

Updating ASX's admission requirements for listed entities

CONSULTATION PAPER

12 MAY 2016

ATTACHMENT B: PROPOSED CHANGES TO GUIDANCE NOTE 1





ASX LISTING RULES

Guidance Note 1

APPLYING FOR ADMISSION – ASX LISTINGS

The purpose of this Guidance Note	<ul style="list-style-type: none">To assist entities wishing to apply for admission to the official list of ASX as an ASX Listing to prepare their application for listing
The main points it covers	<ul style="list-style-type: none">The listing process generallyTiming requirements under the Corporations Act for the lodgement of listing applicationsGuidance on particular admission requirementsAdditional pre-quotation disclosures required in the case of bookbuilds
Related materials you should read	<ul style="list-style-type: none">Guidance Note 4 <i>Foreign Entities Listing on ASX</i>Guidance Note 5 <i>CHESS Depository Interests (CDIs)</i>Guidance Note 7 <i>US Entities - Regulation S Offerings on ASX</i>Guidance Note 9 <i>Disclosure of Corporate Governance Practices</i>Guidance Note 11 <i>Restricted Securities and Voluntary Escrow</i>Guidance Note 17 <i>Waivers and In-Principle Advice</i>Guidance Note 19 <i>Performance Shares</i>Guidance Note 20 <i>ASX Online</i>Guidance Note 29 <i>Applying for Admission – ASX Debt Listings</i>Guidance Note 30 <i>Applying for Quotation of Additional Securities</i>Guidance Note 34 <i>Naming Conventions for Debt and Hybrid Securities</i>

History: Guidance Note 1 amended [01/09/16](#). Previous versions of this Guidance Note were issued in 07/00, 09/01, 03/02, 12/06, 01/12, 05/13, 12/13, 09/14, [09/15](#) and [12/15](#).

Important notice: ASX has published this Guidance Note to assist listed entities to understand and comply with their obligations under the Listing Rules. Nothing in this Guidance Note necessarily binds ASX in the application of the Listing Rules in a particular case. In issuing this Guidance Note, ASX is not providing legal advice and listed entities should obtain their own advice from a qualified professional person in respect of their obligations. ASX may withdraw or replace this Guidance Note at any time without further notice to any person.

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Table of contents

1. Introduction	2
2. The listing process	3
2.1 Initial discussions in advance of application	3
2.2 The admission application	4
2.3 Requests for waivers	4
2.4 Processing time	4
2.5 Fast track process for offers proceeding by pathfinder prospectus or PDS	5
2.6 Corporations Act deadlines for lodgement and quotation	6
2.7 Payment of initial listing fee	7
2.8 The listing decision	8
2.9 Documents released to the market	10
2.10 Requirements for additional information	10
2.11 Responsibility for materials provided with a listing application	11
3. Particular listing requirements	11
3.1 Appropriate structure and operations	11
3.2 Constitution	14
3.3 Prospectus or PDS	14
3.4 When ASX will accept an information memorandum in lieu of a prospectus or PDS	16
3.5 Requirements for quotation	17
3.6 Number of securities to be quoted	19
3.7 Minimum free float	19
3.8 Minimum spread	20
3.9 Satisfying the profit or assets test	22
3.10 Restricted securities	25
3.11 Options	27
3.12 Person responsible for communications	27
3.13 Electronic lodgement facilities	28
3.14 ASX Corporate Governance Council recommendations	28
3.15 Audit committee	28
3.16 Remuneration committee	29
3.17 Trading policy	29
3.18 Directors must be of good fame and character	29
3.19 Additional requirements for foreign entities	30
3.20 Clearing and settlement	32
Annexure: Disclosure of information about bookbuilds	34

Deleted: 1. Introduction . 2¶
2. The listing process generally . 3¶
2.1 Initial discussions in advance of application . 3¶
2.2 The admission application . 4¶
2.3 Requests for waivers . 4¶
2.4 Processing time . 4¶
2.5 Fast track process for offers proceeding by pathfinder prospectus or PDS . 5¶
2.6 Corporations Act deadlines for lodgement . 6¶
2.7 Payment of initial listing fee . 7¶
2.8 The listing decision . 8¶
2.9 Documents released to the market . 10¶
2.10 Requirements for additional information . 10¶
3. Particular listing requirements . 11¶
3.1 Appropriate structure and operations . 11¶
3.2 Constitution . 14¶
3.3 Prospectus or PDS . 14¶
3.4 Type of securities to be quoted . 16¶
3.5 Number of securities to be quoted . 19¶
3.6 Minimum spread . 19¶
3.7 Satisfying the profit or assets test . 22¶
3.8 Restricted securities . 25¶
3.9 Options . 27¶
3.10 Person responsible for communications . 27¶
3.11 ASX Corporate Governance Council recommendations . 28¶
3.12 Electronic lodgement facilities . 28¶
3.13 Trading policy . 28¶
3.14 Remuneration committee . 29¶
3.15 Directors must be of good fame and character . 29¶
3.16 Clearing and settlement . 32¶
Annexure: Disclosure of information about bookbuilds . 34¶

1. Introduction

This Guidance Note is published to assist entities wishing to apply for admission to the official list of ASX Limited (ASX) as an ASX Listing to prepare their application for listing.¹

An ASX listing brings with it significant benefits. These include access to:

- one of the world's largest investment pools underpinned by Australia's mandatory superannuation system;
- price discovery in a deep and liquid market worth well over a trillion dollars;

¹ Listing Rules 1.1 to 1.7 and 1.16 to 1.20 set out the requirements for an entity to be admitted to ASX's official list as an ASX Listing. Listing Rule 2.1 sets out the requirements for the initial quotation of a listed entity's main class of securities and Listing Rule 2.5 sets out the requirements for the quotation of other classes of securities.



ASX LISTING RULES

Guidance Note 1

- the world class trading platform and clearing and settlement infrastructure of ASX, and the status that comes from being listed on one of the world's top 10 exchanges.

This Guidance Note does not deal with applications for admission to the official list of ASX as an ASX Debt Listing or as an ASX Foreign Exempt Listing.² Guidance on those types of applications can be found in Guidance Note 29 *Applying for Admission – ASX Debt Listings* and Guidance Note 4 *Foreign Entities Listing on ASX*.

Further guidance of relevance to foreign entities wishing to apply for admission to the official list of ASX as an ASX Listing can also be found in Guidance Note 4 *Foreign Entities Listing on ASX*, Guidance Note 5 *CHES Depository Interests (CDIs)* and Guidance Note 7 *US Entities - Regulation S Offerings on ASX*.

Further guidance for trusts wishing to apply for admission to the official list of ASX as an ASX Listing can be found in Guidance Note 6 *Trusts*.

Guidance for entities that are already listed on how to prepare applications for quotation of additional securities can be found in Guidance Note 30 *Applying for Quotation of Additional Securities*.

2. The listing process

2.1 Initial discussions in advance of application

Before submitting an application for admission to the official list, ASX recommends that applicants first discuss their application with ASX Listings Compliance at the earliest opportunity. Those discussions are best held with the branch office where the entity intends to lodge its application for admission. Generally, this should be the ASX branch office where the applicant will have its home branch if its application for admission is successful.³

ASX Listings Compliance will be able to provide general advice on the listing process and a preliminary view on the expected timeframe for listing, given its current workloads and the nature and complexity of the application. It can also provide information about available ASX trading codes and arrange the reservation of a suitable code for the applicant.⁴

In the initial discussions, the applicant should bring to the attention of ASX Listings Compliance:

- any unusual features of the applicant's structure and operations that could raise issues under Listing Rule 1.1 condition 1 (an entity's structure and operations must be appropriate for a listed entity).⁵
- any unusual terms applying to its securities that could raise issues under Listing Rule 6.1 (the terms that apply to each class of an entity's securities must, in ASX's opinion, be appropriate and equitable);
- if the entity is proposing to have "performance shares" the proposed milestones for those shares;⁶
- any doubts or queries the applicant may have about how ASX is likely to apply Chapter 9 and Appendix 9B of the Listing Rules in relation to any "restricted securities";⁷

² Listing Rules 1.8, 1.9 and 1.16 to 1.20 set out the requirements for an entity to be admitted to ASX's official list as an ASX Debt Listing. Listing Rule 1.11 to 1.14 and 1.16 to 1.20 set out the requirements for an entity to be admitted to ASX's official list as an ASX Foreign Exempt Listing.

³ The ASX home branch for an entity looks after day-to-day matters relating to the entity's listing and makes decisions about the Listing Rules that affect it. ASX has home branches in Perth (servicing entities based in WA), Melbourne (servicing entities based in Victoria and Tasmania) and Sydney (servicing all other entities).

⁴ On the reservation of trading codes, see Guidance Note 18 Market Codes and Status Notes.

⁵ See '3.1 Appropriate structure and operations' on page 11.

⁶ See Guidance Note 19 Performance Shares.

⁷ See '3.10 Restricted securities' on page 25.

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ASX LISTING RULES

Guidance Note 1

- any unusual waivers from, or rulings in respect of, the Listing Rules that the applicant may be proposing to request in conjunction with its application;
- any issues the entity may have in providing 3 full years of audited accounts with its admission application;⁸
- any circumstances that could give rise to concerns that a director or proposed director of the entity may not meet ASX's good fame and character requirements;⁹ and
- any circumstances that could lead to ASX exercising its discretion not to admit an entity to the official list.¹⁰

The applicant should provide to ASX Listings Compliance all material information in its possession relevant to the matter being discussed so that the discussions are informed and meaningful. In some cases, it may be helpful if the entity provides a draft of its listing prospectus, PDS or information memorandum (or relevant sections of it) to facilitate the discussions.

In an appropriate case, ASX Listings Compliance may suggest to the applicant that it seek in-principle advice¹¹ from ASX about a matter mentioned above before it goes to the effort and expense of lodging a listing application.

2.2 The admission application

To apply for admission to the ASX official list, an entity must complete an application in the prescribed form and give it to ASX. The prescribed form for an entity applying for an ASX Listing is Appendix 1A – ASX Listing Application and Agreement. An editable version of the Appendix 1A application can be downloaded from www.asx.com.au/regulation/compliance/compliance-downloads.htm.

The application must be properly completed, dated and executed by the entity seeking admission to the official list.¹² It must also be accompanied by the Information Form and Checklist (ASX Listings) published on the ASX website¹³ and all of the information and documents referred to in it that Form/Checklist. This includes a copy of the applicant's prospectus or product disclosure statement (PDS) that has been lodged with the Australian Securities and Investments Commission (ASIC) or, if ASX has agreed that the applicant may lodge an information memorandum in lieu of a prospectus or PDS, a completed information memorandum.¹⁴

ASX may reject or defer consideration of an application for listing that is not properly completed and executed or that is not accompanied by all of the required information and documents.

2.3 Requests for waivers

If the applicant is seeking a waiver from, or in-principle advice about the application of, any Listing Rule, its application should include a letter from the entity or its advisers detailing the waiver or advice sought and providing the information set out in Guidance Note 17 *Waivers and In-Principle Advice*.

2.4 Processing time

ASX Listings Compliance aims to process applications for listing as quickly as it reasonably can, given its workloads at the time. Typically,¹⁵ an application for ASX Listing will take ASX around four to six weeks to process, from the

⁸ See '3.9 Satisfying the profit or assets test' on page 22.

⁹ See '3.18 Directors must be of good fame and character' on page 29.

¹⁰ See '2.8 The listing decision' on page 8 below.

¹¹ Guidance Note 17 *Waivers and In-Principle Advice* has guidance on how to apply for in-principle advice.

¹² In the case of a trust, the application should be executed by the responsible entity of the trust.

¹³ An editable version of the Information Form and Checklist (ASX Listings) can also be downloaded from www.asx.com.au/regulation/compliance/compliance-downloads.htm.

¹⁴ See '3.3 Prospectus or PDS' on page 14, and '3.4 When ASX will accept an information memorandum in lieu of a prospectus or PDS' on page 16.

¹⁵ The normal timetable for processing an application for listing may be fast tracked for certain offers that proceed by way of a pathfinder prospectus or PDS: see '2.5 Fast track process for offers proceeding by pathfinder prospectus or PDS' on page 5.

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ASX LISTING RULES

Guidance Note 1

time a completed application for listing and all other required documents are lodged with ASX, until a decision is made on whether or not to admit the applicant to the official list and quote its securities. It may take longer, however, if:

- the application raises any issues under Listing Rule 1.1 condition 1, (the entity's structure and operations must be appropriate for a listed entity¹⁶) or that might cause ASX to exercise its discretion under Listing Rule 1.19 to refuse the application;¹⁷
- the applicant is seeking an atypical number or type of waivers from the Listing Rules; or
- the applicant is making a non-underwritten offer of securities that is subject to a minimum subscription condition and it takes longer than four to six weeks to satisfy that condition.¹⁸

In either of the first two cases above, the applicant should discuss the matter with ASX Listings Compliance at the earliest opportunity to determine the impact that may have on its timetable for listing. In the third case above, the applicant should keep ASX apprised of its progress in satisfying its minimum subscription condition.

The time it takes ASX to process an application for listing is very much a function of the quality of the application. The better the quality of the application, the more quickly and efficiently ASX is likely to be able to process it. ASX therefore encourages applicants for listing to engage professional advisers who are experienced in ASX listings and to seek their advice and assistance in preparing their listing application.

Subject to the comments above, ASX Listings Compliance will generally try to process an application for listing within a timeframe that is consistent with the timetable outlined in any prospectus, PDS or information memorandum the applicant may be issuing in connection with its listing. That said, if an applicant intends to specify in its prospectus, PDS or information memorandum a timetable that is shorter than four weeks from the date of lodgement of the application with ASX, it should discuss the matter with ASX Listings Compliance at the earliest opportunity to determine whether the proposed timetable can be accommodated.

2.5 Fast track process for offers proceeding by pathfinder prospectus or PDS

In most cases, ASX normally does not commence its review of a listing application until the applicant has filed its prospectus or PDS with ASIC, this being one of the documents that must accompany the application for listing. This in turn generally means that an applicant for listing is not normally notified of ASX's decision in relation to the application for some 4 to 6 weeks thereafter, with quotation of the applicant's securities on ASX commencing at some point after notification of ASX's decision to admit the applicant to the official list.

Where, however, an entity is proposing to use a "pathfinder" prospectus or PDS,²⁰ ASX may agree to "front end" its review of the entity's listing application based on the pathfinder prospectus or PDS and complete most of the work involved in assessing the application before the applicant formally lodges its final prospectus or PDS with ASIC. By doing this, ASX will generally be able to commence official quotation of the applicant's securities on ASX approximately two weeks after the date (the formal lodgement date) that the applicant lodges with ASX its application for listing with the final version of its prospectus or PDS, as lodged with ASIC.

If ASX agrees to apply this fast track process, the applicant must lodge its pathfinder prospectus or PDS, a draft of its Appendix 1A application for listing and the accompanying Information Form and Checklist (ASX Listings), drafts or final versions of all the supporting information and documents that would ordinarily accompany that Form/Checklist and a cheque for the initial listing fee no less than 4 weeks prior to the formal lodgement date. If

¹⁶ See '3.1 Appropriate structure and operations' on page 11.

¹⁷ See '2.8 The listing decision' on page 8.

¹⁸ Where the applicant is making a non-underwritten offer of securities that is subject to a minimum subscription condition, ASX may defer finalising its review of the application until it is advised by the applicant in writing that the minimum subscription condition has been, or is close to being, satisfied.

²⁰ A pathfinder prospectus or PDS is a document distributed to professional or sophisticated investors which does not seek subscriptions but is designed to facilitate the pricing of securities or other financial products proposed to be offered under, or for settling the contents of, the prospectus or PDS. See also paragraph 268 of ASIC Regulatory Guide 254 Offering Securities under a Disclosure Document.

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ASX LISTING RULES

Guidance Note 1

the entity is proposing to seek a waiver from any Listing Rule in conjunction with its listing, a formal request for that waiver will also be required at this time.

In addition, if the applicant is proposing to seek in-principle advice²¹ about the application of, or a waiver from, any Listing Rule (including the application of ASX imposed escrow), the application for in-principle advice must be lodged with ASX no less than 4 weeks prior to lodging the pathfinder prospectus or PDS and draft Appendix 1A with ASX.

On the formal lodgement date, the applicant will need to lodge with ASX:

- a completed and signed Appendix 1A application for listing;
- a completed Information Form and Checklist (ASX Listings);
- a copy of the final prospectus or PDS lodged with ASIC; and
- final versions of any draft documents that were lodged with ASX prior to the formal lodgement date,

together with a mark-up showing any changes that were made to the above documents from the versions originally lodged with ASX or, if no such changes have been made, written confirmation to that effect.

ASX's ability to meet this fast track timetable for quotation will depend on there being no material changes to the Appendix 1A application for listing, pathfinder prospectus or PDS and other draft documents originally given to ASX.

If an applicant for listing is proposing to use a [pathfinder](#) prospectus or PDS for its offer and wishes to take advantage of this fast track process, it should discuss the matter with ASX Listings Compliance at the earliest opportunity to ensure that ASX is agreeable to applying the process described above and that its proposed timetable for listing can be accommodated.

2.6 Corporations Act deadlines for lodgement and quotation

If an entity has issued a prospectus or PDS in conjunction with its listing application, as most will,²² the Corporations Act 2001 (Cth)²³ imposes strict timing requirements as to when the application for admission must be lodged with ASX and when admission to quotation of its securities must be achieved.

If a prospectus or PDS states or implies that the securities offered under it are to be quoted on ASX, then an application for admission to quotation must be made to ASX within 7 days, and the securities must be admitted to quotation on ASX within 3 months, after the date of the prospectus or PDS.²⁵

An entity should liaise with its professional advisers to ensure that a properly completed application for admission to the official list is lodged with ASX in sufficient time to satisfy these time limits.

An entity that has or may have difficulties meeting these time limits should refer to Part I (Minimum subscription and quotation conditions) of ASIC Regulatory Guide 254 Offering securities under a disclosure document for guidance on what to do. If it has any queries in that regard, it should direct them to ASIC, the regulatory body responsible for administering the Corporations Act, rather than ASX. The entity should keep ASX informed of any material developments and, if it lodges a "refresh document" with ASIC to extend its prospectus or PDS, it should provide a copy to ASX as soon as practicable thereafter.

²¹ See Guidance Note 17 *Waivers and In-Principle Advice*.

²² See '3.3 Prospectus or PDS' on page 14.

²³ Referred to in this Guidance Note as the "Corporations Act". Unless otherwise indicated, references in this Guidance Note to sections of an Act are to sections of the Corporations Act.

²⁵ See sections 723(3) and 724 (securities offered under a prospectus) and sections 1013H and 1016D (securities offered under a PDS). See also Part I (Minimum subscription and quotation conditions) of ASIC Regulatory Guide 254 *Offering securities under a disclosure document* (RG 254).

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Deleted: transfer of securities in response to an application made under the [prospectus] is void; and [¶] (d) . the person offering the securities must return the money received by the person from the applicants as soon as practicable. [¶] Similarly, in the case of financial products to be quoted on ASX that are offered under a PDS, section 1016D of the Corporations Act provides: [¶] (1) If [the
Deleted:] ... states or implies that [the financial products] will be able to be traded on [ASX], the responsible person must only issue or sell [the financial products], pursuant to an application made in response to [the PDS], if:
Deleted: (a) . the product is able to be traded on [ASX]; or [¶] (b) an application has, within 7 days after the relevant date (see subsection (3)), been made to [ASX] for the taking of such action as is necessary to enable [the financial products] to be traded on [ASX]; [¶] Paragraph (b) ceases to apply to the [financial product] at the end of the period of 3 months starting on the relevant date. [¶] (2) . If [the PDS] ... states or implies that [the financial products are] to be quoted on [ASX] and [¶] (a) an application has not, within 7 days after the relevant date (see subsection (3)), been made to [ASX] for the taking of such action as is necessary to enable [the financial products] to be traded on [ASX]; or [¶] (b) . the product is not able to be traded on [ASX] at the end of 3 months after the relevant date; [¶] then; [¶] (c) an issue or transfer to a person of [the financial products] is void if; [¶] (i) . the issue or transfer is pursuant to an application made in response to [the PDS]; or [¶] (ii) the person should have been given [the PDS]; and [¶] (d) if; [¶]
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ASX LISTING RULES

Guidance Note 1

An applicant generally should not issue any securities offered under a prospectus or PDS that states or implies that the securities offered under it are to be quoted on ASX unless and until:

- it receives a written notification from ASX that its application has been successful and ASX intends to admit the entity to the official list and to quote its securities; and
- it has a high degree of confidence that it will be able to meet any conditions that ASX may have imposed on its admission or the quotation of its securities.²⁶

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If it issues securities to investors under the prospectus or PDS and it finds that its securities are not admitted to quotation on ASX within the period prescribed by the Corporations Act, the issue is void and it will be obliged to return to investors the moneys they have paid under the prospectus or PDS, or else to obtain a court order extending the time limit for quotation.²⁷

An applicant should also note that it is required to hold any moneys received from an investor under a prospectus or PDS on trust for the investor until the investor is issued with the securities for which they have applied.²⁸ The applicant is not at liberty to expend any of those moneys before then.

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2.7 Payment of initial listing fee

An entity applying for admission to the official list must pay the applicable initial listing fee in accordance with Chapter 16 of the Listing Rules and the schedule of fees set out in Guidance Note 15A *ASX Schedule of Listing Fees*. This payment must be made at the time its lodges its application for listing.²⁹ ASX will not begin processing an application for listing until it has received the initial listing fee.

Payment can be made either by cheque made payable to ASX Operations Pty Ltd or by electronic funds transfer to the following account:

Bank: National Australia Bank
Account Name: ASX Operations Pty Ltd
BSB: 082 057
A/C: 494728375
Swift Code (Overseas Customers): NATAAU3302S

If payment is made by electronic funds transfer, the applicant should email its remittance advice to ar@asx.com.au or fax it to (612) 9227-0553, describing the payment as "initial listing fee" and including the name of the entity applying for admission, the ASX home branch where the entity has lodged its application (ie Sydney, Melbourne or Perth) and the amount paid.

²⁶ The requirement that securities be admitted to quotation on ASX within 3 months of a prospectus or PDS is only met when they are actually admitted to quotation on ASX and not when ASX advises the entity that it intends to admit the entity to the official list and/or to quote its securities (see RG 254.218-220).

²⁷ See section 723 (securities offered under a prospectus) and section 1016D (securities offered under a PDS) and Table 9 in RG 254.

²⁸ See section 722 (securities offered under a prospectus) and section 1017E (securities offered under a PDS). In the case of securities issued under a PDS, the application money received from investors must be paid into an account that meets the requirements of section 1017E. In the case of securities issued under a prospectus, the Corporations Act does not specify how investor funds should be held other than saying that they must be held on trust. Best practice, however, would be for the funds to be paid into a separate and secure bank account set up specifically for that purpose, which is designated as a "trust account".

²⁹ As a practical matter, this means that the applicant will need to fund the payment of its initial listing fee from sources other than the subscriptions it intends to raise under its listing prospectus or PDS. This is for two reasons. First, lodgement of a listing application usually occurs at or before the start of the offer period under the applicant's listing prospectus or PDS, so the applicant typically will not have raised any subscriptions at that point. Secondly, as mentioned above in note 28 and the accompanying text, the applicant will be required to hold any moneys it receives from investors under its listing prospectus or PDS on trust for investors until they have been issued with their securities and so it cannot use those moneys for any purpose ahead of that issue.

If the applicant borrows money to pay its initial listing fee and intends to use the proceeds raised under its listing prospectus or PDS to repay the borrowing, this should be disclosed in the "use of funds" section of its prospectus or PDS.

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ASX LISTING RULES

Guidance Note 1

As mentioned below,³⁰ an entity should apply for quotation of, and pay the initial listing fee for, the maximum number of securities that can be quoted. If the actual number of securities eventually quoted is less than the amount applied for, ASX will refund the excess.³¹

Further guidance about the calculation and payment of listing fees is set out in Guidance Note 15 *ASX Listing Fees*. There is also a Listing Fee Calculator available online at: www.asx.com.au/prices/cost-listing.htm.

2.8 The listing decision

Decisions on whether or not an entity meets the conditions for admission to the official list, and the quotation of its securities, and whether or not to grant any waiver requested or required in connection with its admission or the quotation of its securities, are generally made on behalf of ASX by the ASX National Listing Committee (NLC). The NLC's decision on these matters will be reduced to writing and communicated to the applicant by ASX Listings Compliance, usually via an emailed letter.

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ASX has an absolute discretion in deciding whether or not to admit an entity to the official list and to quote its securities, and is not required to give any reasons for its decision in that regard.³² ASX may exercise its discretion not to admit an entity to the official list even where the entity meets, or is expected to meet, the specific conditions set out in the Listing Rules for listing and quotation. Examples of where ASX may do so include where:

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- ASX is not satisfied that the applicant has an appropriate structure and operations for a listed entity;³³
- ASX is not satisfied with the qualifications and experience of the auditor who provided the audit report for, or conducted a review of, the entity's accounts or its pro forma statement of financial position;
- ASX has had prior unacceptable dealings with the applicant or a director, promoter, broker, auditor, investigating accountant or professional adviser involved in the application;
- the applicant appears to ASX to be seeking a listing on ASX for collateral purposes unrelated to accessing Australian capital markets;³⁴
- ASIC or another corporate regulator has expressed concerns to ASX about the admission of the applicant to the official list;
- the applicant has been denied admission to the official list of another exchange; or
- ASX otherwise has concerns that admitting the applicant to the official list may put at risk the reputation of the ASX market as one of quality and integrity.³⁵

Decisions on whether or not ASX should exercise its discretion not to admit an entity to the official list are generally made on its behalf by the ASX Policy and Listings Standards Committee (PLSC) on reference from the NLC. Currently, all applications from entities that are incorporated in, have their main business operations in, or have a majority of their board or a controlling shareholder resident in, an emerging or developing market are referred to the PLSC for consideration of these factors.

³⁰ See '3.6 Number of securities to be quoted' on page 19.

³¹ Further details of the refund arrangements are set out in Guidance Note 15 *ASX Listing Fees*.

³² Listing Rules 1.19 and 2.9.

³³ See '3.1 Appropriate structure and operations' on page 11.

³⁴ Common indicia of an applicant seeking a listing on ASX for collateral purposes unrelated to accessing Australian capital markets include where the applicant is seeking to raise a small amount of capital relative to its size or to list with a relatively small free float. Another indicia is where the statement in its listing prospectus, PDS or information memorandum about the proposed use of funds raised is vague or indicates that most of the funds raised will be spent on the costs of listing. These indicia beg the question as to why the applicant is seeking a listing on ASX.

³⁵ The list of examples in the text where this discretion may be exercised is not intended to be exhaustive.

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ASX LISTING RULES

Guidance Note 1

ASX may impose such conditions on admission and/or quotation as it considers appropriate.³⁶

In practice, ASX's decision to admit an entity as an ASX Listing and quote its securities is usually expressed to be subject to a number of conditions that must be satisfied before the decision becomes effective. Typically, these will include:

- the close of the offer under the applicant's prospectus, PDS or information memorandum and the completion of the issue of any required minimum subscription;
- confirmation in a form acceptable to ASX (usually a bank statement) that the applicant has received cleared funds for the full amount of the issue price under the prospectus, PDS or information memorandum;
- mailing of CHES³⁷ or issuer sponsored holding statements to the successful applicants;
- ASX being satisfied that the applicant meets ASX's minimum free float³⁸ and spread³⁹ requirements;
- a statement setting out the number of securities subject to escrow and the escrow period applied;
- where appropriate, provision of updated financial information (such as an updated statement of commitments or pro forma balance sheet) based on the actual amount of funds raised under the applicant's prospectus, PDS or information memorandum; and
- provision to ASX of any remaining documents referred to in the Information Form and Checklist (ASX Listings) that have not yet been lodged with ASX, including usually:
 - a statement setting out the names of the 20 largest holders of each class of securities to be quoted, and the number and percentage of each class of securities held by those holders;
 - a distribution schedule of each class of equity security to be quoted setting out the number of holders in the categories:
 - 1 - 1,000
 - 1,001 - 5,000
 - 5,001 - 10,000
 - 10,001 - 100,000
 - 100,001 and over; and
 - the number of holders of a parcel of securities (excluding restricted securities or securities subject to voluntary escrow⁴⁰) with a value of more than \$5,000, based on the issue/sale price.

Once ASX is satisfied that the entity has met all applicable admission and quotation conditions, ASX will notify the entity of the date on which trading in its securities will commence.

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³⁶ Listing Rules 1.19 and 2.9.

³⁷ CHES stands for 'Clearing House Electronic Subregister System'. CHES is a proprietary system operated by ASX Settlement that facilitates the clearing and settlement of trades in securities quoted on ASX and includes an electronic sub-register for the registration of title to securities issued by ASX-listed companies.

³⁸ See '3.7 Minimum free float' on page 19.

³⁹ See '3.8 Minimum spread' on page 20.

⁴⁰ As defined in Listing Rule 19.12.

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ASX LISTING RULES

Guidance Note 1

2.9 Documents released to the market

After ASX has admitted an entity to the official list, and prior to the commencement of quotation, a number of documents will be released to the market through the ASX Market Announcements Platform as pre-quotation disclosure.⁴¹ These documents will typically include:

- the entity's Appendix 1A application form and the accompanying Information Form and Checklist (ASX Listings);
- the entity's constitution;
- any financial statements given to ASX with the application;
- if it is not included in the entity's prospectus, PDS or information memorandum but given to ASX as a separate document:
 - the entity's trading policy;
 - the entity's corporate governance statement;⁴² and
 - the information about employment, service and consultancy agreements with the entity's chief executive officer, directors and their related parties referred to in Listing Rule 3.16.4; and
- the distribution schedule of the numbers of holders in each class to be quoted and the statement setting out the names of the 20 largest holders in each class of securities to be quoted, and the number and percentage of each class of securities held by those holders.

For privacy and/or confidentiality reasons, the documents released on the ASX Market Announcements Platform with an admission application for an ASX Listing will not include the documents supplied to ASX about the directors or proposed directors in satisfaction of Listing Rule 1.1 condition 20.⁴³ Nor will they include restriction agreements, underwriting agreements or other material contracts⁴⁴ provided with the listing application or any letter applying for a waiver or in-principle advice.

If the applicant has received a waiver of any Listing Rule in connection with its admission, ASX may require the entity to disclose on the ASX Market Announcements Platform the fact that it has received the waiver and the terms of the waiver.

2.10 Requirements for additional information

ASX may require an applicant for listing to disclose additional information over and above that required under Appendix 1A and the accompanying Information Form and Checklist (ASX Listings).⁴⁵

ASX may submit, or require the applicant to submit, any information given to ASX to the scrutiny of an expert selected by ASX.⁴⁶

⁴¹ ASX will usually already have released a copy of the applicant's prospectus, PDS or information memorandum on the ASX Market Announcements Platform ahead of the listing decision, after the applicant has been set up in ASX's systems with an appropriate code and entity details (see note 74 and accompanying text below).

⁴² See '3.14 ASX Corporate Governance Council recommendations' on page 28, including in particular note 188.

⁴³ Which requires ASX to be satisfied that the directors or proposed directors of the entity are of good fame and character (see '3.18 Directors must be of good fame and character' on page 29).

⁴⁴ Since material contracts are not released on the ASX Market Announcements Platform, it is particularly important that the entity's prospectus, PDS or information memorandum include a fair and accurate description and a summary of the material terms of those contracts.

⁴⁵ Listing Rule 1.17.

⁴⁶ Listing Rule 1.17. The costs of the expert must be paid for by the applicant.

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ASX LISTING RULES

Guidance Note 1

ASX may also impose a condition on admission or quotation that the applicant disclose certain information to the market before its admission to the official list or quotation commences.⁴⁷

Entities that conduct an initial public offering by way of a bookbuild should be aware that, as a matter of practice, ASX will require disclosure of certain information relating to the outcome of the bookbuild before quotation commences. This information is set out in the Annexure to this Guidance Note.

In certain cases, ASX may also require the applicant to provide information about the qualifications and experience of its auditor for release to the market before quotation commences.⁴⁸

2.11 Responsibility for materials provided with a listing application

An officer or employee of a corporation who gives, or authorises or permits the giving of, materially false or misleading⁴⁹ information to ASX in connection with a listing application by the corporation:

- knowingly, breaches section 1309(1) of the Corporations Act, which is a criminal offence punishable by a fine of up to 200 penalty units and/or imprisonment for up to 5 years; or
- without taking reasonable steps to ensure that the information was not false or misleading, breaches section 1309(2) of the Corporations Act, which is a criminal offence punishable by a fine of up to 100 penalty units and/or imprisonment for up to 2 years.⁵⁰

Lead managers and other professional advisers involved in a listing application who do likewise can also be liable under other provisions of the Corporations Act.⁵¹

It is therefore important that applicants and their officers, employees, lead managers and other professional advisers exercise appropriate care and diligence in the preparation of a listing application and supporting documents.

3. Particular listing requirements

3.1 Appropriate structure and operations

An entity seeking admission to the official list as an ASX Listing **must** have a structure and operations that are appropriate for a listed entity.⁵²

Examples of where **an applicant may not have a structure and operations that are appropriate for a listed entity** include:

⁴⁷ Listing Rules 1.19 and 2.9.

⁴⁸ The Information Form and Checklist (ASX Listings) that must accompany an Appendix 1A application for listing requires the applicant to disclose the name of its auditor.

⁴⁹ This includes omitting material which renders the information given to ASX misleading in a material respect.

⁵⁰ See for example ASIC Media Release 14-103MR announcing that a former Perth director had been sentenced to 14 months jail, with a minimum of 5 months to serve before being released on a \$5,000 recognisance requiring good behaviour for 12 months, for providing false or misleading information to ASX in connection with the conditions precedent for admission to the official list.

⁵¹ See for example ASIC Media Release 08-167, announcing that ASIC had banned an individual from providing financial services for 5 years, among other things, for knowingly misleading or deceiving ASX about shareholder spread and, in so doing, misleading or deceiving investors under section 1041H of the Corporations Act. In that case, the individual had been engaged as a consultant to assist an applicant for listing that was having difficulty meeting the spread test. He subsequently sought assistance from some of his associates and instructed them to encourage others known to them to fill in application and transfer forms for shares. He paid \$100 to his associates for each completed application, a portion of which was sometimes passed onto the applicant. The individual applicants were encouraged to fill out an IPO application form without completing the payment details on the application form. They were also asked to execute pre-completed share transfer forms. The shares were then paid for from a bank account held by a director of the applicant and later transferred out of the applicants' names by way of the pre-completed transfer forms.

⁵² Listing Rule 1.1 condition 1. In assessing whether this requirement is met, ASX has regard to the principles on which the Listing Rules are based, as set out in the introduction to the Listing Rules. One of those principles is that securities "should have rights and obligations attaching to them that are fair to new and existing security holders".

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ASX LISTING RULES

Guidance Note 1

- where the applicant has a vague or ill-defined business model or its business operations do not appear to ASX to have any substance.⁵³
- where the applicant is incorporated or established in an emerging or developing market⁵⁴ and ASX is not satisfied that the level of corporate regulation in that market is appropriate for a listed entity;⁵⁵
- where ASX is not satisfied as to the legality of the applicant's business operations in any jurisdiction where they are materially carried on;
- where a material part of the applicant's business operations is conducted through a joint venture with another party or parties and the joint venture agreement gives another joint venture participant disproportionate representation on the governing body of the joint venture or disproportionate decision-making powers;⁵⁶
- where the applicant holds a derivative or economic interest in a material part of its assets or business operations via potentially risky contractual arrangements with the owner of the assets or operations rather than owning them itself or through a child entity;⁵⁷
- where the applicant's board has no directors with experience directing or managing a listed entity;
- where the applicant's board has no directors with experience directing or managing a business of the type that the entity will have at the time of its proposed listing;
- where the applicant appears to ASX to have structured its board and management to avoid having to meet the good fame and character requirements for a particular individual;⁵⁸
- where the applicant appears to ASX to have priced the offer of its securities under its listing prospectus, PDS or information memorandum at an artificially high price in an attempt to meet the market capitalisation test⁶⁰ or ASX's minimum spread requirements;⁶¹

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Deleted: held by parties other than related parties⁵⁹ and the trustee or trustees of any employee incentive scheme) – in this regard, ASX would generally expect the

Deleted: of an entity that at listing will have a free float of less than 10% to outline its plans to increase that percentage to at least 10% and the timeframe over which it intends to do that

⁵³ ASX has, for example, declined to accept an application for admission to the official list from an applicant that claimed to have invented a "perpetual motion" machine. If ASX has concerns about the substance of an applicant's business operations, it may exercise its power under Listing Rule 1.17 to require additional information from the applicant about those operations and for that information to be submitted to the scrutiny of an expert selected by ASX but paid for by the applicant.

⁵⁴ For these purposes, ASX regards any country that is on the list of developing countries declared by the Minister for Foreign Affairs for the purposes of the Overseas Aid Gift Deduction Scheme established by the Income Tax Assessment Act 1997 (available online at <http://dfat.gov.au/about-us/publications/Documents/list-developing-countries.pdf>) as an emerging or developing market.

⁵⁵ In such a case, it will often be more suitable that the applicant is a holding entity established in Australia or in another developed jurisdiction that holds the assets in the emerging or developing market through a child entity.

⁵⁶ Where an applicant has a material interest in a joint venture, ASX would generally expect its listing prospectus, PDS or information memorandum to contain a clear description of the joint venture agreement, including the parties to the agreement and their respective rights and obligations under the agreement, as well as any risks arising from the fact that its business operations are conducted through a joint venture rather than by the entity itself or a child entity.

⁵⁷ For example, ASX does not consider that a "variable interest entity" or VIE is an acceptable structure for listing on ASX. A VIE is a construct used by non-Chinese parties to acquire the economic equivalent of ownership of certain business ventures in China that are otherwise subject to foreign ownership restrictions under Chinese law. A VIE structure attempts to mimic ownership of the Chinese business venture via a series of complex contractual arrangements with the Chinese owners of the venture. These arrangements are particularly risky as their status under Chinese law is presently unclear and they rely heavily on the Chinese owners performing their contractual obligations. More generally, ASX would generally expect an applicant's listing prospectus, PDS or information memorandum to set out a clear description of how the applicant holds or derives its interest in its material assets and business operations and, if it does not do so directly or through a child entity, to include an explanation of why that structure has been employed, as well as any risks arising from the fact that its assets or business operations are held in that way rather than being directly owned by the entity itself or a child entity. ASX may also require the applicant under Listing Rule 1.17 to provide an opinion from a suitably qualified legal expert from the jurisdiction where the assets or business operations are located that the ownership structure is lawful in that jurisdiction.

⁵⁸ See '3.18 Directors must be of good fame and character' on page 29.

⁶⁰ The market capitalisation test refers to the second limb of the asset test in Listing Rule 1.3.1 (permitting an entity to list of ASX if it has a market capitalisation of at least \$20 million).

⁶¹ See '3.8 Minimum spread' on page 20.

Deleted: ASX may exercise its discretion under Listing Rule 1.19 to refuse to admit an entity to the official list if it is proposing to list with a free float of less than 10% and its listing prospectus, PDS or information memorandum does not outline plans to increase that percentage to at least 10% over the medium term.

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ASX LISTING RULES

Guidance Note 1

- where the applicant's capital structure includes options,⁶² performance shares or other convertible securities, and the total number of ordinary securities that will be issued if the options are all exercised, the performance milestones applicable to the performance shares are all achieved and the convertible securities are all converted is greater than the number of ordinary securities in the entity on the date of listing;⁶³
- where the applicant's capital structure includes a not insignificant number of "piggy back" options (that is, options to acquire further options);⁶⁴
- where the applicant's capital structure includes performance shares that do not meet the requirements outlined in Guidance Note 19 *Performance Shares*;
- where the applicant is offering bonus or "loyalty" securities and it is a condition of receiving the benefit of those bonus or loyalty securities that security holders must retain other securities in the entity quoted on ASX for a given period;⁶⁵
- where the applicant's capital structure has separate classes of securities which confer on one class disproportionate representation on the board or other governing body of the entity or disproportionate voting powers;⁶⁶
- ~~where the applicant has not stipulated a minimum subscription condition for the offer of securities under its listing prospectus, PDS or information memorandum or the minimum subscription condition it has stipulated does not appear to ASX to be sufficient to provide enough capital to meet its business objectives;~~⁶⁹
- where the applicant has a stapled structure and the structure does not meet the requirements outlined in Guidance Note 2 *Stapled Securities*; ~~and~~
- where the applicant is an externally managed listed entity and the management agreement does not meet the requirements outlined in Guidance Note 26 *Management Agreements*.⁷⁰

Co-operative and other mutual business entities are given certain concessions by ASX to facilitate their listing even though they may have a structure or operations that might not be acceptable for other types of entities. Further guidance on these concessions can be found in Guidance Note 3 *Co-operatives and Mutual Business Entities*.

Deleted: <#>where the applicant's main business operations are conducted through a joint venture with another party or parties and the joint venture agreement gives another joint venture participant disproportionate representation on the governing body of the joint venture or disproportionate decision-making powers;[¶] where the applicant's main assets or business operations are located in an "emerging market"⁶⁷ and the applicant holds its interest in those assets or operations through a complex and potentially risky ownership structure (for example, to meet foreign ownership restrictions in the emerging market).^{68¶}

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⁶² Note that ASX regards most performance rights to be options for the purposes of the Listing Rules: see Guidance Note 19 *Performance Shares*.

⁶³ ASX considers this capital structure to be inconsistent with the policy underlying Listing Rule 7.16, which provides that a listed entity cannot have more options on issue than underlying securities. Having this number of options, performance shares or other convertible securities in a capital structure may confuse investors and lead to difficulties in valuing the entity's securities. It may also have a significant overhang effect on the market price of its ordinary securities.

⁶⁴ Again, having a significant number of piggy back options on issue may confuse investors and lead to difficulties in valuing the entity's securities. It may also have a significant overhang effect on the market price of its ordinary securities.

⁶⁵ Such a condition will act as a disincentive for security holders to trade the securities quoted on ASX. ASX considers this to be an inappropriate structure for the purposes of Listing Rule 1.1 condition 1.

⁶⁶ Note also Listing Rule 6.2, which precludes a listed entity from having more than one class of ordinary security unless ASX approves the terms of the additional class or the additional class is of partly paid securities which, if fully paid, would be in the same class as the ordinary securities.

⁶⁹ ~~An entity that undertakes an offer of securities in conjunction with its listing is expected to raise sufficient funds to meet the business objectives stated in its prospectus, PDS or information memorandum. In the case of an entity admitted under the assets test, its listing prospectus, PDS or information memorandum must include an express statement from its directors that the entity will have enough working capital at the time of its admission to carry out its stated objectives or else the entity must give ASX an equivalent statement from an independent expert (see note 160 below and the accompanying text).~~

~~If an entity does not raise enough working capital under its listing prospectus, PDS or information memorandum and consequently has to undertake a further capital raising shortly after listing, ASX may apply Chapter 11 of the Listing Rules and require the applicant to re-comply with Chapters 1 and 2 of the Listing Rules. Further guidance on this topic can be found in Guidance Note 12 *Significant Changes to Activities*.~~

⁷⁰ Listing Rule 15.16 prescribes a maximum five year term for any management agreement entered into by an investment entity. That rule, however, does not apply to entities that are not classified as 'investment entities'. This would include most typical infrastructure, energy and property funds.

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ASX LISTING RULES

Guidance Note 1

3.2 Constitution

An entity seeking admission in the ASX Listing category must have a constitution that is consistent with the Listing Rules or that includes the provisions in Appendix 15A (for entities which are not companies to which any replaceable rule⁷² applies) or Appendix 15B (for companies to which any replaceable rule applies).⁷³ These Appendices include pro forma constitutional provisions intended to ensure that if there is any inconsistency between the entity's constitution and the Listing Rules, the Listing Rules will prevail.

An applicant which has elected not to include the provisions of Appendix 15A or Appendix 15B in its constitution (as applicable) must include with its application a completed ASX Constitution Checklist to confirm that its constitution complies with the Listing Rules. An editable version of the checklist can be downloaded from www.asx.com.au/regulation/compliance/compliance-downloads.htm.

3.3 Prospectus or PDS

An entity seeking admission in the ASX Listing category will generally need to issue a prospectus or PDS and lodge it with ASIC⁷⁴ (although, in certain limited circumstances, ASX may agree to accept an information memorandum in lieu of a prospectus or PDS⁷⁵).

The prospectus or PDS must include a prominent statement (that is, on the cover or near the front of the document) that ASX takes no responsibility for the contents of the prospectus.⁷⁶

It is common for an entity applying for listing to be making an offer of securities to raise capital and/or to satisfy ASX's minimum free float and minimum spread requirements,⁷⁷ and it will usually be the prospectus or PDS for that offer⁷⁸ that is used to meet this requirement.

A copy of the applicant's prospectus or PDS, as lodged with ASIC, must accompany its Appendix 1A application for listing⁷⁹ and will be released to the market via the ASX Market Announcements Platform ahead of the listing decision, after the applicant has been set up in ASX's systems with an appropriate code and entity details.⁸⁰ This

⁷² "Replaceable rules" are those provisions of the Corporations Act that are listed under section 141 of the Corporations Act as "replaceable rules" and so capable of being replaced or modified by a company's constitution. Replaceable rules are only relevant to companies incorporated in Australia and registered under the Corporations Act.

⁷³ Listing Rule 1.1 condition 2.

⁷⁴ Listing Rule 1.1 condition 3.

⁷⁵ See '3.4 When ASX will accept an information memorandum in lieu of a prospectus or PDS' on page 16.

⁷⁶ Listing Rule 1.1 condition 3. This statement can be combined with the statement required under sections 711(7)(b) and 1013J(b) of the Corporations Act respectively that ASIC takes no responsibility for the contents of the prospectus or PDS.

⁷⁷ See '3.7 Minimum free float' on page 19 and '3.8 Minimum spread' on page 20.

⁷⁸ Any offer of securities in advance of, or in conjunction with, a listing on ASX – even where the offers are confined to investors outside Australia or are limited to investors in Australia who would not otherwise have to be given a prospectus/PDS under section 708/1012D (for example, sophisticated investors under section 708(8)/761G(7)(a)-(c) or professional investors under section 708(11)/761G(d)) – will usually attract section 707(3)/1012C(6) and therefore, as a practical matter, require the production of a prospectus/PDS under section 708A/1012DA. Any entity that is seeking admission as an ASX Listing and that is not intending to lodge a prospectus or PDS with ASIC will need to satisfy ASX that a prospectus or PDS is not required under the Corporations Act, either in connection with the primary issue of those securities or the secondary sale of those securities on ASX.

⁷⁹ An entity warrants in its Appendix 1A ASX Listing application and agreement that an offer for sale of the securities to be quoted within 12 months after their issue will not require disclosure under section 707(3) or section 1012C(6) of the Corporations Act and indemnifies ASX to the fullest extent permitted by law in respect of any claim, action or expense arising from, or connected with, any breach of that warranty.

⁷⁹ An applicant for listing must provide an electronic version and 25 hard copies of its prospectus or PDS (or, if ASX permits one, its information memorandum) as one of the required attachments to the Information Form and Checklist accompanying its Appendix 1A listing application.

⁸⁰ The fact that ASX enters an entity's details into its systems and releases a copy of its prospectus, PDS or information memorandum on the Market Announcements Platform does not constitute approval of the entity's application to be admitted to the official list or any express or implied endorsement by ASX of its prospectus, PDS or information memorandum. ASX may refuse the application notwithstanding it has taken these steps.

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ASX LISTING RULES

Guidance Note 1

is to facilitate both the primary offering of the securities ahead of quotation and also to help ensure that there is an informed secondary market in the securities if and when quotation commences.

The Corporations Act requires:

- a prospectus for securities to set out all the information that investors and their professional advisers would reasonably require, and reasonably expect to find in the prospectus, to make an informed assessment of the rights and liabilities attaching to the securities and of the issuer's assets and liabilities, financial position and performance, profits and losses and prospects;⁸¹ and
- a PDS for other financial products to include, amongst other things, all information that might reasonably be expected to have a material influence on the decision of a reasonable person, as a retail client, whether to acquire the product.⁸²

The Corporations Act also imposes significant liabilities on the issuer of a prospectus or PDS if the prospectus or PDS omits such information or is otherwise misleading or deceptive.⁸³

ASX would observe that much of the information referred to in the Information Form and Checklist (ASX Listings) that must accompany an Appendix 1A application for listing would typically be included in the applicant's listing prospectus or PDS, on the basis that this is material information for investors.

There is also some limited guidance in this Guidance Note on additional matters that ASX considers ought to be disclosed in a listing prospectus or PDS.⁸⁶

It is the responsibility of the applicant and its professional advisers to determine what information must be included in its prospectus or PDS, having regard to their disclosure obligations and liabilities under the Corporations Act.⁸⁷

If requested by an applicant, ASX will review and provide comments on an extract from a draft prospectus or PDS that raises particular Listing Rule issues. Beyond that, ASX will not pre-vet or provide comments on a draft prospectus or PDS ahead of its lodgement with ASIC.

ASX will review the final version of the applicant's prospectus or PDS lodged with ASIC and, if it has any concerns about the quality of the information in the prospectus or PDS, it may raise those concerns with ASIC, as the regulator responsible for administering the laws relating to prospectuses and PDSs, and discuss with ASIC whether the applicant should be required to lodge a supplementary or replacement prospectus or PDS to address those concerns.⁸³ It may also take those concerns into account in determining whether or not it will admit the applicant to the official list.⁸⁴

⁸¹ Corporations Act section 710.

⁸² Corporations Act section 1013E.

⁸³ See sections 728, 729, 1021D, 1021E and 1022B of the Corporations Act. In the case of a prospectus, that liability can also extend to the directors of the issuer, as well as to proposed directors of the issuer and certain other parties named with their consent in the prospectus (see section 729(1)). In the case of a PDS, that liability can also extend to certain other parties named with their consent in the PDS (see section 1022B(3)).

⁸⁶ See, for example, the guidance in note 44 (material contracts), 56 (joint venture arrangements) and 57 (description of how the applicant holds its material assets and business operations) and 3.19 Additional requirements for foreign entities' on page 30.

⁸⁷ Applicants for listing should note the guidance provided by ASIC in relation to prospectuses and PDSs in ASIC Regulatory Guides 254 Offering Securities under a Disclosure Document, 168 Disclosure: Product Disclosure Statements (and other disclosure obligations) and 228 Prospectuses: Effective disclosure for retail investors (RG 228).

Entities should also be aware that there may be relevant professional codes, such as the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves (the 'JORC Code') and the Code and Guidelines for Assessment and Valuation of Mineral Assets and Mineral Securities for Independent Expert Reports (the 'Vaimin Code'), which contain requirements that could impact on the content of their prospectuses or PDSs.

⁸³ ASX has an obligation to refer any suspected significant contravention of the Corporations Act to ASIC under section 792B(2)(c) of that Act.

⁸⁴ Pursuant to its general discretion in that regard under Listing Rule 1.19.

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Deleted: The first exception applies where an entity is established outside Australia. In that case, ASX expects the applicant's prospectus or PDS to include:[¶] a statement of its place of incorporation or registration,[¶]

Moved down [3]: a statement to the effect that:[¶] "As [name of entity] is not established in Australia, its general corporate activities (apart from any offering of securities in Australia) are not regulated by the Corporations Act 2001 of the Commonwealth of Australia or by the Australian Securities and Investments Commission but instead are regulated by [insert name of governing legislation] and [insert name of corporate regulator administering that legislation]."[¶] a concise summary⁸⁸ of the rights and obligations of security holders under the law of its home jurisdiction⁸⁹ covering:[¶] what types of transactions require security holder approval;[¶] whether security holders have a right to request or requisition a meeting of security holders;[¶] whether security holders have a right to appoint proxies to attend and vote at meetings on their behalf;[¶] how changes in the rights attaching to securities are regulated;[¶] what rights do security holders have to seek relief for oppressive conduct;[¶] what rights do security holders have to bring or intervene in legal proceedings on behalf of the entity; and[¶] whether there is any equivalent to the "two strikes" rule in relation to remuneration reports in Part 2G.2 Division 9 of the Corporations Act; and[¶] a concise summary⁸⁹ of how the disclosure of substantial holdings and takeovers are regulated under the law of its home jurisdiction.⁹¹[¶]

Deleted: The second exception applies where an entity is proposing to list with a free float of less than 10%. In that case, as mentioned above,⁸² ASX expects the applicant's prospectus or PDS to outline its plans to increase that percentage to at least 10% and the timeframe over which it intends to do that.[¶]

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ASX LISTING RULES

Guidance Note 1

If the applicant issues a supplementary or replacement prospectus or PDS, it should provide a copy to ASX as soon as it is issued.⁹⁵ If the changes in the supplementary or replacement prospectus or PDS are material, ASX may require the applicant to provide an updated Information Form and Checklist (ASX Listings) that cross-references the new document.

3.4 When ASX will accept an information memorandum in lieu of a prospectus or PDS

ASX may agree to accept an information memorandum in lieu of a prospectus or PDS. Generally, it will only do so in one of the following circumstances:

- where the entity applying for admission is the successor entity to an existing listed entity that is undergoing some form of reconstruction and has no need to undertake an offer of securities in conjunction with its listing, either to raise capital or to meet ASX's minimum spread requirements;
- where the entity is undertaking a re-compliance listing⁹⁶ and has no need to undertake an offer of securities in conjunction with its listing, either to raise capital or to meet ASX's minimum free float and minimum spread requirements; or
- where the applicant is a government-owned body that is being privatised and is making an offer of securities which is not subject to the prospectus or PDS requirements in the Corporations Act.⁹⁷

If ASX agrees to accept an information memorandum in lieu of a prospectus or PDS, the information memorandum must meet the content requirements set out in Listing Rule 1.4. These include:

- if the entity is a company, a statement that the information memorandum contains all the information that would be required under section 710 of the Corporations Act if the information memorandum were a prospectus offering for subscription the same number of securities for which quotation will be sought;
- if the entity is a trust, a statement that the information memorandum contains all the information that would be required under section 1013C of the Corporations Act if the information memorandum were a PDS offering for subscription the same number of securities for which quotation will be sought;
- a statement that the entity has not raised any capital for the 3 months before, and will not need to raise any capital for 3 months after, the date of issue of the information memorandum; and
- a statement that the applicant will issue a supplementary information memorandum if it becomes aware of any of the following between the date of issue of the information memorandum and the date the entity's securities are quoted or reinstated:
 - a material statement in the information memorandum is misleading or deceptive;
 - there is a material omission from the information memorandum;
 - there has been a significant change affecting a matter included in the information memorandum; or
 - a significant new circumstance has arisen and it would have been required to be included in the information memorandum.

The information memorandum must also include a prominent statement (that is, on the cover or near the front of the document) that ASX takes no responsibility for the contents of the information memorandum.⁹⁹

⁹⁵ The reference in Listing Rule 1.1 condition 3 to providing ASX with a copy of a prospectus or PDS includes providing a copy of any supplementary or replacement prospectus or PDS (see the definitions of "prospectus" and "PDS" in Listing Rule 19.12).

⁹⁶ That is, fulfilling a requirement imposed by ASX pursuant to Listing Rule 11.1.3 (significant change in nature or scale of activities) that the entity must meet the requirements in Chapters 1 and 2 of the Listing Rules as if the entity were applying for admission.

⁹⁷ Corporations Act section 5A.

⁹⁹ Listing Rule 1.1 condition 3.

Deleted: Where an entity does undertake an offer of securities in conjunction with its listing, it is expected that the funds raised will be sufficient to meet the objectives stated in its prospectus or PDS. Any capital raising conducted shortly after listing may attract the application of Chapter 11 of the Listing Rules and could require the applicant to re-comply with Chapters 1 and 2 of the Listing Rules. Further guidance on this topic can be found in Guidance Note 12 *Significant Changes to Activities*.¶
Type of securities to be quoted¶
Listing Rule 1.1 condition 6⁹⁸ requires an

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ASX LISTING RULES

Guidance Note 1

If the applicant issues a supplementary or replacement information memorandum, it should provide a copy to ASX as soon as it is issued.¹⁰⁰ If the changes in the supplementary or replacement information memorandum are material, ASX may require the applicant to provide an updated Information Form and Checklist (ASX Listings) that cross-references the new document.

3.5 Requirements for quotation

An entity seeking admission in the ASX Listing category must apply for and be granted permission for quotation of all of the securities in its main class of securities (except restricted securities and securities issued under an employee incentive scheme that are subject to restrictions on transfer).¹⁰¹

The main class of securities will usually be, for a company, its fully paid ordinary shares and, for a trust, its fully paid ordinary units.¹⁰²

Listing Rule 2.1 sets out the conditions that must be satisfied for quotation of the main class of securities of an entity seeking admission to the official list as an ASX Listing. In summary, they are:

- the terms of the securities must comply with Chapter 6 of the Listing Rules;¹⁰³
- the issue or sale price of the securities must be at least 20 cents in cash;¹⁰⁴
- either:
 - the securities; or
 - if the entity is established in a jurisdiction whose laws have the effect that the securities cannot be registered or transferred under the operating rules of an approved clearing and settlement facility, CDIs issued over those securities, have been approved under the operating rules of an approved clearing and settlement facility;¹⁰⁵ and
- if the applicant is not a no liability company and its main class of securities are partly paid securities, there must be a defined call program setting out the date and amount of each proposed call.¹⁰⁶

An entity applying for admission to the official list as an ASX Listing may also seek quotation of other classes of securities in addition to its main class of securities. If it does so, those securities must meet the conditions in Listing Rule 2.5. In summary, they are:

- the terms of the securities again must comply with Chapter 6 of the Listing Rules;¹⁰⁷

¹⁰⁰ The reference in Listing Rule 1.1 condition 3 to providing ASX with a copy of an information memorandum includes providing a copy of any supplementary or replacement information memorandum (see the definition of "information memorandum" in Listing Rule 19.12).

¹⁰¹ Listing Rule 1.1 condition 6. This Guidance Note does not address the requirements of condition 5 of Listing Rule 1.1. Condition 5 is only relevant to trusts. Further guidance on that condition can be found in Guidance Note 6 Trusts.

¹⁰² Listing Rule 19.2 defines "main class" as the ordinary securities of an entity or, if ordinary securities are not to be quoted, the class of securities designated by ASX.

¹⁰³ Listing Rule 2.1 condition 1. Chapter 6 of the Listing Rules sets out the rights and obligations that must be attached to the securities (both quoted and unquoted) of a listed entity.

¹⁰⁴ Listing Rule 2.1 condition 2. This condition does not apply to "restricted securities" and securities issued under an employee incentive scheme, which may still be quoted (in the case of restricted securities, after the escrow period ends) even though they are issued or sold for a price that is less than 20 cents.

¹⁰⁵ Listing Rule 2.1 condition 3. See also '3.20 Clearing and settlement' on page 32.

¹⁰⁶ Listing Rule 2.1 condition 4. The call program may provide for one extension of up to six months of the date for payment of a call, on provision of at least two months' written notice to holders of the partly paid securities. However, the call program for a mining entity or an oil and gas entity must require payment in full within two years after the date of issue and must not be extended past two years.

Conditions 5 and 6 of Listing Rule 2.1 are not addressed in this Guidance Note as they only apply to ASX Debt Listings.

¹⁰⁷ Listing Rule 2.5 condition 1.

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ASX LISTING RULES

Guidance Note 1

- if there are any restricted securities, the applicant must have complied with Chapter 9 of the Listing Rules;¹⁰⁸
- either:
 - the securities; or
 - if the entity is established in a jurisdiction whose laws have the effect that the securities cannot be registered or transferred under the operating rules of an approved clearing and settlement facility, CDIs issued over those securities,
have been approved under the operating rules of an approved clearing and settlement facility;¹⁰⁹
- if the securities are partly paid securities, there must be a defined call program setting out the date and amount of each proposed call;¹¹⁰
- if the securities are debt securities or convertible debt securities, a copy of the documents setting out the terms of the securities must have been given to ASX;¹¹¹
- if the securities are a class of equity securities, or other securities with rights of conversion to equity, that are not already quoted, there must be at least 100,000 securities and 50 holders with a marketable parcel (excluding restricted securities or securities subject to voluntary escrow) unless one of the following requirements is met:
 - the securities would be in the same class as the fully paid ordinary securities of the entity (ignoring the fact that they do not rank equally for the next dividend or distribution and ignoring any right to participate in a concurrent offer) and there are at least one million securities; or
 - the securities are a class of partly paid securities, there are at least one million securities, they are paid to not less than 40% of their issue price and the uncalled amount is payable on a fixed date which is within 12 months after the date of issue;¹¹² and
- if the securities are options issued on the exercise of other options, the other options must have expired, or have all been exercised.¹¹⁴

One of the core requirements of Chapter 6 of the Listing Rules is that the terms that apply to each class of equity securities of a listed entity (both quoted and unquoted) must, in ASX's opinion, be appropriate and equitable.¹¹⁵ In assessing whether this requirement is met, ASX will have regard to the principles on which the Listing Rules are based, as set out in the introduction to the Listing Rules, and the fairness and proportionality of the various rights and obligations attaching to the different classes of securities in the listed entity.

ASX recommends that an applicant for listing that has issued, or proposes to issue, securities that will have non-standard terms attached consult with ASX at the earliest opportunity about the likelihood of those terms meeting the requirements of Chapter 6.

Deleted: <#>if any of the entity's quoted securities are approved under the operating rules of an approved clearing and settlement facility, the new class must also be securities approved under the operating rules of the facility, unless the operator of the facility decides otherwise;¹¹³ and¶

¹⁰⁸ Listing Rule 2.5 condition 2.

¹⁰⁹ Listing Rule 2.5 condition 3. See also '3.20 Clearing and settlement' on page 32.

¹¹⁰ Listing Rule 2.5 condition 4. The call program may provide for one extension of up to six months of the date for payment of a call, on provision of at least two months' written notice to holders of the partly paid securities. However, the call program for a mining entity or an oil and gas entity must require payment in full within two years after the date of issue and must not be extended past two years.

¹¹¹ Listing Rule 2.5 condition 5.

¹¹² Listing Rule 2.5 condition 6.

¹¹⁴ Listing Rule 2.5 condition ~~7~~.

¹¹⁵ Listing Rule 6.1.

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Note that condition 3 has been deleted from Listing Rule 2.5.

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ASX LISTING RULES

Guidance Note 1

3.6 Number of securities to be quoted

As a practical matter, at the time an entity applies to ASX for admission to the official list, it may not know the precise number of securities in any particular class that are to be quoted. For example, some securities may not be quoted because ASX classifies them as restricted securities.¹¹⁶ Or an entity offering securities by way of a prospectus, [PDS](#) or [information memorandum](#) may include a provision allowing it to accept over-subscriptions and may not know the level of over-subscriptions it will receive and accept.

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To meet Listing Rule 1.1 condition 6¹¹⁷ and to avoid the legal difficulties that might otherwise arise under section 723(3) or 1016D of the Corporations Act,¹¹⁸ an entity should apply for quotation of, and pay the initial listing fee¹¹⁹ for, the maximum number of securities that can be quoted. Hence, even where the entity anticipates that ASX will categorise some of its securities as restricted securities and therefore not quote them until the escrow restriction lapses, it should include all of those securities in the number of securities for which quotation is sought. Similarly, if the entity's prospectus, [PDS](#) or [information memorandum](#) allows acceptance of over-subscriptions, the number of securities for which quotation is sought in the application should include the maximum amount of over-subscriptions that can be accepted.

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3.7 Minimum free float

An entity seeking admission in the ASX Listing category must have a free float at the time of its admission to the official list of not less than 20%.¹²⁰

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"Free float" means the percentage of the entity's main class of securities that:

- are not "restricted securities"¹²¹ or subject to voluntary escrow; and
- are held by non-affiliated security holders.¹²²

"Non-affiliated security holders" means security holders who are not: (a) a related party¹²³ of the entity; (b) an associate¹²⁴ of a related party of the entity; or (c) a person whose relationship to the entity or to a person referred to in (a) or (b) above is such that, in ASX's opinion, they should be treated as affiliated with the entity.¹²⁵

Securities held by or for an employee incentive plan are not regarded by ASX as forming a part of an entity's free float.¹²⁶

¹¹⁶ Restricted securities are only quoted once the escrow restriction has been lifted: see '3.10 Restricted securities' on page 25 and Guidance Note 11 *Restricted Securities and Voluntary Escrow*.

¹¹⁷ See note 101 above and the accompanying text.

¹¹⁸ See '2.6 Corporations Act deadlines for lodgement' on page 6.

¹¹⁹ See '2.7 Payment of initial listing fee' on page 7.

¹²⁰ Listing Rule 1.1 condition 7.

¹²¹ The concept of "restricted securities" is explained in greater detail in Guidance Note 11 *Restricted Securities and Voluntary Escrow*.

¹²² Listing Rule 19.12.

¹²³ "Related party", in the case of a body corporate, has the same meaning in section 228 of the Corporations Act and, in relation to a trust, means the responsible entity of the trust and a related party of the responsible entity under section 228 of the Corporations Act, as modified by section 601LA of the Corporations Act (Listing Rule 19.12).

¹²⁴ "Associate" has the meaning given in sections 12 and 16 of the Corporations Act, with section 12 applied as if paragraph 12(1)(a) included a reference to the Listing Rules and on the basis that the entity is the "designated body" for the purposes of that section (Listing Rule 19.12).

It should be noted that a related party of a director or officer of the entity or of a child entity is to be taken to be an associate of the director or officer unless the contrary is established.

¹²⁵ Listing Rule 19.12.

¹²⁶ If they do not fall within paragraph (a) or (b) of the definition of non-affiliated security holder in Listing Rule 19.12, ASX will regard them as falling within paragraph (c) of that definition.

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3.8 Minimum spread

An entity seeking admission in the ASX Listing category must meet ASX's minimum spread requirements.¹²⁷ This serves to demonstrate that there is sufficient investor interest in the entity to justify its listing¹²⁸ and to ensure some level of liquidity at the time the entity is initially listed.

To meet the minimum spread requirements:

- if the entity has a free float at the time of its admission to the official list of less than \$50 million,¹²⁹ there must be at least 200 non-affiliated security holders; or
- if the entity has a free float at the time of its admission to the official list of \$50 million or more, there must be at least 100 non-affiliated security holders,

each of whom holds a parcel of the entity's main class of securities¹³⁰ that are not "restricted securities," and that are not subject to voluntary escrow with a value of at least \$5,000.¹³¹

There is no specific requirement in the Listing Rules for a minimum number of Australian-resident security holders. However, ASX does encourage entities in the ASX Listing category to have at the time of their admission to the official list a reasonable number of security holders resident in Australia with security holdings of at least A\$5,000 in value, to promote local interest and liquidity in its securities. ASX also has a residual discretion under Listing Rule 1.19, which it may exercise in an appropriate case, to require as a condition of admission that the applicant has a minimum number of Australian resident security holders with a minimum size or value of security holding.

ASX will generally exercise this discretion where an applicant is incorporated in, has its main business operations in, or has a majority of its board or a controlling shareholder resident in, an emerging or developing market. In ASX's experience, these types of entities tend to target or attract investors from the emerging or developing market, making it less likely that they will trade on ASX and more difficult for ASX to conduct its usual checks to verify that minimum spread has been obtained without using artificial means. Typically, in such a case, ASX will require at least 75% of the minimum spread to come from investors resident in Australia.

ASX will generally count security holdings registered in the name of a nominee as a single holding and assume that they are held for non-Australian residents for the purposes of determining whether spread has been achieved. If an applicant requests ASX to look behind the nominee holding and take account of the number and residence of beneficial holders for the purposes of spread, ASX will, at a minimum, require a letter from the nominee setting out the full names, addresses and security holdings of each beneficial holder and attesting that each beneficial holder:

- is the beneficial owner of the securities in question and has full and unfettered power to direct the nominee to vote and to dispose of the securities as they see fit;
- is fully entitled to any proceeds received on the sale of the securities; and
- is fully entitled to any dividend or distribution paid by the entity on the securities.

ASX will not accept security holdings obtained by artificial means as counting towards minimum spread. Without limitation, ASX regards the following as "artificial" for these purposes:

¹²⁷ Listing Rule 1.1 condition 8.

¹²⁸ Amongst other things, the minimum spread requirement operates to keep poorer quality applicants that are not able to attract sufficient investor interest to meet that requirement from being admitted to the ASX official list.

¹²⁹ Where an entity is undertaking a material capital raising in conjunction with its listing, ASX will normally use the offer price under the prospectus, PDS or information memorandum for that capital raising to calculate the value of the entity's free float and the value of a parcel of securities. ASX may, however, use a different price to determine these values if the entity is not undertaking a material capital raising in conjunction with its listing or if ASX is concerned that the offer price under the prospectus, PDS or information memorandum does not fairly reflect the value of its main class of securities (see the note to Listing Rule 1.1 condition 8). In an appropriate case, ASX may require these values to be verified by an independent expert (Listing Rule 1.17).

¹³⁰ If CDIs are issued over securities in the main class, holders of the CDIs are included for these purposes.

¹³¹ The value of securities is usually based on the offer price under the entity's prospectus, PDS or information memorandum.

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350 holders each holding a parcel of the main class of securities

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Deleted: <#>300 holders each holding a parcel of the main class of securities with a value of at least A\$2,000 (excluding restricted securities), with at least 50% of the securities in the main class being held by non-related security holders (excluding restricted securities held by the non-related security holders).¶

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Deleted: There is also no specific requirement in the Listing Rules for a minimum "free float".¹³³ However, ASX does encourage entities in the ASX Listing category to have at the time of their admission to the official list a reasonable free float to promote liquidity in its securities. ASX also has a residual discretion under Listing Rule 1.19, which it may exercise in an appropriate case,¹³⁴ to require as a condition of admission that the applicant has a minimum free float.¶

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ASX LISTING RULES

Guidance Note 1

- giving securities away;
- offering non-recourse loans to prospective investors to acquire securities;
- having investors pre-complete transfers of their securities to a third party ahead of listing;
- having investors enter into purchase agreements or call options that allow a third party to acquire their securities for a period after listing;
- having investors enter into repurchase agreements or put options that allow them to dispose of their securities to a third party for a period after listing;
- brokers allocating securities to discretionary managed accounts without the knowledge or consent of the client for whom those accounts are managed;
- brokers or other parties being incentivised to procure spread through the payment of abnormally high fees, brokerage or commission;¹³⁵ and
- splitting a beneficial holding of securities across multiple trustees, nominees or family members.

Unless satisfactory evidence is provided to the contrary, ASX will assume that any more than two holdings registered at the same address fall within this last category and treat them as a single holding for the purposes of determining whether spread has been achieved.¹³⁶

ASX may require evidence to verify that an entity has achieved minimum spread without using artificial means.¹³⁷ This may include requiring:

- the entity to provide copies of its share register, bank statements, application forms and cheques or other evidence of payment by investors;
- any broker involved in the listing¹³⁸ to provide details of its processes for procuring subscriptions, a list of investors from whom it has procured subscriptions and copies of its "know your client" checks for those investors;
- a statutory declaration from an officer of the entity or from an officer or employee of any broker involved in the listing confirming that artificial means have not been used to achieve spread; and/or
- the entity to provide to ASX, at its own cost, a report from an independent expert selected by ASX verifying that the entity has achieved spread without using artificial means.

If ASX has concerns that an entity may have been admitted to the official list without having properly obtained spread, ASX may suspend trading in its securities¹⁴¹ and seek information from the entity to determine whether or not that is the case.¹⁴² If ASX ultimately forms the view that the entity has falsified spread or obtained it by artificial

¹³⁵ These types of arrangements raise concerns that the broker or other party will pay over a significant proportion of its fee, brokerage or commission to an investor to procure their subscription. This effectively involves offering the investor a significant discount or rebate to take up their securities, which ASX regards as an artificial way of obtaining spread.

¹³⁶ This is not to say that ASX will always accept two holders registered at the same address as counting for two holders for spread purposes, particularly if ASX finds multiple examples of two holders at the one address.

¹³⁷ Listing Rule 1.17.

¹³⁸ For example as the applicant's underwriter or lead manager.

¹⁴¹ Listing Rule 17.3.1 and/or 17.3.4.

¹⁴² Listing Rule 18.7.

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without taking reasonable steps to ensure that the information was not false or misleading, breaches section 1309(2) of the Corporations Act, which is a criminal offence punishable by a fine of up to 100 penalty units and/or imprisonment for up to 2 years.

Deleted: ASX would note that a person who gives, or authorises or permits the giving of, materially false or misleading¹³⁹ information to ASX about whether or not spread has been achieved.¶

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ASX LISTING RULES

Guidance Note 1

means, ASX may require the entity to undertake steps to obtain sufficient spread¹⁴³ or remove the entity from the official list for having breached the requirements for admission.¹⁴⁴

3.9 Satisfying the profit or assets test

An entity seeking admission in the ASX Listing category must satisfy either the profit test in Listing Rule 1.2 or the assets test in Listing Rule 1.3.¹⁴⁵

To satisfy the **profit test**, an entity must:

- be a going concern or the successor of a going concern;¹⁴⁶
- have conducted the same main business activity during the last 3 full financial years and through to the date it is admitted;¹⁴⁷
- have aggregated profit from continuing operations for the last 3 full financial years of at least \$1 million;¹⁴⁸
- have consolidated profit from continuing operations for the 12 months to a date no more than 2 months before the date it applied for admission of at least \$500,000;¹⁴⁹
- give ASX each of the following.
 - the entity's audited accounts for the last 3 full financial years;¹⁵⁰
 - if the last full financial year for which accounts must be given to ASX ended more than 8 months before the entity applies for admission, the entity's audited or reviewed accounts for the last half year (or longer period if available) from the end of the last full financial year;¹⁵² and
 - a reviewed pro forma statement of financial position;¹⁵³

which, in each case above, does not contain a modified opinion, emphasis of matter or other matter paragraph that ASX considers unacceptable;¹⁵⁴ and

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¹⁴³ Listing Rule 12.4.

¹⁴⁴ Listing Rule 17.12 (first and/or third bullet point).

¹⁴⁵ Listing Rule 1.1 condition 9.

¹⁴⁶ Listing Rule 1.2.1.

¹⁴⁷ Listing Rule 1.2.2.

¹⁴⁸ Listing Rule 1.2.4.

¹⁴⁹ Listing Rule 1.2.5.

¹⁵⁰ Listing Rule 1.2.3(a). The audit reports must be provided with the accounts. ASX will not accept less than 3 full financial years of audited accounts for an entity applying for admission under the profit test. However, if the entity applies for admission less than 90 days after the end of its last financial year, unless it has audited accounts for its latest full financial year, the accounts may be for the 3 years to the end of the previous financial year.

¹⁵² Listing Rule 1.2.3(b). The audit report or review must be provided with the accounts.

¹⁵³ Listing Rule 1.2.3(c). The review must be provided with the pro forma statement of financial position. The requirement for a reviewed pro forma statement of financial position applies unless ASX agrees that it is not needed (which would be rare). The review must be conducted by a registered company auditor (or, if the entity is a foreign entity, an overseas equivalent of a registered company auditor) or an independent accountant.

¹⁵⁴ ASX will not accept a modified opinion, emphasis of matter or other matter paragraph for an entity applying for admission under the profits test that questions whether the entity can continue as a going concern or has satisfied the required profit levels to meet Listing Rules 1.2.4 and 1.2.5. Outside of this, ASX will generally only accept a modified opinion, emphasis of matter or other matter paragraph that ASIC will accept in a disclosure document, as outlined in Part F of RG 228.

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ASX LISTING RULES

Guidance Note 1

- give ASX a statement from all directors (in the case of a trust, all directors of the responsible entity) confirming that they have made enquiries and nothing has come to their attention to suggest that the economic entity is not continuing to earn profit from continuing operations up to the date of application.¹⁵⁵

To satisfy the **assets test**, an entity that is not an "investment entity"¹⁵⁶ must meet the following requirements:

- it must have at the time of admission:
 - net tangible assets of at least \$5 million after deducting the costs of fund raising; or
 - a market capitalisation of at least \$20 million;¹⁵⁷
- either:
 - less than half of its total tangible assets (after raising any funds) are cash or in a form readily convertible to cash;¹⁵⁸ or
 - if half or more of its total tangible assets (after raising any funds) are cash or in a form readily convertible to cash, it must have commitments consistent with its business objectives to spend at least half of its cash and assets readily convertible to cash;¹⁵⁹

- its listing prospectus, PDS or information memorandum must include an express statement from its directors that the entity will have enough working capital at the time of its admission to carry out its stated objectives, or else the entity must give ASX an equivalent statement from an independent expert;¹⁶⁰ and
- its working capital must be at least \$1.5 million, or if it is not, it would be at least \$1.5 million if its budgeted revenue for the first full financial year that ends after listing was included in the working capital. This amount must be available after allowing for the first full financial year's budgeted administration costs and the cost of acquiring any assets referred to in its prospectus, PDS or information memorandum, to the extent those costs are to be met out of working capital.¹⁶²

Applicants applying under the assets test on the basis of commitments¹⁶³ should note that ASX does not consider the following types of expenditure to be acceptable as a "commitment" for these purposes:

- amounts allocated to working capital, or which could otherwise be considered to be of a working capital nature, such as administration costs and accounts payable; and

¹⁵⁵ Listing Rule 1.2.5A.

¹⁵⁶ An "investment entity" is one which in ASX's opinion has as a principal part of its activities investing (directly or through a child entity) in listed or unlisted securities or futures contracts and whose objectives do not include exercising control over or managing any entity, or the business of any entity, in which it invests: see Listing Rule 19.12.

¹⁵⁷ Listing Rule 1.3.1. Where an entity is undertaking a material capital raising in conjunction with its listing, ASX will normally use the offer price under the prospectus, PDS or information memorandum for that capital raising to calculate the entity's market capitalisation. ASX may, however, use a different price to determine market capitalisation if the entity is not undertaking a material capital raising in conjunction with its listing or if ASX is concerned that the offer price under the prospectus, PDS or information memorandum does not fairly reflect the value of its main class of securities (see the note to the definition of "market capitalisation" in Listing Rule 19.12). In an appropriate case, ASX may require an entity's market capitalisation to be verified by an independent expert (Listing Rule 1.17).

¹⁵⁸ Listing Rule 1.3.2(a).

¹⁵⁹ Listing Rule 1.3.2(b). In this case, the entity's business objectives must be clearly stated and include an expenditure program. If this information is not included in the entity's prospectus, PDS or information memorandum, it must be separately given to ASX.

¹⁶⁰ Listing Rule 1.3.3(a). If ASX is not satisfied with the accuracy or basis of the working capital statement made by directors in an applicant's listing prospectus, PDS or information memorandum, ASX may require the provision of an independent expert's report confirming that the applicant will have enough working capital at the time of its admission to carry out its stated objectives under Listing Rule 1.17.

¹⁶² Listing Rule 1.3.3(b). The cost of acquiring assets includes the cost of acquiring and exercising an option over them. See also note 69 above and the accompanying text.

¹⁶³ See note 159 above and accompanying text.

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ASX LISTING RULES

Guidance Note 1

- where an applicant's main business is mineral exploration, amounts allocated to exploration or development activities on mining tenements that have not yet been granted or in relation to which the applicant does not have a present right to explore.

Where operations are to be conducted through a joint venture, ASX also will not accept a capital contribution to the joint venture as a "commitment" for these purposes unless the joint venture itself is committed to expending the capital contribution on acceptable types of expenditure.

To satisfy the **assets test**, an "investment entity"¹⁶⁴ must at the time of admission:

- have net tangible assets of at least \$15 million after deducting the costs of fund raising; or
- be a pooled development fund and have net tangible assets of at least \$2 million after deducting the costs of fund raising.¹⁶⁵

Any entity seeking to be admitted under the assets test must also give ASX each of the following.

- the entity's audited accounts for the last 3 full financial years;¹⁶⁷
- if the last full financial year ended more than 8 months before the entity applied for admission, the entity's audited or reviewed accounts for the last half year (or longer period if available) from the end of the last full financial year;¹⁶⁸ and
- if the entity is proposing to acquire another entity or business:
 - audited accounts for the last 3 full financial years for that other entity or business; and
 - if the last full financial year for that entity or business ended more than 8 months before the entity applied for admission, audited or reviewed accounts for the last half year (or longer period if available) from the end of the last full financial year for that other entity or business;¹⁶⁹ and
- a reviewed pro forma statement of financial position;¹⁷⁰

In each case above, the audit reports or review must not contain a modified opinion, emphasis of matter or other matter paragraph that ASX considers unacceptable.¹⁷¹

ASX may agree to accept less than 3 full financial years of audited accounts for an entity applying for admission under the assets test but will generally only do so in the circumstances where ASIC will accept less than less than 3 full financial years of audited accounts in a disclosure document, as outlined in Part F of ASIC Regulatory Guide 228 Prospectuses: Effective disclosure for retail investors. Any agreement by ASX to accept less than 3 full financial years of audited accounts may be conditional on the entity providing additional financial information about itself or any entity or business it is acquiring.¹⁷²

¹⁶⁴ See note 156 above.

¹⁶⁵ Listing Rule 1.3.4.

¹⁶⁷ Listing Rule 1.3.5(a) first bullet point. The audit report must be provided with the accounts.

¹⁶⁸ Listing Rule 1.3.5(a) second bullet point. The audit report or review must be provided with the accounts.

¹⁶⁹ Listing Rule 1.3.5(b). The audit report or review must be provided with the accounts.

¹⁷⁰ Listing Rule 1.3.5(c). The review must be provided with the pro forma statement of financial position. The requirement for a reviewed pro forma statement of financial position applies unless ASX agrees that it is not needed (which would be rare). The review must be conducted by a registered company auditor (or, if the entity is a foreign entity, an overseas equivalent of a registered company auditor) or an independent accountant.

¹⁷¹ Again, ASX will generally only accept a modified opinion, emphasis of matter or other matter paragraph that ASIC will accept in a disclosure document, as outlined in Part F of RG 228.

¹⁷² Listing Rule 1.17. ASX may require that additional financial information to be audited or reviewed.

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Deleted: 24 December 2015



ASX LISTING RULES

Guidance Note 1

If ASX considers that the market would benefit from such disclosure, ASX may also require the applicant to provide information about the qualifications and experience of the auditor who provided any audit report or conducted any review referred to above, for release to the market as supplemental pre-quotations disclosure.¹⁷³ This applies both to entities applying for admission under the profit test and to entities applying for admission under the assets test.

3.10 Restricted securities

An entity seeking admission in the ASX Listing category that has issued "restricted securities" before it is admitted to the official list, must comply with Chapter 9 of the Listing Rules.¹⁷⁴ That chapter requires the entity to execute a restriction agreement in the prescribed form with the holder and each controller of the securities.

An entity applying for admission in the ASX Listing category that has acquired a "classified asset"¹⁷⁵ from a related party of the entity or a promoter in the two years before the date of the application, must also have issued restricted securities as the consideration for the acquisition unless:

- the consideration was reimbursement of expenditure incurred in developing the classified asset; or
- under Listing Rule 9.1.3, the entity is not required to apply the restrictions in Appendix 9B.¹⁷⁶

Restricted securities are placed in escrow and not quoted on ASX for a specified period. This effectively prevents the transfer of ownership or control of them during that period. Further guidance on restricted securities can be found in Guidance Note 11 *Restricted Securities and Voluntary Escrow*.

The prescribed form of the restriction agreement is set out in Appendix 9A of the Listing Rules. An editable version of the restriction agreement can be downloaded from www.asx.com.au/regulation/compliance/compliance-downloads.htm. These are standard form agreements and ASX will not agree to any changes. Hence, any edits to a restriction agreement should be confined to inserting the date of the agreement, the details of, and an appropriate execution clause for, the various parties, and the details of the restricted securities.

An entity which expects to have any of its securities classified as restricted securities should include with its application for listing an ASX Restricted Securities Table. An editable version of the table can also be downloaded from www.asx.com.au/regulation/compliance/compliance-downloads.htm. The Restricted Securities Table should include the following details in respect of each class of securities on issue (eg ordinary shares, preference shares, performance shares, options, convertible notes, etc):

- the full name of the holder;
- the holder's relationship with the applicant (eg director, promoter, etc);
- the total number of securities held by the holder;

¹⁷³ Listing Rule 1.17.

¹⁷⁴ Listing Rule 1.1 condition 10.

¹⁷⁵ A "classified asset" is defined in Listing Rule 19.12 as:

- (a) an interest in a mining exploration area or similar tenement or interest;
- (b) an interest in intangible property that is substantially speculative or unproven, or has not been profitably exploited for at least three years, and which entitles the entity to develop, manufacture, market or distribute the property;
- (c) an interest in an asset which, in ASX's opinion, cannot readily be valued; or
- (d) an interest in an entity the substantial proportion of whose assets (held directly, or through a controlled entity) is property of the type referred to in paragraphs (a), (b) and (c) above.

¹⁷⁶ Listing Rule 1.1 condition 11. Listing Rule 9.1.3 effectively confers on ASX a discretion not to apply escrow restrictions where an entity is admitted under the profit test in Listing Rule 1.2 or otherwise has a track record of profitability acceptable to ASX or where, in ASX's opinion, the entity has a substantial proportion of its assets as tangible assets or assets with a readily ascertainable value.

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ASX LISTING RULES

Guidance Note 1

- the number of securities to be restricted, as estimated by the applicant (if this is less than the total number of securities held by the holder, an explanation should be included in the table or in a cover letter as to why that is so);
- the date of issue of the restricted securities (if a holder was issued securities on more than one occasion, details of each issue should be listed separately in the table);
- the issue price of the security;
- the nature of the consideration given by the holder for issue of the restricted securities (eg cash, assets, services, etc. – this should state the amount of cash and describe the assets and services, as applicable); and
- the reason for restriction (including a reference to the applicable clause in Appendix 9B).

Where restricted securities have been transferred after issue, the information above should be provided in respect of the transferor.¹⁷⁷

It will assist ASX to process an application for listing if the Restricted Securities Table is subdivided into the different categories of restricted securities. In this regard, ASX suggests that applicants subdivide the table so that the security holders are grouped together using the classifications in Appendix 9B:

- related party or promoter seed capitalists (paragraph 1);
- unrelated seed capitalists (paragraph 2);
- related party or promoter vendors (paragraph 3);
- unrelated vendors (paragraph 4);
- promoters (consideration other than seed capital) (paragraph 7);
- professional service providers (paragraph 8);
- employee incentive scheme participants (paragraph 9);
- transferees (paragraph 10); and
- miscellaneous (paragraph 11).

It is also helpful if the unrelated seed capitalists and unrelated vendors are listed in the order of the dates on which their securities were issued to them (for these categories of restricted securities, the 12 months escrow period begins on the day of issue).

Changes to the information contained in the Restricted Securities Table (eg, as a result of a transfer of such securities) following the lodgement of an application for listing can delay ASX's processing of the application. For this reason, ASX recommends that an entity which will have restricted securities on issue close its register of members for the registration of transfers from the point at which it lodges its application for listing, through to its admission to the official list.

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¹⁷⁷ Under paragraph 10 of Appendix 9B, the escrow period applicable to a transferee of restricted securities is the same as that which applied to the transferor, irrespective of the amount paid for the securities by the transferee.

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ASX LISTING RULES

Guidance Note 1

3.11 Options

If an entity seeking admission in the ASX Listing category has options on issue, the exercise price for each underlying security must be at least 20 cents in cash.¹⁷⁸ This requirement applies even where the options are not intended to be quoted.

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3.12 Person responsible for communications

An entity seeking admission in the ASX Listing category must appoint at least one person¹⁸⁰ to be responsible¹⁸¹ for communication with ASX in relation to Listing Rule matters.¹⁸² The person appointed must be able to communicate in English.

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From time to time, ASX may need to discuss with a listed entity pressing matters (particularly, but not only, disclosure matters) under the Listing Rules. To facilitate this, it is important that the person (or each of the persons) appointed to be responsible for communications with ASX in relation to Listing Rule matters:

- has the organisational knowledge to have meaningful discussions on Listing Rule matters;
- can request a trading halt and issue an announcement to the market, if that is what is required,¹⁸³

and that person (or at least one of those persons) is readily contactable by ASX by telephone during normal market hours and for at least one hour either side thereof (ie, from 9am to 5pm Sydney time) on each day that ASX is trading.¹⁸⁴

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This requires that the person has a high degree of familiarity with the listed entity's operations and, if they are not a member of senior management, that they have immediate access to senior management. It also requires them to provide ASX with a mobile phone number to contact them and that they keep their mobile phone switched on at all times from 9am to 5pm Sydney time on each trading day.

The need to resolve a disclosure issue under the Listing Rules can be extremely time critical. Where such an issue arises, if ASX is not able to contact an entity's nominated representative on Listing Rule matters, or the representative does not have the organisational knowledge or authority to address the issue promptly, ASX may be left with little option but to suspend the quotation of the entity's securities until the issue can be properly resolved.

Typically, a company secretary would be an appropriate person to be responsible for communications with ASX.

¹⁷⁸ [Listing Rule 1.1 condition 12](#).

¹⁸⁰ An entity may appoint more than one person to be responsible for communications with ASX, to cater for one of its contacts being absent or on leave.

¹⁸¹ The fact that the person so appointed is said to be "responsible" for communication with ASX in relation to Listing Rule matters does not in any way diminish the responsibility of the listed entity to communicate to ASX any information required under the Listing Rules.

¹⁸² [Listing Rule 1.1 condition 13](#). The name, address and contact details of the person or persons responsible for communication with ASX in relation to Listing Rule matters must be notified to ASX in the Information Form and Checklist (ASX Listings) lodged with an applicant's Appendix 1A application for listing. [Listing Rule 12.6 also imposes an ongoing requirement on all listed entities to appoint a person to be responsible for communication with ASX in relation to Listing Rule matters and to notify ASX of the initial appointment and of any change in the appointment.](#)

¹⁸³ ASX acknowledges that the decision to request a trading halt is a serious one and that a listed entity will often have approval processes that need to be followed before a person appointed under Listing Rule 12.6 to be responsible for communications with ASX in relation to Listing Rule matters will have the authority to request a trading halt. For example, many entities typically require such a request to be approved by the chairperson and/or the CEO. If an entity has such approval processes in place, they must be able to be activated and any necessary approvals obtained within a matter of minutes. They should also include appropriate contingencies for when key approvers are not available. As noted in the text, where there is a time critical continuous disclosure issue and a trading halt is warranted, any delay in requesting the trading halt could result in ASX being left with little choice but to suspend the quotation of the entity's securities. It could also result in regulatory action by ASIC (see ASIC Media Release 08-117).

¹⁸⁴ This requires the nominated representative to be available to take calls from ASX, if they are based in Western Australia, from as early as 6am (WA time) during summer time and 7am (WA time) at other times and, if they are based in New Zealand, until as late as 7pm (NZ time). They must also be available to take calls from ASX on trading days that fall on a public holiday where they live and make suitable arrangements to cover any absences due to illness or while they are on leave.

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ASX LISTING RULES

Guidance Note 1

3.13 Electronic lodgement facilities

An entity seeking admission in the ASX Listing category must agree with ASX, in writing, that documents may be given to ASX and authenticated electronically and to establish the facilities required for the entity to give documents to ASX electronically.¹⁸⁶

In practice, this requirement is met by the entity executing an *Application and agreement for use of electronic lodgement facility and entity details facility* (ASX Online Agreement) in the form set out in the attachment to Guidance Note 20. An editable version of the ASX Online Agreement can be downloaded from www.asx.com.au/regulation/compliance/compliance-downloads.htm. Again, these are standard form agreements and ASX will not agree to any changes. Hence, any edits to the ASX Online Agreement should be confined to inserting the date of the agreement and the details of, and an appropriate execution clause for, the applicant.

A signed copy of the ASX Online Agreement, duly executed by the applicant, should accompany its listing application.

Further guidance on the use of ASX's electronic lodgement facilities can be found in Guidance Note 20 *ASX Online*.

3.14 ASX Corporate Governance Council recommendations

An entity seeking admission in the ASX Listing category must provide a statement disclosing the extent to which the entity will follow, as at the date of its admission to the official list, the recommendations set by the ASX Corporate Governance Council in its publication *Corporate Governance Principles and Recommendations*.¹⁸⁷ If the entity does not intend to follow all the recommendations on its admission to the official list, it must separately identify each recommendation that will not be followed and state its reasons for not following the recommendation and what (if any) alternative governance practices it intends to adopt in lieu of the recommendation.

This disclosure is often included in the entity's listing prospectus, PDS or information memorandum. If it is not, it should be supplied to ASX in the form of a separate corporate governance statement.¹⁸⁸

Further guidance on the ASX Corporate Governance Council recommendations and on the preparation of corporate governance statements can be found in Guidance Note 9 *Disclosure of Corporate Governance Practices: Listing Rule 4.10.3*.

3.15 Audit committee

An entity seeking admission in the ASX Listing category that will be included in the All Ordinaries Index on admission to the official list must have an audit committee and, if the entity will be in the S&P/ASX 300 Index on admission to the official list, must also comply with the recommendations set by the ASX Corporate Governance Council in relation to the composition and operation of the audit committee.

Where this condition applies, the entity should confirm its intention to comply in its corporate governance statement or in the cover letter with its listing application.¹⁸⁹

If an applicant for listing is unsure whether or not it is likely to be included in the All Ordinaries Index or the S&P/ASX 300 Index on admission to the official list, it should discuss that issue with ASX or Standard & Poors (S&P).

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Moved down [5]: ~~<#> If the entity does not intend to follow all the recommendations on its admission to the official list, it must separately identify each recommendation that will not be followed and state its reasons for not following the recommendation and what (if any) alternative governance practices it intends to adopt in lieu of the recommendation.¶ This disclosure is often included in the entity's listing prospectus, PDS or information memorandum. If it is not, it should be supplied to ASX in the form of a separate corporate governance statement.¹⁸⁵¶~~

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¹⁸⁶ Listing Rule 1.1 condition 14.

¹⁸⁷ Listing Rule 1.1 condition 16.

¹⁸⁸ If ASX considers that an entity's corporate governance disclosures in its prospectus, PDS or information memorandum do not meet the requirements of Listing Rule 1.1 condition 13.16, ASX may require the entity to provide additional information about such matters for release to the market as supplemental pre-quotations disclosure under Listing Rule 1.17.

¹⁸⁹ Listing Rule 1.1 condition 17.

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ASX LISTING RULES

Guidance Note 1

3.16 Remuneration committee

An entity seeking admission in the ASX Listing category, ~~that~~ will be included in the S&P/ASX 300 Index on admission, ~~must~~ have a remuneration committee comprised solely of non-executive directors.¹⁹⁰

Where this condition applies, the entity should confirm its intention to comply either in its corporate governance statement or in the cover letter with its listing application.

~~Again, if~~ an applicant for listing is unsure whether it is likely to be included in the S&P/ASX 300 Index on admission to the official list, it should discuss that issue with ASX or S&P.

3.17 Trading policy

~~An entity seeking admission in the ASX Listing category must have a trading policy that complies with Listing Rule 12.9.~~¹⁹¹ A copy of the trading policy must accompany the application.

Further guidance on this requirement can be found in [Guidance Note 27 Trading Policies](#).

3.18 Directors must be of good fame and character

An entity seeking admission in the ASX Listing category, ~~must~~ satisfy ASX that each director or proposed director¹⁹² of the entity¹⁹³ at the date of listing is of good fame and character.¹⁹⁴ For these purposes, the applicant is required to include with their application:¹⁹⁵

- (1) for each director or proposed director who is or has in the past 10 years been a resident of Australia, an original or certified true copy of:
 - (a) a national criminal history check obtained from the Australian Federal Police, a State or Territory police service or a broker accredited by CrimTrac for each director or proposed director; and
 - (b) a search of the Australian Financial Security Authority National Personal Insolvency Index, in each case, which is not more than 12 months old;
- (2) for each director or proposed director who is or has in the past 10 years been a resident of another country, an original or certified true copy of:
 - (a) an equivalent national criminal history check to that mentioned in (1)(a) above for each country in which the director has resided over the past 10 years (in English or together with a certified English translation) which is not more than 12 months old or, if such a check is not available in any such country, a statutory declaration from the director confirming that fact and that he or she has not been convicted in that country of:
 - (i) any criminal offence involving fraud, dishonesty, misrepresentation, concealment of material facts or breach of director's duties; or
 - (ii) any other criminal offence which at the time carried a maximum term of imprisonment of five years or more (regardless of the period, if any, for which he or she was sentenced),

¹⁹⁰ [Listing Rule 1.1 condition 18](#).

¹⁹¹ [Listing Rule 1.1 condition 19](#).

¹⁹² The reference in this rule to a "proposed director" includes any person named in a prospectus, PDS or information memorandum as a proposed director of the entity.

¹⁹³ For these purposes, if the entity is a trust, references to the directors or proposed directors of the entity, will be taken to mean the directors or proposed directors of the responsible entity of the trust.

¹⁹⁴ [Listing Rule 1.1 condition 20](#).

¹⁹⁵ The Information Form and Checklist (ASX Listings) that must accompany an Appendix 1A application for listing requires the applicant to provide these documents.

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or, if that is not the case, a statement to that effect and a detailed explanation of the circumstances involved;

- (b) an equivalent national bankruptcy check to that mentioned in (1)(b) above for each country in which the director has resided over the past 10 years (in English or together with a certified English translation) which is not more than 12 months old or if such a check is not available in any such country, a statutory declaration from the director confirming that fact and that he or she has not been declared a bankrupt or been an insolvent under administration in that country or, if that is not the case, a statement to that effect and a detailed explanation of the circumstances involved;
- (3) a statutory declaration from each director or proposed director confirming that:
- (a) the director has not been the subject of any criminal or civil penalty proceedings or other enforcement action by any government agency in which he or she was found to have engaged in behaviour involving fraud, dishonesty, misrepresentation, concealment of material facts or breach of duty;
 - (b) the director has not been refused membership of, or had their membership suspended or cancelled by, any professional body on the ground that he or she has engaged in behaviour involving fraud, dishonesty, misrepresentation, concealment of material facts or breach of duty;
 - (c) the director has not been the subject of any disciplinary action (including any censure, monetary penalty or banning order) by a securities exchange or other authority responsible for regulating securities markets for failure to comply with his or her obligations as a director of a listed entity;
 - (d) no listed entity of which he or she was a director (or, in the case of a listed trust, in respect of which he or she was a director of the responsible entity) at the time of the relevant conduct has been the subject of any disciplinary action (including any censure, monetary penalty, suspension of trading or termination of listing) by a securities exchange or other authority responsible for regulating securities markets for failure to comply with its obligations under the listing rules applicable to that entity; and
 - (e) the director is not aware of any pending or threatened investigation or enquiry by a government agency, professional body, securities exchange or other authority responsible for regulating securities markets that could lead to proceedings or action of the type described in (a), (b), (c) or (d) above,

or, if the director is not able to give such confirmation, a statement to that effect and a detailed explanation of the circumstances involved.

An editable version of the statutory declaration referred to in (3) above can be downloaded from www.asx.com.au/regulation/compliance/compliance-downloads.htm.

In considering whether the applicant's directors or proposed directors meet the "good fame and character" requirement, ASX will primarily have regard to the documents mentioned above. However, ASX may also have regard to any other information it has about the directors or proposed directors from any source and, in an appropriate case, may require an applicant for listing to provide additional information about its directors or proposed directors.

It can take some time to obtain criminal history and bankruptcy checks and applicants for listing are encouraged to apply for them at the earliest opportunity so that this does not delay their listing.

3.19 Additional requirements for foreign entities

[A foreign company¹⁹⁶ seeking admission as an ASX Listing must be registered as a foreign company carrying on business in Australia under the Corporations Act.¹⁹⁷ Guidance Note 4 Foreign Entities Listing on ASX has further](#)

¹⁹⁶ "Foreign company" means a body corporate that is not formed or established in Australia (see Listing Rule 19.12).

¹⁹⁷ Listing Rule 1.1 condition 4.

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ASX LISTING RULES

Guidance Note 1

guidance on the requirements to register as a foreign company carrying on business in Australia under the Corporations Act.

A foreign trust¹⁹⁸ that wishes to list on ASX as a standard ASX Listing must be registered as a managed investment scheme under the Corporations Act or have an exemption from ASIC from that requirement.¹⁹⁹ If it registers as a managed investment scheme, this effectively converts it into an Australian trust for the purposes of the Listing Rules.²⁰⁰

A foreign trust that is exempted from the requirement to be a registered managed investment scheme must have as its responsible entity²⁰¹ either an Australian company or an entity that is registered as a foreign company carrying on business in Australia under the Corporations Act.²⁰² Again, Guidance Note 4 *Foreign Entities Listing on ASX* has further guidance on the requirements to register as a foreign company carrying on business in Australia under the Corporations Act.

A foreign entity²⁰³ seeking admission as an ASX Listing must satisfy the same admission requirements as an Australian entity, set out above. This applies even where it is listed on an overseas stock exchange.

ASX expects the listing prospectus of a foreign entity to include:

- a statement of its place of incorporation, registration or establishment;
- a statement to the effect that:

"As [name of entity] is not established in Australia, its general corporate activities (apart from any offering of securities in Australia) are not regulated by the Corporations Act 2001 of the Commonwealth of Australia or by the Australian Securities and Investments Commission but instead are regulated by [insert name of governing legislation] and [insert name of corporate regulator administering that legislation]."

- a concise summary²⁰⁴ of the rights and obligations of security holders under the law of its home jurisdiction²⁰⁵ covering:
 - what types of transactions require security holder approval;
 - whether security holders have a right to request or requisition a meeting of security holders;
 - whether security holders have a right to appoint proxies to attend and vote at meetings on their behalf;
 - how changes in the rights attaching to securities are regulated;

¹⁹⁸ "Foreign trust" means a trust or similar overseas entity that is not formed or established in Australia and that is not a registered managed investment scheme under the Corporations Act (see Listing Rule 19.12).

¹⁹⁹ Listing Rule 1.1 condition 5(a).

²⁰⁰ See the definition of "Australian trust" in Listing Rule 19.12.

²⁰¹ "Responsible entity" means: (a) in relation to a managed investment scheme registered under the Corporations Act, the responsible entity of that scheme under that Act; (b) in relation to a trust that is not a registered managed investment scheme, the entity that in ASX's opinion performs a substantially equivalent role in relation to the trust as the responsible entity performs in relation to a registered managed investment scheme (see Listing Rule 19.12).

²⁰² Listing Rule 1.1 condition 5(b).

²⁰³ "Foreign entity" means a foreign company or a foreign trust (see Listing Rule 19.12 and notes 196 and 198 above).

²⁰⁴ The concise summary is not intended to be a legal treatise on the laws of the entity's home jurisdiction or a detailed comparative analysis of those laws with the laws of Australia. For those matters where the entity's home jurisdiction has broadly comparable laws to Australia, a statement to that effect will generally suffice.

²⁰⁵ A foreign listed entity should also note its continuing obligation under Listing Rule 3.17C, if it becomes aware of a change to the law of its home jurisdiction that materially affects the rights or obligations of security holders, to give ASX details of that change immediately.

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Deleted: 24 December 2015



ASX LISTING RULES

Guidance Note 1

- what rights do security holders have to seek relief for oppressive conduct;
- what rights do security holders have to bring or intervene in legal proceedings on behalf of the entity; and
- whether there is any equivalent to the “two strikes” rule in relation to remuneration reports in Part 2G.2 Division 9 of the Corporations Act; and
- a concise summary²⁰⁶ of how the disclosure of substantial holdings and takeovers are regulated under the law of its home jurisdiction.²⁰⁷

If the information above is not included in the foreign entity’s listing prospectus, ASX will require the information to be given to ASX under Listing Rule 1.17 as supplemental pre-quotation disclosure for release to the market.

3.20 Clearing and settlement

Trades in ASX quoted securities are cleared and settled through an electronic system called CHES (Clearing House Electronic Subregister System). CHES facilitates the paperless transfer of ownership to ASX quoted securities through an electronic subregister system.

Under the CHES system, a listed entity’s principal register of securities is effectively made up of two electronic uncertificated subregisters – a “CHES subregister” maintained by ASX Settlement²⁰⁸ and an “issuer sponsored subregister” maintained by the issuer. Persons holding securities in the entity have the option to register their securities on either subregister.²⁰⁹

Unless it is established in an overseas jurisdiction whose laws preclude this, an entity seeking an ASX Listing must be approved as an issuer under the operating rules²¹⁰ of the CHES facility²¹¹ and also have its main class of securities approved for participation in that facility.²¹² Once these approvals have been obtained, ASX Settlement will then establish the entity’s CHES subregister.²¹³ The entity must establish its own issuer sponsored subregister.²¹⁴ In practice, this will usually require it to engage a share registry to administer the issuer sponsored subregister on its behalf.

If the entity is established in an overseas jurisdiction whose laws have the effect that CHES cannot be used for holding legal title to its securities, to allow ASX to clear and settle transactions in its securities, the entity must have CHES Depository Interests, or CDIs, issued over its ASX quoted securities and establish a CHES subregister and an issuer sponsored subregister in those CDIs.²¹⁶ To do the first of these, the entity must be approved as a foreign issuer of CDIs under the operating rules of the CHES facility²¹⁷ and also have the CDIs to be issued over

Deleted: An entity’s Appendix 1A application form not only operates as an application to be admitted to the official list of ASX but also as an application by the entity to be approved as an issuer, and to have its main class of securities approved, under the operating rules of the CHES facility.²¹⁵

Deleted: CDIs are a type of depository receipt that allow investors to obtain all the economic benefits of owning securities without actually holding legal title to them. They were developed by ASX to facilitate the clearing and settlement of transactions in securities through CHES where the transfer of legal title to the securities themselves is not able to be effected through CHES.

²⁰⁶ See note 88204 above.

²⁰⁷ If this information is not included in the entity’s prospectus, PDS or PDS information memorandum, ASX will require the information to be given to ASX under Listing Rule 1.17 as supplemental pre-quotation disclosure for release to the market.

²⁰⁸ ASX Settlement Pty Limited, a wholly owned subsidiary of ASX and the operator of the ASX Settlement facility.

²⁰⁹ To register securities on the CHES subregister, a person must have a sponsorship agreement with a participant in the ASX Settlement facility. Registering securities on the CHES subregister effectively gives the sponsoring participant control of the holdings for the purposes of settlement.

²¹⁰ References to the operating rules of the CHES facility mean the ASX Settlement Operating Rules.

²¹¹ Listing Rule 1.1 condition 15(a).

²¹² Listing Rule 2.1 condition 3(a) and ASX Settlement Operating Rule 8.1.1. Once its securities have been approved for participation in the CHES system, an entity must continue to comply with the operating rules for that system in relation to its quoted securities (Listing Rule 8.1).

²¹³ Pursuant to ASX Settlement Operating Rules 8.1.3, 8.6.1 and 8.6.2.

²¹⁴ Listing Rule 8.2.

²¹⁶ Listing Rule 8.2 and ASX Settlement Operating Rule 13.5.4. CDIs are a type of depository receipt that allow investors to obtain all the economic benefits of owning securities without actually holding legal title to them. They were developed by ASX to facilitate the clearing and settlement of transactions in securities through CHES where the transfer of legal title to the securities themselves is not able to be effected through CHES. For further guidance on CDIs, see Guidance Note 5 CHES Depository Interests (CDIs).

²¹⁷ Listing Rule 1.1 condition 15(b).

Deleted: References to the operating rules of the CHES facility mean the ASX Settlement Operating Rules.

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Deleted: 24 December 2015



ASX LISTING RULES

Guidance Note 1

its securities approved for participation in that facility.²¹⁸ Once these approvals have been obtained, ASX Settlement will then establish the CHESSE subregister for its CDIs. The entity must establish its own issuer sponsored subregister for its CDIs.²¹⁹ Again, in practice, this will usually require it to engage a share registry to administer the issuer sponsored subregister on its behalf..

An entity's Appendix 1A application form not only operates as an application to be admitted to the official list of ASX but also as an application by the entity for the requisite approvals under the operating rules of the CHESSE facility.²²²

Deleted: An entity established in an overseas jurisdiction can only have a certificated register for ASX quoted securities²²⁰ if the laws where it is established prohibit its securities being held on an uncertificated issuer sponsored subregister.²²¹¶

²¹⁸ [Listing Rule 2.1 condition 3\(b\) and ASX Settlement Operating Rule 13.2.1.](#)

²¹⁹ [Listing Rule 8.2.](#)

²²² [ASX Settlement Operating Rule 8.1.1 and Procedure 8.1.1.](#)

Deleted: 24 December 2015



ASX LISTING RULES

Guidance Note 1

Annexure: Disclosure of information about bookbuilds

Where an entity has undertaken an offering by way of bookbuild in conjunction with its application for listing, ASX requires the information outlined in this annexure to be disclosed prior to the commencement of trading in the entity's securities.

The purpose of this requirement is to ensure that the market is informed of any material information arising from a bookbuild which may impact on the price or value of the entity's securities so that, when trading commences, it takes place on a reasonably informed basis.

An applicant which undertakes a bookbuild process is required to disclose the following information under Listing Rule 1.17:

- the number of securities issued under the bookbuild and the price at which they have been issued;
- if a material number of securities have been taken up by a person or persons who are promoters or related parties of the applicant, the number of securities taken up by them;
- any concessionary fee or other arrangements entered into which have had the result that the effective issue price paid by some allottees differs materially from the bookbuild price announced by the applicant;
- any arrangements entered into which have had the result that some allottees receive a material benefit for agreeing to participate in the bookbuild at the bookbuild price announced by the applicant and which is not received by other allottees; and
- any arrangements entered into with associates of the applicant or the bookrunner to avoid a shortfall, or the appearance of a shortfall, in the bookbuild.

This is not intended to require disclosure of normal sub-underwriting and cornerstone investor arrangements entered into in the ordinary course of business.

An entity must ensure it has a right to obtain appropriate information from the bookrunner in order to meet its disclosure requirements under this annexure.

Bookrunners could potentially enter into different types of arrangements which would fall within the disclosure requirements in this annexure. We have provided four examples below to illustrate ASX's expectations. However, these examples are intended as a guide only and are in no way exhaustive.

Example 1

Company A intends to list on ASX. Company A's initial public offering (IPO) includes an institutional bookbuild component to be conducted by Broker B. Company A awarded the tender for the bookbuild to Broker B because it undertook to place equal numbers of securities with Australian and offshore institutions.

Company A wants to place a total of 50 million shares at between \$2.30 and \$2.50 each with these institutions. During the course of the bookbuild, it becomes clear to Broker B that offshore interest is weaker than anticipated. There is insufficient demand to cover the book at \$2.30.

In order to ensure that the book is covered, an offshore subsidiary of Broker B agrees to take 10 million shares. Broker B enters into an arrangement with a second, unrelated offshore entity, whereby Broker B will pay a "special fee" of \$0.15 per share in return for which the offshore entity will bid for 15 million shares at \$2.30.

Company A must disclose details of the total number of shares allocated to the institutions, and the price at which they were placed. Company A must also disclose details of the actions taken to minimise or avoid a material shortfall – ie the shares allocated to Broker B's offshore subsidiary and the \$0.15 "special fee" paid to the second offshore entity.

Deleted: 24 December 2015



ASX LISTING RULES

Guidance Note 1

Example 2

Company C intends to list on ASX and to obtain its minimum spread by undertaking a placement of shares to institutional investors and major private clients of Broker D. The placement will be via a bookbuild conducted by Broker D. Company C hopes to place a total of 20 million shares at around \$1.00 each.

Broker D succeeded in attracting greater than the required minimum spread but not in completing the placement for the full 20 million shares. In order to successfully complete the placement, Broker D enters into a series of agreements with major private clients. The clients agree to purchase a total of 10 million shares at \$0.98 each, and Broker D agrees to buy back the shares in the next 30 to 60 days for \$1.03.²²³

Company C must obtain and disclose details of the buy-back arrangement between Broker D and its clients.

Example 3

Company E intends to list on ASX. It will offer 30% of its securities to retail investors, and 70% of its securities to institutional investors via a bookbuild.

Company E's prospectus indicates a bookbuild price range of between \$3.00 and \$3.50. Company E is concerned that the market for IPOs may be weakening, so it enters into a series of "offer agreements" with large institutional investors, agreeing to place 30% of its securities with those investors at \$3.00 per security. The bookbuild for the remaining 40% of securities is conducted. It is priced at \$3.50.

Company E must disclose a breakdown of the number of securities placed and the price at which they were placed. Company E must also release details of the "offer agreements" between Company E and the institutional investors.

Example 4

Company F intends to list on ASX and to use the funds raised by its initial public offering to purchase assets from Company G, who is currently its major shareholder. Company G is therefore a promoter of Company F for the purposes of the Listing Rules.

Company F is proposing to conduct a bookbuild to raise the minimum subscription specified in its prospectus and, to the extent that the subscriptions received in the bookbuild do not satisfy ASX's minimum spread requirements, to leave its prospectus open for further applications by investors.

Company F conducts the bookbuild and successfully raises its minimum subscription. However, a large proportion of the bids into the book came from Company G and interests associated with it and there were insufficient bids from other parties to meet ASX's minimum spread requirements. Company F therefore continues to offer securities under its prospectus seeking to obtain the required minimum spread.

Company F must disclose a breakdown of the number of securities placed with Company G and its associates and the price at which they were placed.

In any public announcement about the results of the bookbuild, Company F must also take care not to mislead potential investors about the composition of bids into the book. For instance, for Company F in this example to issue a public announcement describing the bookbuild as having successfully raised the minimum subscription from "retail and wholesale investors" without disclosing the fact that a large proportion of the bids came from a promoter of the company, could mislead potential investors into believing that the float has more widespread support from investors than it truly has.

²²³ Note that if this arrangement was relied on to deliver the shareholders needed to meet ASX's minimum spread requirement in Listing Rule 1.1 condition 8, ASX would regard it as using "artificial means" to obtain spread (see '3.8 Minimum spread' on page 20).