

17 December 2024

Beneficial Ownership and Transparency Unit  
Market Conduct and Digital Division  
Treasury  
Langton Crescent  
PARKES ACT 2600

Dear Sir/Madam,

### Enhanced beneficial ownership disclosure for listed entities

#### About ACSI

Established in 2001, ACSI exists to provide a strong voice on financially material environmental, social and governance (ESG) issues. Our members include Australian and international asset owners and institutional investors with more than \$1 trillion in funds under management.

Through our research, engagement, advocacy and voting recommendations, ACSI supports members in exercising active ownership, which enhances the long-term value of the retirement savings entrusted to them to manage. ACSI members can achieve value for their beneficiaries through genuine and permanent improvements to the ESG practices of the companies in which they invest.

#### Summary of ACSI's position

ACSI welcomes the opportunity to comment on the exposure draft of the Treasury Laws Amendment Bill 2024: Enhanced disclosure of ownership of listed entities (the Exposure Draft). We support the proposed amendments, which are expected to enhance transparency of Australia's financial markets.

Substantial holding disclosures provide markets with important and potentially price sensitive information on who ultimately owns and controls listed companies. Substantial holding disclosures support shareholders' ability to effectively exercise their rights and make informed investment decisions, including in takeover scenarios. However, ACSI has observed several instances in recent years where derivative contracts have been used to build economic interests in Australian listed companies and market disclosures have not kept pace.

In these situations, there has often been little clarity in relation to the price that will be paid per security upon settlement. There has also been uncertainty as to whether, at the time of a substantial shareholding notice, the counterparty to the swap holds physical stock, has borrowed it or needs to go on market to purchase it to fulfill at the time of settlement. Examples of this challenge have included:

- The emergence of a ~9.9% holding and blocking stake in David Jones Limited (DJS) in 2014;
- Crown Limited's (CWN) acquisition of 10% of Echo Entertainment (EGP) in 2014 facilitated by the early settlement of an equity derivative; and
- The emergence of an 11.3% interest in AGL Limited (AGL) in May 2022.

Each of these transactions and substantial shareholding notices occurred against the backdrop of either significant corporate actions or potential board instability. Measures contained in the Bill should aim to address these issues in future.

### Requiring disclosure of more kinds of relevant interests arising from equity derivatives

ACSI supports the proposed amendments to broaden disclosure requirements related to relevant interests arising from 'long' equity derivative contracts. While these contracts may not grant direct ownership rights of underlying securities, they can provide influence and advantage in the market for those shares. Disclosures should allow all market participants to understand material economic interests in listed companies, regardless of whether that arises from owning shares or entering into a derivative contract.

In ACSI's view, these amendments would be consistent with the objectives of the existing substantial holding disclosure regime. They would also align the law with expectations already communicated by the Takeovers Panel and regulatory settings in several other major jurisdictions.

ACSI agrees with the proposal that relevant interest disclosures should capture interests acquired via cash settled equity derivative contracts. While these contracts do not provide rights to acquire securities, it is typical for counterparties to hedge positions by buying underlying shares. Therefore, these arrangements may impact the supply of shares which are available for trading. Cash settled equity derivatives may also provide the buyer with the ability to have influence over the market for the underlying shares by timing the settlement of the contract. This potentially price-sensitive information should be available to all market participants.

ACSI also agrees with the proposal to deem interests arising from physically settled equity derivative contracts, regardless of whether the counterparty acquires securities to hedge their position. This will ensure that information is available on the investor's material economic interest and potential future hedging by their counterparty.

### Format of substantial holding notice disclosures

We recommend the development of a standard format for the disclosure of information in the annexures that accompany substantial shareholding notices. A standard format is important for investors to assist in understanding the key details of arrangements including pricing, details of settlement and the physical ownership of shares. Shareholders should be provided information on the price that will be paid per security on settlement and clarity as to whether, at the time of filing a substantial shareholder notice, the counterparty to the swap holds, has borrowed or needs to go on market to purchase securities to fulfil at the time of settlement.

A standardised approach is favourable as inconsistent (or incomplete) disclosures may overstate or understate levels of physical ownership or simply create confusing disclosures for investors.

ACSI also supports the proposals to require disclosure of substantial holdings when a company initially lists and to extend the disclosure requirements to foreign companies listed in Australia.

We expect these reforms to further improve market transparency.

I trust our comments are of assistance. Please contact Kate Griffiths, Executive Manager – Policy and Research ([kgriffiths@acsi.gov.au](mailto:kgriffiths@acsi.gov.au)) should you require any further information.



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