

Listed@ASX Compliance Update

November 2015

Update no 12/15

1. Trading halts email addresses

To assist listed entities submit a written request for a Trading Halt, particularly before the market opens, the ASX Home Branch offices have each established a designated trading halt email address to be used to send a request for trading halt to ASX. Those email addresses are:

- Sydney Home Branch: tradinghaltssydney@asx.com.au
- Melbourne Home Branch: tradinghaltsmelbourne@asx.com.au
- Perth Home Branch: tradinghaltspert@asx.com.au

Listed entities are requested to email both their Listings Compliance Adviser, as they currently do, and also the general trading halts email address of their Home Branch office when requesting a trading halt.

If their Listings Compliance Adviser is not in the office, another person at Listings Compliance will pick up the email and arrange to process the trading halt request.

The request must contain the information required under Listing Rule 17.1.

Further information about trading halts and the procedure for requesting them is contained in Listing Rules [Guidance Note 16 Trading Halts and Voluntary Suspensions](#).

2. Listing Rule 10.1 waivers in the context of takeovers and schemes

Listed entities and their advisers are reminded that Listing Rule 10.1 can apply to takeovers and schemes effecting similar acquisitions where a person who has a relationship with the bidder caught by rules 10.1.1 to 10.1.5 (a "connected party") also has a sufficiently large shareholding in the target (a "LR 10.1 holding") for the acquisition of that shareholding by the bidder to constitute the acquisition of a substantial asset. This typically arises in relation to a connected party referred to in rule 10.1.3 - in other words a person who has both a substantial holding in the bidder and a LR 10.1 holding in the target.

In this situation, absent a waiver from ASX, the bidder must seek shareholder approval under rule 10.1 to acquire the LR 10.1 holding from the connected party.

Under these circumstances, in the past, ASX has typically received a request for a waiver of rule 10.1 by the bidder. On a number of occasions this waiver has been granted, while on others, it has been refused.

Generally ASX has agreed to grant a waiver from rule 10.1 where the connected party has a larger security holding in the bidder than it does in the target - the rationale being that the relative percentage security holdings do not suggest that the connected party would have an incentive to cause the bidder to overpay to acquire the target. Conversely, ASX has refused to grant a waiver from Listing Rule 10.1 where the connected party has a smaller security holding in the bidder than it does in the target - the rationale being that the relative percentage security holdings suggest that the connected party could have an incentive to cause the bidder to overpay to acquire the target.

ASX has received increased levels of enquiry about the application of rule 10.1 and the waivers ASX is prepared to grant in these circumstances. Some listed entities and their advisers appear to believe that ASX is relatively certain to grant a waiver from rule 10.1 in the first case mentioned in the previous paragraph, based on ASX's published precedents. However, all waiver applications are determined by ASX case-by-case with more factors considered than just relative percentage security holdings. Those factors include:

- whether the bidder can demonstrate that there is no economic rationale for it to overpay in order to benefit the connected party, with the onus being firmly on the bidder to demonstrate that there is no reasonable possibility of value shifting or the asset being acquired at an over-value. Relative percentage security holdings are important in this regard, but so too are the relative sizes of the bidder and the target.
- whether or not the connected party has representation on the bidder's or the target's board.
- ASX otherwise being satisfied that the connected party has not had the capacity to exert influence over the terms of the proposed transaction.

ASX intends to update its guidance in Guidance Note 24 on the application of rule 10.1 in these circumstances. In the meantime, please contact the Manager Listings Compliance in your home branch or your Listings Compliance Adviser if you have any queries on these issues.

3. Reverse Takeovers Consultation Paper

On 10 November, ASX released a consultation paper [Reverse Takeovers - Consultation on Shareholder Approval Requirements for Listed Company Mergers](#).

The term "reverse takeover" refers to a takeover where a bidder acquires a larger target company offering its shares as consideration. This typically results in the target's shareholders between them acquiring majority ownership of the bidder, the reverse of what would ordinarily happen in a "standard" takeover, where the bidder and its shareholders acquire majority ownership of the target.

ASX has received representations from some investor and corporate governance groups that there is a gap in the regulatory framework for reverse takeovers in Australia because bidder shareholder approval is not required for a reverse takeover and therefore bidder shareholders have no say in whether the transaction proceeds even though they are effectively in the position of "target" shareholders. By contrast, the target shareholders do have a say through their right to accept or reject the offer (in the case of an off-market takeover offer) or to vote on the scheme proposal (in the case of a scheme of arrangement), even though they are effectively in the position of "bidder" shareholders.

Through this Consultation Paper, ASX is seeking feedback from stakeholders on whether the Listing Rules should be amended to require bidder shareholder approval for reverse takeovers.

Written submissions are requested by Thursday 17 December 2015.

4. Updated guidance on US Entities - Regulation S Offerings on ASX

On 30 October 2015, ASX released an updated version of Listing Rules Guidance Note 7 *US Entities - Regulation S Offerings on ASX*. It is intended to assist US entities considering a listing on ASX via an initial public offering of equity securities to understand certain relief available to them under Regulation S of the Securities Act of 1933 of the United States of America and a no-action letter ASX has obtained from the SEC.

The updated Guidance Note is part of ASX's rolling two-to-three-year Guidance Note refresh program.

A copy of the new Guidance Note can be downloaded from the ASX website: [Guidance Note 7](#).

5. Removal of long-term suspended entities - circumstances where ASX may consider a short extension

Under section 3.4 of Listing Rules Guidance Note 33 *Removal of Entities from the ASX Official List*, a number of ASX Listed entities whose securities have been suspended from trading for a continuous period of 3 years or more are due to be removed from the official list effective on the first business day after 1 January 2016. ASX wrote to the entities in question advising them of that fact in 2014 and again in early 2015.

Section 3.4 of the Guidance Note states that ASX may agree to a short extension to the 1 January 2016 deadline if the entity can demonstrate to ASX's satisfaction that it is in the final stages of implementing a transaction that will lead to the resumption of trading in its securities within a reasonable period. For these purposes, "final stages" means:

- having announced the transaction to the market;
- having signed definitive legal agreements for the transaction (including for any financing required in respect of the transaction);
- if the transaction requires a prospectus or product disclosure statement to be lodged with ASIC, having lodged that document with ASIC; and
- if the transaction requires security holder approval, having obtained that approval.

ASX would like to reiterate that it will only consider granting an extension to the deadline for removal if all of the matters referred to in the bullet-points above have been completed by 31 December 2015 and that the extension will only be a short one. For these purposes, it is unlikely that ASX will agree to an extension of more than 3 months from the date that the entity has lodged its prospectus or product disclosure document with ASIC.

For further information please refer to [Listing Rules Guidance Note 33](#).

6. Update on the transition to T+2 settlement

ASX is on track for the implementation of T+2 settlement in March 2016 and is publishing educational material to ensure investors are aware of the change. A brochure on the T+2 changes is now available for investors and ASX is encouraging brokers and other market stakeholders, including issuers, to use the brochure in their own information campaigns. The brochure is available on the ASX Website/T2 Brochure.

In addition, CHES Holding Statements issued from the end of October 2015 to the end of March 2016 will include the following message:

Australia is moving to faster trade settlement. From March 2016 your trade will settle one day earlier. Please contact your broker for details or go to the ASX Website/T2Brochure.

The T+2 message has temporarily replaced ShareGift on the CHES Holding Statements.

Listed entities are reminded that the transition to T+2 settlement also impacts corporate action timetables. Please refer to Listed@ASX Compliance updates published on [20 August](#), [31 July](#) and [10 June 2015](#) for more information.

ASX has also published an [industry readiness guide](#) for stakeholders, including share registries and issuers, which is available to download along with other information on the ASX Website/t2. If you have further queries contact your listings compliance adviser or email the ASX project team at T2Settlement@asx.com.au.

ASX will continue to provide updates on the transition to T+2 settlement relevant to ASX-listed entities in these emails.

7. Moratorium on listing VIE structures

A "variable interest entity" (VIE) is a structure used by companies in the Peoples Republic of China operating in certain industries subject to restrictions on foreign investment to source funds from foreign investors. Under the VIE structure, a foreign investor seeks to control a Chinese operating company through a series of complex contractual arrangements rather than through direct equity ownership.

An initial review of VIE structures, their use in international markets, and proposed changes to Chinese laws in this area, have raised significant concerns about the legal status of VIEs in China and the enforceability of key contractual arrangements by foreign investors.

Consequently, ASX has agreed with ASIC to adopt a moratorium on listing companies with VIE structures. The moratorium will remain in place until these concerns have been addressed to ASIC's and ASX's satisfaction.

8. Market Announcements Reporting Calendar 2016

The 2016 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.

9. Dividend and distribution information

Listed entities declaring a dividend or distribution for the period ending **31 December 2015** are reminded that they must use ASX Online forms to announce the dividend or distribution and that if they wish to set a record date of **31 December 2015**, they will need to announce the dividend or distribution by no later than **22 December 2015** (Day 0 in the Appendix 6A Paragraph 1 timetable).

Listed entities should include the following information in their announcements (see [Appendix 6A](#) paragraph 1):

- Conduit foreign income - where an entity announces a dividend or distribution that is fully or partially unfranked, the announcement should make clear the conduit foreign income (CFI) component of that dividend or distribution, even if the CFI component is nil.

In the online form, please note that questions 3A.4 Franked amount, 3A.6 Unfranked amount and 3A.7 Conduit Foreign Income amount should all add up to the total amount of the dividend/distribution as advised at question 3A.1b (that is, the Conduit Foreign Income amount is exclusive of the Unfranked amount).

The announcement of franking details is not compulsory when announcing an estimate of a dividend or distribution.

- Dividend/distribution reinvestment plans (DRP) - where an entity has a DRP or other plan in place, ASX requests that the entity make it clear in the announcement whether the DRP will operate or will be suspended for that particular dividend or distribution. If the DRP will operate, the following information should also be given:

- the last date for electing to participate in the DRP (question 4A.2 in the online form);
- the discount rate, if applicable (question 4A.3 in the online form);
- the ranking of the securities to be issued pursuant to the DRP (question 4A.8a in the online form); and
- pricing period and the pricing methodology for determining the issue price under

the DRP (questions 4A.4 and 4A.5 in the online form).

If at the time when the dividend or distribution is announced it has not been decided by the entity whether the DRP will operate, or the above details are not known, the entity should give an indication of when the entity expects to confirm details of the DRP's operation (using Part 5 Further information if advising by online form).

Listed entities are also reminded to advise any update to dividend information (including actual amounts, DRP prices) by completing and submitting an Updated Online Form.

If you have any questions please contact your Listings Compliance Adviser or email: onlineforms@asx.com.au.

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