

ASX / ASX Corporate Governance Council Developments



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May - June 2014

Outline

1. 3rd edition *Corporate Governance Principles and Recommendations*:
 - What has not changed
 - Structural changes
 - Substantive changes:
 - Greater flexibility to put disclosures on website
 - Enhanced risk recommendations (including new recommendations on internal audit and sustainability risks)
 - 7 other new recommendations
 - Director independence
 - Board committees

Outline (cont.)

- Board skills matrix
 - CEO / CFO certifications
 - Security holder rights
 - Diversity recommendations
 - Overseas entities
2. Supporting ASX Listing Rule changes
 3. Effective date and early adoption
 4. Other ASX Listing Rule changes
 5. Other ASX developments

What has not changed

- Non-prescriptive, flexible “if not, why not” disclosure approach
- Hierarchy: principles, recommendations, commentary
- 8 core principles and 22 ‘substantive’ recommendations in 2nd edition largely retained and carried across into 3rd edition, although with some drafting changes
- Now 29 recommendations in 3rd edition compared to 30 in 2nd edition but ...
- Substantial changes in structure of *Principles and Recommendations* allow for introduction of 9 new recommendations (although 7½ were already in commentary in 2nd edition in one form or another)

Structural changes

- Amalgamated 3 separate recommendations re audit committee, 2 re remuneration committee, 2 re diversity, and 2 re chair being independent and not the CEO, into one recommendation on each topic
 - ✓ Better, more streamlined and more holistic governance disclosures
- 8 separate 'reporting' recommendations removed – each recommendation now specifies what (if anything) has to be disclosed in relation to that recommendation
 - ✓ Easier for listed entities to understand their reporting obligations and to make disclosures required under LR 4.10.3
 - ✓ Fewer errors in reporting

Structural changes (cont.)

- Greater flexibility to make governance disclosures either on website or in annual report
 - ✓ Will allow listed entities to reduce “clutter” in annual reports
- Streamlined commentary - overall length of *Principles and Recommendations* reduced by around 25%
- Recommendations that apply to externally managed entities (eg listed trusts) now in stand-alone section at end of *Principles and Recommendations* rather than in 8 separate sub-sections under each principle
 - ✓ Easier for externally managed listed entities to understand reporting obligations and to make disclosures under LR 4.10.3
 - ✓ Avoids disrupting the flow of the document for others

Enhanced risk recommendations

- **Recommendation 7.1 (modified):** The board of a listed entity should:
 - (a) have a committee or committees to oversee risk, each of which:
 - (1) has at least three members, a majority of whom are independent directors; and
 - (2) is chaired by an independent director,and disclose:
 - (3) the charter of the committee;
 - (4) the members of the committee; and
 - (5) as at the end of each reporting period, the number of times the committee met throughout the period and the individual attendances of the members at those meetings; *OR*
 - (b) if it does not have a risk committee or committees, disclose that fact and the processes it employs for overseeing the entity's risk management framework.

Enhanced risk recommendations (cont.)

- **Recommendation 7.2 (modified):** The board or a committee of the board should:
 - (a) review the entity's risk management framework at least annually to satisfy itself that it continues to be sound; and
 - (b) disclose in relation to each reporting period, whether such a review has taken place.

- **Recommendation 7.3 (new):** A listed entity should disclose:
 - (a) if it has an internal audit function, how the function is structured and what role it performs; or
 - (b) if it does not have an internal audit function, the processes it employs for evaluating and continually improving the effectiveness of its risk management and internal control processes.

Enhanced risk recommendations (cont.)

- **Recommendation 7.4 (new):** A listed entity should disclose whether it has any material exposure to economic, environmental and social sustainability risks and, if it does, how it manages, or intends to manage, those risks.

“*Economic sustainability*” – the ability ... to continue operating at a particular level of economic production over the long term.

“*Environmental sustainability*” – the ability ... to continue operating in a manner that does not compromise the health of the ecosystems in which it operates over the long term.

“*Social sustainability*” – the ability ... to continue operating in a manner that meets accepted social norms and needs over the long term.

“*Material exposure*” – a real possibility that the risk in question could substantively impact the listed entity’s ability to create or preserve value for security holders over the short, medium or long term.

Enhanced risk recommendations (cont.)

- Rec 7.4 reflects and responds to increasing attention being given by investors to environmental and social issues and the investment risks they pose, see eg:
 - *Principles of Responsible Investment* – ascribed to by managers with \$34+ trillion FUM (approximately 15% of total global investable assets)
 - ACSI and FSC, *ESG Reporting Guide for Australian Companies: Building the foundation for meaningful reporting* (June 2011)
 - UN Global Compact's ten principles on human rights, labour, the environment and anti-corruption
 - OECD's Guidelines for Multinational Enterprises
 - Global Reporting Initiative
 - International Integrated Reporting Council
 - <http://www.youtube.com/watch?v=1BCA8dQfGi0>

Enhanced risk recommendations (cont.)

- Key points about Rec 7.4:
 - sits within principle 7 (recognise and manage risk) rather than principle 3 (act ethically and responsibly)
 - if you consider you do not have a material exposure to sustainability risks, all you need do is to state that fact
 - if you consider you do have a material exposure to sustainability risks, you should disclose what those risks are and how you manage, or intend to manage, them
 - this does not require you to publish a sustainability report – but, if you do, you can meet Rec 7.4 simply by cross-referring to that report
 - you can also meet Rec 7.4 by cross-referring to relevant sections in your operating and financial review

Other new recommendations

- **Recommendation 1.2:** A listed entity should:
 - (a) undertake appropriate checks before appointing a person, or putting forward to security holders a candidate for election, as a director; and
 - (b) provide security holders with all material information in its possession relevant to a decision on whether or not to elect or re-elect a director.

- **Recommendation 1.3:** A listed entity should have a written agreement with each director and senior executive setting out the terms of their appointment.

- **Recommendation 1.4:** The company secretary of a listed entity should be accountable directly to the board, through the chair, on all matters to do with the proper functioning of the board.

Other new recommendations (cont.)

- **Recommendation 2.6:** A listed entity should have a program for inducting new directors and provide appropriate professional development opportunities for directors to develop and maintain the skills and knowledge needed to perform their role as directors effectively.
- **Recommendation 4.3:** A listed entity that has an AGM should ensure that its external auditor attends its AGM and is available to answer questions from security holders relevant to the audit.
- **Recommendation 6.1:** A listed entity should provide information about itself and its governance to investors via its website.
- **Recommendation 6.4:** A listed entity should give security holders the option to receive communications from, and send communications to, the entity and its security registry electronically.

Director independence

The indicia of independence in the *Principles and Recommendations* (formerly Box 2.1 but now Box 2.3) have been amended to:

- expand the references to material suppliers and customers to cover those relationships, and other material business relationships, going back 3 years
- include close family ties in the Box rather than in the commentary
- include “been in role for such a period that independence may have been compromised” but:
 - no fixed period of tenure
 - guidance in commentary that this should be considered annually and looked at more carefully after 10 years
 - recognition in the commentary that boards are best served by having a mix of tenures

Nom, audit and rem committees

- Nom, audit and rem committee recommendations (as well as risk committee and internal audit recommendations) now allow listed entities to adopt and report alternative practices:
 - ✓ recognises that different listed entities (particularly, but not only, smaller ones) may legitimately adopt different governance practices
 - ✓ enables a larger number of entities to report positively that they have complied with recommendations rather than report negatively that they did not comply and why

Board skills matrix

- **Recommendation 2.2:** A listed entity should have and disclose a board skills matrix setting out the mix of skills and diversity that the board currently has or is looking to achieve in its membership.
 - Replaces Rec 2.6 (5th bullet point) of 2nd edition and requires ‘board skills matrix’ instead of ‘statement as to mix of skills and diversity’ – ie specificity around disclosure of skills, not motherhood statements
 - Doesn’t have to be in tabular format – choose a format that you feel best conveys the information
 - Can reflect the board’s current mix of skills and diversity or the mix of skills and diversity that the board is looking to achieve
 - Disclosure only has to be made collectively across the board as a whole – you don’t need to identify the presence or absence of particular skills by a particular director
 - Commercially sensitive information can be excluded

CEO / CFO certifications

- **Recommendation 4.2:** The board of a listed entity should, before it approves the entity's financial statements for a financial period, receive from its CEO and CFO a declaration that, in their opinion, the financial records of the entity have been properly maintained and that the financial statements comply with the appropriate accounting standards and give a true and fair view of the financial position and performance of the entity and that the opinion has been formed on the basis of a sound system of risk management and internal control which is operating effectively.
 - Replaces recommendation 7.3 of 2nd edition
 - Unlike s295A, applies to financial statements for any financial period
 - Applies to entities incorporated overseas not otherwise covered by s295A

Security holder rights

- **Recommendation 6.2:** A listed entity should design and implement an investor relations program to facilitate effective two-way communication with investors.
- **Recommendation 6.3:** A listed entity should disclose the policies and processes it has in place to facilitate and encourage participation at meetings of security holders.

Diversity recommendations

- Entities that are “relevant employers” can choose to report:
 - their “Gender Equality Indicators” under the Workplace Gender Equality Act 2012, or
 - the respective proportions of men and women on the board, in senior executive positions and across the whole organisation
- If you are thinking about the former, note footnote 16 on page 11 of the third edition
- If you choose the latter, you must disclose how you have defined ‘senior executive’
- Note the enhanced commentary on how to define ‘senior executive’ and reassess how you have defined the term
- Note also the enhanced commentary on the meaning of ‘measurable objectives’ and test whether your diversity policy really sets meaningful and measurable objectives

Diversity recommendations (cont.)

- If you want guidance on setting measurable objectives, see:
 - Workplace Gender Equality Agency, *About Setting Gender Targets*: <https://www.wgea.gov.au/learn/about-setting-gender-targets>
 - Women on Boards, *Guidelines for Gender Balance Performance and Reporting*: <http://www.womenonboards.org.au/pubs/guidelines/>
- If you want to lead rather than lag, see:
 - *Male Champions of Change, Accelerating the advancement of women in leadership: Listening, Learning, Leading*: https://www.humanrights.gov.au/sites/default/files/document/publication/2013_AHRC_MCC_accelerating_advancement_women.pdf
 - *Male Champions of Change Raise the Bar on Gender Reporting*: <https://www.humanrights.gov.au/male-champions-change-raise-bar-gender-reporting>

Overseas entities

- Some recommendations (Rec 4.2, 4.3 and 8.3) have been modified or expanded to recommend that listed entities incorporated outside Australia comply with some of the governance practices that entities incorporated in Australia must conform to under the Corporations Act
 - ✓ A more level playing field
 - ✓ Better governance outcomes

Supporting ASX Listing Rule changes

- **Listing Rule 19.12** (definitions) – new definition of “corporate governance statement” (CGS) to facilitate the revisions to LR 4.7 and 4.10.3
- **Listing Rule 4.10.3** (corporate governance disclosures) amended to:
 - afford greater flexibility to listed entities to make their corporate governance disclosures either in their annual report or on their website
 - make it clearer what an entity should disclose if it has not followed a recommendation of the ASX Corporate Governance Council for any part of the reporting period
 - add a requirement that an entity’s CGS must specify the date at which it is current, which must be the balance date or a later date specified by the entity, and state that it has been approved by the board of the entity (in the case of a trust, the board of the responsible entity of the trust)

Supporting ASX Listing Rule changes (cont.)

- **New Appendix 4G** – key to corporate governance disclosures
- **Listing Rule 4.7** (entity to give ASX annual report) – amended to require a listed entity to lodge with ASX:
 - a completed Appendix 4G; and
 - if the entity chooses to include its CGS under Listing Rule 4.10.3 on its website rather than in its annual report, a copy of the CGS,at the same time as it lodges its annual report with ASX

Supporting ASX Listing Rule changes (cont.)

- **Listing Rule 1.1 Condition 13** (admission requirements for ASX Listing) – amended to make it clearer what an applicant for listing must disclose if it does not intend to follow a recommendation of the ASX Corporate Governance Council after it is listed
- **Listing Rule 12.7** (audit committees) – amended to make some minor drafting corrections
- **Guidance Note 9 *Disclosure of Corporate Governance Practices*** – amended to reflect changes to *Principles and Recommendations* and to the ASX Listing Rules – to be issued on or around 1 July 2014

Effective date

- 3rd edition and supporting Listing Rule changes take effect for your first full financial year commencing on or after 1 July 2014
 - 30 June reporters – financial year ended 30 June 2015
 - 31 December reporters – financial year ended 31 December 2015
 - 31 March reporters – financial year ended 31 March 2016
- Requirements to:
 - report against 3rd edition
 - date and have your board approve your CGS, and
 - lodge Appendix 4Gtherefore don't apply until 2015/2016, depending on your balance date
- **BUT NOTE:** a number of steps you will need to implement beforehand if you want to report in 2015/2016 that you are in compliance with the 3rd edition

Early adoption of website disclosure

- Only possible if you early-adopt the whole package, that is:
 - report against the 3rd edition of the Principles and Recommendations, and follow ...
 - amended Listing Rule 4.10.3 (ie date your CGS and have it approved by the board)
 - new Listing Rule 4.7.4 (ie give ASX a copy of your CGS at the same time as your annual report)
 - new Listing Rule 4.7.3 (ie give ASX a completed Appendix 4G at the same time as your annual report)
- If you do not do **ALL** of these things, you will need to include your CGS in your annual report, as per the existing rules

Early adoption of the 3rd edition alone

- Encouraged and can be done without adopting new LR 4.7.3 or 4.10.3 (ie no need to date your CGS, have it approved by the board or to lodge Appendix 4G)
- Your CGS must be included in your annual report and, technically, report the extent to which you complied with the 2nd edition over the whole of the reporting period
- Simply report in your CGS:
 - the switchover date
 - the extent to which you complied with the 2nd edition in the period up to the switchover date
 - the extent to which you complied with the 3rd edition in the period after the switchover date
- Note that new and amended recommendations in the 3rd edition will likely mean that few will be able to early-report full compliance with the 3rd edition

Early adoption of a specific recommendation only

- Encouraged and can be done without adopting new LR 4.7.3 or 4.10.3 (ie no need to date your CGS, have it approved by the board or to lodge Appendix 4G)
- Your CGS must be included in your annual report and, technically, report the extent to which you complied with the 2nd edition over the whole of the reporting period
- If you early-adopt a new recommendation (ie no counterpart in 2nd edition), technically, there's no need to mention it in your CGS at all – although you can, if you want, and you probably should
- If you early-adopt an amended recommendation (eg diversity), simply report in your CGS:
 - the switchover date
 - the extent to which you complied with the recommendation in the 2nd edition in the period up to the switchover date
 - the extent to which you complied with the recommendation in the 3rd edition in the period after the switchover date

Other ASX Listing Rule changes

- **Various Listing Rules** – replaced references to “market price” with “closing market price” or “volume weighted average market price”, as appropriate
- **Listing Rule 3.16.4** (disclosure of material terms of CEO/director service contracts) – amended to:
 - add new carve-out for indemnities and exclusions from liability that conform with s199A of the Corps Act (or, if the entity is not established in Australia, the laws applicable in the jurisdiction where it is established)
 - modify carve-out for insurance arrangements to require arrangements to conform with s199B of the Corps Act (or, if the entity is not established in Australia, the laws applicable in the jurisdiction where it is established)

Other ASX Listing Rule changes (cont.)

- **Listing Rule 4.10** (information to be included in annual reports) – amended to require the information to be current as at a date specified by the entity that is on or after the entity’s balance date and “not more than 6 weeks before the report is *given to ASX*” rather than “not more than 6 weeks before the report is *sent to security holders*”
- **New Listing Rule 4.10.22** (replaces proposed LR 3.19B) – entities must disclose in their annual report on-market purchases under or for the purposes of an employee incentive scheme or to satisfy the entitlements of the holders of options or other rights to acquire securities granted under the terms of an employee incentive scheme:
 - the total number of securities purchased during the reporting period
 - the average price per security at which they were purchased

Other ASX Listing Rule changes (cont.)

- **Listing Rule 7.2 Exception 2** – explanatory note added to clarify that the exception:
 - only applies to the issue to an underwriter under an underwriting agreement of securities comprising the shortfall from a pro rata issue to holders of ordinary securities, and
 - does not apply to any other issue of securities to the underwriter under an underwriting agreement (eg in payment of an underwriting fee or other amount due under an underwriting agreement)
- **Listing Rule 7.2 Exception 14** – expanded to exclude from the requirement for security holder approval under LR 7.1:
 - issues to directors and associates under an employee incentive scheme that are approved under LR 10.14, and
 - issues approved under LR10.11

Other ASX Listing Rule changes (cont.)

- **Listing Rule 10.12 Exception 1** – explanatory note added to clarify that the exception:
 - only applies to securities taken up as part of a pro rata issue, and
 - does not apply to a person taking up all or part of the shortfall of a pro rata issue

For example, a director who has taken up their entitlement in a pro rata issue cannot take up shortfall securities under this exception, even if the shortfall is allocated on a pro rata basis to those participating in the shortfall

- **New Listing Rule 10.12 Exception 4A** – excludes from requirement for approval under LR 10.11 a grant of options or other rights to acquire securities under an employee incentive scheme, where the securities to be acquired on the exercise of the options or in satisfaction of the rights are *required by the terms of the scheme* to be purchased on-market (as referred to in LR 10.15B)

Other ASX Listing Rule changes (cont.)

➤ New Listing Rule 10.15B

- Replaces the exception in what is currently the last sentence of the opening paragraph of Listing Rule 10.14 (security holder approval not required for on-market purchases of securities pursuant to employee incentive schemes)
- Extends that exception to cover the grant of options or other rights to acquire securities under an employee incentive scheme, where the securities to be acquired on the exercise of the options or in satisfaction of the rights are *required by the terms of the scheme* to be purchased on-market

Other ASX Listing Rule changes (cont.)

- **Listing Rule 10.17** (fees payable to directors) – amended to improve its drafting and to clarify its intent:
 - Fee pool for non-execs includes all fees payable by the entity or any of its child entities to a non-executive director for acting as a director of the entity or any child entity (including attending and participating in normal board committee meetings)
 - Fee pool for non-execs excludes reimbursement of genuine out-of-pocket expenses, genuine “special exertion” fees paid in accordance with the entity’s constitution, and securities issued to a non-executive director under LR 10.11 or 10.14 with the approval of the holders of the entity’s ordinary securities

Other ASX Listing Rule changes (cont.)

- Resolution to approve increase in fee pool must disclose details of any securities issued to a non-executive director under LR 10.11 or 10.14 with the approval of the holders of the entity's ordinary securities at any time within the preceding three years
- Note added to clarify that LR 10.17 does not apply to the director's fees paid to a non-executive director of a child entity who is not also a director of the entity
- Note also added that ASX does not regard acting as a director of a child entity or attending and participating in normal board committee meetings (such as an audit, nomination, remuneration or risk committee) of the entity or a child entity as a "special exertion"

Other ASX Listing Rule changes (cont.)

- **Listing Rule 14.2** (proxy form requirements) – amended to:
 - require a proxy form to give a security holder the ability to direct their proxy to abstain from voting on a resolution, as well as to vote for or against the resolution
 - require, if the proxy form specifies that the chair of the meeting is appointed as proxy if a security holder does not appoint another person to act as their proxy or the chair is appointed proxy by default, that the proxy form must also include a statement as to how the chair intends to vote undirected proxies
 - remove the requirement for the “chairman’s box”

Other ASX Listing Rule changes (cont.)

- **Listing Rule 17.5** (suspension from quotation) – amended to:
 - reinstate the power ASX had under the pre-1 December 2013 rules to suspend a mining exploration entity's securities from quotation if it fails to give to ASX an Appendix 5B
 - give ASX the same power to suspend an oil and gas exploration entity that fails to provide a quarterly report or Appendix 5B as it has for mining exploration entities

Other ASX Listing Rule changes (cont.)

➤ Listing Rule 19.12 (definitions):

- new definitions of “associate”, “ASX market”, “Chi-X market”, “closing market price” and “volume weighted average market price” added
- definitions of “market price”, “trading participant” and “Trading Platform” deleted
- modifications to definitions of “employee incentive scheme”, “marketable parcel”, “net tangible asset backing”, “promoter” and “security purchase plan”

Other ASX Listing Rule changes (cont.)

- Various other minor drafting amendments to:
 - Listing Rule 1.10.2
 - Listing Rule 3.19A.2
 - the explanatory note to Chapter 5
 - Listing Rule 7.11.2
 - Listing Rule 10.1
 - Listing Rule 10.12 Exception 4
 - Listing Rule 14.11.1
 - Listing Rule 15.5
 - Listing Rule 15.7
 - Listing Rule 18.1.2

- These other rule changes also all effective from 1 July 2014

Other ASX developments

- Timetable for standard rights issues shortened from 26 to 19 business days, effective 14 April 2014
- Timetable for ex–trading period on most corporate actions (inc dividends) also shortened from five to three business days, effective 14 April 2014
- New prescribed timetables for:
 - standard rights issues (renounceable and non-renounceable)
 - various types of accelerated pro rata issues – no need to apply for a timetable waiver for these issues
- Change to election dates for DRPs (no earlier than the business day after the record date) – entities may need to review DRP terms and conditions

Coming soon – new online forms

New online forms for announcing certain corporate actions (dividends, interest payments, consolidations, splits and cash returns of capital):

- Uses existing ASX Online Companies portal
- Pre-population of data (eg company name and security details) – easier, faster and more accurate data
- Form validation such as timetable dates – fewer data entry errors
- Automatic creation of PDF market announcement – faster dissemination
- After release of PDF, structured data sent directly to ASX systems and then to market information users (eg registries, professional investors, data vendors and custodians) – fewer translation errors by information users
- Meets international standards on corporate action processing

Coming soon – new online forms (cont.)

- Go live expected 21 July 2014, including new Listing Rule Appendices
- Optional to use online forms for six months, mandatory thereafter
- Early adoption encouraged – at least include the extra information from the new Listing Rule appendices in your PDF announcement
- Testing facility open from 26 May 2014 for two weeks: email ASXCorporateInformation.STP@asx.com.au to apply for access
- Training sessions June 2014: register at <https://www.asxonline.com/static/companies/files/listings/online-webinar-invitation.pdf>
- New Guidance Note 20 *ASX Online* and Guidance Note 14 *ASX Market Announcements*, user manual & online tutorial to support changes
- Note also two new Listing Rule Appendices for calls and in-specie capital returns to be filled in and lodged as PDFs

Long term suspended entities

New Guidance Note 33 *Removal of Entities from the ASX Official List* issued in November 2013 setting out ASX's policy and processes on:

- When ASX will agree to a request from an entity under LR 17.11 for removal from the official list
- When ASX will require security holder approval and other conditions ASX typically imposes
- When ASX can remove an entity from the official list under LR 17.12 - 17.15
- New policy that entities continuously suspended for three years will be automatically removed from the official list, with ASX discretion to grant short extensions for entities on the cusp of re-instatement to trading

Guidance Note refresh

- Completed:
 - GN 1 *Applying for Admission – ASX Listings* (but new version shortly)
 - GN 4 *Foreign Entities Listing on ASX* (but new version shortly)
 - GN 8 *Continuous Disclosure: Listing Rules 3.1-3.1B*
 - GN 9 *Corporate Governance Disclosures* (but new version shortly)
 - GN 12 *Significant Changes to Activities* (but new version shortly)
 - GN 14 *Market Announcements Platform* (but new version shortly)
 - GN 15 *ASX Listing Fees*
 - GN 16 *Trading Halts and Voluntary Suspensions*
 - GN 17 *Waivers and In-Principle Advice*
 - GN 19 *Performance Shares*
 - GN 20 *ASX Online* (but new version shortly)
 - GN 21 *Appeals*

Guidance Note refresh (cont.)

- GN 27 *Trading Policies*
 - GN 30 *Applying for Quotation of Additional Securities*
 - GN 31 *Reporting on Mining Activities*
 - GN 32 *Reporting on Oil and Gas Activities*
 - GN 33 *Removal of Entities from the ASX Official List*
- Releasing new GN 29 on ASX Debt Listings shortly
- Balance of existing GNs to be refreshed and re-issued over 2014 – 2015
- Also FAQs on new Chapter 5 reporting rules for mining and oil and gas entities (available on the Compliance Downloads page of the ASX website <http://www.asxgroup.com.au/compliance-downloads.htm>, under 'Reserves and Resources Reporting Requirements')

Questions?

Note: the slides for this presentation and a separate presentation on “Transitioning to the 3rd Edition” will be available on the ASX website:

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<http://www.asx.com.au/regulation/compliance/presentations-and-webinars.htm>

Thank you

