

Reporting Update

29 July 2014, 14RU-007



ASX Corporate Governance changes

The third edition of the ASX Corporate Governance Council (Council) *Principles and Recommendations* introduces nine new recommendations to which the 'if not, why not' disclosure approach now applies, in addition to amendments to certain existing recommendations.

With supporting changes to the ASX Listing Rules, listed entities will now have greater flexibility to make their Corporate Governance disclosures on their website or in their annual report. Concurrently, the ASX has introduced Appendix 4G to provide a key to locating an entity's corporate governance disclosures.

The changes are effective for financial years commencing on or after 1 July 2014. However, listed entities are encouraged to adopt the changes earlier.

In addition to the corporate governance amendments, the ASX has made other listing rule amendments during the year including changes to the standard timetable for rights issues, new listing rules for resource reporting and release of new guidance notes.

KEY POINTS

- **Key changes to the ASX Corporate Governance *Principles and Recommendations* include:**
 - 9 new recommendations to which 'if not, why not' disclosure applies
 - enhanced risk recommendations
 - CEO/CFO sign-off not just year-end
 - changes to indicators of director independence
- **Corresponding ASX listing rule changes include:**
 - corporate governance disclosure on website or annual report
 - new Appendix 4G

ACTION POINTS

- **Review new recommendations now to allow time to change or consider disclosures that may be required under 'if not, why not' disclosure approach**

Corporate Governance amendments

Which entities should apply the updated *Corporate Governance Principles and Recommendations*?

The *Corporate Governance Principles and Recommendations (Principles and Recommendations)* apply to all ASX listed entities, regardless of their legal form (i.e. company, managed investment scheme or stapled entity), whether they were established in Australia or whether they are internally or externally managed. Whilst the *Principles and Recommendations* are designed to achieve good corporate governance outcomes and meet reasonable investor expectations, the Council acknowledges that different entities may legitimately adopt a range of corporate governance practices. As such, the *Principles and Recommendations* are not mandatory for listed entities nor do they prescribe practices that an entity must adopt. However, where the Board of a listed entity chooses not to follow a particular recommendation, it must explain why – the “if not, why not” approach.

The *Principles and Recommendations* reflect a ‘best practice’ view of appropriate corporate governance standards that other entities may find useful when framing their own corporate governance policies and practices.

What are the key changes to the *Principles and Recommendations*?

New recommendations

The *Principles and Recommendations* contain eight core principles supported by 29 specific recommendations and explanatory commentary. The third edition introduces nine new recommendations, although the majority of these are elevated from previous explanatory commentary and as such, do not represent completely new guidance. However, the effect of this elevation is that the “if not, why not” disclosure approach to non-compliance now applies to these areas.

Companies should review their corporate governance policies and practices to ensure compliance with the new recommendations (outlined below) or prepare to explain any non-compliance.

New guidance		
Principle	Recommendation	A listed entity should:
1. Lay solid foundations for management and oversight	1.2 (a)	undertake appropriate background checks before appointing a person for election as a director
7. Recognise and manage risk	7.4	disclose any material exposure to economic, environmental and social sustainability risks and how those risks are managed

Elevated from commentary or guidance

Principle	Recommendation	A listed entity should:
1. Lay solid foundations for management and oversight	1.2 (b)	provide material information to security holders relevant to re-election of directors
1. Lay solid foundations for management and oversight	1.3	have a written agreement with each director/senior executive outlining the terms of appointment
1. Lay solid foundations for management and oversight	1.4	have company secretary directly accountable to Board
2. Structure the board to add value	2.6	have an induction program for directors and provide appropriate professional development for continuing directors to develop and maintain their skills and knowledge needed to perform their role effectively
4. Safeguard integrity in corporate reporting	4.3	ensure that external auditor attends AGM and is available to answer questions
6. Respect the rights of security holders	6.1	provide information about itself and governance on its website
6. Respect the rights of security holders	6.4	give security holders the option to send/receive communications with the entity and its security registry electronically
7. Recognise and manage risk	7.3	disclose if it has an internal audit function and its structure and role or, if it does not, disclose the processes for evaluation and continuous improvement of its risk management and internal control processes

Other key changes

The third edition included a number of other changes outlined in the table below.

Change	Implication
CEO/CFO certification (recommendation 4.2) now applies to financial statements for any reporting period rather than just year-end	Ensure processes are in place to receive CEO/CFO certification for all financial statements approved by Board, including the half-year.
Enhanced risk recommendations (recommendations 7.1 -7.4)	Review and consider a need to upgrade corporate governance practices.
Ability to adopt and report alternative governance practices for nomination, audit, risk and remuneration committees and internal audit (recommendations 2.1, 4.1, 7.1, 8.1 and 7.3 respectively)	Enables entities to legitimately adopt different governance practices and report positive compliance with <i>Principles and Recommendations</i> .
Modification of diversity recommendation 1.5 to: <ul style="list-style-type: none"> ■ allow reporting of ‘Gender Equality Indicators’ instead of the respective proportions of men and women on the board, in senior executive positions and across the whole organisation where the entity is a ‘relevant employer’ under the Workplace Gender Equality Act ■ where entity chooses to report respective proportions of men and women on the board, in senior executive positions and across the whole organisation, it should disclose how it has defined ‘senior executive’ for these purposes ■ provide enhanced commentary on the meaning of ‘measurable objectives’ and how an entity may assess its achievements against those objectives 	Review and consider the need for changes to entity’s diversity objectives, measurements and disclosures.
Factors relevant to assessing the independence of a director contained in Box 2.3 have been amended to: <ul style="list-style-type: none"> ■ expand the references to providers of material professional services and other material business relationships (e.g. supplier or customer) to cover those relationships within the past three years ■ include the following as potential indicators of non-independence: <ul style="list-style-type: none"> – close family ties with non-independent person – overly long service as a director. 	Review and assess directors’ independence. Whilst Box 2.3 does not prescribe what an “overly long service” period may be, the commentary suggests that the Board should regularly assess independence when a director has served more than 10 years.

Change	Implication
Recommendation 4.1 describes the Audit Committee's responsibility for the integrity of 'corporate reporting' rather than purely 'financial reporting' of an entity.	<p>Review and assess whether the scope of the Audit Committee's role requires amendment.</p> <p>KPMG has recently released a report 'Oversight of corporate reporting by company directors' discussing how recent changes in ASX Corporate Governance Principle 4 impact directors and investors.</p>

ASX listing rule Corporate Governance amendments

The ASX listing rules have been amended to complement and give effect to the third edition of the *Corporate Governance Principles and Recommendations*. These amendments are intended to ensure that the corporate governance statement receives due attention and focus by an entity's board to reflect an entity's individual corporate governance practices.

The changes apply for financial years ending on or after 30 June 2015. Early adoption is possible where an entity reports on the third edition of the *Corporate Governance Principles and Recommendations* and early-adopts changes to Listing rule 4.7 and 4.10.3 concurrently. An entity cannot early adopt the listing rule changes if it reports against the second edition of the *Principles and Recommendations*.

Corporate Governance Statement

One of the key changes provides greater flexibility by allowing an entity to provide its corporate governance statement in its annual report or website (Listing rule 4.10.3). Where an entity chooses to provide its corporate governance statement on its website, it must lodge a copy of the statement at the same time the annual report is lodged with the ASX, thus ensuring the ASX has a permanent record at its effective date each year, regardless of an entity's website changes (Listing rule 4.7.4). In addition, the annual report needs to include the website address of where the corporate governance statement can be found.

The corporate governance statement must also specify the date at which it is current (which must be the entity's balance date or later) and state that it has been approved by the board. The amendments also clarify the disclosures required where a corporate governance recommendation was not followed during the reporting period, including the period for which a recommendation was not followed, explanation and any alternative governance practices adopted in lieu.

Appendix 4G

The ASX introduced Appendix 4G "*Key to disclosures Corporate Governance Council Principles and Recommendations*" to simplify the identification and location of corporate governance disclosures by providing a key to where each can be found; and to assist entities with their corporate governance disclosure obligations by providing a documented verification process (Listing rule 4.7.3).

A listed entity is required to complete and lodge an Appendix 4G at the same time it lodges its annual report with the ASX commencing for financial years ending on or after 30 June 2015. An entity may choose to lodge an Appendix 4G earlier provided it meets the early-adoption criteria outlined above.

Other amendments

A number of other listing rule changes were included with the above corporate governance amendments. These amendments are summarised in the table below and are effective from 1 July 2014.

Chapter	Listing rule	Amendment	Comment
3. Continuous disclosure – <i>Notice of specific information</i>	3.16.4	Requires an entity to disclose certain information relating to employment, service and consultancy agreements with chief executive officers, directors and their related parties. As 'related entity' is not defined in the listing rules, the amendments have replaced the term with 'child entity' or 'related body corporate'. The amendment also states that provisions requiring the entity to indemnify officers or exempt them from liability that conform to section 199A of the Corporations Act or require the entity to maintain directors' and officers' liability insurance to conform to section 199B of the Corporations Act are excluded from the requirements of this listing rule.	
4. Periodic disclosure - <i>Additional information to be included by all entities</i>	4.10	Additional information in the annual report must be current on or after balance date and not more than 6 weeks before the report is given to the ASX	Previously, this rule required not more than 6 weeks before the report is "sent to security holders"
4. Periodic disclosure - <i>Additional information to</i>	4.10.22	Introduction of new listing rule requiring an entity to disclose in its annual report any on-market purchases of securities for employee incentive schemes or	This disclosure is required regardless of who purchased the securities (i.e. the entity, child entity, or an independent trustee of the employee

Chapter	Listing rule	Amendment	Comment
<i>be included by all entities</i>		any on-market purchases of securities to satisfy the entitlements of holders of options or other rights to acquire securities granted under an employee incentive scheme.	<p>incentive scheme to whom the entity or child entity has directly or indirectly provided funds for that purpose) and is an annual disclosure covering the whole reporting period (i.e. the disclosures are not required when each purchase is made).</p> <p>The disclosures must be made in the entity's annual report to enable investors to consider the information when deciding whether to approve the entity's remuneration report.</p>
14. Meetings – <i>general meetings</i>	14.2	<p>Amendments to the requirements for proxy forms include:</p> <ul style="list-style-type: none"> ■ providing the security holder the ability to direct their proxy to abstain from voting on a resolution ■ providing a statement as to how the Chair intends to vote undirected proxies and ■ removing the requirement to tick a "chairman's box" in order to have undirected proxy votes counted. 	
19. Interpretation and definitions	19.12	New definition for associate to reference sections 12 and 16 of the Corporations Act rather than section 11 and 13-17.	The note to the definition states that one way to establish whether a related party of a director or officer is not their associate is for the party in question to give a statutory declaration or some other form of certification to the entity to that effect.
19. Interpretation and definitions	19.12	New definition for volume weighted average market price (VWAP).	When calculating the reduction in the exercise price of an option, the VWAP now replaces market price. VWAP is

Chapter	Listing rule	Amendment	Comment
			considered a better measure of market value for these purposes than an average of closing prices.

Other ASX listing rule amendments

The table below summarises the listing rule amendments over the past 12 months (excluding the corporate governance amendments).

Amendment	Detail	Effective date
Guidance Note 19 <i>Performance Shares</i>	Developed to assist listed entities in structuring the terms of performance shares to comply with the ASX Listing Rules. Replaces Guidance note 19 <i>Non-Business Days and Non-Trading Days</i> that has been withdrawn.	Released on 28 April 2014
The standard timetable for rights issues is reduced to 19 business days.	Standard timetable for rights issues shortened by 7 business days by reducing the period from: <ul style="list-style-type: none"> ■ ex date to and including the record date from 5 business days to 3 business days ■ the day after the record date to and including the date the documents are sent to shareholders from a maximum of 4 business days to a maximum of 3 business days ■ the day after the date that documents are sent to shareholders to and including the date that applications close from a minimum of 10 business days to a minimum of 7 business days ■ the day after the date that applications close to and including the issue date from 6 business days to 5 business days 	14 April 2014

Amendment	Detail	Effective date
Standard timetables for accelerated rights issues introduced	Standard timetables introduced for: <ul style="list-style-type: none"> ■ accelerated non-renounceable entitlement offers (ANREO) ■ accelerated renounceable entitlement offers (AREO) and simultaneous accelerated entitlement offers (SAREO) ■ accelerated renounceable entitlement offers with retail rights trading (AREORT) 	14 April 2014
Amendment to dividend reinvestment plan (DRP) election date rule	The last election date for a DRP must be no earlier than the business day following the record date for the dividend	14 April 2014
New annual reporting requirements for mining, oil and gas entities commenced in December 2013	Full detail of requirements outlined in Chapter 5 of the ASX listing rules	December 2013
Guidance Note 33 <i>Removal of entities from the official list</i>	Deals with when and how ASX may de-list an entity, either at the request of the listed entity or at the instigation of the ASX.	Released on 28 November 2013
Amendments to Guidance Note 8 <i>Continuous Disclosure: Listing Rules 3.1 – 3.1B</i>	As a result of release of new Guidance Note 33, amendments made to guidance note 8 deal with disclosures ASX expects an entity to make if its securities are suspended from quotation.	28 November 2013