

# Listed@ASX Compliance Update no. 10/24

13 September 2024

## 1. Notice of meeting and other meeting materials

In December 2023, ASX outlined its observations from the 2023 AGM season in [Listed@ASX Compliance Update 09/23](#). This update identified a number of common issues that ASX encountered when reviewing notices of meeting last year. ASX recommends that listed entities review this guidance when preparing their meeting materials for 2024.

ASX's observations from the 2023 AGM season covered:

- ASX's approach when an entity makes changes to their draft meeting materials after the materials have been submitted to ASX for examination under Listing Rule 15.1.
- The documents that ASX must receive before it can commence its review of an entity's notice of meeting (including the proxy form, any document which must be sent to security holders along with the notice, and the documents that must be submitted if an entity proposes to amend or replace its constitution).
- The importance of ensuring that voting exclusion statements are to the same effect as the statement set out in Listing Rule 14.11.
- Common issues identified when entities are seeking an approval relating to the issue of securities under an agreement or a Listing Rule 7.1A mandate.
- A reminder that draft meeting documents do not need to be submitted under Listing Rule 15.1 if the sole business of the meeting is to consider Corporations Act items (e.g. receiving the financial statements and the election of directors). In that case, the documents can simply be finalised and lodged through ASX Online.

ASX has set out below some further observations to assist listed entities that are in the process of preparing their notices of meeting.

### ***Waivers sought in connection with a notice of meeting***

Entities should be aware that the 5-business day review period under Listing Rule 15.1 does not include the time needed to obtain a waiver.

Guidance Note 17 sets out the usual timeframes for ASX to process standard and non-standard waivers.

Waivers from meeting-related requirements, if granted, are often conditional on the entity including additional disclosure in the notice of meeting. If an entity finalises their notice of meeting before ASX has considered any associated waiver application, the entity runs the risk that it will not be able to comply with the conditions of any waiver that ASX may grant.

### ***Existing guidance on Listing Rule resolutions and accompanying explanatory material***

ASX has issued a number of Guidance Notes that contain suggestions about how to prepare resolutions and explanatory materials that comply with the Listing Rules. These include:

- Guidance Note 21 (Listing Rules 7.1 – 7.5).
- Guidance Note 24 (Listing Rule 10.1).
- Guidance Note 25 (Listing Rules 10.11 – 10.16).
- Guidance Note 35 (general guidance in relation to security holder resolutions).

### ***Disclosing the identity of the recipient of an issue of securities***

Several Listing Rules require an entity to disclose the names of the persons to whom an issue of securities was or may be made, or the basis upon which those persons were or will be identified or selected.

Guidance Note 21 sets out when the identity of such a person should be disclosed in the notice of meeting for a resolution under the following Listing Rules (instead of referring to the person as a member of a class):

- Listing Rule 7.3.1 (section 7.2).
- Listing Rule 7.3A.6(b), first bullet point (section 7.3).
- Listing Rule 7.5.1 (section 7.4).

#### ***Listing Rule 14.1A***

ASX reminds entities that Listing Rule 14.1A requires a notice of meeting seeking an approval under the Listing Rules to summarise the relevant rule, and what will happen if security holders give or do not give that approval.

#### ***Location of information required by the Listing Rules***

ASX occasionally encounters notices of meeting where the information required to be disclosed under the Listing Rules (for example, the information required by the sub-rules to Listing Rule 7.3 in relation to a Listing Rule 7.1 resolution) is set out in various sections of the notice.

ASX recommends that such information is instead set out in a single section, under a clearly-identifiable heading (e.g. 'Information required by Listing Rule 7.3'), and following the same order as the Listing Rule itself.

It will greatly assist with ASX's review (and would likewise assist the entity's investors) if the information is set out in an easily identifiable manner.

#### ***Approval of issues of securities under an employee incentive scheme***

If an entity wishes to rely on Listing Rule 7.2 exception 13 in relation to issues of securities under an employee incentive scheme, the notice of meeting must state (amongst other things) the maximum number of securities proposed to be issued under the scheme following the approval.

ASX notes that this number cannot be a floating cap (e.g. 5% of the entity's issued capital from time to time) and must instead be a specified maximum number.

#### ***Supplementary disclosure***

Where materially new or different information emerges after a notice of meeting proposing a resolution under the Listing Rules has been sent to security holders but before the vote on the resolution, the entity may need to make supplementary disclosure to security holders. This should be done in sufficient time ahead of the meeting to allow security holders to consider, and if necessary take advice on, how the new or different information should affect their vote on the resolution.

In line with ASIC guidance on similar matters, ASX generally considers that security holders should receive the supplementary information at least 10 days before they are required to vote. Anything less may warrant an adjournment of the meeting or the calling of a new meeting. Generally speaking, this information should be sent to security holders in the same manner as the original notice of meeting.

#### ***Short notice of Listing Rule resolutions***

After completing its review of an entity's notice of meeting, ASX is sometimes asked to review additional resolutions which are proposed to be considered at the meeting even though the resolutions and accompanying explanatory material were not included in the original notice of meeting.

If ASX is asked to review a new Listing Rule resolution that will be circulated to shareholders with less than 28 days' notice, ASX will not provide any comments on the draft resolution until the entity provides satisfactory evidence that the new resolution will be legally valid if it is passed. At a minimum, any submissions made to ASX on this issue would need to include advice given to the entity by suitably qualified external legal advisers.

## **2. Reminder: Additional information to be included with the annual report**

Annual reports for listed companies with a 30 June balance date are due no later than Thursday 31 October 2024 and no later than 30 September 2024 for listed registered schemes with a 30 June balance date.

Corporate governance statements may be included in the annual report or lodged separately on the market announcements platform no later than the date when the annual report is lodged.

ASX would like to remind listed entities that they must include all of the additional information required by Listing Rules 4.10.1 to 4.10.22 inclusive in their reports.

For example:

- corporate governance statements must specify a date at which it is current and that it has been approved by the board (Listing Rule 4.10.3); and
- security holder distribution schedules must state both the number of holders and the percentage of securities held in each category (Listing Rule 4.10.7).

### 3. ASX Market Announcements Office closes one hour later during daylight saving

Daylight saving commences in all states and territories where it is observed on Sunday 6 October 2024. During daylight saving, the ASX Market Announcements Office remains open for an extra hour, until 8:30pm Sydney time (5.30pm Perth time).

The Market Announcements Office is generally staffed from 7:00am Sydney time. Processing of announcements commences at 7:30am Sydney time, giving priority to announcements by entities that have a dual listing in New Zealand so that these are released in time for the opening of trading on the NZX. For those entities that are not dual listed, the Market Announcements Office will generally commence releasing announcements from approximately 8:25am Sydney time.

The Market Announcements Office will continue processing and releasing announcements as they are received during the trading day up to 8:30pm Sydney time.

The ASX Market Announcements Office will revert to its usual 7.30pm Sydney time closing time when daylight saving has ended.

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Listed entities are reminded that they must have a nominated person responsible for communication with ASX in relation to Listing Rule matters (Listing Rule 12.6).

Entities should keep the contact details of their nominated ASX contacts up to date on ASX Online at all times and also inform their Listings Adviser of any changes. Further information about how to notify ASX of any changes (including temporary changes) made to the entity's nominated ASX contact is available [here](#) (see Item 3).

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