



## Guidance Note 17

## ASX Issuers

**Issued:** July 2007

### Key topics

1. ASX Issuers structure
2. Procedures for lodging an application for decision
3. Admission applications
4. Waiver applications
5. In-principle advice
6. Quotation of additional securities
7. Suspensions and reinstatements
8. New and Complex Matters
9. Decisions
10. Appeal process

### Listing Rules

1. All Listing Rules

### Cross-reference

1. Guidance Note 1 – Applying for Admission and Quotation
2. Guidance Note 14 – Company Announcements Platform
3. Guidance Note 20 – ASX Online
4. Guidance Note 21 - Appeals

### Guidance Note History

Re-issued: 1/7/2000  
September 2001  
July 2007

### Introduction

1. This Guidance Note is published to assist entities and their advisers to understand how ASX deals with listings matters, including the procedures that are adopted for decision-making.

### ASX Issuers structure

2. The ASX Issuers unit (**ASX Issuers**) is part of ASX Markets Supervision Pty Limited (**ASXMS**), a wholly owned subsidiary of ASX Limited (**ASX**) which was established to provide greater transparency and accountability of ASX's supervisory operations, strengthen market integrity and address the perception of conflict between ASX's regulatory and commercial functions. ASX Issuers is represented in ASX offices in all Australian mainland State capital cities. ASX Issuers also has specialised legal and accounting resources available to it.

### Procedures for lodging an application for a decision

#### Home branches

3. The primary point of contact for each listed entity is one of ASX's State offices, known as the entity's home branch. The home branch looks after day-to-day matters relating to the entity's listing and makes decisions about the Listing Rules that affect it. There are home branches in Perth, Adelaide, Brisbane, Sydney and Melbourne (Melbourne takes responsibility for Tasmanian based entities).

## **Guidance Note 17**

### **ASX Issuers**

4. Each home branch is headed by a Manager, Issuers. The home branch of an entity is likely to be in the State in which the entity has its main administrative functions in Australia.
5. New listing applications are usually dealt with by the ASX State office that will become the home branch of the applicant entity. Initial enquiries about listing can be directed to any ASX office. ASX will deal with a listing application wherever it is convenient for the applicant entity. For instance, if advisers of the applicant entity are located in a different State from the entity's main administrative office, it may be more convenient for the application to be dealt with in that State (however, the home branch of the applicant entity following admission would be likely to be the State in which its main administrative functions are located).
6. For listed entities, all enquiries regarding the application of Listing Rules, waivers from Listing Rules, quotation of additional securities, trading halts, suspensions, reinstatements and removals should be directed to the home branch of the listed entity. You should refer to Guidance Note 14 – Company Announcements Platform and Guidance Note 20 – ASX Online in respect of company announcements, which are sent to the central Company Announcements Office in Sydney.

#### **How to apply for a decision from ASX**

7. The following sets out the procedure for all enquiries regarding the application of the Listing Rules, all applications for decisions in relation to the Listing Rules, all new listings applications and all applications for waivers from the Listing Rules, quotation of additional securities, suspensions, reinstatements and removals.

#### **Discuss the proposed application with ASX before lodging it**

8. Before lodging a formal application with ASX, ASX encourages applicants to contact their home branch for informal discussion and guidance. Potential applicants may wish to discuss the prospect of listing with a representative of ASX's commercial arm - the Business Development Division in ASX's Sydney office - before engaging with the ASX Issuers unit in their home branch or where their advisers are based. However, only the ASX Issuers representatives in the relevant home branch can deal with enquiries relating to any actual application that is lodged or can answer specific questions as to how supervisory decisions are likely to be made or provide interpretations of the Listing Rules.

#### **Lodge a fully completed application**

9. Applications may be initiated by or on behalf of the entity. Applications must:
  - be made in writing
  - include all information requested under the Listing Rules, including the information set out in Appendices A and B of this Guidance Note and any other material requested by ASX
  - include any required fee
  - provide a comprehensive submission in support of the application.

### **Completed application from applicant or its advisers**

10. Formal consideration of an entity's application by the appropriate ASX delegate will commence once the relevant home branch has confirmed that it has received all the required information from the applicant or its advisers.
11. If further information is required by ASX during the decision making process, the matter raises new policy considerations or is complex, the decision may take longer than it would otherwise. The applicant will be advised of any possible delays in the decision making process. The length of any delay will depend on the time taken for an entity to provide the required material, for ASX to review the additional material, or for the matter to be considered by the appropriate ASX delegate.

### **Admission applications**

12. Entities must ensure that applications include comprehensive details on each of the matters set out in Appendix A of this Guidance Note.
13. If an entity has issued a prospectus or Product Disclosure Statement, the Corporations Act imposes requirements about when an application for admission must be made and when admission to quotation of its securities must be achieved. An entity should consult its advisers to ensure all time limits are met; refer to Guidance Note 1 – Applying for Admission and Quotation.
14. If ASX requires additional information or clarification, it may take additional time before a decision may be made. The time taken largely depends on how long an entity takes to deal with the matters raised, the complexity of the matter and the progress of any capital raising.
15. Applications for admission where the offer of securities is underwritten may be considered in priority to applications where the offer is not underwritten.
16. An appeal process is available if a decision is made not to admit an applicant entity, which is further discussed in Guidance Note 21 – Appeals.

### **Waiver applications**

17. Generally, ASX's objective is to provide a decision in relation to a waiver application in the most timely manner possible. If further information is required by ASX during the decision making process, or the matter raises new policy considerations or is complex, the decision may take longer. In those circumstances, any undertakings or representations as to the timeframe for decision making may be altered to facilitate the applicant providing the required additional material and to provide ASX with the opportunity to review such material, or until the matter has been considered by the appropriate ASX delegate.
18. In order for a matter or proposal to be considered by ASX, complete materials in support of the matter or proposal must be provided to ASX. If a decision is required within a certain timeframe, the entity should consult with its home branch to ensure that ASX has sufficient time to consider the application.

## **Guidance Note 17**

### **ASX Issuers**

19. In preparing a waiver application, the onus is on the entity to establish that there is sufficient commercial and policy justification to waive a listing rule and that a waiver of the rule will not have adverse policy implications.
20. Entities must ensure that applications include comprehensive details on each of the matters set out in Appendix B of this Guidance Note.
21. If ASX requires additional information or clarification, it may take additional time before a decision can be made. The time taken largely depends on how long an entity takes to deal with the additional queries raised by ASX or the complexity of the matter.
22. An appeal process is available if a decision is made not to grant a waiver to an applicant entity, which is further discussed in Guidance Note 21 – Appeals.

### **'In principle' advice**

23. In appropriate cases, for example where an applicant entity has an unusual structure or significant waivers are needed, ASX may give 'in principle' advice on the position it is likely to take on a matter. An entity should consult with ASX if an 'in principle' submission would be appropriate. The request should be made before the entity applies for admission or for the waiver. An appeal process is available from an 'in principle' decision made by ASX, which is outlined in Guidance Note 21 – Appeals.
24. Generally, ASX's objective is to provide a decision in relation to an "in principle" application in the most timely manner possible. If further information is required by ASX during the assessment process, or the matter raises new policy considerations or is complex, the decision may take longer and any undertakings or representations as to timeframe for decision making will be suspended until the entity is able to provide the required material and ASX has the opportunity to review it, or until the matter has been considered by the appropriate ASX delegate.

### **Quotation of additional securities**

25. The Manager, Issuers of the relevant home branch is generally able to make decisions about the quotation of additional securities. The Listing Rules require an entity to apply for quotation of all securities in a quoted class (listing rule 2.4). To apply for quotation, the entity must complete Appendix 3B (contained in the Listing Rules - refer to listing rule 2.7). Time limits are imposed in relation to applying for quotation, refer to listing rule 2.8.

### **Suspensions and reinstatements to quotation**

26. Decisions about suspensions and reinstatements to quotation are made as required in accordance with the Listing Rules.
27. No appeal can be made from a decision to suspend an entity.

### **New and Complex Matters**

28. Some listing and waiver applications and questions of listing rule interpretation raise new and complex issues. In these instances, the matter may need to be referred to the appropriate ASX delegate. If this takes place, the timetable for review by ASX will be extended accordingly and the entity will be advised.

## **Decisions**

### **Notification to entity**

29. The format of the ASX waiver decision will include details of the waiver granted - the 'Decision' - and a 'Basis for Decision'. The Basis for Decision sets out the underlying policy behind the relevant listing rule, and the present application of that policy in the fact situation relating to the entity. The present application will therefore present in summary form facts relevant to the decision drawn from the materials provided by the entity in support of the application.

### **Publication of waivers**

30. Waivers granted by ASX are published in a waivers register. Applications for in principle advice and admission decisions (other than any waivers granted to an entity in connection with its admission) and any refusals of either admissions or waivers are not published in the waivers register. The waivers register includes both the Decision and the Basis for Decision. The publication of the waivers register facilitates the transparency of decisions made by ASX. The waivers register is available from the ASX customer service centre (Tel.: 131 279) and the ASX website ([www.asx.com.au](http://www.asx.com.au)). ASX is also committed to providing greater transparency when waivers are granted and will publish waiver decisions on the waivers register twice a month (unless a matter is confidential). This means that, generally, a decision is made public within 2 weeks of the decision being made.
31. If publication of the decision is cause for concern then the entity may request that the decision be confidential and provide reasons as to why the application should be treated differently in this regard from other applications and request the time for which confidentiality may be required. If the timing of public disclosure is cause for concern, the entity should withdraw the application immediately and apply at a time more acceptable to it. It should be noted that a condition of some waivers is disclosure to the market of the terms of the waiver.
32. ASX also regularly reports all waivers granted to the Australian Securities & Investments Commission.

## **Appeal process**

33. Guidance Note 21 – Appeals sets out the appeal process available to an entity for the following:

- Refusal to admit that entity to the official list, or the conditions of admission.
- Refusal to quote the securities of that entity, or the conditions of quotation.
- Refusal to grant a waiver to that entity, or the conditions of a waiver.
- The application of the Listing Rules to that entity (except in relation to a suspension).
- Removal of that entity from the official list.

## **Appendix A**

### **INFORMATION CHECKLIST FOR NEW LISTINGS**

All new listing applications should include the following information.

1. Appendix 1A (and associated documentation required by that form).
2. Letter from the entity or its advisers detailing any waivers or confirmations being sought from ASX. The letter should address the following:
  - a. A comprehensive explanation of the event or circumstance around which listing rule waivers or confirmations are sought and the rationale for such relief or confirmation.
  - b. The entity's capital structure (before and after any issues of securities).
  - c. Identification of particular listing rules from which relief is being sought.
  - d. In relation to transactions involving related parties, full details of the relationships between the parties and the listed entity.
  - e. Comprehensive submissions as to why the relief being sought should be granted by ASX.
  - f. Identification of previous decisions (if any) that have been made by ASX in relation to the listing rule(s) from which relief is being sought by the entity, together with an explanation as to why those particular decisions are considered relevant to the entity's application. (The ASX waivers register is available at: [www.asx.com.au](http://www.asx.com.au)).
  - g. Any other information that is considered necessary for ASX to obtain a full understanding of the transaction and the reasons for the application for relief from compliance with the identified listing rules.
3. For entities which expect to have any of their securities classified as restricted securities a table, in the format outlined below, which details the following:
  - a. All existing security holders and their holdings.
  - b. The date of issue of the securities. If a holder was issued, or subscribed for, securities on more than one occasion, details of each issue or subscription are to be listed separately in the table (i.e., holdings are not to be combined or aggregated).
  - c. The relationship of each security holder to the entity.
  - d. The purpose for which the securities were issued (e.g., details of any services provided in exchange for the issue of securities, the amount of cash paid by

**Guidance Note 17**  
**ASX Issuers**

the holder to the entity for the issue of shares, or details of any assets sold to the entity in exchange for the issue of securities).

- e. The number of securities and their issue price, presented to reflect any reorganisations of capital that has been undertaken.

**NOTE:**

The consideration of the application of escrow to existing security holders is part of ASX's consideration of the entity's application for listing. It is important that complete and accurate information be provided in respect of each security holder so that a final determination of the application of escrow can be made as efficiently as possible. If relief from the application of escrow is sought for any security holder, a waiver application must accompany the listing application. If there are changes to the information that has been provided in respect of each security holder, or relief is subsequently sought from the application of escrow to a particular security holder, the whole listing application has to be reconsidered by ASX. Such reconsiderations are time-consuming and may lead to delay.

The Restricted Securities Table can be subdivided so that the required information is provided in respect of each different class of securities separately. It may be found convenient to subdivide the table so that the security holders are grouped together using the classifications in paragraphs of Appendix 9B –

- related party or promoter seed capitalists (para.1);
- related party or promoter vendors (para. 3);
- unrelated seed capitalists (para. 2);
- unrelated vendors (para. 4);
- promoters (consideration other than seed capital) (para. 7);
- professional service providers (para. 8);
- employee incentive plan participants (para. 9).

In the case of transferees of securities, the relevant information should be provided in respect of the transferor (because the escrow period applicable to the transferee is the same as that which applied to the transferor under paragraph 10 of Appendix 9B).

It may also be found convenient to sub-divide the unrelated seed capitalists and unrelated vendors according to the dates on which their securities were issued to them (because, in the case of unrelated seed capitalists and unrelated vendors, the 12 months escrow period begins on the day of issue).

ASX may require further information in order to make a decision in relation to escrow.

For more information in relation to the preparation of the Restricted Securities Table, refer to chapter 9 of the Listing Rules, Appendix 9B and Guidance Note 11 – Restricted Securities and Voluntary Escrow.

**Restricted Securities Table**

Holder	Holder's relationship with the Entity (e.g. Director/Promoter etc)	Number of securities held	Number of securities to be restricted as estimated by entity	Date of issue	Nature of consideration given by holder for issue (e.g. cash, assets, services, etc. Identify assets and services)	Issue price (only for securities issued for cash)	Reason for restriction. If all securities are not restricted, state reason why; e.g. Issued to unrelated seed investor > 12 months ago, or show application of cash formula)

## **Appendix B**

### **INFORMATION CHECKLIST FOR A WAIVER APPLICATION**

All waiver applications should include the following information:

1. Letter from the entity or its advisers detailing any waivers or confirmations being sought from ASX. The letter should address the following:
  - a. A comprehensive explanation of the transaction, circumstance or event, including structure, timing and rationale.
  - b. The entity's capital structure (before and after any issues of securities).
  - c. Identification of particular listing rules from which relief is being sought.
  - d. In relation to transactions involving related parties, full details of the relationships between the parties and the listed entity.
  - e. Comprehensive submissions as to why the relief being sought should be granted by ASX.
  - f. Identification of previous decisions (if any) that have been made by ASX in relation to the listing rule(s) from which relief is being sought by the entity, together with an explanation as to why those particular decisions are considered relevant to the entity's application. (The ASX waivers register is available at: [www.asx.com.au](http://www.asx.com.au)).
  - g. Any other information that is considered necessary for ASX to obtain a full understanding of the transaction and the reasons for the application for relief from compliance with the identified listing rules.