



# **Proposed Governance-Related Listing Rule Amendments**

## **Supplementary Consultation**

**21 February 2014**

# Supplementary Consultation Paper

## Proposed Governance-Related Listing Rule Amendments

### Introduction

On 16 August 2013 ASX released for public comment:

- a consultation paper entitled [Proposed Changes to ASX Listing Rules and Guidance Note 9: Corporate Governance Disclosures](#);
- a document entitled [Proposed Governance-Related Amendments to the ASX Listing Rules](#), which set out in mark-up proposed governance-related amendments to ASX's Listing Rules and described in detail the purpose of the amendments; and
- a marked-up version of [proposed changes to Guidance Note 9](#).

Most of the changes proposed to the Listing Rules and to Guidance Note 9 were intended to complement and give effect to the reforms proposed by the ASX Corporate Governance Council in a [separate consultation paper](#) relating to a proposed new (third) edition of its *Corporate Governance Principles and Recommendations*. However, ASX also took the opportunity to seek feedback on some other proposed governance-related changes to its Listing Rules. These included the introduction of a new Listing Rule 3.19B, requiring the disclosure of on-market purchases of securities on behalf of employees or directors or their related parties under an employee incentive scheme. They also included amendments to a number of Listing Rules that currently apply to "associates", extending their reach to "related parties".

ASX invited written comments from interested stakeholders on the consultation materials. Submissions were due by Friday, 15 November 2013.

ASX gave a number of presentations and held a number of meetings with various stakeholders over the consultation period. These included national road show presentations in Brisbane (16 September), Melbourne (18 September), Adelaide (19 September), Sydney (20 September) and Perth (26 September).

### Consultation feedback on governance-related Listing Rule changes

ASX received 21 non-confidential and 3 confidential submissions in response to its consultation paper. Copies of the non-confidential submissions are available on the [ASX website](#).

ASX would note that all of the submissions it received related to the proposed Listing Rule changes. ASX did not receive any specific feedback on the changes proposed to Guidance Note 9.

ASX would like to express its gratitude to each respondent who took the time and trouble to send written submissions to ASX. ASX has found the feedback provided by respondents invaluable in understanding the perspectives and concerns of various stakeholders.

Generally speaking, the submissions mostly supported the changes proposed by ASX to complement and give effect to the reforms proposed by the ASX Corporate Governance Council in the third edition of its *Corporate Governance Principles and Recommendations*, although some parties did express opposition to the introduction of proposed Appendix 4G (key to governance disclosures) on the basis of the added administrative burden it would cause for listed entities.

However, there was considerable opposition to the introduction of Listing Rule 3.19B and the extension to "related parties" of the various Listing Rules that currently apply to "associates". As a consequence of this feedback, ASX has decided not to proceed with the introduction of Listing Rule 3.19B and has modified its proposed changes to the various Listing Rules dealing with "associates". ASX has also modified some of the other governance-related changes proposed to its Listing Rules.

A brief summary of the changes to the Listing Rule amendments original consulted upon appears in the next section of this supplementary consultation paper.

A more detailed summary of the submissions received in the consultation and ASX's response appears in Annexure A.

## Supplementary Consultation Paper Proposed Governance-Related Listing Rule Amendments

### Modifications proposed to governance-related Listing Rule changes

ASX is intending to proceed with the governance-related changes originally consulted upon in August 2013, subject to the modifications below and to any further modifications ASX may decide to make in response to the submissions it receives in this supplementary consultation.

In summary, the changes ASX intends to make to the amendments original consulted upon are:

- **Listing Rule 1.1 condition 13** – ASX intends to make a minor drafting correction in the second paragraph so that the amendments to this rule are consistent with the amendments to Listing Rule 12.7.
- **Listing Rule 3.16.4** – ASX intends to substitute the term “child entity” for “related entity” in most places and to add after the references to sections 199A and 199B the words “(or, if the entity is not established in Australia, the laws applicable in the jurisdiction where it is established)”.
- **Proposed Listing Rule 3.19B** – ASX intends to drop this proposed new rule and replace it with the new Listing Rule 4.10.22 mentioned below.
- **Listing Rules 4.7 and 4.10.3** - ASX intends to add a note to these rules stating that while the amendments to be made on 1 July 2014 apply in respect of financial years ending on or after 30 June 2015, a listed entity may adopt the amendments in respect of an earlier financial year, if it wishes to do so.
- **Listing Rule 4.10.22 (new)** – this is a new Listing Rule intended to replace proposed new Listing Rule 3.19B originally consulted upon. It will require a listed entity to include in its annual report, as a one-off annual disclosure covering the whole of the reporting period, the substance of the information that would have been required to be disclosed continuously under the proposed Listing Rule 3.19B.
- **Listing Rule 10.1** – ASX intends to make a minor change to the heading to this rule.
- **Listing Rule 10.14** – ASX is no longer intending to substitute “related party” for “associate” in Listing Rule 10.14.2, as was proposed in the initial consultation, and instead is adding a cross reference to the new definition of “associate” in Listing Rule 19.12. To improve the flow of Listing Rules 10.14, 10.15 and 10.15A, ASX also intends to remove the exception in what is currently the last sentence of the opening paragraph of Listing Rule 10.14 and relocate it in a new Listing Rule 10.15B (see below).
- **Listing Rule 10.15B (new)** – this replaces the exception in what is currently the last sentence of the opening paragraph of Listing Rule 10.14. It includes the changes to that exception originally consulted upon, and extends them to cover the issue of options and performance rights that will be satisfied by the purchase of securities on market.
- **Listing Rule 10.16** – again, ASX is no longer intending to substitute “related party” for “associate” in this rule, as was proposed in the initial consultation, and instead is adding a cross reference to the new definition of “associate” in Listing Rule 19.12.
- **Listing Rule 19.12** – ASX is not intending to proceed with the proposed change to the definition of “associate” deeming a related party of a director or officer to be their associate, but instead is intending to include a provision to the effect that a related party of a director or officer of the entity or of a child entity is to be taken to be an associate of the director or officer unless the contrary is established and to add a note that one way in which it may be established that a related party of a director or officer is not their associate is for the director, officer or related party in question to give a statutory declaration to the entity to that effect. ASX also intends to make some further very minor drafting corrections to the definition of “promoter”.

For completeness, ASX is intending to proceed with the amendments to Listing Rules 4.10, 12.7 and 14.11 and the proposed new definition of “corporate governance statement” in Listing Rule 19.12, in the form originally consulted upon, without any changes.

## Supplementary Consultation Paper Proposed Governance-Related Listing Rule Amendments

All of the above Listing Rule changes are proposed to come into effect on 1 July 2014, at the same time as the ASX Corporate Governance Council's proposed third edition of its *Corporate Governance Principles and Recommendations*.

### Other non-governance related Listing Rule changes now proposed

ASX is proposing to make some further changes to its Listing Rules over and above the governance-related changes originally consulted upon in August 2013:

- **References to “market price”** – ASX is proposing to tidy up the various references to “market price” in the Listing Rules (specifically Listing Rules 4.10.8, 6.22.2, 7.1A.3, 7.2 Exception 15, 7.3.3, 7.3A.2, 7.3A.6, 7.11.3, 7.33, 10.12 Exception 8, 10.15.3, 10.15A.3 and 19.12) and replace them with a reference to “closing market price” or “volume weighted average market price”, as appropriate.

As a consequence, the definition of “market price” is being deleted from Listing Rule 19.12 and new definitions of “closing market price” and “volume weighted average market price” are being added.

The definition of “volume weighted average market price” is intended to take account of trading on the Chi-X market as well as the ASX market. To achieve this, ASX is proposing to amend Listing Rule 19.12 to delete the definition of “Trading Platform” (which currently is used in the definition of “market price” and which only includes trading on the ASX) and replace it with definitions of “ASX market” and “Chi-X market”. This will require some minor consequential changes to Listing Rules 3.19A.2 and 7.11.2 and also to the definition of “marketable parcel” in Listing Rule 19.12. The redundant definition of “trading participant” in Listing Rule 19.12 will also be deleted.

It should be noted that the proposed definition of “closing market price” only takes account of prices on the ASX market. The reason for this is that Chi-X does not have a closing auction.

- **Listing Rule 7.2 Exception 2** – ASX is proposing to add an explanatory note to exception 2 in Listing Rule 7.2 to clarify that the exception only applies to the issue to an underwriter under an underwriting agreement of securities comprising the shortfall from a pro rata issue to holders of ordinary securities. It does not apply to any other issue of securities to the underwriter under an underwriting agreement (for example, in payment of an underwriting fee or other amount due under an underwriting agreement).
- **Listing Rule 10.12 Exception 1** – ASX is proposing to add an explanatory note to exception 1 in Listing Rule 10.12 to clarify that the exception only applies to securities taken up as part of a pro rata issue. It does not apply to a person taking up all or part of the shortfall of a pro rata issue. For example, a director who has taken up their entitlement in a pro rata issue cannot take up shortfall securities under this exception, even if the shortfall is allocated on a pro rata basis to those participating in the shortfall.
- **Listing Rule 10.17** – this rule regulates the fees payable to the directors of a listed entity. ASX is proposing to amend this rule to improve its drafting and to clarify its intent.
- **Listing Rule 14.2** – in response to a submission received from the Governance Institute of Australia in the initial consultation, ASX is proposing to amend Listing Rule 14.2 to require a proxy form to give a security holder the ability to direct their proxy to abstain from voting on a resolution or to vote or abstain from voting on a resolution at the proxy's discretion. It also requires, if the proxy form specifies that the chair of the meeting is appointed as proxy if a security holder does not appoint another person to act as their proxy or the chair is appointed proxy by default, that the proxy form must also include a statement as to how the chair intends to vote undirected proxies. In addition it removes the requirement for a so-called “chairman's box” in a proxy form that currently appears in Listing Rules 14.2.3A and 14.2.3B. On this last point, the submission to ASX noted that the requirement to tick the chairman's box is often overlooked by security holders when they complete their proxy forms, meaning that their votes are not taken into account on resolutions to which voting exclusions apply under the Listing Rules. ASX does not consider this a desirable outcome.

## Supplementary Consultation Paper Proposed Governance-Related Listing Rule Amendments

- **Listing Rule 14.11.1** – ASX is proposing to correct some minor typographical errors and clarify which parties are to be covered by a voting exclusion statement for the purposes of Listing Rule 10.14.
- **Listing Rule 17.5** – ASX is proposing to correct an omission from the consequential changes made to the Listing Rules in conjunction with the new reporting rules for mining entities and oil and gas entities that came into effect on 1 December 2013. The amendments to Listing Rule 17.5 will reinstate the power ASX had under the pre-1 December 2013 rules to suspend a mining exploration entity's securities from quotation if it fails to give to ASX an Appendix 5B and will also give ASX the same power to suspend an oil and gas exploration entity as it has for a mining exploration entity that fails to provide a quarterly report or Appendix 5B.
- **Other minor amendments** – ASX is proposing to make some other minor drafting amendments to the Listing Rule 1.10.2, the explanatory note to Chapter 5 and the definitions of “net tangible asset backing” and “security purchase plan” in Listing Rule 19.12, and also to update Listing Rules 15.5, 15.7 and 18.1.2 to reflect changes in its internal processes.

All of the above Listing Rule changes are proposed to come into effect on 1 July 2014.

### Mark-up of proposed Listing Rule changes

Accompanying this supplementary consultation paper are the [modified changes to the ASX Listing Rules](#) now proposed by ASX, together with a [mark-up](#) identifying (in green) how the modified rule changes vary from the proposed rule changes originally consulted upon in August 2013.

The modified changes and mark-up do not include the proposed Appendix 4G. This will need to be updated for the final version of the third edition of the Corporate Governance Council's *Corporate Governance Principles and Recommendations*. This document is expected to be published in March 2014.

### Supplementary consultation

ASX is inviting comment from listed entities, their advisers and other stakeholders on the modified changes it is now proposing to its Listing Rules.

Having consulted extensively on the governance-related changes originally proposed to its Listing Rules in August 2013, ASX is not seeking to go over old ground and would ask respondents to limit their comments on the governance-related changes to the proposed new Listing Rules 4.10.22 and 10.15B and the modified definition of “associate” in Listing Rule 19.12 mentioned above.

Since it has not consulted on them previously, ASX is happy and keen to receive feedback on any of the other non-governance related Listing Rule changes mentioned above including, in particular, the proposed changes to Listing Rule 10.17 regarding directors' fees, the proxy form requirements in Listing Rule 14.2 and the replacement of the various references to “market price” in the Listing Rules with references to “closing market price” or “volume weighted average market price”.

If you wish to provide comments, please do so by Friday, 28 March 2014 to the following email address: [mavis.tan@asx.com.au](mailto:mavis.tan@asx.com.au).

ASX is proposing to make the submissions it receives in response to this consultation paper publicly available on its website unless a respondent clearly indicates that they wish their submission to remain confidential.

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# Annexure A

## Feedback on Proposed Listing Rule Amendments Originally Consulted Upon and ASX's Response

### Introduction

This Annexure contains a summary of the suggestions made in response to ASX's August 2013 consultation paper on proposed governance-related changes to its Listing Rules and ASX's response to those suggestions.

To help keep the length of this Annexure manageable, in many cases ASX has condensed and/or paraphrased the suggestions. The detailed argument or justification accompanying the suggestions has not been included. ASX apologises to any respondent who feels that ASX's condensing and/or paraphrasing of any particular issue it has raised does not do it justice.

A number of respondents made submissions on various issues to similar effect. Rather than repeat them, ASX has in many cases selected and/or paraphrased the submission that best encapsulates the substance of the point being made. Accordingly, where there are multiple respondents noted as having raised the same point, it should be appreciated that they may have expressed the point in somewhat different terms. Again ASX apologises to any respondent who feels that this treatment of any particular issue it has raised does not do it justice.

### Submission received

As mentioned above, ASX received 21 non-confidential and 3 confidential submissions in response to its consultation paper. Copies of the non-confidential submissions are available on the [ASX website](#).

Non-confidential submissions were received from:

- 3 Degrees Consulting Pty Ltd ("3 Degrees")
- AMP Limited ("AMP")
- Australian Council of Superannuation Investors ("ACSI")
- BHP Billiton Limited ("BHP")
- British Columbia Investment Management Corporation ("bcIMC")
- Chorus Limited ("Chorus")
- Commonwealth Bank of Australia ("CBA")
- Corrs Chambers Westgarth ("Corrs")
- Governance Institute of Australia ("GIA")
- GRT Lawyers ("GRT")
- Herbert Smith Freehills ("HSF")
- Institutional Shareholder Services Inc ("ISS")<sup>1</sup>
- King & Wood Mallesons ("KWM")
- Macquarie University Department of Accounting and Corporate Finance ("Macquarie University")
- Net Balance Management Group Pty Ltd ("NBMG")
- Ownership Matters ("OM")
- QBE Insurance Group Limited ("QBE")
- SNS Asset Management NV ("SNS")
- Telstra Corporation Limited ("Telstra")
- The Corporations Committee of the Business Law Section of the Law Council of Australia ("LCA")
- The Executive Remuneration Reporter ("ERR")

The suggestions made in the three confidential submissions are identified in this Annexure as "Confidential 1", "Confidential 2" and "Confidential 3".

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<sup>1</sup> The ISS submission essentially just summarised the proposed Listing Rule changes.

Respondent	Comment	ASX Response
<b>Listing Rule 1.1 Condition 13 (admission condition re corporate governance statement)</b>		
N/A	No substantive comments received.	ASX intends to proceed with the changes to this rule, effective 1/7/2014.
<b>Listing Rule 3.16.4 (material terms of any employment, service or consultancy agreement with CEO or directors)</b>		
Corrs	We support these amendments	ASX appreciates the support. ASX intends to proceed with the changes to this rule, effective 1/7/2014, with the further amendments mentioned in the next two comments.
Chorus	The references in this rule to sections 199A and 199B of the Corporations Act do not work for entities incorporated overseas that are not subject to those sections.	ASX agrees and will add after the references to sections 199A and 199B the words “(or, if the entity is not established in Australia, the laws applicable in the jurisdiction where it is established)”.
3 Degrees; AMP	It is not appropriate to use the term “related entity” in Listing Rule 3.16.4, given the breadth of the definition of that term in the Corporations Act. <sup>2</sup>	ASX agrees and will substitute the term “child entity” for “related entity”.
AMP	It is not appropriate that Listing Rule 3.16.4 requires the disclosure of employment, service or consultancy agreements entered into with “related parties” of a CEO or director. In particular, this creates issues in relation to employees who happen to be a spouse or other relative of the CEO or a director.	ASX does not see this as an issue. Listing Rule 3.16.4 has a specific carve-out for bona fide employment, service or consultancy agreements entered into with a relative of a CEO or director on arm’s length and ordinary commercial terms.

<sup>2</sup> The term “related entity” is not defined in the Listing Rules and therefore takes its meaning from the Corporations Act (see Listing Rule 19.3).

Respondent	Comment	ASX Response
<b>New Listing Rule 3.19B (on-market purchases by or on behalf of employees or directors)</b>		
ACSI; Confidential 2; ERR; OM	<p>We support the requirement for on-market purchases on behalf of employee share plans to be disclosed.</p> <p>[Confidential 2: we do however have some concerns regarding the practical implementation of the rule.]</p> <p>[ERR: the rule provides necessary information on on-market purchases, although it does not address the basic concern that on-market purchases can occur without prior shareholder approval.]</p>	<p>ASX appreciates the support but, having regard to the numerous practical difficulties identified by various stakeholders with proposed Listing Rule 3.19B (as mentioned below), ASX does not intend to proceed with the introduction of that rule.</p> <p>Instead, ASX intends to introduce a new Listing Rule 4.10.22 requiring a listed entity to include in its annual report, as a one-off annual disclosure covering the whole of the reporting period, the substance of the information that would have been required to be disclosed continuously under proposed Listing Rule 3.19B.</p> <p>Requiring such information to be included in an entity's annual report will mean that security holders can take the information into account when they decide whether or not to approve the entity's remuneration report under the "two-strikes rule" (sections 250U-250Y of the Corporations Act).</p>
ACSI; OM	The disclosures required under Listing Rule 3.19B should be made within 1 or 2 business days of the purchases rather than 5 business days.	ASX does not intend to proceed with the introduction of Listing Rule 3.19B and so this comment is no longer relevant.
ACSI; OM	Listing Rule 3.19B should not only apply to on-market purchases of securities but also to transactions effected through derivatives and forward purchase arrangements.	<p>ASX does not intend to proceed with the introduction of Listing Rule 3.19B and so this comment is no longer relevant.</p> <p>For completeness, ASX does not see a need to extend new Listing Rule 4.10.22 to require these matters to be disclosed on an annual basis. The disclosures required by Listing Rule 4.10.22 relate specifically to purchases of securities that fall within the exception to Listing Rule 10.14 now to be included in new Listing Rule 10.15B.</p>



Respondent	Comment	ASX Response
ACSI; OM	The disclosures required under Listing Rule 3.19B should extend to disclosure of arrangements with third parties who effect purchases on behalf of the entity.	<p>ASX does not intend to proceed with the introduction of Listing Rule 3.19B and so this comment is no longer relevant.</p> <p>For completeness, ASX does not see a need to extend new Listing Rule 4.10.22 to require these arrangements to be disclosed on an annual basis. They are commercial arrangements between the listed entity and the third parties in question. In some cases, they may be commercially sensitive.</p>
OM	An entity should have to disclose all purchases made for employee share plans over the prior 12 months and, where the securities have not initially been allocated to a particular individual, any subsequent allocations to a director or related party over that period.	<p>ASX does not intend to proceed with the introduction of Listing Rule 3.19B. Instead ASX intends to introduce a new Listing Rule 4.10.22 requiring a listed entity to include in its annual report, as a one-off annual disclosure covering the whole of the reporting period, the substance of the information that would have been required to be disclosed continuously under proposed Listing Rule 3.19B. This disclosure will therefore provide the information in question over a 12 month period.</p> <p>ASX has drafted Listing Rule 4.10.22 so that it applies not only to securities purchased on behalf of a director or related party, but also to securities purchased on an unallocated basis and then subsequently allocated to a director or related party.</p>
BHP; CBA; Confidential 2 (in relation to LR 3.19B.3); Confidential 3; GIA; HSF	ASX should not proceed with the introduction of Listing Rule 3.19B because of the administrative difficulties it will cause for listed entities.	ASX agrees. This is one of the reasons why ASX is not intending to proceed with the introduction of Listing Rule 3.19B.

Respondent	Comment	ASX Response
3 Degrees	<p>There are particular issues with the application of Listing Rule 3.19B to broad-based employee share plans, the trustees of which will regularly be making purchases for the plan over the course of a financial year. If ASX proceeds with Listing Rule 3.19B, it should not apply to purchases on behalf of broad-based employee share plans but rather it should only apply to plans making purchases on behalf of key management personnel.</p> <p>Alternatively, disclosures of purchases on behalf of broad-based employee share plans should only have to be made once a year at the start of the financial year and merely disclose the fact that the plan is in existence, the value of which and frequency with which shares are to be purchased for the plan, and who will be undertaking the purchases.</p>	<p>ASX acknowledges the difficulties that the introduction of Listing Rule 3.19B would have caused for broad-based employee share plans. This is one of the reasons why ASX is not intending to proceed with the introduction of Listing Rule 3.19B.</p>
AMP; CBA; Confidential 2 (in relation to LR 3.19B.3); Confidential 2; Corrs; GIA; HSF; LCA; Telstra	<p>There is no need for the rule, given the disclosures already required in relation to directors' interests under Listing Rule 3.19A and Appendix 3Y and in relation to remuneration for key management personnel in the annual report.</p>	<p>ASX largely agrees. This is one of the reasons why ASX is not intending to proceed with the introduction of Listing Rule 3.19B. However, to ensure that this information is disclosed to the market, ASX intends to introduce a new Listing Rule 4.10.22 requiring a listed entity to include in its annual report, as a one-off annual disclosure covering the whole of the reporting period, the substance of the information that would have been required to be disclosed continuously under proposed Listing Rule 3.19B.</p> <p>Requiring such information to be included in an entity's annual report will mean that security holders can take the information into account when they decide whether or not to approve the entity's remuneration report under the "two-strikes rule" (sections 250U-250Y of the Corporations Act).</p>
AMP	<p>Disclosure in accordance with Listing Rule 3.19A and Appendix 3X, 3Y or 3Z should, to that extent, be taken to be compliance with the proposed new Listing Rule 3.19.</p>	<p>As mentioned above, ASX does not intend to proceed with the introduction of Listing Rule 3.19B and so this comment is no longer relevant.</p>
Confidential 3; Corrs; LCA	<p>Since the concerns around participation in employee share plans that purchase securities on-market primarily relate to directors, there should not be any requirement to separately disclose purchases on behalf of employees who are not directors.</p>	<p>ASX does not agree but will now only require this information to be disclosed on an annual basis under new Listing Rule 4.10.22.</p>

Respondent	Comment	ASX Response
AMP; Confidential 3; GIA; HSF; Telstra	The requirement for disclosure should only apply to purchases on behalf of associates of directors, not related parties of directors.	ASX does not agree but will now only require this information to be disclosed on an annual basis under new Listing Rule 4.10.22.
3 Degrees; Confidential 2; Confidential 3; KWM; LCA	The 5 business day period for disclosure is too short. [Confidential 2: this will particularly be so, where an employee share plan is administered by an external trustee, where there may be delays in the flow of information from the trustee to the listed entity.] [KWM: we favour periodic (eg annual) disclosure.] [LCA: disclosure should be half yearly.]	ASX acknowledges the timing concerns. This is one of the reasons why ASX is not intending to proceed with the introduction of Listing Rule 3.19B and is replacing it with an annual disclosure requirement under new Listing Rule 4.10.22.
CBA	Purchases for employee share plans may take place over an extended period of time. The new rule would effectively require daily disclosures of these purchases.	ASX would note that one of the reasons for the 5 business day reporting period originally proposed in Listing Rule 3.19B was so that listed entities could report purchases over that period in a single notice. However, as mentioned above, ASX is replacing the proposed continuous disclosure requirement in Listing Rule 3.19B with an annual disclosure requirement in new Listing Rule 4.10.22 and so this comment is no longer relevant.
CBA; Confidential 3; GIA	Rather than requiring disclosure within 5 business days of any purchase, where purchases are made over a trading window, the rule should require disclosure within 5 business days of the end of that window. [Confidential 3: this would also facilitate applying the same allocation price to all purchases for the plan over the trading window. Otherwise, the requirement to separately identify the average price per security for purchases on behalf of directors and their related parties and for the plan more generally in each notice over that period could interfere with this.]	As mentioned above, ASX is replacing the proposed continuous disclosure requirement in Listing Rule 3.19B with an annual disclosure requirement in new Listing Rule 4.10.22 and so this comment is no longer relevant.
Confidential 2	The rule should be amended to make it clear that only one notice per trading day is required which uses the weighted average purchase price for shares on the day, rather than individual notices after each purchase.	As mentioned above, ASX does not intend to proceed with the introduction of Listing Rule 3.19B and so this comment is no longer relevant.

Respondent	Comment	ASX Response
Confidential 2; GIA; LCA; OM	Many employee share plans buy securities to hedge their forward exposure and hold them “in stock” pending actual allocation to a director or employee. The new rule does not cater well for shares purchased on an unallocated basis which are subsequently allocated to a director or related party.	ASX agrees. As mentioned previously, ASX does not intend to proceed with the introduction of Listing Rule 3.19B. Instead ASX intends to introduce a new Listing Rule 4.10.22 requiring a listed entity to include in its annual report, as a one-off annual disclosure covering the whole of the reporting period, the substance of the information that would have been required to be disclosed continuously under proposed Listing Rule 3.19B. ASX has drafted Listing Rule 4.10.22 so that it applies not only to securities purchased on behalf of a director or related party, but also to securities purchased on an unallocated basis and then subsequently allocated to a director or related party.
Confidential 2	The disclosures required by the rule may be taken by the market to signal a particular view by the entity about the value of its securities and give rise to insider trading and/or continuous disclosure issues.	ASX agrees. This is one of the reasons why ASX is not intending to proceed with the introduction of Listing Rule 3.19B.
3 Degrees; Confidential 2; GIA	Given the difficulties identified with the rule, listed entities should be given a longer period to transition to the new disclosure regime. The effective date of the amendment should be 1/7/14 rather than 1/1/14.	As mentioned above, ASX is replacing the proposed continuous disclosure requirement in Listing Rule 3.19B with an annual disclosure requirement in new Listing Rule 4.10.22 and so this comment is no longer relevant. However, recognising the need for listed entities to have an appropriate transition to any new reporting regime, the new Listing Rule 4.10.22 will only come into effect in respect of the first financial year ending on or after 30 June 2015.
<b>Listing Rule 4.7 (entity to give ASX annual report)</b>		
Corrs; Confidential 3; ERR	We support the move to allow greater flexibility to listed entities to make their governance disclosures on their website rather than in their annual report.	ASX appreciates the support. ASX intends to proceed with the changes to this rule, effective 1/7/2014.
<b>Listing Rule 4.10 (additional information to be included by all entities in annual report)</b>		
3 Degrees; ERR; GIA	We welcome/support the move to allow greater flexibility to listed entities to include their corporate governance statement on their website rather than in their annual report.	ASX appreciates the support. ASX intends to proceed with the changes to this rule, effective 1/7/2014.

Respondent	Comment	ASX Response
3 Degrees	In fact, the changes should go further and permit a listed entity to disclose a “static” corporate governance statement on its website and to require a “dynamic” one page corporate governance snapshot of key governance matters and activities in its annual report.	ASX believes that this change would be inconsistent with the underlying philosophy of the reforms proposed in the third edition of the ASX Corporate Governance Council’s <i>Principles and Recommendations</i> and, in particular, the Council’s desire to afford greater flexibility to listed entities to make their corporate governance disclosures <i>either</i> in their annual report or on their website. Listed entities who want to adopt the style of reporting suggested in the comment are free to do so.
3 Degrees; Corrs	The rule should not require the board of a listed entity to approve the corporate governance statement because of the potential additional personal liability that this may impose upon directors.	ASX does not agree. The requirement for a listed entity’s corporate governance statement to state that it has been approved by the board of the entity (in the case of a trust, the board of the responsible entity of the trust) is intended to ensure that a listed entity’s corporate governance statement receives appropriate focus by the board and is not just a “boilerplate” document produced by professional advisers, as some corporate governance statements occasionally appear to be. It also reflects the legal responsibility that the directors of a listed entity have under the general law for ensuring that a listed entity has appropriate governance arrangements in place.
GIA; Telstra	The rule should allow a committee of the board to approve an entity’s corporate governance statement rather than the full board.	ASX has no issue with the board of a listed entity delegating responsibility for reviewing its corporate governance statement to an appropriate committee (such as the audit committee or a governance committee) but, for the reasons outlined in the previous comment, considers that the board, rather than a committee of the board, should approve the final statement.
3 Degrees	Listing Rule 4.10.3 should expressly permit early adoption ahead of the first financial year ending on or after 30 June 2015.	ASX agrees and will update the note to both Listing Rules 4.7 and 4.10.3 – which currently states that the 1/7/2014 amendments apply in respect of financial years ending on or after 30 June 2015 – to indicate that listed entities may adopt the amendments in respect of an earlier financial year, if they wish to do so.
<b>Listing Rule 10.1 (approval required for certain related party acquisitions or disposals)</b>		
N/A	No substantive comments received.	ASX intends to proceed with the changes to this rule, effective 1/7/2014.

Respondent	Comment	ASX Response
<b>Listing Rule 10.14 (approval required to acquire securities under an employee incentive scheme)</b>		
AMP; Confidential 3; GIA; HSF; KWM; LCA; Telstra	This Listing Rule should only apply to “associates” of directors (as it currently does) and should not be extended to cover “related parties”.  In particular, it creates issues in relation to family members of directors who may legitimately be employed by the listed entity and otherwise entitled to participate in employee share plans.	ASX agrees and will amend the rule accordingly (although noting the changes it proposes to make to the definition of “associate” in Listing Rule 19.12 mentioned below).
ACSI; ERR; OM	The exception from the requirement for shareholder approval for on-market purchases should be removed.	ASX does not agree, for the reasons outlined in its consultation paper. For clarity of drafting, ASX is moving the exception to a new Listing Rule 10.15B and extending that exception to cover the issue of options and performance rights that will be satisfied by the purchase of securities on market (see next comment).
GIA; LCA	The exception from the requirement for shareholder approval for on-market purchases should be extended to cover the issue of options and performance rights that will be satisfied by the purchase of securities on market.	ASX agrees and in fact already administers the Listing Rules as if this was the case. ASX therefore proposes to amend the Listing Rules (via the introduction of the new Listing Rule 10.15B mentioned above) to formalise this exception.
<b>Listing Rule 10.16 (no underwriting by directors and associates)</b>		
AMP; GIA; KWM; LCA; Telstra	This Listing Rule should only apply to “associates” of directors (as it currently does) and should not be extended to cover “related parties”.	ASX agrees and will amend the rule accordingly (although noting the changes it proposes to make to the definition of “associate” in Listing Rule 19.12 mentioned below).
<b>Listing Rule 12.7 (composition of audit committee)</b>		
N/A	No substantive comments received.	ASX intends to proceed with the changes to this rule, effective 1/7/2014.

Respondent	Comment	ASX Response
<b>Listing Rule 14.11 (voting exclusion statement)</b>		
OM	The voting exclusion should be amended to exclude “treasury shares” from being able to vote on resolutions under Listing Rule 10.1, 10.11 and 10.14.	ASX does not agree. ASX would note that Australian law does not recognise the concept of “treasury shares”.
Corrs	The explanatory note to the Listing Rule about the meaning of “associate” can be deleted, given the definition of “associate” that has been added to Listing Rule 19.12.	ASX agrees and will delete the note.
<b>Listing Rule 19.12 (new definition of “associate”)</b>		
GIA; HSF; LCA	We support the changes to the definition of “associate” referencing section 12 and 16 of the Corporations Act rather than sections 11 and 13-17 of the Corporations Act.	ASX appreciates the support and intends to proceed with the introduction of the new definition of “associate”, with the amendments referred to in the responses to the next two comments, effective 1/7/2014.
LCA	We suggest that the words “Section 12 is to be applied as if it was not confined to associate references occurring in Chapter 6 of the Corporations Act ...” are replaced with “Section 12 is to be applied as if the ASX Listing Rules were listed in section 12(1)(a) ...”	ASX agrees with the substance of this change and intends to replace the words in question with “Section 12 is to be applied as if paragraph 12(1)(a) included a reference to the Listing Rules ...”.
AMP; GIA; HSF; LCA; Telstra	The last sentence deeming a related party of a director or officer to be their associate is not appropriate and should be deleted. [AMP: the automatic extension of Listing Rules to the family members of a director is not appropriate in the modern era.] [LCA: ASX should rely on the power to deem someone to be an associate rather than extend the definition in this manner.]	ASX acknowledges that deeming all related parties to be associates may be a step too far. However, in many cases, it will be difficult to prove that a related party of a director or officer is in fact their associate under the Corporations Act, even where they are or are likely to be acting in concert. ASX intends to amend the last sentence of this definition to provide that: “A related party of a director or officer of the entity or of a child entity is to be taken to be an associate of the director or officer unless the contrary is established.”  It will also add a note to the rule indicating that one way in which it can be established that a related party of a director or officer is not their associate is for the director, officer or related party in question to give a statutory declaration to the entity to that effect.

Respondent	Comment	ASX Response
<b>Listing Rule 19.12 (new definition of “corporate governance statement”)</b>		
N/A	No substantive comments received.	ASX intends to proceed with the introduction of this new definition, effective 1/7/2014.
<b>Listing Rule 19.12 (amendments to definition of “promoter”)</b>		
N/A	No substantive comments received.	ASX intends to proceed with the amendments to this definition, effective 1/7/2014.
<b>Appendix 4G</b>		
ACSI; bcIMC; SNS	We support the requirement for the new Appendix 4G. [Per bcIMC: “bcIMC is particularly supportive of the new Appendix 4G ... This key to the location of relevant governance disclosures is most useful to investors because we currently spend a great deal of time on identifying and locating the various pieces of information that are important to us. The Appendix 4G summary will allow us to be much more efficient going forward.”]	ASX appreciates the support. ASX intends to proceed with the introduction of the new Appendix 4G, effective 1/7/2014.
3 Degrees; AMP; Confidential 1; Confidential 3; Corrs	The requirement to complete and lodge the new Appendix 4G will impose a significant administrative burden on listed entities. ASX should not proceed with this change.	ASX does not agree. ASX considers that the administrative burdens involved are not that significant and are outweighed by the benefits that will accrue to all stakeholders by more complete and more readily accessible corporate governance disclosures. ASX would also repeat the observation in its consultation paper that by particularising each ASX Corporate Governance Council Recommendation that needs to be reported against, the Appendix 4G will assist listed entities to comply with their obligations under Listing Rule 4.10.3 and provide them with a documented verification process to confirm their compliance with that Listing Rule. Given the significant criminal and civil liabilities that can attach to a listed entity and its directors and officers if the entity’s annual report contains false or misleading information (see, for example, sections 1041E, 1308(2))



Respondent	Comment	ASX Response
		and 1309 of the Corporations Act), ASX would expect most listed entities to be conducting a detailed verification exercise in relation to their annual reports to confirm that the statements in the annual report have a reasonable basis in fact and are not misleading. The Appendix 4G will aid that exercise, in so far as the annual report includes disclosures made in connection with the ASX Corporate Governance Council Recommendations.
AMP	The requirement to complete and lodge the new Appendix 4G should only apply where an entity's corporate governance disclosures are not in its annual report or in a discrete corporate governance section on its website.	ASX does not agree. As a practical matter, in almost all cases, corporate governance disclosures will be spread across multiple locations. For example, entities will often include information about board committees in their annual report but then disclose the charter of the committees on its website.
AMP	Corporate websites get updated from time to time, which is likely to make the URL disclosures in the Appendix 4G checklist out of date.	ASX does not see this as a concern. The Appendix 4G is required to be dated and to be accurate as at that date. It therefore speaks as at a particular date. The fact that the information in the Appendix may become out of date thereafter should be well understood.  The information will, of course, be updated annually as a new Appendix 4G is filed each year.
Confidential 3	The Appendix 4G should be simplified to look more like Annexure C to the current version of Guidance Note 9.	ASX does not agree. Annexure C to the current version of Guidance Note 9 is a key to the location of the recommended disclosures in the <i>reporting</i> recommendations in the second edition of the ASX Corporate Governance Council Recommendations (ie the final recommendation under each of the 8 Principles). It does not cover the <i>substantive</i> recommendations in the second edition (ie those recommendations preceding the final recommendation under each of the 8 Principles). Instead, compliance with the substantive recommendations is addressed in the Verification Worksheet in Annexure B to the current version of Guidance Note 9. Annexure C also does not give an option for an entity not to follow a particular recommendation and to indicate where it has included its "if not why not" explanation for taking that course.  The Appendix 4G effectively combines Annexures B and C to the current

Respondent	Comment	ASX Response
		<p>version of Guidance Note 9 and makes provision for a listed entity which does not follow a particular recommendation to indicate where it has included its “if not why not” explanation for taking that course.</p>
ERR	<p>The Appendix 4G should be simplified to include a check box to indicate that an entity’s corporate governance statement is included in its annual report or on its website, in which case the balance of the form can simply identify which of the Council’s recommendations that entity complies with and which of them it does not.</p>	<p>ASX does not agree. The Appendix 4G not only identifies where a listed entity has included its “if not why not” statement under Listing Rule 4.10.3, but also all of the various disclosures called for under the third edition of the ASX Corporate Governance Council’s Principles and Recommendations.</p>
3 Degrees; Corrs	<p>The Appendix 4G will lead to a “check the box” mentality to corporate governance disclosures, which is inconsistent with the whole philosophy of the Council’s recommendations.</p>	<p>ASX understands the concern but nonetheless intends to proceed with the new Appendix 4G.</p> <p>ASX identified in its consultation paper a number of the issues with the current corporate governance disclosure regime, which make it difficult and/or time consuming for readers to locate disclosures made in connection with the ASX Corporate Governance Council recommendations.</p> <p>ASX considers that without some pre-emptive remedial action, the flexibility being introduced by the third edition of the ASX Corporate Governance Council’s <i>Principles and Recommendations</i> and the associated changes to ASX’s Listing Rules to allow listed entities to choose to make their governance disclosures in their annual report or on their website could exacerbate these issues.</p> <p>Appendix 4G seeks to address these issues by providing a key to where relevant governance disclosures can be found.</p> <p>Rather than promoting a “check the box” mentality to corporate governance disclosures, ASX believes that the fact that the Appendix 4G lists each ASX Corporate Governance Council recommendation that needs to be reported against, will assist listed entities to comply with their disclosure obligations under Listing Rule 4.10.3 and provide them with a documented verification process to confirm their compliance with that Listing Rule. This should result in better, and more complete, governance disclosures than is the case today.</p>

Respondent	Comment	ASX Response
3 Degrees	The requirement to lodge an Appendix 4G should only apply to listed entities outside the ASX200.	ASX does not agree and cannot see a proper basis for having a more lenient governance disclosure regime for entities within the ASX200 compared to entities outside the ASX200.
<b>Other comments</b>		
Macquarie University	We support the proposed changes to the Listing Rules.	ASX appreciates the support.
NBMG	We commend the ASX for its proposed changes to the Listing Rules and Guidance Note 9.	ASX appreciates the support.
QBE	We generally support the AICD's position in relation to the proposed changes to the Listing Rules.	Noted.
GRT	ASX should introduce a Listing Rule requiring an "independence statement" to be provided by directors before they are appointed, elected or re-elected as a director. The statement should be provided to the listed entity and included with any notice of meeting considering a resolution to elect or re-elect the director.	ASX does not see a need at this point in time for such a requirement.
OM	ASX should review its controls around employee share plans more generally.	ASX does not see a need at this point in time to introduce further controls into the Listing Rules in relation to employee share plans. It will however continue to monitor the situation in case that position changes.
GIA	ASX should remove the requirement for a "chairman's box" in the second bullet point of Listing Rule 14.2.3B. Many shareholders forget to tick this box, meaning that the chairman is precluded from voting their shares on any resolution where the shareholder has not directed the chairman how to vote.	ASX agrees and will make this change. To facilitate this change, ASX will amend Listing Rule 14.2.1 to require a proxy form to give a security holder the ability to direct their proxy to abstain from voting on a resolution or to vote or abstain from voting on a resolution at the proxy's discretion. ASX will also add a new Listing Rule 14.2.2 requiring, if a proxy form specifies that the chair of the meeting is appointed as proxy if a security holder does not appoint another person to act as their proxy or the chair is appointed proxy by default, that the proxy form also include a statement as to how the chair intends to vote undirected proxies.

Respondent	Comment	ASX Response
ERR	ASX should give guidance to smaller listed entities in relation to resolutions regarding capital management (eg under Listing Rules 7.1, 7.1A, 7.4, 10.1 and 10.14).	<p>ASX has issued a user guide on Listing Rule 7.1A resolutions, which is available on its website.</p> <p>ASX is also in the middle of a project to refresh all of its Guidance Notes and will provide further guidance on these issues in due course.</p>