

APPLYING FOR ADMISSION – ASX LISTINGS

<p>The purpose of this Guidance Note</p>	<ul style="list-style-type: none"> To assist entities wishing to apply for admission to the official list of ASX as an ASX Listing to prepare their application for listing
<p>The main points it covers</p>	<ul style="list-style-type: none"> The listing process generally Timing requirements under the Corporations Act for the lodgement of listing applications Guidance on particular admission requirements Additional pre-quotation disclosures required in the case of bookbuilds
<p>Related materials you should read</p>	<ul style="list-style-type: none"> Guidance Note 4 <i>Foreign Entities Listing on ASX</i> Guidance Note 5 <i>CHESS Depository Interests (CDIs)</i> Guidance Note 7 <i>US Entities - Regulation S Offerings on ASX</i> Guidance Note 9 <i>Disclosure of Corporate Governance Practices</i> Guidance Note 11 <i>Restricted Securities and Voluntary Escrow</i> Guidance Note 17 <i>Waivers and In-Principle Advice</i> Guidance Note 19 <i>Performance Shares</i> Guidance Note 20 <i>ASX Online</i> Guidance Note 29 <i>Applying for Admission – ASX Debt Listings</i> Guidance Note 30 <i>Applying for Quotation of Additional Securities</i> Guidance Note 34 <i>Naming Conventions for Debt and Hybrid Securities</i>

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Important notice: ASX has published this Guidance Note to assist listed entities to understand and comply with their obligations under the Listing Rules. Nothing in this Guidance Note necessarily binds ASX in the application of the Listing Rules in a particular case. In issuing this Guidance Note, ASX is not providing legal advice and listed entities should obtain their own advice from a qualified professional person in respect of their obligations. ASX may withdraw or replace this Guidance Note at any time without further notice to any person.

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1. Introduction

This Guidance Note is published to assist entities wishing to apply for admission to the official list of ASX Limited (ASX) as an ASX Listing to prepare their application for listing.¹

An ASX listing brings with it significant benefits. These include access to:

- one of the world's largest investment pools underpinned by Australia's mandatory superannuation system;
- price discovery in a deep and liquid market worth well over a trillion dollars;

¹ Listing Rules 1.1 to 1.7 and 1.16 to 1.20 set out the requirements for an entity to be admitted to ASX's official list as an ASX Listing. Listing Rule 2.1 sets out the requirements for the initial quotation of a listed entity's main class of securities and Listing Rule 2.5 sets out the requirements for the quotation of other classes of securities.

- the world class trading platform and clearing and settlement infrastructure of ASX, and the status that comes from being listed on one of the world's top 10 exchanges.

This Guidance Note does not deal with applications for admission to the official list of ASX as an ASX Debt Listing or as an ASX Foreign Exempt Listing.² Guidance on those types of applications can be found in Guidance Note 29 *Applying for Admission – ASX Debt Listings* and Guidance Note 4 *Foreign Entities Listing on ASX*.

Further guidance of relevance to foreign entities wishing to apply for admission to the official list of ASX as an ASX Listing can also be found in Guidance Note 4 *Foreign Entities Listing on ASX*, Guidance Note 5 *CHESSE Depositary Interests (CDIs)* and Guidance Note 7 *US Entities - Regulation S Offerings on ASX*.

Further guidance for trusts wishing to apply for admission to the official list of ASX as an ASX Listing can be found in Guidance Note 6 *Trusts*.

Guidance for entities that are already listed on how to prepare applications for quotation of additional securities can be found in Guidance Note 30 *Applying for Quotation of Additional Securities*.

2. The listing process

2.1 Initial discussion in advance of application

Before submitting an application for admission to the official list, ASX strongly recommends that the intended applicant first discuss its application with ASX Listings Compliance. This is particularly the case if the application will involve any of the following:

- the applicant's structure and operations have unusual features that could raise issues under Listing Rule 1.1 condition 1 (an entity's structure and operations must be appropriate for a listed entity);³
- the applicant's securities have unusual terms that could raise issues under Listing Rule 6.1 (the terms that apply to each class of an entity's securities must, in ASX's opinion, be appropriate and equitable);
- the applicant is proposing to have "performance shares" on issue and it would like a view from ASX as to the acceptability of the proposed milestones for those shares;⁴
- the applicant is unclear as to how ASX is likely to apply Chapter 9 and Appendix 9B of the Listing Rules in relation to any "restricted securities";⁵
- the applicant is proposing to request any unusual waivers from, or rulings in respect of, the Listing Rules in connection with its application;
- the applicant wishes to obtain ASX's approval not to provide with its admission application audited accounts covering the entities and periods otherwise required under the Listing Rules or to obtain ASX's opinion on the acceptability of any modified opinion, emphasis of matter or other matter paragraph that those accounts might contain;⁶

² Listing Rules 1.8, 1.9 and 1.16 to 1.20 set out the requirements for an entity to be admitted to ASX's official list as an ASX Debt Listing. Listing Rule 1.11 to 1.14 and 1.16 to 1.20 set out the requirements for an entity to be admitted to ASX's official list as an ASX Foreign Exempt Listing.

³ See '3.1 Appropriate structure and operations' on page 12.

⁴ See Guidance Note 19 *Performance Shares*.

⁵ See '3.10 Restricted securities' on page 12.

⁶ See '3.9 Satisfying the profit or assets test' on page 12.

- there are concerns that a director or proposed director of the entity may not meet ASX's good fame and character requirements;⁷ or
- there are circumstances present that could lead to ASX exercising its discretion not to admit an entity to the official list.⁸

In addition to providing a preliminary view on any of the matters mentioned above, ASX Listings Compliance will be able to provide general advice on the listing process and on the expected timeframe for listing, given its current workloads and the nature and complexity of the application. It can also provide information about available ASX trading codes and arrange the reservation of a suitable code for the applicant.⁹

The initial discussion should be held at the earliest opportunity with the ASX branch office where the entity intends to lodge its application for admission. Generally, this should be the branch office where the applicant will have its home branch if its application for admission is successful.¹⁰

The applicant should provide to ASX Listings Compliance all material information in its possession relevant to the matters being discussed so that the discussions are informed and meaningful.

2.2 Seeking in-principle advice from ASX

If it is anticipated that there may be issues about an entity's suitability for admission to the official list, it should strongly consider applying to ASX for in-principle advice on the application of Listing Rule 1.1 condition 1 and Listing Rule 1.19 before it goes to the effort and expense of lodging an application for admission.

In this context, the in-principle advice will be a statement in writing from ASX either that:

- (a) based on the facts known at the time, ASX is not aware of any reason that would cause the applicant not to have a structure and operations suitable for a listed entity for the purposes of Listing Rule 1.1 condition 1 or that would cause ASX to exercise its discretion to refuse admission to the official list under Listing Rule 1.19; or
- (b) if ASX is aware of any such reasons, those reasons.

There is a prescribed form for such applications, an editable version of which can be downloaded from the ASX website at: www.asx.com.au/regulation/compliance/compliance-downloads.htm.

It should be noted that receipt of positive advice under paragraph (a) above is not a guarantee that the entity will be admitted to the official list – it must still meet all of the requirements for admission and quotation set out in Chapters 1 and 2 of the Listing Rules. However, by obtaining such advice, the entity can have a high degree of certainty¹¹ that there are unlikely to be any fundamental hurdles to its application for admission to the official list under either Listing Rule 1.1 condition 1 or Listing Rule 1.19.

Similarly, if an entity applying for admission to the official list has any material concerns about how a particular Listing Rule might apply to it after it is listed or about ASX's preparedness to grant a waiver of a particular Listing

⁷ See '3.18 Directors must be of good fame and character' on page 12.

⁸ See '2.9 The listing decision' on page 9.

⁹ On the reservation of trading codes, see Guidance Note 18 *Market Codes and Status Notes*.

¹⁰ The ASX home branch for an entity looks after day-to-day matters relating to the entity's listing and makes decisions about the Listing Rules that affect it. ASX has home branches in Perth (servicing entities based in WA), Melbourne (servicing entities based in Victoria and Tasmania) and Sydney (servicing all other entities).

¹¹ Any advice that ASX provides in this regard will be expressed to be non-binding and based on the facts known at the time. It may be given subject to conditions and will usually be expressed to apply for a limited time only. If the entity omits or misrepresents material facts in its application for in-principle advice, or if other material facts come to light after ASX provides its advice, ASX may withdraw or change its advice. Regardless of any view expressed in ASX's advice, ASX will retain its absolute discretion under Listing Rule 1.19 not to admit the applicant to the official list, which it can exercise at any time. Among other reasons, this is because the full range of issues with an entity's application for admission to the official list will often not be apparent until the entity lodges its admission application with its listing prospectus, PDS or information memorandum.

Rule, the entity should strongly consider applying to ASX for in-principle advice from ASX on that issue before it goes to the effort and expense of lodging an application for admission.

In this context, the in-principle advice will be a statement in writing expressing ASX's view on the application of a Listing Rule to, or on ASX's preparedness to grant a waiver of a Listing Rule in, a particular situation. By obtaining such advice, the entity can have a high degree of certainty¹² about ASX's position on the issue and reflect that in its transaction structuring and in its listing documentation.

There is no prescribed form for this latter type of application. A letter from the entity or its advisers detailing the advice sought and providing the information set out in section 12 of Guidance Note 17 *Waivers and In-Principle Advice* will suffice.

In either case above, the application for in-principle advice should be addressed to ASX Listings Compliance at the ASX branch where the entity intends to lodge its application for admission to the official list. If the entity is wanting to receive a decision on the application for in-principle advice ahead of filing its application for admission, it should lodge the application for in-principle advice at least 4 weeks prior to the date on which it intends to lodge its application for admission.

ASX charges a fixed fee of \$5,000 (plus GST) for providing in-principle advice in advance of, and in connection with, an application for admission to the official list.¹³ Payment must be made at the time of lodging the application for in-principle advice with ASX.¹⁴ ASX will not commence working on an application for in-principle advice until the fee has been paid.

Guidance Note 17 *Waivers and In-Principle Advice* has further guidance on how to apply for in-principle advice.

2.3 The admission application

To apply for admission to the ASX official list, an entity must complete an application in the prescribed form and give it to ASX. The prescribed form for an entity applying for an ASX Listing is an Appendix 1A – *ASX Listing Application and Agreement*. An editable version of the Appendix 1A application form can be downloaded from www.asx.com.au/regulation/compliance/compliance-downloads.htm.

The application must be properly completed, dated and executed by the entity seeking admission to the official list.¹⁵ It must also be accompanied by the Information Form and Checklist (ASX Listings) published on the ASX website¹⁶ and all of the information and documents referred to in the Information Form and Checklist. This includes a copy of the applicant's prospectus or product disclosure statement (PDS) that has been lodged with the Australian

¹² Any advice that ASX provides in this regard will be expressed to be non-binding and based on the facts known at the time. It may be given subject to conditions and will usually be expressed to apply for a limited time only. If the entity omits or misrepresents material facts in its application for in-principle advice, or if other material facts come to light after the advice is provided, ASX may withdraw or change its advice.

¹³ See Listing Rule 16.7 and Schedule 3 of Guidance Note 15A *Schedule of ASX Listing Fees*. If the listing proceeds, this amount will be set off against the entity's initial listing fee. ASX does not charge a fee for an application for in-principle advice that is made at the same time as, or after, an entity has lodged an Appendix 1A, 1B or 1C application for admission to the official list and paid its initial listing fee in connection with that application.

¹⁴ Payment can be made either by cheque made payable to ASX Operations Pty Ltd or by electronic funds transfer to the following account:

Bank: National Australia Bank
Account Name: ASX Operations Pty Ltd
BSB: 082 057
A/C: 494728375
Swift Code (Overseas Customers): NATAAU3302S

If payment is made by electronic funds transfer, the entity should email its remittance advice to ar@asx.com.au or fax it to (612) 9227-0553, describing the payment as "fee for in-principle advice" and including the name of the applicant, the home branch (ie Sydney, Melbourne or Perth) where the entity intends to lodge its application and the amount paid.

¹⁵ In the case of a trust, the application should be made in the name of the responsible entity of the trust.

¹⁶ An editable version of the Information Form and Checklist (ASX Listings) can also be downloaded from www.asx.com.au/regulation/compliance/compliance-downloads.htm.

Securities and Investments Commission (ASIC) or, if ASX has agreed that the applicant may lodge an information memorandum in lieu of a prospectus or PDS, a completed information memorandum.¹⁷

ASX may reject or defer consideration of an application for listing that is not properly completed and executed or that is not accompanied by all of the required information and documents.

2.4 Requests for waivers

If the applicant is seeking a waiver from, or in-principle advice about the application of, any Listing Rule, its application should include a letter from the entity or its advisers detailing the waiver or advice sought and providing the information set out in Guidance Note 17 *Waivers and In-Principle Advice*.

2.5 Processing time

ASX Listings Compliance aims to process applications for listing as quickly as it reasonably can, given its workloads at the time. Typically,¹⁸ an application for ASX Listing will take ASX around four to six weeks to process, from the time a completed application for listing and all other required documents are lodged with ASX, until a decision is made on whether or not to admit the applicant to the official list and quote its securities. It may take longer, however, if:

- the application raises any issues under Listing Rule 1.1 condition 1 (the entity's structure and operations must be appropriate for a listed entity¹⁹) or that might cause ASX to exercise its discretion under Listing Rule 1.19 to refuse the application;²⁰
- the applicant is seeking an atypical number or type of waivers from the Listing Rules;
- the application is not of a high standard; or
- the applicant is tardy in responding to any requests by ASX for further information or documents required to process the application.

In each case above, ASX Listings Compliance will liaise with the applicant and keep it apprised of the impact this may have on its timetable for listing.

Where an applicant is making a non-underwritten offer of securities in connection with its application to list on ASX which is subject to a minimum subscription condition, ASX may defer finalising its review of the application until it is advised by the applicant that the minimum subscription condition has been, or is close to being, satisfied. If it does delay finalising its review of the application, ASX will advise the applicant of that fact. Whether or not ASX does this, the applicant should keep ASX apprised of its progress in satisfying any minimum subscription condition for a non-underwritten offer of securities.

The time it takes ASX to process an application for listing is very much a function of the quality of the application. The better the quality of the application, the more quickly and efficiently ASX is likely to be able to process it. ASX therefore encourages applicants for listing to engage professional advisers who are experienced in ASX listings and to seek their advice and assistance in preparing their listing application.

Subject to the comments above, ASX Listings Compliance will generally try to process an application for listing within a timeframe that is consistent with the timetable outlined in any prospectus, PDS or information memorandum the applicant may be issuing in connection with its listing. That said, if an applicant intends to specify in its prospectus, PDS or information memorandum a timetable that is shorter than six weeks from the date of lodgement

¹⁷ See '3.3 Prospectus or PDS' on page 12 and '3.4 When ASX will accept an information memorandum in lieu of a prospectus or PDS' on page 12.

¹⁸ The normal timetable for processing an application for listing may be fast tracked for certain offers that proceed by way of a pathfinder prospectus or PDS: see '2.6 Fast track process for offers proceeding by pathfinder prospectus or PDS' on page 7.

¹⁹ See '3.1 Appropriate structure and operations' on page 12.

²⁰ See '2.9 The listing decision' on page 9.

of the application with ASX, it should discuss the matter with ASX Listings Compliance at the earliest opportunity to determine whether the proposed timetable can be accommodated.

2.6 Fast track process for offers proceeding by pathfinder prospectus or PDS

In most cases, ASX normally does not commence its review of a listing application until the applicant has filed its prospectus or PDS with ASIC, this being one of the documents that must accompany the application for listing. This in turn generally means that an applicant for listing is not normally notified of ASX's decision in relation to the application for some 4 to 6 weeks thereafter, with quotation of the applicant's securities on ASX commencing at some point after notification of ASX's decision to admit the applicant to the official list.

Where, however, an entity is proposing to use a "pathfinder" prospectus or PDS,²¹ ASX may agree to "front end" its review of the entity's listing application based on the pathfinder prospectus or PDS and complete most of the work involved in assessing the application before the applicant formally lodges its final prospectus or PDS with ASIC. By doing this, ASX will generally be able to commence official quotation of the applicant's securities on ASX approximately two weeks after the date (the formal lodgement date) that the applicant lodges with ASX its application for listing with the final version of its prospectus or PDS, as lodged with ASIC.

If ASX agrees to apply this fast track process, the applicant must lodge its pathfinder prospectus or PDS, a draft of its Appendix 1A application form and the accompanying Information Form and Checklist (ASX Listings), drafts or final versions of all the supporting information and documents that would ordinarily accompany that Form/Checklist and a cheque for the initial listing fee no less than 4 weeks prior to the formal lodgement date. If the entity is proposing to seek a waiver from any Listing Rule in connection with its listing, a formal request for that waiver will also be required at this time.

In addition, if the applicant is proposing to seek in-principle advice²² about the application of, or a waiver from, any Listing Rule (including the application of ASX imposed escrow), the application for in-principle advice must be lodged with ASX no less than 4 weeks prior to lodging the pathfinder prospectus or PDS and draft Appendix 1A application form with ASX.

On the formal lodgement date, the applicant will need to lodge with ASX:

- a completed and signed Appendix 1A application form;
- a completed Information Form and Checklist (ASX Listings);
- a copy of the final prospectus or PDS lodged with ASIC; and
- final versions of any draft documents that were lodged with ASX prior to the formal lodgement date,

together with a mark-up showing any changes that were made to the above documents from the versions originally lodged with ASX or, if no such changes have been made, written confirmation to that effect.

ASX's ability to meet this fast track timetable for quotation will depend on there being no material changes to the Appendix 1A application form, pathfinder prospectus or PDS and other draft documents originally given to ASX.

If an applicant for listing is proposing to use a pathfinder prospectus or PDS for its offer and wishes to take advantage of this fast track process, it should discuss the matter with ASX Listings Compliance at the earliest opportunity to ensure that ASX is agreeable to applying the process described above and that its proposed timetable for listing can be accommodated.

²¹ A pathfinder prospectus or PDS is a document distributed to professional or sophisticated investors which does not seek subscriptions but is designed to facilitate the pricing of securities or other financial products proposed to be offered under, or for settling the contents of, the prospectus or PDS. See also paragraph 268 of ASIC Regulatory Guide 254 *Offering securities under a disclosure document*.

²² See Guidance Note 17 *Waivers and In-Principle Advice*.

2.7 Corporations Act deadlines for lodgement and quotation

If an entity has issued a prospectus or PDS in connection with its listing application, as most will,²³ the Corporations Act 2001 (Cth)²⁴ imposes strict timing requirements as to when the application for admission must be lodged with ASX and when admission to quotation of its securities must be achieved.

If a prospectus or PDS states or implies that the securities offered under it are to be quoted on ASX, then an application for admission to quotation must be made to ASX within 7 days, and the securities must be admitted to quotation on ASX within 3 months, after the date of the prospectus or PDS.²⁵

The entity's Appendix 1A application form for admission to the official list as an ASX Listing also operates as an application for admission to quotation for these purposes. An entity should liaise with its professional advisers to ensure that a properly completed Appendix 1A application form is lodged with ASX in sufficient time to satisfy these time limits.

An entity that has or may have difficulties meeting these time limits should refer to Part I (Minimum subscription and quotation conditions) of ASIC Regulatory Guide 254 *Offering securities under a disclosure document* for guidance on what to do. If it has any queries in that regard, it should direct them to ASIC, the regulatory body responsible for administering the Corporations Act, rather than ASX. The entity should keep ASX informed of any material developments and, if it lodges a "refresh document" with ASIC to extend its prospectus in accordance with that Regulatory Guide, it should provide a copy to ASX as soon as practicable thereafter.

An applicant generally should not issue any securities offered under a prospectus or PDS that states or implies that the securities offered under it are to be quoted on ASX unless and until:

- it receives a written notification from ASX that its application has been successful and ASX intends to admit the entity to the official list and to quote its securities; *and*
- it has a high degree of confidence that it will be able to meet any conditions that ASX may have imposed on its admission or the quotation of its securities.²⁶

If it issues securities to investors under the prospectus or PDS and it finds that its securities are not admitted to quotation on ASX within the period prescribed by the Corporations Act, the issue is void and it will be obliged to return to investors the moneys they have paid under the prospectus or PDS, or else to obtain a court order extending the time limit for quotation.²⁷

An applicant should also note that it is required to hold any moneys received from an investor under a prospectus or PDS on trust for the investor until the investor is issued with the securities for which they have applied.²⁸ The applicant is not at liberty to expend any of those moneys before then.

²³ See '3.3 Prospectus or PDS' on page 12.

²⁴ Referred to in this Guidance Note as the "Corporations Act". Unless otherwise indicated, references in this Guidance Note to sections of an Act are to sections of the Corporations Act.

²⁵ For securities offered under a prospectus, see sections 723(3) and 724 and Part I (Minimum subscription and quotation conditions) of ASIC Regulatory Guide 254 *Offering securities under a disclosure document* (RG 254) and, for securities offered under a PDS, see sections 1013H and 1016D.

²⁶ The requirement that securities be admitted to quotation on ASX within 3 months of a prospectus or PDS is only met when they are actually admitted to quotation on ASX and not when ASX advises the entity that it intends to admit the entity to the official list and/or to quote its securities (cf RG 254.218-220).

²⁷ See section 723 and Table 9 in RG 254 (securities offered under a prospectus) and section 1016D (securities offered under a PDS).

²⁸ See section 722 (securities offered under a prospectus) and section 1017E (securities offered under a PDS). In the case of securities issued under a PDS, the application money received from investors must be paid into an account that meets the requirements of section 1017E. In the case of securities issued under a prospectus, the Corporations Act does not specify how investor funds should be held other than saying that they must be held on trust. Best practice, however, would be for the funds to be paid into a separate and secure bank account set up specifically for that purpose, which is designated as a "trust account".

2.8 Payment of initial listing fee

An entity applying for admission to the official list must pay the applicable initial listing fee in accordance with Chapter 16 of the Listing Rules and the schedule of fees set out in Guidance Note 15A *Schedule of ASX Listing Fees*. This payment must be made at the time it lodges its application for listing.²⁹ ASX will not begin processing an application for listing until it has received the initial listing fee.

Payment can be made either by cheque made payable to ASX Operations Pty Ltd or by electronic funds transfer to the following account:

Bank: National Australia Bank
Account Name: ASX Operations Pty Ltd
BSB: 082 057
A/C: 494728375
Swift Code (Overseas Customers): NATAAU3302S

If payment is made by electronic funds transfer, the applicant should email its remittance advice to ar@asx.com.au or fax it to (612) 9227-0553, describing the payment as "initial listing fee" and including the name of the entity applying for admission, the ASX home branch where the entity has lodged its application (ie Sydney, Melbourne or Perth) and the amount paid.

As mentioned below,³⁰ an entity should apply for quotation of, and pay the initial listing fee for, the maximum number of securities that can be quoted. If the actual number of securities eventually quoted is less than the amount applied for, ASX will refund the excess.³¹

Further guidance about the calculation and payment of listing fees is set out in Guidance Note 15 *ASX Listing Fees*. There is also a Listing Fee Calculator available online at: www.asx.com.au/prices/cost-listing.htm.

2.9 The listing decision

Decisions on whether or not an entity meets the conditions for admission to the official list and the quotation of its securities, and whether or not to grant any waiver requested or required in connection with its admission or the quotation of its securities, are generally made on behalf of ASX by the ASX National Listing Committee (NLC). The NLC's decision on these matters will be reduced to writing and communicated to the applicant by ASX Listings Compliance, usually via an emailed letter.

ASX has an absolute discretion in deciding whether or not to admit an entity to the official list and to quote its securities, and is not required to give any reasons for its decision in that regard.³² ASX may exercise its discretion not to admit an entity to the official list even where the entity meets, or is expected to meet, the specific conditions set out in the Listing Rules for listing and quotation. Examples of where ASX may do so include:³³

- ASX has concerns that the applicant's structure, business, financial condition, governance arrangements, board or management may not be suitable for an entity listed on ASX;

²⁹ As a practical matter, this means that the applicant will need to fund the payment of its initial listing fee from sources other than the subscriptions it intends to raise under its listing prospectus or PDS. This is for two reasons. First, lodgement of a listing application usually occurs at or before the start of the offer period under the applicant's listing prospectus or PDS, so the applicant typically will not have raised any subscriptions at that point. Secondly, as mentioned above in note 28 and the accompanying text, the applicant will be required to hold any moneys it receives from investors under its listing prospectus or PDS on trust for investors until they have been issued with their securities and so it cannot use those moneys for any purpose ahead of that issue. See also *Re Elsmore Resources Ltd* [2016] NSWSC 856.

If the applicant borrows money to pay its initial listing fee and intends to use the proceeds raised under its listing prospectus or PDS to repay the borrowing, this should be disclosed in the "use of funds" section of its prospectus or PDS.

³⁰ See '3.6 Number of securities to be quoted' on page 12.

³¹ Further details of the refund arrangements are set out in Guidance Note 15 *ASX Listing Fees*.

³² Listing Rules 1.19 and 2.9.

³³ The list of examples where this discretion may be exercised is not intended to be exhaustive.

- the applicant is established or has its main business operations in an emerging or developing market³⁴ and ASX has concerns about the regulatory environment in that market;³⁵
- ASX has concerns about the genuineness of the applicant's interest in accessing the Australian equity market;³⁶
- ASX is not satisfied with the qualifications and experience of:
 - the auditor who provided an audit report for, or conducted a review of, the applicant's accounts included with its listing application;
 - the auditor or investigating accountant who conducted a review of the applicant's pro forma statement of financial position included with its listing application; or
 - any other expert or professional adviser providing a report included in the applicant's listing prospectus, PDS or information memorandum or otherwise providing services to the applicant in relation to the listing;
- ASX has had prior unacceptable dealings with the applicant or a director, promoter, broker, auditor, investigating accountant, expert or professional adviser involved in the application;
- the applicant has not engaged legal and/or accounting advisers to assist it with the preparation of its listing prospectus, PDS or information memorandum, giving rise to potential concerns about the quality of that document and the due diligence supporting it;
- the applicant has not engaged a broker or other financial adviser to assist it with its capital raising, giving rise to potential concerns about the applicant's ability to meet ASX's minimum spread requirements without using artificial means;³⁷
- ASIC or another corporate regulator has expressed concerns to ASX about the admission of the applicant to the official list;
- the applicant has been denied admission to the official list of another exchange; or
- ASX otherwise has concerns that admitting the applicant to the official list may put at risk the reputation of the ASX market as one of quality and integrity.

Decisions on whether or not ASX should exercise its discretion not to admit an entity to the official list are generally made on its behalf by the ASX Policy and Listings Standards Committee (PLSC) on reference from the NLC. All applications for admission to the official list from entities that are incorporated in, or have their main business operations, a majority of their board or a controlling shareholder resident in, an emerging or developing market are closely scrutinised against the criteria set out above and may be referred to the PLSC for further consideration if any of those criteria are present or if there is a broader concern about the appropriateness of the entity's structure and operations for a listed entity.³⁸

³⁴ For these purposes, ASX regards any country that is on the list of developing countries declared by the Minister for Foreign Affairs for the purposes of the Overseas Aid Gift Deduction Scheme established by the Income Tax Assessment Act 1997 (available online at <http://dfat.gov.au/about-us/publications/Documents/list-developing-countries.pdf>) as an emerging or developing market.

³⁵ Where an entity's main business operations are located in an emerging or developing market and there are concerns about the regulatory environment in that market, it will generally be preferable if the applicant establishes itself in a market where there are no such concerns (so that it is at least subject to an acceptable corporate regulatory environment at the parent level) and it operates the business either itself or through a child entity established in the emerging or developing market.

³⁶ Common indicia that give rise to such concerns include where the applicant is seeking to raise a small amount of capital relative to its size or where the statement in its listing prospectus, PDS or information memorandum about the proposed use of funds is vague or indicates that most of the funds will be spent on the costs of listing.

³⁷ See '3.8 Minimum spread' on page 12.

³⁸ See '3.1 Appropriate structure and operations' on page 12.

ASX may impose such conditions on admission and/or quotation as it considers appropriate.³⁹

In practice, ASX's decision to admit an entity as an ASX Listing and quote its securities is usually expressed to be subject to a number of conditions that must be satisfied before the decision becomes effective. Typically, these will include:

- the close of the offer under the applicant's prospectus, PDS or information memorandum and the completion of the issue of any required minimum subscription;
- confirmation in a form acceptable to ASX (usually a bank statement) that the applicant has received cleared funds for the full amount of the issue price under the prospectus, PDS or information memorandum;
- mailing of CHES or issuer sponsored holding statements to the successful applicants;⁴⁰
- ASX being satisfied that the applicant meets ASX's minimum free float⁴¹ and spread⁴² requirements;
- a statement setting out the number of securities subject to escrow and the escrow period applied;
- where appropriate, provision of updated financial information (such as an updated statement of commitments or pro forma balance sheet) based on the actual amount of funds raised under the applicant's prospectus, PDS or information memorandum; and
- the provision to ASX of any remaining documents referred to in the Information Form and Checklist (ASX Listings) that have not yet been lodged with ASX, including usually:
 - a statement setting out the names of the 20 largest holders of each class of securities to be quoted, and the number and percentage of each class of securities held by those holders;
 - a distribution schedule of each class of equity security to be quoted setting out the number of holders in the categories:
 - 1 - 1,000
 - 1,001 - 5,000
 - 5,001 - 10,000
 - 10,001 - 100,000
 - 100,001 and over; and
 - the number of holders of a parcel of securities (excluding restricted securities or securities subject to voluntary escrow⁴³) with a value of at least \$2,000, based on the issue/sale price.

Once ASX is satisfied that the entity has met all applicable admission and quotation conditions, ASX will notify the entity of the date on which trading in its securities will commence.

³⁹ Listing Rules 1.19 and 2.9.

⁴⁰ CHES stands for 'Clearing House Electronic Subregister System'. CHES is a proprietary system operated by ASX Settlement that facilitates the clearing and settlement of trades in securities quoted on ASX and includes an electronic sub-register for the registration of title to securities issued by ASX-listed companies. See also '3.20 Clearing and settlement' on page 12.

⁴¹ See '3.7 Minimum free float' on page 12.

⁴² See '3.8 Minimum spread' on page 12.

⁴³ As defined in Listing Rule 19.12.

2.10 Documents released to the market

A copy of the applicant's listing prospectus, PDS or information memorandum⁴⁴ will be formally released to the market via the ASX Market Announcements Platform shortly before the listing decision,⁴⁵ after the applicant has been set up in ASX's systems with its trading code and corporate details.⁴⁶ This helps ensure that there is an informed secondary market in the applicant's securities if and when quotation commences.

After ASX has admitted an entity to the official list and prior to the commencement of quotation, a number of other documents will be released to the market through the ASX Market Announcements Platform as pre-quotation disclosure, again to help ensure that there is an informed secondary market in the entity's securities. These documents will typically include:

- the entity's Appendix 1A application form and the accompanying Information Form and Checklist (ASX Listings);
- the entity's constitution;
- any financial statements given to ASX in connection with the application;
- if it is not included in the entity's prospectus, PDS or information memorandum but given to ASX as a separate document:
 - the entity's trading policy;
 - the entity's corporate governance statement;⁴⁷ and
 - the information about employment, service and consultancy agreements with the entity's chief executive officer, directors and their related parties referred to in Listing Rule 3.16.4; and
- the distribution schedule of the numbers of holders in each class to be quoted and the statement setting out the names of the 20 largest holders in each class of securities to be quoted, and the number and percentage of each class of securities held by those holders.

For privacy and/or confidentiality reasons, the documents released on the ASX Market Announcements Platform with an admission application for an ASX Listing will not include the documents supplied to ASX about the directors or proposed directors in satisfaction of Listing Rule 1.1 condition 20.⁴⁸ Nor will they include restriction agreements, underwriting agreements or other material contracts⁴⁹ provided with the listing application or any letter applying for a waiver or in-principle advice.

⁴⁴ If the applicant has issued one or more supplementary prospectuses, PDSs or information memoranda, these will also be released on the ASX Market Announcements Platform at this time. If the applicant has issued one or more replacement prospectuses, PDSs or information memoranda, the current replacement rather than the original or any superseded replacements will be released on the ASX Market Announcements Platform.

⁴⁵ Ahead of this, at the request of the applicant or of its own volition, ASX may include a link to a short summary of the applicant and its offer on the "Upcoming floats and listings" page of the ASX website (see <http://www.asx.com.au/prices/upcoming.htm>). This will usually include a link to the applicant's website, from where a prospective investor will generally be able to download the applicant's listing prospectus, PDS or information memorandum. The fact that ASX publishes these summary details and the link to the applicant's website does not constitute approval of the entity's application to be admitted to the official list, nor any express or implied endorsement by ASX of its listing prospectus, PDS or information memorandum. ASX may still refuse the application notwithstanding it has taken these steps.

⁴⁶ Again, the fact that ASX enters an entity's details into its systems and releases a copy of its prospectus, PDS or information memorandum on the Market Announcements Platform does not constitute approval of the entity's application to be admitted to the official list, nor any express or implied endorsement by ASX of its prospectus, PDS or information memorandum. ASX may still refuse the application notwithstanding it has taken these steps.

⁴⁷ See '3.14 ASX Corporate Governance Council recommendations' on page 12, including in particular note 182.

⁴⁸ Which requires ASX to be satisfied that the directors or proposed directors of the entity are of good fame and character (see '3.18 Directors must be of good fame and character' on page 12).

⁴⁹ Since material contracts are not released on the ASX Market Announcements Platform, it is particularly important that the entity's prospectus, PDS or information memorandum include a fair and accurate description and a summary of the material terms of those contracts.

If the applicant has received a waiver of any Listing Rule in connection with its admission, ASX may require the entity to disclose on the ASX Market Announcements Platform the fact that it has received the waiver and the terms of the waiver.

2.11 Requirements for additional information

ASX may require an applicant for listing to disclose additional information over and above that required in its Appendix 1A application form and the accompanying Information Form and Checklist (ASX Listings).⁵⁰

ASX may submit, or require the applicant to submit, any information given to ASX to the scrutiny of an expert selected by ASX.⁵¹

ASX may also impose a condition on admission or quotation that the applicant disclose certain information to the market before its admission to the official list or quotation commences.⁵²

Entities that conduct an initial public offer by way of a bookbuild should be aware that, as a matter of practice, ASX requires⁵³ disclosure of certain information relating to the outcome of the bookbuild before quotation commences. This information is set out in the Annexure to this Guidance Note.

Other examples of where ASX may exercise these powers include:⁵⁴

- where ASX considers that the market would benefit from such disclosure, ASX may require the applicant to provide information about the qualifications and experience of its auditor or any other auditor or investigating accountant who provided an audit report or conducted a review referred to in its listing prospectus, PDS or information memorandum for release to the market before quotation commences; and
- where ASX has concerns about the extent or quality of due diligence undertaken in relation to a listing prospectus, PDS or information memorandum, ASX may ask for a detailed description of the applicant's due diligence program and a copy of the final due diligence report (although ASX would not generally require these documents to be released to the market).

2.12 Responsibility for materials provided with a listing application

An officer or employee of a corporation who gives, or authorises or permits the giving of, materially false or misleading⁵⁵ information to ASX in connection with a listing application by the corporation:

- knowingly, breaches section 1309(1) of the Corporations Act, which is a criminal offence punishable by a fine of up to 200 penalty units and/or imprisonment for up to 5 years; or
- without taking reasonable steps to ensure that the information was not false or misleading, breaches section 1309(2) of the Corporations Act, which is a criminal offence punishable by a fine of up to 100 penalty units and/or imprisonment for up to 2 years.⁵⁶

⁵⁰ Listing Rule 1.17.

⁵¹ Listing Rule 1.17. The costs of the expert must be paid for by the applicant.

⁵² Listing Rules 1.19 and 2.9.

⁵³ Pursuant to Listing Rules 1.19 and 2.9.

⁵⁴ The list of examples where this power may be exercised is not intended to be exhaustive. Other examples of where ASX may exercise its power to require the disclosure of additional information (either privately to ASX or to the market) are included in notes 59, 64, 126, 144, 149, 161, 166, 167, 168, 182, 201 and 214 and the accompanying text.

⁵⁵ This includes omitting material which renders the information given to ASX misleading in a material respect.

⁵⁶ See for example ASIC Media Release 14-103MR announcing that a former Perth director had been sentenced to 14 months jail, with a minimum of 5 months to serve before being released on a \$5,000 recognisance requiring good behaviour for 12 months, for providing false or misleading information to ASX in connection with the conditions precedent for admission to the official list.

Lead managers and other professional advisers involved in a listing application who do likewise can also be liable under other provisions of the Corporations Act.⁵⁷

It is therefore important that applicants and their officers, employees, lead managers and other professional advisers exercise appropriate care and diligence in the preparation of a listing application and supporting documents.

3. Particular listing requirements

3.1 Appropriate structure and operations

An entity seeking admission to the official list as an ASX Listing must have a structure and operations that are appropriate for a listed entity.⁵⁸

Examples of where an applicant may not have a structure and operations that are appropriate for a listed entity include:

- the applicant has a vague or ill-defined business model or its business operations do not appear to ASX to have any substance;⁵⁹
- the applicant's proposed business is little more than a concept or idea;
- ASX has concerns that the applicant may not be solvent or have enough working capital to achieve its stated business objectives after it completes its initial public offering;⁶⁰
- ASX is not satisfied as to the legality of the applicant's business operations in any jurisdiction where they are materially carried on;
- the applicant has not yet secured the key licences, government approvals, intellectual property rights or other property or rights it will need to operate its business;⁶¹
- the applicant has structured itself or its business operations to give its promoters or management a different ownership interest in its business operations than its ordinary security holders;⁶²

⁵⁷ See for example ASIC Media Release 08-167, announcing that ASIC had banned an individual from providing financial services for 5 years, among other things, for knowingly misleading or deceiving ASX about shareholder spread and, in so doing, misleading or deceiving investors under section 1041H of the Corporations Act. In that case, the individual had been engaged as a consultant to assist an applicant for listing that was having difficulty meeting the spread test. He subsequently sought assistance from some of his associates and instructed them to encourage others known to them to fill in application and transfer forms for shares. He paid \$100 to his associates for each completed application, a portion of which was sometimes passed onto the applicant. The individual applicants were encouraged to fill out an IPO application form without completing the payment details on the application form. They were also asked to execute pre-completed share transfer forms. The shares were then paid for from a bank account held by a director of the applicant and later transferred out of the applicants' names by way of the pre-completed transfer forms.

⁵⁸ Listing Rule 1.1 condition 1. In assessing whether this requirement is met, ASX has regard to the principles on which the Listing Rules are based, as set out in the introduction to the Listing Rules. One of those principles is that securities "should have rights and obligations attaching to them that are fair to new and existing security holders".

⁵⁹ ASX has, for example, declined to accept an application for admission to the official list from an applicant that claimed to have invented a "perpetual motion" machine. If ASX has concerns about the substance of an applicant's business operations, it may exercise its power under Listing Rule 1.17 to require additional information from the applicant about those operations and for that information to be submitted to the scrutiny of an expert selected by ASX but paid for by the applicant.

⁶⁰ See notes 147-150 below and the accompanying text.

⁶¹ In such a case, where ASX is otherwise satisfied that the applicant has a structure and operations suitable for listing, ASX may decide to admit the applicant to the official list on condition that it obtain the necessary licences, government approvals, intellectual property rights or other property or rights needed to operate its business within a specified period.

⁶² An example is where the applicant structures itself so that its business operations are held in a separate unlisted vehicle (OpCo), in which some of the shares are held by the applicant for listing (ListCo) and the balance are held by a separate unlisted vehicle (SepCo) established by or for the benefit of the applicant's promoters or managers. This potentially opens up the door for circumvention of some core principles enshrined in the Listing Rules, including that a listed entity should have only one class of ordinary securities (Listing Rule 6.2) and

- a material part of the applicant's business operations is conducted through an incorporated or unincorporated joint venture⁶³ with another party or parties and the joint venture agreement gives another joint venture participant disproportionate representation on the governing body of the joint venture or disproportionate decision-making powers;
- the applicant holds a derivative or economic interest in a material part of its assets or business operations via potentially risky contractual arrangements with the owner of the assets or operations rather than owning them itself or through a child entity;⁶⁴
- the applicant's board has no directors with experience directing or managing a listed entity;
- the applicant's board has no directors with experience directing or managing a business of the type that the entity will have at the time of its proposed listing;
- the applicant appears to ASX to have structured its board and management to avoid having to meet the good fame and character requirements for a particular individual;⁶⁵
- the applicant appears to ASX to have priced the offer of its securities under its listing prospectus, PDS or information memorandum at an artificially high price in an attempt to meet the market capitalisation test⁶⁶ or ASX's minimum spread requirements;⁶⁷

each shareholder should have one vote for each ordinary security they hold (Listing Rule 6.9). It can also give rise to a number of potential difficulties or concerns, including:

- ensuring that the amount and quality of information provided to the market on an ongoing basis is the same as would have been the case if ListCo owned the business operations itself (noting that OpCo will not be subject to the continuous disclosure regime in the Listing Rules or the Corporations Act and, even where ListCo can appoint directors to the board of OpCo, they will have duties of confidentiality to OpCo);
- ensuring that the indirect economic interests that the investors in ListCo have in the underlying business operations of OpCo are not able to be diluted by corporate transactions done at the OpCo level;
- ensuring that ASX's escrow regime is not compromised at the OpCo level;
- if SepCo has any power to control or veto the appointment or removal of the directors and managers of OpCo, the potential that has to interfere with the operation of the market for corporate control; and
- generally, the potential for a misalignment of interests and conflict created by giving the promoters or management a direct personal interest in the business operations through SepCo rather than giving them shares in ListCo and thereby aligning their interests with the security holders in ListCo.

These difficulties or concerns are particularly acute where the interest held by ListCo in OpCo is a minority interest.

⁶³ Where an applicant has a material interest in a joint venture, ASX would generally expect its listing prospectus, PDS or information memorandum to contain a clear description of the joint venture agreement, including the parties to the agreement and their respective rights and obligations under the agreement, as well as any risks arising from the fact that its business operations are conducted through a joint venture rather than by the entity itself or a child entity.

⁶⁴ For example, ASX does not consider that a "variable interest entity" or VIE is an acceptable structure for listing on ASX. A VIE is a construct used by non-Chinese parties to acquire the economic equivalent of ownership of certain business ventures in China that are otherwise subject to foreign ownership restrictions under Chinese law. A VIE structure attempts to mimic ownership of the Chinese business venture via a series of complex contractual arrangements with the Chinese owners of the venture. These arrangements are particularly risky as their status under Chinese law is presently unclear and they rely heavily on the Chinese owners performing their contractual obligations.

More generally, ASX would generally expect an applicant's listing prospectus, PDS or information memorandum to set out a clear description of how the applicant holds or derives its interest in its material assets and business operations and, if it does not do so directly or through a child entity, to include an explanation of why that structure has been employed, as well as any risks arising from the fact that its assets or business operations are held in that way rather than being directly owned by the entity itself or a child entity. ASX may also require the applicant under Listing Rule 1.17 to provide an opinion from a suitably qualified legal expert from the jurisdiction where the assets or business operations in question are located that the ownership structure is lawful in that jurisdiction.

⁶⁵ See '3.18 Directors must be of good fame and character' on page 12.

⁶⁶ The market capitalisation test refers to the second limb of the asset test in Listing Rule 1.3.1 (permitting an entity to list of ASX if it has a market capitalisation of at least \$15 million).

⁶⁷ See '3.8 Minimum spread' on page 12.

- the applicant's capital structure includes options,⁶⁸ performance shares or other convertible securities, and the total number of ordinary securities that will be issued if the options are all exercised, the performance milestones applicable to the performance shares are all achieved and the convertible securities are all converted is greater than the number of ordinary securities in the entity on the date of listing;⁶⁹
- the applicant's capital structure includes a not insignificant number of "piggy back" options (that is, options to acquire further options);⁷⁰
- the applicant's capital structure includes performance shares that do not meet the requirements outlined in Guidance Note 19 *Performance Shares*;
- the applicant is offering bonus or "loyalty" securities and it is a condition of receiving the benefit of those bonus or loyalty securities that security holders must retain other securities in the entity quoted on ASX for a given period;⁷¹
- the applicant's capital structure has separate classes of securities which confer on one class disproportionate representation on the board or other governing body of the entity or disproportionate voting powers;⁷²
- the applicant has not stipulated a minimum subscription condition for the offer of securities under its listing prospectus, PDS or information memorandum or the minimum subscription condition it has stipulated does not appear to ASX to be sufficient to raise enough capital to achieve its stated business objectives;⁷³
- the applicant has a stapled structure and the structure does not meet the requirements outlined in Guidance Note 2 *Stapled Securities*; and
- the applicant is an externally managed listed entity and the management agreement does not meet the requirements outlined in Guidance Note 26 *Management Agreements*.⁷⁴

⁶⁸ Note that ASX regards most performance rights to be options for the purposes of the Listing Rules: see Guidance Note 19 *Performance Shares*.

⁶⁹ ASX considers this capital structure to be inconsistent with the policy underlying Listing Rule 7.16, which provides that a listed entity cannot have more options on issue than underlying securities. Having this number of options, performance shares or other convertible securities in a capital structure may confuse investors and lead to difficulties in valuing the entity's securities. It may also have a significant overhang effect on the market price of its ordinary securities.

⁷⁰ Again, having a significant number of piggy back options on issue may confuse investors and lead to difficulties in valuing the entity's securities. It may also have a significant overhang effect on the market price of its ordinary securities.

⁷¹ Such a condition will act as a disincentive for security holders to trade the securities quoted on ASX. ASX considers this to be an inappropriate structure for the purposes of Listing Rule 1.1 condition 1.

⁷² Note also Listing Rule 6.2, which precludes a listed entity from having more than one class of ordinary security unless ASX approves the terms of the additional class or the additional class is of partly paid securities which, if fully paid, would be in the same class as the ordinary securities.

⁷³ An entity that undertakes an offer of securities in connection with its listing is expected to raise sufficient funds to meet the business objectives stated in its prospectus, PDS or information memorandum. In the case of an entity admitted under the assets test, its listing prospectus, PDS or information memorandum must include an express statement from its directors that the entity will have enough working capital at the time of its admission to carry out its stated business objectives or else the entity must give ASX an equivalent statement from an independent expert (see notes 147-150 below and the accompanying text).

If an entity does not raise enough working capital under its listing prospectus, PDS or information memorandum and consequently has to undertake a further capital raising shortly after listing, ASX may apply Chapter 11 of the Listing Rules (on the basis that the subsequent capital raising constitutes a significant change to the nature or scale of its business) and require the applicant to re-comply with Chapters 1 and 2 of the Listing Rules. Further guidance on this topic can be found in Guidance Note 12 *Significant Changes to Activities*.

⁷⁴ Listing Rule 15.16 prescribes a maximum five year term for any management agreement entered into by an investment entity. That rule, however, does not apply to entities that are not classified as 'investment entities'. This would include most typical infrastructure, energy and property funds.

Co-operative and other mutual business entities are given certain concessions by ASX to facilitate their listing even though they may have a structure or operations that might not be acceptable for other types of entities. Further guidance on these concessions can be found in Guidance Note 3 *Co-operatives and Mutual Business Entities*.

3.2 Constitution

An entity seeking admission in the ASX Listing category must have a constitution that is consistent with the Listing Rules or that includes the provisions in Appendix 15A (for entities which are not companies to which any replaceable rule⁷⁵ applies) or Appendix 15B (for companies to which any replaceable rule applies).⁷⁶ These Appendices include pro forma constitutional provisions intended to ensure that if there is any inconsistency between the entity's constitution and the Listing Rules, the Listing Rules will prevail.

An applicant which has elected not to include the provisions of Appendix 15A or Appendix 15B in its constitution (as applicable) must include with its application a completed ASX Constitution Checklist to confirm that its constitution complies with the Listing Rules. An editable version of the checklist can be downloaded from www.asx.com.au/regulation/compliance/compliance-downloads.htm.

3.3 Prospectus or PDS

Unless ASX agrees to accept an information memorandum in lieu of a prospectus or PDS (which it will only do in very limited circumstances⁷⁷), an entity seeking admission in the ASX Listing category must issue a prospectus or PDS and lodge it with ASIC.⁷⁸

The prospectus or PDS must include a prominent statement (that is, on the cover or near the front of the document) that ASX takes no responsibility for the contents of the prospectus.⁷⁹

It is common for an entity applying for listing to be making an offer of securities to raise capital and/or to satisfy ASX's minimum free float and minimum spread requirements,⁸⁰ and it will usually be the prospectus or PDS for that offer that is used to meet this requirement.

⁷⁵ "Replaceable rules" are those provisions of the Corporations Act that are listed under section 141 of the Corporations Act as "replaceable rules" and so capable of being replaced or modified by a company's constitution. Replaceable rules are only relevant to companies incorporated in Australia and registered under the Corporations Act.

⁷⁶ Listing Rule 1.1 condition 2.

⁷⁷ See '3.4 When ASX will accept an information memorandum in lieu of a prospectus or PDS' on page 12.

⁷⁸ Listing Rule 1.1 condition 3. Generally, the applicant will need to lodge a prospectus or PDS with ASIC in any event under the Corporations Act because it will be making an offer of securities or managed investment products for issue to investors in Australia in connection with its listing on ASX that requires a prospectus under sections 700 and 706 (in the case of an offer of securities) or a PDS under sections 1011A and 1012B (in the case of an offer of managed investment products).

Even if it is not planning to offer securities or managed investment products to investors in Australia in connection with its listing on ASX, if the applicant has issued any securities/managed investment products of the type to be quoted on ASX within the 12 months preceding its listing on ASX without lodging a prospectus/PDS with ASIC – for example because the issue was limited to investors outside Australia or to investors in Australia who do not have to be given a prospectus/PDS (for example, sophisticated investors under section 708(8)/761G(7)(a)-(c) or professional investors under section 708(11)/761G(7)(d)) – section 707(3)/1012C(6) will usually apply and the applicant will have to produce a prospectus/PDS under the latter sections before its securities/managed investment products can be offered for sale on ASX.

Any entity that is seeking admission as an ASX Listing and that is seeking ASX's approval to lodge an information memorandum in lieu of a prospectus or PDS, or a waiver of the requirement to issue and lodge with ASIC a prospectus or PDS, will need to satisfy ASX that a prospectus or PDS is not required under the Corporations Act, either in connection with the primary issue of its securities or the secondary sale of its securities on ASX.

It should be noted that an entity warrants in its Appendix 1A *ASX Listing application* and agreement that an offer for sale of the securities to be quoted within 12 months after their issue will not require disclosure under section 707(3) or section 1012C(6) of the Corporations Act and indemnifies ASX to the fullest extent permitted by law in respect of any claim, action or expense arising from, or connected with, any breach of that warranty.

⁷⁹ Listing Rule 1.1 condition 3. This statement can be combined with the statement required under sections 711(7)(b) and 1013J(b) of the Corporations Act respectively that ASIC takes no responsibility for the contents of the prospectus or PDS.

⁸⁰ See '3.7 Minimum free float' on page 12 and '3.8 Minimum spread' on page 12.

A copy of the applicant's prospectus or PDS, as lodged with ASIC, must accompany its Appendix 1A application form.⁸¹

The Corporations Act requires:

- a prospectus for securities to set out all the information that investors and their professional advisers would reasonably require, and reasonably expect to find in the prospectus, to make an informed assessment of the rights and liabilities attaching to the securities and of the issuer's assets and liabilities, financial position and performance, profits and losses and prospects;⁸² and
- a PDS for other financial products to include, amongst other things, all information that might reasonably be expected to have a material influence on the decision of a reasonable person, as a retail client, whether to acquire the product.⁸³

The Corporations Act also imposes significant liabilities on the issuer of a prospectus or PDS if the prospectus or PDS omits such information or is otherwise misleading or deceptive.⁸⁴

ASX would observe that much of the information referred to in the Information Form and Checklist (ASX Listings) that must accompany an Appendix 1A application form would typically be included in the applicant's listing prospectus or PDS, on the basis that this is material information for investors.

There is some limited guidance in this Guidance Note on matters that ASX considers ought to be disclosed in a listing prospectus or PDS.⁸⁵ Beyond that, it is the responsibility of the applicant and its professional advisers to determine what information must be included in its prospectus or PDS, having regard to their disclosure obligations and liabilities under the Corporations Act.⁸⁶

If requested by an applicant, ASX will review and provide comments on an extract from a draft prospectus or PDS that raises particular Listing Rule issues. Beyond that, ASX will not pre-vet or provide comments on a draft prospectus or PDS ahead of its lodgement with ASIC.

ASX will review the final version of the applicant's prospectus or PDS lodged with ASIC and, if it has any concerns about the quality of the information in the prospectus or PDS, it may raise those concerns with ASIC, as the regulator responsible for administering the laws relating to prospectuses and PDSs, and discuss with ASIC whether it should issue a stop order and/or require the applicant to lodge a supplementary or replacement prospectus or PDS to

⁸¹ An applicant for listing must provide an electronic version and 15 hard copies of its prospectus or PDS (or, if ASX permits one, its information memorandum) as one of the required attachments to the Information Form and Checklist accompanying its Appendix 1A application form.

⁸² Corporations Act section 710.

⁸³ Corporations Act section 1013E.

⁸⁴ See sections 728, 729, 1021D, 1021E and 1022B of the Corporations Act. In the case of a prospectus, that liability can also extend to the directors of the issuer, as well as to proposed directors of the issuer and certain other parties named with their consent in the prospectus (see section 729(1)). In the case of a PDS, that liability can also extend to certain other parties named with their consent in the PDS (see section 1022B(3)).

⁸⁵ See, for example, the guidance in note 49 (material contracts), 63 (joint venture arrangements) and 64 (description of how the applicant holds its material assets and business operations) and '3.19 Additional requirements for foreign entities' on page 12.

⁸⁶ Applicants for listing should note the guidance provided by ASIC in relation to prospectuses and PDSs in ASIC Regulatory Guides 254 *Offering securities under a disclosure document*, 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)* and 228 *Prospectuses: Effective disclosure for retail investors* (RG 228).

Entities should also be aware that there may be relevant professional codes, such as the *Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves* (the 'JORC Code') and the *Code and Guidelines for Assessment and Valuation of Mineral Assets and Mineral Securities for Independent Expert Reports* (the 'Valmin Code'), which contain requirements that could impact on the content of their prospectuses or PDSs.

address those concerns.⁸⁷ ASX may also take those concerns into account in determining whether or not it will admit the applicant to the official list.⁸⁸

If the applicant issues a supplementary or replacement prospectus or PDS, it should provide a copy to ASX as soon as it is issued.⁸⁹ If the changes in the supplementary or replacement prospectus or PDS are material, ASX may require the applicant to provide an updated Information Form and Checklist (ASX Listings) that cross-references the new document.

3.4 When ASX will accept an information memorandum in lieu of a prospectus or PDS

ASX may agree to accept an information memorandum in lieu of a prospectus or PDS. Generally, it will only do so in one of the following circumstances:

- where the entity applying for admission is the successor entity to an existing listed entity that is undergoing some form of reconstruction and has no need to undertake an offer of securities in connection with its listing, either to raise capital or to meet ASX's minimum spread requirements;
- where the entity is undertaking a re-compliance listing⁹⁰ and has no need to undertake an offer of securities in connection with its listing, either to raise capital or to meet ASX's minimum free float and minimum spread requirements; or
- where the applicant is a government-owned body that is being privatised and is making an offer of securities which is not subject to the prospectus or PDS requirements in the Corporations Act.⁹¹

If ASX agrees to accept an information memorandum in lieu of a prospectus or PDS, the information memorandum must meet the content requirements set out in Listing Rule 1.4. These include:

- if the entity is a company, a statement that the information memorandum contains all the information that would be required under section 710 of the Corporations Act if the information memorandum were a prospectus offering for subscription the same number of securities for which quotation will be sought;
- if the entity is a trust, a statement that the information memorandum contains all the information that would be required under section 1013C of the Corporations Act if the information memorandum were a PDS offering for subscription the same number of securities for which quotation will be sought;
- a statement that the entity has not raised any capital for the 3 months before, and will not need to raise any capital for 3 months after, the date of issue of the information memorandum; and
- a statement that the applicant will issue a supplementary information memorandum if it becomes aware of any of the following between the date of issue of the information memorandum and the date the entity's securities are quoted or reinstated:
 - a material statement in the information memorandum is misleading or deceptive;
 - there is a material omission from the information memorandum;
 - there has been a significant change affecting a matter included in the information memorandum; or

⁸⁷ ASX has an obligation to refer any suspected significant contravention of the Corporations Act to ASIC under section 792B(2)(c) of that Act.

⁸⁸ Pursuant to its general discretion in that regard under Listing Rule 1.19.

⁸⁹ The reference in Listing Rule 1.1 condition 3 to providing ASX with a copy of a prospectus or PDS includes providing a copy of any supplementary or replacement prospectus or PDS (see the definitions of "prospectus" and "PDS" in Listing Rule 19.12).

⁹⁰ That is, fulfilling a requirement imposed by ASX pursuant to Listing Rule 11.1.3 (significant change in nature or scale of activities) that the entity must meet the requirements in Chapters 1 and 2 of the Listing Rules as if the entity were applying for admission.

⁹¹ Corporations Act section 5A.

- a significant new circumstance has arisen and it would have been required to be included in the information memorandum.

The information memorandum must also include a prominent statement (that is, on the cover or near the front of the document) that ASX takes no responsibility for the contents of the information memorandum.⁹²

If the applicant issues a supplementary or replacement information memorandum, it should provide a copy to ASX as soon as it is issued.⁹³ If the changes in the supplementary or replacement information memorandum are material, ASX may require the applicant to provide an updated Information Form and Checklist (ASX Listings) that cross-references the new document.

3.5 Requirements for quotation

An entity seeking admission in the ASX Listing category must apply for and be granted permission for quotation of all of the securities in its main class of securities (except restricted securities and, if the entity so chooses, securities issued under an employee incentive scheme that are subject to restrictions on transfer).⁹⁴

The entity's Appendix 1A application form includes an application for quotation of its securities. The entity simply needs to complete the table in that form with details of the securities it is seeking to have quoted.

The main class of securities will usually be, for a company, its fully paid ordinary shares and, for a trust, its fully paid ordinary units.⁹⁵

Listing Rule 2.1 sets out the conditions that must be satisfied for quotation of the main class of securities of an entity seeking admission to the official list as an ASX Listing. In summary, they are:

- the terms of the securities must comply with Chapter 6 of the Listing Rules;⁹⁶
- the issue or sale price of the securities must be at least 20 cents in cash;⁹⁷
- either:
 - the securities; or
 - if the entity is established in a jurisdiction whose laws have the effect that the securities cannot be registered or transferred under the operating rules of an approved clearing and settlement facility, CDIs issued over those securities,

have been approved under the operating rules of an approved clearing and settlement facility;⁹⁸ and

⁹² Listing Rule 1.1 condition 3.

⁹³ The reference in Listing Rule 1.1 condition 3 to providing ASX with a copy of an information memorandum includes providing a copy of any supplementary or replacement information memorandum (see the definition of "information memorandum" in Listing Rule 19.12).

⁹⁴ Listing Rule 1.1 condition 6. This Guidance Note does not address the requirements of condition 5 of Listing Rule 1.1. Condition 5 is only relevant to trusts. Further guidance on that condition can be found in Guidance Note 6 *Trusts*.

⁹⁵ Listing Rule 19.2 defines "main class" as the ordinary securities of an entity or, if ordinary securities are not to be quoted, the class of securities designated by ASX.

⁹⁶ Listing Rule 2.1 condition 1. Chapter 6 of the Listing Rules sets out the rights and obligations that must be attached to the securities (both quoted and unquoted) of a listed entity.

⁹⁷ Listing Rule 2.1 condition 2. This condition does not apply to "restricted securities" and securities issued under an employee incentive scheme, which may still be quoted (in the case of restricted securities, after the escrow period ends) even though they are issued or sold for a price that is less than 20 cents.

⁹⁸ Listing Rule 2.1 condition 3. See also '3.20 Clearing and settlement' on page 12.

- if the applicant is not a no liability company and its main class of securities are partly paid securities, there must be a defined call program setting out the date and amount of each proposed call.⁹⁹

An entity applying for admission to the official list as an ASX Listing may also seek quotation of other classes of securities in addition to its main class of securities. If it does so, those securities must meet the conditions in Listing Rule 2.5. In summary, they are:

- the terms of the securities again must comply with Chapter 6 of the Listing Rules;¹⁰⁰
- if there are any restricted securities, the applicant must have complied with Chapter 9 of the Listing Rules;¹⁰¹
- either:
 - the securities; or
 - if the entity is established in a jurisdiction whose laws have the effect that the securities cannot be registered or transferred under the operating rules of an approved clearing and settlement facility, CDIs issued over those securities,

have been approved under the operating rules of an approved clearing and settlement facility;¹⁰²

- if the securities are partly paid securities, there must be a defined call program setting out the date and amount of each proposed call;¹⁰³
- if the securities are debt securities or convertible debt securities, a copy of the documents setting out the terms of the securities must have been given to ASX;¹⁰⁴
- if the securities are a class of equity securities, or other securities with rights of conversion to equity, that are not already quoted, there must be at least 100,000 securities and 50 holders with a marketable parcel (excluding restricted securities) unless one of the following requirements is met:
 - the securities would be in the same class as the fully paid ordinary securities of the entity (ignoring the fact that they do not rank equally for the next dividend or distribution and ignoring any right to participate in a concurrent offer) and there are at least one million securities; or
 - the securities are a class of partly paid securities, there are at least one million securities, they are paid to not less than 40% of their issue price and the uncalled amount is payable on a fixed date which is within 12 months after the date of issue;¹⁰⁵ and
- if the securities are options issued on the exercise of other options, the other options must have expired, or have all been exercised.¹⁰⁶

⁹⁹ Listing Rule 2.1 condition 4. The call program may provide for one extension of up to six months of the date for payment of a call, on provision of at least two months' written notice to holders of the partly paid securities. However, the call program for a mining entity or an oil and gas entity must require payment in full within two years after the date of issue and must not be extended past two years.

Conditions 5 and 6 of Listing Rule 2.1 are not addressed in this Guidance Note as they only apply to ASX Debt Listings.

¹⁰⁰ Listing Rule 2.5 condition 1.

¹⁰¹ Listing Rule 2.5 condition 2.

¹⁰² Listing Rule 2.5 condition 3. See also '3.20 Clearing and settlement' on page 12.

¹⁰³ Listing Rule 2.5 condition 4. The call program may provide for one extension of up to six months of the date for payment of a call, on provision of at least two months' written notice to holders of the partly paid securities. However, the call program for a mining entity or an oil and gas entity must require payment in full within two years after the date of issue and must not be extended past two years.

¹⁰⁴ Listing Rule 2.5 condition 5.

¹⁰⁵ Listing Rule 2.5 condition 6.

¹⁰⁶ Listing Rule 2.5 condition 7.

One of the core requirements of Chapter 6 of the Listing Rules is that the terms that apply to each class of equity securities of a listed entity (both quoted and unquoted) must, in ASX's opinion, be appropriate and equitable.¹⁰⁷ In assessing whether this requirement is met, ASX will have regard to the principles on which the Listing Rules are based, as set out in the introduction to the Listing Rules, and the fairness and proportionality of the various rights and obligations attaching to the different classes of securities in the listed entity.

ASX recommends that an applicant for listing that has issued, or proposes to issue, securities that will have non-standard terms attached consult with ASX at the earliest opportunity about the likelihood of those terms meeting the requirements of Chapter 6.

3.6 Number of securities to be quoted

As a practical matter, at the time an entity applies to ASX for admission to the official list, it may not know the precise number of securities in any particular class that are to be quoted. For example, some securities may not be quoted because ASX classifies them as restricted securities.¹⁰⁸ Or an entity offering securities by way of a prospectus or PDS may include a provision allowing it to accept over-subscriptions and may not know the level of over-subscriptions it will receive and accept.

To meet Listing Rule 1.1 condition 6¹⁰⁹ and to avoid the legal difficulties that might otherwise arise under the Corporations Act,¹¹⁰ an entity should apply in its Appendix 1A application form for quotation of, and pay the initial listing fee¹¹¹ for, the maximum number of securities that can be quoted. Hence, even where the entity anticipates that ASX will categorise some of its securities as restricted securities and therefore not quote them until the escrow period lapses, it should include all of those securities in the number of securities for which quotation is sought. Similarly, if the entity's prospectus or PDS allows acceptance of over-subscriptions, the number of securities for which quotation is sought in its Appendix 1A application form should include the maximum amount of over-subscriptions that can be accepted.

3.7 Minimum free float

An entity seeking admission in the ASX Listing category must have a free float at the time of its admission to the official list of not less than 20%.¹¹²

"Free float" means the percentage of the entity's main class of securities that:

- are not "restricted securities"¹¹³ or subject to voluntary escrow;¹¹⁴ and
- are held by non-affiliated security holders.¹¹⁵

¹⁰⁷ Listing Rule 6.1.

¹⁰⁸ Restricted securities are only quoted once the escrow restriction has been lifted: see '3.10 Restricted securities' on page 12 and Guidance Note 11 *Restricted Securities and Voluntary Escrow*.

¹⁰⁹ See note 94 above and the accompanying text.

¹¹⁰ See '2.7 Corporations Act deadlines for lodgement' on page 8.

¹¹¹ See '2.8 Payment of initial listing fee' on page 9.

¹¹² Listing Rule 1.1 condition 7.

¹¹³ The concept of "restricted securities" is explained in greater detail in Guidance Note 11 *Restricted Securities and Voluntary Escrow*.

¹¹⁴ As defined in Listing Rule 19.12.

¹¹⁵ Listing Rule 19.12.

“Non-affiliated security holders” means security holders who are not: (a) a related party¹¹⁶ of the entity; (b) an associate¹¹⁷ of a related party of the entity; or (c) a person whose relationship to the entity or to a person referred to in (a) or (b) above is such that, in ASX’s opinion, they should be treated as affiliated with the entity.¹¹⁸

Securities held by or for an employee incentive plan are not regarded by ASX as forming a part of an entity’s free float.¹¹⁹

3.8 Minimum spread

An entity seeking admission in the ASX Listing category must meet ASX’s minimum spread requirement.¹²⁰ This serves to demonstrate that there is sufficient investor interest in the entity to justify its listing¹²¹ and to ensure some level of liquidity at the time the entity is initially listed.

To meet the minimum spread requirement, an entity must have at least 300 non-affiliated security holders, each of whom holds a parcel of the entity’s main class of securities¹²² that are not “restricted securities” and that are not subject to voluntary escrow, with a value of at least \$2,000.¹²³

There is no specific requirement in the Listing Rules for a minimum number of Australian-resident security holders. However, ASX does encourage entities in the ASX Listing category to have at the time of their admission to the official list a reasonable number of security holders resident in Australia with a reasonable level of security holdings, to promote local interest and liquidity in its securities. ASX also has a residual discretion under Listing Rule 1.19, which it may exercise in an appropriate case, to require as a condition of admission that the applicant has a minimum number of Australian resident security holders with a minimum size or value of security holding.

ASX will generally exercise this discretion where an applicant is incorporated in, has its main business operations in, or has a majority of its board or a controlling shareholder resident in, an emerging or developing market. In ASX’s experience, these types of entities tend to target or attract investors from the emerging or developing market, making it less likely that they will trade on ASX and more difficult for ASX to conduct its usual checks to verify that minimum spread has been obtained without using artificial means. Typically, in such a case, ASX will require at least 75% of the minimum spread to come from investors resident in Australia.

ASX will generally count security holdings registered in the name of a nominee as a single holding and assume that they are held for non-Australian residents for the purposes of determining whether spread has been achieved. If an applicant requests ASX to look behind the nominee holding and take account of the number and residence of beneficial holders for the purposes of spread, ASX will, at a minimum, require a letter from the nominee setting out the full names, addresses and security holdings of each beneficial holder and attesting that each beneficial holder:

- is the beneficial owner of the securities in question and has full and unfettered power to direct the nominee to vote and to dispose of the securities as they see fit;

¹¹⁶ “Related party”, in the case of a body corporate, has the same meaning in section 228 of the Corporations Act and, in relation to a trust, means the responsible entity of the trust and a related party of the responsible entity under section 228 of the Corporations Act, as modified by section 601LA of the Corporations Act (Listing Rule 19.12).

¹¹⁷ “Associate” has the meaning given in sections 12 and 16 of the Corporations Act, with section 12 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 (Listing Rule 19.12).

It should be noted that a related party of a director or officer of the entity or of a child entity is to be taken to be an associate of the director or officer unless the contrary is established.

¹¹⁸ Listing Rule 19.12.

¹¹⁹ If they do not fall within paragraph (a) or (b) of the definition of non-affiliated security holder in Listing Rule 19.12, ASX will regard them as falling within paragraph (c) of that definition.

¹²⁰ Listing Rule 1.1 condition 8.

¹²¹ Amongst other things, the minimum spread requirement operates to keep poorer quality applicants that are not able to attract sufficient investor interest to meet that requirement from being admitted to the ASX official list.

¹²² If CDIs are issued over securities in the main class, holders of the CDIs are included for these purposes.

¹²³ The value of securities is usually based on the offer price under the entity’s prospectus, PDS or information memorandum.

- is fully entitled to any proceeds received on the sale of the securities; and
- is fully entitled to any dividend or distribution paid by the entity on the securities.

ASX will not accept security holdings obtained by artificial means as counting towards minimum spread. Without limitation, ASX regards the following as “artificial” for these purposes:

- giving securities away;
- offering non-recourse loans to prospective investors to acquire securities;
- having investors pre-complete transfers of their securities to a third party ahead of listing;
- having investors enter into purchase agreements or call options that allow a third party to acquire their securities for a period after listing;
- having investors enter into repurchase agreements or put options that allow them to dispose of their securities to a third party for a period after listing;
- brokers allocating securities to discretionary managed accounts without the knowledge or consent of the client for whom those accounts are managed;
- brokers or other parties being incentivised to procure spread through the payment of abnormally high fees, brokerage or commission;¹²⁴ and
- splitting a beneficial holding of securities across multiple trustees, nominees or family members.

Unless satisfactory evidence is provided to the contrary, ASX will assume that any more than two holdings registered at the same address fall within this last category and treat them as a single holding for the purposes of determining whether spread has been achieved.¹²⁵

ASX may require evidence to verify that an entity has achieved minimum spread without using artificial means.¹²⁶ This may include requiring:

- the entity to provide copies of its share register, bank statements, application forms and cheques or other evidence of payment by investors;
- any broker involved in the listing¹²⁷ to provide details of its processes for procuring subscriptions, a list of investors from whom it has procured subscriptions and copies of its “know your client” checks for those investors;
- a statutory declaration from an officer of the entity or from an officer or employee of any broker involved in the listing confirming that artificial means have not been used to achieve spread; and/or
- the entity to provide to ASX, at its own cost, a report from an independent expert selected by ASX verifying that the entity has achieved spread without using artificial means.

If ASX has concerns that an entity may have been admitted to the official list without having properly obtained spread, ASX may suspend trading in its securities¹²⁸ and seek information from the entity to determine whether or

¹²⁴ These types of arrangements raise concerns that the broker or other party will pay over a significant proportion of its fee, brokerage or commission to an investor to procure their subscription. This effectively involves offering the investor a significant discount or rebate to take up their securities, which ASX regards as an artificial way of obtaining spread.

¹²⁵ This is not to say that ASX will always accept two holders registered at the same address as counting for two holders for spread purposes, particularly if ASX finds multiple examples of two holders at the one address.

¹²⁶ Listing Rule 1.17.

¹²⁷ For example as the applicant’s underwriter or lead manager.

¹²⁸ Listing Rule 17.3.1 and/or 17.3.4.

not that is the case.¹²⁹ If ASX ultimately forms the view that the entity has falsified spread or obtained it by artificial means, ASX may require the entity to undertake steps to obtain sufficient spread¹³⁰ or remove the entity from the official list for having breached the requirements for admission.¹³¹ It may also refer the parties responsible for falsifying spread or obtaining it by artificial means to ASIC for consideration of regulatory action.¹³²

3.9 Satisfying the profit or assets test

An entity seeking admission in the ASX Listing category must satisfy either the profit test in Listing Rule 1.2 or the assets test in Listing Rule 1.3.¹³³

To satisfy the *profit test*, an entity must:

- be a going concern or the successor of a going concern;¹³⁴
- have conducted the same main business activity during the last 3 full financial years and through to the date it is admitted;¹³⁵
- have aggregated profit from continuing operations for the last 3 full financial years of at least \$1 million;¹³⁶
- have consolidated profit from continuing operations for the 12 months to a date no more than 2 months before the date it applied for admission of at least \$500,000;¹³⁷
- give ASX each of the following.
 - the entity's audited accounts for the last 3 full financial years;¹³⁸
 - if the last full financial year for which accounts must be given to ASX ended more than 6 months and 75 days before the entity applies for admission, the entity's audited or reviewed accounts for the last half year (or longer period if available) from the end of the last full financial year;¹³⁹ and
 - a reviewed pro forma statement of financial position,¹⁴⁰

¹²⁹ Listing Rule 18.7.

¹³⁰ Listing Rule 12.4.

¹³¹ Listing Rule 17.12 (first and/or third bullet point).

¹³² ASX has an obligation to refer any suspected significant contravention of the Corporations Act or the Listing Rules to ASIC under section 792B(2)(c) of that Act. For an example of regulatory action taken by ASIC in relation to the falsification of spread, see ASIC Media Release 08-167, summarised in note 57 above.

¹³³ Listing Rule 1.1 condition 9.

¹³⁴ Listing Rule 1.2.1.

¹³⁵ Listing Rule 1.2.2.

¹³⁶ Listing Rule 1.2.4.

¹³⁷ Listing Rule 1.2.5.

¹³⁸ Listing Rule 1.2.3(a). The audit reports must be provided with the accounts. ASX will not accept less than 3 full financial years of audited accounts for an entity applying for admission under the profit test. However, if the entity applies for admission less than 90 days after the end of its last financial year, unless it has audited accounts for its latest full financial year, the accounts may be for the 3 years to the end of the previous financial year. ASX would generally expect the accounts for the most recent financial year to be general purpose financial statements, on the basis that they would have been compiled in contemplation of a public offering. If the entity has not been required to prepare general purpose financial statements for the previous years, ASX will generally accept special purpose financial statements for those years for the purposes of this rule, provided they otherwise comply with all applicable measurement and recognition standards.

¹³⁹ Listing Rule 1.2.3(b). The audit report or review must be provided with the accounts. ASX would generally expect the accounts for the last half year (or longer period if applicable) to be general purpose financial statements, on the basis that they would have been compiled in contemplation of a public offering.

¹⁴⁰ Listing Rule 1.2.3(c). The review must be provided with the pro forma statement of financial position. The requirement for a reviewed pro forma statement of financial position applies unless ASX agrees that it is not needed (which would be rare). The review must be conducted by a registered company auditor (or, if the entity is a foreign entity, an overseas equivalent of a registered company auditor) or an independent accountant.

which, in each case above, does not contain a modified opinion, emphasis of matter or other matter paragraph that ASX considers unacceptable;¹⁴¹ and

- give ASX a statement from all directors (or, in the case of a trust, all directors of the responsible entity) confirming that they have made enquiries and nothing has come to their attention to suggest that the economic entity is not continuing to earn profit from continuing operations up to the date of application.¹⁴²

To satisfy the *assets test*, an entity that is not an “investment entity”¹⁴³ must meet the following requirements:

- it must have at the time of admission:
 - net tangible assets of at least \$4 million after deducting the costs of fund raising; or
 - a market capitalisation of at least \$15 million;¹⁴⁴
- either:
 - less than half of its total tangible assets (after raising any funds) are cash or in a form readily convertible to cash;¹⁴⁵ or
 - it must have commitments consistent with its business objectives to spend at least half of its cash and assets readily convertible to cash;¹⁴⁶ and
- its listing prospectus, PDS or information memorandum must include an express statement (a *working capital statement*) from its directors that the entity will have enough working capital at the time of its admission to carry out its stated business objectives, or else the entity must give ASX an equivalent statement from an independent expert;¹⁴⁷ and
- its working capital must be at least \$1.5 million, or if it is not, it would be at least \$1.5 million if its budgeted revenue for the first full financial year that ends after listing was included in the working capital. This amount must be available after allowing for the first full financial year’s budgeted administration costs and the cost of acquiring any assets referred to in its prospectus, PDS or information memorandum, to the extent those costs are to be met out of working capital.¹⁴⁸

¹⁴¹ ASX will not accept a modified opinion, emphasis of matter or other matter paragraph for an entity applying for admission under the profit test that questions whether the entity can continue as a going concern or has satisfied the required profit levels to meet Listing Rules 1.2.4 and 1.2.5. If the accounts are being audited for the first time, ASX will generally accept the usual qualifications about the inability to inspect inventory (subject to materiality) and, for the oldest set of accounts, the usual qualifications about opening balances and the absence of prior year comparisons. This is consistent with the types of modified opinion, emphasis of matter or other matter paragraph that ASIC will accept in a prospectus, as outlined in Part F of RG 228.

¹⁴² Listing Rule 1.2.5A.

¹⁴³ An “investment entity” is one which in ASX’s opinion has as a principal part of its activities investing (directly or through a child entity) in listed or unlisted securities or futures contracts and whose objectives do not include exercising control over or managing any entity, or the business of any entity, in which it invests: see Listing Rule 19.12.

¹⁴⁴ Listing Rule 1.3.1. Where an entity is undertaking a material capital raising in connection with its listing, ASX will normally use the offer price under the prospectus, PDS or information memorandum for that capital raising to calculate the entity’s market capitalisation. ASX may, however, use a different price to determine market capitalisation if the entity is not undertaking a material capital raising in connection with its listing or if ASX is concerned that the offer price under the prospectus, PDS or information memorandum does not fairly reflect the value of its main class of securities (see the note to the definition of “market capitalisation” in Listing Rule 19.12). In an appropriate case, ASX may require an entity’s market capitalisation to be verified by an independent expert (Listing Rule 1.17).

¹⁴⁵ Listing Rule 1.3.2(a).

¹⁴⁶ Listing Rule 1.3.2(b). In this case, the entity’s business objectives must be clearly stated and include an expenditure program. If this information is not included in the entity’s prospectus, PDS or information memorandum, it must be separately given to ASX.

¹⁴⁷ Listing Rule 1.3.3(a).

¹⁴⁸ Listing Rule 1.3.3(b). The cost of acquiring assets includes the cost of acquiring and exercising an option over them. See also note 73 above and the accompanying text.

The working capital statement is a substantive statement and it requires more than just lip service. If ASX has concerns about the accuracy or basis of an entity's working capital statement, ASX may require the statement to be confirmed by an independent expert¹⁴⁹ or it may refuse to admit the applicant to the official list.¹⁵⁰

Applicants applying under the assets test on the basis of commitments¹⁵¹ should note that ASX does not consider the following types of expenditure to be acceptable as a "commitment" for these purposes:

- amounts allocated to working capital, or which could otherwise be considered to be of a working capital nature, such as administration costs and accounts payable; and
- where an applicant's main business is mineral exploration, amounts allocated to exploration or development activities on mining tenements that have not yet been granted or in relation to which the applicant does not have a present right to explore.

Where operations are to be conducted through a joint venture, ASX also will not accept a capital contribution to the joint venture as a "commitment" for these purposes unless the joint venture itself is committed to expending the capital contribution on acceptable types of expenditure.

To satisfy the **assets test**, an "investment entity"¹⁵² must at the time of admission:

- have net tangible assets of at least \$15 million after deducting the costs of fund raising; or
- be a pooled development fund and have net tangible assets of at least \$2 million after deducting the costs of fund raising.¹⁵³

In addition, unless ASX agrees otherwise, all entities seeking admission under the **assets test** must give ASX each of the following.

- the entity's audited accounts for the last 2 full financial years;¹⁵⁴
- if the last full financial year ended more than 6 months and 75 days before the entity applied for admission, the entity's audited or reviewed accounts for the last half year (or longer period if available) from the end of the last full financial year;¹⁵⁵
- if the entity has in the 12 months prior to applying for admission acquired, or is proposing in connection with its application for admission to acquire, another entity or business¹⁵⁶ that is significant in the context of the entity:
 - audited accounts for the last 2 full financial years for that other entity or business; and

¹⁴⁹ Under Listing Rule 1.17.

¹⁵⁰ Using its general discretion in that regard under Listing Rule 1.19.

¹⁵¹ See note 146 above and accompanying text.

¹⁵² For the definition of "investment entity", see note 143 above.

¹⁵³ Listing Rule 1.3.4.

¹⁵⁴ Listing Rule 1.3.5(a) first bullet point. The audit report must be provided with the accounts. ASX would generally expect the accounts for the most recent financial year to be general purpose financial statements, on the basis that they would have been compiled in contemplation of a public offering. If the entity has not been required to prepare general purpose financial statements for the previous year, ASX will generally accept special purpose financial statements for that year for the purposes of this rule, provided they otherwise comply with all applicable measurement and recognition standards.

¹⁵⁵ Listing Rule 1.3.5(a) second bullet point. The audit report or review must be provided with the accounts. ASX would generally expect the accounts for the last half year (or longer period if applicable) to be general purpose financial statements, on the basis that they would have been compiled in contemplation of a public offering.

¹⁵⁶ ASX does not regard an acquisition of a collection of unrelated assets to be an acquisition of a business for these purposes, even if the acquirer proposes to amalgamate those assets and use them in a new business.

- if the last full financial year for that entity or business ended more than 6 months and 75 days before the entity applied for admission, audited or reviewed accounts for the last half year (or longer period if available) from the end of the last full financial year for that other entity or business;¹⁵⁷ and
- a reviewed pro forma statement of financial position.¹⁵⁸

In each case above, the audit report or review must not contain a modified opinion, emphasis of matter or other matter paragraph that ASX considers unacceptable.¹⁵⁹

ASX applies the above rules according to their spirit, intent and purpose,¹⁶⁰ looking through the applicant's corporate structure to the underlying business that is being listed. If that business has been operating within the applicant's corporate umbrella for 2 or more financial years, ASX will expect to receive audited accounts for that business for 2 full financial years regardless of any internal restructure that may have taken place over that period. So, for example, if the applicant for listing is a newly established holding company inserted over the top of an existing entity or business, ASX will expect to receive not only audited accounts for the new holding company for its short existence but (subject to the comments below as to when ASX may accept less than 2 full financial years of accounts) also:

- audited accounts for the existing entity or business going back for 2 full financial years; and
- if the existing entity or business has acquired in the 12 months prior to the date of the application another entity or business that is significant in the context of the applicant, audited accounts for the acquired entity or business going back for 2 full financial years.¹⁶¹

For these purposes, ASX will generally consider an entity or business to be "significant" if at the time of listing it will account for 25% or more of any of the applicant's: (a) consolidated total assets; (b) consolidated total equity interests; (c) consolidated annual revenue or, in the case of a mining exploration entity, oil and gas exploration entity or other entity that is not earning material revenue from operations, consolidated annual expenditure; (d) consolidated EBITDA; or (e) consolidated annual profit before tax.¹⁶²

ASX acknowledges that there may be circumstances where the utilisation of some of the individual measures in (a) to (e) above could capture an entity or business that is not truly significant in the context of the applicant (for example where the applicant's consolidated annual revenue, EBITDA or profit before tax is a relatively low amount). If an applicant for admission to the official list considers this to be the case, then it should discuss the issue with

¹⁵⁷ Listing Rule 1.3.5(b). The audit report or review must be provided with the accounts. If the entity or business that has been, or is being, acquired has not been required to prepare general purpose financial statements, ASX will generally accept special purpose financial statements for the purposes of this rule, provided they otherwise comply with all applicable measurement and recognition standards.

¹⁵⁸ Listing Rule 1.3.5(c). The review must be provided with the pro forma statement of financial position. The requirement for a reviewed pro forma statement of financial position applies unless ASX agrees that it is not needed (which would be rare). The review must be conducted by a registered company auditor (or, if the entity is a foreign entity, an overseas equivalent of a registered company auditor) or an independent accountant.

¹⁵⁹ If the accounts are being audited for the first time, ASX will generally accept the usual qualifications about the inability to inspect inventory (subject to materiality) and, for the oldest set of accounts, the usual qualifications about opening balances and the absence of prior year comparisons. ASX will not accept a modified opinion, emphasis of matter or other matter paragraph for an entity applying for admission under the assets test that questions whether the entity can continue as a going concern unless ASX is satisfied that the capital proposed to be raised by the entity in connection with its listing will be sufficient to remove that question. In such a case, ASX may require the auditor or another expert to opine on whether the capital proposed to be raised is sufficient to enable the entity to continue as a going concern.

This is consistent with the types of modified opinion, emphasis of matter or other matter paragraph that ASIC will accept in a prospectus, as outlined in Part F of RG 228.

¹⁶⁰ As it is required to do under Listing Rule 19.2.

¹⁶¹ To the extent that these fall outside of the requirements of Listing Rule 1.3.5, ASX will require their production to ASX under Listing Rule 1.17.

¹⁶² These are the same criteria as outlined in section 2.5 of Guidance Note 12 *Significant Changes to Activities*, in terms of when ASX expects an entity to notify it of a significant change to the scale of its activities under Listing Rule 11.1. Consistent with the approach outlined in that Guidance Note, ASX will usually use the most recent published financial statements of the applicant and the entity or business it is acquiring to determine whether the 25% significance threshold has been exceeded. Typically this will be the audited or reviewed pro forma financial information included in the applicant's listing prospectus, PDS or information memorandum.

ASX at the earliest opportunity to determine whether ASX may be prepared to grant a waiver or exemption in its particular circumstances. ASX will apply Listing Rule 1.3.5 in a common sense way and in a manner that is consistent with its spirit, intent and purpose.¹⁶³

ASX may agree to accept less than 2 full financial years of audited accounts for an entity applying for admission under the assets test where:

- the entity has been operating for less than one full financial year, in which case, ASX will instead require audited accounts for the period commencing when the entity began operating up to a balance date not more than 2 months prior to the date of the application;
- the entity has been operating for not less than one, but less than two, full financial years, in which case, ASX will instead require audited accounts for the full financial year the entity has been operating and, if that financial year ended more than 6 months and 75 days before the date of the application, audited or reviewed accounts for the last half year;
- the entity underwent such a major and transformative change during its most recent financial year, that the accounts for the previous financial year would not provide any meaningful information to investors, in which case, ASX will instead require audited accounts for the most recent financial year and, if the most recent financial year ended more than 6 months and 75 days before the date of the application, audited or reviewed accounts for the last half year.¹⁶⁴

ASX may agree to accept less than 2 full financial years of audited accounts for a significant entity or business that has within the preceding 12 months been acquired, or is proposed to be acquired, by an entity applying for admission under the asset tests where:

- the entity or business has been operating for less than one full financial year, in which case, ASX will instead require audited accounts for the period commencing when the entity or business began operating up to a balance date not more than 2 months prior to the date of the application;
- the entity or business has been operating for not less than one, but less than two, full financial years, in which case, ASX will instead require audited accounts for the full financial year and, if the last full financial year ended more than 6 months and 75 days before the date of the application, audited or reviewed accounts for the last half year; or
- the entity or business underwent such a major and transformative change during its most recent financial year that the accounts for the previous financial year would not provide any meaningful information to investors, in which case, ASX will instead require audited accounts for the most recent financial year and, if the most recent financial year ended more than 6 months and 75 days before the date of the application, audited or reviewed accounts for the last half year.¹⁶⁵

Any agreement by ASX to accept less than 2 full financial years of audited accounts may be conditional on the entity providing additional financial information about itself or any entity or business it is acquiring. ASX may require that additional financial information to be audited or reviewed or otherwise opined upon by an expert.¹⁶⁶

If ASX considers that the market would benefit from such disclosure, ASX may require the applicant to provide information about the qualifications and experience of the auditor or investigating accountant who provided any audit report or conducted any review referred to above, for release to the market as supplemental pre-quotation

¹⁶³ As it is required to do under Listing Rule 19.2.

¹⁶⁴ See example 1 in table 10 of RG 228.

¹⁶⁵ See the final row of table 11 and example 1 in table 10 of RG 228.

¹⁶⁶ Pursuant to its power in that regard under Listing Rule 1.17.

disclosure.¹⁶⁷ This applies both to entities applying for admission under the profit test and to entities applying for admission under the assets test.

ASX will also usually require an applicant to provide a copy of any other accounts not mentioned previously that are referred to in the applicant's listing prospectus, PDS or information memorandum, again for release to the market as supplemental pre-quotations disclosure.¹⁶⁸ This may include, for example, audited or reviewed accounts that the applicant has prepared for the purposes of meeting ASIC's guidance in Part F of RG 228 that would not otherwise be required to be lodged with ASX under the specific requirements in Listing Rules 1.2.3 and 1.3.5.¹⁶⁹

3.10 Restricted securities

An entity seeking admission in the ASX Listing category that has issued "restricted securities" before it is admitted to the official list, must comply with Chapter 9 of the Listing Rules.¹⁷⁰ That chapter requires the entity to execute a restriction agreement in the prescribed form with the holder and each controller of the securities.

An entity applying for admission in the ASX Listing category that has acquired a "classified asset"¹⁷¹ from a related party of the entity or a promoter in the two years before the date of the application, must also have issued restricted securities as the consideration for the acquisition unless:

- the consideration was reimbursement of expenditure incurred in developing the classified asset; or
- under Listing Rule 9.1.3, the entity is not required to apply the restrictions in Appendix 9B.¹⁷²

Restricted securities are placed in escrow and not quoted on ASX for a specified period. This effectively prevents the transfer of ownership or control of them during that period. Further guidance on restricted securities can be found in Guidance Note 11 *Restricted Securities and Voluntary Escrow*.

The prescribed form of the restriction agreement is set out in Appendix 9A of the Listing Rules. An editable version of the restriction agreement can be downloaded from www.asx.com.au/regulation/compliance/compliance-downloads.htm. These are standard form agreements and ASX will not agree to any changes. Hence, any edits to a restriction agreement should be confined to inserting the date of the agreement, the details of, and an appropriate execution clause for, the various parties, and the details of the restricted securities.

An entity which expects to have any of its securities classified as restricted securities should include with its application for listing an ASX Restricted Securities Table. An editable version of the table can also be downloaded from www.asx.com.au/regulation/compliance/compliance-downloads.htm. The Restricted Securities Table should include the following details in respect of each class of securities on issue (eg ordinary shares, preference shares, performance shares, options, convertible notes, etc):

- the full name of the holder;

¹⁶⁷ Again, pursuant to its power in that regard under Listing Rule 1.17.

¹⁶⁸ Again, pursuant to its power in that regard under Listing Rule 1.17.

¹⁶⁹ For example, audited accounts prepared in relation to a "roll up listing" (as referred to in example 7 in table 10 of RG 228) or for "multiple insignificant acquisitions" (see row 5 of table 11 of RG 228) or where a third full year of audited financial information is expected under RG 228.87 and none of the circumstances referenced in table 10 of RG 228 apply.

¹⁷⁰ Listing Rule 1.1 condition 10.

¹⁷¹ A "classified asset" is defined in Listing Rule 19.12 as:

- (a) an interest in a mining exploration area or similar tenement or interest;
- (b) an interest in intangible property that is substantially speculative or unproven, or has not been profitably exploited for at least three years, and which entitles the entity to develop, manufacture, market or distribute the property;
- (c) an interest in an asset which, in ASX's opinion, cannot readily be valued; or
- (d) an interest in an entity the substantial proportion of whose assets (held directly, or through a controlled entity) is property of the type referred to in paragraphs (a), (b) and (c) above.

¹⁷² Listing Rule 1.1 condition 11. Listing Rule 9.1.3 confers on ASX a discretion not to apply escrow restrictions where an entity is admitted under the profit test in Listing Rule 1.2 or otherwise has a track record of profitability acceptable to ASX or where, in ASX's opinion, the entity has a substantial proportion of its assets as tangible assets or assets with a readily ascertainable value.

- the holder's relationship with the applicant (eg director, promoter, etc);
- the total number of securities held by the holder;
- the number of securities to be restricted, as estimated by the applicant (if this is less than the total number of securities held by the holder, an explanation should be included in the table or in a cover letter as to why that is so);
- the date of issue of the restricted securities (if a holder was issued securities on more than one occasion, details of each issue should be listed separately in the table);
- the issue price of the security;
- the nature of the consideration given by the holder for issue of the restricted securities (eg cash, assets, services, etc. – this should state the amount of cash and describe the assets and services, as applicable); and
- the reason for restriction (including a reference to the applicable clause in Appendix 9B).

Where restricted securities have been transferred after issue, the information above should be provided in respect of the transferor.¹⁷³

It will assist ASX to process an application for listing if the Restricted Securities Table is subdivided into the different categories of restricted securities. In this regard, ASX suggests that applicants subdivide the table so that the security holders are grouped together using the classifications in Appendix 9B:

- related party or promoter seed capitalists (paragraph 1);
- unrelated seed capitalists (paragraph 2);
- related party or promoter vendors (paragraph 3);
- unrelated vendors (paragraph 4);
- promoters (consideration other than seed capital) (paragraph 7);
- professional service providers (paragraph 8);
- employee incentive scheme participants (paragraph 9);
- transferees (paragraph 10); and
- miscellaneous (paragraph 11).

It is also helpful if the unrelated seed capitalists and unrelated vendors are listed in the order of the dates on which their securities were issued to them (for these categories of restricted securities, the 12 months escrow period begins on the day of issue).

Changes to the information contained in the Restricted Securities Table (eg as a result of a transfer of such securities) following the lodgement of an application for listing can delay ASX's processing of the application. For this reason, ASX recommends that an entity which will have restricted securities on issue close its register of members for the registration of transfers from the point at which it lodges its application for listing, through to its admission to the official list.

¹⁷³ Under paragraph 10 of Appendix 9B, the escrow period applicable to a transferee of restricted securities is the same as that which applied to the transferor, irrespective of the amount paid for the securities by the transferee.

3.11 Options

If an entity seeking admission in the ASX Listing category has options on issue, the exercise price for each underlying security must be at least 20 cents in cash.¹⁷⁴ This requirement applies even where the options are not intended to be quoted.

3.12 Person responsible for communications

An entity seeking admission in the ASX Listing category must appoint at least one person¹⁷⁵ to be responsible¹⁷⁶ for communication with ASX in relation to Listing Rule matters.¹⁷⁷ The person appointed must be able to communicate in English.

From time to time, ASX may need to discuss with a listed entity pressing matters (particularly, but not only, disclosure matters) under the Listing Rules. To facilitate this, it is important that the person (or each of the persons) appointed to be responsible for communications with ASX in relation to Listing Rule matters:

- has the organisational knowledge to have meaningful discussions on Listing Rule matters;
- can request a trading halt and issue an announcement to the market, if that is what is required,¹⁷⁸

and that person (or at least one of those persons) is readily contactable by ASX by telephone during normal market hours and for at least one hour either side thereof (ie from 9am to 5pm Sydney time) on each day that ASX is trading.¹⁷⁹

This requires that the person has a high degree of familiarity with the listed entity's operations and, if they are not a member of senior management, that they have immediate access to senior management. It also requires them to provide ASX with a mobile phone number to contact them and that they keep their mobile phone switched on at all times from 9am to 5pm Sydney time on each trading day.

The need to resolve a disclosure issue under the Listing Rules can be extremely time critical. Where such an issue arises, if ASX is not able to contact an entity's nominated representative on Listing Rule matters, or the representative does not have the organisational knowledge or authority to address the issue promptly, ASX may be left with little option but to suspend the quotation of the entity's securities until the issue can be properly resolved.

Typically, a company secretary would be an appropriate person to be responsible for communications with ASX.

¹⁷⁴ Listing Rule 1.1 condition 12.

¹⁷⁵ An entity may appoint more than one person to be responsible for communications with ASX, to cater for one of its contacts being absent or on leave.

¹⁷⁶ The fact that the person so appointed is said to be "responsible" for communication with ASX in relation to Listing Rule matters does not in any way diminish the responsibility of the listed entity to communicate to ASX any information required under the Listing Rules.

¹⁷⁷ Listing Rule 1.1 condition 13. The name, address and contact details of the person or persons responsible for communication with ASX in relation to Listing Rule matters must be notified to ASX in the Information Form and Checklist (ASX Listings) lodged with an applicant's Appendix 1A application form. Listing Rule 12.6 also imposes an ongoing requirement on all listed entities to appoint a person to be responsible for communication with ASX in relation to Listing Rule matters and to notify ASX of the initial appointment and of any change in the appointment.

¹⁷⁸ ASX acknowledges that the decision to request a trading halt is a serious one and that a listed entity will often have approval processes that need to be followed before a person appointed under Listing Rule 12.6 to be responsible for communications with ASX in relation to Listing Rule matters will have the authority to request a trading halt. For example, many entities typically require such a request to be approved by the chairperson and/or the CEO. If an entity has such approval processes in place, they must be able to be activated and any necessary approvals obtained within a matter of minutes. They should also include appropriate contingencies for when key approvers are not available. As noted in the text, where there is a time critical continuous disclosure issue and a trading halt is warranted, any delay in requesting the trading halt could result in ASX being left with little choice but to suspend the quotation of the entity's securities. It could also result in regulatory action by ASIC (see ASIC Media Release 08-117).

¹⁷⁹ This requires the nominated representative to be available to take calls from ASX, if they are based in Western Australia, from as early as 6am (WA time) during summer time and 7am (WA time) at other times and, if they are based in New Zealand, until as late as 7pm (NZ time). They must also be available to take calls from ASX on trading days that fall on a public holiday where they live and make suitable arrangements to cover any absences due to illness or while they are on leave.

3.13 Electronic lodgement facilities

An entity seeking admission in the ASX Listing category must agree with ASX, in writing, that documents may be given to ASX and authenticated electronically and to establish the facilities required for the entity to give documents to ASX electronically.¹⁸⁰

In practice, this requirement is met by the entity executing an *Application and agreement for use of electronic lodgement facility and entity details facility* (ASX Online Agreement) in the form set out in Annexure A to Guidance Note 20. An editable version of the ASX Online Agreement can be downloaded from www.asx.com.au/regulation/compliance/compliance-downloads.htm. These are standard form agreements and ASX will not agree to any changes. Hence, any edits to the ASX Online Agreement should be confined to inserting the date of the agreement and the details of, and an appropriate execution clause for, the applicant.

A signed copy of the ASX Online Agreement, duly executed by the applicant, should accompany its listing application.

Further guidance on the use of ASX's electronic lodgement facilities can be found in Guidance Note 20 *ASX Online*.

3.14 ASX Corporate Governance Council recommendations

An entity seeking admission in the ASX Listing category must provide a statement disclosing the extent to which the entity will follow, as at the date of its admission to the official list, the recommendations set by the ASX Corporate Governance Council in its publication *Corporate Governance Principles and Recommendations*.¹⁸¹ If the entity does not intend to follow all the recommendations on its admission to the official list, it must separately identify each recommendation that will not be followed and state its reasons for not following the recommendation and what (if any) alternative governance practices it intends to adopt in lieu of the recommendation.

This disclosure is often included in the entity's listing prospectus, PDS or information memorandum. If it is not, it should be supplied to ASX in the form of a separate corporate governance statement.¹⁸²

Further guidance on the ASX Corporate Governance Council recommendations and on the preparation of corporate governance statements can be found in Guidance Note 9 *Disclosure of Corporate Governance Practices: Listing Rule 4.10.3*.

3.15 Audit committee

An entity seeking admission in the ASX Listing category that will be included in the All Ordinaries Index on admission to the official list must have an audit committee and, if the entity will be in the S&P/ASX 300 Index on admission to the official list, must also comply with the recommendations set by the ASX Corporate Governance Council in relation to the composition and operation of the audit committee.

Where this condition applies, the entity should confirm its intention to comply in its corporate governance statement or in the cover letter with its listing application.¹⁸³

If an applicant for listing is unsure whether or not it is likely to be included in the All Ordinaries Index or the S&P/ASX 300 Index on admission to the official list, it should discuss that issue with ASX or Standard & Poors (S&P).

¹⁸⁰ Listing Rule 1.1 condition 14.

¹⁸¹ Listing Rule 1.1 condition 16.

¹⁸² If ASX considers that an entity's corporate governance disclosures in its prospectus, PDS or information memorandum do not meet the requirements of Listing Rule 1.1 condition 16, ASX may require the entity to provide additional information about such matters for release to the market as supplemental pre-quotation disclosure under Listing Rule 1.17.

¹⁸³ Listing Rule 1.1 condition 17.

3.16 Remuneration committee

An entity seeking admission in the ASX Listing category that will be included in the S&P/ASX 300 Index on admission must have a remuneration committee comprised solely of non-executive directors.¹⁸⁴

Where this condition applies, the entity should confirm its intention to comply either in its corporate governance statement or in the cover letter with its listing application.

Again, if an applicant for listing is unsure whether it is likely to be included in the S&P/ASX 300 Index on admission to the official list, it should discuss that issue with ASX or S&P.

3.17 Trading policy

An entity seeking admission in the ASX Listing category must have a trading policy that complies with Listing Rule 12.9.¹⁸⁵ A copy of the trading policy must accompany the application.

Further guidance on this requirement can be found in Guidance Note 27 *Trading Policies*.

3.18 Directors must be of good fame and character

An entity seeking admission in the ASX Listing category must satisfy ASX that each director or proposed director¹⁸⁶ of the entity¹⁸⁷ at the date of listing is of good fame and character.¹⁸⁸ For these purposes, the applicant is required to include with their application:¹⁸⁹

- (1) for each director or proposed director who is or has in the past 10 years been a resident of Australia, an original or certified true copy of:
 - (a) a national criminal history check obtained from the Australian Federal Police, a State or Territory police service or a broker accredited by CrimTrac for each director or proposed director; and
 - (b) a search of the Australian Financial Security Authority National Personal Insolvency Index, in each case, which is not more than 12 months old;
- (2) for each director or proposed director who is or has in the past 10 years been a resident of another country, an original or certified true copy of:
 - (a) an equivalent national criminal history check to that mentioned in (1)(a) above for each country in which the director has resided over the past 10 years (in English or together with a certified English translation) which is not more than 12 months old or, if such a check is not available in any such country, a statutory declaration from the director confirming that fact and that he or she has not been convicted in that country of:
 - (i) any criminal offence involving fraud, dishonesty, misrepresentation, concealment of material facts or breach of director's duties; or
 - (ii) any other criminal offence which at the time carried a maximum term of imprisonment of five years or more (regardless of the period, if any, for which he or she was sentenced),

¹⁸⁴ Listing Rule 1.1 condition 18.

¹⁸⁵ Listing Rule 1.1 condition 19.

¹⁸⁶ The reference in this rule to a "proposed director" includes any person named in a prospectus, PDS or information memorandum as a proposed director of the entity.

¹⁸⁷ In the case of a listed trust, references to the directors or proposed directors of the entity should be read as references to the directors or proposed directors of the responsible entity of the trust.

¹⁸⁸ Listing Rule 1.1 condition 20.

¹⁸⁹ The Information Form and Checklist (ASX Listings) that must accompany an Appendix 1A application form requires the applicant to provide these documents.

or, if that is not the case, a statement to that effect and a detailed explanation of the circumstances involved;

- (b) an equivalent national bankruptcy check to that mentioned in (1)(b) above for each country in which the director has resided over the past 10 years (in English or together with a certified English translation) which is not more than 12 months old or if such a check is not available in any such country, a statutory declaration from the director confirming that fact and that he or she has not been declared a bankrupt or been an insolvent under administration in that country or, if that is not the case, a statement to that effect and a detailed explanation of the circumstances involved;
- (3) a statutory declaration from each director or proposed director confirming that:
- (a) the director has not been the subject of any criminal or civil penalty proceedings or other enforcement action by any government agency in which he or she was found to have engaged in behaviour involving fraud, dishonesty, misrepresentation, concealment of material facts or breach of duty;
 - (b) the director has not been refused membership of, or had their membership suspended or cancelled by, any professional body on the ground that he or she has engaged in behaviour involving fraud, dishonesty, misrepresentation, concealment of material facts or breach of duty;
 - (c) the director has not been the subject of any disciplinary action (including any censure, monetary penalty or banning order) by a securities exchange or other authority responsible for regulating securities markets for failure to comply with his or her obligations as a director of a listed entity;
 - (d) no listed entity of which he or she was a director (or, in the case of a listed trust, in respect of which he or she was a director of the responsible entity) at the time of the relevant conduct has been the subject of any disciplinary action (including any censure, monetary penalty, suspension of trading or termination of listing) by a securities exchange or other authority responsible for regulating securities markets for failure to comply with its obligations under the listing rules applicable to that entity; and
 - (e) the director is not aware of any pending or threatened investigation or enquiry by a government agency, professional body, securities exchange or other authority responsible for regulating securities markets that could lead to proceedings or action of the type described in (a), (b), (c) or (d) above,

or, if the director is not able to give such confirmation, a statement to that effect and a detailed explanation of the circumstances involved.

An editable version of the statutory declaration referred to in (3) above can be downloaded from www.asx.com.au/regulation/compliance/compliance-downloads.htm.

In considering whether the applicant's directors or proposed directors meet the "good fame and character" requirement, ASX will primarily have regard to the documents mentioned above. However, ASX may also have regard to any other information it has about the directors or proposed directors from any source and, in an appropriate case, may require an applicant for listing to provide additional information about its directors or proposed directors.

It can take some time to obtain criminal history and bankruptcy checks and applicants for listing are encouraged to apply for them at the earliest opportunity so that this does not delay their listing.

3.19 Additional requirements for foreign entities

A foreign company¹⁹⁰ seeking admission as an ASX Listing must be registered as a foreign company carrying on business in Australia under the Corporations Act.¹⁹¹ Guidance Note 4 *Foreign Entities Listing on ASX* has further

¹⁹⁰ "Foreign company" means a body corporate that is not formed or established in Australia (see Listing Rule 19.12).

¹⁹¹ Listing Rule 1.1 condition 4.

guidance on the requirements to register as a foreign company carrying on business in Australia under the Corporations Act.

A foreign trust¹⁹² that wishes to list on ASX as a standard ASX Listing must be registered as a managed investment scheme under the Corporations Act or have an exemption from ASIC from that requirement.¹⁹³ If it registers as a managed investment scheme, this effectively converts it into an Australian trust for the purposes of the Listing Rules.¹⁹⁴

A foreign trust that is exempted from the requirement to be a registered managed investment scheme must have as its responsible entity¹⁹⁵ either an Australian company or an entity that is registered as a foreign company carrying on business in Australia under the Corporations Act.¹⁹⁶ Again, Guidance Note 4 *Foreign Entities Listing on ASX* has further guidance on the requirements to register as a foreign company carrying on business in Australia under the Corporations Act.

A foreign entity¹⁹⁷ seeking admission as an ASX Listing must satisfy the same admission requirements as an Australian entity, set out above. This applies even where it is listed on an overseas stock exchange.

ASX expects the listing prospectus of a foreign entity to include:

- a statement of its place of incorporation, registration or establishment;
- a statement to the effect that:

"As [name of entity] is not established in Australia, its general corporate activities (apart from any offering of securities in Australia) are not regulated by the Corporations Act 2001 of the Commonwealth of Australia or by the Australian Securities and Investments Commission but instead are regulated by [insert name of governing legislation] and [insert name of corporate regulator administering that legislation]."
- a concise summary¹⁹⁸ of the rights and obligations of security holders under the law of its home jurisdiction¹⁹⁹ covering:
 - what types of transactions require security holder approval;
 - whether security holders have a right to request or requisition a meeting of security holders;
 - whether security holders have a right to appoint proxies to attend and vote at meetings on their behalf;
 - how changes in the rights attaching to securities are regulated;

¹⁹² "Foreign trust" means a trust or similar overseas entity that is not formed or established in Australia and that is not a registered managed investment scheme under the Corporations Act (see Listing Rule 19.12).

¹⁹³ Listing Rule 1.1 condition 5(a).

¹⁹⁴ See the definition of "Australian trust" in Listing Rule 19.12.

¹⁹⁵ "Responsible entity" means: (a) in relation to a managed investment scheme registered under the Corporations Act, the responsible entity of that scheme under that Act; or (b) in relation to a trust that is not a registered managed investment scheme, the entity that in ASX's opinion performs a substantially equivalent role in relation to the trust as the responsible entity performs in relation to a registered managed investment scheme (see Listing Rule 19.12).

¹⁹⁶ Listing Rule 1.1 condition 5(b).

¹⁹⁷ "Foreign entity" means a foreign company or a foreign trust (see Listing Rule 19.12 and notes 190 and 192 above).

¹⁹⁸ The concise summary is not intended to be a legal treatise on the laws of the entity's home jurisdiction or a detailed comparative analysis of those laws with the laws of Australia. For those matters where the entity's home jurisdiction has broadly comparable laws to Australia, a statement to that effect will generally suffice.

¹⁹⁹ A foreign listed entity should also note its continuing obligation under Listing Rule 3.17C, if it becomes aware of a change to the law of its home jurisdiction that materially affects the rights or obligations of security holders, to give ASX details of that change immediately.

- what rights do security holders have to seek relief for oppressive conduct;
 - what rights do security holders have to bring or intervene in legal proceedings on behalf of the entity; and
 - whether there is any equivalent to the “two strikes” rule in relation to remuneration reports in Part 2G.2 Division 9 of the Corporations Act; and
- a concise summary²⁰⁰ of how the disclosure of substantial holdings and takeovers are regulated under the law of its home jurisdiction.

If the information above is not included in the foreign entity’s listing prospectus, ASX will require the information to be given to ASX as supplemental pre-quotation disclosure for release to the market.²⁰¹

3.20 Clearing and settlement

Trades in securities quoted on ASX are cleared and settled through an electronic system called the Clearing House Electronic Subregister System, or CHESS. CHESS facilitates the paperless transfer of ownership of securities through an electronic subregister system.

Under CHESS, a listed entity’s principal register of securities is effectively made up of two electronic uncertificated subregisters – a “CHESS subregister” maintained by ASX Settlement²⁰² and an “issuer sponsored subregister” maintained by or on behalf of the issuer. Persons holding securities in the entity have the option to register their securities on either subregister.²⁰³

Ordinarily, to allow ASX to clear and settle transactions in its securities, an entity seeking an ASX Listing must be approved as an issuer under the operating rules²⁰⁴ of the CHESS facility²⁰⁵ and also have its main class of securities approved for participation in that facility.²⁰⁶ Once these approvals have been obtained, ASX Settlement will then establish the entity’s CHESS subregister, which ASX Settlement will administer as the entity’s agent.²⁰⁷ The entity is responsible for establishing its own issuer sponsored subregister for its quoted securities²⁰⁸ and, in practice, will usually engage an Australian registry to establish and administer that subregister on its behalf.

Where, however, an entity is established in an overseas jurisdiction whose laws have the effect that CHESS cannot be used for holding legal title to its securities, it must instead have CHESS Depositary Interests, or CDIs, issued over its ASX quoted securities and establish a CHESS subregister and an issuer sponsored subregister in those CDIs.²⁰⁹ To issue CDIs, the entity must be approved as a foreign issuer of CDIs under the operating rules of the CHESS facility²¹⁰ and also have its CDIs approved for participation in that facility.²¹¹ Once these approvals have

²⁰⁰ See note 198 above.

²⁰¹ Using its powers in this regard under Listing Rule 1.17.

²⁰² ASX Settlement Pty Limited, a wholly owned subsidiary of ASX and the operator of the ASX Settlement facility.

²⁰³ To register securities on the CHESS subregister, a person must have a sponsorship agreement with a participant in the ASX Settlement facility. Registering securities on the CHESS subregister effectively gives the sponsoring participant control of the holdings for the purposes of settlement.

²⁰⁴ References to the operating rules of the CHESS facility mean the ASX Settlement Operating Rules.

²⁰⁵ Listing Rule 1.1 condition 15(a).

²⁰⁶ Listing Rule 2.1 condition 3(a) and ASX Settlement Operating Rule 8.1.1. Once its securities have been approved for participation in the CHESS system, an entity must continue to comply with the operating rules for that system in relation to its quoted securities (Listing Rule 8.1).

²⁰⁷ Pursuant to ASX Settlement Operating Rules 8.1.3, 8.6.1 and 8.6.2.

²⁰⁸ Listing Rule 8.2.

²⁰⁹ Listing Rule 8.2 and ASX Settlement Operating Rule 13.5.4. CDIs are a type of depository receipt that allow investors to obtain all the economic benefits of owning securities without actually holding legal title to them. They were developed by ASX to facilitate the clearing and settlement of transactions in securities through CHESS where the issuing entity is domiciled in a country whose laws do not recognise uncertificated holdings or electronic transfer of title. For further guidance on CDIs, see Guidance Note 5 *CHESS Depositary Interests (CDIs)*.

²¹⁰ Listing Rule 1.1 condition 15(b).

²¹¹ Listing Rule 2.1 condition 3(b) and ASX Settlement Operating Rule 13.2.1.

been obtained, ASX Settlement will then establish the CHESSE subregister for its CDIs, which ASX Settlement will administer as the entity's agent. The entity must establish its own issuer sponsored subregister for its CDIs²¹² and, again, in practice, will usually engage an Australian registry to establish and administer that subregister on its behalf.

An entity's Appendix 1A application form not only operates as an application to be admitted to the official list of ASX but also as an application by the entity for the requisite approvals under the operating rules of the CHESSE facility.²¹³

²¹² Listing Rule 8.2.

²¹³ ASX Settlement Operating Rule 8.1.1 and Procedure 8.1.1.

Annexure: Disclosure of information about bookbuilds

Where an entity has undertaken an offer by way of bookbuild in connection with its application for listing, as a matter of practice, ASX requires²¹⁴ it to disclose the following information prior to the commencement of trading in its securities:

- the number of securities issued under the bookbuild and the price at which they have been issued;
- if a material number of securities have been taken up by a person or persons who are promoters or related parties of the applicant, the number of securities taken up by them;
- any concessionary fee or other arrangements entered into which have had the result that the effective issue price paid by some allottees differs materially from the bookbuild price announced by the applicant;
- any arrangements entered into which have had the result that some allottees receive a material benefit for agreeing to participate in the bookbuild at the bookbuild price announced by the applicant which is not received by other allottees; and
- any arrangements entered into with associates of the applicant or the bookrunner to avoid a shortfall, or the appearance of a shortfall, in the bookbuild.

This does not require disclosure of normal sub-underwriting arrangements entered into by an underwriter in the ordinary course of business.

The purpose of the requirement above is to ensure that the market is informed of any material information arising from a bookbuild which may impact on the price or value of the entity's securities so that, when trading in those securities commences, it takes place on a reasonably informed basis.

An entity must ensure it has a right to obtain appropriate information from the bookrunner in order to meet this requirement.

Bookrunners could potentially enter into different types of arrangements which would fall within the disclosure requirements in this annexure. We have provided four examples below to illustrate ASX's expectations. However, these examples are intended as a guide only and are in no way exhaustive.

Example 1

Company A intends to list on ASX. Company A's initial public offering (IPO) includes an institutional bookbuild component to be conducted by Broker B. Company A awarded the tender for the bookbuild to Broker B because it undertook to place equal numbers of securities with Australian and offshore institutions.

Company A wants to place a total of 50 million shares at between \$2.30 and \$2.50 each with these institutions. During the course of the bookbuild, it becomes clear to Broker B that offshore interest is weaker than anticipated. There is insufficient demand to cover the book at \$2.30.

In order to ensure that the book is covered, an offshore subsidiary of Broker B agrees to take 10 million shares. Broker B enters into an arrangement with a second, unrelated offshore entity, whereby Broker B will pay a "special fee" of \$0.15 per share in return for which the offshore entity will bid for 15 million shares at \$2.30.

Company A must disclose details of the total number of shares allocated to the institutions, and the price at which they were placed. Company A must also disclose details of the actions taken to minimise or avoid a material shortfall – ie the shares allocated to Broker B's offshore subsidiary and the \$0.15 "special fee" paid to the second offshore entity.

²¹⁴ Pursuant to Listing Rule 1.17 and 2.9.

Example 2

Company C intends to list on ASX and to obtain its minimum spread by undertaking a placement of shares to institutional investors and major private clients of Broker D. The placement will be via a bookbuild conducted by Broker D. Company C hopes to place a total of 20 million shares at around \$1.00 each.

Broker D succeeded in attracting greater than the required minimum spread but not in completing the placement for the full 20 million shares. In order to successfully complete the placement, Broker D enters into a series of agreements with major private clients. The clients agree to purchase a total of 10 million shares at \$0.98 each, and Broker D agrees to buy back the shares in the next 30 to 60 days for \$1.03.²¹⁵

Company C must obtain and disclose details of the buy-back arrangement between Broker D and its clients.

Example 3

Company E intends to list on ASX. It will offer 30% of its securities to retail investors, and 70% of its securities to institutional investors via a bookbuild.

Company E's prospectus indicates a bookbuild price range of between \$3.00 and \$3.50. Company E is concerned that the market for IPOs may be weakening, so it enters into a series of "offer agreements" with large institutional investors, agreeing to place 30% of its securities with those investors at \$3.00 per security. The bookbuild for the remaining 40% of securities is conducted. It is priced at \$3.50.

Company E must disclose a breakdown of the number of securities placed and the price at which they were placed. Company E must also release details of the "offer agreements" between Company E and the institutional investors.

Example 4

Company F intends to list on ASX and to use the funds raised by its initial public offering to purchase assets from Company G, who is currently its major shareholder. Company G is therefore a promoter of Company F for the purposes of the Listing Rules.

Company F is proposing to conduct a bookbuild to raise the minimum subscription specified in its prospectus and, to the extent that the subscriptions received in the bookbuild do not satisfy ASX's minimum spread requirements, to leave its prospectus open for further applications by investors.

Company F conducts the bookbuild and successfully raises its minimum subscription. However, a large proportion of the bids into the book came from Company G and interests associated with it and there were insufficient bids from other parties to meet ASX's minimum spread requirements. Company F therefore continues to offer securities under its prospectus seeking to obtain the required minimum spread.

Company F must disclose a breakdown of the number of securities placed with Company G and its associates and the price at which they were placed.

In any public announcement about the results of the bookbuild, Company F must also take care not to mislead potential investors about the composition of bids into the book. For instance, for Company F in this example to issue a public announcement describing the bookbuild as having successfully raised the minimum subscription from "retail and wholesale investors" without disclosing the fact that a large proportion of the bids came from a promoter of the company, could mislead potential investors into believing that the float has more widespread support from investors than it truly has.

²¹⁵ Note that if this arrangement was relied on to deliver the shareholders needed to meet ASX's minimum spread requirement in Listing Rule 1.1 condition 8, ASX would regard it as using "artificial means" to obtain spread (see '3.8 Minimum spread' on page 12).