資料 4

Material 4

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Asian Corporate Governance Association (ACGA)

# "Fostering Constructive Engagement between Companies and Investors"

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The Council of Experts Concerning the Follow-up of Japan's Stewardship and CG Codes
June 1, 2016



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# Agenda

**Douglas Henck**

1. Core principles of corporate governance
2. Why we set up ACGA
3. The evolution of engagement: From formality to substance

**Jamie Allen**

1. Addressing conflicts of interest
2. Encouraging passive investors to engage

**Appendices**

1. A history of "comply or explain"
2. Trends in investor stewardship in Asia

# Core Principles of Corporate Governance

1. Transparency
2. Accountability
3. Fair treatment of shareholders / stakeholders
4. Board independence / strategic role
5. Ethics and integrity

*We believe these principles strengthen, not weaken, companies, capital markets and national economies over time.*

# Why we set up ACGA

- Founded in 1999 as a response to the Asian Financial Crisis of 1997-98.
- An independent, non-profit membership association dedicated to facilitating systemic and long-term improvements in corporate governance in Asia through independent research, advocacy and educational initiatives.
- We work with key constituencies—regulators, listed companies, institutional investors, accounting auditors and others—to bring about tangible improvements in governance practices.
- ACGA's growing membership base reflects increasing interest in corporate governance in Asia and globally—111 organisations; 1,200 individual contact persons receiving our material; and a global AUM of more than US$24 trillion among our investor members.



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# The evolution of engagement: From formality to meaning

- Under company law, shareholders elect directors and, therefore, directors are accountable to shareholders as owners.
  - This formal legal framework, however, has not produced meaningful dialogue in most countries.

- Solution 1: The introduction of corporate governance codes and "Comply or Explain" – Designed to give companies choice and to explain their governance policies to shareholders/stakeholders.
  - This has led to an improvement in communication and relations generally, but still much box-ticking.

- Solution 2: Stewardship codes – Puts the onus on shareholders to play an active role. While directors are the primary stewards of a company, these codes recognise that shareholders also have a important stewardship role.
  - The goal is meaningful corporate communication (reports, websites, social media) and constructive dialogue.

# Constructive dialogue and engagement

A new role for both company boards and management teams:

- Directors and executives need to be more open to engagement with shareholders and critical stakeholders.
- Delegation of communication to the investor relations function will continue, but cannot be the only avenue.
- Dialogue is an opportunity to gain new insights and independent views.

A new role for institutional investors:

- Dialogue with directors and senior management puts more onus on shareholders to understand the strategic challenges facing a company.
- New Government Pension Investment Fund survey indicates some companies complaining about investors who are seeking meetings to meet performance targets. Engagement must be meaningful.
- Governance recommendations also need to be carefully targetted and relevant to each company/sector—not just standardised best practices.
- CG / ESG specialists and portfolio managers need to present an integrated message to companies.

# Addressing conflicts of interest - 1

Q: How can asset managers mitigate conflicts of interest over shareholder voting in Japan?

Possible solutions:

1. **Independent committee to review voting:** An interesting idea, but the composition of the committee would influence its effectiveness. And from a practical perspective, would such people have the time during proxy season to review the vast number of voting decisions made by asset managers?

   - A materiality threshold or risk-based approach needed to ensure the committee focuses only on the most serious conflict-of-interest situations.

2. **Disclosure of voting records:** Useful, but of limited value if only in aggregate form (ie, total votes For, Against, Abstain on all AGMs in a year).

   - A better solution would be company-level voting disclosure.



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# Addressing conflicts of interest - 2

3. **Clear voting policy:** Develop an internal guideline that has market credibility and allows asset managers to vote based on what is best for their clients and beneficiaries. This gives the asset manager a consistent standard on which to base voting decisions and should reduce arbitrary pressure from a parent.

    - This approach could be augmented by requiring asset managers to explain why they have voted for parent-company clients in conflict-of-interest situations.

4. **Parent-level disclosure:** Perhaps the FSA should require parent financial institutions to explain how they allow asset management subsidiaries to play their fiduciary role without interference?

# ACGA Member Practice

| Total number of ACGA investor members | 75 |
|---|---|
| Number (percentage) that have a voting policy | 63 (84%) |
| Number (percentage) that disclose voting records down to **the company level** | 48 (64%) |

**Example:**

PROXY VOTING PROCEDURES AND PRINCIPLES

*The following summarizes the internal operating procedures for voting proxies of portfolio companies held by the American Funds. These Proxy Voting Procedures and Principles ("Principles"), which have been in effect in substantially their current form for many years, are disclosed in accordance with a U.S. Securities and Exchange Commission requirement that all investment companies (mutual funds) make public how they conduct their proxy voting process.*

**Abbott Laboratories**

| **Ticker** | **Security ID:** | **Meeting Date** | **Meeting Status** |
|---|---|---|---|
| ABT | CUSIP 002824100 | 04/24/2015 | Voted |
| **Meeting Type** | **Country of Trade** | | |
| Annual | United States | | |

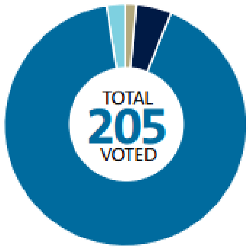
| **Issue No.** | **Description** | **Proponent** | **Mgmt Rec** | **Vote Cast** | **For/Agnst Mgmt** |
|---|---|---|---|---|---|
| 1.1 | Elect Robert J. Alpern | Mgmt | For | For | For |
| 1.2 | Elect Roxanne S. Austin | Mgmt | For | For | For |
| 1.3 | Elect Sally E. Blount | Mgmt | For | For | For |
| 1.4 | Elect W. James Farrell | Mgmt | For | For | For |
| 1.5 | Elect Edward M. Liddy | Mgmt | For | For | For |
| 1.6 | Elect Nancy McKinstry | Mgmt | For | For | For |
| 1.7 | Elect Phebe N. Novakovic | Mgmt | For | For | For |
| 1.8 | Elect William A. Osborn | Mgmt | For | For | For |
| 1.9 | Elect Samuel C. Scott III | Mgmt | For | For | For |

# AMP CAPITAL BLUE CHIP FUND

AMP CAPITAL

Proxy Voting Disclosure
Financial Year 2014-2015

VOTING
**AMP CAPITAL BLUE CHIP FUND**




**Number of resolutions:**

- Abstain **3** (2%)
- Against **10** (5%)
- For **187** (91%)
- Not authorised to vote* **5** (2%)

* This includes votes at AMP Limited meetings and stock issues in which AMP Capital participated.

| ASX CODE | COMPANY NAME | MEETING DATE | RECORD DATE | MEETING TYPE | PROPOSER | PROPOSAL NO | TYPE OF PROPOSAL | VOTE | PROPOSAL DETAIL |
|---|---|---|---|---|---|---|---|---|---|
| MQG | MACQUARIE GROUP LTD | 24-Jul-14 | 22-Jul-14 | Annual General Meeting | Management | 2 | Director Election | For | RE-ELECTION OF MR HK MCCANN AS A VOTING DIRECTOR |
| MQG | MACQUARIE GROUP LTD | 24-Jul-14 | 22-Jul-14 | Annual General Meeting | Management | 3 | Director Election | For | RE-ELECTION OF MS DJ GRADY AS A VOTING DIRECTOR |
| MQG | MACQUARIE GROUP LTD | 24-Jul-14 | 22-Jul-14 | Annual General Meeting | Management | 4 | Director Election | For | ELECTION OF MR GR BANKS AS A VOTING DIRECTOR |
| MQG | MACQUARIE GROUP LTD | 24-Jul-14 | 22-Jul-14 | Annual General Meeting | Management | 5 | Director Election | For | ELECTION OF MRS PA CROSS AS A VOTING DIRECTOR |
| MQG | MACQUARIE GROUP LTD | 24-Jul-14 | 22-Jul-14 | Annual General Meeting | Management | 6 | Director Election | For | ELECTION OF MS NM WAKEFIELD EVANS AS A VOTING DIRECTOR |
| MQG | MACQUARIE GROUP LTD | 24-Jul-14 | 22-Jul-14 | Annual General Meeting | Management | 7 | Executive Remuneration - Approve the remuneration report | For | TO ADOPT THE REMUNERATION REPORT OF MACQUARIE FOR THE YEAR ENDED 31 MARCH 2014 |
| MQG | MACQUARIE GROUP LTD | 24-Jul-14 | 22-Jul-14 | Annual General Meeting | Management | 8 | Executive Remuneration - Approve incentive plan | For | APPROVAL OF EXECUTIVE VOTING DIRECTOR'S PARTICIPATION IN THE MACQUARIE GROUP EMPLOYEE RETAINED EQUITY PLAN (MEREP) |
| WPL | WOODSIDE PETROLEUM LTD | 1-Aug-14 | 30-Jul-14 | Ordinary General Meeting | Management | 1 | Capital restructure | Against | BUY-BACK OF SHELL'S SHARES IN THE COMPANY |
| TCL | TRANSURBAN GROUP | 9-Oct-14 | 7-Oct-14 | Annual General Meeting | Management | 2.a | Director Election | For | TO RE-ELECT A DIRECTOR OF THL AND TIL-NEIL CHATFIELD |
| TCL | TRANSURBAN GROUP | 9-Oct-14 | 7-Oct-14 | Annual General Meeting | Management | 2.b | Director Election | For | TO RE-ELECT A DIRECTOR OF THL AND TIL-ROBERT EDGAR |
| TCL | TRANSURBAN GROUP | 9-Oct-14 | 7-Oct-14 | Annual General Meeting | Management | 3 | Executive Remuneration - Approve the remuneration report | For | ADOPTION OF REMUNERATION REPORT (THL AND TIL ONLY) |
| TCL | TRANSURBAN GROUP | 9-Oct-14 | 7-Oct-14 | Annual General Meeting | Management | 4 | Executive Remuneration - Issue of options/ZEPOs | For | GRANT OF PERFORMANCE AWARDS TO THE CEO (THL, TIL AND THT) |
| TLS | TELSTRA CORPORATION LTD | 14-Oct-14 | 10-Oct-14 | Annual General Meeting | Management | 3.a | Director Election | For | ELECTION OF DIRECTOR: MR PETER HEARL |
| TLS | TELSTRA CORPORATION LTD | 14-Oct-14 | 10-Oct-14 | Annual General Meeting | Management | 3.b | Director Election | For | RE-ELECTION OF DIRECTOR: MR JOHN MULLEN |
| TLS | TELSTRA CORPORATION LTD | 14-Oct-14 | 10-Oct-14 | Annual General Meeting | Management | 3.c | Director Election | For | RE-ELECTION OF DIRECTOR: MS CATHERINE LIVINGSTONE AO |
| TLS | TELSTRA CORPORATION LTD | 14-Oct-14 | 10-Oct-14 | Annual General Meeting | Management | 4 | Executive Remuneration - Issue of options/ZEPOs | For | GRANT OF PERFORMANCE RIGHTS |
| TLS | TELSTRA CORPORATION LTD | 14-Oct-14 | 10-Oct-14 | Annual General Meeting | Management | 5 | Executive Remuneration - Approve the remuneration report | For | REMUNERATION REPORT |
| CSL | CSL LTD | 15-Oct-14 | 13-Oct-14 | Annual General Meeting | Management | 2.a | Director Election | For | TO RE-ELECT PROFESSOR JOHN SHINE AS A DIRECTOR |
| CSL | CSL LTD | 15-Oct-14 | 13-Oct-14 | Annual General Meeting | Management | 2.b | Director Election | For | TO RE-ELECT MS CHRISTINE O'REILLY AS A DIRECTOR |
| CSL | CSL LTD | 15-Oct-14 | 13-Oct-14 | Annual General Meeting | Management | 2.c | Director Election | For | TO RE-ELECT MR BRUCE BROOK AS A DIRECTOR |
| CSL | CSL LTD | 15-Oct-14 | 13-Oct-14 | Annual General Meeting | Management | 3 | Executive Remuneration - Approve the remuneration report | For | ADOPTION OF THE REMUNERATION REPORT |
| CSL | CSL LTD | 15-Oct-14 | 13-Oct-14 | Annual General Meeting | Management | 4 | Executive Remuneration - Issue of options/ZEPOs | For | GRANT OF PERFORMANCE OPTIONS AND PERFORMANCE RIGHTS TO MR PAUL PERREAULT, THE MANAGING DIRECTOR AND CHIEF EXECUTIVE OFFICER |

# Market Rules / Practices on Institutional Voting

| Market | Disclose voting policy? | Disclose voting records? | Disclose voting to company level? |
|---|---|---|---|
| **United States** | ✓ | ✓ | ✓ |
| **Australia** | ✓ | ✓ | ✓ |
| **India** | ✓ | ✓ | ✓ |
| **Korea** | ✓ | ✓ | × |
| **Malaysia** | ✓ | ✓ | × |
| **Thailand** | ✓ (Follow industry standard) | ✓ (Industry aggregate) | × |



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# Encouraging passive investors to engage

Incorrect to say that passive investors have no role in CG:

1. Passive investors cannot sell, hence engagement is one of the few ways to deal with governance problems in companies.
2. Passive investors are long-term shareholders by definition (and often with long-term liabilities), hence have an incentive to enhance the value of their holdings.
3. Numerous asset owners around the world are passive investors, yet have long had voting policies, actively vote shares, and increasingly engage.
4. Given large holdings, passive investors must be selective in choosing companies to engage with.

# Appendix 1: The emergence of "Comply or Explain"

- **United Kingdom, early 1990s:** Corporate collapses, concerns over auditing and executive pay led to the "Cadbury Report", a seminal document on the "financial aspects of corporate governance", published in December 1992. Hugely influential and widely copied.

- The Cadbury Report produced a short Code of Best Practice, which companies were expected to follow or "give reasons for any areas of non-compliance". The London Stock Exchange created a continuing listing obligation to this effect (ie, a disclosure obligation).

- Cadbury argued that "compliance with a voluntary code coupled with disclosure, will prove more effective than a statutory code. It is directed at establishing best practice, at <u>encouraging pressure from shareholders to hasten its widespread adoption</u>, and at allowing some <u>flexibility in implementation</u>".

  *(Underlining added)*

# Implementation of "Comply or Explain"

Cadbury envisages four essential actors in any "comply or explain" regime:

1. **Listed company boards**: They can choose to comply with the best practices in the Code or explain why they do not. But they should do so in spirit and substance, not form.

2. **Regulators**: They must ensure that the Code's disclosure obligation is taken seriously by companies and take enforcement action under the Listing Rules if it is not (eg, a reprimand).

3. **Shareholders:** Since they elect directors, shareholders have a responsibility as owners to hold boards accountable in their implementation of the Code.

4. **Auditors:** They are formally appointed by shareholders and must ensure the financial reports of companies are true and fair, and that their audit is done with professional objectivity. Cadbury also envisaged auditors would review board compliance with the Code.

- These four parts are interconnected. Drop any one or more and the system loses integrity and cohesion.

# Early challenges

- **Hampel Committee, January 1998:** Formed in late 1995 to review the implementation of the Cadbury Committee's recommendations and those of a subsequent committee addressing remuneration—the Greenbury Committee.
- Hampel reported that companies often felt shareholders or their advisers treated the Codes as "sets of prescriptive rules", which led to box-ticking.
- Hampel also criticised some companies for taking the "easier option" of box-ticking, rather than "the diligent pursuit of corporate governance objectives".
- And, presciently, he argued against lower standards for smaller companies—a controversial issue still today.

  "Any distinction by size would be arbitrary; more importantly, we consider that high standards of governance are as important for smaller listed companies as for larger ones."

# CG Codes in Asia-Pacific

| Market | CG Code adoption | Amendment | "Comply or explain"? |
|---|---|---|---|
| **Australia** | 2003 | 2007, 2010, 2014 | Yes |
| **China** | 2002 | - | No (mandatory) |
| **Hong Kong** | 2004 | 2012 | Yes |
| **India** | 1999 | 2014 | Yes |
| **Indonesia** | 2001 | 2006, 2015 | No / Yes |
| **Japan** | 2015 | - | Yes |
| **Korea** | 1999 | 2003, 2016? | No (voluntary) / Yes? |
| **Malaysia** | 2000 | 2007, 2012 | Yes |
| **Philippines** | 2002 | 2009 | No (mandatory) |
| **Singapore** | 2001 | 2005, 2012 | Yes |
| **Taiwan** | 2002 | 2011, 2015 | Yes |
| **Thailand** | 1999 | 2002, 2006, 2012 | Yes |

Source: ACGA research

# CG Codes in selected European countries

| Market | CG Code adoption | Amendment | Code compliance: Mandatory or Comply/ explain? |
|---|---|---|---|
| **Germany** | 2002 | 2003 to 2015 (11 revisions) | Both |
| **Belgium** | 2004 | 2009 | Both |
| **Spain** | 2006 | 2013, 2015 | Voluntary/Comply or explain |
| **Finland** | 2004 | 2008, 2010 | Mandatory |
| **France** | 2003 | 2007 to 2015 (5 revisions) | Voluntary/Comply or explain |
| **Italy** | 2006 | 2010 to 2015 (4 revisions) | Voluntary/Comply or explain |
| **Netherlands** | 2003 | 2008 | Both |
| **UK** | 1998 | 2003 to 2016 (6 revisions) | Both |
| **Sweden** | 2005 | 2008, 2010, 2015 | Mandatory |

Source: AMF, France

# How does Asia measure up?

- Although the Cadbury Report (and later the "UK Combined Code") has had a profound impact on Asian CG Codes—some largely copying it and/or the OECD Principles—the performance of the four actors has much room for improvement:
  - **Company** explanations often verge on the formulaic ("boilerplate").
  - **Regulators** rarely take enforcement action for poor disclosure.
  - **Shareholder** ability to hold boards accountable is limited.
  - **Audit** quality hard to assess, lack of professional scepticism.
- This has implications for Korea: Governance reform needs to ensure that the right cultural incentives and institutional structures are in place if the amended CG Code is to achieve its objectives.
- It is worth noting that even in the UK, these processes are far from perfect. A 2013 review found that many companies struggled to articulate why they deviated from some aspects of the Code.

# What "comply or explain" is not

- There seems to be a view that "comply or explain" means either 'comply and simply state that you have complied' or 'do not comply and provide an explanation as to why you have not'.

- However, companies need to provide some explanation to shareholders even when they do comply. How are they implementing the principles and guidelines in a Code, and what have been the results of this action?

- Hence, "comply or explain" should really be written: "comply <u>and</u> explain, or do not comply <u>and</u> explain".

# Appendix 2: Stewardship Codes

- UK "Stewardship Code" (2010, 2012)
- Netherlands "Best Practices for Engaged Share Ownership" (2011)
- Japan "Stewardship Code" (2014)
- Malaysia "Code for Institutional Investors" (2014)
- Hong Kong "Principles of Responsible Ownership" (2016)
- Taiwan "Stewardship Principles for Institutional Investors" (2016)

Coming up in Asia:

- Singapore
- Thailand
- Korea

# “Stewardship” before stewardship codes

- **1980s/1990s:** State pension funds in the US began to develop policies and strategies on corporate governance. Voting shares, highlighting poor performers (CalPERS).
- **1990s/2000s:** Pension funds and asset managers in the UK started to follow suit, with voting/CG policies and active voting.
- **2000s:** Superannuation (pension) funds in Australia became actively involved in corporate governance issues and voting.
- **2005:** National Pension Service in Korea revised its voting policies.
- **Mid-2000s:** ACGA members actively voting in this region.
- **2010:** Employees Provident Fund, Malaysia, published its internal CG Principles and Voting Guidelines.

# Global investor approaches to Asian companies: past 10+ years

| | Comment |
|---|---|
| **"Passive"** | Only invest in companies, passive as shareholder |
| **"Automatic voters"** | Some shareholder responsibilities, institutions starting to vote, but somewhat automatically |
| **"Informed voters"** | Investors who take a focussed and risk-based approach as shareholder (e.g. voting on all or selected parts of their shareholdings) |
| **"Light touch engagement"** | Investors starting to exercise their rights and responsibilities as shareholders (e.g. undertake or participate in letter campaigns or conference calls with companies) |
| **"Active owners" (Stewards)** | Act as owners of the company (e.g. building long term relationship, engagement strategy, advising etc.) |

Evolution over time

# Modern “stewardship” – Post 2010 / GFC

- Institutional investors (pension funds and investment managers) are under increasing pressure to act as “stewards” of the capital they invest <u>and</u> of the assets they invest in (through holding the board to account).

- What does this mean in practice?
  - Investors need to take “environmental, social, and governance” (ESG) factors into account when investing.
  - They need explicitly to <u>engage</u> in “purposeful dialogue” with company management/directors.

- The Global Financial Crisis (GFC) has led to enormous pressure on institutional investors to be better stewards. Great criticism that many of them ignored CG and ESG factors before the GFC, leading to large investment losses.

# Key Questions & Issues

1. Directors are the primary stewards of a company. How should shareholders exercise their "stewardship" function most effectively? What is the right relationship between the two groups?
2. Investor stewardship comprises two parts: stewardship <u>of</u> the capital with which they have been entrusted (the "fiduciary duty" concept); and stewardship over the companies in which they invest (the "ownership concept"). Both are critical. Yet most of the discussion and focus is on the latter.
3. How do institutions manage and disclose the conflicts of interest they face?
4. How do state pension/investment institutions manage the political interference they face?
5. Should pension funds ("asset owners") drive stewardship, with investment funds ("asset managers") playing a secondary role?

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