

### DISCLOSURE OF CORPORATE GOVERNANCE PRACTICES

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| <p><b>The purpose of this Guidance Note</b></p> | <ul style="list-style-type: none"> <li>To assist listed entities to comply with the disclosure and other requirements in Listing Rules 4.7.3, 4.7.4, 4.10.3, 12.7 and 12.8 regarding corporate governance practices</li> </ul>  |
| <p><b>The main points it covers</b></p>         | <ul style="list-style-type: none"> <li>The requirement for a listed entity to produce a corporate governance statement disclosing the extent to which it has followed the recommendations set by the ASX Corporate Governance Council and to disclose that statement in its annual report or on its website</li> <li>The requirement for a listed entity to lodge an Appendix 4G with ASX at the same time as lodging its annual report</li> <li>The structure and content of the ASX Corporate Governance Council's <i>Corporate Governance Principles and Recommendations</i></li> <li>Where to make your corporate governance disclosures</li> <li>What to disclose if you follow an ASX Corporate Governance Council recommendation</li> <li>What to disclose if you do not follow an ASX Corporate Governance Council recommendation</li> <li>Guidance on Council recommendations 2.2 (board skills matrices), 4.2 (CEO and CFO certification of financial statements) and 7.4 (sustainability risks)</li> <li>The requirements in Listing Rules 12.7 and 12.8 for entities of a certain size to have an audit committee and a remuneration committee</li> <li>ASX enforcement practices</li> <li>Listed entity compliance policies</li> <li>The governance disclosures required by applicants seeking admission to the official list as an ASX Listing</li> </ul> |
| <p><b>Related materials you should read</b></p> | <ul style="list-style-type: none"> <li>The ASX Corporate Governance Council's <i>Corporate Governance Principles and Recommendations</i> (available online at: <a href="http://www.asx.com.au/documents/asx-compliance/cgc-principles-and-recommendations-3rd-edn.pdf">http://www.asx.com.au/documents/asx-compliance/cgc-principles-and-recommendations-3rd-edn.pdf</a>).</li> </ul>   |

**History:** Guidance Note 9 amended 19/12/16. Previous versions of this Guidance Note were issued in 09/01, 02/12 and 07/14.

**Important notice:** ASX has published this Guidance Note to assist listed entities to understand and comply with their obligations under the ASX Listing Rules. Nothing in this Guidance Note necessarily binds ASX in the application of the ASX Listing Rules in a particular case. In issuing this Guidance Note, ASX is not providing legal advice and listed entities should obtain their own advice from a qualified professional person in respect of their obligations. ASX may withdraw or replace this Guidance Note at any time without further notice to any person.

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## 1. Introduction

This Guidance Note is published to assist listed entities admitted to the official list as an ASX Listing to comply with Listing Rules 4.7.3, 4.7.4, 4.10.3, 12.7 and 12.8.<sup>1</sup>

Listing Rule 4.10.3 requires each listed entity to include in its annual report either a corporate governance statement that meets the requirements of that rule or the URL of the page on its website where such a statement is located.

Listing Rule 4.7.4 provides that if a listed entity's corporate governance statement is not included in its annual report, the entity must also give ASX a copy of its corporate governance statement at the same time as it gives its annual report to ASX.

Listing Rule 4.7.3 requires a listed entity to give ASX a completed Appendix 4G at the same time as it gives ASX its annual report.

Listing Rules 12.7 and 12.8 require listed entities of a certain size to have audit and remuneration committees that meet certain requirements.

## 2. The requirement for a corporate governance statement

As mentioned previously, Listing Rule 4.10.3 requires a listed entity to include in its annual report either a corporate governance statement<sup>2</sup> that meets the requirements of that rule or the URL of the page on its website where such a statement is located.

The corporate governance statement must disclose the extent to which the entity has followed the recommendations set by the ASX Corporate Governance Council ("Council") during the reporting period. If the entity has not followed a recommendation for any part of the reporting period, its corporate governance statement must separately identify that recommendation and the period during which it was not followed and state its reasons

<sup>1</sup> These Listing Rules do not apply to entities admitted to the official list as an ASX Debt Listing or as an ASX Foreign Exempt Listing (see Listing Rules 1.10 and 1.15.1). References in this Guidance Note to a listed entity or entity mean an entity admitted to the ASX official list as an ASX Listing.

<sup>2</sup> "Corporate governance statement" is defined in Listing Rule 19.12 to mean the statement referred to in Listing Rule 4.10.3 which discloses the extent to which an entity has followed the recommendations set by the ASX Corporate Governance Council during a particular reporting period.

for not following the recommendation and what (if any) alternative governance practices it adopted in lieu of the recommendation during that period.

The corporate governance statement must also:

- specify the date at which it is current, which must be the entity's balance date or a later date specified by the entity;<sup>3</sup> and
- state that it has been approved by the board of the entity (in the case of a trust, the board of the responsible entity of the trust).

Listing Rule 4.7.4 provides that if an entity's corporate governance statement is not included in its annual report, the entity must also give ASX a copy of its corporate governance statement at the same time as it gives its annual report to ASX.<sup>4</sup> The corporate governance statement must be current as at the effective date specified in that statement for the purposes of Listing Rule 4.10.3.

### 3. The requirement for an Appendix 4G

As mentioned previously, Listing Rule 4.7.3 requires a listed entity to give ASX a completed Appendix 4G at the same time as it gives ASX its annual report. The Appendix 4G serves a dual purpose. It acts as a key designed to assist readers to locate the governance disclosures made by a listed entity both under Listing Rule 4.10.3 and under the Council's recommendations. It also acts as a verification tool for listed entities to confirm that they have met the disclosure requirements of Listing Rule 4.10.3.

An editable version of Appendix 4G is available on the ASX website at:  
<http://www.asx.com.au/regulation/compliance/compliance-downloads.htm>.

The Appendix 4G is not a substitute for, and is not to be confused with, the entity's corporate governance statement. They serve different purposes and an entity must produce each of them separately.

If an entity includes its corporate governance statement in its annual report, it must provide to ASX an Appendix 4G at the same time as it lodges its annual report with ASX (with lodgement of the annual report effectively being taken to be lodgement of the corporate governance statement).

If an entity does not include its corporate governance statement in its annual report, it must provide to ASX *both* an Appendix 4G *and* a copy of its corporate governance statement, at the same time as it lodges its annual report with ASX.

### 4. The Corporate Governance Principles and Recommendations

The ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations* ("Principles and Recommendations") were originally introduced in 2003. A second edition was issued in 2007, further amendments were made in 2010 and a third edition was issued in 2014.<sup>5</sup>

<sup>3</sup> The flexibility for a listed entity to choose an effective date for a corporate governance statement that is later than its balance date is intended to allow the entity, for example, to choose as the effective date the same date as the directors' declaration under section 295(4) of the Corporations Act. This would allow the board to sign off on the entity's financial statements and its corporate governance statement at the same time.

<sup>4</sup> The requirement for an entity to give ASX a copy of a corporate governance statement that is published on its website rather than in its annual report is intended to cater for the fact that an entity's website is likely to change over time. Compliance with the requirement ensures that there is a contemporaneous and permanent record of that statement kept on the Market Announcements Platform. This in turn improves the ability of investors and other interested parties to locate a copy of that statement in the form it was in as at its effective date and also to follow changes in an entity's governance practices from year to year.

<sup>5</sup> The *Principles and Recommendations* are available online at: <http://www.asx.com.au/documents/asx-compliance/cgc-principles-and-recommendations-3rd-edn.pdf>.

The current version of Listing Rule 4.10.3 was also adopted in 2003 and modified in 2010 and again in 2014 to underpin the operation of the *Principles and Recommendations*.

The *Principles and Recommendations* are structured around, and seek to promote, eight central principles:

1. A listed entity should establish and disclose the respective roles and responsibilities of its board and management and how their performance is monitored and evaluated.
2. A listed entity should have a board of an appropriate size, composition, skills and commitment to enable it to discharge its duties effectively.
3. A listed entity should act ethically and responsibly.
4. A listed entity should have formal and rigorous processes that independently verify and safeguard the integrity of its corporate reporting.
5. A listed entity should make timely and balanced disclosure of all matters concerning it that a reasonable person would expect to have a material effect on the price or value of its securities.
6. A listed entity should respect the rights of its security holders by providing them with appropriate information and facilities to allow them to exercise those rights effectively.
7. A listed entity should establish a sound risk management framework and periodically review the effectiveness of that framework.
8. A listed entity should pay director remuneration sufficient to attract and retain high quality directors and design its executive remuneration to attract, retain and motivate high quality senior executives and to align their interests with the creation of value for security holders.

The *Principles and Recommendations* set out 29 recommendations on how a listed entity might implement these principles. It is these 29 recommendations that listed entities are required to report against under Listing Rule 4.10.3.

The Principles and Recommendations also expressly recognise that:

*... different entities may legitimately adopt different governance practices, based on a range of factors, including their size, complexity, history and corporate culture. For that reason, the Principles and Recommendations are not mandatory and do not seek to prescribe the corporate governance practices that a listed entity must adopt. ...*

*... if the board of a listed entity considers that a Council recommendation is not appropriate to its particular circumstances, it is entitled not to adopt it. If it does so, however, it must explain why it has not adopted the recommendation – the “if not, why not” approach.<sup>6</sup>*

Some of the Council's principles and all of the Council's recommendations are accompanied by further explanatory material under the heading 'commentary'. The principles, and commentary about the principles and the recommendations, do not form part of the recommendations themselves and therefore do not trigger disclosure obligations under Listing Rule 4.10.3.<sup>7</sup>

To assist listed entities to identify and comply with their specific reporting obligations under Listing Rule 4.10.3, ASX has set out in the Annexure to this Guidance Note the text of the 29 Council recommendations that they are required to report against under that rule, stripped of the accompanying commentary.

<sup>6</sup> *Principles and Recommendations*, page 3. For this reason, Listing Rule 4.10.3 is commonly referred to as the “if not, why not” reporting requirement. In other jurisdictions with similar requirements (such as the UK), the equivalent rule is often referred to as “comply or explain”.

<sup>7</sup> *Principles and Recommendations*, page 5.

### 5. The policy objectives of Listing Rule 4.10.3

Apart from the requirements in:

- Listing Rules 12.7 and 12.8 for entities of a certain size to have audit and remuneration committees;
- Listing Rules 12.9-12.12 for entities to have trading policies for key management personnel; and
- various other Listing Rules for certain matters to be submitted to security holders for approval,<sup>8</sup>

the Listing Rules, like the *Principles and Recommendations*, do not seek to prescribe the corporate governance practices that a listed entity must adopt.

As the *Principles and Recommendations* acknowledge:

*Which governance practices a listed entity chooses to adopt is fundamentally a matter for its board of directors, the body charged with the legal responsibility for managing its business with due care and diligence and therefore for ensuring that it has appropriate governance arrangements in place.<sup>9</sup>*

The underlying policy objective of Listing Rule 4.10.3 (which is also furthered by Listing Rule 4.7.3 and Appendix 4G) is to ensure that the market receives an appropriate level of disclosure about the corporate governance practices an entity has adopted so that:

- security holders and other stakeholders in the investment community<sup>10</sup> can have a meaningful dialogue with the board and management on corporate governance matters;
- security holders can factor that information into their decision on how to vote on particular resolutions; and
- investors can factor that information into their decision on whether or not to invest in the entity's securities.

Listing Rule 4.10.3 seeks to achieve this objective by requiring listed entities to compare their corporate governance practices to the Council's recommendations and, where they do not conform, to disclose that fact and the reasons why. It acts to encourage listed entities to adopt the corporate governance practices suggested in the Council's recommendations but does not force them to do so. It leaves a listed entity with the flexibility to adopt alternative corporate governance practices, if its board considers those to be more suitable to its particular circumstances, subject to the requirement for the board to explain its reasons for adopting those alternative practices instead of the Council's recommendations.

It is not the role of ASX under Listing Rule 4.10.3 to pass judgment on the quality or effectiveness of the corporate governance policies and practices that a listed entity may have adopted (whether to give effect to the Council's recommendations or otherwise), nor on the reasons an entity may give for not adopting a particular Council recommendation. Those judgments are initially for the entity's board, and then ultimately for its security holders and the broader investment community, to make. The role of ASX under Listing Rule 4.10.3 is to ensure that a listed entity meets its disclosure obligations under that rule so that security holders and the broader investment community have the information they need to make those judgements.

An entity which follows all of the Council's recommendations will necessarily have articulated and disclosed in its annual report or on its website (among other things):

- the respective roles and responsibilities of the board and management, including those matters expressly reserved to the board and those delegated to management;<sup>11</sup>

<sup>8</sup> See, for example, Listing Rules 6.23, 7.1, 7.1A, 10.1, 10.11, 10.17, 10.19, 11.1.2 and 11.2.

<sup>9</sup> *Principles and Recommendations*, page 3.

<sup>10</sup> Such as fund managers, analysts, brokers, proxy advisers and the financial press.

<sup>11</sup> Council recommendation 1.1.

- its process for periodically evaluating the performance of the board, its committees and individual directors;<sup>12</sup>
- its process for periodically evaluating the performance of senior executives;<sup>13</sup>
- whether performance evaluations of its board and senior executives were undertaken in the reporting period in accordance with the disclosed processes;<sup>14</sup>
- a board skills matrix setting out the mix of skills and diversity that the board currently has or is looking to achieve in its membership;<sup>15</sup>
- which of its directors are considered to be independent;<sup>16</sup>
- its code of conduct;<sup>17</sup>
- its continuous disclosure compliance policy;<sup>18</sup>
- its policy and processes to facilitate and encourage participation at meetings of security holders;<sup>19</sup>
- if it has an internal audit function, how the function is structured and what role it performs or, if it does not have an internal audit function, that fact and the processes it employs for evaluating and continually improving the effectiveness of its risk management and internal control processes;<sup>20</sup>
- whether it has any material exposure to economic, environmental and social sustainability risks and, if it does, how it manages or intends to manage those risks;<sup>21</sup>
- its policy on diversity, the measurable gender diversity targets that the board or a committee of the board has set, and its performance against those targets;<sup>22</sup>
- its policies and practices regarding the remuneration of non-executive directors and the remuneration of executive directors and other senior executives;<sup>23</sup> and
- if it has an equity-based remuneration scheme, its policy on whether participants are permitted to enter into transactions (whether through the use of derivatives or otherwise) which limit the economic risk of participating in the scheme.<sup>24</sup>

It will also have established an audit committee,<sup>25</sup> risk committee or committees,<sup>26</sup> nomination committee<sup>27</sup> and remuneration committee<sup>28</sup> and disclosed their charters, membership and the attendance records of members at

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<sup>12</sup> Council recommendation 1.6.

<sup>13</sup> Council recommendation 1.7.

<sup>14</sup> Council recommendations 1.6 and 1.7.

<sup>15</sup> Council recommendation 2.2.

<sup>16</sup> Council recommendation 2.3.

<sup>17</sup> Council recommendation 3.1.

<sup>18</sup> Council recommendation 5.1.

<sup>19</sup> Council recommendation 6.3.

<sup>20</sup> Council recommendation 7.3.

<sup>21</sup> Council recommendation 7.4.

<sup>22</sup> Council recommendation 1.5.

<sup>23</sup> Council recommendation 8.2.

<sup>24</sup> Council recommendation 8.3.

<sup>25</sup> Council recommendation 4.1.

<sup>26</sup> Council recommendation 7.1.

<sup>27</sup> Council recommendation 2.1.

<sup>28</sup> Council recommendation 8.1.

committee meetings, or else have disclosed the alternative arrangements the board has put in place to perform the responsibilities normally undertaken by such committees.

An entity which does not follow all of the Council's recommendations will need to identify in its corporate governance statement each recommendation it does not follow and state its reasons for not following the recommendation and what (if any) alternative governance practices it has adopted in lieu of the recommendation.

Hence, Listing Rule 4.10.3 elicits the disclosure of a significant amount of information about a listed entity's governance practices, whether it follows the Council's recommendations or not.

## 6. Where to make your corporate governance disclosures

Listing Rule 4.10.3 requires an entity's corporate governance statement to be published in its annual report or on its website. The *Principles and Recommendations* likewise suggest that information about an entity's corporate governance practices should be disclosed either in its annual report or on its website.<sup>29</sup>

Where an entity publishes its governance disclosures in its annual report, those disclosures should appear in a clearly delineated "corporate governance" section of the annual report.

Where an entity publishes its governance disclosures on its website, those disclosures should be clearly presented and centrally located on, or accessible from, a "corporate governance" landing page on its website. There should be an intuitive and easily located link to this landing page in the navigation menu for the entity's website (for example, under an "About Us", "Investor Centre" or "Information for Shareholders/Unitholders" menu item).

It is acceptable for an entity's corporate governance statement to incorporate material by reference (for example, in another part of its annual report or on another part of the entity's website) provided that material is freely available and the statement clearly indicates where interested parties can read or obtain a copy of that material (for example, the relevant page or section of the annual report or the URL of the relevant web page).

## 7. What to disclose if you follow a Council recommendation

On a strict literal reading of Listing Rule 4.10.3, an entity which follows all of the Council's recommendations need only state that fact in its corporate governance statement and nothing more (although, as noted above, the fact that an entity does follow the Council's recommendations will necessarily mean that it has disclosed substantial information about its corporate governance practices in its annual report or on its website).

To comply with the spirit, intention and purpose of Listing Rule 4.10.3<sup>30</sup> – which, as mentioned above, is to ensure that the market receives an appropriate level of disclosure about the corporate governance practices an entity has adopted – a listed entity should give a holistic and informative explanation of its corporate governance framework and not take a pedantic or legalistic approach to its disclosures under Listing Rule 4.10.3, where it simply lists those Council recommendations it follows and those Council recommendations it doesn't follow and why.

Where a listed entity follows a Council recommendation, rather than simply state that fact, it should explain what policies and practices it has in place in that regard and, where applicable, point readers to where they can find further information about those policies and practices. For example, readers are likely to find a statement that:

*The board has established an audit committee. It has 3 members, all of whom are non-executive directors. A majority of the committee members are independent directors. The committee is also chaired by an independent chair, who is not chair of the board. A copy of the charter of the audit committee is available on the corporate governance page on the company's website at [insert URL]. Information about the members of the audit committee, their relevant qualifications and experience, the number of times the committee met*

<sup>29</sup> As noted previously, if a listed entity publishes its corporate governance statement on its website rather than in its annual report, Listing Rule 4.10.3 requires its annual report to mention the URL where the statement can be found.

<sup>30</sup> As listed entities are required to do under Listing Rule 19.2.

*throughout the most recent reporting period and the individual attendances of members at those meetings is also on the corporate governance page on the company's website.*

to be much more engaging and illuminating than:

*The entity complies with recommendation 4.1 of the ASX Corporate Governance Council Principles and Recommendations.*

Listed entities should view their corporate governance statement not as a compliance document but rather as an opportunity to demonstrate that their board and management are alive to the importance of having proper and effective corporate governance arrangements and to communicate to security holders and the broader investment community the robustness of their particular approach to corporate governance.

## 8. What to disclose if you do not follow a Council recommendation

Again, to comply with the spirit, intention and purpose of Listing Rule 4.10.3,<sup>31</sup> any statement an entity includes in its corporate governance statement explaining its reasons for not following a Council recommendation should:

- be reasonably detailed and informative so that the market understands why it is that the entity has chosen not to follow that recommendation; and
- disclose what, if any, alternative corporate governance practices the entity may have adopted in lieu of those in the recommendation, and explain why those practices are considered more appropriate for the entity than the ones in the recommendation.

Security holders are unlikely to find brief statements – such as “the recommendation is not considered appropriate, given [the entity]’s size and circumstances” – to be particularly helpful in understanding why an entity has chosen not to follow a particular Council recommendation or what alternative corporate governance arrangements the entity may have instituted to address the underlying principle to which that recommendation is directed.

## 9. Guidance on Council recommendation 2.2

Council recommendation 2.2 provides that:

*A listed entity should have and disclose a board skills matrix setting out the mix of skills and diversity that the board currently has or is looking to achieve in its membership.*

The commentary to recommendation 2.2 acknowledges that this disclosure need only be made collectively across the board as a whole, without identifying the presence or absence of particular skills by a particular director and that commercially sensitive information can be excluded.

ASX has noted some instances of a listed entity purporting to comply with recommendation 2.2 by simply cross-referring to the short biographies of its directors included in its annual report or on its website. This does not comply with recommendation 2.2.

Entities that wish to improve their understanding of what should be disclosed in a board skills matrix under recommendation 2.2 are encouraged to read the Governance Institute of Australia’s Good Governance Guide *Creating and disclosing a board skills matrix*.<sup>32</sup>

## 10. Guidance on Council recommendation 4.2

Council recommendation 4.2 provides that:

<sup>31</sup> See note 30 and the accompanying text.

<sup>32</sup> Available online at: [http://www.governanceinstitute.com.au/media/762794/ggg\\_creating\\_disclosing\\_board\\_skills\\_matrix.pdf](http://www.governanceinstitute.com.au/media/762794/ggg_creating_disclosing_board_skills_matrix.pdf).



*The board of a listed entity should, before it approves the entity's financial statements for a financial period, receive from its CEO and CFO a declaration that, in their opinion, the financial records of the entity have been properly maintained and that the financial statements comply with the appropriate accounting standards and give a true and fair view of the financial position and performance of the entity and that the opinion has been formed on the basis of a sound system of risk management and internal control which is operating effectively.*

On its face, this recommendation applies to all financial statements that the board of a listed entity may approve. This includes not only annual and half-year financial statements under the Corporations Act (or equivalent legislation overseas) but also:

- quarterly cash flow (Appendix 5B) reports of mining exploration entities and oil and gas exploration entities under Listing Rule 5.5; and
- quarterly cash flow (Appendix 4C) reports of entities subject to Listing Rule 4.7B.

Therefore, if an entity is required to give quarterly reports to ASX under the Listing Rules and it wishes to comply with recommendation 4.2, before the board approves those quarterly reports, it should be receiving a declaration from its CEO and CFO in the terms set out in that recommendation.

## 11. Guidance on Council recommendation 7.4

Council recommendation 7.4 provides that:

*A listed entity should disclose whether it has any material exposure to economic, environmental and social sustainability risks<sup>33</sup> and, if it does, how it manages or intends to manage those risks.*

"Material exposure" is defined to mean "a real possibility that the risk in question could substantively impact the listed entity's ability to create or preserve value for security holders over the short, medium or long term."<sup>34</sup>

The commentary to recommendation 7.4 acknowledges that meeting this recommendation does not require an entity to publish a sustainability report. However, an entity that does publish a sustainability report may meet this recommendation simply by cross-referring to that report.

ASX has noted some instances of a listed entity purporting to comply with recommendation 7.4 by simply cross-referring to its operating and financial review (OFR).<sup>35</sup> This is fine provided the OFR in fact specifically addresses whether the entity has any material exposure to economic, environmental and social sustainability risks and, if it does, how it manages or intends to manage those risks. If the OFR only has general disclosures about risks, this does not comply with recommendation 7.4.

## 12. Audit committees

Listing Rule 12.7 provides:

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<sup>33</sup> The terms "economic sustainability", "environmental sustainability" and "social sustainability" are defined in the glossary to the *Principles and Recommendations*.

"Economic sustainability" is defined to mean the ability of a listed entity to continue operating at a particular level of economic production over the long term.

"Environmental sustainability" is defined to mean the ability of a listed entity to continue operating in a manner that does not compromise the health of the ecosystems in which it operates over the long term.

"Social sustainability" is defined to mean the ability of a listed entity to continue operating in a manner that meets accepted social norms and needs over the long term.

<sup>34</sup> See footnote 38 of the *Principles and Recommendations*.

<sup>35</sup> Noting that paragraph 63 of ASIC Regulatory Guide 247 *Effective disclosure in an operating and financial review* suggests that a listed entity's operating and financial review "should include a discussion of environmental and other sustainability risks where those risks could affect the entity's achievement of its financial performance or outcomes disclosed, taking into account the nature and business of the entity and its business strategy."

*An entity which was included in the S&P All Ordinaries Index at the beginning of its financial year must have an audit committee during that year. If the entity was included in the S&P/ASX 300 Index at the beginning of its financial year it must also comply with the recommendations set by the ASX Corporate Governance Council in relation to composition and operation of the audit committee for the whole of that financial year, unless it had been included in that index for the first time less than 3 months before the beginning of that financial year. An entity that is included in the S&P/ASX 300 Index for the first time less than 3 months before the first day of its financial year but did not comply with the recommendations set by the ASX Corporate Governance Council in relation to composition and operation of the audit committee at that date must take steps so that it complies with those recommendations within 3 months of the beginning of the financial year.*

The specific Council recommendations dealing with the composition and operation of audit committees that an entity in the S&P/ASX 300 Index must comply with under Listing Rule 12.7 are in Council recommendation 4.1(a), which recommends that the board of a listed entity should have an audit committee which:

- (1) has at least three members, all of whom are non-executive directors and a majority of whom are independent directors; and
  - (2) is chaired by an independent director, who is not the chair of the board,
- and disclose:
- (3) the charter of the committee;
  - (4) the relevant qualifications and experience of the members of the committee; and
  - (5) in relation to each reporting period, the number of times the committee met throughout the period and the individual attendances of the members at those meetings.

An entity in the S&P/ASX 300 Index at the beginning of its financial year should therefore be reporting in its annual corporate governance statement for that financial year that it follows Council recommendation 4.1(a).<sup>36</sup> It cannot “if not, why not” report against (that is, not follow and give its reasons for not following) that recommendation as that would amount to a breach of Listing Rule 12.7.

An entity in the S&P All Ordinaries Index, but not in the S&P/ASX 300 Index, at the beginning of its financial year should be reporting in its annual corporate governance statement for that financial year that it has an audit committee and therefore follows the opening paragraph of Council recommendation 4.1(a). It cannot “if not, why not” report against that part of recommendation 4.1(a) as that would amount to a breach of Listing Rule 12.7. It should also be reporting under Listing Rule 4.10.3 whether it follows the specific suggestions in subparagraphs (1) – (5) of Council recommendation 4.1(a) about the composition and operation of the audit committee and, if not, give its reasons for not doing so.

An entity which is not in the S&P All Ordinaries Index at the beginning of its financial year should be reporting under Listing Rule 4.10.3 whether it follows Council recommendation 4.1(a) or (b) and, if not, give its reasons for not doing so. Recommendation 4.1(b) deals with the situation of those listed entities which decide that they are able to oversee the financial reporting process efficiently and effectively without establishing a separate audit committee. In that case, to comply with recommendation 4.1(b), the entity should disclose in its annual report or on its website the fact that it does not have an audit committee and explain the processes it employs that independently verify and safeguard the integrity of its corporate reporting, including the processes for the appointment and removal of the external auditor and the rotation of the audit engagement partner.

<sup>36</sup> If the entity was included in the S&P/ASX 300 Index for the first time less than three months before the first day of its financial year, it has three months from the start of the financial year to implement processes to comply with Council recommendation 4.1(a). If this means that the entity has not complied with Council recommendation 4.1(a) for the whole of the financial year, it should report in its corporate governance statement which part of the financial year that it did comply with that recommendation and state its reasons for not following the recommendation and what (if any) alternative governance practices it adopted in lieu of the recommendation during that period.

### 13. Remuneration committees

Listing Rule 12.8 provides:

*An entity, which was included in the S&P/ASX 300 Index at the beginning of its financial year, must have a remuneration committee, comprised solely of non executive directors, for the entire duration of that financial year.*

The term “remuneration committee” is defined in Listing Rule 19.12 as “a committee formed by an entity to advise that entity on matters pertaining to the remuneration of its key management personnel.”<sup>37</sup>

The Council recommendation relevant to remuneration committees is recommendation 8.1(a), which recommends that the board of a listed entity should have a remuneration committee which:

- (1) has at least three members, a majority of whom are independent directors; and
- (2) is chaired by an independent director,

and disclose:

- (3) the charter of the committee;
- (4) the members of the committee; and
- (5) in relation to each reporting period, the number of times the committee met throughout the period and the individual attendances of the members at those meetings.

An entity in the S&P/ASX 300 Index at the beginning of its financial year therefore should be reporting in its corporate governance statement that it has a remuneration committee and therefore follows the opening paragraph of Council recommendation 8.1(a). It cannot “if not, why not” report against that part of recommendation 8.1(a) as that would amount to a breach of Listing Rule 12.8. In addition, it should be reporting under Listing Rule 4.10.3 whether it follows the specific suggestions in sub-paragraphs (1) – (5) of Council recommendation 8.1(a) about the composition and operation of the remuneration committee and, if not, give its reasons for not doing so. It should also be stating in its corporate governance statement that its remuneration committee is comprised solely of non-executive directors and has been in place for the whole of the financial year, so as to record its compliance with Listing Rule 12.8 (noting that Council recommendation 8.1 recommends that a *majority* of the members of the remuneration committee are *independent* directors, whereas Listing Rule 12.8 requires *all* of the members of the remuneration committee to be *non-executive* directors).

An entity which is not in the S&P/ASX 300 Index at the beginning of its financial year should be reporting under Listing Rule 4.10.3 whether it follows Council recommendation 8.1(a) or (b) and, if not, give its reasons for not doing so. Recommendation 8.1(b) deals with the situation of those listed entities which decide that they are able to deal efficiently and effectively with remuneration issues without establishing a separate remuneration committee. In that case, to comply with recommendation 8.1(b), the entity should disclose in its annual report or on its website the fact that it does not have a remuneration committee and explain the processes it employs for setting the level and composition of remuneration for directors and senior executives and ensuring that such remuneration is appropriate and not excessive.

<sup>37</sup> The term “key management personnel” is defined in Listing Rule 19.12 to have the same meaning as in Accounting Standard AASB 124 *Related Party Disclosure*, which requires subject entities to disclose the remuneration and shareholdings of, and various other transactions involving, key management personnel. AASB 124 defines “key management personnel” as: “those persons having authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly, including any director (whether executive or otherwise) of that entity.”

### 14. ASX's enforcement practices

In assessing whether an entity has complied with its disclosure obligations under Listing Rule 4.10.3, ASX looks beyond form to substance to see if the entity has made disclosures which are consistent with the spirit, intention and purpose of the rule<sup>38</sup> and which reveal an appropriate level of information about the corporate governance practices an entity has adopted.

ASX reviews the corporate governance statement of each listed entity to confirm that it materially complies with its disclosure obligations under Listing Rule 4.10.3. If the entity was in the S&P/ASX 300 Index or S&P All Ordinaries Index at the beginning of its financial year, ASX also checks that the entity has complied with the applicable audit committee and remuneration committee requirements under Listing Rules 12.7 and 12.8.

If an entity:

- fails to include in its annual report a corporate governance statement, or the URL of the page on its website where a corporate governance statement is located, in breach of Listing Rule 4.10.3;
- omits information from its corporate governance statement that should have been included under Listing Rule 4.10.3 and ASX considers the omission to be a substantial one (in the sense of not meeting the underlying policy objective of ensuring that the market has an appropriate level of information about an entity's corporate governance practices); or
- fails to have an audit committee or remuneration committee when it is required to do so under Listing Rules 12.7 and 12.8,

ASX will bring that matter to the attention of the entity and ask it to take immediate action to rectify the breach. In the first two cases above, this will usually involve the entity making an announcement to the market to correct the omission and, in the third case, the entity making an announcement that it has established the required audit committee or remuneration committee. If the entity does not respond appropriately to ASX's request, ASX may issue a written direction to the entity under Listing Rule 18.8 requiring it to rectify the breach.<sup>39</sup> Depending on the circumstances, ASX may also suspend trading in the entity's securities until it rectifies the breach.<sup>40</sup>

If it appears to ASX that an entity has omitted information from its corporate governance statement that should have been included under Listing Rule 4.10.3 but ASX considers the omission not to be a substantial one, ASX may deal with the matter more informally by simply requesting the entity to correct the omission in its next annual corporate governance statement.

If ASX has concerns that a listed entity may have:

- omitted material information that ought to have been included in its corporate governance statement under Listing Rule 4.10.3; or
- lodged a materially false or misleading corporate governance statement,

ASX may ask the entity to provide it with any information, document or explanation (including an updated version of an Appendix 4G) to enable ASX to be satisfied that the entity is in compliance with its obligations under the Listing Rules. The entity must comply with that request within the time specified by ASX.<sup>41</sup>

Depending on the nature of the information requested, ASX may require that information to be released to the market. ASX's request for the information will make it clear whether ASX is intending to release, or reserves the

<sup>38</sup> As listed entities are required to do under Listing Rule 19.2.

<sup>39</sup> Listing Rule 18.8. Such a direction will usually be published on the ASX Market Announcements Platform.

<sup>40</sup> Listing Rules 17.3.1 and 17.3.2.

<sup>41</sup> Listing Rule 18.7.

right to release, the information to the market so that the entity will have the opportunity to respond in a suitable form.<sup>42</sup>

## 15. Listed entity compliance practices

Listed entities should exercise due care to ensure that the information in their corporate governance statements is correct and not misleading. An officer or employee of a listed entity who gives, or authorises or permits the giving of, materially false or misleading<sup>43</sup> information to ASX under the Listing Rules:

- knowingly, potentially breaches section 1309(1) of the Corporations Act, which is a criminal offence punishable by a fine of up to 200 penalty units and/or imprisonment for up to 5 years; or
- without taking reasonable steps to ensure that the information was not false or misleading, potentially breaches section 1309(2) of the Corporations Act, which is a criminal offence punishable by a fine of up to 100 penalty units and/or imprisonment for up to 2 years.

ASX therefore encourages listed entities to complete their corporate governance statements and their Appendix 4G carefully to confirm that the disclosures in them are correct.

It should be noted that if ASX has reason to suspect that a listed entity or any other person (such as a director, secretary or other officer of a listed entity) has committed a significant contravention of the Corporations Act, it is required under section 792B(2)(c) to give a notice to ASIC with details of the contravention. The purpose of such a notice is so that ASIC can then consider what action (if any) it may wish to take under its various enforcement powers.

If a listed entity provides a corporate governance statement to ASX that is essentially fabricated or contains material falsehoods, ASX is likely to regard that as a “significant” contravention of section 1309 for these purposes and refer the matter to ASIC under section 792B(2)(c).

## 16. Applicants seeking admission to the official list

Listing Rule 1.1 sets out the conditions for an entity to be admitted to the official list as an ASX Listing. Condition 16 requires an applicant for listing to produce a corporate governance statement of the type required annually under Listing Rule 4.10.3.<sup>44</sup> The statement must disclose the extent to which the applicant will follow the Council’s recommendations as at the date of its admission to the official list. If the entity does not intend to follow all of the Council’s recommendations, the statement must separately identify each recommendation that will not be followed and state its reasons for not following the recommendation and what (if any) alternative governance practices it intends to adopt in lieu of the recommendation.

If an applicant for listing will be subject to Listing Rules 12.7 or 12.8 upon its admission to the official list, Conditions 17 (in the former case) and 18 (in the latter case) also require the applicant to demonstrate to ASX that it will comply with those rules as at the date of its admission. Hence, if the entity will be included in the S&P All Ordinaries Index upon admission, it must confirm in the materials lodged with its listing application<sup>45</sup> that it will have an audit committee in place when it is admitted to the official list. If it will be in the S&P/ASX 300 Index upon admission, it must also confirm in the materials lodged with its listing application<sup>46</sup> that it will comply with the

<sup>42</sup> Listing Rule 18.7A.

<sup>43</sup> This includes omitting material which renders the information given to ASX misleading in a material respect.

<sup>44</sup> Typically, most applicants for listing will include this statement in the prospectus, PDS or information memorandum that they lodge with their listing application under Listing Rule 1.1 Condition 3. If they do not, ASX will require the lodgement of a separate corporate governance statement as a condition of admission to the official list.

<sup>45</sup> Again, most applicants for listing will typically include a statement confirming their compliance with Listing Rule 12.7 in the prospectus, PDS or information memorandum that they lodge with their listing application under Listing Rule 1.1 Condition 3.

<sup>46</sup> Again, most applicants for listing will typically include a statement confirming their compliance with Listing Rule 12.8 in the prospectus, PDS or information memorandum that they lodge with their listing application under Listing Rule 1.1 Condition 3.

Council's recommendations relating to composition and operation of the audit committee and that it will have a remuneration committee comprised solely of non-executive directors in place when it is admitted to the official list.

### Annexure: The Council's Recommendations

#### Principle 1 - Lay solid foundations for management and oversight

##### Recommendation 1.1:

A listed entity should disclose:

- (a) the respective roles and responsibilities of its board and management; and
- (b) those matters expressly reserved to the board and those delegated to management.

##### Recommendation 1.2:

A listed entity should:

- (a) undertake appropriate checks before appointing a person, or putting forward to security holders a candidate for election, as a director; and
- (b) provide security holders with all material information in its possession relevant to a decision on whether or not to elect or re-elect a director.

##### Recommendation 1.3:

A listed entity should have a written agreement with each director and senior executive setting out the terms of their appointment.

##### Recommendation 1.4:

The company secretary of a listed entity should be accountable directly to the board, through the chair, on all matters to do with the proper functioning of the board.

##### Recommendation 1.5:

A listed entity should:

- (a) have a diversity policy which includes requirements for the board or a relevant committee of the board to set measurable objectives for achieving gender diversity and to assess annually both the objectives and the entity's progress in achieving them;
- (b) disclose that policy or a summary of it; and
- (c) disclose as at the end of each reporting period the measurable objectives for achieving gender diversity set by the board or a relevant committee of the board in accordance with the entity's diversity policy and its progress towards achieving them and either:
  - (1) the respective proportions of men and women on the board, in senior executive positions and across the whole organisation (including how the entity has defined "senior executive" for these purposes); or
  - (2) if the entity is a "relevant employer" under the Workplace Gender Equality Act, the entity's most recent "Gender Equality Indicators", as defined in and published under that Act.

##### Recommendation 1.6:

A listed entity should:

- (a) have and disclose a process for periodically evaluating the performance of the board, its committees and individual directors; and

- (b) disclose, in relation to each reporting period, whether a performance evaluation was undertaken in the reporting period in accordance with that process.

### Recommendation 1.7:

A listed entity should:

- (a) have and disclose a process for periodically evaluating the performance of its senior executives; and
- (b) disclose, in relation to each reporting period, whether a performance evaluation was undertaken in the reporting period in accordance with that process.

## Principle 2 - Structure the board to add value

### Recommendation 2.1:

The board of a listed entity should:

- (a) have a nomination committee which:
- (1) has at least three members, a majority of whom are independent directors; and
  - (2) is chaired by an independent director,
- and disclose:
- (3) the charter of the committee;
  - (4) the members of the committee; and
  - (5) as at the end of each reporting period, the number of times the committee met throughout the period and the individual attendances of the members at those meetings; or
- (b) if it does not have a nomination committee, disclose that fact and the processes it employs to address board succession issues and to ensure that the board has the appropriate balance of skills, knowledge, experience, independence and diversity to enable it to discharge its duties and responsibilities effectively.

### Recommendation 2.2:

A listed entity should have and disclose a board skills matrix setting out the mix of skills and diversity that the board currently has or is looking to achieve in its membership.

### Recommendation 2.3:

A listed entity should disclose:

- (a) the names of the directors considered by the board to be independent directors;<sup>47</sup>
- (b) if a director has an interest, position, association or relationship of the type described in Box 2.3 but the board is of the opinion that it does not compromise the independence of the director, the nature of the interest, position, association or relationship in question and an explanation of why the board is of that opinion; and
- (c) the length of service of each director.

<sup>47</sup> The definition of "independent director" is set out in the Glossary to the *Principles and Recommendations*.



### Recommendation 2.4:

A majority of the board of a listed entity should be independent directors.

### Recommendation 2.5:

The chair of the board of a listed entity should be an independent director and, in particular, should not be the same person as the CEO of the entity.

### Recommendation 2.6:

A listed entity should have a program for inducting new directors and provide appropriate professional development opportunities for directors to develop and maintain the skills and knowledge needed to perform their role as directors effectively.

## Principle 3 - Act ethically and responsibly

### Recommendation 3.1:

A listed entity should:

- (a) have a code of conduct for its directors, senior executives and employees; and
- (b) disclose that code or a summary of it.

## Principle 4 - Safeguard integrity in corporate reporting

### Recommendation 4.1:

The board of a listed entity should:

- (a) have an audit committee which:
  - (1) has at least three members, all of whom are non-executive directors and a majority of whom are independent directors; and
  - (2) is chaired by an independent director, who is not the chair of the board,and disclose:
  - (3) the charter of the committee;
  - (4) the relevant qualifications and experience of the members of the committee; and
  - (5) in relation to each reporting period, the number of times the committee met throughout the period and the individual attendances of the members at those meetings; or
- (b) if it does not have an audit committee, disclose that fact and the processes it employs that independently verify and safeguard the integrity of its corporate reporting, including the processes for the appointment and removal of the external auditor and the rotation of the audit engagement partner.

### Recommendation 4.2:

The board of a listed entity should, before it approves the entity's financial statements for a financial period, receive from its CEO and CFO a declaration that, in their opinion, the financial records of the entity have been properly maintained and that the financial statements comply with the appropriate accounting standards and give a true and fair view of the financial position and performance of the entity and that the opinion has been formed on the basis of a sound system of risk management and internal control which is operating effectively.

### Recommendation 4.3:

A listed entity that has an AGM should ensure that its external auditor attends its AGM and is available to answer questions from security holders relevant to the audit.

## Principle 5 - Make timely and balanced disclosure

### Recommendation 5.1:

A listed entity should:

- (a) have a written policy for complying with its continuous disclosure obligations under the Listing Rules; and
- (b) disclose that policy or a summary of it.

## Principle 6 - Respect the rights of security holders

### Recommendation 6.1:

A listed entity should provide information about itself and its governance to investors via its website.

### Recommendation 6.2:

A listed entity should design and implement an investor relations program to facilitate effective two-way communication with investors.

### Recommendation 6.3:

A listed entity should disclose the policies and processes it has in place to facilitate and encourage participation at meetings of security holders.

### Recommendation 6.4:

A listed entity should give security holders the option to receive communications from, and send communications to, the entity and its security registry electronically.

## Principle 7- Recognise and manage risk

### Recommendation 7.1:

The board of a listed entity should:

- (a) have a committee or committees to oversee risk,<sup>48</sup> each of which:
  - (1) has at least three members, a majority of whom are independent directors; and
  - (2) is chaired by an independent director,and disclose:
  - (3) the charter of the committee;
  - (4) the members of the committee; and

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<sup>48</sup> The risk committee may be a stand-alone risk committee, a combined audit and risk committee or a combination of board committees addressing different elements of risk (see the commentary to Council recommendation 7.1).

- (5) as at the end of each reporting period, the number of times the committee met throughout the period and the individual attendances of the members at those meetings; or
- (b) if it does not have a risk committee or committees that satisfy (a) above, disclose that fact and the processes it employs for overseeing the entity's risk management framework.

### **Recommendation 7.2:**

The board or a committee of the board should:

- (a) review the entity's risk management framework at least annually to satisfy itself that it continues to be sound; and
- (b) disclose, in relation to each reporting period, whether such a review has taken place.

### **Recommendation 7.3:**

A listed entity should disclose:

- (a) if it has an internal audit function, how the function is structured and what role it performs; or
- (b) if it does not have an internal audit function, that fact and the processes it employs for evaluating and continually improving the effectiveness of its risk management and internal control processes.

### **Recommendation 7.4:**

A listed entity should disclose whether it has any material exposure to economic, environmental and social sustainability risks and, if it does, how it manages or intends to manage those risks.

## **Principle 8- Remunerate fairly and responsibly**

### **Recommendation 8.1:**

The board of a listed entity should:

- (a) have a remuneration committee which:
  - (1) has at least three members, a majority of whom are independent directors; and
  - (2) is chaired by an independent director,and disclose:
  - (3) the charter of the committee;
  - (4) the members of the committee; and
  - (5) as at the end of each reporting period, the number of times the committee met throughout the period and the individual attendances of the members at those meetings; or
- (b) if it does not have a remuneration committee, disclose that fact and the processes it employs for setting the level and composition of remuneration for directors and senior executives and ensuring that such remuneration is appropriate and not excessive.

### **Recommendation 8.2:**

A listed entity should separately disclose its policies and practices regarding the remuneration of non-executive directors and the remuneration of executive directors and other senior executives.

### Recommendation 8.3:

A listed entity which has an equity-based remuneration scheme should:

- (a) have a policy on whether participants are permitted to enter into transactions (whether through the use of derivatives or otherwise) which limit the economic risk of participating in the scheme; and
- (b) disclose that policy or a summary of it.

### Additional recommendations that apply to an externally managed listed entity

The following two additional recommendations apply to externally managed listed entities:

#### Alternative to Recommendation 1.1 for externally managed listed entities:

The responsible entity of an externally managed listed entity should disclose:

- (a) the arrangements between the responsible entity and the listed entity for managing the affairs of the listed entity;
- (b) the role and responsibility of the board of the responsible entity for overseeing those arrangements.

#### Alternative to Recommendations 8.1, 8.2 and 8.3 for externally managed listed entities:

An externally managed listed entity should clearly disclose the terms governing the remuneration of the manager.

The following table summarises how the recommendations apply to externally managed listed entities:

| Recommendation   | Applicable to externally managed listed entities  |
|--|---|
| 1.1 (role of board and management)                             | No, however the <i>alternative recommendation</i> above applies   |
| 1.2 (information about directors)                              | No  |
| 1.3 (written contracts of appointment)                         | No  |
| 1.4 (company secretary)  | No  |
| 1.5 (diversity)  | No  |
| 1.6 (board reviews)  | No  |
| 1.7 (management reviews)                                       | No  |
| 2.1 (nomination committee)                                     | No  |
| 2.2 (board skills matrix)                                      | No  |
| 2.3 (disclose independence and length of service of directors) | Yes, in relation to the responsible entity in its corporate capacity  |
| 2.4 (majority of directors independent)                        | No  |
| 2.5 (chair independent and not CEO)                            | No  |
| 2.6 (director induction and professional development)          | No  |
| 3.1 (code of conduct)  | Yes, in relation to the responsible entity in its corporate capacity  |
| 4.1 (audit committee)  | Yes, in relation to the specific processes and facilities the responsible entity has put in place to perform its role as the manager of the listed entity |

|  |   |
|--|---|
| 4.2 (CEO and CFO certification of financial statements)                        | Yes, in relation to the specific processes and facilities the responsible entity has put in place to perform its role as the manager of the listed entity |
| 4.3 (external auditor available at AGM)  | Yes, if the externally managed listed entity holds an AGM. No if it does not.   |
| 5.1 (disclosure policy)  | Yes, in relation to the listed entity being managed by the responsible entity   |
| 6.1 (information on website)   | Yes, in relation to the specific processes and facilities the responsible entity has put in place to perform its role as the manager of the listed entity |
| 6.2 (investor relations program)   | Yes, in relation to the specific processes and facilities the responsible entity has put in place to perform its role as the manager of the listed entity |
| 6.3 (facilitate participation at meetings of security holders)                 | Yes, if the externally managed listed entity has periodic meetings of security holders. No if it does not.  |
| 6.4 (facilitate electronic communications)                                     | Yes, in relation to the listed entity being managed by the responsible entity   |
| 7.1 (risk committee)   | Yes, in relation to the specific processes and facilities the responsible entity has put in place to perform its role as the manager of the listed entity |
| 7.2 (annual risk review)   | Yes, in relation to the specific processes and facilities the responsible entity has put in place to perform its role as the manager of the listed entity |
| 7.3 (internal audit)   | Yes, in relation to the specific processes and facilities the responsible entity has put in place to perform its role as the manager of the listed entity |
| 7.4 (sustainability risks)   | Yes, in relation to the listed entity being managed by the responsible entity   |
| 8.1 (remuneration committee)   | No, however the <i>alternative recommendation</i> above applies   |
| 8.2 (disclosure of executive and non-executive director remuneration policies) | No, however the <i>alternative recommendation</i> above applies   |
| 8.3 (policy on hedging equity incentive schemes)                               | No, however the <i>alternative recommendation</i> above applies   |

Externally managed listed entities should consult the section headed “The application of the recommendations to externally managed listed entities” in the *Principles and Recommendations* for further guidance on how they should apply and make disclosures against the recommendations.