Consultation Response

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

10 October 2019

Contents

1. Introduction 1

2. Summary of consultation feedback 1

3. Final rule changes and effective date 2

4. Changes to guidance notes and listing rule appendices 2

5. Specific consultation feedback and ASX's response 4

5.1. Quarterly reporting 4
5.2. Disclosure by listed investment entities of their investment portfolios and NTA backing 6
5.3. Disclosure of closing date for receipt of director nominations 9
5.4. Disclosure of voting results at meetings of security holders 10
5.5. Disclosure of underwriting agreements 11
5.6. 'Good fame and character' listing condition 14
5.7. Persons responsible for communication with ASX on listing rule issues 14
5.8. Voting by employee incentive scheme securities 15
5.9. Market announcements 16
5.10. Distributions schedules 16
5.11. Announcing issues of securities and seeking their quotation 16
5.12. Working capital 21
5.13. CHESS Depositary Interests (CDIs) 21
5.14. Improving the rules regulating placements in LR chapter 7 22
5.15. Improving the rules regulating transactions with persons in a position of influence in LR chapter 10 25
5.16. Voting exclusions 31
5.17. Improvements to ASX's escrow regime 33
5.18. Agreements for admission and quotation (Appendices 1A, 1B and 1C) 36
5.19. Eliminating the need to apply for a number of standard waivers 38
5.20. Standard forms 38
5.21. Timetables for corporate actions 39
5.22. Deferred settlement trading 43
5.23. Monitoring and enforcing compliance with the listing rules 44
5.24. Changes to GN 33 *Removal of Entities from the ASX Official List* 45
5.25. Feedback on other drafting improvements to the LR 47
5.26. Other feedback on new and updated guidance notes 49

6. Other listing rule and guidance note changes by ASX 50

6.1. Trusts and stapled groups 50
6.2. Supplemental changes to the listing rules in the consultation package 52
6.3. Changes to listing rules that were not included in the consultation package 54
6.4. Supplemental changes to the guidance notes in the consultation package 55
6.5. Changes to guidance notes that were not included in the consultation package 59

7. Other issues raised by respondents 60

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

1. Introduction

On 28 November 2018, ASX Limited ("ASX") released a consultation paper *Simplifying, clarifying and enhancing the integrity and efficiency of the ASX listing rules* seeking feedback on a major package of proposed listing rule amendments. Broadly speaking, the proposed changes fell into eight categories:

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

The consultation paper was accompanied by 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*.

The consultation period closed on 1 March 2019.

2. Summary of consultation feedback

ASX received 48 submissions (39 non-confidential and 9 confidential) in response to its consultation paper. Copies of the non-confidential submissions are available on the ASX website at: *https://www.asx.com.au/regulation/public-consultations.htm* (next to the entry for 10/10/19).

Some of the consultation submissions focussed on a single issue or a small number of issues directly relevant to the respondent. This was particularly the case for the proposed changes to:

- ASX's long term suspended entity policy, which attracted a number of single issue submissions from smaller listed entities vulnerable to removal from the official list under the policy and their legal advisers; and
- LIC/LIT reporting, which attracted a number of submissions from entities in those sectors and their legal and accounting advisers.

A good number of the submissions, however, addressed the broader consultation package. They were largely supportive of, or expressed no objections to or comments on, the vast majority of the proposed changes to ASX's rules and guidance in the consultation package.

Section 4 below summarises the specific objections or suggestions for improvement ASX received to the proposed changes to its rules and guidance and ASX's response.

ASX would like to express its appreciation to all of the respondents, who went to considerable effort to read, understand and provide feedback on a very large consultation package. ASX has found the feedback most helpful in finalising and improving its package of rule and guidance note changes.

3. Final rule changes and effective date

Accompanying this consultation response are mark-ups of the final changes ASX is making to the ASX listing rules ("LR") addressing the feedback received in consultation submissions, together with a mark-up comparing the final rule changes to the consultation version (Annexure A in the consultation package).

Subject to the receipt of the necessary regulatory approvals, with two exceptions, the final rule changes will come into effect on 1 December 2019.

The first exception is the changes to LR 1.1 condition 13 and LR 12.6 to require the person who has been appointed by an entity to be responsible for communication with ASX in relation to listing rule matters to have completed an approved education course and examination covering listing rule compliance matters. To allow more time to complete the development of ASX's online education course and examination, ASX has decided to push back the transition date for these particular rule changes to 1 July 2020.

The second exception is the changes to the Appendix 4C and Appendix 5B quarterly cash flow reports mentioned below, which will come into effect for the quarter beginning 1 January 2020 and ending 31 March 2020.

4. Changes to guidance notes and listing rule appendices

Accompanying this consultation response are:

- mark-ups of the changes ASX is making to the consultation versions of the following guidance notes ("GN") included as Annexures B – H respectively in the consultation package, to reflect the final LR changes and to address specific issues raised in consultation submissions as well as other issues identified by ASX since releasing the consultation GNs – these are marked up as against the consultation versions:
    - GN 1 *Applying for Admission – ASX Listings*
    - GN 11 *Restricted Securities and Voluntary Escrow*
    - GN 12 *Significant Changes to Activities*
    - GN 13 *Spin-outs of Major Assets*
    - GN 21 *The Restrictions on Issuing Equity Securities in Chapter 7 of the Listing Rules*
    - GN 24 *Acquisitions and Disposals of Substantial Assets Involving Persons in a Position of Influence*

- GN 25 *Issues of Equity Securities to Persons in a Position of Influence*.[1]

- mark-ups of the changes ASX is making to the existing versions of the following GN to reflect the final LR changes as well as other issues identified by ASX since releasing the consultation package and, in the case of GN 19, 23 and 30, to address specific issues raised in consultation submissions – these were not included in the consultation package and are marked up as against the current versions:
  - GN 4 *Foreign Entities Listing on ASX*
  - GN 5 *CHESS Depositary Interests (CDIs)*
  - GN 17 *Waivers and In-Principle Advice*
  - GN 19 *Performance Shares*
  - GN 20 *ASX Online*
  - GN 23 *Quarterly Reports*
  - GN 29 *Applying for Admission – ASX Debt Listings*
  - GN 30 *Notifying an Issue of Securities and Applying for Their Quotation*
  - GN 34 *Naming Conventions for Debt and Hybrid Securities*.[2]

- a new GN 35 *Security Holder Resolutions* consolidating the materials on meetings of security holders into a single GN so that they do not have to be repeated in other GNs.[3]

- mark-ups of the changes ASX is making to the consultation versions of the following LR Appendices included as Annexure J in the consultation package, to incorporate some minor amendments – these are marked up as against the consultation versions:
  - 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)*
  - Appendix 1C *Application for Admission to the ASX Official List (ASX Foreign Exempt Listing)*.[4]

- mark-ups of the changes ASX is making to the existing versions of the following LR Appendices to address issues raised in connection with them in consultation submissions – these were not included in the consultation package and are marked up as against the current versions:
  - Appendix 4C *Quarterly Cash Flow Report for Entities Subject to Listing Rule 4.7B*
  - Appendix 5B *Mining Exploration Entity and Oil and Gas Exploration Entity Quarterly Cash Flow Report*.[5]

ASX would note that it has already released a revised version of GN 33 *Removal of Entities from the ASX Official List* (annexure I in the consultation package) on 15 April 2019. This was done:

---

[1] Subject to the receipt of the necessary regulatory approvals, all of these GNs will come into effect on 1 December 2019. ASX would note that GN 1 and 12 will also be subject to further minor updates on 1 July 2020 to reflect the changes to LR 1.1 condition 13 and LR 12.6 that will take effect on that date.

[2] Subject to the receipt of the necessary regulatory approvals, all of these revised GNs will come into effect on 1 December 2019.

[3] Subject to the receipt of the necessary regulatory approvals, new GN 35 will come into effect on 1 December 2019.

[4] Subject to the receipt of the necessary regulatory approvals, the revised Appendices 1A, 1B and 1C will come into effect on 1 December 2019. ASX would note that it does not propose issuing updated versions of the Appendix 2A *Application for quotation of securities*, Appendix 3B *Announcement of proposed issue of securities* or Appendix 4A *Statement of CDIs on Issue* included in annexures K, L and M of the consultation package. These forms will be made available in either online form format or as MS Word documents initially in an ASX Online test environment, and then on ASX Online when effective. If the necessary system development to make these forms available as online forms is not finished prior to the commencement date of 1 December 2019, ASX will make MS Word versions of the forms available on ASX Online for use in the interim.

[5] Subject to the receipt of the necessary regulatory approvals, the revised Appendices 4C and 5B will come into effect for the quarter beginning 1 January 2020 and ending 31 March 2020.

- to incorporate immediately some of the feedback received in the consultation including, in particular, a change to section 2.7 of GN 33 to require a special resolution rather than an ordinary resolution to approve a voluntary de-listing; and
- to give the market advance notice of the deferral of the effective date for the changes to ASX's long term suspended entity policy in section 3.4 of GN 33.

The changes to ASX's long term suspended entity policy in GN 33 will now take effect on Monday 3 February 2020, rather than the date originally proposed in the consultation paper of 1 July 2019. This is to allow currently suspended entities more time to pursue a transaction that could lead to them being reinstated to trading. All of the other changes in GN 33 took effect when it was published on 15 April 2019.

A mark-up comparing the 15 April 2019 version of GN 33 to the consultation version is available here.

There will be some further minor updates to GN 33 on 1 December 2019 to reflect the rule changes and the new GN 35 coming into effect on that date. A marked up version of the proposed changes to GN 33 compared to the version released on 15 April 2019 is available here.

5. Specific consultation feedback and ASX's response

This section outlines the detailed feedback ASX received on the issues raised in its consultation paper and on its proposed LR and GN changes. It largely follows the order in which the issues were raised in ASX's consultation paper.

5.1. Quarterly reporting

ASX proposed a number of changes to its quarterly reporting regime directed to providing a more robust disclosure framework for start-up entities and giving them a vehicle to communicate developments in their business to the market on a regular basis.[6] Respondents generally supported ASX's proposed changes in this area. ASX is therefore proceeding with its proposed changes, with the modifications mentioned below.

Item 9 in Appendix 4C

One respondent expressed concerns about the inclusion of estimated cash outflows for the next quarter currently required under Item 9 in Appendix 4C. It noted that there was a key difference between resource exploration entities reporting under Appendix 5B, who usually have expenses associated with their exploration activities but no revenue, and start-up entities reporting under Appendix 4C, who often have both revenue and expenses. It argued that disclosing estimated cash outflows for the next quarter in an Appendix 4C without disclosing estimated cash inflows for that quarter was potentially misleading, especially for entities in a revenue growth phase. However, it noted that disclosing projected cash inflows could raise issues about forward looking revenue statements. It proposed deleting Item 9 in the Appendix 4C and replacing it with a new section designed to elicit disclosure of whether an entity has at least two quarters' funding available and, if it does not, to require answers to the following questions:

- Does the entity expect that it will continue to have the current level of net operating cash flows for the time being and, if not, why not?
- Has the entity taken any steps, or does it propose to take any steps, to raise further cash to fund its operations and, if so, what are those steps and how likely does it believe that they will be successful?

[6] See section 2.1 of the consultation paper.

- Does the entity expect to be able to continue its operations and to meet its business objectives and, if so, on what basis?

ASX has added a new item 8 to Appendix 4C and updated section 6 of GN 23 (now section 7 in the latest version) to incorporate this proposal***.***

ASX would note that it typically issues a query letter requiring answers to the questions above whenever an entity's Appendix 4C indicates that it has less than two quarters' funding available. These modifications to the Appendix 4C will eliminate the need for ASX to send a letter asking these questions and ensure that the market is made aware of this information in a timelier manner.

ASX would also note that in calculating whether an entity has less than two quarters' funding available, using the entity's actual net cash outflows for the most recent quarter rather than the entity's projected net cash outflows for the next quarter, is likely to lead to a more objective and robust determination on that issue. An entity that plans to significantly reduce its net cash outflows for the next quarter can always explain that in its answer to the first question above.

In light of this change, ASX will not be proceeding with the proposed introduction of LR 4.7C.4, which would have required an explanation in an entity's quarterly activities report if any category of expenditure in its Appendix 4C for the current quarter is materially different to the estimated cash outflows for that quarter shown in its Appendix 4C for the preceding quarter. That disclosure would only make sense if item 9 was retained in Appendix 4C.

ASX is also making some improvements to the Appendix 4C to rationalise its contents and make it easier for issuers to complete and for investors to understand.

Item 9 in Appendix 5B

Even though the submission in the preceding section was made specifically in relation to Appendix 4C cash flow reports, ASX considers that the same logic applies to Appendix 5B cash flow reports.

Accordingly, ASX has decided to remove item 9 in Appendix 5B and to add a corresponding new item (item 8) to the Appendix 5B, to that suggested above for the Appendix 4C, to elicit disclosure of whether a resources explorer has at least two quarters of funding available and, if it does not, to require answers to the questions set out above. Again, this will eliminate the need for ASX to send a letter asking these questions and ensure that the market is made aware of this information in a timelier manner.

In light of this change, ASX will not be proceeding with the proposed introduction of LR 5.3.6 and 5.4.6, which would have required an explanation in an entity's quarterly activities report if any category of expenditure in its Appendix 5B for the current quarter is materially different to the estimated cash outflows for that quarter shown in its Appendix 5B for the preceding quarter. That disclosure would only make sense if item 9 was retained in Appendix 5B.

ASX is also making some improvements to the Appendix 5B, similar to those it is making to Appendix 4C, to rationalise its contents and make it easier for issuers to complete and for investors to understand.

Comparisons to "use of funds" statements and expenditure programs

One respondent objected to the proposed new LR 4.7C.2, 4.7C.3, 5.3.4, 5.3.5, 5.4.4 and 5.4.5 requiring quarterly reporting entities to compare actual expenditures to the estimates of expenditure in "use of funds" statements in offer documents or in expenditure programs provided to ASX as part of the listing process, and to explain any material variances. It argued that not only would these new requirements place an administrative burden on what are usually small and under-resourced entities,

they would act as an impediment for a listed entity to change its business model after listing if it was not performing as expected. It also argued that these LR would increase the potential exposure of an entity's directors to litigation in relation to its listing prospectus or PDS if they made a decision to move the entity into a different line of business, even though that may be in the best interests of the entity. ASX considers that these risks are relatively low where the directors are genuinely acting in the interests of the entity and outweighed by the market integrity benefits that these disclosures will deliver. They will discourage promoters from effectively listing a cash box, promising to spend IPO funds on one line of business when they fully intend to move into another line of business shortly after listing. Accordingly, ASX intends to proceed with the proposed new LR 4.7C.2, 4.7C.3, 5.3.4, 5.3.5, 5.4.4 and 5.4.5, albeit with some drafting improvements. This includes merging LR 4.7C.2 with 4.7C.3, merging LR 5.3.4 with 5.3.5, and merging LR 5.4.4 with 5.4.5.

One respondent suggested that ASX clarify whether material changes arising from 'use of funds' statements for secondary capital raisings (as distinct from IPOs) require disclosure. That is not ASX's intention and ASX has updated section 6 of GN 23 to address this issue.

One respondent noted that there may be circumstances where disclosures pursuant to LR 5.3.6 or 5.4.6 (explanations of material differences between actual expenditure and estimated cash outflows) may already have been made to the market as part of a listed entity's ongoing disclosure obligations. It suggested that ASX consider allowing listed entities to cross-refer to previous announcements, where applicable. This is no longer relevant given the deletion of LR 5.3.6 and 5.4.6 mentioned previously.

Other quarterly reporting issues

One respondent suggested LR 4.7B should more clearly state the actual manner in which the rule is typically applied by ASX to entities required to complete Appendix 4C and, at a minimum, should include a specific cross reference to GN 23. ASX agrees and has included a cross-reference to GN 23 in a note to LR 4.7B and also in the notes to LR 4.7C, 5.3, 5.4 and 5.5.

Finally, one respondent noted that the amended quarterly reporting requirements may require quarterly reporters, who often have limited resources, to incur additional costs, and that it may be appropriate to consider additional relief for these entities, such as longer financial reporting lodgement deadlines for Appendix 4C start-up entities (similar to those available to Appendix 5B resources explorers). ASX will keep this issue under watch.

5.2. Disclosure by listed investment entities of their investment portfolios and NTA backing

ASX proposed a number of LR changes to improve the reporting by listed investment companies and listed investment trusts of their investment portfolios and NTA backing.[7] These changes attracted the second highest number of consultation responses, some of which were supportive of ASX's proposed changes and some of which were not. As explained below, ASX is proceeding with some, but not all, of its proposed changes, and with the modifications mentioned below.

Disclosure of investment portfolios (LR 4.10.20(a))

Six respondents expressed concern about the existing requirement in LR 4.10.20(a) for LICs/LITs to disclose in their annual report a list of their investments. They argued that this requirement put LICs/LITs at a competitive disadvantage to other investment vehicles and that, in some cases, this information would be confidential and proprietary in nature and its disclosure would be prejudicial to the interests of the entity and its security holders. They were opposed to the proposed extension of

[7] See section 2.3 of the consultation paper.

this requirement to include a list of derivatives and for the list to include the values of the entity's individual investments and derivatives.

ASX has carefully considered these arguments and believes that they warrant further consultation with industry and investors. In ASX's view, for reasons of comparability, the requirement to disclose investment portfolios needs to be considered holistically across all the different types of investment vehicles, including LICs/LITs, ETFs, quoted managed funds, and unlisted and unquoted managed investment schemes. For that reason, ASX intends to liaise with ASIC on this and the other topics mentioned below with a view to determining how best to move forward on these issues. In the meantime, ASX will not be proceeding with the proposed changes to LR 4.10.20(a) and will leave that rule as currently drafted.

Disclosure of valuation inputs (LR 4.10.20(b))

Two respondents opposed the requirement in LR 4.10.20(b) for LICs/LITs to disclose in their annual report the level 1, level 2 and level 3 inputs used to value their investments in accordance with Australian Accounting Standard AASB 13 *Fair Value Measurement*. One of them questioned the utility of providing such detailed information where investors do not have the ability to properly challenge the valuation inputs being used, especially for complex derivative instruments. It also expressed concern that this change could require the disclosure of private and confidential financial information in relation to investments in unlisted entities. The other stated that the requirement had the potential to significantly increase the amount of information being provided but with no real benefit to security holders.

ASX does not agree. Paragraph 91 of AASB 13 specifically requires an entity to disclose information that helps users of its financial statements assess both: (a) for assets and liabilities that are measured at fair value on a recurring or non-recurring basis in the statement of financial position after initial recognition, the valuation techniques and inputs used to develop those measurements; and (b) for recurring fair value measurements using significant unobservable inputs (level 3), the effect of the measurements on profit or loss or other comprehensive income for the period. ASX is therefore proceeding with the amendment to LR 4.10.20(b). It has however added a note to LR 4.10.20 to make it clear that these disclosures may be made in the notes to the entity's financial statements.

Annual disclosure of changes in NTA (LR 4.10.20(c))

Two respondents disagreed with the new requirement in LR 4.10.20(c) that an investment entity disclose the NTA of its quoted securities at the beginning and end of the reporting period and provide an explanation of changes over that period. One submitted that security holders could garner this information from the monthly disclosures made by LICs/LITs under LR 4.12 and that requiring disclosure in the annual report was an additional administrative burden. One other respondent questioned the value of the explanation of changes in NTA given that it is not disclosed until sometime after year end in the annual report.

By comparison, two respondents commended ASX for the new requirement in LR 4.10.20(c). One (a leading investment manager) commented that:

> "*disclosure of this information in … an annual report provides the highest level of corporate governance from the perspective of the Board of Directors … while also providing the opportunity for an independent review from the entity's auditors to ensure the accuracy of the information presented to shareholders.*"

For the reasons in the passage quoted above, ASX considers the new requirement in LR 4.10.20(c) has considerable merit and ASX intends to proceed with it.

One respondent asked ASX to clarify the level of detail that would be required in the explanation of changes in NTA over an annual reporting period. In ASX's view, this is a matter to be looked at on a case-by-case basis. The overarching principle should be to explain to retail investors in terms they can understand how the NTA of the LIC's/LIT's investment portfolio has performed over the course of the financial year and the components of that performance. ASX will monitor the quality of disclosures made by LICs/LITs under the new requirement in LR 4.10.20(c) and, if ASX considers guidance is warranted, will publish it then.

Performance reporting generally

One respondent submitted that broader amendments should be made to the LR to add a new section on performance reporting by LICs/LITs. He suggested that they should be required to report their performance in their financial statements over different periods (eg 6 months, 1 year, 2 years, 3 years, 5 years and 7 years) and using both TSR calculations and calculations of movement in NTA. He also suggested that calculations of movement in NTA should be mandated by ASX to be on a consistent basis, which should be adjusted for tax paid/provided and dividends paid, so the results can then be easily compared to relevant indices and directly comparable to the performance of unlisted managed funds.

ASX sees considerable merit in these suggestions and believes that they warrant further consultation with industry and investors. Again, in ASX's view, for reasons of comparability, the methodology for reporting investment performance should be considered holistically across all the different types on investment vehicles in the Australian market, including LICs/LITs, ETFs, quoted managed funds, and unlisted and unquoted managed investment schemes. ASX intends to liaise with ASIC on this topic with a view to determining how best to move forward on these issues.

Definition of 'NTA backing' (LR 19.12)

Four respondents suggested that the proposed changes to the definition of "net tangible asset backing" in LR 19.12 requiring "A", "I" and "L" in that definition to be calculated in accordance with Australian Accounting Standard AASB 13 *Fair Value Measurement* were too restrictive and should be amended to simply require these values to be calculated in accordance with Australian accounting standards. ASX agrees and has modified this rule to refer to these values being calculated in accordance with Australian accounting standards (including in particular Australian Accounting Standard AASB 13 *Fair Value Measurement*) or other standards agreed by ASX.[8]

Two respondents suggested deleting the note in the definition of "net tangible asset backing" underneath the definition of "I" (intangible assets) referring to capitalised listing expenses being an intangible asset. This was on the basis that Australian and international accounting standards require listing expenses to be expensed or deducted from the proceeds of the capital raising. ASX agrees and has made this change.

Other suggestions received in relation to the definition of "net tangible asset backing" in LR 19.12 included:

- One respondent pointed to the differing interpretations of item "I" (intangibles) in the definition of "net tangible asset backing" in LR 19.12. It suggested that the definition should indicate a range of items which should be classified as intangibles, while indicating that the list is not exhaustive. It mentioned specifically capitalised listing expenses, prepayments and future tax benefits in this regard (although see the comments above regarding capitalised

[8] The reference here to other standards agreed by ASX is for consistency with LR 19.11A and to cater for the rare situation where a LIC/LIT is established in a foreign jurisdiction and prepares its accounts in accordance with foreign accounting standards acceptable to ASX.

listing expenses). It also suggested that ASX provide guidance on whether future tax benefits should be considered tangible (not intangible) to the extent they can be offset against future tax liabilities.

- Five respondents raised the treatment of deferred tax assets in calculating NTA. Two of them expressed the view that it would be better to require LICs (but not LITs, on the basis that they are unlikely to provide for tax) to report both NTA backing before deferred tax and NTA backing after deferred tax and explain which they consider more meaningful and why. One of them also suggested that deferred tax assets that cannot (or are not intended to) be utilised to offset current and deferred tax liabilities should be treated as an intangible asset under the LR and that the per security value of the deferred tax assets (excluded as "I") should be disclosed by way of note.
- One respondent raised the treatment of prepayments for goods and services and right-of-use assets in calculating NTA.

ASX sees merit in these suggestions. Again, ASX intends to liaise with ASIC on these issues with a view to determining how best to move forward on them.

Timing of monthly NTA disclosures (LR 4.12)

Two respondents supported the changes to LR 4.12 requiring a LIC/LIT to disclose its monthly NTA backing per security "immediately it is or becomes aware of the information and in any event not later than 14 days after the end of that month". However, three respondents were concerned that this did not allow for the time it would take a LIC/LIT to have its NTA calculation validated and approved for release to the market. That was not ASX's intention.

To address this concern, ASX has change this wording to: "immediately it is available for release to the market and in any event not later than 14 days after the end of that month". ASX has also added a note to the rule to make it clear that being "available for release to the market" means having been validated and approved by the board or an authorised officer for release to the market.

Consequences of late lodgement of monthly NTA disclosures (LR 17.5)

Two respondents opposed the extension of LR 17.5 to provide for the automatic suspension of a LIC/LIT for failing to disclose its monthly NTA by the due date, arguing that it was too harsh a penalty for what could be an administrative slip or technical problem. They suggested that ASX should have the discretion to impose a suspension where an investment entity fails to lodge its monthly NTA announcement on time, rather than one being automatically applied. ASX does not agree and will be proceeding with this change. ASX notes that investment entities have up to 14 days after month end to lodge their monthly NTA announcement. ASX generally contacts entities ahead of the deadline for automatic removal under LR 17.5, so they have advance warning of their potential suspension. A period of 14 days should be more than ample time to address an administrative slip or technical problem.

5.3. Disclosure of closing date for receipt of director nominations

ASX proposed changes to LR 3.13.1 to clarify the requirement for listed entities to give notice of the closing date for receipt of director nominations.[9] Only two respondents opposed ASX's proposed changes, while substantially more supported them. ASX is therefore proceeding with its proposed changes, with the modification mentioned below.

---

[9] See section 2.4 of the consultation paper.

For extra clarity and guidance, ASX has added a note to LR 3.13.1 to state that notice of the closing date for recept of director nominations can be given in the form of a calendar of key events.

5.4. Disclosure of voting results at meetings of security holders

ASX proposed changes to LR 3.13.2 to improve the quality and consistency of disclosures of voting results at meetings of security holders.[10] Respondents overwhelmingly supported ASX's proposed changes and ASX is therefore proceeding with them, with the modifications mentioned below.

Seven respondents suggested merging LR 3.13.2(e)(iv) and (v) to better align LR 13.3.2 with section 251AA of the Corporations Act. ASX agrees and has made this change.

Two respondents suggested amending LR 3.13.2 to include the aggregate number of securities which have been voted "for", "against" or "abstain" via a direct vote. ASX does not consider this necessary as this information would already be incorporated within the figures disclosed under LR 3.13.2(d). ASX also does not consider it particularly relevant or meaningful to separately record whether members vote in person at the AGM or by electronic means ahead of the AGM.

One respondent suggested that the disclosure should cover the percentage of securities, as well as the aggregate number of securities, that were voted for and against resolutions or abstained. ASX agrees and has made this change.

Three respondents raised practical difficulties with the inclusion of the new note to LR 13.3.2 stating that a security holder attending a meeting but not voting should be regarded as having abstained. They suggested the note should be deleted. ASX agrees and has removed the note.

Five respondents suggested that ASX publish a standard template for disclosure of voting results. ASX agrees and will make the template available on ASX Online and the ASX Compliance 'downloads' page on the ASX website shortly after the proposed rule changes come into effect.

One respondent proposed that where a show of hands is used to pass a resolution, entities should have to attach a short explanation of why a poll was not required. ASX considers that this would largely result in boilerplate disclosure and ASX therefore is not intending to adopt this proposal.

Another respondent proposed that the LR make polls mandatory on all resolutions.[11] ASX would note that the revised guidance included in the consultation package made it clear that because of the possible application of voting exclusions, all resolutions under the LR should be decided by a poll and not by a show of hands. It is not clear to ASX that the LR could properly require this in relation to non-LR resolutions. ASX would also note that this matter has been addressed in a non-mandatory way in the fourth edition of the Corporate Governance Principles and Recommendations (see recommendation 6.4) and this should lead to a greater adoption of voting by poll over time.

One respondent suggested that there should be a requirement to disclose the proxy outcomes on proposed resolutions where the proxy deadline has passed but the resolution is subsequently not put to the meeting. ASX considers the proposed new requirement in LR 3.13.2 to include an explanation as to why a resolution was not put to a meeting is sufficient for these purposes.

One respondent expressed support for the requirement to include an explanation as to why a resolution was not put to a meeting but then questioned the utility of that requirement where

---

[10] See section 2.5 of the consultation paper.

[11] In support of their position, the two respondents referred to some examples of voting by show of hands allegedly being used to avoid a remuneration strike. ASX would note that remuneration resolutions are regulated by ASIC under the Corporations Act, not by ASX under the listing rules. Such behaviour would, in ASX's opinion, amount to a clear breach of director's duty on the part of the chair, also a matter regulated by ASIC under the Corporations Act.

resolutions are withdrawn for reasons of procedural irregularity. It also noted that there could also be any number of other reasons why resolutions are withdrawn and providing this detail not only adds a disclosure burden but may also add complexity. ASX does not agree and considers that, as a matter of good governance, the market should be informed of why a proposed resolution on the agenda for a meeting was not put to the meeting, regardless of the reason.

One respondent suggested a two tier approach to disclosure of voting results, with more basic information being released immediately and then entities having two business days to release the more detailed information. This would not sit well with section 251AA(2) of the Corporations Act and so ASX has decided not to adopt the suggestion.

5.5. Disclosure of underwriting agreements

ASX proposed changes to various LR to improve the quality and consistency of disclosures regarding underwriting agreements.[12] Respondents generally supported ASX's proposed rule changes and ASX is therefore proceeding with them, with the modifications mentioned below.

Disclosure of the "extent of the underwriting"

One respondent submitted that it is unclear what ASX means by the phrase "extent of the underwriting" in LR 3.10.9, LR 3.11.3, LR 7.2 exception 2 and LR 10.12 exception 2 and the corresponding cells in the Appendix 3B.

ASX has addressed this issue by adding a note to LR 3.10.9, LR 3.11.3, LR 7.2 exception 2 and LR 10.12 exception 2 and in the relevant cells of the Appendix 3B to explain in each case what is meant by the "extent of the underwriting".

Disclosure of fees and commissions

One respondent suggested that ASX should make clear that the underwriting fee or commission required to be disclosed for an underwritten issue includes any applicable discount the underwriter receives to the subscription price payable by other investors participating in the issue. ASX agrees and has added a note to this effect to each of LR 3.10.9, LR 3.11.3, LR 7.2 exception 2 and LR 10.12 exception 2 and in the relevant cells of the Appendix 3B.

One respondent commented that it had seen cases where issuers had disclosed in their Appendix 3B the underwriting fee for an equity issue but not the management fee, and submitted that both fees should be disclosed. ASX agrees but believes this issue is already addressed by the proposed changes to Appendix 3B in the consultation package. In addition to requiring disclosure of underwriting fees, the revised Appendix 3B calls for disclosure of whether there is a lead manager or broker to the issue and, if so, any fees or commissions payable to them for that role. It also calls for disclosure of any other material fees or costs payable in relation to the proposed issue.

Disclosure of termination events

Four respondents proposed replacing references to disclosing a summary of the "material circumstances where the underwriter has the right to avoid or change its obligations" with references to disclosing a summary of "significant termination events", so as to align the LR disclosure requirements with ASIC Regulatory Guide 228. ASX agrees and has made this change. It has also made a corresponding change to LR 3.10.6, so that it now requires immediate disclosure of "details of the exercise by an underwriter of a right to terminate an underwriting agreement or to avoid or change the underwriter's obligations under an underwriting agreement".

---

[12] See section 2.6 of the consultation paper.

One respondent suggested expanding the note in the relevant cells of the Appendix 3B that currently allows the annexure of a document with a summary of the significant termination events for an underwriting, to also allow cross-reference to a disclosure document or PDS with this information that has been lodged on the ASX market announcements platform ("MAP"), without the need to attach a copy of it. ASX agrees and has made this change.

Another respondent queried whether ASX would require disclosure of significant termination events in an Appendix 3B if it was already included in an investor presentation. ASX has expanded the note in the relevant cells of the Appendix 3B to allow cross-reference to an investor presentation or other document with this information that has been lodged on MAP.

Other disclosures

Three respondents suggested that the Appendix 3B should require the same disclosures about underwriting agreements in relation to placements, as it does for other types of issues. ASX would note that placements are not generally underwritten and that is the reason why this information was not included in the proto-type Appendix 3B in the consultation package. However, for completeness, ASX has amended the Appendix 3B:

- to include a separate section for offers of securities to wholesale investors under an information memorandum, which will call for equivalent information about underwriting agreements as the section dealing with offers of securities under a prospectus or PDS; and
- to add in the placements section of the Appendix 3B, where applicable, a requirement to disclose equivalent information about underwriting agreements to that required to be disclosed for other types of issues.

One respondent suggested that certain situations may arise where it would be appropriate to disclose other material terms of an underwriting agreement outside of those currently listed in the LR and Appendix 3B and that ASX should make this point in its guidance. ASX agrees and has added a new section 2.11 in GN 30 addressing this issue and other disclosure issues related to underwritings.

One respondent suggested that there should be additional disclosure requirements (either within or outside the Appendix 3B) on:

- how the board oversaw the capital-raising process;
- how the capital raising was priced;
- why the form of capital raising (for example, rights issue or placement) was chosen;[13]
- details of any sub-underwriting arrangements including differences in fees paid to sub-underwriters; and
- once the raising is completed, disclosure of the proportion that was ultimately allocated to the underwriters.

It also suggested that the following additional matters should be disclosed in relation to placements, given their potential to adversely dilute existing security holders:

- the proportion of the placement that went to existing security holders up to their notional pro rata entitlement; and
- the identity of security holders who received an allocation materially above their notional pro rata entitlement and the multiple of their entitlement they received.

---

[13] ASX would note that this is an existing requirement for LR 7.1A placements under LR 3.10.5A(b). While ASX is deleting that rule, the requirement to make this disclosure for LR 7.1A placements will continue via the Appendix 3B.

ASX is concerned that a number of these suggested disclosure requirements would likely just lead to boilerplate disclosure and that some of them could have a potentially chilling effect on capital markets. ASX also notes that the issue of what entities should disclose around the level of participation in security issues and underwriting shortfalls is currently the subject of litigation by ASIC and ACCC against various parties involved in an ANZ institutional share placement in August 2015. ASX considers it appropriate to await the outcome of those proceedings before making rule or guidance changes in this area.

Sub-underwritings

One respondent asked that ASX clearly confirm that the disclosure requirements for underwritings do not apply to sub-underwritings, while another made the same suggestion specifically in relation to the disclosure obligations about underwritings in LR 7.2 exception 2 (the exception to LR 7.1 for issues to an underwriter of a pro rata issue). Presumably these suggestions were prompted by the definition of "underwrite" in section 9 of the Corporations Act (which provides that "underwrite" includes "sub-underwrite") and LR 19.3 (which provides that terms not defined in the LR that are given a specific meaning under the Corporations Act have the same meaning in the LR).

ASX agrees and has added a new definition of "underwrite" in LR 19.12, which states that unless a rule provides to the contrary, references to "underwrite", "underwriter" etc do not include "sub-underwrite", "sub-underwriter" etc.[14] Also, for the avoidance of any doubt, ASX has added a note to LR 7.2 exception 2 to state that the obligation to disclose details of the underwriting under that exception does not extend to sub-underwriting arrangements. ASX has also modified LR 10.12 exception 2 to make it clear that, in the case of that particular rule, "underwrite" does include "sub-underwrite".

DRP and SPP underwritings

One respondent suggested that the requirement in LR 3.10.9 to disclose DRP underwriting arrangements should be limited to circumstances where the board has actually determined that a particular dividend will be underwritten. It noted that some entities may choose to put in place a contingent DRP underwriting agreement to give the entity flexibility to decide to underwrite a dividend in the future and that this ought not require disclosure unless and until a decision is actually made to underwrite a dividend. Similarly, another respondent noted instances where a listed entity had entered into DRP underwriting agreements in respect of more than one dividend and suggested that ASX clarify whether the entity should disclose the underwriting when each dividend is declared or only once when the underwriting agreement is first entered into. ASX understands the issue and has modified LR 3.10.9 so that it requires disclosure where an entity "enters into or activates an underwriting agreement in relation to the level of reinvestment of a particular dividend or distribution under a dividend or distribution plan".

Two law firm respondents expressed concern that the disclosure of the key features of underwriting agreements for DRPs and SPPs may undermine the attractiveness of those structures and suggested that ASX consult further with brokers and underwriters on the potential commercial impact of these proposed disclosures. No brokers or underwriters raised these issues in the consultation, nor did any other respondents. ASX believes it is appropriate for all underwritings, including DRP and SPP underwritings, that the market is informed of the identity of the underwriter, the extent of the underwriting, the fees and commissions payable and the significant termination events. ASX is therefore proceeding with the proposed changes.

[14] See section 3.3 of the consultation paper.

Timing issues with exception 2 of LR 7.2 and 10.12

One respondent noted an issue with the changes proposed to LR 7.2 exception 2 and LR 10.12 exception 2 to require certain details of the underwriting agreement to be disclosed in the Appendix 3B for a pro rata issue before those exceptions apply. They pointed out that the Appendix 3B for a pro rata issue that is proposed to be underwritten, may have to be lodged with ASX before the underwriting arrangements have been finalised. ASX understands the issue and has modified LR 7.2 exception 2 and 10.12 exception 2 to require details of the underwriting to be disclosed in the Appendix 3B lodged under rule 3.10.3 in relation to the pro rata issue or, if the underwriting was entered into after the Appendix 3B was lodged, by market announcement as soon as practicable following the entry of the underwriting agreement.

5.6. 'Good fame and character' listing condition

ASX proposed changes to LR 1.1 condition 20 to extend ASX's 'good fame and character' listing condition to non-director CEOs as well as directors.[15] Respondents overwhelmingly supported ASX's proposed changes and ASX is therefore proceeding with them, with the modifications mentioned below.

One respondent suggested extending this listing condition to other C-suite executives. ASX can see merit in extending this requirement to CFOs, given the pivotal role they play at listed entities, and has amended LR 1.1 condition 20 accordingly to extend the good fame and character requirements to non-director CFOs. ASX is however wary of extending it any further at this stage, given the administrative burden it would create for applicants for listing in obtaining good fame and character documentation for a broader set of executives.

One respondent noted that in the case of trusts, the good fame and character requirement would extend to the CEO of the responsible entity ("RE") of a trust and asked for more clarity on whether the requirement will extend to the CEO of a fund (eg in scenarios where the RE has no employees and management is outsourced). ASX has modified LR 1.1 condition 20 to spell out more clearly how that rule applies in respect of trusts and updated section 3.21 of GN 1 to provide further guidance on this issue.

5.7. Persons responsible for communication with ASX on listing rule issues

ASX proposed changes to LR 1.1 condition 13 and LR 12.6 to require the person who has been appointed by an entity to be responsible for communication with ASX in relation to listing rule matters to have completed an approved education course and examination covering listing rule compliance matters.[16] Respondents generally supported ASX's proposed changes to these rules, with some reservations discussed below. Only two respondents objected to the changes, arguing that they were not necessary. ASX is proceeding with the proposed changes. However, to allow more time to complete the development of ASX's online training course, ASX has decided to push back the transition date for the changes to these rules to 1 July 2020.

One respondent suggested exempting accountants and lawyers from the requirement, while another suggested exempting chartered secretaries. ASX dos not agree. An accounting, legal or chartered secretary qualification of itself does not guarantee any knowledge of the LR.

Another respondent suggested exempting qualified accountants and lawyers who can demonstrate no less than 10 years' experience with the LR, and graduates of appropriate courses from the Governance Institute of Australia or the Australian Institute of Company Directors. ASX has already

---

[15] See section 2.7 of the consultation paper.

[16] See section 2.8 of the consultation paper.

said that it will exempt a person who has completed a suitable LR training course with an exam attached, such as those offered by the GIA. Extending this to persons who can demonstrate "no less than 10 years' experience with the ASX listing rules" would create an administrative burden for ASX in assessing the experience of the person concerned and inevitably lead to inconsistent application of the requirements. ASX thinks the best way of demonstrating experience is by undertaking the course and exam ASX proposes.

Two respondents suggested exempting a person who already performed the role of being responsible for communicating with ASX on LR issues prior to the transition date to allow their appointment to that role in a different entity after the transition date without having to comply with this requirement. ASX does not agree. This would result in a very large pool of candidates who would never have to complete an approved LR compliance course at any time and discriminate against new entrants to the profession.

Two respondents queried whether this requirement should apply to entities with a dual listing who may have the benefit of multiple waivers of the LR. ASX would note that the requirement does not apply to ASX Foreign Exempt Listings and that those dual listed entities with an ordinary ASX Listing would seldom have that many waivers of the LR that undertaking the course would not be of benefit to them.

Two respondents suggesting allowing entities to appoint someone who had not completed the compliance course but to require them to do so within a nominated period (2 or 3 months) after their appointment. This suggestion was to avoid a delay in the appointment of a person to the role of being responsible for communicating with ASX on LR issues. ASX does not agree. This would create an administrative burden on ASX to monitor whether appointees ultimately completed the compliance course and then create further compliance issues for ASX if the appointee did not complete the course within the nominated period. The type of course ASX has in mind will not be that onerous and should be able to be completed within a couple of hours. As a practical matter, where ASX finds an entity has appointed a person to the role of being responsible of communication with ASX on LR issues without them having completed the required training course, ASX will generally allow the person a short grace period (of no more than 5 business days) to complete the training before taking enforcement action against the entity.

One respondent suggested extending this requirement to all directors of ASX listed entities. ASX would note that boards operate as a collective and it is not uncommon to have boards with some members who have a deep knowledge of the ASX LR and others who do not. By contrast, a person appointed to be responsible for communicating with ASX on LR issues needs to have a thorough understanding of the LR. ASX remains open to extending the requirement more broadly in the future but does not feel the need to do so at this point.

One respondent suggested that ASX should consider making the online education course publicly accessible for voluntarily refreshing and testing understanding of the LR. ASX has already said that it would do this.

One respondent had misread the consultation materials and expressed concerns about the administrative burden on persons who move from entity to entity having to undertake the course and exam each time they changed employer. ASX has clearly stated that this is a one-off requirement. Once a person has completed the required course and exam they do not need to repeat it just because they change employer.

5.8. Voting by employee incentive scheme securities

ASX proposed adding a new LR 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.[17] Respondents overwhelmingly supported ASX's proposed new rule and ASX is therefore proceeding with it.

5.9. Market announcements

ASX proposed amendments to LR 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.[18] Respondents generally supported ASX's proposed changes to LR 15.5, with some reservations. ASX is therefore proceeding with the proposed changes, with the modifications mentioned below.

Two respondents objected to the proposed requirement in LR 15.5(a) for announcements to be "on letterhead" or accompanied by a cover letter. ASX agrees and has amended LR 15.5(a) to refer instead to announcements "including the entity's name, address and logo".

Two respondents also suggested excluding from LR 15.5(a) announcements made using a form prescribed by the listing rules or under an Australian law. ASX agrees and has amended LR 15.5(a) accordingly.

One respondent noted in relation to LR 15.5(c) that to include the name and title of an authorising officer is not always appropriate where the announcement has been authorised by the board or by a disclosure committee. ASX agrees and has amended LR 15.5(c) to require a document given by an entity to ASX to identify the title of the body, or the name and title of the officer, of the entity who authorised the document to be given to ASX and to add a note that the reference to a body who authorised the document to be given to ASX includes the board, a committee or sub-committee of the board, or a disclosure committee of the entity.

5.10. Distributions schedules

ASX proposed changes to pick up 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.[19] Very few respondents commented on ASX's proposed changes and those that did generally supported them. ASX is therefore proceeding with its proposed changes.

5.11. Announcing issues of securities and seeking their quotation

ASX proposed changes to simplify and rationalise the current process for announcing issues of securities and applying for their quotation. This included changes to existing LR 2.7, 2.8 and 3.10.3 and Appendix 3B; the replacement of LR 3.10.5; and the introduction of new LR 3.10.3A, 3.10.3B and 3.10.3C and a new Appendix 2A.[20] Respondents generally supported ASX's proposed changes. ASX is therefore proceeding with them, with the modifications mentioned below.

[17] See section 2.9 of the consultation paper.

[18] See section 2.10 of the consultation paper.

[19] See section 2.11 of the consultation paper.

[20] See section 3.1 of the consultation paper.

Transition date

These changes will come into effect on 1 December 2019. Entities will be able to use the new online Appendix 3B to notify a proposed issue of securities to ASX on and from that date.

To assist listed entities to make the transition to the new online Appendix 3B, ASX will also make that Appendix available as a normal electronic document (MS Word) for 2 months. The electronic version will be available in ASX Online to download, complete, convert to a PDF and then lodge on MAP in the same way as any other announcement.

From 1 February 2020, ASX will only accept online lodgement of the new Appendix 3B. It will not accept lodgement of PDFs.

Unfortunately, through events beyond ASX's control, the development of the new online Appendix 2A has been delayed. Pending its completion, ASX will make the new Appendix 2A available as a normal electronic document (MS Word). The electronic version will be available in ASX Online to download, complete, convert to a PDF and then lodge on MAP in the same way as any other announcement. ASX will make a further announcement to the market when the online version of the Appendix 2A is available for use and the transitional arrangements that will apply.

As a further accommodation to listed entities and to facilitate transition to the new arrangements, ASX will continue accepting notifications of proposed issues of securities and applications for quotation on the current (paper-based) form of Appendix 3B up until 31 January 2020. Consequently, if an entity notifies a proposed issue of securities and applies for their quotation on the current Appendix 3B on or before 31 January 2020, it will not be required to lodge a new Appendix 2A to have those securities quoted, even where the securities are not issued until after that date.

With one exception, any Appendix 3B lodged in the old form after 31 January 2020 will be rejected by ASX and returned to the entity for the correct forms to be completed. The one exception is issuers of wholesale debt securities seeking quotation of additional or new classes of debt securities, who should continue to use the current (paper-based) form of Appendix 3B until advised otherwise by further announcement by ASX.

A number of respondents asked ASX to consider introducing a new online form to cater for the notification to ASX of issues and the payment up of securities required under the proposed new LR 3.10.3A, 3.10.3B and 3.10.3C,[21] rather than entities having to prepare such notifications in "free form". ASX thinks this has considerable merit. It has modified the Appendix 2A to cater for this where the securities in question are to be quoted and is developing a new online Appendix 3G to cater for this where the securities in question are to be unquoted. Pending its completion, ASX will make the new Appendix 3G available as a normal electronic form (MS Word). The electronic version will be available in ASX Online to download, complete, convert to a PDF and then lodge on MAP in the same way as any other announcement. ASX will make a further announcement to the market when the online version of the Appendix 3G is available for use and the transitional arrangements that will apply.

ASX will release the electronic versions of the Appendix 2A and Appendix 3G, and the new online Appendix 3B, ahead of the 1 December 2019 transition date to give entities and their advisers an opportunity to familiarise themselves with the new forms.

---

[21] That is, an issue to be made under an employee incentive scheme or as a consequence of the conversion of any convertible securities, and the payment up of partly paid securities. None of these requires the filing of an Appendix 3B.

The time limits to apply for quotation of securities (LR 2.8)

Two respondents submitted that the proposed 5 business day deadline in new LR 2.8.3 for an entity to apply for quotation of new securities issued upon the conversion of unquoted convertible securities (including the exercise of options) was too short.[22] They noted that this was especially the case where the issuer has to prepare a cleansing prospectus before the converted securities can trade. ASX understands the practical issues involved in conversion but considers that the benefit to security holders of receiving their converted securities and being able to trade them on ASX in a timely manner is also a relevant consideration.

As a compromise, ASX has decided to reduce this time period to 10 business days rather than the current 15 business days. In most cases, listed entities with unquoted convertible securities on issue should have a reasonable sense of whether or not they will be converted ahead of the conversion date and, if they will, should have started work on preparing the required cleansing notice or cleansing prospectus ahead of the conversion date. If an entity is not practically able to meet the 10 business day timeframe, it can always approach ASX for a waiver or no-action letter. ASX is also making a corresponding change to LR 3.10.3B to align the period within which an entity must notify ASX of any issue of equity securities as a consequence of the conversion of any convertible securities to 10 business days.

The application of LR 3.10.3 to debt securities

Three respondents suggested that ASX clarify how the requirement in LR 3.10.3 to notify ASX of a proposed issue of securities would apply in relation to unquoted debt securities, particularly those commonly issued by banks and other financial institutions in the ordinary course of their borrowing activities.

ASX understands the point and has modified LR 3.10.3 and the notes to it to make it clear that the rule applies to all issues of equity securities (quoted and unquoted) but that it only applies to issues of debt securities if they are in a class that is quoted or intended to be quoted on ASX.[23]

ASX has also made corresponding changes to LR 3.10.3A, 3.10.3B and 3.10.3C to make it clear that they also only apply to equity securities.

Disclosures of issues under employee incentive schemes (LR 3.10.3A)

Two respondents suggested that listed entities may benefit from further guidance from ASX as to what should be included in the disclosure relating to issues under employee incentive schemes under LR 3.10.3A, to ensure consistency in approach, with one highlighting in particular some inconsistencies in the disclosures by listed entities in relation to performance rights. Another suggested that at an absolute minimum, LR 3.10.3A should require disclosure of the number of securities that were issued, identification of any key management personnel ("KMP") who participated in the issue, the total number of securities currently on issue under the incentive scheme, and a cross-reference to the annual report or other disclosure where the terms of the incentive scheme can be found.

ASX understands the point and has updated LR 3.10.3A to require an issue of securities under an employee incentive scheme to be notified to ASX via an Appendix 2A (where the securities are to be

---

[22] Two other respondents similarly submitted that the proposed 5 business day deadline in the timetable in section 5 of Appendix 6A for an entity to apply for quotation of new securities issued upon the conversion of quoted convertible securities was too short (see note 47 below and the accompanying text).

[23] ASX has also added a note to LR 3.10.3 to the effect that an issue of debt securities which are not, and are not intended to be, quoted on ASX may be separately notifiable to ASX under LR 3.1 if a reasonable person would expect it to have a material effect on the price or value of the entity's securities.

immediately quoted on ASX) or 3G (where the securities are not to be immediately quoted on ASX). It has also made provision in the Appendix 2A and Appendix 3G for disclosure of:

- the total number and class of securities issued;
- the date or dates on which the securities were issued;
- if the recipient of the securities is a member of a KMP or an associate, their name and the number of securities that were issued to them;
- a hyperlink or cross-reference to a document lodged with ASX where the terms of the scheme, or a summary of the terms of the scheme, can be found; and
- if the securities are not ordinary securities, a summary of the material terms of the securities or a hyperlink or cross-reference to a document lodged with ASX where that summary can be found.

Disclosure of conversions and payments up (LR 3.10.3B and 3.10.3C)

ASX would note that the same points made by respondents in relation to LR 3.10.3A in the preceding section can also be made in relation to the notification requirements in LR 3.10.3B (issue of equity securities as a consequence of the conversion of convertible securities) and 3.10.3C (payment up in full of unquoted partly paid equity securities).

ASX has therefore updated LR 3.10.3B to require the notification under that rule to be made via an Appendix 2A (where the securities resulting from the conversion are to be quoted on ASX) or Appendix 3G (where the securities resulting from the conversion are not to be quoted on ASX). It has also made provision in the Appendix 2A and Appendix 3G for disclosure of:

- the total number and class of convertible securities that were converted and, if they were quoted on ASX, their ASX trading code;
- the total number and class of equity securities issued as a consequence of the conversion and, if they are in the same class as quoted equity securities, their ASX trading code; and
- the date or dates on which the equity securities were issued.

ASX has also updated LR 3.10.3C to require the notification under that rule to be made via an Appendix 2A (where the fully paid securities are to be quoted on ASX) or Appendix 3G (where the fully paid securities are not to be quoted on ASX). It has also made provision in the Appendix 2A and Appendix 3G for disclosure of:

- the total number and class of unquoted partly paid equity securities that became fully paid;
- the date or dates on which the unquoted partly paid equity securities became fully paid; and
- the ASX trading code of the quoted fully paid equity securities.

In addition, ASX has added new sections 2.6, 2.7 and 2.8 to GN 30 to reflect and give guidance on the changes to LR 3.10.3A, 3.10.3B and 3.10.3C above.

The ss707(3)/1012C(6) warranties in Appendices 2A and 3B

Three respondents suggested that the wording of the ss707(3)/1012C(6) warranty in LR Appendices 2A and 3B about securities to be quoted being freely tradeable, should be amended to reflect the fact that those provisions allow securities to be issued without a prospectus or PDS to, and to be traded for 12 months among, non-retail investors. ASX does not agree. Trading on ASX takes place anonymously. Any securities quoted on ASX are able to be purchased by retail investors. It is therefore imperative that securities are not quoted on ASX unless they are able to be freely traded at the time of quotation. An entity that seeks to have securities quoted on ASX must do everything required (including issuing any necessary cleansing notice or cleansing prospectus) to permit them to be freely tradeable from the point of quotation. ASX has added a new section 4.7 to

GN 30 addressing the representations and warranties in Appendix 2A and providing further guidance on this issue.

One respondent suggested that it would be more appropriate and make more procedural sense for the ss707(3)/1012C(6) warranty to be given at the time of filing the Appendix 2A once the number of securities to be issued is known and the market has been cleansed rather than at the time of the filing of the Appendix 3B when the issue is first proposed. ASX does not agree. The ss707(3)/1012C(6) warranty in the Appendix 3B only applies where the entity is applying for the quotation of securities (including rights) on a deferred settlement basis. Quotation of securities (particularly rights) on a deferred settlement basis typically occurs before the entity will be in a position to provide a final Appendix 2A for quotation of the securities (or, in the case of rights, the underlying securities).

The required disclosures in the proto-type Appendices 2A and 3B

One respondent observed that item 10 of the proto-type Appendix 2A and various items in the proto-type Appendix 3B included in the consultation package ask for the proposed date of issue of securities. It suggested that it would be useful if ASX could provide guidance on how strict ASX proposes to be on this indicative date. For example, if the securities were issued one day after the date originally proposed for their issue under an Appendix 2A or 3B, would ASX require a new Appendix 2A or 3B be issued to update that information, or would this be seen as a 'de minimis' change and therefore no updated Appendix 2A or 3B would be required? It is too early at this stage to determine how this issue will unfold. ASX will keep it under watch and publish guidance if needed.

One respondent noted that item 25 of the proto-type Appendix 2A and items 379 (LR 6.1) and 393 (LR 10.11.1) of the proto-type Appendix 3B included in the consultation package only apply to ASX Listings and do not apply to ASX Debt Listings or ASX Foreign Exempt Listings and suggested the forms be amended to address this issue. ASX agrees and has modified these forms accordingly. ASX would also note that the same comment can be made about items 33 – 40 of the proto-type Appendix 2A, and a number of other items in the proto-type Appendix 3B, included in the consultation package. ASX has also modified those items so that they only apply to ASX Listings.

One respondent suggested ASX reconsider the order of the entries in the multi-choice drop down selection for item 5 (type of issue) in the proto-type Appendix 3B included in the consultation package. This was on the basis that the most common selection (placement) was at the end of the list and it would be more efficient for users to have it at the start. ASX does not agree. The reason for choosing this order was so that users consider carefully what type of issue is involved and not treat everything as a placement (which they might do if "placement" was at the top of the list).

One respondent noted that the Appendix 3B currently is used to disclose securities issued as consideration for takeovers and mergers and that ASX should consider how this information is disclosed in the new Appendix 3B. ASX agrees and has amended the Appendix 3B to address this issue.

One respondent suggested changing the various entries for "issue price/consideration" in the proto-type Appendix 3B included in the consultation package to "issue price/consideration per security" to encourage users to fill out the form on the same basis. ASX agrees and has amended the Appendix 3B to address this issue.

One respondent noted that the requirement in item 128 of the proto-type Appendix 3B included in the consultation package for an entity to input an indicative price range for a bookbuild is too onerous and, if this was required before bookbuild negotiations had concluded, could lead to disadvantageous outcomes. ASX agrees and has amended the Appendix 3B to address this issue.

One respondent noted that the details for an accelerated renounceable entitlement offer with rights trading in the proto-type Appendix 3B included in the consultation package did not have a field to enter details of any other material fees or costs to be incurred by the entity in connection with the proposed offer. ASX has corrected this.

One respondent suggested that ASX clarify whether items 287 and 288 of the proto-type Appendix 3B included in the consultation package regarding the minimum and maximum subscription amount and minimum and maximum number of securities to be offered under an SPP, relate to the overall issue or to the individual offers to security holders. ASX understands the issue and has amended the Appendix 3B to address it.

One respondent wanted the Appendix 3B to disclose total voting securities to facilitate calculation of the 5%/20% of voting securities thresholds in the substantial holder and takeover provisions in the Corporations Act. ASX notes that the Appendix 2A will include a table setting out the entity's existing total issued capital and parties should therefore be able to work this out for themselves without imposing an additional administrative burden on listed entities to separately disclose this information.

One respondent suggested that ASX consider how cancellation and expiry of securities should be notified to ASX, noting that some entities today do this on an Appendix 3B, which is not well suited to the task. ASX has taken this issue on board and will look to address it in the next phase of its straight through processing project.

5.12. Working capital

ASX proposed changes to clarify the working capital requirement for assets test listings by adding a new definition of "working capital" in LR 19.12 and amending the "working capital test" in LR 1.3.3 to make it clearer and easier to apply.[24] Respondents generally supported ASX's proposed changes. ASX is therefore proceeding with them, with the modifications mentioned below.

One respondent asked for ASX to consider giving guidance on whether certain types of assets (such as deferred revenue and financial instruments) or liabilities (such as current liabilities at year end that are renegotiated and become non-current liabilities after year end) should be counted in working capital. ASX has included additional guidance on this issue in section 3.12 of GN 1.

One respondent opposed the proposed changes removing the ability for an entity to include in its working capital budgeted first year revenue and administration costs on the basis it would make it more difficult for smaller entities to list on ASX. In ASX's view, if an entity applying for admission under the assets test does not have $1.5m in working capital at the point of listing, it is likely to be too small to list on ASX. ASX intends to proceed with this change.

5.13. CHESS Depositary Interests (CDIs)

ASX proposed a new LR 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 via an Appendix 4A.[25] Respondents generally supported ASX's proposed new rule. ASX is therefore proceeding with it, with the modifications mentioned below.

One respondent suggested that the requirement to file an Appendix 4A should only apply to dual listed entities, on the basis that the purpose of the form is to allow ASX to calculate annual listing fees on the proportion of the entity's quoted securities represented by CDIs tradable on ASX. Entities

---

[24] See section 3.2 of the consultation paper.

[25] See section 3.3 of the consultation paper.

with a sole listing on ASX are required to have all of their securities quoted on ASX, either directly through CHESS or indirectly in the form of CDIs. ASX agrees and has made this change.

One respondent suggested that CDI issuers only have to file an Appendix 4A if there was a change in the number of CDs on issue over a month. ASX does not agree. If an issuer did not file an Appendix 4A at the end of the month ASX would have no way of knowing whether that was because there was no change in the number of CDIs on issue over the month or because the issuer had just forgotten to file the form.

One respondent queried whether there might be a number of entities that have CDIs over their securities that are not currently subject to a condition to notify ASX on a monthly basis of the number of CDIs on issue (for example, if there were no CDIs in place on admission but these were introduced later in the entity's life). It suggested that ASX consider a grace period for existing entities with CDIs in place to file the required Appendix 4A. ASX does not believe that there are many (if any) entities in this position and ASX therefore does not see a need for a grace period.

5.14. Improving the rules regulating placements in LR chapter 7

ASX proposed amendments to LR chapter 7:

- 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 LR 7.1A;
- rationalising the lists of equity issues that can be made without security holder approval under LR 7.2, 7.6 and 7.9 and making them consistent with each other and LR 10.12; and
- expanding and rationalising the requirements for notices of meetings in LR 7.3, 7.3A and 7.5 and making them consistent with each other and LR 10.5,[26] 10.13 and 10.15.[27]

Respondents generally supported ASX's proposed changes to LR chapter 7. ASX is therefore proceeding with them, with the modifications mentioned below.

The base 15% placement capacity in LR 7.1

One respondent noted the proposed new carve-out in the first and second bullet points of the definition of "A" in LR 7.1 for ordinary securities issued during the "relevant period" on the conversion of convertible securities pursuant to LR 7.2 exception 9. They suggested a technical change to the second bullet point in that definition so that the carve-out does not apply if the convertible securities were issued within placement capacity before the commencement of the "relevant period". This is on the basis that once the "relevant period" passes, the convertible notes should no longer have any impact of the calculation of the entity's placement capacity. ASX agrees and has made this change.

ASX would note that the same point applies to the proposed new carve-out in the first and third bullet points in the definition of "A" in LR 7.1 for ordinary securities issued during the "relevant period" under an agreement to issue equity securities pursuant to LR 7.2 exception 16. ASX has made a corresponding change to the third bullet point in the definition of "A" to address the point.

One respondent suggested that LR 7.1 and GN 21 should not regulate the granting of a put option by a third party to a listed entity for the right to issue equity securities to the third party, on the basis that at the time the put option is granted, there is no issue of an equity security and no agreement

---

[26] A new LR introduced by ASX in the consultation version of the proposed LR changes.

[27] See sections 3.4, 3.5 and 3.6 of the consultation paper.

on the part of the issuer to issue equity securities to the third party. It suggested that ASX provide clarity as to whether LR 7.1 and GN 21 should apply to this type of arrangement. ASX agrees and has added a footnote to section 2.1 of GN 21 addressing this issue.

The additional 10% placement capacity in LR 7.1A

Four respondents asked ASX to re-consider allowing LR 7.1A placements for non-cash consideration, such as paying for assets, while three others expressly supported ASX's position that the ability to do this should be removed. As ASX pointed out in the consultation paper, LR 7.1A placements are seldom used for these purposes and give rise to significant compliance issues when they are. ASX is therefore proceeding with its proposed change to remove the ability of listed entities to use LR 7.1A placements for non-cash consideration.

Two respondents suggested clarifying that new LR 7.1A.1(b) only applies if a 7.1A mandate resolution is rejected by security holders at that AGM (noting that without this change, entities may be deprived of the full 12 month period approved at a preceding AGM even if a 7.1A mandate resolution is not proposed at the subsequent AGM). ASX does not agree. If a 7.1A mandate resolution is not put forward and passed at an AGM, ASX does not consider it appropriate that the entity continue to rely on one approved at an earlier AGM. ASX has added a footnote to section 3.4 of GN 21 to confirm its position in this regard.

One respondent suggested amending LR 7.1A to allow a 7.1A mandate to be passed at an EGM rather than at the entity's AGM. This issue was fully canvassed with ASIC when LR 7.1A was adopted and ASX does not consider that this change would attract regulatory support.

One respondent noted that currently the notice of meeting requirements in LR 7.3A.6 for security holder approval of the additional LR 7.1A 10% placement capacity are inconsistent between the initial approval, where no information is required on securities issued in the prior 12 months, and a renewal of the additional LR 7.1A 10% placement capacity, where details are required of all securities issued in the prior 12 months, irrespective of whether the LR 7.1A capacity was utilised or not. It suggested the disclosures required in a security holder meeting for any LR 7.1A approval should simply require the disclosure of any prior use of the LR 7.1A placement capacity in the prior 12 months or, where no 7.1A placement capacity was used in the prior 12 months even if security holder approval had previously been granted, a statement to the effect that "no securities were issued in the prior 12 months under ASX LR7.1A". The amendments ASX proposed to LR 7.3A.6 in the consultation package actually have this effect and so no change is necessary in this regard.

One respondent did not agree with inclusion of Q392 in the proto-type Appendix 3B included in the consultation package requiring an entity to explain why it chose a placement rather than a pro rata issue or an SPP. This provision only applies where an entity is making the placement under its extra 10% placement capacity in LR 7.1A and simply replicates the obligation currently in LR 3.10.5A(b) and so ASX is proposing to retain it.

The exceptions in LR 7.2

One respondent called attention to the requirement in LR 7.2 exception 3 (offering the shortfall on a pro rate issue) that directors should state their allocation policy in relation to the shortfall and the guidance in section 4.4 of GN 21 that it is not sufficient to simply state that the entity reserves the right to allocate the shortfall at the directors' discretion. The guidance goes on to provide that the entity should also state the factors the directors will take into account in exercising that discretion. The respondent was concerned that this may limit the ability of some entities to raise capital where a prior established allocation policy may not be feasible for them. It said that if ASX's intention was that flexibility can be maintained in an allocation policy, it did not foresee problems with the amendment. However if ASX's intention was to require a detailed allocation policy, the amendment

may prove problematic. ASX does not agree. This is an area where disclosures need to improve and ASX has chosen its language in GN 21 quite carefully. ASX has simply said that it is not sufficient to state that the entity reserves the right to allocate the shortfall at the directors' discretion without also stating the factors the directors will take into account in exercising that discretion.

Two respondents objected to the proposed changes to LR 7.2 exception 13, which will require entities to disclose the maximum number of equity securities proposed to be issued under a scheme. They argued that this would limit entities, due to the difficulty of determining such numbers three years in advance. ASX does not agree. This maximum number is not a prediction of the actual number of securities to be issued under the plan but simply a maximum number set by the entity for the purposes of the security holder approval. If the entity wants to exceed that number, it needs to go back to security holders for a fresh approval. It is important that security holders know the maximum number of securities that are proposed be issued under an employee incentive scheme so that they can understand its potential dilutive effect when they approve the plan. Once that number is reached, it is appropriate for the plan to go back to security holders for approval. ASX has updated section 4.13 of GN 21 to make this clearer.

Two respondents requested that ASX provide guidance (including by way of examples) as to what types of amendments to an employee incentive scheme would constitute a "material" change to the terms of the scheme requiring a fresh approval by security holders under LR 7.2 exception 13. ASX agrees and has updated section 4.13 of GN 21 to address this issue.

Issues during a takeover (LR 7.9)

Two respondents expressed concerns about the addition of LR 7.9 exception 8 allowing the board of a listed entity subject to a written takeover proposal to issue securities with the approval of the potential bidder. ASX notes that this exception does not remove the need for security issues to comply with LR 7.1 and 10.11 and, to reinforce this point, ASX has added a note to this effect to LR 7.9 and to the related provisions in LR 7.6. Further, to the extent that these concerns related to directors undertaking issues to facilitate control transactions, for Australian listed entities at least, that would be a matter within the regulatory purview of ASIC and the Takeovers Panel.

GN 21

One respondent asked ASX to clarify the definitions of "convertible debt security", "convertible security", "equity security" and "security" used throughout GN 21. It noted the multiple definitions of "security" in the Corporations Act and the potential confusion they cause. ASX has already addressed this issue through the substantial amendments to the definitions of these terms in LR 19.12. Section 1.1 of GN 21 also has footnotes clearly defining these terms in the same manner as in LR 19.12.

One respondent noted that the way in which GN 21 dealt with convertible securities under LR 7.1 and 7.1A was different to the way in which ASX has dealt with them in the past and suggested that this be stated in GN 21. ASX has added a footnote to the beginning of section 5 of GN 21 acknowledging this.

The same respondent asked for GN 21 to be expanded to clarify whether ASX was intending to change its position in relation to "no floor" convertible securities (ie convertible securities where the price at which they convert is determined by reference to the market price of the underlying securities at a future date or over a future period and there is no floor on the conversion price). They noted that ASX had in the past sometimes refused to allow entities with an unstable share price or thinly traded securities to issue "no floor" convertible securities because of the potentially significant dilutive impact they could have on existing security holders. ASX agrees that GN 21 should address this issue and has added a new section 5.9 in GN 21 that does so.

Three respondents objected to the guidance in GN 21 on LR 7.1 and 7.4 resolutions (also reflected in item 373 of Appendix 3B of the proto-type Appendix 3B included in the consultation package) that if the identity of the allottees is known and they number fewer than 10, ASX expects them to be named in the notice of meeting proposing the resolution. They argued that this is a significantly higher standard of disclosure than currently required under chapter 7, that it raises privacy issues and that it could have a potentially chilling effect on entities raising capital from investors who did not want their details made public. ASX understands the issue and has updated sections 4.9, 4.10, 4.16, 7.2, 7.3 and 7.4 of GN 21 to require the disclosure of the identity of the allottees, where it is known and it is likely to be material to a decision by security holders to approve the issue. It has also provided guidance in those sections of GN 21 to indicate that the identity of the allottee is likely to be material for these purposes if the allottee is:

- a related party;
- a member of KMP;
- an adviser to the entity;
- a substantial holder; or
- an associate of any of the above,

and is receiving an allotment of more than 1% of the entity's current issued capital.

ASX has also deleted item 373 from the proto-type Appendix 3B to be consistent with this position.

Worksheets to calculate an entity's placement capacity

Three respondents noted the requirements in the new Appendix 2A and 3B for an entity to send a worksheet in the form of Annexure B or C of the new GN 21 to the entity's ASX listings advisor confirming an issue is within the entity's LR 7.1 or 7.1A placement capacity (as applicable). They expressed concerns that this could delay issues of securities and asked for guidance on the timeframes for ASX to review and approve these worksheets. To be clear, it is not ASX's intention to review these worksheets ahead of an issue. They exist for an entity to confirm that it is operating within its placement capacity. ASX will review them after the event to satisfy itself that the entity's calculation of its placement capacity was correct and, if it was not, take appropriate remedial action. ASX has updated the guidance in section 2.10 of GN 21 to explain the intended process more clearly.

Two respondents objected to the requirement in the proto-type Appendix 3B included in the consultation package to produce a worksheet confirming compliance with LR 7.1 for an ordinary placement or an SPP, arguing that it is an entity's responsibility to comply with LR 7.1 and it should not have to confirm compliance with ASX each time. ASX would note that such a worksheet is only required for an SPP where the offer does not meet the requirements of LR 7.2 exception 5. Since most other respondents who commented on the point were supportive and did not see it as an excessive compliance burden, ASX is proceeding with this requirement.

One respondent suggested that the work sheets confirming compliance with LR 7.1 and 7.1A should be publicly disclosed as part of the Appendix 3B. This would make the conversion of the Appendix 3B into a smart form able to be straight through processed very difficult. ASX therefore does not propose to adopt this suggestion.

One respondent suggested some minor drafting changes to the proposed worksheets to better address agreements to issue securities, which ASX has made.

5.15. Improving the rules regulating transactions with persons in a position of influence in LR chapter 10

ASX proposed amendments to LR chapter 10:

- rationalising the lists of equity issues that can be made without security holder approval under LR 10.12 and making them consistent with LR 7.2, 7.6 and 7.9;
- expanding the requirements for notices of meetings in LR 10.5,[28] LR 10.13 and 10.15 and rationalising them with each other and LR 7.3, 7.3A and 7.5; and
- rationalising the rules dealing with the approval of issues to directors and their associates under employee incentive schemes by merging LR 10.15 and 10.15A into the one rule LR10.15).[29]

Respondents generally supported ASX's proposed changes to LR chapter 10. ASX is therefore proceeding with them, with the modifications mentioned below.

LR 10.1

One respondent suggested that it would be helpful if new GN 24 provided some guidance as to the policy objectives that the "child entity" limb in LR 10.1.2 is seeking to achieve and that it be recognised in new GN 24 that there may be situations where ASX would consider grating a waiver from LR 10.1.2 in relation to a transfer of substantial assets to a non-wholly-owned child entity where the policy objectives of that rule were not compromised. ASX agrees and has amended section 4.2 of, and added a new section 8.2 to, GN 24 addressing this issue.

One respondent encouraged ASX to retain the existing "two-tiered test" for LR 10.1.3 to apply (ie that the person was either an existing 10%+ substantial holder or has been a 10%+ substantial holder in the last 6 months). That is in fact how ASX drafted LR 10.1.3 in the consultation package and so no change is necessary in this regard.

The test in LR 10.2 for an asset to be a "substantial asset"

Two respondents objected to the language in LR 10.2 giving ASX the discretion to determine whether the 5% threshold for a substantial asset was met. ASX already has this discretion and it is one that is important for the integrity of chapter 10. The changes proposed in the consultation package to LR 10.2 were drafting changes intended to express this discretion more clearly. On closer review, ASX can see that the drafting might have been more felicitous and has modified the language in LR 10.2 to improve the drafting.

One respondent noted the test in LR 10.2 for determining whether an asset is a substantial asset (ie whether the value of the asset is 5% or more of the equity interests of the entity, as set out in the latest accounts given to ASX under the listing rules). It said that it would be helpful if ASX could confirm that, in relation to stapled groups, this means the consolidated accounts of the stapled group. ASX agrees and has addressed this issue by adding a definition of "stapled group" to LR 19.12 and a new LR 19.11C stating that where a stapled group applies for and is admitted to the official list:

(a) each entity within the stapled group is regarded as a listed entity and must comply with the listing rules; but

(b) references in the listing rules to the entity's assets, liabilities, equity interests, profits, losses or market capitalisation are to be read as referring to the aggregated assets, liabilities, equity interests, profits, losses or market capitalisation (as the case may be) of all of the entities in the stapled group.[30]

---

[28] A new LR introduced by ASX in the consultation version of the proposed LR changes.

[29] See section 3.5, 3.6 and 3.7 of the consultation paper.

[30] See also the proposed changes to LR 19.11B proposed in the text accompanying note 43 below addressing similar issues in connection with trusts.

The exceptions to LR 10.1 in LR 10.3

Two respondents suggested that it would be better if there was an express exception included in LR 10.3 to any requirement for security holder approval under LR 10.1 for transfers of assets between entities within a stapled structure, rather than require stapled groups to seek a waiver under section 8.2 of the consultation version of GN 24 at the time they are first established, or each time an intra-staple transfer occurs. ASX agrees and has addressed this issue by adding a definition of "stapled group" to LR 19.12 and adding a new exception in LR 10.3(c) excluding from LR 10.1 various transfers between entities within a stapled group".

The same two respondents suggested a similar exception in LR 10.3 for transactions between an internally managed stapled group on the one hand and an externally managed fund managed by the manager of the stapled group or a wholly owned subsidiary of the manager on the other hand, provided the manager can demonstrate that no related party of the trust (other than related parties forming part of the stapled group) will derive any direct financial benefit from the transaction. In ASX's opinion, this scenario is too nuanced to be dealt with by an express exception in LR 10.3. Nonetheless, this submission and the submission in the preceding paragraph have given ASX pause to consider the manner in which the LR currently apply to internally managed and externally managed trusts and stapled groups. As a consequence, ASX has made a number of improvements to the LR to better differentiate between these different types of listed entities, which are outlined in greater detail in section 5 below. These changes include removing the RE of an internally managed trust from the list of the related parties of the trust (on the basis that in an internally managed trust the RE is effectively owned and controlled by the unitholders in the trust). This change effectively addresses the concerns raised by these two respondents on this issue.

Two different respondents queried the continuation of the exception in LR 10.3 for securities issued for cash and what they perceived as an inconsistency it creates between:

- LR 10.1, which applies to acquisitions and disposals of substantial assets involving a person in a positon of influence and extends to 10%+ substantial holders, and
- LR 10.11, which applies to security issues to a person in a position of influence but does not extend to 10%+ substantial holders.

Far from creating an inconsistency, LR 10.3 actually sets the boundary between LR 10.1 and LR 10.11. Issues of securities for cash are excluded from LR 10.1 and instead are regulated by LR 10.11. As a matter of policy, ASX currently applies LR 10.11, through the application of its discretion under LR 10.11.2, to 30%+ substantial holders and to persons with a lesser percentage security holding but who have nominated a director to the board of the entity pursuant to an agreement, arrangement or understanding with the entity (whether legally enforceable or not) which gives them a right or expectation to do so. For greater certainty and clarity, ASX is amending LR 10.11 to renumber LR 10.11.2 to 10.11.5 and to add 3 new limbs: (10.11.2) a 30%+ substantial holder; (10.11.3) a 10%+ substantial holder who has nominated a director to the board of the entity pursuant to a "relevant agreement" which gives them a right or expectation to do so; and (10.11.4) an associate of anyone referred to in LR 10.11.1 to 10.11.3. ASX considers these thresholds more appropriate to apply in the context of issues of securities than a mere 10%+ substantial holding.

Waivers of LR 10.1 – externally managed listed trusts

Two respondents objected to ASX's change in policy (as set out in sections 6.1 and 8.1 of GN 24) lifting the bar for the granting of waivers to LR 10.1, interpreting this as meaning that ASX will no longer grant such waivers to listed trusts or fund managers, relieving them from the obligation to obtain security holder approval for the transfer of significant assets to/from listed trusts from/to other funds or mandates managed by the RE of the listed trust. They noted that currently those

waivers would typically include conditions that the RE procure an independent valuation of the relevant assets being transferred and that related parties of the listed entity do not hold a significant stake in the unlisted entity to/from which the assets were being sold. They submitted that granting the waiver remains an appropriate course of action where:

- the relevant RE owes significant fiduciary duties to the listed unitholder, reducing the possibility of a conflict of interest;
- there is no cross-holding between significant investors in the listed entity and the fund (so that the waiver cannot be used to avoid the usual operation of LR 10.1 on significant investors); and
- there is no possibility for shifting value away from the listed fund, given that any transfer has to be supported by an independent valuation.[31]

These respondents also commented that this change in policy has already had, and is likely to continue to have, a significant impact on listed trusts with responsible entities or fund managers who also operate unlisted funds and that there is no reason why listed trusts should not be able to sell assets to an unlisted fund managed by the same RE or fund manager where those sales are subject to the terms of the previously issued waivers. They argued that many listed trusts and fund managers warehouse substantial assets ahead of selling them to unlisted funds. This comprises a significant part of their business model. Requiring those trusts to seek approval under LR 10.1 each time they transfer a warehoused asset would make warehousing risky and, in many circumstances, impractical.

Another respondent suggested it would be helpful if the new GN 24 provided some guidance on the circumstances in which the ASX would be open to granting a waiver for a significant asset transaction involving an externally managed listed trust.

ASX has listened carefully to these concerns. As it has stated in section 8.1 of GN 24, ASX firmly believes that it should only grant a waiver from the requirement for security holder approval under LR 10.1 to the acquisition or disposal of a substantial assets involving a person in a positon of influence where it is satisfied that there is no reasonable prospect of the counterparty, either itself or through its connections to the RE of the listed trust, influencing the terms of the transaction to favour themselves at the expense of the trust. ASX intends to retain the guidance to this effect in section 8.1 of GN 24. ASX has, however, amended GN 24 to delete the statements in section 8.1 of GN 24 (and the corresponding statements in sections 2.8 and 4.9 of GN 25) that it will only grant waivers "in exceptional circumstances" and that the "bar in this regard is high". It has also added guidance to section 6.1 of GN 24 around the factors relevant to a determination on whether it will grant a waiver from LR 10.1 to an externally managed listed trust.

Waivers of LR 10.1 – standard supply agreements

One respondent suggested expanding the policy position in section 8.3 of GN 24 indicating ASX's preparedness to grant waivers of LR 10.1 for standard supply agreements with persons in a position of influence to other (non-standard) supply agreements on arm's length terms. This would involve ASX not only having to determine whether the agreement was on arm's length terms, but also substituting its judgment on the acceptability of the transaction for that of security holders, neither of which ASX considers appropriate.

By contrast, one respondent was opposed outright to the granting of waivers in relation to standard supply agreements, arguing that even standard supply agreements with persons in a position of influence should be subject to security holder approval. This is a long standing waiver and one that

[31] ASX would note that the mere fact a transfer from/to a listed fund is supported by an independent valuation does not mean there is "no possibility" for shifting value away from the listed fund. Independent valuations can differ significantly.

only occasionally comes up in practice. ASX considers the policy position for these types of waivers is well grounded and they should neither be expanded nor withdrawn.

Other issues in respect of GN 24

Two respondents suggested that the $5,000 *de minimis* exception ASX proposed in section 3.2 of GN 24 for entities with negligible or negative equity should be increased to $50,000. ASX does not agree. The $5,000 threshold aligns to the small benefit exception in chapter 2E of the Corporations Act.

One respondent thought it would be helpful if section 8.4 of GN 24 changed the terms of the standard waiver for granting security to allow a change that does not “materially benefit the 10.1 party” rather than one that is “minor”. ASX understands the point and has modified section 8.4 of GN 24 to allow a change that does not advantage the 10.1 party, or disadvantage the entity, in a material respect.

The exceptions to LR 10.11 in LR 10.12

Three respondents suggested that LR 10.12 exception 1 should allow related parties to participate in a shortfall facility for a pro rata offer up to a sensible cap. They said that this would allow more funds to be raised when needed, but still maintain the integrity of the exception. ASX does not agree. This is an exception to the general rule that issues of securities to persons in a position of influence should be subject to security holder approval. It is predicated on the pro rata nature of the underlying issue, which ensures that all security holders have had an equal opportunity to participate in the issue on the same terms. Allowing directors to participate in the shortfall without security holder approval is contrary to the policy underpinning the exception.

One respondent noted that listed entities may benefit from clarification in LR 10.12 exception 3 that a restriction on employees participating in a dividend or distribution plan in respect of securities held under an employee incentive scheme is not a limit on participation in the dividend or distribution plan for the purposes of that exception. ASX agrees and has added a note to LR 10.12 exception 3 to this effect.

Two respondents suggested the removal of LR 10.12 exception 12 (issues to future related parties) as it “allows quite large equity issues to directors to be agreed prior to their appointment and subverts the intent of” LR 10.11. ASX does not agree. If the issue takes place before a person is a director, they are not in position to influence the board and the price agreed results from an arm’s length negotiation. It is therefore outside the mischief that LR 10.1 seeks to prevent.

The requirements to approve an issue of securities under an employee incentive scheme in LR 10.15

Three respondents supported, while five respondents opposed, the new requirement in LR 10.15.3[32] that a notice of meeting proposing a resolution under LR 10.14 to approve an issue of equity securities to a director or associate under an employee incentive scheme, disclose the director’s total remuneration. This aligns with ASIC view of the disclosures required to approve a related party benefit under section 208 of the Corporations Act (see “Disclosure of a relevant director’s total remuneration package” in table 2 of ASIC Regulatory Guide 76 *Related Party Transactions)*. ASX therefore intends to proceed with the new LR 10.15.3.[33] For consistency, ASX is also introducing an

---

[32] Note that this rule has become LR 15.3.4 in the final LR amendments. This is as a consequence of the changes to LR 10.15.10 in the consultation draft mentioned in ‘6.2 Supplemental changes to the listing rules in the consultation package’ below, which have resulted in LR 10.15.10 being deleted and a new LR 10.15.3 being introduced.

[33] See note 32 above.

equivalent requirement in LR 10.13.8 for issues intended to remunerate or incentivise directors that an entity seeks to have approved by members under LR 10.11 rather than under LR 10.14.

Three respondents asked for guidance on what is included in "total remuneration" for these purposes. ASX has updated section 5.2 of GN 25 to provide further guidance on this issue and also to quote and endorse ASIC's guidance on this topic in ASIC Regulatory Guide 76.

One respondent objected to the proposed statement required under LR 10.15.11[34] in a notice of meeting proposing a resolution under LR 10.14 to approve an issue of equity securities to a person in a position of influence under an employee incentive scheme. It stated that it was not clear why this statement, which is currently only relevant to notices of meeting under existing LR 10.15A, should be extended to all approvals under LR 10.14. ASX does not agree. This is simply a function of the merger of current LR 10.15 and 10.15A.

One respondent suggested a minor drafting change to LR 10.15.11 to ensure that it does not cut across the exception in LR 10.16, which ASX has made.

One respondent opposed the inclusion of the note to the definition of employee incentive scheme that: "A scheme can be an employee incentive scheme of the purposes of the LR even if there is only one employee or non-executive director participating in the scheme". It commented that this could invite entities to inappropriately issue securities under the guise of an employee incentive scheme when they should get approval under chapter 10. This comment is founded on a misunderstanding of the LR. Any issue of securities to a director or associate outside of the exceptions in LR 10.12 will acquire approval under either LR 10.11 or, if it is an issue under an employee incentive scheme, LR 10.14.

Other issues in respect of GN 25

One respondent expressed concern that within the mining industry, it is often the case that the main support for junior explorers is largely found within the existing connected parties to the entity. It objected to what it characterised as the broadening of the definition of "closely connected party". ASX would note that this term was simply its shorthand way of referring to the parties captured by LR 10.11.2, 10.14.2 and 10.14.3 and not an extension of any sort. The respondent also objected to the provisions dealing with CEOs in sections 2.5 and 4.6 of GN 25. ASX does not agree with the respondent's position on these issues and is retaining these provisions.

One respondent suggested that section 3.3 of GN 25 (underwritings of pro rata issues) should be modified to outline an acceptable market fall percentage for an arrangement to be considered a genuine underwriting. ASX does not agree. This comment was made in relation to a quote from ASIC Regulatory Guide 6 *Takeovers: Exceptions to the general prohibition*, where ASIC states that "arrangements that permit the underwriter to terminate on the basis of an event that is certain, or near certain, to occur (such as a token fall in a relevant market index) are also likely to mean that the underwriter has an option to underwrite and does not, in substance, assume shortfall risk". ASX does not consider it appropriate that ASX should qualify guidance from ASIC.

The same respondent suggested that ASX should clarify whether the jurisdictions listed in footnote 60 of GN 25 have acceptable takeover regimes for the purposes of the waiver discussed in section 3.6 of GN 25. ASX is comfortable with the way in which that footnote is currently worded.

---

[34] This requires the notice to state that details of any securities issued under the scheme will be published in the annual report of the entity relating to the period in which they were issued, along with a statement that approval for the issue was obtained under LR 10.14 and that any additional persons covered by LR 10.14 who become entitled to participate in an issue of securities under the scheme after the resolution is approved and who were not named in the notice of meeting will not participate until approval is obtained under LR 10.14.

One respondent noted in relation to section 3.13 of GN 25 that ASX has previously indicated a holding of over 30% of an entity's ordinary securities or holding a lesser percentage of an entity's ordinary securities but with an attendant right to appoint a director is likely to mean the entity will be considered a related party by ASX. The respondent submitted that it would be helpful if ASX could clarify its position and specify these percentages in GN 25. ASX sees the merit in this suggestion but, on further reflection and for greater market certainty, ASX considers that this should be addressed in the LR rather than in guidance. ASX has therefore added to LR 10.11:

- a new LR 10.11.2 to extend LR 10.11 to "a person who is, or was at any time in the 6 months before the issue or agreement, a substantial (30%+) holder in the entity";
- a new LR 10.11.3 to extend LR 10.11 to "a person who is, or was at any time in the 6 months before the issue or agreement, a substantial (10%+) holder in the entity and who has nominated a director to the board of the entity (in the case of a trust, to the board of the responsible entity of the trust) pursuant to a relevant agreement which gives them a right or expectation to do so; and
- a new 10.11.4 to extend LR 10.11 to an associate of a person referred to in rules 10.11.1 to 10.11.3,

and renumbered existing LR 10.11.2 to 10.11.5. It has also inserted new definitions of "substantial (30%+) holder" and "substantial (10%+) holder" in LR 19.12 and added new sections 2.4, 2.5 and 2.6 to GN 25 with guidance on these new provisions.

One respondent noted in relation to section 4.1 of GN 25 that ASX reconsider whether it is appropriate to treat performance rights as options or equity securities. It submitted that this should be left to an analysis of the particular performance rights as many of the performance rights it had previously observed would not have been equity securities as they did not have a right to securities attached. ASX has updated section 2 of GN 19 and section 4.1 of GN 25 to address this issue.

Two respondents objected to the guidance in section 4.9 of GN 25 regarding the use of a statutory declaration as evidence that a close relative of a director is not an associate of the director and therefore LR 10.14 should not apply to an issue of securities to the relative under an employee incentive scheme. ASX would point out that those who falsely swear a statutory declaration are liable to penalties for perjury and that equity issues to a relative of a director would generally have to be disclosed as a related party transaction in an entity's accounts. ASX considers the combination of disclosure and verification by oath leads to an appropriate policy outcome.

5.16. Voting exclusions

ASX proposed amendments to LR 14.11 and 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 on LR resolutions.[35] Respondents generally supported ASX's proposed amendments, with some reservations discussed below. ASX is proceeding with them, with the modifications mentioned below.

Undirected proxies in favour of the chair

One respondent submitted that the changes to the voting exclusion statement in LR 14.11 to remove the reference permitting "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" may have unintended consequences. Specifically, it might exclude discretionary votes of security holders

[35] See section 3.8 of the consultation paper.

who are entitled to vote on a resolution, where they have given the chair of the meeting an undirected proxy but the chair is subject to a voting exclusion. It argued that the removed text served to ensure that the discretionary votes of these security holders were counted and not lost.[36] ASX is not convinced that this position is consistent with section 250C(1) of the Corporations Act, which provides that a proxy who is not entitled to vote on a resolution as a member may vote as a proxy for another member who can vote “if their appointment specifies the way they are to vote on the resolution and they vote that way”. ASX thinks it is reasonably arguable that an undirected proxy given to the chair does not “[specify] the way they are to vote” for these purposes. However, ASX can also see a respectable argument to the contrary.[37] It was not ASX’s intention in seeking to improve the operation of LR 14.11 to disenfranchise any security holders presently able to vote on LR resolutions via the chair as their proxy. ASX has therefore reinstated the words referred to above in LR 14.11.[38]

Three respondents similarly expressed concerns that the proposed amendments to LR 14.11 may inadvertently remove the ability for the chair to vote undirected proxies in respect of a resolution connected directly or indirectly with the remuneration of KMP, even where the chair has an express authority to do so and is therefore permitted to vote on the resolution under section 250BD of the Corporations Act.[39] The amendments ASX has made to LR 14.11 referred to in the previous paragraph should address this issue.

Incongruity with the Corporations Act

Two respondents noted the incongruity between the voting exclusion required under LR 14.11 (which applies to votes cast in favour of an LR resolution by certain persons and their “associates”) and the voting exclusion in section 250BD of the Corporations Act concerning resolutions connected directly or indirectly with the remuneration of KMP (which applies to votes cast in favour of, or against, such a resolution by KMP and their “closely connected parties”). This incongruity is inescapable. For sound policy reasons, the LR voting exclusions apply only to persons who vote in favour of an LR resolution (they are designed to stop a person with a potential interest in a transaction from trying to force it through by voting in favour of it, not to deny someone who may be opposed to a transaction from voting against it). However, to assist in addressing this issue, ASX has added a note to LR 14.11 reminding entities subject to section 250BD that if a proposed resolution relates directly or indirectly to the remuneration of KMP, they also need to include the voting exclusions required under that section.

Two respondents suggested that there may also be some incongruity between the proposed changes to LR 14.11 and section 250R(4) and (5) of the Corporations Act. ASX does not agree. LR 14.11 only applies to LR resolutions with a voting exclusion. Section 250R(4) and (5) address who can vote on a resolution to approve an entity’s remuneration report at its AGM, to which LR 14.11 has no application.

One respondent also suggested that there may be an inconsistency between the proposed changes to LR 14.11 (which refer to “directions given to the proxy or attorney to vote in favour of the

---

[36] ASX would also note that this issue can be readily managed as a practical matter by appointing as the chair of the meeting or for the relevant part of the meeting someone who is not subject to a voting exclusion.

[37] The way in which the Corporations Act deals with voting exclusions and proxies in sections 250BDand 250R would support the argument to the contrary (that is, despite section 250C(1), a chair with an undirected proxy can vote that proxy even though they may be subject to a voting exclusion preventing them from voting in their own right).

[38] Notwithstanding this change to the LR, listed entities should obtain their own legal advice on whether a chair with an undirected proxy can vote as proxy on a resolution under section 250C(1) of the Corporations Act.

[39] Section 250BD may apply to some LR resolutions (eg a resolution under LR 10.14 to approve an issue of equity securities to a director under an employee incentive scheme).

resolution") and the wording of section 250C(1) of the Corporations Act (which refers to a proxy appointment which "specifies the way they are to vote on the resolution"). ASX does not see any inconsistency. Section 250C sets out general provisions dealing with the validity of votes cast by proxy, regardless of whether they are cast for or against a resolution. LR 14.11 only applies to LR resolutions with a voting exclusion. As mentioned above, there are sound policy reasons why the LR voting exclusions only apply to persons who vote in favour of an LR resolution.

Voting by nominees, trustees, custodians and other fiduciaries

One respondent welcomed the change to LR 14.11 to facilitate voting by nominees, trustees, custodians and other fiduciaries on LR resolutions with a voting exclusion and to eliminate the need for entities to apply for a waiver to allow this to occur. However, it objected to the requirement that the nominee, trustee, custodian or other fiduciary obtain confirmation in writing that the beneficial holder is not excluded from voting on the relevant resolution. ASX does not agree. It is important that nominees, trustees, custodians and other fiduciaries receive this confirmation before voting or else it could compromise the integrity of ASX's voting exclusion requirements. Nominees, trustees, custodians and other fiduciaries should be able to include the required confirmation in their voting instruction forms without any difficulty.

One respondent asked who is responsible for identifying nominees, trustees, custodians and other fiduciaries and ensuring that the correct voting exclusions are applied. It also asked whether a securities registry or issuer has an obligation to ensure that the nominee, trustee, custodian or other fiduciary has received the requisite written confirmation from the beneficial holder? ASX has introduced a new GN 35 *Security Holder Resolutions* addressing these issues (see section 6 of that GN).

Specific voting exclusions

One respondent expressed practical concerns about applying a voting exclusion to a resolution under LR 7.4 ratifying a past issue of securities, where the security holders who participated in the issue and who are therefore subject to a voting exclusion could be large in number. ASX has included guidance in new GN 35 addressing this issue (see section 9 of that GN).

One respondent suggested some drafting changes in the relevant GNs addressing the different voting exclusions under the LR to tighten what is meant by a "material benefit" and to make the guidance more consistent with the language of the relevant voting exclusions, which ASX has adopted.

One respondent objected to the changes to the voting exclusions for LR 11.1.2 and 11.2 extending them to "any other person who will obtain a material benefit as a result of the transaction (except a benefit solely by reason of being a holder of ordinary securities in the entity)". It raised concerns about the "potential unintended consequence of the difficulties associated with the entity applying and policing the exclusion and particularly where the 'benefit' is unknown (or not reasonably capable of being known) to the entity." ASX does not agree. ASX has given clear guidance in GNs 12, 13, 21, 24 and 25 as to what may constitute a "material benefit" for these purposes.

5.17. Improvements to ASX's escrow regime

ASX proposed substantial changes to its escrow regime in chapter 9 and Appendices 9A and 9B of the LR to substantially reduce the administrative burden for applicants seeking to list on ASX and for ASX.[40] Respondents overwhelmingly supported ASX's proposed changes. ASX is therefore proceeding with them, with the modifications mentioned below.

[40] See section 4.1 of the consultation paper.

Transition date

These changes will come into effect on 1 December 2019. However, if an entity wishes to adopt the new escrow regime before that date, ASX will look favourably upon a request for waiver to achieve that outcome. It should be noted that ASX will not allow an entity to cherry pick aspects of the new escrow regime it wishes to adopt early – it must be all or nothing. It should be further noted that early adoption will require a provision in the entity's constitution that conforms to the new LR 15.12.

When escrow is applied

Three respondents thought that the thresholds set out in section 3.6 of GN 11 for an entity to have an acceptable track record of profitability so as to not have to apply escrow were too high. One suggested that the thresholds for consolidated revenue over the last three years prior to listing should be reduced from $30m to $25m; for consolidated revenue for the last 12 months prior to listing from $20m to $15m; for raising size from $20m to $15m; and for market capitalisation from $100m to $75m. Two suggested that the thresholds for consolidated revenue over the last three years prior to listing should be reduced from $30m to $20m and for consolidated revenue for the last 12 months prior to listing from $20m to $15m, but made no reference to changing the other thresholds. ASX agrees with the latter position and has amended section 3.6 of GN 11 to reflect the reductions those respondents have suggested.

One respondent suggested it would be helpful if ASX could update GN 11 to make it clear that the determination of whether an entity has an acceptable track record of profitability or revenue for escrow purposes will often be based on pro forma accounts rather than statutory accounts, given that the latter is often not meaningful due to pre-IPO restructures etc. ASX does not see a need to do this. The question of whether an entity has an acceptable track record of profitability or revenue for escrow purposes is one to be answered by ASX having regard to whatever accounts or other information it considers appropriate.

One respondent submitted that where an adviser has taken securities as payment or part payment for advisory work in lieu of cash, then the adviser should obtain cash formula relief for the agreed value of the services. ASX does not agree. Such services are difficult to value at the best of times. To accept the value put on the transaction by the entity and its adviser would open up substantial scope for abuse and often lead to escrow not applying in circumstances where it should.

Venture capitalists

Three respondents submitted that the provisions in section 2.2 of GN 11 stating that for a venture capitalist not to be considered a promoter, any NED appointed by them could not be "actively involved in the planning and preparation for the entity's listing" was too restrictive and ran counter to the expectation that directors of an entity seeking a listing would participate in due diligence for the listing prospectus. ASX agrees and has removed this provision from section 2.2 of GN 11.

One respondent submitted that a venture capitalist should be able to be represented on the board of an entity by two non-executive directors rather than just one, and still not be considered a promoter. ASX agrees and has updated section 2.2 of GN 11 to provide for this.

Trustees and custodians

One respondent sought further clarity on the treatment of holdings of restricted securities by trustees under the proposed new escrow regime, especially in relation to discretionary family trusts and self-managed superannuation funds where a related party or promoter may not be the sole beneficiary. ASX agrees and has modified Appendix 9B to extend the escrow restrictions that

currently apply to related parties and promoters to their associates (as defined in the LR) and has updated its guidance in section 6.11 of GN 11 to address this issue.

One respondent suggested that custodians should not have to execute escrow deeds and that it should be sufficient for the underlying beneficial owner to do so. ASX does not agree. Where an escrow deed is required, it is critical that the legal owner of the securities executes it.

The duration of the escrow period

Two respondents suggested aligning the escrow period in Appendix 9B to the usual period applied in voluntary escrow arrangements, being the forecast period in the listing prospectus or PDS plus one full audit cycle. ASX does not agree. Voluntary escrow commonly applies where the entity already has some sort of track record of revenue generation and/or profitability. That is not generally the case for ASX-imposed escrow.

One respondent noted the reference in section 10.7 of GN 11 that "ASX will consider exercising its discretion" for convertible securities held by a seed capitalist who is not a related party or promoter, so that the escrow period runs for 12 months from the date the holder was issued the convertible security, rather than for 12 months from the date the holder was issued the ordinary securities at conversion. It suggested that it would be better for all parties involved in an IPO if ASX stated a firm position. ASX agrees and has updated section 10.7 of GN 11 to do so.

One respondent suggested that the conditions for bona fide purchasers from related parties or promoters to receive the relief from escrow contemplated in section 10.8 of GN 11 were too restrictive and that the escrow regime should be modified for such purchasers so that the escrow period of 2 years runs from the date they purchased their securities rather than the date of listing. ASX does not support having a third tier of escrow restriction. It would complicate the escrow regime. The normal rule is that escrow follows the securities. If securities subject to escrow are transferred, the transferee inherits the same escrow treatment as the transferor. This is an important principle that prevents the avoidance of ASX's escrow restrictions. The concession in section 10.8 of GN 11 for bona fide purchasers from related parties or promoters is not one that ASX believes should be widened.

The same respondent suggested modifying the escrow treatment of convertible securities so that if the securities issued on the conversion of the principal component of convertible securities are free from escrow, the same treatment is applied to any securities issued to pay the interest component. ASX does not agree. The reason the principal component of a convertible security qualifies for cash relief under the escrow rules is that it is the equivalent of a cash contribution to the entity made at the time the convertible note was originally issued. The interest component does not involve any cash contribution to the entity.

Transitional arrangements for LR 15.12

Two respondents pointed out the absence in the consultation draft of any express transitional arrangements for the new constitutional requirements for escrow in LR 15.12. To address this issue, ASX has added a note to the rule specifying that the changes to that rule made on 1 December 2019 apply to entities admitted to the official list, or that issue restricted securities, on or after that date. Entities that were admitted to the official list and issued restricted securities before that date must continue to comply with the provisions of LR 15.12 in force immediately prior to that date.

Notice of securities coming out of escrow

Two respondents suggested removing the requirement in LR 3.10A for an entity to give 10 business days' notice of securities being released from ASX-imposed or voluntary escrow. ASX does not agree.

This notification is important so that the market is not caught unawares of a possibly significant volume of securities coming out of escrow where the owners may be looking to sell. However, ASX has decided to reduce the required period of notice from 10 business days to 5 business days, for consistency with the changes it has made in this regard to a number of rules.

The same two respondents also suggested that if ASX was not inclined to make this change, ASX amend LR 3.10A to allow the 10 business day notification to be made 10 business days in advance of the earliest possible time for release of the relevant escrowed securities so that holders subject to voluntary escrow are not held back from selling their securities once an early release threshold has been met. ASX does not believe this amendment is necessary. LR 3.10A counts back 10 business days from the end of the escrow period. If an early release threshold is triggered, that is the end of the escrow period for these purposes.

Two respondents suggested that escrowed security holders should have the option to sell-down together as a block at the time of the release from escrow, with any escrowed security holders who choose not to participate being locked up for the next 60 or 90 days. This was put forward as a mechanism to promote orderly trading at the time of escrow release. ASX has no particular issue with security holders subject to voluntary escrow agreeing amongst themselves to do this, although they would need to consider carefully the possible collusion, insider trading, substantial shareholding and takeovers issues involved. However, ASX does not think it would be appropriate for it to mandate this for restricted securities under the LR.

Other escrow issues

One respondent asked for further clarity on the treatment of CDIs under the proposed new escrow regime. ASX agrees and has added a new LR 9.1(i) and added a new section 5.7 to GN 11 to address this issue.

One respondent asked if ASX would clarify in GN 11 whether or not it will accept electronically signed copies of restriction deeds. ASX has updated section 5.3 of GN 11 to address this issue.

One respondent expressed reservations about the requirement that restriction notices be sent to affected holders by electronic mail or post no later than 5 business days prior to an issuer's anticipated date of admission to the official list. They noted that the completion of escrow arrangements usually happens late in the IPO process. ASX believes it is particularly important that security holders receive escrow notices a reasonable period prior to the commencement of trading and has decided to stay with this timing.

Two respondents expressed concern about the breadth of the references to "family and friends" in section 4.3 of GN 1, section 2.2 of GN 11 and section 3.4 of GN 12 (dealing with issue of securities to related parties, promoters, professional advisers involved in the transaction, and their family, friends and associates, at a significant discount to the anticipated offer price for the capital raising). The use of that terminology was quite intentional on the part of ASX and directed to addressing some recent examples of abuse in this area.

5.18. Agreements for admission and quotation (Appendices 1A, 1B and 1C)

ASX proposed separating the application forms for admission to the official list in Appendices 1A, 1B and 1C from the formal listing agreements included in those Appendices, with the application forms being made available on ASX Online and the terms of the formal listing agreement being retained in the relevant Appendix in the LR.[41] No respondents had any objections to this separation, and ASX is therefore proceeding with this change. However, a number of respondents expressed concerns

[41] See section 4.3 of the consultation paper.

about the wording of the warranties and consents in the updated agreements for admission and quotation. ASX agrees with the concerns about the breadth of the consents and is modifying them as set out below. ASX does not agree with the concerns about the warranties.

Three respondents suggested that the wording of the ss707(3)/1012C(6) warranty in Appendices 1A, 1B and 1C about securities to be quoted being freely tradeable, should be amended to reflect the fact that those provisions allow securities to be issued without a prospectus or PDS to, and traded for 12 months among, non-retail security holders. ASX again does not agree. Trading on ASX takes place anonymously. Any securities quoted on ASX are able to be purchased by retail investors. It is therefore imperative that securities must not be quoted on ASX if they are not able to be freely traded at the time of quotation. An entity that seeks to have securities quoted on ASX must do everything required to permit them to be freely tradeable from the point of quotation.

Five respondents objected to the breadth of the provisions in Appendices 1A, 1B and 1C giving ASX the right to disclose to any third party any information provided by the applicant to ASX in connection with its listing application. ASX agrees and has narrowed the drafting to limit it to the disclosure of information "in connection with ASX's assessment of this application".

Three respondents similarly objected to the breadth of the provisions in Appendices 1A, 1B and 1C giving third parties the right to disclose information to ASX relating to the entity seeking admission or its employees, officers or agents. They questioned the legal effectiveness of the entity giving this authorisation on behalf of its employees, officers and agents. ASX does not agree. The consent is not given by the applicant on behalf of these persons. It is a consent from the applicant to information being given about these persons.

Two respondents expressed some concerns about the breadth of the warranty in Appendices 1A, 1B and 1C that the information given in connection with the admission of the entity or the quotation of securities is or will be "accurate, complete and not misleading" and suggested that it be narrowed by the words "to the best of our knowledge". ASX considers that this warranty is critical and is not agreeable to making this change.

Three respondents suggested it would be helpful if the timing for the lodgement of an Appendix 1B application for admission as an ASX Debt Listing under LR 1.9 could be stated or otherwise LR 2.8.7 might apply. ASX does not understand the point. If the debt securities are being offered under a prospectus, LR 2.8.1 addresses when the application for quotation needs to be made. If the debt securities are not being offered under a prospectus, the Appendix 1B simply needs to be lodged in sufficient time that will accommodate the applicant's timetable for admission (as is the case for an ASX Listing under LR 1.7 or an ASX Foreign Exempt Listing under LR 1.14).

Two respondents also suggested that it would be helpful if Appendix 1B could be amended to make clear that although it is the trustee that applies for the debt listing, the entity that will be included in the ASX Official List is the trust and not the trustee.[42] ASX agrees, however, rather than amend Appendix 1B, ASX has decided to address this issue across the breadth of the LR by amending LR 19.11B to provide that where the RE of a trust applies for a trust to be admitted, and the trust is admitted, to the official list:

(a) the trust, rather than the RE, is regarded as the listed entity and must comply with the listing rules;

[42] The respondents noted that it was important to clarify whether it is the trust or the RE that is listed as this impacts on whether the relevant entity will fall under the definition of "disclosing entity" under the Corporations Act and therefore will be required to prepare half year reports under the Corporations Act.

(b) references in the listing rules to the entity's assets, liabilities, equity interests, profits, losses or market capitalisation are to be read as referring to the assets, liabilities, equity interests, profits, losses or market capitalisation (as the case may be) of the trust;

(c) unless otherwise stated, references in the listing rules to the entity's directors mean:

(i) if the trust is internally managed, the directors of the RE; or

(ii) if the entity is externally managed, the RE of the trust; and

(d) unless otherwise stated, references in the listing rules to the entity's chair, CEO, CFO or secretary mean the chair, CEO, CFO or secretary of the RE; and

(e) the RE of the trust has an obligation to ensure that the trust complies with the listing rules.[43]

ASX has also introduced a definition of "internally managed" and "externally managed" in LR 19.12.

5.19. Eliminating the need to apply for a number of standard waivers

ASX proposed a number of LR changes to remove the need for listed entities to apply for nine of the standard waivers set out in GN 17.[44] Respondents overwhelmingly supported ASX's proposed changes in this area. ASX is therefore proceeding with them.

One respondent queried why all of the remaining standard waivers set out in the Annexure to GN 17 have not been reflected in changes to the LR. ASX would simply note that to do this for some of the remaining standard waivers would require complex and lengthy amendments to the LR that could "clutter" the rulebook and make it less easy to follow. Some of these waivers can also be quite nuanced, even though they may be characterised as "standard", and in ASX's view these are better dealt with on a case-by-case basis through ASX's waiver discretion rather than being "hard coded" into the LR.

5.20. Standard forms

ASX proposed changes to remove a number of standard forms from the Appendices to the LR and make them available on ASX Online. This is to 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. To ensure the market had adequate warning of any changes to standard forms, ASX proposed a new LR 19.8B requiring 14 days' notice to be given to the market of any such changes.[45]

Respondents generally supported ASX's proposed changes but with some reservations. ASX is therefore proceeding with the proposed changes, with the modifications mentioned below.

Three respondents objected to ASX being able to amend LR appendices without formal consultation regardless of the amount of notice given. ASX notes the concern. As it does with all major rule amendments, ASX will continue to consult with industry on major changes to LR appendices before introducing them. However, ASX does not believe it necessary or fruitful that it should have to do so on minor changes.

---

[43] See also the new LR 19.11C proposed in the text accompanying note 30 above addressing similar issues in connection with stapled groups.

[44] See section 4.4 of the consultation paper.

[45] See section 4.5 of the consultation paper.

Three respondents submitted that 14 days' notice of a change in a prescribed ASX form could be too short and instead variously suggested the period should be one month, 30 days or 28 days. ASX can see the issue and has made the required period of notice in LR 19.8B 30 days rather than 14 days. ASX would note that this is a minimum period and there will no doubt be cases where ASX gives a longer period of notice to the market of a change to a standard form.

5.21. Timetables for corporate actions

ASX proposed a raft of drafting changes to the timetables for corporate actions in LR Appendices 3A, 6A and 7A intended to make them clearer and easier to follow.[46] Respondents generally supported ASX's proposed changes. ASX is therefore proceeding with them, with the modifications mentioned below.

Transition date

The new timetables will come into effect for corporate actions notified to ASX on or after on 1 December 2019. Corporate actions notified to ASX before that date will proceed on the old timetables applicable at the time they were notified to ASX, even though they may not be completed until after 1 December 2019.

DRP issues

Three respondents recommended that ASX amend the timetable for DRP issues in item 1 of appendix 6A to make it clear that the 5 business day limit to issue DRP securities after the date of the dividend only applies to entities that issue new securities to satisfy DRP entitlements and not to entities that purchase and transfer existing securities to satisfy such entitlements (which could take longer in practice). To avoid causing disruption to the market, ASX agrees (albeit with some hesitation) and has added a note to the timetable for DRPs to state this position, along with an exhortation encouraging (but not requiring) entities who purchase DRP entitlements to do so within a timeframe consistent with that set out in section 1 of Appendix 6A. That said, ASX is concerned that this could lead to unequal treatment of security holders based on whether an entity issues new securities, or purchases and transfers existing securities, to satisfy entitlements under a DRP. ASX intends to keep this issue under review and may look to impose a specific deadline for such purchases to be completed in the future.

One respondent suggested that the timetable for DRP issues should require the securities to be issued on the same date as payment of the dividend. No one else raised this suggestion. ASX is halving the current 10 business day deadline after the dividend payment date for entities to issue securities under a DRP. ASX wishes to see how the market copes with this change before considering shortening this deadline even further.

Option expiry notices

One respondent approved the proposed exception in clause 5.3 of Appendix 6A to the requirement to send expiry notices to option holders where the current market price of 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. It suggested that ASX should define what it means by "current market price" for these purposes. ASX agrees and has updated clause 5.3 of Appendix 6A to specify for these purposes the closing market price on the trading day which is 20 business days before the option expiry date (this being the last date for an option expiry notice to be sent to option holders).

[46] See section 5 of the consultation paper.

Another respondent proposed that the disclosure document setting out the terms of offer/issue of options specify that the issuer is not obliged to send expiry notices if the new criteria of the proposed exception are met. From ASX's perspective, it is up to issuers to specify in the terms of issue of any options and any related disclosure document whether they will give a notice of expiry to option holders and if so when and on what conditions, provided what is said in that regard is consistent with the LR.

Conversion of convertible securities

Two respondents submitted that the proposed 5 business day deadline in the timetable in section 5 of Appendix 6A for an entity to apply for quotation of new securities issued upon the conversion of quoted convertible securities was too short.[47] One proposed that it should revert to the current 15 business days while the other (a major securities registry) suggested a compromise of 10 business days. ASX understands the practical issues involved in conversion but considers that the benefit to security holders of receiving their converted securities and being able to trade them on ASX in a timely manner is also a relevant consideration. As a compromise, ASX has decided to reduce this time period to 10 business days rather than the current 15 business day. If an entity is not practically able to meet the 10 business day timeframe, it can always approach ASX for a waiver or no-action letter.

New LR 7.10 – non pro rata issues

One respondent referenced the re-drafting and shifting into LR 7.10 of 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. They queried the need for this period in all cases. ASX agrees. The provenance and purpose of this requirement are unclear. ASX has therefore decided to proceed with the removal of section 1 of Appendix 7A but not to proceed with the replacement provision in LR 3.10.

Pro rata issues

One respondent noted an error in the timetable for a standard non-renounceable right issue in section 2 of Appendix 7A, which incorrectly had an entry relating to the close of rights trading. ASX has deleted that entry.

One respondent noted that the timetables for pro rata issues in sections 2-6 of Appendix 7A previously stated that an entity must tell option holders that they cannot participate in an issue without first exercising their options and queried the fact that this language was proposed to be softened to the entity "should also consider the rights of convertible security holders to participate in the issue and what, if any, notice needs to be given to them in relation to the offer." This change was intentional and intended to better reflect the different permutations possible under LR 6.19 and 6.20.

Four respondents noted the insertion of the note in the first step of the timetables for pro rata issues in sections 2-6 of Appendix 7A, that "If all of these steps have not been completed prior to the commencement of trading, day 0 will be deemed to be the next business day and all subsequent dates in the timetable will be adjusted accordingly." They agreed that this made sense for the non-accelerated rights issues (sections 2-3) where there is no trading halt, but said that the note could be problematic for any of the accelerated structures (sections 4-6) if the issuer goes into trading halt

[47] Two other respondents similarly submitted that the proposed 5 business day deadline in new LR 2.8.3 for an entity to apply for quotation of new securities issued upon the conversion of unquoted convertible securities was too short (see note 22 above and the accompanying text)

and launches after the market open for whatever reason. ASX agrees and has updated the opening two rows in the timetables in sections 4-6 of Appendix 7A to address this issue.

The same respondents also questioned in a case where an entity requests a trading halt and launches an accelerated offer after market close (rather than before market open) on a particular trading day whether that shouldn't be day 0 for the purposes of the relevant timetables, effectively allowing for a one day contraction in the timetable. ASX does not agree. If an entity requests a trading halt and announces an accelerated offer after market close, day 0 in the timetable has to be the following trading day. Otherwise ASX will not have sufficient notice to set up the corporate action in its systems.

The same respondents further noted that the accelerated rights issue timetables allow institutional offer periods of anywhere between 1-3 days, irrespective of structure, but for the AREO (section 5) and PAITREO (section 6) timetables, the most common day for announcing the institutional offer and coming out of trading halt would be business day 3 (not business day 2 as currently drafted). They noted that the "business day" references are more examples/indicative rather than time limits, but thought it may be worth clarifying. ASX is comfortable with the way in which this issue is dealt with in the accelerated rights issue timetables. They each clearly state that the timetable assumes a trading halt of 2 trading days to conduct the institutional component of the offer and that if the period of the halt differs, the timetable is to be adjusted accordingly.

The same respondents asked ASX to confirm that the AREO (section 5) and PAITREO (section 6) timetables allow (but don't require) a gap of up to 2 days between retail offer shortfall announcement and the associated bookbuild, noting that it is usual practice to hold the bookbuild immediately post the retail shortfall announcement. ASX agrees and has added a note to each of these timetables to address this issue.

Two respondents suggested that the timetables for pro rata offers in sections 2-6 of Appendix 7A should include explicit requirements on what entities should disclose when they announce the "results of the offer", particularly in terms of the level of participation by retail security holders and underwriting shortfalls. The issue of what entities should disclose around the level of participation in security issues and underwriting shortfalls is currently the subject of litigation by ASIC and ACCC against various parties involved in an ANZ institutional share placement in August 2015. ASX considers it appropriate to await the outcome of those proceedings before making rule or guidance changes in this area.

Returns of capital by way of in specie distribution of securities in another entity

One respondent noted that the timetable for a return of capital by way of in specie distribution of securities in another entity in section 9 of Appendix 7A seems to have been written for a scenario where security holders are being issued with new securities in an entity and that for an in specie distribution of existing securities in an entity, it would be more accurate to refer to a 'transfer' of securities rather than an 'issue' of securities. It also noted that if the securities being transferred are already quoted on ASX, it would not be necessary for the issuer to lodge an Appendix 2A to apply for their quotation. ASX agrees and has modified this timetable accordingly.

Court approved schemes of arrangement

One respondent expressed the view that the proposed timetable in section 10 of Appendix 7A regarding court approved schemes of arrangements operates in a manner that is not equitable or efficient for investors holding positions with custodians. For these events investors must submit an election by the meeting date and retain this position until the scheme is effective. This poses challenges for custodians who hold positions in omnibus accounts and need to track client elections and block settlement occurring from the meeting date until after effective date of the scheme, which

can take several weeks to occur. It suggested that the relevant timetable for court ordered schemes should be amended to have a single date where client elections must be submitted by, after which the scheme should become effective and trading suspended. This is not consistent with the legal framework governing schemes in Australia and so ASX is not in a position to adopt this suggestion.

Equal access buybacks

One respondent noted in relation to the timetable for equal access buybacks in section 11 of Appendix 7A that the “new requirement” for issuers to lodge their Appendix 3F final notice “no later than half an hour before the commencement of trading on the next business day after the offer closing date” is not practical, given the logistics of closing an offer and completing the necessary audit, reconciliation and reporting of tenders received. It recommended that the lodgement time for the Appendix 3F final notice be revised to be within 1 business day of the offer closing. ASX would note that this is not a new requirement – it presently exists in LR 3.8A (see the second last row in the table in that rule). Nonetheless, ASX understands the issue and has made this change to the timetable in section 11 of Appendix 7A. ASX has also made a corresponding change to LR 3.8A.

Another respondent noted in relation to the timetable for equal access buybacks in section 11 of Appendix 7A that the time in which a Form 484 must be lodged with ASIC is governed by the Corporations Act (currently it is one month after the relevant change). It recommend that the Form 484 regarding the cancellation of securities pursuant to an equal access buy-back should be lodged with ASX promptly after it is lodged with ASIC (similar to LR 3.8A) and that there is no need for section 11 of Appendix 7A to stipulate when the form must be lodged with ASIC. ASX does not agree. ASX requires a copy of the Form 484 to verify that the entity has updated its register to cancel the securities bought back and will only update its records to reflect the cancellation upon receipt of that form. ASX considers 5 business days after the offer closing date ample time for an entity to cancel the securities bought back and provide this form to ASIC and ASX, notwithstanding the Corporations Act may allow a longer period for lodgement.

Security purchase plans (SPPs)

One respondent recommended that the SPP timetable in section 12 of Appendix 7A include the same opening date requirement as in LR 7.10. As mentioned above, ASX is not proceeding with LR 7.10 and so is not going to implement this recommendation.

Two respondents stated that they did not support changing the timelines from the original 5 and 7 business days after the SPP closing date. Both said that the proposed timelines of 3 and 5 business days are too tight for entities with large security holder bases and complex offers. One (a major securities registry) suggested a compromise of 3 and 7 business days respectively. ASX understands and is proceeding with this compromise suggestion.

Interactive timetables

Finally, three respondents queried the need in the case of a “vanilla” capital raising (eg an entitlement offer that strictly follows a timetable provided for in Appendix 7A), that ASX not require that the timetable be reviewed in advance and should automatically grant a trading halt for the capital raising provided ASX ETO expiry dates are not affected. It also suggested that the risk of a timetable error not being picked up until post-launch could be mitigated if ASX provided a smart form timetable that entities could enter dates into and receive an automatic response. This would help free ASX’s time up to focus on other matters and would facilitate capital raisings that need to move quickly to launch in a condensed timeframe (eg over a long weekend). ASX thinks that this is a good suggestion and will look to explore this at a future date.

5.22. Deferred settlement trading

ASX asked for feedback in its consultation paper on its current practices around deferred settlement trading.[48] Only a few respondents addressed the questions ASX asked in its consultation paper. Of those who did, six supported the continuation of existing practice, while only one suggested that the practice should be eliminated.

Currently, deferred settlement trading applies to some 9 corporate actions (as specified in LR Appendices 6A and 7A) and to some IPOs.

ASX has endeavoured to shorten and, where it can, standardise the timetables for corporate actions to reduce the variance in the periods of deferred settlement trading. This has resulted in reductions in the periods of deferred settlement trading for conversion or expiry of convertible securities and bonus issues. At this stage, ASX proposes to retain the current deferred settlement trading timetables for other corporate actions.

One respondent noted that under an IPO where deferred settlement trading is not a feature, holding statements for unrestricted securities are usually required to be despatched 3 business days prior to the anticipated date of admission. It recommended that the timeframe for this requirement be reconsidered.

This timetable is set out in a note to LR 2.10. ASX has reviewed that note and agrees that it warrants updating. ASX has decided to replace it with the following:

> *Note: ASX will generally publish a market circular advising of the entity's proposed quotation date. In the case of an entity seeking first quotation of securities at listing:*
>
> *(a) If ASX agrees to a conditional market in accordance with ASX Operating Rule 3330, quotation will usually be granted on a conditional and deferred settlement basis after ASX is satisfied that the entity has met all of the conditions for its admission to the official list.*
>
> *(b) Subject to paragraph (a) above, if the entity's capital raising does not include a general public offer (eg it is limited to institutional offers, broker-firm offers and/or invitation only offers), quotation will usually be granted on a normal (T+2) basis after ASX is satisfied that the entity has met all of the conditions for its admission to the official list and ASX has received confirmation from the entity before market open on the proposed quotation date that the securities to be quoted have been issued; and*
>
> *(c) Subject to paragraph (a) above, if the entity's capital raising includes a general public offer, quotation will usually be granted on a normal (T+2) basis 3 business days after ASX is satisfied that the entity has met all of the conditions for its admission to the official list and ASX has received confirmation that holding statements have been sent to security holders.*

The effect of this change going forward will be that deferred settlement trading in IPOs will generally be limited to conditional markets that meet the requirements in ASX Operating Rule 3330 and otherwise:

- IPO offers that do not include a 'general public offer' can start trading on a T+2 basis as soon as securities are issued; and

---

[48] See section 5.14 of the consultation paper.

- IPO offers that include a 'general public offer' have to wait 3 business days after holding statements are dispatched to start trading on a T+2 basis.

5.23. Monitoring and enforcing compliance with the listing rules

ASX proposed a number of LR changes to enhance its powers to operate the market and to monitor and enforce compliance with the LR.[49] Most of the respondents who addressed this issue supported the notion of ASX having better and clearer powers to monitor and enforce compliance with the LR, but with reservations.

Two respondents suggested that all of ASX's enforcement powers in chapter 18 (including the imposition of conditions under LR 18.5 and 18.5A) should be subject to an obligation on the part of ASX to act reasonably. ASX does not agree. In ASX's opinion, that change would only encourage non-compliance, disputes and litigation.

One respondent objected to the introduction of LR 18.5A stating that ASX can exercise a power or discretion under the LR in its absolute discretion and on conditions, while another expressly supported it, and another supported it provided it was amended to make it clear that it does not oust legal challenge on grounds of natural justice and procedural fairness. Despite the mixed feedback, ASX is intending to proceed with this change.

Three respondents objected to the provisions in LR 18.7 empowering ASX to require a document or information to be verified under oath, arguing that other regulators do not have this power. ASX disagrees. Most regulators (including ASIC) have the power to examine a person of interest under oath. ASX considers the proposed changes to LR 18.7 will substantially improve the compliance framework underpinning the LR and is proceeding with them.

Five respondents expressed concerns about the list of examples ASX proposed to include in LR 18.8 of the types of directions it could give under that rule to secure compliance with the LR, particularly those in paragraphs (c) and (d) empowering ASX to direct an entity not to enter into or perform an agreement or transaction or to require an entity to cancel or reverse an agreement or transaction. They were concerned that the rules should have an explicit linkage to a breach of the LR and about the potential impact such a requirement might have on innocent third parties. ASX understands the concern and has tightened the drafting of paragraphs (c) and (d) to make it explicit that the former only applies where the entry or performance of the agreement or transaction would breach the LR and the latter only applies where the agreement or transaction was entered into in breach of the LR. ASX has also added the following note to LR 18.8:

> "In deciding whether or not to impose a requirement under (c) or (d) above, ASX will have due regard to the impact that such a requirement may have on innocent third parties (noting that ASX does not regard a person who enters into an agreement or transaction with a listed entity where they know, or ought to know, that the agreement or transaction is a breach of the listing rules, or will be a breach of the listing rules if the approval of security holders is not obtained, to be an innocent third party for these purposes)."

Two respondents also suggested in relation to proposed LR 18.8(k)-(m) (which relate to introducing or updating compliance policies and processes, reviewing compliance policies and processes and causing officers or employees to undertake a compliance education program), that these powers should also have an explicit linkage to the rules. ASX agrees and has made this change.

[49] See section 6 of the consultation paper.

One respondent objected to the introduction of LR 18.8(l) and (m), arguing that ASX's other powers to enforce the rules were sufficient for this purpose. Notwithstanding this feedback, ASX is proceeding with LR 18.8(l) and (m) with the changes referred to in the preceding paragraph.

Six respondents expressly supported, while three respondents opposed, the introduction of LR 18.8A giving ASX a power of censure. Those opposed thought that ASX's other powers to enforce the rules were sufficient for this purpose without it needing a power of censure. ASX regards the power to censure as a significant gap in its armoury to enforce the LR and is proceeding with the introduction of LR 18.8A.

Three respondents suggested that if ASX is to have a censure power, there should be a right of appeal against the imposition of a censure. One suggested that the ASX Appeals Tribunal (abolished in December 2015) should be reinstated and hear not only appeals under LR 18.8A but also LR 18.8. ASX firmly believes that it would be a retrograde step for the reputation and integrity of the ASX market to reinstate the ASX Appeals Tribunal. ASX's admission pre-vetting process has been operating effectively to prevent unsuitable applicants listing on ASX to the benefit of all participants in the ASX market since ASX was freed from the appeals to the Tribunal that would inevitably follow a rejected listing application. ASX would also note that listed entities who are dissatisfied with a decision by ASX under the LR have the capacity to pursue, and in fact have pursued, legal action against ASX in a court of law.

Five respondents suggested clarifying the scope of the public censure power and the process proposed to be undertaken before a public censure is made. ASX agrees and has added a note to LR 18.8A that:

> "ASX will generally only exercise its power of censure against an entity where it considers the entity's breach of the listing rules to be egregious and after first providing the entity with an opportunity to comment on the proposed terms of the censure."

5.24. Changes to GN 33 *Removal of Entities from the ASX Official List*

ASX proposed substantial changes to GN 33 to tighten and improve the steps listed entities have to follow when they seek voluntary removal from the official list and ASX's policy for the automatic removal of long term suspended entities from the official list.[50] This issue generated the largest number of submissions in the consultation. The changes were supported by five respondents but, unsurprisingly, the specific changes to ASX's long term suspended entity policy were opposed by some listed entities vulnerable to removal under the revised policy and their advisers.

Those opposed to the changes to ASX's long term suspended entity policy objected to what they saw as a short transition period for those changes to come into effect, given the proposed effective date of 1 July 2019, and asked either for an extension to the effective date (in most cases of 6-12 months) or for existing suspended entities to be grandfathered from the changes. ASX notes that its consultation paper proposing this change was issued in November 2018, effectively giving 7 months' notice of the change and had been signalled by ASX to the market for several months beforehand. However, ASX is cognisant of the concerns raised and has extended the transition date for this particular initiative to 3 February 2020, giving entities an addition 7 months' notice. An amended version of GN 33 has already been issued with this change incorporated.

Respondents were more benign about the proposed changes to other aspects of GN 33.

Two respondents suggested that there could be more definitive guidance in GN 33 regarding the arrangements that ASX expects entities seeking to voluntarily de-list to put in place to enable security

---

[50] See section 9.8 of the consultation paper.

holders to sell or otherwise realise their securities in the lead up to, and after, an entity's removal from the official list. ASX does not wish to be prescriptive in this regard and is comfortable for the moment with the way in which this issue is addressed in GN 33.

One respondent suggested that ASX give further guidance on when ASX is likely to form a view that a voluntary de-listing is motivated "solely or primarily" for an improper purpose (as described in section 2.1 of GN 33) and what factors it will take into account in this regard. ASX looks at these issues on a case-by-case basis. It will form a judgement based on the information before it. ASX does not believe it is necessary or appropriate to say anything further on this point.

Two respondents expressed their support of the policy setting in section 2.7 of GN 33 that where an entity seeking a voluntary de-listing will cease to be a disclosing entity under section 675 of the Corporations Act, security holders who will consequently end up with a material informational advantage over other security holders may have a voting exclusion imposed by ASX preventing them from voting on the resolution approving the de-listing. They noted the guidance in footnote 35 of the consultation version of GN 33, where ASX indicates that directors and "senior managers" with securities will generally be considered to have a material informational advantage over other security holders in these circumstances. They suggested that the phrase "senior managers" may be open to interpretation and that this should be limited in the first instance to the CEO and CFO. ASX does not agree. The reference to "senior managers" was deliberate and intended to give ASX reasonable scope to determine who should be subject to a voting exclusion.

The same two respondents queried the distinction drawn in sections 2.7 and 2.8 of GN 33 between an entity whose ordinary securities are not readily able to be traded on another exchange and an entity with another class of securities not able to be traded on another exchange. Again, ASX is comfortable for the moment with the way in which this issue is addressed in GN 33.

The same two respondents noted the proposed change in section 3.2 of GN 33 amending the reference to "simply failing" to pay an annual listing fee to "refusing" to pay an annual list fee and queried whether ASX was making a distinction between an entity that is incapable (eg due to its cash position) of paying its annual listing fee and an entity that wilfully determines not to pay its annual listing fee. ASX has changed this reference to "declining" to pay an annual listing fee.

The same two respondents expressed support for ASX requiring more detail in a notice of meeting proposing a resolution to approve a voluntary de-listing, but queried whether that should include the proposed explanation of oppression remedies under Part 2F.1 of the Corporations Act. They suggested that this could encourage litigation in relation to de-listing. ASX notes the point but considers that minority security holders who may wish to oppose a voluntary de-listing should have this information presented to them.

Finally, while not specifically raised in the consultation paper, in its consultation roadshows ASX asked for feedback on views that had been put to it in the context of two recent de-listings that the usual requirement in section 2.7 of GN 33 for an ordinary resolution approving a de-listing of an entity that is not listed on another exchange should be lifted to a special resolution. Only three respondents addressed the issue in their submissions. Two supported the change to a special resolution while one preferred it remain as an ordinary resolution. ASX however received submissions from in excess of 200 retail shareholders in relation to one de-listing that occurred over the consultation period, as well as one from an institutional investor and one from a prominent proxy adviser in relation to another de-listing during 2018, forcefully putting the case for a change to a special resolution. ASX has decided to implement this change and to require a special resolution approving a de-listing rather than an ordinary resolution. An amended version of GN 33 has already been issued with this change incorporated.

5.25. Feedback on other drafting improvements to the LR

ASX proposed a range of changes to correct various gaps or errors in the LR and to improve their clarity.[51] ASX received the following comments on the proposed changes:

- ***LR 1.10.1*** – two respondents objected to the proposed addition of LR 3.21 as a rule that an ASX Debt Listing should have to comply with under LR 1.10.1, based on a misunderstanding that it would require an ASX Debt Listing to disclose dividends or other distributions paid on its equity securities. LR 1.10.1 only applies to the debt securities of an ASX Debt Listing. The inclusion of LR 3.21 as a rule that an ASX Debt Listing should have to comply with in relation to its debt securities reflects the fact that some less-traditional debt securities pay a dividend or other distribution rather than interest. ASX has however added a note to the rule to make it clear that it only applies to quoted debt securities that pay a dividend or other distribution.

  ASX has also modified the opening words in LR 1.10.1 to state that it applies in relation to "quoted" debt securities (see also the changes to LR 3.22 described below).

- ***LR 3.10.7*** – one respondent suggested this rule should be amended to clarify that it applies to quoted convertible securities only, given that the amendments to LR 15.1.5 and 15.1.6 make it clear that the intent of these rules is to capture quoted securities. ASX does not agree. LR 3.10.7 and 15.1 serve different purposes. It is appropriate the former extends to all convertible securities, while the latter applies to quoted convertible securities only.

- ***LR 3.19A.2A*** – one respondent suggested a minor drafting change to this rule, which ASX has adopted.

- ***LR 3.22*** – four respondents submitted that this new rule was too broadly drafted, that it should only apply to quoted debt securities and that it should not require a separate disclosure of ordinary interest payments expected to be paid on a particular date beyond requiring the filing of a timely Appendix 3A.2 ahead of the payment date. ASX agrees and has amended the rule accordingly. It now requires a listed entity to:

  (a) notify ASX immediately it makes a decision to pay interest on a quoted debt security or quoted convertible debt security in respect of a period when, but for that decision, interest would not have been paid for that period;

  (b) notify ASX immediately if it makes a decision not to pay interest on a quoted debt security or quoted convertible debt security in respect of a period when, but for that decision, interest would have been paid for that period; and

  (c) provide a completed Appendix 3A.2 to ASX not less than 4 business days before the intended record date to identify security holders entitled to an interest payment on a quoted debt security or quoted convertible debt security.

- ***LR 14.1A*** – one respondent was concerned that the requirement in this rule for listed entities to summarise what will occur if security holders give, or do not give, an approval could impose a significant administrative burden on listed entities for little gain. This appears to have been based on what appears to be a misreading that the rule applies all resolutions. The rule only applies to LR resolutions.

  Another respondent said that it would be helpful for listed entities if ASX provides sample wording that it expects entities to include in notices of meeting for the purposes of complying

[51] See sections 4.2, 7and 8 of the consultation paper.

with new LR 14.1A. They said that this may reduce initial compliance costs for entities in meeting the expectations of ASX in summarising the relevant rule and will encourage consistency in market practice. ASX agrees and has added sample wording for this summary in each of the various GNs providing guidance on security holder resolutions under the LR.

- ***LR 19.12 definition of "asset"*** – One respondent was confused by the statement in section 3.1 of GN 24 that an asset includes "loans and other receivables" and suggested that it would be helpful for ASX to clarify its policy on loans (ie whether the making of a loan to a related party could constitute a disposal of a substantial asset for the purposes of LR 10.1). ASX has clarified this point in a footnote to section 3.1 of GN 24.

- ***LR 19.12 definition of "associate"*** – One respondent suggested that in the text below paragraph (d) of this definition, the words "… and includes, in the case of a trust, the RE of the trust" should be changed to: "and includes, in the case of a trust, the trustee of the trust acting in that capacity". ASX agrees, subject to the point that the LR use the defined term "responsible entity" to refer to the trustee of a trust. ASX has therefore modified the definition of "associate" to include the words "and includes, in the case of a trust, the responsible entity of the trust acting in that capacity".

- ***LR 19.12 definition of "child entity"*** – Again, one respondent suggested that in the text below paragraph (b), the words "… and includes, in the case of a trust, the responsible entity of the trust" should be changed to: "and includes, in the case of a trust, the trustee of the trust acting in that capacity". ASX agrees and has made a corresponding change to this definition as it did to the definition of "associate" above.

  The same respondent noted that the change to the definition of "child entity" as it applies to listed trusts means that LR 3.16.4 (disclosures of service contracts with directors and CEOs entered into by a listed entity or child entity) and LR 10.19[52] (limits on retirement benefits payable to an officer of a listed entity or child entity) would not apply to contracts entered into, or benefits paid by, a subsidiary of the RE of a listed trust, as such a subsidiary would not be a "child entity" of the listed trust for the purposes of those rules. It queried whether this was intended.

  On reflection, ASX considers that LR 3.16.4 and 10.19 should not apply at all to an externally managed listed trust but should apply an internally managed listed trust. The remuneration arrangements between the RE of an externally managed listed trust and its staff are a matter for the RE rather than the listed trust.

  To address this issue, ASX has introduce a definition of "internally managed" and "externally managed" in LR 19.12 and has amended LR 3.16.4 and LR 10.19 to provide that they only apply if the entity is not an externally managed listed trust.

- ***LR 19.12 definition of "equity security"*** – One respondent pointed to the note to the definition of "equity security" to confirm that the decision to treat securities issued by an APRA-regulated entity that fall within the definition of "convertible security" in rule 19.12 solely because that can be converted on the occurrence of a "non-viability trigger event" and/or a "capital trigger event" and that would otherwise be a debt security but for the inclusion of those provisions, as debt securities rather than equity securities. They suggested amending this to refer specifically to APRA designated "Tier 2 securities" and to exclude "Tier AT1 securities". ASX is comfortable with the way in which this note is currently worded.

---

[52] As well as the corresponding voting exclusion in LR 14.11.1.

- ***LR 19.12 definition of "related party"*** – one respondent objected to the references in the revised definition of "related party" to "anyone who believes or has reasonable grounds to believe that they are likely to [become a related party] at any time in the future". These references are already incorporated in the existing definition of "related party" in section 228 of the Corporations Act and in the existing definition of "related party" in LR 19.12. ASX sees no basis to change this.
- ***LR 19.12 definition of substantial holder*** – four respondents noted that the term "substantial holder " is used in LR 4.10.4 to refer to a 5%+ Corporations Act substantial holder and in others to a 10%+ LR 10.1 substantial holder and suggested using separately defined terms. ASX agrees and has amended LR 19.12 to introduce a definition of "substantial (10%+) holder" (used in LR 10.1 and 10.11) and "substantial (30%+) holder" (used in LR 10.11).

5.26. Other feedback on new and updated guidance notes

ASX's consultation package included 5 substantially new GNs (11, 13, 21, 24 and 25) providing guidance in areas where ASX had not provided much (or in some cases any) guidance previously. It also included 3 updated GNs (1, 12 and 33) which had changes to reflect the proposed LR changes and recent compliance issues ASX had experienced with new and re-compliance listings and de-listings.[53]

The vast majority of comments that ASX received on the GNs included in the consultation package have been addressed under the headings above. Set out below are some additional submissions ASX received on the new and updated GNs in the consultation package.

One respondent commented in relation to section 3.7 (minimum free float) of the consultation version of GN 1 that if ASX is to maintain the LR deeming a related party of a natural person to be their associate unless the contrary is proven, ASX should provide additional guidance on the types of evidence that it may accept to establish that the other person is not associated. Guidance on this issue is currently included in a note to the definition of "associate" in LR 19.12, which provides:

> "One way in which a related party of a natural person may seek to establish that it is not an associate of the natural person is for the natural person or related party in question to give a statutory declaration or some other form of certification to the listed entity to that effect. The listed entity should take this and any other information known to it into account when forming a view as to whether or not the related party is in fact an associate of the natural person."

ASX has also given guidance on this matter in the context of an issue of securities to a relative of a director under an employee incentive scheme (see section 4.9 of GN 25). ASX does not see a need to embellish this guidance at this point.

One respondent commented in relation to section 3.4 of GN 12 that "market practice on pre-emptive capital raisings is that the entity is usually permitted by ASX to raise up to $500,000 (should the entity not have sufficient working capital already) to allow it to meet the costs of undertaking a backdoor listing" and asked whether that practice was to continue That former "market practice" was superseded some time ago by the specific guidance on pre-emptive capital raisings in section 3.4 of GN 12. ASX no longer expresses a view on the dollar amount that can be raised for the purpose of funding the expenses of a backdoor listing before an issue is considered to be a pre-emptive issue. That matter is looked at on a case-by-case basis, having regard to the specific circumstances and needs of the individual entity.

---

[53] See section 9 of the consultation paper.

Two respondents commented in relation to section 3.2 of GN 13 where a 25% threshold is used to determine whether something is a "major asset", measured against particular metrics that are the same as those used in GN 12 in relation to LR 11.1. They suggested that it be made clearer that this is the threshold at which discussions with ASX are required, rather than (as presently drafted) the threshold at which a pro rata offering or security holder approval is required. They argued that this would not only align better with the LR 11.1 guidance, it would operate more efficiently where, for example, there are short term blips in one of the metrics and therefore the 25% is triggered inappropriately. ASX does not agree. GN 12 provides a 25% "bright line" test for the notification of significant changes in the scale of activities under LR 11.1. GN 13 does likewise in relation to spin-outs under LR 11.4. ASX considers that this promotes certainty for listed entities and other stakeholders in the application of both rules. If in a particular case there is a "short term blip" that has LR 11.4 applying to something that is arguably not a major asset, the entity is always free to apply to ASX for a ruling or waiver on the point.

One respondent suggested updating GN 13 to address the issue currently dealt with in paragraph 12 of the existing GN 13 (ie over what time frame must a listing on ASX or another exchange be contemplated to trigger the operation of LR 11.4). ASX agrees and has added a new section 3.4 to GN 13 with guidance on the meaning of "aware" to address this issue.

One respondent asked for clarification on what was meant by a "properly scrutineered voting process" in those GNs dealing with security holder resolutions. ASX has addressed this issue in the new GN 35.

6. Other listing rule and guidance note changes by ASX

6.1. Trusts and stapled groups

As mentioned in section 5.15 above, the submissions ASX received in relation to the application of chapter 10 of the LR to listed trusts have given ASX pause to consider the manner in which the LR currently apply to internally managed and externally managed trusts and stapled groups. ASX has decided to make a number of additional changes to the LR in this regard, including:

- ***LR 19.12 (definition of "externally managed")*** – ASX has added a new definition providing that a trust is externally managed if:

  (a) it is not internally managed; or

  (b) ASX determines that the trust should be treated as an externally managed trust for the purposes of the listing rules.

- ***LR 19.12 (definition of "internally managed")*** – ASX has added a new definition providing that a trust is internally managed if:

  (a) the RE of the trust is a wholly owned child entity of the trust;

  (b) the trust forms part of a stapled group and the RE of the trust is also a part of the stapled group; or

  (c) the trust forms part of a stapled group and the RE of the trust is a wholly owned child entity of another entity that is also a part of the stapled group,

  and ASX has not determined that the trust should be treated as an externally managed trust for the purposes of the listing rules.

- ***LR 19.12 (definition of "stapled group")*** – ASX has added a new definition of "stapled group", meaning a group of entities whose securities are subject to constitutional or contractual arrangements acceptable to ASX that prevent those securities from being traded separately
- ***LR 19.12 (definition of "related party")*** – ASX has modified the definition of "related party" so that the current paragraph (b) (how the definition applies to a trust) is re-numbered as paragraph (c) and applies only to an externally managed trust. ASX has also added a new paragraph (b), which applies only to internally managed trusts and which removes the reference to the RE being a related party (in an internally managed trust, the RE is controlled by the security holders of the trust).
- ***LR 19.12 (definition of "associate")*** – ASX has modified the definition of "associate" to state that:
    - if the listed entity is an externally managed trust, the reference in paragraph (c) of that definition to controlling or influencing the composition of the listed entity's board is taken to be a reference to controlling or influencing whether a particular entity becomes or remains the trust's RE; and
    - if the listed entity is an internally managed trust, the reference in paragraph (c) of that definition to controlling or influencing the composition of the listed entity's board is taken to be a reference to controlling or influencing the board of the trust's RE.
- ***New LR 19.11B (application of rules to trusts)*** – as mentioned previously,[54] ASX has added a new rule providing that where the RE of a trust applies for a trust to be admitted, and the trust is admitted, to the official list:

  (a) the trust, rather than the RE, is regarded as the listed entity and must comply with the listing rules;

  (b) references in the listing rules to the entity's assets, liabilities, equity interests, profits, losses or market capitalisation are to be read as referring to the assets, liabilities, equity interests, profits, losses or market capitalisation (as the case may be) of the trust;

  (c) unless otherwise stated, references in the listing rules to the entity's directors mean:

    (i) if the trust is internally managed, the directors of the RE; or

    (ii) if the entity is externally managed, the RE of the trust;

  (d) unless otherwise stated, references in the listing rules to the entity's chair, CEO, CFO or secretary mean the chair, CEO, CFO or secretary of the RE; and

  (e) the RE of the trust has an obligation to ensure that the trust complies with the listing rules.
- ***New LR 19.11C (application of rules to stapled groups)*** – as mentioned previously,[55] ASX has added a new rule providing that where a stapled group applies for and is admitted to the official list:

  (a) each entity within the stapled group is regarded as a listed entity and must comply with the listing rules; but

  (b) references in the listing rules to the entity's assets, liabilities, equity interests, profits, losses or market capitalisation are to be read as referring to the aggregated assets, liabilities, equity

---

[54] See the text accompanying note 43 above.

[55] See the text accompanying note 30 above.

interests, profits, losses or market capitalisation (as the case may be) of all of the entities in stapled group.

ASX has also made the following consequential amendments to other LR relevant to trusts:

- ***References to registered managed investment schemes*** – ASX has amended a number of rules related to trusts to use the Corporations Act defined term “registered scheme” rather than “registered managed investment scheme”. This includes LR 1.1 condition 5, LR 1.8 condition 8, LR 1.11 condition 8, and the definitions of “Australian trust”, “foreign trust”, “responsible entity” and “substantial holder” in LR 19.12.

- ***LR 1.1 condition 20 (good fame and character)*** – ASX has amended this rule to spell out the different requirements for a body corporate and a trust.

- ***LR 1.2.6 (notification of continuing profits)*** – ASX has made some minor amendments to this rule to clarify how it operates in the case of a trust.

- ***LR 3.8A and 3.9 (buy-backs)*** – ASX has updated the notes to these rule to reflect the fact that ASIC Class Order 07/422 has been replaced by ASIC Corporations (ASX-listed Schemes On-market Buy-backs) Instrument 2016/1159 and shortened and simplified them.

- ***LR 3.13.1 (disclosure of closing date for receipt of director nominations)*** – ASX has amended this rule to acknowledge that it does not apply to an externally managed trust (the directors of the RE of an externally managed trust are elected by the security holders of the RE, not the security holders of the trust).

- ***LR 3.16 (chair, directors, RE, auditors etc)*** – ASX has amended this rule to state that LR 3.16.1 and 3.16.4 apply both to a body corporate and an internally managed trust, while LR 3.16.2 applies only to an externally managed trust.

- ***LR 3.18 (additional disclosure if loans are an asset)*** – ASX has made some minor amendments to this rule to clarify how it operates in the case of a trust.

- ***LR 3.19A and 3.19B (disclosure of directors’ interests)*** – ASX has made some notational amendments to these rules to recognise that the term “RE” is defined in LR 19.12.

- ***LR 14.3 and 14.4 (election of directors)*** – ASX has made some minor amendments to these rules to clarify that they do not apply to an externally managed trust (the directors of the RE of an externally managed trust are elected by the security holders of the RE, not the security holders of the trust).

6.2. Supplemental changes to the listing rules in the consultation package

In addition to the changes described in sections 5 and 6.1 above, ASX has made numerous other changes to the proposed new and amended LR in the consultation package to improve their clarity and operation. Most of these are minor drafting changes and are not sufficiently material to highlight in this response, but ASX would draw attention to the following:

- ***LR 1.1 condition 11 (classified assets)*** – ASX has amended this rule to cater for situations where a classified asset is acquired from an associate of a related party or promoter (it currently only applies where the vendor is a related party or promoter).

- ***LR 1.10.1 (rules that ASX Debt Listings must comply with)*** – ASX has removed the reference to LR 3.10.5 (distribution schedules) as a rule that an ASX Debt Listing must comply with. The requirement to supply these schedules is only intended to apply to equity securities.

- ***LR 1.15.1 (rules that ASX Foreign Exempt Listings must comply with)*** – ASX has removed the reference to LR 8.15 as a rule that an ASX Foreign Exempt Listing must comply with. That rule has been deleted.
- ***LR 3.21 (dividends or distributions)*** – ASX has modified this rule to be consistent with the changes it has made to LR 3.22 mentioned in section 5.25 above. It now requires an entity to:
  - notify ASX immediately if it makes a decision to pay a dividend or distribution on a quoted security;
  - notify ASX immediately if it makes a decision not to pay a dividend or distribution on a quoted security in respect of a period if it has previously announced an intention to pay a dividend or distribution for that period or paid a dividend or distribution in respect of the prior corresponding period; and
  - provide a completed Appendix 3A.1 to ASX not less than 4 business days before the intended record date to identify security holders entitled to a dividend or distribution on a quoted security.
- ***LR 4.7B (quarterly cash flow reports by commitment test entities)*** – ASX has amended this rule to make it clear that it does not apply to mining producing entities and oil and gas producing entities.
- ***LR 7.1 (placement limits)*** – ASX has made some further corrections to the formula in this rule to clarify its intended operation.
- ***LR 7.2 exception 5, 10.12 exception 4 and 19.12 (definition of 'security purchase plan')*** –ASX has amended these rules to reflect the recent replacement of ASIC Class Order CO 09/425 with ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547.
- ***LR 10.15 (approval of issues to directors etc under employee incentive schemes)*** – on further reflection, ASX appreciates that proposed LR 10.15.10 included in its consultation draft (which replicates the existing LR 10.15.4 and 10.15A.4) is not workable in practice. That rule would have required a notice of meeting proposing a resolution under LR 10.14 to include "the names of all persons referred to in rule 10.14 who received securities under the scheme since it was last approved under that rule, the number of the securities received, and the acquisition price for each security". Among other reasons, this is not workable in practice because each individual issue of securities is required to be approved under LR 10.14. The scheme itself is not approved under that rule.

  ASX has re-ordered the sub-rules in LR 10.15 and added a new LR 10.15.5. This rule will require a notice of meeting proposing a resolution under LR 10.14 to approve an issue of securities to a particular person, to state the number of securities that have previously been issued to the person under the scheme and the average acquisition price (if any) paid by the person for those securities.
- ***LR 10.16 (exceptions to LR 10.14)*** – ASX has modified paragraph (c) of this rule to clarify its intended operation.
- ***LR 19.12 (definition of "controller")*** – ASX has modified this definition to address restricted securities held by a nominee, trustee, custodian or other fiduciary.
- ***Appendices 1A, 1B and 1C (listing applications)*** – ASX has made some minor changes to these appendices to reflect the changes proposed to LR 18.1, 18.3, 18.5 and 18.5A.
- ***Appendix 6A (corporate action timetables)*** – ASX has made some minor corrections to the timetable in section 3 of this Appendix.

- ***Appendix 7A (corporate action timetables)*** – ASX has made some minor corrections to the timetables in sections 3, 5, 6 and 12 of this Appendix.
- ***Appendix 9A (escrow deed)*** – ASX has added a counterpart clause and made some other drafting improvements to the form of escrow deed in this appendix.

6.3. Changes to listing rules that were not included in the consultation package

ASX would draw attention to the following LR changes in the final rule amendments that were not included in the consultation package:

- ***LR 1.1 condition 3 (listing prospectus or PDS))*** – ASX has made a minor change to condition 3 to make it clear that an entity's listing prospectus or PDS must not only be lodged with ASIC but also given to ASX.
- ***LR 1.3.2(b) (assets test admission requirements)*** – ASX has made some consequential changes to this rule reflecting the requirement in the modified rule 1.3.3(a) for an entity's listing prospectus, PDS or information memorandum to state the objectives the entity is seeking to achieve from its admission and any capital raising undertaken in connection with its admission. Rule 1.3.2(b) will now provide that where half or more of the entity's total tangible assets (after raising any funds) are cash or in a form readily convertible to cash, the entity must have commitments consistent with its stated objectives under rule 1.3.3(a) to spend at least half of its cash and assets in a form readily convertible to cash. It will also require the entity's listing prospectus, PDS or information memorandum to include an expenditure program setting out these commitments.
- ***LR 1.8 (conditions for admission as an ASX Debt Listing)*** – ASX has made a minor change to condition 4 to make it clear that an entity's prospectus for an issue of debt securities to retail investors must not only be lodged with ASIC but also given to ASX.
- ***LR 1.11 (conditions for admission as an ASX Foreign Exempt Listing)*** – ASX has made a minor notational amendment to condition 1 to recognise that the term "foreign entity" is defined in LR 19.12. ASX has also made consequential changes to condition 6 (qualified NZ entity to satisfy profit test in LR 1.2 or assets test in LR 1.3) to reflect the changes made to LR 1.3.3 and also to condition 11 (directors of qualified NZ entity to be of good fame and character) to be consistent with the changes made to LR 1.1 condition 20 extending the good fame and character requirements to CEOs and CFOs.
- ***LR 4.10.4 (disclosure in annual report of substantial holders)*** – ASX has made some minor drafting changes to this rule to acknowledge that the Corporations Act regime for substantial holdings only applies to listed Australian companies and registered managed investment schemes.
- ***LR 5.1 and 5.2 (quarterly activity reports by mining producing entities and oil and gas producing entities)*** – ASX has simplified the drafting of these rules to be consistent with the simplified drafting in LR 5.3 and 5.4 (quarterly activity reports by mining exploration entities and oil and gas exploration entities).
- ***LR 16.5 (annual listing fees)*** – ASX has made a minor change to this rule to allow late annual listing fees to be paid in cleared funds as well as by bank cheque.
- ***LR 17.8 (reinstatement after lodging documents)*** – ASX has made a minor change to this rule to provide that if an entity's securities are suspended under LR 17.5 for failure to lodge documents, ASX will normally reinstate quotation of the securities before the commencement of trading on the day after ASX receives the documents "*and any outstanding fees payable by the entity to ASX*".

- ***LR 17.9 (reinstatement after payment of listing fees)*** – ASX has made a minor change to this rule to provide that if an entity's securities are suspended under LR 17.6 for failure to pay annual listing fees, ASX will normally reinstate quotation of the securities before the commencement of trading on the business day after it receives the listing fees "*and any other outstanding fees payable by the entity to ASX*".

- ***LR 18.3 (varying or revoking decisions)*** – ASX has amended this rule to clarify its intended operation and to reflect the changes being made to LR 18.1 and 18.5 and the new LR 18.5A.

- ***LR 19.12 (definition of "takeover")*** – ASX has made some minor drafting changes to this definition.

6.4. Supplemental changes to the guidance notes in the consultation package

In addition to the changes to GNs described in section 5 above, ASX has made numerous changes to the proposed new and amended GNs in the consultation package to improve their clarity and operation. Most of these are minor drafting changes and are not sufficiently material to highlight in this response, but ASX would draw attention to the following:

- **GN 1 *Applying for Admission – ASX Listings*** – ASX has:
  - added a new section 2.4 highlighting ASX's practice of publishing details of a listing application on the ASX website shortly after it has been lodged with ASX;
  - added to the grounds on which ASX may reject a listing application in section 2.9:
    - if the applicant has entered into an agreement or transaction that, if it had been entered into after listing, would have required approval under LR 10.1, 10.11 or 10.14 and ASX has concerns about the commerciality of the agreement or transaction, and
    - if ASX has had prior unacceptable dealings with the CEO or CFO of the applicant;
  - highlighted in section 2.9 that ASX's decision on whether to accept or reject a listing application is final and that there is no right of appeal;
  - added to section 2.10 an additional standard condition of admission that where an entity has any securities subject to voluntary escrow on issue, the entity will have an ongoing obligation to notify ASX immediately of any material change to the terms of the voluntary escrow;
  - added to the list of examples in section 3.1 of unacceptable structures and operations "where the composition of the applicant's board is otherwise not appropriate for a listed entity", with some examples in a footnote;
  - noted in a footnote to section 3.1 ASX's general view that ASX does not consider it appropriate that an officer or employee of the lead manager or broker to the entity's IPO is a director of the entity, given the clear conflicts it creates; and
  - added to section 3.21 a statement that: "Where ASX has removed an entity from the official list or censured an entity for breaching the listing rules, any officer of the entity who in ASX's opinion was culpably responsible for the breach or breaches is likely to have some difficulty in satisfying ASX that they are of good fame and character."

- **GN 11 *Restricted Securities and Voluntary Escrow*** – ASX has:
  - added the following passage to the guidance on the meaning of "promoter" in section 2.2:

"*In certain circumstances, ASX may also apply paragraph (c) of the definition of "promoter" to a vendor who has sold a classified asset to an entity in the lead up to the entity undertaking a new or re-compliance listing, even where the vendor has had no other specific involvement in the formation or promotion of the entity. This includes where it appears to ASX that the vendor has recently acquired the classified asset with a view to on-sale or is in the business of "packaging" assets for IPO. If ASX does so, this will have the likely consequence that the consideration for the acquisition must be restricted securities and can only include a cash component to the extent that it involves reimbursement of actual expenditure incurred by the vendor in developing the classified asset.*"

- substantially re-written section 9.3 (disposals with ASX approval) to contemplate ASX granting conditional relief from escrow[56] where the holder of restricted securities:
  - dies and their legal personal representative wishes to transfer restricted securities to an individual in accordance with the holder's will or the laws related to intestacy;
  - dies and their legal personal representative wishes to distribute restricted securities, or the proceeds of sale of restricted securities, to a bona fide independent charity registered with the Australian Charities and Not-for-profits Commission in accordance with the holder's will or the laws related to intestacy; or
  - wishes to make a gift while they are still alive of restricted securities, or the proceeds of sale of restricted securities, to a bona fide independent charity that is registered with the Australian Charities and Not-for-profits Commission.

- **GN 12 *Significant Changes to Activities*** – ASX has:
  - made substantial changes to sections 2.8 – 2.11 around the process to be followed by an entity announcing a transaction involving a significant change to the nature or scale of its activities. These include, in the case of a transaction that attracts a re-compliance obligation under LR 11.1.3; guidance that:
    - the entity should not release an announcement to the market about the transaction unless and until ASX has reviewed a draft of the announcement and indicated to the entity that ASX has no objections to the draft;
    - as soon as practicable after an acceptable announcement has made to the market, the entity will need to apply to ASX for:
      - in principle advice that, based on the facts known at the time, ASX is not aware of any reason that would cause the entity not to have a structure and operations suitable for a listed entity or that would cause ASX to exercise its discretion to refuse the entity's re-admission to the official list; and
      - any listing rule waivers or rulings that are required to complete the transaction (including in particular, but not limited to, a "2 cent waiver" or confirmation that any performance shares proposed to be issued meet the requirements of LR 6.1);
    - ASX will not commence work on any further documentation that the entity may lodge with ASX in connection with the transaction (including any draft notice of meeting with a

[56] This is in addition to the conditional escrow relief contemplated in the consultation version of GN 8 for when a holder is subject to a family settlement requiring restricted securities to be transferred to his/her spouse or de facto spouse.

proposed resolution seeking approval of the transaction under LR 11.1.2) until the entity has obtained favourable rulings in response to these applications;

- if ASX declines to give the in principle advice or waivers or rulings sought by the entity, ASX will expect the entity to make a further announcement to the market of ASX's determination and what the entity intends to do in light of that determination. In the case of in principle advice that the entity is unlikely to have a structure and operations suitable for a listed entity or that ASX is likely to exercise its discretion to refuse the entity's re-admission to the official list, this further announcement will need to reflect the fact that the entity will not be able to proceed with the transaction in its current form (at least not if it wishes to remain an ASX-listed entity);

- if ASX gives the in principle advice and waivers or rulings sought by the entity, ASX will expect the entity to make an immediate announcement to the market of ASX's determination and outline the process and timetable for seeking re-admission from this point. ASX will reinstate the entity's securities to quotation at this point if (and only if):

  - the cumulative announcements the entity has made about the transaction contain all of the information referred to in Annexure A; and

  - ASX is otherwise satisfied that the market has sufficient information about the transaction for trading in the entity's securities to take place on a reasonably informed basis;

- otherwise, the entity's securities will remain suspended from quotation until:

  - the entity has provided the missing information to ASX's satisfaction;

  - the entity has re-complied with ASX's admission and quotation requirements; or

  - those requirements cease to apply,

  and the entity's announcement about the transaction should clearly disclose this;

- if ASX reinstates the entity's securities to quotation following the steps above and the entity subsequently abandons the transaction, it will not be afforded the same opportunity with any subsequent transaction that triggers LR 11.1.3. In that case, even if it supplies all of the information referred to in Annexure A, its securities will remain suspended from quotation from the time the transaction is announced until:

  - the entity has re-complied with ASX's admission and quotation requirements; or

  - those requirements cease to apply.

o refined its guidance in section 4.7 that where a listed entity disposes of its main undertaking:

- as a precursor to the listed entity being wound up, ASX will generally continue its quotation for up to six months from the date of the agreement to dispose of its main undertaking, to allow the entity time to complete the disposal and to initiate the legal processes needed to commence its winding up. ASX will normally suspend trading in the entity's securities as soon as ASX is notified that those processes have begun and will terminate the entity's admission to the official list once the entity has formally been placed into winding up; or

- as a precursor to the entity embarking on a new business venture, either immediately or once a suitable business has been identified and acquired, ASX will generally continue its

quotation for up to six months from the date of the agreement to dispose of its main undertaking to allow the entity time to complete the disposal and to identify, and make an announcement of its intention to acquire, a suitable new business.

- **GN 25 _Issues of Equity Securities to Persons in a Position of Influence_** – ASX has added commentary to section 2.11 of GN 25 noting that:
    - prior to 1 December 2019, ASX had previously granted waivers from LR 6.18, which prohibits a listed entity from granting anyone an option that is exercisable over a percentage of its capital, to permit an entity to give an anti-dilution right to a strategic security holder. The anti-dilution right allowed the strategic security holder and its related bodies corporate to maintain a particular percentage security holding in the entity. Typically, that percentage security holding was more than 10%, but less than 30%, of the entity's ordinary securities. Typically also, the strategic security holder was given a right to appoint one or more representatives to the entity's board;
    - the introduction on 1 December 2019 of LR 10.11.3 extending LR 10.11 to substantial (10%+) holders with board representation cuts across the operation of these waivers. Most strategic security holders with the benefit of these waivers will now fall within LR 10.11.3 and therefore, in the absence of a further waiver from ASX, each new issue of equity securities under the anti-dilution right to the strategic security holder or its related bodies corporate will require security holder approval under LR 10.11;
    - in ASX's view, a security holder in a strategic relationship with a listed entity and with board representation is likely to have considerable influence over the types of capital raisings the entity undertakes. If the entity undertakes a non-pro rata capital raising that may potentially dilute the strategic security holder, it always has the option to buy securities on-market to top up its holding and therefore it should not need a separate anti-dilution right;
    - accordingly, from 1 December 2019, ASX will no longer grant these types of waivers from LR 6.18;
    - entities that had the benefit of a LR 6.18 waiver prior to 1 December 2019 should approach ASX to discuss its preparedness to grant a concurrent waiver of LR 10.11.3 to allow issues of equity securities to a strategic security holder and its related bodies corporate to continue to be made under their anti-dilution right without security holder approval. Before granting a concurrent LR 10.11.3 waiver, ASX will need to be satisfied that the basis for the original LR 6.18 waiver still holds true and that there is still a genuine strategic relationship between the entity and the security holder and that the security holder and its related bodies corporate have maintained their holding in the entity at the agreed percentage throughout the life of their anti-dilution right. ASX will also need to be satisfied that the terms of the anti-dilution right continue to be appropriate and equitable; and
    - any concurrent LR 10.11.3 waiver ASX may grant may be subject to conditions and may be varied or revoked by ASX at any time.
- **new GN 35 _Security Holder Resolutions_** – ASX has removed from GNs 12, 13, 21, 24, 25 and 33 much of the commentary around security holder resolutions, which was highly repetitive across those six GNs, and consolidated it into a single new GN 35 *Security Holder Resolutions* that applies across the board to all LR requiring security holder approvals.

6.5. Changes to guidance notes that were not included in the consultation package

The breadth of the final LR changes has required numerous consequential amendments to existing GNs that were not included in the consultation page, including GNs 4, 5, 17, 19, 20, 23, 29, 30 and 34. Most of these do no more than reflect the final LR amendments and ASX does not see a need to say anything more about them.

In addition to the changes to GN 19, 23 and 30 described in sections 5.1, 5.5, 5.11 and 5.15 above, ASX would draw attention to the following more material changes it has made to existing GNs that were not included in the consultation page:

- **GN 5 CHESS Depositary Interests (CDIs)** – ASX has update GN 5 (and made confirmatory changes to GN 1 and GN 29) to state that ASX's CDI facility is only available to an entity that is established in a place overseas whose laws have the effect that CHESS cannot be used for holding legal title to its securities. It is not available to an entity established in Australia or in a place overseas whose laws allow CHESS to be used for holding legal title to its securities. If there is any doubt on this issue, ASX may ask the entity to provide an opinion from a legal practitioner in the overseas jurisdiction acceptable to ASX to clarify that doubt.

- **GN 17 Waivers and In-Principle Advice** – ASX has added two further waivers to the list of standard waivers in the Annexure to GN 17:

  - a waiver (often referred to as a "supersize waiver") from LR 7.1 to permit an entity conducting a capital raising which will consist of a placement of new ordinary securities (the "Placement"), and an accelerated pro rata entitlement offer of new ordinary securities (the "Entitlement Offer"), to the extent necessary to permit the entity to calculate the number of ordinary shares which it may issue without shareholder approval pursuant to the Placement on the basis that variable "A" of the formula in LR 7.1 is deemed to include the number of ordinary securities in the entity that may be issued under the underwritten component of the Entitlement Offer, subject to the following conditions:

    - the ordinary securities issued under the Placement are to be included in variable "C" in the formula in LR 7.1, until their issue has been ratified by shareholders under LR 7.4 or 12 months has passed since their issue; and

    - in the event that the full number of securities offered under the underwritten component of the Entitlement Offer is not issued, and the number of shares represented by the Placement thereby exceeds 15% of the actual number of the entity's securities following completion of the Entitlement Offer, the entity's 15% placement capacity under LR 7.1 following completion of the Entitlement Offer is to be reduced by that number of securities issued under the Placement that exceeded the entity's 15% capacity under LR 7.1 at the time of the Placement and

  - where:

    - an entity's securities are suspended from official quotation following the appointment of an administrator to the entity's business, property and affairs; and

    - creditors of the entity have agreed to the restructure and recapitalisation of the entity pursuant to a deed of company arrangement and the entity is proposing an issue of securities as part of, or in conjunction with, that transaction that requires the approval of the holders of ordinary securities under LR 10.11,

    a waiver from LR 10.13.5 to permit the notice of meeting with the resolution to approve the issue of securities to state that the securities will be issued at the same time as other securities

to be issued under a prospectus or PDS that the entity has issued or is proposing to issue as part of, or in conjunction with, that transaction, rather than within one month after the date of the meeting.

- **GN 19 Performance Shares** – ASX has added to the list of examples of unacceptable milestones for performance shares in section 8 of GN 19:
  - performance shares proposed to be issued to a lead manager/financial adviser by an entity proposing to list where the performance milestone was tied to the post-listing market price of the ordinary shares of the entity; and
  - performance shares proposed to be issued to persons who had provided seed capital to an entity proposing to list where the performance milestone was tied to the post-listing market price of the ordinary shares of the entity.
- **GN 20 ASX Online** – ASX has made some minor changes to the ASX Online Agreement included in Annexure A of GN 20 that will come into effect on 1 December 2019. Applicants for listing who lodge their listing application on or after that date should ensure they execute the correct version of that agreement.
- **GN 23 Quarterly Reports** – ASX has added a new section 11 to GN 23 setting out ASX's expectations that an entity's auditor will inspect the entity's quarterly cash flow reports as part of its work plan for auditing or reviewing the entity's half year financial statements and auditing the entity's full year financial statements. If the auditor identifies any material errors or omissions in the quarterly cash flow reports, ASX expects the auditor will communicate those to the entity's board. Further, if the entity's board receives such a communication from its auditor, ASX expects the entity will make an announcement to the market highlighting and correcting the errors or omissions.

7. Other issues raised by respondents

In its consultation paper, ASX invited respondents to identify whether there were any other material gaps or deficiencies in the ASX listing rules and related guidance that had not been addressed by the proposed changes in the consultation package. Set out below are the issues respondents raised in this regard and ASX's response:

- One respondent requested that ASX clarify the requirements in respect of audited/reviewed historical financial information for roll-up listings and the format of that reporting. ASX has updated GN 1 to address this issue.
- One respondent requested that ASX clarify the financial information requirements, including the requirements to lodge financial statements for a half-year period as pre quotation disclosure and for comparative information, when an application for admission is made within 75 days of the half-year reporting date. ASX has updated GN 1 to address this issue.
- One respondent asked for changes to LR 1.3.2(b) to allow funds set aside for a future acquisition to be treated as a commitment for the purposes of that rule. ASX does not agree. If an acquisition is already agreed and documented, it will be treated as a commitment by ASX. If it is not yet agreed and documented, it cannot be a commitment. To allow an entity to treat a possible future acquisition as a commitment would run counter to the underlying policy objective of LR 1.3.2(b), which is to prevent "cash boxes" from listing on ASX.
- One respondent suggested that ASX introduce additional LRs or GNs that include documented processes for assessing the taxation implications of new issuers entering the market, citing the listing of Unibail-Rodamco, which resulted in a requirement by Australian market participants to collect

French transfer tax at short notice and with little time for system development. ASX has already addressed this issue with amendments to GN 1 and 4 in June 2018.

- One respondent suggested revisiting the 100% dilution threshold for reverse takeovers. This matter was fully consulted upon in 2017 and ASX does not see a need to re-visit the issue at this stage. ASX notes that since the reverse takeover amendments were introduced in 2017, there has only been one reverse takeover launched in relation to an ASX listed entity (the bid by Intrepid Mines Limited for AIC Resources Limited).
- One respondent raised the AMP matter and suggested that there should be greater transparency around how ASX applies its 50% "rule of thumb" in relation to disposals of main undertakings under GN 12. ASX notes that this issue was fully addressed by the disclosures ASX required of AMP and does not see the need to change GN 12 on this score.
- Two respondents asked for ASX to consider removing what they perceived as a "loophole" in existing LR 10.15B (to become LR 10.16 with ASX's proposed changes to the LR), which exempts employee incentive scheme entitlements that are satisfied by on-market purchases (rather than issues of new securities) from the requirement for security holder approval under LR 10.14. ASX does not regard LR 10.15B as a loophole. The rule is based on sound policy considerations.
- One respondent suggested including a requirement for listed entities to publish the closing date for security holder resolutions to be considered at a general meeting. ASX does not agree. Security holder resolutions are not that common and those who propose them are generally well informed and able to determine for themselves the relevant closing dates under the Corporations Act without putting all 2,300 ASX listed entities to the administrative burden of making these disclosures.

****