidelines, and thus provide further opportunity for the expectations of companies by shareholders to be in agreement with the expectations of the ASX Council.

RPMI Railpen supports the positive changes to the ASX Council's Corporate Governance Principles and Recommendations which will be encapsulated in the third edition, as proposed in the consultation document. In our opinion, the third edition will serve to strengthen further the existing corporate governance framework in Australia, which is already highly regarded in providing robust protection for investors. In addition, as ACSI members, we are generally supportive of their submission to the consultation which they have shared with their members.

In particular, we strongly welcome and support the following recommendations and changes:

- **Risk management:** The enhanced focus on risk management throughout the revised version and the corresponding recommendations on the establishment of a risk committee where appropriate and the need for regular review of risk management procedures.
- **Sustainability risks:** Recommendation 7.4 that a listed entity should disclose whether, and if so how, it has regard to economic, environmental and social sustainability risks. This is a very welcome and appropriate recommendation especially given the enhanced focus on risk management in the third edition and in acknowledgment of the increasing significance of sustainability issues by global mainstream institutional investors in understanding and assessing the companies in which they are investing in. By incorporating this in the ‘if not, why not’ framework, we envisage that it will allow a listed entity to discuss the opportunities within the sphere of economic, environmental and social sustainability whilst also considering and disclosing the risks.
- **Diversity:** we welcome the changes in Recommendation 1.5 to disclosures on diversity and a company’s approach to this important area of human capital management, in particular that they will appear under **Principle 1 – Lay solid foundations for management and oversight**. This is consistent with our view that considerations on diversity are an important part of the board’s deliberations in oversight of the management of the company as well as being an integral part of the board’s own considerations as to its membership and succession planning. We also agree that the proposed approach and disclosure guidance will allow companies the ability to meet their requirements of reporting in the Workplace Gender Equality Act 2012 legislation and there will be no duplication of reporting for companies in this area.
- **Definition of independence:** we welcome the clarification on the *defining characteristics of an independent director* and the nature of the way in which it is framed will be helpful in avoiding prescription in this area. From our experience of this sort of specific guidance on independence of directors within the UK governance framework, it is helpful for one common set of guidelines that both companies and investors can use to test independence, which is also supported by the ‘if not, why not’ framework to allow some flexibility in specific cases which does not compromise the independence of the board as a whole. In particular, we do not automatically deem a director who has served 9 years to have lost their independence as we value long serving outside directors. The more important test is that there is an appropriate balance of tenured directors with directors who have served less years and that the overall board performance as a whole is effective and with the appropriate mix of skills and experience. This provides a good segue to the changes to **Principle 2 – Structure the board to add value** as we are also supportive of the inclusion of reference to a consideration of the skills within the board collectively. This is an increasingly common indicator of the ability of the board as a whole to undertake its duties effectively.
- **Board performance evaluation:** we strongly welcome the inclusion in Principle 1 of the evaluation of the board and management’s performance. In particular, a robust process around board performance evaluation is a key governance protection for shareholders and is an increasing area of emphasis in the dialogue we have with our investee companies. Further, we encourage robust reporting around this important

board process that moves beyond boiler-plate and allows shareholders to understand whether there is a strong evaluation process in place. We would also direct the ASX Council to the UK Corporate Governance Code in this area that specifically recommends, for larger UK companies (FTSE 350 companies), an evaluation by an external evaluator (ideally independent), at least every three years¹ to ensure both the integrity of the process and ultimately, the effectiveness of the board. We would also recommend that the board committees also undertake evaluation in addition to the board as a whole.

- **Clawback:** Recommendation 8.3 on clawback is welcomed, especially as it widens the possible scenarios to which clawback should apply, rather than limiting it to situations related to material financial misstatement. This is again in keeping with the focus on risk management within the third edition of the Principles as we agree with ACSI's position that there are a wide range of circumstances related to risk and company performance where clawback should be applied.
- **Formal and rigorous processes to protect integrity of financial statements:** we welcome the improved processes and strengthened language in Principle 4 which will serve to provide further protection to investors regarding the documents they rely on to make investment decisions and to assess their investee companies.
- **Disclosure on websites and participation in shareholder meetings:** we are supportive of Recommendation 6.1 and Recommendation 6.3 with respect to increasing communication channels for investors such as disclosure through company websites as well as the importance of the annual meeting and other meeting of security holders as a key mechanism to ensure accountability of boards and companies to their shareholders.

We would also observe the following:

- **Smaller companies:** we are sympathetic to the view that it may be a real challenge for smaller companies to meet all of the requirements of the ASX Principles in relation to the formation of appropriate board committees. Whilst we are comfortable about the ability of the board of a small company as a whole to take the role of the Nominations Committee, we are less sympathetic to the view that the board as a whole can undertake the role of the Remuneration Committee and the Audit Committee (and the Risk Committee if it is deemed appropriate that such a committee should be separately formed). We would recommend that the ASX consider the recommendations of the UK Corporate Governance Code in relation to smaller companies. Whilst there is an overall statement that 'smaller listed companies, in particular those new to listing, may judge that some of the provisions are disproportionate or less relevant', there is still strong encouragement that such companies adopt the general approach of the Code². Specifically with reference to the formation of the Remuneration Committee and Audit Committee, the following provisions are relevant:

¹ UK Corporate Governance Code (September 2012), Code Provision B.6.2

² UK Corporate Governance Code, (September 2012) page 4

Code Provision C.3.1: The board should establish an audit committee of at least three, or in the case of smaller companies two, independent non-executive directors.

Code Provision D.2.1: The board should establish a remuneration committee of at least three, or in the case of smaller companies two, independent non-executive directors.

As demonstrated, there are effective ways in which the challenge for smaller companies can be addressed without compromising the emphasis on independence of board committees. If the ASX does not consider such an approach to be applicable to smaller listed Australian companies, then there should be a requirement as to how the board as a whole ensured that appropriate independent decision-making underpinned the outcomes of decision-making.

- **Integrated reporting:** we note that the ASX Council considers it would be 'premature to expect listed entities of Australia to adopt integrated reporting until the international framework for such reporting is better developed than it currently is.' Whilst we are sympathetic to this view, RPMI Railpen has long advocated for integrated reporting, and our Head of Corporate Governance serves on the International Integrated Reporting Council's Working Group which has been instrumental in developing the reporting framework. Given the first edition of the Integrated Reporting framework is due to be launched in December 2013, we would urge the ASX Council to include a requirement for adoption of the integrated reporting framework in the final version of the third edition. Further, we would observe that the Johannesburg Stock Exchange adopted a requirement for listed companies to issue integrated reports in 2010 and other stock exchanges are also considering it. Therefore, we would encourage the ASX to be at the forefront in requiring Australian listed companies to adopt the framework as integrated reporting emerges as a global standard for annual reporting.

In summary, we are supportive of the many changes proposed to the current edition of the ASX Council's Corporate Governance Principles and Recommendations and trust you will find our comments helpful and constructive. We would be happy to discuss any part of our submission with you so please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Deborah Gilshan', with a long horizontal flourish extending to the right.

Deborah Gilshan
Corporate Governance Counsel
RPMI Railpen Investments