

**2005 Analysis of  
corporate  
governance  
practice disclosure  
Listed trusts**

24 October 2006



# EXECUTIVE SUMMARY

## Key findings

The 2005 ASX review of compliance with its Listing Rules and the ASX Corporate Governance Council's (Council) ten "Principles of Good Corporate Governance" (Principles) and the twenty-eight "Best Practice Recommendations" (Recommendations) that support the Principles demonstrates that in most cases corporate governance reporting by listed trusts (listed trusts) compares favourably with corporate governance reporting by listed companies.<sup>1</sup>

The overall reporting level (being the aggregate of the levels of adoption of the Recommendations and the levels of "if, not, why not?" reporting against the Recommendations) for the listed trust sector in 2005 is 86% compared with 88% for listed companies.

## Summary of Review

- This review involved a review of the corporate governance disclosures of 89 listed trusts
- The review of listed trust disclosures showed:
  - The overall reporting level for all Recommendations for listed trusts (being the aggregate of actual adoption of the Recommendations and "if not, why not?" reporting) was 86%. This figure is only marginally lower than for listed companies - 88%
  - 10 out of 28 Recommendations had reporting levels over 90%
  - An additional 14 out of 28 Recommendations had reporting levels over 80%
  - This compares with the listed company sector where 14 out of 28 Recommendations had reporting levels over 90% and an additional 9 out of 28 Recommendations had reporting levels over 80%
  - The overall reporting level for listed trusts reviewed in the Top 500 was 92%
- Key differences between listed trusts and listed companies were noted in relation to:
  - Principle 2 - Structure the board to add value
  - Principle 9 - Remunerate fairly and responsibly
- Other distinguishing features of the listed trust sector review relate to inconsistency as to which entity is reporting and confusion arising from the governance requirements under the Managed Investments regime and the Guidelines especially in the area of remuneration.<sup>2</sup>

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<sup>1</sup> In this report the term "listed trusts" refers to a representative sample of 'non-traditional' listed entities and includes; private equity trusts, specialist investment trusts, infrastructure funds, pooled development funds, exchange traded funds and property trusts listed on ASX. The sample reviewed included: externally managed 'traditional' property trusts, internally managed 'standard' stapled trusts and externally managed 'non-standard' stapled trusts.

<sup>2</sup> Managed investment schemes are collective investment vehicles regulated by Part 5C of the Corporations Act. They are required to have a Responsible Entity to serve the dual role of trustee and manager of the scheme – see sections 601FA ff. They are also required to have a compliance plan and where the board of directors of the Responsible Entity does not consist of at least half "external directors", there should be a Compliance Committee consisting of at least three members, the majority of which should be "external" – see Part 5C.4 and 5C.5 of the Corporations Act.

## What this report is about

This report presents an analysis of corporate governance disclosure and compliance by listed trusts with ASX Listing Rules for the 2005 reporting period. It also provides commentary on the differences in disclosure and adoption reporting levels of various Recommendations between listed trusts and listed companies as identified in the *2005 Analysis of corporate governance practice disclosure* released by ASX on 22 May 2006 (2005 Main Report).<sup>3</sup>

### 1. Overview and general observations

- 1.1. In the 2005 Main Report ASX said it would undertake a separate review of the corporate governance disclosures by listed trusts in 2005 annual reports. There were two principal reasons for undertaking this review:
  - To examine the corporate governance disclosures by listed trusts more closely to find out whether the sector has issues that are similar to, or different from, the issues of listed companies identified in the 2005 Main Report. This information will assist Council in its current review of the Principles and Recommendations
  - To explore anecdotal and other reports which compare corporate governance disclosure by the listed trust sector with disclosure by listed companies.<sup>4</sup>
- 1.2. Figure 1 provides an overview of the disclosures in 2005 by all listed trusts reviewed and compares these disclosures with the results for listed companies published in the 2005 Main Report.<sup>5</sup> It also distinguishes between levels of adoption of the Recommendations and levels of adoption of alternative practices (that is, providing reasons for not following a Recommendation – known as “if not, why not?” reporting).
- 1.3. Each of the Principles includes a box of text which is intended to assist listed trusts with their reporting obligations under the Principles. Council will use the results of this review of listed trusts to consider whether the text at the end of each Principle is sufficient or whether the text requires amendment or clarification.
- 1.4. The bottom colour section (royal blue for listed trusts and orange for listed companies) shows entities whose disclosure indicated adoption of the relevant Recommendation. The middle colour section (turquoise for listed trusts and gold for listed companies) shows “if not, why not?” reporting. The top colour section (light blue for listed trusts and bright yellow for listed companies) refers to entities that did not address the particular Recommendation.

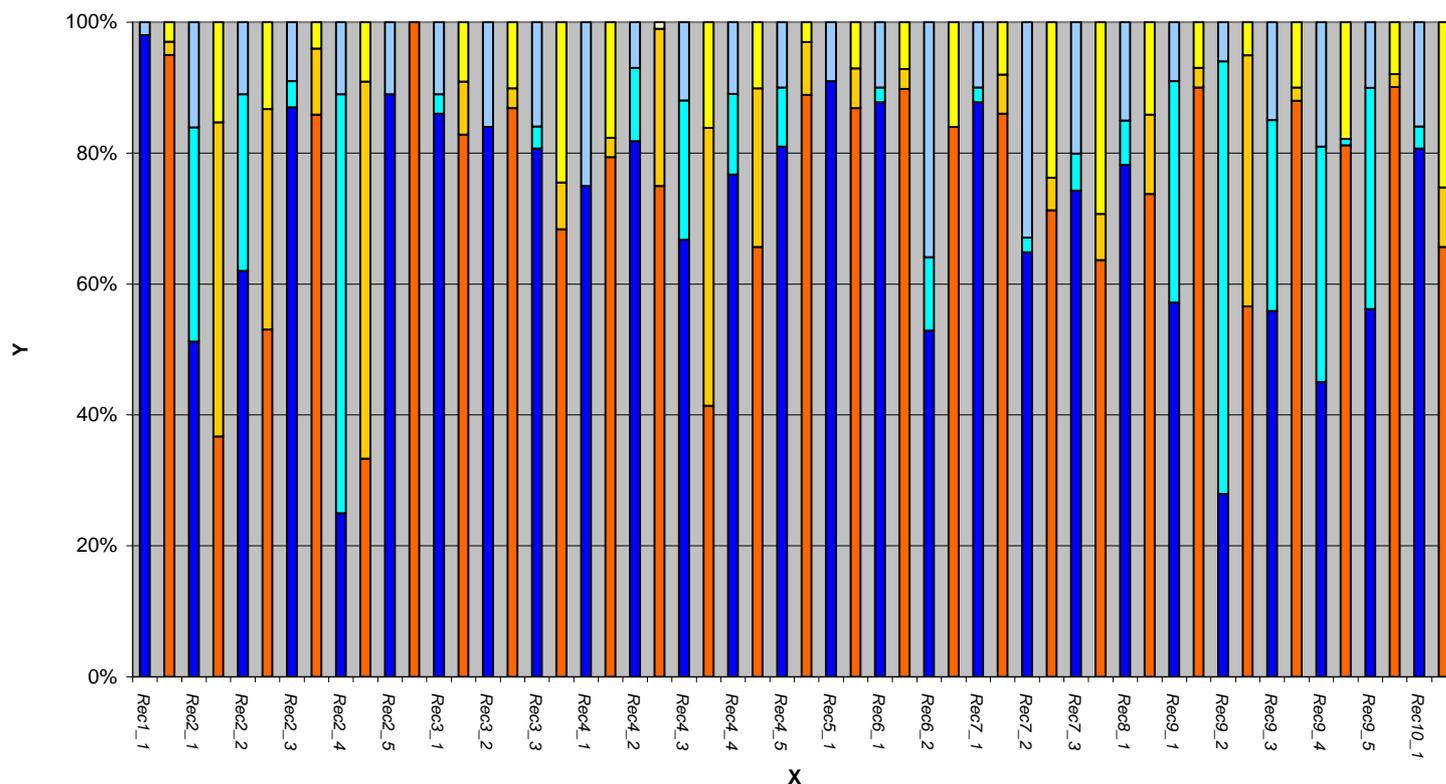
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<sup>3</sup> This report is available at [www.asx.com.au/Market Supervision/Corporate Governance](http://www.asx.com.au/Market%20Supervision/Corporate%20Governance).

<sup>4</sup> See for example *Governance deficiencies of the ASX listed trust sector*, October 2005 a report by Corporate Governance International Pty Ltd for the Australian Council of Super Investors Inc. at [www.acsi.org.au](http://www.acsi.org.au).

<sup>5</sup> Note that 23 entities included in this review of listed trusts were included in the 2005 Main Report. These entities were included in the review of listed trusts to provide a more complete picture of the corporate governance disclosure practices of this sector.

### Comparison Listed Trusts and Listed Companies



**KEY: Listed trusts**

Adoption  
Exception  
Neither



**Listed companies**

Adoption  
Exception  
Neither



- 1.5. A substantial majority of listed trusts have fulfilled their disclosure obligations under Listing Rule 4.10.3, either by confirming adoption of the various Recommendations or by providing “if not, why not” reporting.<sup>6</sup>
- 1.6. The 2005 ASX review of listed trusts reveals that on the basis of the annual reports reviewed, there was an overall reporting level of 86% of compliance with this Listing Rule for the listed trust sector. The reporting level for listed trusts is slightly lower than for listed companies – 86% compared with 88%. The overall reporting level for listed trusts in the Top 500 was 92% compared with 86% for listed companies.<sup>7</sup> The 2005 ASX review of listed trusts reveals that the average adoption reporting level for all Recommendations for this sector was 70% compared to 74% for listed companies.

<sup>6</sup> Listing Rule 4.10.3 requires an entity to include in its annual report a statement of the extent to which the entity has followed the Council’s Principles and Recommendations during the reporting period. If the entity has not followed all of the recommendations, the entity must identify which recommendations were not followed and give reasons. If a recommendation is only followed for part of the period the entity must state the period during which it had been followed. For more detail about disclosures by listed companies see the 2005 Main Report.

<sup>7</sup> For more detail about disclosures by listed companies see the 2005 Main Report.

- 1.7. As was the case with the 2005 Main Report ASX notes by way of observation, the following suggestions to enhance reporting further:
- The 2005 reviews of both listed trusts and listed companies indicate that entities should be encouraged to improve their compliance with Listing Rule 4.10.3 by simplifying their corporate governance statements. This could be achieved by dealing with the Recommendations consecutively on a Recommendation by Recommendation basis. Some of the better reports provided information in this format either in narrative or tabular form
  - Clear cross references to the location of information not included in the corporate governance statement but located elsewhere in the annual report are also useful
  - The need for greater clarity when providing corporate governance information was one of the key findings of the User Survey of professional and private investors conducted by the Council in late 2005 and released in March 2006.<sup>8</sup> Other suggestions in the User Survey for improving corporate governance information included:
    - Existing information could be clearer and more concise
    - Existing information could be more accessible
    - More details about boards - board experience, independence and affiliations, commitments, share trading, committees including composition, policies and review processes
    - Clarity of information concerning remuneration of directors and key personnel
    - A summary statement of whether companies are adopting/"if not, why not" reporting against the Council's Principles and Recommendations
  - Websites are a valuable tool for disclosing many of the supporting documents referred to in the Recommendations such as board and committee charters, codes of conduct and relevant policies.
- 1.8. During the 2004 review, ASX identified and addressed over 1750 individual disclosure issues. Following the 2004 review, ASX has been consistent in reinforcing the requirement for corporate governance disclosure and has encouraged new and existing entities to upgrade their practices and increase their disclosure of these practices.
- 1.9. In managing governance disclosure issues ASX has a number of options available to it. These include:
- Contacting the entity to discuss the issue, emphasising education and guidance to achieve an informed market
  - Encouraging the entity to voluntarily make additional disclosure, where ASX identified the need for further disclosure
  - Writing to the entity and releasing this correspondence and the entity's response to the market
  - Writing to the board of the entity asking for an explanation.
- ASX has relied on each of these options to manage corporate governance disclosure issues during 2005 and 2006.
- 1.10. ASX and the Council have also been involved in activities that have assisted with improving compliance with the Principles:

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<sup>8</sup> See the Survey at [www.asx.com.au/supervision/pdf/asx\\_corporate\\_governance\\_summary\\_march06](http://www.asx.com.au/supervision/pdf/asx_corporate_governance_summary_march06)

- Following the 2004 review, ASX has been involved in a program of ongoing monitoring of corporate governance disclosures
- The Council has been involved in ongoing work in promoting corporate governance disclosure.

## 2. Key difference between disclosures by the listed trusts and listed companies

- 2.1. The key differences between the review of the listed trusts and the review of listed companies fall into four categories:
- Lack of clarity as to which entity should be reporting
  - Not differentiating between obligations under the Managed Investments legislation and obligations in relation to Listing Rule 4.10.3 and the Guidelines
  - Independence of directors - Principle 2
  - Director and executive remuneration disclosure – Principle 9.
- 2.2. The listed trust sector demonstrated little consistency about which entity was reporting on its governance practices. In most cases, it was clear from the corporate governance section of the annual report that the “Responsible Entity” under the Managed Investments Regime was reporting. However, in some cases particularly those involving ‘stapled’ structures, reports discussed the listed entity without mentioning the Responsible Entity. In other cases reports referred to “the company” or “the board” without clearly identifying which entity was under discussion. There were a number of reports which did not provide clear details about ownership or control of the Responsible Entity.
- 2.3. The standard of reporting on Principle 2 – Structure the board to add value was another area of difference. In many cases, the Responsible Entity is owned or controlled by the promoter of the listed trust and in this capacity it appoints directors to its board who are frequently, employees or otherwise closely linked to the promoter. In some reports these relationships were clearly identified and acknowledged, in others they were not. If, notwithstanding the existence of any of these links, the Responsible Entity considers particular directors to be ‘independent’, the reasons needed to be set out more clearly.<sup>9</sup>
- 2.4. There was a lack of consistency in the way in which listed trusts reported on remuneration – Principle 9 – Remunerate fairly and responsibly. A number of listed trusts addressed remuneration reporting by “if not, why not?” reporting and made a variety of statements in this context. For example:
- The listed trust has no employees
  - The directors of the Responsible Entity are paid by the trust and not the Responsible Entity, alternatively the directors are paid by the Responsible Entity and not the trust
  - The directors are paid by a third party, such as the parent of the Responsible Entity, and remuneration is not the concern of the responsible entity.<sup>10</sup>
- 2.5. There was some confusion in reports as to the differences between reporting and compliance obligations under the Managed Investments regime and obligations under Listing Rule 4.10.3 and the Principles and Recommendations. For example, some entities provided great detail about the contents of compliance committee charters but little or no detail about the key governance committees: audit, nomination or remuneration.

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<sup>9</sup> See also below on Principle 2.

<sup>10</sup> See also below on Recommendation 2.1.

### **3. Commentary – Key Recommendations**

A more detailed analysis of reporting on Recommendations which have generated particular interest from entities, investors and other stakeholders is set out below.

#### **Board issues**

##### **Recommendation 2.1- A majority of the board should be independent directors**

- 3.1. Principle 2 is about structuring boards to add value. Recommendation 2.1 is about boards having a majority of independent directors.
- 3.2. The reporting level for listed trusts was 84% reporting compliance with the Listing Rule either by adopting this Recommendation or by “if not, why not?” reporting. This compares with a reporting level of 83% for listed companies.
- 3.3. The adoption reporting level for this Recommendation for listed trusts was 51% compared to 36% for listed companies. There is a high “if not, why not?” reporting level for both sectors – 33% for listed trusts and 47% for listed companies.
- 3.4. As is the case with listed companies, listed trusts appear comfortable with the nature of “if not, why not?” reporting and the flexibility that this approach allows.
- 3.5. One of the key differences between listed trusts and listed companies in relation to this particular Recommendation is that in the listed trust sector some of the reports indicate the entire board is comprised of “non-independent” directors. In many cases a number of the directors of the Responsible Entity are closely related to or employed by the promoter. This is in contrast to listed companies, where boards, particularly smaller boards, will not necessarily consist of a majority of independent directors but will frequently include one or two independent directors.

#### **Committees**

##### **Recommendation 2.4 – The board should establish a nomination committee**

##### **Recommendation 9.2 – The board should establish a remuneration committee**

- 3.6. The Guidelines recommend that listed entities establish three committees: audit, remuneration and nomination.<sup>11</sup> Recommendation 2.4 is about establishing a nomination committee. This committee is responsible for matters relating to the composition of the board, the evaluation of the board and the appointment and removal of directors. Recommendation 9.2 is about establishing a remuneration committee to oversee the development and implementation of remuneration policies.
- 3.7. The review of listed trusts shows a high rate of compliance with the Listing Rules in relation to Recommendations 2.4 and 9.2 with reporting levels of 89% and 94%, compared with reporting levels for these Recommendations for listed companies of 90% and 94%. When looking at the adoption reporting levels for these Recommendations, more listed trusts have a remuneration committee 28% than a nomination committee 25%.

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<sup>11</sup> See the separate discussion below on Recommendations 4.2 and 4.3 on audit committees.

- 3.8. The results of the review indicate that the majority of listed trusts reviewed, as was the case with listed companies, have addressed the issue of nomination and remuneration committees by “if not, why not?” reporting. The results again demonstrate entities’ level of comfort with “if not, why not?” reporting.
- 3.9. The relatively small number of nomination committees in the listed trust sector is likely to result from the fact that in many cases directors of the Responsible Entity are appointed by the controlling shareholder of the Responsible Entity, who is often also the promoter of the vehicle, so a nomination committee is less likely to be used. This is also the case in relation to remuneration committees.

## **Audit Committees**

### **Recommendation 4.2 – The board should establish an audit committee**

### **Recommendation 4.3 – Structure the audit committee so that it consists of: only non-executive directors, a majority of independent directors, an independent chairperson who is not chairperson of the board and at least three members**

- 3.10. A key focus of the 2005 review was compliance with Listing Rule 12.7 which supports Recommendations 4.2 and 4.3.<sup>12</sup>
- 3.11. Recommendation 4.2 recommends that entities establish an audit committee and Recommendation 4.3 that the audit committee consists of: only non-executive directors, a majority of independent directors, a chairperson who is not chairperson of the board and at least three members. Listing Rule 12.7 requires Top 300 entities to comply with Recommendations 4.2 and 4.3. and entities in the Top 500 to comply with Recommendation 4.2. Entities outside the Top 500 are not required to have an audit committee under Listing Rule 12.7 but are required to report on their practices in relation to Recommendations 4.2 and 4.3 under Listing Rule 4.10.3.
- 3.12. There was a reporting level for Recommendation 4.2 for listed trusts of 93% and an adoption reporting level of 82%. The comparable rates for listed companies were 99% and 75%. Many entities in the listed trust sector referred to the audit committee in the context of the compliance committee required by the Managed Investments regime.
- 3.13. The reporting level for listed trusts for Recommendation 4.3 was 88%, with an adoption level of 67% and an “if not, why not?” reporting level of 21%. The comparable rates for listed companies were – 83% reporting level, 41% adoption level and 42% exception reporting level. The main reason provided by listed trusts for exception reporting was the lack of independent directors resulting from the ownership of the entity. The main reason cited for exception reporting by listed companies was the size of the board or the company.

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<sup>12</sup> Listing Rule 12.7 requires an entity in the S&P All Ordinaries Index at the beginning of its financial year to have an audit committee during that year. If the entity was in the Top 300 of that index at the beginning of its financial year it **must** also comply with Recommendation 4.3 in relation to composition of the audit committee. Top 300 companies is a reference made in Listing Rule 12.7 to the Top 300 companies listed in the S&P/ASX 300 at the beginning of the company’s financial year. To assist entities in understanding whether they fall within this category at the commencement of the financial year the ASX provides a list of entities in this Top 300 category in the corporate governance section of the ASX website [www.asx.com.au](http://www.asx.com.au). This list is updated for the beginning of each financial reporting period.

## Sign – offs and risk management

**Recommendation 4.1 – Require the chief executive officer and the chief financial officer to state in writing to the board that the company’s financial reports present a true and fair view, in all material respects, of the company’s financial condition and operational results and are in accordance with relevant accounting standards**

**Recommendation 7.2 – The chief executive officer and the chief financial officer should state to the board in writing that the statement given in accordance with ... recommendation 4.1 ... is founded on a sound system of risk management and internal compliance and control which implements the policies adopted by the board [and] the company’s risk management is operating efficiently and effectively in all material respects**

- 3.14. The sign-off required under Recommendation 4.1 is complemented by the sign-off under Recommendation 7.2. Following the CLERP 9 amendments to the Corporations Act the sign off under Recommendation 4.1 is largely mandated by law.<sup>13</sup> In its current review of the Principles, Council proposes to remove or revise Recommendation 4.1. The new Section 295A of the Corporations Act effectively codifies the Recommendation 4.1 sign-off but also contains additional specific references, most notably that the financial records have been properly maintained.
- 3.15. Reporting by listed trusts against Recommendation 4.1 showed a reporting and adoption level of 75%. This compares with a reporting level of 84% and an adoption level of 81% for listed companies.
- 3.16. Reporting by listed trusts against Recommendation 7.2 showed a reporting level of 67%, with an adoption level of 65%. The reporting and adoption levels for listed companies were 77% and 72%.
- 3.17. As is the case with listed companies ASX considers that there is room for improvement in the reporting level for Recommendation 7.2 for listed trusts. This is also an issue with listed companies as demonstrated by the 2005 Main Report and the review of 2004 corporate governance disclosures.<sup>14</sup>
- 3.18. One difficulty encountered in the review of listed trusts which was also noted as a difficulty in the Main Report and in the 2004 review was that while the wording of Recommendations 4.1 and 7.2 requires the sign-offs to be given, it does not explicitly require entities to report on the fact of the sign-off. Council proposes to address this issue in its current review of the Principles.<sup>15</sup>

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<sup>13</sup> CLERP 9 introduced a new section 295A (Declaration in relation to listed entity’s financial statements by chief executive officer and chief financial officer) into *Part 3M – Financial Reporting* of the Corporations Act. The directors’ declaration under s295(4) can now only be made once the directors have received a declaration from the CEO and CFO, or equivalents that: (a) the financial records have been properly maintained, (b) the financial statements comply with accounting standards and (c) the financial statements and notes give a true and fair view.

<sup>14</sup> The 2004 review of annual reports also indicated a need for improvement in the level of reporting. The 2004 review showed that while a core group of companies made reasonably comprehensive disclosure under Recommendation 7.2, most companies provided limited, generic information. In 2004 only 18 per cent of companies disclosed their risk profile and only 32 per cent disclosed a detailed description of the system of risk management and internal control. The 2004 review found that over 20% of companies did not make an explicit statement of their risk management practices in their annual report.

<sup>15</sup> See the discussion below on Recommendations 7.1 and 7.3.

- 3.19. As part of the current review of the Principles, Council proposes to revise Recommendation 7.2 and issue further guidance. One issue Council proposes to consider is that the CLERP 9 sign-off does not require disclosure or sign-off in relation to underlying risk management and internal controls and is not a substitute for Recommendation 7.2. Council proposes to consider how the Recommendation 7.2 sign-off sits in relation to Section 295A of the Corporations Act to ensure that the reporting in relation to underlying risk management and internal compliance and controls is not lost or diminished.

**Recommendation 7.1 – The board or appropriate board committee should establish policies on risk oversight and management**

**Recommendation 7.3 – Provide an explanation of any departures from Recommendations 7.1 and 7.2 and a description of the company’s risk management policy and internal control system**

- 3.20. Recommendation 7.1 recommends establishing policies on risk oversight and management and Recommendation 7.3 recommends providing an explanation of departures from Recommendations 7.1 and 7.2 and the disclosure of a description of the entity’s risk management policy and internal compliance and control system.
- 3.21. The review of listed trusts shows a reporting level of 90% and an adoption level of 88% for Recommendation 7.1 compared with a reporting level of 92% and an adoption level of 86% for listed companies. The level of disclosure of policies on risk management was higher for the listed trust sector than for listed companies. The reporting and adoption levels for Recommendation 7.3 for listed trusts were 80% and 74% compared to 70% and 63% for listed companies.
- 3.22. Council proposes issuing further guidance or clarifying the existing guidance to take into account the difficulties listed trusts and listed companies have experienced in reporting under this Principle and a number of international and domestic developments in reporting on risk.

## **Remuneration**

**Recommendation 9.1 – Provide disclosure in relation to the company’s remuneration policies to enable investors to understand the costs and benefits of those policies and the link between remuneration paid to directors and key executives and corporate performance**

**Recommendation 9.3 – Clearly distinguish the structure of non-executive directors’ remuneration from that of executives**

**Recommendation 9.4 – Ensure that the payment of equity based remuneration is made in accordance with thresholds set in plans approved by shareholders**

**Recommendation 9.5 - Provide the information indicated in Guide to reporting on Principle 9.**

- 3.23. The review of listed trusts showed that the reporting levels for listed trusts for these Recommendations were quite similar to listed companies. However there was a high level of “if not, why not?” reporting, being the difference between the reporting and adoption levels, for listed trusts compared to listed companies. There was a

correspondingly lower level of adoption for these Recommendations by the listed trust sector.

- 3.24. The high level of “if not, why not?” reporting for listed trusts appears to stem from the fact that a number of these entities report having no employees and that their directors are paid either by a third party or out of an entity other than the Responsible Entity.
- 3.25. ASX notes that the remuneration area of the annual reports for listed trusts was difficult to review in many cases and that there was little consistency about what was reported. The trends revealed by the ASX review indicate that Principle 9 is an area of difficulty for this sector. The current review by the Council of the Principles is reviewing the content of Principle 9 to consider eliminating areas of overlap between the Recommendations and the Corporations Act following the enactment of the CLERP 9 amendments and changes to the accounting standards. The review will also examine ways to assist this sector report on remuneration more clearly and consistently.

### **Codes of conduct**

**Recommendation 3.1 - Establish a code of conduct to guide the directors, the chief executive officer (or equivalent), the chief financial officer (or equivalent) and any other key executives as to:**

**3.1.1 the practices necessary to maintain confidence in the company’s integrity**

**3.1.2 the responsibility and accountability of individuals for reporting and investigating reports of unethical practices.**

**Recommendation 10.1 – Establish and disclose a code of conduct to guide compliance with legal and other obligations to legitimate stakeholders**

- 3.26. Recommendation 3.1 and 10.1 both recommend that entities establish a code of conduct. Principle 3 addresses promoting ethical and responsible decision making and Principle 10 addresses the recognition of legal and other obligations to all legitimate stakeholders. The reporting and adoption levels for listed trusts for Recommendation 3.1 were 89% and 86%, and 90% and 82% for listed companies. The reporting and adoption levels for Recommendation 10.1 were 84% and 81% for listed trusts and 74% and 65% for listed companies.
- 3.27. One other difference between listed trusts and listed companies is the higher rate of adoption of Recommendation 3.3 which relates to disclosure of codes of conduct. The adoption rate for listed trusts is 81% compared with 65% for listed companies. ASX notes that there is still room for improvement in the rate of disclosure of these codes either in the annual report or on company websites. Council intends to provide greater clarity around the need to disclose the contents of the actual codes of conduct during its current review of the Principles.

### **Sustainability/corporate responsibility reporting**

- 3.28. As with the 2005 Main Report ASX’s review of listed trusts also looked at the levels of sustainability/corporate responsibility (CR) reporting. This is the first time ASX has reviewed entities’ disclosures in this area. ASX looked at whether listed trusts are disclosing sustainability/CR information in their annual reports, and if so, whether the

disclosures are in the context of the Principles. The results of the review indicate some listed trusts are currently reporting on sustainability/CR issues in their annual reports.

- 3.29. The ASX review looked at the range of terms listed trusts are using in their annual reports to report on these issues and at how they are reporting. The 2005 Main Report noted that a number of entities reported on sustainability/CR issues but not necessarily in the context of a specific principle and where listed companies did refer to a Principle they referred to Principles 1, 3, 4, 7 and 10 or a combination of these Principles.
- 3.30. Of the 89 listed trusts reviewed, 11 listed trusts included reporting which falls in the categories: corporate responsibility, corporate social responsibility, sustainability/environmental, community or people reporting. It should be noted that five of these entities are related to the same promoter. Only two of the eleven specifically referred to a Principle in the context of this type of reporting and in both cases it was to Principle 7. Seven of the eleven entities were in the Top 300.
- 3.31. ASX notes that its review of 2005 reporting is limited to a review of reporting in annual reports and that many entities report on sustainability/CR issues in other ways such as a separate report or on their web-site.

## **4 Background information**

- 4.1. ASX has produced two analyses of corporate governance practices reported in 2004 and 2005 Annual Reports. These analyses were based on information gathered from 2004 and 2005 Annual Reports as part of ASX's review of compliance with its Listing Rules and the Council's Principles and Recommendations. ASX released the results of the review of listed companies' Annual Reports in May 2006.<sup>16</sup> This report on the corporate governance disclosures of listed trusts is the first specific review of the listed trust sector undertaken by ASX.
- 4.2. The ASX Listing Rules contain three rules which specifically support the Principles and the Recommendations; Listing Rule 4.10.3, Listing Rule 12.7 and Listing Rule 1.1 Condition 13.
- 4.3. Listing Rule 4.10.3 requires entities to disclose in the corporate governance section of the annual report the extent to which the entity has followed the Recommendations for the period covered by the report and, if a Recommendation is not followed, the reasons for not following the Recommendation. Disclosure is to be on an "if not, why not?" basis.
- 4.4. Listing Rule 12.7 requires that all Top 500 companies comply with Recommendation 4.2 and have an audit committee in place from the commencement of the financial year. In addition, Listing Rule 12.7 requires that the composition of the audit committee for all Top 300 companies must comply with Recommendation 4.3 and comprise only non-executive directors, a majority of independent directors, an independent chairperson who is not the chair of the board and at least three members. Listing Rule 1.1 Condition 13 is a reflection of Listing Rule 12.7 and requires newly listed entities included in either the Top 300 or Top 500 to meet similar audit committee requirements on listing.
- 4.5. Listing Rule 4.10.3 only came into effect for financial years beginning after 1 January 2003. For most entities the 2004 annual reports were the first reports to contain this

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<sup>16</sup> See above

information. The 2005 annual reports are, for most entities, the second year in which this information is provided.

- 4.6. Transitional provisions in place until 1 July 2005 in relation to Listing Rule 12.7 also means that the 2005 Financial Year is the first year relevant entities are required to be fully compliant with this Listing Rule.

## **5 Methodology**

- 5.1. The results contained in this report are based on a review of annual reports of listed trusts with financial statements having a 30 June 2005 balance date. This involved reviewing 89 annual reports for this period. This number represents approximately five per cent of all listed entities at 30 June 2004, the total number being 1638.<sup>17</sup>
- 5.2. The term “listed trusts” refers to a representative sample of ‘non-traditional’ listed entities and includes; private equity trusts, specialist investment trusts, infrastructure funds, pooled development funds, exchange traded funds and property trusts listed on ASX. The sample reviewed included: externally managed ‘traditional’ property trusts, internally managed ‘standard’ stapled trusts and externally managed ‘non-standard’ stapled trusts.
- 5.3. The approach adopted by ASX in the review involved not only a review of each listed trust’s annual report but also any applicable corporate governance section of the company’s website.
- 5.4. In the first instance, the review considered compliance with the Listing Rules, in particular Listing Rule 4.10.3. An entity was found to have complied with this Listing Rule in relation to a Recommendation where it reported on its approach to the Recommendation in some form and whether it followed the Recommendation or not and, if not, provided some explanation for why not. The explanation could be in the form of reasons for non adoption of the Recommendation, for example, the entity as too small to justify appointment of independent directors or in the form of a description of an alternate practice, for example, that the whole board performs the duty of a particular committee.
- 5.5. An entity is not required to adopt the Recommendation to comply with the Listing Rules. Compliance with the Listing Rule simply requires disclosure or reporting of the entity’s approach in relation to the Recommendation and if the Recommendation is not followed the reasons why the Recommendation was not followed. Compliance was measured on the basis that if an entity referred to a Recommendation and indicated adoption then it was recognized as having adopted the Recommendation. If the entity referred to a Recommendation and gave reasons for not adopting it or indicated an alternative way of dealing with the particular Recommendation this was regarded as “if not, why not?” reporting. Reporting on the adoption of a Recommendation and “if not, why not?” reporting are both regarded as compliant reporting for the purpose of the Listing Rules.
- 5.6. The review also looked at the adoption reporting levels for each of the Recommendations in addition to the rate of compliance with the Listing Rules.

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<sup>17</sup> See the ASX Annual Report 2005 at page 44.

- 5.7. Where the Responsible Entity reported, it was the Responsible Entity's report that was reviewed. If the listed entity also reported on corporate governance this was not reviewed. If the listed entity reported but not the Responsible Entity the listed entity was reviewed.
- 5.8. Listed trusts not having a balance date of 30 June or that had been suspended or deregistered post this balance date were also excluded from the review. Each report was reviewed for disclosure in relation to each of the 28 Recommendations. This equates to almost 2,500 individual actions.

## Appendix 1 - ASX Corporate Governance Council Recommendations

<b>1.</b>	<b>Lay solid foundations for management and oversight</b>
	1.1 Formalise and disclose the functions reserved to the board and those delegated to management.
<b>2.</b>	<b>Structure the board to add value</b>
	2.1 A majority of the board should be independent directors. 2.2 The chairperson should be an independent director 2.3 The roles of chairperson and chief executive officer should not be exercised by the same individual. 2.4 The board should establish a nomination committee. 2.5 Provide the information indicated in Guide to reporting on Principle 2.
<b>3.</b>	<b>Promote ethical and responsible decision making</b>
	Establish a code of conduct to guide the directors, the chief executive officer (or equivalent), the chief financial officer (or equivalent) and any other key executives as to: 3.1.1 the practices necessary to maintain confidence in the company's integrity 3.1.2 the responsibility and accountability of individuals for reporting and investigating reports of unethical practices. 3.2 Disclose the policy concerning trading in company securities by directors, officers and employees. 3.3 Provide the information indicated in Guide to reporting on Principle 3.
<b>4.</b>	<b>Safeguard integrity in financial reporting</b>
	4.1 Require the chief executive officer (or equivalent) and the chief financial officer (or equivalent) to state in writing to the board that the company's financial reports present a true and fair view, in all material respects, of the company's financial condition and operational results and are in accordance with relevant accounting standards. 4.2 The board should establish an audit committee. 4.3 Structure the audit committee so that it consists of: only non-executive directors, a majority of independent directors, an independent chairperson, who is not chairperson of the board, at least three members. 4.4 The audit committee should have a formal charter 4.5 Provide the information indicated in Guide to reporting on Principle 4.
<b>5.</b>	<b>Make timely and balanced disclosure</b>
	5.1 Establish written policies and procedures designed to ensure compliance with ASX Listing Rule disclosure requirements and to ensure accountability at a senior management level for that compliance. 5.2 Provide the information indicated in Guide to reporting on Principle 5.

<b>6.</b>	<b>Respect the rights of shareholders</b>
	<p>6.1 Design and disclose a communications strategy to promote effective communication with shareholders and encourage effective participation at general meetings.</p> <p>6.2 Request the external auditor to attend the annual general meeting and be available to answer shareholder questions about the conduct of the audit and the preparation and content of the auditor's report.</p>
<b>7.</b>	<b>Recognise and manage risk</b>
	<p>7.1 The board or appropriate board committee should establish policies on risk oversight and management.</p> <p>7.2 The chief executive officer (or equivalent) and the chief financial officer (or equivalent) should state to the board in writing that:</p> <p>7.2.1 the statement given in accordance with best practice recommendation 4.1 (the integrity of financial statements) is founded on a sound system of risk management and internal compliance and control which implements the policies adopted by the board</p> <p>7.2.2 the company's risk management and internal compliance and control system is operating efficiently and effectively in all material respects.</p> <p>7.3 Provide the information indicated in Guide to reporting on Principle 7.</p>
<b>8.</b>	<b>Encourage enhanced performance</b>
	8.1 Disclose the process for performance evaluation of the board, its committees and individual directors, and key executives.
<b>9.</b>	<b>Remunerate fairly and responsibly</b>
	<p>9.1 Provide disclosure in relation to the company's remuneration policies to enable investors to understand (i) the costs and benefits of those policies and (ii) the link between remuneration paid to directors and key executives and corporate performance.</p> <p>9.2 The board should establish a remuneration committee.</p> <p>9.3 Clearly distinguish the structure of non-executive directors' remuneration from that of executives.</p> <p>9.4 Ensure that payment of equity-based executive remuneration is made in accordance with thresholds set in plans approved by shareholders.</p> <p>9.5 Provide the information indicated in Guide to reporting on Principle 9.</p>
<b>10.</b>	<b>Recognise the legitimate interests of stakeholders.</b>
	10.1 Establish and disclose a code of conduct to guide compliance with legal and other obligations to legitimate stakeholders.