



Corporate governance disclosure in annual reports

INTRODUCTION

This practice note outlines NSX expectations with respect to NSX listed entities' corporate governance disclosure obligations under Section IIA, IIB and IIC clause 6.9 (the rule) of the NSX Listing Rules. The rule requires the inclusion of a corporate governance statement (the CGS) in the directors' annual report which outlines the corporate governance practices that the entity had in place during the relevant period.

NSX has adopted a 'principled' rather than a prescriptive approach to the disclosures expected under the rule. This involves listed entities ensuring compliance with the principles of corporate governance (PCG). NSX tests compliance with PCG by reference to whether the policies and procedures of the listed entity support: the adoption of transparent corporate structures and operations, the application of robust risk management and internal control structures and ensures board accountability to shareholders and stakeholders (the principles).

By promoting a principled rather than prescriptive approach, NSX is not advocating less disclosure than would be required by other stock exchanges; rather NSX expects listed entities to become actively involved in the development of good corporate governance practices. This approach recognises that good corporate governance cannot be achieved by a 'one size fits all' approach. Rather, directors must consider the individual characteristics of the listed entity with respect to the size, type and scope of the business' activities. Directors should develop policies and procedures that ensure the listed entity adheres to the principles described in this document.

Nominated Advisers also play a role in helping the issuer with its obligations.

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Qualifications

National Stock Exchange of Australia Limited (NSX) issues practice notes to promote commercial certainty, reduce costs to business and assist market participants. We are available to discuss any questions you have in relation to a practice note. NSX may replace practice notes at any time. Issuers should contact NSX to ensure that they have the latest version of a practice note. As a practice note is only a guide to NSX practice, issuers are advised to contact NSX to discuss their particular circumstances and the application of the listing rules. NSX cannot give legal advice to issuers and recommends that they consider taking advice from a qualified professional person.

Practice Note History

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Disclosures required under Listing Rules and Corporations Act

Both the Corporations Act 2001 (Cth) (the Act) and Listing Rules, refer to a number of specific and general disclosures that must be disclosed in the annual directors' report. Although it is with respect to the general disclosures required under the Listing Rules that this practice note specifically deals with, listed entities are advised to familiarise themselves with the specific disclosures required under the Act.

Clause 6.9 of the Listing Rules states that the directors' operations report must include a statement of the main corporate governance practices that the issuer had in place during the relevant period. NSX interprets this rule broadly to place an obligation on listed entities to develop and disclose the corporate governance practices which ensure that the company is able to adhere to the principles discussed in this practice note.

NSX considers that this obligation has three aspects. First, the listed entity must consider what good corporate governance means to the listed entity in its own specific circumstances. Secondly, the listed entity must formulate policies and procedures relevant to the individual entity, which support adherence with the principles. Thirdly, the entity must regularly revise its policies and procedures to ensure ongoing compliance with the principles. This practice note provides guidance on how entities may satisfy these obligations.

Nominated Advisers

Nominated Advisers play a large role in the NSX listing rules. Specifically Nominated Advisers are there to help listed entities with their obligations under the listing rules. Many of the Nominated Advisers are also able to assist entities with policies and procedures to implement effective corporate governance for their businesses. Nominated Advisers are to be available at all times to advise and guide the directors of the issuer as to their responsibilities and obligations to ensure compliance by the issuer on an ongoing basis with the Exchange's rules;

The meaning of corporate governance

NSX interprets the term corporate governance broadly and adopts the Australian National Audit Office's (ANAO) definition referred to in 'Principles and Better Practices – Corporate Governance in Commonwealth Authorities and Companies' (the report) see <http://www.anao.gov.au> Commonwealth definition, namely:

"...Corporate governance generally refers to the processes by which organizations are directed, controlled and held to account ...
...Governance encompasses agency management, the structure and operation of boards, as well as the values, behaviors and relationship between organisation and their stakeholders".

The Organisation for Economic Cooperation and Development (OECD) in its Principles of Corporate Governance supplies a similar definition:

"...corporate governance ... involves a set of relationships between a company's management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set out, and the means of attaining those objectives and monitoring performance are determined".

Each of these definitions highlights the broad nature of corporate governance. Given the broad issues involved, listed entities need to develop a broad range of policies and procedures to adequately deal with these important structural and operational issues.

NSX has identified the following corporate governance issues, with respect to which listed are likely to be obligated to develop policies and procedures and consequently, be required to disclose in the annual directors' report.

- (i) Policies and procedures adopted to ensure that the entity acts according to law, including satisfying its reporting obligations under the Act and Listing Rules.



- (ii) Policies and procedures adopted to ensure that the entity's board acts with due care and diligence and in the interests of shareholders.
- (iii) Policies and procedures adopted to adequately identify and deal with conflicts of interest at board, management and employee levels.
- (iv) Policies and procedures adopted to protect shareholder interests, including: access to information, voting rights, share of profits, equitable treatment.
- (v) Policies and procedures adopted to protect the interests of stakeholders including: employees, creditors, and the wider community.

NSX's approach to application of the principles

As recognised in the ANAO report:

“Good corporate governance is more than just prescribing particular corporate structures and complying with a number of accepted rules. Instead, it is about a range of broad principles which should be applied flexibly to the varying circumstances of individual organizations in a way that facilitates accountability and performance.” (emphasis added)

It is these twin principles, of accountability and performance, that NSX is seeking to promote by adopting its principled approach to corporate governance disclosure. As stated by ANAO, it is now axiomatic that:

“An effective system of corporate governance will help facilitate decision making and appropriate delegation of accountability and responsibility within and outside an organisation. This should ensure that the varying interests of stakeholders are appropriately balanced; that decisions are made in a rational, informed and transparent fashion; and that those decisions contribute to the overall efficiency and effectiveness of the organisation.”

By obligating boards to consider how to achieve compliance with PCG, in the specific circumstances of their corporation, listed entities will be more than just complying with a prescribed list of disclosures, instead boards will be actively promoting their accountability to shareholders and stakeholders alike.

NSX considers that given the increasingly complex structures being adopted in Australian financial markets, the listed entities themselves are in the best position to know what policies and procedures are necessary to achieve: transparency in structure and operations, application of appropriate risk management and internal control structures and accountability to shareholders and stakeholders.

It is the expectation of the NSX that by considering application of the policies and procedures listed above, listed entities will be in a position to satisfy their disclosure obligations under the rule.

A regulatory perspective

In order that listed entities understand NSX's approach to testing compliance with disclosure obligations under the rule, it is relevant to outline NSX regulatory interests as a market licensee.

As a market licensee, NSX is obligated to ensure that the market operates in a fair, orderly and transparent manner. Where listed entities comply with the rule, by formulating and disclosing appropriate corporate governance practices and procedures, relevant to PCG, this assists NSX to ensure that the market operates in a fair, orderly and transparent manner.

Failure by listed entities to comply with disclosure obligations is treated seriously by the NSX and can result in notification to Australian Securities and Investment Commission (ASIC), fines and/or suspension from the official list.



How listed entities may formulate approaches to corporate governance disclosures while listed on NSX?

The listed entity must consider what good corporate governance means in its own specific circumstances. This involves the board and management considering what policies and procedures must be adopted, in the specific circumstances of the entity, to ensure: the adoption of transparent corporate structures and operations, the application of a robust risk management and internal control structures and board accountability to shareholders and stakeholders.

An annexure is attached to this practice note that outlines the various policies and procedures and related issues which may assist listed entities develop and review relevant policies and procedures. Once these policies and procedures are developed and disclosed, listed entities must have systems in place to regularly review these documents to ensure ongoing compliance with their obligations under the rule.

NSX also advises that listed entities may find assistance in developing appropriate policies and procedures by referring to ASX Corporate Governance Council's – Principles of Good Corporate Governance and Best Practice Recommendations (ASX Principles). This document provides a list of ten (10) principles, supported by a number of recommendations. Under clause 4.10.3 of the ASX listing rules, listed entities must include in their annual report:

“A statement disclosing the extent to which the entity has followed the best practice recommendation set by the ASX Corporate Governance Council during the reporting period. If the entity has not followed all of the recommendations the entity must identify those recommendations that have not been followed and give reasons for not following them”.

While the ASX Principles serve as a useful guide of the matters which should be disclosed, NSX is of the view that the same corporate governance goals can be achieved under the self-reporting principled approach outlined in this practice note. NSX advises that it will continue to closely monitor corporate governance disclosures of listed entities and will update this practice note as required, to ensure the maintenance of a fair, orderly and transparent market.

References

For further information please refer to the following:

- NSX Practice Note #3: Continuous Disclosure
- NSX Practice Note #9: Periodic Disclosure
- Australian National Audit Office's (ANAO)
- Organisation for Economic Cooperation and Development (OECD) Principles of Corporate Governance

Further Information

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ANNEXURE 1:

Suggested Content and Scope of Policies and Procedures

This annexure is intended to provide a brief outline of the content and scope of the various policies and procedures that listed entities may need to disclose in the directors' report on corporate governance practices.

A. Policies and procedures adopted to ensure that the entity acts according to law, including satisfying its reporting obligations under the Act and Listing Rules

1. Code of conduct and ethical behaviour

Such a document would outline the high standard of corporate and individual behavior expected of the entity, the board, management and employees and may deal with such issues as:

- (i) Responsibilities to shareholders,
- (ii) Entity's obligation to act with care and due diligence,
- (iii) Policy on identifying and dealing with conflicts of interest,
- (iv) Policy on confidentiality,
- (v) Policy on fair dealing in company shares,
- (vi) Policy on use of company assets,
- (vii) Policy on shareholder and stakeholder privacy, and
- (viii) Policy on monitoring and reporting on the code.

2. Charter of Audit and Compliance Committee

Such a document would outline the role of the committee in ensuring that the listed entity has the appropriate structures in place to ensure ongoing compliance with listing rules and other regulatory requirements.

- (i) Responsibilities of committee
- (ii) Members of the committee
- (iii) Timing and content of reporting responsibilities
- (iv) Appointment to the committee
- (v) Interaction with external auditors
- (vi) Independence of the committee

B. Policies and procedures adopted to ensure that the entity's board acts with due care and diligence and in the interests of shareholders.

1. Board charter

Such a document would outline the duties, powers and structure of the board of directors. The charter may cover the following issues:

- (i) Board responsibilities
- (ii) Term of membership of the board
- (iii) The role of chairman
- (iv) Separation of functions between Chairman and Chief Executive Officer
- (v) Restriction on activities of Chief Executive Officer and Chairman
- (vi) The role of the Company Secretary
- (vii) Scope of activities of the Board
- (viii) Reporting activities of the board



2. Procedure for the appointment of directors

Procedure should outline the process for the recruitment and appointment of directors to the board. Issues it may cover include:

- (i) Receipt of relevant documentation from appointee
- (ii) ASIC database checks
- (iii) Application to NSW police freedom of information unit for police check
- (iv) Approval by NSX Board
- (v) Letter of notice sent to ASIC concerning appointment

3. Procedure for dealing in company securities

Procedure should outline approach for ensuring that directors, management or employees do not unlawfully deal in company securities.

- (i) Responsibilities of directors, management or employees not to engage in insider trading
- (ii) Implications for non-compliance with procedure
- (iii) Nature of legal obligations
- (iv) Prohibitions under the Corporations Act
- (v) When dealing in company shares is or is not permitted
- (vi) Procedures for dealing in company shares

4. Procedures for the provision of services by directors and/or related parties to the company

Procedures should outline the requirement that where director related parties enter into commercial arrangements with the company, they do so on commercial terms on an arms length basis. Procedure document may include reference to:

- (i) Policy of conducting business in a manner accountable to shareholders
- (ii) Requirement for all paid services provided by director related entities to be approved by the board
- (iii) All transactions involving director related entities must be entered into on arms length terms

C. Policies and procedures adopted to adequately identify and deal with conflicts of interest at board, management and employee levels.

1. Policy on conflicts of interests

This document should outline the entity's approach to identifying and dealing with conflicts of interest at the board, management and employee levels. Issues covered may include:

- (i) Entity's definition of what is meant by conflicts of interests
- (ii) Examples of practical steps to be taken to identify and avoid potential conflicts of interests
- (iii) Board, management and Employee responsibilities for avoiding conflicts of interest
- (iv) Procedures for identifying and reporting conflicts of interests

2. Policy on the maintenance of a conflicts of interest register.

This document should outline the approach adopted by the entity for maintaining a record of any relevant board, management of employee level conflicts of interest. Topics covered may include:

- (i) Procedures for the declaration by directors of their personal interests.
- (ii) Procedures for the updating and recording of these interests.



D. Policies and procedures adopted to protect shareholder interests, including: access to information, voting rights, share of profits, equitable treatment.

1. Communication policy with shareholders

This policy outlines listed entity's policy with respect to informing shareholders of material matters which affect their interests, issues covered in the policy may include:

- (i) entities commitment to keeping shareholders informed,
- (ii) timing and content of disclosures,
- (iii) use of internet and or other medium to keep shareholders informed
- (iv) process for informing shareholders of meetings
- (v) policy on protecting privacy of shareholders

2. Policy on dealing with risk

This policy should outline the board's strategy with dealing with the various types of risk faced by the organization. The policy may include reference to the following issues:

- (i) Identify the various categories of risk faced by the organisation, financial, business, asset, legal, political, competitive, external, internal etc.
- (ii) Developing systems and procedures to ensure that the entity is able to respond effectively to threats from these key risk areas.

E. Policies and procedures adopted to protect the interests of stakeholders including: employees, creditors, and the wider community.

1. Remuneration policy

This policy should outlines the board's approach to remuneration of employees topics covered may include:

- (i) Level of remuneration
- (ii) Salary packaging
- (iii) Use of options or share purchase plans
- (iv) Performance component of salary package

2. See policy on 'Code of Conduct and Ethical Behavior' as noted above



ANNEXURE 2:

Suggested Timetable for June 30 and 31 December Balance Date Companies

This time table outlines maximum lodgment dates for June 30 balance Sheet Companies. Companies with different year end should modify the dates accordingly. Also note that dates are subject to public holidays and weekends so that lodgment should be the no later than the business day before the final lodgment date.

MONTH	NSX EVENT	MARKET EVENT
January	<ul style="list-style-type: none"> Quarterly Cashflow report 	<ul style="list-style-type: none"> 31st January quarterly cashflow reports due.
February		
March	<ul style="list-style-type: none"> Half Yearly Report Preliminary Final Reports 	<ul style="list-style-type: none"> Half Yearly reports due for 30 June Companies, usually 16th March (75 days) Preliminary statements due for 31 December Companies, usually 16th March (75 days)
April	<ul style="list-style-type: none"> Quarterly Cashflow report 	<ul style="list-style-type: none"> 30 April quarterly cashflow reports due.
May	<ul style="list-style-type: none"> Audit Management Review 	<ul style="list-style-type: none"> Review of upcoming audit with Auditors.
June		
July	<ul style="list-style-type: none"> Quarterly Cash Flow Report 	<ul style="list-style-type: none"> 31st July Quarterly Cash Flow reports due.
August		
September	<ul style="list-style-type: none"> Lodge Annual Financial Report with ASIC and NSX Lodge Annual Regulatory Report with ASIC 	<ul style="list-style-type: none"> 13th September, Preliminary Appendix 3 Statements due for 30 June Companies 13th September, Half yearly statutory and appendix 3 reports dues 30th September Statutory Directors' Financial Report due to ASIC for Companies
October	<ul style="list-style-type: none"> Post out Annual report to Shareholders plus Notice of Meeting, report to NSX. 	<ul style="list-style-type: none"> 31st October, last date for Notice of meeting and annual report to be sent to shareholders Any reports not previously lodged with NSX must be lodged.
November	<ul style="list-style-type: none"> Annual General Meeting of NSX Limited 	<ul style="list-style-type: none"> 31st November – last date for AGM Lodge with NSX results of meeting including information required by section 251AA
December		