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Dear Kevin and Mavis

## **Proposed amendments to ASX Listing Rules Guidance Note 8 Continuous Disclosure: Listing Rules 3.1 – 3.1B**

Governance Institute of Australia (Governance Institute) is the only independent professional association with a sole focus on the practice of governance. We provide the best education and support for practising chartered secretaries, governance advisers and risk managers to drive responsible performance in their organisations.

Chartered secretaries have primary responsibility in listed companies to deal with the Australian Securities Exchange (ASX) and interpret and implement the listing rules. Our members hold primary responsibility within listed companies for developing governance policies and supporting the board on all governance matters.

Governance Institute of Australia (Governance Institute) welcomes the opportunity to comment on the proposed amendments to *ASX Listing Rules Guidance Note 8 Continuous Disclosure: Listing Rules 3.1 – 3.1B* (proposed amendments to Guidance Note 8).

### **General comments**

Governance Institute supports the proposed amendments to Guidance Note 8, as they are very helpful in clarifying in a formal manner when an earnings surprise ought to be disclosed to the market. They also address helpfully a number of issues related to analyst and investor briefings and the publication of analyst forecasts and consensus estimates.

We have only a few comments on the proposed amendments, which follow, but would like to thank ASX for providing the opportunity for public consultation on the proposed changes. The opportunity is valued to consider the proposed amendments to assess if there are any issues that might attach to them that could give rise to concern.

### **7.4 Correcting analyst forecasts and consensus estimates**

The term 'consensus' is not defined in the revised draft of Guidance Note 8. We appreciate that it is not possible — or advisable — to provide a definition, given that there are different approaches to arriving at consensus. Different companies will take different approaches.

However, to assist companies to turn their minds actively to considering what approach they take to consensus, and whether they may need to include a reference to their approach in any

announcement to the market, **Governance Institute recommends** that section 7.4 contain a reference to the guidance on this matter issued by the Australasian Investor Relations Association (AIRA), *Member Update #7 Special edition on Compilation and Dissemination of Broker Forecasts and Consensus Estimates by Listed Entities*.

The current heading of and commentary contained in this section could be clarified that it is addressing the situation where companies have not published earnings guidance. This is implicit in the commentary, but it would assist companies if this was made explicit. To achieve this, **Governance Institute recommends** that the section heading should change to read:

7.4 Correcting analyst forecast and consensus estimates *where no earnings guidance is published* [italics show suggested additional words]

## **7.6 Analyst and investor briefings**

This section recommends as 'prudent practice' that any new presentation provided to an analyst or investor briefing be published on the ASX Markets Announcement Platform.

Governance Institute notes that many companies hold numerous presentations each year, and in many instances the presentation is the same information tailored to particular audiences (for example, changes in formatting and some updating of information), but containing no new, material, price-sensitive information. However, each presentation is, as a result of the minor changes outlined above, a new presentation.

**Governance Institute recommends** that Guidance Note 8 should clarify that companies should use their judgment and discretion as to which presentations need to be lodged on the ASX Markets Announcements Platform, that is, they should publish only those presentations containing new, market-sensitive information.

Our members note that too much disclosure of identical information will be obfuscatory rather than helpful, given that the announcements platform could be flooded with multiple presentations, which are in essence the same, should companies follow the current guidance that all new presentations must be published.

While some companies post each version of a briefing to the company website, Governance Institute is of the view that Guidance Note 8 needs to recognise that there is a higher threshold for announcements on the ASX Markets Announcement Platform.

We also note that the draft Guidance Note 8 currently concentrates on equity presentations. However, we are of the view that Guidance Note 8 note that any briefing, be it debt, equity or industry, is capable of containing previously undisclosed market-sensitive information. Listed debt is subject to the same continuous disclosure rules as listed companies.

**Governance Institute recommends** that Guidance Note 8 clarify that any presentation that includes new market-sensitive information, including those to debt funders, needs to be disclosed.

In the final sentence of the third paragraph, the language 'just too great' potentially elevates guidance on prudent actions to a rule.

**Governance Institute also recommends** that the word 'significant' replace 'just too great', so that the revised sentence would read:

If the materials presented or given at such a briefing contain different or more up-to-date information than has previously been given to the market, the risks are significant

that someone may take a different view than the entity on whether the materials are market-sensitive.

Finally, we note that we are considering how best to assist company secretaries implement the necessary training within their companies on the procedural controls set out in section 7.6.

We look forward to seeing the final amended Guidance Note 8.

Kind regards

A handwritten signature in black ink that reads "Tim Sheehy". The signature is written in a cursive style with a large, stylized 'T' and 'S'.

Tim Sheehy  
Chief Executive