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Submission to the better regulation and governance, enhanced transparency and improved competition in superannuation discussion paper 28 November 2013

Women on Boards welcomes the opportunity to comment on the discussion paper '*Better regulation and governance, enhanced transparency and improved competition in superannuation of November 2013,*' which canvasses issues of corporate governance, transparency and enhancing competition in the superannuation sector.

Women on Boards (WOB) has an objective to improve the participation of women in board and leadership roles. As part of this work it develops information sets about women's participation in leadership across Australian society and assists organisations improve the diversity of their work forces.

This submission reflects the view of the Women on Boards directors who have substantial experience in the application of governance principles across ASX companies and superannuation trustees.

This submission draws on knowledge gained from the Boardroom Diversity Index [(1)], the 2013 WOB Traffic Light Index [(2)] and the Guidelines for Gender Balance Performance and Reporting [(3),] released in May and led by Women on Boards and the Governance Institute of Australia (formerly Chartered Secretaries).

The Boardroom Diversity Index highlights that superannuation trustees have largely stagnated in relation to the number of female trustees (21%), a factor which is particularly worrying given the Australian tax payer funds this sector via the tax concessions for contributions.

WOB supports harmonisation of the superannuation regime so as to be consistent with arrangements applying to licensed banking and insurance entities and the regime as encapsulated in the ASX Corporate Governance Council Principles and Recommendations.

We also support changed governance arrangements for superannuation to increase female participation on trustee boards, including setting targets for gender balance and reporting on gender diversity. This would bring the sector into line with the ASX and the Government.

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Part 1: A Better Approach to Regulation

1. *The Government has committed to identifying (in dollar terms) measures that offset the cost impost to business of any new regulation. What suggestions do you have for how the regulatory compliance burden can be reduced?*

Response

The superannuation sector has grown from small beginnings with industry and corporate funds predominant to a situation of much greater complexity. Corporate funds have declined, industry funds and retail funds are a significant presence and SMSF's now make up approximately one third of Funds Under Management (FUM) - 512,000 funds with FUM of $506Bil.

In this context the question of how to reduce the regulatory compliance burden is important as the APRA regulated funds need to be regulated in a way that does not provide a competitive advantage to the lesser regulated (and less protected) SMSF sector.

The Treasury discussion paper canvasses mechanisms to provide Portfolio Holdings disclosure and the format of the Choice product dashboard. The options canvassed are detailed. If the vast majority of members continue in a MySuper offering are the additional regulatory imposts that comes with mandatory portfolio disclosures and dashboards better approached for choice products by:

- requiring trustees to disclose on and "if not, why not" basis if they do not provide portfolio disclosures and dashboards
- directing APRA to include in its annual reporting whether a fund discloses its holdings (with information to come from the trustee)

Over time this approach will encourage better disclosure for business reasons rather than regulatory reasons.

Part 2: Better Governance

What should 'independent' mean for superannuation fund trustees and directors?

2. *What is the most appropriate definition of independence for directors in the context of superannuation boards?*

Response

Superannuation trustees should adopt in due course the principles for board composition and director independence contained in the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations (ASX Principles). In addition, the chair of Superannuation trustees should be required to be independent as is the case for the S&P/ASX 300, recognising the these definitions will likely evolve over time.

Proportion and role of independent directors

3. *What is an appropriate proportion of independent directors for superannuation boards?*

Response

WOB suggests a minimum of one third independent directors for industry funds and compliance with the ASX Principles vis a vis independence for other types of trustees. This will enable those trustees on industry funds who are wedded to equal employer / employee representation to continue this arrangement in a modified way. Over time, as further merger activity occurs in the industry fund sector this representation model will need to be revisited.

4. *Both the ASX Principles for listed companies and APRA's requirements for banking and insurance entities either suggest or require an independent chair. Should superannuation trustee boards have independent chairs?*

Response

Superannuation is now integral to the economy and the finance system. It is no longer the teenager to the mature banking and insurance sectors. Accordingly the higher standard of governance should apply which means harmonising super rules with the banking and finance sector. WOB supports an independent chair.

Process for appointing directors on superannuation trustee boards

5. *Given the way that directors are currently appointed varies across funds, does it matter how independent directors are appointed?*

Response

The appointment of independent directors to superannuation trustees should be transparent and merit-based and include a requirement for a gender balance target.

Despite the high level of regulation and oversight of the sector via APRA, there are surprisingly few female superannuation trustees (21% in 2013) with the industry sector the worst performer at 18.2% and the retail sector the best at 25.2%. It can be mooted that this is a result of the trickledown effect of diversity requirements of the ASX Principles.

WOB supports the adoption of the 40:40:20 target for trustees as per the Federal Government requirements for its boards and committees and more recently the Australian Sports Commission requirements on National Sporting Organisations funded by the tax payer. A 40% target for women would increase the likelihood of merit-based appointments as the pool of prospective candidates would have to increase and the selection process become more transparent.

This target should be supported by APRA guidelines around appointments processes, including a requirement to include diversity amongst the skills and experiences sought for trustees and to expect a diversity policy for an entity. This would be relatively easy for the industry sector which appoints 'informed amateurs' in contrast to the retail sector which relies on subject matter professionals.

Accountability to the market place and investors should be provided with a requirement for funds to report on the gender composition of their board and senior management in line with the ASX Principles.

6. *Should the process adopted for appointing independent directors be aligned for all board appointments?*

Response

Appointment of independent directors via a transparent and merit based process should enable/facilitate the trustee to adopt a similar process for all directors. In this way the appointment process will be harmonised over time.

Management of conflicts of interest

7. *Are there any other measures that would strengthen the conflict of interest regime?*

Response

Conflict of interest is a difficult matter for many directors. Trustees may need additional guidelines and education to assist them. Reference to the practices that flow from the corporations law and focus on education of trustee directors about interests and material conflicts should be required of trustees as part of trustee mandated continuing education requirements.

Ongoing effectiveness of superannuation trustee boards

8. *In relation to board renewal, should there be maximum appointment terms for directors? If so, what length of term is appropriate?*

Response

A top tier ASX company will expect a minimum of six years and more likely nine years of service from its directors; given the complexity of the role and the value add from the corporate memory perspective as directors are likely to outlast the CEO's employment term.

A maximum requirement is attractive but there are always exceptions. If a trustee adopts a merit based and transparent recruitment process, a mandatory professional development obligation and regular board evaluations then flexibility should be permitted. Some trustees may find it convenient to stipulate a maximum term and APRA may give guidance as to what the absolute upper limit for terms of office should be.

9. *Should directors on boards be subject to regular appraisals of their performance?*

Response

Limited performance reviews are generally part of the Fit and Proper policy of trustees. A more thorough review of quality and quantity of contribution could be beneficial but market experience with their success varies. One common approach is a cycle of an independent review in one year, chair assessment in another and self-assessment in another year.

Implementation issues

10. *Would legislation, an APRA prudential standard, industry self-regulation or a combination be most suitable for implementing changes to governance? What would the regulatory cost and compliance impacts of each option be?*

Response

To minimise additional regulatory burden the existing framework should be used. This framework is working satisfactorily with a mix of legislation, APRA policies and guidelines, APRA supervisory visits combined with a self-assessment and a reporting regime for breaches and other notifiable matters. Amendment of existing APRA prudential standards would seem a sensible way forward.

11. *What is the appropriate timeframe to implement the Government's governance policy under each option?*

Response

Regulatory changes traditionally come into place over a number of years or at the next available opportunity for trustee appointments. This would seem appropriate.

12. *Given that there will be existing directors appointed under a variety of terms and conditions, what type of transition rules are required?*

Response

Changes, if needed, should be implemented as trustee terms expire. Those trustees with no fixed trustee terms should be given a time to comply, suggest 2-3 years.

References

1. Women on Boards 2013 Traffic Light Index, www.womenonboards.org.au/pubs/traffic-light/2013-traffic-lights/index.htm
2. Guidelines for Gender Balance Performance and Reporting, May 2013 www.womenonboards.org.au/pubs/guidelines/
3. Women on Boards Boardroom Diversity Index 2013, http://www.womenonboards.org.au/pubs/bdi/2013/index.htm