

Checklist for preparing s209 notices

If your company is electing not to send hard copies of annual reports and half year reports to all shareholders, then use the following checklist to ensure your s209 notice complies with the requirements of the Companies Act 1993 and NZSX Listing Rules.

Section	Requirement	Comply?
Contents of s209 notice (assuming no concise annual report is prepared)		
s209(1)	Have you sent your notice at least 20 working days before your AGM?	<input type="checkbox"/>
s209(3)	Does your notice contain a statement to the effect that:	
(a)	the shareholder has a right to receive from the company, free of charge, a copy of the annual report if the shareholder, within 15 working days of receiving the notice, makes a request to the company to receive a copy of the annual report?	<input type="checkbox"/>
(b),(c)	the shareholder can obtain, and how the shareholder can obtain, a copy of the annual report by electronic means (e.g., from a specified website address)? (note that under s209B(1)(b) the manner described must allow a copy of the annual report to be readily accessible so as to be usable for subsequent reference)	<input type="checkbox"/>
(d)	the Board has not prepared, in relation to the same accounting period as the annual report, a concise annual report?	<input type="checkbox"/>
LR10.5.2(b)	Does your notice explicitly state that it applies to your next half-yearly report under the NZX Listing Rules? <ul style="list-style-type: none"> If yes, an election to receive a hard copy applies to both annual reports and half-yearly reports. If no, you must send a separate s209 notice at the time your half yearly report is finalised, and elections to receive hard copies at that time will only apply to half yearly reports. 	<input type="checkbox"/>
Availability of reports electronically		
209B(1)	At the date the notice is sent, is the annual report available electronically (i.e., on your website)? It must be available in this manner at all reasonable times from the date the notice is sent until the date the notice is sent the following year.	<input type="checkbox"/>
Requirement to send hard copies		
s209A(1)	If a shareholder requests a copy of the annual report within 15 working days of receiving a notice, have you sent, as soon as practicable and free of charge, a copy of the annual report to the shareholder?	<input type="checkbox"/>
s209A(2)	If a shareholder makes a request to receive hard a hard copy of the annual report,	
(a)	have you treated the request as a request by the shareholder to send a hard copy of the annual report each year?	<input type="checkbox"/>
(b)	have you organised to send to that shareholder a hard copy of the annual report each year until the request is revoked?	<input type="checkbox"/>

Requirements for concise annual reports (if one is being prepared)		
s209(5),(6)	If you are preparing a concise annual report, does it include the information set out in sections 209(5) and 209(6) of the Companies Act?	<input type="checkbox"/>
s209(3)(d)	Does your s209 notice contain a statement that:	<input type="checkbox"/>
(i)	the Board has prepared, in relation to the same accounting period as the annual report, a concise annual report, and the shareholder has a right to receive from the company, free of charge, a copy of the concise annual report if the shareholder, within 15 working days of receiving the notice, makes a request to the company to receive a copy of the concise annual report; and	<input type="checkbox"/>
(ii), (iii)	the shareholder can obtain, and how the shareholder can obtain, a copy of the concise annual report by electronic means (e.g., from a specified website address)? (note that under s209B(1)(b) the manner described must allow a copy of the annual report to be readily accessible so as to be usable for subsequent reference)	<input type="checkbox"/>
LR10.5.2(b)	Where your notice specifically states that it applies to the next half-yearly report under the NZX Listing Rules, have you treated an election to receive a concise annual report as an election to receive a hard copy of the half-yearly report?	<input type="checkbox"/>
s209B(2)	At the date the notice is sent, is the concise annual report available electronically (i.e., on your website)? It must be available in this manner at all reasonable times from the date the notice is sent until the date the notice is sent the following year.	<input type="checkbox"/>
s209A(3)/(4)	If a shareholder has requested a hard copy within 15 working days of receiving the notice, have you sent a copy to the shareholder, free of charge, as soon as reasonably practicable after receiving the request?	<input type="checkbox"/>

In addition to the above legal and regulatory requirements, issuers also need to turn their minds to the following:

- Have you considered allowing shareholders the option to receive only those shareholder communications required to be sent to them, and no others? If so, the notice could allow for this.
- How will you deal with shareholders who have previously elected to receive financial statements only (rather than a full annual report)?
- Have you previously allowed shareholders to elect to receive shareholder communications electronically? If so, how will you deal with shareholders who have made that election? Will you continue to send links to annual and half year reports via email? Or will you assume that those people want to receive limited shareholder communications only?
- If you are sending other hard copy materials to shareholders instead of an annual report, for example a Shareholder Review, will you send this to all shareholders? What if they have previously elected to receive limited shareholder communications, or electronic shareholder communications?