

# Listed@ASX Compliance Update no. 04/20

22 April 2020

## 1. Changes to temporary emergency capital raising relief

ASX announced in section 3 of [Listed@ASX Compliance Update no 03/20](#) dated 31 March 2020 that it had introduced two class order waivers (“Class Waivers”) implementing temporary emergency capital raising measures to help listed entities affected by the COVID-19 pandemic to raise urgently needed capital.

In consultation with ASIC, ASX has updated the Class Waivers to clarify certain matters and to improve their overall operation. Marked up and clean versions of the amended Class Waivers are available at:

- [Marked-up Temporary Extra Placement Capacity Waiver](#)
- [Clean Temporary Extra Placement Capacity Waiver](#)
- [Marked-up Non-Renounceable Offers Waiver](#)
- [Clean Non-Renounceable Offers Waiver](#)

Both Class Waivers have been amended:

- to expand the existing requirement that a listed entity that wishes to take advantage of the waiver must give a written notice to ASX that it intends to rely on the waiver and explain the circumstances in which it is doing so, to make it clear that:
  - the notice must be given to ASX before the entity undertakes the capital raising in question;
  - the notice is not for release to the market; and
  - the “circumstances” to be notified to ASX in the notice include whether the capital raising is proposed to be made to raise urgently needed capital to address issues arising in relation to the COVID-19 health crisis and/or its economic impact or for some other purpose; and
- to specify that ASX can:
  - withdraw the Class Waivers from an individual listed entity at any time and for any reason by giving the entity written notice to that effect; and
  - withdraw the Class Waivers prior to their scheduled expiry date of 31 July 2020 for all listed entities by a market notice to that effect.

The Temporary Extra Placement Capacity Waiver has also been amended:

- to allow entities to do a placement followed by a standard rights issue, as well as a placement followed by an accelerated pro rata entitlement offer or a placement followed by a share purchase plan (“SPP”) offer – this change is intended to benefit smaller listed entities that do not have a substantial base of institutional security holders and therefore get no benefit from undertaking an accelerated offer to institutional security holders with a subsequent offer to retail security holders;
- to require an entity, within 5 business days of completing the relevant placement, to announce to the market:
  - the results of the placement;
  - reasonable details of the approach the entity took in identifying investors to participate in the placement and how it determined their respective allocations in the placement (including the key objectives and criteria that the entity adopted in the allocation process, whether one of those objectives was a best effort to allocate pro-rata to existing holders and any significant exceptions or deviations from those objectives and criteria); and

- that, as far as the entity is aware, no securities were issued or agreed to be issued in the placement to any person referred to in listing rule 10.11 without one of the following applying:
  - the issue or agreement was approved by, or is conditional upon the approval of, security holders in accordance with listing rule 10.11;
  - the issue or agreement was made in accordance with an exception in listing rule 10.12; and
  - the issue or agreement was made in accordance with a waiver granted by ASX from listing rule 10.11;
- to require also that the entity must within 5 business days of completing the relevant placement supply to ASIC and ASX (in the case of ASX, not for release to the market) a detailed allocation spreadsheet in electronic format showing:
  - full details of the persons to whom securities were allocated in the placement (including their name, existing holding as understood by the entity, the number of securities they applied for at or above the final price or were offered in the placement); and
  - the number of securities they were allocated in the placement (including any zero allocations);
- to explain what happens if an entity has already used up part of its existing 15% placement capacity under rule 7.1;
- to tidy up the drafting of the provisions explaining what happens if a qualifying entity has already used up part of its additional 10% placement capacity under listing rule 7.1A;
- to expand the existing requirement that if there is a limit on the amount to be raised under an SPP offer, the entity must use all reasonable endeavours to ensure that SPP offer participants have a reasonable opportunity to participate equitably in the overall capital raising, to also require that the entity must disclose why a limit is in place and how the limit was determined in relation to the total proposed fundraising;
- to confirm that an entity that has the benefit of a waiver or exemption from ASIC to allow it to make SPP offers of more than \$30,000 to individual holders under *ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547* in any 12 month period, is regarded as satisfying the conditions in that instrument;
- to expand the existing provisions requiring the scale-back arrangements for SPP offers to be applied on a pro rata basis to all participants to allow that to be based either on the size of their existing security holdings or the number of securities they have applied for; and
- to grant a waiver of listing rule 10.12 exception 4 equivalent to the waiver granted to listing rule 7.2 exception 5 – this new waiver allows parties covered by listing rule 10.11 (including directors) to participate in an SPP on the same terms as other security holders.

The amendments take effect for capital raisings announced on or after 23 April 2020.

## 2. Back-to-back trading halts

In addition to the Class Waivers mentioned above, ASX announced in section 3 of [Listed@ASX Compliance Update no 03/20](#) dated 31 March 2020 that, to help listed entities affected by the COVID-19 pandemic to raise urgently needed capital, ASX would permit an entity contemplating any form of capital raising to request two consecutive trading halts. This has the effect of allowing the entity a maximum of up to four trading days in halt to consider, plan for and execute the capital raising, instead of the usual two trading days. Previously this facility was only available to listed entities announcing their intention to undertake an accelerated pro rata offer.

A listed entity seeking two consecutive trading halts must make that fact clear in its request for a trading halt under listing rule 17.1 and also state in that request that the consecutive trading halts are for the purpose of considering, planning and executing a capital raising (consecutive trading halts are not permitted for any other purpose).

If an entity simply requests a trading halt, ASX will only grant it a single trading halt for a maximum of up to two trading days. ASX will not entertain a subsequent application from the entity for a second consecutive trading halt.

## 3. Cancellation of dividends or distributions

To preserve cash to cope with the COVID-19 pandemic, a number of listed entities have cancelled previously announced dividends and distributions. In some cases, these cancellations have occurred after the entity's securities have been trading ex-dividend/distribution.

As advised in section 1 of [Listed@ASX Compliance Update no 03/20](#) dated 31 March 2020, under listing rule 3.21(b), a listed entity must notify ASX immediately if it makes a decision not to pay a dividend or distribution on a quoted security in respect of a period if it has:

- previously announced an intention to pay a dividend or distribution for that period; or
- paid a dividend or distribution in respect of the prior corresponding period.

An entity that decides to cancel a dividend/distribution that it has already determined to pay should immediately announce that fact to the market under listing rule 3.1. The announcement should explain the legal basis for the cancellation (including confirming that the cancellation is authorised by the entity's constitution, where that is a legal requirement).

ASX acknowledges that these are extraordinary and unprecedented times and that these decisions may have to be made at a time beyond the control of the listed entity. However, ASX would ask all listed entities contemplating the cancellation of a dividend/distribution to announce that at the earliest opportunity and, if at all possible, before its securities commence trading ex-dividend/distribution.

ASX would also ask listed entities to be mindful that the classification of a dividend/distribution paid on securities can have significant implications for products such as options, warrants, hybrid securities and indices that reference those securities. This is particularly the case if an entity decides to change the classification of what ordinarily would have been an ordinary dividend/distribution to a special dividend/distribution.

For example, a change in the classification of a dividend on shares from an ordinary dividend to a special dividend will result in the exchange traded option (ETO) over the shares being adjusted by the full amount of the ordinary dividend. In other words, the impact to the valuation of the ETO is the same as moving the ordinary dividend to 0 (zero). As ETOs are leveraged products, the percentage change in the value of the ETO will typically be much larger than it would be for the underlying share.

If an entity is considering announcing a change to an upcoming dividend or to its dividend policy, ASX requests that it provide clear advice on any change in the nature of the dividend from ordinary to special or otherwise, in addition to other details such as dates and amount.

#### **4. Contacting your ASX Listings Compliance adviser**

ASX Listings Compliance managers and advisers are all presently working from home as part of ASX's response to the COVID-19 pandemic.

Given this, it is particularly important that listed entities seeking a trading halt or suspension email their request for the halt or suspension both to their ASX Listings Compliance adviser and to the general 'trading halts' email address at their ASX Home Branch. Those email addresses are:

Sydney Home Branch: [tradinghaltssydney@asx.com.au](mailto:tradinghaltssydney@asx.com.au)

Melbourne Home Branch: [tradinghaltsmelbourne@asx.com.au](mailto:tradinghaltsmelbourne@asx.com.au)

Perth Home Branch: [tradinghaltspert@asx.com.au](mailto:tradinghaltspert@asx.com.au)

By following this process, if your ASX Listings Compliance Adviser is not available when the request is sent through, another person at ASX Listings Compliance will pick up the email and arrange to process the trading halt or suspension.

For the same reasons, if you need to contact ASX Listings Compliance for anything urgent and you are not able to reach them by phone, we strongly recommend that you email both your Listings Compliance Adviser and the general email address for your ASX home branch. Those email addresses are:

Sydney Home Branch: [Listingscompliancesydney@asx.com.au](mailto:Listingscompliancesydney@asx.com.au)

Melbourne Home Branch: [Listingscompliancemelbourne@asx.com.au](mailto:Listingscompliancemelbourne@asx.com.au)

Perth Home Branch: [Listingscomplianceperth@asx.com.au](mailto:Listingscomplianceperth@asx.com.au)

#### **5. Listing rule compliance course for persons responsible for communicating with ASX on listing rule matters deferred**

Listing rule 1.1 condition 13 and listing rule 12.6 were amended on 1 December 2019 to require persons responsible for communicating with ASX in relation to listing rule matters ("responsible persons") appointed to that role on or after

1 July 2020 to complete an approved listing rule compliance course and attain a satisfactory pass mark in the examination for that course.

ASX intended to make an approved education course and examination available online on the ASX website for these purposes free of charge.

ASX was advised by its online education vendor earlier this year that it is closing its operations in Australia. This regrettably will delay the completion of the online training course ASX has been building for these purposes.

In light of this, ASX has decided to defer the introduction of these requirements for one year so that they will come into effect on 1 July 2021 rather than 1 July 2020. The relevant rules will be amended in due course to give effect to this deferral.

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