

Updating ASX's admission requirements for listed entities

CONSULTATION PAPER

12 MAY 2016

ATTACHMENT F: PROPOSED CHANGES TO GUIDANCE NOTE 30





APPLYING FOR QUOTATION OF ADDITIONAL SECURITIES

The purpose of this Guidance Note	<ul style="list-style-type: none">• To assist listed entities to understand the process and to prepare applications for the quotation of additional securities
The main points it covers	<ul style="list-style-type: none">• Notification obligations in relation to an issue of shares• Applying for quotation of securities in a class that is already quoted on ASX• Applying for quotation of securities in a class that is not already quoted on ASX• The quotation process generally
Related materials you should read	<ul style="list-style-type: none">• Guidance Note 1 <i>Applying for Admission – ASX Listings</i>• Guidance Note 4 <i>Foreign Entities Listing on ASX</i>• Guidance Note 8 <i>Continuous Disclosure: Listing Rules 3.1 – 3.1B</i>• Guidance Note 11 <i>Restricted Securities and Voluntary Escrow</i>• Guidance Note 17 <i>Waivers and In-Principle Advice</i>• Guidance Note 19 <i>Performance Shares</i>• Guidance Note 29 <i>Applying for Admission – ASX Debt Listings</i>• Guidance Note 34 <i>Naming Conventions for Debt and Hybrid Securities</i>

History: Guidance Note 30 amended [01/09/16](#). Previous versions of this Guidance Note were issued in 01/12, 01/15, 08/15, [12/15](#) and [03/16](#).

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Important notice: ASX has published this Guidance Note to assist listed entities to understand and comply with their obligations under the ASX Listing Rules. Nothing in this Guidance Note necessarily binds ASX in the application of the ASX 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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1. Introduction

This Guidance Note is published to assist listed entities to understand the process and to prepare applications for the quotation of additional securities.

Securities need to be quoted before they are able to be traded on ASX.¹

Chapters 2 and 6 of the Listing Rules set out the requirements for a listed entity to have its securities quoted on ASX. Listing Rules 2.4 to 2.8 set out the rules that apply specifically to the quotation of additional securities by an entity that is already listed on ASX.

¹ Rule 5.10.1 of the ASIC Market Integrity Rules (ASX Market) 2010 and the ASIC Market Integrity Rules (Chi-X Market) 2011 restricts dealings by a broker in unquoted securities. The National Guarantee Fund also does not cover transactions by brokers in unquoted securities.



2. Notification obligations in relation to issues of securities

2.1. The obligation to notify ASX of a proposed issue of securities

As soon as a listed entity decides to issue securities, it must immediately tell ASX about the proposed issue.²

For these purposes, ASX regards an entity as having made a decision to issue securities:

- if the securities are to be issued under an agreement being negotiated between the entity and the recipient, when the parties have entered into a legally binding agreement providing for the issue or the entity is otherwise committed to proceeding with the issue;³ or
- otherwise, when the board, or any other organ (such as a board committee or other body) to which the board has delegated the power to decide to make the issue, formally resolves to do so.

If the proposed issue is a bonus issue or pro rata issue, the entity must give an Appendix 3B to ASX at the time the proposed issue is announced giving details of the issue. In this case, the Appendix 3B serves the dual purpose of notifying ASX and the market of the proposed bonus issue or pro rata issue and also applying for the quotation to the securities to be issued.⁴

If the proposed issue is not a bonus issue or pro rata issue, the entity must give the following information to ASX when it announces the proposed issue:

- the class of securities to be issued;
- the number of securities to be issued (if known) or maximum number which may be issued;
- the principal terms of the securities to be issued;
- the issue price (expressed clearly in dollars or cents) or consideration;
- the purpose of the issue;
- whether the entity will seek security holder approval in relation to the proposed issue of securities; and
- whether the issue will be to a class of security holders.

An entity must also immediately tell ASX if there is a change to any of the information it has given to ASX about a proposed issue.⁵

2.2. The obligation to notify ASX of the lodgement of a prospectus or PDS

If the entity has lodged a prospectus or PDS in relation to a proposed issue of securities, it must immediately tell ASX of that fact and give a copy of the prospectus or PDS to ASX immediately after it has been lodged with Australian Securities and Investments Commission (ASIC).⁶

² Listing Rule 3.10.3.

³ See also the guidance on incomplete proposals or negotiations in section 5.4 of Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*. The reference to an entity otherwise being committed to proceeding with an issue of securities is intended to capture those situations where an entity may become legally bound to proceed with the issue without having signed a legally binding agreement (eg, through the principles of estoppel). It is also intended to capture those situations where an entity enters into an arrangement or understanding committing itself to proceed with an issue of securities without having signed a legally binding agreement. Once the entity is so committed, the transaction is no longer an incomplete proposal or the subject of incomplete negotiations.

⁴ See '5.1 How to apply for quotation' on page 9.

⁵ Listing Rule 3.10.3.

⁶ Listing Rule 3.10.4.

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If the prospectus relates to a proposed issue of "simple corporate bonds"⁷ pursuant to the two-part prospectus regime in section 713B of the Corporations Act and the entity has already lodged its base prospectus⁸ with ASX, it need only lodge the offer-specific prospectus relating to the proposed issue.⁹

2.3. The obligation to notify ASX of an issue of securities

As well as notifying ASX of a proposed issue of securities, a listed entity must separately tell ASX when the securities have been issued.¹⁰

If the issue is a bonus issue or pro rata issue, this is done by way of a simple announcement to the market confirming the date of the issue and the number and class of securities issued (the entity having already lodged its Appendix 3B application for quotation at the time of announcing the proposed bonus issue or pro rata issue).

If the issue is not a bonus issue or pro rata issue, the entity must give an Appendix 3B to ASX when the securities have been issued.¹¹ In this case, the Appendix 3B serves the dual purpose of notifying ASX and the market of the actual issue and also applying for the quotation to the securities that have been issued.¹²

If any of the securities that have been issued are restricted securities or are subject to voluntary escrow, the entity must also tell ASX the number and class of the securities and the date from which they will cease to be restricted securities or subject to voluntary escrow.¹³ In the case of restricted securities, the entity will generally do this by including the restricted securities in box 9 in its Appendix 3B (number and class of all securities not quoted on ASX), identifying them specifically as "restricted securities" and stating in that box the date on which they will cease to be restricted securities. In the case of securities that are subject to voluntary escrow, the entity will generally do this by including the securities subject to voluntary escrow in box 8 in its Appendix 3B (number and class of all securities quoted on ASX), identifying them specifically as "securities subject to voluntary escrow" and stating in that box the date on which they will cease to be subject to voluntary escrow.

3. Applying for quotation for securities in a class that is already quoted

3.1. The obligation to apply for quotation

An entity with an ASX Listing or an ASX Debt Listing and a qualifying NZ entity with an ASX Foreign Exempt Listing that has a class of securities already quoted on ASX¹⁴ is generally obliged to ensure that all of the securities in that class are quoted on ASX.¹⁵

Hence an entity that is proposing to issue additional securities in a class that is already quoted on ASX (whether it is a bonus issue, pro rata issue, an issue arising from the exercise of options or the conversion of convertible securities or otherwise) must apply to ASX to have those additional securities quoted.

Likewise, an entity that has unquoted partly paid securities that have been paid up and as a result become fully paid securities in a class that is already quoted on ASX, must apply to ASX to have those securities quoted.

⁷ As defined in section 713A of the Corporations Act 2001 (Cth) (referred to in this Guidance Note as the "Corporations Act").

⁸ As provided for in section 713C of the Corporations Act.

⁹ As provided for in section 713D of the Corporations Act.

¹⁰ Listing Rule 3.10.5.

¹¹ Listing Rule 3.10.5.

¹² See '5.1 How to apply for quotation' on page 9.

¹³ Listing Rule 3.10.5.

¹⁴ The main class of securities of an entity admitted to the official list as an ASX Listing will already have been quoted on ASX as part of its admission to the official list (Listing Rule 1.1 condition 6 and Listing Rule 2.1). An entity admitted to the official list as an ASX Debt Listing or an ASX Foreign Exempt Listing will also have at least one class of securities already admitted to quotation on ASX (Listing Rule 1.8 condition 5 and Listing Rule 1.11 condition 5).

¹⁵ See Listing Rules 1.1 condition 6, 1.8 condition 5 and 2.4. Note that this obligation does not apply to ASX Foreign Exempt Listings that are not qualifying NZ entities (Listing Rule 1.15.1). An ASX Foreign Exempt Listing that is not a qualifying NZ entity can apply for the quotation of all, or a subset, of the securities in a class (Listing Rule 1.11 condition 5(b)).

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3.2. Initial discussions in advance of application for quotation

Where a class of securities is already quoted on ASX, an application for quotation of additional securities of that class is usually very straightforward and processed quite quickly by ASX. It would be unusual for such an application to require any advance discussion with ASX. However, an entity that has any queries or concerns about such an application should not hesitate to raise those queries or concerns with ASX Listings Compliance.

3.3. When to apply for quotation

Subject to the exceptions mentioned in the next two paragraphs, an entity with an ASX Listing or an ASX Debt Listing that:

- proposes to issue additional securities in a class that is already quoted on ASX by way of a bonus issue or pro rata issue, must apply to have those additional securities quoted on ASX at the time the bonus issue or pro rata issue is announced;¹⁶
- proposes to issue additional securities in a class that is already quoted on ASX as a result of an exercise of options or a conversion of convertible securities, must apply to have those additional securities quoted on ASX by no later than 14 business days after the entity has sent notice to the holders of their rights to exercise or convert and at least 2 business days before trading in the securities commences on a deferred settlement basis;¹⁷
- has unquoted partly paid securities that are paid up and as a result become fully paid securities in a class that is already quoted on ASX, must apply to have those securities quoted on ASX within 10 business days after the date of the final payment on the securities;¹⁸ or
- otherwise proposes to issue additional securities in a class that is already quoted on ASX, must apply to have those additional securities quoted on ASX on or before their issue date.¹⁹

This obligation does not apply to “restricted securities” which are subject to restrictions on transfer for a nominated “escrow period”.²⁰ An entity that issues restricted securities must instead apply to have them quoted on ASX within 10 business days after the end of the escrow period.²¹

This obligation also does not apply to securities issued under an employee incentive scheme that are subject to restrictions on transfer.²² An entity that issues such securities must apply to have them quoted on ASX within 10 business days after the end of the restrictions,²³ although it can apply to have them quoted earlier at the time of issue, if it wishes to do so.²⁴

Entities that have frequent issues of relatively small numbers of securities under an employee incentive scheme may apply to ASX for approval to apply for quotation (and consequently pay the minimum additional quotation fee)

¹⁶ Listing Rules 2.4 and 2.8.1 and Appendix 7A.

¹⁷ Listing Rules 2.4 and 2.8.1 and Appendix 6A. Section 6 of Appendix 6A has further information about when notice has to be given to the holders of options or convertible securities of their rights to exercise or convert and also on when trading commences on a deferred settlement basis in the securities to be issued as a consequence. Note that these time limits do not apply if the convertible securities automatically convert into securities in a class that is already quoted.

¹⁸ Listing Rules 2.4 and 2.8.2A.

¹⁹ Listing Rules 2.4 and 2.8.3.

²⁰ See the words in parenthesis in Listing Rule 2.4. See also Guidance Note 11 *Restricted Securities and Voluntary Escrow*.

²¹ Listing Rule 2.8.2. See also Listing Rule 3.10A, which requires an entity to tell ASX that restricted securities or securities subject to voluntary escrow will be released not less than 10 business days before the end of the escrow period.

²² Again, see the words in parenthesis in Listing Rule 2.4.

²³ Listing Rule 2.8.2B.

²⁴ See the note to Listing Rule 2.4.



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less often than would otherwise be required under the Listing Rules.²⁵ Entities wishing to take advantage of this concession should discuss it with their home branch.

4. Applying for quotation of securities in a class that is not already quoted

4.1. The option to apply for quotation

A listed entity may, but is not obliged to, apply for quotation of a class of securities that is not already quoted on ASX.²⁶

4.2. ASX Listings and ASX Foreign Exempt Listings seeking quotation of new retail debt securities²⁷

An entity admitted as an ASX Listing or an ASX Foreign Exempt Listing that wishes to have a new class of retail debt securities quoted on the ASX market simply has to apply to have those securities quoted. It does not need to change its category of listing.

The entity will not have to pay an initial listing fee in respect of those debt securities (it having already paid an initial listing fee to ASX in connection with its admission to the official list as an ASX Listing or an ASX Foreign Exempt Listing).

If the debt securities to be quoted are not simple corporate bonds²⁸, the entity will pay additional quotation fees on those securities at the rate set out in Guidance Note 15A – Schedule 1 – Table 1C. If the debt securities to be quoted are simple corporate bonds, it will pay additional quotation fees on those securities at the rate set out in Guidance Note 15A – Schedule 1 – Table 1D.

Any further issues of that class of retail debt securities after their initial quotation will attract additional quotation fees at the rate set out in Guidance Note 15A – Schedule 1 – Table 1C or Table 1D, as applicable.

The entity will need to satisfy the applicable requirements for quotation mentioned under heading 4.9 below. It will also generally need to lodge a prospectus in relation to the new class of retail debt securities with ASIC²⁹ and give a copy of the prospectus to ASX immediately after it has been lodged with ASIC.³⁰

4.3. ASX Listings and ASX Foreign Exempt Listings seeking quotation of new wholesale debt securities³¹

An entity admitted as an ASX Listing or an ASX Foreign Exempt Listing that wishes to have a new class of wholesale debt securities quoted on the ASX wholesale loan securities market simply has to apply to have those securities quoted. It does not need to change its category of listing.

²⁵ See the concluding sentence in Listing Rule 2.8.

²⁶ Listing Rules 2.4 and 2.5.

²⁷ A "retail debt security" refers to any debt security that is not a "wholesale security" (see the definition of "retail security" in Listing Rule 19.12 and the explanation of the meaning of "wholesale security" in note 31). Retail debt securities are quoted and traded on the general ASX market and settled through the CHESS system.

²⁸ See note 7.

²⁹ Generally, this will be because the entity is intending to make an offer of the retail debt securities for issue to investors in Australia that will require a prospectus under sections 700 and 706 of the Corporations Act. 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 under section 708 (for example, sophisticated investors under section 708(8) or professional investors under section 708(11)) – will usually attract section 707(3) and therefore, as a practical matter, require the production of a prospectus under section 708A. Any entity that is seeking to have retail debt securities quoted on ASX and that is not intending to lodge a prospectus with ASIC will need to satisfy ASX that a prospectus 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.

An entity warrants in its Appendix 3B *Application for quotation of additional securities 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) 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.

³⁰ Listing Rule 3.10.4.

³¹ A wholesale debt security is any debt security that satisfies the definition of "wholesale security" in Listing Rule 19.12 (that is, a security whose terms allow it to be held at all times only by wholesale clients, as defined in the Corporations Act) and that is quoted on ASX's wholesale loan securities market. Wholesale debt securities are traded off-market and settled through the Austraclear system. For more

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The entity will have to pay an initial listing fee in respect of those wholesale debt securities at the rate set out in Guidance Note 15A – Schedule 2 – Table 2A.³²

Any further issues of that class of wholesale debt securities after their initial quotation will attract additional quotation fees at the rate set out in Note 15A – Schedule 2 – Table 2C.

The entity will need to satisfy the applicable requirements for quotation mentioned under heading 4.9 below. It will not necessarily need to lodge a prospectus in relation to the new class of wholesale debt securities with ASIC.³³ However, if it does, it must give a copy of the prospectus to ASX immediately after it has been lodged with ASIC.³⁴

4.4. ASX Debt Listings seeking quotation of equity securities

An ASX Debt Listing can only have debt securities quoted on ASX.³⁵

If an ASX Debt Listing wishes to have equity securities quoted on ASX, it must first apply to be admitted as an ASX Listing or, if it qualifies, as an ASX Foreign Exempt Listing. This will require it to complete an application for admission to the official list in the relevant category (ie, an Appendix 1A for an ASX Listing or an Appendix 1C for an ASX Foreign Exempt Listing).³⁶

If the entity was admitted as an ASX Debt Listing in relation to retail securities traded on the ASX market, it will not have to pay an initial listing fee in respect of the equity securities it wishes to have quoted (it having already paid an initial listing fee to ASX in relation to the retail debt securities it originally had quoted on the ASX market). Instead, it will pay additional quotation fees on the equity securities it wishes to have quoted at the rate set out in Guidance Note 15A – Schedule 1 – Table 1C.

If the entity was admitted as an ASX Debt Listing in relation to wholesale securities traded on the ASX wholesale loan securities market, it must pay an initial listing fee in respect of the equity securities it wishes to have quoted at the rate set out in Guidance Note 15A – Schedule 1 – Table 1A.³⁷

Any further issues of that class of equity securities after their initial quotation will attract additional quotation fees at the rate set out in Guidance Note 15A – Schedule 1 – Table 1C.

information on the ASX wholesale loan securities market, see <http://www.asx.com.au/listings/debt-listing/non-quoted-securities-wholesale.htm>.

³² The ASX market and the ASX wholesale loan securities market are treated as separate markets for the purposes of charging initial listing fees.

³³ By definition, a wholesale debt security means a security whose terms allow it to be held at all times only by wholesale clients, as defined in the Corporations Act (see note 31). An offer of securities to a wholesale client generally does not require a prospectus by virtue of sections 708(8) and (11) of the Corporations Act. Provided the securities continue to be held by and traded between wholesale investors, section 707(3) also should not apply. Entities offering wholesale debt securities should, however, take their own legal advice on whether a prospectus is required in relation to the offer.

³⁴ Listing Rule 3.10.4.

³⁵ Listing Rules 1.8 condition 1 and 2.1.

³⁶ For general guidance on the admission process for ASX Listings and ASX Foreign Exempt Listings see Guidance Note 1 *Applying for Admission – ASX Listings* and Guidance Note 4 *Foreign Entities Listing on ASX*.

³⁷ See note 32.

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The entity will need to satisfy the applicable requirements for quotation mentioned under heading 4.9 below. It will also generally need to lodge a prospectus or PDS in relation to the new class of equity securities with ASIC³⁸ and give a copy of the prospectus to ASX immediately after it has been lodged with ASIC.³⁹

4.5. ASX Debt Listings (ASX market) seeking quotation of new retail debt securities⁴⁰

An entity admitted as an ASX Debt Listing in relation to retail debt securities quoted on the ASX market that wishes to have a new class of retail debt securities quoted on the ASX simply has to apply to have those securities quoted. It does not need to change its category of listing.

If the debt securities to be quoted are not simple corporate bonds⁴¹, it will pay additional quotation fees on those securities at the rate set out in Guidance Note 15A – Schedule 1 – Table 1C. If the debt securities to be quoted are simple corporate bonds, it will pay additional quotation fees on those securities at the rate set out in Guidance Note 15A – Schedule 1 – Table 1D.

Any further issues of that class of retail debt securities after their initial quotation will attract additional quotation fees at the rate set out in Guidance Note 15A – Schedule 1 – Table 1C or Table 1D, as applicable.

Again, the entity will need to satisfy the applicable requirements for quotation mentioned under heading 4.9 below. It will also generally need to lodge a prospectus in relation to the new class of retail debt securities with ASIC and give a copy of the prospectus to ASX immediately after it has been lodged with ASIC.⁴²

4.6. ASX Debt Listings (ASX market) seeking quotation of new wholesale debt securities⁴³

An entity admitted as an ASX Debt Listing in relation to retail debt securities quoted on the ASX market that wishes to have a new class of wholesale debt securities quoted on the ASX wholesale loan securities market simply has to apply to have those securities quoted. It does not need to change its category of listing.

The entity will have to pay an initial listing fee in respect of those wholesale debt securities at the rate set out in Guidance Note 15A – Schedule 2 – Table 2A.⁴⁴

Any further issues of that class of wholesale debt securities after their initial quotation will attract additional quotation fees at the rate set out in Note 15A – Schedule 2 – Table 2C.

Again, the entity will need to satisfy the applicable requirements for quotation mentioned under heading 4.9 below. It will not necessarily need to lodge a prospectus in relation to the new class of wholesale debt securities with ASIC but, if it does, it must give a copy of the prospectus to ASX immediately after it has been lodged with ASIC.⁴⁵

³⁸ Generally, this will be because the entity is intending to make an offer of the equity securities for issue to investors in Australia that will require a prospectus under sections 700 and 706, or a PDS under sections 1010B, 1011A and 1012B, of the Corporations Act. Any offer of securities in advance of, or in conjunction with, a quotation 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) or professional investors under section 708(11)) – 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 to have equity securities quoted on ASX 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.

An entity warrants in its Appendix 3B *Application for quotation of additional securities 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.

³⁹ Listing Rule 3.10.4.

⁴⁰ For the meaning of “retail debt security”, see note 27.

⁴¹ As defined in notes 7 and 28.

⁴² See notes 29 and 30 and the accompany text.

⁴³ For the meaning of “wholesale debt security”, see note 31.

⁴⁴ See note 32.

⁴⁵ See notes 33 and 34 and the accompany text.

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4.7. ASX Debt Listings (wholesale market) seeking quotation of new wholesale debt securities⁴⁶

An entity admitted as an ASX Debt Listing in relation to wholesale securities traded on the ASX wholesale loan securities market that wishes to have a new class of wholesale debt securities quoted on the ASX wholesale loan securities market simply has to apply to have those securities quoted. It does not need to change its category of listing.

The entity will have to pay an additional quotation fee in respect of those wholesale debt securities at the rate set out in Guidance Note 15A – Schedule 2 – Table 2C.

Any further issues of that class of wholesale debt securities after their initial quotation will also attract additional quotation fees at the rate set out in Note 15A – Schedule 2 – Table 2C.

Again, the entity will need to satisfy the applicable requirements for quotation mentioned under heading 4.9 below. It will not necessarily need to lodge a prospectus in relation to the new class of wholesale debt securities with ASIC but, if it does, it must give a copy of the prospectus to ASX immediately after it has been lodged with ASIC.⁴⁷

4.8. ASX Debt Listings (wholesale market) seeking quotation of new retail debt securities⁴⁸

An entity admitted as an ASX Debt Listing in relation to wholesale securities traded on the ASX wholesale loan securities market that wishes to have a new class of retail debt securities quoted on the ASX market simply has to apply to have those securities quoted. It does not need to change its category of listing.

If the debt securities to be quoted are not simple corporate bonds,⁴⁹ the entity will have to pay an initial listing fee in respect of those retail debt securities at the rate set out in Guidance Note 15A – Schedule 1 – Table 1A (it not having paid any initial listing fee to ASX in connection with securities traded on the ASX market).⁵⁰ Any further issues of that class of retail debt securities after their initial quotation will attract additional quotation fees at the rate set out in Guidance Note 15A – Schedule 1 – Table 1C.

If the debt securities to be quoted are simple corporate bonds⁵¹, it will pay additional quotation fees on those securities at the rate set out in Guidance Note 15A – Schedule 1 – Table 1D. Any further issues of that class of simple corporate bonds after their initial quotation will also attract additional quotation fees at the rate set out in Guidance Note 15A – Schedule 1 – Table 1D.

Again, the entity will need to satisfy the applicable requirements for quotation mentioned under heading 4.9 below. It will also generally need to lodge a prospectus in relation to the new class of retail debt securities with ASIC and give a copy of the prospectus to ASX immediately after it has been lodged with ASIC.⁵¹

4.9. Particular quotation requirements applicable to a class of security not already quoted on ASX

An application for quotation of securities in a class of securities is not already quoted on ASX requires closer consideration by ASX than one where the class is already quoted on ASX, in particular, to ensure that it satisfies the conditions in Listing Rule 2.5.⁵² In summary, they are:

- The terms of the securities must comply with Chapter 6 of the Listing Rules.⁵³
- If there are any restricted securities, the applicant must have complied with Chapter 9 of the Listing Rules.⁵⁴

⁴⁶ For the meaning of “wholesale debt security”, see note 31.

⁴⁷ See notes 33 and 34 and the accompany text.

⁴⁸ For the meaning of “retail debt security”, see note 27.

⁴⁹ As defined in notes 7 and 28.

⁵⁰ See note 32.

⁵¹ See notes 29 and 30 and the accompany text.

⁵² Listing Rule 2.5 does not apply to ASX Foreign Exempt Listings (Listing Rule 1.15.1).

⁵³ Listing Rule 2.5 condition 1. Chapter 6 deals with the rights and obligations that must be attached to the securities (both quoted and unquoted) of a listed entity.

⁵⁴ Listing Rule 2.5 condition 2.

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- either:
 - the securities; or
 - if the entity is established in a jurisdiction whose laws have the effect that the securities cannot be registered or transferred under the operating rules of an approved clearing and settlement facility. CDIs issued over those securities, have been approved under the operating rules of an approved clearing and settlement facility;⁵⁵
- If the securities are partly paid securities, there must be a defined call program setting out the date and amount of each proposed call. The call program may provide for one extension of up to six months of the date for payment of a call, on provision of at least two months' written notice to holders of the partly paid securities. However, the call program for a mining entity or an oil and gas entity must require payment in full within two years after the date of issue and must not be extended past two years.⁵⁶
- If the securities are debt securities or convertible debt securities, a copy of the documents setting out the terms of the securities must have been given to ASX.⁵⁷
- If the securities are a class of equity securities, or other securities with rights of conversion to equity, that are not already quoted, there must be at least 100,000 securities and 50 holders with a marketable parcel (excluding restricted securities) unless one of the following requirements is met:
 - the securities would be in the same class as the fully paid ordinary securities of the entity (ignoring the fact that they do not rank equally for the next dividend or distribution and ignoring any right to participate in a concurrent offer) and there are at least one million securities; or
 - the securities are a class of partly paid securities, there are at least one million securities, they are paid to not less than 40% of their issue price and the uncalled amount is payable on a fixed date which is within 12 months after the date of issue.⁵⁸
- If the securities are options issued on the exercise of other options, the other options must have expired, or have all been exercised.⁶⁰

A core requirement of Chapter 6 of the Listing Rules is that the terms that apply to each class of equity securities of a listed entity must, in ASX's opinion, be appropriate and equitable.⁶¹ In assessing whether this requirement is met, ASX will have regard to the principles on which the Listing Rules are based, as set out in the introduction to the Listing Rules. One of those principles is that securities "should have rights and obligations attaching to them that are fair to new and existing security holders". Examples of where issues can arise in this regard include:

- where the entity is proposing to issue performance shares that do not meet the requirements outlined in Guidance Note 19 *Performance Shares*;
- where the entity is offering bonus or "loyalty" securities and it is a condition of receiving the benefit of those bonus or loyalty securities that security holders must retain other securities in the entity quoted on ASX for a given period;⁶²

⁵⁵ Listing Rule 2.5 condition 3. Note that conditions 7 and 8 have been deleted from Listing Rule 2.5.

⁵⁶ Listing Rule 2.5 condition 4.

⁵⁷ Listing Rule 2.5 condition 5.

⁵⁸ Listing Rule 2.5 condition 6.

⁶⁰ Listing Rule 2.5 condition 7.

⁶¹ Listing Rule 6.1.

⁶² Such a condition will act as a disincentive for security holders to trade the securities quoted on ASX.

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- where the entity is proposing to issue a separate classes of securities which confer on the holders of that class disproportionate representation on the board or other governing body of the entity or disproportionate voting powers;⁶³
- where the entity is proposing to issue retail debt securities that are considered too complex for the average retail investor to understand (which may be the case for some of the more sophisticated collateralised debt obligations on offer in wholesale markets); and
- where the entity is proposing to issue retail debt securities has used a name or description for those securities that does not conform to the naming conventions set out in Guidance Note 34 *Naming Conventions for Debt and Hybrid Securities*.

4.10. Initial discussions in advance of application for quotation

ASX recommends that a listed entity proposing to issue a new class of securities that will have non-standard terms attached consult with ASX at the earliest opportunity about the likelihood of those terms meeting the requirements of Chapter 6. Those discussions are generally best held with the entity's home branch.

In addition to being able to advise on whether the securities are likely to meet the requirement that, in ASX's opinion, their terms are appropriate and equitable, ASX Listings Compliance will also be able to advise on:

- the likely application of Chapter 9 and Appendix 9B in relation to any "restricted securities";⁶⁴
- any waivers from, or in-principle decisions concerning, the Listing Rules that the applicant may be proposing to request in conjunction with its application and the likelihood of those waivers or rulings being given;⁶⁵ and
- the expected timeframe for quotation, given the nature and complexity of the application and the current workloads within ASX Listings Compliance.

4.11. When to apply for quotation

An application for quotation of securities in a class that is not already quoted on ASX must be made:

- if the securities are being issued as a bonus issue or pro rata issue, at the time the issue is announced;⁶⁶
- if the securities are being issued as a result of an exercise of options or a conversion of convertible securities, by no later than 14 business days after the entity has sent notice to the holders of their rights to exercise or convert and at least 2 business days before trading in the securities commences on a deferred settlement basis;⁶⁷ and
- in any other case, on or before the issue date.⁶⁸

⁶³ Note also Listing Rule 6.2, which precludes a listed entity from having more than one class of ordinary security unless ASX approves the terms of the additional class or the additional class is of partly paid securities which, if fully paid, would be in the same class as the ordinary securities.

⁶⁴ See 5.4 Restricted securities' on page 14.

⁶⁵ See Guidance Note 17 *Waivers and In-principle Advice* for further guidance on this topic.

⁶⁶ Listing Rule 2.8.1 and Appendix 7A.

⁶⁷ Listing Rule 2.8.1 and Appendix 6A. Item 6 of Appendix 6A has further information about when notice has to be given to the holders of options or convertible securities of their rights to exercise or convert and also on when trading commences on a deferred settlement basis in the securities to be issued as a consequence. Note that these time limits do not apply if the convertible securities automatically convert into securities in a class that is already quoted.

⁶⁸ Listing Rule 2.8.3.

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5. The quotation process generally

5.1. How to apply for quotation

To apply for quotation of securities, an entity must complete an application in the form of Appendix 3B (*New issue announcement, application for quotation of additional securities and agreement*)⁶⁹ and give it to ASX.⁷⁰ An editable version of the Appendix 3B application can be downloaded from:

<http://www.asx.com.au/regulation/compliance/compliance-downloads.htm>.

In most cases, the applicant will need to complete parts 1 (information about the new issue)⁷¹ and 3 (application for quotation). Part 2 only needs to be completed if the issue is a bonus issue or pro rata issue.

The application must be properly completed and dated.⁷² It must also be accompanied by all of the documents referred to in it that are able to be lodged at the time of the application.⁷³ ASX may reject or defer consideration of an application for quotation of additional securities that is incomplete.

5.2. Corporations Act deadlines where securities are issued under a prospectus or PDS

If an entity has issued a prospectus or PDS in relation to the securities that are to be quoted, the Corporations Act also imposes strict timing requirements as to when the application for quotation must be made to ASX and by when admission to quotation must be achieved.

If a prospectus or PDS states or implies that the securities offered under it are to be quoted on ASX, then an application for quotation must be made to ASX within 7 days, and the securities must be admitted to quotation on ASX within 3 months, after the date of the prospectus or PDS.⁷⁵

An entity should consult with its professional advisers to ensure that a properly completed application for quotation of additional securities is lodged with ASX in sufficient time to meet the above time limits.

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

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

⁶⁹ Listing Rule 2.7. An entity seeking admission to the official list does not need to complete an Appendix 3B to apply for quotation of its securities. Its application for admission to the official list (Appendix 1A for ASX Listings, 1B for ASX Debt Listings and 1C for ASX Foreign Exempt Listings) includes the requisite application for its securities to be quoted.

⁷⁰ Listing Rule 15.2.1 requires an Appendix 3B to be given to the ASX Market Announcements office.

⁷¹ Part 1 is not required to be completed if the applicant has ticked Box 34(b), indicating that it is seeking quotation of securities that have already been issued – for example, if it is seeking quotation of restricted securities at the end of the escrowed period, partly paid securities that have been paid up and become fully paid securities, or securities issued under an employee incentive plan that are no longer subject to a restriction on transfer – or securities issued on the expiry or conversion of convertible securities.

⁷² Even though the Appendix 3B includes a place for signature by a director or company secretary, these forms are not generally signed. Instead they are filed electronically with ASX and authenticated, which is taken to be as valid, effective and enforceable as if the form had been in writing and signed.

⁷³ If applicable, a copy of any trust deed for the additional securities must be lodged with the application (item 37). In some cases, the names of the 20 largest holders and the number and percentage of additional securities held by them (item 35) and a distribution schedule in the categories prescribed (item 36) will not be able to be provided at the time the Appendix 3B is lodged. In those cases, these documents will need to be provided before quotation commences.

⁷⁵ See sections 723(3) and 724 (securities offered under a prospectus) and sections 1013H and 1016D (securities offered under a PDS). See also Part I (Minimum subscription and quotation conditions) of ASIC Regulatory Guide 254 *Offering securities under a disclosure document* (RG 254).

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Deleted: In the case of securities to be quoted on ASX that are offered under

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If [the prospectus] ...

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(a)

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(b) . the

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then[¶]
(c) an issue

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(d) . the person offering the securities must return the money received by the person from the applicants as soon as practicable.[¶]
Similarly, in the case of financial products to be quoted on ASX that are offered under a PDS, section 1016D of the Corporations Act provides:[¶]
(1) If [the

Deleted:] ... states or implies that [the financial products] will be able to be traded on [ASX], the responsible person must only issue or sell [the financial products], pursuant to an application made in response to [the financial products], if:

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(b) an application has, within 7 days after the relevant date (see subsection (3)), been made to [ASX] for the taking of such action as is necessary to enable [the financial products] to be traded on [ASX].[¶]
Paragraph (b) ceases to apply to the [financial product] at the end of the period of 3 months starting on the relevant date.[¶]

(2) . If [the PDS] ... states or implies that [the financial products are] to be quoted on [ASX] and[¶]

(a) an application has not, within 7 days after the relevant date (see subsection (3)), been made to [ASX] for the taking of such action as is necessary to enable [the financial products] to be traded on [ASX]; or[¶]

(b) the product is not able to be traded on [ASX] at the end of 3 months after the relevant date,[¶]
then[¶]

(c) an issue or transfer to a person of [the financial products] is void if[¶]

(i) the issue or transfer is pursuant to an application made in response to [the PDS]; or[¶]

(ii) the person should have been given [the PDS]; and[¶]

(d) . if.[¶]

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- it receives a written notification from ASX that ASX intends to quote its securities; and
- it has a high degree of confidence that it will be able to meet any conditions that ASX may have imposed on the quotation of its securities.⁷⁶

If it issues securities to investors under the prospectus or PDS and it finds that its securities are not admitted to quotation on ASX within the period prescribed by the Corporations Act, the issue is void and it will be obliged to return to investors the moneys they have paid under the prospectus or PDS, or else to obtain a court order extending the time limit for quotation.⁷⁷

An entity should also note that it is required to hold any moneys received from an investor under a prospectus or PDS on trust for the investor until the investor is issued with the securities for which they have applied.⁷⁸ The applicant is not at liberty to expend any of those moneys before then.

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5.3. Number of securities to be quoted

As a practical matter, at the time an entity applies to ASX for quotation of additional securities, it may not know the precise number of additional securities that are to be quoted. For example, some securities may not be quoted because ASX classifies them as restricted securities.⁷⁹ An entity offering securities by way of a prospectus or PDS may include a provision allowing it to accept over-subscriptions and may not know the level of over-subscriptions it will receive and accept. Or in the case of a rights issue or pro rata issue that is not underwritten, the entity may not know how much of the issue will be taken up.

To meet Listing Rule 2.4 and to avoid the legal difficulties that might otherwise arise under section 723(3) or 1016D of the Corporations Act,⁸⁰ an entity should apply for quotation of the maximum number of securities that can be quoted. Hence, even where the entity anticipates that ASX will categorise some of its securities as restricted securities and therefore not quote them until the escrow restrictions lapse, it should include all of those securities in the number of securities for which quotation is sought. If the entity's prospectus or PDS allows acceptance of over-subscriptions, the number of securities for which quotation is sought in the application should include the maximum amount of over-subscriptions that can be accepted. Similarly, in the case of a rights issue or pro rata issue, the maximum number of securities offered should be included, whether or not the issue is underwritten.

As soon as the exact number of securities to be quoted is known, the entity must tell ASX by giving an announcement to the ASX Market Announcements office stating the final number of securities to be quoted⁸¹ and, if any securities are restricted securities, the number of securities classified as restricted securities.⁸² At that point, ASX will usually invoice the entity for the listing fee payable for the actual number of additional securities quoted.

⁷⁶ The requirement that securities be admitted to quotation on ASX within 3 months of a prospectus or PDS is only met when they are actually admitted to quotation on ASX and not when ASX advises the entity that it intends to quote its securities (see ASIC Regulatory Guide 254.218-220).

⁷⁷ See section 723 (securities offered under a prospectus) and section 1016D (securities offered under a PDS) and Table 9 in ASIC Regulatory Guide 254.

⁷⁸ See section 722 (securities offered under a prospectus) and section 1017E (securities offered under a PDS). In the case of securities issued under a PDS, the application money received from investors must be paid into an account that meets the requirements of section 1017E. In the case of securities issued under a prospectus, the Corporations Act does not specify how investor funds should be held other than saying that they must be held on trust. Best practice, however, would be for the funds to be paid into a separate and secure bank account set up specifically for that purpose, which is designated as a "trust account".

⁷⁹ Restricted securities are only quoted once the escrow restriction has been lifted: see '5.4 Restricted securities' on page 14 and Guidance Note 11 *Restricted Securities and Voluntary Escrow*.

⁸⁰ See '5.2 Corporations Act deadlines' where securities are issued under a prospectus or PDS' on page 12.

⁸¹ Listing Rule 3.10.3 requires a listed entity to tell ASX immediately if there is any change to the information given to ASX about a proposed issue of shares.

⁸² Listing Rule 3.10.5.

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5.4. Restricted securities

A listed entity seeking quotation of additional securities that has issued, or is seeking to issue, any “restricted securities” must comply with Chapter 9 of the Listing Rules.⁸³ That Chapter requires the entity to execute a restriction agreement with the holder and each controller of the securities. The required form of the restriction agreement is set out in Appendix 9A of the Listing Rules. An editable version⁸⁴ of the restriction agreement can be downloaded from <http://www.asx.com.au/regulation/compliance/compliance-downloads.htm>.

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

5.5. Payment of listing fees

An entity applying for quotation of additional securities must pay the applicable 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*. ASX will invoice this payment after the entity lodges its application for quotation, generally when quotation has been granted.

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

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

If payment is made by electronic funds transfer, the applicant should email its remittance advice to ar@asx.com.au or fax it to (612) 9227-0553, describing the payment as “additional quotation fee” and the amount paid.

As mentioned above,⁸⁵ it is recommended that an entity apply for quotation of the maximum number of securities that can be quoted. As soon as the exact number of securities to be quoted is known, ASX will invoice the entity for the listing fee payable for the actual securities quoted.

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

5.6. Applications are released to the market

All applications for quotation of additional securities received by ASX are released to the market through the ASX Market Announcements Platform shortly after receipt. The fact that the application is released to the market by ASX does not guarantee, however, that ASX will agree to quote the additional securities.

5.7. The quotation decision

ASX has an absolute discretion in deciding whether or not to quote the securities of an entity and is not required to give any reasons for its decision in that regard.⁸⁶ ASX may exercise its discretion not to quote the securities of an entity even where the entity meets, or is expected to meet, the specific conditions set out in the Listing Rules for quotation.

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⁸³ Listing Rule 2.5 condition 2 and Listing Rule 9.1.

⁸⁴ These are standard form agreements and ASX will not agree to any changes. Hence, any edits to a restriction agreement should be confined to inserting the date of the agreement, details of and an appropriate execution clause for the various parties, and details of the restricted securities.

⁸⁵ See '5.3. Number of securities to be quoted' on page 13.

⁸⁶ Listing Rule 2.9.

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ASX may impose such conditions on quotation as it considers appropriate.⁸⁷

Applicants for quotation of additional securities will be notified in writing of ASX's decision on the application, usually via an emailed letter. If the application is successful, the letter will include the date official quotation of the securities is granted, the basis of quotation (that is, normal (T+2) settlement or deferred settlement), the total number of quoted securities and, where applicable, the number and type of unquoted securities.

Quotation will take effect from the commencement of trading on ASX on the relevant date notified in the quotation decision. Unless trading is on a deferred settlement basis, this will usually be the trading day after the allotment date set out in box 7 of the applicant's Appendix 3B.⁸⁸

Should an entity wish to check on the progress of an application for quotation of additional securities, it may contact the ASX Quotations Unit on quotations@asx.com.au.

5.8. Requirements for additional information

ASX may impose a condition on quotation that the listed entity disclose certain information to the market before quotation commences.⁸⁹

Entities that conduct an offer of additional securities by way of a bookbuild should be aware that, as a matter of practice, ASX will require disclosure of certain information relating to the outcome of the bookbuild. This information is the same as the information required in relation to initial public offerings conducted by way of a bookbuild, as set out in the Annexure to Guidance Note 1 *Applying for Admission – ASX Listings*.

⁸⁷ Listing Rule 2.9.

⁸⁸ Quotation on the allotment date itself may be possible where the listed entity employs DvP settlement for a placement.

⁸⁹ Listing Rule 2.9.