COMPANIES UPDATE

ASX LISTING RULE AMENDMENTS – CORPORATE GOVERNANCE – TRANSITIONAL ARRANGEMENTS FOR RULE 4.10.3

On 1 January 2003 ASX implemented rule amendments to mandate audit committees for the top 500 companies and to enhance compliance with corporate governance best practice. These rule amendments:

- Require listed companies to report on their main corporate governance practices by reference to the best practice recommendations of the ASX Corporate Governance Council (the Council), and require that a company highlight those areas of departure from the best practice recommendations of the Council and explain that departure.

- Mandate the establishment of audit committees that comprise the S&P All Ordinaries Index and require that the composition, operation and responsibility of the audit council comply with the best practice recommendations of the Council.

The amendments apply to the first financial year of an entity commencing after 1 January 2003. For example, an entity with a financial year commencing on 1 July and ending on 30 June will be under an obligation to comply with the new requirements commencing 1 July 2003.

The rule amendments will be complemented by the publication of a completely revised Guidance Note on Corporate Governance, incorporating the best practice recommendations of the ASX Corporate Governance Council, which are to be released on 31 March 2003.

ASX encourages all listed entities to make an early transition to the best practice recommendations and in doing so consider and constructively adopt the recommendations to the extent that it is practicable in the context of their corporate governance reporting this year.

Listing rule 18.4 provides that ASX may publish transitional arrangements in relation to any new rule or rules.

To assist listed entities in the preparation of their annual reports the new rules and applicable transitional arrangements are outlined below.
Transitional arrangements

**Listing rule 4.10.2 – Audit Committee**

The rule that required all entities to report whether they had an audit committee and if not, to explain why, was deleted on 1 January 2003.

The practical effect is:

1. For full reporting periods commencing prior to 1 January 2003 the rule still has application. Accordingly, if an entity does not have an audit committee in respect of that period, it must explain why.

2. For full reporting periods commencing after 1 January 2003 different requirements apply depending on whether an entity is included in the S&P All Ordinaries Index as follows:

   2.1 For entities included in the S&P All Ordinaries Index at the beginning of its financial year – an audit committee is required by listing rule 12.7. The composition, operation and responsibility of that audit committee must comply with the best practice recommendations of the ASX Corporate Governance Council. ASX recognises that these best practice recommendations may require significant change within the operations of an entity including significant restructuring of the audit committee’s composition, and therefore transitional arrangements for compliance with the best practice recommendations will apply. These arrangements are outlined further below.

   2.2 For entities that are not included in the S&P All Ordinaries Index – an audit committee is not required by the listing rules. However an audit committee is a best practice recommendation of the ASX Corporate Governance Council. Therefore, if an entity does not have an audit committee it must state this and explain why in accordance with new listing rule 4.10.3.

The previous form of listing rule 4.10.2 is as follows:

4.10.2 Whether the entity had an audit committee as at the date of the directors’ report. If the entity did not, it must explain why.

**Listing rule 4.10.3 – Corporate Governance**

The rule is as follows:

4.10 An entity must include the following information in its annual report. The information must be current at a date specified by the entity which is no more than 6 weeks before the report is sent to security holders.

... 

4.10.3 A statement disclosing the extent to which the entity has followed the best practice recommendations set by the ASX Corporate Governance Council during the reporting period. If the entity has not followed all of the recommendations the entity must identify those recommendations that have not been followed and give reasons for not following them. If a recommendation had been followed for only part of the period, the entity must state the period during which it had been followed.

New listing rule 12.7 and the audit committee requirement for those entities in the S&P All Ordinaries Index is discussed further below.

In relation to the corporate governance reporting requirement, most listed entities have financial years commencing on 1 July, but some have financial years commencing on 1 January, and a handful have financial years commencing on other dates such as 1 April.

- an entity with a financial year commencing on 1 April and ending on 31 March will be under an obligation to comply with the new rule 4.10.3 commencing with the financial year that starts on 1 April 2003;
an entity with a financial year commencing on 1 July and ending on 30 June will be under an obligation to comply with the new rule 4.10.3 commencing with the financial year that starts on 1 July 2003; and

an entity with a financial year commencing on 1 January and ending on 31 December will be under an obligation to comply with the new rule 4.10.3 commencing with the financial year that starts on 1 January 2004.

ASX encourages entities to consider early adoption of the requirement to report on their corporate governance practices by reference to the ASX Corporate Governance Council best practice recommendations. ASX also notes that the exception reporting element of listing rule 4.10.3 provides an excellent opportunity for listed entities to report in a pro-active and positive way, by outlining the procedures and practices the entity intends to put in place in the future to comply with the best practice recommendations.

The previous form of listing rule 4.10.3 is as follows.

4.10 An entity must include the following information in its annual report. The information must be current at a date specified by the entity which is no more than 6 weeks before the report is sent to security holders.

…

4.10.3 A statement of the main corporate governance practices that the entity had in place during the reporting period. If a practice had been in place for only part of the period, the entity must state the period during which it had been in place.

Listing rule 12.7 – Audit Committee

The new rule is as follows:

12.7 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. The composition, operation and responsibility of the audit committee must comply with the best practice recommendations set by the ASX Corporate Governance Council.

There was no previous equivalent to this rule, which has its origins in listing rule 4.10.2.

The best practice recommendations of the ASX Corporate Governance Committee will be set and published on 31 March 2003.

The new rule applies to the first financial year of an entity commencing after 1 January 2003. Most listed entities have financial years commencing on 1 July, but some have financial years commencing on 1 January, and a handful have financial years commencing on other dates such as 1 April.

• an entity with a financial year commencing on 1 April and ending on 31 March will be under an obligation to have a complying audit committee during the financial year that starts on 1 April 2003 if they are included in the S&P All Ordinaries Index as at 1 April 2003;

• an entity with a financial year commencing on 1 July and ending on 30 June will be under an obligation to have a complying audit committee during the financial year that starts on 1 July 2003 if they are included in the S&P All Ordinaries Index as at 1 April 2003; and

• an entity with a financial year commencing on 1 January and ending on 31 December will be under an obligation to have a complying audit committee during the financial year that starts on 1 January 2004 if they are included in the S&P All Ordinaries Index as at 1 January 2004.

ASX encourages all entities to consider the feasibility of adoption of audit committees at the earliest practicable opportunity.
Composition, operation & responsibility of audit committee – transitional arrangements

As noted above, ASX recognises that implementation of the best practice recommendations in relation to the composition, operation and responsibility of audit committees is likely to entail substantive change within the operations of an entity including significant restructuring of the audit committee’s composition. Transitional arrangements will therefore apply to that element of listing rule 12.7, based on the exception reporting model. These transitional arrangements will only apply for the first relevant reporting period of an entity.

An entity under an obligation to have a complying audit committee may as an alternative include a statement disclosing the extent to which the audit committee complied with the best practice recommendations in relation to the composition, operation and responsibility of audit committees during the reporting period. If the audit committee does not comply with all of the recommendations the entity must identify those recommendations that have not been followed and give reasons for not following them. The entity should also outline the procedures and practices it intends to put in place to comply with the recommendations, and include a timetable for implementation of the recommendations.

ASX Online – eLodgement of Financial Reports – ASIC Relief from Dual Lodgement - Signatures

From 1 July 2003, a document given to ASX for release to the market must be given to ASX electronically. This includes financial reports which can be lodged with ASX as agent for ASIC under ASIC Practice Note 61: Relief from Dual Lodgement of Financial Reports.

Listed entities are reminded that pursuant to the arrangement between ASIC and ASX, although an eLodged document may not include a signature, an entity must retain a signed hard copy of the same document for a period of at least seven years.