



Listed@ASX

Compliance Update 19 August 2019 Update no 07/19

1. Updates to Guidance Note 9 *Disclosure of Corporate Governance Practices*

ASX has published an updated version of ASX Listing Rules Guidance Note 9 *Disclosure of Corporate Governance Practices*, which is due to be released on 1 January 2020, the same date that the fourth edition of the Corporate Governance Principles and Recommendations comes into effect.

The update includes additional guidance on issues raised with ASX during and since its May 2019 roadshows on the fourth edition. This includes:

- additional guidance on how to complete an Appendix 4G in section 9 of the Guidance Note;
- a new section 10 on disclosure of corporate governance policies;
- a new section 11 with guidance on Council recommendation 1.5 (diversity); and
- a new section 14 with guidance on Council recommendation 4.3 (process to verify integrity of periodic corporate reports).

This updated guidance should be especially helpful for those entities intending to early adopt the fourth edition (see the next item below).

[Access the updated Guidance Note](#)

It can also be accessed, along with other relevant governance materials, on the [ASX Compliance Downloads page](#) on the ASX website (under the heading Corporate Governance Disclosures).

2. Early adopters of the fourth edition of the Corporate Governance Principles and Recommendations

The fourth edition of the Corporate Governance Principles and Recommendations takes effect for an entity's first full financial year commencing on or after 1 January 2020. Accordingly, entities with a 31 December balance date will be expected to measure their governance practices against the recommendations in the fourth edition commencing with the financial year ended 31 December 2020. Entities with a 30 June balance date will be expected to measure their governance practices against the recommendations in the fourth edition commencing with the financial year ended 30 June 2021.

ASX has been advised by a number of listed entities that they intend to early adopt the fourth edition and report against it for the financial year ending 30 June 2020. ASX and the ASX Corporate Governance Council encourage and support this.

ASX will be carefully reviewing the corporate governance disclosures of early adopters to ensure that they conform to the spirit, intention and purpose of the fourth edition and Listing Rule 4.10.3 (the 'if not why not' reporting requirement). ASX anticipates that this could lead to some entities receiving a request from ASX to update their corporate governance disclosures.

With that in mind, ASX would encourage any listed entity early adopting the fourth edition that has any queries or concerns about the governance practices it should be following, or the governance disclosures it should be making, to comply with the fourth edition to raise those with their ASX listing adviser at the earliest opportunity.

3. "Ramping" announcements

ASX has recently seen a number of examples of listed entities making market announcements that look to ASX to be designed to "ramp" the price of their securities rather than to inform the market. ASX has observed that in some cases, these announcements are made just before a capital raising where they appear to be directed to supporting the price of the entity's securities ahead of the raising. In other instances, they are made just after a capital raising, where they appear to be directed to facilitating a profitable exit for some investors who have acquired securities in the capital raising.

Often these announcements focus on customer developments, such as signing up a new customer or customer trial, successfully completing a trial with a customer, or achieving a "milestone" under a customer contract. Alternatively, they are expressed as "business updates". Typically these announcements are expressed in exuberant terms, but on closer examination include little in the way of substance.

Whenever ASX detects what it suspects to be a "ramping" announcement, it will not hesitate to suspend the entity and issue a query letter asking the entity:

- to explain its basis for lodging the announcement with ASX (i.e. was it lodged to meet the entity's continuous disclosure obligations under listing rule 3.1 or for some other purpose); and
- to identify what information in the announcement is market sensitive and explain why it is market sensitive.

In a number of cases, the lodgement of a “ramping” announcement has resulted in the entity having to publish a corrective announcement highlighting that the information in the announcement was not material.

ASX reminds listed entities of the guidance it gave in [Listed@ASX Compliance Update no 02/18](#) dated 15 March 2018 about disclosure of customer contracts:

'Recently there have been a number of incidents where the disclosures by listed entities about their contractual arrangements with customers have fallen short of the required standards. Examples include entities:

- *announcing a contract with a major global customer without providing any details of the nature or substance of the contract or its significance to the entity (ie seeking to benefit from the association with the customer without providing proper disclosure);*
- *announcing what appears to be a material customer contract without disclosing that it is subject to a trial period or other conditions and therefore may not proceed;*
- *disclosing revenue projections for customer contracts that do not have a proper basis or that do not state the material assumptions or qualifications underpinning them;*
- *not disclosing when a previously announced material customer contract is terminated or does not proceed (ie disclosing good news but not bad); and*
- *misrepresenting customer contracts as being "material" or with other superlatives when plainly they are not (one of the more notable examples being a listed entity that disclosed a "material commercial agreement with a leading financial entity" under which it was to receive less than \$1000 in revenue).*

Whenever ASX detects this sort of behaviour it will not hesitate to suspend the entity, query it and require it to correct any inadequate or misleading disclosures. It will also refer the entity to ASIC for consideration of regulatory action.

ASX would draw the attention of all listed entities to the following new passage in section 4.15 of Guidance Note 8 ... dealing with market sensitive customer contracts:

"Wherever possible, an announcement under Listing Rule 3.1 should contain sufficient detail for investors or their professional advisers to understand its ramifications and to assess its impact on the price or value of the entity's securities...

...depending on the circumstances, ASX would generally expect an announcement about the signing of a market sensitive contract with a customer to include information about:

- *the name of the customer;*
- *the term of the contract;*
- *the nature of the products or services to be supplied to the customer;*
- *the significance of the contract to the entity;*
- *any material conditions that need to be satisfied before the customer becomes legally bound to proceed with the contract; and*
- *any other material information relevant to assessing the impact of the*

contract on the price or value of the entity's securities.

ASX also reminds listed entities to take care to ensure that announcements are based on accurate and objectively verifiable information and do not include or present information in a way that is designed to mislead.

4. 'Loyalty' securities

ASX has observed an increase in listed entities issuing 'loyalty' securities (including 'loyalty' options). These are usually intended to reward security holders who participate in an issue of securities for their loyalty in holding those securities for a given period. Sometimes these are given different names, such as 'bonus' or 'reward' securities.

ASX reminds listed entities that Listing Rule 6.1 provides that the terms that apply to each class of equity securities of a listed entity must, in ASX's opinion, be appropriate and equitable. In addition, Listing Rule 12.5 imposes an ongoing obligation on a listed entity to have a structure that is appropriate for a listed entity.

'Loyalty' securities present issues in this regard. Securities in listed entities quoted on ASX are expected to be freely tradeable (unless they are subject to escrow). If it is a condition of receiving the benefit of 'loyalty' securities that the holders must retain the relevant securities in the entity for a given period, that will act as a disincentive for them to trade those securities during that period. This is not appropriate for a listed entity.

It is strongly recommended that a listed entity proposing to issue 'loyalty' (or similar) securities first apply to ASX for in-principle advice that the terms of the securities will satisfy Listing Rules 6.1 and 12.5 before it issues the securities or enters into any legally binding agreement to do so. This may help to avoid the legal and practical complications and embarrassment that will arise if ASX subsequently rules that the 'loyalty' securities breach the listing rules and it requires the entity to take action to avoid or correct that breach.

An application for in-principle advice that the terms of the 'loyalty' securities are acceptable to ASX under Listing Rules 6.1 and 12.5 should be addressed to the listed entity's home branch at ASX and include the following details:

- the full terms of the securities;
- the entity's capital structure before and after the issue of the securities; and
- the parties to whom the securities are to be issued and the number of securities to be issued to them.

5. Updates to Listing Rules Guidance Notes 8 and 27

On 23 August 2019, ASX will be releasing updates to Guidance Note 8 *Continuous Disclosure – Listing Rules 3.1 – 3.1B* and Guidance Note 27 *Trading Policies* to reflect the changes to the law in the Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019.

Sections 7.3 and 7.5 of Guidance Note 8 will also be updated to refine ASX's guidance regarding analyst forecasts and consensus estimates.

The revised Guidance Notes 8 and 27 will be able to be accessed via ASX Online or the [ASX Listing Rules page](#) on the ASX website.

You can also access the mark-ups of the changes to the Guidance Notes here: [Guidance Note 8](#) and [Guidance Note 27](#).

6. Annual listing fees FY2020 - Reminder

Listed entities are reminded that annual listing fees for FY2020 were due on 31 July 2019.

Should payment not be received in full by 5.00pm AEST Wednesday 21 August 2019, ASX will suspend trading in the entity's securities before trading commences on Thursday 22 August 2019 in accordance with Listing Rule 17.6. ASX will not waive this rule. Fees paid after Wednesday 21 August 2019 must be paid by bank cheque.

Further, should payment still remain outstanding by 5.00pm AEST on Wednesday 28 August 2019, ASX will remove the entity from the official list that day under Listing Rule 17.15. ASX will not waive this rule.

For queries on how the fee was calculated please refer to [ASX Guidance Note 15](#) paragraph 2.4. For queries in relation to the suspension and delisting process please contact your Listings Compliance Adviser. For all other enquiries please contact ASX Accounts Receivable via the email address ar@asx.com.au.

7. Fees for registering paper-based transfers

ASX refers to the following guidance in [Listed@ASX Compliance Update 04/17](#) (11 May 2017):

ASX has received a number of complaints from security holders of listed entities about being charged fees by share registries for registering paper-based transfers when the constitution of the entity has a provision (reflecting former restrictions in the Listing Rules) prohibiting such a fee. While Listing Rule 8.14.1 and [Guidance Note 28](#) now permit a reasonable fee to be charged for registering a paper-based transfer, such a fee can only be charged if it does not infringe the entity's constitution.

It is the responsibility of a listed entity and its registry to ensure that the charging of fees for paper-based transfers is permitted under the entity's constitution. If it is not, the registry should not charge such a fee or the entity should refund the fee to any security holder who complains about it. Alternatively, the listed entity should modernise its constitution to remove the constraint on charging fees that are now permitted under Listing Rule 8.14.1.

A recent Federal Court judgement ([\[2019\] FCA 796](#) (30 May 2019)) confirms the position outlined above.

A listed entity that has a prohibition in its constitution on charging fees for paper-based transfers but nonetheless has been charging such a fee should consult its registry, and if necessary take legal advice, on the ramifications for it of this judgement.

8. Lodging your notice of meeting for your AGM with ASX

Listed companies must hold their AGMs within 5 months of their financial year end. Almost 90% of ASX's listed entities have a balance date of 30 June and therefore have to hold their AGMs by 30 November each year.

Under Listing Rule 15.1.7, draft notices of general meeting that contain resolutions for Listing Rules purposes must be submitted to ASX for review before they are sent to security holders. Listing Rule 15.1 provides that ASX may take 5 business days to advise whether it objects to a draft document and may extend that deadline if it needs further time to review the document.

ASX asks listed entities to bear these timing requirements in mind and allow sufficient time when they submit their draft notices of meeting for ASX to review. This is particularly important if there are a number of resolutions or complex transactions to be considered. If you will require waivers from any listing rules in connection with your notice of AGM, additional time should be allowed to obtain the waiver as the 5 business day period referred to above does not include the time needed to obtain a waiver. Listed entities should contact their Listings Compliance Adviser to seek advice on how long ASX needs to process a waiver request.

9. Dividend and distribution information- period ending 30 September 2019

Listed entities declaring a dividend or distribution for the period ending Monday 30 September 2019 are reminded that they must use ASX Online forms to announce the dividend or distribution and if 30 September 2019 is used as the record date, the entity will need to announce the dividend or distribution by no later than Tuesday 24 September 2019 (Day 0 in the Appendix 6A Paragraph 1 timetable).

Listed entities should include the following information in such announcements (see [Appendix 6A](#) paragraph 1):

- Conduit foreign income - where an entity announces a dividend or distribution that is fully or partially unfranked, the announcement should make clear the conduit foreign income (CFI) component of that dividend or distribution, even if the CFI component is nil.
- In the online form, please note that questions 3A.4 Franked amount, 3A.6 Unfranked amount and 3A.7 Conduit Foreign Income amount should all add up to the total amount of the dividend/ distribution as advised at question 3A.1b (that is, the Conduit Foreign Income amount is exclusive of the Unfranked amount).

The announcement of franking details is not compulsory when announcing an estimate of a dividend or distribution.

- Dividend/distribution reinvestment plans (DRP) - where an entity has a DRP or similar plan in place, ASX requests that the entity make it clear in the announcement whether the DRP will operate or will be suspended for that particular dividend or distribution. If the DRP will operate, the following information should also be given:

- the last date for electing to participate in the DRP (question 4A.2 in the online form);
- the discount rate, if applicable (question 4A.3 in the online form);
- the ranking of the securities to be issued pursuant to the DRP (question 4A.8a in the online form); and
- the pricing period and the pricing methodology for determining the issue price under the DRP (questions 4A.4 and 4A.5 in the online form).

If at the time when the dividend or distribution is announced it has not been decided by the entity whether the DRP will operate, or the above details are not known, the entity should give an indication of when the entity expects to confirm details of the DRP's operation (using Part 5 'Further information' if advising by online form).

Listed entities are also reminded to advise any update to dividend information (including actual amounts and DRP prices) by completing and submitting an Updated Online Form.

If you have any questions please contact your Listings Compliance Adviser or email: onlineforms@asx.com.au.

10. Upcoming deadlines for periodic reports

Listed entities are reminded of upcoming deadlines for periodic reports:

- Preliminary final reports (June year-end) – Friday 30 August 2019
- Statutory half year financial reports (except mining exploration entities) (December year-end) – Friday 30 August 2019
- Statutory half year financial reports for mining exploration entities (December year-end) – Friday 13 September 2019
- Statutory audited annual accounts (June year-end) – Monday 30 September 2019
- Annual reports (June year-end) – Thursday 31 October 2019
- Quarterly Reports for Mining and Commitments Test Entities – Thursday 31 October 2019

Listed entities are also reminded that a failure to lodge the relevant documents on time will result in an automatic suspension of the entity's securities under Listing Rule 17.5.

11. Subscribe to Listed@ASX - Compliance Update

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