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**Companies Update**  
**13 August 2010**

**Update no 07/10**

## Important information for ASX Listed Entities

### A. LISTING RULE AMENDMENTS

#### 1. LISTING RULE AMENDMENT NOTIFICATION - REQUIREMENT FOR A TRADING POLICY

ASX on 19 July 2010 released the details of amendments to the Listing Rules, which require listed entities to adopt and disclose a company trading policy, and an associated Guidance Note - [Guidance Note 27](#) (PDF 37KB) Trading Policies - to assist listed entities to comply with their obligations under listing rules 12.9, 12.10 and 12.12. The amendments to the Listing Rules will come into effect on 1 January 2011.

The amendments to the Listing Rules are available on the ASX website.

[Listing Rule Amendments - Trading Policy Requirements](#) (PDF 55KB)

Guidance Note 27 - Trading Policies is available on the ASX website.

[Guidance Note 27, Trading Policies](#) (PDF 37KB)

#### Summary of amendments

The amendments to the Listing Rules require listed entities to:

- adopt and disclose a trading policy on trading in the entity's securities by directors and other key management personnel;
- include restrictions and clearance procedures in the policy as to when trading can and cannot occur; and
- publicly disclose whether trading by directors occurred during a closed period where prior written clearance was required under the company trading policy and, if so, whether prior written clearance was provided.

#### Guidance Note 27 - Trading Policies

The Guidance Note provides listed entities with guidance on:

- the types of amendments to an entity's trading policy that may constitute a material change and which would require that the amended policy be given to ASX for release to the market;
- trading that an entity may choose to exclude from the operation of its trading policy;
- exceptional circumstances, in which key management personnel may be provided with a prior written clearance

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to trade during a prohibited period under the entity's trading policy; and

- the inclusion of restrictions on trading in derivative products by key management personnel during prohibited periods under the trading policy.

### **Consultation Undertaken**

The proposed amendments to the Listing Rules were exposed for comment on 4 December 2009 in ASX Consultation Paper "Listing Rule Amendments - Company Policies on Trading 'Windows' and 'Blackout' Periods".

The outcomes of the consultation process and the revisions made to the proposed Listing Rules to take account of the key issues raised in submissions were published on 22 April 2010 in ASX Exposure Draft "Listing Rule Amendments - New Requirements for a Remuneration Committee and a Company Trading Policy".

The Consultation Paper and the Exposure Draft are available on the ASX website.

[Consultation Paper and Exposure Draft](#)

## **2. LISTING RULE AMENDMENT NOTIFICATION - REMUNERATION COMMITTEE REQUIREMENT FOR TOP 300 LISTED ENTITIES**

On 4 August 2010, ASX released the details of amendments to the Listing Rules, which require S&P/ASX 300 Index entities to have a remuneration committee comprised solely of non executive directors. The amendments to the Listing Rules will come into effect on 1 July 2011.

The amendments to the Listing Rules are available on the ASX website.

[Listing Rule Amendments - Remuneration Committee Requirements](#) (PDF 36KB)

### **Consultation undertaken**

The proposed amendments to the Listing Rules were exposed for comment on 22 April 2010 in ASX Exposure Draft "Listing Rule Amendments - New Requirements for a Remuneration Committee and a Company Trading Policy".

The Consultation Paper and the Exposure Draft are available on the ASX website.

[Consultation Paper and Exposure Draft](#)

## **B. ANNUAL AND HALF YEARLY REPORTS FOR THE**

## PERIOD ENDED 30 JUNE 2010, AND ANNUAL GENERAL MEETING SEASON MATTERS

### 1. PROFIT WARNINGS AND OTHER ANNOUNCEMENTS OF EXPECTED MATERIAL DIFFERENCES IN FINANCIAL RESULTS

In the period leading up to the deadline for lodging preliminary final and half yearly reports for the period ended 30 June 2010, ASX would like to remind listed entities of the importance of releasing to the market immediately in accordance with their obligations under [listing rule 3.1](#) (PDF 126KB) any expected material variations to their financial results for the period ended 30 June 2010.

Entities are required to make an appropriate announcement immediately they become aware that there is expected to be a material difference in the financial results for that period from the results that were recorded in the previous corresponding period, or from forecasts for that period that have been provided to the market by the entity, or (in some cases) from analysts' consensus forecasts. It is not acceptable for the release of such information to be delayed until the release of the periodic financial report (the [Appendix 4D](#), [Appendix 4E](#), or statutory financial report).

Listing rule 3.1 states:

*"Once an entity is or becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities, the entity must tell ASX that information."*

[Guidance Note 8](#) (PDF 221KB) to the ASX Listing Rules is on the subject of Continuous Disclosure and has been issued to assist listed entities to comply with their disclosure obligations. The Guidance Note outlines ASX's expectations in relation to best disclosure practice. Paragraphs 93 to 95 of Guidance Note 8 are particularly relevant to continuous disclosure obligations in the context of periodic financial reporting.

Specifically, Paragraph 93 of Guidance Note 8 states:

*"Listing rule 3.1 provides examples of information that, if material, would require disclosure. One of those examples is a change in the entity's previously released financial forecast or expectation. As a general policy, a variation in excess of 10% to 15% may be considered material, and should be announced by the entity as soon as the entity becomes aware of the variation. If the entity has not made a forecast, a similar variation from the previous corresponding period will need to be disclosed. In certain circumstances a smaller variation will be disclosable."*

Paragraph 94 states that:

*"In making such disclosure, the entity must provide some details, however qualified, of the extent of the variation. For example a statement by an entity may indicate that, based on internal management accounts, its expected net profit or EBIT will be an approximate amount (e.g. approximately \$6m) or alternatively within a stated range (e.g. between \$5m and \$7m). Alternatively, the entity may indicate an approximate percentage movement (e.g. "up [or down] by 25%"). ASX accepts that this information may not be precise and may be changed or amended on completion of the final accounts. ASX discourages entities from using terms such as "single digit" and "double digit" when disclosing financial forecasts or profit variations as they are considered to be insufficiently precise and potentially misleading to investors in assessing the impact of information and making investment decisions."*

An example relevant to paragraphs 93 to 95 is set out at Example B on page 23 of Guidance Note 8.

Listed entities are asked to take note that where an entity reports results that have varied by greater than 10% to 15%, ASX will undertake a review of previous announcements made by that entity in the financial reporting period to determine if continuous disclosure obligations have been met. This approach will be adopted in respect of entities whose periodic financial report discloses variations of approximately that size from the results in the previous corresponding reporting period or from forecasts or earnings guidance previously released by the entity itself, and (in appropriate cases) from analysts' consensus forecasts. Where it does not appear from that review that an announcement indicating the likelihood of a material variation in the results had been released prior to the release of the periodic financial report, ASX may write to an entity asking it to state when it first became aware that there would be such a variation. If ASX decides to write to an entity in order to confirm that the entity has met its continuous disclosure obligations, copies of correspondence between ASX and the entity may be released to the market.

## **2. APPENDIX 4D and APPENDIX 4E - PRESENTATION OF DOCUMENTS**

ASX would also like to take this opportunity to draw listed entities' attention to [listing rules 4.2C.3 and 4.3C.2](#) (PDF 108KB), which state that in relation to information or documents given to ASX under [listing rules 4.2A and 4.3A](#) (PDF 108KB):

*The information identified as "Results for announcement to the market" must be set out at the beginning of the document."*

The "Results for announcement to the market" section of the announcement forms the basis for the voiceline broadcast which is made for all profit results by the Company Announcements Office (CAO). Profit results also trigger a brief halt in trading while the announcement is prepared by CAO for release and voiceline to the market.

If the relevant section is not prominently displayed at the front of the document, delays will occur in processing and release, particularly during CAO's busy periods. The full name of the reporting entity should also be included on this front page for inclusion in the voiceline broadcast.

Please note that if supplementary documentation is being prepared to be lodged separately but at the same time as the periodic financial reports (such as media releases and/or presentations), these supplementary documents should be sent to ASX **after** the [Appendix 4D](#) or [4E](#). The 'sensitive' document which triggers the halt in trading is the relevant Appendix containing the voiceline details described above, and it should therefore always be sent to ASX and released ahead of any supplementary documentation.

ASX would also request that correct user name and telephone number details for contact purposes are attached to each e-lodgement so that any issues may be promptly resolved by CAO.

It would be appreciated if entities could take note of these important steps in preparing half-yearly and preliminary final profit reports in order to avoid unnecessary confusion and delay.

### **3. PROVISION OF AUDIT REVIEW OR REPORT TO ASX**

The note to paragraph 15 of [Appendix 4E](#) states the following in relation to the provision of the Preliminary Final Report to ASX and the accounts on which the report is based:

*"If the accounts have been audited or subject to review, the audit report or review should be provided with the report."*

Listed entities that state that the accounts on which the Preliminary Final Report is based are audited or subject to review but which do not provide the audit report or review to ASX at that time must provide the following information:

- a. The specific reason why the audit report or review has not been provided.
- b. When the audit report or review will be provided.
- c. Whether the audit report or review is subject to dispute or qualification along with a description of the dispute or qualification.

Listed entities which are not able to provide this information must say that the accounts are either **in the process of being audited** or **have not been audited**. Issuers are at liberty to provide any additional information that may be appropriate to assist readers of the Preliminary Final Report.

#### **4. DIVIDEND AND DISTRIBUTION INFORMATION**

To assist ASX to process more efficiently the information announced by listed entities about their dividends and distributions, ASX requires that listed entities include the following information in such announcements (including in an [Appendix 4D](#) or [4E](#)) (see the [Appendix 6A](#) paragraph 1).

##### *Conduit foreign income*

Where an entity announces dividends or distributions that are fully unfranked or partially unfranked, ASX requests that the announcement make clear the conduit foreign income (CFI) component of that dividend or distribution, even if this component is nil CFIs.

##### *Dividend/distribution reinvestment plans*

Where an entity has a DRP in place, ASX requests that entities make it clear in the announcement whether the DRP will operate or will be suspended for that particular dividend or distribution. The following information should also be given:

- the last election date for the DRP
- the discount rate, if applicable
- ranking of the securities to be issued pursuant to the DRP
- the pricing methodology, and pricing, period for determining the issue price under the DRP

If at the time that the dividend or distribution is announced it has not been decided by the entity whether the DRP will operate, or the above details are not known, please give an indication of when the entity expects to confirm details of the DRP's operation.

#### **5. TIMETABLE FOR DIVIDENDS AND DISTRIBUTIONS**

[Listing Rule 6.24](#) (PDF 123KB) requires a listed entity to comply with timetables set out in [Appendix 6A](#) for a range of corporate actions. The timetable that governs dividends or distributions is silent as to the minimum periods provided to shareholders where they need to elect to participate in an optional dividend plan (such as a dividend reinvestment plan (DRP)). In practice, this means that listed entities have a degree of flexibility to construct a timetable in accordance with the Appendix, to suit their circumstances and their shareholder base.

ASX has been asked by the Australian Custodial Services

Association (ACSA) to mandate a timetable for DRPs. Under ACSA's proposal, an entity would be required to nominate a dividend election date that is post-record date, so that shareholders can accurately determine their entitled position prior to making an election, bringing this event in line with the timetable set out for other capital raisings.

ASX has considered the possibility of rule change to stipulate a more prescriptive timetable, however after targeted consultation with industry ASX has decided not to pursue this approach. ASX has formed the view that the degree to which this issue may be a factor for entities can vary considerably and a 'one-size-fits-all' timetable would unnecessarily restrict the choices available to entities where this issue may not be relevant, or where there are other competing considerations that the entity must weigh up.

However, ASX reminds listed entities of the need to consider the interests of different shareholder segments when determining the timetables for capital raisings. Where the nominated election date is before the record date, on the record date or the day after the record date, investors may have inadequate time to decide whether to participate, which may limit their participation and impact on the success of the DRP. Time zone differences can exacerbate the effects of a shortened timetable.

The purpose of the notification in this Companies Update is to remind entities to consider, as part of their normal investor relations activities, the particular (and sometimes diverse) needs of different investor segments, both domestic and foreign, institutional and retail, and to balance these needs when setting timetables for dividends or distributions. Where possible, an entity is encouraged to nominate a dividend election date that is at least two days after the record date, so that shareholders can accurately determine their entitled position prior to making an election.

## **6. JORC CODE: COMPETENT PERSON SIGN-OFFS**

ASX reminds listed entities that will be including information on mineralisation in their annual reports that the JORC Code requires that a competent person's statement be provided for relevant statements in "Public Reports". Annual reports (and other periodic reports released to ASX, such as quarterly activities reports) are classified as "Public Reports" under the JORC Code.

## **7. REVIEW OF DRAFT NOTICES OF ANNUAL GENERAL MEETING**

ASX reminds listed entities that they must submit for ASX's review any notice of shareholders' meeting at which a resolution under a listing rule is to be considered ([listing rule](#))

[15.1.7](#) (PDF 97KB)). ASX may take 5 business days to review a document submitted for review and may extend the time for review. In practice a longer period of time is required by ASX to review notices of meeting, particularly for more complex notices and for matters that call for listing rule waivers. In the lead-up to annual general meeting season for entities with year ends of 30 June, ASX requests that listed entities build into their timetables a sufficient period of time for review of their notice of meeting by ASX, and that they submit their draft notices of meeting as early as possible.

## **C. COMPANY ANNOUNCEMENTS OFFICE MATTERS**

### **1. HYPERLINKS IN ANNOUNCEMENTS**

ASX has previously (in [Companies Update 05/09](#)) released guidance on the practices and procedures of CAO in relation to announcements lodged on the Company Announcements Platform (CAP) by listed entities that include active hyperlinks to websites. Not all such announcements are suitable for release over CAP, and CAO has declined to release some announcements which have included hyperlinks. ASX wishes to repeat and clarify this guidance.

1. If there is an active link to information that has previously been released to the market by the entity itself, ASX will not object to the active hyperlink. Any references to information released by the entity and available on asx.com should provide a direct link to the previously released announcement.
2. If there is an active link to an entity's home page of its website, or to an email contact of a person at the entity, ASX will not object to the active hyperlink.
3. ASX will not release an announcement with an active link in an announcement to an interview or a corporate audio broadcast, unless the announcement has a copy of a transcript of the interview or broadcast attached.
4. ASX will not release an announcement with an active link to another entity's announcement or another entity's website. References to third-party sites/addresses within the announcement are acceptable as long as they are not live.
5. If there is a link to a video of a presentation, the PowerPoint presentation must be attached.

Please note that non-adherence to these guidelines will cause delay in processing and release to the market of announcements. It is important that CAO should be able to make prompt contact with the person lodging an announcement to resolve any issues.

### **2. PROCESSING OF SENSITIVE ANNOUNCEMENTS DURING PEAK PERIODS, AND TRADING HALT REQUESTS**



ASX would like to reiterate the guidance it gave in [Companies Update 08/06](#) and [Companies Update 09/08](#) concerning the consideration that listed entities should give to the timing of lodging announcements with ASX surrounding peak periods throughout the trading day, such as prior to Market Open and Market Close. During these periods, the number of announcements handled by CAO increases, and therefore the time taken in processing the announcements is lengthier than may be the case during the rest of the day.

During these peak periods, in order to for an announcement to be processed prior to the required release time, listed entities should have regard to the following guidelines:

- For an announcement that must be released prior to Market Open at 10:00am AEST, the announcement should be submitted prior to 9:30am AEST.
- For an announcement that must be released prior to Market Close at 4:00pm AEST, the announcement should be submitted prior to 3:40pm AEST.

In addition, the nature of the announcement should also be considered as a factor that may affect how quickly the announcement can be released. More complex announcements may require further review by an Issuers Adviser prior to release to the market.

For more complex announcements of a critical nature, listed entities are advised to contact CAO in advance if there are concerns with meeting the above guidelines.

If an entity is going to lodge a materially price sensitive announcement before Market Open, but will not be able to submit it prior to 9.30 am AEST, ASX strongly encourages the entity to contact its Issuers Adviser so that the appropriate action can be taken in the event that the announcement cannot be lodged, processed, and released, before Market Open. If the announcement will be submitted just before Market Open, the announcement will still be in the process of being released at Market Open, and the opening of the entity's securities should be delayed to take account of this. If the entity will not be able to submit the announcement before the Market Open, it should request a Trading Halt until the announcement can be submitted and released. Trading Halts can be requested orally, but must be confirmed in writing. ASX strongly encourages entities that may wish to request a Trading Halt to contact their Issuers Adviser as early as possible before the open of the market, so that the request may be considered and, if approved, the necessary steps taken to implement the Trading Halt before the open of the market.

Company Secretary's Office from time to time. You are receiving this email because you have been identified as a key contact within the Company Secretary's Office at your organisation. If you would like to update your email address please do so via the Directors/Senior Management page on [ASX Online for Companies](#). Feel free to forward this email to any relevant parties within your organisation.

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