

ASX and ASIC Listed Companies Conference

Corporate Governance

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Background



- 1st edition - March 2003 - 10 Principles and 28 Recommendations
- Non-prescriptive, flexible “if not, why not” market disclosure approach
- Consultation November 2006 - February 2007
- >100 submissions incl 120 listed entities
- 2nd edition - August 2007 - 8 Principles and 26 Recommendations – Effective date 1 January 2008

Key changes

- Removal of overlap with CA SS 250RA, 295A, 300A and AAS 124 - Principles 4, 6, 7 and 9
- Merger of Principles:
 - Principle 8 Executive performance evaluation → Principle 1 – Board performance evaluation → Principle 2
 - Principle 10 – Codes of conduct → Principle 3 – link between stakeholders and risk → Principle 7

Key changes (cont'd)



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- Listed trusts, non-CA listed entities and SMEs
- “Plain English” drafting and consistent terminology
- “Independent status” vs “definition of independence”
- Required to disclose reasons for considering a director independent despite existence of a relationship in Box 2.1

Key changes (cont'd)

- Hedging of options – trading policies should prohibit hedging of unvested options and require disclosure of hedging of vested options to the company.
Council's position complements current Government proposals
- “Prescriptive language – “should” and “companies may find it useful to consider”
- Disclosure of summary of documents

Principle 7 – Recognise and manage risk

- Key focus in submissions >90 submissions
- Redraft designed to encourage entities to consider the issue of risk and the effectiveness of their risk management and internal control systems and to elevate their consideration of “material business risks” – MBR
- Need to take into account legal obligations and consider “reasonable expectations” of stakeholders - no requirement to disclose specific MBR

Revised Supplementary Guidance to Principle 7



- Released 30 June 2008
- Q&A designed to provide assistance particularly for smaller companies. Covers:
 - What is material business risk?
Interaction with LR 3.1 and S 299A CA
 - What is a system of risk oversight, risk management and internal control?

Remuneration issues



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- Recommendation 9.4 deleted and new commentary in Recommendation 8.2 – companies may wish to consult shareholders about equity-based executive incentive plans involving the issue of new shares to executives, other than directors prior to implementing them
- Council submission to ASX and Treasury

Annual reviews of Corporate Governance disclosures



- LR 4.10.3 – each listed entity to set out in its annual report the extent to which it followed the Recommendations during the reporting period
- LR 12.7 – listed entities in the S&P All Ordinaries Index to have an audit committee. Top 300 companies to comply with the Recommendation on audit committee composition

Overall reporting levels	2004	2005	2006	2007
Listed companies	84%	88%	90%	90.5%
> 90% reporting level	8/28	14/28	17/28	17/28
> 80% reporting level	17/28	23/28	23/28	26/28

Annual reviews of Corporate Governance disclosures (cont'd)



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Overall reporting levels	2005	2006	2007
Listed trusts	86%	85%	93%
> 90% reporting level	10/28	13/28	24/28
> 80% reporting level	24/28	21/28	27/28

Adoption reporting levels	2004	2005	2006	2007
Companies	68%	74%	75%	74%
Trusts	N/A	70%	72%	79%
Top 500	N/A	86%	88%	87%

Recent developments



Review of CG disclosures - where entities have not fulfilled LR 4.10.3 obligations - ASX has made contact to follow up non-compliance

Directors' Interest Notices – Review of all trading by directors of all 2200 listed entities during Q1 08 following lodgement of yearly or half yearly financial results - Results released 27 June 2008

Review of Directors' Interest Notices and blackout trading



- ASX identified instances of:
 - failure to comply with the requirement for notification to the market within the 5 day time limit in ASX LR and the 14 day time limit S 205G CA
 - potential breaches of insider trading or continuous disclosure laws where directors traded during “blackout period”
 - directors non-observance of their own company’s dealing policies

Results of Directors' Interest Notices review



Directors' Interest Notices Q1 2008	App 3X	App 3Y	App 3Z	Total Q1
Total lodged	580	3,218	339	4,137
Total breaches of LR 3.19A	133 (23%)	359 (11%)	46 (14%)	538
Total breaches of S 250G	78 (13%)	188 (6%)	23 (7%)	289

Results of review of blackout trading



Number of Appendices 3Y lodged	January	February	March	Total Q1
Number lodged	890	980	1,348	3,218
Total number of active trades	432	569	862	1,863
Total number of active trades during blackout	353	339	103	795
Number of potential contraventions of trading policy	15*	39**	3***	57

*Trades occurred in 7 entities – 1 S&P/ASX 200, 4 AOI

** Trades occurred in 23 entities – 1 S&P/ASX 200, 5 AOI

*** Trades occurred in 3 entities all outside AOI

Companies Update 05/08 – Directors' Interest Notices



- From 1 July 2008 ASX will actively monitor lodgement of DINs and will take action where late or incomplete
- Action may include:
 - Writing to the entity noting the LR breach and requesting an explanation as well as details of arrangements in place with directors to enable entity to comply with LR obligations - correspondence will be released to the market.
 - Where Appendix 3Y lodged > 14 calendar days after the relevant change of interest and no other lodgement to comply with S205G CA may refer to ASIC.

Questions



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