

Financial Services Council

Blue Book

June 2009

FSC Guidance Note No. 2.00

Corporate Governance:
A Guide for Fund Managers
and Corporations

strength through advocacy

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CORPORATE GOVERNANCE: A GUIDE FOR FUND MANAGERS AND CORPORATIONS

Main features of this Guidance Note are:

- The first five Guidelines in the Guidance Note provide guidelines for FSC Members in determining their approach to Corporate Governance (including environmental and social issues), voting and other issues proposed by public companies in which they invest.
- The next eighteen Guidelines in the Guidance Note provide guidelines for public listed companies in relation to a range of Corporate Governance issues including disclosure, board and board committee composition, non-executive directors, board and executive remuneration policy, and company code of ethics and conduct.
- APPENDIX A to this Guidance Note includes a suggested format for remuneration disclosure, APPENDIX B a model proxy form, APPENDIX C the FSC Aggregate Proxy Voting Table, and APPENDIX D lists the other complementary FSC Corporate Governance Standards/Guidance Notes.

1st edition 1995
4th edition December 2002
Reprint March 2003
5th edition October 2004
6th edition June 2009

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1 TITLE

- 1.1 This Guidance Note may be cited as FSC Guidance Note No. 2.00 'Corporate Governance: A Guide for Fund Managers and Corporations'. It is commonly known as the *Blue Book*.

2 GUIDANCE NOTE AND COMMENTARY

- 2.1 The Guidelines set out in this Guidance Note are shown in bold print. Commentary is shown in normal print immediately after the Guideline to which it relates, as an aid to interpretation of the Guidelines.

3 DATE OF ISSUE

- 3.1 June 2009

4 EFFECTIVE DATE

- 4.1 The parts of this Guidance Note that relate to an FSC Member may be applied in relation to the Member's operations on or after June 2009. Earlier application of this Guidance Note is permitted and encouraged.

5 APPLICATION

- 5.1 The first five Guidelines, 'Guidelines for Fund Managers', should be applied by FSC Members in relation to their own operations. It is expected that Fund Managers apply these Guidelines in relation to their investment activities in Australia. Fund Managers who are engaged in investment activities internationally have an opportunity to promote good governance practices outside Australia and are encouraged to do so, having regard to the content and spirit of these Guidelines.
- 5.2 The next eighteen Guidelines, 'Guidelines for Corporations', establish the framework for a sound approach to Corporate Governance from the point of view of the investment community. However, FSC acknowledges that some companies may have circumstances that warrant departure from these Guidelines. FSC recommends that corporations should, therefore, disclose in their annual report whether, and the way in which, they comply with the Guidelines. Where a company does not comply with a particular Guideline, FSC also recommends that the company should explain clearly to shareholders the circumstances and reasons for departing from the Guideline.

6 DEFINITIONS

Unless otherwise specified, a 'Term' used in this Guidance Note has the same meaning as defined in FSC Guidance Note No. 5.00 'Industry Terms and Definitions'.

'Member' refers to both 'Full Member' and 'Supporting Member' as defined in FSC's Articles of Association.

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7 INTRODUCTION

- 7.1 This Guidance Note is published by FSC to assist its Members to pursue an active role in monitoring the Corporate Governance responsibilities of the companies in which they invest. FSC's Members manage over \$1.1 trillion on behalf of superannuation members and retail/wholesale clients. FSC Members' investment in the domestic market accounts for about 25% of the capitalisation of the Australian Securities Exchange (ASX). Fund Managers are significant shareholders in Australian listed companies on behalf of over 9 million Australians.
- 7.2 As major shareholders, FSC Members are in a position to promote improved company performance that provides positive benefits to all shareholders and the economy as a whole. While shareholders are not involved in the day-to-day management of companies, the Corporations Act, ASX Listing Rules and industry best practice provide many opportunities for shareholders to monitor and influence company decision-making which drives ultimate company performance.
- 7.3 These Guidelines were first developed by Fund Managers to address some of the corporate excesses during the 1980s. The Guidelines have become widely accepted by the investment and corporate community as providing guidance for Corporate Governance. The ASX Corporate Governance Council released its 'Corporate Governance Principles and Recommendations' that are underpinned by ASX Listing Rule 4.10, which adopted many of the FSC Blue Book principles. A second edition of the ASX Guidelines was released in August 2007.
- 7.4 Recent market practices and developments have placed Corporate Governance in the spotlight of the wider community. It is, therefore, timely to review the FSC Guidelines to ensure that FSC continues to provide corporate governance guidance to its Members. FSC has taken a leading role in corporate governance over a number of decades and, for the first time, these Guidelines include recommendations relating to significant environmental and social considerations which could have an impact on corporate performance.
- 7.5 These Guidelines are primarily for the use of FSC Members in determining their approach to Corporate Governance, voting and other issues proposed by public companies in which they invest. The Guidelines indicate the principles of Corporate Governance that FSC Members expect Australian listed companies to adopt. The ASX Corporate Governance Principles and Recommendations, along with these Guidelines, provide a useful reference for companies when designing and reviewing their governance structures.
- 7.6 FSC supports the Australian framework for Corporate Governance that is based on the encapsulation of broad principles within the Corporations Act, supplemented by the ASX Listing Rules and industry best practice. These Guidelines provide an important contribution to the Australian Corporate Governance framework. FSC will continue to monitor and review the Guidelines in light of domestic and international developments.
- 7.7 The 6th edition of this Guidance Note is issued by FSC to assist its Members to provide leadership in promoting matters central to the interests of all shareholders.

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8 SUMMARY OF GUIDELINES

8.1 GUIDELINES FOR FUND MANAGERS

8.1.1 *Guideline 1 - Corporate Governance Policy and Procedures*

Fund Managers should have a written Corporate Governance policy which is made available on their website. The policy should be approved by the board of the Fund Manager and should note the general principles underpinning formal internal procedures to ensure that the policy is applied consistently.

8.1.2 *Guideline 2 - Communication with Companies*

Fund Managers should establish direct contact with companies in accordance with their Corporate Governance Policy. Engagement with companies should include constructive communication with both senior management and board members about performance, Corporate Governance and other matters affecting shareholders' interests.

8.1.3 *Guideline 3 - Voting on Company Resolutions*

Fund Managers should vote on all Australian company resolutions where they have the voting authority and responsibility to do so. An aggregate summary of a Fund Manager's Australian proxy voting record must be published at least annually and within 2 months of the end of the financial year.

8.1.4 *Guideline 4 - Reporting to Clients*

Wherever a client delegates responsibility for exercising proxy votes, the Fund Manager should report in a manner required by the client. Reporting on voting and, where required, other corporate governance activities, should be a part of the regular reporting process to each client. The report should include a positive statement that the Fund Manager has complied with its obligation to exercise voting rights in the client's interest only. If a Fund Manager is unable to make the statement without qualification, the report should include an explanation.

8.1.5 *Guideline 5 - Environmental and Social Issues and Corporate Governance*

Fund Managers should engage companies on significant environmental and social issues that have the potential to impact on current or future company reputation and performance.

8.2 GUIDELINES FOR CORPORATIONS

8.2.1 *Guideline 1 - Annual Disclosure*

The board of directors of a listed company should prominently and clearly disclose, in a separate section of its annual report, its approach to Corporate Governance. This should include an analysis of the Corporate Governance issues specific to the company so that shareholders understand how the company deals with those issues. If the particular circumstances of a company warrant departure from these guidelines, the company should clearly explain the reason for an alternative approach. A company should also disclose its policies and performance regarding other issues, including its risk management framework and material environmental and social issues.

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8.2.2 Guideline 2 - Composition of the Board of Directors: Competency

The board of directors of a listed company should be comprised of competent individuals who have the requisite skills and experience to fully discharge their directors' duties. It is important to ensure that the board as a whole has the necessary breadth of experience and diversity of skills to enable it to discharge its functions. The board should review and disclose in the annual report its required mix of skills, experience and other qualities, including the core competencies that each director brings to the board.

8.2.3 Guideline 3 - Composition of the Board of Directors: Independence

The board of directors of a listed company should be constituted with a majority of individuals who qualify as independent directors as defined in this Guideline.

8.2.4 Guideline 4 - Number of Permissible Directorships an Individual May Hold

Individual directors must commit an appropriate amount of time to board matters and, where appointed, to relevant board committees. It is appropriate to limit the number of board positions held in order to ensure that the individual fulfils their duties to each particular company.

8.2.5 Guideline 5 - Chairperson to be an Independent Director

The Chairperson should be an independent director.

8.2.6 Guideline 6 - Board Committees

Committees of the board of directors should:

- generally be constituted with a majority who are independent directors, although all members of the Audit Committee should be independent directors (see Recommendation 4.2 of ASX Principle 4: Safeguard integrity in financial reporting);
- be entitled to obtain independent professional or other advice of their choice at the reasonable cost of the company; and
- be entitled to obtain such resources and information from the company, including direct access to employees and advisers to the company.

8.2.7 Guideline 7 - Key Board Committees

The board should appoint a nomination committee, an audit committee, a remuneration committee, and such other committees required by law. These committees should be constituted as defined in this Guideline.

8.2.8 Guideline 8 - Election of Directors

The method for electing directors must be fair and transparent.

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8.2.9 *Guideline 9 - Appointment of Non-Executive Directors*

Before accepting appointment, non-executive directors should be formally advised of the reasons they have been asked to join the board and given an outline of what the board expects of them. They should be advised of their rights as a director, including their access to company employees and access to information and resources. Additionally, they should be advised of their entitlement to obtain independent professional or other advice of their choice at the reasonable cost of the company. The terms of any pre-nuptial agreement should not diminish shareholder rights.

8.2.10 *Guideline 10 - Performance Evaluation*

The board should develop a formal performance evaluation process for the regular review of its performance, the performance of individual directors, the company and management. As a key part of that process, the independent directors should meet on their own at least once annually to review performance.

8.2.11 *Guideline 11 - Equity Participation by Non-Executive Directors*

The board should establish and disclose in the annual report a policy to encourage non-executive directors to invest their own capital in the company or to acquire shares from an allocation of a portion of their fees.

8.2.12 *Guideline 12 - Trading by Directors and Senior Management*

Companies must develop, enforce and monitor policies on director and executive trading in accordance with the *Corporations Act 2001*, and which reflect their own circumstances. This should include monitoring, enforcement and reporting on trading within any trading windows and 'blackout' trading periods. The policy should include appropriate restrictions and disclosure regarding margin lending arrangements over the company's stock.

8.2.13 *Guideline 13 - Respective Roles of the Board and Management*

The board should, at least annually, review the respective roles and the allocation of responsibilities between the board and management.

8.2.14 *Guideline 14 - Board and Executive Remuneration Policy and Disclosure*

The board must disclose in the company's annual report its policies on, and the quantum and components of, remuneration for all directors and each of the five highest paid executives. Where consolidated financial statements are required, remuneration details of each of the five highest paid group executives must be provided. The disclosure should be made in one section of the annual report in tabular form with appropriate explanatory notes.

8.2.15 *Guideline 15 - Company Meetings*

• *Format of Resolutions*

Notices of meeting and company resolutions should be in plain English and made in a manner that permits shareholders to make informed decisions. Notices of meeting should be posted on the company website or be accessible electronically. Separate issues should not be combined and presented as a single motion for shareholder vote.

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- **Form of Proxies**

Companies should adopt the Model Form of Proxy in APPENDIX B (with appropriate modifications). Additionally, companies should take steps to implement facilities for the electronic submission and authentication of proxy forms.

- **Notification Period for Shareholder Meetings**

The annual report, notice of meeting and other documents for all shareholder meetings should be sent to shareholders at least 28 days prior to the meeting.

- **Method of Voting**

Voting should generally be conducted by poll only at the conclusion of discussion of each item of business. Appropriate forms of technology should be utilised to facilitate the proxy voting process.

- **Disclosure of Voting Results**

In announcing to the ASX the decisions made by shareholders at a general meeting, a listed company should report the aggregate proxy votes validly received for each item of business in the notice of meeting. The report should disclose, in the case of a resolution passed on a show of hands, the aggregate number of proxy votes received in each voting category ('For', 'Against', 'Left to Proxy's Discretion' and 'Abstain'). In the case of a resolution submitted to a poll, the report should disclose both the information specified in the preceding sentence and the aggregate number of votes cast 'For' and 'Against' on the poll.

- **Access to Minutes**

Shareholders should be able to authorise an agent to inspect or obtain copies of minutes of shareholders' meetings.

8.2.16 Guideline 16 - Disclosure of Beneficial Shareholder Information

Information about beneficial shareholdings obtained by companies in response to their inquiries should be disclosed to the market.

8.2.17 Guideline 17 - Major Corporate Changes

Major corporate changes, which in substance or effect may impact shareholder equity or erode share ownership rights, should be submitted to a vote of shareholders. Sufficient time and information (including a balanced assessment of relevant issues) should be provided to shareholders to enable them to make informed judgements on these resolutions.

8.2.18 Guideline 18 - Company Codes of Ethics and Conduct

Listed companies should have a company Code of Ethics and Conduct that is adopted by the board and is available to shareholders on request.

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9 PART 1: RATIONALE

9.1 Introduction

- 9.1.1 All shareholders benefit from the activities of Fund Managers in the Corporate Governance arena. By engaging with the companies in which they invest, Fund Managers are monitoring the integrity of their investments and promoting long-term economic growth. This is increasingly important given the vital role that FSC Members have in investing Australians' superannuation savings.
- 9.1.2 Fund Managers have a fiduciary responsibility to their unitholders and clients to manage their investments in accordance with their stated investment objectives. The significant increase in funds under management, in particular the growth of superannuation funds, highlights the importance of ensuring that shareholder interests are promoted appropriately on behalf of a range of investors (retail and institutional) and related beneficiaries such as superannuation members.

9.2 What is Corporate Governance?

- 9.2.1 Corporate Governance concerns the conduct of the board of directors and the relationships between the board, management and shareholders. The transparency of major corporate decisions and accountability to shareholders is at the core of governance issues. Shareholders should be treated equitably and there should be the appropriate distribution of risks and rewards between shareholders and company management.
- 9.2.2 Corporate Governance is concerned with ensuring that a company's management practices are aligned with the interests of shareholders. Sound Corporate Governance principles increase investor confidence in the integrity and efficiency of the Australian capital market, which in turn enhances the competitiveness of the Australian economy.
- 9.2.3 While Australian companies have generally demonstrated a good Corporate Governance record, FSC Members continue to expect Australian boards to exercise strong leadership to continually improve disclosure and accountability practices.
- 9.2.4 The primary mechanisms Fund Managers use to influence Corporate Governance issues are through direct communication with companies and voting on company resolutions.

9.3 The FSC Corporate Governance Guidelines

- 9.3.1 The Corporate Governance Guidelines contained in this Guidance Note are issued by FSC for the benefit of its Members and all Investors and for the information of the companies in which they invest. The Guidelines provide Fund Managers with a benchmark to assess the Corporate Governance of a particular company, and where necessary, engage with the company in order to promote change. It also provides principles to assist Fund Managers in their decisions on voting on company resolutions. In addition, these guidelines provide a useful reference point for Fund Managers and their clients when entering into investment management agreements. The FSC Standard Investment Management Agreement provides a standardised process for these matters to be considered.

FSC's Standard Investment Management Agreement is available at:
<http://www.fsc.org.au/public/content/ViewCategory.aspx?id=170>

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9.4 Disclosure Standard

- 9.4.1 The Guidelines are considered to set an appropriate standard of disclosure by Australian listed companies to their shareholders. Over time, a number of the Guidelines have been incorporated into the law, and they are reflected in the ASX Corporate Governance Principles and Recommendations. These disclosure standards are intended to build on the requirements of the Corporations Act and the ASX Listing Rules.
- 9.4.2 Sound Corporate Governance requires the board of each listed company to examine and develop governance structures that are appropriate for the particular circumstances of the company.

9.5 Ongoing review

- 9.5.1 These Guidelines will be reviewed by FSC to take account of Australian developments, including regulatory and market developments and the status of international best practice principles. Where appropriate, existing Guidelines will be revised and new Guidelines may be introduced.

10 PART 2: GUIDELINES FOR FUND MANAGERS

10.1 Introduction

Effective Corporate Governance depends heavily on the willingness of the owners of a company to exercise their rights of ownership, to express their views to boards of directors and to exercise their voting rights.

The relative size of their shareholdings provides Fund Managers with a particular responsibility and capacity to exercise that shareholder influence and franchise.

FSC's Corporate Governance Guidelines should be made available to companies. The Guidelines are consistent with responsible investment management and should be applied consistently across all companies on all relevant issues. Clients of Fund Managers should be informed of FSC's Guidelines and of their consistent application.

10.2 Guideline 1 - Corporate Governance Policy and Procedures

Fund Managers should have a written Corporate Governance Policy which is made available on their website. The policy should be approved by the board of the Fund Manager and should note the general principles underpinning formal internal procedures to ensure that the policy is applied consistently.

Monitoring the Corporate Governance activities of Australian listed companies is an important aspect of the professional services provided by Fund Managers. It is, therefore, vital that a Corporate Governance Policy is developed and approved by the board of each Fund Manager. This policy should document processes regarding engagement with companies on Corporate Governance activities and ensuring that voting rights are managed with due care and diligence. The policy should include the process for consulting superannuation trustees and other institutional clients if required by the investment mandate. Procedures must be implemented to ensure that the Corporate Governance Policy is consistently applied.

The Corporate Governance Policy of a Fund Manager should be provided to superannuation trustees and other institutional clients of the Fund Manager in accordance with FSC's Standard Investment Management Agreement. The Corporate Governance Policy of the Fund Manager should be made available on the Fund Manager's website.

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Fund Managers should also consider disclosing in product disclosure statements that their Corporate Governance Policy is available on request.

10.3 Guideline 2 - Communication with Companies

Fund Managers should establish direct contact with companies in accordance with their Corporate Governance Policy. Engagement with companies should include constructive communication with both senior management and board members about performance, Corporate Governance and other matters affecting shareholders' interests.

Shareholders receive reports and accounts and other explanatory material from companies that are required by the Corporations Act or the ASX Listing Rules. In addition to company meetings, companies conduct road shows and provide analyst briefings. However, given Fund Managers' responsibilities to their clients, and the significant amount of capital at stake, Fund Managers should establish direct contact with companies about performance and Corporate Governance issues.

A direct dialogue will give Fund Managers a better appreciation of a company's objectives, its potential problems and the quality of its management. It also provides the company with an opportunity to understand the expectations and concerns of professional investors. Two-way communications between companies and Fund Managers is an important aspect of Corporate Governance, enabling each party to more fully assess the concerns and prospects of the company. Communication between Fund Managers and companies also benefits other shareholders who may hold similar views.

FSC research reveals a very high level of direct contact between Fund Managers and companies. Fund Managers generally agree that direct contact is the most effective means of influencing Corporate Governance outcomes.

10.3.1 Use by companies of information

Information on the company's market standing, such as valuation, stock performance, performance relative to peers and analysts' reports, can be a useful part of the information regularly provided to directors and to senior management. Such data can create a critical performance benchmark, revealing the overall judgement of capital markets about a company's past and present policies. This information can also be helpful to companies formulating and debating future plans and projects.

10.3.2 Communication should be at senior level

Fund Managers should establish contact with the company at Chief Executive Officer, board of directors and senior management level.

Direct communication is effective when the Fund Managers and corporate representatives understand what the company business strategy is and both parties have a clear understanding of the decision-making structures and responsibilities within their organisations. Communications should signal a serious commitment to high-level feedback that can directly affect policy.

10.3.3 Companies' expectations

Companies agreeing to enhance communications with their major investors can expect positive undertakings from Fund Managers regarding a commitment to continuing informed discourse, agreements about the process governing the dialogue and a commitment to play a constructive role. Once companies have made the commitment to open up their process and seek new kinds of input, the onus is on the Fund Manager to respond responsibly and positively.

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10.3.4 *Fund Managers' expectations*

At the same time, Fund Managers should feel entitled to have their questions or concerns on Corporate Governance issues, including performance, answered or addressed in a business-like manner.

10.3.5 *Compliance with the law*

This Guideline should not be taken to advocate any conduct inconsistent with insider trading, continuous disclosure and other corporate laws. If information is in a proper form to disclose to a Fund Manager, the company should consider whether it has a duty to disclose the information to the market under ASX Listing Rules and continuous disclosure requirements.

Companies should refer to the ASIC Regulatory Guide 62 'Better Disclosure For Investors', which was first released in August 2000. This sets out principles for companies on a number of issues, including communication with shareholders and analyst briefings. In particular, it requires companies to establish written policies and procedures for better disclosure and to appropriately monitor their disclosure to the market.

Companies and Fund Managers should manage communications so that no Investor or potential Investor obtains material or price-sensitive information that has not been disclosed to the market in accordance with the Corporations Act and the ASX Listing Rules.

If a Fund Manager considers that material information has been provided during discussions with a company, it must warn the company that it may have breached the continuous disclosure provisions of the Corporations Act. The Fund Manager must implement appropriate mechanisms to ensure that the information is strictly safeguarded and insulated from any other activity. This may include a temporary ban on trading in the company's shares or implementing 'Chinese Walls' until the appropriate disclosures have been made to the full market.

10.4 **Guideline 3 - Voting on Company Resolutions**

Fund Managers should vote on all Australian company resolutions where they have the voting authority and responsibility to do so. An aggregate summary of a Fund Manager's Australian proxy voting record must be published at least annually and within 2 months of the end of the financial year.

Voting rights are a valuable shareholder right that should be managed with the same care and diligence as any other asset. Ultimately, shareholders' ability to influence management depends on shareholders' willingness to exercise those rights.

Fund Managers should support boards by positive use of their voting power unless they have good reasons for doing otherwise. Where a board has received steady support over a period of time, it should become a matter of concern for the board if that support is withdrawn.

If a Fund Manager intends to vote against a proposal, it may be appropriate for the Fund Manager to contact the company in time for the problem to be considered with a view to achieving a satisfactory solution. The company also has a responsibility to provide enough time for this to occur. Where a satisfactory outcome cannot be achieved on an important issue, it may be desirable for a spokesperson to attend the relevant meeting of the company and to explain why the proposal is being opposed. In such cases, a poll should be demanded to ensure that the vote is duly recorded.

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FSC Standard No. 13 - Proxy Voting requires Fund Managers to have a formal Proxy Voting Policy, approved by the board, that sets out the principles and guidelines under which proxies are voted. The Proxy Voting Policy must be made available to Scheme members on request.

The Standard provides that the Fund Manager should vote on all resolutions in respect of which it has discretion to vote, and not merely material resolutions. Additionally, an aggregate summary of its Australian proxy voting record must be published at least annually within 2 months of the end of the financial year. The information required by the Standard may be supplemented with relevant additional information (see APPENDIX C).

Fund Managers should also engage with their custodians to monitor whether their voting instructions have been appropriately recorded and lodged.

10.4.1 *Securities lending, vote renting and entitlement record dates*

Securities lending is a legitimate market practice that permits institutional owners, including superannuation funds, to make additional earnings on their long-term portfolios. It contributes to the liquidity and efficiency of the market.

FSC strongly supports the principle of 'one share, one vote'. FSC does not support differential voting shares or proxy vote renting that have the effect of undermining this principle.

While industry research¹ has indicated that the incidence of vote renting in Australia is relatively rare, institutional clients and their Fund Managers should discuss and develop policies dealing with securities lending arrangements, including the circumstances and procedures for ensuring all securities lending activity is lawful and that all voting entitlements are exercised appropriately. This may include working closely with superannuation clients and custodians to increase the information and transparency surrounding securities lending.

FSC is also aware that the discrepancy between a custodial cut-off date for recording voting entitlements and the company record date (usually 2 days difference) has led to circumstances where a Fund Manager's voting entitlements have been deemed partially or fully invalid. A single record date for determining voting entitlements should be developed between Fund Managers, custodians and share registries to ensure that shareholders are not disenfranchised due to reporting cut-off procedures.

10.5 **Guideline 4 - Reporting to Clients**

Wherever a client delegates responsibility for exercising proxy votes, the Fund Manager should report in a manner required by the client. Reporting on voting and, where required, other corporate governance activities should be a part of the regular reporting process to each client. The report should include a positive statement that the Fund Manager has complied with its obligation to exercise voting rights in the client's interest only. If a Fund Manager is unable to make the statement without qualification, the report should include an explanation.

As required under FSC Standard No. 13 - Proxy Voting, the Fund Manager should report to the client whether or not votes are cast, including information about abstentions that play an important role in the relationship between Fund Managers and companies. Reporting periods should be agreed with the client and should occur on at least an annual basis. The report should disclose:

¹ 'Securities Lending and Voting Entitlements', December 2007. A report prepared by the ISS Governance unit of RiskMetrics Group.

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- material Corporate Governance issues discussed with a company before an AGM, with a view to amending or withdrawing a proposed resolution;
- resolutions where the Fund Manager abstained or voted against the board's recommendation; and
- issues voted in favour of a board's recommendation where the Fund Manager was aware that there was significant opposition from board members or other investors.

The reporting of other Corporate Governance activities should be aligned with the reporting voting requirements stipulated above.

10.6 Guideline 5 - Environmental and Social Issues and Corporate Governance

Fund Managers should engage companies on significant environmental and social issues that have the potential to impact on current or future company reputation and performance.

The governance of a company has long been established as a major factor impacting on potential and actual company financial performance. It is now well accepted that issues such as environmental and social issues faced by a company may contribute towards financial performance in the short, medium and long term.

FSC members should engage companies on their significant environment and social issues that have the potential to impact on company perception and performance. Companies should also be encouraged to explain how they identify and manage their significant environmental and social risks.

The United Nations Principles for Responsible Investment (UNPRI) are recognised as providing a solid framework within which Fund Managers may engage companies regarding environmental and social issues. While the uptake of the UNPRI is strong within Australia, it is recognised that not all Fund Managers are in a position to become signatories to the initiative, because of resource limitations and/or the lack of consistent data in the marketplace. Fund Managers who are not signatories are encouraged to use the UNPRI as a framework for company engagement. FSC also encourages research houses to work with the professional investment community and Australian companies to develop investment-grade research to assist Fund Managers to assess company performance regarding their environmental and social risk management.

11 PART 3: GUIDELINES FOR CORPORATIONS

11.1 Introduction

In August 2007, the ASX Corporate Governance Council released its revised 'Corporate Governance Principles and Recommendations'. They applied to financial years commencing after 1 January 2008.

The ASX Corporate Governance Principles and Recommendations have built on this FSC Guidance Note No. 2 Corporate Governance - A Guide for Fund Managers and Corporations. The ASX 'Corporate Governance Principles and Recommendations' are underpinned by the ASX Listing Rules requiring disclosure in the annual report of the company of compliance with the recommendations. Where companies do not comply, the annual report must provide reasons for non-compliance with the recommendations.

This FSC Guideline is complementary to the ASX 'Corporate Governance Principles and Recommendations' and, for cross-referencing purposes, the relevant ASX Principle is cited.

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The board of directors of every corporation should explicitly assume responsibility for the stewardship of the corporation including the following matters:

- development and adoption of a corporate strategy;
- succession planning, including board succession planning, as well as appointing, training and monitoring senior management;
- an investor relations program for the corporation;
- the integrity of the corporation's internal control and management information system;
- setting of remuneration policy which incorporates appropriate performance hurdles;
- the company Corporate Governance Policy;
- the company Continuous Disclosure Policy;
- reviewing the respective roles of the Board and Management (ASX Principle 1);
- ensuring that the various Board Committees are appropriately constituted and performing their functions (ASX Principle 2);
- ensuring, on advice of the audit committee, that the company auditor is properly appointed and is performing its duties adequately and independently.

11.2 Guideline 1 - Annual Disclosure

The board of directors of a listed company should prominently and clearly disclose, in a separate section of its annual report, its approach to Corporate Governance. This should include an analysis of the Corporate Governance issues specific to the company so that shareholders understand how the company deals with those issues. If the particular circumstances of a company warrant departure from these guidelines, the company should clearly explain the reason for an alternative approach. A company should also disclose its policies and performance regarding other issues, including its risk management framework and material environmental and social issues.

This Guideline is also reflected in the ASX's 'Corporate Governance Principles and Recommendations' 'if not, why not?' approach.

The ASX 'Corporate Governance Principles and Recommendations' provide a benchmark which companies should refer to in preparing the Corporate Governance Policy and when reporting on Corporate Governance issues in the annual report. Where the company departs from a particular Guideline, the company must specify the reasons or circumstances that warrant such departure.

The FSC Blue Book Guidelines and the ASX Corporate Governance Principles will evolve to reflect changes in business practices, business structures, technology and the law.

It has long been accepted that good Corporate Governance contributes to the financial performance of corporations. It is now well established that other issues, including significant environmental and social risks, have the potential to impact on company performance and reputation.

Poor management of the environmental and social risks facing a company can significantly detract from community and stakeholder support for that company. Poor management of such risks can have a direct impact on company performance and can potentially have an adverse impact on the broader community.

Companies should develop policies and report on their performance regarding environmental and social risk management. Companies are encouraged to report in accordance with the Global Reporting Initiative's G3 Guidelines (regarding significant economic, environmental and social performance) to provide more consistent and comprehensive information on environmental and social risks and performance.

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A risk management framework refers to the policies and practices that are necessary for companies to manage and control their exposure to risk. The implementation of an effective risk management framework promotes stability and confidence in Australia's capital market.

Research houses also have an important role to play in developing investment-quality information on a range of issues influencing the investment risk decision-making process, including environmental and social considerations. Research houses should engage with companies and Fund Managers to contribute towards better quality information to permit shareholders to assess company performance on these issues.

11.3 Guideline 2 - Composition of the Board of Directors: Competency

The board of directors of a listed company should be comprised of competent individuals who have the requisite skills and experience to fully discharge their directors' duties. It is important to ensure that the board as a whole has the necessary breadth of experience and diversity of skills to enable it to discharge its functions. The board should review and disclose in the annual report its required mix of skills, experience and other qualities, including the core competencies that each director brings to the board.

The board of directors is a key element of ensuring that there are appropriate governance procedures implemented by the company. Amongst other things, the board is responsible for strategic planning, supervision of management, succession planning and remuneration policy. One of its core functions is to ensure accountability to shareholders by supervising, monitoring and reporting to shareholders on overall company performance.

It is, therefore, vital that the board is appropriately comprised of competent, committed individuals who have the relevant skills and experience to ensure the board exercises its proper functions. All individuals must be capable of meeting the high standards of behaviour imposed on directors by the Corporations Act. It is also necessary for the board to be composed of individuals with diverse and complementary skills to ensure that there is enough breadth of experience for the particular circumstances of the company. This Guideline is reflected in ASX Principle 2: Structure the board to add value.

The board should, at least annually, identify the mix of skills, experience and other qualities it requires for it to function competently and efficiently. It is, of course, possible for a board to access particular skills and experience either within the company or from external advisers. However, depending on the company's business, it is likely that there will be certain skills and experience which are so strategic and fundamental to success that they should exist at board level itself and, in particular, amongst the independent directors.

11.4 Guideline 3 - Composition of the Board of Directors: Independence

The board of directors of a listed company should be constituted with a majority of individuals who qualify as independent directors as defined in this Guideline.

The composition of the board of directors of a listed company is one of the most crucial issues of Corporate Governance. International best practice requires that the majority of the individuals on the board should be genuinely independent and, in particular, free from the interests and influences outlined below. These interests and influences can create a conflict of interest and affect investor perceptions of the ability of the director concerned to act solely in the best interests of the company as a whole.

The board of directors is the chief mechanism on which shareholders rely to ensure that management is acting in the best interests of the company as a whole. Shareholders should be confident that board decisions are made without bias and in the best interests of all shareholders. It is, therefore, vital that the board consists of a majority of directors

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who are independent from company management. If the majority of the board is genuinely independent, it is more likely that board decisions will be implemented even if they are contrary to the wishes of management or a major shareholder. This power creates a more effective board culture and imposes a responsibility on the independent majority to be competent and diligent in carrying out their role in the decision-making process.

The application of the definition of 'independent director' to the circumstances of each director should be the responsibility of the board, which should disclose in the annual report that directors qualify as independent directors and the principles supporting their independence.

An independent director is a director who is not a member of management (a non-executive director) and who:

- is not a substantial shareholder of the company or an officer of, or otherwise associated directly or indirectly with, a substantial shareholder of the company;
- has not within the last three years been employed in an executive capacity by the company or another group member, or been a director after ceasing to hold any such employment;
- has not within the last three years been a principal or employee of a material professional adviser or a material consultant to the company, or another group member;
- is not a material supplier or customer of the company or another group member, or an officer of, or otherwise associated directly or indirectly with, a material supplier or customer;
- has no material contractual relationship with the company or another group member, other than as a director of the company; and
- is free from any interest and any business or other relationship which could, or could reasonably be perceived to, materially interfere with the director's ability to act in the best interests of the company.

This Guideline uses the word 'material' in a number of places. The word 'material' has not been defined as it will depend on the circumstances of each person as to whether their interests result in a material relationship with the company. It is important that the board addresses these issues appropriately to ensure that there is no perception that a particular relationship provides a possible conflict of interest that will interfere with the director's responsibility to act in the best interests of the company.

This Guideline is reflected in recommendation 2.1 of ASX Principle 2: Structure the board to add value.

11.5 Guideline 4 - Number of Permissible Directorships an Individual May Hold

Individual directors must commit an appropriate amount of time to board matters and, where appointed, to relevant board committees. It is appropriate to limit the number of board positions held in order to ensure that the individual fulfils their duties to each particular company.

Individual directors must be able to commit an appropriate amount of time to the company to ensure that they fulfil their duties to the company and its shareholders. These Guidelines are not specific about limiting the precise number of directorships or other commitments a director may have in order to appropriately carry out their required functions. Rather, the board must make an assessment of an individual's ability to properly carry out the functions of a director of the particular company, having regard to all other directorships or work commitments of the individual.

Re-appointment as a director should not be automatic. As provided under Guideline 10 - Performance Evaluation, the board as a whole should undertake performance evaluation of individual directors.

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11.6 Guideline 5 - Chairperson to be an Independent Director

The Chairperson should be an independent director.

The Chairperson's role in leading the board, including working with the Chief Executive Officer to determine the board agenda and fostering the contribution of other members of the board in its deliberations, is another crucial issue of international best practice. Separation of the roles of Chairperson and the Chief Executive Officer is a vital aspect of Corporate Governance. A strong independent Chairperson provides the appropriate counterbalance and check to the power of the Chief Executive Officer.

The Chairperson should satisfy the test of independence as defined in Guideline 3. If not, the independent directors should appoint one of their number to be lead director. The lead director should monitor and report to them on issues falling within the normal purview of a non-executive chairperson.

This Guideline is reflected in Recommendations 2.2 and 2.3 of ASX Principle 2: Structure the board to add value.

11.7 Guideline 6 - Board Committees

Committees of the board of directors should:

- generally be constituted with a majority who are independent directors, although all members of the Audit Committee should be independent directors (see Recommendation 4.2 of ASX Principle 4: Safeguard integrity in financial reporting);
- be entitled to obtain independent professional or other advice of their choice at the reasonable cost of the company; and
- be entitled to obtain such resources and information from the company, including direct access to employees and advisers to the company.

The board should develop a formal policy setting out the role and responsibilities of each board committee. Committees should have a formalised program of meetings and a system for reporting to the board. The formal policy should address the structure of the committee, the criteria for appointment to the committee and the processes the committee should follow in order to exercise its responsibilities.

It is stressed that responsibility for company decisions remains with the full board of directors. The role of board committees is to examine particular issues in greater detail and to provide advice and recommendations to the board for their ultimate consideration. The composition and resourcing of board committees is fundamental to their effectiveness and ensures that they operate on behalf of the full board.

Board committees must be entitled to access independent professional advice to assist with the discharge of their responsibilities. The board committee should be permitted to choose the source of this independent advice. Nevertheless, the cost to the company for independent advice to board committees must be relevant to the operations of the company and the issues facing the board committee.

The board is responsible for ensuring that each board committee is appropriately constituted and is properly performing its responsibilities.

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11.8 Guideline 7 - Key Board Committees

The board should appoint a nomination committee, an audit committee, a remuneration committee, and such other committees required by law. These committees should be constituted as defined in this Guideline.

Other board committees may also be appropriate. However, these key committees have become accepted mechanisms of Corporate Governance. This Guideline is reflected in Recommendation 2.4 of ASX Principle 2: Structure the board to add value; Recommendation 4.2 of ASX Principle 4: Safeguard integrity in financial reporting; and Recommendation 8.1 of ASX Principle 8: Remunerate fairly and responsibly.

11.8.1 The Nomination Committee

The nomination committee established by the board should:

- be chaired by an independent director and at least a majority of the committee should be independent directors;
- be responsible for proposing new nominees to the board (after taking into account the other directorships held by candidates), for advising the board on the procedures for assessing existing directors' performance and generally for advising the board on the company's policies on the employment of non-executive directors. This would include the appropriate mix of skills, experience and other qualities, especially the core competencies of the independent directors and the maximum period of service and retirement age proposed by the company;
- be responsible for preparing, for the board's approval, appropriate disclosure in the company's annual report of its performance of that responsibility; and
- have written terms of reference which include core matters to be dealt with by the committee, and core rights of the committee.

11.8.2 The Audit Committee

The audit committee plays a key role in assisting the board of directors with its responsibilities regarding financial management and reporting and ensuring the independence of the company auditor. This committee should:

- be composed entirely of independent directors. FSC considers that the responsibilities of the audit committee require shareholders to be assured of its complete independence from management. The existence of management on this committee may create the perception that the company auditor is not willing to provide frank advice to the committee;
- be composed of directors with the mix of skills, experience and other qualities appropriate for its role. The audit committee obviously requires skills that facilitate the proper consideration of the complex issues involved in financial reporting and audit;
- assist the board to discharge its responsibilities in connection with the financial management, financial performance and financial reporting of the company, including corporate risk assessment and the system of internal control, preparing the company's financial statements and the independence of the company's auditors, and the quality of their audit; and
- have written terms of reference which include core matters to be dealt with by the committee, and core rights of the committee.

The audit committee should ensure that the appointment of the company auditor is transparent and will result in the independent conduct of the audit. Auditor appointment, independence and rotation are prescribed in Part 2M.4 of the *Corporations Act 2001*. The obligation on directors is to include in the directors' report details regarding:

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- company officers who were formerly a director or partner of the audit firm or company at the time the audit was conducted for the current financial year;
- disclosure of non-audit services provided by the auditor; and
- a copy of the auditor's independence declaration.

An audit committee composed entirely of independent directors should consult company executives, including executive directors, in its business. This may be achieved by inviting the appropriate participation of those executives in committee meetings. However, it will also be appropriate for the audit committee to discuss matters with the external and internal auditors in the absence of management, including executive directors. This will provide assurance that the external and internal auditors are not inhibited by the presence of senior management from raising matters with the committee.

11.8.3 The Remuneration Committee

The Remuneration Committee established by the board should:

- be chaired by an independent director and at least a majority of the committee should be independent directors;
- be responsible for reviewing the remuneration of directors and senior management and advising the full board on these issues. The committee should advise the board whether the remuneration of non-executive directors realistically reflects the responsibilities and risk involved in being an effective director. It should also advise whether the remuneration of senior management is aligned with the long-term growth of shareholder values and is reasonable in comparison with industry benchmarks;
- be responsible for preparing, for the board's approval, the disclosure of board and executive remuneration in the company's annual report as specified in the Corporations Act and these Guidelines; and
- have written terms of reference which include core matters to be dealt with by the committee, and core rights of the committee.

11.9 Guideline 8 - Election of Directors

The method for electing directors must be fair and transparent.

Voting on the election of directors is an important shareholder right. Shareholders have the ability to support, or not support, particular directors based on their experience, skills, dedication, and in the case of re-election, their performance.

A basic concept of corporate law is that the shareholders select the directors. However, the actual practice in most listed companies is that the board, on the advice of the nomination committee, selects the directors who stand for election or are appointed during the year. Shareholders are then requested to endorse these directors at the annual general meeting.

Companies must ensure that appropriate information is provided to investors to permit shareholders to make informed decisions on whether to support the election of nominated directors. The entitlement of shareholders to appoint or remove directors is an important Corporate Governance mechanism. Any action that lessens that right, such as a pre-nuptial agreement (see 11.10 below) with terms that, in effect, require a director's retirement at the request of other directors, is unacceptable. In addition, it is unacceptable to undermine the rights of shareholders to appoint or remove a director.

Companies should be encouraged to adopt procedures that ensure that the method for election of directors is fair and transparent. This Guideline is reflected in Recommendation 2.4 of ASX Principle 2: Structure the board to add value.

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11.10 Guideline 9 - Appointment of Non-Executive Directors

Before accepting appointment, non-executive directors should be formally advised of the reasons they have been asked to join the board and given an outline of what the board expects of them. They should be advised of their rights as a director, including their access to company employees and access to information and resources. Additionally, they should be advised of their entitlement to obtain independent professional or other advice of their choice at the reasonable cost of the company. The terms of any pre-nuptial agreement should not diminish shareholder rights.

The terms of any agreement between the company and the person being nominated as a director (a 'pre-nuptial' agreement) should:

- be disclosed;
- not include terms that would restrict the director from fulfilling their obligations at law; and
- not operate in a manner that effectively removes from shareholders the right to remove the director.

A letter of appointment should cover, amongst other things, the duties and rights of the director and the orientation system for directors:

- the duties should include special skills or experience which are expected to be contributed by the director and the time which the director should expect to devote to the company. The rights should include the rights to obtain independent professional advice, resources and information at reasonable company expense, according to a formal procedure approved by the board;
- the letter should also record relevant policies of the company, such as board, director and Chief Executive Officer evaluation; and
- the letter should also confirm whether or not the director is required to limit the nature and/or number of other directorships.

Non-executive directors should undergo a formal system of induction, approved by the board, on the business of the company and the workings of the board and its committees. Their introduction to the company and its business operations should include the provision of documentary information (company constitution, internal management structure, etc) and meeting of the company executive and relevant staff.

One or more non-executive directors should be entitled, with the approval of the chairperson to obtain:

- independent professional advice at the reasonable cost of the company; and
- such resources and information from the company, including direct access to the employees and advisers to the company, as they may require.

This Guideline is reflected in Recommendation 1.1 of ASX Principle 1: Lay solid foundations for management and oversight.

11.11 Guideline 10 - Performance Evaluation

The board should develop a formal performance evaluation process for the regular review of its performance, the performance of individual directors, the company and management. As a key part of that process, the independent directors should meet on their own at least once annually to review performance.

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The board should develop a formal performance evaluation process to assess the performance of the board, individual directors and company management. The process should be systematic and regular. The standards of performance used must be robust and made available to shareholders. Performance evaluation should be based upon the competency requirements for the board outlined in Guideline 2.

Regular and independent review of the performance of the board, individual directors, the company and management, including the Chief Executive Officer, is an important element of the board's monitoring role, especially with regard to the long-term growth of the company and of shareholder value. A key element in that process is for the independent directors to meet to discuss these issues without other directors or management being present. Other directors or management may be invited to attend part of the meeting, but the independent directors should make their ultimate assessment on their own.

In the case of directors seeking re-election, there should be a formal procedure approved by the board for evaluating the contribution of directors retiring by rotation. This evaluation should be reported to shareholders in the notice of meeting. Where the board appoints a director during the year, the board should disclose the reasons for the appointment.

Criteria used to evaluate company and management performance could include: monitoring of the group's performance against business plans and budgets, long-term return objectives, strategic objectives and the performance of competitors.

Where these performance criteria have not been met, the board should ask itself whether it has taken timely steps to:

- identify the areas of under-performance and understand their causes;
- evaluate remedial courses of action; and
- decide on particular remedies.

In conducting this review, the board should consider whether it has reviewed and, where necessary, updated the company's strategic objectives, monitored progress towards them and communicated the results within the organisation and to shareholders. As part of this review, the board should also determine policies where the interests of shareholders and other stakeholders require them to limit the discretion of management to act in particular areas such as legal compliance and environmental policy.

Companies should disclose the attendance record of each director for all company meetings, including the attendance of directors appointed to sub-committees.

This Guideline is reflected in Recommendation 2.5 of ASX Principle 2: Structure the board to add value, and Principle 8: Remunerate fairly and responsibly.

11.12 Guideline 11 - Equity Participation by Non-Executive Directors

The board should establish and disclose in the annual report a policy to encourage non-executive directors to invest their own capital in the company or to acquire shares from an allocation of a portion of their fees.

The purpose of this Guideline is to align the financial interests and risks of the board with the interests and risks of the shareholders as the owners of the company.

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Non-executive directors should acquire equity participation independently and from their own resources. In particular, non-executive directors should not participate in a share or option scheme designed for the executives whose role is to manage the company on a daily basis. The non-executive directors' role is to assess effectively the performance of the company and its executives, and a conflict of interest would be created if directors participated in a similar scheme to the executives.

11.13 Guideline 12 - Trading by Directors and Senior Management

Companies must develop, enforce and monitor policies on director and executive trading in accordance with the *Corporations Act 2001*, and which reflect their own circumstances. This should include monitoring, enforcement and reporting on trading within any trading windows and 'blackout' trading periods. The policies should include appropriate restrictions and disclosure regarding margin-lending arrangements over the company's stock.

Companies, directors and senior management must comply with the *Corporations Act 2001* regarding use of insider information while trading in company shares. Disclosure of director trading must also be in accordance with the law and the ASX Listing Rules.

There is ongoing concern regarding the disclosure of executive and director share trading. Companies must develop, monitor and enforce their policies on director and executive trading. The policies should be available to shareholders on request and should be disclosed on the company website. Companies must ensure that there is a high level of transparency regarding director and executive trading to ensure that inappropriate behaviour is not taking place or perceived to be taking place. Inappropriate trading behaviour, or the perception of such behaviour, has the ability to undermine shareholder confidence and impact on company performance.

The company share trading policy should also provide guidance regarding restrictions and disclosure about directors and executives entering margin lending or other lending arrangements over the company's stock, particularly where the holdings and/or exposures are material. This should also include guidance regarding suitable margin lenders (i.e. not related parties) and managing trigger points for margin calls or forced sales.

11.14 Guideline 13 - Respective Roles of the Board and Management

The board should, at least annually, review the respective roles and the allocation of responsibilities between the board and management.

The respective roles of the board and senior management and the resulting allocation of responsibilities is a fundamental aspect of Corporate Governance. There must be an appropriate balance between the board of directors, senior executives and company staff. If the balance is not appropriate, the fundamental governance structure of the company will be flawed and may lead to poor company performance. The board should develop a policy that clearly allocates the division of responsibilities within the company. This policy should be made available to all company employees.

The purpose of this Guideline is to ensure:

- the functions of board and management are clearly defined and understood;
- the board retains full control over the company, including identification of specific matters reserved for board decision, and of the company's system of internal control and information;
- the board can efficiently organise and conduct its own functions; and
- the board can effectively monitor management in the conduct of its functions.

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This Guideline is reflected in Recommendation 1.1 of ASX Principle 1: Lay solid foundations for management and oversight.

11.15 Guideline 14 - Board and Executive Remuneration Policy and Disclosure

The board must disclose in the company's annual report its policies on, and the quantum and components of, remuneration for all directors and each of the five highest paid executives. Where consolidated financial statements are required, remuneration details of each of the five highest paid group executives must be provided. The disclosure should be made in one section of the annual report in tabular form with appropriate explanatory notes.

The board is required to disclose in the company's annual report a 'Remuneration Report' being:

- its policies on the remuneration of directors, the company secretary and senior managers of the company or consolidated entity;
- a discussion of its remuneration policy in the context of company performance over the current and four previous financial years;
- a discussion of remuneration performance hurdles, their rationale, selection and measurement; and
- the remuneration for all directors, each of the five highest paid executives and, where consolidated financial statements are required, the five highest paid group executives.

The *Corporations Act 2001* was amended in 2004 to expand company disclosure requirements for remuneration of directors and executive officers. Shareholders must be given a reasonable opportunity to comment and ask questions about the Remuneration Report, and to cast a non-binding vote on the adoption of the Report.

This Guideline, along with Guidance Note No. 12 - Executive Equity Plan, addresses current shareholder concerns on remuneration practices in Australia. Its purpose is to provide shareholders with meaningful information on the application of the board's remuneration policies in the context of the performance of the company. The disclosures recommended recognise and promote the important principles of accountability, transparency and fairness.

FSC Members consider that Australian listed companies must be able to attract and reward superior executives within a competitive global environment. Nevertheless, remuneration must be reasonable in light of the circumstances of the company and should be adequately disclosed to shareholders. Companies can assist in overcoming the perception that remuneration is overly generous by taking a leading role in disclosing all components of remuneration and the way in which executives are rewarded for performance.

In particular, appropriate disclosure will provide shareholders, in an easily understood format, with the information they need to know on the quantum and components of remuneration in comparison with the performance of the company and the stated policies of the board. It may be appropriate for boards to, at least indirectly, consider the impact that remuneration packages may have on the cohesiveness of the community in which their company operates.

All components of remuneration should be disclosed, including cash salary and bonuses, shares or options granted and any other long term payments or other compensation. Boards should pay particular attention to increasing the transparency of termination or retirement payments to directors and senior management. It is important that termination or retirement payments should be fully disclosed to shareholders and that they are reasonable in the circumstances of the departure. Section 200G of the *Corporations Act 2001* stipulates a requirement for shareholder approval for termination payments that exceed one year of the average salary for the previous three years of a director or executive officer.

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A suggested format for this disclosure is illustrated in APPENDIX A. Where shares or share options are issued, the company may find it useful to illustrate in graphical form the relevant performance criteria required to be achieved before they can be exercised.

This Guideline is reflected in ASX Principle 8: Remunerate fairly and responsibly.

11.15.1 Share and Option Schemes

FSC supports the implementation of properly designed incentive schemes that have robust performance hurdles. The schemes must be fully disclosed and approved by shareholders.

Share and share option schemes can be an important element of well-designed remuneration packages. The granting of a right to equity participation, subject to appropriate performance hurdles, assists in aligning the interests of executives and shareholders. While the alignment of interests is important, shareholders need adequate disclosure to ensure that the schemes are appropriately designed. Equity participation should not involve the provision by the company of non-recourse loans.

FSC has two Guidance Notes on this issue: Guidance Note No. 12 - Executive Equity Plan and Guidance Note No. 13 - Employee Share Ownership Plan. These Guidance Notes were developed in conjunction with the AICD, the ASA and the Australian Employee Ownership Association. FSC Members encourage all Australian listed companies to comply with these Guidance Notes.

Key principles within the Share and Share Option Scheme Guidelines are:

- all schemes should be disclosed to shareholders for their approval;
- remuneration should realistically reflect the responsibilities of executives;
- remuneration should be reasonable and comparable with market standards;
- incentive schemes must reward superior company performance and be clearly linked to appropriate performance benchmarks;
- performance hurdles must be based on specific benchmarks which assess actual company performance, for example, peer assessment in terms of long-term growth of the company and resulting shareholder value; and
- the cost of the schemes must be disclosed in accordance with the requirements of the law and relevant accounting standards.

FSC Members do not consider that option schemes should be banned. A poorly designed share scheme is as unacceptable as a poorly designed option scheme. The Guidelines do not establish which type of incentive scheme a company should implement. Rather, it is important that boards develop incentive schemes which are appropriate for the circumstances of the company and which are aimed at driving superior executive performance.

The FSC Guidelines are not intended to restrict or diminish the flexibility of companies to attract, retain and motivate employees in the interest of improved company performance. However, shareholders have a right to know the costs of such schemes and the success of these elements of remuneration measured against the original reasons for their use.

This Guideline is reflected in ASX Principle 8: Remunerate fairly and responsibly.

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11.16 Guideline 15 - Company Meetings

11.16.1 Format of Resolutions

Notices of meeting and company resolutions should be in plain English and made in a manner that permits shareholders to make informed decisions. Notices of meeting should be posted on the company website or be accessible electronically. Separate issues should not be combined and presented as a single motion for shareholder vote.

Generally, resolutions are highly technical and drafted by legal advisers. Fund Managers have complained that professional investors often need to contact the company to clarify the intention of the proposed resolution. If professional Fund Managers consider resolutions difficult to understand, the problem must be compounded for retail investors.

In response to shareholder concerns about the complexity of company resolutions, the *Corporations Act 2001* was amended in 2004, stipulating a new requirement that notices of general meetings must be presented in a 'clear, concise and effective' manner.

Companies must now consider ways in which company resolutions can be simplified so that shareholders are able to make more informed decisions. Resolutions must be drafted in plain English and made in a manner that permits all shareholders to clearly understand the issues they are asked to consider.

With the increasing use of internet access, shareholders should be able to be notified electronically of company meetings. Notices of meeting should also be posted on the company website to facilitate shareholder access in a timely manner.

Bundling separate issues into one resolution prevents shareholders from exercising the right to approve or reject each issue. This right is an important principle of best practice in Corporate Governance. An important purpose of this Guideline is to outlaw the 'sugar-coated pill', where a company asks shareholders to approve a contentious matter by combining it with an unconnected beneficial matter for shareholders, for example, combining a proposed dividend with a proposed alteration of shareholder rights. Additional guidelines on the bundling of resolutions are included with the ASX Corporate Governance Principles and Recommendations as a supplementary paper².

FSC Members encourage companies to make related resolutions dependent on the approval of the other related resolutions, rather than bundling the resolutions for shareholder approval.

There may be some circumstances that permit companies to bundle uncontroversial related resolutions. However, the practice is not encouraged by FSC.

11.16.2 Form of Proxies

Companies should adopt the Model Form of Proxy in APPENDIX B (with appropriate modifications). Additionally, companies should take steps to implement facilities for the electronic submission and authentication of proxy forms.

The model form of proxy contained in APPENDIX B was originally developed in conjunction with a working party comprised of a wide group of industry participants including FSC Members, the Chartered Institute of Company Secretaries in Australia, the Australian Shareholders' Association, the Australian Institute of Company Directors and legal and accounting firms. The form was then improved by the Chartered Secretaries Australia in conjunction with Computershare and ASX Perpetual Registrars Limited.

²ASX Guidelines for notices of meeting: http://www.asx.com.au/supervision/pdf/guidelines_notices_of_meeting.pdf

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The model form of proxy is designed to facilitate and expedite the precise registration of shareholders' votes and the electronic processing of those votes using available technologies. The model form can be amended to suit the circumstances of particular companies. A shareholder may now appoint a body corporate as proxy. The body corporate must then nominate an individual to exercise the proxy vote. Additionally, impediments to the electronic receipt and authentication of proxy forms have been removed.

11.16.3 Notification Period for Shareholder Meetings

The annual report, notice of meeting and other documents for all shareholder meetings should be sent to shareholders at least 28 days prior to the meeting.

Evidence from overseas and in Australia suggests that the longer the notification period for meetings, the higher the incidence of voting. Companies should utilise as far as possible electronic notification of meetings now permitted under the law.

11.16.4 Method of Voting

Voting should generally be conducted by a poll at the conclusion of discussion of each item of business. Appropriate forms of technology should be utilised to facilitate the proxy voting process.

FSC Members spend considerable resources on lodging proxy votes. The proxy voting process involves analysis, consultation with clients where required, and carrying out the administrative processes involved with lodging votes through custodians. Not all shareholders are able to attend company meetings and it is vital that the view of all shareholders who have voted either through the lodgement of proxies, or by attending the meeting, prevails. It is, therefore, vital that proxy votes are counted in determining the outcome of a particular resolution.

In practice, proxy voting is the only feasible means of voting for most institutional shareholders in listed companies, including Fund Managers.

Fund Managers' holdings are often registered through domestic and international custodians, usually reflecting contractual obligations under client mandates or other legal obligations. In those cases, Fund Managers lodge proxy votes through the custodian.

A custodian often cannot vote on a show of hands because it may have different voting instructions from various Fund Managers who use their services. These different instructions may in turn reflect different instructions to the Fund Managers by their various clients. In those cases, the Fund Managers and their clients are effectively disenfranchised from voting on a show of hands.

Fund Managers represent a substantial proportion of voting capital, most often far larger than the proportion represented by other public shareholders who attend and vote at the meeting on a show of hands (or, for that matter, by proxy or representative).

At the same time, because the director who chairs a shareholder meeting is obliged to ensure that the decision on a resolution put to shareholder vote reflects the true will of the meeting, the proxy votes are always counted and made available prior to the meeting to that director (and often to other directors and senior management). This permits the director chairing the meeting to assess whether to exercise the responsibility given to the chairperson to call for a poll where necessary - ie where it is certain or possible that a decision different from that obtained on a show of hands

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would be obtained on a poll. Typically, the computer reports produced for this purpose aggregate the number of votes cast by proxy in the various voting categories ('For', 'Against', 'Left to Proxy's Discretion' and 'Abstained') so that the director chairing the meeting is instantly aware of the certainty or possibility of a different decision on a poll.

Proxy votes are instrumental in the decision on a resolution put to shareholder vote, and shareholders have a legitimate interest in knowing the proxy voting information made available to the director who chaired their meeting. Therefore, voting should generally be conducted by poll only at the conclusion of discussion of each item of business.

FSC is aware that considering non-contentious resolutions by way of show of hands may be an efficient way of dealing with those issues and may be an expedient way of dealing with non-contentious company business. However, proxies should be counted on all resolutions prior to the meeting, and a poll must be conducted if it is likely that the outcome of the resolution would be different from the decision made on a show of hands.

The law and practice in this area has developed, and will continue to develop, with the broader adoption of electronic voting facilities by companies. FSC supports the development of new electronic voting systems and better communication between companies and shareholders to provide efficiencies in the proxy voting process.

11.16.5 Disclosure of Voting Results

In announcing to the ASX the decisions made by shareholders at a general meeting, a listed company should report the aggregate proxy votes validly received for each item of business in the notice of meeting. The report should disclose, in the case of a resolution passed on a show of hands, the aggregate number of proxy votes received in each voting category ('For', 'Against', 'Left to Proxy's Discretion' and 'Abstain'). In the case of a resolution submitted to a poll, the report should disclose both the information specified in the preceding sentence and the aggregate number of votes cast 'For' and 'Against' on the poll.

Disclosure of this information as part of the report to the ASX of the decisions by shareholders in a general meeting will result in:

- shareholders being able to fulfil their monitoring role, that is, of the director's responsibility to ensure that those decisions reflect the true will of shareholders;
- transparency of all voting and, in particular, shareholders being able to assess:
 - the extent to which and how shareholders have exercised their right to vote by proxy;
 - the relative importance of their own vote (whether or not they voted);
 - how that vote compares with the voting pattern of others and how proxy votes 'Left to Proxy's Discretion' may have been exercised on a poll, including whether that exercise may have influenced the ultimate decision on a resolution;
 - the potential relevance of all or any of the above information for their voting on future resolutions submitted to shareholder vote;
 - ease and transparency of reporting by FSC Members and other institutions to their clients; and
 - consistency with international best practice in Corporate Governance which requires that this information be publicly disclosed.

Australian listed companies are required under the Corporations Act to notify the ASX of the outcome of shareholders' meetings and the details of valid proxies voted for each resolution and, if the resolution is decided on a poll, the votes cast for, against and abstained in respect of each resolution.

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11.16.6 Access to Minutes

Shareholders should be able to authorise an agent to inspect or obtain copies of minutes of shareholders' meetings.

Shareholders should be able to authorise an agent to obtain copies of these important documents that contain information on the outcome of all resolutions.

11.17 Guideline 16 - Disclosure of Beneficial Shareholder Information

Information about beneficial shareholdings obtained by companies in response to their inquiries should be disclosed to the market.

Companies have the right under the Corporations Act to inquire into the beneficial ownership of shares registered in the name of a nominee company. Where a company has made such an enquiry and obtained information on such ownership, section 672DA of the *Corporations Act 2001* requires listed entities to maintain a register of notices about relevant interests. The register must be open to members without charge. Non-members may be charged an access fee. A person may also request a copy of the register that must be provided within 21 days of the request or payment of the fee (if applicable).

FSC believes that the relevant information should be available to the market but only to the extent that it does not encourage predatory trading practices ('front running') whereby, based on the tracking and extrapolation of Fund Manager portfolio trends, other parties are able to take a position in an equity which will move the equity's price in a predictable fashion in anticipation of Fund Manager trades. As in the US, legislation should provide an appropriate delay period for the release of information.

Additionally, FSC encourages its Members to disclose their holdings to the market where such disclosure will not prejudice member interests.

11.18 Guideline 17 - Major Corporate Changes

Major corporate changes, which in substance or effect may impact shareholder equity or erode share ownership rights, should be submitted to a vote of shareholders. Sufficient time and information (including a balanced assessment of relevant issues) should be provided to shareholders to enable them to make informed judgements on these resolutions.

The purpose of this Guideline is to ensure that shareholder equity is not impacted and share ownership rights are not eroded through board or executive action that is not subject to informed shareholder review.

This Guideline applies irrespective of any existing legal authority for action by the board or management.

11.19 Guideline 18 - Company Codes of Ethics and Conduct

Listed companies should have a company Code of Ethics and Conduct that is adopted by the board and is available to shareholders on request.

This Guideline is reflected in ASX Principle 3: Promote ethical and responsible decision-making.

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APPENDIX A: (A) Non Executive Directors

Column	A	B	C	D	E	F	G
	<i>(For columns A to D quote Annual Compensation)</i>						
	<i>Total Cash Paid</i>	<i>Total Shares Awarded (Number/ Value)</i>	<i>Value of Benefits</i>	<i>Total Annualised (Number/ Value)</i>	<i>Options Granted (Number/ Value)</i>	<i>Options Total (Number/ Value)</i>	<i>Professional Fees & Other</i>
Note	(1)	(2)	(3)	(4)	(5)	(6)	(7)
<i>Name & Position</i>							
<i>[Chairman]</i>	\$	\$	\$	\$	\$	\$	\$
<i>[Director A]</i>	\$	\$	\$	\$	\$	\$	\$
<i>[Director B]</i>	\$	\$	\$	\$	\$	\$	\$
<i>[Director C]</i>	\$	\$	\$	\$	\$	\$	\$
<i>[Director D]</i>	\$	\$	\$	\$	\$	\$	\$
<i>[Director E]</i>	\$	\$	\$	\$	\$	\$	\$
<i>[Director F]</i>	\$	\$	\$	\$	\$	\$	\$
<i>Total of Directors</i>	\$	\$	\$	\$	\$	\$	\$

Notes:

- (1) Includes all retainers, meeting fees and chair premiums paid in cash or equivalent income. Some companies may wish to list items separately in this table.
- (2) Number of shares issued and the fair market value on the date of issue under any company sponsored scheme or entitlement.
- (3) Amounts accrued or otherwise provided for future retirement benefits and superannuation plus summary footnote describing these benefits and services along with the methodology used to calculate their value. Indicate whether amount is calculated for each individual director or is based on an average value for all directors.
- (4) The sum of columns A through to C.
- (5) Number of options in year granted times assumed value plus a summary footnote describing the methodology used to calculate their value.
- (6) Total options granted and still outstanding times the assumed value and the methodology used to calculate their value.
- (7) Indicate in a footnote amount of fees paid to the director and amount paid to director's firm.

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APPENDIX A: (B) Executives

Column	A	B	C	D	E	F	G	H	I	J
	<i>(For columns A to E quote Annual Compensation)</i>									
	<i>Cash Salary</i>	<i>Cash Bonus</i>	<i>Other Benefits</i>	<i>Total compensation</i>	<i>Shares Awarded Total (Number/Value)</i>	<i>Shares Awarded (Number/Value)</i>	<i>Options Awarded (Number/Value)</i>	<i>Options Awarded Total (Number/Value)</i>	<i>Other Long Term Payouts</i>	<i>All other compensation</i>
<i>Note</i>	<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>	<i>(6)</i>	<i>(7)</i>	<i>(8)</i>	<i>(9)</i>	<i>(10)</i>
<i>Name & Position</i>										
<i>[Managing Director]</i>	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
<i>[Executive A]</i>	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
<i>[Executive B]</i>	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
<i>[Executive C]</i>	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
<i>[Executive D]</i>	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$

Notes:

- (1) Includes all annual salary and any deferred component or equivalent if not received in cash.
- (2) Same as for (1).
- (3) Any other annual compensation or benefit as part of the executive's remuneration.
- (4) The sum of columns A through to C.
- (5) Number of shares issued in year and the fair market value on the date of issue under any company sponsored scheme or entitlement.
- (6) Total number of shares issued and the fair market value on the date of issue under any company sponsored scheme or entitlement.
- (7) Number of options in year granted times assumed value plus a summary footnote describing the methodology used to calculate their value.
- (8) Total options granted and still outstanding times the assumed value and a footnote describing the methodology used to calculate value.
- (9) Any other payments or benefits due or accruing under long-term compensation entitlements.
- (10) Residual category - components identified in a footnote or expanded table. Includes but not limited to (a) termination payments, (b) contributions to superannuation retirement plans etc.

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APPENDIX B: MODEL PROXY FORM CONTENT

Explanatory Memorandum

The Model form is designed to improve the proxy voting process in Australia in three ways:

1. It will improve the efficiency of voting, and reduce the costs incurred by companies in the voting process;
2. It will improve accuracy of registration of votes. Every shareholder's vote is important to a company. In the past, many votes have not been counted because the shareholders' proxy forms have not been filled out properly. The model form attempts to reduce the number of these invalidities;
3. The model form is easy to understand. This means that shareholders are more likely to understand what they are voting about and how they can express their views.

There are several ways in which the Model Proxy Form differs from many existing company proxy forms. The result is a proxy form that clearly and accurately identifies the information necessary to be obtained from a shareholder to vote by proxy. In summary, the main benefits of the Model Proxy Form are:

- 1. Shareholder Reference Number and Bar Code**
The shareholder reference number and bar code makes it easy and efficient for the company's share registry to identify the shareholder voting. By using a bar code, this can be done electronically.
- 2. Telephone Number**
If there is a formal problem with a shareholder's vote, the company can contact the shareholder to clarify the situation.
- 3. Name of Proxy**
The name of the proxy is clearly identified. There is no legal requirement or practical reason to state the proxy's address.
- 4. Numbers of Shares**
The voting boxes are large enough to write the numbers of shares being voted for, against and in abstention on each resolution. This is important for custodian shareholders who vote the shares of many clients. While each client may vote differently on each resolution, the custodian's vote is expressed as the aggregate numbers of client shares voted for, against and in abstention on a resolution.
- 5. Abstain Box**
Many shareholders wish to deliberately abstain from voting on a resolution. This may be because they have no view, or because they disagree with the resolution, but not strongly enough to vote against it. A formal abstain vote can be an indication to the company that a shareholder is not entirely satisfied with a course of action. In the past, some companies have counted the absence of a vote on a particular resolution as being a vote in favour of the resolution. This practice is not acceptable, and the Model Proxy Form makes this clear.
- 6. Appointment of Second Proxy**
Generally, shareholders are legally entitled to appoint a second proxy. If a shareholder does this, they should be able to state the proportions of their voting rights held by each proxy.
- 7. Easy to Understand**
The model form is drafted so that shareholders can easily understand it. To assist them in this, a step-by step explanation is given on the page adjacent to the proxy form.

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APPENDIX C: FSC Aggregate Proxy Voting Table

The following table should be used to standardise the disclosure of the Fund Manager's Proxy Voting record.

	Resolutions³	For⁴	Against⁵	Abstain⁶	No Action
Number					
%					

The Fund Manager, as the Operator of a managed investment scheme, may provide additional information in respect of its Proxy Voting record and may choose, for example, to provide explanations of its vote on contentious or material issues; where it has abstained from voting; or, delegated the voting of non-contentious issues to the Chair of the shareholder meeting.

The Fund Manager may also choose to distinguish between resolutions put forward by management and resolutions put forward by Scheme Members.

This Standard does not limit the type or nature of the disclosures that a Fund Manager may provide to its Scheme Members.

³ Only resolutions for which the Fund Manager as Scheme Operator has discretion to vote are to be included.

⁴ The Fund Manager as Scheme Operator may choose to distinguish between resolutions put forward by management and resolutions put forward by Scheme Members.

⁵ The Fund Manager as Scheme Operator may choose to distinguish between resolutions put forward by management and resolutions put forward by Scheme Members.

⁶ Includes the delegation of voting decisions on non-contentious issues to the Chair of the shareholder meeting.

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APPENDIX D: FSC Corporate Governance Standards and Guidance Notes

STANDARDS				
No.	Title	Purpose	Status	Date
13	<i>Proxy Voting</i>	<p>This Standard on Proxy Voting specifies requirements for disclosure of Proxy Voting policies, including the summary disclosure of proxy votes to the Members of each Scheme operated by FSC member companies. Main features of this Standard are:</p> <ul style="list-style-type: none">- to require disclosure of Proxy Voting policy;- to require publication at least annually of Australian Proxy Voting record;- to standardise disclosure of Proxy Voting record.	Current	October 2004

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APPENDIX D: FSC Corporate Governance Standards and Guidance Notes

GUIDANCE NOTES				
No.	Title	Purpose	Status	Date
10	<i>Brokerage Arrangements</i>	The main features of this Guidance Note are: to specify the principles to be adopted in relation to Investment Brokerage arrangements; to provide guidance in the interpretation and application of those principles; and to specify the basis for disclosure of Investment Manager Brokerage Arrangements.	Current	December 2006
12	<i>Executive Equity Plan</i>	This Guidance Note provides guidance for boards and shareholders regarding the development of equity plans that aim to drive improved corporate performance and thereby increase shareholder value. The guidelines specify key principles that boards should consider in designing incentive plans and the process for shareholder approval of the plans.	Current	April 2007
13	<i>Employee Share Ownership Plan</i>	This Guidance Note provides guidance for boards and shareholders regarding the development of employee ownership and incentive plans that aim to drive improved company performance and thereby increase shareholder value. The guidelines specify key principles that boards should consider when designing these plans and the process for shareholder approval of the plans.	Current	April 2007

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APPENDIX D: FSC Corporate Governance Standards and Guidance Notes

GUIDANCE NOTES				
No.	Title	Purpose	Status	Date
	FSC Guidance Note Circular - Non-binding Shareholder Vote on Remuneration Reports	<p>The purpose in developing this Guidance Note Circular is to provide further guidance to members making decisions on how to vote on remuneration reports. When read in conjunction with FSC's Blue Book – Corporate Governance – A Guide for Fund Managers and Corporations, the Note should assist companies to formulate remuneration policies and remuneration reports that are received positively by shareholders, both in Australia and offshore.</p> <p>Furthermore, FSC believes this Note will assist in ensuring that the benefits from the non-binding vote are realised, including improved communication between shareholders and companies, and improved construction and disclosure of remuneration practices, resulting in greater transparency in the Australian share market.</p>	Current	September 2005



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