Public Consultation

Simplifying, clarifying and enhancing the integrity and efficiency of the ASX listing rules

28 November 2018

Invitation to comment

ASX is seeking submissions on the accompanying package of listing rule amendments, new and updated listing rule guidance notes, and new and updated listing rule forms. The package is intended to simplify, clarify, and enhance the integrity and efficiency of, the ASX listing rules.

Submissions are due **by Friday, 1 March 2019** and should be sent to by email to:
mavis.tan@asx.com.au
or by mail to:
ASX Limited
PO Box H224
Australia Square NSW 1215
Attention: Mavis Tan

ASX would prefer to receive submissions in electronic form.

Submissions not marked as 'confidential' will be made publicly available on the ASX website.

If you would like your submission, or any part of it, to be treated as confidential, please indicate this clearly in your submission.

Contacts
For general enquiries, please contact:
Mavis Tan
T +61 2 9227 0354
E mavis.tan@asx.com.au

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1. Introduction

ASX Limited ("ASX") is consulting on proposed measures to simplify, clarify, and enhance the integrity and efficiency of, the ASX listing rules.

The last major update to the listing rules took place with the changes to the admission requirements in 2016.[1] ASX is conscious of the need to continually evolve the listing rules so that they remain contemporary, address emerging compliance issues, and continue serving the interests of issuers, investors and the wider market.

Broadly speaking, the proposed changes ASX is consulting upon can be grouped into 8 categories:

- improving market disclosures and other market integrity measures (section 2);
- making the rules simpler and easier to follow (section 3);
- making aspects of the listing process and ongoing compliance with the listing rules more efficient for issuers and for ASX (section 4);
- updating the timetables for corporate actions (section 5);
- enhancing ASX's powers to operate the market and to monitor and enforce compliance with the listing rules (section 6);
- correcting gaps or errors in the listing rules (section 7);
- general drafting improvements , including removing redundant rules (section 8); and
- more and better guidance (section 9).

The proposed changes to the listing rules and ASX guidance are summarised in sections 2 – 9 below.

The text of the proposed changes to the listing rules is shown in mark-up format in annexure A to this consultation paper. Annexure A also has detailed drafting notes for each rule proposed to be changed explaining more fully the reasons for the proposed change.

2. Improving market disclosures and other market integrity measures

ASX is proposing a number of changes to the listing rules aimed at improving market disclosures in some key areas and bolstering the integrity of the ASX market:

2.1. Quarterly reporting – enhancing the quarterly reporting regime by:

- introducing a new rule 4.7C requiring start-up entities that currently lodge an Appendix 4C quarterly cash flow report with ASX under rule 4.7B to also lodge a quarterly activities report with ASX, similar to the one required by mining exploration entities under rule 5.3 and oil and gas exploration entities under rule 5.4. This will provide a more robust disclosure framework for start-up entities and give them a vehicle to communicate developments in their business to the market on a regular basis.
- requiring the quarterly activity reports of rule 4.7B quarterly reporters under the new rule 4.7C, and amending rules 5.3 and 5.4 to require the quarterly activity reports of mining exploration entities and oil and gas exploration entities under those rules, to include:
  - if the quarter is included in a period covered by a "use of funds" statement in the entity's listing prospectus, PDS or information memorandum, a comparison of its actual

[1] A limited number of changes to address reverse takeovers were made in 2017.

expenditure since the date of its admission to the official list against the expenditure estimated in that "use of funds" statement and an explanation of any material variances;

- if the quarter is included in a period covered by an expenditure program provided to ASX under rule 1.3.2(b), a comparison of its actual expenditure since the date of its admission to the official list against the expenditure estimated in that expenditure program and an explanation of any material variances;
- if any category of expenditure in its quarterly cash flow report is materially different from the estimated cash outflows for the next quarter shown in its quarterly cash flow report for the preceding quarter, an explanation of why that is so; and
- a description of, and an explanation for, any payments to a related party included in its quarterly cash flow report.

These are integrity measures intended to make entities lodging quarterly cash flow reports more accountable for the "use of funds" statements and expenditure programs included in their listing prospectuses and PDSs and to be more transparent about quarter-to-quarter differences in projected and actual cash outflows and about related party payments.

– adding to the list of documents in rule 17.5 that attract an automatic suspension if not lodged with ASX on time, the quarterly activities report a start-up entity will be required to lodge with ASX under proposed new rule 4.7C.

ASX is keen to receive feedback on the changes to the quarterly reporting regime proposed above. Do stakeholders support the concept of requiring rule 4.7B quarterly reporters to lodge quarterly activities reports? Are the proposed informational requirements for quarterly activity reports in the new rule 4.7C and in the amendments to rule 5.3 and 5.4 appropriate, in terms of their reach and content? Are there any other matters that should be required to be included in quarterly activities reports?

2.3. Disclosure by listed investment entities of their NTA backing – improving the disclosures by listed investment companies ("LICs") and listed investment trusts ("LITs") of their NTA backing by:

– amending the definition of "net tangible asset backing" in rule 19.12 to clarify its intended operation, including:
  - amending the description of variable "A" in the definition to remove the redundant references to "net market value" and Accounting Standard AASB 1023 and replace them with references to "fair value" and Accounting Standard AASB 13;
  - adding a note to the description of variable "I" in the definition making it clear that capitalised listing expenses are to be treated as intangible assets;
  - amending the description of variable "L" in the definition to require liabilities (as well as assets) to be valued at "fair value", as determined under Accounting Standard AASB 13; and
  - adding a note to the description of variable "L" in the definition to make it clear that the reference to accrued but unpaid management fees includes all forms of fees paid to the manager, including establishment fees and performance fees.

– amending rule 4.10.20 to require a LIC/LIT to disclose in its annual report:
  - the values of its individual investments (including derivatives);

- the level 1, level 2 and level 3 inputs used to value its investments in accordance with Australian Accounting Standard AASB 13 Fair Value Measurement; and
- the NTA backing of its quoted securities at the beginning and end of the reporting period and an explanation of any change therein over that period.

– amending rule 4.12 to require a LIC/LIT to disclose its monthly NTA backing as soon as that information is available and in any event not later than 14 days after the end of that month. Currently, rule 4.12 allows a LIC/LIT to wait for 14 days after month end to disclose this information, even though it may be ready earlier. This potentially opens the door for insider trading in the LIC/LIT's securities by those who know the upcoming NTA backing figure and for uninformed trading by those who don't.

– adding to the list of documents in rule 17.5 that attract an automatic suspension if not lodged with ASX on time, the monthly statement of NTA backing required from an investment entity under rule 4.12.

These changes are intended to address issues ASX has experienced recently with some LICs regarding their valuation methodology for investments in unlisted securities. They also reflect a desire by ASX to standardise and improve NTA reporting by LICs and LITs.

ASX is keen to receive feedback on the changes to the reporting requirements for LICs and LITs proposed above. Are they appropriate, in terms of their reach and content? Might there be any unintended consequences if they are adopted? Are there any other matters that LICs and LITs should be required to report to the market on a periodic basis?

2.4. Disclosure of closing dates for the receipt of director nominations – fixing issues with the drafting of rule 3.13.1. That rule currently provides that if directors may be elected at a meeting of security holders, the entity must tell ASX the date of the meeting at least 5 business days before the closing date for the receipt of nominations. Implicitly, the rule is directed at ensuring that the market is given at least 5 business days' notice of the closing date for the receipt of nominations from persons wishing to be considered for election as a director. However, the rule currently only requires a listed entity to disclose the intended date of the meeting and does not require any specific reference to the closing date for the receipt of such nominations. ASX considers the intended scope and operation of the rule should be made clearer.

Rule 3.13.1 also does not specify the consequence if a listed entity fails to give notice of the date of a meeting required under that rule. ASX has had security holders argue that the meeting and the election of directors at the meeting should be regarded as invalid or that the meeting should be postponed until the requisite notice has been given. ASX does not consider either of these outcomes to be an appropriate outcome for what in many cases will be a simple administrative oversight. ASX is therefore proposing to amend the rule to state that the failure to give such notice does not invalidate the meeting or the election of any director at the meeting.

ASX is keen to receive feedback on the changes to rule 3.13.1 proposed above. Do stakeholders agree that listed entities should disclose the closing date for the receipt of director nominations to the market? Will this requirement be burdensome to comply with? Might there be any unintended consequences if these changes are adopted?

2.5. Disclosure of voting results at meetings of security holders – amending rule 3.13.2 to standardise the disclosure of voting results at meetings of security holders. The proposed rule will require an entity to disclose for each resolution put to a meeting of security holders:

- both the number and a short description of the resolution;
- whether the resolution was passed or not passed;
- whether the resolution was decided on a show of hands or a poll;
- if the resolution was decided on a poll, the number of securities that were voted for the resolution, the number of securities that were voted against the resolution and the number of securities that formally abstained from voting on the resolution;
- regardless of how the resolution was decided, the aggregate number of securities for which valid proxies were received before the meeting, showing separately:
    - the aggregate number of securities in respect of which the proxy was directed to vote for the resolution;
    - the aggregate number of securities in respect of which the proxy was directed to vote against the resolution;
    - the aggregate number of securities in respect of which the proxy was directed to abstain from voting on the resolution;
    - the aggregate number of securities where the chair of the meeting was appointed or acted as the proxy and could vote at their discretion; and
    - the aggregate number of securities where someone other than the chair of the meeting was appointed or acted as the proxy and could vote at their discretion;
- if the resolution related to the adoption of the entity's remuneration report and the outcome constitutes a "first strike" under section 250U(a) or a "second strike" under section 205U(b) of the Corporations Act, that fact,

and, if a resolution was proposed in the notice of meeting but not put to the meeting, the number and a short description of the resolution, the fact that it was not put to the meeting and an explanation of why it was not put to the meeting.

ASX is keen to receive feedback on the changes to rule 3.13.2 proposed above. Are they appropriate, in terms of their reach and content? Will they be burdensome to comply with? Might there be any unintended consequences if they are adopted?

2.6. Disclosure of underwriting agreements – amending various rules to achieve consistent disclosure of the key features of underwriting agreements, including the name of the underwriter, the extent of the underwriting, the fee or commission payable, and a summary of the material circumstances where the underwriter has the right to avoid or change its obligations. This includes:

- inserting a new rule 3.10.9 requiring a listed entity to notify the market if it has entered into an agreement to underwrite a DRP and to disclose the details mentioned above about the underwriting agreement; and
- amendments to rule 3.11.3 (underwritten exercises of options), rule 7.2 exception 2 and rule 10.12 exception 2 (underwritten pro rata offers), and Appendix 3B (announcements of new

issues) to require an entity to disclose the details mentioned above about the underwriting agreements referred to in those provisions.

ASX is keen to receive feedback on the changes to the disclosures required in relation to underwriting arrangements proposed above. Are they appropriate, in terms of their reach and content? Will they be burdensome to comply with? Might there be any unintended consequences if they are adopted?

2.7. **Good fame and character –** expanding the "good fame and character" requirement in the conditions for admission as an ASX Listing (rule 1.1 condition 20) to cover an entity's CEO or proposed CEO as well as its directors and proposed directors.

2.8. **Persons responsible for communication with ASX on listing rule issues –** improving listing rule compliance by requiring the persons appointed by listed entities to be responsible for communication with ASX on listing rule issues to have demonstrated an adequate level of knowledge of the listing rules. This involves:

- adding a definition of "approved listing rule compliance course" in rule 19.12.
- amending rule 1.1 condition 13 to require an applicant seeking an ASX Listing to have appointed as the person responsible for communication with ASX in relation to listing rule matters someone who has completed an approved listing rule compliance course and attained a satisfactory pass mark in the examination for that course. This requirement is proposed to come into effect for entities admitted to the official list on or after 1 July 2019.
- amending rule 12.6 likewise to require a person appointed on or after 1 July 2019 by an ASX Listing to be responsible for communication with ASX in relation to listing rule matters to have completed an approved listing rule compliance course and attained a satisfactory pass mark in the examination for that course. This requirement is proposed to come into effect for persons appointed under rule 12.6 on or after 1 July 2019.

ASX will make an approved education course and examination available online on the ASX website for these purposes free of charge. The course is expected to cover key obligations of listed entities under chapters 3, 4, 7, 10, 11, 12, 14 and 15 of the Listing Rules. The exam is expected to be a multiple-choice and those who have completed the online materials should not find it difficult to attain the required pass mark.

ASX will also consider approving listing rule courses provided by other organisations where their content is acceptable and they have a suitable examination attached.

Persons appointed to be responsible for communication with ASX in relation to listing rule matters prior to 1 July 2019 will be grandfathered from this requirement. They will, however, have access to the online education course and will be able to undertake the online examination as a way of (voluntarily) refreshing and testing their understanding of the listing rules.

ASX is keen to receive feedback on the educational requirements proposed above for persons appointed on or after 1 July 2019 to be responsible for communication with ASX on listing rule issues. Do stakeholders support the concept of having educational requirements for such persons? What concerns do stakeholders have about the proposal? Do stakeholders have a view on the scope and content of what should be covered in the approved education course?

2.9. **Voting by employee incentive schemes** – adding a new rule 14.10 providing that securities held by or for an employee incentive scheme must only be voted on a resolution under the listing rules if and to the extent that they are held for the benefit of a nominated participant in the scheme who is not

excluded from voting on the resolution under the listing rules and who has directed how the securities are to be voted.

The proposed new rule reflects an underlying assumption that if securities are held by or for an employee incentive scheme and they haven't been allocated to a participant in the scheme who is exercising the right to vote the securities, the likelihood is that the board or management of the entity will have some influence in how they are voted. Where that is the case, ASX considers that it would be inappropriate for the securities in question to be voted on a listing rule resolution.

Currently under the rules, ASX can achieve this outcome by applying a voting exclusion to the securities in question under rule 14.11.2. However, this requires ASX to be aware of the situation ahead of time and to take action under that rule. ASX considers it preferable to have a blanket rule prohibiting voting in these cases. If in a particular case an entity considers this to be an unfair or inappropriate outcome, it can always apply to ASX for a waiver of the rule.

ASX is keen to receive feedback on the voting restrictions proposed in new rule 14.10 for securities held by or for an employee incentive scheme. Are they appropriate, in terms of their reach and content? Will they be burdensome to comply with? Might there be any unintended consequences if they are adopted?

2.10. Market announcements – amending rule 15.5 to make it clearer how a document should be given to ASX and to add a requirement suggested by the Australian Investor Relations Association ("AIRA") that if the document is for release to the market, it should include, or be sent under a covering letter including, the name, title and contact details of a person who security holders and other interested parties can contact if they have any queries.

2.11. Distribution schedules – acting upon a further suggestion from AIRA that the information collected by ASX and released to the market via 'distribution schedules' at the point of listing, upon quotation of a new class of securities, and in annual reports, could usefully include the total percentage of securities held by holders in each category. ASX is proposing to include this requirement in new rule 3.10.5(b) for distribution schedules relating to the quotation of a new class of securities. It is also proposing to amend its Information Form and Checklist (ASX Listings) to require equivalent information for new listings and rule 4.10.7 to require equivalent information in annual reports.

3. Making the rules simpler and easier to follow

ASX is proposing a number of changes to the listing rules intended to make them simpler and easier to follow and comply with:

3.1. Announcing issues of securities and seeking their quotation – simplifying and rationalising the current process for announcing issues of securities and applying for their quotation. This involves changes to existing rules 2.7, 2.8 and 3.10.3 and Appendix 3B; the replacement of rule 3.10.5; and the introduction of new rules 3.10.3A, 3.10.3B and 3.10.3C and a new Appendix 2A.

Currently, announcing an issue and applying for quotation of securities are dealt with in the one form, an Appendix 3B. An entity is currently required to notify ASX of a proposed pro rata issue by giving ASX a completed Appendix 3B at the time of the announcement of the proposed issued under rule 3.10.3. For other types of proposed issues, the entity is required to give a preliminary announcement with the information set out in the bullet points to rule 3.10.3 and then to give a completed Appendix 3B under rule 3.10.5 when the securities are issued.

ASX has noticed that some listed entities confuse the interaction between rules 3.10.3 and 3.10.5 and assume that they meet both rules when they lodge an Appendix 3B for an issue of securities. This

assumption is not correct. ASX must be notified of a proposed issue of securities under rule 3.10.3 as soon as it is proposed. So, for example, an agreement to issue securities must be notified immediately to ASX under rule 3.10.3 even though it is not intended to issue the securities (and therefore to lodge an Appendix 3B) until sometime after the agreement has been entered into.

Currently, the Appendix 3B is a static form that attempts to extract data for all of the different types of issues an entity may undertake. It includes an application for quotation of the securities, even where the securities may not be intended to be quoted. It also includes a substantial amount of information[2] relevant to issues under rule 7.1A, even though they are only a very small proportion of the issues made by listed entities. All of this makes the Appendix 3B much longer and more complicated than it needs to be in the majority of cases.

ASX is proposing to amend the listing rules to deal with announcements of new issues and applications for quotation of securities in two separate forms – an Appendix 3B for the notification of a proposed issue and an Appendix 2A to apply for the quotation of securities.

Both the Appendix 2A and Appendix 3B are proposed to be "smart" forms, tailored for the various types of issues an entity can make.

Early proto-types of the new Appendix 2A and revised Appendix 3B are included in annexures K and L to this paper respectively.

Under the proposed listing rule changes, most issues of securities will now need to be notified to ASX under rule 3.10.3 via an Appendix 3B at the time the issue is proposed. The Appendix 3B will incorporate the information currently required to be disclosed under the bullet points to rule 3.10.3 for a non-pro rata issue of securities.

An application for quotation of securities will be made via an Appendix 2A under rule 2.7. The Appendix 2A will adjust to reflect prior disclosures made in an Appendix 3B to avoid unnecessary duplication in disclosures.

Excluded from the requirement in rule 3.10.3 to lodge an Appendix 3B will be the types of issues referred to in new rules 3.10.3A and 3.10.3B (ie issues under an employee incentive scheme or made as a consequence of the conversion of any convertible securities). Instead these issues will need to be notified to ASX within 5 business days of the relevant securities being issued, rather than when they are proposed.

New rule 3.10.3C will also require an entity to notify ASX within 5 business days if unquoted partly paid securities become fully paid securities in the same class as quoted fully paid securities.

Initially, there will be no prescribed form for notifications under the new rules 3.10.3A, 3.10.3B and 3.10.3C – a short letter/announcement will suffice[3]. Where the entity will be applying to have the securities in question quoted on ASX, it will also need to lodge an Appendix 2A applying for quotation of the securities under rules 2.7 and 2.8. In that case, provided the Appendix 2A is lodged within 5 business days of the relevant event, the Appendix 2A can be the notification required under new rules 3.10.3A, 3.10.3B and 3.10.3C.

As part of these changes, ASX is also proposing to shorten the period to apply for quotation of securities in the circumstances mentioned in existing rules 2.8.2, 2.8.2A and 2.8.2B[4] from 10 business

[2] See items 6a – 6i and Annexure 1 in the existing Appendix 3B.

[3] ASX may add prescribed forms for these notifications to ASX Online in due course.

[4] To become rules 2.8.5. 2.8.4 and 2.8.6 respectively with the changes proposed by ASX.

days to 5 business days. This will ensure the market is informed of an increase in the number of quoted securities in a timelier manner than currently is the case.

3.2. Working capital – clarifying the working capital requirement for assets test listings by adding a definition of "working capital" in rule 19.12 and amending the "working capital test" in rule 1.3.3 to make it clearer and easier to apply.

This includes making explicit what is currently implicit in rule 1.3.3 that an entity must set out in its listing prospectus, PDS or information memorandum the objectives it is hoping to achieve from its capital raising and listing, so that it can then confirm it has adequate working capital to achieve those objectives.

It also includes removing the provisions permitting an entity to include in its working capital its budgeted revenue and budgeted administration costs for the first full financial year following listing. Including first full year budgeted revenue and administration costs in the working capital calculation gives rise to a number of issues, including how these figures should be confirmed, why other budgeted expenses apart from administration costs are not included, why revenue and administration costs in the lead up to the commencement of the first full financial year are not included, potential liability for forward looking statements etc. Given these issues, ASX favours a simpler approach to determining the amount of working capital.

3.3. Chess Depositary Interests – introducing a new rule 4.11 requiring entities that have CDIs issued over their quoted securities to notify ASX of the number of CDIs on issue on a monthly basis. This notification will be made via a new Appendix 4A.

Currently, ASX imposes a condition at admission for such entities that they lodge an Appendix 3B on a monthly basis showing changes in the number of CDIs on issue over that month. ASX then uses that information to determine if additional quotation fees should be paid by the entity. The Appendix 3B is a complex, multi-faceted form and is not well suited to this particular task. ASX is proposing to introduce a new, much shorter and simpler Appendix 4A for this purpose.

An early proto-type of the new Appendix 4A is included in annexure M to this paper.

3.4. The additional 10% placement capacity in rule 7.1A – implementing the changes foreshadowed in *Strengthening Australia's equity capital markets: ASX Listing Rule 7.1A after three years* and some other changes to simplify and rationalise aspects of rule 7.1A. This includes:

– deleting rule 3.10.5A(a) and moving the disclosures required by rules 3.10.5A(b)-(d) into the revised Appendix 3B.

  Rule 3.10.5A currently imposes additional disclosure obligations for issues of equity securities made under rule 7.1A, including: (a) details of the dilution to the existing holders of ordinary securities caused by the issue; (b) where the equity securities are issued for cash consideration, a statement of the reasons why the eligible entity issued the equity securities as a placement under rule 7.1A and not as (or in addition to) a pro rata issue or other type of issue in which existing ordinary security holders would have been eligible to participate; (c) details of any underwriting arrangements, including any fees payable to the underwriter; and (d) any other fees or costs incurred in connection with the issue. The obligation to make these disclosures is often overlooked by an entity issuing securities under rule 7.1A, resulting in considerable 'to-ing and fro-ing' between ASX and the entity.

ASX is proposing that the matters currently required to be disclosed under rule 3.10.5A(b)-(d) will now be covered in the new Appendix 3B, removing the need to retain those rules.[5] Where applicable, the Appendix 3B will prompt entities making an issue to provide this information, ensuring better compliance.

The remaining requirement in rule 3.10.5A(a) to disclose details of the dilution to the existing holders of ordinary securities caused by an issue under rule 7.1A is very unclear. It could be taken to refer to the notional dilution caused by an issue under rule 7.1A calculated by comparing the percentage of the original capital that a notional security holder who did not participate in the issue had prior to the issue, to the percentage of the expanded capital that the security holder holds after the issue. If that is the case, then this is easily calculable from the public record and ASX does not consider it serves any useful purpose for this to be disclosed each time an issue is made under rule 7.1A. However, it could also be taken to refer to the actual dilution caused by an issue under rule 7.1A. This is extremely difficult, if not impossible, for a listed entity to calculate. It will vary from security holder to security holder, depending on what amount a security holder paid for their securities, the price paid for securities in the issue under rule 7.1A, and whether or not the security holder participated in some way in the issue under rule 7.1A.

ASX is therefore proposing to delete rule 3.10.5A(a). In doing so, ASX would note that the potential dilution that an issue under rule 7.1A may cause is fully explained to security holders upfront before they give a rule 7.1A mandate.[6]

- removing the ability for entities to make an issue under their additional 10% placement capacity in rule 7.1A for non-cash consideration.[7] It is seldom used and creates significant compliance issues.
- extending the period specified in rule 7.1A.3(b) that listed entities have to issue securities without having to re-calibrate the price, from 5 trading days from which the price was agreed to 10 trading days from which the price is agreed. This change responds to feedback ASX has received that in many cases 5 trading days is too short a period to attend to the formalities for issuing securities.
- introducing new rules 7.1B.4 and 7.1B.5 to provide a more rigorous framework for how the market is informed that an issue is being made using an entity's additional 10% placement capacity under rule 7.1A rather than its base 15% placement capacity under rule 7.1. The new rules will require an entity to disclose the fact that it is using its additional 10% placement capacity under rule 7.1A rather than its base 15% placement capacity in rule 7.1 in its Appendix 3B announcement of the proposed issue under rule 3.10.3 or in its Appendix 2B application for quotation of the securities under rule 2.7. The Appendix 3B and Appendix 2A forms will prompt the entity to provide this information where applicable.

  If an entity does not give these notifications, it will be deemed to be making the issue using its base 15% placement capacity in rule 7.1. As a fail-safe, rule 7.1B.5(b)(ii) will allow ASX in an appropriate case to deem an issue to have been made under rule 7.1A where an entity has forgotten to do this. Rule 7.1B.5(c) will also allow ASX to deem an issue to be made under

[5] ASX is proposing that details of any underwriting arrangements, including any fees payable to the underwriter, and any material fees or costs incurred in connection with the issue, should be disclosed for all types of security issues, not just placements under rule 7.1A, and the new Appendix 3B will reflect this.

[6] This is a required disclosure under existing rule 7.3A.2. This rule will become rule 7.3A.4 with the changes proposed by ASX.

[7] This is currently permitted under rule 7.1A.3.

rule 7.1, rather than under rule 7.1A, if ASX considers this appropriate in the circumstances. Examples of how ASX may exercise these powers will be included in proposed new Guidance Note ("GN") 21 (see section 9.5 below).

3.5. Issues of equity securities without security holder approval – rationalising the lists of equity issues that can be made without security holder approval under rules 7.2, 7.6, 7.9 and 10.12 and making them consistent. This includes:

- deleting existing rule 7.1B.2 (which deals with agreements to issue securities that are conditional on security holder approval) and replacing it with a specific and corresponding exception in rule 7.2 for agreements to issue equity securities that are conditional on holders of ordinary securities approving the issue under rule 7.1 before the issue is made (see proposed new exception 17 in that rule). This will align the drafting of the exceptions in rules 7.2 and 10.12 (see existing exception 10 in rule 10.128).
- amending rule 7.2 exception 2 (issues to an underwriter of a pro rata issue):
  - to address the fact that it currently only applies to "an issue under an underwriting agreement to an underwriter of a pro rata issue" – typically, in an underwriting, if there is a shortfall, some or all of it will be allocated and issued at the direction of the underwriter to sub-underwriters and other parties who have agreed to take firm allocations rather than issued to the underwriter and this exception will be amended to reflect this;
  - so that, consistent with exception 1, the underwriting can also relate to other securities that are entitled under their terms of issue to participate in a pro rata issue to holders of ordinary securities; and
  - to add a requirement that certain key features of the underwriting agreement must be disclosed in the Appendix 3B filed in relation to the issue under rule 3.10.3 – this will make exception 2 consistent with existing rule 7.2 exception 12.[9]
- expanding rule 7.2 exception 3 (issues to make up a shortfall on a pro rata issue):
  - so that, consistent with exception 1 and the proposed changes to exception 2, an issue to make up a shortfall can also relate to other securities that are entitled under their terms of issue to participate in a pro rata issue to holders of ordinary securities; and
  - to replace the reference to the directors reserving the right to issue the shortfall at their discretion with a reference to the directors having disclosed their allocation policy in relation to the shortfall. In this regard, ASX is aware of some entities arguing that the current language requires their directors to be able to allocate the shortfall at their discretion and precludes them from having a different allocation policy. That was not the intention of this language.
- amending rule 7.2 exception 4 (issues on the conversion of convertible securities)[10] to add a requirement that where an entity has issued convertible securities before it was listed, it must have disclosed the existence and material terms of the convertible securities in the prospectus,

[8] To become rule 10.12 exception 11 with the changes proposed by ASX.

[9] To become rule 7.2 exception 10 with the changes proposed by ASX.

[10] To become rule 7.2 exception 9 with the changes proposed by ASX.

PDS or information memorandum lodged with ASX under rule 1.1 condition 3 in order to attract the exception.

- amending rule 7.2 exception 7 (issues under a DRP)[11] to extend it to an underwriter of a DRP provided certain key information about the underwriting agreement has been disclosed.
- amending rule 7.2 exception 12 (issues to an underwriter of the exercise of options):[12]
  - to address the fact that it currently only applies to an issue of securities to the underwriter – typically, in an underwriting, if there is a shortfall, some or all of it will be allocated and issued at the direction of the underwriter to sub-underwriters and other parties who have agreed to take firm allocations rather than issued to the underwriter and this exception will be amended to reflect this;
  - to extend the 10 business day deadline for such issues to 15 business days, to align the exception with rule 7.2 exception 2; and
  - to be consistent with new rule 7.2 exception 9, to extend this exception to cover underwritings of options issued before an entity was listed, provided the existence and material terms of the options were disclosed in the prospectus, PDS or information memorandum lodged with ASX under rule 1.1 condition 3.
- amending rule 7.2 exception 13 (issues under an agreement to issue securities)[13] to add a new paragraph (a) extending the exception to agreements to issue securities entered into before an entity was listed, provided the entity disclosed the existence and material terms of the agreement in the prospectus, PDS or information memorandum lodged with ASX under rule 1.1 condition 3.
- amending rule 7.2 exception 14 (issues made with security holder approval under rule 10.11 or 10.14) to remove the requirement that the notice of meeting approving an issue to a related party must state that if approval is given under rule 10.11 or 10.14, approval is not required under rule 7.1. This requirement is often overlooked by listed entities and ASX does not consider it necessary. The exception should have this effect without the notice of meeting needing to state it.
- introducing into rule 7.2 a new exception 15 equivalent to existing rule 10.12 exception 4A.14 This would exclude from the restrictions in rules 7.1 and 7.1A a grant of options or other rights to acquire securities under an employee incentive scheme, where the securities to be acquired on the exercise of the options or in satisfaction of the rights are required by the terms of the scheme to be purchased on-market. These issues are proposed to be excluded from rules 7.1 and 7.1A on the basis that because the securities to be acquired on the exercise of the options or in satisfaction of the rights must be purchased on-market, there is no dilution to existing security holders.

[11] To become rule 7.2 exception 4 with the changes proposed by ASX.

[12] To become rule 7.2 exception 10 with the changes proposed by ASX.

[13] To become rule 7.2 exception 16 with the changes proposed by ASX.

[14] To become rule 10.12 exception 9 with the changes proposed by ASX.

- introducing into rule 7.2 a new exception 17 equivalent to the exception in existing rule 10.12 exception 10[15] for agreements conditional on security holder approval.[16]
- amending rule 7.6 (no equity securities to be issued without approval before a meeting to appoint or remove directors or responsible entity) to include equivalent exceptions to those in rule 7.9 (no equity securities to be issued for 3 months after written notice of a takeover).17
- adding to rule 7.9 new exceptions 7 (an issue made after the entity is told in writing that takeover offeror is no longer making, or proposing to make, a takeover offer for the entity's securities) and 8 (an issue made with the approval of the takeover offeror).
- amending rule 10.12 exception 1 (pro rata issues) to extend it to issues made to the holders of other securities that are entitled under their terms of issue to participate in a pro rata issue to holders of ordinary securities. This will align the exception with rule 7.2 exception 1.
- expanding rule 10.12 exception 2 (issues to an underwriter of a pro rata issue) so that, consistent with exception 1, the underwriting can also relate to other securities that are entitled under their terms of issue to participate in a pro rata issue to holders of ordinary securities and adding a requirement that certain key features of the underwriting agreement must be disclosed in the Appendix 3B filed in relation to the issue under rule 3.10.3. This will align the exception with the changes proposed to rule 7.2 exception 2 above.
- amending rule 10.12 exception 3 (issues under a DRP) to make it clear that it does not apply to an issue of securities to, or at the direction of, an underwriter of a DRP.
- adding to rule 10.12 a new exception 6 for issues approved under item 7 of section 611 of the Corporations Act equivalent to the existing exception in rule 7.2 exception 16.18
- amending rule 10.12 exception 7 (issues on the conversion of convertible securities) to make the drafting consistent with the proposed amendments to the equivalent exception in existing rule 7.2 exception 4.19
- amending rule 10.12 exception 920 (issues under agreements to issue securities) to make the drafting consistent with the proposed amendments to the equivalent exception in rule 7.2 exception 13.21
- adding to the list of exceptions in rule 10.15B a further exception22 for an issue of equity securities pursuant to options or other rights to acquire securities granted to directors or their associates under an employee incentive scheme. For the exception to apply, the entity must have issued the options or other rights:

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[15] To become rule 10.12 exception 11 with the changes proposed by ASX.

[16] To prevent such an agreement being prematurely counted in variable A, ASX is proposing to exclude issues under the new exception from the first bullet point in the definition of that variable but to include a note in the fourth bullet point to indicate that the reference in that bullet point to fully paid ordinary securities issued in the relevant period with approval under rule 7.1 or rule 7.4 may include fully paid ordinary securities issued under an agreement to issue securities within rule 7.2 exception 17 where the issue is subsequently approved under rule 7.1.

[17] This includes the two new exceptions to rule 7.9 mentioned in the next bullet point.

[18] To become rule 7.2 exception 8 with the changes proposed by ASX.

[19] To become rule 7.2 exception 9 with the changes proposed by ASX.

[20] To become rule 10.12 exception 10 with the changes proposed by ASX.

[21] To become rule 7.2 exception 16 with the changes proposed by ASX.

[22] To become rule 10.16(c) with the changes proposed by ASX.

- before it was listed and disclosed the information referred to in rules 10.15.1 – 10.15.9 in relation to the issue in the prospectus, PDS or information memorandum lodged with ASX under rule 1.1 condition 3; or
- after it was listed with the approval of holders of ordinary securities under rule 10.14.

In each case above, the issue of the equity securities will be taken to have been made with the approval of holders of ordinary securities under rule 10.14, meaning that the issue will also be exempt from rule 10.11 under existing exception 4 of rule 10.12.[23]

3.6. Notices of meeting – expanding and rationalising the requirements for notices of meetings in rules 7.3,[24] 7.3A,[25] 7.5,[26] new rule 10.5,[27] 10.13[28] and 10.15.[29] This includes:

- putting all of them in a consistent order and amending them to harmonise their drafting.
- removing the requirement to disclose the "terms of the securities" for fully paid ordinary securities.
- adding a requirement that if the acquisition or disposal is occurring, or securities are being issued, under an agreement, the entity must disclose in its notice of meeting any other material terms of the agreement.
- removing the minimum price constraint in existing rule 7.3.3.30 ASX regards this as an unnecessary fetter on the discretion of security holders to approve an issue at whatever price they consider appropriate. The removal of this constraint will also make this rule consistent with existing rules 7.5.2 and 10.13.5.31
- deleting existing rule 7.3.7 (the requirement that the notice state the issue date or that the issue will occur progressively), on the basis that it covers much the same territory as existing rule 7.3.2.32
- removing the provisions dealing with priority entitlement offers currently in rule 7.3.8. These provisions are seldom used and, with the changes proposed to rules 14.11 and 14.11.1, are no longer considered necessary by ASX.
- removing existing rule 7.3.9 referring to agreements to issue securities that are part of a public offer. With the proposed new rule 7.3.7 (requiring the disclosure of "a summary of any other material terms of the agreement"), this too is no longer considered necessary by ASX.

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[23] To become rule 10.12 exception 8 with the changes proposed by ASX.

[24] For resolutions under rule 7.1.

[25] For resolutions under rule 7.1A.

[26] For resolutions under rule 7.4.

[27] For resolutions under rule 10.1.

[28] For resolutions under rule 10.11.

[29] For resolutions under rule 10.14.

[30] To become rule 7.3.5 with the changes proposed by ASX. Existing rule 7.3.3 requires the issue price for an issue of securities being approved under rule 7.1 to be either a fixed price or a minimum price. The minimum price must be fixed or a stated percentage that is at least 80% of the volume weighted average market price for securities in that class, calculated over the last 5 days on which sales in the securities were recorded before the day on which the issue was made or, if there is a prospectus, Product Disclosure Statement or offer information statement relating to the issue, over the last 5 days on which sales in the securities were recorded before the date the prospectus, Product Disclosure Statement or offer information statement is signed

[31] To become rules 7.5.5 and 10.13.6 respectively with the changes proposed by ASX.

[32] To become rule 7.3.4 with the changes proposed by ASX.

- modifying rule 7.3A.4[33]to reflect ASX's decision to remove the capacity for entities to issue securities under rule 7.1A for non-cash consideration.
- adding a requirement in rule 7.3A.6, where an entity has agreed in the 12 months before its AGM to issue any equity securities under rule 7.1A.2 but as at the date of the AGM has not yet issued those equity securities, for its notice of AGM to include a statement giving all material details of that agreement and an explanation why the equity securities have not yet been issued.
- modifying rule 7.3A.7 so that the requirement to include a voting exclusion statement only applies where the entity is proposing to make an issue of equity securities at the time of dispatching the notice of meeting to security holders (this is consistent with the way in which ASX currently interprets the voting exclusion requirements in rule 7.3A.7).
- introducing a new rule 7.5.4, equivalent to existing rule 7.3.2,34 requiring the notice of meeting approving an issue or agreement to issue securities under rule 7.4 to state the date or dates on which the securities were or will be issued. If the securities have not yet been issued, this must be no later than 3 months after the date of the meeting.
- introducing a new rule 10.5 listing the minimum contents for a notice of meeting approving an acquisition or disposal of a substantial asset from/to a person in a position of influence under rule 10.1, with broadly equivalent information to that required under rule 10.13 for a notice of meeting approving an issue of securities to a person in a position of influence under rule 10.11.
- adding a new rule 14.1A requiring a notice of meeting which contains a resolution seeking an approval of security holders under the listing rules to summarise the relevant rule and what will happen if security holders give, or do not give, that approval.

3.7. Employee incentive schemes – rationalising the rules dealing with the approval of issues to directors and their associates under employee incentive schemes by merging rules 10.15 and 10.15A into the one rule (rule 10.15).[35] The new rule 10.15 will be substantially based on rule 10.15A, but with some additional changes to clarify its intended operation and to make it consistent with rules 7.3, 7.5 and 10.13. This includes some re-ordering of the provisions.

Currently an entity can choose to obtain an approval from security holders under rule 10.14 to make issues of securities under an employee incentive scheme to directors and their associates for 12 months under rule 10.15 or for 3 years under rule 10.15A. Most entities take the latter option. Rules 10.15 and 10.15A are substantially identical apart from the requirement currently in rule 10.15A.8 for some additional disclosures in the notice of meeting and in the entity's annual report. ASX does not see a need to maintain the two regimes.

ASX is proposing to add a requirement in new rule 10.15.3 that the relevant director's current total remuneration package is also disclosed, so as to provide context for security holders in deciding the reasonableness of the award being made to the director, or to his or her associate or connected person, under the employee incentive scheme.

[33] To become rule 7.3A.3 with the changes proposed by ASX.

[34] To become rule 7.3.4 with the changes proposed by ASX.

[35] This will require some consequential changes to rule 10.14.

ASX is keen to receive feedback on the changes to rule 10.15 proposed above. Are they appropriate, in terms of their reach and content? Will they be burdensome to comply with? Might there be any unintended consequences if they are adopted?

3.8. Voting exclusions – amending the list of voting exclusions in the table in rule 14.11.1 for greater consistency and to give greater certainty as to which parties must have their votes excluded.

ASX is proposing to split the currently combined voting exclusions for rules 7.1 and 7.1A into separate exclusions. The voting exclusion under rule 7.1A will be modified to reflect the changes proposed to rule 7.3A.7 so that a voting exclusion statement will only be required where, at the time of dispatching the notice of meeting to approve a rule 7.1A mandate, the entity is proposing to make an issue of equity securities under rule 7.1A.2. This is consistent with the manner in which ASX currently interprets the requirement for a voting exclusion for resolutions seeking a 7.1A mandate.

The separate voting exclusions that currently exist for resolutions under rule 10.5[36] and 10.9 will be removed. Rule 10.5 (option arrangements) is being absorbed into rule 10.4 and an approval under that rule will now be treated as an approval under rule 10.1 and therefore attract the voting exclusion applicable to resolutions under rule 10.1. Rule 10.9 is proposed to be deleted.[37]

The existing references in the voting exclusions for rules 11.1 and 11.2 to "a person who might obtain a benefit, except a benefit solely in the capacity of a holder of ordinary securities, if the resolution is passed" are considered too broad and uncertain. To give greater certainty as to which parties must have their votes excluded on this score, these references will be replaced with references to a person who will obtain a "material benefit" as a result of the relevant transaction. ASX will give guidance in GN 12 on what types of benefits are considered material, or not material, for the purposes of these voting exclusions.

Unlike the voting exclusions for rules 7.1, 11.1 and 11.2, the voting exclusions for rules 10.1 and 11.4 currently do not extend to a person who might obtain a benefit if the resolution is passed. For consistency, ASX is proposing to include in the voting exclusions for rules 10.1 and 11.4 a reference to "a person who will obtain a material benefit as a result of the transaction". Again, ASX will give guidance in GN 24 (in the case of rule 10.1) and GN 13 (in the case of rule 11.4) on what types of benefits are considered material, or not material, for the purposes of these voting exclusions.

ASX is keen to receive feedback on the changes to voting exclusions proposed above. Are they appropriate, in terms of their reach and content? Will they be burdensome to comply with? Might there be any unintended consequences if they are adopted?

4. Efficiency measures

ASX is proposing a number of rule changes to make aspects of the listing process and ongoing compliance with the listing rules more efficient for issuers and for ASX:

4.1. Escrow – streamlining the escrow regime in chapter 9 and Appendices 9A and 9B to substantially reduce the administrative burden for applicants seeking to list on ASX and for ASX.

ASX has had examples of entities seeking admission or re-admission to the official list having to obtain executed escrow agreements in the form of Appendix 9A from hundreds of security holders as part of the admission process. The administrative burden this imposes on applicants for listing and on ASX is significant. ASX is also aware of some cases where issuers have been exposed to greenmail from

[36] To become rule 10.4 with the changes proposed by ASX.

[37] See note 57 and the accompanying text below.

security holders who have refused to sign escrow agreements and held out for other parties to purchase their securities ahead of listing.

ASX is proposing to introduce a two-tier escrow regime where ASX can (and will) require certain more significant holders of restricted securities and their controllers to execute a formal escrow agreement in the form of Appendix 9A, as is currently the case.[38] ASX expects it will impose this requirement on related parties, promoters, substantial holders,[39] service providers[40] and their associates. However, for less significant holdings, ASX will instead permit entities to rely on a provision in their constitution imposing appropriate escrow restrictions on the holder of restricted securities[41] and to simply give a notice to the holder of restricted securities in the form of a new Appendix 9C advising them of those restrictions.[42]

These escrow agreements and notices will then be reinforced by a requirement that if the securities are in a class that is quoted (as they generally will be), they must be held on the entity's issuer-sponsored sub-register and made the subject of a holding lock for the duration of the escrow period. If they are in a class that is not quoted, they must be held on the entity's certificated subregister and the certificates held in escrow by a bank or recognised trustee for the duration of the escrow period.

ASX considers a restriction notice and the "lock-up" mechanisms in the previous paragraph should be more than adequate to ensure an effective escrow regime. This, for example, is the mechanism used for most employee incentive schemes to prevent transfers of securities before vesting hurdles have been met.

ASX is proposing to update the prescribed form of escrow agreement in Appendix 9A to convert it into a deed and to tighten the drafting. ASX is also proposing to delete the provisions currently in rule 9.1.4 specifying when a controller is not required to execute a restriction agreement and instead to deal with that issue via guidance in the Guidance Note 11 *Restricted Securities and Voluntary Escrow*.

These changes involve a wholesale re-drafting of rules 9.1 – 9.4, 9.17, 9.18 and Appendices 9A and 9B and the removal of existing rules 9.5, 9.7, 9.14, 9.15 and 9.16.[43] They also involve consequential changes to rule 15.12 and the definitions of "cash formula" and "promoter" in rule 19.12, as well as the addition of a new Appendix 9C and new definitions of "restriction deed", "restriction notice" and "seed capitalist" in rule 19.12.

ASX is also proposing to remove the current escrow restrictions in item 6 of Appendix 9B and merge the escrow restrictions for promoters providing services currently in item 7 of Appendix 9B into item 1.

ASX notes that escrow restrictions currently apply (and will continue to apply) under rule 10.7 and item 5 of Appendix 9B where an entity acquires a classified asset that is a "substantial asset" (as defined in rule 10.2) from a vendor who is a person in a position of influence and caught by rule 10.1.

By contrast, the existing escrow restrictions currently in item 6 apply whenever the vendor disposing of a classified asset "will have 20% of the capital of the entity". These restrictions are stated to apply where the vendor is not a person referred to in rule 10.1 (and therefore are not in a positon of influence in relation to the transaction). They apply regardless of whether the classified asset is a

[38] See proposed rule 9.1(b).

[39] As defined in rule 19.12.

[40] As referred to in existing item 8 of Appendix 9B, which will become item 6 of Appendix 9B with the changes proposed by ASX.

[41] See proposed rule 9.1(a) and the proposed changes to rule 15.12.

[42] See proposed rule 9.1(c).

[43] Noting that rules 9.6 and 9.8 – 9.13 have already been deleted.

"substantial asset" or not. Under existing rule 9.1.3, they also apply in circumstances where escrow would not be applied to an entity being admitted to the official list for the first time (eg where the entity is profitable or has mostly tangible assets or assets with a readily ascertained value). The policy reasons for this are obscure.

ASX considers that the escrow restrictions for vendors of classified assets in items 3, 4 and 5 of Appendix 9B are adequate and that item 6 is unnecessary. This is especially so, given ASX's powers under rule 10.1.5 to apply rule 10.1 (and therefore item 5 of Appendix 9B) to any person whose relationship with the entity or a related party of the entity is such that in ASX's opinion the transaction should be subject to security holder approval. An entity also has the ability to negotiate voluntary escrow if it considers that appropriate in the circumstances.

ASX is keen to receive feedback on the changes to the escrow regime proposed above. Do stakeholders support simplifying the escrow regime? Will the changes reduce the workload currently involved in obtaining escrow agreements from all holders of restricted securities? Are there any other changes ASX could sensibly make to reduce the burden of the escrow requirements and still maintain the integrity of its escrow regime?

4.2. Notification by profit test entities of continuing profits – amending rule 1.2.5A[44] to allow the statement required from the directors of a 'profit test' listing that they have made enquiries and nothing has come to their attention to suggest that the economic entity is not continuing to earn profit from continuing operations, to be included in the entity's listing prospectus, PDS or information memorandum, rather than having to be provided separately to ASX.

4.3. Agreements for admission and quotation – separating the application forms for admission to the official list in existing Appendices 1A, 1B and 1C from the formal listing agreements included in those Appendices. The application forms will be made available on ASX Online. The terms of the formal listing agreement will be retained in the relevant Appendix in the listing rules. The application form will incorporate the listing agreement by reference, while the relevant Appendix will state that by giving an application to ASX in the prescribed form, the entity will be taken to have agreed to the matters set out in that Appendix. This will shorten the application forms and avoid the need for them to be signed.

A similar approach will be taken to the formal agreement for quotation that currently sits within the body of Appendix 3B – to be replaced by Appendix 2A with the changes proposed by ASX. The application for quotation will be made available on ASX Online as an Appendix 2A. The terms of the formal quotation agreement will be set out in Appendix 2A in the listing rules. The application form will incorporate the quotation agreement in Appendix 2A by reference, while Appendix 2A in the rules will state that by giving an application to ASX in the prescribed form, the entity will be taken to have agreed to the matters set out in that Appendix. Again, this will shorten the application form and avoid the need for it to be signed.

To ensure that there is no gap in the framework for quotation of securities, the Appendix 3B form on ASX Online will include an application for quotation of any rights or securities that are quoted on a deferred settlement basis ahead of the lodgement of an Appendix 2A. Appendix 3B in the rules will include a formal quotation agreement for those rights or securities. Again, the application form will incorporate the quotation agreement in Appendix 3B by reference, while Appendix 3B in the rules will state that by giving a notice to ASX in the prescribed form, the entity will be taken to have agreed to the matters set out in that Appendix.

[44] To become rule 1.2.6 with the changes proposed by ASX.

4.4. Eliminating the need to apply for a number of standard waivers – amending a number of rules to remove the need for listed entities to apply for standard waivers of those rules. These are routinely granted by ASX and putting listed entities to the trouble of applying for the waiver, and ASX to the trouble of documenting its decision to grant the waiver, is time consuming and inefficient. The standard waivers to be built into the rules include:

- amending rule 7.2 exception 7[45] to extend it to an underwriter of a DRP.
- amending rule 7.2 exception 15[46] and rule 10.2 exception 8[47] to extend them to security purchase plans that would otherwise qualify for the relief in ASIC Class Order 09/425 but for the fact that the entity's securities have been suspended from trading on ASX for longer than is permitted under that class order.[48]
- adding to rule 7.2 exception 13[49] a new paragraph (a) extending the exception to agreements to issue securities entered into before an entity was listed, provided the entity disclosed the existence and material terms of the agreement in the prospectus, PDS or information memorandum lodged with ASX under rule 1.1 condition 3.
- adding new exceptions 7 (an issue made after the entity is told in writing that takeover offeror is no longer making, or proposing to make, a takeover offer for the entity's securities) and 8 (an issue made with the approval of the takeover offeror) to rule 7.9.
- amending rule 7.39 to permit an auction of forfeited securities to be held at any place within the capital city of an Australian State or Territory which investors can conveniently attend.
- adding a new rule 9.6 to remove the need for an entity to apply to ASX for a waiver to allow the holder of restricted securities to transfer some or all of those securities to a related party. ASX routinely grants such waivers provided there is no change in the beneficial ownership of the securities and the other conditions set out in proposed new rule 9.6 are met.
- removing the requirement in existing rules 9.17 and 9.18[50] for an entity to seek ASX's approval to allow the holder of restricted securities to accept a takeover offer or participate in a merger scheme where the conditions set out in those rules are met. ASX routinely grants this consent. This change will remove the administrative burden of having to apply for such a consent.
- adding a concluding paragraph to rule 14.11 allowing holders who hold shares in a nominee, trustee, custodial or other fiduciary capacity on behalf of a beneficiary to vote those shares where the beneficiary provides written confirmation to the holder that they are not excluded from voting, and are not an associate of a person excluded from voting, on the resolution and the holder votes on the resolution in accordance with directions given by the beneficiary to the holder to vote in favour of the resolution.
- adding a clause to Appendix 6A providing that an entity is not required to send a notice to the holder of quoted options that are about to expire where the options are substantially out of the money (that is, where the current market price for the underlying security is less than 50% of

[45] To become rule 7.2 exception 4 with the changes proposed by ASX.

[46] To become rule 7.2 exception 5 with the changes proposed by ASX.

[47] To become rule 10.12 exception 4 with the changes proposed by ASX.

[48] That is, for more than a total of 5 days during the 12 months before the day on which the offer is made under the plan or, if the securities have been quoted on ASX for less than 12 months, during the period of quotation.

[49] To become rule 7.2 exception 16 with the changes proposed by ASX.

[50] To be merged and become rule 9.5 with the changes proposed by ASX.

the option exercise price and the highest market price at which the underlying security has traded on ASX in the preceding 6 months is less than 75% of the option exercise price).

4.5. Standard forms – removing a number of standard forms from the appendices to the listing rules and making them available on ASX Online. This will facilitate ASX being able to make changes to those forms from time to time without having to go through the formal rule change process prescribed in the Corporations Act. It will also facilitate the conversion in due course of what are now static, paper-based forms to smart electronic forms.

The forms proposed to be removed from the appendices and put on ASX Online are the existing forms in Appendices 1A, 1B, 1C, 3A.1, 3A.2, 3A.3, 3A.4, 3A.5, 3A.6, 3B, 3C, 3D, 3E, 3F, 3X, 3Y, 3Z, 4C, 4G and 5B. The new Appendix 2A and Appendix 4A forms will also be made available on ASX Online rather than included in hard copy in the appendices to the listing rules.

Under proposed new rule 19.8B, ASX will not be able to amend or replace any of these forms without first giving at least 14 days' notice to ASIC and to the market.

Apart from Appendices 1A, 1B, 1C, 2A and 3B, all of these forms primarily serve an informational purpose (ie prescribing information to be disclosed to the market) rather than a legal or regulatory purpose (ie specifying rights and obligations).

Appendices 1A, 1B, 1C, 2A and 3B serve both an information purpose and a legal and regulatory purpose. Appendices 1A, 1B and 1C contain the terms of the agreement between ASX and an entity regarding its admission to the ASX official list, while Appendices 2A and 3B contain the terms of the agreement between ASX and an entity regarding the quotation of its securities. For these particular forms, ASX proposes to extract the informational part of the appendix into a separate form on ASX Online, but keep the legal and regulatory part of the appendix within the appendix to the listing rules. The listing rules will provide that by filing an Appendix 1A, 1B, 1C, 2A or 3B form, the entity will be taken to have agreed to the legal and regulatory provisions set out in the applicable appendix in the listing rules.

Other appendices that primarily serve a legal or regulatory purpose (that is, the timetables in Appendices 3A, 6A, 7A and 8A; the JORC Code in Appendix 5A; the escrow requirements in existing Appendices 9A and 9B and the proposed new Appendix 9C; and the requirements for constitutions in Appendices 15A and 15B) will be retained in the listing rules. Accordingly, any future changes to those appendices will need to go through the formal rule change process prescribed in the Corporations Act.

For the time being, ASX is leaving Appendices 4D, 4E and 4F in the Listing Rules untouched, pending future work it intends to do in relation to the financial reporting requirements in the Listing Rules. Again, any future changes to those appendices will need to go through the formal rule change process prescribed in the Corporations Act.

As a consequence of these changes, rule 15.3 will also be amended to reflect the fact that additional forms are being made available on ASX Online and that some of these will be "smart forms" with built-in lodgement facilities, while others will be in the nature of templates to be completed and lodged in the same manner as market announcements generally.

5. Updating the timetables for corporate actions

In addition to a raft of drafting changes to the timetables for corporate actions in Appendices 3A, 6A and 7A of the listing rules intended to make them clearer and easier to follow, ASX is proposing to make the following specific and substantive changes to various corporate action timetables mentioned in sections 5.1 - 5.13 below. ASX is also seeking the views of stakeholder on the further issues regarding deferred settlement trading mentioned in section 5.14 below:

5.1. **Dividends and distributions** – shortening the date currently in section 1 of Appendix 6A for issuing and applying for quotation of securities issued under a dividend or distribution plan to 5 business days after the dividend or distribution payment date. It is currently 10 business days after the dividend or distribution payment date.

5.2. **Interest payments dates** – simplifying the provisions currently in section 2 of Appendix 6A dealing with interest payments on quoted debt securities and convertible debt securities. Section 2 currently requires the record date to identify the persons entitled to receive interest payments on debt securities and convertible debt securities issued before 30 September 2001 to be 7 calendar days before the date of payment or 11 business days before the date of payment and for debt securities and convertible debt securities issued on or after 1 October 2001 to be 8 calendar days before the date of payment. This is subject to a rider that where the date of payment falls on a day on which trading banks in the State of the home branch of the entity are closed, the date of the payment must be the next day on which those banks are open. These time constraints reflect historical systems constraints and are no longer relevant.

5.3. **Satisfaction of interest payments by the issue of quoted securities** – adding an entry to the timetable for interest payments in section 2 of Appendix 6A providing that if an interest payment is to be satisfied by the issue of quoted securities, the last day for the entity to issue the securities and apply for their quotation is 5 business days after the due date for the interest payment.

5.4. **Option expiry notices** – adding a new clause 5.3 to Appendix 6A providing that an entity is not required to send a notice to the holder of quoted options that are about to expire where the options are substantially out of the money (defined to mean where the current market price for the underlying security is less than 50% of the option exercise price and the highest market price at which the underlying security has traded on ASX in the preceding 6 months is less than 75% of the option exercise price). ASX routinely grants waivers from the requirement to send out notices of expiry to option holders in these circumstances. The addition of clause 5.3 will remove the need for ASX to grant this waiver.

5.5. **Conversion of expiry of convertible securities** – shortening the period for applying for quotation of securities issued upon the conversion or expiry of convertible securities in section 6 of Appendix 6A to 5 business days after the conversion or expiry date. It is currently 15 business days after the conversion or expiry date.

5.6. **Opening date of an issue to existing security holders** – re-drafting and shifting into rule 7.10 the requirement that currently appears in section 1 of Appendix 7A that the opening date of an issue of securities to existing security holders which is not a pro rata issue must be at least 10 business days after the disclosure document or PDS is sent to them, unless the disclosure document or PDS is lodged with ASIC and given to ASX at least 7 days before the opening date.

5.7. **Bonus securities** – shortening the period for issuing and applying for quotation of bonus securities in section 2 of Appendix 7A to 5 business days after the record date. It is currently 10 business days after the record date.

5.8. **Offers of specific entitlements** – deleting the requirement currently in clause 3.2 of Appendix 7A that if an entity offers a specific entitlement to holders of securities, the offer must be pro rata without restriction on the number of securities to be held before entitlements accrue. Instead, ASX proposes to put that requirement into rule 7.11.6, where it will have greater prominence, and to extend it to all pro rata issues of securities in the entity and not just to standard non-renounceable pro rata issues.

5.9. **Non-court approved reorganisations of capital** – splitting out the timetable for non-court approved reorganisations of capital currently in section 8 of Appendix 7A into separate timetables for

splits/consolidations, cash returns of capital and returns of capital by way of in specie distribution of securities in another entity.

5.10. Court-approved reorganisations of capital – replacing the existing generic timetable for court-approved reorganisations of capital in section 9 of Appendix 7A with a new timetable specifically for mergers or takeovers effected via a court approved scheme of arrangement. These are far and away the most common form of court-approved reorganisations of capital undertaken by ASX listed entities.

5.11. Other issue dates – deleting the existing timetable headed "Issue dates" in section 10 of Appendix 7A (this timetable is not currently used by ASX).

5.12. Equal access buy backs – updating the timetable currently in section 11 of Appendix 7A for an entity buying back securities under an equal access buy back to specify a time limit by which the entity must update its register to cancel the securities bought back, lodge an ASIC Form 484 notifying the number of securities that have been cancelled due to the buy back with ASIC and give a copy of that form to ASX. That time limit will be than 5 business days after the offer closing date.

5.13. Security Purchase Plans – updating the timetable currently in section 12 of Appendix 7A for an entity issuing securities under a securities purchase plan (SPP) to specify time limits by which the entity must: (a) announce the results of the SPP; and (b) issue the securities purchased under the SPP and lodge an Appendix 2A with ASX applying for their quotation. These time limits will be, respectively, 3 business days and 5 business days, after the SPP closing date.

ASX is keen to receive feedback on the proposed changes to the timetables for corporate actions mentioned in sections 5.1 - 5.13 above, including in particular the changes to the timetable for interest payments mentioned in section 5.2. Are they appropriate, in terms of their reach and content? Will they be burdensome to comply with? Might there be any unintended consequences if they are adopted?

5.14. Deferred settlement trading – the CHESS Replacement Settlement Enhancements Working Group recently requested that ASX consider shortening and standardising the timeframes for deferred settlement trading markets, and removing conventions for deferred settlement trading where they are no longer relevant.

Deferred settlement trading, in this context, means ASX allowing trading in securities to be issued pursuant to certain types of corporate actions to be traded on ASX ahead of them being formally issued, with delivery of the underlying securities deferred to a date after the securities in question have been formally issued.

ASX sees a number of benefits from the current practice of allowing deferred settlement trading in certain corporate actions. These include allowing investors to manage their exposure to market risk on the securities they expect to receive in a corporate action, and greater liquidity and timelier price discovery for those securities.

The changes mentioned in sections 5.1, 5.3, 5.5, 5.7, 5.12 and 5.13 above are all intended to achieve the goal of shortening and standardising the timeframes for various corporate actions. This in turn will make the timetables for those corporate actions that qualify for deferred settlement trading shorter and more consistent.

ASX is keen to receive feedback from stakeholders, including listed entities, investors, brokers and corporate advisers, on:

- the importance or otherwise of ASX allowing deferred settlement trading in securities affected by corporate actions;
- any costs, risks or disadvantages associated with deferred settlement trading and how they might be mitigated; and
- any changes that could be made to improve the operation of deferred settlement markets.

6. Monitoring and enforcing compliance with the listing rules

ASX is proposing a number of rule changes to enhance its powers to operate the market and to monitor and enforce compliance with the listing rules:

6.1. **Waivers** – amending rule 18.1 to make it clear that ASX can grant waivers to a specific class of entities or to all entities generally.

6.2. **Conditional no-action letters** – amending rule 18.5 to make it clear that ASX can impose conditions in connection with its decision not to take action against an entity for breaching the listing rules and, if it does impose any such conditions, the entity must comply with them.

6.3. **Powers and discretions** – adding a new rule 18.5A to make it clear that ASX can exercise, or decide not to exercise, any power or discretion conferred under the listing rules in relation to an entity in its absolute discretion. The new rule will also make it clear that ASX may do so on conditions and, if it does, the entity must comply with the conditions.

6.4. **Requests for information** – amending rule 18.7 to make it clear that, in addition to requiring any information, document or explanation from a listed entity confirming its compliance with the Listing Rules, ASX can also require information from listed entities about their compliance with any conditions or requirements imposed under the listing rules and also information going to whether an entity will comply with the listing rules, or a condition or requirement imposed under the listing rules, in the future (for example, that an issue of securities it is proposing to make, but has not yet made, will comply with listing rules 7.1, 7.1A or 10.11).

ASX is also proposing to expand rule 18.7 to empower it to require any such information, document or explanation to be verified under oath.

In addition, ASX is proposing to add a new paragraph to rule 18.7 empowering it to require an entity to disclose any information, document or explanation that ASX reasonably requires to perform its obligations as a licensed market operator.

6.5. **Compliance requirements** – amending rule 18.8 to list specific examples of the types of requirements ASX may impose on a listed entity under that rule to ensure compliance with the listing rules. These will include a requirement:

- to give specified information to ASX for release to the market;
- to update, correct or retract information previously released to the market;
- not to enter into or perform an agreement or transaction;
- to cancel or reverse an agreement or transaction;
- to seek the approval of the holders of its ordinary securities to an agreement or transaction;

- to include specified information in a notice of meeting proposing a resolution under the listing rules;
- to update, correct or retract any information in a notice of meeting proposing a resolution under the listing rules;
- to impose a holding lock on specified securities;
- to enforce a provision in its constitution required under the listing rules;
- to enforce a provision in a deed or any other legal document required to be entered into by the entity under the listing rules;
- to introduce or update a compliance policy or process;
- to engage an independent expert to review its compliance policies and processes and to release to the market the findings of, and any changes the entity proposes to make to its compliance policies and processes in response to, the review; and
- to cause specified officers or employees to undertake a compliance education program.

ASX considers that its existing powers under rule 18.8 are broad enough to impose the requirements above but wishes to put that position beyond doubt.

6.6. Censures – adding a new rule 18.8A giving ASX the power to formally censure a listed entity that breaches the listing rules, or a condition imposed under the listing rules, and to publish the censure and the reasons for it to the market.

Most major exchanges (including the London, Hong Kong, Shanghai, Shenzhen, Singapore and Johannesburg exchanges) have a formal power of public censure. ASX considers this an important power to have in its armoury to enforce compliance with the listing rules and to raise awareness of material incidents of non-compliance.

ASX only expects to exercise this power where the breach is an egregious one and warrants a public censure.

7. Correcting gaps or errors in the listing rules

ASX is proposing a number of rule changes to correct gaps or errors in the listing rules:

7.1. Time limits to apply for quotation of securities – fixing gaps in rule 2.8 by including provisions:

- to address the Corporations Act requirement that where securities are offered under a prospectus or PDS which states or implies that the securities are to be quoted on ASX, an application for quotation of the securities must be made within 7 days of the date of the disclosure document or PDS; and
- to cover the conversion of unquoted convertible securities into securities in a class of quoted securities.

7.2. Employee incentive scheme issuances – amending the concluding paragraph of rule 2.8 to address a problem that stems from the fact that currently an Appendix 3B is used by many listed entities both for announcing issues of securities and for seeking their quotation. Accordingly, where ASX agrees that an entity may apply for quotation of securities issued under an employee incentive scheme less

frequently, in practice, this results in the Appendix 3B being lodged less frequently and so the market is often not informed of these issues until well after the event.

To address this issue, ASX is proposing to remove the requirement to lodge an Appendix 3B for a proposed issue of securities under an employee incentive scheme and to replace it with an obligation to notify the market of such an issue within 5 business days of when it is made (see proposed new rule 3.10.3A), ensuring that the market is notified of these types of issues on a timely basis. There will be no prescribed form for this purpose – a short letter or announcement will suffice.[51]

As modified, the concluding paragraph to rule 2.8 will allow ASX to agree that the entity can apply for quotation of such securities on a periodic basis, thereby allowing it to "batch" its applications for quotation and to pay the minimum quotation fee less frequently.

7.3. Listing rule 7.1 and 7.1A placement capacities – correcting a flaw in the definition of variable "A" in rule 7.1 (the base on which an entity's 15% placement capacity in rule 7.1, and if applicable its additional 10% placement capacity in rule 7.1A, is calculated). That flaw allows a listed entity to use its placement capacity to issue convertible securities that convert into fully paid ordinary securities, convert those securities shortly thereafter and have the resulting fully paid shares immediately counted in variable A (because those securities are then issued under an exception in rule 7.2, namely existing exception 4). Similarly, it also allows a listed entity to use its placement capacity to enter into an agreement to issue fully paid ordinary securities, complete that agreement shortly thereafter and have the securities issued immediately count in variable A (because those securities are then issued under an exception in rule 7.2, namely existing exception 13).

With the proposed changes to the numbering and order of the exceptions in rule 7.2, existing exceptions 4 and 13 in rule 7.2 will become exceptions 9 and 16 respectively.

To address the flaw identified above, ASX is proposing to amend the definition of variable A so that securities issued on the conversion of a convertible security within new rule 7.2 exception 9 or under an agreement to issue securities within new rule 7.2 exception 16 are only included in variable A if the issue of the convertible securities or the entry of the agreement to issue the securities (as applicable) was approved by the holders of the entity's ordinary securities under rule 7.1 or 7.4.

ASX is also proposing to introduce the concept of "relevant period" in rules 7.1 and 7.1A.2 to fix an issue with existing rule 7.1B.4. The latter rule addresses how variable A in rules 7.1 and 7.1A.2 should be calculated where the entity has been listed for less than 12 months, but does not address how variable C in rule 7.1 or variable E in rule 7.1A.2 should be calculated in that circumstance.

7.4. Ratifying an agreement to issue securities – amending rules 7.4 and 7.5 to allow a listed entity to have an agreement to issue securities ratified by security holders. Currently those rules only permit an actual issue of securities to be ratified.

7.5. Agreements to acquire or dispose of substantial assets – amending rule 10.1 to deal more appropriately with agreements to acquire or dispose of substantial assets, similar to the way in which rules 7.1 and 10.11 currently deal with agreements to issue securities. This will remove an ambiguity currently in rule 10.1 as to when the applicable tests for the application of that rule should be applied (ie the amendments will make it clear that if there is an agreement to acquire or dispose of an asset, it is the time the agreement is entered into and not when the actual acquisition or disposal takes place

[51] ASX may add a prescribed form for notifications under rule 3.10.3A to ASX Online in due course.

under the agreement that one must determine whether the counterparty is caught by rule 10.1 and whether the asset is a substantial asset under rule 10.2).

7.6. Substantial holders under rule 10.1.3 – correcting a potential drafting ambiguity in rule 10.1.3 that arises from the way in which "substantial holder" is defined. Currently that term is defined in rule 19.12 by reference to the corresponding definition in section 9 of the Corporations Act which, broadly speaking, treats a holder of securities as a "substantial holder" of a listed entity if they and their associates together have relevant interests in 5% or more of the voting securities in the entity or if they have made a takeover bid for the entity. Rule 10.1.3 then seeks, in effect, to add a further requirement that the combined relevant interests of the person and their associates must be, or at any time in the last 6 months have been, at least 10% (for convenience referred to as the person being a "10% holder"). This could be interpreted as imposing a two-tier test for the application of rule 10.1.3 – ie (1) that the person must be a 5% Corporations Act substantial holder at the time the transaction is being assessed under rule 10.1; and (2) at that time or at any time in the preceding 6 months, the person must have been a 10% holder as well. Historically, that has not been the way in which ASX has interpreted rule 10.1.3. ASX has applied the rule whenever the second condition alone has been met.

There are also some potential inconsistencies between the Corporations Act definition of "substantial holder" and the way in which the 10% holder test is expressed in rule 10.1.3 that arise from the fact that the Corporations Act definition of "substantial holder" captures some interests in shares that are not technically "relevant interests" – being the interests referred to in sections 609(6) (market traded options and derivatives), 609(7) (conditional agreements) and 609(11) (restricted securities).[52]

To simplify the operation of rule 10.1.3, ASX is proposing to re-draft the rule so that it applies whenever the counterparty to the relevant acquisition or disposal is, or at any time in the preceding 6 months has been, a substantial holder. ASX is proposing to include a new definition of "substantial holder" in rule 19.12 based on paragraph (a) of the definition of that term in section 9 of the Corporations Act, but replacing the reference to 5% in the section 9 definition with 10%. ASX will also include in the definition of "substantial holder" in rule 19.12 appropriate modifications to the section 9 definition to extend it to listed foreign companies and to listed trusts that are not registered managed investment schemes in Australia (the section 9 definition only applies to Australian companies and registered managed investment schemes).

7.7. The exceptions to rule 10.1 – correcting a number of issues with the exceptions in rule 10.3 from the requirement in rule 10.1 for security holders to approve an acquisition or disposal of a substantial asset from/to a person in a position of influence, including:

- replacing the references to wholly owned subsidiaries in the first two bullet points in rule 10.3 with references to wholly owned child entities. "Child entities" is the more appropriate term for listed trusts (trusts do not have subsidiaries, as such). It also captures a broader range of wholly owned entities apart from corporations;
- removing the fourth bullet point in rule 10.3 – if a substantial asset is not beneficially held for the listed trust before or after the transaction, it is not an asset of the listed trust and so there is no need for the exception; and
- adding two new exceptions to rule 10.3 – an acquisition or disposal under an agreement to acquire or dispose of a substantial asset, and an agreement to acquire or dispose of a substantial asset that is conditional on the holders of ordinary securities approving the

[52] As introduced by ASIC Class Order 13/520.

transaction under rule 10.1 before the agreement is given effect to. In the case of the first exception, the entity must have entered into the agreement before it was listed and disclosed the existence and material terms of the agreement in the prospectus, PDS or information memorandum lodged with ASX under rule 1.1 condition 3, or else complied with the listing rules when it entered into the agreement. In the case of the second exception, the entity must not give effect to the agreement without first obtaining the requisite approval. This will align the exceptions in rule 10.3 with those in rule 10.12 (see existing exceptions 9 and 10 in rule 10.12)[53] and ensure that the listing rules deal appropriately with agreements to acquire or dispose of a substantial asset.

7.8. **Voting exclusions** – removing the reference in rule 14.11 to votes cast by a person chairing a meeting as proxy for a person who is entitled to vote, in accordance with a direction on the proxy form to vote as the proxy decides. Where the chair is not subject to a voting exclusion and is voting on behalf of a security holder who likewise is not subject to a voting exclusion, rule 14.11 has no application. If chair is subject to a voting exclusion, under section 250C of the Corporations Act, they can only cast a vote as proxy for a security holder who is not subject to a voting exclusion if the proxy specifies the way the chair is to vote on the resolution.

7.9. **Fees** – amending rule 16.4 to confirm ASX's practice not to charge an additional listing fee when quoted partly paid securities become quoted fully paid securities.

7.10. **Interpretation** – amending rule 19.3.1 to specify that a reference to an ASIC Class Order in the rules includes any amendment or replacement of that Class Order. This reflects the proposed reference to an ASIC Class Order in the definition of "security purchase plan" in rule 19.12.

7.11. **Associate** – modifying the definition of "associate" in rule 19.12 to differentiate better between the associates of a natural person and the associates of an entity (with "entity" for these purposes defined to mean a body corporate, partnership, unincorporated body or a trust and including, in the case of a trust, the responsible entity ("RE") of the trust).

7.12. **Child entity** – modifying the definition of "child entity" in rule 19.12 to correct an error in the existing definition. Currently that definition treats the subsidiaries of the RE of a listed trust as child entities of the trust. This is only appropriate if the RE controls those entities in its capacity as RE of the trust, and not in its own capacity or in its capacity as RE of another trust. However, if the RE controls those entities in a fiduciary capacity as RE of the listed trust then, by definition, they are not subsidiaries of the RE (see section 48(2) of the Corporations Act).

7.13. **Control** – introducing a definition of "control" into rule 19.12. The proposed definition is based on section 50AA of the Corporations Act, with modifications to address when a trust controls other entities.

7.14. **Related party** – amending the definition of "related party" in rule 19.12, which currently incorporates by reference the provisions of sections 208 and 601LA of the Corporations Act, to correct two drafting flaws in those sections, in so far as they apply to trusts/managed investment schemes. Currently those sections don't capture entities controlled by the RE in a capacity other than as RE, which they should. They also exclude entities controlled by related parties if they are also controlled by the RE. That

[53] To become rule 10.12 exceptions 10 and 11 with the changes proposed by ASX.

exclusion should only operate where the RE controls those entities in its capacity as RE and not in some other capacity.

7.15. Warranties – expanding the warranties currently in clause 2 of the Appendix 1A, 1B and 1C applications for admission and clause 2 of the Appendix 3B application for quotation of securities to include warranties that:

- the securities to be quoted by ASX have been validly issued; and
- all of the documents and information the entity has given, or will give, to ASX in connection with (in the case of an Appendix 1A, 1B or 1C) its admission to the official list and (in all cases) the quotation of its securities are, or will be, accurate, complete and not misleading.

8. General drafting improvements

In addition to the changes mentioned above, ASX is proposing a number of minor drafting changes to the listing rules to improve their clarity. This includes:

- drafting changes to:
  - rules 1.1, 1.10.1; 1.15.1; 3.10.4; 3.10.7; 3.10A; 3.16.1; 3.16.2; 3.16.4; 3.20.1 – 3.20.3; 4.7B; 5.3; 5.4; 7.1; 7.1A; 7.1B; 7.2; 7.11; 7.17; 10.2; 10.2.1; 10.3; 10.7; 10.11; 10.12; 11.4; 11.4.1; 15.1; 15.2.1; and 18.7A; and
  - the definitions of “acquire”, “cash formula”; “classified asset”, “controller”, “convertible debt security, “convertible security”, “debt security, “dispose”, “eligible entity”, “employee incentive scheme”, “equity security”, “information memorandum”, “market capitalisation”, “prescribed amount”, “promoter”, “pro rata issue”, “restricted securities”, “security” and “security purchase plan” in rule 19.12,

  to make their meaning and intent clearer.
- adding into rule 19.12 new definitions of “CEO” and “chair”.
- amending rules 3.10.1, 3.10.2 and 3.21 and introducing a new rule 3.22 (dealing with interest payments on debt securities or convertible debt securities) to sign-post the various online forms that need to be lodged with ASX in relation to the corporate actions referenced in those rules.
- amending rule 3.13.3 to make it clear that the prepared addresses to be provided to ASX ahead of a meeting of security holders include any address by the CEO as well as the chair.
- consolidating existing rules 10.4, 10.5 and 10.6 (options to acquire or dispose of a substantial asset) into one new rule 10.4 and making some drafting changes to clarify the intended operation of those rules.

- removing rules that are no longer required or relevant. This includes rules 7.12,[54] 10.8,[55] 10.8.1,[56] 10.9,[57] 10.10A.2,[58] and 10.16.[59]

9. New and amended guidance

ASX is consulting on the following new or amended Guidance Notes:

9.1. GN 1 *Applying for Admission – ASX Listings*

GN 1 forms Annexure B to this consultation paper. The proposed changes to it are shown in mark-up. They include a number of consequential changes, reflecting (among other things) the changes proposed to Chapter 1 of the listing rules, the new escrow regime mentioned in section 4.1 above and some of the new and amended definitions mentioned in sections 7 and 8 above.

GN 1 also includes enhanced disclosure and escrow measures intended to deal with behaviours ASX has recently encountered with financial advisers on new listings extracting excessive equity-based fees and perquisites.

9.2. GN 11 *Restricted Securities and Voluntary Escrow*

GN 11 forms Annexure C to this consultation paper. It has been substantially re-written to reflect the wholesale changes to ASX's escrow regime mentioned in section 4.1 above. Given the extent of the changes, ASX has not provided a mark-up.

GN 11 also includes enhanced escrow measures intended to deal with issues ASX has recently encountered with financial advisers on new and back door listings and their family, friends and associates participating in pre-listing issues of securities at a substantial discount to the listing price.

9.3. GN 12 *Significant Changes to Activities*

GN 12 forms Annexure D to this consultation paper. The proposed changes to it are shown in mark-up. They include a number of consequential changes, reflecting (among other things) the changes proposed to Chapter 1 of the listing rules, the amended voting exclusions mentioned in section 3.8

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[54] Rule 7.12 requires an entity that makes an entitlement offer that is not pro rata, or one that allows persons to subscribe for more than their entitlement under rules 7.11.4 or 7.17.1, to accept evidence of entitlement constituted by copies of certified contract notes from market participants of ASX. ASX no longer considers this relevant or appropriate in a world of electronic trading.

[55] Rule 10.8 provides that an entity may, before acquiring or disposing of an asset, seek the written opinion of ASX on whether approval is required under rule 10.1. The entity must give ASX complete details of the transaction. It also provides that ASX will only be bound by its written opinion if the details given to it remain materially unchanged at the time of the transaction. A listed entity is always free to seek in-principle advice from ASX on the application of rule 10.1 (see Guidance Note 17 *Waivers and In-principle Advice*) and so rule 10.8 is not necessary.

[56] Rule 10.8.1 provides that if an entity does not have a written opinion from ASX under rule 10.8 that approval is not required under rule 10.1, ASX may require the entity to take the corrective action set out in rule 10.9. The rule becomes obsolete if rules 10.8 and 10.9 are deleted.

[57] Rule 10.9 provides that an entity that breaches rule 10.1 must take corrective action if ASX requires it to. The corrective action, at the option of the entity, is either: (1) cancelling the transaction or arranging for its cancellation; or (2) seeking the approval of holders of ordinary securities to the transaction and, if the approval is not obtained, cancelling the transaction or arranging for its cancellation. ASX has broad powers to require corrective action in relation to a breach of rule 10.1 under rule 18.8. Given that, ASX does not see a need for rule 10.9. Retaining the rule might also give rise to an argument that where rule 10.1 is breached, ASX can only exercise the corrective powers under rule 10.9 and not the full range of enforcement powers ASX has under the listing rules.

[58] Rule 10.10A.2 states that provided the report on a rule 10.1 transaction from an independent expert and notice of meeting have both been given to the holders of the entity's securities, the report on the transaction from an independent expert is taken to have been given to the holder of the entity's ordinary securities at the same time that the notice of meeting is taken to have been given to the holder of its ordinary securities. ASX does not see any purpose served by this rule.

[59] Rule 10.16 currently prohibits directors and their associates from underwriting a DRP. A director or other related party can only underwrite a DRP if they receive security holder approval under rule 10.11 (on the basis that an underwriting constitutes an agreement to issue securities that requires security holder under rule 10.11 and there is no applicable exception from that requirement in rule 10.12 – as is made clear in the additional sentence proposed to be added to rule 10.12 exception 3). Given that, ASX does not consider it necessary to retain existing rule 10.16.

above, the new escrow regime mentioned in section 4.1 above, and some of the new and amended definitions mentioned in sections 7 and 8 above.[60]

GN 12 also includes new guidance on "pre-emptive loans" [61] and enhanced escrow and other preventative measures intended to deal with behaviours ASX has recently encountered with financial advisers on back door listings extracting excessive equity-based fees and perquisites.

9.4. GN 13 *Spin-outs of Major Assets*

GN 13 forms Annexure E to this consultation paper. It has also been substantially re-written with updated guidance on how ASX applies the prohibition in rule 11.4 on spin-outs of major assets and the exceptions to that prohibition in rule 11.4.1. Given the extent of the changes, ASX has not provided a mark-up.

9.5. GN 21 *The Restrictions on Issuing Equity Securities in Chapter 7 of the Listing Rules*

GN 21 forms Annexure F to this consultation paper. It is a new GN intended to assist listed entities to understand and comply with the restrictions on issuing equity securities in chapter 7 of the listing rules, including rules 7.1, 7.1A, 7.4, 7.6 and 7.9.

ASX would draw attention to the work sheets included in Annexures B and C of GN 21 to calculate an entity's placement capacity under Listing Rules 7.1 and 7.1A.2 respectively, discussed further in section 10 below.[62]

ASX would also draw attention to the proposed guidance in GN 21 on the various requirements to disclose in a notice of meeting seeking a resolution to approve an issue of securities under rule 7.1, 7.1A or 7.4 the names of recipients of the securities or to describe the basis on which they were identified or selected. ASX's proposed guidance is that where there is a placement to 10 or fewer persons, ASX would generally expect the entity to name those persons in the notice of meeting rather than describe the basis on which they were identified or selected.[63]

ASX is keen to receive feedback on this proposed guidance. Do stakeholders agree with the guidance? Will complying with the guidance be burdensome? Might there be any unintended consequences if ASX adopts the guidance?

9.6. GN 24 *Acquisitions and Disposals of Substantial Assets Involving Persons in a Position of Influence*

GN 24 forms Annexure G to this consultation paper. It is a substantially re-written GN intended to assist listed entities to understand and comply with the framework regulating acquisitions and disposals of substantial assets involving persons who are in a position of influence. Given the extent of the changes, ASX has not provided a mark-up.

ASX would draw particular attention to the discussion of the waivers ASX will typically grant in relation to rule 10.1 in sections 8.2 – 8.4 of GN 24 and to the policy position articulated in section 8.1 of GN 24 that:

> *"ASX regards Listing Rule 10.1 as one of the fundamental protections afforded to investors under the Listing Rules. While ASX may consider procedural and other minor waivers of the rule, ASX will only waive the central requirement for security holders to approve an acquisition or disposal*

[60] ASX was proposing to consult on proposals to remove the so-called "2 cent waiver" and on revised guidance on the application of the "20 cent" rule and the "minimum option exercise price" for back door listings in sections 8.8 and 8.9 of GN 12. ASX has decided to defer that to a future date.

[61] See new section 3.5 in GN 12 in Annexure D.

[62] See notes 65 and 66 below and the accompanying text.

[63] See footnotes 169, 195 and 203 in GN 21 in Annexure F.

of a significant asset involving a 10.1 party in exceptional circumstances, where it is clear to ASX that the harm Listing Rule 10.1 seeks to protect against is not present.

Hence, to receive such a waiver, an entity must establish to ASX's satisfaction that there is no reasonable prospect of the counterparty, either itself or through its connections to the board or a substantial holder (or, in the case of a listed trust, to the RE of the trust) influencing the terms of the transaction to favour themselves at the expense of the entity. The bar in this regard is high."

ASX would welcome feedback on the policy position above, the appropriateness of the waivers referred to in sections 8.2 – 8.4 of GN 24 and whether there are any other specific cases where ASX should consider granting a waiver of rule 10.1.

9.7. GN 25 *Issues of Equity Securities to Persons in a Position of Influence*

GN 25 forms Annexure H to this consultation paper. It is a new GN intended to assist listed entities to understand and comply with the framework in rules 10.11 – 10.16 regulating issues of equity securities to persons in a position of influence.

ASX would draw particular attention to the policy position articulated in section 2.8 of GN 25 that:

"ASX regards Listing Rule 10.11 as one of the fundamental protections afforded to investors under the Listing Rules. While ASX may consider procedural and other minor waivers of the rule, ASX will only waive the central requirement for security holders to approve an issue of equity securities to a related or closely connected party in exceptional circumstances, where it is clear to ASX that the harm Listing Rule 10.11 seeks to protect against is not present.

Hence, to receive such a waiver, an entity must establish to ASX's satisfaction that there is no reasonable prospect of the recipient of the securities, either itself or through its connections to the board or a controlling security holder (or, in the case of a listed trust, to the RE of the trust) influencing the terms of the issue to favour themselves at the expense of the entity. The bar in this regard is high."

ASX would welcome feedback on the policy position above and whether there are any specific cases where ASX should consider granting a waiver of rule 10.11.

ASX would also draw particular attention to the policy positions articulated in section 4.9 of GN 24 that:

"Like Listing Rule 10.11, ASX regards Listing Rule 10.14 as one of the fundamental protections afforded to investors under the Listing Rules. While ASX may consider procedural and other minor waivers of the rule, ASX will only waive the central requirement for security holders to approve an issue of equity securities to a director or closely connected party under an employee incentive scheme in exceptional circumstances, where it is clear to ASX that the harm that Listing Rule 10.14 seeks to protect against is not present. The onus is firmly on the entity seeking the waiver to establish this to ASX's satisfaction.

Hence, to receive such a waiver, an entity must establish to ASX's satisfaction that there is no reasonable prospect of the recipient of the securities, either themselves or through their connections to the board of the entity (or, in the case of a listed trust, to the RE of the trust), influencing the terms of the scheme or the size of the award to them under the scheme. The bar in this regard is high. …

One circumstance where ASX has been approached for a waiver of Listing Rule 10.14 is where an entity employs a prescribed relative of a director and the relative is entitled to participate in an employee incentive scheme operated by the entity. A director's related parties include his or her prescribed relatives and a director's related parties are assumed to be his or her associates unless the contrary is established. This has the consequence that, absent a waiver from ASX, any issue of equity securities to a prescribed relative of a director under an employee incentive scheme will require security holder approval under Listing Rule 10.14.2 unless it can be established that the relative is not an associate of the director (ie that they are not controlled by, or acting in concert with, the director).

ASX will not grant a waiver of Listing Rule 10.14.2 in these circumstances. Either the relative is an associate of a director – in which case a waiver would be inappropriate and the entity should obtain the approval of its ordinary security holders to the issue under Listing Rule 10.14.2 – or they are not – in which case Listing Rule 10.14.2 does not apply.

Rather than approach ASX for a waiver, an entity in this situation should either seek security holder approval to the issue or satisfy itself that the relative is not an associate of the director and therefore security holder approval is not required. To do the latter, it would be prudent for it to obtain a statutory declaration or similar form of certification from the relative and/or the director that they are not associates. It should also have regard to any other information in its possession that is relevant to forming a view on whether or not the relative is in fact an associate of the director."

ASX would also welcome feedback on the policy positions above and whether there are any specific cases where ASX should consider granting a waiver of rule 10.14.

9.8. GN 33 *Removal of Entities from the ASX Official List*

GN 33 forms Annexure I to this consultation paper. The proposed amendments to it are shown in mark-up. ASX is consulting on proposals to amend GN 33 in two key respects:

– Currently GN 33 reflects ASX policy that it will automatically remove an entity from the official list if the entity's securities have been suspended from trading for a continuous period of 3 years. This policy came into effect on 1 January 2016. ASX considers that it has had considerable benefits for the reputation and integrity of the market.

  ASX is proposing to shorten this deadline to provide for the automatic removal from the official list of any entity whose securities have been suspended from quotation for a continuous period of 2 years, with the rider that this period will be shortened to one year if the entity's securities have been suspended from quotation under rule 17.5 for failure to lodge the financial statements and other documents referred to in that rule.[64] This rider reflects a view that entities that fail to lodge such documents for more than a year are possibly close to insolvency or perhaps seeking to conceal important financial information and, in either case, should not remain on the official list.

  ASX is proposing that this change in policy will come into effect on 1 July 2019. If it does come into effect on that date:

[64] The documents referred to in rule 17.5 include an annual report, preliminary final report, annual accounts, half yearly accounts, quarterly activity report, quarterly cash flow report, an Appendix 4F (when required) and the monthly statement of net tangible asset backing per share required from a listed investment entity.

- entities suspended under rule 17.5 that have been continuously suspended since on or before 1 July 2018; and
- entities suspended under any other rule that have been continuously suspended since on or before 1 July 2017,

will be automatically removed from the official list at the commencement of trading on 2 July 2019.

- ASX is also proposing to update its guidance on requests for voluntary removal from the official list as follows:
  - adding to the list of unacceptable reasons why an entity might ask to be removed from the official list in section 2.1 of GN 33, seeking to avoid the disclosure obligations an entity would otherwise have under the Listing Rules and sections 674 and 675 of the Corporations Act;
  - adding to the required disclosures in a market announcement about the lodgement of a request by an entity for removal from the official list in section 2.4 of GN 33, whether or not the entity will become an "unlisted disclosing entity" under the Corporations Act following its removal from the official list and the ramifications which follow from that;
  - adding two further examples in section 2.7 of GN 33 of where ASX may impose a voting exclusion on a resolution to approve an entity's removal from the official list; and
  - giving additional guidance in sections 2.11 – 2.15 of GN 33 regarding the contents of notices of meeting, voting exclusions and notification of meeting results.

ASX would welcome feedback on the proposed changes to GN 33.

9.9. Other GN changes

There will be consequential changes required to GNs 4, 5, 17, 19, 20, 23, 29, 30 and 34 to reflect the proposed listing rule changes mentioned above. In and of themselves, these are not controversial and, to reduce the burden on stakeholders in providing feedback on what is already a large consultation package, ASX is not proposing to release copies of the proposed amendments to these GNs at this stage. Instead, when the rule changes are finalised after the conclusion of this consultation, ASX will release copies of the updated GNs at that point reflecting the final changes to the listing rules.

10. Accompanying documents

Accompanying this consultation paper are the following annexures:

A. a mark-up showing the proposed changes to the ASX listing rules, with detailed drafting notes explaining the reasons for the changes;

B. a mark-up of the changes proposed to GN 1 *Applying for Admission – ASX Listings*;

C. proposed new GN 11 *Restricted Securities and Voluntary Escrow*;

D. a mark-up of the changes proposed to GN 12 *Significant Changes to Activities*;

E. proposed new GN 13 *Spin-outs of Major Assets*;

F. proposed new GN 21 *The Restrictions on Issuing Equity Securities in Chapter 7 of the Listing Rules*;

G. proposed new GN 24 *Acquisitions and Disposals of Substantial Assets Involving Persons in a Position of Influence*;

H. proposed new GN 25 *Issues of Equity Securities to Persons in a Position of Influence*;

I. a mark-up of the changes proposed to GN 33 *Removal of Entities from the ASX Official List*;

J. the proposed new Appendix 1A *Application for Admission to the ASX Official List (ASX Listing)*, Appendix 1B *Application for Admission to the ASX Official List (ASX Debt Listing)* and Appendix 1C *Application for Admission to the ASX Official List (ASX Foreign Exempt Listing)*;

K. an early proto-type of the proposed new Appendix 2A *Application for quotation of securities*;

L. an early proto-type of the proposed revised Appendix 3B *Announcement of proposed issue of securities*; and

M. an early proto-type of the proposed new Appendix 4A *Statement of CDIs on Issue*.

ASX would draw attention to the requirement in the proto-type Appendix 2A and 3B for an entity using its Listing Rule 7.1 or 7.1A.2 placement capacity to make:

- an issue of securities under an SPP that falls outside of rule 7.2 exception 5;
- an offer of securities under a disclosure document or PDS that falls outside of the exceptions in rule 7.2; or
- a placement or other issue of securities that falls outside of the exceptions in rule 7.2,

without security holder approval to complete the applicable work sheets in Annexures B and C of GN 21 and send them to the entity's ASX listings adviser to confirm that the entity has the available placement capacity under those rules to make the issue.[65]

Currently, equivalent worksheets are included in Annexure 1 of Appendix 3B, but the way in which the Appendix 3B is currently worded, it only requires the worksheets to be completed where the entity is an "eligible entity" that has the additional placement capacity under rule 7.1A.[66]

ASX is proposing to require any entity relying on its placement capacity under rule 7.1 or 7.1A to make an issue of equity securities of the type referred to above without security holder approval to complete the applicable worksheet and send it to ASX.

It should be noted that the requirement to provide worksheets to ASX will not apply to issues that are exempted from the placement limits in rules 7.1 and 7.1A by rule 7.2 (DRPs, SPPs, bonus issues, pro rata issues, takeovers etc) nor to issues that don't require pre-announcement in an Appendix 3B under rule 3.10.3 (eg employee incentive plan issues and conversion of convertible securities).

ASX is keen to receive feedback on the contents of the proto-type Appendix 2A, 3B and 4A forms included in Annexures K, L and M respectively, including in particular the requirement mentioned above for any entity relying on its placement capacity under rule 7.1 or 7.1A to make an issue of equity securities without security holder approval to complete the applicable worksheet and send it to ASX. Will this requirement be burdensome to comply with? Might there be any unintended consequences if it is adopted?

11. Issues for consultation

The primary purpose of this consultation is to seek feedback from listed entities, investors, advisers and other stakeholders on the proposed changes to the ASX listing rules and related guidance. ASX wishes to

[65] See items 33-40 in the proto-type Appendix 2A in annexure K to this consultation paper and items 297-302, 343-348 and 386-391 in the proto-type Appendix 3B in annexure L to this consultation paper. See also sections 2.10, 8.2 and 8.3 of GN 21 in Annexure F to this consultation paper.

[66] See item 6i in the current Appendix 3B.

ensure that the proposed rule and guidance changes strike the right balance between the needs and interests of all stakeholders.

ASX welcomes comments generally on:

A. whether stakeholders agree with the proposed rule changes and, if not, why not;

B. whether compliance with any of the amended rules or guidance might have any unforeseen consequences or give rise to undue compliance burdens for listed entities;

C. whether the level of guidance in the new and amended guidance notes included in the consultation package is appropriate and whether stakeholders would like more guidance on any particular issue; and

D. whether there are any other material gaps or deficiencies in the ASX listing rules and related guidance that have not been addressed by the proposed changes in the consultation package.

ASX is especially interested to hear specific comments or concerns that stakeholders may have in relation to:

E. the proposed changes to the quarterly reporting regime mentioned in section 2.1 above;

F. the proposed changes to the reporting requirements for LICs and LITs mentioned in section 2.3 above;

G. the proposed changes to rule 3.13.1 requiring listed entities to disclose the closing date for the receipt of director nominations mentioned in section 2.4 above;

H. the proposed changes to rule 3.13.2 regarding the disclosure of voting results at meetings of security holders mentioned in section 2.5 above;

I. the proposed changes to the disclosures required in relation to underwriting arrangements mentioned in section 2.6 above;

J. the proposed educational requirements for persons appointed on or after 1 July 2019 to be responsible for communication with ASX on listing rule issues mentioned in section 2.8 above;

K. the proposed voting restrictions in new rule 14.10 for securities held by or for an employee incentive scheme mentioned in section 2.9 above;

L. the proposed changes to rule 10.15 dealing with the approval of issues to directors and their associates under employee incentive schemes mentioned in section 3.7 above;

M. the proposed changes to voting exclusions mentioned in section 3.8 above;

N. the proposed changes to the escrow regime mentioned in section 4.1 above;

O. the proposed changes to the timetables for corporate actions mentioned in sections 5.1 - 5.13 above;

P. the issues raised in section 5.14 above about:

- the importance or otherwise of ASX allowing deferred settlement trading in securities affected by corporate actions;
- any costs, risks or disadvantages associated with deferred settlement trading and how they might be mitigated; and
- any changes that could be made to improve the operation of deferred settlement markets;

Q. the issues raised in sections 9.6 and 9.7 above about the circumstances in which ASX should consider waiving the security holder approval requirements in rules 10.1, 10.11 and 10.14;

R. the proposed changes to GN 33 mentioned in section 9.8 above; and

S. the contents of the proto-type Appendix 2A, 3B and 4A forms included in Annexures K, L and M, including in particular the provisions in the Appendix 2A and 3B forms requiring an entity using its Listing Rule 7.1 or 7.1A.2 placement capacity to make:

- an issue of securities under an SPP that falls outside of rule 7.2 exception 5;
- an offer of securities under a disclosure document or PDS that falls outside of the exceptions in rule 7.2; or
- a placement or other issue of securities that falls outside of the exceptions in rule 7.2,

without security holder approval to complete the applicable work sheets in Annexures B and C of GN 21 and send them to its ASX listings adviser to confirm that the entity has the available placement capacity under those rules to make the issue.

12. Due date for consultation responses

Stakeholders interested in making a submission on the consultation package are asked to do so in writing by the **close of business on Friday 1 March 2019** to mavis.tan@asx.com.au.

Please note that ASX is proposing to make the submissions it receives in response to this consultation paper publicly available on its website unless a respondent clearly indicates that they wish their submission to remain confidential.

13. Timetable for implementation of rule changes and related guidance

ASX will consider all submissions it receives in response to this consultation before finalising the proposed rule amendments and related guidance.

Subject to the receipt of the necessary regulatory approvals, it is envisaged that the final rule amendments and the new and amended guidance notes mentioned in sections 9.1 - 9.9 above will be released in May 2019 and will take effect on 1 July 2019. This includes the changes to ASX's long term suspended entity policy included in GN 33.

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