



# Listing Rule Amendments

## Notification of Rule Amendments

### Proposed ASX Listing Rule Amendments

- Appendix 5B: Mining exploration entity quarterly report
- Listed Investment Company Annual Reporting
- Appendix 7A and Definitions: Security Purchase Plans
- Non-executive director fee pool

11 September 2008

## What this paper is about

This paper has been prepared by ASX Limited ("ASX") to set out details of Listing Rule amendments proposed to take effect by year end 2008. ASX previously consulted on the proposal in relation to security purchase plans (SPPs) in December 2007. Responses generally supported the changes proposed, which are now set out in draft form. ASX is continuing to consider the other proposals contained in the December 2007 consultation paper.

Other minor amendments exposed here for the first time are:

- Changes to the Appendix 5B to require mining exploration companies to estimate cash outflows for the next quarter in respect of production and administration expenses;
- Changes to listing rule 4.10 and 4.10.20 so that Listed Investment Companies (LICs) must disclose in their annual report a list of investments held by the LIC at the balance date, rather than as at 6 weeks before the annual report is sent to security holders;
- Amendment to clarify that the fee pool for non-executive directors approved by ordinary shareholders under listing rule 10.17 must include all superannuation payments.

Although these amendments have been expressed as if implemented, it is important to note that this is for convenience of expression and that they are draft proposals only at this stage. The method used to identify the amendments is as follows:

- deletions are ~~struck through~~; and
- additions are in **bold**.

This method of showing amendments makes them easier to read and makes the document more convenient for readers.

Any comments on the proposed amendments will be welcomed by ASX. They should be sent to:

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ASX prefers to receive comments in electronic form.

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## *Section 1*

### *APPENDIX 5B*

*Rules considered in this section: Appendix 5B*

## COMMENTARY

Listing rule 5.3 says a mining exploration entity must complete Appendix 5B: Mining Exploration Entity Quarterly Report, and give it to ASX within 1 month after the end of each quarter of its financial year. Appendix 5B contains a consolidated statement of cash flows, including operating activities cash flows in respect of four payments for exploration and evaluation; development; production; administration. The Appendix also requires disclosure of estimated cash outflows for the next quarter. Currently an entity is required to disclose estimates of forward cash outflows in relation to exploration and evaluation, and development.

For the sake of presenting a complete picture of the company's likely cash flows for the forthcoming quarter, it is proposed to amend Appendix 5B and to include production and administration (as well as exploration and evaluation and development) in the fourth section of the Appendix relating to estimates of cash outflows for the next quarter. This information will help investors understand the entity's likely 'cash burn' for the next quarter.

The change will provide more meaningful disclosure to investors and will enhance the role of the Appendix 5B as a cash forecast mechanism. In particular, ASX notes that administration costs may account for over 50% of a mining exploration company's net operating cash flows for the quarter and that administrative costs vary considerably from quarter to quarter. The changes will mean that a company must estimate its administrative and production costs for the next quarter.

ASX anticipates this change will take effect for the quarter commencing 1 January 2009.

## LISTING RULE AMENDMENTS

### Proposal

Section 4 of Appendix 5B be amended as follows. A full version of the current Appendix 5B can be obtained at <http://www.asx.com.au/ListingRules/appendices/App5b.doc>

### Estimated cash outflows for next quarter

		\$A'ooo
4.1	Exploration and evaluation	
4.2	Development	
<b>4.3</b>	<b>Production</b>	
<b>4.4</b>	<b>Administration</b>	
<b>Total</b>		

### Purpose of Amendment

The amendments to Appendix 5B (Mining Exploration Entity Quarterly Report) will require mining and exploration companies to disclose an estimate of administrative costs and production costs for the forthcoming quarter. Investors will benefit from this information as it will help to present a more complete picture of the company's anticipated cash outflows in the coming quarter. The requirement is also expected to act as a discipline on the use of administration expenses.

## *Section 2*

### ***LISTED INVESTMENT COMPANY ANNUAL REPORTING***

*Rules considered in this section: rule 4.10, 4.10.20.*

## COMMENTARY

ASX proposes amendments to Listing Rules 4.10 and 4.10.20 which will have the effect of enabling Listed Investment Companies (LICs) to disclose in their annual report a list of all investments held by the LIC and its child entities as at the balance date.

A LIC is required under listing rule 4.10.20(a) to disclose in its annual report a list of all investments held by it and its child entities. The rule says the information must be current at a date no more than 6 weeks before the annual report is sent to security holders. Rule 4.10.20 was introduced in 1999.

The pre-cursor to the current rule was an investment company guidance note. It required a LIC to provide a list of investments as at the company's balance date. In 1999 an Exposure Draft proposed to delete most of the limitations placed on investment companies by the guidance note, but also proposed to retain annual reporting of the list of investments. In the process of transferring this requirement from the investment company guidance note to listing rule 4.10, the nexus with the balance date was lost.

ASX has become aware that the current wording of the rule presents timing issues for several LICs, and proposes to restore the nexus to the balance date. This amendment will not have any materially adverse effects on the timeliness or quality of information disclosed to shareholders, but will mean that affected LICs are not in technical breach of this listing rule.

## LISTING RULE AMENDMENTS

### Proposal

Listing Rules 4.10 and 4.10.20 be amended as follows.

4.10 *An entity must include the following information in its annual report. The information must be current at a date specified by the entity which **must not be more than 6 weeks before the report is sent to security holders** (unless listing rule 4.10.20(a) applies).*

.....

4.10.20 *If the entity is an investment entity, each of the following:*

- (a) *A list of all investments held by it and its child entities at the balance date.*
- (b) *The total number of transactions in securities during the reporting period, together with the total brokerage paid or accrued during that period,*
- (c) *The total management fees paid or accrued during the reporting period, together with a summary of any management agreement.*

### Purpose of Amendment

The amendments will remove timing issues which make compliance with the rule problematic for a number of LICs. The amendments will mean that an LIC must disclose in its annual report a list of investments held by the LIC at the balance date, rather than as at 6 weeks before the annual report is sent to security holders.

## *Section 3*

# ***SECURITY PURCHASE PLANS***

*Rules considered in this section: Appendix 7A and Rule 19.12.*

## COMMENTARY

ASX has previously consulted on these listing rule amendments. A new requirement will be introduced to ensure that companies which offer a Security Purchase Plan (SPP) must ensure that it is open to all shareholders on the register the business day before the SPP is announced. The response to this proposal has been generally favourable and it is proposed to implement the proposed amendments as set out below.

The proposal will remove the incentive and ability for sellers to manipulate the delivery of entitled securities to the detriment of purchasers. However, it will not add to the length of time it will take a company to conduct an SPP and will not detract from the underlying principle of the SPP, of providing long-term shareholders the opportunity to purchase shares at no brokerage, and possibly at a discount to the market price, as a reward for their loyalty.

The rule is not intended to prevent a company from foreshadowing that a SPP will occur; however the effect of the rule will be that on the day a company releases full details of the SPP, only those shareholders on the register the day before the SPP is announced are eligible to take part.

## LISTING RULE AMENDMENTS

### Proposal

Appendix 7A and Rule 19.12 be amended as follows.

## Appendix 7A

### Timetables

#### Security Purchase Plans

10 An entity must follow the following timetable for an issue of securities under a security purchase plan.

Event	Time limits	Business day
↓ *Record date to identify *security holders who may participate in the security purchase plan.	1 *business day before the entity announces security purchase plan	-1
↓ Entity announces security purchase plan.	The business day after the record date	0

Note: Security Purchase Plans are not processed as corporate actions by CHESS, therefore there will not be an ex date and no protections are available.

Introduced x/x/xx.

## Definitions

19.12 The following expressions have the meaning set out below.

Introduced 1/7/96 Origin: Definitions.

Expressions	meanings
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....

Security Purchase Plan	an issue of securities under a security purchase plan, excluding an issue to the plan's underwriters, making offers not exceeding \$5,000 in value to existing security holders which do not require the issue of a disclosure document or Product Disclosure Statement in accordance with relief granted by ASIC.
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Introduced x/x/xx.

### Purpose of Amendment

The amendment will reinforce the original intent of the SPP as a mechanism to reward existing long-term shareholders. It will reduce the incentive for sellers to short sell or fail to settle, in order to qualify for the SPP. This will result in more orderly trading in the lead-up to the SPP. The proposal will ensure confidence and certainty in trading for companies that have announced an SPP.

## *Section 4*

### *NON-EXECUTIVE DIRECTOR FEE POOL*

*Rules considered in this section: rule 10.17.*

## COMMENTARY

Listing rule 10.17 says that shareholders must determine the total maximum amount of directors' fees payable to non-executive directors. A company cannot increase the total fee pool for non-executive directors without shareholder approval.

ASX has received feedback which suggests there is some uncertainty in the market as to whether superannuation, including any salary sacrificed amounts contributed by non-executive directors, should be included in the fee pool. In ASX's view these payments should be included in the fee pool, thus resulting in consistent treatment of superannuation payments across all listed entities.

ASX proposes to amend this listing rule so it is clear that all payments, including superannuation payments, must be included by the company when calculating the total amount of directors' fees payable. In other words, a company which pays non-executive directors' superannuation in excess of the total amount of fees approved by shareholders will be in breach of the listing rule.

## LISTING RULE AMENDMENT

### Proposal

That listing rule 10.17 be amended as follows:

### Payments to directors

10.17 An entity must not increase the total amount of directors' fees payable by it or any of its +child entities without the approval of holders of its +ordinary securities. This rule does not apply to the salary of an executive director. However, an executive director's salary or director's fees must not include a commission on, or percentage of, operating revenue.

10.17.1 The notice of meeting must include the amount of the increase, the maximum amount that may be paid to the directors as a whole, and a +voting exclusion statement.

10.17.2 If a non-executive director is paid, he or she must be paid a fixed sum.

**For the purposes of Rule 10.17, the "total amount of directors' fees payable" includes superannuation payments (including any salary sacrificed amounts contributed by directors).**

Introduced 1/7/96. Origin: Listing Rule 3L(7). Amended XX/XX/XX

Example: The amount must not be calculated as a commission on, or percentage of, profits or operating revenue.

### Purpose of Amendment

The purpose of this amendment is to confirm that the non-executive director fee pool approved by shareholders includes all fees and superannuation payments to non-executive directors. The amendment reinforces the integrity of the listing rule and the role of shareholders in determining the maximum pool of fees available for payment of non-executive directors.

