



OWNERSHIP MATTERS

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Director
Beneficial Ownership and Transparency Unit
Market Conduct Division
The Treasury
Email: beneficialownership@treasury.gov.au

RE: Consultation on a public beneficial ownership register

Dear Treasury,

Thank you for the opportunity to comment on the consultation paper on *Multinational tax integrity: Public Beneficial Ownership Register*. Ownership Matters (OM), formed in 2011, is an Australian owned governance advisory firm serving institutional investors. This submission represents the views of OM and not those of its clients.

OM notes the proposed introduction of a beneficial ownership register is intended as part of tax avoidance measures but considers some aspects of the proposals have relevance for investors in entities listed on the ASX and subject to the Australian *Corporations Act*. This submission addresses only these aspects of the proposals:

- **Questions 1-4:** As the paper notes, beneficial ownership information is already routinely collected by the management of listed entities using the 'tracing notice' provisions of the Corporations Act (ss. 672A & 672B) and this information is meant to be available for inspection by members of the entity or by other interested parties (s.672DA(7)).
- Tracing notices and the resulting beneficial ownership registers are funded by members but used by management. In some cases this information is used for legitimate reasons such as seeking to determine relationships between potentially connected investors with substantial interests in an entity or to identify the presence of a potential acquirer. In many cases however this information is used to ascertain the identity of shareholders voting against the wishes of board and management on issues such as director elections and non-binding remuneration report resolutions. It is not clear what the benefit is to the end shareholder of this use of the tracing regime given in OM's experience, most listed entities make inspecting the register of members obtained through a 'beneficial ownership analysis' difficult.
- For this reason OM would support requiring beneficial ownership information obtained by a listed entity through tracing notices to be held in a separate, independently run location, such as a register maintained by a body such as ASIC or the ATO. This would address the current situation where management teams are able to use shareholder funds to identify and potentially penalise shareholders disagreeing with management but then make it difficult for parties other than company insiders to access this information. This beneficial ownership information, subject to reasonable privacy protections and materiality thresholds – for example, holdings below a specified

ownership threshold such as 1% - would be valuable to investors and those that serve investors by allowing them to conduct their own review of beneficial ownership information.

- Separately, OM notes disclosure requirements for beneficial ownership of interests in listed entities have direct consequences for the market for corporate control. To this end, aligning substantial shareholder disclosures with beneficial interest disclosures would help address the use of derivative instruments such as swaps and securities lending by market participants seeking to build a 'blocking stake' in the context of aiding or blocking a takeover (Treasury has previously considered this issue through other consultations).
- There is also a case for beneficial ownership registers for an entity's derivative securities – such as options - to also be held by an independent beneficial ownership registry. This would enable investors and the public in general to identify the interests of parties beyond the most senior management of a listed entity in incentive schemes (these registers are in principle available but in reality difficult to access). OM is aware, for example, of cases where public relations advisors and other consultants to a listed entity have received unlisted options in an entity in exchange for services giving them a direct incentive to increase the share price of an entity – at least until the options are exercised. A central, independent beneficial ownership register would also enable parties outside of company management to review who holds such incentive instruments including persons who may not fall under the technical definition of a related party but who are closely connected with directors or senior executives.

In relation to the concept of the creation of a beneficial ownership register more generally, OM considers there are likely to be public benefits beyond reducing the scope for tax avoidance. These include improving market integrity through requiring disclosure of beneficial ownership of entities such as trusts. In many cases, investors, journalists or researchers seeking to identify the ultimate owners of entities involved with listed entities, either as consultants, joint venture partners, minority investors in businesses or as shareholders directly are frustrated by the use of trusts to obscure an entity's ultimate beneficiaries.

Please feel free to contact us concerning any aspect of our submission. For the avoidance of doubt we are happy for our submission to be made public.

Yours sincerely,



Dean Paatsch & Martin Lawrence

Ownership Matters Pty Ltd