



## Companies Bulletin

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### Key topics

1. Enhanced Disclosure

### Reading List

1. Chief Executive Officers
2. Chief Financial Officers
3. Company Secretaries
4. Legal Counsel

### ASX contact

ASX Customer Service

**Telephone** 1300 300 279

Australian Stock Exchange Limited  
 ABN 98 008 624 691  
 Exchange Centre  
 Issuers & Market Integrity  
 Level 6, 20 Bridge Street  
 Sydney NSW 2000

PO Box H224  
 Australia Square  
 NSW 1215

Telephone 61 2 9227 0444  
 Facsimile 61 2 9227 0428  
 Internet <http://www.asx.com.au>  
 DX 10427 Stock Exchange Sydney

## COMPANIES UPDATE

### ASX TO PROCEED WITH ENHANCED DISCLOSURE REFORMS

Australian Stock Exchange (ASX) will proceed with the proposed "Enhanced Disclosure" changes to its Listing Rules, designed to ensure that the Australian market's disclosure regime remains at the forefront of global exchange practices.

The Listing Rule amendments are designed to further improve the continuous disclosure regime, which remains the cornerstone of the orderliness and efficiency of ASX's capital markets. This regime is widely acknowledged here and abroad as the fairest and most efficient means of providing the market with sufficient knowledge to invest with confidence while enabling companies to grow their business and deliver shareholder returns.

The Exposure Draft released on 19 July, invited comment on the proposed rule amendments by 16 September 2002. 36 submissions were received, of which only two were marked confidential. ASX also presented to over 1,000 people during the consultation period.

Taken with the recommendations of the ASX Corporate Governance Council, due in March next year, ASX believes it will have struck the right and necessary balance between empowering shareholders and enabling businesses to operate effectively and efficiently on their behalf.

#### Clarifying the Continuous Disclosure Obligation

The immediate priority of the proposed amendments was to clarify the requirements concerning a listed entity's fundamental duty to immediately inform the market of market information. Following consideration of the responses, ASX will:

- Introduce a separate rule 3.1B, to provide that where ASX considers that there is or is likely to be a false market, and asks an entity to give it information to correct or prevent a false market, the entity must give ASX the information needed to do so.
- Clarify the "confidentiality" limb of the exception to rule 3.1 to provide that information must be confidential and that this element will not be satisfied where ASX forms and communicates its opinion that the information has ceased to be confidential. The usual practice of ASX would be to consult with the relevant listed entity prior to formalising such an opinion.
- Restructure rule 3.1 to clarify that all elements of the exception to immediate disclosure must be satisfied.

- Introduce new listing rule 18.7A to provide that ASX may publish correspondence between it and an entity if ASX has reserved the right to do so and considers that publication is necessary for an informed market.

These amendments will be introduced with an effective date of 1 January 2003. A revised Guidance Note covering the application of Continuous Disclosure obligations will be issued.

### Improving the Quality and Timeliness of Company Disclosures

The Exposure Draft proposals included mandating electronic lodgement of announcements by listed entities in order to facilitate more efficient, secure and timely processing and dissemination of company information to all investors.

Following consideration of submissions received, ASX will:

- Proceed with rule amendments mandating electronic lodgement of announcements by all listed companies by 1 July 2003. eLodgement will remain a free service. A fax-lodgement mechanism will be retained as a back-up facility for the foreseeable future.

### Enhancing Corporate Governance Practices

In August, ASX convened the ASX Corporate Governance Council to develop an agreed set of best practice corporate governance standards for Australian listed companies. To complement this initiative, ASX will enhance current Listing Rule requirements concerning audit committees and corporate governance reporting by listed entities to:

- Require reporting by reference to the best practice recommendations determined by the ASX Corporate Governance Council. A company will be required to highlight any areas of departure from the best practice recommendations of the Council and include reasons for the departure.
- Require audit committees for all those companies which comprise the All Ordinaries Index (the top 500), and that their structure, role and operation comply with the best practice recommendations of the Council.

It is proposed that these amendments relating to corporate governance will be introduced on 1 January 2003 and become effective for the first financial year of an entity commencing after 1 January 2003. For example, a company with a financial year commencing 1 July 2003 and ending on 30 June 2004 will be required to comply with the new requirements for that reporting period.

### Improving Periodic Disclosure

ASX also addressed the issue of financial periodic reporting, seeking to simplify its requirements while enhancing the quality and timeliness of information provided to the market.

ASX will:

- Eliminate the standard forms of Appendix 4B for both half-year and preliminary final reports for periods ending on or after 30 June 2003.
- For half-year reports, require provision of the statutory half-year report plus the additional information set out in a new Appendix 4D.
- Reduce the time period for lodgement of the half-year report for periods ending on or after 30 June 2003 from the present 75 days to the new period of two months after the end of the accounting period.
- Require foreign companies to give ASX the half-year documents that they prepare for their home jurisdiction, any additional information which would be required under Australian law, and the additional information set out in Appendix 4D. The accounts must be audited or reviewed and that audit or review report be given to ASX.

- Proceed with the proposed contents of Appendix 4D (which is broadly equivalent to the current Appendix 4B except that there is no requirement to follow a prescribed form to present the information) subject to refinement to the wording to clarify the application of the materiality principle.

With regard to preliminary final (full-year) reports, ASX will:

- Retain the current requirement that the preliminary final report be provided within 75 days after the end of the accounting period for periods ending before 30 June 2004. For preliminary final reports for periods ending on or after 30 June 2004, the reporting deadline will be reduced to two months.
- Introduce a requirement for a form of “management discussion and analysis” commentary on the results.
- Proceed with a form of Appendix 4E which includes a statement of financial performance, statement of financial position, statement of cash flows, movements of capital and other items in the current Appendix 4B. The wording of appendix 4E to be adopted by ASX will be refined where appropriate to clarify that the information is subject to the materiality principle.
- The new Appendix 4E will also require the addition of a statement reporting on the current status of the audit or review of the underlying statutory accounts.
- ASX will proceed with the requirements that there be **immediate** disclosure of circumstances materially affecting the information in a preliminary final report, and in any event disclosure of these circumstances with the statutory full year accounts, subject to refinement of the wording of the draft rules.
- Introduce an express power, in the circumstance where there has been a failure to lodge the statutory accounts with ASIC by the due date, enabling ASX to suspend the securities of the company from quotation on the trading day following that date.

ASX will also clarify the reporting requirements that apply when a company changes its balance date so that the next annual accounts cover a period greater than 12 months. In this circumstance a company will, in respect of periods ending on or after 30 June 2003, be required to:

- Provide the information set out in a new Appendix 4F that is, to provide a general purpose financial report of equivalent information content to the half-year report and which complies with the requirements of AASB 1029.
- Indicate as part of this information, whether the underlying accounts have been or are being audited or reviewed.
- Provide the information within two months after the end of the old 12-month period.

With regard to foreign companies, ASX will:

- Amend listing rule 4.5 to ensure that all foreign companies are under a consistent obligation to give ASX the full year documents that a registered foreign company is required to give ASIC under section 601CK (a balance sheet, cash flow statement and profit and loss statement).
- Amend Guidance Note 4 on Foreign Entities to among other matters, set out policy on the foreign accounting standards acceptable to ASX and the issue of reconciliation statements.

ASX’s detailed response to the Enhanced Disclosure submissions together with a narrative on the proposed rule amendments and underlying policy can be obtained at [www.asx.com.au/](http://www.asx.com.au/) under “What’s New” or “Information for companies”.