

# PROPOSED DISCLOSURE RELATED AMENDMENTS TO THE ASX LISTING RULES

The materials below show in mark-up form the changes that ASX is proposing to make to various Listing Rules, in conjunction with the release of a revised version of ASX Listing Rule Guidance Note 8 on continuous disclosure.

They form part of a public consultation package released by ASX on 17 October 2012.

## Listing Rules Introduction

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## **The principles on which the Listing Rules are based**

The Listing Rules serve the interests of listed entities and investors, both of whom have a vital interest in maintaining the reputation of the market in ASX listed securities and ensuring that it is internationally competitive and facilitates efficient capital raising.

The principles which underpin the obligations imposed on listed entities by the Listing Rules include:

- An entity should satisfy appropriate Mminimum standards of quality, size and, operations and ~~disclosure must be satisfied~~ disclose sufficient information about itself before it is admitted to the +official list.
- Sufficient investor interest in an entity's +securities should ~~must~~ be demonstrated ~~to warrant an entity's participation in the market by having its before those~~ +securities are quoted.
- +Securities should ~~must~~ be issued in circumstances which are fair to new and existing +security holders.
- +Securities should ~~must~~ have rights and obligations attaching to them that are fair to new and existing +security holders.
- Timely disclosure should ~~must~~ be made of information which may have a material effect on the price or value of an entity's +securities  ~~affect +security values or influence investment decisions, and information in which +security holders, investors and ASX have a legitimate interest.~~
- Information should ~~must~~ be produced  ~~according to the highest~~ standards and, where appropriate, enable ready comparison with similar information.
- Information should be disclosed to enable investors to assess an entity's corporate governance practices ~~The highest standards of integrity, accountability and responsibility of entities and their officers must be maintained.~~
- The Ppractices  ~~must be~~ adopted in relation to meetings and other communications with +security holders should facilitate constructive

~~engagement with and pursued which protect the interests of~~ +security holders;  
~~including ownership interests and the right to vote.~~

- ~~Certain significant transactions should require~~ +security holder approval  
~~+Security holders must be consulted on matters of significance.~~
- ~~Market transactions must be commercially certain.~~

**Purpose of Amendment:** The principles on which the Listing Rules are based, as described in the introduction to the Listing Rules, form part of the Listing Rules (see Listing Rule 19.9).

The amendments above are intended to express the principles as principles (replacing the word “must” with “should”) and simplify the drafting to make the principles consistent with the actual obligations imposed by the Listing Rules (for example, requiring timely disclosure of information which may “have a material effect on the price or value of an entity’s securities” rather than information which may “affect security values or influence investment decisions, and information in which security holders, investors and ASX have a legitimate interest”).

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# Chapter 1

## Listing Rule 1.10

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1.10 After it is admitted, an entity admitted as an ASX Debt Listing must comply with the following listing rules (and need not comply with the others).

Introduced 1/7/1996. Amended 30/9/2001.

Note: If the entity admitted as an ASX Debt Listing is a trust, ASX may specify other rules to suit the circumstances.

1.10.1 In relation to +debt securities:

- rules 2.1, 2.4, 2.5, 2.6, 2.7, 2.8, 2.9, 2.10, 2.14, 3.1, [3.1A](#), [3.1B](#), 3.10.3, 3.10.4, 3.10.5, 3.13.2, 3.13.3, 3.15, 3.17, 3.20, 4.11, Appendix 6A paragraphs 2 and 3, Chapter 8, rules 15.1.2, 15.2 to 15.10, and Chapters 16, 17, 18, 19, and any listing rules that ASX specifies either before or after the entity is admitted.

Introduced 1/7/1996. Amended 1/7/1997, 1/7/2000, 30/9/2001, [1/1/2013](#).

Note: Listing #Rules 15.2 to 15.10 and Chapters 16, 17, 18 and 19 are more in the nature of procedural rules.

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**Purpose of Amendment:** Currently, the list of rules applied to ASX Debt Listings under LR 1.10.1 does not include Listing Rule 3.1A or 3.1B.

Arguably, Listing Rule 3.1A applies by implication, because it operates as an exception to Listing Rule 3.1. It would clearly be better, however, if this was made express rather than left to implication.

As a policy matter, Listing Rule 3.1B should also apply to listed debt securities.

This amendment makes it clear that both Listing Rules 3.1A and 3.1B apply to ASX Debt Listings, albeit only in relation to their debt securities.

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## Chapter 3

### Explanatory note

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This chapter sets out the continuous disclosure requirements that an entity must satisfy. ~~Continuous disclosure is the timely advising of information to keep the market informed of events and developments as they occur.~~ Information for release to the market must be given to ASX's ~~company~~[market](#) announcements office.

**Purpose of Amendment:** This amendment reflects the change in name of the company announcements office to the market announcements office and removes unnecessary material from the explanatory note.

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## Listing Rule 3.1

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3.1 Once an entity is or becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities, the entity must immediately tell ASX that information.

Introduced 1/7/1996. Origin: Listing Rule 3A(1). Amended 1/7/2000, 1/1/2003, 1/1/2013.

Note: Section 677 of the Corporations Act defines material effect on price or value. As at ~~11 March 2002~~ 1 January 2013 it said for the purpose of sections 674 and 675 a reasonable person would be taken to expect information to have a material effect on the price or value of securities if the information would, or would be likely to, influence persons who commonly invest in securities in deciding whether or not to subscribe for, or buy or sell, the first mentioned securities.

"Information" may include information necessary to prevent or correct a false market, see Listing Rule 3.1B. It may also include matters of supposition and other matters that are insufficiently definite to warrant disclosure to the market, and matters relating to the intentions, or likely intentions, of a person (see Listing Rule 19.12).

A confidentiality agreement ~~must~~ cannot prevent an entity from complying with its obligations under the Listing Rules, and, in particular, its obligation to give ASX information for release to the market where required by the Listing Rules.

Examples: The following are non-exhaustive examples of the type of information that, depending on the circumstances, could ~~would~~ require disclosure by an entity if material under this rule:

- ~~• a change in the entity's financial forecast or expectation.~~
- ~~• the appointment of a receiver, manager, liquidator or administrator in respect of any loan, trade credit, trade debt, borrowing or securities held by it or any of its child entities.~~
- ~~• a transaction for which the consideration payable or receivable is a significant proportion of the written down value of the entity's consolidated assets. Normally, an amount of 5% or more would be significant, but a smaller amount may be significant in a particular case.~~
- ~~• a change in the control of the responsible entity of a trust.~~
- ~~• a proposed change in the general character or nature of a trust.~~
- ~~• a recommendation or declaration of a dividend or distribution.~~
- ~~• a recommendation or decision that a dividend or distribution will not be declared.~~
- ~~• under subscriptions or over subscriptions to an issue.~~
- ~~• a copy of a document containing market sensitive information that the entity lodges with an overseas stock exchange or other regulator which is available to the public. The copy given to ASX must be in English.~~
- ~~• an agreement or option to acquire an interest in a mining tenement, including the number of tenements, a summary of previous exploration activity and expenditure, where the tenements are situated, the identity of the vendor and the consideration for the tenements. Cross reference: Appendix 5B, which requires this information quarterly, regardless of disclosure because of its materiality.~~
- ~~• information about the beneficial ownership of securities obtained under Part 6C.2 of the Corporations Act.~~
- ~~• giving or receiving a notice of intention to make a takeover.~~
- ~~• an agreement between the entity (or a related party or subsidiary) and a director (or a related party of the director).~~
- ~~• a copy of any financial documents that the entity lodges with an overseas stock exchange or other regulator which is available to the public. The copy given to ASX must be in English.~~
- ~~• a change in accounting policy adopted by the entity.~~
- ~~• any rating applied by a rating agency to an entity, or securities of an entity, and any change to such a rating.~~
- ~~• a proposal to change the entity's auditor.~~
- a transaction that will lead to a significant change in the nature or scale of the entity's activities (see also Listing Rule 11.1 and Guidance Note 12 Significant Changes to Activities);
- a material mineral or hydro-carbon discovery;
- a material acquisition or disposal;
- the granting or withdrawal of a material licence;
- the entry into, variation or termination of a material agreement;
- becoming a plaintiff or defendant in a material law suit;
- the fact that the entity's earnings will be materially different from market expectations;
- the appointment of a liquidator, administrator or receiver;

- [the commission of an event of default under, or other event entitling a financier to terminate, a material financing facility;](#)
- [under subscriptions or over subscriptions to an issue of securities \(a proposed issue of securities is separately notifiable to ASX under listing rule 3.10.3\);](#)
- [giving or receiving a notice of intention to make a takeover; and](#)
- [any rating applied by a rating agency to an entity or its securities and any change to such a rating.](#)

Cross-reference: Listing ~~R~~ules 3.1A, 3.1B, 5.18, 15.7, 18.7A, 19.2, Guidance Note 8 ~~–~~*Continuous Disclosure: Listing Rules 3.1-3.1B.*

**Purpose of Amendment:** As far as the rule itself is concerned, this amendment simply adds a cross reference to the new definition of “information” in Listing Rule 19.12.

However, it is proposed to replace the examples given in the notes to Listing Rule 3.1 with more meaningful examples of the type of information that is likely to require disclosure under Listing Rule 3.1.

A number of the existing examples in the current notes have been removed, on the basis that they will now require specific disclosure under other provisions of Chapter 3, regardless of their impact on the price or value of an entity’s securities (see the proposed amendments to Listing Rules 3.10, 3.16, 3.17, 3.17A, 3.17B and 3.21).

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## Listing Rule 3.1A

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3.1A Listing rule 3.1 does not apply to particular ~~±~~information while each ~~all~~ of the following ~~are~~ is satisfied in relation to the information:

~~3.1A.1 A reasonable person would not expect the information to be disclosed.~~

~~3.1A.2 The information is confidential and ASX has not formed the view that the information has ceased to be confidential.~~

~~3.1A.3 One or more of the following 5 situations applies:~~

- ~~• It would be a breach of a law to disclose the information;~~
- ~~• The information concerns an incomplete proposal or negotiation;~~
- ~~• The information comprises matters of supposition or is insufficiently definite to warrant disclosure;~~
- ~~• The information is generated for the internal management purposes of the entity; or~~
- ~~• The information is a trade secret; and~~

3.1A.2 The information is confidential and ASX has not formed the view that the information has ceased to be confidential; and

3.1A.3 A reasonable person would not expect the information to be disclosed.

Introduced 1/1/2003. Amended 1/1/2013.

~~Note: “Confidential” means confidential as a matter of fact. An entity may give information to third parties in the ordinary course of its business and activities and continue to satisfy rule 3.1A.2, provided the entity retains control over the use and disclosure of the information. Examples include information given to the following:~~

- ~~• the entity’s advisers for the purposes of obtaining advice;~~
- ~~• other service providers such as share registries and printers;~~
- ~~• a party with whom the entity is negotiating, for the purposes of the negotiation;~~
- ~~• a regulatory authority or ASX in the course of an application or submission.~~

~~ASX would be likely to consider that information has ceased to be confidential if the information, or part of it, becomes known either selectively or generally, whether inadvertently or deliberately. If information becomes known by others in circumstances where the entity does not retain control of its use and disclosure, rule 3.1A.2 is not satisfied, regardless of whether the entity or a third party disclosed the information.~~

~~Example: Where there is rumour circulating or media comment about the information and the rumour or comment is reasonably specific, this will generally indicate that confidentiality has been lost.~~

Cross-reference: Listing ~~±~~Rules 3.1, 3.1B, 18.8A; Guidance Note 8 –*Continuous Disclosure: Listing Rules* 3.1-3.1B.

**Purpose of Amendment:** This amendment reverses the order of the current exceptions in Listing Rule 3.1A to put the “reasonable person” test in a more appropriate place, in terms of the order of emphasis of the different requirements in Listing Rule 3.1A.

It is also proposed to simplify the notes to Listing Rule 3.1A, on the basis that the matters referred to in the notes are now dealt with more comprehensively in Guidance Note 8.

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## Listing Rule 3.1B

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3.1B If ASX considers that there is or is likely to be a false market in an entity's securities and asks the entity to give it information to correct or prevent a false market, the entity must give ASX the information ~~needed to correct or prevent the false market~~ it asks for.

Introduced 1/1/2003. Amended 1/1/2013.

Note: The obligation to give information under this rule arises even if the exception under Listing Rule 3.1A applies. ~~ASX would consider that there is or is likely to be a false market in the entity's securities in the following circumstances:~~

- ~~• The entity has information that has not been released to the market, for example because all of the limbs of the exception from listing rule 3.1 in listing rules 3.1A.1, 3.1A.2 and 3.1A.3 are satisfied; and~~
- ~~• There is reasonably specific rumour or media comment in relation to the entity that has not been confirmed or clarified by an announcement by the entity to the market; and~~
- ~~• There is evidence that the rumour or comment is having, or ASX forms the view that the rumour or comment is likely to have, an impact on the price of the entity's securities.~~

~~ASX may make enquiries of an entity under rule 18.7 to satisfy itself whether there is a false market.~~

Cross-reference: Listing Rules 3.1, 3.1A, 18.7A; Guidance Note 8 ~~–Continuous Disclosure: Listing Rule 3.1-3.1B~~.

**Purpose of Amendment:** This amendment is intended to remove the scope for an entity to argue that it does not have to provide information ASX asks for to correct or prevent a false market because, in its opinion, the information is not needed to correct or prevent a false market. ASX is generally better placed to form a view on this matter than most listed entities.

The amendment also adds a cross reference to the new definition of "information" in Listing Rule 19.12.

In addition, it is proposed to simplify the notes to Listing Rule 3.1B, on the basis that the matters referred to in the notes are now dealt with more comprehensively in Guidance Note 8.

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**Listing Rule 3.10**

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**Capital**

3.10 An entity must immediately tell ASX the following information.

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3.10.8 If a +dividend or distribution plan is established<sub>2</sub> ~~or~~ amended<sub>2</sub> [deactivated or reactivated](#). A copy of the terms of the plan or any amendment to it must be given to ASX.

Introduced 31/3/2004. [Amended 1/1/2013](#).

Cross reference: listing rules 7.2 exception 7 and listing rule 10.12 exception 3.

**Purpose of Amendment:** This amendment requires a listed entity to notify ASX if it deactivates or reactivates a dividend or distribution plan.

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## Listing Rule 3.16

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### ~~Change of chairperson, directors, responsible entity, auditors etc~~

3.16 An entity must immediately tell ASX the following information.

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- 3.16.4 The material terms of any employment, service or consultancy agreement it or a related entity enters into with:
- its chief executive officer (or equivalent); or
  - a director or any other person or entity who is a related party of the entity;
- and of any variation to such an agreement.

Introduced ~~1/1/2013~~30/9/2001. Deleted 11/3/2002. Refer rule 12.6.

Note: The entity may satisfy this obligation by giving a copy of the agreement or variation to ASX.

**Purpose of Amendment:** In a Companies Update dated 1 May 2003, ASX suggested that a CEO's remuneration ought to be disclosed to the market under Listing Rule 3.1. The existing notes to Listing Rule 3.1 also list in the examples of information that may need to be disclosed under that rule any agreement between the entity (or a related party or subsidiary) with a director (or a related party of a director).

ASX considers that most investors would expect the material terms of a CEO's employment or service agreement, not just the CEO's remuneration, to be disclosed to the market. ASX also considers that most investors would expect the material terms of any employment, service or consultancy agreement a listed entity enters into with a director or an associate of a director to be disclosed to the market. Technically, however, this information is currently only required to be given to ASX under Listing Rule 3.1 if a reasonable person would expect it to have a material effect on the price or value of the entity's securities. In many cases, it would not have such an effect.

This amendment requires an entity to notify ASX of the material terms of any employment, service or consultancy agreement it or a related entity enters into with its chief executive officer (or equivalent) or a director or any other person or entity who is a related party of the entity, and also of any variation to such an agreement. This applies regardless of the impact of that information on the price or value of an entity's securities. The entity can satisfy this obligation either by providing a summary of the material terms of the agreement or variation, or by lodging a copy of the agreement or variation with ASX.

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## Listing Rule 3.17

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### Communications with ~~Documents sent to~~ security holders

3.17 An entity must immediately give ASX:~~a~~

3.17.1 A copy of a document it sends to holders of +securities generally or in a +class.

3.17.2 A copy of any notice it receives under section 249D, 249F, 249N, 252B, 252D or 252L of the Corporations Act or under any equivalent overseas law or equivalent provisions in the entity's constitution from a holder or holders of +securities calling, or requesting the calling of, or proposing to move a resolution at, a general meeting.

3.17.3 A copy of any information about substantial holdings of +securities obtained under Part 6C.2 of the Corporations Act or under any overseas law or provisions in the entity's constitution equivalent to Part 6C.1 or 6C.2 of the Corporations Act.

Note: A person who gives a substantial holding notice to a listed entity under Part 6C.1 of the Corporations Act is required to give a copy of that notice to ASX (section 671B(1)) and therefore the listed entity is not required to give a further copy of that notice to ASX.

Introduced 1/7/1996. Amended 1/1/2013. Origin: Listing Rules 3E(8)(b), 3E(8)(c), 3I(1)(a).

Note: In some cases, ~~an entity must give ASX a draft document (eg, a notice of meeting) in advance of it being sent out. See chapter 15.~~

Example: A company must give ASX a copy of a letter sent to shareholders. A trust must give ASX a copy of a document sent to holders of interests in the trust under section 1017D of the Corporations Act so far as that document relates to the circumstances of holders of interests generally, and not to the individual circumstances of a holder.

Cross reference: Chapter 14 deals with the requirements for meetings. Chapter 4 deals with accounts and related disclosure.

**Purpose of Amendment:** The notes to Listing Rule 3.1 currently include in the examples of information that may be required to be given to ASX under Listing Rule 3.1 information about the beneficial ownership of securities obtained under Part 6C.2 (the tracing provisions) of the Corporations Act. Technically, however, this information is currently only required to be given to ASX under Listing Rule 3.1 if a reasonable person would expect it to have a material effect on the price or value of the entity's securities. In most cases, this would only be an issue if the notice reveals a substantial (ie 5%+) holding that had not previously been disclosed under Part 6C.1 (the substantial holding provisions) of the Corporations Act.

Part 6C.1 and 6C.2 of the Corporations Act only apply to listed companies and managed investment schemes registered in Australia. This amendment will require an entity incorporated or registered elsewhere to notify ASX of information about substantial holdings of securities obtained under overseas law or provisions in the entity's constitution equivalent to Part 6C.1 or 6C.2 of the Corporations Act.

The amendment will also require an entity to notify ASX of notices received from security holders calling, or requesting the calling of, or proposing to move a resolution

at, a general meeting. This applies regardless of the impact of that information on the price or value of an entity's securities.

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## New Listing Rule 3.17A

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### Documents given to overseas stock exchanges

3.17A An entity must immediately give ASX a copy of a document it gives to an overseas stock exchange that is, or is to be, made public.

Introduced 1/1/2013.

Note: If the document is not in English, it must be accompanied by an English translation (see Listing Rule 15.2A).

**Purpose of Amendment:** The notes to Listing Rule 3.1 currently include in the examples of information that may be required to be given to ASX under Listing Rule 3.1 “a copy of a document containing market sensitive information that the entity lodges with an overseas stock exchange or other regulator which is available to the public” and “a copy of any financial documents that the entity lodges with an overseas stock exchange or other regulator which is available to the public.” Technically, however, this information is only required to be given to ASX under Listing Rule 3.1 if a reasonable person would expect it to have a material effect on the price or value of the entity’s securities.

This amendment requires an entity to give to ASX a copy of any document it gives to an overseas stock exchange that is to be made public, regardless of the impact of that information on the price or value of an entity’s securities. This ensures informational parity between Australian investors and overseas investors.

It should be noted that section 323DA of the Corporations Act requires a listed company that discloses information to, or as required by, the US Securities and Exchange Commission, the New York Stock Exchange or a prescribed financial market in a foreign country to disclose that information in English to ASX on the next business day after doing so. Currently, there are no foreign markets prescribed for the purposes of section 323DA.

Section 323DA only applies to listed companies established in Australia. It does not apply to listed companies established outside Australia, nor to listed managed investment schemes. The proposed new Listing Rule will apply to all listed entities, regardless of what legal form they take or where they are established.

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## New Listing Rule 3.17B

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### Entities established overseas

3.17B If an entity that is not established in Australia becomes aware of a change to the law of its home jurisdiction that materially affects the rights or obligations of security holders, it must immediately give ASX details of that change.

Introduced 1/1/2013.

ASX Guidance Note 4 *Foreign Entities Listing on ASX* has guidance on the types of changes to law that may need to be disclosed under this rule.

**Purpose of Amendment:** To require an entity established overseas to inform the market of any material change to the law of its home jurisdiction that it becomes aware of that materially affects the rights or obligations of security holders.

If this rule change is adopted, ASX will update ASX Guidance Note 4 *Foreign Entities Listing on ASX* in due course to include guidance on the requirements of this rule.

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## New Listing Rule 3.21

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### Dividends or distributions

3.21 An entity must tell ASX immediately it declares a dividend or distribution or makes a decision that a dividend or distribution will not be declared.

Introduced 1/1/2013.

**Purpose of Amendment:** The notes to Listing Rule 3.1 currently include in the examples of information that may be required to be given to ASX under Listing Rule 3.1 “a recommendation or declaration of a dividend or distribution” and “a recommendation or decision that a dividend or distribution will not be declared”. Technically, this information is only required to be given to ASX under Listing Rule 3.1 if a reasonable person would expect it to have a material effect on the price or value of the entity’s securities. However, if the dividend or distribution an entity declares is in line with market expectations, then it may not have a material effect on the price or value of its securities.

This amendment requires an entity to notify ASX if it declares a dividend or distribution or makes a decision that a dividend or distribution will not be declared, regardless of the impact of that information on the price or value of an entity’s securities.

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## Chapter 4

### Explanatory note

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This chapter sets out the relevant periodic disclosure requirements that an entity will be required to satisfy in relation to each quarter, half year and end of year. Periodic disclosure requirements support and supplement the [continuous disclosure primary obligations](#) of a listed entity ~~to release material information~~ under [chapter 3 listing rule 3.1](#).

Periodic disclosure is made to ASX's [+company+market](#) announcements office. If the Corporations Act applies, and an entity (in the case of a trust, the responsible entity) lodges +accounts with +ASIC, all of the documents lodged with +ASIC under the relevant provisions of the Corporations Act must also be given to ASX no later than the time they are lodged with +ASIC and in any event no later than 2 months (75 days for a +mining exploration entity) after the end of the half year or three months after the end of the full year, which are the time limits which apply under ASX Listing Rules.

**Purpose of Amendment:** This amendment reflects the change in name of the company announcements office to the market announcements office and also the fact that an entity has continuous disclosure obligations under the whole of Chapter 3, not just Listing Rule 3.1.

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## Listing Rule 4.2A

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4.2A Following the end of the half year of an entity, the entity (in the case of a trust, the responsible entity) must give ASX the following information or documents.

4.2A.1 If the entity is established in Australia, a copy of the documents which a disclosing entity must lodge with ASIC under section 320 of the Corporations Act.

4.2A.2 If the entity is not established in Australia [but it is subject in its home jurisdiction to an equivalent law to section 320 of the Corporations Act requiring it to prepare half yearly accounts](#), the accounts ~~and other information or~~ documents prepared under ~~that~~ law ~~of its home jurisdiction which are equivalent to those that a disclosing entity must lodge with ASIC under section 320 of the Corporations Act, and any other information or documents that would be required under section 320~~. The accounts must be audited or subject to review ~~and~~. ~~The~~ audit or review report must be given to ASX with the accounts.

[4.2A.2A If the entity is not established in Australia and it is not subject in its home jurisdiction to an equivalent law to section 320 of the Corporations Act requiring it to prepare half yearly accounts, accounts for the half year equivalent to those it would be required to prepare in its home jurisdiction if its governing legislation included a provision equivalent to section 320 of the Corporations Act.](#)

4.2A.3 Unless the entity is a mining exploration entity, the information set out in Appendix 4D. A responsible entity must give the information to ASX with any necessary adaptation. The information must comply with all relevant accounting standards.

Introduced 1/1/2003. Origin: Listing rules 4.1, 4.2. Amended 11/01/10, 1/1/2013

Note: Section 320 deals with the lodgement of half-yearly financial information by disclosing entities incorporated or established in Australia. If the entity has been granted relief from the obligation to lodge half-yearly financial information by ASIC (for example, because an administrator has been appointed), it must still give ASX the documents that section 320 of the Corporations Act requires to be prepared unless ASX also grants it a waiver from this rule.

Foreign entities may prepare information in accordance with Australian accounting standards, or other accounting standards acceptable to ASX. ASX will accept, for example, the use of International Financial Reporting Standards.

If the home jurisdiction of the foreign entity has no requirement for half-yearly reporting the entity must give ASX all of the documents and other information required by section 320.

If the home jurisdiction of the foreign entity requires quarterly reports the entity may give ASX the quarterly report for the second quarter provided that it includes year-to-date information, i.e. information for the first half year.

Cross reference: Listing rules 5.6, 19.11A, Guidance Note 4 - Foreign Entities.

**Purpose of Amendment:** This amendment amends the drafting of Listing Rule 4.2A to cater for the rare situation where a listed entity is not established in Australia and it is not subject in its home jurisdiction to an equivalent law to section 320 of the Corporations Act requiring it to prepare half yearly accounts.

The assumption that underlies the current drafting in Listing Rule 4.2A is that all entities established offshore will be subject to a legal requirement to prepare half yearly accounts.

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**In the notes to Listing Rules 4.2C, 4.3C and 4.4C**

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Cross reference: Guidance Note 14—~~Company Announcements Platform~~ [ASX Market Announcements Platform](#), Guidance Note 20—~~ASX Online~~ [ASX Online](#).

**Purpose of Amendment:** This amendment reflects the change in name of the company announcements office to the market announcements office.

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## Listing Rule 4.3D

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4.3D Once an entity is or becomes aware of any circumstances which are likely to materially affect the results or other information contained in the preliminary final report given to ASX under listing rules 4.3 or 4.3A the entity must immediately give ASX an explanation of the circumstances and the effects the circumstances are expected to have on the entity's current or future financial performance or financial position.

Introduced 1/1/2003. Origin: Listing rule 4.10.1.

Note: [Listing rule 4.3D requires the disclosure of this information immediately the entity becomes aware of it.](#) ~~Immediate disclosure of this information is~~ consistent with continuous disclosure requirements [in Listing Rule 3.1. An entity should be aware of this information by no later than the time it lodges its statutory full year information with ASIC. It may be aware of this information earlier than that time.](#)

~~Cross-reference: Listing rule 4.5A.~~

**Purpose of Amendment:** This amendment updates the notes to Listing Rule 4.3D to capture a point previously included in the notes to Listing Rule 4.5A (which is duplicative and being deleted).

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## Listing Rule 4.5

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- 4.5 An entity must give ASX a copy of the following documents.
- 4.5.1 If the entity is established in Australia, a copy of the documents which a disclosing entity must lodge with +ASIC under section 319 of the Corporations Act. It must give the documents to ASX when it lodges them with +ASIC and in any event no later than three months after the end of the accounting period. It must also give ASX a copy of any concise report at the same time.
- 4.5.2 If the entity is not established in Australia and is required to comply with section 601CK of the Corporations Act, a copy of the [+accounts and other](#) documents it must lodge with +ASIC [under that section](#). [The +accounts must be audited and the audit report must be given to ASX with the +accounts](#). It must give the [+accounts and other](#) documents to ASX when it lodges them with +ASIC and in any event no later than three months after the end of the accounting period.
- 4.5.3 If the entity is not established in Australia and is not required to comply with section 601CK of the Corporations Act, a copy of the documents that it would [be required to give ASX under rule 4.5.2](#) ~~lodge with +ASIC~~ if it had to comply with ~~these~~ requirements [of that section](#). It must give the documents to ASX no later than three months after the end of the accounting period.

Introduced 1/7/1996. Origin: Listing Rule 3C(1)(a). Amended 1/7/1998, 1/9/1999, 1/7/2000, 30/9/2001, 1/1/2003, [1/1/2013](#).

Note: All the documents that are to be lodged with ASIC must be given to ASX as a package. Section 319 deals with the lodgement of annual financial information by disclosing entities incorporated or established in Australia. Section 601CK deals with the lodgement of financial information by registered foreign companies. It requires a balance sheet, cash flow statement and profit and loss statement to be provided to ASIC. A foreign entity is required to give ASX any other documents specifically required by ASIC to be lodged under section 601CK but is not required to give ASX the ASIC Form 405 referred to in section 601CK or any other document such as a director's report or directors' declaration. An audit report is only required to be given to ASX if ASIC requires one under section 601CK. An entity may give ASX the Form 405 or any other form if it wishes if that is convenient for the entity.

If the entity has been granted an extension of time to lodge yearly financial information by ASIC, it must still give ASX the documents within three months of the end of the accounting period unless ASX also grants it a waiver from this rule.

Cross reference: Listing rules 5.6 and 17.5. See also ASIC Practice Note 61 which sets out when an entity may give financial documents to ASX and be treated as having lodged them with ASIC.

**Purpose of Amendment:** This corrects a drafting oversight in the Listing Rules. Listing Rule 4.5, in effect, requires a listed entity that is not established in Australia to lodge the same annual accounts as it is required to lodge with ASIC as a registered foreign company under section 601CK of the Corporations Act (or, if it is not subject to that section, the same annual accounts as it would be required to lodge with ASIC under that section if it was subject to the section).

Under section 601CK, if the relevant law in the entity's home jurisdiction does not require its annual accounts to be audited, then there is no requirement for the accounts to be lodged with ASIC to be audited, unless ASIC forms the opinion that the accounts

do not sufficiently disclose the company's financial position and it gives a direction to the entity to produce audited accounts under section 601CK(3).

This sets up a potential regulatory mismatch with listed entities established in Australia, whose annual accounts are required to be audited under the Corporations Act.

This is to be contrasted with the situation under Listing Rule 4.2A, which requires a listed entity that is not established in Australia to lodge audited or reviewed half year accounts, consistent with the requirements applicable to listed entities established in Australia under the Corporations Act.

All of the foreign established entities currently listed on ASX prepare audited annual accounts and so this change will not impose any added burden on them.

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## Listing Rule 4.5A

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### ~~Disclosure of circumstances affecting preliminary final report with full year documents~~

4.5A ~~[Deleted] If the entity is or becomes aware of any circumstances which are likely to materially affect the results or other information contained in the preliminary final report given to ASX under listing rule 4.3 the entity must also give ASX an explanation of the circumstances and the effects the circumstances are expected to have on the entity's current or future financial performance or financial position. This rule does not apply if the entity has already given ASX the information under listing rule 4.3D.~~

Introduced 1/1/2003. Deleted 1/1/2013.

~~Note: Listing rule 4.3D requires the disclosure of this information immediately the entity becomes aware of it. The entity should have become aware of this information by the time that it lodges its statutory full year information with ASIC.~~

**Purpose of Amendment:** Listing Rule 4.5A effectively duplicates Listing Rule 4.3D. It is proposed to delete Listing Rule 4.5A and put the note that currently appears beneath it underneath Listing Rule 4.3D.

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**Listing Rule 4.10.3**

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4.10.3 A statement disclosing the extent to which the entity has followed the recommendations set by the +ASX Corporate Governance Council during the reporting period. If the entity has not followed all of the recommendations the entity must identify those recommendations that have not been followed and give reasons for not following them. If a recommendation hass~~d~~ been followed for only part of the period, the entity must state the period during which it hass~~d~~ been followed.

Introduced 1/7/1996. Origin: Listing Rule 3C(3)(f). Amended 1/1/2003, 01/06/2010, 1/1/2013.

Note: The corporate governance statement may be given to ASX as a separate report but must be given to ASX at the same time as the annual report and be clearly identified as the entity's corporate governance statement under this rule.

**Purpose of Amendment:** This amendment corrects some minor grammatical errors in Listing Rule 4.10.3.

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## Listing Rule 4.10.17

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4.10.17 A review of operations and activities for the reporting period that complies with the following requirements.

- If the entity is established in Australia, the review must comply with sections 299 and 299A of the Corporations Act.
- If the entity is not established in Australia but it is subject in its home jurisdiction to an equivalent law to sections 299 and 299A of the Corporations Act requiring the preparation of a directors' report that includes a review of operations and activities for the reporting period, the review must comply with that law.
- If the entity is not established in Australia and it is not subject in its home jurisdiction to an equivalent law to sections 299 and 299A of the Corporations Act requiring the preparation of a directors' report that includes a review of operations and activities for the reporting period, the review must be equivalent to that which it would be required to prepare if it was incorporated in Australia and subject to sections 299 and 299A of the Corporations Act.

Introduced 1/1/1999. Amended 1/1/2013

~~For further guidance, see Note: Listing rule 4.10.17 is based on section 299 of the Corporations Act. ASX does not require the review of operations and activities to follow any particular format. Nor does ASX specify its contents. However, ASX supports the Group of 100 Incorporated publication Guide to the Review of Operations and Financial Condition. This publication is reproduced in Guidance Note 10 - Review of Operations and Activities: Listing Rule 4.10.17 Review of Operations and Activities: Listing Rule 4.10.17.~~

**Purpose of Amendment:** Listing Rule 4.10.17 pre-dates the introduction of section 299A of the Corporations Act and needs to be amended to reflect the introduction of that section. The amendment being made here is consistent with the amendments proposed to Listing Rules Rule 4.2A and 4.5 regarding half-yearly and annual financial statements.

ASX proposes to issue a revised version of Listing Rule Guidance Note 10 *Review of Operations and Activities: Listing Rule 4.10.17* when ASIC finalises the Regulatory Guide foreshadowed in its Consultation Paper 187 *Effective disclosure in an operating and financial review*. If this rule is adopted, the revised version of Guidance Note 10 will also address the requirements of this rule.

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## Chapter 12

### Listing Rule 12.7

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12.7 An entity which was included in the +S & P All Ordinaries Index at the beginning of its financial year must have an audit committee during that year. If the entity was included in the +S & P / ASX 300 Index at the beginning of its financial year it must also comply with the ~~best practice~~ recommendations set by the ASX Corporate Governance Council in relation to composition, operation and responsibility of the audit committee for the whole of that financial year, unless it had been included in that index for the first time less than 3 months before the beginning of that financial year. An entity that is included in the +S & P / ASX 300 Index for the first time less than 3 months before the first day of its financial year but did not comply with the ~~best practice~~ recommendations set by the ASX Corporate Governance Council in relation to composition, operation and responsibility of the audit committee at that date must take steps so that it complies with those recommendation within 3 months of the beginning of the financial year.

Introduced 1/1/2003. Origin: Listing rule 4.10.2. Amended 3/5/2004, 11/01/2010

Note: If the entity is a trust, its audit committee may also be the responsible entity's audit committee.

The S & P / ASX 300 Index is reviewed semi-annually.

If an entity was included in the index on the first day of its financial year but is subsequently not included in the index following a review, it must comply with this rule for the whole of the financial year. If an entity was not included in the index on the first day of its financial year but is subsequently included in the index following a review, it need not comply with this rule for that financial year.

Entities which are included in the S + P/ASX 300 Index for the first time have a transitional period to constitute an audit committee that complies with the recommendations of the ASX Corporate Governance Council.

Examples: (1) An entity has a balance date of 30 June. It is included in the S+P/ASX 300 Index for the first time in September 2010. It will be required to have an audit committee that complies with the ~~best practice~~ recommendations of [the ASX Corporate Governance Council](#) constituted by no later 1 July 2011.

(2) An entity has a balance date of 31 March. It is included in the S+P/ASX 300 for the first time in early March 2010. It will be required to have an audit committee that complies with the ~~best practice~~ recommendations of [the ASX Corporate Governance Council](#) constituted by no later than 1 July 2010.

Cross reference: Listing rule 4.10.3.

**Purpose of Amendment:** This amendment tidies up some historical references to the ASX Corporate Governance Council's recommendations. These recommendations are no longer referred to as "best practice" recommendations.

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**Listing Rules 12.9 and 12.10**

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12.9 An entity must have a +trading policy that complies with the requirements of ASX listing rule 12.12. An entity must give its +trading policy to the ~~+company~~+market announcements office for release to the market.

Introduced 01/01/2011. Amended 1/1/2013.

12.10 Where an entity makes a material change to their +trading policy such entity must give the amended +trading policy to the ~~+company~~+market announcements office for release to the market within 5 +business days of the material changes taking effect.

Introduced 01/01/2011. Amended 1/1/2013.

**Purpose of Amendment:** This amendment reflects the change in name of the company announcements office to the market announcements office.

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## Chapter 15

### Explanatory note

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ASX has issued a Guidance Note on its ~~+company+~~[+market](#) announcements platform ([see Guidance Note 14 ASX Market Announcements Platform](#)).

**Purpose of Amendment:** This amendment reflects the change in name of the company announcements office to the market announcements office.

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## Listing Rules 15.1.1 and 15.1.2

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### 15.1.1 Proposed amended constitution.

Introduced 1/7/2096. Origin: Listing Rule 3A(15).

Cross reference: rules 3.17, 15.4.2 and 15.11.

Note: The draft must be given to the home branch in a way that enables the changes to be readily identified. The amended constitution must be given to the ~~company~~-market announcements office after the amendments have been made.

### 15.1.2 Proposed amended document setting out the terms of +debt securities or +convertible debt securities.

Introduced 1/7/1996. Origin: Listing Rule 3A(15).

Note: As at 1/7/2000 section 260FA(1) of the Corporations Act may require a trust deed in relation to debt securities. If a trust deed is required, a copy of any amending deed must be given to ASX under this rule. The draft must be given to the home branch in a way that enables the changes to be readily identified. The amended document must be given to the ~~company~~-market announcements office after the amendments have been made.

Example: ASX will check that the payment date for interest as set out in the draft document complies with the listing rules.

**Purpose of Amendment:** This amendment reflects the change in name of the company announcements office to the market announcements office.

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## Listing Rule 15.2

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15.2 To give a document to ASX, an entity must give it:

15.2.1 to the ~~+company~~+market announcements office, if any of the following apply.

- The document is for release to the market.  
Note: Drafts are given to the home branch.  
Financial statements and annual reports are released to the market.  
Cross reference: Guidance Note 14 ~~—Company Announcements Platform~~ ASX Market Announcements Platform.
- ASX has specified the ~~+company~~+market announcements office as the place for giving ASX the document.
- The document is in response to correspondence from the ~~+company~~+market announcements office.
- The document was sent to holders of the entity's +securities.
- The document is a disclosure document, Product Disclosure Statement, information memorandum, +takeover document, document setting out the terms of +debt securities or +convertible debt securities, or copy of the entity's constitution.
- The document is an Appendix 3B.

Introduced 1/7/96. Origin: Listing Rule 3J(1)(a). Amended 1/7/~~1997~~, 13/3/2000, 1/7/2000, 11/3/2002, 1/1/2003, 1/1/2012.

~~Note: From 1 July 2003 a document must be given to ASX by electronic means, unless it is an excluded category of documents.~~

~~Company announcements office does not receive hand delivered documents.~~

~~As at 13/3/2000, disclosure document for an offer of securities is defined in section 9 of the Corporations Act as meaning:~~

~~(a) — a prospectus for the offer; or~~

~~(b) — a profile statement for the offer; or~~

~~(c) — an offer information statement for the offer.~~

~~As at 1/7/2000 section 260FA(1) of the Corporations Act may require a trust deed in relation to debt securities. If a trust deed is required, a copy of any amending deed must be given to ASX under this rule.~~

Cross reference: Listing rule 15.3; Guidance Note 14 ~~—Company Announcements Platform~~ ASX Market Announcements Platform.

15.2.2 to the +home branch, if any of the following apply.

- The document is not for release to the market.  
Example: A draft document.
- ASX has specified the +home branch as the place for giving ASX the document.

- The document is in response to correspondence from the +home branch and ASX has not specified that the response is to be sent to the ~~+company~~+market announcements office.

Introduced 01/07/1996 Origin: Listing Rule 3J(1)(a) [Amended 01/01/2013](#)

15.2.3 Introduced 01/07/2000 Amended 30/09/2001 Deleted 01/01/2003

**Purpose of Amendment:** This amendment removes unnecessary historical material and reflects the change in name of the company announcements office to the market announcements office.

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## Listing Rule 15.3

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15.3 A document for release to the market must be given to ASX electronically. This rule does not apply if the document is in an excluded category published by ASX from time to time.~~The following rules apply to documents given to ASX:~~

~~(a) — Until 30 June 2003, a document for release to the market must be given to ASX electronically or by fax.~~

~~(b) — From 1 July 2003 a document for release to the market must be given to ASX electronically. This rule does not apply if the document is in an excluded category published by ASX from time to time.~~

Introduced 01/07/1996 Origin: Listing Rule 3J(1)(b) Amended 01/09/1999, 01/07/2000, 30/09/2001, 01/01/2003, 01/01/2013

Note: If an entity is sending its security holders an annual report that comprises only the financial statements it has lodged with ASIC and previously given to ASX, it need not send in an annual report, but should tell ASX at the time of lodgement that that is what it is sending to security holders.

The only excluded category of documents is proxy voting information given to ASX under section 251AA of the Corporations Act.

~~Company announcements office does not receive hand-delivered documents.~~

Cross reference: Listing rules 4.7, 15.4; Guidance Note 14 ~~Company Announcements Platform~~ ASX Market Announcements Platform.

**Purpose of Amendment:** This amendment removes unnecessary historical material and reflects the change in name of the company announcements office to the market announcements office.

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Listing Rule 15.4A

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**Electronic lodgement of documents**

15.4A ~~An entity must agree with ASX in writing by 1 July 2003 that documents may be given to ASX and authenticated electronically.~~

Introduced: 1/1/2003. ~~Deleted 1/12/2013.~~

**Purpose of Amendment:** This amendment removes unnecessary historical material.

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## Listing Rule 15.7

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15.7 An entity must not release information that is for release to the market to any person until it has given the information to ASX and has received an acknowledgement that ASX has released the information to the market.

Introduced 1/7/1996. Origin: Listing Rule 3J(1)(f).

Note: This rule prohibits an entity giving information to the media even on an embargoed basis.

The ~~company~~-market announcements office sends an acknowledgement by fax after releasing information to the market.

Cross reference: Listing rule 15.8.

15.7.1 However, an entity may release information that is for release to the market, if it becomes available outside the hours of operation of the ~~+company~~+market announcements office, to an overseas stock exchange that requires it. In that case, the entity must give the information to the ~~+company~~+market announcements office at the same time, together with advice that it has released it.

Introduced 1/7/1996. Origin: Listing Rule 3J(1)(e). Amended 1/1/2003, 1/1/2012.

~~Note: The company announcements office hours are 8.30 am to 8.30 pm Sydney time on trading days.~~

**Purpose of Amendment:** This amendment reflects the change in name of the company announcements office to the market announcements office.

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## Chapter 19

### Listing Rule 19.12

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19.12 The following expressions have the meanings set out below.

Introduced 1/7/1996. Origin: Definitions.

<u>Expressions</u>	<u>meanings</u>
...	
aware	<p>an entity becomes aware of information if, <u>and as soon as, an a director or executive officer of the entity</u> (or, in the case of a trust, an <u>director or executive officer of the responsible entity</u>) has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an <u>director or executive officer</u> of that entity.</p> <p>Introduced 1/7/1996. Origin: Listing Rule 3A(1). Amended 1/7/1998, 30/9/2001, 1/1/2013.</p>
...	
<del>company announcements office</del>	<p><del>the office designated by ASX as its company announcements office.</del></p> <p><del>Note: The company announcements office is located at Level 4, 20 Bridge Street, Sydney. At 13/3/2000 the fax numbers are:-</del></p> <ul style="list-style-type: none"><li><del>• For announcements sent within Australia — 1300 300 021</del></li><li><del>• For announcements sent from New Zealand — 0800 449 707</del></li><li><del>• For announcements sent from elsewhere 61 2 9347 0005 or 61 2 9778 0999</del></li></ul>
<u>information</u>	<p><u>for the purposes of Listing Rules 3.1-3.1B, information includes:</u></p> <p>(a) <u>matters of supposition and other matters that are insufficiently definite to warrant disclosure to the market; and</u></p> <p>(b) <u>matters relating to the intentions, or likely intentions, of a person.</u></p> <p>Introduced 1/1/2013.</p>
<u>market announcements office</u>	<p><u>the office designated by ASX as its market announcements office.</u></p> <p>Introduced 1/1/2013.</p>

**Purpose of Amendment:** Since the definition of “aware” was adopted in Listing Rule 19.12, the Corporations Act has been amended (the CLERP 9 amendments) to

substantially modify the definition of “officer” so that it no longer includes mere employees and to remove the definition of “executive officer”.

The amendment to the definition of “aware” removes the redundant reference to the undefined term “executive officer” and makes the definition consistent with section 1042G of the Corporations Act.

The addition of the definition of “information” addresses a possible drafting gap in the Corporations Act, in that it defines “information” for the purposes of the insider trading laws in Part 7.10 Division 3 of the Corporations Act (see section 1042A), but not for the purposes of the continuous disclosure laws in chapter 6CA of the Corporations Act.

The deletion of the definition of “company announcements office” and the insertion of the definition of “market announcements office” reflects the change in name of the company announcements office to the market announcements office.

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