

Listed@ASX Compliance Update no. 06/24

16 May 2024

1. New data breach example in Guidance Note 8

ASX has prepared a new data breach example that will be included in Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*.

ASX has developed the example having regard to market feedback about common disclosure issues that arise during a cyber incident. The example illustrates how existing ASX policy applies to a hypothetical data breach scenario, and includes commentary on the application of the Listing Rule 3.1A exception, the contents of announcements, how ASX approaches confidential engagement with regulators, and the use of trading halts and voluntary suspensions.

A mark-up comparing the updated Guidance Note to the current version is available [here](#).

The updated Guidance Note will take effect from 27 May 2024. The revised Guidance Note will be able to be accessed via ASX Online or the ASX Listing Rules page on the ASX website.

2. Nomination of external director candidates for election at AGM

Listing rule 14.3 requires a listed entity to accept nominations for the election of directors up to 35 business days before the date of the annual general meeting, unless the entity's constitution provides otherwise.

This rule ensures that there is certainty about the period when candidates for election as a director can be nominated and provides a reasonable opportunity for them to be nominated.

ASX is aware that in some industries an entity must obtain approvals from regulatory authorities before a candidate can be formally appointed as a director. Entities in these industries may have constitutions that provide that a person is not eligible for election as a director unless all necessary approvals have been obtained.

If an entity receives a nomination for an external director candidate within the required timeframe, the entity must manage the nomination process in a way that complies with the Listing Rules. The Listing Rules are interpreted in accordance with their spirit, intention and purpose, by looking beyond form to substance, and in a way that best promotes the principles on which the Listing Rules are based. Those principles include, relevantly, that the practices adopted by listed entities in relation to meetings of security holders should allow security holders the opportunity to express their views openly to the board and management.

ASX provides the following guidance about how it expects an entity to comply with Listing Rule 14.3 if the entity receives a nomination for an external director candidate within the required timeframe:

- If the entity must await the outcome of a regulatory approval process before the candidate can be formally appointed to the board, it will ordinarily be possible for the entity to put the candidate's appointment to a security holder vote on a conditional basis, so that if the resolution is passed the appointment will only take effect if all necessary approvals are subsequently obtained. This ensures that the entity can meet its regulatory obligations without undermining the spirit, intention and purpose of Listing Rule 14.3.
- Unless the entity has received confirmation that a necessary regulatory approval has been refused by the approving authority before the AGM, the entity must not withdraw or decline to put a resolution for the election of an external director candidate to security holders simply because the entity has not yet obtained all required regulatory approvals by the date of the AGM. A listed entity should proactively engage with their Listings Adviser if the entity is concerned that it is not permitted to put a conditional resolution to security holders in these circumstances, and will be expected to propose a solution that is consistent with the spirit, intention and purpose of the Listing Rules.

If you missed any of our historical Compliance Updates, you can download past editions [here](#).
