

Proposed amendments to Chapter 7 of the ASX Listing Rules

Chapter 7

Changes in capital and new issues

...

Rules applicable to placements under Rules 7.1 and 7.1A

7.1B The following rules apply for the purposes of rules 7.1 and 7.1A.

Introduced 01/08/12

7.1B.1 In working out:

- (a) the number of *equity securities that an entity may issue or agree to issue under rule 7.1 (including the amount "C" referred to in that rule) or that an *eligible entity may issue or agree to issue under rule 7.1A.2 (including the amount "E" referred to in that rule); or
- (b) whether a transaction is a +reverse takeover for the purposes of these rules by reference to the number of +equity securities that are issued or to be issued by the entity under or to fund the +reverse takeover,
unless ASX determines otherwise, apply the following rules:
 - (ac) if the *equity securities are fully paid *ordinary securities, each *security is counted as one;
 - (bd) if the *equity securities are partly paid *securities, each *security is counted as the maximum number of fully paid *ordinary securities into which it can be paid up; ~~and~~
 - (ee) if the +equity securities are +convertible securities, each *security is counted as the maximum number of fully paid *ordinary securities into which it can be converted; and
- (f) in any other case, each *security is counted as ASX decides.

Introduced 01/08/12 Amended 04/03/13, XX/XX/17

...

Exceptions to rule 7.1 and rule 7.1A

7.2 Rule 7.1 and rule 7.1A do not apply in any of the following cases.

Amended 01/08/12

...

Exception 5 An issue under a takeover n-off-market bid ~~that is required to comply with the Corporations Act~~ or under a merger by way of scheme of arrangement under Part 5.1 of the Corporations Act. Exception 5 is not available if the issue is being made under a +reverse takeover.

Introduced 01/07/96 Origin: Listing Rule 3E(6)(c)(iv) Amended 01/07/97, 13/03/00, 30/09/01, XX/XX/17

Note: takeover bid has the same meaning as in section 9 of the Corporations Act.

Exception 6 An issue to fund the cash consideration payable under a takeover bid or under a merger by way of scheme of arrangement under Part 5.1 of the Corporations Act where in any of the following circumstances if the terms of the issue are disclosed in the takeover or scheme documents. Exception 6 is not available if the issue is being made to fund a +reverse takeover.

- ~~• An off market bid that is required to comply with the Corporations Act, when the offer becomes unconditional.~~
- ~~• A market bid that is required to comply with the Corporations Act, when the market bid is announced under section 635 of the Corporations Act.~~
- ~~• A merger by way of scheme of arrangement under Part 5.1 of the Corporations Act, when the arrangement is approved by the court under section 411(4) of the Corporations Act.~~

Introduced 01/07/96 Origin: Listing Rule 3E(6)(c)(v) Amended 01/07/97, 01/09/99, 13/03/00, 30/09/01, XX/XX/17

Note: takeover bid has the same meaning as in section 9 of the Corporations Act.

...

Notice requirements for approval under rule 7.1

7.3 For the holders of +ordinary securities to approve an issue or agreement to issue under rule 7.1, the notice of meeting must include each of the following.

7.3.1 The maximum number of +securities the entity is to issue (if known) or the formula for calculating the number of +securities the entity is to issue.

Introduced: 01/07/96 Origin: Listing Rule 3E(6)(e)(i) Amended 01/07/00

7.3.2 The date or dates on or by which the entity will issue the +securities. ~~This date~~ must be:

- if the +securities are being issued under, or to fund, a +reverse takeover, no later than 6 months after the date of the meeting;
- ~~no later than 3 months after the date of the meeting. However, if court approval of a reorganisation of capital (in the case of a trust, interests) is required before the issue, the date must be~~ no later than 3 months after the date of the court approval; or
- otherwise, no later than 3 months after the date of the meeting.-

Introduced: 01/07/96 Origin: Listing Rule 3E(6)(e)(ii) Amended: XX/XX/17 Cross reference: chapter 10

If the issue requires approval under chapter 10, the time limit under that chapter for issue of the securities must be complied with.

7.3.3 The issue price of the +securities, which must be either:

- a fixed price; or
- a minimum price. The minimum price may be fixed or a stated percentage that is at least 80% of the +volume weighted average market price for +securities in that +class, calculated over the last 5 days on which sales in the +securities were recorded before the day on which the issue was made or, if there is a prospectus, Product Disclosure Statement or offer information statement relating to the issue, over the last 5 days on which sales in the +securities were recorded before the date the prospectus, Product Disclosure Statement or offer information statement is signed.

Introduced 01/07/96 Origin: Listing Rule 3E(6)(e)(iii)a & b Amended 01/07/97, 13/03/00, 11/03/02, 01/07/14

7.3.4 The names of the persons to whom the entity will issue the +securities (if known) or the basis upon which those persons will be identified or selected.

Introduced: 01/07/96 Origin: Listing Rule 3E(6)(e)(iv) Amended 30/09/01, 04/03/13

Note: in the case of an issue under a reverse takeover, it is sufficient to describe the class or classes of security holders in the reverse takeover target who will be issued securities in the entity.

7.3.5 The terms of the +securities.

Introduced: 01/07/96 Origin: Listing Rule 3E(6)(e)(v)

7.3.6 The intended use of the funds raised.

Introduced: 01/07/96 Origin: Listing Rule 3E(6)(e)(vi)

7.3.7 The +issue date or a statement that the issue will occur progressively.

Introduced: 01/07/96 Origin: Listing Rule 3E(6)(e)(vii) Amended 04/03/13

7.3.8 A +voting exclusion statement. This does not apply if security holders are to receive a priority entitlement as part of a public offer and the notice of meeting states each of the following.

- (a) The priority entitlement is at least 10% of the offer or in another way, in ASX's opinion, that is fair in all the circumstances.
- (b) The entity will limit the number of +securities it issues to a holder of +ordinary securities to the higher of 5% of all the +securities being offered under the priority entitlement and the number the holder would be entitled to under a +pro rata issue of all those +securities.

Introduced 01/07/96 Origin: Listing Rule 3E(6)(e)(viii) Amended 31/03/04

7.3.9 In the case of an agreement for the issue of +securities which is part of a public offer, a +voting exclusion statement in relation to a party to the agreement, and an adequate summary of the agreement.

Introduced 01/07/96 Origin: Listing Rule 3E(6)(e)(viii) Amended 04/03/13

7.3.10 If the +securities are being issued under, or to fund, a +reverse takeover, information about the +reverse takeover.

Proposed amendments to Chapter 14 of the ASX Listing Rules

Chapter 14

Meetings

...

Voting exclusion statement

14.11 If a rule requires a notice of meeting to include a +voting exclusion statement, the notice of meeting must contain a statement to the following effect.

The entity will disregard any votes cast in favour of the~~en~~a resolution by or on behalf of:

- *the (named) person (or class of persons) excluded from voting; or*
- *an +associate of that person (or those persons).*

However, the entity need not disregard a vote if:

- *it is cast by a person as proxy for a person who is entitled to vote, in accordance with the directions on the proxy form; or*
- *it is cast by the person chairing the meeting as proxy for a person who is entitled to vote, in accordance with a direction on the proxy form to vote as the proxy decides.*

Introduced 01/07/96 Amended 01/07/14, XX/XX/2017

Cross reference: listing rule 14.2.3.

14.11.1 The +person excluded from voting must be named in the notice of meeting. The +persons who must be named are the following.

Rule	Disregard votes cast by:
...	
7.1 and 7.1A	<p><u>in the case of a proposed issue under a +reverse takeover, the +reverse takeover target and any +person who will obtain a material benefit as a result of the +reverse takeover or the proposed issue (except a benefit solely by reason of being a holder of +ordinary securities in the entity or the +reverse takeover target)</u></p> <p><u>in the case of a proposed issue to fund a +reverse takeover, the +reverse takeover target, any +person who is expected to participate in the proposed issue, and any +person who will obtain a material benefit as a result of the +reverse takeover or the proposed issue (except a benefit solely by reason of being a holder of +ordinary securities in the entity or the +reverse takeover target)</u></p> <p><u>otherwise, a +person who may is expected to participate in, or who will obtain a material benefit as a result of, the proposed issue (except a benefit solely by reason of being a holder of +ordinary securities in the entity) and a +person who might obtain a benefit, except a benefit solely in the capacity of a holder of +ordinary securities, if the resolution is passed</u></p>

Rule	Disregard votes cast by:
	<p data-bbox="520 237 1326 286">Introduced 01/07/96 Origin: Listing Rule 3E(6)(c)(viii) Amended 01/07/97, 30/09/01, 01/07/14, <u>XX/XX/17</u></p> <p data-bbox="520 309 1390 622">The voting exclusion statement for rules 7.1 and 7.1A excludes from voting “a person who may participate in the proposed issue”. Where the names of the proposed persons to whom the entity will issue the securities are not known and identified, but the proposed issue is a general offer to apply for equity securities open to the public or a section of the public, or where the approval is an approval at large for the issue of equity securities up to a certain limit, then the words “a person who may participate in the proposed issue” require more than the mere possibility that the person will participate in the proposed issue. For a person’s vote to be excluded in these circumstances, it must be known that that person will participate in the proposed issue. Where it is not known who will participate in the proposed issue, security holders must consider the proposal on the basis that they may or may not get a benefit and that it is possible that their holding will be diluted. There is no reason to exclude their vote. See Stratford Sun Limited v OM Holdings Limited [2011] FCA 1275.</p>

Proposed amendments to Chapter 19 of the ASX Listing Rules

Chapter 19

Interpretation and definitions

...

Definitions

19.12 The following expressions have the meanings set out below.

Introduced 01/07/96 Origin: Definitions

Expressions	Meanings
<p><u>associate</u></p>	<p><u>save as set out below, a person (the second person) is an associate of another person (the primary person) in relation to a listed entity if, and only if, one or more of the following paragraphs applies:</u></p> <p><u>(a) the second person is:</u></p> <p><u>(i) an entity the primary person controls; or</u></p> <p><u>(ii) an entity that controls the primary person; or</u></p> <p><u>(iii) an entity that is controlled by an entity that controls the primary person;</u></p> <p><u>(b) the second person is a person with whom the primary person has, or proposes to enter into, a relevant agreement for the purpose of controlling or influencing the composition of the listed entity's board or the conduct of the listed entity's affairs;</u></p> <p><u>(c) the second person is a person with whom the primary person is acting, or proposing to act, in concert in relation to the listed entity's affairs.</u></p> <p>has the meaning given in sections 12 and 16 of the Corporations Act. Section 12 is to be applied as if paragraph 12(1)(a) included a reference to the Listing Rules and on the basis that the entity is the "designated body" for the purposes of that section.</p> <p><u>(a) Note: "Entity" has the same meaning as in section 9 of the Corporations Act</u></p> <p><u>If the listed entity is a managed investment scheme a reference to controlling or influencing the composition of the listed entity's board is taken to be a reference to controlling or influencing:</u></p> <p><u>(a) if the scheme is a registered scheme--whether a particular company becomes or remains the scheme's responsible entity; or</u></p> <p><u>(b) if the scheme is not a registered scheme--whether a particular person is appointed, or remains appointed, to the office (by whatever name it is known) in relation to the scheme that corresponds most closely to the office of responsible entity of a registered scheme.</u></p> <p>A +related party of a natural person director or officer of the entity or of a +child entity is to be taken to be an associate of the natural person director or officer unless the contrary is established.</p>

	<p><u>However, a person is not an associate of another person merely because of one or more of the following:</u></p> <p><u>(a) one gives advice to the other, or acts on the other's behalf, in the proper performance of the functions attaching to a professional capacity or a business relationship;</u></p> <p><u>(b) one, a client, gives specific instructions to the other, whose ordinary business includes dealing in financial products, to acquire financial products on the client's behalf in the ordinary course of that business;</u></p> <p><u>(c) one had sent, or proposes to send, to the other an offer under a takeover bid for shares held by the other;</u></p> <p><u>(d) one has appointed the other, otherwise than for valuable consideration given by the other or by an associate of the other, to vote as a proxy or representative at a meeting of members, or of a class of members, of the listed entity.</u></p> <p>Introduced 01/07/14 Amended XX/XX/17</p> <p>Note: One way in which it may be established that a related party of a <u>natural person</u> director or officer may seek to establish that it is not <u>an</u> their associate of the <u>natural person</u> director or officer is for the <u>director, officer, natural person</u> or related party in question to give a statutory declaration or some other form of certification to the <u>listed</u> entity to that effect. <u>The listed entity should take this and any other information known to it into account when forming a view as to whether or not the related party is in fact an associate of the natural person.</u></p>
<u>reverse takeover</u>	<p><u>a takeover bid or a merger by way of scheme of arrangement under Part 5.1 of the Corporations Act where an entity is proposing to acquire securities of another body and the aggregate number of +equity securities issued or to be issued by the entity:</u></p> <ul style="list-style-type: none"> <u>• under the +takeover bid or scheme; and/or</u> <u>• to fund the cash consideration payable under the +takeover bid or scheme,</u> <p><u>is equal to or greater than the number of fully paid +ordinary securities on issue in the entity at the date of announcement of the +takeover bid or scheme. Separate issues may be aggregated if, in ASX's opinion, they form part of the same commercial transaction.</u></p> <p>Introduced XX/XX/17</p>
<u>reverse takeover target</u>	<p><u>the body in which an entity is proposing to acquire securities in a reverse takeover.</u></p> <p>Introduced XX/XX/17</p> <p>Note: takeover bid has the same meaning as in section 9 of the Corporations Act.</p>
...	...
takeover	<p>(a) a takeover bid;</p> <p>(b) a similar bid under a foreign regime.</p> <p>Introduced 01/07/97 Amended 13/03/00</p> <p>Note: <u>The "takeover bid" has the same meaning as in section 9 of the Corporations Act</u> listing rules apply to takeovers as follows.</p> <ul style="list-style-type: none"> <u>• Takeovers which may be made under the Corporations Act. The term "takeover bid" is used, which has the meaning given in section 9 of the Corporations Act (see listing rule 49.12).</u> <u>• Takeovers which must be made under the Corporations Act. The listing rules refer to an off-market bid that is required to comply with the Corporations Act and a market bid that</u>

	<p>is required to comply with the Corporations Act.</p> <ul style="list-style-type: none">• Takeovers under Australian law and under a foreign regime (whether under legislation or another regime). The defined term “takeover” is used.
--	---