



*10 minutes
on....
proposed changes to the ASX
Corporate Governance Principles
and Listing Rules*

August 2013

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10 minutes on proposed changes to the ASX Corporate Governance Principles and Listing Rules

Highlights

- The Australian Securities Exchange (ASX) has released a draft of the third edition of its Corporate Governance Principles and Recommendations (ASX Principles). These are proposed to be effective for an entity's first financial year commencing on or after 1 July 2014.
- The main change from a remuneration perspective is the addition that companies should have, and disclose, details around their clawback policy. The proposed principle goes further than the proposed legislation which was retrospective and only in the case of a material misstatement in the financial statements.
- All other remuneration-related proposals are minor and will not represent any material change to companies that are already complying with Principle 8 *Remunerate Fairly and Responsibly*.
- The ASX is also proposing to introduce a new Listing Rule 3.19B. This will require the disclosure of on-market purchases of securities on behalf of employees or directors or their related parties under an employee incentive scheme. This seeks to create more timely disclosure of on-market purchases of securities. Currently, listed companies can purchase securities on-market without timely disclosure of such acquisitions and without seeking security holder approval. This change is proposed to be effective on 1 January 2014.
- The ASX is seeking submissions, with a close date of 15 November 2013.

On 16 August 2013, the ASX released a draft of the third edition of its Corporate Governance Principles and Recommendations. It also released a consultation paper seeking comments on a number of proposed governance-related amendments to its Listing Rules and proposed changes to Guidance Note 9 *Disclosure of Corporate Governance Practices*.

The ASX Principles last underwent a major review in 2007 and this latest version seeks to incorporate the lessons of the global financial crisis and other local and international developments in corporate governance since this time. It also seeks to afford greater flexibility to listed entities to make their corporate governance disclosures on their website rather than in their annual report.

It is envisaged that the final version of the third edition of the ASX Principles will be released in early 2014 and will take effect for an entity's first financial year commencing on or after 1 July 2014. Accordingly, entities with a 30 June balance date will be expected to measure their governance practices against the recommendations in the third edition commencing with the financial year ended 30 June 2015.

The proposed new ASX Listing Rule 3.19B is intended to take effect on 1 January 2014 and will be published in final form before year-end.

The following pages outline the proposed remuneration-related changes to the ASX Listing Rules and ASX Principles.

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| ASX Listing Rules - Proposal | Comments |
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| <ul style="list-style-type: none">• The ASX has proposed to introduce a new Listing Rule 3.19B.• This will require the disclosure of on-market purchases of securities on behalf of employees or directors or other related parties under an employee incentive scheme. Under these changes, the company will need to disclose to the ASX, within 5 business days after purchase:<ul style="list-style-type: none">➤ the total number of securities purchased;➤ the average price per security; and➤ the name of any director or related party for whom securities were purchased, and the corresponding price and number of securities for each director or related party. | <ul style="list-style-type: none">• The implication of this Listing Rule is that it will require the disclosure of on-market purchases of securities on behalf of employees or directors or their related parties under an employee incentive scheme.• Presently, ASX Listing Rule 10.14 prohibits the acquisition of securities by a director (or an associate) under an employee incentive scheme without security holder approval. However no approval is required where securities are purchased on-market under the terms of an employee incentive scheme that provides for the purchase of securities by or on behalf of employees or directors.• Under the current rules, listed companies have been permitted to buy securities on-market without timely disclosure of such acquisitions and without seeking security holder approval. Such equity based remuneration has only been required to be disclosed for key management personnel in the remuneration report which is then subject to a non-binding security holder vote at the Annual General Meeting. This 'gap' in disclosure has been the subject of significant adverse comment in the financial press in recent times.• The ASX has stated that while it does not necessarily agree with the concerns regarding the need for these acquisitions to be approved by security holders (because these are not causing dilution), it does believe that it would be appropriate for a listed entity to disclose to the market any such purchases that it may make from time to time.• The disclosure of this information within 5 business days is consistent with the timing requirements for the disclosure of changes in a director's "notifiable interests". |

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| ASX Principles - Proposed recommendation | Comments |
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| <p><i>Principle 8 – Remunerate fairly and responsibly:</i> A listed entity should endeavour to pay remuneration that is sufficient to attract, retain and motivate high quality directors and senior executives and that is aligned to the creation of value for security holders.</p> | <ul style="list-style-type: none"> The ASX has provided further clarity on what is “sufficient” through explaining that this is in the context of attracting, retaining and motivating high quality directors and senior executives. It has also emphasised that remuneration should be aligned to the creation of value for security holders. |
| <p>8.1 The board of a listed entity should:</p> <p>a) have a remuneration committee which:</p> <ol style="list-style-type: none"> has at least three members, a majority of whom are independent directors; and is chaired by an independent director, and disclose: <ol style="list-style-type: none"> the charter of the committee; the members of the committee; and as at the end of each reporting period, the number of times the committee met throughout the period and the individual attendances of the members at those meetings; or <p>b) if it does not have a remuneration committee, disclose that fact and the processes it employs for setting the level and composition of remuneration for directors and senior executives and ensuring that such remuneration is appropriate and not excessive.</p> | <ul style="list-style-type: none"> While proposed recommendation 8.1(b) is new, this will not represent any change to companies that already comply with the recommendations in respect of remuneration committees. Recommendation 8.1(b) has been proposed to recognise that some listed entities, particularly smaller ones with smaller boards, may legitimately decide not to have a remuneration committee. Instead, they may institute alternative processes for setting the level and composition of remuneration for directors and senior executives and ensuring that such remuneration is appropriate and not excessive. Recommendation 8.1(a) is a combination of existing recommendations. |

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| ASX Principles - Proposed recommendation | Comments |
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| <p>8.2 A listed entity should separately disclose its policies and practices regarding the remuneration of non-executive directors and the remuneration of executive directors and other senior executives and ensure that the different roles and responsibilities of non-executive directors compared to executive directors and other senior executives are reflected in the level and composition of their remuneration.</p> | <ul style="list-style-type: none"> This recommendation is broadly the same as the existing recommendation, however it further emphasises that the roles and responsibilities of the non-executive directors (compared to executive directors and other senior executives) should be reflected in the level and composition of their remuneration. |
| <p>8.3 A listed entity should:</p> <ol style="list-style-type: none"> have a “clawback” policy which sets out the circumstances in which the entity may claw back performance-based remuneration from its senior executives; disclose that policy or a summary of it; and disclose as at the end of each reporting period: <ol style="list-style-type: none"> whether any performance-based remuneration has been clawed back in accordance with the policy during the reporting period; and where performance-based remuneration should have been clawed back in accordance with the policy during the reporting period but was not, the reasons for this. | <ul style="list-style-type: none"> In February 2012, the Australian Government announced that it would be introducing amendments to the Corporations Act to require a listed company to disclose to shareholders, on an “if not why not” basis, the steps it had taken to claw back bonuses and other remuneration from senior executives where there had been a material misstatement of financial results in the company’s financial statements. Under the proposed changes, these disclosures were to be made in the entity’s remuneration report. If shareholders were not satisfied with the company’s actions, they would then be able to use their powers under the “two strikes rule” to vote down the remuneration report. The Australian Government’s proposed amendments have been postponed given the upcoming election. In light of this, the proposed recommendation 8.3 seeks to address the Government’s intentions within the framework of the ASX Corporate Governance Principles rather than in legislation. The Australian Government may still seek to implement legislation in relation to clawback policies and / or practices. The proposed ASX principle goes further than the proposed Government legislation because it states that all listed entities should have a clawback policy and set out the circumstances in which that policy applies. This is broader than the proposed Government legislation which is limited to retrospective disclosure of the steps that the company had taken to claw back bonuses and other remuneration only in the case of material misstatement of financial results. |

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| ASX Principles - Proposed recommendation | Comments |
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| <p>8.4 A listed entity which has an equity-based remuneration scheme should:</p> <ul style="list-style-type: none">a) have a policy on whether participants are permitted to enter into transactions (whether through the use of derivatives or otherwise) which limit the economic risk of participating in the scheme; andb) disclose that policy or a summary of it. | <ul style="list-style-type: none">• The proposed recommendation is similar to the current guidance in the Guide to Reporting on Principle 8 (recommendation 8.4). |
| <p>The ASX is also proposing to apply an alternative to recommendations 8.1, 8.2 and 8.3 for externally managed listed entities, being:</p> <p>An externally managed listed entity should clearly disclose the terms governing the remuneration of the manager.</p> | <ul style="list-style-type: none">• This recognises that some of the proposed recommendations require modifications for externally managed listed entities. |

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How PwC can help

To have a deeper discussion about these issues, please contact:

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