



Mavis Tan  
Australian Securities Exchange  
mavis.tan@asx.com.au

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Dear Ms Tan,

## Submission on the Proposed Governance-Related Listing Rule Amendments

This submission is made by the Head Office Advisory Team at Herbert Smith Freehills. We commend the ASX for its continued efforts to improve the ASX listing rules and for the thorough and open consultation process. Our comments in relation to the current proposed changes are as follows.

### Listing Rules 4.7 and 4.10.3

Entities who 'early adopt' will not be able to comply with revised listing rule 4.7 until Appendix 4G is updated and finalised. It would be helpful if ASX could clarify how early adopters can comply prior to this time – for instance by lodging their own checklist.

### Listing Rule 4.10.22(c)

The intention of this rule appears to be that entities should disclose the number of shares purchased during the reporting period on behalf of a director or their related parties (**relevant persons**) that were allocated to the relevant person during the same reporting period. However, in practice, the securities allocated to a relevant person during a reporting period may have been purchased in an earlier reporting period and purchased with no particular individual recipient in mind (eg they may have been purchased as general trust property). On that basis, we suggest the following drafting change:

*If any of the purchased +securities were ~~purchased on behalf of, or ultimately allocated to,~~ a director or a +related party of a director during the reporting period:*

- *the name of the director;*
- *if applicable, the name of the related party; and*
- *the number of purchased +securities ~~purchased on behalf of, or ultimately allocated to,~~ the director or +related party.*

We note that, if adopted, this change would not sit neatly under the introductory sentence of proposed Listing Rule 4.10.22 and would need its own paragraph (or rule).

### Listing Rule 10.11, Exception 4

Exception 4 should be drafted consistently with the way that ASX currently administers the listing rules. We suggest the following drafting change:

*The +person is a +person referred to in rule 10.14 and receives the +securities under an +employee incentive scheme ~~with approval under that rule in~~ accordance with that rule or rule 10.15B.*

The intention of this change is to clarify that approval is not required under listing rule 10.11 for the issue of options or performance rights that are not approved by shareholders because the exception to listing rule 10.14 applies.



## Listing Rule 7.2, Exception 14

We appreciate that it is outside the scope of the consultation, but as ASX is making changes to listing rule 10.14, ASX could consider clarifying that securities issued under a listing rule 10.14 approval are covered by Listing rule 7.2, Exception 14.

## Listing Rule 10.15B

- In practice, companies often issue shares to a trust and allocate those shares to employees under an employee incentive scheme. These allocated shares may ultimately be forfeited by an employee (e.g. because they resign before the shares vest). It would be helpful if ASX could clarify whether listing rule 10.14 approval is required if such forfeited shares are re-allocated to a director (or whether these forfeited shares can be treated in the same way as shares purchased on market)?
- In our view the exception in new listing rule 10.15B should apply whenever shares are in fact sourced on market. This would give companies flexibility to grant rights and options without approval, but then subsequently seek approval if the entity decides to satisfy the right or option with issued shares rather than shares sourced on market (for instance, because the company's cash flow position has changed since the rights or options were granted). We suggest the following drafting change:

*The issue of options or performance rights over +securities to employees or directors or their +related parties under the +terms of an +employee incentive scheme, where the +securities to be granted on the exercise of the options or the satisfaction of the performance rights are ~~required~~ permitted by the +terms of the +employee incentive scheme to be purchased on market and are purchased on market.*

## Listing Rule 10.17

We suggest the following drafting changes:

- *10.17...It does not include reimbursement of out-of-pocket expenses for attending board or board committee meetings, "special exertion" fees or other ~~benefits paid~~ benefits provided in accordance with the entity's constitution, or payments or other benefits that have been approved by the holders of the entity's +ordinary securities...*
- *Note 3: ASX does not regard acting as a +child entity or attending and participating in ~~board committee~~ meetings of standing committees of the board of the entity or a +child entity as "special exertions" by a director...*
- *10.17A The total amount of directors' fees paid to the directors of the entity by an the entity or any of its +child entities must not exceed the total amount of directors' fees approved by the holders of its +ordinary securities under rule 10.17.*

## Listing Rule 14.2

Our understanding is that the intention of this change is simply to remove the requirement to include a Chairman's box in the proxy form, as long as the form specifies how the chairman intends to vote if the chairman is or becomes the shareholder's proxy.

However, we have had discussions with a number of clients who are concerned that the amendments will in future require proxy forms to include a new box for each resolution, along the lines of the last column in the table below –



**Item of business:**

		For	Against	Abstain	Proxy's discretion
<b>Item x</b>	<b>To re-elect Ms Smith</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Item xx</b>	<b>To adopt the Remuneration Report</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Item xxx</b>	<b>To approve the CEO LTI grant</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

It would be helpful if ASX clarified that this is **not** the intended effect of the amendments.

**Listing Rule 19.12**

We prefer the new definition of 'associate' to the existing language in the note to listing rule 14.11 that irrebuttably deems all related parties of a director or officer to be their 'associate'. However, we still query why it is necessary for there to be any presumption that a related party of a director or officer is their associate.

Yours sincerely

**Priscilla Bryans**  
Partner  
Herbert Smith Freehills

**Garth Riddell**  
Senior Associate  
Herbert Smith Freehills