

Listed Entities Update

24 November 2014

Follow: (100)





Update no 11/14

1. Update to ASX Listing Rules Guidance Note 12 Significant Changes to **Activities**

In case you missed, it, ASX recently released an updated version of ASX Listing Rules Guidance Note 12 Significant Changes to Activities with further guidance in:

- Section 3.2 (the main circumstances in which ASX will apply Listing Rules 11.1.2 and 11.1.3) - that when it applies the "doubling up" test to work out whether it should examine a transaction more closely to determine if it might be a back door listing, ASX will usually use the entity's most recent published financial statements or, in the case of securities on issue, its Appendix 3B filings with ASX, as the reference point for the different financial measures referred to in this section of the Guidance Note.
- Section 3.3 (prospectus / PDS / information memorandum) on the contents for an information memorandum (relevant to those re-compliance listings where an entity is not making an offer of securities as part of, or in conjunction with, a significant change to the nature or scale of its activities and ASX agrees to accept an information memorandum in lieu of a prospectus or PDS).
- Section 3.6 (meeting the minimum spread test) that where an entity is undertaking a material capital raising in conjunction with a re-compliance listing, ASX will normally use the issue price under the prospectus or PDS for that capital raising to determine whether a holder's securities have a value of at least \$2,000 for the purposes of the minimum spread test. ASX may, however, use a different measure to determine the value of a holder's securities if the entity is not undertaking a material capital raising in conjunction with its re-compliance with the admission requirements or if ASX is concerned that the issue price under the prospectus or PDS does not fairly reflect the market value of its main class of securities.
- Section 3.7 (meeting the profit test or assets test) giving general guidance on how ASX applies the profit test and assets test to a re-compliance listing and noting in particular that:
 - if an entity has failed to lodge any financial statements required under Chapter 4 in the period prior to its re-admission, or if the financial statements it has lodged with ASX have not been properly audited or reviewed as required by Chapter 4, ASX will insist that default is cured prior to its readmission taking effect. This applies even where the entity is being re-admitted under the assets test and it would not ordinarily have to produce audited or reviewed financial statements to meet that test;
 - Where an entity is required under Listing Rule 11.1.3 to re-comply with the admission requirements, it must provide to ASX a reviewed pro forma statement of financial position, together with the review, as if it were being admitted to the official list for the first time. The reviewed pro forma statement of financial position must show the effect if the proposed transaction or transactions that led to ASX imposing the requirement to re-comply with the admission requirements are consummated, as well as reflect any material change in the financial position of the entity since the balance date of the last financial statements given to ASX under Chapter 4; and

- ASX would generally expect to see the reviewed pro forma statement of financial position in the prospectus, PDS or information memorandum the entity lodges with ASX to meet Listing Rule 1.1 condition 3, on the basis that it is material information for investors.
- Section 3.8 (escrow requirements for restricted securities) giving general guidance on how ASX applies the escrow requirements for restricted securities and noting, in particular, that where ASX exercises its discretion under Listing Rule 11.1.3 to require re-compliance with the admission requirements in relation to a particular transaction and the entity has issued any securities for cash shortly before or after the announcement of the transaction, those issues will be looked at carefully by ASX to determine whether they are in the nature of seed capital for, or to a promoter of, the transaction and should therefore be classified as restricted securities, making them subject to the escrow requirements in Chapter 9 and Appendices 9A and 9B.
- **Section 3.9 (the 20 cent rule)** adopting a new policy on the application of the "20 cent rule" to recompliance listings.

The new policy recognises that where an entity's securities have been trading on ASX at less than 20 cents, having to undertake a consolidation or other restructure to facilitate compliance with the 20 cent rule prior to, or in conjunction with, a capital raising can impose structural, timing and other impediments to the completion of a transaction that might otherwise be in the interests of an entity and its security holders. In such a case, ASX will consider a request from the entity not to apply the 20 cent rule provided:

- b the issue price or sale price for any securities being issued or sold as part of, or in conjunction with, the transaction:
 - is not less than two cents each; and
 - is specifically approved by security holders as part of the approval(s) obtained under Listing Rule 11.1.2; and
- ASX is otherwise satisfied that the entity's proposed capital structure after the transaction will satisfy Listing Rules 1.1 condition 1 and 12.5 (appropriate structure for a listed entity).

The new policy also recognises that where an entity is not proposing to undertake a capital raising as part of, or in conjunction with, a significant change to the nature or scale of its activities, the 20 cent rule has no application. In that case, if ASX has any concerns about the level at which an entity's securities are likely to trade following the significant change, it will address those concerns on a case-by-case basis. This may include requiring the entity to consolidate or otherwise restructure its share capital as a condition of it being readmitted to the official list.

Section 3.10 (minimum option exercise price) - adopting a new policy on the application of the "minimum option exercise price rule" to re-compliance listings.

The new policy applies where an entity is proposing to issue options over ordinary securities as part of, or in conjunction with, the transaction that has caused ASX to apply Listing Rule 11.1.3 and its ordinary securities have been trading at less than 20 cents. In that case, ASX will consider a request from the entity for ASX not to apply the minimum option exercise price rule, provided:

- the exercise price for the options:
 - is not less than two cents each; and
 - is specifically approved by security holders as part of the approval(s) obtained under Listing Rule 11.1.2; and
- ASX is otherwise satisfied that the proposed capital structure of the entity after the transaction in question will satisfy Listing Rule 1.1 condition 1 (appropriate structure for a listed entity).

ASX may have concerns on this latter issue if, for instance, the number of options to be issued is disproportionate to the number of ordinary securities on issue.

- Section 3.12 (requirements for additional information) noting that
 - ASX may require an entity that is required under Listing Rule 11.1.3 to re-comply with the admission requirements to disclose additional information over and above that required under Appendix 1A and the accompanying Information Form and Checklist (ASX Listings); and
 - where the proposed transaction or transactions that led to ASX imposing the requirement to re-comply with the admission requirements involves the listed entity acquiring another entity

not listed on ASX, ASX will generally require the non-listed entity's financial statements, together with any audit report or review in relation to those financial statements:

- for the last 3 full financial years (or shorter period if ASX agrees); and
- if the non-listed entity's last full financial year ended more than 8 months before the listed entity applied for admission, for the last half year (or longer period if available) from the end of the last full financial year,

to be given to ASX before the listed entity's re-admission takes effect.

- **Section 3.13 (pre-emptive capital raisings)** dealing with capital raisings that occur ahead of obtaining security holder approval under Listing Rule 11.1.2 or re-complying with the admission requirements under Listing Rule 11.1.3.
- Section 4.2 (the application of Listing Rule 11.2) noting the decision in Quancorp Pty Ltd v MacDonald [1999] WASCA 33 that, by necessary implication, Listing Rule 11.2 does not apply to an in specie distribution of an entity's main undertaking to the holders of its ordinary securities on a pari passu basis.
- **Section 6.1 (the contents of the notice)** on the information that should be included in a notice of meeting approving a transaction under Listing Rules 11.1.2 or 11.2. The new guidance notes that:
 - where an entity is required both to obtain security holder approval to a proposed transaction under Listing Rule 11.1.2 and to re-comply with the admission requirements under Listing Rule 11.1.3, ASX would generally expect any material information about the transaction included in any prospectus, PDS or information memorandum lodged to re-comply with the admission requirement in Listing Rule 1.1 condition 3, also to be included in the notice of meeting to security holders seeking their approval. This is on the basis that if the information is sufficiently material to require disclosure to investors in a prospectus, PDS or information memorandum, it is likely also to be sufficiently material to require disclosure to security holders in the notice of meeting.
 - having said this, ASX recognises that an entity in this situation may not want to go to the trouble and expense of preparing a prospectus, PDS or information memorandum under Listing Rule 1.1 condition 3 unless and until it knows that its security holders approve the transaction. It therefore may not have available to it at the time it prepares and dispatches the notice of meeting seeking security holder approval all of the information that will ultimately find its way into the prospectus, PDS or information memorandum. Where that is the case, the entity should nonetheless include in the notice of meeting all material information that is known to it and its directors at the time of dispatching the notice.
 - Thus, for example, if at the time the entity prepares and dispatches the notice of meeting seeking security holder approval, it has already received a completed review by a registered company auditor or independent accountant of the pro forma statement of financial position that it will be lodging to re-comply with the admission requirements, the pro forma statement and the review should generally be included with the notice of meeting. If it hasn't received the completed review at the time of dispatching the notice of meeting, the notice should state that fact and include whatever pro forma financial information the entity and its directors used to determine that the transaction should be put to security holders for approval.

A footnote has also been added noting that putting out a notice of meeting with a pro forma statement of financial position that has not been reviewed by a registered company auditor or independent accountant may expose the entity and its directors to embarrassment and potential legal liability if the information in the reviewed version of the pro forma statement of financial position included in the entity's prospectus, PDS or information memorandum ultimately differs from the information included in the notice of meeting or if the reviewed version is subject to a material qualification. Entities and their directors may care to reflect on this issue when they determine the timetable for dispatching a notice of meeting seeking security holder approval under Listing Rule 11.1.2. In most cases, it would be better for this to happen after the entity has received the completed review by a registered company auditor or independent accountant of the pro forma statement of financial position so that this information can be included in the notice of meeting.

2. AOL user details

Listed entities are reminded to keep their ASX Online company details and user details up to date, especially when a director or company secretary leaves the business. ASX uses the information in the company details section for important communications to listed entities and to resolve any queries in relation to announcements.

If you require assistance please do not hesitate to contact ASX Online Help Desk on 1 800 028 302 or email ASX.Online@asx.com.au

3. Reporting calendar

The 2015 reporting calendar for listed entities is now available on the home page of ASX Online. Designed as a quick reference guide for listed entities with a 30 June or 31 December balance date, it outlines key reporting dates under the Listing Rules. It also indicates days on which ASX is closed.

If you require assistance to understand your entity's periodic reporting obligations please contact your Listings Compliance Adviser.

Edit details | Privacy Policy

© Copyright 2014 ASX Limited ABN 98 008 624 691. All rights reserved 2014.