

Updating ASX's admission requirements for listed entities

CONSULTATION PAPER

12 MAY 2016

ATTACHMENT C: PROPOSED CHANGES TO GUIDANCE NOTE 4





ASX LISTING RULES

Guidance Note 4

FOREIGN ENTITIES LISTING ON ASX

The purpose of this Guidance Note	<ul style="list-style-type: none">To assist entities established outside of Australia (foreign entities) considering a listing on ASX to understand the options available to them
The main points it covers	<ul style="list-style-type: none">The three categories of ASX listings available to foreign entities – an ASX Foreign Exempt Listing, a standard ASX Listing and an ASX Debt ListingThe requirements to be admitted as an ASX Foreign Exempt ListingParticular issues that a foreign entity applying for admission as a standard ASX Listing should consider, over and above those addressed in Guidance Note 1 <i>Applying for Admission – ASX Listings</i>Particular issues that a foreign entity applying for admission as an ASX Debt Listing should consider, over and above those addressed in Guidance Note 29 <i>Applying for Admission – ASX Debt Listings</i>Common issues for foreign entities that apply to all 3 categories of ASX listings
Related materials you should read	<ul style="list-style-type: none">Guidance Note 1 <i>Applying for Admission – ASX Listings</i>Guidance Note 5 <i>CHESS Depository Interests (CDIs)</i>Guidance Note 7 <i>US Entities - Regulation S Offerings on ASX</i>Guidance Note 8 <i>Continuous Disclosure: Listing Rules 3.1 – 3.1B</i>Guidance Note 9 <i>Disclosure of Corporate Governance Practices</i>Guidance Note 17 <i>Waivers and In-Principle Advice</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>

History: Guidance Note 4 amended [01/09/16](#). Previous versions of this Guidance Note were issued in 07/00, 09/01, 05/02 (transitional copy), 06/02, 01/03, 09/07, 01/12, 05/13, 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
1.1. The benefits of an ASX listing	2
1.2. Listing categories	3
2. ASX Foreign Exempt Listings	3
2.1. Admission requirements	3
2.2. Initial discussions in advance of application	5
2.3. The admission application	6
2.4. Requests for waivers	7
2.5. Processing time	7
2.6. Payment of initial listing fee	8
2.7. The listing decision	8
2.8. Documents released to the market	10
2.9. Requirements for additional information	10
2.10. Continuing requirements	10
2.11. ASX's discretion to apply other rules	12
2.12. Timetables for corporate actions	12
3. Standard ASX Listings	12
3.1. Admission requirements	12
3.2. Prospectus/product disclosure statement	13
3.3. Minimum free float, minimum spread and connection with Australia	14
3.4. Continuing compliance with Listing Rules and ASX's waiver power	15
3.5. Continuous disclosure requirements	17
3.6. Financial reporting requirements	17
3.7. Financial documents given by a dual listed entity to an overseas exchange	19
3.8. Information about substantial holdings	20
3.9. Requisitions from security holders	20
3.10. Information about material changes in the rights and obligations of security holders	20
4. ASX Debt Listings	21
4.1. Admission requirements	21
4.2. Prospectus requirements for retail debt securities	22
5. Common issues relevant to foreign entities seeking any listing on ASX	22
5.1. Registration as a foreign company under the Corporations Act	22
5.2. Appointment of person responsible for communications with ASX	24
5.3. Electronic lodgement of announcements	25
5.4. Clearing and settlement	25
5.5. Foreign regulatory approvals	26
5.6. Governing law	26

Deleted:

1. Introduction	2¶
1.1. The benefits of an ASX listing	2¶
1.2. Listing categories	3¶
2. ASX Foreign Exempt Listings	3¶
2.1. Admission requirements	3¶
2.2. Initial discussions in advance of application	5¶
2.3. The admission application	6¶
2.4. Requests for waivers	7¶
2.5. Processing time	7¶
2.6. Payment of initial listing fee	8¶
2.7. The listing decision	8¶
2.8. Documents released to the market	10¶
2.9. Requirements for additional information	10¶
2.10. Continuing requirements	10¶
2.11. ASX's discretion to apply other rules	12¶
2.12. Timetables for corporate actions	12¶
3. Standard ASX Listings	12¶
3.1. Admission requirements	12¶
3.2. Prospectus/product disclosure statement	13¶
3.3. Minimum spread and connection with Australia	14¶
3.4. Continuing compliance with Listing Rules and ASX's waiver power	15¶
3.5. Continuous disclosure requirements	17¶
3.6. Financial reporting requirements	17¶
3.7. Financial documents given by a dual listed entity to an overseas exchange	19¶
3.8. Information about substantial holdings	20¶
3.9. Requisitions from security holders	20¶
3.10. Information about material changes in the rights and obligations of security holders	20¶
4. ASX Debt Listings	21¶
4.1. Admission requirements	21¶
4.2. Prospectus requirements for retail debt securities	22¶
5. Common issues relevant to foreign entities seeking any listing on ASX	22¶
5.1. Registration as a foreign company under the Corporations Act	22¶
5.2. Appointment of local agent to accept service of process	23¶
5.3. Appointment of person responsible for communications with ASX	24¶
5.4. Electronic lodgement of announcements	25¶
5.5. Clearing and settlement	25¶
5.6. Foreign regulatory approvals	26¶
5.7. Governing law	26¶

1. Introduction

This Guidance Note is published to assist entities established outside of Australia (foreign entities) considering a listing on ASX Limited (ASX) to understand the options available to them.

1.1. The benefits of an ASX listing

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;

Deleted: 11 December 2015



ASX LISTING RULES

Guidance Note 4

- 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.

1.2. Listing categories

There are two ways a foreign entity may list equity securities on ASX:

- as an **ASX Foreign Exempt Listing**: this category is for entities listed on another securities exchange which wish to have a secondary listing on ASX and which meet certain eligibility criteria. Entities in this category are expected to comply primarily with the Listing Rules of their home exchange and are exempt from complying with most of ASX's Listing Rules.
- as a standard **ASX Listing**: this category is for entities which wish to have ASX as their primary listing venue or which do not meet the eligibility criteria to be admitted as an ASX Foreign Exempt Listing. Entities in this category are subject to ASX's Listing Rules, even if they are listed on another securities exchange.

A foreign entity may also list debt securities on ASX as an **ASX Debt Listing**.

This Guidance Note provides guidance in:

- [section 2](#) to foreign entities seeking an ASX Foreign Exempt Listing on how to prepare their applications for admission;
- [section 3](#) on issues specifically relevant to foreign entities seeking a standard ASX Listing;
- [section 4](#) on issues specifically relevant to foreign entities seeking an ASX Debt Listing; and
- [section 5](#) on common issues relevant to foreign entities seeking any category of ASX listing.

More general guidance on standard ASX listings can be found in Guidance Note 1 *Applying for Admission – ASX Listings*, while more general guidance on ASX Debt Listings can be found in Guidance Note 29 *Applying for Admission – ASX Debt Listings*.

Some other Guidance Notes of general application that foreign entities may find helpful are Guidance Note 5 *CHES Depositary Interests (CDIs)*, Guidance Note 14 *ASX Market Announcements Platform* and Guidance Note 20 *ASX Online*.

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

Guidance for United States entities on how they can offer their securities on the ASX market under the safe harbour provisions of Regulation S of the US Securities Act 1933 can be found in Guidance Note 7 *US Entities – Regulation S Offerings on ASX*.

2. ASX Foreign Exempt Listings

2.1. Admission requirements

To be admitted as an ASX Foreign Exempt Listing, a foreign entity must meet the requirements in Listing Rule 1.11. The key requirements are:

- the entity must be a foreign entity and have as its overseas home exchange a member of the World Federation of Exchanges (WFE) that is acceptable to ASX;¹

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¹ Listing Rule 1.11 condition 1. The WFE was formerly known as the Fédération International des Bourses de Valeurs (FIBV). A list of the member exchanges of the WFE can be found on its website <http://www.world-exchanges.org>. Presently, the London Stock Exchange

Deleted: 11 December 2015



ASX LISTING RULES

Guidance Note 4

- the entity must be subject to, and ASX must be satisfied that it complies with, the Listing Rules (or their equivalent) of its overseas home exchange;²
- the entity must inform ASX of any waiver of all or part of any listing rule (or the equivalent) of its overseas home exchange that will be in effect in respect of the entity on its admission to the official list and, if ASX requires, the entity must release details of any such waiver to the market;³
- if the entity is a trust, no-one must be under an obligation to buy back units in the trust or to allow a security holder to withdraw from the trust;⁵ and

the entity must either:

- be approved to act as an issuer of quoted securities under the operating rules of an approved clearing and settlement facility; or
- if it is established in a jurisdiction whose laws have the effect that its securities cannot be registered or transferred under the operating rules of an approved clearing and settlement facility, be approved as a foreign issuer of CDIs under the operating rules of an approved clearing and settlement facility.⁸

If the entity is a "qualifying NZ entity",¹⁰ it must meet the following additional requirements:

- it must satisfy either the profit test in Listing Rule 1.2 or the assets test in Listing Rule 1.3 (with the exceptions of Listing Rules 1.3.2 and 1.3.3(a));¹¹
- it must apply for and be granted permission for quotation of all of the securities that are in the class for which it seeks quotation;¹² and
- it must satisfy ASX that each director or proposed director of the entity at the date of listing on ASX is of good fame and character.¹³

If the entity is not a qualifying NZ entity, it must meet the following additional requirements:

- if the entity is a foreign company,¹⁴ it must be registered as a foreign company carrying on business in Australia¹⁵ under the Corporations Act 2001 (Cth);¹⁶

(LSE) is not a member of the WFE. ASX will generally grant a waiver of Listing Rule 1.11 condition 1 to an entity listed on the main board of the LSE that wishes to be admitted as an ASX Foreign Exempt Listing.

² Listing Rule 1.11 conditions 2 and 3.

³ Listing Rule 1.11 condition 4.

⁵ Listing Rule 1.11 condition 8(c).

⁸ Listing Rule 1.11 condition 12. See also '5.4 Clearing and settlement' on page 25 below.

¹⁰ "Qualifying NZ entity" means a foreign company or foreign trust that has NZX as its overseas home exchange and whose securities are admitted to quotation on the main board of NZX (see Listing Rule 19.12).

¹¹ Listing Rule 1.11 condition 6(a). Further guidance on the profit test in Listing Rule 1.2 and the assets test in Listing Rule 1.3 can be found in Guidance Note 1 Applying for Admission – ASX Listings.

¹² Listing Rule 1.11 condition 5(a).

¹³ Listing Rule 1.11 condition 11. For the purposes of satisfying this requirement, ASX will primarily have regard to the documents provided by the entity in accordance with the Information Form and Checklist (ASX Foreign Exempt Listings) accompanying its application. However, ASX may also have regard to any other information it has about the directors or proposed directors and, in an appropriate case, may require an entity to provide additional information about its directors or proposed directors.

¹⁴ "Foreign company" means a body corporate that is not formed or established in Australia (see Listing Rule 19.12).

¹⁵ For further information about the process involved in registering as a foreign company, see '5.1 Registration as a foreign company under the Corporations Act' on page 22.

¹⁶ Listing Rule 1.11 condition 7. The Corporations Act 2001 (Cth) is the principal legislation governing companies and securities matters in Australia. It is referred to in the balance of 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.

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Deleted: <#>the entity must give ASX a copy of its last annual report and any subsequent interim report;⁸ If the entity's primary listing is on the main board of the New Zealand Exchange (NZX),

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ASX LISTING RULES

Guidance Note 4

- if the entity is a trust:
 - it must be a registered managed investment scheme or have an exemption from ASIC from that requirement;¹⁷ and
 - if it is exempted from the requirement to be a registered managed investment scheme, its responsible entity¹⁸ must be an Australian company or registered as a foreign company carrying on business in Australia under the Corporations Act;¹⁹
- it must have at least A\$200 million operating profit before tax for each of the last three years or, at the time of admission, have net tangible assets of at least A\$2,000 million or a market capitalisation of at least A\$2,000 million;²¹ and
- the entity must apply for and be granted quotation of securities in a class for which it seeks quotation (it may apply for quotation of all or a subset of securities in the class).²²

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there must be at least 1,000 holders each having a parcel of securities in the class for which the entity seeks quotation with a value

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In terms of the first requirement above that an applicant have an overseas home exchange that is acceptable to ASX, the main boards of the principal exchanges in developed markets are generally acceptable to ASX for these purposes.²³ Second boards in developed markets and exchanges in emerging or developing markets²⁴ are considered more carefully by ASX and will only be acceptable to ASX if they have a regulatory framework broadly equivalent to the framework applying to Australian entities with their primary listing on ASX. An applicant seeking a foreign exempt listing that has its primary listing on a second board or in an emerging or developing market may be required by ASX to make submissions on this point.

2.2. Initial discussions in advance of application

Before submitting an application for admission as an ASX Foreign Exempt Listing, ASX recommends that the applicant first discuss the matter with ASX Listings Compliance at the earliest opportunity. Those discussions are best held with the ASX 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.²⁵

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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 the nature and complexity of the application and the current workloads within ASX Listings Compliance. It can also provide information about available ASX trading codes and arrange the reservation of a suitable code for the applicant.²⁷

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any waiver²⁶ from, or in-principle advice in respect of, the Listing Rules that the applicant may be proposing to request in conjunction with its application and the likelihood of that waiver or advice being given; and¶

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ASX Listings Compliance

¹⁷ Listing Rule 1.11 condition 8(a).

¹⁸ "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).

¹⁹ Listing Rule 1.11 condition 8(b).

²¹ Listing Rule 1.11 condition 6(b) and Listing Rules 1.12 and 1.13.

²² Listing Rule 1.11 condition 5(b).

²³ Deutsche Börse, EuroNext (Amsterdam), EuroNext (Brussels), EuroNext (Paris), HKSE, LSE, SGX, TSE (Tokyo), TSX (Toronto), NASDAQ, NYSE and NZX are therefore all acceptable home exchanges for the purposes of Listing Rule 1.11 condition 1.

²⁴ 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. However, even though South Africa is considered an emerging or developing market on that list, JSE is considered by ASX to be an acceptable home exchange for the purposes of Listing Rule 1.11 condition 1.

²⁵ 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. There are currently home branches in Perth (servicing entities based in WA), Melbourne (servicing entities based in Victoria and Tasmania) and Sydney (servicing all other entities).

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²⁷ On the reservation of trading codes, see Guidance Note 18 *Market Codes and Status Notes*.

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ASX LISTING RULES

Guidance Note 4

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

- 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; and
- any circumstances that could lead to ASX exercising its discretion not to admit an entity to the official list.²⁸

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 an appropriate case, ASX Listings Compliance may suggest to the applicant that it seek in-principle advice²⁹ from ASX about a matter mentioned above before it goes to the effort and expense of lodging a listing application.

2.3. 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 admission as an ASX Foreign Exempt Listing is Appendix 1C – *ASX Foreign Exempt Listing Application and Agreement*. An editable version of the Appendix 1C application can be downloaded from:
<http://www.asx.com.au/regulation/compliance/compliance-downloads.htm>.

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The application must be properly completed, dated and executed by the entity seeking admission to the official list.³⁰ It must also be accompanied by:

- the Information Form and Checklist (ASX Foreign Exempt Listings) published on the ASX website,³¹ and
- all of the information and documents referred to in that Form/Checklist.

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The Information Form and Checklist (ASX Foreign Exempt Listings) has two annexures – annexure I for applicants that are not qualifying NZ entities and annexure II for applicants that are qualifying NZ entities. The applicable annexure must also be completed and all of the information and documents referred to in it provided to ASX.

The Information Form and Checklist (ASX Foreign Exempt Listings) requires the applicant to provide certain information about itself, including a copy of its constitution and a concise summary³² of:

- the rights and obligations of security holders under the law of its home jurisdiction and/or the rules of its home exchange 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;

²⁸ See '2.7 The listing decision' on page 8.

²⁹ Guidance Note 17 *Waivers and In-Principle Advice* has guidance on how to apply for in-principle advice.

³⁰ In the case of a trust, the application should be executed by the responsible entity of the trust.

³¹ An editable version of the Information Form and Checklist (ASX Foreign Exempt Listings) can also be downloaded from <http://www.asx.com.au/regulation/compliance/compliance-downloads.htm>.

³² 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.

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- 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;
- the obligations of the entity under the law of its home jurisdiction and/or the rules of its home exchange regarding:
 - the disclosure of material information;
 - the disclosure of periodic financial information and the accounting and auditing standards that apply;
 - requirements for information to be sent to security holders; and
 - regulation of dealings with directors and controlling holders of equity securities; and
- how the disclosure of substantial holdings and takeovers are regulated under the law of its home jurisdiction.

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.

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2.4. Requests for waivers

Given the limited number of ASX Listing Rules that apply to an ASX Foreign Exempt listing,³³ it has not generally been the case that an applicant in that category has required a waiver or in-principle advice from ASX in relation to process, from the 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:

2.5. Processing time

ASX Listings Compliance aims to process applications for listing as quickly as it reasonably can, given its workload at the time. Typically, an application for an ASX Foreign Exempt Listing will take ASX around four to six weeks to process, from the 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 that might cause ASX to exercise its discretion under Listing Rule 1.19 to refuse the application;³⁴
- 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.³⁵

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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 and completeness of the application. The better the quality of the application, the more quickly and efficiently ASX is likely to be able

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³³ See '2.10 Continuing requirements' on page 10.

³⁴ See '2.7 The listing decision' on page 8.

³⁵ 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.

Deleted: 11 December 2015



ASX LISTING RULES

Guidance Note 4

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 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.

2.6. Payment of initial listing fee

An entity applying for admission as an ASX Foreign Exempt Listing must pay an 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. ASX will not begin processing an application for listing until it has received the initial listing fee.

In the case of an entity with a primary listing on the NZX Main Board, the initial listing fee is calculated by reference to the value of all of the securities in the relevant class the entity is seeking to have quoted on ASX.³⁶ In any other case, the initial listing fee is calculated by reference to the value of the specific securities or CHESS Depository Interests ("CDIs")³⁷ to be included on the entity's Australian register³⁸ which it is seeking to have quoted on ASX.³⁹ If an entity is unsure about the number of its securities or CDIs that will or should be included on its Australian register, it should discuss that issue with the ASX Listings Adviser handling its listing application.

Payment of the initial listing fee 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.

Further guidance about the calculation and payment of listing fees is set out in Guidance Note 15 *ASX Listing Fees*.

2.7. The listing decision

Decisions on whether or not an entity meets the conditions for admission as an ASX Foreign Exempt Listing, 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.

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.⁴⁰ ASX may exercise its discretion

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³⁶ See Listing Rules 1.11 condition 6 and 2.4.

³⁷ See Guidance Note 5 *CHESS Depository Interests (CDIs)*.

³⁸ The reference here to an entity's Australian register includes its CHESS sub-register and its issuer sponsored sub-register. See '5.4 Clearing and settlement' on page 25 below for an explanation of CHESS and issuer sponsored sub-registers.

³⁹ See Listing Rule 1.11 condition 6.

⁴⁰ Listing Rules 1.19 and 2.9.



ASX LISTING RULES

Guidance Note 4

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 where ASX may do so include where:

- the applicant is established or has its home exchange in an emerging or developing market⁴¹ and ASX is not satisfied that the level of regulation in that market is comparable to Australia;
- 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;
- 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.⁴²

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.

ASX may impose such conditions on admission and/or quotation as it considers appropriate.⁴³

In some cases, ASX's decision to admit an entity as an ASX Foreign Exempt Listing and to quote its securities may be subject to conditions that must be satisfied before the decision becomes effective. For example, if the entity is proposing to raise funds domestically by offering securities under a prospectus or product disclosure statement (PDS) in conjunction with its application for admission, these conditions will typically include:

- the close of the offer under the applicant's prospectus or PDS and the completion of the allotment and 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 or PDS;
- mailing of CHESS⁴⁴ or issuer sponsored holding statements to the successful applicants; and
- provision to ASX of any remaining documents referred to in the Information Form and Checklist (ASX Foreign Exempt Listings) that have not yet been lodged with ASX.

If the entity is not raising any funds domestically but it has existing Australian shareholders, ASX may require that these holders are given the opportunity to convert their shares into CHESS Depository Interests as a condition of admission. Further guidance on this topic can be found in found in Guidance Note 5 *CHESS Depository Interests (CDIs)*.

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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⁴¹ See note 24 above.

⁴² The list of examples in the text where this discretion may be exercised is not intended to be exhaustive.

⁴³ Listing Rules 1.19 and 2.9.

⁴⁴ CHESS stands for 'Clearing House Electronic Subregister System'. CHESS 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.

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ASX LISTING RULES

Guidance Note 4

2.8. 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. These documents will typically include:

- the entity's Appendix 1C application form and the accompanying Information Form and Checklist (ASX Foreign Exempt Listings);
- the entity's constitution; and
- any annual report or other financial statements given to ASX with the application.

The documents released to the ASX Market Announcements Platform will not include 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 a waiver of a Listing Rule and the terms of that waiver.

2.9. Requirements for additional information

ASX has the power to require an applicant for listing to disclose additional information over and above that required under Appendix 1C.⁴⁵ ASX also has the power to impose a condition on admission or quotation that the applicant disclose certain information to the market before quotation commences.⁴⁶

It would be uncommon for ASX to exercise either of these powers in relation to an ASX Foreign Exempt Listing. ASX would generally only do so if it formed the view that investors in Australia required additional information, over and above that which had been disclosed under the listing rules of the entity's overseas home exchange, in order for trading in the entity's securities on the Australian market to take place on a reasonably informed basis.

2.10. Continuing requirements

Once listed on ASX, an ASX Foreign Exempt Listing is exempt from complying with most of ASX's Listing Rules. However, it must comply with the following requirements:

- it must immediately provide to ASX all information it provides to its overseas home exchange that is, or is to be, made public⁴⁷ – the information must be in English or accompanied by an English translation;⁴⁸
- it must continue to comply with the listing rules of its overseas home exchange and, by no later than the lodgement of its full year accounts with ASX in each year, give ASX a statement that it continues to comply with those rules for release to the market;⁴⁹
- it must promptly inform ASX if it is granted a waiver of all or part of any listing rule of its overseas home exchange and, if ASX requires, the entity must release details of any such waiver to the market;⁵⁰

⁴⁵ Listing Rule 1.17. ASX may require this information to be submitted to the scrutiny of an expert selected by ASX. The applicant must pay for the expert.

⁴⁶ Listing Rules 1.19 and 2.9.

⁴⁷ Listing Rule 1.15.2.

⁴⁸ Listing Rule 15.2A.

⁴⁹ Listing Rule 1.15.3.

⁵⁰ Listing Rule 1.15.4.

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ASX LISTING RULES

Guidance Note 4

- it must immediately request a trading halt in respect of its securities or a class of them if trading in those securities or that class is halted on its overseas home exchange;⁵¹
- it must immediately request a suspension in respect of its securities or a class of them if those securities or that class have been suspended from quotation on its overseas home exchange, (Listing Rule 17.1);⁵²
- it must comply with some ASX Listing Rules relating to transfers and registers of securities, namely Listing Rules 2.2, 2.7, 8.2, 8.10, 8.15 and 8.21, and Appendices 3B and 8A, and, if its securities are CHES⁵³ approved, Listing Rules 8.1, 8.3, 8.5, 8.6, 8.7, 8.11 and 8.17;⁵⁴
- if it is a qualifying NZ entity, it must comply with the requirement to apply for quotation of all additional securities in a class of securities that is to be quoted or is already quoted on ASX (Listing Rule 2.4);⁵⁵
- it must comply with the requirement to lodge with ASX copies of notices it receives from substantial holders (Listing Rules 3.17.3 and 3.17.4);⁵⁶
- it must comply with some ASX Listing Rules relating to certain procedural and administrative matters:⁵⁷
 - the requirement to appoint a person responsible for communications with ASX (Listing Rule 12.6);⁵⁸
 - if it is a foreign company and it is not a qualifying NZ entity, the requirement to remain registered as a foreign company carrying on business in Australia under the Corporations Act (Listing Rule 12.6A);⁵⁹
 - if it is a foreign trust which is not a qualifying NZ entity and which has as its responsible entity an entity which is not an Australian company, the requirement for its responsible entity to remain registered as a foreign company carrying on business in Australia under the Corporations Act (Listing Rule 12.6B);⁶⁰
 - the way announcements are lodged with ASX, including those announcements that have to be made using an online form provided by ASX (Listing Rules 15.2 to 15.6, 15.8 and 15.9);
 - trading halts, suspension and removal (Chapter 17);
 - the application of the Listing Rules (Chapter 18); and
 - interpretation and definitions (Chapter 19); and
- it must pay ASX's prescribed fees under Chapter 16 of the Listing Rules.⁶²

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⁵¹ Listing Rule 1.15.5. Listing Rule 17.1 applies to any such request. This requirement does not limit the application of Chapter 17 to an entity.

⁵² Listing Rule 1.15.6. Listing Rule 17.2 applies to any such request. This requirement does not limit the application of Chapter 17 to an entity.

⁵³ See note 44 above and '5.4 Clearing and settlement' on page 25.

⁵⁴ Listing Rule 1.15.1.

⁵⁵ Listing Rule 1.15.1.

⁵⁶ Listing Rule 1.15.1. See also '3.8 Information about substantial holdings' on page 20.

⁵⁷ Listing Rule 1.15.1.

⁵⁸ See also '5.2 Appointment of person responsible for communications with ASX' on page 24.

⁵⁹ See also 'see 5.1 Registration as a foreign company under the Corporations Act' on page 22.

⁶⁰ See also '5.1 Registration as a foreign company under the Corporations Act' on page 22.

⁶² Listing Rule 1.15.1.

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ASX LISTING RULES

Guidance Note 4

2.11. ASX's discretion to apply other rules

ASX has the power to prescribe additional Listing Rules with which an ASX Foreign Exempt Listing must comply.⁶³

It would be uncommon for ASX to exercise this power in relation to an ASX Foreign Exempt Listing. ASX would generally only do so if it formed the view that there are significant gaps in the listing rules of the entity's overseas home exchange compared to the ASX Listing Rules, or if those listing rules are not being enforced in a way that is consistent with the legitimate expectations of investors trading on ASX.

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One such example is where ASX becomes concerned that insufficient information has been disclosed by the entity under the Listing Rules of its overseas home exchange for trading in its securities to take place on a reasonably informed basis. In those circumstances, ASX may consider imposing a requirement that the entity comply with ASX's continuous disclosure requirements in Listing Rules 3.1 - 3.1B.

Another example is where ASX becomes concerned about the quality of information contained in the entity's financial statements. In those circumstances, ASX may consider imposing a requirement that the entity comply with some or all of ASX's accounting requirements in Listing Rule 19.11A.

2.12. Timetables for corporate actions

ASX Foreign Exempt Listings are not subject to ASX's Listing Rules relating to timetables for corporate actions (dividend payments, rights issues, reconstructions, etc.). However ASX encourages ASX Foreign Exempt Listings to consult with it about the timing of their corporate actions to ensure that the needs of the ASX market are taken into consideration and, to the extent possible, that the ASX market and the entity's home exchange trade on the same basis when it comes to entitlement to participate in corporate actions.

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3. Standard ASX Listings

3.1. Admission requirements

A foreign entity seeking a standard ASX Listing is subject to the same admission requirements as an Australian entity, irrespective of whether it is listed on another stock exchange. Detailed information about those requirements can be found in Guidance Note 1 *Applying for Admission – ASX Listings*.

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Additionally, a foreign company that wishes to list on ASX as a standard ASX Listing must be registered as a foreign company carrying on business in Australia under the Corporations Act.⁶⁵

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A foreign trust 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.⁶⁹ If it registers as a managed investment scheme, this effectively converts it into an Australian trust for the purposes of the Listing Rules.⁷⁰

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if the entity has a certificated sub-register for quoted securities,⁶⁷ it must establish in Australia an Australian securities register or sub-register.^{68¶}
Further guidance on these 3 requirements can be found in section 5 of this Guidance Note.¶

A foreign trust that is exempted from the requirement to be a registered managed investment scheme must have as its responsible entity either an Australian company or an entity that is registered as a foreign company carrying on business in Australia under the Corporations Act.⁷¹

The discussion below highlights some additional considerations that are relevant to foreign entities applying for an ASX Listing.

⁶³ Listing Rule 1.15.1. This power may be exercised before or after the entity is listed.

⁶⁵ Listing Rule 1.1 condition 4. See also '5.1 Registration as a foreign company under the Corporations Act' on page 22.

⁶⁹ Listing Rule 1.1 condition 5(a).

⁷⁰ See the definition of "Australian trust" in Listing Rule 19.12.

⁷¹ Listing Rule 1.1 condition 5(b).

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ASX LISTING RULES

Guidance Note 4

3.2. Prospectus/product disclosure statement

Listing Rule 1.1 condition 3 generally requires an entity seeking admission in the ASX Listing category to issue a prospectus or PDS and to lodge it with the Australian Securities and Investments Commission (ASIC). 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,⁷² and it will usually be the prospectus or PDS for that offer⁷³ that is used to satisfy Listing Rule 1.1 condition 3.

In certain limited cases,⁷⁴ ASX may agree to accept an information memorandum in lieu of a prospectus or PDS. Generally speaking, however, the information memorandum must contain the same information that would otherwise be required in a prospectus or PDS (as applicable).

Guidance Note 1 *Applying for Admission – ASX Listings* has further information about ASX's requirements for prospectuses, PDSs and information memoranda. As noted in that Guidance Note, ASX expects the prospectus, PDS or information memorandum 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 summary⁷⁵ of the rights and obligations of security holders under the law of its home jurisdiction⁷⁶ 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;

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⁷² See '3.3 Minimum [free float, minimum](#) spread and connection with Australia' on page 14.

⁷³ 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)) – 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.

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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.

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⁷⁴ These cases are spelt out in further detail in Guidance Note 1 *Applying for Admission – ASX Listings*.

⁷⁵ 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.

⁷⁶ 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: see '3.10 Information about material changes in the rights and obligations of security holders' on page 20.

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ASX LISTING RULES

Guidance Note 4

- 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 summary⁷⁷ of how the disclosure of substantial holdings and takeovers are regulated under the law of its home jurisdiction.

If this information is not included in the entity’s prospectus, PDS or 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.

3.3. Minimum free float, minimum spread and connection with Australia

It is not considered an obstacle to an ASX Listing that an entity does not conduct any major business activities or have management or staff based in Australia.⁷⁸ Accessing the substantial pool of capital in Australia in and of itself is a sufficient business reason for an entity to want to list in Australia.

An entity applying for a standard ASX Listing must satisfy ASX’s minimum free float⁷⁹ and minimum spread requirements.⁸⁰ This is to ensure that there is sufficient investor interest in the entity to justify its listing and to aid liquidity.

To meet the minimum float requirement, 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%.

“Free float” means the percentage of the entity’s main class of securities that:

- are not “restricted securities”⁸¹ or subject to voluntary escrow;⁸² and
- are held by non-affiliated security holders.⁸³

“Non-affiliated security holders” means security holders who are not: (a) a related party⁸⁴ of the entity; (b) an associate⁸⁵ 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.⁸⁶

To meet the minimum spread requirement:

⁷⁷ See note 75 above.

⁷⁸ Provided the entity has someone who can communicate with ASX on Listing Rule matters during the Sydney time zone: see 5.2 Appointment of person responsible for communications with ASX on page 24.

⁷⁹ Listing Rule 1.1 condition 7.

⁸⁰ Listing Rule 1.1 condition 8.

⁸¹ The concept of “restricted securities” is explained in greater detail in Guidance Note 11 *Restricted Securities and Voluntary Escrow*.

⁸² As defined in Listing Rule 19.12.

⁸³ Listing Rule 19.12.

⁸⁴ “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).

⁸⁵ “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.

⁸⁶ Listing Rule 19.12. Securities held by or for an employee incentive plan are not regarded by ASX as forming a part of an entity’s free float. 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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ASX LISTING RULES

Guidance Note 4

- if the entity has a free float at the time of its admission to the official list of less than \$50 million, there must be at least 200 non-affiliated security holders;⁸⁷ 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 securities⁸⁸ that are not restricted securities or subject to voluntary escrow with a value of at least \$5,000.⁸⁹

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 AS\$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 established 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.

Further guidance on ASX's minimum spread requirements can be found in Guidance Note 1 *Applying for Admission – ASX Listings*.

3.4. Continuing compliance with Listing Rules and ASX's waiver power

A foreign entity which is granted an ASX Listing must comply with all applicable ASX Listing Rule requirements, in the same way as any Australian entity, unless it is granted a specific waiver by ASX. This applies even where the entity is listed on another exchange.

ASX may, in very limited situations, recognise compliance by a foreign entity which has its primary listing on an overseas exchange with a particular obligation imposed by its home exchange as constituting, in principle, sufficient reason to justify the granting of a waiver from a comparable, but inconsistent, obligation under the ASX Listing Rules. Such waivers have historically been granted sparingly and the onus is on the applicant to show good cause why it should be granted such a waiver. ASX has no obligation to recognise the regulation of an ASX Listing by any other exchange and will only do so where it is satisfied that the exchange in question imposes comparable standards to ASX that meet the general principles on which the ASX Listing Rules are based, as outlined in the introduction to the Listing Rules.

All applications for such waivers are considered on their merits on a case by case basis. In considering such an application, ASX will be guided by considerations such as:

- the stature and reputation of the home exchange on which the foreign entity is listed;
- the period of time the entity has been listed on that exchange;

⁸⁷ 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).

⁸⁸ If CDIs are issued over securities in the main class, holders of the CDIs are included for these purposes. If securities or CDIs are registered in the name of a nominee or custodian, they are to be taken to be held by the underlying beneficial owner.

⁸⁹ The value of securities is usually based on the offer price under the entity's prospectus or PDS.

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

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ASX LISTING RULES

Guidance Note 4

- the entity's track record in complying with the listing rules of that exchange;
- the proportion of trading in the entity's securities that occurs, or is likely to occur, on that exchange compared to ASX;
- the proportion of the entity's business that is conducted in Australia;⁹²
- whether the corresponding requirement of the overseas exchange is consistent with the underlying policy of the ASX Listing Rule from which a waiver is sought and with the principles that underpin ASX's Listing Rules (as set out in the introduction to the Listing Rules); and
- whether the inconvenience to the listed company in satisfying two sets of comparable, but inconsistent, requirements outweighs any detriment to users of ASX markets from the non-application of ASX's requirements.

A foreign entity applying for an ASX Listing that wishes to receive such a waiver must apply in writing for the waiver, identifying the particular ASX Listing Rule or Rules from which a waiver is sought. In its application for the waiver, the foreign entity should:

- describe in detail the corresponding rules of its home exchange with which it must comply;
- confirm that it is in full compliance with those rules;
- explain why it is considered burdensome that it should have to comply with the relevant ASX Listing Rules in addition to the rules of its home exchange; and
- justify why compliance with the rules of its home exchange in lieu of the relevant ASX Listing Rules will meet the general principles on which the ASX Listing Rules are based, as outlined in the introduction to the Listing Rules.

Further guidance on how to apply for waivers and the principles that ASX applies in deciding whether or not to grant them can be found in Guidance Note 17 *Waivers and In-Principle Advice*.

If ASX is minded to grant such a waiver, it will be subject to a condition that the listed entity continues to comply with the comparable rules of its home exchange. The waiver will also usually be granted for a nominated period only (typically one year) so that there is an opportunity to review the need for the waiver on a regular basis. ASX may withdraw the waiver at any time⁹³ and, **among** other circumstances, will consider doing so if there is a change in the regulatory regime that applies to the foreign entity.

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If ASX grants such a waiver, the applicant will be required to make an announcement on the ASX Market Announcements Platform that the waiver has been granted.

A foreign entity applying for admission as an ASX Listing that has a primary listing on an overseas exchange other than the NZX **main board** and that intends to use CHESS Depository Interests (CDIs) to facilitate the holding and transfer of its ASX-quoted securities⁹⁴ should note one waiver, in particular, that it can seek from ASX. ASX will usually, on request, grant a waiver to such an entity from Listing Rules 1.1 condition 6 and 2.4 to relieve the entity from the obligation to apply for quotation of all the securities in its main class and instead allow it to apply for quotation of the portion of its securities that will be represented by CDIs. This will have the result that the entity will pay ASX listing fees only on the portion of its securities represented by CDIs (ie on the Australian component of its

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⁹² An entity which has its central management and control or a significant proportion of its business operations in Australia is unlikely to be granted a waiver from any ASX Listing Rules, other than standard waivers granted to Australian entities generally. This is intended to prevent essentially Australian businesses incorporating or registering themselves offshore to circumvent ASX's listing requirements and also to maintain a level playing field between entities that are listed on ASX and carrying on essentially Australian businesses, regardless of their place of incorporation or registration.

⁹³ Listing Rule 18.3.

⁹⁴ See '5.4 Clearing and settlement' on page 25 below and Guidance Note 5 *CHESS Depository Interests (CDIs)*.

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ASX LISTING RULES

Guidance Note 4

register rather than on its full register).⁹⁵ This puts such entities in the same position as ASX Foreign Exempt Listings when it comes to the amount of ASX listing fees they pay.

3.5. Continuous disclosure requirements

Listing Rule 3.1 requires an entity admitted as an ASX Listing to tell ASX of any information that a reasonable person would expect to have a material effect on the price or value of the entity's securities, immediately upon becoming aware of such information.

Compliance with Listing Rule 3.1 is critical to the integrity and efficiency of the ASX market and other markets that trade in ASX quoted securities or derivatives of those securities. Reflecting this, Parliament has given the rule statutory force in section 674 of the Corporations Act. A listed entity which breaches Listing Rule 3.1 may also breach that section and this can attract serious legal consequences for the entity and its officers.

Further guidance about an entity's continuous disclosure obligations can be found in Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*. Foreign entities admitted to the official list as an ASX Listing must ensure that they are thoroughly familiar with Guidance Note 8 and their continuous disclosure obligations under the ASX Listing Rules.

3.6. Financial reporting requirements

Foreign entities admitted as an ASX Listing must give periodic financial reports to ASX. These requirements are set out in Chapters 4 and 5 of the Listing Rules and are essentially the same for Australian and foreign entities. In brief, a foreign entity must provide the following:

- in the case of an entity that is not a mining exploration entity or oil and gas exploration entity,⁹⁶ a half year report containing the information in Appendix 4D;⁹⁷
- the following half yearly accounts and documents:
 - if the entity is subject in its home jurisdiction to an equivalent law to section 320 of the Corporations Act requiring it to prepare half yearly accounts, the accounts and other documents prepared under that law;⁹⁸ or
 - if the entity is not subject in its home jurisdiction to an equivalent law to section 320 of the Corporations Act requiring it to prepare half yearly accounts, accounts for the half year equivalent to those it would be required to prepare in its home jurisdiction if its governing legislation included a provision equivalent to section 320 of the Corporations Act;⁹⁹
- in the case of an entity that is not a mining exploration entity or oil and gas exploration entity,¹⁰⁰ a preliminary final (full year) report containing the information set out in Appendix 4E;¹⁰¹

⁹⁵ The waiver will usually be subject to conditions requiring the entity to lodge an Appendix 3B on a monthly basis, showing the net movement in CDIs. If new securities are issued and will be held in the form of CDIs, a separate Appendix 3B will also need to be lodged seeking quotation of those CDIs.

⁹⁶ Mining exploration entities and oil and gas exploration entities are exempt from the requirement to provide an Appendix 4D half year report on the basis that they are required to provide quarterly reports under Listing Rules 5.3 and 5.4 and quarterly Appendix 5Bs under Listing Rule 5.5.

⁹⁷ Listing Rule 4.2A.3.

⁹⁸ Listing Rule 4.2A.2. The accounts must be audited or subject to review and the audit or review report must be given to ASX with the accounts.

⁹⁹ Listing Rule 4.2A.2A. This effectively requires the accounts to be audited or subject to review and the audit or review report to be given to ASX with the accounts.

¹⁰⁰ Again, mining exploration entities and oil and gas exploration entities are exempt from the requirement to provide an Appendix 4E preliminary final report on the basis that they are required to provide quarterly reports under Listing Rules 5.3 and 5.4 and quarterly Appendix 5Bs under Listing Rule 5.5.

¹⁰¹ Listing Rule 4.3A.

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- the following full year accounts and documents:¹⁰²
 - if the entity is a registered foreign company that is required to comply with section 601CK of the Corporations Act,¹⁰³ a copy of the accounts and other documents it must lodge with ASIC under that section;¹⁰⁴ or
 - if the entity is not a registered foreign company that is required to comply with section 601CK of the Corporations Act, a copy of the accounts and other documents that it would be required to give ASX under the paragraph immediately above if it had to comply with the requirements of that section;¹⁰⁵ and
- the annual report it sends to security holders.¹⁰⁶

The Appendix 4D half year report and the Appendix 4E preliminary final report must be provided as soon as they are ready to be given to ASX and no later than two months from the end of the relevant accounting period.¹⁰⁷

Half yearly accounts must be lodged with ASX at the same time as they are lodged with the relevant overseas regulator and in any event:

- in the case of an entity that is not a mining exploration entity or oil and gas exploration entity, no later than two months after half year end; or
- in the case of a mining exploration entity or oil and gas exploration entity, no later than 75 days after half year end.¹⁰⁸

Full year accounts lodged with ASIC under section 601CK of the Corporations Act must be given to ASX at the same time as they are lodged with ASIC and no later than three months after year end.¹⁰⁹ If an entity does not have to file with ASIC under section 601CK of the Corporations Act, then it must give the equivalent documents to ASX no later than three months after year end.¹¹⁰

There are additional quarterly reporting requirements in Chapter 5 for mining and oil and gas entities. A mining producing entity or an oil and gas producing entity must provide a detailed report of its production and development activities and a summary of its exploration activities within one month after quarter end.¹¹¹ A mining exploration entity or an oil and gas exploration entity must provide a detailed report of its exploration, development and production activities and certain other information,¹¹² as well as an Appendix 5B report,¹¹³ within one month after quarter end.

¹⁰² Entities that change their financial reporting year also need to file an Appendix 4F if the transitional period of the change is longer than 12 months. Entities should contact ASX for specific guidance if they are considering a change to their reporting periods.

¹⁰³ The documents required to be lodged with ASIC under section 601CK are a balance sheet, cash flow statement, and profit and loss statement.

¹⁰⁴ Listing Rule 4.5.2. The accounts must be audited and the audit report must be given to ASX with the accounts.

¹⁰⁵ Listing Rule 4.5.3. This effectively requires the accounts to be audited and the audit report to be given to ASX with the accounts.

¹⁰⁶ Listing Rule 4.7.

¹⁰⁷ Listing Rule 4.2B and 4.3B.

¹⁰⁸ Listing Rule 4.2B.

¹⁰⁹ Listing Rule 4.5.2.

¹¹⁰ Listing Rule 4.5.3.

¹¹¹ Listing Rules 5.1 and 5.2 respectively.

¹¹² Listing Rules 5.3 and 5.4 respectively.

¹¹³ Listing Rule 5.5.

Deleted: 11 December 2015



ASX LISTING RULES

Guidance Note 4

An entity admitted under the assets test on the basis of commitments to spend funds¹¹⁴ will normally be required to provide quarterly Appendix 4C cash flow reports within one month after quarter end, for at least the first two years after its listing. Other entities may also be required by ASX to provide quarterly Appendix 4C cash flow reports.¹¹⁵

The information required by the various ASX reports (Appendices 4C, 4D, 4E, 5A and 5B) does not need to be audited or reviewed unless ASX explicitly requires an audit or review of a specific report. However, the statutory accounts which are part of the half year report must be audited or reviewed and the annual accounts underlying the preliminary final report must be audited. The audit of the annual accounts can be completed after the Appendix 4E Preliminary final report is lodged with ASX.

If these reporting requirements are not met by an ASX Listing, the quotation of its securities will be suspended until the required reports have been given to ASX.¹¹⁶

Financial statements given to ASX must be prepared in accordance with Australian Accounting Standards or other standards agreed to by ASX.¹¹⁷ This applies not only to the periodic financial reports referred to above, but also to other financial statements, such as those included in prospectuses, PDSs, information memoranda and the like. For these purposes, ASX will accept International Financial Reporting Standards (IFRS) as adopted by the EU and the accounting standards and generally accepted accounting principles applied in Bermuda, Canada, Cayman Islands, Hong Kong, New Zealand, Singapore, South Africa and USA as acceptable standards for these purposes. Entities ~~that~~ wish to use any other accounting standards in preparing financial statements must apply to ASX for advice as to whether those standards are acceptable to ASX.

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If an entity wishes to use accounting standards in the preparation of its financial statements which ASX considers are not acceptable, ASX will generally require it to attach a statement reconciling the financial information in those statements to the equivalent financial information prepared using either Australian Accounting Standards or IFRS.

Similarly, the audit/review standards applied to any audited/reviewed accounts that are required to be lodged with ASX must be Australian Auditing Standards or other standards agreed to by ASX.¹¹⁸ ASX will accept International Standards on Auditing or US Auditing Standards as acceptable standards for these purposes. Entities which wish to use any other audit/review standards must apply to ASX for advice as to whether those standards are acceptable to ASX.

It is important that foreign entities admitted as ASX Listings have internal accounting staff and external auditors with appropriate skills and expertise in the applicable accounting standards necessary to ensure that ASX's ongoing reporting requirements are met.¹¹⁹

3.7. Financial documents given by a dual listed entity to an overseas exchange

In addition to the accounts and other documents it must give to ASX under chapters 4 and 5 of the Listing Rules, an entity with a dual listing on the ASX and an overseas securities exchange must immediately give to ASX a copy of any document it gives to the overseas exchange that meets the following requirements:

- the document is given to the overseas stock exchange by the entity in its capacity as an entity listed on that exchange;
- the document is, or will be, made public by the overseas stock exchange;

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¹¹⁴ Listing Rule 1.3.2(b).

¹¹⁵ Listing Rule 4.7B.

¹¹⁶ Listing Rule 17.5.

¹¹⁷ Listing Rule 19.11A(b).

¹¹⁸ Listing Rule 19.11A(c) and (d).

¹¹⁹ The Information Form and Checklist (ASX Listing) that must accompany its application for listing requires an applicant applying for admission to the official list as an ASX Listing to disclose the name of its auditor. In certain cases, ASX may also require the applicant to provide information about the qualifications and experience of the auditor for release to the market before quotation commences.

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ASX LISTING RULES

Guidance Note 4

- the document includes accounts or other similar financial information; and
- the document is not materially the same as another document that the entity has already given to ASX.¹²⁰

Such documents, if not in English, must be accompanied by an English translation.¹²¹

3.8. Information about substantial holdings

The provisions of the Corporations Act dealing with notification of substantial holdings do not apply to entities established outside Australia. To ensure that the market is properly informed of such matters, the Listing Rules require an entity not established in Australia to give to ASX:

- a copy of a document it receives about a substantial holdings of securities under any overseas law or provisions in the entity's constitution equivalent to Part 6C.1 of the Corporations Act;¹²² and
- a copy of a document it receives about a substantial holding of securities under any overseas law or provisions in the entity's constitution equivalent to Part 6C.2 of the Corporations Act that reveals materially different information to the most current information it has received (if any) about that substantial holding under the overseas law or provisions in the entity's constitution referred to in the preceding **bullet point**.¹²³

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3.9. Requisitions from security holders

An entity established in Australia is required to give ASX within two business days of receipt:

- information about the material terms of any notice it receives under certain provisions of the Corporations Act from a holder or holders of securities calling, or requesting the calling of, or proposing to move a resolution at, a general meeting; and
- information that a notice previously notified to ASX under this requirement has been withdrawn by the holder or holders who gave it.¹²⁴

An entity not established in Australia is required to give equivalent information in relation to any notice it receives under any equivalent overseas law or equivalent provisions in the entity's constitution.

3.10. Information about material changes in the rights and obligations of security holders

Material changes to the provisions of the Corporations Act conferring rights or imposing obligations on the holders of securities in entities established in Australia are likely to be a matter of such public notoriety that investors trading in those securities on ASX can be presumed to be aware of those changes. The same may not be true, however, of changes in the rights or obligations of security holders in an entity not established in Australia under the law of its home jurisdiction.

¹²⁰ Listing Rule 3.17B.

¹²¹ Listing Rule 15.2A. If the preparation of an English translation is likely to take some time, to meet the requirement to disclose information immediately, the entity should lodge the original foreign language version with a short summary in English of the material contents of the document and then lodge the translation as soon as it reasonably can thereafter.

¹²² Listing Rule 3.17.3. Part 6C.1 of the Corporations Act requires the disclosure of substantial (5%+) holdings of voting securities in listed entities established in Australia. A person who gives a substantial holding notice to an entity established in Australia under Part 6C.1 of the Corporations Act is required to give a copy of that notice to ASX (section 671B(1)) and therefore it is not necessary for the entity to give a separate copy of that notice to ASX. Hence there is no equivalent to Listing Rule 3.17.3 for entities established in Australia.

¹²³ Listing Rule 3.17.4. Part 6C.2 of the Corporations Act empowers a listed entity established in Australia to serve "tracing notices" to uncover the beneficial owner/controller of voting securities in the entity. Listing Rule 3.17.2 requires an Australian entity to give ASX any equivalent document it receives about a substantial holding of securities under Part 6C.2 of the Corporations Act.

¹²⁴ Listing Rule 3.17A. The specific provisions referenced in that rule are sections 249D, 249F, 249N, 252B, 252D or 252L of the Corporations Act.

Deleted: 11 December 2015



ASX LISTING RULES

Guidance Note 4

To ensure that the market is properly informed of such matters, the Listing Rules require an entity not established in Australia, 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.¹²⁵

Examples of the types of matters that would need to be notified to ASX in this regard include any material change to the law of its home jurisdiction in terms of:

- the types of transactions that require security holder approval;
- the right of security holders to request or requisition a meeting of security holders;
- the right of security holders to appoint proxies to attend and vote at meetings on their behalf;
- how changes in the rights attaching to securities are regulated;
- the right of security holders to seek relief for oppressive conduct;
- the right of security holders to bring or intervene in legal proceedings on behalf of the entity;
- the adoption of, or any material change to, any equivalent to the “two strikes” rule in relation to remuneration reports in Part 2G.2 Division 9 of the Corporations Act; or
- how the disclosure of substantial holdings and takeovers are regulated.

4. ASX Debt Listings

4.1. Admission requirements

A foreign entity seeking an ASX Debt Listing is subject to the same admission requirements as an Australian entity, irrespective of whether it is already listed on another securities exchange. Detailed information about those requirements can be found in Guidance Note 29 *Applying for Admission – ASX Debt Listings*.

A foreign entity must also satisfy the following additional requirements:

- ASX must be satisfied that the entity complies with its constitution and the laws that govern it and the Listing Rules (or their equivalent) of its overseas home exchange (if any);¹³¹
- if it is a foreign company, it must be registered as a foreign company carrying on business in Australia under the Corporations Act;¹³² and
- if it is a foreign trust¹³³ which has as its responsible entity an entity which is not an Australian company, its responsible entity must be registered as a foreign company carrying on business in Australia under the Corporations Act.¹³⁴

To meet the first requirement above, ASX will generally require a legal opinion from a reputable law firm in the applicant’s home jurisdiction which is satisfactory to ASX and which confirms that the applicant is validly existing in that jurisdiction and that the business it carries on complies with its constitution, the laws of that jurisdiction and, if it is listed on an overseas stock exchange, the listing rules (or their equivalent) of that exchange.

¹²⁵ Listing Rule 3.17C.

¹³¹ Listing Rule 1.8 condition 6.

¹³² Listing Rule 1.8 condition 7. See also ‘5.1 Registration as a foreign company under the Corporations Act’ on page 22.

¹³³ “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).

¹³⁴ Listing Rule 1.8 condition 8(d).

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it must appoint an agent for service in Australia;¹²⁸¶
if the entity has a certificated sub-register for quoted securities,¹²⁹ it must establish in Australia an Australian securities register or sub-register (if ASX agrees, other appropriate facilities for the registration of transfers may be provided instead of an Australian securities register or sub-register);¹³⁰¶

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ASX LISTING RULES

Guidance Note 4

4.2. Prospectus requirements for retail debt securities

Guidance Note 29 *Applying for Admission – ASX Debt Listings* has further information about certain Corporations Act requirements that apply to retail debt securities, including the requirement to have lodged a prospectus in relation to the securities with ASIC. As noted in that Guidance Note, ASX expects the prospectus for a foreign entity to include:

- a statement of its place of incorporation or registration; and
- 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*].”

Deleted: In relation to the fifth requirement above, in most cases, it will be clear that the debt securities to be quoted by a foreign entity are “financial products” as defined in the Corporations Act. However, if ASX has any doubt on this score, it may require the applicant to provide a legal opinion from a reputable Australian law firm which is satisfactory to ASX and which confirms that the debt securities to be quoted are “financial products” as defined in the Corporations Act.¶

5. Common issues relevant to foreign entities seeking any listing on ASX

5.1. Registration as a foreign company under the Corporations Act

As mentioned previously, a foreign company:

- which is not a qualifying NZ entity and which is seeking a listing on ASX as an ASX Foreign Exempt Listing,¹³⁶ or
- which is seeking a listing on ASX as an ASX Listing¹³⁷ or an ASX Debt Listing.¹³⁸

Deleted: A foreign entity admitted to the official list of ASX as an ASX Listing or an ASX Debt Listing is required to be registered as a foreign company under the Corporations Act.¹³⁹¶
A foreign company that

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must be registered as a foreign company carrying on business in Australia for the purposes of the Corporations Act.

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The responsible entity of a foreign trust:¹³⁹

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- which is not a qualifying NZ entity and which is seeking a listing on ASX as an ASX Foreign Exempt Listing,¹⁴⁰ or
- which is seeking a listing on ASX as an ASX Listing¹⁴¹ or an ASX Debt Listing.¹⁴²

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must, if it is not an Australian company, be registered as a foreign company carrying on business in Australia under the Corporations Act.

The process to register as a foreign company, and the obligations that apply to registered foreign companies, are set out in Part 5B.2 Division 2 of the Corporations Act.

Deleted: Further information about the registration and post-registration obligations of foreign companies can also be found on the ASIC website.¹⁴³

¹³⁶ Listing Rule 1.11 condition 7.

¹³⁷ Listing Rule 1.1 condition 4.

¹³⁸ Listing Rule 1.8 condition 7.

¹³⁹ As defined in note 133 above. A foreign trust that wishes to list on ASX in any category of listing also has the option to register as a managed investment scheme under the Corporations Act. This effectively converts it into an Australian trust for the purposes of the Listing Rules (see the definition of “Australian trust” in Listing Rule 19.12).

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¹⁴⁰ Listing Rule 1.11 condition 8(b).

¹⁴¹ Listing Rule 1.1 condition 5(b).

¹⁴² Listing Rule 1.8 condition 8(d).

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Among other things, to register as a foreign company under the Corporations Act, an entity must appoint a local agent in Australia who is authorised to accept service of process and notices on behalf of the entity.¹⁴⁶ ASIC has prescribed a form of Memorandum of Appointment of Local Agent for these purposes.¹⁴⁷

Registration as a foreign company carrying on business in Australia brings with it a number of regulatory obligations, including:

- to have a registered office in Australia to which communications and notices may be addressed that is open between certain hours and at which a representative of the company is present at all times the office is open;¹⁴⁸
- to display its name and its place of origin in a conspicuous position and in legible characters outside its registered office and every office and place of business in Australia that is open and accessible to the public;¹⁴⁹
- to display its name, its Australian Registered Body Number (ARBN), its place of origin and, if the liability of the members is limited and the last word of its name is neither 'Limited' nor 'Ltd.', notice of the fact that the liability of its members is limited on:
 - every public document issued, signed or published by or on behalf of the company in Australia; and
 - every negotiable instrument signed or issued by or on behalf of the company in Australia;¹⁵⁰
- to retain a local agent who is answerable for the doing of all acts, matters and things that the company is required to do by or under the Corporations Act;¹⁵¹
- unless exempted by ASIC,¹⁵² to lodge financial statements with ASIC at least once every calendar year and at intervals of not more than 15 months comprising:
 - a copy of the company's balance sheet, profit and loss statement and cash flow statement (all made up to the end of the last financial year), and
 - any other documents the company is required to prepare by the law that applies in the company's place of origin,

together with a Form 405 Statement to verify financial statements of a foreign company.¹⁵³

It should be noted that issues about the requirement to be registered as a foreign company carrying on business in Australia are within the regulatory remit of ASIC. Any questions about that requirement should be directed to ASIC rather than ASX.

¹⁴⁶ Section 601CF(2) of the Corporations Act. The name and address of the entity's local agent must be notified to ASX in the Information Form and Checklist lodged with the applicant's application for listing on ASX.

¹⁴⁷ ASIC Form 418, available online at: http://download.asic.gov.au/media/2948596/418_v2.pdf.

¹⁴⁸ See section 911D.

¹⁴⁹ Section 601CW.

¹⁵⁰ Section 601DE. The company must also display its ARBN on all documents required to be lodged with ASIC under the Corporations Act: Corporations Regulations 1.0.07 – 1.0.10.

¹⁵¹ Section 601CF.

¹⁵² ASIC may declare some types of registered foreign company to be exempt from these financial reporting requirements: see ASIC Regulatory Guide 58 *Reporting requirements—registered foreign companies and Australian companies with foreign company shareholders*. An exempt registered foreign company must lodge a Form 406 Annual return of a foreign company instead of a Form 405 (see note 153 and the accompanying text).

¹⁵³ Section 601CK. When a foreign company that holds an AFSL lodges its financial statements with ASIC, it can either: (a) rely on ASIC Class Orders [CO 03/823] or [CO 06/68] and lodge a Form 405 (in which case it must include an auditor's report with this form); or (b) lodge Forms FS70 Australian financial services licensee profit and loss statement and balance sheet and FS71 Australian financial services licensee audit report.

Deleted: It should be noted that ASX will only entertain an application for a waiver from the requirement for the applicant to be registered as a foreign company under the Corporations Act, if it provides a legal opinion from a reputable Australian law firm which is satisfactory to ASX and which confirms that the applicant will not be "carrying on business" in Australia for the purposes of section 601CD of the Corporations Act.^{144¶}

Appointment of local agent to accept service of process¶
Every foreign entity listed on ASX, whether as an ASX Listing, an ASX Foreign Exempt Listing or an ASX Debt Listing, must appoint an agent for service of process in Australia.^{145¶}
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ASX LISTING RULES

Guidance Note 4

[Further information about the process for registering as a foreign company and the ongoing obligations that apply to registered foreign companies can be found on the ASIC website at: http://www.asic.gov.au/for-business/starting-a-company/how-to-start-a-company/foreign-companies/.](http://www.asic.gov.au/for-business/starting-a-company/how-to-start-a-company/foreign-companies/)

5.2. Appointment of person responsible for communications with ASX

Every foreign entity listed on ASX, whether as an ASX Listing, an ASX Foreign Exempt Listing or an ASX Debt Listing, must nominate at least one person¹⁵⁴ to be responsible¹⁵⁵ for communication with ASX in relation to Listing Rule matters.¹⁵⁶ The person appointed must be able to communicate in English.

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,¹⁵⁷

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.¹⁵⁸

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.

¹⁵⁴ 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.

¹⁵⁵ 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.

¹⁵⁶ Listing Rule 1.1 condition **13** (ASX Listings), Listing Rule 1.11 condition **9** (ASX Foreign Exempt Listings) and Listing Rule 1.8 condition **10** (ASX Debt Listings). See also Listing Rule 12.6, which 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.

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 lodged with an applicant's application for listing on ASX.

¹⁵⁷ 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).

¹⁵⁸ 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 4

5.3. Electronic lodgement of announcements

Every foreign entity listed on ASX, whether as an ASX Listing, an ASX Foreign Exempt Listing or an ASX Debt Listing, must establish facilities for electronically lodging announcements with the ASX Market Announcements office.¹⁵⁹

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 <http://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 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*.

5.4. 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 Settlement¹⁶⁰ 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.¹⁶¹

Unless it is established in an overseas jurisdiction whose laws preclude this, an entity seeking admission to the ASX official list must be approved as an issuer under the operating rules¹⁶² of the CHES facility¹⁶³ and also have the securities it is seeking to have quoted on ASX approved for participation in that facility.¹⁶⁴ Once these approvals have been obtained, ASX Settlement will then establish the CHES subregister **for its securities**.¹⁶⁵ The entity must establish its own issuer sponsored subregister **for its securities**.¹⁶⁶ 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.¹⁶⁸ **To do the first of these, the entity must be approved as a**

¹⁵⁹ Listing Rule 1.1 condition 14 (ASX Listings), Listing Rule 1.11 condition 10 (ASX Foreign Exempt Listings) and Listing Rule 1.8 condition 11 (ASX Debt Listings). See also Listing Rule 8.2.

¹⁶⁰ ASX Settlement Pty Limited, a wholly owned subsidiary of ASX and the operator of the ASX Settlement facility.

¹⁶¹ 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.

¹⁶² **References to the operating rules of the CHES facility mean the ASX Settlement Operating Rules.**

¹⁶³ **Listing Rule 1.1 condition 15(a) (ASX Listings), Listing Rule 1.11 condition 12(a) (ASX Foreign Exempt Listings) and Listing Rule 1.8 condition 12(a) (ASX Debt Listings).**

¹⁶⁴ Listing Rule 2.1 condition 3(a) (ASX Listings and ASX Debt Listings), Listing Rule 2.2(a) (ASX Foreign Exempt Listings) 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).

¹⁶⁵ Pursuant to ASX Settlement Operating Rules 8.1.3, 8.6.1 and 8.6.2.

¹⁶⁶ Listing Rule 8.2.

¹⁶⁸ 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**

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Deleted: An entity's Appendix 1A, 1B or 1C 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 securities approved, under the operating rules of the CHES facility.¹⁶⁷

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

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ASX LISTING RULES

Guidance Note 4

foreign issuer of CDIs under the operating rules of the CHES facility¹⁶⁹ and also have the CDIs to be issued over its securities approved for participation in that facility.¹⁷⁰ Once these approvals have been obtained, ASX Settlement will then establish the CHES subregister for its CDIs. The entity must establish its own issuer sponsored subregister for its CDIs.¹⁷¹ 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, 1B or 1C 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 CHES facility.¹⁷⁴

Deleted: An entity established in an overseas jurisdiction can only have a certificated register for ASX quoted securities¹⁷² if the laws where it is established prohibit its securities being held on an uncertificated issuer sponsored subregister.¹⁷³

5.5. Foreign regulatory approvals

Some foreign jurisdictions restrict the listing of their domestic entities on foreign exchanges. An entity incorporated or registered in one of these jurisdictions seeking to list on ASX should get any necessary approval before applying to be listed and give ASX evidence of the approval when making its application.

5.6. Governing law

Listing Rules 19.2A and 19.2B provide for the listing agreement between ASX and a listed entity to be governed by the law of New South Wales and for ASX and listed entities to submit to the jurisdiction of the courts of New South Wales. New South Wales is the State of Australia in which ASX has its principal office.

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).

¹⁶⁹ Listing Rule 1.1 condition 15(b) (ASX Listings), Listing Rule 1.11 condition 12(b) (ASX Foreign Exempt Listings) and Listing Rule 1.8 condition 12(b) (ASX Debt Listings).

¹⁷⁰ Listing Rules 2.1 condition 3(b) (ASX Listings and ASX Debt Listings) and 2.2(b) (ASX Foreign Exempt Listings). See also ASX Settlement Operating Rule 13.2.1.

¹⁷¹ Listing Rule 8.2.

¹⁷⁴ ASX Settlement Operating Rule 8.1.1 and Procedure 8.1.1.

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