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**Companies Update
09 December 2010**

Update no 11/10

Important information for ASX Listed Entities

Listing Rules on Trading Policies come into effect on 1 January 2011

[New listing rules](#) (PDF 55KB) about the policies governing trading in a listed entity's securities by its directors and other key management personnel ("Trading Policies") come into effect on 1 January 2011. At the same time, consequential amendments to the Appendix 3Y Change of Director's Interests Notice come into effect. The amended version of the Appendix 3Y is to be used from 1 January 2011.

The requirements are set out in listing rules 12.9 to 12.12.

[Guidance Note 27 Trading Policies](#) (PDF 38KB) contains guidance to assist listed entities understand and comply with their obligations under these listing rules.

The purpose of this Companies Update is to respond to some queries ASX has received to date in relation to Trading Policies.

Categories of listed entity affected

The requirement to have a compliant Trading Policy applies to all entities admitted to the Official List in the ASX Listing category. It does not apply to entities admitted to the Official List in the Debt Listing or Foreign Exempt Listing categories. ¹

Timing and lodgement requirements

To meet the 1 January 2011 commencement date for these measures, all listed entities in the ASX Listing category will need to have adopted a Trading Policy that complies with listing rules 12.9 to 12.12 and give a copy of it to the Company Announcements Platform by 31 December 2010.

Entities that already have a Trading Policy in place that complies with listing rules 12.9 to 12.12 still need to give a copy of it to the Company Announcements Platform by 31 December 2010.

ASX will begin following up listed entities that have not lodged their Trading Policies with the Company Announcements Platform in the first few weeks of 2011.

New listing applicants

Listing rule 1.1 includes a new condition 15 that will require new applicants for listing in the ASX Listing category on or after 1 January 2011 to adopt and disclose a compliant Trading Policy as a condition of admission to the Official List. This applies even where the application for admission was lodged prior to 1 January 2011.

Persons to be bound by a Trading Policy

At a minimum, a listed entity's Trading Policy must apply to its "key management personnel", as defined in AASB 124 *Related Party Disclosures*. An entity, however, may choose to extend its Trading Policy to a wider group of executives or employees, if it wishes.

For those entities that do extend their Trading Policy to a wider group of executives or employees, ASX will accept in satisfaction of the lodgement requirement in listing rule 12.9, either a copy of the full Trading Policy or a verbatim extract of the relevant provisions in the Trading Policy that apply to key management personnel.

Main requirements of the new rules

Listing rule 12.9:

- An entity must adopt a policy on trading in the entity's securities by key management personnel and give a copy to the Company's Announcement Platform for release to the market.
- The Trading Policy must comply with the minimum content requirements of listing rule 12.12.

Listing rule 12.10:

- If a material change is made to an entity's Trading Policy, the entity must release the amended Trading Policy on the Company Announcements Platform within 5 business days of the material change taking effect.

Guidance Note 27 has further information on the types of amendments to a Trading Policy that may constitute a material change requiring release of the amended policy to the market under this rule.

Listing rule 12.11:

- The entity must give a copy of the Trading Policy to ASX immediately upon request.

Listing rule 12.12:

The *minimum* content requirements for a Trading Policy are

set out in listing rule 12.12. There are five matters that must be covered.

- Listing rule 12.12.1 *Closed periods*

The Trading Policy must specify the entity's closed periods. A "closed period" is a fixed period specified in the Trading Policy when an entity's key management personnel are generally prohibited² from trading in the entity's securities.

This means that a Trading Policy must specify at least some fixed period of time during which trading in securities by key management personnel is generally prohibited. A Trading Policy that does not specify any such fixed period, or that specifies that there is no such fixed period, is not compliant with listing rule 12.12.

A Trading Policy may comply with the requirement to specify closed periods either by:

- generally prohibiting trading by key management personnel at all times, except during certain defined "trading windows" (in which case, the closed period is the whole of the year apart from the defined trading windows); or
- defining fixed periods, generally referred to as "black-out periods", throughout the year where trading by key management personnel is generally prohibited (in which case, the closed periods are the defined black-out periods).

The listing rules do not mandate what periods an entity must choose as its closed periods. It is the responsibility of each entity to define in its Trading Policy closed periods that are appropriate to its circumstances. In doing so, the entity should be mindful of the perception that trading by its key management personnel during certain periods may create. One such example is if it takes place during a period where those personnel may have, or be perceived to have, access to information that has not yet been made available to the market (for instance, in the lead up to lodgement of periodic financial reports).

For this reason, entities which report on a semi-annual basis should consider whether it is appropriate to include within their closed periods the period from the close of books at half and full year end until the release of their financial results for the half and full year respectively. They can address this in their Trading Policy:

- if they prescribe trading windows, by including

within their permitted trading windows a short period (say, two to six weeks) commencing from the trading day after the release of their financial results for the half and full year;³ or

- o if they prescribe black-out periods, including within their nominated black-out periods the period from the close of books at half and full year end until the release of their financial results for the half and full year respectively.⁴

Some entities (for example, mining exploration entities that are not yet producing revenue and that release quarterly cash flow reports under [listing rule 4.7B](#) (PDF 108KB) may decide that their quarterly cash flow reports are a more appropriate reference point for their closed periods than their half and full year financial results. Those entities should consider whether it is appropriate to include within their closed periods the periods from quarter end until the release of their quarterly cash flow reports.

Ultimately, however, it remains the responsibility of each entity to decide what the appropriate closed periods are under its Trading Policy.

- Listing rule 12.12.2:

The Trading Policy must include the restrictions on trading that apply to the key management personnel.

- Listing rule 12.12.3 *Excluded trading:*

The Trading Policy must include information on any trading that is not subject to the Trading Policy. Guidance Note 27 provides further guidance on the types of trading that an entity may choose to exclude from the operation of its Trading Policy. These are generally various kinds of 'passive' or 'reactive' trades.

- Listing rule 12.12.4 *Trading during a prohibited period with prior written clearance:*

Listing rule 12.12.4 requires the Trading Policy to include information on any exceptional circumstances in which key management personnel may be permitted to trade during a prohibited period with prior written clearance.

"Prohibited period" is defined in listing rule 19.12 as any closed period (that is, one of the fixed periods that are required to be specified in the Trading Policy), and any additional period arising from time to time when an entity imposes a prohibition on trading by key management personnel (that is, an ad hoc prohibition on trading).

Guidance Note 27 contains further guidance on what may be taken to be "exceptional circumstances".

- Listing rule 12.12.5 *Procedures for clearance*:

Listing rule 12.12.5 requires the Trading Policy to set out the procedures for obtaining prior written clearance to trade during a prohibited period under listing rule 12.12.4.

Guidance Note 27 - Trading Policies

In addition to the matters referred to above, the Guidance Note provides listed entities with guidance on the inclusion of restrictions on trading in derivative products by key management personnel during prohibited periods under the Trading Policy.

Since the release of the original text of Guidance Note 27 on the ASX website on 19 July 2010, a minor amendment has been made to one paragraph in the Guidance Note to clarify that non-discretionary trading plans may encompass plans in which a number of individuals participate as well as plans that have only one director or executive as a participant.

Appendix 3Y Change of Director's Interest Notice

The Appendix 3Y form of notification of a change in a director's interests has been amended to provide space to include the following information.

- Were the interests the subject of the notification traded during a closed period where prior written clearance under the Trading Policy was required? (NB: This requires notification of whether the relevant trading occurred during a closed period, i.e., one of the fixed periods of prohibition under the Trading Policy, not to trading during an ad hoc prohibited period.)
- Was prior written clearance obtained?
- If the prior written clearance was obtained, the date on which it was provided.

The amended version of the Appendix 3Y is to be used from 1 January 2011.

Previous consultation

Please refer to [Companies Update 07/10](#) for a link to the Consultation Paper and Exposure Draft for these rules.

Queries

Please contact your Listings Adviser if you have any queries.

¹ ASX may in respect of any particular Debt Listing under listing rule 1.10.2, or any Foreign Exempt Listing under listing rule 1.15.2, specify additional listing rules that that entity must comply with.

² Under listing rule 12.12.3, certain types of trading by key management personnel may be excluded from the operation of the Trading Policy. Also, under listing rule 12.12.4, trading by key management personnel may be permitted during a closed period but only if there are exceptional circumstances and with prior written clearance.

³ Entities in this category may also wish to consider whether it is appropriate to allow a trading window for a short period commencing on the trading day after their annual general meeting and also during the currency of a long form prospectus or PDS offering securities that are to be quoted on ASX.

⁴ Entities in this category may also wish to consider whether it is appropriate for their black-out periods:

- to commence a few weeks before close of books to align with when key management personnel may receive unaudited information about the probable financial position at balance date; and
- to last at least until the beginning of the next trading day after the release of their results, to allow time for the market to absorb those results.

To help keep our Listed Entities informed of information and events ASX will be sending emails to the Company Secretary's Office from time to time. You are receiving this email because you have been identified as a key contact within the Company Secretary's Office at your organisation. If you would like to update your email address please do so via the Directors/Senior Management page on [ASX Online for Companies](#). Feel free to forward this email to any relevant parties within your organisation.
