



AUGUST 2013

CORPORATE UPDATE

ASX PROPOSES UPDATES TO THEIR: CORPORATE GOVERNANCE PRINCIPLES & RECOMMENDATIONS; AND LISTING RULES

ASX last week released two consultation papers in relation to its corporate governance regime. The first outlines proposed updates to the *ASX Corporate Governance Principles & Recommendations* ("**Principles & Recommendations**") for the first time since the GFC, placing an increased focus on risk mitigation and diversity. The second outlines a number of corporate governance-related amendments to the Listing Rules (including a new Listing Rule 3.19B) and Guidance Note 9 (*Disclosure of Corporate Governance Practices*) which will increase the disclosure obligations of listed companies' corporate governance practices. ASX expects the changes will take effect in mid-2014.

KEY CHANGES TO THE PRINCIPLES AND RECOMMENDATIONS

The proposed changes to the Principles & Recommendations reflect an increased focus on managing risk in the post-GFC era, and taking into consideration social factors such as gender diversity and environmental sustainability. The changes are proposed to take effect from 1 July 2014 and to apply to the first full financial year starting on or after that date.

ASX is not proposing any changes to the eight principles themselves. The proposed changes relate to the recommendations for complying with each of the current principles. In many cases, the proposed new recommendations are already discussed in the

current version of the Principles & Recommendations as commentary. However, by elevating the status of these matters to recommendations, listed companies will need to disclose compliance or non-compliance with these recommendations in their Annual Report or corporate governance statement.

The proposed changes include recommendations that listed companies:

- 1 Establish a risk committee, or incorporate the functions of a risk committee into the audit committee. Listed companies which do neither will be required to disclose this fact to ASX and explain the processes they have in place for managing risk.

- 2 Disclose whether, and if so how, they have regard to economic, environmental and social sustainability risks.
- 3 Implement a diversity policy, which includes measurable objectives for achieving gender diversity. Listed companies will need to disclose at the end of each reporting period the progress that has been made towards these objectives.
- 4 Conduct "appropriate checks" before putting a candidate forward to shareholders for election as a director. The consultation paper does not define "appropriate checks", but refers to the standard that would normally be adopted by a professional search firm engaged by a company to identify potential board members.
- 5 Run an induction program for new directors and provide ongoing professional development for directors to ensure that they are able to carry out their duties effectively.

The amended recommendations will also relax the requirements for smaller listed companies, and make it easier for these companies to comply with their corporate governance disclosure obligations. For example, smaller listed companies boards will have the flexibility to choose not to have separate nomination, audit, risk and remuneration sub-committees, but to adopt their own practices to address these issues and report on how these practices comply with the Principles & Recommendations.

KEY CHANGES TO LISTING RULES

Alongside the updated Principles & Recommendations, ASX proposes to revise the Listing Rules and Guidance Note 9 (which deals with the disclosure of corporate governance practices), to clarify and enhance the corporate governance disclosure obligations of listed companies. With the exception of Listing Rule 3.19B, which is intended to take effect from 1 January 2014, these changes are proposed to take effect from 1 July 2014.

The key changes include:

- 1 A new Listing Rule 3.19B, which will require disclosure to ASX of all on-market purchases by or on behalf of employees, directors or other related parties under employee share schemes.
- 2 Giving listed companies a choice between disclosing their corporate governance practices in their Annual Report or in a corporate governance statement on their website.
- 3 A requirement that listed companies lodge an Appendix 4G (which is a new appendix) with ASX together with their Annual Report each year. Appendix 4G will provide a checklist of corporate governance-related disclosures required by listed companies. As well as helping listed companies verify that they are complying with their disclosure obligations, Appendix 4G will help investors locate corporate governance disclosures and assess the corporate governance practices in place.

A revised version of Guidance Note 9 has also been proposed, to help listed companies understand and comply with the amended Listing Rules.

The consultation papers are available on the ASX website, see:

- <http://www.asxgroup.com.au/corporate-governance-press-releases.htm>; and
- <http://www.asxgroup.com.au/public-consultations.htm>).

As noted above, the consultation period for both proposals runs until Friday 15 November 2013.

ASX is also conducting a national road show in September 2013 to explain and seek feedback on the proposed changes in order to "strike the right balance between the needs and interests of all stakeholders".

We will keep you informed as these changes progress through the consultation stages. However if you have any queries about these changes or how they could affect your business, please contact one of our experts as detailed on the following page.

MORE INFORMATION

For more information, please contact:



Mark Burger
Partner
T +61 3 9274 5586
Mark.Burger@dlapiper.com



Greg Monahan
Senior Associate
T +61 9274 5231
Greg.Monahan@dlapiper.com

Contact your nearest DLA Piper office:

BRISBANE

Level 28, Waterfront Place
1 Eagle Street
Brisbane QLD 4000
T +61 7 3246 4000
F +61 7 3229 4077
brisbane@dlapiper.com

CANBERRA

Level 3, 55 Wentworth Avenue
Kingston ACT 2604
T +61 2 6201 8787
F +61 2 6230 7848
canberra@dlapiper.com

MELBOURNE

Level 21, 140 William Street
Melbourne VIC 3000
T +61 3 9274 5000
F +61 3 9274 5111
melbourne@dlapiper.com

PERTH

Level 31, Central Park
152–158 St Georges Terrace
Perth WA 6000
T +61 8 6467 6000
F +61 8 6467 6001
perth@dlapiper.com

SYDNEY

Level 38, 201 Elizabeth Street
Sydney NSW 2000
T +61 2 9286 8000
F +61 2 9286 4144
sydney@dlapiper.com

www.dlapiper.com

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