



ASX

AUSTRALIAN SECURITIES EXCHANGE

## Guidance Note 22

# Director Disclosure of Interests and Transactions in Securities – Obligations of Listed Entities

**Issued:** March 2002

### Key topics

1. Disclosure of directors' securities transactions
2. The framework for disclosure
3. Obligation on listed entity
4. Agreement between director and listed entity
5. Form of notification
6. Disclosure of value
7. Trusts – change in responsible entity
8. Section 205G Corporations Act

### Listing Rules

1. Listing rule 3.19A
2. Listing rule 3.19B
3. Appendix 3X
4. Appendix 3Y
5. Appendix 3Z

### Cross-reference

1. Guidance Note 14 – Company Announcements Platform
2. Guidance Note 20 – ASX Online

### Guidance Note History

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## Introduction

1. This Guidance Note is published to assist listed entities to comply with their obligations under listing rules 3.19A and 3.19B and to give an overview of Australian Stock Exchange Limited (ASX) policy in relation to disclosure of directors' interests and transactions in securities.
2. A rule framework to require disclosure by entities of director's interests in securities and transactions in securities was introduced on 30 September 2001, following exposure of the proposals as part of the 2001 Exposure Draft of Listing Rule Amendments and the subsequent release of a specific Discussion Paper on the proposed amendments. Rules 3.19A and 3.19B apply to all entities (including foreign incorporated entities) admitted as an ASX Listing. The rules do not apply to ASX Foreign Exempt or Debt Listings.

## Background

3. ASX considers that investors in a listed entity, and the market in general, have a legitimate interest in relation to trading in its securities by directors. In order to be useful to the market, information about holdings must be up-to-date and, where changes have occurred, must enable investors to more readily understand the nature of the changes.

4. ASX also recognises that a director may choose to trade an entity's securities for a broad range of reasons which are unrelated to his or her knowledge of the entity. ASX does not believe that directors' securities trading is necessarily an indicator of an entity's prospects and discourages any perception that investors should rely on such information in making investment decisions.
5. ASX considers that disclosure of director's transactions is not generally a matter of continuous disclosure but primarily one of corporate governance, as it promotes transparency.

### **Interaction with section 205G**

6. The rule framework complements the director notification requirements of section 205G of the Corporations Act and there is a considerable degree of overlap between section 205G and listing rule 3.19A. Where an entity complies with listing rule 3.19A, the obligations of the relevant director under section 205G will also have been satisfied, subject to certain conditions, refer paragraph 17. Conversely, if information required by rule 3.19A is not given to ASX, the director may contravene section 205G, refer paragraph 20 in relation to ASIC relief under subsection 205G(6).
7. Listing rule 3.19A requires disclosure of the information required by section 205G of the Corporations Act, together with some additional information that promotes a better understanding of the information required by the Corporations Act. To that extent, the Listing Rule requirements are separate from the requirements of the Corporations Act. Importantly, the Listing Rules require disclosure within a five business day period, rather than the 14 day period prescribed by the Corporations Act.

### **The framework**

8. The essential elements of the rule framework are:
  - A listed entity must notify ASX of the information required by section 205G relating to director's relevant interests in its securities and interests in contracts relating to its securities. In the case of a trust, the obligation relates to the relevant interests or interests in contracts of directors of the responsible entity.
  - Additional information in relation to such matters as details of the value of the transaction and the position prior to and after a transaction must be provided.
  - The obligation to notify ASX arises when:
    - a director is appointed (**Appendix 3X**),
    - changes occur in a director's relevant interests or interests in contracts (**Appendix 3Y**).
    - the director ceases to be a director (**Appendix 3Z**).
  - Notification must be given within five business days.

- A listed entity must enter into arrangements with its directors that require a director to disclose to the entity all the information it needs to comply with the obligation to notify ASX.
- An entity is not required to notify ASX of any information which it does not have, and thus would not be in breach of the Listing Rules in such a case.

#### **Obligation on listed entity – enforcement of agreement**

9. Section 205G places the obligation to disclose on the director, but as the Listing Rules are a contract between ASX and listed entities, rules 3.19A and 3.19B place the primary notification obligation on the entity. In order to be able to make the required disclosure, the entity needs to enter into an agreement with each of its directors under which the director accepts a liability to provide the necessary information to the entity, to enable the entity to comply with the Listing Rules.
10. The entity's obligation is to enforce the agreement, and to give the information provided to it by the director to ASX. If information is not given to ASX because the director has not disclosed it to the entity, the entity does not breach rule 3.19A. However, if the entity does not take action to ensure that the director understands his or her obligations and makes the required disclosure, the entity will be in breach of rule 3.19B. Where an entity consistently fails to comply with its disclosure obligations this may indicate that it is not enforcing the agreement or that the procedures that it has in place are not adequate to ensure compliance with the rules.
11. Where the information required by rule 3.19A is not disclosed to the market in accordance with the time period prescribed by the rule, ASX expects that the market will be advised of the reason unless the breach is trivial. The advice given to the market should include the steps being taken by the entity to obtain the information and make the disclosure. ASX recognises that in some cases it may not be possible for the entity to take effective action to enforce the agreement with the director, for example where the director has resigned and left Australia. However, the market should be advised of the circumstances that explain why enforcement within the time period has not been possible.

#### **Form of agreement**

12. Rule 3.19B does not prescribe the form of the agreement between the entity and a director, as ASX believes that entities will find it appropriate to address the issue in a variety of ways. Similarly, listing rule 3.19B does not prescribe any formalities for the agreement between entity and director. Entities may wish to consider including appropriate procedures to ensure compliance with the Listing Rules as part of the terms of appointment of directors. Some entities will be satisfied with a letter agreement. Others may require the agreement to be executed as a deed. This is an internal management matter for the entity. The form of agreement given as an example in Attachment 1 to this Guidance Note is a letter agreement.

13. Entities and directors are therefore free to negotiate the precise nature of the content of the agreement. An entity could agree with a director, for example, that the director will provide a completed Appendix 3X, 3Y or 3Z to the entity, so that the entity's only responsibility is to give the Appendices to ASX. Alternatively, an entity could agree with a director that the director will merely provide details of changes in his or her interests to the entity so that the entity also has responsibility for preparing the Appendices.
14. The form of agreement in Attachment 1 assumes that the entity is able to adequately inform itself of changes in interests due to corporate actions and the director is only required to inform the entity of transfers of interests of which the director is the registered holder, and of details of changes in securities in which the director has a relevant interest.

#### **Initial Notification – Admission of Entity or Appointment of New Director**

15. Entities seeking admission to the official list must provide an Appendix 3X for each director when they are admitted. If a director is appointed to a listed entity, the entity must provide an Appendix 3X for the new director at the date of appointment.

#### **ASIC relief under section 205G(6) of the Corporations Act**

16. By instrument dated 2 December 2001, the Australian Securities & Investments Commission (ASIC) has granted class order relief under subsection 205G(6) of the Corporations Act, the effect of which is that a director of a listed public company will be relieved of his or her obligation under subsection 205G(1). This is on condition that all of the information which would have been required to be disclosed under that subsection of the Act is given to ASX by the company in compliance with the Listing Rules.
17. The company must also retain a “substantially faithful hard copy” of any notification given under listing rule 3.19A for a period of not less than seven years, where notification is given in hard form. This copy must be made available to ASIC or ASX on request.
18. Where notification is given to ASX electronically through ASX Online, the company must comply with the technical and security features of ASX Online and any other ASX procedures and requirements which may apply from time to time in relation to ASX Online.
19. Appendices 3X, 3Y and 3Z state that the information is provided to ASX as agent for the director for the purposes of section 205G. If the information required by rule 3.19A is not given to ASX, the director may contravene section 205G of the Corporations Act.

### **Form and manner of notification**

20. There is no requirement for the director to sign Appendices 3X, 3Y or 3Z. Normal verification procedures applicable to all announcements will apply to the Appendices, refer Guidance Note 14 - Company Announcements Platform and Guidance Note 20 - ASX Online. The Appendices are lodged both on behalf of the entity, in compliance with its obligations under rule 3.19A, and on behalf of the director, in compliance with his or her obligations under section 205G of the Corporations Act and in that way satisfy both the requirements of the Listing Rules and the Corporations Act.

### **Disclosure of value**

21. The disclosure requirements in Appendices 3X and 3Z are straightforward. ASX considers that the requirement in Appendix 3Y to disclose consideration or value in relation to a change in interests is also straightforward in most cases. Where transactions are on-market trades of quoted securities, the disclosure is of the price paid or received. The value of off-market trades in quoted securities can also be readily calculated by reference to the market price of the securities.
22. Valuing transactions in unquoted securities may be more difficult, particularly if the transaction is for nil consideration between family members, for example. However, valuation methodology exists which can be utilised for this purpose, for example options can be valued by the Black-Scholes method. In such cases the notification should include the method used or the basis for the valuation given. It is also appropriate to clarify any circumstances that may affect the valuation, for example where options are issued which may only be exercised subject to performance hurdles.

### **Trusts – change in responsible entity**

23. Section 205G does not apply to listed trusts, although a previous form of the provision - section 235 of the former Corporations Law - did. Consistent with that previous legislative provision, rule 3.19A requires disclosure of securities transactions by directors of the responsible entity of the trust.
24. The requirement in listing rule 3.19A.1 to disclose a director's interests "on the date that a director is appointed" encompasses a change in responsible entity. This means that where there is a change in responsible entity, the director's interests on the date that the company in question is appointed as the trust's responsible entity must be disclosed. Similarly, the requirement in listing rule 3.19A.3 to disclose a director's interests at the date that the director ceases to be a director encompasses a director's interests at the date that the company in question ceases to be the responsible entity and this notification must be given to ASX.

**Interaction with substantial holder notices under the Corporations Act**

25. Listed entities should be aware that the notification obligations in respect of substantial holdings under Chapter 6C of the Corporations Act are separate to the obligations under listing rule 3.19A. Any queries in this regard should be directed to ASIC.

**Issues List**

26. To further assist listed entities and directors in understanding the ambit and operation of rules 3.19A and 3.19B, an information sheet in the form of questions and answers is included in this Guidance Note as Attachment 2. This is not exhaustive of all the issues that may arise in relation to listing rule 3.19A and 3.19B and listed entities are advised to contact their Companies Advisor to discuss any further matters that may arise.

## **Attachment 1**

### **Pro-forma agreement between entity and director**

*This pro forma agreement is provided merely as a suggested form of agreement. Entities are free to negotiate the form of agreement required to satisfy rule 3.19B as they see fit.*

[letterhead of entity]

To: director/prospective director

#### **# Limited/Trust (the “Entity”)**

From 1 January 2002 the Entity is required, under the Listing Rules of Australian Stock Exchange Limited (“ASX”), to disclose to ASX details of directors’ interests in securities, and in contracts relevant to securities. The Entity is also required to enter into an agreement with directors under which directors are obliged to provide the necessary information to the entity.

If you agree to the following terms, please sign and return the enclosed copy of this letter.

#### **Initial disclosure**

1. The director will provide the following information as at the date of appointment.
  - Details of all securities registered in the director’s name. These details include the number and class of the securities.
  - Details of all securities not registered in the director’s name but in which the director has a relevant interest within the meaning of section 9 of the Corporations Act. These details include the number and class of the securities, the name of the registered holder and the circumstances giving rise to the relevant interest.
  - Details of all contracts (other than contracts to which the Entity is a party) to which the director is a party or under which the director is entitled to a benefit, and that confer a right to call for or deliver shares in, debentures of, or interests in a managed investment scheme made available by, the Entity or a related body corporate. These details include the number and class of the shares, debentures or interests, the name of the registered holder if the shares, debentures or interests have been issued and the nature of the director’s interest under the contract.
2. The director will provide the required information as soon as reasonably possible after the date of appointment and in any event no later than three business days after the date of appointment.

### **Ongoing disclosure**

3. The director will provide the following information.
  - Details of changes in securities registered in the director's name other than changes occurring as a result of corporate actions by the Entity. These details include the date of the change, the number and class of the securities held before and after the change, and the nature of the change, for example on-market transfer. The director will also provide details of the consideration payable in connection with the change, or if a market consideration is not payable, the value of the securities the subject of the change.
  - Details of changes in securities not registered in the director's name but in which the director has a relevant interest within the meaning of section 9 of the Corporations Act. These details shall include the date of the change, the number and class of the securities held before and after the change, the name of the registered holder before and after the change, and the circumstances giving rise to the relevant interest. The director will also provide details of the consideration payable in connection with the change, or if a market consideration is not payable, the value of the securities the subject of the change.
  - Details of all changes to contracts (other than contracts to which the Entity is a party) to which the director is a party or under which the director is entitled to a benefit, and that confer a right to call for or deliver shares in, debentures of, or interests in a managed investment scheme made available by, the Entity or a related body corporate. These details include the date of the change, the number and class of the shares, debentures or interests to which the interest relates before and after the change, the name of the registered holder if the shares, debentures or interests have been issued, and the nature of the director's interest under the contract.
4. The director will provide the required information as soon as reasonably possible after the date of the change and in any event no later than three business days after the date of the change.

### **Final disclosure**

5. The director will provide the following information as at the date of ceasing to be a director.
  - Details of all securities registered in the director's name. These details include the number and class of the securities.
  - Details of all securities not registered in the director's name but in which the director has a relevant interest within the meaning of section 9 of the Corporations Act. These details include the number and class of the securities, the name of the registered holder and the circumstances giving rise to the relevant interest.
  - Details of all contracts (other than contracts to which the Entity is a party) to which the director is a party or under which the director is entitled to a benefit, and that confer a right to call for or deliver shares in, debentures of, or interests in a managed investment scheme made available by, the Entity or a related body corporate. These details include the number and class of the shares, debentures or interests, the name of the registered holder if the shares, debentures or interests have been issued and the nature of the interest under the contract.
6. The director will provide the required information as soon as reasonably possible after the date of ceasing to be a director and in any event no later than three business days after the date of ceasing to be a director.

### **Agency**

7. The director authorises the Entity to give the information provided by the director to ASX on the director's behalf and as the director's agent.

### **Securities**

8. "Securities" for the purposes of this letter means securities of the entity or a related body corporate.

## **Attachment 2**

### **Listing Rule 3.19A Issues** **Disclosure of Directors' Interests**

**Issue: Are entities required to lodge Appendices 3X, 3Y and 3Z on behalf of alternate directors?**

"Director" is not defined in the Listing Rules. It is defined in the Corporations Act to include *"a person who is appointed to the position of an alternate director and is acting in that capacity"*.

Using that definition, Appendices 3X, 3Y and 3Z must also be completed for alternate directors for the purpose of listing rule 3.19A.

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**Issue: What is the purpose of the note to listing rule 3.19A which states, *An entity is not required to give information to ASX under this rule that, notwithstanding that it has complied with rule 3.19B, it does not have?***

The Listing Rules are a contract between ASX and listed entities. There is no contractual relationship between ASX and individual directors. The nexus between the director and ASX is the listed entity, and ASX requires the listed entity to make arrangements with each director to ensure the director discloses the required information to the entity, so that the entity may comply with the rule (listing rule 3.19B).

However, if information is not given to ASX because the director does not give the information to the entity, the entity does not breach listing rule 3.19A. In this way, the note acts as a "circuit breaker", as the entity requires information from a third party to comply with the rule.

The entity does, however, have an obligation to enforce the agreement with the director under listing rule 3.19B. If an entity consistently fails to comply with listing rule 3.19A this may indicate that it is not enforcing its agreement with directors or that its procedures are not adequate to ensure compliance, a breach of listing rule 3.19B.

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**Issue: If a director does not have a notifiable interest, is the entity required to lodge an Appendix 3X?**

An entity should lodge an Appendix 3X on behalf of all directors, either by commencement of trading on 9 January 2002, or upon the appointment of a director. Where there is no interest held by a director, the notifiable interest should be recorded as nil.

When there is a subsequent change in the notifiable interest from nil, i.e. a director purchases or receives securities, the entity should then lodge an Appendix 3Y. A note will be inserted to clarify this position.

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**Issue: Are entities required to lodge an Appendix 3X/3Y/3Z in respect of the spouse of a director?**

The issue here is whether a director has a “relevant interest” by virtue of a spouse (or anyone else for that matter) holding securities. Notifiable interest tracks the definition of relevant interest in the Corporations Act, refer in particular sections 608 and 609.

A person has a relevant interest if, amongst other things, they have the power to exercise, or control the exercise of, a right to vote attached to securities or have the power to dispose of or control the exercise of a power to dispose of securities. It doesn't matter how remote the interest is. In the case of a spouse, a relevant interest may arise where securities are jointly held. An interest may also arise where securities are held in a family trust or superannuation fund.

While entities are not required to lodge any of the Appendices in respect of the spouse of a director (assuming of course, that the spouse is not a director), the director should be aware of the obligation to advise ASX of notifiable interests. Where control can be exercised over the spouse's holding, or such holdings are held jointly, there may be a requirement for an entity to notify of that director's holding within their lodged Appendices.

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**Issue: What does Part 3 of Appendix 3X refer to?**

The reference to "*director's interest in contracts*" was a shorthand reference to paragraph (a)(ii) of the definition of "notifiable interest". This paragraph in the definition states:

*Interests in contracts to which the director is a party or under which the director is entitled to a benefit, and that confer a right to call for or deliver shares in, debentures of, or interests in a managed investment scheme made available by, the company or a related body corporate.*

The paragraph picks up the language of s.205G(1)(b) of the Corporations Act.

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**Issue: How should interests in options be disclosed?**

Part 1 is the appropriate part of Appendix 3X for interests in options to be disclosed. The Listing Rules definition of "securities" includes options. Therefore, a director who has a relevant interest in options (because the director holds or controls them) has a relevant interest in a class of "securities" for the purposes of Part 1 of Appendix 3X.

People may be confused because s.205G(1)(a) of the Corporations Act refers to relevant interest in "securities" but the Corporations Act definition of "securities" in s.92 does not include options.

Section 205G(1)(b) appears to be intended to pick up interests in options, because options are not included in the Corporations Act definition of "securities" and therefore options are not covered by s.205G(1)(a).

As options are recognised by the Listing Rules as a class of securities, it is clearer and more convenient to disclose information about them in Part 1 of Appendix 3X than in Part 2.

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**Issue:** When an entity lodges an Appendix 3Y and there is a change of interest (either direct or indirect) in only one class of security of the director, is there a requirement for the entity to restate in Appendix 3Y all of the securities held by the director (including both direct and indirect), or is it enough to just state the number of securities held in the class that has changed?

Ideally, the Appendix 3Y should restate all of the securities held at the time, the interest that has changed and the number of securities held after the change, even if there is only a change in just one holding/interest, either direct or indirect. That way, the latest form gives a complete picture of the directors' current position in all types of securities held in the entity.

For example, if a director holds 200,000 shares in XYZ Company, 50,000 options and through a family trust account (Director Family Trust) holds 100,000, and then purchases 50,000 shares on market for himself, the Appendix 3Y would state:

<b>Direct or Indirect Interest:</b>	Direct Interest
<b>No. of securities held prior to change:</b>	200,000 shares 50,000 options 100,000 shares - (Director Family Trust)
<b>Number acquired:</b>	50,000 shares
<b>No. of securities held after change:</b>	250,000 shares 50,000 options 100,000 shares - (Director Family Trust)
<b>Nature of change:</b>	On-market purchase

However, if the director's total position is not restated in the Appendix 3Y, it should still be possible to ascertain a particular director's holding at any given time, by tracing back through previous Appendix 3Y's lodged, and the initial Appendix 3X notification lodged.

**Issue: Is an entity required to lodge an Appendix 3Y in respect of a director that moves shares between indirect interests held but where the overall relevant interest does not change? For example, if a director has 1000 shares, held indirectly by A Pty Ltd (in which the director is a major shareholder) and 1000 shares held indirectly by B Pty Ltd (in which the director is a major shareholder) and moves 500 shares out of A into B, is there a requirement to lodge an Appendix 3Y?**

For the purposes of listing rule 3.19A, the relevant interests of the director have not changed, although the way it is held/the nature of the interest has. Technically, while the relevant interests have not changed (ie, the director still has the same control over the securities whether they are held by A or B) there is no strict requirement to formally lodge an Appendix 3Y. For completeness however, it would be preferable if the director gave the information to the entity and the entity lodged an Appendix 3Y on behalf of the director. However if this is not done, the entity may update the information in the next Appendix 3Y it lodges on behalf of the director (i.e. when there is a change in the relevant interest).

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**Issue: What disclosure is required in relation to interests in a managed investment scheme?**

Disclosure of interests in a managed investment scheme is required where the listed entity is a trust. The disclosure is of the interests held in the trust by directors of the responsible entity. Disclosure of interests in a managed investment scheme may also be required where the listed entity is a company. If the company makes interests in a scheme available, e.g. a cash management fund, or a scheme relating to agricultural production, there must be disclosure of directors' holdings of such interests. The Listing Rules definition of "securities" includes interests in a scheme. The Listing Rule requirement mirrors the requirement under s.205G(1) because the Corporations Act definition of "securities" in s.92 also includes interests in a scheme.

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**Issue: Are ASX Debt Listings and ASX Foreign Exempt Listings required to lodge Appendices 3X, 3Y and 3Z?**

No. Listing rules 3.19A and 3.19B only apply to entities admitted as ASX Listings.

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**Issue: Does lodgement of Appendices 3X, 3Y and 3Z relieve a director from lodging a substantial holder notice?**

No. Substantial holder notices are a separate matter from both director disclosure under s.205G and disclosure by entities under listing rule 3.19A.