

Guidance Note 12

Issued: September 2008

Key topics

1. Changes to an entity's activities
2. Prospectus requirements
3. Suspension/trading halt policy

Listing Rules

1. Listing rule 11.1
2. Listing rule 11.2
3. Listing rule 11.3
4. Listing rule 11.4
5. Listing rule 14.11

Cross-reference

1. Chapter 1 Listing Rules
2. Chapter 2 Listing Rules
3. Chapter 12 Listing Rules
4. Guidance Note 11 - Restricted Securities and Voluntary Escrow
5. Guidance Note 13 – Disposal of a Major Asset
6. ASIC Practice Note 66 - Transaction Specific Prospectuses

Guidance Note History

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Changes to Activities: Listing Rules 11.1, 11.2 & 11.3

Introduction

1. This Guidance Note is published to assist listed entities to understand how ASX Limited (ASX) deals with corporate proposals which result in a change to the nature and / or scale of a listed entity's activities and to outline ASX policy in relation to the application of listing rules 11.1, 11.2, 11.3 and related provisions in these situations.

The listing rules

2. The listing rules state:

11.1 If an entity proposes to make a significant change, either directly or indirectly, to the nature or scale of its activities, it must provide full details to ASX as soon as practicable. It must do so in any event before making the change. The following rules apply in relation to the proposed change.

11.1.1 The entity must give ASX information regarding the change and its effect on future potential earnings, and any information that ASX asks for.

11.1.2 If ASX requires, the entity must get the approval of holders of its +ordinary securities and must comply with any requirements of ASX in relation to the notice of meeting. The notice of meeting must include a +voting exclusion statement.

11.1.3 If ASX requires, the entity must meet the requirements in chapters 1 and 2 as if the entity were applying for admission to the +official list.

- 11.2 *If the significant change involves the entity +disposing of its main +undertaking, the entity must get the approval of holders of its +ordinary securities and must comply with any requirements of ASX in relation to the notice of meeting. The notice of meeting must include a +voting exclusion statement. The entity must not enter into an agreement to +dispose of its main +undertaking unless the agreement is conditional on the entity getting that approval. Rules 11.1.1 and 11.1.3 apply.*
- 11.3 *ASX may suspend +quotation of the entity's +securities until the entity has satisfied the requirements of rules 11.1 or 11.2.*

Disclosure of Material Information

3. An entity is likely to have continuous disclosure obligations arising from a transaction that falls within listing rule 11.1 or 11.2. The information to be disclosed under listing rule 11.1.1 is in addition to any information disclosed under the continuous disclosure obligations in chapter 3 of the listing rules. Entities are referred to Guidance Note 8 - Continuous Disclosure for further assistance in relation to their continuous disclosure obligations.

Policy Objective of listing rules 11.1.2 and 11.2

4. One of the principles underlying listing rules 11.1.2 and 11.2 is that an investor may decide to subscribe for or buy securities in the belief that there will be some continuity in a listed entity's operations. Similarly, this may be a factor in an investor's decision to continue to hold securities in an entity.
5. If a change in the nature of an entity's activities or scale is contemplated that may have the effect of significantly changing the nature of a security holder's investment, security holders approval may be appropriate. This principle is embodied in listing rule 11.1.2, which ASX applies in relation to significant acquisitions, and listing rule 11.2, which relates to disposal of the entity's main undertaking. Further guidance as to how the rules are to be interpreted is set out below.
6. In relation to acquisitions, ASX has a discretion whether to require security holder approval. In order to determine whether to exercise it, ASX has a power to call for such information as it needs about the effect of the acquisition on the entity, which will usually be measured by reference the transaction-based comparisons set out in paragraph 12 of this Guidance Note.
7. In relation to disposals of the main undertaking, security holder approval is mandatory. In relation to disposals of the main undertaking, ASX's information requirements prior to the mandatory security holder meeting are generally confined to reviewing the terms of the security holder notice. Where there is a proposed disposal of a significant asset not involving the main undertaking, ASX does not require either security holder approval or prior provision of information to ASX. Depending on the circumstances, ASX may require the entity to provide information to ASX for the purpose of assisting ASX to decide whether a proposed disposal is in fact the disposal of the entity's main undertaking.

Security holders' approval under listing rule 11.1.2

8. In situations where a new business is acquired, whether or not the new business is complementary to an entity's existing operations, ASX's decision whether to require security holder approval under listing rule 11.1.2 will be based on whether a significant change in nature or scale would result from the acquisition. Depending on the scale of the transaction the entity may also be required to satisfy the admission requirements which apply under listing rule 11.1.3 – refer discussion at paragraph 35 of this Guidance Note. Therefore, where ASX requires security holder approval under listing rule 11.1.2, it may often be the case that listing rule 11.1.3 will also be applied if ASX thinks that the listed entity's proposal is such that the entity will, in essence, be a different entity after the change.
9. One circumstance in which listing rule 11.1.2 alone may be applied is where a listed entity changes the nature of its activities by acquiring the business of another listed entity – refer discussion at paragraph 15 of this Guidance Note. Where the “new business” test is satisfied by a change in scale rather than nature of activities, whether listing rule 11.1.3 applies in addition to listing rule 11.1.2 will depend upon all the circumstances. For example, where the change in scale is very significant or involves the introduction of a substantial and previously unlisted business, it is likely that the admission requirements which apply under listing rule 11.1.3 must also be satisfied.
10. There are three possibilities:
 - ASX may not require the convening of a meeting to approve the change.
 - ASX may require a meeting.
 - ASX may require a meeting and also compliance with Chapters 1 and 2.Entities are advised to liaise with ASX as early as possible to determine ASX's position in respect of significant transactions.
11. The requirements that ASX may impose will depend on the circumstances of the transaction, which include:
 - whether the contemplated change is one of nature or scale,
 - the extent to which the change is the outcome of growth and development of the entity over a period of time, and
 - the extent to which the change has been foreshadowed and investors have had the opportunity to debate the direction of the entity at previous general meetings
 - the extent to which investors have been given the opportunity to adjust their investment decisions accordingly.
12. ASX applies the following transaction-based comparisons to assess the magnitude of a significant change under rule 11.1.2.
 - Total consolidated assets as a result of the transaction by the entity or its child entity compared to total assets in the entity's latest audited, consolidated financial statements.
 - Total equity interests as a result of the transaction by the entity or its child entity compared to total equity interests in the entity's latest audited, consolidated financial statements.

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- The number of securities issued by the entity as a result of the transaction compared to the number on issue before the transaction.
 - The projected annual profit (before tax and extraordinary items) of the entity (or group) after the transaction compared to the annual profit in the entity's (or group's) latest audited, consolidated financial statements.
 - The projected annual revenue of the entity (or group) after the transaction compared to the annual revenue in the entity's (or group's) latest audited, consolidated financial statements.
 - The projected exploration expenditure of the entity (or group) for its next reporting period after the transaction compared to the aggregated exploration expenditure over the previous period.
13. In some cases tests based on assets, profits or revenues may not give a meaningful indication of the significance of the acquisition to the entity. For example, revenue and expense items can vary considerably from year to year, and in some cases it will not be appropriate to adopt a profit or revenue-based test. If a comparison produces an anomalous result, ASX may substitute other relevant indicators of significance.
14. Before sending out its notice of meeting to seek security holder approval, the entity must give ASX a copy of the draft notice for review (listing rule 15.1.7). If compliance with Chapters 1 and 2 is required under listing rule 11.1.3, in addition to obtaining security holders' approval to the change to activities, the entity must issue a prospectus relevant to the change.

Takeovers and mergers

15. Listing rule 11.1 may apply where a change to activities occurs through the entity acquiring a new business under a takeover, or merger by way of scheme of arrangement. ASX will not require compliance with listing rules 11.1.2 or 11.1.3 if both entities are listed on ASX. However, the entity must consult with ASX about the application of rule 11.1. ASX may consider that security holder approval is required under listing rule 11.1.2 but that issues of compliance with admission standards under listing rule 11.1.3 do not arise because the new business has been previously listed through another entity.

Security holders' approval under listing rule 11.2

16. Listing rule 11.2 applies where an entity is disposing of its main undertaking. It does not apply where the entity is disposing of a major asset, or high profile asset, if these assets do not also constitute the entity's main undertaking.
17. Listing rule 11.2 is primarily directed at requiring security holder approval for a change that will result in the entity carrying on no significant business or holding no significant assets, other than cash (i.e., the creation of a cashbox). In many cases, the purpose of disposing of the main undertaking is to ready the entity to undertake a new business which may attract the operation of listing rules 11.1.2 and 11.1.3. This is discussed further in paragraph 34 of this Guidance Note. In other cases, the disposal may be a precursor to terminating the entity and listing rule 11.1.3 is not relevant.

18. Disposal of the main undertaking, which attracts the operation of listing rule 11.2, is distinguishable from disposal of a major asset or disposal of a high profile asset. A major asset is a lesser thing than the main undertaking - see the discussion at paragraphs 8 to 10 of Guidance Note 13 – Disposal of a Major Asset.
19. The application of listing rule 11.2 is relatively straightforward where the entity has a clearly identifiable main undertaking. However, where the entity has several business operations and none of them are clearly the predominant business of the entity, the position is more complex. ASX may apply listing rule 11.2 to the disposal of a significant individual business. ASX may also apply listing rule 11.2 where the entity proposes to dispose of several businesses, if collectively they are more significant than the business or businesses to be retained.
20. As mentioned in paragraph 11, an important consideration in the application of listing rules 11.1 and 11.2 is the extent to which the proposed change in business activities is consistent with the business strategy that has been disclosed to the market by the entity and is understood and accepted by investors. For example, where the entity has announced that it proposes to concentrate on an identified substantial core business that it considers has growth prospects, ASX may be prepared to accept that the identified core business is the main undertaking and listing rule 11.2 does not apply to disposals of non-core businesses even if they are of significant size.

What comparisons will ASX use to determine what is a disposal of the “main undertaking”?

21. Among other things, ASX uses transaction-based comparisons to decide what requirements an entity contemplating a change to its activities must meet under the Listing Rules. ASX will adopt a 50% rule-of-thumb benchmark to assist its application of listing rule 11.2. Where the comparison figures listed below vary by 50% or more, ASX is more likely to consider that the entity is disposing of its main undertaking. Although ASX refers to a benchmark of 50%, ASX will continue to assess all decisions on a case by case basis. This reflects the diversity in the operations of listed entities.
22. The comparisons are:
 - Total consolidated assets as a result of the transaction by the entity or its child entity compared to total assets in the entity’s latest audited, consolidated financial statements.
 - Total equity interests as a result of the transaction by the entity or its child entity compared to total equity interests in the entity’s latest audited, consolidated financial statements.
 - The number of securities issued by the entity as a result of the transaction compared to the number on issue before the transaction.
 - The projected annual profit (before tax and extraordinary items) of the entity (or group) after the transaction compared to the annual profit in the entity’s (or group’s) latest audited, consolidated financial statements.
 - The projected annual revenue of the entity (or group) after the transaction compared to the annual revenue in the entity’s (or group’s) latest audited, consolidated financial statements.

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- The projected exploration expenditure of the entity (or group) for its next reporting period after the transaction compared to the aggregated exploration expenditure over the previous period.
23. In some cases tests based on assets, profits or revenues may not give a meaningful indication of the significance of the acquisition to the entity. For example, revenue and expense items can vary considerably from year to year, and in some cases it will not be appropriate to adopt a profit or revenue-based test. If a comparison produces an anomalous result, ASX may substitute other relevant indicators of significance.

Aggregating and netting off transactions

24. ASX may aggregate two or more transactions when deciding if a change to activities is a significant change. Generally, ASX will only aggregate transactions that occur within a twelve month period. ASX will not net off transactions for the purpose of the Listing Rules if the change involves both an acquisition and disposal of assets, or an acquisition of assets and an increase in liabilities.

Prospectus requirement

25. ASX's policy in respect of the requirement to issue a prospectus is to ensure that an entity does not circumvent the requirement for a prospectus by raising capital prior to listing, and then using an information memorandum instead of a prospectus as a basis for listing.
26. In some very limited situations, ASX may agree to accept an information memorandum which complies with Appendix 1A under listing rule 1.1 condition 3. Appendix 1A requires that the entity has not raised capital in the three months before issuing the information memorandum. The entity must also be able to state that it will not raise capital in the three months after issuing the information memorandum. It is unlikely that an entity proposing a change of activities, for which additional funding is usually required, will be able to satisfy ASX that it can meet these requirements. Therefore, in most cases, ASX will require that a prospectus be issued.
27. Where an entity does not anticipate issuing a prospectus its first step should be to seek ASX's permission under listing rule 1.1 condition 3 to issue an information memorandum. Any reference to a prospectus in this Guidance Note includes a reference to an information memorandum, where ASX has agreed to accept it.
28. If a prospectus is required, it must contain the information required by section 710 of the Corporations Act. Section 713 permits briefer disclosure in prospectuses issued for an offer of continuously quoted securities than for an offer of securities that are to be quoted for the first time. Continuously quoted securities are defined as securities in a class that were quoted ED securities at all times in the 12 months before the date of the prospectus. Sections 111AE and 111AM explain that securities are quoted ED securities if issued by a listed entity. Therefore, if the entity has been continuously listed for 12 months, the Corporations Act permits the issue of a prospectus under section 713, even if the entity has been suspended in that period. However, ASX does not consider that the information required by section

713 provides a sufficient basis for ongoing continuous disclosure by an entity where that entity has undergone a change of activities.

29. ASX policy on the use of prospectuses issued under section 713 is consistent with that of the Australian Securities and Investments Commission (“ASIC”). ASIC policy is that an entity that has been suspended should not automatically be able to take advantage of section 713. A suspended entity must approach ASIC if it seeks to issue a section 713 prospectus. Where listing rule 11.1.3 applies, ASX would not support any application to ASIC by an entity seeking to issue a section 713 prospectus to comply with the requirements of listing rule 1.1 condition 3.
30. ASX policy in relation to suspension of trading of securities of entities to which listing rule 11.1.3 applies is discussed further in paragraph 44.
31. The prospectus does not have to be sent to security holders for the purposes of the meeting to obtain their approval to the change of activities - it may be prepared and sent to security holders after they approve the change. ASX would expect copies to be sent to all security holders unless ASX agrees otherwise, consistent with ASX requirements for “front door” listings.
32. However, if the prospectus has not been prepared and released to the market by the date of the security holders’ meeting, this may delay the start of trading after approval is obtained at the meeting. This is discussed further in paragraph 44 of this Guidance Note.
33. Listing rules 11.1.2 and 11.2 say that the notice of meeting to seek the approval of security holders must include a voting exclusion statement. Listing rule 14.11 sets out the content of this requirement. In essence, listing rule 14.11 says that the following votes must be disregarded (with a limited exception for marked proxies):
 - Those of a person who might obtain a benefit, except a benefit solely in the capacity of a security holder, if the resolution is passed.
 - Those of an associate of that person.

The notice of meeting must include a statement to that effect.

Compliance with chapters 1 and 2 under listing rule 11.1.3

34. One purpose of listing rule 11.1 is to ensure that ASX’s admission requirements are not circumvented by the use of an existing listed entity. Listing rule 11.1.3 ensures that a listed entity again meets the admission requirements if the proposed change to its activities could otherwise have taken the form of a new listing.
35. Compliance with the admission requirements involves (among other things) the following.
 - Issuing a prospectus. This requirement is discussed further in paragraphs 25 to 29 of this Guidance Note.
 - Meeting the spread requirement (listing rule 1.1 condition 7), that is, either:
 - (a) At least 500 holders each with a parcel of the main class of securities with a value of at least \$2,000 (excluding restricted securities), or

- (b) 400 holders with a parcel of the main class of securities with a value of at least A\$2,000 (excluding restricted securities), and persons who are not related parties must hold at least 25% of the securities in the main class.

A prospectus may be required not only to satisfy listing rule 1.1 condition 3, but to attract new investors to satisfy the spread requirement.

- Meeting ASX's profit test or assets test (listing rule 1.1 condition 8).
- Having the entity's quoted securities (except options) issued or sold for at least 20 cents in cash (listing rule 2.1 condition 2).
- Having the entity's options exercisable for at least 20 cents in cash (listing rule 1.1 condition 11).

This is in addition to the prospectus requirements discussed in paragraphs 25 to 29.

36. An entity which complies with the assets test on the basis of "commitments" under listing rule 1.3.2(b) must also comply with the ongoing requirements that apply to such entities. Listing rule 4.7B requires the entity to lodge quarterly cash flow reports for the first eight quarters after satisfying the admission test. Listing rule 4.10.19 requires the entity to include a statement about whether it used its cash in a way consistent with its objectives in its annual reports for the first two years after satisfying the admission test.
37. Generally, ASX requires compliance with the admission requirements if it thinks that the entity's proposal is such that the entity will, in essence, be a different entity after the change, although ASX may require compliance in other circumstances as well.

Assessment of change

Moribund entities

38. If an entity has disposed of its main undertaking and has either no activities or only residual activities, any proposal for it to undertake a new activity is a change of activities to which listing rule 11.1.3 will be applied.

Deed of Company Arrangement

39. If a company which has been subject to a Deed of Company Arrangement is seeking to recapitalise and to acquire new projects, any proposal for it to undertake a new activity is a change of activities to which listing rule 11.1.3 is likely be applied. ASX may form the view that transactions entered into by the company after the Deed is effected and the company has been reinstated may, when aggregated, trigger a change of activities to which listing rule 11.1.3 applies.

Change of control

40. A change in activities may be associated with a change of control of the entity. However, change of control is not a pre-requisite to the application of listing rule 11.1.3. Even where there is no change in control, the entity may, in essence, be a different entity after the change.

Treatment of option arrangements

41. Generally, the acquisition of an option by a listed entity will be treated as if the option were exercised by the entity.

In Specie Distribution

42. Generally, ASX will not apply listing rules 11.1 and 11.2 where an entity conducts a 'spin off' of an asset through an in-specie distribution. A return of capital to shareholders conducted by an in-specie distribution requires shareholder approval under the Corporations Act and this is sufficient for the purposes of Chapter 11 of the Listing Rules.

Restricted securities

43. Where listing rule 11.1.3 applies to an entity, it is ASX's practice to apply the rules and policies concerning restricted securities which apply to securities issued before or at the time of admission to the official list. This policy is discussed in greater details at paragraphs 17 to 20 of Guidance Note 11 - Restricted Securities and Voluntary Escrow.

Suspension

44. If an entity is undertaking a change to its activities and must comply with Chapters 1 and 2, ASX will normally adopt the practice outlined below. The principle underlying the practice is that ASX will usually permit trading in the securities of an entity which proposes to change activities where security holders and the market have adequate information in relation to the proposed change, and the market is able to assess the proposal prior to it being put to a vote.
- ASX will suspend trading of the entity's securities immediately the entity announces the proposed change of activities. If ASX is satisfied that the announcement contains sufficient information to inform the market of the entity's proposed new activities, the suspension will generally end at the close of trading on that day. However, if the announcement is received shortly before the close of trading, ASX suspension may continue for the whole of the next trading day.
 - If ASX is not satisfied with the contents of the announcement, trading will be suspended until the entity provides enough information in order that ASX considers the market is adequately informed.
 - At the time trading of the entity's securities starts again the entity must make the following announcement to the market.
 - ◆ The entity will be required to comply with chapters 1 and 2 of the Listing Rules if the proposal is approved by security holders.
 - ◆ Trading will be suspended following security holder approval of the proposal until the requirements of chapters 1 and 2 of the Listing Rules have been satisfied.
 - ◆ The entity's proposed timetable for complying with the requirements of chapters 1 and 2 of the Listing Rules.

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- The entity should request a trading halt for the day of the security holders' meeting. If it does not, ASX will suspend trading of the entity's securities before trading starts.
 - If security holders do not approve the change of activities, the trading halt will end or the suspension will normally be lifted after the entity has confirmed that it will not change its activities.
 - If security holders approve the change, the trading halt will end or the suspension will normally be lifted immediately if the entity has met the requirements of chapters 1 and 2.
 - If any requirements of chapters 1 and 2 are still outstanding, trading in the securities of the entity will not start again before those requirements are satisfied. For example, if the entity has not issued the prospectus required by listing rule 1.1 condition 3, there will be no trading in the entity's securities until this document is issued.
45. Where the sale of a business results in the creation of a cash box, ASX will generally tolerate the existence of the cash box for up to 6 months, with the intent that during that time the entity will look to find another business to acquire. It is likely that listing rule 11.1.3 will apply once a new business has been identified for acquisition. If a suitable acquisition is not identified in 6 months, ASX would normally suspend trading in the entity's securities.

Application of Chapter 12

46. Where security holders do not approve a change of activities, the entity may be required to satisfy ASX that it complies with rules 12.1 and 12.2 before ASX will allow trading in the entity's securities to start again. These listing rules require an entity to have a sufficient level of operations and an adequate financial condition to justify continued quotation of the entity's securities.