

International Institute for Self-governance

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Langton Crescent, PARKES ACT 2600

16 December 2022

Securing efficient and fair price discovery with sunlight trading

Dear Sir/Madam

I write to support the objective of the government to establish a “public register of beneficial ownership information to record who ultimately owns, controls, and receives benefits from a company or legal vehicle operating in Australia¹.”

The reason for my support is that the objective would allow “sunlight”² share trading to be introduced to provide efficient and fair price discovery of the securities of *any* publicly traded entities. This would promote the integrity of our democracy by exposing who benefits from our most powerful corporations.

Crucially it would eliminate the unconscionable unethical anonymous share trading of corporate shares introduced by the ASX guidance note-6 of June 2015 providing for both shareholder:

“Anonymity and pseudonymity”. Refer,

https://www.asx.com.au/documents/rules/asx_or_guidance_note_06.pdf

While the law requires beneficial ownership of any person owning more than 5% of the shares of any publicly traded firm to be disclosed, it is not timely, nor does it prevent ASX share trading introducing more ways than any casino to facilitate corrupt, unethical, and anti-social activities. The scope for this is indicated by the fact that 5% of any of the top 50 ASX companies can obscure the beneficial ownership securities valued at more than \$200 million³. The top 1,000 of the 2,300 or so ASX traded firms can be used to secretly launder money of around \$5 million for each firm per day.

So why would *anyone anywhere in the world* bother to go to a casino when they can undertake corrupt activities from their home by digitally trading Australian shares whose beneficial ownership is hidden by nominee companies? The introduction of Australian betting limits at Casinos will increase the attraction of the ASX becoming a preferred global money laundry for corrupt activities. It only takes 21 nominee companies to keep secret the beneficial ownership of a 100% of any corporation.

The ASX acceptance of “Anonymity and pseudonymity” means that no listed corporation should be described as “public” when its beneficial ownership is kept private and so secret. To avoid the public being misled, firms listed on the ASX, that *includes itself*, should be described as a “Société Anonyme” (SA) as found in Europe⁴.

¹ Multinational tax integrity: Public Beneficial Ownership Register, Consultation paper, November 2022, p. 4, <https://treasury.gov.au/sites/default/files/2022-11/c2022-322265-cp.pdf>

² Turnbull, S. (2005), “Insider trading – Let the sunshine in”, *Online Opinion*, November 25th, <https://www.onlineopinion.com.au/view.asp?article=3874>

³ <https://www.marketindex.com.au/asx-listed-companies>

⁴ The French government introduced legislation creating a Société Anonyme” in 1808 to protect investors from liability from the enterprises in which they invested. Directors were protected from personal liability by forming a supervisory board that did not undertake any role in incurring liabilities for an unincorporated society of anonymous investors. Management was usually protected from liability by the deed of association requiring the business to be liquidated in the event losses reduced the equity invested by a specified amount such as 50%.

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The purpose of this submission is to strongly object to the approach set out on page 12 of your consultation paper that states: “It is therefore proposed that listed entities would not be required to maintain a beneficial ownership register”⁵. I present the following reasons:

1. A fundamental requirement for any ethical business is to know your client/counter party.
2. It is misleading and deceptive conduct to describe a listed public corporation as being “public” if details of their ultimate beneficial ownership are kept hidden and/or not accessible freely on the public internet.
3. Company directors are denied knowing to who they are being held accountable when considering how to report their activities and that of the corporation. I shared an early draft of this submission with the John Atkin the chair of the Australian Institute of Company Directors on November 28th. He stated at the AGM of the AICD on November 29th that: "I personally am very supportive of it".⁶
4. Company directors and other insiders cannot ethically offer to buy or sell their corporate shares without such offers being publicly available to allow efficient and fair price discovery to be fully informed because their actions may be perceived as being price sensitive.
5. Listed corporations that do not continuously disclose without cost, the ID of their beneficial owners and/or controllers are providing a publicly sanctioned facility to act against the public good by hiding:
 - (a) insider trading,
 - (b) bribery,
 - (c) money laundering,
 - (d) tax evasion
 - (e) terrorist funding,
 - (f) foreign/alien interests,
 - (g) “dark pools that represents about 12% of Australian share trading”⁷,
 - (h) vote sharing/stock lending manipulations,
 - (i) related derivative manipulations,
 - (j) franked dividend stripping,
 - (k) covered short selling,
 - (l) naked short selling,
 - (m) franked dividend manipulation,
6. The role and purpose of AUSTRAC becomes frustrated when shares become ASX listed⁸.
7. The ability of any member of the public to be a whistle blower of insider trading and/or any of the other anti-social actions in point five above is denied.
8. ASX revenues and profits and those of its brokers are promoted by maintaining “Anonymity and pseudonymity” that facilitates insider trading, short selling, etc.
9. Private equity investments have now become so numerous that ethical investors can retain their privacy without the need to become involved in publicly traded securities.
10. Maintaining covert share trading is inconsistent with the objectives of the Finance Minister proposing to introduce a “National Identity system” for all Australian citizens⁹.

⁵ Op. Cit note 1, p. 12.

⁶ At 55 minutes of video recording at https://webcast.openbriefing.com/9305/player/index.php?player_id=50013

⁷ Budovsky, E. (2021), Trading in Australia, June 14, at: <https://www.tradersmagazine.com/am/a-deep-dive-into-public-dark-pool-trading-in-australia/>

⁸ <https://www.austrac.gov.au/business/how-comply-and-report-guidance-and-resources/customer-identification-and-verification/beneficial-owners>

⁹ “Identity a key priority for Gallagher and state digital finance ministers”, *Australian Financial Review*, September 15, 2022, at: <https://www.afr.com/politics/federal/identity-a-key-priority-for-gallagher-and-state-digital-ministers-20220915-p5bi9q>

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11. Sunlight share trading would allow any public company to trade its own shares as regulators currently **allows the ASX to do on a covert basis**.
12. Regulators have failed to safeguard the reliability, ethics, integrity, economy, efficiency, and effectiveness of public share trading in Australia by not promoting the ability of any public company to trade its own shares in the sunlight without brokers like cooperatives.

This last point is crucial as complications and risk to share exchanges would be substantially simplified eliminating any third party like a Stock Exchange and/or brokers from the exchange of shares. Buyers and sellers would only have contracts with the company being traded to eliminate the risks, costs, and time delays in third party settlements and credit clearances. Settlement risks and costs are eliminated to allow real time changes in company share registers. Cooperatives routinely self-manage their own share transfers as do private companies with employee share plans, and equities in incorporated apartments or strata title buildings.

Digital technology has made stock exchanges obsolete in facilitating price discovery to allow corporations to change entries in their share registry. Refer to the article, “Registry Z to replace stock exchanges?”, by Alderman Professor Michael Mainelli posted in 2021 at: <https://www.longfinance.net/news/pamphleteers/registryz-to-replace-stock-exchanges/> At the time Mainelli was the Sheriff of London. In November 2023 he becomes the 685th Lord Mayor of the City of London whose role is to promote London as a financial centre. Australia could lead the way by introducing sunlight share trading to allow any company to trade its own securities. Australia could become the host of any global firm seeking to maximise the integrity, reliability, economy, efficiency, and instant effectiveness in trading its shares.

It is recommended that Regulators should immediately invite corporations to trial self-listing of their shares as presently approved for the ASX **on a covert basis**. It would provide a way of removing the legal monopoly the government has granted to the ASX to control settlement and clearance functions. It would remove the concern shared by the Governor of the Reserve Bank of Australia and the Chair of the Australian Securities and Investment Commission in their letter to the ASX of November 22 this year over the reliability of what they described as “critical financial market infrastructure”¹⁰. The cost of share price discovery could be substantially reduced with superior integrity. With sunlight share trading any member of the public could safely become a whistle blower of undisclosed beneficial interests or corrupt activities.

Additional details are in my presentations to the Australian Conference of Economists in 2021 and the Academy of Finance in 2021. Refer to: *Can digital technology make self-listed firms more efficient?* Posted at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4020819 A shorter introduction is presented in my 2005 article on: “Insider trading – let sunshine in”. Refer to *Online Opinion* at <https://www.onlineopinion.com.au/view.asp?article=3874> Recent relevant letters published in *The Australian Financial Review* follow in the APPENDIX.

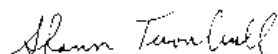
The submission is supported by the UK based Transparency Task Force (TTF) led by Andy Agathangelou described at: <https://www.transparencytaskforce.org/> The writer is one of two dozen Australian Ambassadors of TTF identified at: https://www.transparencytaskforce.org/ttf_ambassadors/australia/

Either Andy Agathangelou (andy.agathangelou@transparencytaskforce.org) and/or the writer is available to present any further information in writing, in person and/or online.

Kind regards

¹⁰ <https://www.rba.gov.au/payments-and-infrastructure/financial-market-infrastructure/clearing-and-settlement-facilities/pdf/letter-of-expectations-to-asx-regarding-chess.pdf>

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Fellow: Royal Society for encouragement of Arts (RSA)

APPENDIX Related published 2022 letters in *The Australian Financial Review*

August 8th, p. 35

FINANCIAL REVIEW

ASX secrecy rules are a part of the 'joke'

Another reason "Anti-money-laundering is a joke" (August 6), not mentioned by Chanticleer, is the Australian Securities Exchange.

The ASX trading rules, approved by the government, hide money laundering by keeping secret the ultimate beneficial owners and/or controllers of the securities being traded.

The treasurer of Australia, Jim Chalmers, is part of this joke as he has direct personal authority to disallow the ASX rule that protects "anonymity and pseudonymity".

As the ASX trades its own shares, there is a better way for the treasurer, Treasury and ASIC to not be part of the joke. They could authorise any corporation to likewise trade its own shares on any electronic trading platform that fully discloses all parties associated with each trade.

Shann Turnbull, Woollahra, Sydney

September 30th, p. 35

Let companies trade their own shares

Requiring ASX directors and their executives to undergo compliance training is not a convincing way to protect what "the central bank considers as vital financial infrastructure" ("RBA slams ASX over 'unacceptable' information lapses", September 29). A much more compelling solution would be to allow any company to trade their own shares like the ASX does. The ASX would then no longer remain a "vital financial infrastructure".

There are many electronic platforms for exchanging goods and services that could be used to trade corporate equities. Unlike the ASX, which protects insider traders with anonymity, the disclosure requirements of other platforms are superior. Already 12 per cent of Australian share trades are executed without involving the ASX in "dark pools", according to a 2021 report.

Shann Turnbull
Woollahra, NSW

December 8th p.35

Ideal response to the ASX failure

The simplest, most resilient and efficient way to overcome the ASX failure is for the government to immediately invite any publicly traded company in the world to trade its own shares, as the ASX is already allowed ("Failure raises big questions for ASX", December 7).

No third party is introduced to create delays, risks, and costs to the settlement and clearance of trades. Instant share register changes can be achieved by the company that has created the shares and controls their proof of ownership.

This routinely occurs with shares in company-owned apartments, title deeds to strata units, or shares in a co-operative. The identity of buyers and sellers would become known to each other to introduce sunlight share-trading. Australia would become the world's preferred location to expedite both reliable price discovery for their shares with their efficient transfer.

No longer would share trading be exposed to hidden insider trading, short selling, tax evasion, money laundering, terrorist financing, dark pools and other types of systemic manipulation and corruption.

Shann Turnbull
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