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Submission to the 4th ed consultation draft of the Corporate Governance Principles and Recommendations

Thomson Reuters Connect 4 is part of Thomson Reuters (Professional) Australia Ltd and specialises in providing databases of ASX listed entity information to the legal, financial services, government, accounting, executive recruitment and university sectors.

Thomson Reuters Connect 4's range of databases covers corporate transaction details, director/executive information and remuneration, company announcements, ASX listing rule waivers and documents (annual reports, prospectuses and bidder & target statements). Access to Corporate Governance Statements is provided via the Company Announcements and Annual Report databases as well as certain data points are collected from the Corporate Governance Statements for the Boardroom database.

This submission to the 4th edition Consultation draft is based on firsthand experience of Thomson Reuters Connect 4 and its observations of investors, stakeholders and other third parties wanting to access Corporate Governance Statements as well as interpreting and extracting data from the information they contain.

The aims of this submission are to highlight:

- the need for changes to commentary around the lodgement of Corporate Governance Statements to ensure greater compliance with ASX Listing Rule 4.7.4
- the lack of compliance by listed entities with ASX Listing Rule 4.7.4
- the importance of listed entities lodging Corporate Governance Statements (and other company announcements) rather than just putting them on corporate websites and providing a weblink
- additional information commonly sought by investors and researchers

This submission covers:

1/ Corporate Governance Statements overall

- Rewrite of 'The linkage with ASX's Listing Rules' section (p. 4, 4th edition Consultation draft)
- Elimination of any ambiguity by changing any references throughout the draft or other commentary and publications to the corporate governance statement to better reflect ASX Listing Rule requirements
- Greater emphasis on using the listed entity's balance date as the 'current' date and to base information on this rather than the 'later date' option

2/ Recommendation sub-points to add or modify

- Add 'Recommendation 1.5 (d) – Disclose the total number of employees for each reporting period'
- Add 'Recommendation 2.3 (d) the country of residence of each director'
- Modify Recommendation 7.3 (a) to better disclose the internal auditor outsource or co-source parties



3/ Not providing an adequate explanation and over reliance on links to the website to provide information in the Corporate Governance Statements

- Not providing an adequate explanation of recommendations
- Over reliance on links to the website to provide information

4/ Some common mistakes when completing or lodging Corporate Governance Statements

1/ Corporate Governance Statements overall

Rewrite of 'The linkage with ASX's Listing Rules' section (p. 4, 4th edition consultation draft)

Recommendation

'The linkage with ASX's Listing Rules' section (4th edition Consultation draft, p. 4) needs to be rewritten to clarify the requirements for ASX listed entities about lodging the Corporate Governance Statement either separately or within the annual report with the ASX and the URL to the Corporate Governance Statement on the company's website.

It is recommended that the following be inserted between the 'The linkage with ASX's Listing Rules' heading and the altered first paragraph to make it clear what the Listing Rules require.

An entity is to lodge with the ASX the following:

- *A copy of the annual report (Listing Rule 4.7)*
- *If not part of the annual report, a copy of the Corporate Governance Statement at the same time as the annual report (Listing Rule 4.7.4)*
- *A completed Appendix 4G (Listing Rule 4.7.3)*

*An annual report can have either a Corporate Governance Statement or a URL of the page on its website to where the Corporate Governance Statement is located (Listing Rule 4.10.3). IF the URL option is used, a copy of the Corporate Governance Statement **must still be lodged with the ASX (Listing Rule 4.7.4).***

Explanation

While the text is new, it is purely to clarify what is currently required by the ASX Listing Rules as there are many cases of the ASX Listing Rules not being followed by listed entities. The current 3rd edition of the Corporate Governance Principles and Recommendations creates confusion regarding the requirements for entities on lodging Corporate Governance Statements with the ASX due to lack of clarity. The proposed 4th edition of the Corporate Governance Principles and Recommendations continues this confusion by not taking the opportunity to clarify the requirements demanded by the ASX Listing Rules.

According to Thomson Reuters Connect 4 unpublished data for the 2017 financial year, approximately 160 entities that lodged their 2017 annual report did not include a 2017 Corporate Governance Statement within the annual report nor lodge it at the same time as the annual report as required by ASX Listing Rule 4.7.4. The data does not include ETFs, mFunds, delisted entities, suspended entities or entities under DOCA/administration.

The failure of listed entities to lodge Corporate Governance Statements also occurred in 2015 and 2016 financial years and were noticeably significant. Data was not collected over these years and therefore not quantifiable as it wasn't realised how big the issue was or that it would be ongoing.



The non-lodgement of Corporate Governance Statements with the ASX has become a major issue since the adoption of the 3rd edition of Corporate Governance Principles and Recommendations and listed entities were given the option to lodge them separately from the annual reports. In the 1st and 2nd editions, Corporate Governance Statements were required to be part of the annual report and therefore wasn't a major issue as it is now.

Corporate Governance Statements are an important part of annual information provided to the market by listed entities. Investors and other users of these documents are researching individual companies as well as undertaking thematic research. Based on Thomson Reuters Connect 4 customers, demand in terms of both quantity and quality for corporate governance information has increased significantly since 2003.

It is imperative the Corporate Governance Statements are lodged with the ASX as once the demand goes beyond the latest version and if they are not lodged, they can be quite difficult or impossible to locate. This is due to any of the following reasons:

- listed entities nearly always have only the latest version available i.e. no historical collection
- website isn't updated with the latest version e.g. a company is still showing the 2014 version
- website isn't updated in a timely manner
- the listed entity delists and the website is subsequently decommissioned
- the listed entity changes its name/website and the previous website is subsequently decommissioned

Elimination of any ambiguity by changing any references throughout the draft or other commentary and publications to the corporate governance statement to better reflect ASX Listing Rule requirements

Recommendation

Throughout the draft and other commentary and publications there are constant references to the Corporate Governance Statement being 'disclosed in either in the entity's annual report or on its website' or similar.

Mentions and references in 4th edition Consultation draft should be reworded or changed in the final version to reflect ASX Listing Rule requirements by:

- changing any mention of the URL or website option to include that if not in the annual report, the Corporate Governance Statement must be lodged. Example: pages 4 & 5, 4th edition Consultation draft of the Corporate Governance Principles and Recommendations.
- changing any mention of the URL or website option and Listing Rule 4.10.3 to include that if not in the annual report, the Corporate Governance Statement must be lodged (Listing Rule 4.7.4).
- move any footnote references of 'Listing Rule 4.7.4' into the main text. Example: 4th edition Consultation draft, p. 4.

This recommendation should also be used when putting together new commentary and publications.



Explanation

Constant use of this misleading reference gives the impression that the Corporate Governance Statement is only required to be in the annual report or a URL provided (Listing Rule 4.10.3) when it is not the case. As stated in the Explanation in the previous recommendation, in 2017, a large number of listed entities that did not lodge a Corporate Governance Statement with the ASX as per Listing Rule 4.7.4.

Adding that the Corporate Governance Statement must be lodged if not in the annual report and Listing Rule 4.7.4 to any reference will help change the approach / mindset of those having to follow the Listing Rules and reinforce what is required.

Greater emphasis on using the listed entity's balance date as the 'current' date and to base information on rather than the 'later date' option

Recommendation

Amend paragraph 5 of the 'The linkage with ASX's Listing Rules' section (4th edition Consultation draft, p. 4) to place a greater emphasis on using the 'balance date' as the preferred option for the current date and to base information on. The 'later date specified' option should only be used in limited circumstances e.g. listing, coming out of liquidation/DOCA.

Explanation

The whole idea of the Corporate Governance Statement is to provide information so "investors can make informed investment decisions" (4th edition Consultation draft, p. 30) in conjunction with the annual report.

By using the balance date, corporate governance information can be more easily correlated to the annual report information which relies on the balance date. As a result, investors have the potential to make a more informed decision.

The 'later date specified' option has its drawbacks due to listed entities having up to four months to lodge annual reports (if lodged on time). Under this option, the further away from the balance date the Corporate Governance Statement is dated, the more the information is not reflective of the state of affairs at the date of the financial information.

Example of where this creates issues are:

- very little information provided on company directors who have changed between the balance date and the later specified date such as not showing whether they are independent or not
- showing committee members only at the later specified date rather than the balance date

It also occurs where listed entities lodge Corporate Governance Statements to catch up on their Corporate Governance Statement filings. Instances have been observed where listed entities lodge the Corporate Governance Statements up to 12 months after the balance date (e.g. 30 June 2017) but date it at the time of lodgement (e.g. May 2018) and only contain information current at the lodgement date.

This recommendation also needs to be reflected in ASX Listing Rule 4.10.3.



2/ Recommendation sub-points to add or modify

Add 'Recommendation 1.5 (d) – Disclose the total number of employees for each reporting period'

Recommendation

Add Recommendation 1.5 '(d) – Disclose the total number of employees for each reporting period'

Explanation

The total number of employees is often used as a filter or as part of a theme by investors and researchers undertaking thematic research. Many listed entities do not provide this figure in announcements or documents lodged with the ASX and this makes it difficult for this type of research to be carried out.

The total could be included as a separate figure in Recommendation 1.5 or added to the gender diversity table in Recommendation 1.5 (c) (iv). It is an easy figure for listed entities to provide - especially for those gathering more complex employee data for the gender diversity table.

Add 'Recommendation 2.3 (d) the country of residence of each director'

Recommendation

Add 'Recommendation 2.3 (d) the country of residence of each director'

Explanation

The country of residence of each director is in demand by investors and researchers as it helps build out the profile of directors. Currently it is either not disclosed nor clearly disclosed by listed entities and Recommendation 2.3 would be the appropriate position to locate such a disclosure.

Modify Recommendation 7.3 (a) to better disclose the internal auditor outsource or co-source parties

Recommendation

Modify Recommendation 7.3 (a) to better disclose the internal auditor outsource or co-source parties

Change 7.3 (a) to:

(a) if it has an internal audit function, how the function is structured, what role it performs and if outsourced or co-sourced, name these parties;

Explanation

The changes to Recommendation 7.3 in the 3rd edition of the Corporate Governance Principles and Recommendations highlighting the internal audit function made significant improvements in the disclosure of this information over previous editions.



However greater emphasis needs to be placed on clarification on whether the internal audit function was outsourced or co-sourced and who these parties were. Currently some listed entities are not clearly stating this or who are the other parties involved. An example is where a listed entity stated that the internal audit function was “outsourced to an accounting firm” rather than identifying the firm.

Identification of these entities and the status of the relationship will assist investors and others in finding key information about the internal audit relationships in place.

3/ Not providing an adequate explanation and over reliance on links to the website to provide information in the Corporate Governance Statements

Not providing an adequate explanation of recommendations

As alluded to in ‘Disclosing the fact that a recommendation is followed’ on page 6 of the 4th edition Consultation draft, listed entities should explain the policies and practices in place rather than a one sentence disengaged response. A more detailed response provides a more accurate reflection of the listed entity’s adoption / non-adoption of the recommendation.

Over reliance on links to the website to provide information

In the same vein, some listed entities are providing links to parts of their website instead of an informative explanation in response to a recommendation.

This short changes investors and others both of an informative response and the lack of a permanent record beyond the current website. Websites and their content frequently change so if not lodged, the information is more or less lost as changes are made and difficult for investors to find when undertaking research – particularly when researching more than one year. It also creates difficulty matching up information to the relevant year/time of application.

4/ Some common mistakes when completing or lodging Corporate Governance Statements

There are some common mistakes made by listed entities when completing or lodging Corporate Governance Statements under the current 3rd edition of the Corporate Governance Principles and Recommendations and are still likely to be made under the proposed 4th edition. Note: Thomson Reuters Connect 4 only collates a limited number of data points and the observations are based on these.

Some common mistakes are:

Not disclosing the names of the independent directors as per Recommendation 2.3 (a)

Examples:

- not identifying which directors are the independent directors at all
- not identifying the independent status of former directors
- stating the information is in the annual report but then do not disclose it in the annual report
- stating “yes we have majority independent directors” but do not identify them



Incorrectly classing 'executive directors' as independent

- misidentifying 'executive directors' including MD/CEOs as independent directors

Not disclosing the names of committee members (when committees are in place)

Where nomination (Recommendation 2.1), audit (Recommendation 4.1), risk (Recommendation 7.1) and remuneration (Recommendation 8.1) committees are in place, some listed entities:

- do not identify the committee members
- do not identify the committee chair

Incorrectly state the chair as independent when the chair is an executive director

Some listed entities state "yes we meet the recommendation that the chair of such and such a committee is an independent director" but clearly don't meet it as the named director is not independent due to being either:

- the MD/CEO
- an executive director

Lodging corporate governance plans/policies/charters under the guise of lodging Corporate Governance Statements

- under the guise of lodging Corporate Governance Statements as required, listed entities lodge their corporate governance plans/policies/charters instead. This means the information required by the Corporate Governance Statement doesn't get lodged.

Using a summary of the Corporate Governance Statement in the annual report with a link to the website for the full version and not lodging a full copy with the ASX

- Providing only a summary (often only half a page) and a link to the full version on the listed entity's website in the annual report. This, if a full version is not lodged with the ASX also, does not comply with ASX Listing Rule 4.7.4.

Not dating the Corporate Governance Statement

- Some listed entities do not specify the date of their Corporate Governance Statement as required by Listing Rule 4.10.3. This creates difficulty in identifying which reporting period the Corporate Governance Statement belongs to – particularly when no years are mentioned within the document.

Please feel free to contact me with any queries concerning this submission.

Yours sincerely,

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