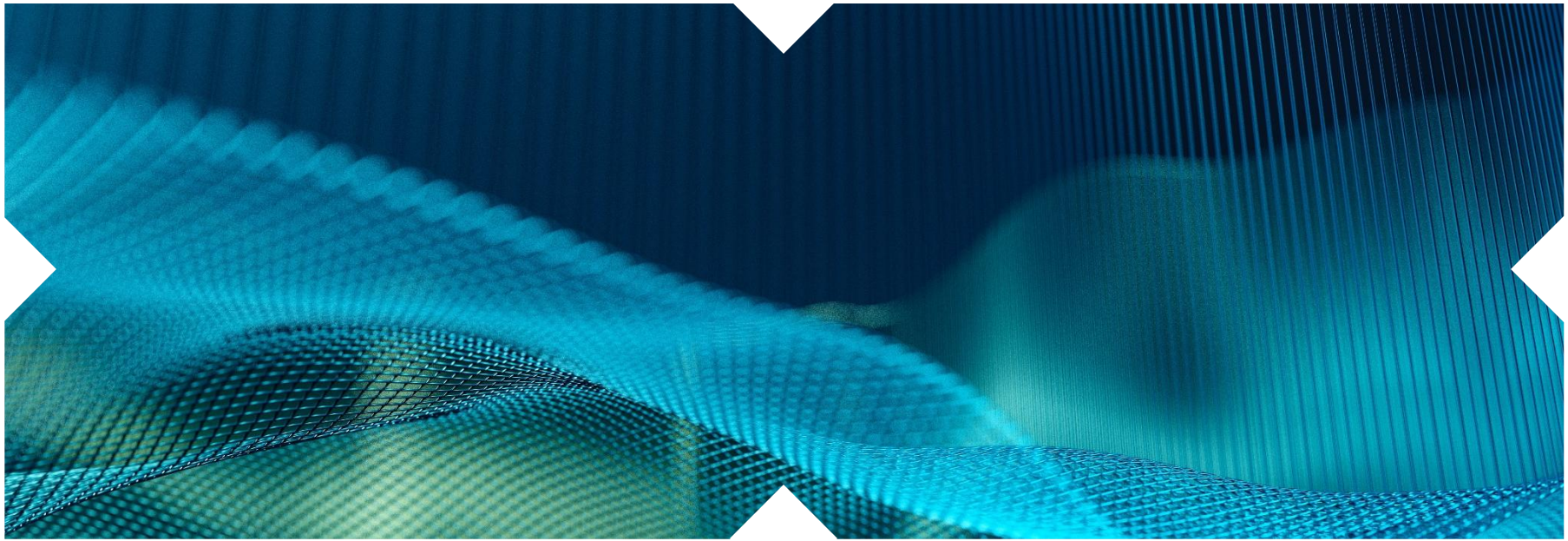
ASX Listing Rules Compliance Course

Module 7: General meetings



Before we begin

An important legal notice

The information provided in this course module is for educational purposes only.

This module does not purport to cover all aspects of the Listing Rules relevant to the subject matter in its title. There may also have been changes to a Listing Rule, or to ASX's policy or guidance on the application of a Listing Rule, mentioned in this module since the module was last updated.

Accordingly, readers should not rely on the contents of this module in determining their obligations under the Listing Rules but instead should refer to the Listing Rules and relevant ASX Guidance Notes and, if in doubt, obtain advice from a qualified professional person in respect of the matter.

Nothing in this module binds ASX in the application of the Listing Rules in a particular case.

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ASX Listing Rules Compliance Course

Module 7 – General meetings

- Welcome to module 7 of the ASX Listing Rules Compliance Course.
- This module covers general meetings. It should take you around 20 minutes to complete.



Module	Name of module
Module 1	Continuous disclosure
Module 2	Periodic reporting
Module 3	Issue of equity securities
Module 4	Transactions with persons in a position of influence
Module 5	Significant transactions
Module 6	Corporate governance disclosures
Module 7	General meetings
Module 8	Lodging documents with ASX
Module 9	Trading halts and suspensions
Module 10	Waivers and in-principle advice
Module 11	Directors' interest notifications

General meetings

Introduction

- In this module, we will cover:
  - notice of meeting requirements
  - proxy form requirements
  - director elections
  - voting procedures, and
  - reporting the results of meetings.
- For further information on these matters, please refer to GN 35 *Security Holder Resolutions* (‘GN 35’).



Rules requiring security holder resolutions

An overview

- Numerous rules require matters to be approved by a resolution of security holders, including:

Rule	Heading of rule
6.20.3	Participation in new issues of underlying securities
6.22.2A	Change of option's exercise price or the number of underlying securities
6.23.2, 6.23.4	Other changes in terms of options
7.1	Issues exceeding 15% of capital
7.1A.2	Additional issuance capacity for eligible entities
7.2 exception 13(b)	Exceptions to rule 7.1 and rule 7.1A
7.3B	Notice requirements to approve a higher threshold for Listing Rule 7.2, Exceptions 6 and 7
7.4	Subsequent approval of an issue of securities
7.6	No issue without approval before a meeting to appoint or remove directors or governing body
7.9	Issues during a takeover
7.21	Reorganisation of convertible securities (except options)
7.22.6	Reorganisation of options
7.26.1, 7.26.3	Cancelling forfeited shares by a limited liability company

Rules requiring security holder resolutions

An overview (cont.)

Rule	Heading of rule
10.1	Approval required for certain acquisitions or disposals
10.11	Approval required for certain issues of securities
10.14	Approval required for certain issues of securities under an employee incentive scheme
10.17	Payments to directors
10.19	Termination benefits
11.1.2	Proposed change to nature or scale of activities
11.2	Change involving main undertaking
11.4.1(b)	No disposal of major asset without offer, or approval for no offer
17.11A	Removal with the approval of security holders
18.10	Change of admission category

Rules requiring security holder resolutions

An overview (cont.)

- GN 35 has general guidance on security holder resolutions.
- Some of the rules mentioned in the table on the two previous slides are also the subject of specific GNs, e.g. for resolutions under rule:
  - 7.1, 7.1A, 7.3B 7.4, 7.6 or 7.9, see GN 21 *The Restrictions on Issuing Equity Securities in Chapter 7 of the Listing Rules*
  - 10.1, see GN 24 *Acquisitions and Disposals of Substantial Assets Involving Persons in a Position of Influence*
  - 10.11 or 10.14, see GN 25 *Issues of Equity Securities to Persons in a Position of Influence*
  - 11.1.2 or 11.2, see GN 12 *Significant Changes to Activities*
  - 11.4.1, see GN 13 *Spin-outs of Major Assets*
  - 17.11A, see GN 33 *Removal of entities from the ASX Official List*

Notice of meeting requirements

Rules 14.1A, 14.6 and 15.1.4

- A notice of meeting ('NOM') which proposes a resolution of security holders to approve something under the rules must be provided to ASX in draft and not finalised until ASX tells the entity that it does not object to the NOM (rule 15.1.4). This requirement is explained further in module 8.
- The NOM must summarise the applicable rule and what will happen if security holders give, or do not give, that approval (rule 14.1A).
- If the rules specify the information that must be included in the NOM proposing the resolution, all of that information must be included for the resolution to be valid (rule 14.6).
- If the rules do not specify the information that must be included in the NOM proposing the resolution, the general law standard applies – i.e. the NOM must include such material as will fully and fairly inform security holders of the matters to be considered at the meeting and enable them to make a properly informed judgement on those matters.

Voting exclusions

Rule 14.11.1

- Most resolutions under the rules attract a voting exclusion prohibiting certain nominated parties ('excluded persons') and their associates from voting in favour of the resolution. The exclusion is applied by including a 'voting exclusion statement' in the NOM – ie a statement to the effect that the entity will disregard any votes cast in favour of the resolution by or on behalf of an excluded person or an associate of an excluded person, save where it is cast by:
  - a person as proxy or attorney for a person who is entitled to vote on the resolution, in accordance with directions given to the proxy or attorney to vote on the resolution in that way
  - the chair of the meeting as proxy or attorney for a person who is entitled to vote on the resolution, in accordance with a direction given to the chair to vote on the resolution as the chair decides, or
  - a holder acting solely in a nominee, trustee, custodial or other fiduciary capacity on behalf of a beneficiary, provided the following conditions are met:
    - the beneficiary provides written confirmation to the holder that the beneficiary is not excluded from voting, and is not an associate of a person excluded from voting, on the resolution, and
    - the holder votes on the resolution in accordance with directions given by the beneficiary to the holder to vote in that way.

Voting exclusions

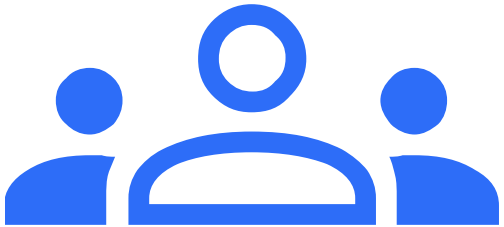
Rule 14.11.1 (cont.)

- The table in rule 14.11.1 specifies who are the ‘excluded persons’ for the different resolutions under the rules.
- The excluded persons identified in that table must be named or described in the NOM proposing the resolution.
- ASX also has a general discretion to treat as an excluded person any person whose votes, in ASX’s opinion, should be disregarded. If ASX exercises this discretion ahead of the NOM being dispatched, the person in question must be named or described in the NOM.
- Rule 19.12 defines who is an ‘associate’ of an excluded person.
- Under rules 14.6 and 14.7, an entity must in fact disregard the votes of excluded persons named or described in the voting exclusion statement for a resolution, and their associates, or else the resolution will not be valid.
- GN 35 has detailed guidance on voting exclusions, including on who are the associates of an excluded person.

Voting by employee incentive schemes

Rule 14.10

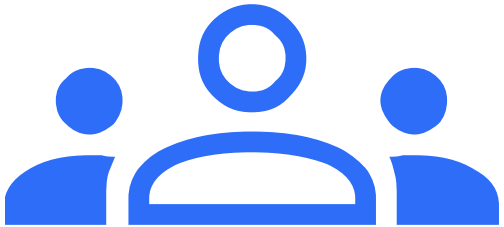
- Securities held by or for an employee incentive scheme must only be voted on a resolution under the rules if and to the extent that:
  - they are held for the benefit of a nominated participant in the scheme
  - the nominated participant is not excluded from voting on the resolution under the rules, and
  - the nominated participant has directed how the securities are to be voted.
- This limitation is separate to, and does not need to be mentioned in, the voting exclusion statement for the resolution.



Proxy form requirements

Rule 14.2

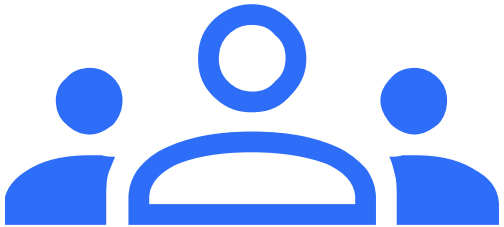
- A NOM must include a proxy form which provides, for each resolution, for the security holder to:
  - vote for the resolution
  - vote against the resolution, or
  - abstain from voting on the resolution (rule 14.2.1).
- If the proxy form specifies that the chair of the meeting is appointed as proxy if the security holder does not appoint another person to act as the security holder's proxy or the chair is appointed proxy by default, the form must also include a statement as to how the chair of the meeting intends to vote undirected proxies (rule 14.2.2).
- These requirements apply to all resolutions, not just those under the rules.



Lodgement of meeting materials on MAP

Rule 3.13.3 and 3.17.1

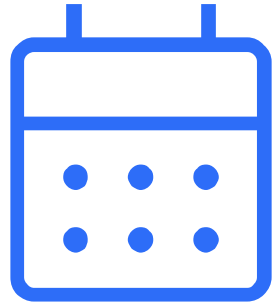
- An entity must give ASX a copy of:
  - a NOM, any accompanying explanatory statement and a sample proxy form immediately after sending them to security holders or to a class of security holders (rule 3.17.1), and
  - any prepared announcement that will be delivered at a meeting of security holders, including (without limitation) any prepared address by the chair, CEO and/or CFO, no later than the start of meeting (rule 3.13.3).



Cut-off dates for nomination of directors

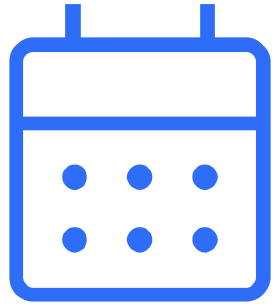
Rule 14.3

- Unless its constitution provides otherwise, an entity that is a company or that is internally-managed must accept nominations for the election of directors up to 35 business days (in the case of a meeting that members have requested directors to call, 30 business days) before the date of a general meeting at which directors may be elected.



Notification of cut-off dates for nomination of directors

Rule 3.13.1



- If the entity is a company or is internally-managed and it intends to hold a meeting of security holders at which a director or directors may be elected, the entity must tell ASX the date of the meeting and the closing date for the receipt of nominations from persons wishing to be considered for election as a director. It must do so at least 5 business days before the closing date for the receipt of such nominations.
- An entity may satisfy this obligation by giving to ASX a calendar of key dates which shows the date of the meeting and the closing date for the receipt of director nominations, as well as other key dates (such as the dates for its half yearly and annual results presentations and dividend payment dates).
- The failure to give such notice does not invalidate the meeting or the election of any director at the meeting.

Director rotation requirements

Rule 14.4

- A director appointed:
  - prior to the entity's admission to the official list must not hold office (without re-election) past the third AGM following the entity's admission to the official list or 3 years following the entity's admission to the official list, whichever is longer
  - to fill a casual vacancy or as an addition to the board after the entity's admission to the official list must not hold office (without re-election) past the next AGM of the entity, or
  - after the entity's admission to the official list other than to fill a casual vacancy or as an addition to the board must not hold office (without re-election) past the third AGM following the director's appointment or 3 years, whichever is longer.
- This rule does not apply to the managing director (but if there is more than one managing director, only one is entitled not to be subject to re-election).

Election of directors to be held at each AGM

Rule 14.5

- A listed company must hold an election of directors at each AGM (rule 14.5).
- A listed company must therefore have at least one director stand for election or re-election at each AGM.
- This applies even where no director is required to stand for re-election at an AGM under the director rotation requirements in rule 14.4 (see previous slide).
- If the company doesn't have a new director standing for election and no director is due to stand for re-election under the director rotation requirements in rule 14.4, the entity must select at least one of its existing directors to stand for re-election.
- Typically the entity will do this by calling for a volunteer or by drawing lots.
- Listed entities that are not companies may not be required to hold an election under rule 14.5 depending on the type of entity that they are – see rule 14.5 for full details.

Guidance on voting procedures

GN 35

- An entity must conduct a properly managed voting process and keep appropriate records of that process to corroborate that a resolution under the rules was duly passed at a properly convened meeting of security holders. This includes having proper processes to:
  - validate the authenticity and validity of proxies and powers of attorney received from security holders ahead of the meeting
  - screen the attendees at the meeting to verify that only security holders on the register of members at the closing date for determining voting entitlements, or their duly appointed proxies or attorneys, receive voting papers or are otherwise able to vote, and
  - ensure that all valid votes are collected and tallied and that invalid votes (such as those covered by a voting exclusion statement) are identified and excluded from the result.

Guidance on voting procedures

GN 35 (cont.)

- As a matter of good corporate governance, all rule resolutions should be decided by a poll rather than by a show of hands:
  - It creates an auditable written or electronic record of the voting process.
  - Noting that most resolutions under the rules attract a voting exclusion, it gives greater confidence that the votes that should have been disregarded under a voting exclusion statement were in fact disregarded.
- This position is consistent with recommendation 6.4 of the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations*, which recommends that all substantive resolutions should be decided by a poll rather than by a show of hands.
- If ASX is not satisfied that an entity has conducted a properly managed and recorded voting process in relation to a resolution under the rules, ASX may require the entity to seek a fresh approval from its security holders.

Voting scrutineers

Rule 14.8

- ASX may require an entity to appoint its auditors, or some other person acceptable to ASX, to act as a scrutineer to decide the validity of votes cast at a general meeting of security holders and whether the votes that should have been disregarded were in fact disregarded (rule 14.8).
- This power applies to any and all resolutions being considered at a general meeting of an entity and not just those under the rules. However, ASX is generally reluctant to exercise this power except:
  - in relation to a rule resolution, where ASX wants to ensure that the entity is complying with its obligations under the rules and ASX has the jurisdiction to take corrective action if the resolution is not validly passed, or
  - at the request of ASIC, in relation to a resolution under the Corporations Act or the general law, where ASIC has the jurisdiction to take corrective action if the resolution is not validly passed.
- If ASX requires the voting on a resolution to be scrutineered, ASX will expect the vote to be decided by way of a poll, rather than by a show of hands, so that the scrutineer can opine on whether the resolution has been validly passed. ASX will also expect the scrutineer to prepare a written report for the entity confirming the matters set out in section 11 of GN 35.

Notification of results of security holder meetings

Rule 3.13.2

- Under rule 3.13.2, immediately after a meeting of security holders has been held, the entity must notify ASX of the outcome of each resolution put to the meeting showing separately:
  - both the number and a short description of the resolution
  - whether the resolution was passed or not passed
  - whether the resolution was decided on a show of hands or a poll
  - if the resolution was decided on a poll:
    - the number of securities that were voted for the resolution and the percentage they represented of the total number of securities that were voted on the resolution
    - the number of securities that were voted against the resolution and the percentage they represented of the total number of securities that were voted on the resolution, and
    - the number of securities that formally abstained from voting on the resolution

Notification of results of security holder meeting

Rule 3.13.2 (cont.)

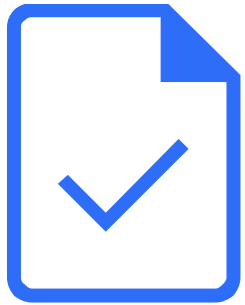
- regardless of how the resolution was decided, the aggregate number of securities for which valid proxies were received before the meeting, showing separately:
  - the aggregate number of securities in respect of which the proxy was directed to vote for the resolution
  - the aggregate number of securities in respect of which the proxy was directed to vote against the resolution
  - the aggregate number of securities in respect of which the proxy was directed to abstain from voting on the resolution, and
  - the aggregate number of securities in respect of which the proxy could vote at their discretion, and
- if the resolution related to the adoption of the entity's remuneration report and the outcome constitutes a 'first strike' or 'second strike' under section 250U of the Corporations Act, that fact,

and, if a resolution was proposed in the NOM but not put to the meeting, the number and a short description of the resolution, the fact that it was not put to the meeting and an explanation of why it was not put to the meeting.

Notification of results of security holder meeting

Rule 3.13.2 (cont.)

- The notification given to ASX must be headed ‘Results of Meeting’ or something similar.
- If the meeting is adjourned, the entity must immediately tell ASX of the adjournment and the outcome in respect of each resolution dealt with before the adjournment.
- These requirements apply to all resolutions considered at a meeting of security holders, not just those under the rules.
- A pro forma notification (in both Word and Excel format) of the results of a meeting of security holders can be downloaded from the ‘ASX Supervision downloads’ page on the ASX website.



General meetings

End of module 7

- Congratulations you have reached the end of module 7. In it we covered:
  - notice of meeting requirements
  - proxy form requirements
  - director elections voting procedures, and
  - reporting the results of meetings.
- For further information on these matters, please refer to GN 35 *Security Holder Resolutions*.
- If you wish, you can now move on to module 8 of the course, which covers lodging documents with ASX. Alternatively, click here to return to the home page for the course.



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