

Listed@ASX Compliance Update no. 07/24

25 June 2024

1. Deferred or contingent consideration

Listed entities should be aware of ASX's position in relation to the interaction of Chapter 7 of the listing rules and any agreement to pay deferred or contingent consideration in the form of a new issue of securities. The maximum number of securities that may be issued under an agreement of this type will count towards variable 'C' in listing rule 7.1 and will reduce the entity's placement capacity, unless the agreement provides that any future issue of securities under the agreement will be subject to security holder approval.

ASX has noted instances of listed entities structuring agreements so that the form of consideration that the listed entity must pay may be cash or newly issued securities, at the election of the listed entity. It is sometimes asserted that an agreement of this type constitutes a 'simple put option' that falls outside listing rules 7.1 and 7.1A on the basis that it does not involve an agreement to issue equity securities. It is noted in Guidance Note 21 that the granting of a simple put option by a third party that does nothing more than confer on the entity the right to require the third party to subscribe for securities may not fall within listing rules 7.1 and 7.1A.

ASX does not consider an agreement to pay deferred or contingent consideration to be a 'simple put option' for the purpose of assessing a listed entity's available placement capacity under Chapter 7 of the listing rules. Rather, at the time a listed entity agrees to pay deferred or contingent consideration (even if the consideration could take the form of cash rather than securities at the listed entity's election), the maximum number of securities which may ultimately be issued under the agreement will count towards variable 'C' and will reduce the entity's available placement capacity, unless the agreement provides that the future issue of securities will be subject to security approval.

2. Reset your login password for ASX Online

For security reasons, ASX Online passwords expire every 45 days unless changed earlier. If a password expires or the user makes three unsuccessful attempts to login with an incorrect password or username, the user will be locked out of their account and must contact the ASX Online Helpdesk on 131 279 or email asx.online@asx.com.au to regain access.

If information contained in an announcement to be released to the market is materially price sensitive under Listing Rule 3.1 and an ASX Online user is unable to access their account for any reason, they should immediately contact their Listings Adviser to seek a trading halt until the announcement can be made.

Please note that Listings Advisers are unable to reactivate a locked account. Access can only be regained by contacting the ASX Online Helpdesk on 131 279 or by emailing asx.online@asx.com.au

3. Use of the term 'over-subscribed'

ASX reminds listed entities that if an announcement states that a placement was 'over-subscribed', the normal meaning of that phrase is that applicants applied and paid for more securities than were ultimately allocated to them, with the excess funds ultimately being remitted to them. The term over-subscribed should not be used if that is not what occurred.

If there was demand for the placement in excess of the funds the listed entity sought to raise and the listed entity feels it is necessary to make a comment about that in its announcement, it should use those words or something similar that is accurate and not misleading.

4. Long term suspended entities

As foreshadowed in [Listed@ASX Compliance Update no. 05/24](#), ASX will soon begin publishing a quarterly market release that lists all entities whose securities have been suspended for more than three months, otherwise known as long term suspended entities.

The list will be released on the market announcements platform of each entity on the list.

The market release will set out:

- the name and ASX code of each long term suspended entity;
- the periodic reports referred to in listing rule 17.5 that the entity has failed to lodge (if any);
- the 1 year deadline date for lodging the oldest outstanding periodic report; and
- the entity's 2 year deadline to execute its plans for trading in its securities to resume, to ASX's satisfaction.

If the entity does not meet the 1 or 2 year deadlines, it will be removed from the official list. The removal will usually take effect from the open of trading on the first trading day after the deadline date.

ASX reminds long term suspended entities that reinstatement of their securities to quotation is not granted automatically on application, even if the suspension was imposed at the entity's request. ASX must be satisfied that the reasons for the ongoing suspension have been addressed and that the entity complies with the listing rules at the point of reinstatement.

Please engage with your Listings Adviser about your plans to seek reinstatement.

If you missed any of our historical Compliance Updates, you can download past editions [here](#).
