

**References**

Version 1, Operative 14/3/2008

Chapter 3, BSX Listing Rules

Listing Rule 3.17(c)

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**Introduction**

This guidance note outlines BSX expectations with respect to BSX listed entities' corporate governance disclosure obligations under BSX Listing Rule 3.17(c) (the rule). The rule requires the inclusion of a statement of the main corporate governance practices the entity had in place during the reporting period, including whether it had an audit committee.

BSX 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). BSX 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.

By promoting a principled rather than prescriptive approach, BSX is not advocating less disclosure than would be required by other stock exchanges; rather BSX 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.

**Regulatory Objectives**

One of the key principles of the BSX Listing Rules is that listed entities must keep investors and the market informed of information about the entity.

Disclosure as required by Listing Rule 3.17(c) allows investors and the market to assess the standards of corporate governance which exist within the entity.

Whilst BSX does not mandate any particular corporate governance requirements other than those set forth in the Listing Rules, it sees strong corporate governance practices as the basis for investor and market confidence in the entity.

**Disclosure Rule**

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 report. Although it is with respect to the general disclosures required under the Listing Rules that this practice note specifically deals, listed entities are advised to familiarise themselves with the specific disclosures required under the Act.

Listing Rule 3.17 specifies information which must be included in the entity's annual report to shareholders in addition to the requirements of the Corporations Act. Part (c) of that Listing Rule requires disclosure of a statement of the main corporate governance practices the entity had in place during the reporting period (including whether it had an audit committee). BSX 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.

BSX 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.

### **The meaning of “Corporate Governance”**

BSX 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, behaviours 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.

BSX 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.

### **BSX’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 BSX 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.

BSX 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 BSX 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 BSX's approach to testing compliance with disclosure obligations under the rule, it is relevant to outline BSX regulatory interests as a market licensee.

As a market licensee, BSX 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 BSX 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 BSX and can result in notification to Australian Securities and Investment Commission and/or suspension from the official list.

### **How listed entities may formulate approaches to corporate governance disclosures while listed on BSX?**

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.

BSX 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, BSX is of the view that the same corporate governance goals can be achieved under the self-reporting principled approach outlined in this guidance note. BSX 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:

- BSX Guidance Note: Disclosure
- Australian National Audit Office's (ANAO) 'Principles and Better Practices – Corporate Governance in Commonwealth Authorities and Companies'
- Organisation for Economic Cooperation and Development (OECD) Principles of Corporate Governance

## Queries

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**ANNEXURE: 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 implement and disclose.

**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 behaviour 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 for police check
- (iv) Notice sent to BSX and 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 outline 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 Behaviour' as noted above