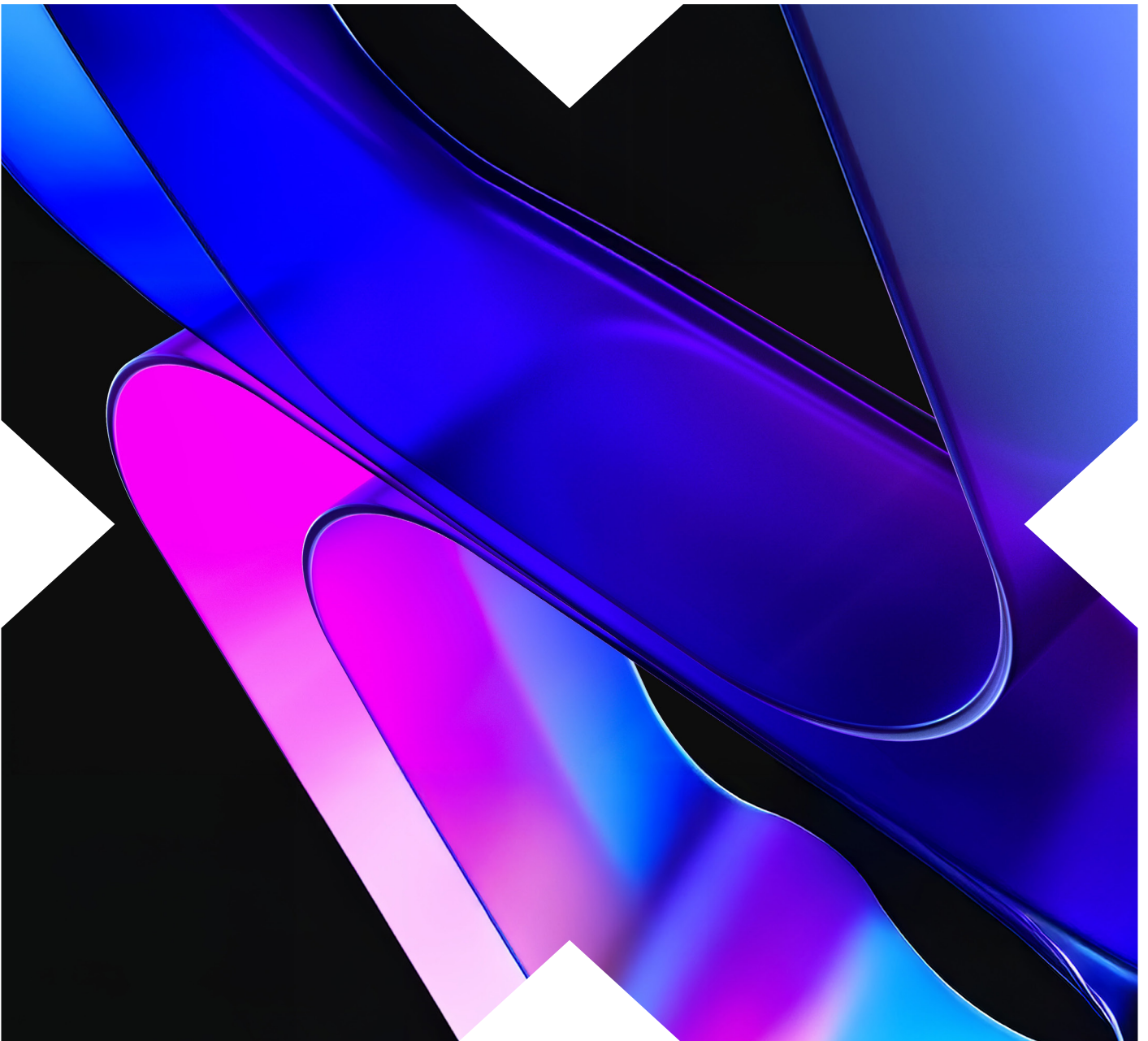


ASX Corporate Governance Principles and Recommendations



Annexure B –
Proposed consequential changes to the ASX Listing
Rules and Guidance Notes



Listing Rules

Chapter 1

Admission

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Explanatory note

This chapter sets out requirements that must be satisfied for an entity to gain admission to the *official list. They include a requirement that the *main class of *securities is *quoted. *Quotation of *securities is dealt with in chapter 2.

ASX takes into account the particular circumstances of each applicant. ASX may grant admission even though not all the requirements have been met. ASX may refuse admission even though all the requirements have been met.

ASX may copy information and documents lodged in support of an application to the *ASIC. Information and documents given to ASX in support of an application become ASX's property and may be made public.

Entities that are admitted to the *official list will come within one of the following categories:

- ASX Listing.
- ASX Debt Listing.
- ASX Foreign Exempt Listing.

An entity admitted as an ASX Foreign Exempt Listing is required to comply with the rules of its *overseas home exchange and to release information to ASX that is released to its *overseas home exchange. Except to a limited extent, it will not normally be required to comply with ASX Listing Rules. See rule 1.15.

Foreign entities that are not admitted as ASX Foreign Exempt Listings will come within the ASX Listing or ASX Debt Listing categories.

For further Guidance on ASX's admission requirements, see Guidance Note 1 *Applying for Admission – ASX Listings*, Guidance Note 4 *Foreign Entities Listing on ASX* and Guidance Note 29 *Applying for Admission – ASX Debt Listings*.

ASX Listing

Requirements for ASX Listing

- 1.1 For an entity to be admitted to the *official list as an ASX Listing, the following conditions must be met to ASX's satisfaction.

Introduced 01/07/96 Amended 30/09/01, 19/12/16

Condition 1	The entity's structure and operations must be appropriate for a listed entity. Introduced 01/07/96 Guidance Note 1 <i>Applying for Admission – ASX Listings</i> has guidance on when an entity's structure and operations are appropriate for a listed entity.
Condition 2	The entity must have a constitution which is consistent with the Listing Rules or which includes the provisions in Appendix 15A or Appendix 15B (as applicable). Introduced 01/07/96 Origin: Listing Rule 1A(1)(b) Amended 01/07/98, 19/12/16 Note: See ASIC Regulatory Guide 134, Managed Investments: Constitutions, for ASIC's position on whether it will register a scheme that includes a provision to the effect of Appendix 15A in its constitution.
Condition 3	A *prospectus or *PDS must be issued and lodged with *ASIC and given to ASX or, if ASX agrees, an *information memorandum that complies with the requirements of rule 1.4 must be lodged with ASX. The *prospectus, *PDS or *information memorandum must include a prominent statement that ASX takes no responsibility for the contents of the document. Introduced 01/07/96 Origin: Listing Rule 1A(1)(f) Amended 01/09/99, 13/03/00, 11/03/02, 01/05/13, 19/12/16, 01/12/19 Note: An offer information statement is not a prospectus. If the entity establishes that it has not raised capital in the past 3 months and does not expect it will need to raise capital in the next 3 months, and has the required spread of security holders, ASX may agree to the issue of an information memorandum.
Condition 4	If the entity is a *foreign company, it must be registered as a foreign company carrying on business in Australia under the <i>Corporations Act</i>. Introduced 01/07/96 Origin: Listing Rule 1A(8)(i) Amended 01/07/00, 24/10/05, 04/03/13, 19/12/16
Condition 5	If the entity is a trust: (a) it must be a registered scheme or have an exemption from ASIC from that requirement; (b) if it is exempted from the requirement to be a registered scheme, its *responsible entity must either be an *Australian company or registered as a foreign company carrying on business in Australia under the <i>Corporations Act</i>; and (c) no-one must be under an obligation to buy-back units in the trust or to allow a *security holder to withdraw from the trust. Introduced 01/07/96 Origin: Listing Rule 2A(9), 2F(20) Amended 01/07/98, 30/09/01, 19/12/16, 01/12/19 Note: "Registered scheme" means a managed investment scheme that is registered under section 601EB of the <i>Corporations Act</i> (rule 19.3 and section 9 of the <i>Corporations Act</i>). Part 5C.6 of the <i>Corporations Act</i> deals with members' rights to withdraw from a scheme. The Listing Rules allow on-market buy-backs by trusts on conditions comparable to buy-backs by companies. See rule 7.36.
Condition 6	The entity must apply for and be granted permission for *quotation of all 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). Introduced 01/07/96 Amended 01/01/12, 19/12/16 Note: Condition 6 is satisfied if permission for quotation (ie, not actual quotation) is granted on conditions. If a condition is not satisfied, the entity may be removed from the official list. An entity may also apply for quotation of other classes of securities. See chapter 2.

- Condition 7** The entity must have a *free float at the time of its admission to the *official list of not less than 20%.
- Introduced 19/12/16
- Condition 8** There must be at least 300 *non-affiliated security holders, each of whom holds a parcel of the *main class of *securities that are not *restricted securities or subject to *voluntary escrow with a value of at least \$2,000.
- If *CDIs are issued over *securities in the *main class, holders of *CDIs will be included.
- This condition is not met if spread is obtained by artificial means.
- Introduced 01/07/96 Origin: Listing Rule 1A(3)(b)(ii) Amended 01/09/99, 11/03/02, 01/11/12, 19/12/16
- Note: Where an entity is undertaking a material capital raising in conjunction with its listing, ASX will normally use the offer price under the prospectus or PDS for that capital raising to calculate the value of the entity's free float and the value of a parcel of securities. ASX may, however, use a different price to determine these values if the entity is not undertaking a material capital raising in conjunction with its listing or if ASX is concerned that the offer price under the prospectus or PDS does not fairly reflect the value of its main class of securities.
- ASX may require some or all of the security holders mentioned above to be residents of Australia.
- Guidance Note 1 *Applying for Admission* – ASX Listings has guidance on what is meant by obtaining spread by artificial means.
- Condition 9** The entity must satisfy either the profit test in rule 1.2 or the assets test in rule 1.3.
- Introduced 01/07/96 Origin: Listing Rule 1A(3)(b)(iii), 1A(3)(b)(iv) Amended 01/09/99, 19/12/16
- Condition 10** If the entity has issued, or proposes to issue, *securities that under these rules are, or are required to be, *restricted securities, it must comply with chapter 9.
- Introduced 01/07/96 Origin: Listing Rule 1A(2)(b) Amended 19/12/16, 01/12/19
- Note: The definition of restricted securities includes securities ASX decides are restricted securities.
- Cross reference: Chapter 9, Appendices 9A, 9B and 9C.
- Condition 11** If:
- (a) in the 2 years prior to the date of the entity's application for admission to the official list the entity has acquired; or in connection with its listing is proposing to *acquire, a *classified asset from a *related party or a *promoter, or an *associate of a *related party or a *promoter, of the entity, the consideration for the acquisition must have been, or be, *equity securities issued by the entity and those *securities must be *restricted securities; or
 - (b) in the 12 months prior to its admission to the official list the entity has *acquired, or in connection with its listing is proposing to *acquire, a *classified asset from someone who is not a *related party or *promoter, or an *associate of a *related party or a *promoter, of the entity, and part or all of the consideration for the acquisition was or will be *securities in a class that is to be quoted, those *securities must be *restricted securities.
- Paragraphs (a) and (b) do not apply if under rule 9.2 the entity is not required to apply the restrictions in Appendix 9B. Paragraph (a) also does not apply if, and to the extent that, the consideration was or will be

reimbursement of expenditure incurred by the related party, promoter or associate in developing the classified asset.

Introduced 01/07/96 Origin: Listing Rule 3J(37) Amended 01/07/98, 19/12/16, 01/12/19

Note: The requirement in this condition that the securities in question must be restricted securities means that condition 10 above also applies and therefore the entity must comply with chapter 9.

Cross reference: Chapter 9, Appendices 9A, 9B and 9C, clauses 3 and 4.

Condition 12 If the entity has options on issue the exercise price for each *underlying security must be at least 20 cents in cash.

Introduced 01/07/00 Amended 19/12/16

Condition 13 The entity must appoint a person to be responsible for communication with ASX in relation to listing rule matters who has completed an *approved listing rule compliance course and attained a satisfactory pass mark in the examination for that course.

Introduced 30/09/01 Amended 19/12/16, 01/12/19

Note: The changes to condition 13 made on 01/12/19 come into effect on 1 July 2020 and apply to entities that lodge an application to be admitted to the official list on or after that date.

For many entities, the company secretary will be an appropriate person to be responsible for communication with ASX. ASX expects that the person appointed will have a high degree of familiarity with an entity's operations and have ready access to senior management who have responsibility for day to day management of the entity.

An entity may nominate more than one person to be responsible for communication with ASX under this rule. If it does so, each person must have completed an approved listing rule compliance course and attained a satisfactory pass mark in that examination.

The nomination of such a person is for administrative convenience only and does not in any way abrogate the responsibility of the listed entity to comply with the Listing Rules.

Cross reference: Listing Rule 12.6.

Condition 14 The entity must:

- (a) agree with ASX, in writing, that documents may be given to ASX and authenticated electronically; and
- (b) establish the facilities required for the entity to give documents to ASX electronically.

Introduced 01/01/03 Amended 19/12/16

Cross-reference: Listing Rules 15.3 and 15.4A, ASX Guidance Note 20 – ASX Online.

Condition 15 The entity must either:

- (a) be approved to act as an issuer of quoted *securities under the operating rules of an *approved CS facility; or
- (b) if the entity is established in a jurisdiction whose laws have the effect that the entity's *securities cannot be registered or transferred under the operating rules of an *approved CS facility, the issuer must be approved as a foreign issuer of *CDIs under the operating rules of an *approved CS facility.

Introduced 19/12/16

Condition 16 The entity 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 [byout in the *ASX Corporate Governance Council Principles and Recommendations](#). If the entity does not intend to follow all the recommendations on its admission to the official list, the entity 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.

Introduced 01/01/03 Origin: Listing Rule 4.10.2 Amended 03/05/04, 11/01/10, 01/07/14, 19/12/16, [xx/xx/xx](#)

The statement provided under this condition may incorporate material by reference (for example, on an entity's website or in another part of its annual report) provided that material is freely available and the statement clearly indicates where interested parties can read or obtain a copy of that material.

Cross reference: Listing Rule 4.10.3

Condition 17

An entity which will be included in the *S & P All Ordinaries Index on admission to the *official list must have an audit committee. If the entity will be included in the *S & P / ASX 300 Index on admission to the *official list it must also comply with the recommendations set [byout in the](#) *ASX Corporate Governance [Council Principles and Recommendations](#) in relation to the composition and operation of the audit committee.

Introduced 01/01/03 Amended 03/05/04, 11/01/10, 01/07/14, 19/12/16, [xx/xx/xx](#)

Note: If the entity is a trust, its audit committee may also be the responsible entity's audit committee.

Cross reference: Listing Rule 12.7

Condition 18

An entity, which will be included in the *S & P / ASX 300 Index on admission to the *official list, must have a *remuneration committee comprised solely of non-executive directors.

Introduced 01/07/11 Amended 19/12/16

Note: If the entity is a trust its remuneration committee may also be the responsible entity's remuneration committee.

Where an entity is part of a corporate group, that has one or more related bodies corporate in the S&P/ASX 300 Index, the board of that entity may utilise a remuneration committee of a related body corporate in the S & P / ASX 300 Index in order to satisfy the requirements of Condition 16.

Cross reference: Listing Rule 12.8

Condition 19

The entity must have a *trading policy that complies with rule 12.9.

Introduced 01/01/11 Amended 19/12/16

Guidance Note 27 *Trading Policies – ASX Listings* has further guidance on the requirements of Listing Rule 12.9 and other matters that might be included in a trading policy.

Condition 20

The entity must satisfy ASX that:

- if the entity is a body corporate:
 - each director or proposed director of the entity;
 - its *CEO or proposed *CEO; and
 - its *CFO or proposed *CFO; or
- if the entity is a trust:
 - each director or proposed director of the *responsible entity of the trust;
 - the *CEO or proposed *CEO of the *responsible entity of the trust; and
 - the *CFO or proposed *CFO of the *responsible entity of the trust,

at the date of listing is of good fame and character.

Introduced 01/01/12 Amended 19/12/16, 01/12/19

Note: The references in this rule to a “proposed director”, “proposed CEO” or “proposed CFO” include any person named in the entity’s listing prospectus, PDS or information memorandum as someone proposed to be appointed as a director, CEO or CFO (respectively) of the entity after it has been admitted to the official list.

Guidance Note 1 *Applying for Admission – ASX Listings* has guidance on how an entity can satisfy ASX of these matters.

The profit test

1.2 To meet the profit test, an entity must satisfy each of the following:

1.2.1 The entity must be a going concern. This rule is satisfied if the entity is the successor of a going concern.

Introduced 01/07/96 Origin: Listing Rule 1A(3)(b)(iii)a

1.2.2 The entity’s main business activity at the date it is admitted must be the same as it was during the last 3 full financial years.

Introduced 01/07/96 Origin: Listing Rule 1A(3)(b)(iii)b

1.2.3 The entity must give ASX each of the following.

- (a) Audited *accounts for the last 3 full financial years. If the entity applies for admission less than 90 days after the end of its last financial year, unless the entity 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 but must also include audited or reviewed *accounts for its most recent half year as well.
- (b) If the entity applies for admission more than 6 months and 75 days after the end of its last financial year, audited or reviewed *accounts for its most recent half year (or longer period if available).
- (c) Unless ASX agrees it is not needed, a reviewed pro forma statement of financial position. 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.

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

Introduced 01/07/96 Origin: Listing Rule 1A(3)(b)(iii)c and Listing Rule 1.2.6 Amended 01/07/97, 01/07/98, 01/07/00, 01/01/12, 19/12/16, 01/12/17

Note: Guidance Note 1 *Applying for Admission – ASX Listings* has guidance on the types of modified opinion, emphasis of matter or other matter paragraph that ASX may accept for the purposes of this rule.

Cross reference: rule 19.11A.

1.2.4 The entity’s aggregated *profit from continuing operations for the last 3 full financial years must have been at least \$1 million.

Introduced 01/07/96 Origin: Listing Rule 1A(3)(b)(iii)a

1.2.5 The entity’s consolidated *profit from continuing operations for the 12 months to a date no more than 2 months before the date the entity applied for admission must exceed \$500,000.

Introduced 01/07/96 Origin: Listing Rule 1A(3)(b)(iii)a and Listing Rule 1.2.6 Amended 01/07/97, 01/07/98, 30/09/01, 19/12/16

1.2.6 If its *prospectus, *PDS or *information memorandum does not contain a statement confirming that the directors (in the case of a trust, the directors of the *responsible entity of the trust) 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 the *prospectus, *PDS or *information memorandum, the

entity must give one to ASX signed by all of its directors (in the case of a trust, all of the directors of the *responsible entity of the trust).

Introduced 30/09/01 Origin: Listing Rule 1.2.5 Amended 01/12/17, 01/12/19

The assets test

- 1.3 To meet the assets test, an entity that is not an *investment entity must satisfy rules 1.3.1, 1.3.2, 1.3.3 and 1.3.5. An *investment entity must satisfy rules 1.3.4 and 1.3.5.

- 1.3.1 At the time of admission, an entity that is not an *investment entity must have:

- (a) net tangible assets of at least \$4 million after deducting the costs of fund raising; or
- (b) a *market capitalisation of at least \$15 million.

Amended 01/11/12, 19/12/16

- 1.3.2 In the case of an entity that is not an *investment entity, either:

- (a) less than half of the entity's total tangible assets (after raising any funds) must be cash or in a form readily convertible to cash; or

Introduced 01/07/96 Origin: Listing Rule 1A(3)(b)(iv)b

- (b) the entity has commitments consistent with its stated objectives under rule 1.3.3(a) to spend at least half of its cash and assets in a form readily convertible to cash. The entity's *prospectus, *PDS or *information memorandum must include an expenditure program setting out these commitments.

Introduced 01/07/96 Origin: Listing Rule 1A(3)(b)(iv)b Amended 01/09/99, 11/03/02, 19/12/16, 01/12/19

Note: In deciding if an entity's total tangible assets are in a form readily convertible to cash, ASX would normally not treat inventories and receivables as readily convertible to cash.

Example: If a start-up company raises \$2.3 million, and the cost of its capital raising is \$300,000, ASX would normally require it to have commitments for an additional \$850,000 (which, with the \$300,000, is half of the \$2.3 million cash raised).

Cross reference: rule 4.10.19 which requires reporting on the use of funds in the first two annual reports.

- 1.3.3 In the case of an entity that is not an *investment entity, the entity must satisfy each of the following:

- (a) Its *prospectus, *PDS or *information memorandum must state the objectives the entity is seeking to achieve from its admission and any capital raising undertaken in connection with its admission.
- (b) If its *prospectus, *PDS or *information memorandum does not contain a statement that the entity will have enough *working capital at the time of its admission to carry out its stated objectives, the entity must give ASX one from an independent expert.
- (c) The entity's *working capital, as shown in its reviewed pro forma statement of financial position under rule 1.3.5(d), must be at least \$1.5 million.

Introduced 01/07/96 Origin Listing Rule 1A(3)(g)(i) Amended 01/09/99, 11/03/02, 11/01/10, 17/12/10, 01/12/13, 19/12/16, 01/12/19

- 1.3.4 At the time of admission, an *investment entity must satisfy one of the following.

- (a) It must have net tangible assets of at least \$15 million after deducting the costs of fund raising.
- (b) It must be a *pooled development fund and have net tangible assets of at least \$2 million after deducting the costs of fund raising.

Introduced as Rule 1.3.1A 01/07/96 Origin: Listing Rule 1A(3)(b)(iv)a Amended 01/09/99, 19/12/16

Note: ASX would normally not treat a limited recourse loan as a tangible asset.

1.3.5 Unless ASX agrees otherwise, the entity must give ASX each of the following.

- (a) Audited +accounts for the last 2 full financial years. If the entity applies for admission less than 90 days after the end of its last financial year, unless the entity has audited +accounts for its latest full financial year, the +accounts may be for the 2 years to the end of the previous financial year but must also include audited or reviewed +accounts for its most recent half year as well.
- (b) If the entity applies for admission more than 6 months and 75 days after the end of its last financial year, audited or reviewed +accounts for its most recent half year (or longer period if available).
- (c) 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 business that is significant in the context of the entity:
 - Audited +accounts for the last 2 full financial years for that other entity or business. If the entity applies for admission less than 90 days after the end of the last financial year for that other entity or business, unless the other entity or business has audited +accounts for its latest full financial year, the +accounts may be for the 2 years to the end of the previous financial year but must also include audited or reviewed +accounts for its most recent half year as well.
 - If the entity applies for admission more than 6 months and 75 days after the end of the last financial year for that other entity or business, audited or reviewed +accounts for that other entity or business for its most recent half year (or longer period if available).
- (d) A reviewed pro forma statement of financial position. The review must be conducted by a registered company auditor, or an overseas equivalent of a registered company auditor, or an independent accountant.

Example: If an entity raises capital or acquires or disposes of assets, the pro forma statement of financial position will reflect these changes. It will also show any material changes in the financial position of the entity since the date of the last balance sheet. ASX may agree that a pro forma statement of financial position is not needed if there are no changes of this nature.

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

Introduced 01/07/97 Amended 01/07/98, 01/07/00, 01/01/12, 19/12/16, 01/12/17

Note: Guidance Note 1 *Applying for Admission – ASX Listings* has guidance on when ASX may agree to accept less than 2 full financial years of audited accounts for the purposes of this rule. 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 under rule 1.17. ASX may require that additional financial information to be audited or reviewed or otherwise opined upon by an expert. Guidance Note 1 *Applying for Admission – ASX Listings* also has guidance on the types of modified opinion, emphasis of matter or other matter paragraph that ASX may accept for the purposes of this rule.

Cross reference: rule 19.11A.

1.4 If ASX agrees pursuant to rule 1.1 condition 3 that an entity may provide an +information memorandum in lieu of a +prospectus or +PDS, the +information memorandum must satisfy the following requirements:

- 1.4.1 If the entity is a company, it must contain a statement that 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 is contained in the +information memorandum;
- 1.4.2 If the entity is a trust, it must contain a statement that 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 is contained in the +information memorandum;

- 1.4.3 It must be signed by every director, and proposed director, of the entity personally or by a *person authorised in writing by the director (in the case of a trust, director of the responsible entity);
- 1.4.4 It must include the date it was signed;
- 1.4.5 It must include full particulars of the nature and extent of any interest now, or in the past 2 years, of every director or proposed director of the entity (in the case of a trust, the responsible entity), in the promotion of the entity, or in the property acquired or proposed to be acquired by it and:
- If the interest was, or is, as a member or partner in another entity, the nature and extent of the interest of that other entity; and
 - If the interest was or is as a member or partner in another entity, a statement of all amounts paid or agreed to be paid to him or her or the entity in cash, *securities or otherwise by any *person to induce him or her to become or to qualify him or her as, a director, or for services rendered by him or her or by the entity in connection with the promotion or formation of the listed entity;
- 1.4.6 It must include full particulars of the nature and extent of any interest of every expert in the promotion of the entity, or in the property acquired or proposed to be acquired by it and:
- If the interest was, or is, as a member or partner in another entity, the nature and extent of the interest of that other entity; and
 - If the interest was or is as a member or partner in another entity, a statement of all amounts paid or agreed to be paid to him or her or the entity in cash, *securities or otherwise by any *person to induce him or her to become or to qualify him or her as, a director, or for services rendered by him or her or by the entity in connection with the promotion or formation of the listed entity;
- 1.4.7 It must include statements that:
- ASX does not take any responsibility for the contents of the *information memorandum;
 - The fact that ASX may admit the entity to its *official list is not to be taken in any way as an indication of the merits of the entity;
 - If the *information memorandum includes a statement claiming to be made by an expert or based on a statement made by an expert, a statement that the expert has given, and has not withdrawn, consent to the issue of the *information memorandum with the particular statement included in its form and context; and
 - the entity has not raised any capital for the 3 months before the date of issue of the *information memorandum and will not need to raise any capital for 3 months after the date of issue of the *information memorandum; and
- 1.4.8 It must include a statement that the entity will issue a supplementary information memorandum if the entity becomes *aware of any of the following between the 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.

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

Introduced 01/05/13 Amended 19/12/16

1.5 If in accordance with the statement required to be included in an *information memorandum by rule 1.4.8 an entity becomes obliged to issue a supplementary information memorandum, the supplementary information memorandum must satisfy the following requirements:

- 1.5.1 It must include a prominent statement that it is a supplementary information memorandum;
- 1.5.2 It must correct the misleading or deceptive statement in or material omission from the *information memorandum or give details of the significant change or significant new circumstance (as the case may be);
- 1.5.3 It must be signed by every director, and proposed director, of the entity personally or by a *person authorised in writing by the director (in the case of a trust, director of the responsible entity); and
- 1.5.4 It must include the date it was signed.

Introduced 01/05/13 Amended 19/12/16

1.6 [Deleted]

Introduced 01/07/96 Origin: Listing Rule 1A(3)(b)(iv)a, b Amended 01/07/97, 01/07/98 Deleted 01/09/99 Refer rules 1.3.1, 1.3.2, 1.3.5

Applying for ASX Listing

1.7 To apply for admission to the *official list as an ASX Listing, an entity must complete Appendix 1A and give it to ASX.

Introduced 01/07/96 Origin: Listing Rule 1A(1)(g) Amended 30/09/01

Cross reference: Chapter 16.

ASX Debt Listing

Requirements for admission as an ASX Debt Listing

1.8 For an entity to be admitted to the *official list as an ASX Debt Listing, the following conditions must be met to ASX's satisfaction.

Introduced 01/07/96 Amended 30/09/01

Condition 1 The entity must be seeking *quotation of *debt securities only that are "financial products", as defined in the *Corporations Act*.

Introduced 01/07/96 Origin: Listing Rule 1A(3)(a) Amended 19/12/16

Condition 2 The entity must be:

- a public company limited by shares; or
- a government borrowing authority; or
- a public authority; or
- a *person approved by ASX.

Introduced 01/07/96 Origin: Listing Rule 1A(3)(a) Amended 01/07/00, 19/12/16

Condition 3 An entity must satisfy one of (a), (b) or (c):

- (a) the entity must:

+ See chapter 19 for defined terms

- have net tangible assets at the time of admission of at least \$10 million or, if the entity is a trustee, the trust must have net tangible assets of at least \$10 million; and
 - give ASX any *accounts, together with any audit report or review for the last 2 full financial years (or a shorter period if ASX agrees). If the *accounts have not been audited or reviewed, the entity must tell ASX; or
- (b) all *debt securities to be issued by the entity for which the entity will seek quotation will be unconditionally and irrevocably guaranteed for the period of quotation of the securities, and the guarantor must:
- be a company which at the time of admission of the entity has net tangible assets of at least \$10 million;
 - give ASX its *accounts, together with any audit report or review for the last 2 full financial years (or a shorter period if ASX agrees); and
 - provide an undertaking to provide to ASX for release to the market the documents required to enable the entity to comply with rule 4.7A.1.

If its *accounts have not been audited or reviewed, the guarantor must tell ASX; or

- (c) the *debt securities for which the entity seeks quotation are rated at least "investment grade" by any of Moody's [Investor Services Inc.](#), [Standard & Poors, Inc.](#), [Corporation](#), [S&P Global](#), and [Fitch, Inc. Group](#) or any other credit rating agency advised to the market by ASX from time to time or any of their subsidiaries and none of those credit rating agencies has issued a rating less than "investment grade" in relation to those *debt securities.

Note: If the issue of debt securities is a retail issue, ASX would expect the issuer to provide investors with details of not only the rating, but also some explanation of the rating and its significance in the context of other ratings. For example, this could be done by including a comparative table, with brief descriptions of each category of rating.

ASX recognises that there may need to be changes to the credit rating agencies on whose ratings it believes it can reasonably rely. Those changes may consist of either additions to or deletions from the list of credit ratings agencies advised by ASX to the market.

Introduced 01/07/96 Amended 30/09/01, 24/10/05, 19/12/16, [xx/xx/xx](#)

Condition 4

If the *debt securities to be quoted on ASX are *retail securities:

- a *prospectus must be issued and lodged with *ASIC and given to ASX. The *prospectus must include a prominent statement that ASX takes no responsibility for the contents of the document; and
- the entity's structure and the terms of the *debt securities must be appropriate for *retail securities.

Introduced 01/07/96 Amended 30/09/01, 24/10/05, 19/12/16, 01/12/19

Condition 5

The entity must apply for and be granted *quotation of all the *securities that are in the *class for which it seeks *quotation.

Introduced 01/07/96

Note: There must be a deed for debt securities and convertible debt securities. See rule 2.1.

Debt securities belong to the same class if they have the same issue date, same maturity date and are issued on exactly the same terms as each other. For asset-backed securities

to belong to the same class, they must also confer on investors recourse to the same pool of assets or rights on the same terms, and with the same priority ranking.

Cross reference: Chapter 2.

Condition 6

If the entity is a *foreign entity, ASX must be satisfied that the entity complies with its constitution and the laws that govern it, and the listing rules (or their equivalent) of its *overseas home exchange (if any).

Introduced 01/07/96 Origin: Listing Rule 1A(8)(i) Amended 01/07/00, 24/10/05, 04/03/13, 19/12/16

Condition 7

If the entity is a *foreign company, it must be registered as a foreign company carrying on business in Australia under the *Corporations Act*.

Introduced 01/07/96 Origin: Listing Rules 1A(8)(i) Amended 01/07/00, 24/10/05, 04/03/13, 19/12/16

Condition 8

If the entity is a trust:

- (a) the *responsible entity of the trust must be the issuer of the debt securities;
- (b) the trust must be a special purpose trust constituted solely for the purpose of issuing the class or classes of debt securities to be quoted on ASX;
- (c) if the *debt securities to be quoted on ASX are *retail securities, it must be a registered scheme or have an exemption from ASIC from that requirement; and
- (d) if the entity is a *foreign trust, its *responsible entity must either be an *Australian company or registered as a foreign company carrying on business in Australia under the *Corporations Act*.

Introduced 19/12/16 Amended 01/12/19

Note: "Registered scheme" means a managed investment scheme that is registered under section 601EB of the *Corporations Act* (rule 19.3 and section 9 of the *Corporations Act*).

Condition 9

The entity must appoint a person to be responsible for communication with ASX in relation to listing rule matters.

Introduced 11/3/02 Amended 19/12/16

Note: For many entities the company secretary will be an appropriate person to be responsible for liaison with ASX, although this may not always be the case, taking into account the structure of the entity. ASX expects that the person will have a high degree of familiarity with an entity's operations or have ready access to senior management who have responsibility for day to day management of the entity.

An entity may nominate more than one person to be responsible for communication with ASX but at any time at least one of the persons nominated must be available to ASX.

The nomination of such a person is for administrative convenience only and does not in any way abrogate the responsibility that lies on the listed entity under the Listing Rules.

Condition 10

The entity must:

- (a) agree with ASX in writing that documents may be given to ASX and authenticated electronically.
- (b) establish the facilities required for the entity to give documents to ASX electronically.

Introduced 01/01/03 Amended 19/12/16

Cross-reference: Listing Rules 15.3 and 15.4A, ASX Guidance Note 20 - ASX Online.

Condition 11

The entity must either:

- (a) be approved to act as an issuer of quoted *securities under the operating rules of an *approved CS facility; or

- (b) if the entity is established in a jurisdiction whose laws have the effect that the entity's *securities cannot be registered or transferred under the operating rules of an *approved CS facility, the issuer must be approved as a foreign issuer of *CDIs under the operating rules of an *approved CS facility.

Introduced 19/12/16

Condition 12

If the entity proposes to apply for quotation of *asset-backed securities:

- (a) there must be a security trustee or other independent *person representing the interests of the holders of the *asset-backed securities; or
- (b) if the issue of *asset-backed securities is secured by *equity securities, or options, warrants or other rights relating to *equity securities, the *equity securities must:
- be quoted on a stock exchange or traded on another regulated market; and
 - not constitute a majority interest or confer legal or management control of the companies that have issued them.

Introduced 24/10/05 Amended 19/12/16

Note: When deciding whether a retail issue of asset-backed securities should be listed, ASX would have regard to whether potential investors had enough information about the structure, the financial risks that might be involved and the recourse available to investors in the possible event of default.

Applying for admission to the official list

- 1.9 To apply for admission to the *official list as an ASX Debt Listing, an entity must complete Appendix 1B and give it to ASX.

Introduced 01/07/96 Origin: Listing Rule 1A(1)(g) Amended 30/09/01

Cross reference: Chapter 16.

Continuing obligations of an ASX Debt Listing

- 1.10 After it is admitted, an entity admitted as an ASX Debt Listing must comply with the following listing rules (and need not comply with the others).

Introduced 01/07/96 Amended 30/09/01

Note: If the entity admitted as an ASX Debt Listing is a trust, ASX may specify other rules to suit the circumstances.

1.10.1 In relation to quoted *debt securities:

- rules 2.1, 2.4, 2.5, 2.6, 2.7, 2.8, 2.9, 2.10, 2.14, 3.1, 3.1A, 3.1B, 3.10.3, 3.10.4, 3.13.2, 3.13.3, 3.15, 3.17, 3.20, 3.21, 3.22, Appendix 6A sections 1 and 2, Chapter 8, rules 15.1.2, 15.2 to 15.10, and Chapters 16, 17, 18, 19, and any listing rules that ASX specifies either before or after the entity is admitted.

Introduced 01/07/96 Amended 01/07/97, 01/07/00, 30/09/01, 01/05/13, 02/11/15, 01/12/19

Note: Rule 3.21 only applies to quoted debt securities that pay a dividend or other distribution. Rules 15.2 to 15.10 and Chapters 16, 17, 18 and 19 are more in the nature of procedural rules.

1.10.2 In relation to the entity as a whole:

- rules 3.14, 3.16 (other than 3.16.4), 3.18, 4.7A, 4.9, 12.6, 12.6A and 12.6B and any listing rules that ASX specifies either before or after the entity is admitted.

Introduced 01/07/96 Amended 01/09/99, 01/07/00, 30/09/01, 01/07/14, 19/12/16

Note: If the entity admitted as an ASX Debt Listing is a trust, ASX may specify other rules to suit the circumstances.

+ See chapter 19 for defined terms

ASX Foreign Exempt Listing

Requirements for admission as an ASX Foreign Exempt Listing

- 1.11 For an entity to be admitted to the *official list as an ASX Foreign Exempt Listing, the following conditions must be met to ASX's satisfaction.

Introduced 01/07/96 Listing Rule 1B(1) Amended 30/09/01

Condition 1 The entity must be a *foreign entity and must have as its *overseas home exchange a stock exchange or market which is acceptable to ASX.

Introduced 01/07/96 Origin: Listing Rule 1B(1)(b) Amended 01/05/13, 19/12/16, 01/12/19

Note: Guidance Note 4 *Foreign Entities Listing on ASX* has guidance on the overseas home exchanges that are acceptable to ASX for the purposes of this rule.

Condition 2 The entity must be subject to the listing rules (or their equivalent) of its *overseas home exchange. ASX will not waive this rule.

Introduced 01/07/96 Origin: Listing Rule 1B(1)(c)

Condition 3 ASX must be satisfied that the entity complies with the listing rules (or their equivalent) of its *overseas home exchange.

Introduced 01/07/96 Origin: Listing Rule 1B(1)(h)

Example: One way for ASX to be satisfied of this is to take into account a statement signed by at least two directors that the entity complies with those listing rules (or their equivalent).

Condition 4 The entity must inform ASX of any waiver of all or part of any listing rule (or the equivalent) of its *overseas home exchange that will be in effect in respect of the entity on its admission to the *official list. If ASX requires, the entity must release details of any such waiver to the market.

Introduced 08/09/15 Amended 19/12/16

Note: Consistently with Listing Rule 19.2, the reference in this rule to a waiver includes any relief from or modification of all or part of a rule. Any waiver that is granted to the entity up to the time of its admission to the official list must be disclosed under this rule, so entities should disclose any pending waiver applications as part of their listing application. ASX will normally require disclosure to the market of any waiver disclosed under this rule, only if disclosure to the market would be required in relation to an equivalent waiver granted by ASX.

Condition 5 The entity must apply for and be granted permission for *quotation of:

- (a) if it is a *qualifying NZ entity, all of the *securities that are in that *class; or
- (b) if it is not a *qualifying NZ entity, *securities that are in the *class for which it seeks *quotation.

Introduced 01/07/96 Amended 01/06/02, 08/09/15, 19/12/16

Note: Condition 6 is satisfied if permission for quotation (ie, not actual quotation) is granted on conditions. If a condition is not satisfied, the entity may be removed from the official list.

Cross reference: Chapter 2

Condition 6 The entity must:

- (a) if it is a *qualifying NZ entity, satisfy either the profit test in rule 1.2 or the assets test in rule 1.3 (with the exception of rules 1.3.2 and 1.3.3(a) and (b)); or
- (b) if it is not a *qualifying NZ entity, satisfy either the profit test in rule 1.12 or the assets test in rule 1.13.

Introduced 01/07/96 Origin: Listing Rule 1B(1)(a) Amended 01/06/02, 08/09/15, 19/12/16, 01/12/19

- Condition 7** If the entity is a *foreign company, it must be registered as a foreign company carrying on business in Australia under the *Corporations Act*.
Introduced 01/07/96 Amended 30/09/01, 19/12/16
- Condition 8** If the entity is a trust:
- (a) if it is not a *qualifying NZ entity, it must have an exemption from ASIC from the requirement to be a registered scheme in Australia and its *responsible entity must be an *Australian company or registered as a foreign company carrying on business in Australia under the *Corporations Act*; and
 - (b) no-one must be under an obligation to buy-back units in the trust or to allow a *security holder to withdraw from the trust.
- Introduced 01/07/00 Amended 19/12/16, 01/12/19
- Note: In relation to paragraph (a) above, “registered scheme” means a managed investment scheme that is registered under section 601EB of the *Corporations Act* (rule 19.3 and section 9 of the *Corporations Act*). If an entity is a registered scheme in Australia, it is by definition an Australian trust and therefore not a foreign entity. Qualifying NZ entities that are trusts do not need to be a registered scheme in Australia nor have an exemption from that requirement by virtue of the trans-Tasman mutual recognition scheme embodied in Chapter 8 of the *Corporations Act* and related regulations. See ASIC Regulatory Guide 190 *Offering financial products in New Zealand and Australia under mutual recognition*.
- Condition 9** The entity must appoint a person to be responsible for communication with ASX in relation to listing rule matters.
Introduced 11/03/02 Amended 19/12/16
- Note: For many entities the company secretary will be an appropriate person to be responsible for liaison with ASX, although this may not always be the case, taking into account the structure of the entity. ASX expects that the person will have a high degree of familiarity with an entity’s operations or have ready access to senior management who have responsibility for day to day management of the entity.
- An entity may nominate more than one person to be responsible for communication with ASX but at any time at least one of the persons nominated must be available to ASX.
- The nomination of such a person is for administrative convenience only and does not in any way abrogate the responsibility that lies on the listed entity under the Listing Rules.
- Condition 10** The entity must:
- (a) agree with ASX in writing that documents may be given to ASX and authenticated electronically; and
 - (b) establish the facilities required for the entity to give documents to ASX electronically.
- Introduced 01/01/03 Amended 19/12/16
- Cross-reference: Listing Rules 15.3 and 15.4A, ASX Guidance Note 20 - ASX Online.
- Condition 11** If the entity is a *qualifying NZ entity, the entity must satisfy ASX that:
- if the entity is a body corporate:
 - each director or proposed director of the entity;
 - its *CEO or proposed *CEO; and
 - its *CFO or proposed *CFO; or
 - if the entity is a trust:
 - each director or proposed director of the *responsible entity of the trust;
 - the *CEO or proposed *CEO of the *responsible entity of the trust; and

- the *CFO or proposed *CFO of the *responsible entity of the trust,

at the date of listing on ASX is of good fame and character.

Introduced 08/09/15 Amended 19/12/16, 01/12/19

Note: The references in this rule to a “proposed director”, “proposed CEO” or “proposed CFO” include any person named in the entity’s listing prospectus, PDS or information memorandum as someone proposed to be appointed as a director, CEO or CFO (respectively) of the entity after it has been admitted to the official list.

Guidance Note 1 *Applying for Admission – ASX Listings* has guidance on how an entity can satisfy ASX of these matters.

Condition 12

The entity must either:

- be approved to act as an issuer of quoted *securities under the operating rules of an *approved CS facility; or
- if the entity is established in a jurisdiction whose laws have the effect that the entity’s *securities cannot be registered or transferred under the operating rules of an *approved CS facility, the issuer must be approved as a foreign issuer of *CDIs under the operating rules of an *approved CS facility.

Introduced 19/12/16

The profit test for an ASX Foreign Exempt Listing that is not a *qualifying NZ entity

- 1.12 To meet the profit test for an entity that is not a *qualifying NZ entity, an entity admitted as an ASX Foreign Exempt Listing must satisfy each of the following.

Introduced 01/07/96 Origin: Listing Rule 1B(1)(a)(ii) Amended 30/09/01, 19/12/16

- 1.12.1 The entity must be a going concern. This rule is satisfied if the entity is the successor of a going concern.

Introduced 01/07/96 Origin: Listing Rule 1B(1)(a)(ii)

- 1.12.2 The entity’s *operating profit before income tax for each of the last 3 full financial years must have been at least \$200 million.

Introduced 01/07/96 Origin: Listing Rule 1B(1)(a)(ii) Amended 01/06/02

- 1.12.3 The entity’s *operating profit before income tax must have been, in ASX’s opinion, derived from the entity’s ordinary activities.

Introduced 01/07/96 Origin: Listing Rule 1B(1)(a)(ii)

- 1.12.4 The entity’s *accounts for the last 3 full financial years must have been prepared and audited to standards acceptable to ASX. The *accounts must not have been qualified in a way that goes to whether the entity can continue as a going concern or has satisfied the profit levels required.

Introduced 01/07/96 Amended 01/07/00

Note: ASX will accept, for example, the use of International Financial Reporting Standards and International Standards on Auditing.

Cross reference: Listing Rule 19.11A.

The assets test for an ASX Foreign Exempt Listing that is not a *qualifying NZ entity

- 1.13 To meet the assets test for an entity that is not a *qualifying NZ entity, at the time of admission, an entity admitted as an ASX Foreign Exempt Listing must have net tangible assets of at least \$2,000 million or a *market capitalisation of at least \$2,000 million.

Introduced 01/07/96 Origin: Listing Rules 1B(1)(a)(i) Amended 30/09/01, 01/06/02, 19/12/16

Applying for admission to the official list as an ASX Foreign Exempt Listing

- 1.14 To apply for admission to the ⁺official list as an ASX Foreign Exempt Listing, an entity must complete Appendix 1C and give it to ASX.

Introduced 01/07/96 Origin: Listing Rule 1B(1)(g) Amended 30/09/01

Cross reference: Chapter 16.

Continuing obligations of an ASX Foreign Exempt Listing

- 1.15 After it is admitted, an entity admitted as an ASX Foreign Exempt Listing must comply with the following listing rules (and need not comply with the others).

Introduced 01/07/96 Origin: Listing Rule 1B(4) Amended 30/09/01

- 1.15.1 Rules 2.2, 2.7, 3.17.3, 3.17.4, 4.11, 8.1, 8.2, 8.3, 8.5, 8.6, 8.7, 8.10, 8.11, 8.17, 8.21, 12.6, 15.2 to 15.6, 15.8, 15.9, Chapters 16, 17, 18 and 19 and any listing rules that ASX specifies, either before or after it is admitted.

Introduced 01/07/96 Origin: Listing Rule 1B(4) Amended 01/07/98, 01/09/99, 01/07/00, 24/10/05, 08/09/15, 19/12/16, 01/12/19

- 1.15.1A If the entity is a ⁺qualifying NZ entity, rule 2.4.

Introduced 19/12/16

- 1.15.1B If the entity is a company, rule 12.6A.

Introduced 19/12/16

- 1.15.1C If the entity is a trust, rule 12.6B.

Introduced 19/12/16

Note: rules 15.2 to 15.6, 15.8, 15.9, and Chapters 16, 17, 18 and 19 are more in the nature of procedural rules.

ASX will have regard to the information given in the application about the regulatory regime to which the entity is subject and the entity's circumstances generally when deciding if additional rules should be specified.

Examples: If a significant proportion of an entity's management, business, operations, assets or derivation of revenue is in Australia, ASX may specify additional listing rules with a view to ensuring that the entity is treated similarly to an Australian entity.

If an entity's financial statements are prepared using accounting standards that ASX is not prepared to accept in place of Australian standards, or the disclosure regime of the overseas home exchange is not broadly similar to ASX's, ASX may specify additional rules.

- 1.15.2 An entity admitted as an ASX Foreign Exempt Listing must immediately provide to ASX all the information that it provides to its ⁺overseas home exchange that is, or is to be, made public. ASX will not waive this rule.

Introduced 01/07/96 Origin: Listing Rule 1B(3), 1B(5) Amended 30/09/01, 01/01/12

- 1.15.3 An entity admitted as an ASX Foreign Exempt Listing must continue to comply with the listing rules (or their equivalent) of its ⁺overseas home exchange. By no later than the lodgement of its full year accounts with ASX in each year, the entity must give ASX, for release to the market, a statement that it continues to comply with those rules.

Introduced 01/07/96 Origin: Listing Rule 1B(3) Amended 30/09/01, 08/09/15

- 1.15.4 An entity admitted as an ASX Foreign Exempt Listing must promptly inform ASX if it is granted a waiver of all or part of any listing rule (or the equivalent) of its ⁺overseas home exchange. If ASX requires, the entity must release details of any such waiver to the market.

Introduced 08/09/15

⁺ See chapter 19 for defined terms

Note: Consistently with Listing Rule 19.2, the reference in this rule to a waiver includes any relief from the ordinary effect of a rule. ASX will normally require disclosure to the market of any such waiver only if disclosure to the market would be required in relation to an equivalent waiver granted by ASX.

- 1.15.5 An entity admitted as an ASX Foreign Exempt Listing must immediately request a *trading halt in respect of its *securities or a *class of them if trading in those *securities or that *class is halted on its *overseas home exchange. Rule 17.1 applies to any such request. This rule does not limit the application of Chapter 17 to an entity.

Introduced 08/09/15

- 1.15.6 An entity admitted as an ASX Foreign Exempt Listing must immediately request a suspension of *quotation in respect of its *securities or a *class of them if those *securities or that *class have been suspended from quotation on its *overseas home exchange. Rule 17.2 applies to any such request. This rule does not limit the application of Chapter 17 to an entity.

Introduced 08/09/15

Rules that apply to all entities

ASX satisfied of compliance with the listing rules

- 1.16 For an entity to be admitted to the *official list, ASX must be satisfied that the entity will comply with the listing rules.

Introduced 01/07/96 Origin: Listing Rules 1A(1)(d), 1A(8)(ii)

Cross reference: Listing Rules 8.1, 18.6.

Additional information

- 1.17 ASX may seek additional information from the entity, or any other person, in relation to the application for admission. ASX may submit, or require the entity to submit, any information given to ASX to the scrutiny of an expert selected by ASX. The entity must pay for the expert.

Introduced 01/07/96 Amended 01/07/00

Fees

- 1.18 An entity seeking admission to the *official list must pay fees in accordance with chapter 16.

Introduced 01/07/96 Origin: Listing Rules 1B(1)(e), 4A(1)

ASX's discretion concerning admission

- 1.19 Admission to the *official list, and the category of an entity's admission, is in ASX's absolute discretion. ASX may admit an entity on any conditions it thinks appropriate. ASX may grant or refuse admission without giving any reasons.

Introduced 01/07/96 Origin: Foreword, Listing Rules 1A(2)(c), 1B(1)(i) and 1B(2)

Note: Guidance Note 1 *Applying for Admission – ASX Listings* has guidance on when ASX may exercise its discretion not to admit an entity to the official list.

Cross reference: Listing Rule 18.9.

How and when admission to the official list occurs

- 1.20 An entity is admitted to the *official list in the particular category in which ASX resolves to admit it.

- 1.20.1 If the resolution is conditional, the entity is admitted when the conditions are met or ASX accepts undertakings to meet them, on a date decided by ASX.

1.20.2 If the resolution is unconditional, the entity is admitted on the date specified in the resolution. If no date is specified, the entity is admitted on a date decided by ASX.

Introduced 01/07/96 Amended 01/07/00

Cross reference: Listing Rule 18.9.

End of Section. Next page is no. 201.

Chapter 4

Periodic Disclosure

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Explanatory note

This chapter sets out the relevant periodic disclosure requirements that an entity will be required to satisfy in relation to each quarter, half year and end of year. Periodic disclosure requirements support and supplement the continuous disclosure obligations of a listed entity under chapter 3.

Periodic disclosure is made to ASX's *market announcements office. If the *Corporations Act* applies, and an entity (in the case of a trust, the responsible entity) lodges *accounts with *ASIC, all of the documents lodged with *ASIC under the relevant provisions of the *Corporations Act* must also be given to ASX no later than the time they are lodged with *ASIC and in any event no later than 2 months (75 days for a *mining exploration entity or *oil and gas exploration entity) after the end of the half year or three months after the end of the full year, which are the time limits which apply under ASX Listing Rules.

~~ASX requires an *annual report to be sent to holders of *ordinary securities and preference *securities. The *annual report must contain the additional information specified in Listing Rule 4.10.~~

Entities should note *ASIC [Regulatory Guide 28 dealing with Information Sheet 31 which describes](#) relief from dual lodgement of financial reports.

Note also chapter 3 (dealing with continuous disclosure) and chapter 5 (dealing with additional reporting on mining and exploration activities). In particular, note that statements in the *annual report must comply with rule 5.6.

Amended 17/12/10, 01/05/13, 01/12/13, [xx/xx/xx](#)

Half-year disclosure

Entity to complete Appendix 4B (Half-year report) – periods ending before 30 June 2003

4.1 [Deleted]

Introduced 01/07/96 Origin: Listing Rule 3B(1)(a) Amended 01/07/97, 01/07/98, 01/01/99, 01/07/00, 01/01/03
Deleted 11/01/10

Entity to give ASX half-year report lodged with ASIC – periods ending before 30 June 2003

4.2 [Deleted]

Introduced 01/07/96 Origin: Listing Rule 3B(1)(a) Amended 01/07/98, 01/09/99, 01/07/00, 30/09/01, 01/01/03
Deleted 11/01/10

Entity to give ASX the information in Appendix 4D (Half-year report) and half-year report lodged with ASIC or foreign regulatory authority

4.2A Following the end of the half year of an entity, the entity (in the case of a trust, the responsible entity) must give ASX the following information or documents.

4.2A.1 If the entity is established in Australia, a copy of the documents which a disclosing entity must lodge with *ASIC under section 320 of the *Corporations Act*.

4.2A.2 If the entity is not established in Australia but it is subject in its home jurisdiction to an equivalent law to section 320 of the *Corporations Act* requiring it to prepare half yearly *accounts, the *accounts and other documents prepared under that law. The *accounts must be audited or subject to review and the audit or review report must be given to ASX with the *accounts.

4.2A.2A If the entity is not established in Australia and it is not subject in its home jurisdiction to an equivalent law to section 320 of the *Corporations Act* requiring it to prepare half yearly *accounts, *accounts for the half year equivalent to those it would be required to prepare in its home jurisdiction if its governing legislation included a provision equivalent to section 320 of the *Corporations Act*.

4.2A.3 Unless the entity is a *mining exploration entity or an *oil and gas exploration entity, the information set out in Appendix 4D. A responsible entity must give the information to ASX with any necessary adaptation. The information must comply with all relevant accounting standards.

Introduced 01/01/03 Origin: Listing Rules 4.1, 4.2 Amended 11/01/10, 01/05/13, 01/12/13

Note: Section 320 deals with the lodgement of half-yearly financial information by disclosing entities incorporated or established in Australia. If the entity has been granted relief from the obligation to lodge half-yearly financial information by ASIC (for example, because an administrator has been appointed), it must still give ASX the documents that section 320 of the *Corporations Act* requires to be prepared unless ASX also grants it a waiver from this rule.

Foreign entities may prepare information in accordance with Australian accounting standards, or other accounting standards acceptable to ASX. ASX will accept, for example, the use of International Financial Reporting Standards.

If the home jurisdiction of the foreign entity has no requirement for half-yearly reporting the entity must give ASX all of the documents and other information that would be required if its governing legislation included a provision equivalent to section 320.

If the home jurisdiction of the foreign entity requires quarterly reports the entity may give ASX the quarterly report for the second quarter provided that it includes year-to-date information, i.e. information for the first half year.

Cross reference: Listing Rules 5.6, 19.11A, Guidance Note 4 *Foreign Entities Listing on ASX*.

4.2B The entity must give the information and documents required by Listing Rule 4.2A to ASX immediately they are ready to be given to ASX, and no later than the time that it lodges any *accounts with *ASIC or the regulatory authorities in the jurisdiction in which it is established. It must do so in any event no later than the following.

- For an entity which is not a *mining exploration entity or an *oil and gas exploration entity, two months after the end of the accounting period.
- For an entity which is a *mining exploration entity or an *oil and gas exploration entity, 75 days after the end of the accounting period.

Introduced 01/01/03 Origin: Listing Rules 4.1.1, 4.2.1 Amended 01/05/13, 01/12/13

Note: There may be information available that is material under rule 3.1. If so, it must be given to ASX immediately in accordance with that rule, even though the information may later also be included in the information given to ASX under Listing Rule 4.2A.

Cross-reference: Listing Rule 17.5.

Half year periods ending on or after 30 June 2005 and before 1 June 2006 for first-time adoption of Australian Equivalents to International Financial Reporting Standards (AIFRS)

4.2BA [Deleted]

Introduced 10/06/05 Origin: Listing Rules 4.1.1, 4.2.1 Deleted 11/01/10

4.2C The following rules apply to information or documents given to ASX under Listing Rule 4.2A.

4.2C.1 All the information or documents required by Listing Rule 4.2A must be given to ASX at the same time and clearly identified on the first page or any covering page as half year information given to ASX under Listing Rule 4.2A.

4.2C.2 The first page or any covering page must state prominently that the information should be read in conjunction with the most recent annual financial report.

4.2C.3 The information identified as “Results for announcement to the market” must be set out at the beginning of the document.

4.2C.4 The statement of financial position may be condensed but must report as line items each significant class of asset, liability, and equity element with appropriate sub-totals. The statement of cash flows may be condensed but must report as line items each significant form of cash flow and comply with the disclosure requirements of AASB 107 Statement of Cash Flows or, for *foreign entities, the equivalent foreign accounting standard.

Introduced 01/01/03 Amended 17/12/10, 19/12/16

Note: The information required by rule 4.2A may comprise a number of documents. In that case, the documents must be merged into one pdf file to be eLodged. The first page of the file must contain a statement that all the documents comprise the information required by rule 4.2A and the statement required by rule 4.2C.2.

If the entity is a mining exploration entity or an oil and gas exploration entity which is not required to complete Appendix 4D, it is effectively required to comply only with Listing Rules 4.2C.1 and 4.2C.2.

Cross reference: Guidance Note 14 *ASX Market Announcements Platform*, Guidance Note 20 *ASX Online*.

Annual disclosure

Entity to complete Appendix 4B (Preliminary final report) – periods ending before 30 June 2003

4.3 [Deleted]

Introduced 01/07/96 Origin: Listing Rule 3B(2)(a) Amended 01/07/97, 01/07/98, 01/09/99, 01/07/00, 01/01/03 Deleted 11/01/10

Entity to give ASX the information in Appendix 4E (preliminary final report)

4.3A Following the end of the financial year of an entity (except a *mining exploration entity or an *oil and gas exploration entity), the entity (in the case of a trust, the responsible entity) must give ASX the information set out in Appendix 4E. A responsible entity must give ASX the information with any necessary adaptation. The information and the *accounts upon which it is based must use the same accounting policies. The information must comply with all relevant accounting standards.

Introduced 01/01/03 Origin: Listing Rule 4.3 Amended 11/01/10, 01/12/13

Foreign entities may provide the information in accordance with accounting standards acceptable to ASX. ASX will accept, for example, the use of International Financial Reporting Standards.

Cross reference: Listing Rules 5.6 and 19.11A, Guidance Note 4 *Foreign Entities Listing on ASX*.

- 4.3B The entity must give the information and documents required by Listing Rule 4.3A to ASX immediately they are ready to be given to ASX, and no later than the time that it lodges any *accounts with *ASIC or the regulatory authorities in the jurisdiction in which it is established. It must do so in any event no later than two months after the end of the accounting period.

Introduced 01/01/03 Origin: Listing Rule 4.3.1 Amended 11/01/10, 01/05/13

Note: There may be information available that is material under rule 3.1. If so, it must be given to ASX immediately in accordance with that rule, even though the information may later also be included in the information given to ASX under Listing Rule 4.5A.

Cross reference: Listing Rules 4.3D, 4.5.1, 17.5.

Financial year periods ending on or after 30 June 2005 and before 1 December 2006 for first-time adoption of Australian Equivalents to International Financial Reporting Standards (AIFRS) and disclosures under AASB 1047 paragraph 4.2

- 4.3BA [Deleted]

Introduced 10/06/05 Origin: Listing Rule 4.3.1 Deleted 11/01/10

- 4.3C The following rules apply to information or documents that are given to ASX under Listing Rule 4.3A.

4.3C.1 The information required by this rule must be clearly identified on the first page or any covering page as the preliminary final report given to ASX under Listing Rule 4.3A.

4.3C.2 The information identified as “Results for announcement to the market” must be set out at the beginning of the document.

Introduced 01/01/03

Note: The information required by rule 4.3A may comprise a number of documents. In that case the documents must be merged into one pdf file to be eLodged. The first page of the file must contain a statement that all the documents comprise the information required by rule 4.3A and identify the information as the preliminary final report.

Cross reference: Guidance Note 14 *ASX Market Announcements Platform*, Guidance Note 20 *ASX Online*.

Immediate disclosure of circumstances affecting preliminary final report

- 4.3D Once an entity is or becomes *aware of any circumstances which are likely to materially affect the results or other information contained in the preliminary final report given to ASX under Listing Rules 4.3 or 4.3A the entity must immediately give ASX an explanation of the circumstances and the effects the circumstances are expected to have on the entity's current or future financial performance or financial position.

Introduced 01/01/03 Origin: Listing Rule 4.10.1

Note: Listing Rule 4.3D requires the disclosure of this information immediately the entity becomes aware of it, consistent with the continuous disclosure requirements in Listing Rule 3.1. An entity should be aware of this information by no later than the time it lodges its statutory full year information with ASIC. It may be aware of this information earlier than that time.

Entity to complete Appendix 4B on change of balance date – 12 month period ending before 30 June 2003

- 4.4 [Deleted]

Introduced 01/07/96 Origin: Listing Rule 3B(3) Amended 01/07/98, 01/07/00, 30/09/01, 01/01/03 Deleted 11/01/10

Entity to give ASX the information in Appendix 4F on change of balance date

- 4.4A If an entity, except a *mining exploration entity or an *oil and gas exploration entity, changes its annual balance date so that its next annual *accounts cover a period that is more than 12 months, the entity must give ASX the information set out in Appendix 4F for that 12 month period. The *accounts on which the information is based must be audited or subject to review

+ See chapter 19 for defined terms

if ASX or the relevant law requires. The audit or review, if required, may be completed after the information has been given to ASX. The audit or review report must be given to ASX.

Introduced: 01/01/03 Origin: Listing Rule 4.4 Amended 11/01/10, 01/12/13

Note: This rule does not require an entity whose balance date varies by up to one week each year to provide the information for the changed period.

Example: An entity has a balance date of 31 March. In November 2003 it decides to change its balance date to 31 October, to coincide with the balance date of its parent company. It must give the information required by Listing Rule 4.2A (including the information set out in Appendix 4D) for the 6 months to 30 September 2003 to ASX no later than 30 November 2003. The entity must also provide the information set out in Appendix 4F for the 12 month period to 31 March 2004 and give it to ASX no later than 31 May 2004.

Cross reference: Listing Rule 19.11A.

- 4.4B The entity must give the information or documents required by Listing Rule 4.4A to ASX immediately all of the information or documents becomes available. It must do so in any event within two months after the end of the 12 month period since its previous balance date.

Introduced: 01/01/03 Origin: Listing Rule 4.4.1

Cross-reference: Listing Rule 17.5.

12 month period since an entity's last balance date ends on or after 30 June 2005 and before 1 December 2006 for first-time adoption of Australian Equivalents to International Financial Reporting Standards (AIFRS)

4.4BA [Deleted]

Introduced: 10/06/05 Origin: Listing Rule 4.4.1 Deleted 11/01/10

- 4.4C The following rules apply to information or documents relating to a change of balance date which are given to ASX under Listing Rule 4.4A.

4.4C.1 The information or documents must be clearly identified on the first page or any covering page as a report on change of balance date given to ASX under Listing Rule 4.4A.

4.4C.2 The first page or any covering page must state prominently that it should be read in conjunction with the most recent annual financial report.

4.4C.3 The information identified as "Results for announcement to the market" must be set out at the beginning of the document.

Introduced 01/01/03

Note. The information required by rule 4.4A may comprise a number of documents. In that case the documents must be merged into one pdf file to be eLodged. The first page of the file must contain a statement that all the documents comprise the information required by rule 4.4A and identify the information as the report on change of balance date.

Cross reference: Guidance Note 14 *ASX Market Announcements Platform*, Guidance Note 20 *ASX Online*.

Entity to give ASX annual documents

- 4.5 An entity must give ASX a copy of the following documents.

4.5.1 If the entity is established in Australia, a copy of the documents which a disclosing entity must lodge with *ASIC under section 319 of the *Corporations Act*. It must give the documents to ASX when it lodges them with *ASIC and in any event no later than three months after the end of the accounting period. It must also give ASX a copy of any concise report at the same time.

4.5.2 If the entity is not established in Australia and is required to comply with section 601CK of the *Corporations Act*, a copy of the *accounts and other documents it must lodge with *ASIC under that section. The *accounts must be audited and the audit report must be given to ASX with the *accounts. It must give the *accounts and other documents to ASX when it lodges them with *ASIC and in any event no later than three months after the end of the accounting period.

+ See chapter 19 for defined terms

- 4.5.3 If the entity is not established in Australia and is not required to comply with section 601CK of the *Corporations Act*, a copy of the documents that it would be required to give ASX under rule 4.5.2 if it had to comply with the requirements of that section. It must give the documents to ASX no later than three months after the end of the accounting period.

Introduced 01/07/96 Origin: Listing Rule 3C(1)(a) Amended 01/07/98, 01/09/99, 01/07/00, 30/09/01, 01/01/03, 01/05/13

Note: All the documents that are to be lodged with ASIC must be given to ASX as a package. Section 319 deals with the lodgement of annual financial information by disclosing entities incorporated or established in Australia. Section 601CK deals with the lodgement of financial information by registered foreign companies. It requires a balance sheet, cash flow statement and profit and loss statement to be provided to ASIC. A foreign entity is required to give ASX any other documents specifically required by ASIC to be lodged under section 601CK but is not required to give ASX the ASIC Form 405 referred to in section 601CK or any other document such as a director's report or directors' declaration. However, an audit report is required to be given to ASX regardless of whether ASIC requires one under section 601CK. An entity may give ASX the Form 405 or any other form if it wishes if that is convenient for the entity.

If the entity has been granted an extension of time to lodge yearly financial information by ASIC, it must still give ASX the documents within three months of the end of the accounting period unless ASX also grants it a waiver from this rule.

Cross reference: Listing Rules 5.6 and 17.5. See also ASIC [Regulatory Guide 28](#) [Information Sheet 31](#) which sets out when an entity may give financial documents to ASX and be treated as having lodged them with ASIC.

4.5A [Deleted]

Introduced 01/01/03 Deleted 01/05/13

Sending annual report to security holders

4.6 [Deleted]

Introduced 01/07/96 Origin: Listing Rule 3C(1A)(a) Amended 01/07/98 Deleted 24/10/05

4.6.1 [Deleted]

Introduced 01/07/96 Amended 01/07/98, 01/07/00 Deleted 24/10/05

Entity to give ASX annual report

4.7 An entity must give ASX a copy of the following documents.

- 4.7.1 If the entity is established in Australia, a copy of the *annual report and any concise report provided to *security holders under section 314 of the *Corporations Act*. This must be given to ASX by the earlier of:
- The first day the entity sends the documents to *security holders under section 315 of the *Corporations Act*.
 - The last day for the documents to be given to *security holders under section 315 of the *Corporations Act*.
- 4.7.2 If the entity is not established in Australia but is required by the law of the place of its establishment to prepare an *annual report to its *security holders, a copy of the *annual report provided to *security holders under that law. This must be given to ASX by the earlier of:
- The first day the entity sends the documents to *security holders under that law.
 - The last day for the documents to be given to *security holders under that law.
- 4.7.3 A completed Appendix 4G.
- 4.7.4 If the entity's *corporate governance statement is not included in its *annual report, a copy of its *corporate governance statement current as at the effective date specified in that statement for the purposes of rule 4.10.3.

The documents referred to in rule 4.7.3 and 4.7.4 (if applicable) must be given to ASX at the same time as the entity gives its *annual report to ASX under rule 4.7.1 or 4.7.2 (as the case may be).

However, an entity need not give ASX any of the above documents if they have already been given to ASX under Listing Rule 4.5. The entity must tell ASX if this is the case.

Introduced 01/07/96 Origin: Listing Rule 3C(1A)(b) Amended 01/07/97, 01/07/98, 01/09/99, 01/07/00, 24/10/05, 01/01/12, 01/07/14

~~The amendments made on 01/07/14 apply in respect of financial years ending on or after 30 June 2015 (although an entity may adopt the amendments in respect of an earlier financial year, if it wishes to do so, provided it also adopts the amendments made on 01/07/14 to rule 4.10.3 and it reports in relation to the third edition of the ASX Corporate Governance Council's recommendations).~~

Note: Section 314 entitles an entity to send a concise report to security holders, except those who request the full financial report under section 316.

~~Note: Listing Rule 15.4 requires 2 hard copies of an annual report and any concise report to be given to ASX.~~

Cross reference: Listing Rules 15.3 ~~and 15.4~~.

ASX Debt Listing to give ASX annual accounts

- 4.7A If an ASX Debt Listing is required to comply with section 319 of the *Corporations Act* or section 601CK of the *Corporations Act*, it must give ASX a copy of the documents that it lodges with ~~the~~ *ASIC under the *Corporations Act* no later than the time that it lodges them. If it is not required to comply with section 319 of the *Corporations Act* or section 601CK of the *Corporations Act*, it must give to ASX, in English, a copy of any annual *accounts that it lodges with the regulatory authorities in the jurisdiction in which it is established within 10 *business days of lodging them.

Introduced 01/07/00 Origin: Listing Rule 4.5 Amended 30/09/01

Note: Section 319 deals with the lodgment of annual financial information by disclosing entities incorporated or established in Australia. Section 601CK deals with the lodgment of financial information by registered foreign companies. It requires a registered foreign company to lodge an annual balance sheet, cash flow statement and profit and loss statement with ASIC.

- 4.7A.1 If an ASX Debt Issuer was admitted on the basis of a guarantee provided by a parent entity, and the parent entity is required to comply with section 601CK of the *Corporations Act*, the ASX Debt Issuer must give ASX a copy of the documents that the parent entity lodges with the *ASIC under the *Corporations Act* no later than the time that the parent entity lodges them. If the parent entity is not required to comply with section 601CK of the *Corporations Act*, the ASX Debt Issuer must give to ASX, in English, a copy of any annual *accounts that the parent entity lodges with the regulatory authorities in the jurisdiction in which it is established, immediately after the parent entity lodges them.

Introduced: 30/09/01

Cross reference: Listing Rule 1.8 condition 3.

Quarterly disclosure

Quarterly cash flow reports

- 4.7B An entity must complete an Appendix 4C and give it to ASX if:
- (a) the entity is not an *investment entity, *mining producing entity, *mining exploration entity, *oil and gas producing entity or an *oil and gas exploration entity and it was admitted under Listing Rule 1.3.2(b);
 - (b) the entity is not an *investment entity, *mining producing entity, *mining exploration entity, *oil and gas producing entity or an *oil and gas exploration entity and it was required to comply with Listing Rule 1.3.2(b) because of the application of Listing Rule 11.1.3; or
 - (c) ASX has asked it to do so.

The entity must give ASX the completed Appendix 4C immediately the information is available for release to the market, and in any event within 1 month after the end of each quarter of its financial year. If rule 4.7B(a) or rule 4.7B(b) apply, the entity must do so for the first eight quarters after admission or compliance with Listing Rule 11.1.3 (as applicable), or for such longer period as ASX may require. If rule 4.7B(c) applies, the entity must do so for the period required by ASX.

Introduced 31/03/00 Amended 30/09/01, 01/12/13, 01/12/19

Note: The changes to rule 4.7B made on 01/12/19 come into effect for the quarter ended 31/03/20.

Information about an entity's quarterly cash flows is "available for release to the market" when it has been properly compiled, verified and approved.

Cross reference: Listing Rule 4.10.19, Guidance Note 23 *Quarterly Reports*.

Quarterly activity reports

4.7C An entity that is required under rule 4.7B to give to ASX an Appendix 4C for a particular quarter must also complete an activity report for that quarter and give it to ASX for release to the market at the same time as it gives its Appendix 4C for that quarter. The report must include all of the following information for the group comprising the entity and its *child entities on a consolidated basis.

4.7C.1 Details of its business activities for the quarter, including any material developments or material changes in those activities, and a summary of the expenditure incurred on those activities. If there were no substantive business activities during the quarter, that fact must be stated.

4.7C.2 If the quarter is included in a period covered by a "use of funds" statement or expenditure program in the *prospectus, *PDS or *information memorandum lodged by the entity with ASX under rule 1.1 condition 3, a comparison of the entity's actual expenditure on the individual items in the "use of funds" statement or expenditure program since the date of its admission or re-admission to the official list against the estimated expenditure on those items in the "use of funds" statement or expenditure program in the *prospectus, *PDS or *information memorandum and an explanation of any material variances.

4.7C.3 A description of, and an explanation for, any payments to, or to an *associate of, a related party of the entity included in its Appendix 4C for the quarter.

Introduced 01/12/19

Note: Rule 4.7C comes into effect for the quarter ended 31/03/20.

Cross reference: Guidance Note 23 *Quarterly Reports*.

Securities in an unlisted entity

Disclosure if the securities are main asset

4.8 If *securities in an unlisted entity, or loans or advances to it, are a listed entity's main asset, the listed entity must give ASX the latest *accounts of the unlisted entity, together with any auditor's report or statement when the listed entity gives ASX the documents required under rule 4.7. The listed entity does not have to do so if the unlisted entity's *accounts are consolidated with the *accounts of the listed entity.

Introduced 01/07/96 Origin: Listing Rule 3J(4) Amended 01/07/98, 01/07/00, 11/01/10

Cross reference: Listing Rule 19.11A.

4.8.1 If a listed entity must give ASX the *accounts of an unlisted entity under this rule, it must give a *security holder, on request, the *accounts of the unlisted entity, together with any auditor's report or statement.

Introduced 01/07/96 Origin: Listing Rule 3J(4) Amended 01/07/98, 01/07/00

Disclosure if ASX asks

- 4.9 If *securities in an unlisted entity, or loans or advances to it, are included in a listed entity's assets, the listed entity must give ASX the latest *accounts of the unlisted entity if ASX asks.

Introduced 01/07/96 Origin: Listing Rule 3J(4) Amended 01/07/98, 01/07/00

Cross reference: Listing Rule 19.11A.

Additional information to be included in the annual report by all entities

Additional information to be included by all entities

- 4.10 An entity must include the following information in its *annual report. Unless otherwise specified in this rule, the information must be current at a date specified by the entity, which must be on or after the entity's balance date and not be more than 6 weeks before the report is given to ASX.

Introduced 01/07/96 Origin: Listing Rule 3C(3)(e), 3B(2C) Amended 01/07/97, 01/07/98, 01/09/99, 30/09/01, 01/06/10, 04/03/13, 01/07/14

Note: Listing Rules 4.10.3 and 4.10.20 specify different dates to the one above at which the information referred to in those rules must be current.

Additional disclosure requirements for the annual report apply to mining exploration entities under Listing Rule 5.20, mining entities (both mining exploration entities and mining producing entities) under Listing Rule 5.14, 5.21 and 5.24, oil and gas exploration entities under Listing Rule 5.3637, and oil and gas entities (both oil and gas exploration entities and oil and gas producing entities) under Listing Rules 5.3739 to 5.3940, and 5.44.

Cross reference: Listing Rules 4.7, 5.6, 5.14, 5.19, 5.20, 5.3624, 5.37 to 5.39, 5.40, 5.44 and 19.11A.

4.10.1 [Deleted]

Introduced 01/07/96 Origin: Listing Rule 3C(2)(e) Amended 01/07/98, 01/07/00 Deleted 01/01/03

4.10.2 [Deleted]

Introduced 01/07/96 Origin: Listing Rule 3C(3)(i) Amended 30/09/01 Deleted 01/01/03

4.10.3 Either of the following:

- a *corporate governance statement that meets the requirements of this rule; or
- the URL of the page on its website where a *corporate governance statement that meets the requirements of this rule is located.

The *corporate governance statement must disclose the extent to which the entity has followed the recommendations set [byout in](#) the *ASX Corporate Governance [CouncilPrinciples and Recommendations](#) during the reporting period. If the entity has not followed a recommendation for any part of the reporting period, its *corporate governance statement must separately identify that recommendation and the period during which it was not followed and state its reasons for not following the recommendation and what (if any) alternative governance practices it adopted in lieu of the recommendation during that period.

The *corporate governance statement must also:

- specify the date at which it is current, which must be the entity's balance date or a later date specified by the entity; and
- state that it has been approved by the board of the entity (in the case of a trust, the board of the responsible entity of the trust).

Introduced 01/07/96 Origin: Listing Rule 3C(3)(j) Amended 01/01/03, 01/06/10, 01/05/13, 01/07/14, [xx/xx/xx](#)

~~The amendments made on 01/07/14 apply in respect of financial years ending on or after 30 June 2015 (although an entity may adopt the amendments in respect of an earlier financial year, if it wishes to do so, provided it also adopts the amendments made on 01/07/14 to rule 4.7 and it reports in relation to the third edition of the ASX Corporate Governance Council's recommendations).~~

Note: Under Listing Rule 4.7, if an entity's corporate governance statement is not included in its annual report, it must be given to ASX as a separate document at the same time as the annual report. In such a

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case, the document should be clearly identified as the entity's corporate governance statement under this rule.

A corporate governance statement may incorporate material by reference (for example, on an entity's website or in another part of its annual report) provided that material is freely available and the statement clearly indicates where interested parties can read or obtain a copy of that material.

- 4.10.4 The names of *substantial holders in the entity, and the number of *equity securities to which each *substantial holder and the *substantial holder's associates have a relevant interest, as disclosed in substantial holding notices given to the entity under the *Corporations Act* or any equivalent overseas law. If a substantial holding notice discloses that related bodies corporate have the same relevant interest in the same number of *equity securities, the *annual report need only include the name of the holding company.

Introduced 01/07/96 Origin: Listing Rule 3C(3)(e)(i) Amended 01/07/97, 13/03/00, 01/12/19

Note: CDIs are equity securities.

The relevant interpretation of "associate" for the purposes of this rule is the interpretation in section 12 of the *Corporations Act*.

- 4.10.5 The number of holders of each *class of *equity securities.

Introduced 01/07/96 Origin: Listing Rules 3B(2C)(i), 3C(3)(e)(ii)

Note: CDIs are equity securities.

- 4.10.6 The voting rights attaching to each *class of *equity securities.

Introduced 01/07/96 Origin: Listing Rules 3B(2C)(i), 3C(3)(e)(ii)

Note: CDIs are equity securities.

- 4.10.7 A distribution schedule of the number of holders in each *class of *equity securities (in the case of *securities over which *CDIs have been issued, including holders of *CDIs), in the following categories and the total percentage of the *securities in that *class held by the holders in each category:

1 - 1,000
1,001 - 5,000
5,001, - 10,000
10,001 - 100,000
100,001 - and over.

Introduced 01/07/96 Origin: Listing Rules 3B(2C)(ii)a, 3C(3)(e)(iii)a Amended 01/09/99, 30/09/01, 01/12/19

- 4.10.8 The number of holders holding less than a *marketable parcel of the entity's *main class of *securities (in the case of *securities over which *CDIs have been issued, including holders of *CDIs), based on the *closing market price at the specified date.

Introduced 01/07/96 Origin: Listing Rules 3B(2C)(ii)b, 3C(3)(e)(iii)b Amended 01/09/99, 01/07/14

- 4.10.9 The names of the 20 largest holders of each *class of quoted *equity securities, the number of *equity securities each holds and the percentage of capital (in the case of a trust, interests) each holds.

Introduced 01/07/96 Origin: Listing Rules 3B(2C)(iii) and (iv), 3C(3)(e)(iv) and (v) Amended 01/07/98

- 4.10.10 The name of the entity's secretary (in the case of a trust, the name of the responsible entity and its secretary).

Introduced 01/07/96 Origin: Listing Rule 3C(3)(f)(i) Amended 01/07/98, 24/10/05

- 4.10.11 The address and telephone number of the entity's registered office in Australia; and of its principal administrative office, if the two are different.

Introduced 01/07/96 Origin: Listing Rule 3C(3)(f)(ii)

- 4.10.12 The address and telephone number of each office at which a register of *securities, register of depositary receipts or other facilities for registration of transfers is kept.

Introduced 01/07/96 Origin: Listing Rule 3C(3)(f)(iii)

Note: CDIs are securities.

4.10.13 A list of other stock exchanges on which any of the entity's *securities are quoted.

Introduced 01/07/96 Origin: Listing Rule 3C(3)(f)(iv)

4.10.14 The number and *class of *restricted securities or *securities subject to voluntary escrow that are on issue, and the date that the escrow period ends. In the case of *securities subject to voluntary escrow, this rule does not apply to an *annual report for a period ending on or before 31 December 2001.

Introduced 01/07/96 Origin: Listing Rule 3C(3)(g) Amended 30/09/01

Note: In the case of securities which are subject to voluntary escrow, it is incumbent on the entity to ensure that arrangements are in place with the holders of the securities that will enable it to comply with this rule. Securities issued under an employee incentive scheme that have restrictions on their transfer under the terms of the scheme are not regarded as being subject to voluntary escrow.

Cross reference: Listing Rules 3.10.5 and 3.10A.

4.10.15 [Deleted]

Introduced 01/07/96 Origin: Listing Rule 3C(6) Deleted 01/12/13 Refer rules 5.19, 5.20 and 5.36 to 5.39

4.10.16 For each *class of unquoted *equity securities (except *CDIs), the number of *equity securities that are on issue and the number of holders. In addition, if a person holds 20% or more of the *equity securities in an unquoted *class, the name of the holder and number of *equity securities held, unless the securities were issued or acquired under an *employee incentive scheme.

Introduced 01/07/98 Amended 01/09/99, 11/03/04

4.10.17 A review of operations and activities for the reporting period that complies with the following requirements.

- If the entity is established in Australia, the review must comply with sections 299 and 299A of the *Corporations Act*.
- If the entity is not established in Australia but it is subject in its home jurisdiction to an equivalent law to sections 299 and 299A of the *Corporations Act* requiring the preparation of a directors' report that includes a review of operations and activities for the reporting period, the review must comply with that law.
- If the entity is not established in Australia and it is not subject in its home jurisdiction to an equivalent law to sections 299 and 299A of the *Corporations Act* requiring the preparation of a directors' report that includes a review of operations and activities for the reporting period, the review must be equivalent to that which it would be required to prepare if it was incorporated in Australia and subject to sections 299 and 299A of the *Corporations Act*.

Introduced 01/09/99 Amended 01/05/13

For further guidance, see [Guidance Note 10 Review of Operations and Activities: Listing Rule 4.10.17-ASIC Regulatory Guide 247: Effective disclosure in an operating and financial review](#).

4.10.18 Whether there is a current on-market buy-back.

Introduced 01/09/99

Note: There is a current on-market buy-back if an Appendix 3C has been given to ASX for an on-market buy-back and no Appendix 3F has been given to ASX for that buy-back.

4.10.19 In its first two *annual reports after admission (or in the case of an entity that has been required to comply with Listing Rule 1.3.2(b) because of the application of Listing Rule 11.1.3, in the first two annual reports after the reinstatement of the entity's securities to quotation following compliance with Listing Rule 11.1.3), a statement about whether the entity used the cash and assets in a form readily convertible to cash that it had at the time of admission in a way consistent with its business objectives. If the use was

not consistent, an explanation of how the cash and assets were used. The statement in the first *annual report must be for the time between admission (or reinstatement to quotation) and the end of the reporting period. The statement in the second *annual report must be for the whole of the reporting period. This rule applies to an entity admitted under Rule 1.3.2(b) and an entity required to comply with Listing Rule 1.3.2(b) because of the application of Listing Rule 11.1.3.

Introduced 01/09/99 Amended 31/03/00, 30/09/01, 11/01/10

Cross reference: Listing Rule 1.3.2(b).

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

- (a) A list of all investments held by it and its *child entities at the balance date.
- (b) The level 1, level 2 and level 3 inputs used to value its investments in accordance with Australian Accounting Standard AASB 13 *Fair Value Measurement*.
- (c) The *net tangible asset backing of its *quoted *securities at the beginning and end of the reporting period and an explanation of any change therein over that period.
- (d) The total number of transactions in listed and unlisted *securities and derivatives during the reporting period, together with the total brokerage paid or accrued during that period.
- (e) The total management fees paid or accrued during the reporting period, together with a summary of any management agreement.

Introduced 01/09/99 Origin: Guidance note on Investment entities Amended 01/06/10, 01/12/19

Note: For the avoidance of doubt, the level 1, level 2 and level 3 inputs used to value an investment entity's investments in accordance with Australian Accounting Standard AASB 13 *Fair Value Measurement* can be disclosed in a note to the financial statements in the entity's annual report.

The reference in rule (e) above to total management fees includes all forms of fees paid to the manager, including establishment fees and performance fees.

4.10.21 A summary of any issues of *securities approved for the purposes of Item 7 of section 611 of the *Corporations Act* which have not yet been completed.

Introduced 31/03/04

4.10.22 If during the reporting period any *securities were purchased on-market:

- under or for the purposes of an *employee incentive scheme; or
- to satisfy the entitlements of the holders of options or other rights to acquire *securities granted under an *employee incentive scheme,

the following information:

- (a) the total number of *securities purchased during the reporting period; and
- (b) the average price per *security at which the *securities were purchased during the reporting period.

Introduced 01/07/14

This rule applies in respect of financial years ending on or after 30 June 2015 (although an entity may adopt the amendments in respect of an earlier financial year, if it wishes to do so).

Note: This rule applies regardless of who purchased the securities (whether it was the entity, a child entity, or an independent trustee of an employee incentive scheme to whom the entity or a child entity has directly or indirectly provided funds for that purpose). The disclosure required by this rule may be made in the remuneration report included in the entity's annual report.

Cross reference: Listing Rule 10.45B16.

Amount of CDIs on issue

- 4.11 An entity that has a dual listing on ASX and an overseas exchange and has +CDIs issued over +quoted securities must complete Appendix 4A and give it to ASX within 5 +business days of the end of each month.

Introduced 01/12/19

Investment entity's net tangible asset backing

- 4.12 An +investment entity must tell ASX the +net tangible asset backing of its +quoted +securities as at the end of each month immediately it is available for release to the market and in any event not later than 14 days after the end of that month.

Introduced 01/07/96 Amended 01/12/19

Note: Information about the net tangible asset backing of an investment entity's quoted securities is "available for release to the market" when it has been properly compiled, verified and approved.

End of Section. Next page is no. 501.

Chapter 12

On-going requirements

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Registration as a foreign company	12.6A – 12.6B
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Level of operations

- 12.1 The level of an entity's operations must, in ASX's opinion, be sufficient to warrant the continued *quotation of the entity's *securities and its continued listing.

Introduced 01/07/96 Origin: Listing Rule 3J(13)

Financial condition

- 12.2 An entity's financial condition (including operating results) must, in ASX's opinion, be adequate to warrant the continued *quotation of its *securities and its continued listing.

Introduced 01/07/96 Origin: Listing Rule 3J(13)

Note: Composition of the balance sheet, relative size of liabilities to assets and access to funds are some of the indicators of an entity's financial condition.

Proportion of assets in cash

- 12.3 If half or more of an entity's total assets is cash or in a form readily convertible to cash, ASX may suspend *quotation of the entity's *securities until it invests those assets or uses them for the entity's business. The entity must give holders of *ordinary securities in writing details of the investment or use. This rule does not apply to the following.

- A bank or a non-bank financial institution.
- A *mining exploration entity or an *oil and gas exploration entity, unless ASX decides otherwise.

Introduced 01/07/96 Origin: Listing Rule 3J(14) Amended 24/10/05, 01/12/13

Note: Listing Rule 1.3.2 and this rule prevent the listing, or continued quotation, of "cash box" entities. In the case of an entity meeting the admission test for investment entities, ASX generally will not apply this rule provided that the entity has adequately disclosed the time within which it proposes to invest its funds and updates that disclosure if the proposal is revised or altered.

Advice to holders must be released to the market. See Listing Rule 3.17.

The entity may also have to comply with Listing Rule 11.1.

Level of spread

- 12.4 An entity must maintain a spread of *security holdings in its *main class which, in ASX's opinion, is sufficient to ensure that there is an orderly and liquid market in its *securities. If *CDIs are issued over *securities in the *main class, holders of *CDIs will be included.

Introduced 01/07/96 Origin: Listing Rule 3J(9) Amended 01/09/99

Note: This rule ensures that an entity has enough holders in its main class of securities. If the entity also has another class quoted, and the number of holders in that other class falls below the number needed for quotation of it, ASX may end quotation of that class. See Listing Rule 17.10.

- 12.4.1 If ASX requires the entity to obtain sufficient spread, the entity must do each of the following.

- (a) Obtain the required spread within 3 months after the date ASX requires it to do so.
- (b) Tell all holders of its quoted *securities in writing that if the required spread is not obtained within 3 months after the date when ASX requires the entity to obtain it, ASX may suspend *quotation of the entity's *securities. The entity must tell the holders in writing within 10 *business days after the date ASX requires it to obtain the spread.

Introduced 01/07/96 Origin: Listing Rule 3J(9)

Note: Advice to holders must be released to the market. See Listing Rule 3.17.

- 12.4.2 ASX's requirement is not met if the spread is obtained by artificial means.

Introduced 01/07/96

Examples: The following ways of obtaining spread are examples of artificial means.

- Giving shares away.
- Offering non-recourse loans to prospective shareholders to acquire their shares.
- Using combinations of nominee companies and names.

Appropriate structure and operations

- 12.5 An entity's structure and operations must be appropriate for a listed entity.

Introduced 01/07/96

Example: When deciding if an entity's structure and operations are appropriate for that entity to be listed, one matter that ASX may have regard to is the principles on which the listing rules are based.

Person responsible for communications with ASX

- 12.6 An entity must appoint and at all times have a person responsible for communication with ASX in relation to listing rule matters. If the entity is admitted as an ASX Listing and the person is appointed on or after 1 July 2020, the person must have completed an *approved listing rule compliance course and attained a satisfactory pass mark in the examination for that course. The entity must tell ASX of the initial appointment and any change in the person.

Introduced 30/09/01 Amended 11/03/02, 01/12/19

Note: For many entities, the company secretary will be an appropriate person to be responsible for communication with ASX. ASX expects that the person appointed will have a high degree of familiarity with an entity's operations and have ready access to senior management who have responsibility for day to day management of the entity.

An entity may nominate more than one person to be responsible for communication with ASX under this rule. If it does so, each person must have completed an approved listing rule compliance course and attained a satisfactory pass mark in that examination.

The nomination of such a person is for administrative convenience only and does not in any way abrogate the responsibility of the listed entity to comply with the Listing Rules.

For the avoidance of doubt, the obligation for a person appointed by an entity on or after 1 July 2020 to be responsible for communication with ASX to have completed an approved listing rule compliance course and attained a satisfactory pass mark in the examination for that course does not apply to ASX Debt Listings or ASX Foreign Exempt Listings.

Registration as a foreign company

- 12.6A A *foreign company must remain registered as a foreign company carrying on business in Australia under the *Corporations Act*.

Introduced 19/12/16

- 12.6B A trust that is exempted from the requirement to be a registered managed investment scheme must continue to have as its *responsible entity either an *Australian company or a *foreign company that is registered as a foreign company carrying on business in Australia under the *Corporations Act*.

Introduced 19/12/16

Audit committee

- 12.7 An entity which was included in the *S & P All Ordinaries Index at the beginning of its financial year must have an audit committee during that year. If the entity was included in the *S & P / ASX 300 Index at the beginning of its financial year it must also comply with the recommendations set [byout in](#) the *ASX Corporate Governance [CouncilPrinciples and Recommendations](#) in relation to composition and operation of the audit committee for the whole of that financial year, unless it had been included in that index for the first time less than 3 months before the beginning of that financial year. An entity that is included in the *S & P / ASX 300 Index for the first time less than 3 months before the first day of its financial year but did not comply with the recommendations set [byout in](#) the *ASX Corporate Governance [CouncilPrinciples and Recommendations](#) in relation to composition and operation of the audit committee at that date must take steps so that it complies with those recommendations within 3 months of the beginning of the financial year.

Introduced 01/01/03 Origin: Listing Rule 4.10.2 Amended 03/05/04, 11/01/10, 01/05/13, 01/07/14, [xx/xx/xx](#)

Note: If the entity is a trust, its audit committee may also be the responsible entity's audit committee.

The S&P/ASX 300 Index is reviewed semi-annually.

If an entity was included in the index on the first day of its financial year but is subsequently not included in the index following a review, it must comply with this rule for the whole of the financial year. If an entity was not included in the index on the first day of its financial year but is subsequently included in the index following a review, it need not comply with this rule for that financial year.

Entities which are included in the S&P/ASX 300 Index for the first time have a transitional period to constitute an audit committee that complies with the recommendations [offset out in](#) the ASX Corporate Governance [CouncilPrinciples and Recommendations](#).

Examples: (1) An entity has a balance date of 30 June. It is included in the S&P/ASX 300 Index for the first time in September [2010of the current financial year](#). It will be required to have an audit committee that complies with the recommendations [offset out in](#) the ASX Corporate Governance [CouncilPrinciples and Recommendations](#) constituted by no later [than the start of the next financial year \(ie. 1 July\) 2011](#).

(2) An entity has a balance date of 31 March. It is included in the S&P/ASX 300 for the first time in early March [2010](#). It will be required to have an audit committee that complies with the recommendations [offset out in](#) the ASX Corporate Governance [CouncilPrinciples and Recommendations](#) constituted by no later than 1 July [2010of the same year](#).

Cross reference: Listing Rule 4.10.3.

Remuneration Committee

- 12.8 An entity, which was included in the *S & P / ASX 300 Index at the beginning of its financial year, must have a *remuneration committee, comprised solely of non executive directors, for the entire duration of that financial year.

Introduced 01/07/11

Note: The *S & P / ASX 300 Index is reviewed semi-annually. If an entity was included in the Index on the first day of its financial year, but is subsequently not included in the Index following a semi-annual review, it must comply with this rule for the whole of the financial year. If an entity was not included in the Index on the first day of its financial year, but is subsequently included in the Index following a semi-annual review, it need not comply with this rule for that financial year.

If the entity is a trust its remuneration committee may also be the responsible entity's remuneration committee.

Where an entity is part of a corporate group, that has one or more related bodies corporate in the *S & P / ASX 300 Index, the board of that entity may utilise a remuneration committee of a related body corporate in the *S & P / ASX 300 Index in order to satisfy the requirements of Listing Rule 12.8.

Trading Policy

- 12.9 An entity must have a *trading policy that complies with the requirements of ASX Listing Rule 12.12. An entity must give its *trading policy to the *market announcements office for release to the market.

Introduced 01/01/11 Amended 01/05/13

- 12.10 Where an entity makes a material change to their *trading policy such entity must give the amended *trading policy to the *market announcements office for release to the market within 5 *business days of the material changes taking effect.

Introduced 01/01/11 Amended 01/05/13

- 12.11 An entity must give its *trading policy to ASX immediately on request by ASX.

Introduced 01/01/11

Content of Trading Policy

- 12.12 At a minimum, an entity's *trading policy must include the following information:

12.12.1 The entity's *closed periods.

12.12.2 The restrictions on trading that apply to the entity's *key management personnel.

12.12.3 Any trading which is not subject to the entity's *trading policy.

12.12.4 Any exceptional circumstances in which the entity's *key management personnel may be permitted to trade during a *prohibited period with prior written clearance.

12.12.5 The procedures for obtaining prior written clearance for trading under rule 12.12.4.

Introduced 01/01/11

Cross-reference: ASX Guidance Note 27 — *Trading Policies*.

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Chapter 19

Interpretation and definitions

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The main headings in this chapter	Rules
Interpretation	19.1 - 19.11C
Definitions	19.12

Interpretation

Principles on which the listing rules are based

19.1 The listing rules are based on the principles set out in the Introduction.

Introduced 01/07/96

Entity must comply with spirit, intention and purpose etc of rules

19.2 An entity must comply with the listing rules as interpreted:

- in accordance with their spirit, intention and purpose;
- by looking beyond form to substance; and
- in a way that best promotes the principles on which the listing rules are based.

Introduced 01/07/96 Origin: Foreword

Note: The principles on which the listing rules are based embody their intention and purpose. See the Introduction.

Governing law

19.2A The listing agreement is governed by the laws of New South Wales.

Introduced 01/07/00

Submission to jurisdiction

19.2B ASX and an entity do each of the following⁺:

19.2B.1 Irrevocably submit to the non-exclusive jurisdiction of the courts of New South Wales and to the courts of appeal from the courts of New South Wales.

19.2B.2 Irrevocably waive any immunity or any objection to any action in the courts of New South Wales and the courts of appeal from the courts of New South Wales.

19.2B.3 Irrevocably waive any claim that any action has been brought in an inconvenient forum or to the courts of New South Wales and the courts of appeal from the courts of New South Wales not having jurisdiction.

Introduced 01/07/00

General principles of interpretation

19.3 In these rules unless the context otherwise requires:

⁺ See chapter 19 for defined terms

- (a) Expressions that are not specifically defined in the listing rules, but are given a particular meaning in the *Corporations Act*, have the same meaning in the listing rules.
- (b) A reference to a provision of a law, ASIC class order or other instrument, ASX's constituent documents, ASX's operating rules, ASX's listing rules, ASX Settlement's operating rules, ASX Clear's operating rules or the operating rules of an *approved CS facility is a reference to the provision as:
- amended;
 - re-enacted or replaced;
 - modified by administrative act; or
- Example: An ASIC exemption or modification modifies the application of the *Corporations Act*.
- affected by a subordinate instrument.
- Example: The Corporations Regulations affect the *Corporations Act*.
- (c) The singular includes the plural and vice-versa.
- (d) A reference to a person, body, corporation, trust, partnership, unincorporated body, firm, association, authority or government includes any of them.
- (e) A word denoting any gender includes all genders.
- (f) If a word or expression is given a particular meaning, another part of speech or grammatical form of that word or expression has a corresponding meaning.
- (g) The meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions.
- (h) A reference to power includes a reference to authority and discretion.
- (i) A reference to a rule includes a reference to all sub-rules included under that rule.
- (j) A reference to a chapter of these rules includes a reference to all rules within that chapter.
- (k) A reference to any rule or Appendix is a reference to that rule or Appendix as amended from time to time.
- (l) A reference to writing includes typing, printing, lithography, photography, email, facsimile or any other mode of representing or reproducing words in a visible form.
- (m) a reference to a document includes a document in electronic or digitised form.

Introduced 01/07/96 Amended 30/09/01, 11/03/04, 03/05/04, 01/08/10, 01/12/19

Conduct

- 19.4 An act or omission by an entity includes an act or omission caused directly or indirectly by the entity.

Introduced 01/07/96

Example: A company that causes a subsidiary to take an action is taking the action indirectly.

Calculation of time

- 19.5 When a listing rule requires something to be done by a day that is not a *business day, the thing must be done by the preceding *business day.

Introduced 01/07/96

- 19.6 References to time are to local time, unless another time is specified.

Introduced 01/07/96

+ See chapter 19 for defined terms

References to currency

19.6A A reference to “\$”, “dollar” or “cent” is to Australian currency unless denominated otherwise.

Introduced 01/08/12

References to quoted securities

19.6B Except in Rule 8.2, a reference to quoted *securities or to *securities being quoted by ASX includes, where CDIs have been issued over an entity’s securities, the *securities over which the CDIs have been issued.

Introduced 19/12/16

Notice to an entity by ASX

19.7 A document is to be treated as being given to an entity if it is left at, or is sent by post, fax or e-mail to, the address, fax number or e-mail address:

- in the entity’s application for admission; or
- given to ASX by the entity or used in correspondence with ASX by the entity.

This rule does not prevent a document being given to an entity in any other way permitted by law.

Introduced 01/07/96 Origin: Listing Rule 3J(34) Amended 01/01/03

Example: Laws regarding service of documents.

19.7.1 The time that the document is to be treated as being given to an entity is as follows.

- If it is delivered, the time of delivery.
- If it is posted, on the second *business day after posting.
- If it is faxed, when it is received. A successful fax transmission report is sufficient proof of the time of receipt.
- If it is e-mailed, when it is received.

Introduced 01/07/96 Origin: Listing Rule 3J(34) Amended 01/01/03

Procedural defects

19.8 A procedural defect does not invalidate a decision of ASX. If the defect may result in substantial injustice, an entity may ask ASX to review its decision.

Introduced 01/07/96

Appendices are part of the listing rules

19.8A The Appendices are part of the listing rules.

Introduced 01/12/19

19.8B An Appendix that sets out a form to be used under or for the purposes of the listing rules may refer to a form made available by ASX from time to time on ASX Online. Where it does so, ASX will not amend or replace that form on ASX Online without first giving at least 30 days’ notice to ASIC and to the market.

Introduced 01/12/19

History, notes etc are not part of the listing rules

19.9 The following are not part of the listing rules.

- The Tables of Contents.

+ See chapter 19 for defined terms

- The Explanatory notes.
- The Introduction (except the principles on which the listing rules are based).
- The history, notes, examples and cross references set out beneath particular rules.
- The Index.
- Guidance Notes.

Introduced 01/07/96

How an entity tells ASX

19.10 If a listing rule requires an entity to tell ASX something, the entity must tell ASX in writing.

Introduced 01/07/96

19.11 [Deleted]

Introduced 01/07/96 Origin: Definitions Deleted 13/03/00

Accounts

19.11A If a listing rule requires an entity to give ASX *accounts, the following rules apply.

- (a) If the entity controls an entity within the meaning of section 50AA of the *Corporations Act* or is the holding company of an entity, required by any law, regulation, rule or accounting standard, or if ASX requires, the *accounts must be consolidated *accounts.

Note: As at 13/3/2000 section 50AA of the *Corporations Act* says that an entity controls a second entity if the first entity has the capacity to determine the outcome of decisions about the second entity's financial and operating policies, and in determining whether the first entity has this capacity, the practical influence that it can exert and any practice or pattern of behaviour affecting the second entity's financial or operating policies is to be taken into account. A holding company has another body corporate as a subsidiary. See sections 9 and 46.

- (b) The *accounts must be prepared to Australian accounting standards. If the entity is a *foreign entity the *accounts may be prepared to other standards agreed by ASX.

Note: ASX will agree, for example, to the use of International Financial Reporting Standards by a foreign entity.

- (c) If the listing rule requires audited *accounts, the audit must be conducted in accordance with Australian auditing standards by a registered company auditor. If the entity is a *foreign entity, the audit may be conducted in accordance with other standards agreed by ASX and may be conducted by an overseas equivalent of a registered company auditor.

- (d) If the listing rule requires *accounts to be reviewed, the review must be conducted in accordance with Australian auditing standards. If the entity is a *foreign entity, the review may be conducted in accordance with other standards agreed by ASX. Unless the listing rule says an independent accountant may conduct the review, it must be conducted by a registered company auditor (or, if the entity is a *foreign entity, an overseas equivalent of a registered company auditor).

- (e) If there is a *directors' declaration that relates to the *accounts, the *directors' declaration must be given to ASX with the *accounts.

- (f) If there is a *directors' report that relates to the period covered by the *accounts, the *directors' report must be given to ASX with the *accounts.

Introduced 01/07/97 Amended 13/03/00, 01/07/00, 30/09/01, 19/12/16

Trusts and stapled entities

19.11B Where the *responsible entity of a trust applies for a trust to be admitted, and the trust is admitted, to the *official list:

- (a) the trust, rather than the *responsible entity, is regarded as the listed entity and must comply with the listing rules;
- (b) references in the listing rules to the entity's assets, liabilities, equity interests, profits, losses or *market capitalisation are to be read as referring to the assets, liabilities, equity interests, profits, losses or *market capitalisation (as the case may be) of the trust;
- (c) unless otherwise stated, references in the listing rules to the entity's directors mean:
 - (i) if the trust is *internally managed, the directors of the *responsible entity; or
 - (ii) if the entity is *externally managed, the *responsible entity of the trust;
- (d) unless otherwise stated, references in the listing rules to the entity's *chair, *CEO, *CFO or secretary mean the *chair, *CEO, *CFO or secretary of the *responsible entity; and
- (e) the *responsible entity of the trust has an obligation to ensure that the trust complies with the listing rules.

Introduced 30/09/01 Origin: Rule 13.6 Amended 01/12/19

19.11C Where a *stapled group applies for and is admitted to the *official list:

- (a) each entity within the *stapled group is regarded as a listed entity and must comply with the listing rules; but
- (b) references in the listing rules to the entity's assets, liabilities, equity interests, profits, losses or *market capitalisation are to be read as referring to the aggregated assets, liabilities, equity interests, profits, losses or *market capitalisation (as the case may be) of all of the entities in the *stapled group.

Introduced 01/12/19

References to Australian Stock Exchange Limited

19.11D All references to 'Australian Stock Exchange Limited' in the listing rules, guidance notes, appendices, circulars, notices, bulletins, explanatory memoranda and other communications issued or made by ASX under the listing rules are as and from 5 December 2006 taken to be references to 'ASX Limited'.

Introduced 20/07/07 Renumbered 01/12/19

Definitions

19.12 The following expressions have the meanings set out below.

Introduced 01/07/96 Origin: Definitions

Expressions	Meanings
1C	denotes the *low estimate scenario of *contingent resources. Introduced 01/12/13
2C	denotes the *best estimate scenario of *contingent resources. Introduced 01/12/13
3C	denotes the *high estimate scenario of *contingent resources. Introduced 01/12/13

1P	is equivalent to *proved reserves. It denotes a *low estimate scenario of *petroleum reserves. Introduced 01/12/13
2P	is equivalent to the sum of *proved reserves plus *probable reserves. It denotes the *best estimate scenario of *petroleum reserves. Introduced 01/12/13
3P	is equivalent to the sum of *proved reserves plus *probable reserves plus *possible reserves. It denotes the *high estimate scenario of *petroleum reserves. Introduced 01/12/13
accelerated pro rata issue	a *pro rata issue undertaken in accordance with the timetable in section 4, section 5 or section 6 of Appendix 7A or another timetable approved by ASX and which commences with a trading halt. Introduced 14/04/14 Amended 05/06/21
Accounts	(a) statement of financial position; Note: Statement of financial position may be referred to as balance sheet in certain jurisdictions. (b) statement of comprehensive income; Note: Statement of comprehensive income may be referred to as profit and loss statement in certain jurisdictions. (c) statement of cash flows; (d) statement of changes in equity; Note: Statement of changes in equity may be referred to as statement of retained earnings in certain jurisdictions. (e) notes to the statement of financial position, statement of comprehensive income, statement of cash flows and statement of changes in equity required by any law, regulation, rule or accounting standard; (f) disclosures in relation to the statement of financial position, statement of comprehensive income, statement of cash flows and statement of changes in equity required by any law, regulation, rule or accounting standard; (g) any other information necessary to give a true and fair view of the financial position and performance of the entity required by any law, regulation, rule or accounting standard. Introduced 01/07/00 Amended 17/12/10 Note: As at 4x/7x/2004-20xx in the case of an entity which is required to comply with sections 295 and 303 of the <i>Corporations Act</i>, accounts include the documents referred to in sections 295(1) and 303(1) of the LawAct, except the directors' declaration about the statements and notes. Cross reference: Rule 19.11A.
acquire	to acquire, directly or indirectly through another *person, by any means, including: • granting, being granted or exercising an option; • being the beneficiary of a declaration of trust over an asset;

- enforcing collateral and taking an asset;
- increasing an economic interest; or
- acquiring part of an asset.

Amended 01/12/19

annual report includes *accounts. However, it does not include a concise report.

Introduced 01/07/96 Amended 01/07/97, 01/07/98, 01/07/00

approved CS facility a *CS facility approved by ASX that provides clearing and/or settlement functions to ASX.

Introduced 03/05/04

Note: ASX Clear is an approved CS facility for clearing and ASX Settlement is an approved CS facility for settlement.

approved CS facility's subregister in relation to ASX Settlement means *CHESS and in relation to any other *approved CS facility means any subregister system operated by the *approved CS facility for the purpose of clearing and settling transactions in securities.

Introduced 03/05/04

approved listing rule compliance course a listing rule compliance course made available or approved by ASX from time to time for persons appointed under Rule 1.1 condition 13 or Rule 12.6 to be responsible for communication with ASX in relation to listing rule matters.

Introduced 01/12/19

ASIC Australian Securities and Investments Commission.

Introduced 01/09/96 Amended 01/09/99

asset-backed securities *debt securities backed by assets which, at the time of the *debt securities' issue, are evidenced by agreements and intended to produce funds to be applied towards interest payments due on the *securities or repayment of principal on maturity, and includes *property-backed securities.

Introduced 24/10/05

associate save as set out below, a person (the *second person*) is an associate of another person (the *primary person*) in relation to a listed entity if, and only if, one or more of the following paragraphs applies:

- (a) in the case of a primary person who is a natural person, the second person is an entity the primary person controls;
- (b) in the case of a primary person who is an entity, the second person is:
 - (i) an entity the primary person *controls; or
 - (ii) an entity that *controls the primary person; or
 - (iii) an entity that is controlled by an entity that *controls the primary person;
- (c) the second person is a person with whom the primary person has, or proposes to enter into, a relevant agreement for the purpose of controlling or influencing the composition of the listed entity's board or the conduct of the listed entity's affairs;

- (d) the second person is a person with whom the primary person is acting, or proposing to act, in concert in relation to the listed entity's affairs.

In paragraphs (a) and (b) above, "entity" means a body corporate, partnership, unincorporated body or a trust and includes, in the case of a trust, the *responsible entity of the trust.

If the listed entity is an *externally managed trust, the reference in paragraph (c) above to controlling or influencing the composition of the listed entity's board is taken to be a reference to controlling or influencing whether a particular entity becomes or remains the trust's *responsible entity.

If the listed entity is an *internally managed trust, the reference in paragraph (c) above to controlling or influencing the composition of the listed entity's board is taken to be a reference to controlling or influencing the board of the trust's *responsible entity.

A *related party of a natural person is to be taken to be an associate of the natural person unless the contrary is established.

However, a person is not an associate of another person merely because of one or more of the following:

- (a) one gives advice to the other, or acts on the other's behalf, in the proper performance of the functions attaching to a professional capacity or a business relationship;
- (b) one, a client, gives specific instructions to the other, whose ordinary business includes dealing in financial products, to acquire financial products on the client's behalf in the ordinary course of that business;
- (c) one had sent, or proposes to send, to the other an offer under a takeover bid for *securities held by the other;
- (d) one has appointed the other, otherwise than for valuable consideration given by the other or by an associate of the other, to vote as a proxy or representative at a meeting of members, or of a class of members, of the listed entity.

Introduced 01/07/14 Amended 01/12/17, 01/12/19

Notes: Section 9 of the *Corporations Act* defines "relevant agreement".

One way in which a related party of a natural person may seek to establish that it is not an associate of the natural person is for the natural person or related party in question to give a statutory declaration or some other form of certification to the listed entity to that effect. The listed entity should take this and any other information known to it into account when forming a view as to whether or not the related party is in fact an associate of the natural person.

ASX

ASX Limited.

Amended 20/07/07

ASX Corporate
Governance Council

~~The Corporate Governance Council established by ASX on 1 August 2002.~~

~~[Deleted]~~

Introduced 01/01/03 ~~Deleted xx/xx/xx~~

ASX Corporate Governance Principles and Recommendations

the ASX Corporate Governance Principles and Recommendations as approved by ASX from time to time.

Introduced xx/xx/xx

Note: the effective date of any new or amended version of the ASX Corporate Governance Principles and Recommendations will be as stated in the document or as otherwise communicated by ASX.

ASX market

the market for trading in securities operated in Australia by ASX.

Introduced 01/07/14

Australian company

a body corporate that is formed or established in Australia.

Introduced 19/12/16

Australian entity

an *Australian company or an *Australian trust.

Introduced 19/12/16

Australian trust

either:

- (a) a registered scheme; or
- (b) a trust that is formed or established in Australia and that is not required to be a registered scheme by virtue of section 601ED(2) of the *Corporations Act*.

Introduced 19/12/16 Amended 01/12/19

Note: "Registered scheme" means a managed investment scheme that is registered under section 601EB of the *Corporations Act* (Rule 19.3 and section 9 of the *Corporations Act*).

aware

an entity becomes aware of information if, and as soon as, an officer of the entity (or, in the case of a trust, an officer of the responsible entity) has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of that entity.

Introduced 01/07/96 Origin: Listing Rule 3A(1) Amended 01/07/98, 30/09/01, 01/05/13

best estimate

is the best estimate of the quantity that will actually be recovered from an accumulation by an *oil and gas project. It is the most realistic assessment of recoverable quantities if only a single result were reported. When probabilistic methods are used, there should be at least a 50% probability (P50) that the quantities actually recovered will equal or exceed the best estimate.

Introduced 01/12/13

BOEs

barrels of oil equivalent.

Introduced 01/12/13

bonus issue

a *pro rata issue of *securities to holders of *ordinary securities for which no consideration is payable by them.

business day

Monday to Friday inclusive, except New Year's Day, Good Friday, Easter Monday, Christmas Day, Boxing Day, and any other day that ASX declares is not a business day.

cash formula

In the case of a *person who has paid cash for fully paid *ordinary securities that are not otherwise free from escrow:

$$N = C / P$$

where:

- N = the number of those securities *not* subject to escrow by reason of the *cash formula;
- C = the total cash paid by the *person for those securities; and
- P = the price per fully paid *ordinary security paid by investors in any initial public offering undertaken in connection with the entity's admission to the *official list, or if there is no public offering, the price agreed by ASX.

In the case of options which have the same terms as options offered with fully paid *ordinary securities in any initial public offering undertaken in connection with the entity's application for admission:

- O = N x F
- O = the number of options *not* subject to escrow.
- N = the number of securities *not* subject to escrow under the formula above.
- F = the number of free options offered per fully paid *ordinary security in the initial public offering.

Introduced 01/07/98 Amended 01/12/19

CDIs

the meaning in Section 2 of the ASX Settlement Operating Rules.

Introduced 01/09/99 Amended 11/03/04

Note: The ASX Settlement Operating Rules state:

CDI "stands for CHESS Depositary Interest and means a unit of beneficial ownership in a Principal Financial Product, registered in the name of the Depositary Nominee and includes:

- (a) CUFS; ~~and~~
- (b) ~~DisDIs; and~~
- (c) Government Bond Depositary Interests".

CUFS "stands for CHESS Units of Foreign Financial Products and means a unit of beneficial ownership in a Financial Product of a Foreign Issuer, registered in the name of the Depositary Nominee".

DI "stands for Depositary Interest and means a unit of beneficial ownership in a Financial Product which is not a Financial Product of a Foreign Issuer, registered in the name of the Depositary Nominee".

Government Bond Depositary Interest "means a unit of beneficial ownership in a Government Bond registered in the name of a Depositary Nominee or its nominee".

CEO

the chief executive officer of an entity (or equivalent office holder).

Introduced 01/12/19

certificated subregister

that part of an entity's register for a *class of its *securities that is administered by the entity and records certificated holdings of *securities in that *class.

Note: The register may be of shares, options or other securities.

CFO

the chief financial officer of an entity (or equivalent office holder).

Introduced 01/12/19

chair

when used in relation to a meeting of *security holders means the person acting as chairperson of the meeting or any part of the meeting, and otherwise means the chairperson of directors (or equivalent office holder).

Introduced 01/12/19

CHES	the meaning in Section 2 of the ASX Settlement Operating Rules. Amended 11/03/04, 01/08/10 Note: The ASX Settlement Operating Rules say that state: CHES “stands for the Clearing House Electronic Subregister System ~~and means the System established and as~~ operated by: (a) ASX Clear for the purpose of clearing Cash Market Transactions and Cash CCP Transactions; and (b) ASX Settlement for the purpose of settling transactions in Approved Financial Products, Transferring Financial Products and registers of registering Transfers:.” ASX Clear “means ASX Clear Pty. Limited (ABN 48 001 314 503)).” ASX Settlement “means ASX Settlement Pty Ltd (ABN 49 008 504 532)).”
CHES approved	means an Approved Financial Product under Section 8 of the ASX Settlement Operating Rules. Amended 11/03/04 Note: Approved Financial Product means a Financial Product approved by ASX Settlement in accordance with Section 8 of the ASX Settlement Operating Rules. ASX Settlement means ASX Settlement Pty Ltd (ABN 49 008 504 532)
CHES subregister	that part of an entity’s register for a *class of *CHES approved securities that is administered by *ASX Settlement and records uncertificated holdings of *securities in that *class. Amended 11/03/04 Note: The register may be of shares, options or other securities that are CHES approved.
child entity	(a) in relation to a body corporate, an entity which is *controlled by, or a subsidiary of, the body corporate; and (b) in relation to a trust, an entity that is *controlled by the *responsible entity of the trust in its capacity as *responsible entity. In paragraphs (a) and (b) above, “entity” means a body corporate, partnership, unincorporated body or a trust and includes, in the case of a trust, the *responsible entity of the trust. Introduced 01/07/96 Amended 01/07/98, 13/03/00, 30/09/01, 24/10/05, 01/12/19 Note: “Subsidiary” has the same meaning as in section 9 of the Corporations aAct (see Rule 19.3).
Chi-X market	the market for trading in securities operated in Australia by Chi-X Australia Pty Ltd. Introduced 01/07/14
class	*Securities are in the same class only if the same rights and obligations attach to them. Differences arising from the requirements of the listing rules relating to *restricted securities are to be ignored. Example: Partly paid securities are in a different class to fully paid securities. Fully paid securities that rank equally except for the next dividend or distribution are in the same class (but may be traded separately until they merge with the other shares in the class). Fully paid ordinary securities classified as restricted securities are in the same class as fully paid ordinary securities that are not classified as restricted securities.
classified asset	(a) an interest in a *mining tenement or *petroleum tenement that is substantially explorative or unproven;

- (b) an interest in intangible property that is substantially speculative or unproven, or has not been profitably exploited for at least 3 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;
- (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) or (c).

Introduced 01/07/96 Amended 01/07/98, 01/12/13, 01/12/19

clearing account	the meaning in Section 2 of the ASX Settlement Operating Rules. Amended 11/03/04 Note: The ASX Settlement Operating Rules state that a clearing account is either an accumulation account (a holder record maintained in CHESS by a settlement participant to facilitate settlement of transactions in Approved Financial Products with clients who are not participants) or a settlement account (a holder record maintained in CHESS by a participant to facilitate settlement in Approved Financial Products with other participants).
closed period	fixed periods specified in the *trading policy when an entity's *key management personnel are prohibited from trading in the entity's securities. Introduced 01/01/11
closing market price	in relation to particular securities on a particular day, the published closing price for those securities on the *ASX market on that day. Introduced 01/07/14
company announcements office	Deleted 01/05/13
competent person	the meaning in Appendix 5A (JORC Code). Introduced 01/09/99 Origin: Rule 5.10 Amended 01/12/13
contingent resources	those quantities of *petroleum estimated, as of a given date, to be potentially recoverable from known accumulations by application of development *oil and gas projects, but which are not currently considered to be commercially recoverable due to one or more contingencies. Introduced 01/12/13
contingent resources holdings	aggregate of the economic interests in *contingent resources of an *entity and its *child entities. Introduced 01/12/13
control	For the purposes of these rules, an entity controls a second entity if the first entity has the capacity to determine the outcome of decisions about the second entity's financial and operating policies. In determining whether the first entity has this capacity: (a) the practical influence the first entity can exert (rather than the rights it can enforce) is the issue to be considered; and (b) any practice or pattern of behaviour affecting the second entity's financial or operating policies is to be taken into

account (even if it involves a breach of an agreement or a breach of trust).

The first entity does not control the second entity merely because the first entity and a third entity jointly have the capacity to determine the outcome of decisions about the second entity's financial and operating policies.

If the first entity is a body corporate, it will not be taken to control a second entity if it is under a legal obligation to exercise its capacity to influence decisions about the second entity's financial and operating policies for the benefit of someone other than its members.

If the first entity is a trust, the trust will be taken to control an entity that the *responsible entity of the trust controls in its capacity as *responsible entity of the trust. It will not be taken to control an entity that the *responsible entity of the trust controls in some other capacity.

Introduced 01/12/19

controller

in relation to *restricted securities:

- (a) if the holder of the *restricted securities holds them on its own account, a *person who, or who in ASX's opinion, directly or indirectly *controls, or has a substantial economic interest in, the holder of the *restricted securities; or
- (b) if the holder of the *restricted securities holds them in a nominee, trustee, custodial or other fiduciary capacity on behalf of a beneficiary, that beneficiary and any other person who, or who in ASX's opinion, *controls, or has a substantial economic interest in, the *restricted securities.

Amended 01/12/19

Note: Paragraph (a) of this definition of "controller" captures each intermediate entity in a chain of entities through which a person ultimately controls, or has a substantial economic interest in, the holder of restricted securities.

convertible

includes exercisable.

convertible debt security

an instrument that would be a *debt security but for the fact that it is a *convertible security.

Amended 01/12/19

convertible security

a *security that is *convertible by the holder, by the issuer, or otherwise by its terms of issue, into *equity securities.

Introduced 01/07/96 Amended 31/03/04, 01/12/19

Note: An option is a convertible security for the purposes of the Listing Rules, as is an instrument that automatically converts into equity securities upon the occurrence of specified events.

corporate action	the meaning in Section 2 of the ASX Settlement Operating Rules. Amended 11/03/04 Note: ~~In the~~The ASX Settlement Operating Rules ~~state~~ a corporate action ~~is~~ means: (a) action taken by an Issuer of Financial Products for the purpose of giving an Entitlement to Holders of a class of the Issuer's Financial Products; (b) action taken by a Principal Issuer for the purpose of giving an Entitlement in respect of Principal Financial Products held by a Depositary Nominee to Holders of CDIs; and (c) in relation to Section 13, action taken by an Issuer of Participating International Financial Products for the purposes of giving an Entitlement in respect of Participating International Products, held by a Depositary Nominee.
corporate governance statement	the statement referred to in Rule 4.10.3 which discloses the extent to which an entity has followed the recommendations set ~~by~~out in the +ASX Corporate Governance ~~Council~~Principles and Recommendations during a particular reporting period. Introduced 01/07/14. Amended xx/xx/xx This definition applies in respect of financial years ending on or after 30 June 2015.
CS facility	the meaning in section 768A of the <i>Corporations Act</i>. Introduced 03/05/04
CUFS	Deleted 11/03/04
debt security	(a) a bond, certificate of deposit, debenture, note or other instrument evidencing a debt owing by an entity to the holder that is negotiable or transferrable and that is not a +convertible security; (b) any +security that ASX decides to classify as a debt security; (c) but not a +security ASX decides to classify as an +equity security. Amended 01/12/19
deferred settlement	a settlement in which the obligation to settle on a trade date plus 2 +business days (T+2) basis is deferred until the time following the +issue date that ASX fixes. Introduced 01/07/96 Amended 01/02/99, 07/03/16
directors' declarations	A declaration by directors (in the case of a trust, the directors of the responsible entity) that is required by any law, rule or accounting standard and states either of the following. • That the statement of financial position, statement of comprehensive income and statement of cash flows, together with the notes and other disclosures and information, comply with a law, rule or accounting standard and give a fair and true view of the financial position and performance of the entity. • That, in the opinion of the directors (in the case of a trust, the directors of the responsible entity), there are reasonable grounds to believe that the entity will be able to pay its debts as and when they become due and payable. Introduced 01/07/00 Amended 24/10/05, 01/01/12

directors' report	A report by directors (in the case of a trust, the directors of the responsible entity) that is required by any law, rule or accounting standard to include a review of operations during the period reported on. Introduced 01/07/00 Amended 24/10/05 Note: ~~As at 01/07/00 in~~In the case of an entity which is required to comply with Chapter 2M of the <i>Corporations Act</i>, directors' report includes the documents referred to in sections 298(~~1AA~~), 298(1AB) and 306-~~of the Law~~.
disclosure document	includes a supplementary or replacement disclosure document. Introduced 19/12/16
dispose	to dispose of, directly or indirectly through another *person, by any means, including: • granting, being granted or exercising an option; • declaring a trust over an asset; • using an asset as collateral; • decreasing an economic interest; or

- disposing of part of an asset.

Amended 01/12/19

Example: A listed company holds all the shares in Company A, which holds all the shares in company B. Company B holds restricted securities. If company A sells 51% of the shares in company B the listed company has disposed of the restricted securities.

dividend or distribution plan any plan which gives holders of *securities the opportunity to accept *securities in place of dividend, distribution or interest payments (either partly or wholly).

eligible entity an *entity which, as at the date of the relevant special resolution under Rule 7.1A:

- (a) is not included in the S&P/ASX300 Index; and
- (b) has a *market capitalisation equal to or less than the *prescribed amount.

Introduced 01/08/12 Amended 04/03/13, 01/12/19

employee incentive scheme (a) a scheme for the issue or *acquisition of *equity securities in the entity by or for the benefit of:

- (i) participating employees or directors of the entity;
- (ii) participating employees or directors of a related entity of the entity; or
- (iii) the related parties of such employees or directors; or

(b) a scheme which, in ASX's opinion, is an employee incentive scheme.

Introduced 01/07/96 Amended 30/09/01, 01/07/14, 01/12/19, 05/06/21

Note: References in this definition to a director include a non-executive director.

The fact that an employee incentive scheme allows participating employees or directors to elect to have equity securities issued to, or held for the benefit of, a related party (such as a relative or a private company or family trust) does not prevent it from being an employee incentive scheme for the purposes of the Listing Rules. Nor does the fact that an employee incentive scheme may also provide for the participation of consultants and contractors, as well as employees and directors.

A scheme can be an employee incentive scheme ~~for~~ the purposes of the Listing Rules even if there is only one employee or director participating in the scheme.

Most non-executive director security purchase plans are employee incentive schemes for the purposes of the Listing Rules. This applies even where the plan provides for securities to be purchased on-market (and therefore at a fair market price) and a participating director is ultimately required to pay the full purchase price for the securities purchased on their behalf (for example, by periodic deduction to their director's fees).

Cross reference: Definition of "terms of the scheme".

entity (a) an entity that has applied for admission to, or is admitted to, the *official list.

(b) in Appendices 4C, 4D, 4E and 4F the meaning in the Australian Accounting Standards.

Introduced 01/07/96 Amended 01/07/00, 01/01/03, 17/12/10

~~Note: At 01/01/10, Australian Accounting Standard AASB 101 says that an entity is any legal, administrative or fiduciary arrangement, organisational structure or other party (including a person) having the capacity to deploy scarce resources in order to achieve objectives.~~

equity interests	the sum of paid up capital, reserves, and accumulated profits or losses, disregarding redeemable preference share capital and outside equity interests, as shown in the consolidated financial statements.
equity security	(a) a share; (b) a *unit; (c) an option over an issued or unissued share or *unit; (d) a right to an issued or unissued share or *unit; (e) an option over, or right to, a security referred to in (c) or (d) above; (f) a *convertible security; (g) any *security that ASX decides to classify as an equity security; (h) but not a *security ASX decides to classify as a *debt security.

Amended 01/12/19

Note: ASX has decided under paragraph (h) above that a security issued by an APRA-regulated entity that falls within the definition of "convertible security" in Rule 19.12 solely because it can be converted on the occurrence of a "non-viability trigger event" and/or a "capital trigger event" and that would otherwise be a debt security but for the inclusion of those provisions, should be classified as a debt security rather than an equity security for the purposes of the Listing Rules. For these purposes, a "non-viability trigger event" means a provision in the terms of issue of a debt security that allows APRA, solely at its discretion, to require the debt security to be written off or converted into equity securities because, without that occurring, the entity would be non-viable. A "capital trigger event" means that APRA has determined, or the entity has determined and notified APRA, that the ratio of its common equity capital to its risk-adjusted assets has fallen below a minimum threshold fixed by APRA and specified in the terms of issue of the security. A security issued by an APRA-regulated entity that has other equity conversion or exchange features in addition to a non-viability trigger event or capital trigger event will be classified as an equity security.

exploration	includes geophysical surveys.

Introduced 01/12/13

exploration results	the meaning in Appendix 5A (JORC Code).

Introduced 01/12/13

exploration target	the meaning in Appendix 5A (JORC Code).

Introduced 01/12/13

externally managed	a trust is externally managed if: (a) it is not *internally managed; or (b) ASX determines that the trust should be treated as an externally managed trust for the purposes of the listing rules.

Introduced 01/12/19

extraction	includes developing the infrastructure to extract *minerals or *petroleum (as the case may be).

Introduced 01/12/13

feasibility study	the meaning in Appendix 5A (JORC Code).

Introduced 01/12/13

financial documents	Introduced 01/07/98 Amended 01/09/99 Deleted 01/07/00
foreign company	a body corporate that is not formed or established in Australia. Introduced 19/12/16
foreign entity	a *foreign company or a *foreign trust. Introduced 19/12/16
foreign estimate	an estimate of quantity and grade of mineralisation that was prepared using a mineral resources classification and reporting standard from another jurisdiction prior to an *entity acquiring, or entering into an agreement to acquire, an interest in a *mining tenement that contains the deposit, and which the *entity has not verified as *mineral resources or *ore reserves in accordance with Appendix 5A (JORC Code). Introduced 01/12/13
foreign trust	a trust or similar overseas entity that is not formed or established in Australia and that is not a registered scheme. Introduced 19/12/16 Amended 01/12/19 Note: "Registered scheme" means a managed investment scheme that is registered under section 601EB of the <i>Corporations Act</i> (Rule 19.3 and section 9 of the <i>Corporations Act</i>).
free float	the percentage of the *main class of *securities of an entity that: (a) are not *restricted securities or subject to *voluntary escrow; and (b) are held by *non-affiliated security holders. Introduced 19/12/16
high estimate	an optimistic estimate of the quantity that will actually be recovered from an accumulation by an *oil and gas project. When probabilistic methods are used, there should be at least a 10% probability (P10) that the quantities actually recovered will equal or exceed the high estimate. Introduced 01/12/13
HIN	Introduced 01/07/96 Deleted 01/07/97
historical estimate	an estimate of quantity and grade of mineralisation that is based on information and supporting documentation that was prepared prior to the introduction of Appendix 5A (JORC Code) and which an *entity has not verified as *mineral resources or *ore reserves in accordance with Appendix 5A (JORC Code). Introduced 01/12/13
holding lock	the meaning in Section 2 of the ASX Settlement Operating Rules. Amended 11/03/04 Note: The ASX Settlement Operating Rules state that a holding lock is "... a facility that prevents Financial Products from being deducted from, or entered into, a Holding pursuant to a Transfer or Conversion:-"

home branch	the branch of ASX designated to an entity by ASX as the entity's home branch for administrative purposes.
hydrocarbon	a compound of the elements hydrogen and carbon, in either liquid or gaseous form. Natural gas and petroleum are mixtures of hydrocarbons.
hydrocarbon reserves	Deleted 01/12/13
identified mineral resources	Introduced 01/07/96 Deleted 01/09/99
indicated mineral resources	the meaning in Appendix 5A (JORC Code). Introduced 01/12/13
inferred mineral resources	the meaning in Appendix 5A (JORC Code). Introduced 01/12/13
information	for the purposes of Listing Rules 3.1 and 3.1B, information includes: (a) matters of supposition and other matters that are insufficiently definite to warrant disclosure to the market; and (b) matters relating to the intentions, or likely intentions, of a person. Introduced 01/05/13
information memorandum	a document that is not a *prospectus or *PDS that includes or accompanies an offer of *securities with information about the issuer, the *securities and the offer. It includes a supplementary or replacement information memorandum. Introduced 19/12/16 Amended 01/12/19
internally managed	a trust is internally managed if: (a) the *responsible entity of the trust is a wholly owned *child entity of the trust; (b) the trust forms part of a *stapled group and the *responsible entity of the trust is also a part of the *stapled group; or (c) the trust forms part of a *stapled group and the *responsible entity of the trust is a wholly owned *child entity of another entity that is also a part of the *stapled group, and ASX has not determined that the trust should be treated as an externally managed trust for the purposes of the listing rules. Introduced 01/12/19
investment entity	an entity which, in ASX's opinion, is an entity to which both of the following apply. • Its activities or the principal part of its activities consist of investing (directly or through a child entity) in listed or unlisted *securities or derivatives.

- Its objectives do not include exercising control over or managing any entity, or the business of any entity, in which it invests.

Introduced 01/07/96 Amended 01/09/99, 02/11/15

Note: In deciding whether an entity is an investment entity ASX will normally have regard to factors including the extent of board representation, the size of the holdings, the investment period and the amount of cash held by the entity.

issue date

the date that the *securities are entered into a *certificated subregister or an *uncertificated subregister.

Introduced 04/03/13

Note: This date may be prescribed by ASX.

issuer sponsored
subregister

that part of an entity's register for a *class of *CHESS approved securities that is administered by the entity (and not ASX Settlement) and records uncertificated holdings of *securities.

Amended 11/03/04

Note: The register may be of shares, options or other securities that are CHESS approved.

key management
personnel

the meaning in Accounting Standard AASB 124 Related Party Disclosure.

Introduced 01/01/11

low estimate

a conservative estimate of the quantity that will actually be recovered from an accumulation by an *oil and gas project. When probabilistic methods are used, there should be at least a 90% probability (P90) that the quantities actually recovered will equal or exceed the low estimate.

Introduced 01/12/13

main class

*ordinary securities of the entity (if *ordinary securities are not to be quoted, the *class of *securities designated by ASX).

Note: Rules relating to main class are not applicable to an ASX Debt Listing.

market announcements
office

the office designated by ASX as its market announcements office.

Introduced 01/05/13

market capitalisation

the number of *securities in the main class on issue multiplied by the price determined by ASX to be a fair measure of the market value of those *securities.

Introduced 01/09/99 Amended 24/10/05, 01/12/19

Note: Guidance Note 1 *Applying for Admission – ASX Listings* has guidance on how ASX applies this definition when calculating the market capitalisation of an entity applying for admission under the second limb of the assets test in Rule 1.3.1(b).

Guidance Note 21 *The Restrictions on Issuing Equity Securities in Chapter 7 of the Listing Rules* has guidance on how ASX applies this definition when calculating the market capitalisation of an entity to determine whether it is an "eligible entity" for the purposes of Rule 7.1A.

market participant

the meaning in the ASX Operating Rules.

Introduced 03/05/04 Amended 01/08/10

market price

Amended 01/01/12 Deleted 01/07/14

marketable parcel	the meaning in the procedures of the ASX Operating Rules. Amended 11/03/04, 17/12/10 Note: The meaning of “marketable parcel” in the ASX Operating Rules Procedures is, in relation to: 1. Equity Securities (but not rights to subscribe for Equity Securities or options over Equity Securities), a parcel of securities of not less than \$500 based on: (a) the closing price on a Trading Platform, if the Equity Securities are quoted; or (b) the price paid on issue if the Equity Securities are unquoted; and 2. Rights to subscribe for Equity Securities, a parcel of rights which, if taken up in full, would result in a parcel of Equity Securities which would not be less than \$500 based on: (a) the closing price on a Trading Platform of the Equity Securities at the time of purchase of the rights, if the Equity Securities are quoted; or (b) the total application moneys payable in relation to the exercise of the rights, if the Equity Securities are unquoted; 3. Options over unissued Equity Securities, a parcel of options which, if exercised in full, would result in a parcel of Equity Securities which would not be less than \$500 based on: (a) the closing price on a Trading Platform of the Equity Securities at the time of purchase of the options, if the Equity Securities are quoted; or (b) the total moneys payable on the exercise of the options, if the Equity Securities are unquoted; 4. Loan Securities other than redeemable preference shares with a fixed and certain date for redemption and Government Bond Depositary Interests, 1 security with a face value of not less than \$100; and 5. Warrants, a parcel of Warrants where the value of the Underlying Instruments equals or exceeds \$500.
material mining project	in relation to an *entity, a *mining project which meets the following criteria: (a) the *entity or a *child entity has an economic interest in the *mining project (whether alone or jointly with others); and (b) that interest is, or is likely to be, material in the context of the overall business operations or financial results of the *entity and its *child entities (on a consolidated basis). Introduced 01/12/13
material oil and gas project	in relation to an *entity, an *oil and gas project which meets the following criteria: (a) the *entity or a *child entity has an economic interest in the *oil and gas project (whether alone or jointly with others); and (b) that interest is, or is likely to be, material in the context of the overall business operations or financial results of the *entity and its *child entities (on a consolidated basis). Introduced 01/12/13
McfGEs	thousand cubic feet of gas equivalent. Introduced 01/12/13
measured mineral resources	the meaning in Appendix 5A (JORC Code). Introduced 01/12/13

mineral resources	the meaning in Appendix 5A (JORC Code). Amended 01/09/99, 01/12/13
mineral resources and ore reserves holdings	aggregate economic interests in mineral resources and *ore reserves of an *entity and its *child entities. Introduced 01/12/13
minerals	means all solid minerals, including diamonds, other gemstones, industrial minerals and coal but does not include *petroleum. Introduced 01/12/13
mining entity	a *mining exploration entity or a *mining producing entity.
mining exploration entity	an *entity: (a) whose main undertaking consists of *exploration for *minerals; or (b) which has been advised by ASX that it is a mining exploration entity for the purposes of the ASX Listing Rules. Amended 01/12/13
mining producing entity	an *entity: (a) whose main undertaking consists of the *extraction of *minerals; or (b) which has been advised by ASX that it is a mining producing entity for the purposes of the listing rules. Introduced 01/07/96 Amended 01/07/97, 01/12/13
mining project	a project to explore for or extract *minerals from a *mining tenement or tenements. Introduced 01/12/13 Note: The boundaries of what constitutes a *mining project will often be determined by commercial considerations, including development decisions and budget allocations. A *mining project may constitute the development of a single mine, or an incremental development in a producing mine, or the integrated development of a group of several mines and associated facilities with common ownership.
mining tenement	any right to explore for or extract *minerals in a given place. Amended 01/12/13
net tangible asset backing	for the purpose of Rules 4.10.20 and 4.12 in relation to a *class of *securities,

$$\frac{(A - I - L)}{N}$$

- A = total assets.
I = intangible assets.
L = total liabilities ranking ahead of, or equally with, claims of that *class of *securities. In calculating this, total liabilities must include each of the following.

- Provisions for tax on realised income and gains.
- Provisions for tax on estimated unrealised income and gains. Alternatively, the entity may disclose the net tangible asset backing per *security before and after providing for the estimated tax on unrealised income and gains.
- Provisions for declared, but unpaid, dividends or distributions if the *securities are still quoted on a basis that includes the dividend or distribution on the date on which the net tangible asset backing is reported.
- Provisions for accrued but unpaid management fees.

Example: Liabilities ranking ahead of, or equally with, fully paid ordinary securities in a parent entity will include all liabilities, preference share entitlements, and outside equity interests.

Note: The reference to accrued but unpaid management fees includes all forms of fees paid to the manager, including establishment fees and performance fees.

N = total number of *securities on issue in that *class. In calculating this, partly paid *securities which are in that *class when paid up are taken into account by assuming that the unpaid amount is paid.

The value of A, I and L at the end of the month must be determined in accordance with Australian accounting standards (including in particular Australian Accounting Standard AASB 13 *Fair Value Measurement*) or other standards agreed by ASX.

Amended 01/07/14, 01/12/19

non-affiliated security holders

*security holders who are not:

- (a) a related party of the entity;
- (b) an associate of a related party of the entity; or
- (c) a person whose relationship to the entity or 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.

Introduced 19/12/16

notifiable interest of a director

- (a) *in relation to a company*, the following.
 - (i) Relevant interest within the meaning of section 9 of the *Corporations Act* in *securities of the company or a related body corporate.

Note: This limb of the definition is equivalent to section 205G(1)(a) of the *Corporations Act*.
 - (ii) Interests in contracts to which the director is a party or under which the director is entitled to a benefit, and that confer a right to call for or deliver shares in, debentures of, or interests in a managed investment scheme made available by, the company or a related body corporate.

Note: This limb of the definition is equivalent to section 205G(1)(b) of the *Corporations Act*.
- (b) *in relation to a trust*, relevant interest within the meaning of section 9 of the *Corporations Act* in *securities of the trust.

Introduced 30/09/01

official list	official list of entities that ASX (in the case of ASX, the +ASIC) has admitted and not removed. Introduced 01/07/96 Amended 01/07/98, 01/09/99
oil and gas entity	an +oil and gas exploration entity or an +oil and gas producing entity. Introduced 01/12/13
oil and gas exploration entity	an +entity: (a) whose main undertaking consists of +exploration for +petroleum; or (b) which has been advised by ASX that it is an oil and gas exploration entity for the purposes of the listing rules. Introduced 01/12/13
oil and gas producing entity	an +entity: (a) whose main undertaking consists of the +extraction of +petroleum; or (b) which has been advised by ASX that it is an oil and gas producing entity for the purposes of the listing rules. Introduced 01/12/13
oil and gas project	a project to explore for or extract +petroleum from a +petroleum tenement or tenements. Introduced 01/12/13 Note: The boundaries of what constitutes an +oil and gas project will often be determined by commercial considerations, including development decisions and budget allocations. An +oil and gas project may constitute the development of a single reservoir or field, or an incremental development in a producing field, or the integrated development of a group of several fields and associated facilities with common ownership. +SPE PRMS defines 'project'.
on-market buy-back	Introduced 01/07/96 Deleted 01/09/99
operating profit (loss)	the profit (loss) for the relevant period resulting from the operations of the entity or group during the period of a kind carried on regularly to achieve the objectives of the entity or group.
ordinary securities	ordinary shares or ordinary +units (if an entity does not have ordinary shares or ordinary +units, the +class of +securities designated by ASX).
ore reserves	the meaning in Appendix 5A (JORC Code). Amended 01/09/99, 01/12/13
overseas home exchange	the place of an entity's primary listing (if the entity is not required to comply with the rules of that exchange or market as a domestic entity, the exchange or market designated by ASX).
participating organisation	Introduced 01/06/96 Amended 11/03/02 Deleted 03/05/04

PDS	means a Product Disclosure Statement (as defined in Chapter 7 of the <i>Corporations Act</i>) and includes a supplementary or replacement Product Disclosure Statement. Introduced 19/12/16
person	includes an individual, body corporate, body politic, firm, association, authority or other entity.
petroleum	a naturally occurring mixture consisting of hydrocarbons in the gaseous, liquid or solid phase. Petroleum may also contain non-hydrocarbon compounds. Common examples of non-hydrocarbon compounds included in petroleum are carbon dioxide, nitrogen, hydrogen sulphide and sulphur. Introduced 01/12/13 Amended 01/07/22
petroleum reserves	those quantities of *petroleum anticipated to be commercially recoverable by application of development projects to known accumulations from a given date forward under defined conditions. Petroleum reserves must satisfy four criteria: they must be discovered, recoverable, commercial and remaining based on the development project(s) applied. Introduced 01/12/13
petroleum reserves holdings	aggregate economic interests in *petroleum reserves of an *entity and its *child entities. Introduced 01/12/13
petroleum resources	all quantities of *petroleum (recoverable and unrecoverable) naturally occurring on or within the Earth's crust, discovered and undiscovered, plus those quantities already produced. It includes all types of *petroleum whether currently considered 'conventional' or 'unconventional'. Introduced 01/12/13
petroleum tenement	any right to explore for or extract *petroleum in a given place. Introduced 01/12/13
pooled development fund	a pooled development fund under the <i>Pooled Development Funds Act 1992</i> (CommonwealthCth). Introduced 01/09/99
possible hydrocarbon reserves	Deleted 01/12/13
possible reserves	those additional *petroleum reserves which analysis of geoscience and engineering data indicate are less likely to be recoverable than *probable reserves. The total quantities ultimately recovered from the project have a low probability to exceed the sum of *proved reserves plus *probable reserves plus *possible reserves (*3P). When probabilistic methods are used, there should be at least a 10% probability that the actual quantities recovered will equal or exceed the *3P estimate. Introduced 01/12/13
pre-hydrocarbon reserve stage	Deleted 01/12/13

preliminary feasibility study	the meaning in Appendix 5A (JORC Code). Introduced 01/12/13
prescribed amount	the amount determined by ASX to be the maximum *market capitalisation that an *entity may have and still be eligible to seek approval of the holders of its *ordinary securities by special resolution passed at an annual general meeting to have the additional capacity to issue *equity securities under Rule 7.1A. Introduced 01/08/12 Amended 04/03/13, 01/12/19 Note: The prescribed amount as at 01/12/19 is \$300 million.
probable hydrocarbon reserves	Deleted 01/12/13
probable ore reserves	the meaning in Appendix 5A (JORC Code). Introduced 01/12/13
probable reserves	those additional *petroleum reserves which analysis of geoscience and engineering data indicate are less likely to be recovered than *proved reserves but more certain to be recovered than *possible reserves. It is equally likely that actual remaining quantities recovered will be greater than or less than the sum of the estimated *proved reserves plus *probable reserves (*2P). When probabilistic methods are used, there should be at least a 50% probability that the actual quantities recovered will equal or exceed the *2P estimate. Introduced 01/12/13
production target	a projection or forecast of the amount of *minerals to be extracted from a particular *mining tenement or tenements for a period that extends past the current year and the forthcoming year. Introduced 01/12/13
profit from continuing operations	*operating profit: (a) before tax; and (b) disregarding items that are revenue or other credits to profits which result from an activity that has been or is to be discontinued, unless ASX decides otherwise. Introduced 01/07/96 Amended 01/07/00
prohibited period	means: ~~i.~~ <u>(a)</u> any *closed period; or ~~ii.~~ <u>(b)</u> additional periods when an entity's *key management personnel are prohibited from trading, which are imposed by the entity from time to time when the company is considering matters which are subject to Listing Rule 3.1A. Introduced 01/01/11
promoter	in relation to an entity: ~~(a)~~ <u>(a)</u> a *person who, in ASX's opinion, has had a material involvement in the formation or promotion of the entity; ~~(b)~~ <u>(b)</u> unless ASX decides otherwise, a person who: ~~(b) unless ASX decides otherwise, a person who:~~

	(i) is; or (ii) has been at any time in the 12 months before the date of the entity's application for admission to the *official list; or (iii) will be at the date of the entity's admission to the *official list, a *substantial (10%+) holder in the entity; and (c) a *person whose relationship with the entity or with a *person referred to in (a) or (b) above is, in ASX's opinion, such that the *person should be subject to the same escrow restrictions as a promoter of the entity.
	Introduced 01/07/98 Amended 13/03/00, 01/07/00, 01/07/14, 01/12/19
property-backed securities	*debt securities which are directly secured, in whole or in part, over real property or other tangible assets. Introduced 24/10/05
property trust	a trust that has investment of its funds in real estate as its main object.
pro rata issue	an issue which has been offered to all holders of *securities in a *class on a pro rata basis, including without limitation a *rights issue. An issue is not precluded from being a pro rata issue for purposes of the listing rules because *security holders with addresses outside Australia and New Zealand are excluded from the issue under Rule 7.7.1 or because *security holders are allowed to subscribe for a greater number of securities than their entitlement under Rule 7.11.4. Amended 14/04/14, 01/12/19 Note: A bonus issue is a type of pro rata issue (see the definition of "bonus issue"). The terms of the securities in the class to which the offer to participate in the pro rata issue is made must entitle the holder of the securities to receive offers of securities. The terms of options usually do not permit an option holder to participate in offers of securities without having exercised the option. Cross reference: Listing Rule 6.20.
prospective resources	those quantities of *petroleum which are estimated, as of a given date, to be potentially recoverable from undiscovered accumulations. Introduced 01/12/13
prospectus	includes a supplementary or replacement prospectus. Introduced 19/12/16
proved hydrocarbon reserves	Deleted 01/12/13
proved reserves	those quantities of *petroleum, which by analysis of geoscience and engineering data, can be estimated with reasonable certainty to be commercially recoverable, from a given date forward, from known reservoirs and under defined economic conditions, operating methods, and government regulations. If deterministic methods are used, the term reasonable certainty is intended to express a high degree of confidence that the quantities will be recovered. When probabilistic methods are used, there should be at least a 90% probability that the quantities actually recovered equal or exceed the estimate.

	Introduced 01/12/13
qualified petroleum reserves and resources evaluator	a person is a qualified petroleum reserves and resources evaluator if he or she: (a) has obtained a bachelor's or advanced degree in petroleum engineering, geology, geophysics or other discipline of engineering or physical science; (b) has a minimum of five years practical experience in *petroleum engineering, *petroleum production geology or *petroleum geology, with at least three years of such experience being in the evaluation and estimation of *petroleum reserves, *contingent resources and *prospective resources; and (c) is a member of good standing of a professional organisation of engineers, geologists or other geoscientists whose professional practice includes *petroleum reserves, *contingent resources and *prospective resources evaluations and/or audits. The professional organisation must have disciplinary powers, including the power to suspend or expel a member.
	Introduced 01/12/13
qualifying foreign estimates	a *foreign estimate that was prepared in accordance with: • the SAMREC Code; • NI 43-101 and the CIM Standards; or • the PERC Code, and that is otherwise acceptable to ASX.
	Introduced 01/12/13
	Note: ASX may not consider a foreign estimate prepared in accordance with one of the abovementioned reporting codes acceptable if, for example, the estimate was prepared at a time when, in ASX's view, that reporting code was not substantially equivalent to the requirements currently applicable in Appendix 5A (JORC Code).
qualifying NZ entity	a *foreign entity that is formed or established in New Zealand, that has NZX as its *overseas home exchange and whose *securities are admitted to quotation on the main board of NZX.
	Introduced 19/12/16
quotation	official quotation by ASX.
recognised mining professional	Introduced 01/09/99 Deleted 17/12/04
recognised trustee	a trustee approved by ASX for the purpose of the listing rules. Amended 11/03/04
record date	(a) in relation to *CHESS approved *securities – the meaning in Section 2 of the ASX Settlement Operating Rules. Note: The ASX Settlement Operating Rules say that record date means 5.00 pm (or, in the case of an ASTC Regulated Transfer, a later time permitted by the Rules) on the date specified by an Issuer as the date by reference to which the Issuer will establish Cum Entitlement Balances for the purpose of identifying the persons entitled to the benefit of a Corporate Action.

- (b) in relation to *securities that are not *CHESS approved securities – 5.00 pm on the date the entity specifies for lodging transfers of those *securities for the purpose of identifying the persons who are entitled to dividends, interest, new *securities, rights to priority of applications for issues of *securities, or any other entitlement.
- (c) in relation to *securities of different *classes, if the *classes include *CHESS approved *securities and *securities that are not *CHESS approved – the time and day agreed by ASX.

Introduced 01/07/96 Amended 01/09/99, 11/03/04

related party

- (a) in relation to a body corporate:
 - (i) an entity that controls the body corporate;
 - (ii) if the body corporate is controlled by an entity that is not a body corporate, the persons making up that entity;
 - (iii) directors of the body corporate or of an entity that controls the body corporate;
 - (iv) spouses and de facto spouses of anyone referred to in (ii) and (iii) above;
 - (v) parents and children of anyone referred to in (ii), (iii) and (iv) above;
 - (vi) an entity controlled by anyone referred to in (i) – (v) above unless it is also controlled by the body corporate;
 - (vii) anyone who has fallen within (i) – (vi) above within the past 6 months;
 - (viii) anyone who believes or has reasonable grounds to believe that they are likely to fall within (i) – (vi) at any time in the future; and
 - (ix) anyone acting in concert with someone referred to in (i) – (viii) above;
- (b) in relation to an internally managed trust:
 - (i) an entity that controls the trust;
 - (ii) if the trust is controlled by an entity that is not a body corporate, the persons making up that entity;
 - (iii) directors of the *responsible entity of the trust or of an entity that controls the trust;
 - (iv) spouses and de facto spouses of anyone referred to in (ii) and (iii) above;
 - (v) parents and children of anyone referred to in (ii), (iii) and (iv) above;
 - (vi) an entity controlled by anyone referred to in (i) – (v) above unless it is also controlled by the *responsible entity of the trust in its capacity as *responsible entity of the trust;
 - (vii) anyone who has fallen within (i) – (vi) above within the past 6 months;

- (viii) anyone who believes or has reasonable grounds to believe that they are likely to fall within (i) – (vi) at any time in the future; and
- (ix) anyone acting in concert with someone referred to in (i) – (viii) above; and
- (c) in relation to an externally managed trust:
 - (i) the *responsible entity of the trust;
 - (ii) an entity that controls the *responsible entity;
 - (iii) if the *responsible entity is controlled by an entity that is not a body corporate, the persons making up that entity;
 - (iv) directors of the *responsible entity or of an entity that controls the *responsible entity;
 - (v) spouses and de facto spouses of anyone referred to in (iii) and (iv) above;
 - (vi) parents and children of anyone referred to in (iii), (iv) and (v) above;
 - (vii) an entity controlled by the *responsible entity of the trust other than in its capacity as *responsible entity of the trust;
 - (viii) an entity controlled by anyone referred to in (ii) – (vii) above unless it is also controlled by the *responsible entity in its capacity as *responsible entity of the trust;
 - (ix) anyone who has fallen within (ii) – (viii) above within the past 6 months;
 - (x) anyone who believes or has reasonable grounds to believe that they are likely to fall within (ii) – (viii) at any time in the future; and
 - (xi) anyone acting in concert with someone referred to in (i) – (x) above; and
- (d) in relation to a person:
 - (i) the person's spouse or de facto spouse;
 - (ii) a parent or child of the person or of a spouse or de facto spouse of the person;
 - (iii) an entity controlled by the person or anyone referred to in (i) or (ii);
 - (iv) anyone who has fallen within (i) – (iii) above within the past 6 months;
 - (v) anyone who believes or has reasonable grounds to believe that they are likely to fall within (i) – (iii) above at any time in the future; and
 - (vi) a person who acts in concert with the person or anyone referred to in (i) – (v) above.

Introduced 01/07/96 Amended 01/07/98, 13/03/00, 30/09/01, 24/10/05, 01/12/19

remuneration committee

is a committee formed by an entity to advise that entity on matters pertaining to the remuneration of its *key management personnel.

Introduced 01/07/11

replaceable rule	any provision of those sections and sub-sections of the <i>Corporations Act</i> that are listed under section 141 of the <i>Corporations Act</i> as “replaceable rules” and so capable of being replaced or modified by a company’s constitution. Introduced 01/07/98 Amended 30/09/01
reserves	Introduced 01/07/96 Deleted 01/09/99
resources	Introduced 01/07/96 Deleted 01/09/99
responsible entity	(a) in relation to a registered scheme, the same meaning as in the <i>Corporations Act</i>; (b) in relation to a trust that is not a registered 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 scheme. Introduced 19/12/16 Amended 01/12/19 Note: “Registered scheme” means a managed investment scheme that is registered under section 601EB of the <i>Corporations Act</i> (Rule 19.3 and section 9 of the <i>Corporations Act</i>).
restricted securities	(a) *securities issued in the circumstances set out in Appendix 9B; and (b) *securities that, in ASX’s opinion, should be treated as restricted securities. Introduced 01/07/96 Amended 01/07/98, 01/12/19 Example: Paragraph (b) can apply to securities issued to a person whose relationship with a related party, promoter, professional adviser or consultant, or vendor is such that, in ASX’s opinion, the securities should be restricted.
restriction deed	A deed entered into under Rule 9.1(b) Introduced 01/12/19
restriction notice	A notice given under Rule 9.1(c) Introduced 01/12/19
retail security	*debt security which is not a *wholesale security Introduced 24/10/05
reverse takeover	a takeover bid or a merger by way of scheme of arrangement under Part 5.1 of the <i>Corporations Act</i> where an entity is proposing to acquire securities of another body and the aggregate number of *equity securities issued or to be issued by the entity: • under the *takeover bid or scheme; and/or • to fund the cash consideration payable under the *takeover bid or scheme, is equal to or greater than the number of fully paid *ordinary securities on issue in the entity at the date of announcement of the *takeover bid or scheme. Separate issues may be aggregated if, in ASX’s opinion, they form part of the same commercial transaction. Introduced 01/12/17

reverse takeover target	the body in which an entity is proposing to acquire securities in a *reverse takeover. Introduced 01/12/17 Note: "Takeover bid" has the same meaning as in section 9 of the <i>Corporations Act</i>.
rights issue	the meaning in section 9A of the <i>Corporations Act</i> as modified by any instrument or class order. Note: ASIC Class Order [CO 08/35] modifies section 9A of the <i>Corporations Act</i> and provides relief from the disclosure provisions of the <i>Corporations Act</i> for some rights issues. An offer of securities that is a rights issue, but that is undertaken, in whole or in part, pursuant to a disclosure document and/or a Product Disclosure Statement will fall within this definition. An offer of securities that is a rights issue under an individual instrument of relief granted by ASIC will also fall within this definition. Introduced 14/04/14
routine transaction statement	a statement of transactions in a *security holder's account issued by the entity.
S & P / ASX 300 Index	The S & P-ASX 300 Index as published by ~~Standard & Poors~~ S & P Global from time to time. Introduced 11/01/10 Amended xx/xx/xx
S & P All Ordinaries Index	The ~~Standard & Poor's~~ index of the top 500 listed entities, by market capitalisation as published by S & P Global from time to time. Introduced 01/01/03 Amended xx/xx/xx
SCH	Deleted 11/03/04
scientific research based entity	Introduced 01/07/96 Deleted 01/09/99
scoping study	the meaning in Appendix 5A (JORC Code). Introduced 01/12/13
SEC	the Securities and Exchange Commission of the United States of America. Introduced 01/07/22
security	an *equity security or a *debt security. Introduced 01/06/96 Amended 11/03/02, 01/12/19 Note: CDIs are securities.
security purchase plan	a "purchase plan", as defined in ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547. Introduced 01/06/10 Amended 01/07/14, 01/12/19 Note: ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547 provides relief from the prospectus and PDS provisions of the <i>Corporations Act</i> for qualifying share and interest purchase plans.

seed capitalist	a *person who has been issued *securities in an entity before or in connection with its admission to the *official list, other than pursuant to the *prospectus, *PDS or *information memorandum lodged with ASX under Rule 1.1 condition 3. Introduced 01/12/19
short report	Introduced 01/07/96 Amended 01/07/98 Deleted 01/07/98
special transaction statement	a statement of transactions in a *security holder's account issued by the entity at the request of the holder.
SPE-PRMS	Petroleum Resources Management System (version 1.01, revised June 2018) sponsored by the Society of Petroleum Engineers (SPE), the American Association of Petroleum Geologists (AAPG), the World Petroleum Council (WPC) and the Society of Petroleum Evaluation Engineers (SPEE). Introduced 01/12/13 Amended 01/07/22
SRN	the meaning in Section 2 of the ASX Settlement Operating Rules. Amended 11/03/04 Note: The ASX Settlement Operating Rules state that SRN "stands for shareholder reference-Security holder Reference Number and means a number, which is allocated by an issuer to identify a holder on the issuer-sponsored subregister-an Issuer Operated Subregister."
stapled group	a group of entities whose securities are subject to constitutional or contractual arrangements acceptable to ASX that prevent those securities from being traded separately. Introduced 01/12/19
substantial holder	(a) in relation to a company and a trust which is a registered scheme, a person who has a "substantial holding" in the company or trust under paragraph (a) of the definition of that term in section 9 of the <i>Corporations Act</i>; Note: "Registered scheme" means a managed investment scheme that is registered under section 601EB of the <i>Corporations Act</i> (Rule 19.3 and section 9 of the <i>Corporations Act</i>). At 01/12/19, paragraph (a) of the definition of "substantial holder" in section 9 of the <i>Corporations Act</i> (as modified by ASIC Class Order 13/520) provided that a person has a substantial holding in a company or a listed registered scheme if the total votes attached to voting shares in the body, or voting interests in the scheme, in which they or their associates have a relevant interest, or would have a relevant interest but for sections 609(6) (market traded options and derivatives), 609(7) (conditional agreements) or 609(11) (restricted securities), is 5% or more of the total votes attached to the voting shares in the company or the voting interests in the scheme. (b) in relation to a trust which is not a registered scheme or which is a *foreign trust, a person who would have a "substantial holding" in the trust under paragraph (a) of the definition of that term in section 9 of the <i>Corporations Act</i> if the references in that paragraph to a scheme and interests in the scheme were references to the trust and *units in the trust; and

- (c) in relation to a *foreign company, a person who would have a “substantial holding” in the company under paragraph (a) of the definition of “substantial holder” in section 9 of the *Corporations Act* if the references in that paragraph to a company and its securities were references to the *foreign company and its securities.

Introduced 01/07/96 Amended 13/03/00, 30/09/01, 19/12/16, 01/12/19

substantial holding has a meaning affected by the definition of *substantial holder in these rules.

Introduced 01/12/19

- substantial (10%+) holder
- (a) in relation to an *Australian company and a trust which is a registered scheme, a person who would have a “substantial holding” in the company or scheme under paragraph (a) of the definition of that term in section 9 of the *Corporations Act* if the reference in that paragraph to 5% was 10%;
- (b) in relation to a trust which is not a registered scheme or which is a *foreign trust, a person who would have a “substantial holding” in the trust under paragraph (a) of the definition of that term in section 9 of the *Corporations Act* if the references in that paragraph to a scheme and interests in the scheme were references to the trust and *units in the trust and the reference to 5% was 10%; and
- (c) in relation to a *foreign company, a person who would have a “substantial holding” in the company under paragraph (a) of the definition of “substantial holder” in section 9 of the *Corporations Act* if the references in that paragraph to a company and its securities were references to the *foreign company and its securities and the reference to 5% was 10%.

Introduced 01/12/19

- substantial (30%+) holder
- (a) in relation to an *Australian company and a trust which is a registered scheme, a person who would have a “substantial holding” in the company or scheme under paragraph (a) of the definition of that term in section 9 of the *Corporations Act* if the reference in that paragraph to 5% was 30%;
- (b) in relation to a trust which is not a registered scheme or which is a *foreign trust, a person who would have a “substantial holding” in the trust under paragraph (a) of the definition of that term in section 9 of the *Corporations Act* if the references in that paragraph to a scheme and interests in the scheme were references to the trust and *units in the trust and the reference to 5% was 30%; and
- (c) in relation to a *foreign company, a person who would have a “substantial holding” in the company under paragraph (a) of the definition of “substantial holder” in section 9 of the *Corporations Act* if the references in that paragraph to a company and its securities were references to the *foreign company and its securities and the reference to 5% was 30%.

Introduced 01/12/19

takeover	(a) a takeover bid; (b) a similar bid under the laws of a foreign jurisdiction. Introduced 01/07/97 Amended 13/03/00, 01/12/19 Note: "Takeover bid" has the same meaning as in section 9 of the <i>Corporations Act</i>.
technical and performance requirements	the meaning in Section 2 of the ASX Settlement Operating Rules. Amended 11/03/04 Note: The ASX Settlement Operating Rules state that Technical and Performance Requirements means the requirements on Facility Users set out in Section 16.
termination benefits	payments, property and advantages that are receivable on termination of employment, engagement or office, except those from any superannuation or provident fund and those required by law to be made.
terms of the scheme	includes terms, conditions, rules, regulations or guidelines formulated to introduce or administer an *employee incentive scheme. Introduced 01/07/96 Origin: Listing Rule 3W(9)
trading day	a day determined by ASX to be a trading day and notified to *market participants being: (a) a day other than: (i) a Saturday, Sunday, New Year's Day, Good Friday, Easter Monday, Christmas Day, Boxing Day; and (ii) any other day which ASX declares and publishes is not a trading day; and (b) notwithstanding (a), a day which for the purposes of settlement, ASX declares is a trading day notwithstanding that dealings between *market participants are suspended on that day. Introduced 01/07/00 Amended 11/03/04, 03/05/04
trading halt	for the purpose of eChapter 17, an interruption to trading at the request of an entity that is not a suspension from *quotation.
trading participant	Deleted 01/07/14
Trading Platform	Amended 11/03/04, 03/05/04, 01/01/12 Deleted 01/07/14
trading policy	an entity's policy relating to trading in the entity's securities by the entity's *key management personnel during *prohibited periods. Introduced 01/01/11
uncertificated subregister	the *CHESS subregister or an *issuer sponsored subregister. Introduced 04/03/13
underlying securities	(a) in relation to an option over unissued shares, or units *securities in the same *class as those which will be issued if the option is exercised.

- (b) in relation to a *convertible debt security, *securities in the same *class as those which will be issued if the *convertible debt security is converted.
- (c) in relation to *CDIs, *securities over which the *CDIs are issued.

Introduced 01/07/96 Amended 01/07/97, 01/09/99, 11/03/02

underwrite

Unless otherwise stated, a reference in a rule to:

- (a) 'underwrite' does not include 'sub-underwrite';
- (b) 'underwriter' does not include 'sub-underwriter';
- (c) 'underwriting' does not include 'sub-underwriting'; and
- (d) 'underwriting agreement' does not include 'sub-underwriting agreement'.

Introduced 01/12/19

undertaking

includes assets or businesses.

unit

a unit in a trust.

US oil and gas reserves statement

a statement of oil and gas reserves prepared in accordance with the SEC requirements set out in Subpart [229.1200](#) of Regulation S-K.

Introduced 01/07/22

vendor

Introduced 01/07/96 Deleted 01/07/98

volume weighted average market price

in relation to particular securities for a particular period, the volume weighted average price of trading in those securities on the *ASX market and the *Chi-X market over that period, excluding block trades, large portfolio trades, permitted trades during the pre-trading hours period, permitted trades during the post-trading hours period, out of hours trades and exchange traded option exercises.

Introduced 01/07/14

Trading on the ASX market and Chi-X market includes trades executed on those markets and trades reported to those markets (other than block trades, large portfolio trades, permitted trades during the pre-trading hours period, permitted trades during the post-trading hours period, out of hours trade and exchange traded option exercises). The terms "block trades", "large portfolio trades", "permitted trades during the pre-trading hours period", "permitted trades during the post-trading hours period" and "out of hours trades" have the same meaning as in the ASIC Market Integrity Rules (Competition in Exchange Markets) 2011. These types of trades are excluded as they are not necessarily representative of market trading.

voluntary escrow

*securities of an entity are subject to voluntary escrow where:

- (a) the entity and the holder of the *securities have entered into an agreement restricting the right of the holder to dispose of the *securities in a form similar to that set out in Appendix 9A or in such other form as the entity and the holder agree;
- (b) the entity and the holder were not required to enter into the agreement under Chapter 9; and

(c) that agreement is still on foot.

Introduced 19/12/16

Note: Securities issued under an employee incentive scheme that have restrictions on their transfer under the terms of the scheme are not regarded as being subject to voluntary escrow.

voting exclusion statement a statement referred to in Rule 14.11.

wholesale security +debt security whose terms allow the security to be held at all times by only wholesale clients, as defined in the *Corporations Act*.

Introduced 24/10/05

working capital the difference between an entity's current assets and its current liabilities.

Introduced 01/12/19

End of Section. Next page is no. 2001.

Appendix 4G

This is the proposed form of the revised Appendix 4G intended to replace the current version made available on ASX Online.

Appendix 4G

Key to Disclosures

ASX Corporate Governance Principles and Recommendations

Name of entity

ABN/ARBN

Financial year ended:

Our corporate governance statement¹ for the period above can be found at:²

☐ These pages of our annual report:

☐ This URL on our website:

The corporate governance statement has been approved by the board and is accurate and up to date as at: _____.

[insert effective date of statement]

The annexure includes a key to where our corporate governance disclosures can be located.³

Date

Name of authorised officer authorising lodgement

ANNEXURE – KEY TO CORPORATE GOVERNANCE DISCLOSURES

PRINCIPLE 1 – LAY SOLID FOUNDATIONS FOR MANAGEMENT AND OVERSIGHT
Recommendation 1.1 ☐ We have followed Recommendation 1.1 in full for the whole of the period and disclosed this in our Corporate Governance Statement. The board charter is disclosed at: [insert location]. ☐ We have not followed Recommendation 1.1 in full for the whole of the period and the reasons for not doing so are set out in our Corporate Governance Statement. ☐ We are an externally managed entity and this recommendation is not applicable.
Recommendation 1.2 ☐ We have followed Recommendation 1.2 in full for the whole of the period and disclosed this in our Corporate Governance Statement. ☐ We have not followed Recommendation 1.2 in full for the whole of the period and the reasons for not doing so are set out in our Corporate Governance Statement. ☐ We are an externally managed entity and this recommendation is not applicable.
Recommendation 1.3 ☐ We have followed Recommendation 1.3 in full for the whole of the period and disclosed this in our Corporate Governance Statement. (a) The evaluation process referred to in paragraph (a) of this recommendation is disclosed at: [insert location]. (b) Whether a performance evaluation was undertaken for the reporting period in accordance with that process is disclosed at: [insert location]. ☐ We have not followed Recommendation 1.3 in full for the whole of the period and the reasons for not doing so are set out in our Corporate Governance Statement. ☐ We are an externally managed entity and this recommendation is not applicable.
Recommendation 1.4 ☐ We have followed Recommendation 1.4 in full for the whole of the period and disclosed this in our Corporate Governance Statement. (a) The evaluation process referred to in paragraph (a) of this recommendation is disclosed at: [insert location]. (b) Whether a performance evaluation was undertaken for the reporting period in accordance with that process is disclosed at: [insert location]. ☐ We have not followed Recommendation 1.4 in full for the whole of the period and the reasons for not doing so are set out in our Corporate Governance Statement. ☐ We are an externally managed entity and this recommendation is not applicable.

PRINCIPLE 2 – STRUCTURE THE BOARD TO BE EFFECTIVE
Recommendation 2.1
☐ We have followed Recommendation 2.1 in full for the whole of the period and disclosed this in our Corporate Governance Statement. (a) The charter of the nomination committee is disclosed at: <i>[insert location]</i>. (b) The members of the nomination committee, the number of times the committee met throughout the reporting period, and the number of meetings each member attended are disclosed at: <i>[insert location]</i>. ☐ We have not followed Recommendation 2.1 in full for the whole of the period and the reasons for not doing so are set out in our Corporate Governance Statement. ☐ We are an externally managed entity and this recommendation is not applicable.
Recommendation 2.2
☐ We have followed Recommendation 2.2 in full for the whole of the period and disclosed this in our Corporate Governance Statement. (a) The process for how the board assesses the collective skills, knowledge and experience of its directors is disclosed at: <i>[insert location]</i>. (b) The outcome of this process is disclosed at: <i>[insert location]</i>. ☐ We have not followed Recommendation 2.2 in full for the whole of the period and the reasons for not doing so are set out in our Corporate Governance Statement.
Recommendation 2.3
☐ We have followed Recommendation 2.3 in full for the whole of the period and disclosed this in our Corporate Governance Statement. (a) How diversity in our board composition is incorporated into board succession planning is disclosed at: <i>[insert location]</i>. (b) The information described in paragraph (b) of this recommendation is disclosed at: <i>[insert location]</i>. ☐ We have not followed Recommendation 2.3 in full for the whole of the period and the reasons for not doing so are set out in our Corporate Governance Statement. ☐ We are an externally managed entity and this recommendation is not applicable.
Recommendation 2.4

☐ We have followed Recommendation 2.4 in full for the whole of the period and disclosed this in our Corporate Governance Statement and the information described in paragraph (b) of this recommendation is disclosed at: <i>[insert location].</i>
☐ We have not followed Recommendation 2.4 in full for the whole of the period and the reasons for not doing so are set out in our Corporate Governance Statement.
☐ We are an externally managed entity and have followed Recommendation 2.4(b) in full for the whole of the period and disclosed this in our Corporate Governance Statement. The information described in paragraph (b) of this recommendation is disclosed at: <i>[insert location].</i>
☐ We are an externally managed entity and have not followed Recommendation 2.4(b) in full for the whole of the period and the reasons for not doing so are set out in our Corporate Governance Statement.
Recommendation 2.5
☐ We have followed Recommendation 2.5 in full for the whole of the period and disclosed this in our Corporate Governance Statement.
☐ We have not followed Recommendation 2.5 in full for the whole of the period and the reasons for not doing so are set out in our Corporate Governance Statement.
☐ We are an externally managed entity and this recommendation is not applicable.
Recommendation 2.6
☐ We have followed Recommendation 2.6 in full for the whole of the period and disclosed this in our Corporate Governance Statement.
☐ We have not followed Recommendation 2.6 in full for the whole of the period and the reasons for not doing so are set out in our Corporate Governance Statement.
☐ We are an externally managed entity and this recommendation is not applicable.
PRINCIPLE 3 – INSTIL AND REINFORCE A CULTURE OF ACTING LAWFULLY, ETHICALLY AND RESPONSIBLY
Recommendation 3.1
☐ We have followed Recommendation 3.1 in full for the whole of the period and disclosed this in our Corporate Governance Statement. Our process for engaging with security holders and other stakeholders is disclosed at: <i>[insert location].</i>
☐ We have not followed Recommendation 3.1 in full for the whole of the period and the reasons for not doing so are set out in our Corporate Governance Statement.
Recommendation 3.2
☐ We have followed Recommendation 3.2 in full for the whole of the period and disclosed this in our Corporate Governance Statement. Our board approved values and code(s) of conduct are disclosed at: <i>[insert location].</i>
☐ We have not followed Recommendation 3.2 in full for the whole of the period and the reasons for not doing so are set out in our Corporate Governance Statement.
Recommendation 3.3

☐ We have followed Recommendation 3.3 in full for the whole of the period and disclosed this in our Corporate Governance Statement. The mechanisms the board has in place to monitor our culture are disclosed at: <i>[insert location]</i> .
☐ We have not followed Recommendation 3.3 in full for the whole of the period and the reasons for not doing so are set out in our Corporate Governance Statement.
PRINCIPLE 4 – SAFEGUARD THE INTEGRITY OF CORPORATE REPORTS
Recommendation 4.1
☐ We have followed Recommendation 4.1 in full for the whole of the period and disclosed this in our Corporate Governance Statement. (a) The charter of the audit committee is disclosed at: <i>[insert location]</i>. (b) The relevant qualification and experience of the audit committee members is disclosed at: <i>[insert location]</i>. (c) The number of times the committee met throughout the period and the attendances of the members is disclosed at: <i>[insert location]</i>.
☐ We have not followed Recommendation 4.1 in full for the whole of the period and the reasons for not doing so are set out in our Corporate Governance Statement.
Recommendation 4.2
☐ We have followed Recommendation 4.2 in full for the whole of the period and disclosed this in our Corporate Governance Statement. Our process is disclosed at: <i>[insert location]</i> .
☐ We have not followed Recommendation 4.2 in full for the whole of the period and the reasons for not doing so are set out in our Corporate Governance Statement.
Recommendation 4.3
☐ We have followed Recommendation 4.3 in full for the whole of the period and disclosed this in our Corporate Governance Statement. Details about the appointment and review of the engagement of the auditor are disclosed at: <i>[insert location]</i> .
☐ We have not followed Recommendation 4.3 in full for the whole of the period and the reasons for not doing so are set out in our Corporate Governance Statement.
PRINCIPLE 5 – MAKE TIMELY, BALANCED AND ACCURATE DISCLOSURE
Recommendation 5.1

Key to Disclosures ASX Corporate Governance Principles and Recommendations

☐ We have followed Recommendation 5.1 in full for the whole of the period and disclosed this in our Corporate Governance Statement. The policy is disclosed at: <i>[insert location]</i> .
☐ We have not followed Recommendation 5.1 in full for the whole of the period and the reasons for not doing so are set out in our Corporate Governance Statement.
Recommendation 5.2
☐ We have followed Recommendation 5.2 in full for the whole of the period and disclosed this in our Corporate Governance Statement.
☐ We have not followed Recommendation 5.2 in full for the whole of the period and the reasons for not doing so are set out in our Corporate Governance Statement.
Recommendation 5.3
☐ We have followed Recommendation 5.3 in full for the whole of the period and disclosed this in our Corporate Governance Statement.
☐ We have not followed Recommendation 5.3 in full for the whole of the period and the reasons for not doing so are set out in our Corporate Governance Statement.
PRINCIPLE 6 – SUPPORT THE RIGHTS OF SECURITY HOLDERS
Recommendation 6.1
☐ We have followed Recommendation 6.1 in full for the whole of the period and disclosed this in our Corporate Governance Statement.
☐ We have not followed Recommendation 6.1 in full for the whole of the period and the reasons for not doing so are set out in our Corporate Governance Statement.
Recommendation 6.2
☐ We have followed Recommendation 6.2 in full for the whole of the period and disclosed this in our Corporate Governance Statement.
☐ We have not followed Recommendation 6.2 in full for the whole of the period and the reasons for not doing so are set out in our Corporate Governance Statement.
Recommendation 6.3
☐ We have followed Recommendation 6.3 in full for the whole of the period and disclosed this in our Corporate Governance Statement. How we facilitate participation at general meetings of security holders is disclosed at: <i>[insert location]</i> .
☐ We have not followed Recommendation 6.3 in full for the whole of the period and the reasons for not doing so are set out in our Corporate Governance Statement.
PRINCIPLE 7 – UNDERSTAND AND MANAGE RISK
Recommendation 7.1

☐ We have followed Recommendation 7.1 in full for the whole of the period and disclosed this in our Corporate Governance Statement. (a) The charter of the risk committee is disclosed at: [insert location]. (b) The members of the risk committee, the number of times the committee met throughout the reporting period, and the number of meetings each member attended are disclosed at: [insert location].
☐ We have not followed Recommendation 7.1 in full for the whole of the period and the reasons for not doing so are set out in our Corporate Governance Statement.
Recommendation 7.2
☐ We have followed Recommendation 7.2 in full for the whole of the period and disclosed this in our Corporate Governance Statement. Whether a review has taken place for each reporting period is disclosed at: [insert location].
☐ We have not followed Recommendation 7.2 in full for the whole of the period and the reasons for not doing so are set out in our Corporate Governance Statement.
Recommendation 7.3
☐ We have followed Recommendation 7.3 in full for the whole of the period and disclosed this in our Corporate Governance Statement. (a) Whether there is an internal audit function and, if so, how the function is structured is disclosed at: [insert location]. (b) The process referred to in paragraph (b) of this recommendation is disclosed at: [insert location].
☐ We have not followed Recommendation 7.3 in full for the whole of the period and the reasons for not doing so are set out in our Corporate Governance Statement.
Recommendation 7.4
☐ We have followed Recommendation 7.4 in full for the whole of the period and disclosed this in our Corporate Governance Statement. Our material risks and how we manage or intend to manage those risks are disclosed at: [insert location].
☐ We have not followed Recommendation 7.4 in full for the whole of the period and the reasons for not doing so are set out in our Corporate Governance Statement.
PRINCIPLE 8 – REMUNERATE FAIRLY AND RESPONSIBLY
Recommendation 8.1

☐ We have followed Recommendation 8.1 in full for the whole of the period and disclosed this in our Corporate Governance Statement. (a) The charter of the remuneration committee is disclosed at: [insert location]. (b) The members of the remuneration committee, the number of times the committee met throughout the reporting period, and the number of meetings each member attended are disclosed at: [insert location]. ☐ We have not followed Recommendation 8.1 in full for the whole of the period and the reasons for not doing so are set out in our Corporate Governance Statement. ☐ We are an externally managed entity and this recommendation is not applicable.
Recommendation 8.2
☐ We have followed Recommendation 8.2 in full for the whole of the period and disclosed this in our Corporate Governance Statement. ☐ We have not followed Recommendation 8.2 in full for the whole of the period and the reasons for not doing so are set out in our Corporate Governance Statement. ☐ We are an externally managed entity and this recommendation is not applicable.
Recommendation 8.3
☐ We have followed Recommendation 8.3 in full for the whole of the period and disclosed this in our Corporate Governance Statement. Our approach to non-executive director ownership of securities is disclosed at: [insert location]. ☐ We have not followed Recommendation 8.3 in full for the whole of the period and the reasons for not doing so are set out in our Corporate Governance Statement. ☐ We are an externally managed entity and this recommendation is not applicable.
ADDITIONAL RECOMMENDATIONS THAT APPLY PRIMARILY TO ENTITIES ESTABLISHED OUTSIDE AUSTRALIA
Recommendation 9.1
☐ We have followed Recommendation 9.1 in full for the whole of the period and disclosed this in our Corporate Governance Statement. The processes in place described in this recommendation are disclosed at: [insert location]. ☐ We have not followed Recommendation 9.1 in full for the whole of the period and the reasons for not doing so are set out in our Corporate Governance Statement. ☐ We have not followed Recommendation 9.1 in full for the whole of the period because we do not have a director in this position and this recommendation is not applicable. ☐ We are an externally managed entity and this recommendation is not applicable.
Recommendation 9.2

Key to Disclosures ASX Corporate Governance Principles and Recommendations

☐ We have followed Recommendation 9.2 in full for the whole of the period and disclosed this in our Corporate Governance Statement. ☐ We have not followed Recommendation 9.2 in full for the whole of the period and the reasons for not doing so are set out in our Corporate Governance Statement. ☐ We have not followed Recommendation 9.2 in full for the whole of the period because we are established in Australia and this recommendation is not applicable. ☐ We are an externally managed entity and this recommendation is not applicable.
Recommendation 9.3
☐ We have followed Recommendation 9.3 in full for the whole of the period and disclosed this in our Corporate Governance Statement. ☐ We have not followed Recommendation 9.3 in full for the whole of the period and the reasons for not doing so are set out in our Corporate Governance Statement. ☐ We have not followed Recommendation 9.3 in full for the whole of the period because we are established in Australia and this recommendation is not applicable.
Recommendation 9.4
☐ We have followed Recommendation 9.4 in full for the whole of the period and disclosed this in our Corporate Governance Statement. ☐ We have not followed Recommendation 9.4 in full for the whole of the period and the reasons for not doing so are set out in our Corporate Governance Statement. ☐ We have not followed Recommendation 9.4 in full for the whole of the period because we are established in Australia and this recommendation is not applicable.
Recommendation 9.5
☐ We have followed Recommendation 9.5 in full for the whole of the period and disclosed this in our Corporate Governance Statement. ☐ We have not followed Recommendation 9.5 in full for the whole of the period and the reasons for not doing so are set out in our Corporate Governance Statement. ☐ We have not followed Recommendation 9.5 in full for the whole of the period because we are established in Australia and this recommendation is not applicable.
Recommendation 9.6
☐ We have followed Recommendation 9.6 in full for the whole of the period and disclosed this in our Corporate Governance Statement. ☐ We have not followed Recommendation 9.6 in full for the whole of the period and the reasons for not doing so are set out in our Corporate Governance Statement. ☐ We have not followed Recommendation 9.6 in full for the whole of the period because we are established in Australia and this recommendation is not applicable. ☐ We are an externally managed entity but do not have an AGM and this recommendation is not applicable.
Recommendation 9.7
☐ We have followed Recommendation 9.7 in full for the whole of the period and disclosed this in our Corporate Governance Statement. Our policy is disclosed at: <i>[insert location]</i> . ☐ We have not followed Recommendation 9.7 in full for the whole of the period and the reasons for not doing so are set out in our Corporate Governance Statement. ☐ We have not followed Recommendation 9.7 in full for the whole of the period because we are established in Australia and this recommendation is not applicable. ☐ We are an externally managed entity and this recommendation is not applicable.

ADDITIONAL DISCLOSURES THAT AN EXTERNALLY MANAGED LISTED ENTITY SHOULD MAKE
Alternative to Recommendation 1.1
☐ We have followed the Alternative to Recommendation 1.1 in full for the whole of the period and disclosed this in our Corporate Governance Statement. The information described in this recommendation is disclosed at: <i>[insert location]</i> .
☐ We have not followed the Alternative to Recommendation 1.1 in full for the whole of the period and the reasons for not doing so are set out in our Corporate Governance Statement.
Alternative to Recommendations 8.1, 8.2, 8.3 and 9.7
☐ We have followed the Alternative to Recommendations 8.1, 8.2, 8.3 and 9.7 in full for the whole of the period and disclosed this in our Corporate Governance Statement. The terms governing the remuneration of the manager are disclosed at: <i>[insert location]</i> .
☐ We have not followed the Alternative to Recommendations 8.1, 8.2, 8.3 and 9.7 in full for the whole of the period and the reasons for not doing so are set out in our Corporate Governance Statement.

¹ The Appendix 4G is not a substitute for, and is not to be confused with, the entity's corporate governance statement. They serve different purposes and an entity must produce each of them separately. For further resources, see: [website link].

² Tick whichever option is correct and then complete the page number(s) of the annual report, or the URL of the web page, where your corporate governance statement can be found. You can, if you wish, delete the option which is not applicable.

³ In response to each item in the annexure, please tick the box beside that statement which is applicable to you or, where you are given two or more options to select, you can, if you wish, delete any option which is not applicable and just retain the option that is applicable. Where the recommendation has a disclosure obligation attached, you must insert the location where that disclosure has been made, where indicated by the line with "*insert location*" underneath. If the disclosure in question has been made in your corporate governance statement, you need only insert "our corporate governance statement". If the disclosure has been made in your annual report, you should insert the page number(s) of your annual report (eg "pages 10-12 of our annual report"). If the disclosure has been made on your website, you should insert the URL of the web page where the disclosure has been made or can be accessed (eg "www.entityname.com.au/corporate governance/charters/").

Guidance Notes

APPLYING FOR ADMISSION – ASX LISTINGS

The purpose of this Guidance Note	To assist entities wishing to apply for admission to the official list of ASX as an ASX Listing to prepare their application for listing
The main points it covers	- 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
Related materials you should read	- Guidance Note 4 <i>Foreign Entities Listing on ASX</i> - Guidance Note 5 <i>CHESS Depositary Interests</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 Securities</i> - Guidance Note 20 <i>ASX Online</i> - Guidance Note 29 <i>Applying for Admission – ASX Debt Listings</i> - Guidance Note 30 <i>Notifying Changes in Issued Securities and Applying for Quotation of New or Additional Securities</i> - Guidance Note 34 <i>Naming Conventions for Debt and Hybrid Securities</i>

History: Guidance Note 1 amended [30/05/25xx/xx/xx](#). Previous versions of this Guidance Note were issued in 07/00, 09/01, 03/02, 12/06, 01/12, 05/13, 12/13, 09/14, 09/15, 12/15, 12/16, 03/17, 12/17, 03/18, 06/18, [12/19](#) and [12/1905/25](#).

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 in excess of \$2 trillion;
- 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 *CHESS Depositary Interests* and Guidance Note 7 *US Entities - Regulation S Offerings on ASX*.

Guidance for entities that are already listed on how to prepare applications for quotation of additional securities can be found in Guidance Note 30 *Notifying Changes in Issued Securities and Applying for Quotation of New or 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 the admissions team in ASX Listings Compliance. This is particularly the case if the application will involve any of the following:

- the applicant is incorporated or established outside Australia, or has significant business³ operations outside of Australia;
- 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);⁴
- 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);

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.

² Listing Rules 1.8 to 1.10 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 Rules 1.11 to 1.15 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 For the purposes of assessing whether a business is significant, ASX will generally consider an entity or business to be “significant” if, at the applicant’s most recent balance date, it accounted 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. 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.

⁴ See ‘3.1 [Appropriate structure and operations](#)’.

- the applicant is proposing to have “performance securities” on issue and it would like a view from ASX as to the acceptability of the proposed milestones for those securities;⁵
- the applicant is unclear as to how ASX is likely to apply the escrow requirements in Chapter 9 and Appendices 9A, 9B and 9C of the Listing Rules in relation to any “restricted securities”;⁶
- 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;⁷
- there are concerns whether the entity’s board has an appropriate composition and skill set for a listed entity or that a current or proposed director, CEO or CFO of the entity may not meet ASX’s good fame and character requirements;⁸ or
- there are circumstances present that could lead to ASX exercising its absolute discretion not to admit the applicant to the official list.⁹

In addition to providing a preliminary view on any of the matters mentioned above, the admissions team in ASX Listings Compliance will be able to provide general guidance 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.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:

- 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 absolute discretion to refuse admission to the official list under Listing Rule 1.19; or
- 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.

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. The entity must still meet all of the requirements for admission and quotation set out in Chapters 1 and 2 of the Listing Rules. Further, regardless of any view expressed in ASX’s in-principle advice, ASX will retain its absolute discretion under Listing Rule 1.19 not to admit the entity to the official list, which it can

⁵ See Guidance Note 19 *Performance Securities*.

⁶ See ‘3.13 [Restricted securities](#)’.

⁷ See ‘3.10 [Satisfying the profit test](#)’ and ‘3.11 [Satisfying the assets test](#)’.

⁸ See ‘3.21 [Directors, CEO and CFO must be of good fame and character](#)’.

⁹ See ‘2.9 [The listing decision](#)’.

¹⁰ On the reservation of trading codes, see Guidance Note 18 *Market Codes and Trading Procedures*.

exercise at any time.¹¹ However, by obtaining in-principle advice, the entity can have a reasonable degree of certainty¹² 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 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 in-principle advice, the entity can have a high degree of certainty¹³ 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 14 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 or the pathfinder prospectus or PDS and draft Appendix 1A application form.

ASX charges a fixed fee for providing in-principle advice about an entity's suitability for admission. ASX charges a separate fixed fee for providing other in-principle advice in advance of, and in connection with, an application for admission to the official list.¹⁴ Payment must be made at the time of lodging the application for in-principle advice with ASX.¹⁵ 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 *Application for*

¹¹ 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.

¹² Any in-principle 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 in-principle advice, ASX may withdraw or change its in-principle advice.

¹³ Again, any in-principle 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 in-principle advice is provided, ASX may withdraw or change its in-principle advice.

¹⁴ 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.

¹⁵ 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.

Admission to the ASX Official List (ASX Listing). An editable version of the Appendix 1A application form can be downloaded from the ASX website.

The application must be properly completed and dated.¹⁶ It must also be accompanied by the *Information Form and Checklist (ASX Listing)* published on the ASX website and all of the information and documents referred to in that Form/Checklist. This includes a copy of the applicant's prospectus or product disclosure statement ("PDS") that has been lodged with the Australian 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 or that is not accompanied by all of the required information and documents.

If an applicant wishes to seek a waiver from, or in-principle advice about the application of, a Listing Rule in connection with its listing, its application for listing should be accompanied by 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*.

2.4 Publication of applicant's details on the ASX website

Within a few days of receiving a valid application for admission to the official list, ASX will publish the name of the applicant, its proposed ASX trading code and a tentative listing date¹⁸ on the ASX website. This will usually include a link to a separate web page with summary information about the applicant and its fund raising, including a link to the applicant's website.

ASX would recommend that the applicant include a prominent link on the home page of its website to its listing prospectus, PDS or information memorandum so that prospective investors who visit the ASX website can easily navigate their way to that document.

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,¹⁹ an application for ASX Listing will take ASX around four to six weeks to process, from the time ASX receives a properly completed listing application and all of the required documents that should accompany the application, until ASX issues the entity with a conditional admission letter confirming its decision to admit the entity to the official list and to quote its securities (subject to the entity satisfying the conditions set out in that letter). It may take longer, however, if the application raises any issues under Listing Rule 1.1 condition 1 (an entity's structure and operations must be appropriate for a listed entity²⁰) or that might cause ASX to exercise its absolute discretion under Listing Rule 1.19 to refuse the application.²¹ Additional delays may occur where the applicant is seeking an atypical number or type of waivers from the Listing Rules, the application is incomplete or of a poor standard or the applicant or its advisers are 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.

¹⁶ In the case of a trust, the application should be made in the name of the responsible entity of the trust.

¹⁷ See '3.3 [The need for a prospectus or PDS](#)~~The need for a prospectus or PDS~~' and '3.5 [When ASX will accept an information memorandum in lieu of a prospectus or PDS](#)~~When ASX will accept an information memorandum in lieu of a prospectus or PDS~~'.

¹⁸ This may be "TBA" (to be advised) if not known at the time of publication.

¹⁹ 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](#)~~Fast track process for offers proceeding by pathfinder prospectus or PDS~~'.

²⁰ See '3.1 [Appropriate structure and operations](#)~~Appropriate structure and operations~~'.

²¹ See '2.9 [The listing decision](#)~~The listing decision~~'.

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 would therefore strongly encourage an applicant for listing to engage professional advisers who are experienced in ASX listings and to seek their advice and assistance in preparing its 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 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. The applicant should also keep ASX Listings Compliance apprised of the progress of any offer of securities it is undertaking in connection with its listing and the impact that may be having on its timetable for listing.

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,²² 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.

The fast track process for pathfinder prospectuses and PDSs is only available: (a) if ASX agrees; and (b) where the entity is expected to have an initial market capitalisation at quotation of at least \$100 million and is not expected to have any securities subject to ASX imposed escrow²³ on issue at the time it is admitted to the official list.

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 Listing)*, drafts or final versions of all the supporting information and documents that would ordinarily accompany that Form/Checklist and a cheque or EFT payment 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.

The draft pathfinder prospectus or PDS and other draft documents referred to in the preceding paragraph are expected to be near final drafts with offer metrics and resulting capital structure left blank. If the entity lodges drafts that in ASX's opinion are not near final drafts, ASX may reject the documents and require the entity to follow the normal (that is, non-fast track) admission process.

²² A pathfinder prospectus or PDS is a draft version of a prospectus or PDS that is only distributed to professional or sophisticated investors or other persons who do not require a disclosure document or PDS under the Corporations Act. See also paragraph 268 of ASIC Regulatory Guide 254 *Offering securities under a disclosure document*.

²³ See '3.13 [Restricted securities](#)~~Restricted securities~~'.

In addition, if the applicant is proposing to seek in-principle advice²⁴ 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 Appendix 1A application form;
- a completed *Information Form and Checklist (ASX Listing)*;
- 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 must 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.

2.7 Corporations Act deadlines for lodgement and quotation

Where an entity has issued a prospectus or PDS in connection with its listing application, as most will,²⁵ the *Corporations Act 2001* (Cth)²⁶ 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.

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.²⁷

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* and the class relief provided in *ASIC Corporations (Minimum Subscription and Quotation Conditions) Instrument 2016/70* 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:

²⁴ See Guidance Note 17 *Waivers and In-Principle Advice*.

²⁵ See '3.3 [The need for a prospectus or PDS](#)~~The need for a prospectus or PDS~~'.

²⁶ 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.

²⁷ 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.

- it receives a conditional admission letter confirming ASX's decision to admit the entity to the official list and to quote its securities, subject to the entity satisfying the conditions set out in that letter; and
- it has a high degree of confidence that it will be able to meet those conditions.²⁸

If it issues securities to investors under the prospectus or PDS and 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.²⁹

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.³⁰ The applicant is not at liberty to expend any of those moneys before then.

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 draft application for listing (if applying under the fast track process)³¹ or otherwise, its application for listing.³² 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.

²⁸ 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).

²⁹ See section 723 and Table 9 in RG 254 (securities offered under a prospectus) and section 1016D (securities offered under a PDS).

³⁰ 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".

³¹ See '2.6 Fast track process for offers proceeding by pathfinder prospectus or PDS'.

³² 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 30~~30~~ 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.

As mentioned below,³³ 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 final listing fee is less than the amount paid, ASX will refund the excess.³⁴

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 on the ASX website.

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 made on behalf of ASX by senior management within the ASX Listings Compliance function. ASX'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.³⁵ ASX may exercise its absolute 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:³⁶

- 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;
- the applicant is established or has its main business operations in, or its controlling shareholders or a majority of its directors are resident in:
 - an emerging or developing market³⁷ and ASX has concerns about the maturity and effectiveness of the legal, regulatory and judicial systems or standards of corporate governance in that market;³⁸
 - a jurisdiction associated with a heightened risk of corruption, organised crime, international fraud or money laundering;³⁹ or
 - a jurisdiction experiencing war or major civil unrest;
- ASX has concerns about the genuineness of the applicant's interest in accessing the Australian equity market;⁴⁰
- the applicant has entered into an agreement or transaction that, if it had been entered into after listing, would have required approval under Listing Rule 10.1, 10.11 or 10.14 and ASX has concerns about the commerciality of the agreement or transaction;

³³ See '3.7 [Number of securities to be quoted](#)~~Number of securities to be quoted~~'.

³⁴ The final listing fee will be based on the actual number of securities quoted (and exclude any restricted securities which are not quoted) and the final issue price. Further details of the refund arrangements are set out in Guidance Note 15 *ASX Listing Fees*.

³⁵ Listing Rules 1.19 and 2.9.

³⁶ The list of examples where this discretion may be exercised is not intended to be exhaustive.

³⁷ 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* ([Cth](#)) (as published from time to time) as an emerging or developing market.

³⁸ 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.

³⁹ ASX has regard to a number of sources to identify these types of jurisdictions, including Transparency International's Corruptions Perceptions Index, the Financial Action Task Force's Call for Action, various lists of known tax havens or 'low disclosure' jurisdictions, and ASX's own experiences in dealing with entities established in the jurisdiction in question.

⁴⁰ 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.

- 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 or other officer of the applicant;
- ASX has had prior unacceptable dealings with a promoter,⁴¹ broker, auditor, investigating accountant, expert or professional adviser involved in the application;
- an officer, employee or adviser of an entity has given, or has authorised or permitted the giving of false or misleading information to ASX in connection with a listing application;⁴²
- an adviser involved in the application, its representatives and its or their associates⁴³ are receiving fees and benefits from their involvement in the application and related transactions that appear to ASX to be disproportionately high compared to the funds being raised;⁴⁴
- the applicant has not engaged experienced legal, financial, technical 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 an experienced broker or other financial adviser to assist it with its capital raising, and has not provided ASX with a credible plan for raising funds from investors sufficient to meet its proposed minimum subscription and ASX's minimum free float and minimum spread requirements;
- ASIC or another corporate regulator has expressed concerns to ASX about the admission of the applicant to the official list;
- another exchange has rejected, or refused to accept, an application by the applicant (or a similar application by another entity being promoted by the same promoters as the applicant) for admission to the official list of that 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.

ASX's absolute discretion to reject a listing application exists to safeguard the reputation and integrity of the ASX market. It allows ASX to exclude from its market any entity where ASX has concerns, for any reason, about:

- the suitability of the entity for admission as a listed entity;
- the suitability of the entity's securities for quotation on a public securities market; or
- the calibre of the promoters or advisers involved in the application.

⁴¹ "Promoter" is defined in Listing Rule 19.12.

⁴² See '2.13 Responsibility for materials provided with a listing application'.

⁴³ This applies regardless of the type of advisory role being performed by the firm.

⁴⁴ See also '4.4 Disclosure of placements involving related parties, promoters or advisers'.

For this reason, ASX's decision on whether to accept or reject a listing application is final. There is no right of appeal.⁴⁵

2.10 Admission/quotation conditions

ASX may impose such conditions on admission and/or quotation as it considers appropriate.⁴⁶

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;
- ASX receiving written⁴⁷ confirmation from the applicant of:
 - the final number of securities issued under the applicant's prospectus, PDS or information memorandum;
 - the resulting total number of each class of equity security and debt security the applicant has on issue; and
 - the number of securities to be quoted on ASX;
- 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 for the securities issued under the applicant's prospectus, PDS or information memorandum;
- mailing of CHESS or issuer sponsored holding statements to the successful applicants;⁴⁸
- ASX being satisfied that the applicant meets ASX's minimum free float⁴⁹ and spread⁵⁰ requirements;
- if the entity has any restricted securities on issue, the provision to ASX of a statement setting out the number of restricted securities and the escrow period applied, together with evidence of its compliance with Chapter 9 and Appendices 9A, 9B and 9C of the Listing Rules;
- if the entity has any securities subject to voluntary escrow on issue, the provision to ASX of a statement setting out the number of securities subject to voluntary escrow and the escrow period applied and an ongoing obligation to notify ASX immediately of any material change to the terms of the voluntary escrow;
- the provision to ASX of any remaining documents referred to in the *Information Form and Checklist (ASX Listing)* 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;

⁴⁵ The right to appeal to the ASX Appeals Tribunal a decision by ASX to reject a listing application previously included in Listing Rule 18.10 was removed in December 2015.

⁴⁶ Listing Rules 1.19 and 2.9.

⁴⁷ This may be in the form of an email (Listing Rule 19.3(l)).

⁴⁸ CHESS stands for 'Clearing House Electronic Subregister System'. CHESS 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 '3.23 Clearing and settlement'.

⁴⁹ See '3.8 [Minimum free float](#)~~Minimum free float~~'.

⁵⁰ See '3.9 [Minimum spread](#)~~Minimum spread~~'.

- a distribution schedule for each class of equity security to be quoted setting out the number of holders in the following categories and the total percentage of the securities in that class held by the holders in each category:
 - 1 - 1,000
 - 1,001 - 5,000
 - 5,001 - 10,000
 - 10,001 - 100,000
 - 100,001 and over; and
- a statement setting out the names, addresses and shareholdings of the holders of parcels of securities (excluding restricted securities⁵¹ or securities subject to voluntary escrow⁵²) with a value of at least \$2,000, based on the issue/sale price, confirming that the applicant has met ASX's minimum spread requirements;
- where applicable, provision of updated financial information (such as an updated statement of commitments or pro forma statement of financial position) based on the actual amount of funds raised under the applicant's prospectus, PDS or information memorandum; and
- if during the course of the application a deadline for the production of audited or reviewed half-yearly accounts or audited annual accounts has passed and those accounts have not been lodged with ASX as part of the application, lodgement of those accounts with ASX by way of pre-quotation disclosure.⁵³

Once ASX Listings Compliance has reviewed all of the information and documentation referred to above and is satisfied that the entity has met all applicable admission and quotation conditions, it will liaise with the ASX Operations team to determine the time at which, and the date on which, trading in the applicant's securities will commence on ASX, and then notify the applicant of that time and date. Typically, the date for commencement of trading will be 3 business days after Listings Compliance has completed that review⁵⁴. Hence, any delay in the provision of, or shortcomings in the quality of, the information and documentation referred to above may impact the timetable for the applicant's securities to commence trading on ASX. This is especially the case for the information and documentation needed to satisfy ASX that the entity has met ASX's minimum spread⁵⁵ and (if applicable) escrow⁵⁶ requirements, where the amount of information and documentation can be substantial.

On the last bullet point above, an applicant for listing should note that it will be expected to lodge its audited or reviewed half yearly accounts and its audited annual accounts with ASX in accordance with the deadlines specified in Chapter 4 of the Listing Rules from the date it is admitted to the official list. The period to be covered by the first set of those accounts will be the whole of the half-year or full year in question, even though the entity may only have been admitted to the official list for part of that period. Consequently, if it is admitted a short period prior to a half-yearly or annual reporting deadline, it will only have a short period within which to prepare its accounts and have them audited or reviewed (as required) and it will need to plan for that contingency.⁵⁷

Similarly, an entity that is subject to quarterly reporting under Listing Rules 4.7B and 4.7C (Appendix 4C) or Listing Rules 5.3 – 5.5 (Appendix 5B) will be expected to lodge quarterly activity reports and quarterly cash flow reports in accordance with the deadlines specified in those rules from the date it is admitted to the official list. The period to be covered by the first quarterly report will be the full quarter in question, even though the entity may only have been admitted to the official list for part of that quarter. Consequently, if it is admitted a short period prior to a

⁵¹ See '3.13 [Restricted securities](#)~~Restricted securities~~'.

⁵² As defined in Listing Rule 19.12.

⁵³ See '4.2 Accounts that fall due after the lodgement of a listing application'.

⁵⁴ See also the note to Listing Rule 2.10.

⁵⁵ See '3.9 [Minimum spread](#)~~Minimum spread~~'.

⁵⁶ See '3.13 Restricted securities'.

⁵⁷ If the entity fails to meet the lodgement deadline, its securities will be automatically suspended from quotation under Listing Rule 17.5.

quarterly reporting deadline, it will only have a short period within which to prepare its quarterly reports and again it will need to plan for that contingency.⁵⁸

ASX may impose ongoing conditions on an entity's listing where it considers it appropriate to do so. Examples include a condition that:

- the entity must continue to have a chairperson of directors who is independent⁵⁹ and/or who has acceptable experience managing or directing an ASX listed entity; or
- the entity must maintain a specified number of directors who are independent and/or who have acceptable experience managing or directing an ASX listed entity.

ASX will generally consider applying such a condition where an applicant for listing has a controlling shareholder or shareholders resident in an emerging or developing market, who may not necessarily be familiar with the rules and standards that apply to ASX listed entities, and the composition of the applicant's board has been a relevant consideration in ASX's decision to admit the applicant.

2.11 Documents released to the market

A copy of the applicant's listing prospectus, PDS or information memorandum⁶⁰ will be formally released to the market via the ASX Market Announcements Platform shortly before the listing decision,⁶¹ after the applicant has been set up in ASX's systems with its trading code and corporate details.⁶² This is to help ensure that there is an informed secondary market in the applicant's securities when they start trading on ASX.

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 Listing)*;
- the entity's constitution;
- any accounts 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;⁶³ and

⁵⁸ See note 57 above.

⁵⁹ As defined in the ASX Corporate Governance ~~Council's Corporate Governance~~ Principles and Recommendations.

⁶⁰ 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.

⁶¹ 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.

⁶² 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.

⁶³ See '3.17 ~~ASX Corporate Governance Principles and Recommendations~~~~ASX Corporate Governance Council recommendations~~~~Principles and Recommendations~~'.

- the information about employment, service and consultancy agreements with the entity's CEO, 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 entity's current or proposed directors, CEO or CFO in satisfaction of Listing Rule 1.1 condition 20.⁶⁴ Nor will they include underwriting agreements or other material contracts⁶⁵ provided with the listing application or any letter applying for a waiver or in-principle advice.

If the applicant has received a waiver of any Listing Rule in connection with its admission, ASX may (and typically will) 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.

2.12 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 Listing)*.⁶⁶ The information may be required to be disclosed to the market or to ASX privately for its own purposes.

ASX may submit, or require the applicant to submit, any information given to ASX to the scrutiny of an expert selected by ASX.⁶⁷

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.⁶⁸

Some examples of where ASX may exercise these powers include:⁶⁹

- where ASX has concerns about the legality of the applicant's business operations in any jurisdiction, requiring the applicant to provide an opinion from a suitably qualified legal expert in that jurisdiction that its operations are lawful in that jurisdiction;
- where the applicant derives its interest in its material assets and business operations through a mechanism other than holding them directly or through a child entity, requiring the applicant to provide an opinion from a suitably qualified legal expert in the jurisdiction where the assets or business operations in question are located that the ownership structure is lawful in that jurisdiction;
- where ASX considers that the market would benefit from such disclosure, requiring 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; and
- where ASX has concerns about the extent or quality of due diligence undertaken in relation to a listing prospectus, PDS or information memorandum, requiring a detailed description of the applicant's due

⁶⁴ Which requires ASX to be satisfied that the current or proposed directors, CEO and CFO of the entity are of good fame and character (see '3.21 [Directors, CEO and CFO must be of good fame and character](#)~~Directors, CEO and CFO must be of good fame and character~~').

⁶⁵ 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.

⁶⁶ Listing Rule 1.17.

⁶⁷ Listing Rule 1.17. The costs of the expert must be paid for by the applicant.

⁶⁸ Listing Rules 1.19 and 2.9.

⁶⁹ The list of examples where this power may be exercised is not intended to be exhaustive.

diligence program and a copy of the final due diligence report (although ASX would not generally require these documents to be disclosed to the market).

2.13 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 misleading⁷⁰ 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; or
- without taking reasonable steps to ensure that the information was not false or misleading, breaches section 1309(2) of the Corporations Act,⁷¹ which is a criminal offence.

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.⁷²

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.⁷³

Examples of where an applicant may not have a structure and operations 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;⁷⁴

⁷⁰ This includes omitting material which renders the information given to ASX misleading in a material respect. Where ASX becomes aware of pre-existing matters that were not initially disclosed to ASX (for example, where a prospectus describes matters that were not raised with ASX when the applicant sought in-principle suitability advice), that may delay the applicant's timetable for listing or result in the application being rejected.

⁷¹ See *Australian Securities and Investments Commission v iSignthis Limited* [2024] FCA 669, paragraphs [545]-[564] where McEvoy J observed in relation to section 1309(2) that, 'Having regard to the clear language of the statute it can never be reasonable to decide not to respond, or not to respond openly, and candidly, to questions from the operator of a financial market'. His honour further observed that 'strict accuracy in the [responses to a financial market operator] is not a defence. A document may be misleading even if everything in it remains literally correct' and 'It is no defence to a failure to comply with that section that compliance was inconvenient, or inconsistent with wider corporate objectives.'

⁷² See for example ASIC Media Release 08-167, announcing that ASIC had banned an individual from providing financial services for 5 years, among other reasons, 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.

⁷³ 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 be issued in circumstances, and have rights and obligations attaching to them, that are fair to new and existing security holders".

⁷⁴ 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.

- the applicant's business is in its early stages and, in ASX's view, has not developed to a point where listing is appropriate;⁷⁵
- the applicant is not an investment entity and has a non-operating or minority interest in assets or businesses that form a significant part of its listing proposition;
- 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;⁷⁶
- 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;⁷⁷
- 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;⁷⁸
- a material part of the applicant's business operations is conducted through an incorporated or unincorporated joint venture⁷⁹ 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

⁷⁵ Decisions about whether an entity's business is at too early a stage for listing are made on a case-by-case basis, based on the type of business and the information ASX has to hand at the time. The factors that ASX will have regard to when assessing the suitability of early stage technology, biotechnology and medical technology entities are discussed at the end of this section.

⁷⁶ See '3.12 Working capital requirements for entities applying under the assets test'.

⁷⁷ 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.

⁷⁸ 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 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 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.

⁷⁹ 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.

- them itself or through a child entity (an example being a Chinese “variable interest entity”, or VIE,⁸⁰ which ASX does not consider to be an acceptable structure for listing on ASX);
- 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 composition of the applicant’s board is otherwise not appropriate for a listed entity;⁸¹
 - 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;⁸²
 - the applicant appears to ASX to have priced the offer of its securities under its listing prospectus, PDS or information memorandum at an unrealistically high price⁸³ in an attempt to meet the market capitalisation test⁸⁴ or ASX’s minimum spread requirements;⁸⁵
 - the applicant’s capital structure includes options, performance securities 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 securities 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;⁸⁶
 - the applicant’s capital structure includes a material number of “piggy back” options (that is, options to acquire further options);⁸⁷
 - the applicant’s capital structure includes performance securities that do not meet the requirements outlined in Guidance Note 19 *Performance Securities*;
 - 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;⁸⁸

⁸⁰ 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.

⁸¹ ASX has objected to boards dominated by an executive chair and his/her family members, boards with no non-executive directors, and boards where the only non-executive directors were relatives of the executive directors or advisers to the entity. Generally, ASX does not consider it appropriate that an officer or employee of the lead manager, broker or named adviser to the entity’s IPO is a director of the entity, given the clear conflicts it creates.

⁸² See ‘3.21 [Directors, CEO and CFO must be of good fame and character](#)’.

⁸³ For example, ASX may treat the fact that an entity has conducted a material capital raising in the lead up to, or following, the lodgement of its listing application at a price materially less than the proposed issue price under its listing prospectus or PDS as evidence that the proposed issue price has been unrealistically set and is not representative of the fair value of its main class of securities.

⁸⁴ The market capitalisation test refers to the second limb of the asset test in Listing Rule 1.3.1 (permitting an entity to list on ASX if it has a market capitalisation of at least \$15 million).

⁸⁵ See ‘3.9 [Minimum spread](#)’.

⁸⁶ 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 securities 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.

⁸⁷ Again, having a material 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.

⁸⁸ 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.

- 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;⁸⁹
- 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;⁹⁰
- 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*.⁹¹

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 Mutuals Listing on ASX*.

For early stage technology applicants, ASX will take into account a number of positive and negative factors when assessing whether the entity's business has developed to a point where listing is appropriate, which are set out below:

Issue	Positive factors	Negative factors
Background of the entity	The business has been developed and grown by its promoters over a period of time	The business was recently acquired by its promoters and there is no continuity of key personnel
Development	Material cash has been spent over several years developing the business	There has been little or no cash spent on development
Revenue and commercialisation	There is a market for the product and commercialisation opportunities, as evidenced by: - revenue⁹² of \$1 million or more in the last 12 months; or - binding agreements for sales of \$1 million or more in the next 12 months	No revenue or binding agreements to generate revenue

⁸⁹ 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.

⁹⁰ 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 '3.12 Working capital requirements for entities applying under the assets test').

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*.

⁹¹ 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.

⁹² ASX will scrutinise revenue to confirm whether the revenue is from ordinary operations and capable of converting to cash in the ordinary course of business.

Issue	Positive factors	Negative factors
Ownership of intellectual property	Intellectual property rights granted or applied for in each relevant jurisdiction and target market	No intellectual property rights granted or applied for in each relevant jurisdiction and target market
Investment history	- The entity has conducted material seed raisings from independent parties - Funds raised in seed raisings have been at prices demonstrating a decreasing level of risk - Funds raised in seed raisings directly contribute to the advancement of the technology and business	- The entity has conducted no material seed raisings - Seed raisings have been conducted at nominal prices - Seed raisings have been conducted without subsequent and meaningful development of the technology and business

ASX will have regard to similar factors when assessing the suitability of early stage applicants from the biotechnology or medical technology sector, with additional focus on whether the applicant has secured the key licences or government approvals required to operate its business.

Where an applicant from the biotechnology or medical technology sector is not yet in a position to generate revenue, ASX will be particularly focused on the status of any planned or required clinical trials.

ASX will have regard to:

- whether the applicant has completed, commenced or will be ready to commence clinical trials promptly after listing; and
- if trials will be commenced after listing, whether the applicant has ethics approval, contracts, protocols and medical arrangements in place to conduct trials promptly after listing.

If clinical trials are not required, ASX will expect the applicant to provide satisfactory evidence that the relevant authority or authorities (eg the Therapeutic Goods Administration, the US Food and Drug Administration, or the European Medicines Agency) do not require clinical trials in order for the applicant to commercialise the product(s).

In all cases, ASX will expect the applicant to demonstrate a clear path towards commercialisation and clear plans to use the funds raised in connection with the listing to advance the business.

ASX considers a range of factors when assessing the suitability of listing applicants. The factors above are not exhaustive and they will continue to develop over time. The presence or absence of factors in an individual case is not determinative and is subject to ASX's absolute discretion to determine whether or not to admit the entity to the official list.

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 rule⁹³ applies) or Appendix 15B (for companies to which any replaceable rule applies).⁹⁴ These

⁹³ "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.

⁹⁴ Listing Rule 1.1 condition 2.

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.

In addition, if the entity has any restricted securities⁹⁵ on issue, its constitution must provide for each of the following:

- a holder of restricted securities must not dispose of, or agree or offer to dispose of, the securities during the escrow period applicable to those securities except as permitted by the listing rules or ASX;
- if the restricted securities are in the same class as quoted securities, the holder will be taken to have agreed in writing that the restricted securities are to be kept on the entity's issuer sponsored subregister and are to have a holding lock applied for the duration of the escrow period applicable to those securities;
- the entity will refuse to acknowledge any disposal (including, without limitation, to register any transfer) of restricted securities during the escrow period applicable to those securities except as permitted by the listing rules or ASX;
- a holder of restricted securities will not be entitled to participate in any return of capital on those securities during the escrow period applicable to those securities except as permitted by the listing rules or ASX; and
- if a holder of restricted securities breaches a restriction deed or a provision of the entity's constitution restricting a disposal of those securities, the holder will not be entitled to any dividend or distribution, or to exercise any voting rights, in respect of those securities for so long as the breach continues.

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 the ASX website.

3.3 The need for a prospectus or PDS

Unless ASX agrees to accept an information memorandum in lieu of a prospectus or PDS (which ASX will generally only do in the very limited circumstances set out in section 3.5 below), an entity seeking admission in the ASX Listing category must issue a prospectus or PDS, lodge it with ASIC and give it to ASX.⁹⁶

In most cases, the applicant will be making an offer of securities or managed investment products for issue to investors in Australia in conjunction with its listing on ASX – for example to raise capital for its business needs and/or to satisfy ASX's minimum free float and minimum spread requirements.⁹⁷ This will require the applicant to issue (in the case of an offer of securities) a prospectus or (in the case of managed investment products) a PDS in relation to that offer and to lodge it with ASIC under the Corporations Act.⁹⁸ It will be the prospectus or PDS for that offer that the entity will then give to ASX to meet this requirement.

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 or managed investment products of the type to be quoted on ASX within the 12 months preceding its listing on ASX without lodging a prospectus or PDS with ASIC,⁹⁹ the secondary sales provisions in the Corporations Act¹⁰⁰ will usually apply and the applicant will be required to issue a prospectus or PDS under those provisions before its securities or managed investment products can be offered for sale on ASX.

⁹⁵ See '3.13 Restricted securities'.

⁹⁶ Listing Rule 1.1 condition 3.

⁹⁷ See '3.8 Minimum free float' and '3.9 [Minimum spread](#)~~Minimum spread~~'.

⁹⁸ See sections 700 and 706 (in the case of an offer of securities) and sections 1011A and 1012B (in the case of an offer of managed investment products).

⁹⁹ 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 or PDS (such as sophisticated investors under section 708(8) or 761G(7)(a)-(c) or professional investors under section 708(11) or 761G(7)(d)).

¹⁰⁰ Sections 707(3) (in the case of securities) and 1012C(6) (in the case of managed investment products).

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 any primary issue of its securities or the secondary sale of its securities on ASX.

It should be noted that by giving an Appendix 1A *Application for Admission to the ASX Official List (ASX Listing)* to ASX, an entity warrants that an offer for sale of the securities to be quoted within 12 months after their issue will not require disclosure under the secondary sales provisions in the Corporations Act¹⁰¹ 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.¹⁰²

As mentioned above,¹⁰³ the entity's application for admission to quotation must be made to ASX within 7 days after the date of the prospectus or PDS. A copy of the applicant's prospectus or PDS, as lodged with ASIC, must accompany its Appendix 1A application form.¹⁰⁴

ASX would encourage applicants for listing to give their Appendix 1A application form and prospectus or PDS to ASX at the earliest opportunity after its prospectus or PDS has been lodged with ASIC and not to wait until the end of this 7 day period. This will reduce the risk of missing the 7 day deadline. It will also enable ASX to make a quicker start on reviewing and processing the application and, if there are concerns with the applicant's prospectus or PDS, for those concerns to be raised and addressed earlier rather than later.

3.4 The contents of a prospectus or PDS

The Listing Rules generally do not prescribe what must be included in an entity's listing prospectus or PDS beyond requiring:

- 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;¹⁰⁵ and
- if the entity is applying for admission under the assets test, a statement of the objectives the entity is seeking to achieve from its admission and any capital raising undertaken in connection with its admission,¹⁰⁶

and providing for the inclusion of:

- if the entity is applying for admission under the assets test, a statement that the entity will have enough working capital at the time of its admission to carry out its stated objectives;¹⁰⁷ or
- if the entity is applying for admission under the profit test, a statement confirming that the directors (in the case of a trust, the directors of the responsible entity¹⁰⁸) have made enquiries and nothing has come to their

¹⁰¹ See note ~~100~~¹⁰⁰ above.

¹⁰² See Appendix 1A of the Listing Rules.

¹⁰³ See '2.7 Corporations Act deadlines for lodgement and quotation'.

¹⁰⁴ The *Information Form and Checklist (ASX Listing)* requires an applicant for listing to provide an electronic version of its prospectus or PDS, as lodged with ASIC.

¹⁰⁵ 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.

¹⁰⁶ Listing Rule 1.3.3(a). See also '3.11 Satisfying the assets test'.

¹⁰⁷ Listing Rule 1.3.3(b). If the entity's prospectus or PDS does not include such a statement, the entity must separately give an equivalent statement to ASX from an independent expert. ASX will release that statement to the market by way of pre-quotation disclosure. See also '3.12 [Working capital requirements for entities applying under the assets test](#)~~Working capital requirements for entities applying under the assets test~~'.

¹⁰⁸ "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 (Listing Rule 19.12).

attention to suggest that the economic entity is not continuing to earn profit from continuing operations up to the date of the prospectus or PDS.¹⁰⁹

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;¹¹⁰ and
- a PDS for other financial products to include, among 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.¹¹¹

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.¹¹²

There is some limited guidance in this Guidance Note on matters that ASX considers ought to be disclosed in a listing prospectus or PDS.¹¹³ 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.

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"). They 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'), with requirements that could impact on the content of their prospectuses or PDSs.

Generally speaking, ASX will not pre-vet or provide comments on a draft prospectus or PDS ahead of its lodgement with ASIC and ASX. The most ASX will do, if requested by an applicant, is to review and provide comments on an extract from a draft prospectus or PDS that raises particular Listing Rule issues.

ASX will review the final version of the applicant's prospectus or PDS lodged with ASIC for the purposes of determining whether the applicant satisfies the requirements in the Listing Rules for admission to the official list and whether any concerns exist that might cause ASX to exercise its absolute discretion not to admit the applicant to the official list. If as part of its review ASX identifies any concerns about the level or quality of information in the prospectus or PDS, ASX will usually raise those concerns with the applicant in the first instance and, if the applicant is not able to allay those concerns, ASX will usually ask for them to be addressed to ASX's satisfaction in a supplementary or replacement prospectus or PDS. If the applicant refuses to do so, this is likely to bring a halt to the processing of its admission application and delay its admission.

ASX may also raise any concerns it has about the applicant's prospectus or PDS with ASIC, the regulator responsible for administering the laws relating to prospectuses and PDSs, for ASIC to form a view on whether it

¹⁰⁹ Listing Rule 1.2.6. If the entity's prospectus or PDS does not include such a statement, the entity must separately give an equivalent statement to ASX signed by all of its directors (or, in the case of a trust, all of the directors of the responsible entity). ASX will release that statement to the market by way of pre-quotation disclosure. See also '3.10 Satisfying the profit test'.

¹¹⁰ Corporations Act section 710.

¹¹¹ Corporations Act section 1013E.

¹¹² 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)).

¹¹³ See, for example, the guidance in notes 6565 (material contracts) and 79 (joint venture arrangements) and sections 3.22 Additional requirements for foreign entities', '4.1 [The role of the Information Form and Checklist \(ASX Listing\)](#)' and '4.3 Disclosure of adviser fees and perquisites'.

should issue a stop order and/or require the applicant to lodge a supplementary or replacement prospectus or PDS to address those concerns.¹¹⁴

Where ASX does raise concerns with an applicant about its prospectus or PDS, ASX will not accept an argument that ASIC has not raised any objections to the prospectus or PDS and therefore ASX should be satisfied with the document. ASIC does not review all prospectuses or PDSs lodged with it under the Corporations Act. In any event, the Listing Rules require ASX to be satisfied with the prospectus or PDS lodged with ASIC¹¹⁵ and that entitles ASX to require additional disclosures to be included over and above those of concern to ASIC.

If the applicant does issue a supplementary or replacement prospectus or PDS, it should give a copy to ASX as soon as it is issued.¹¹⁶ If the changes in the supplementary or replacement prospectus or PDS are material, ASX may require the applicant also to provide an updated *Information Form and Checklist (ASX Listing)* that cross-references the new document.

3.5 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:

- the entity applying for admission:
 - is listed on another acceptable exchange¹¹⁷ and it is seeking to move its primary listing to, or to have a secondary listing on, ASX;
 - is the successor entity to an entity that is listed on ASX or another acceptable exchange and that has undergone a reconstruction where the holders of securities in the listed entity have exchanged those securities for securities in the successor entity; or
 - has been spun out of or de-merged from an entity that is listed on ASX or another acceptable exchange where securities in the applicant have been distributed in specie to the holders of securities in the listed entity,

and, in each case above, the entity applying for admission is not undertaking an offer of securities in connection with its listing on ASX; or
- 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.¹¹⁸

An entity that does not meet the criteria above will need to make an offer of securities pursuant to a prospectus or PDS in connection with its listing on ASX, even though it may not otherwise need to raise capital or to issue securities to meet ASX's minimum free float or minimum spread requirements. The size of the offer is a matter for the entity concerned but it should be noted that in exercising its absolute discretion to determine whether or not to admit the entity to the official list, ASX may have regard to the level of investor support for the listing. From this perspective, the larger the offer and the broader the base of investors who accept it, the stronger the indication of investor support for the listing.

¹¹⁴ ASX has an obligation to refer any suspected significant contravention of the Corporations Act to ASIC under section 792B(2)(c) of that Act. ASX has also entered into a Memorandum of Understanding with ASIC under which ASX and ASIC agree to share information about matters within their respective regulatory remits.

¹¹⁵ Listing Rule 1.1 requires the conditions for listing in that rule (including the requirement in condition 3 about issuing and lodging with ASIC a prospectus or PDS) to be met "to ASX's satisfaction". This is reinforced by ASX's absolute discretion to reject an admission application in Listing Rule 1.19.

¹¹⁶ The requirement in Listing Rule 1.1 condition 3 to give ASX a prospectus or PDS includes giving a copy of any supplementary or replacement prospectus or PDS issued in connection with that prospectus or PDS (see the definitions of "prospectus" and "PDS" in Listing Rule 19.12).

¹¹⁷ For these purposes, an "acceptable exchange" means a licensed Australian securities exchange or a foreign securities exchange listed in ASIC Corporations (Definition of Approved Foreign Market) Instrument 2017/669.

¹¹⁸ Corporations Act section 5A.

In the very limited cases where ASX does agree 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
 - 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.¹¹⁹

If the applicant issues a supplementary or replacement information memorandum, it should provide a copy to ASX as soon as it is issued.¹²⁰ 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 Listing)* that cross-references the new document.

3.6 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 securities¹²¹ and, if the entity so chooses, securities issued under an employee incentive scheme that are subject to restrictions on transfer).¹²²

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 estimated maximum number of securities it will be seeking to have quoted at the date of initial quotation on ASX.¹²³

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.¹²⁴

¹¹⁹ Listing Rule 1.1 condition 3.

¹²⁰ The requirement in Listing Rule 1.1 condition 3 to lodge with ASX an information memorandum that complies with Listing Rule 1.4 includes lodging a copy of any supplementary or replacement information memorandum (see the definition of "information memorandum" in Listing Rule 19.12).

¹²¹ See '3.13 [Restricted securities](#)~~Restricted securities~~'.

¹²² 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*.

¹²³ See '3.7 Number of securities to be quoted'.

¹²⁴ Listing Rule 19.12 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.

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;¹²⁵
 - the issue or sale price of the securities must be at least 20 cents in cash;¹²⁶
 - 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;¹²⁷ and
- 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.¹²⁸

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;¹²⁹
 - if there are any restricted securities, the applicant must have complied with Chapter 9 of the Listing Rules;¹³⁰
 - 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;¹³¹
- if the securities are partly paid securities, there must be a defined call program setting out the date and amount of each proposed call;¹³²

¹²⁵ 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.

¹²⁶ 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.

¹²⁷ Listing Rule 2.1 condition 3. See also ‘3.23 [Clearing and settlement](#)’.

¹²⁸ 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.

¹²⁹ Listing Rule 2.5 condition 1.

¹³⁰ Listing Rule 2.5 condition 2.

¹³¹ Listing Rule 2.5 condition 3. See also ‘3.23 [Clearing and settlement](#)’.

¹³² 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.

- 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;¹³³
- 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;¹³⁴ and
- if the securities are options issued on the exercise of other options, the other options must have expired, or have all been exercised.¹³⁵

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.¹³⁶ 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.

3.7 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.¹³⁷ 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 6¹³⁸ and to avoid the legal difficulties that might otherwise arise under the Corporations Act,¹³⁹ an entity should apply in its Appendix 1A application form for quotation of, and pay the initial listing fee¹⁴⁰ 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.

¹³³ Listing Rule 2.5 condition 5.

¹³⁴ Listing Rule 2.5 condition 6.

¹³⁵ Listing Rule 2.5 condition 7.

¹³⁶ Listing Rule 6.1.

¹³⁷ Restricted securities are only quoted once the escrow restriction has been lifted: see '3.13 [Restricted securities](#)~~Restricted securities~~' and Guidance Note 11 *Restricted Securities and Voluntary Escrow*.

¹³⁸ See note [122](#) above and the accompanying text.

¹³⁹ See '2.7 [Corporations Act deadlines for lodgement](#)~~Corporations Act deadlines for lodgement and quotation~~'.

¹⁴⁰ See '2.8 [Payment of initial listing fee](#)~~Payment of initial listing fee~~'.

3.8 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%.¹⁴¹

“Free float” means the percentage of the entity’s main class of securities that:

- are not “restricted securities”¹⁴² or subject to voluntary escrow;¹⁴³ and
- are held by non-affiliated security holders.¹⁴⁴

“Non-affiliated security holders” means security holders who are not: (a) a related party¹⁴⁵ of the entity; (b) an associate¹⁴⁶ 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) is such that, in ASX’s opinion, they should be treated as affiliated with the entity.¹⁴⁷

Securities held by or for an employee incentive plan are not regarded by ASX as forming a part of an entity’s free float.¹⁴⁸

3.9 Minimum spread

An entity seeking admission in the ASX Listing category must meet ASX’s minimum spread requirement.¹⁴⁹ This serves to demonstrate that there is sufficient investor interest in the entity to justify its listing¹⁵⁰ and to underpin 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 securities¹⁵¹ that are not “restricted securities” and that are not subject to voluntary escrow, with a value of at least \$2,000.¹⁵²

¹⁴¹ Listing Rule 1.1 condition 7.

¹⁴² The concept of “restricted securities” is explained in greater detail in Guidance Note 11 *Restricted Securities and Voluntary Escrow*.

¹⁴³ As defined in Listing Rule 19.12.

¹⁴⁴ See the definition of “free float” in Listing Rule 19.12.

¹⁴⁵ As defined in Listing Rule 19.12.

¹⁴⁶ “Associate” is defined in Listing Rule 19.12. The definition is based on, but in some respects is broader than, the definition of “associate” in section 12 of the Corporations Act. For example, in the Listing Rules definition, the references to a body corporate in section 12(2)(a) have been replaced with references to an entity so as to capture trusts, partnerships and other unincorporated bodies and a paragraph has been added specifying that if the primary person is a natural person, their associates include any entity they control.

The Listing Rules definition also includes a provision deeming a related party of a natural person to be their associate unless the contrary is proven. This provision exists as an evidentiary aid and is intended to put the evidentiary burden on a person who asserts that they do not control and are not acting in concert with a related party to prove that is so. It is based on the premise that because of the close connection between an individual and their related parties, it should be presumed that the individual is able to control a related party, or that a related party is acting in concert with the individual, unless the contrary is proven. Otherwise it is too easy for the individual and the related party simply to deny any association and to put others to the task of proving that they are associates.

The definition of “associate” in Listing Rule 19.12 has an equivalent carve-out to that provided in section 16 of the Corporations Act, which states that a person is not an associate of another person merely because of one or more of the following: (a) one gives advice to the other, or acts on the other’s behalf, in the proper performance of the functions attaching to a professional capacity or a business relationship; (b) one, a client, gives specific instructions to the other, whose ordinary business includes dealing in financial products, to acquire financial products on the client’s behalf in the ordinary course of that business; (c) one has sent, or proposes to send, to the other an offer under a takeover bid for securities held by the other; or (d) one has appointed the other, otherwise than for valuable consideration given by the other or by an associate of the other, to vote as a proxy or representative at a meeting of members, or of a class of members, of the listed entity.

¹⁴⁷ Listing Rule 19.12.

¹⁴⁸ 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.

¹⁴⁹ Listing Rule 1.1 condition 8.

¹⁵⁰ Among 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.

¹⁵¹ If CDIs are issued over securities in the main class, holders of the CDIs are included for these purposes.

¹⁵² The value of securities is usually based on the offer price under the entity’s prospectus, PDS or information memorandum.

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 custodian or 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 custodial or nominee holding and take account of the number and residence of the beneficial holders for the purposes of spread, ASX will, at a minimum, require a statutory declaration from the custodian or nominee (or, if it is a corporation, a responsible officer of the corporation) 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 custodian or nominee to vote and to dispose of the securities as they see fit;
- is fully entitled to any proceeds received on the sale of the securities;
- is fully entitled to any dividend or distribution paid by the entity on the securities; and
- as far as the declarant is aware, is not an associate (as defined in the Listing Rules)¹⁵³ of the other beneficial holders.

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:

- fictitious applications;
- giving securities away;
- offering loans to prospective investors to acquire securities that are non-recourse or expected to be repaid a short period after listing;
- 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 after listing;
- having investors enter into repurchase agreements or put options that allow them to dispose of their securities to a third party after listing;
- brokers, financial advisers or other intermediaries completing applications for clients without their knowledge or consent;
- brokers, financial advisers or other intermediaries allocating securities to discretionary managed accounts without the knowledge or consent of the client for whom those accounts are managed;

¹⁵³ See note [146146](#) above.

- lead managers, brokers, financial advisers or other intermediaries being incentivised to procure spread through the payment of abnormally high fees, brokerage or commission;¹⁵⁴ and
- splitting what is effectively one beneficial holding of securities across multiple family members, family companies or family trusts or across multiple entities in the same corporate group.

Unless satisfactory evidence is provided to the contrary, ASX will assume that if there are more than two holdings registered at the same address or post office box, they fall within this last category and ASX will treat all such holdings as no more than two holdings for the purposes of determining whether spread has been achieved.¹⁵⁵

ASX may require evidence to verify that an entity has achieved minimum spread without using artificial means.¹⁵⁶ This may include requiring:

- the entity to provide copies of its securities register, bank statements, application forms and cheques or other evidence of payment by investors;
- where the entity has a substantial number of proprietary companies on its register, the entity to provide, at its cost, ASIC (or equivalent) searches for those companies to determine whether they are related to or associated with other investors on the register;
- the entity to provide to ASX, at the entity's cost, a report from an identity verification service acceptable to ASX confirming the number of applications received from persons whose identity has been able to be verified;
- any broker, financial adviser or other intermediary involved in the listing¹⁵⁷ 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, financial adviser or other intermediary involved in the listing confirming that artificial means have not been used to achieve spread; and/or
- the entity to provide to ASX, at the entity's 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 securities¹⁵⁸ and seek information from the entity to determine whether or not that is the case.¹⁵⁹ 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 spread¹⁶⁰ or remove the entity from the official list for not having satisfied the requirements for admission.¹⁶¹ It may also refer the parties responsible for falsifying spread or obtaining it by artificial means to ASIC for consideration of regulatory action.¹⁶²

¹⁵⁴ 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.

¹⁵⁵ 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.

¹⁵⁶ Listing Rule 1.17.

¹⁵⁷ For example as the applicant's underwriter or lead manager.

¹⁵⁸ Listing Rule 17.3.1 and/or 17.3.4.

¹⁵⁹ Listing Rule 18.7.

¹⁶⁰ Listing Rule 12.4.

¹⁶¹ Listing Rule 17.12 (first and/or third bullet point).

¹⁶² 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 examples of regulatory action (including criminal proceedings) taken by ASIC in relation to the falsification of spread, see ASIC Media Release 08-167, summarised in note [7272](#) above, ASIC Media Release 17-118, ASIC Media Release 18-319, and ASIC Media Release 20-270.

3.10 Satisfying the profit 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 1.3.¹⁶³

To satisfy the profit test, an entity must:

- be a going concern or the successor of a going concern;¹⁶⁴
- have conducted the same main business activity during the last 3 full financial years and through to the date it is admitted;¹⁶⁵
- have aggregated profit from continuing operations for the last 3 full financial years of at least \$1 million;¹⁶⁶
- 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;¹⁶⁷
- include in its listing prospectus, PDS or information memorandum a statement confirming that the directors (in the case of a trust, the directors of the responsible entity) 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 the prospectus, PDS or information memorandum, or else the entity must give an equivalent statement to ASX signed by all of its directors (in the case of a trust, all of the directors of the responsible entity);¹⁶⁸ and
- give ASX each of the following:
 - the entity's audited accounts for the last 3 full financial years (if the entity applies for admission less than 90 days after the end of its last financial year and it does not have audited accounts for its latest full financial year, ASX will accept audited accounts for the 3 years to the end of the previous financial year along with the entity's audited or reviewed accounts for its most recent half year);¹⁶⁹
 - if the entity applies for admission more than 6 months and 75 days after the end of its last financial year, the entity's audited or reviewed accounts for its most recent last half year (or longer period if available);¹⁷⁰ and
 - a reviewed pro forma statement of financial position showing the effect of any material transactions (including any acquisitions, disposals or issues of securities) expected to occur in conjunction with the entity's admission to the official list. 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.¹⁷¹

¹⁶³ Listing Rule 1.1 condition 9. See also '3.11 Satisfying the assets test'.

¹⁶⁴ Listing Rule 1.2.1.

¹⁶⁵ Listing Rule 1.2.2.

¹⁶⁶ Listing Rule 1.2.4.

¹⁶⁷ Listing Rule 1.2.5.

¹⁶⁸ Listing Rule 1.2.6. If the directors provide a separate signed statement to ASX, ASX will release it to the market by way of pre-quotation disclosure.

¹⁶⁹ Listing Rule 1.2.3(a).

¹⁷⁰ Listing Rule 1.2.3(b).

¹⁷¹ Listing Rule 1.2.3(c). The requirement for a reviewed pro forma statement of financial position applies unless ASX agrees that it is not needed (which would be rare).

In each case above, the entity must provide the audit report or review report to ASX and that report must not contain a modified opinion, emphasis of matter or other matter paragraph that ASX considers unacceptable.¹⁷²

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 calls into question whether the entity can continue as a going concern or has achieved the required profit levels to be admitted under the profit test.

ASX requires the most recent set of accounts lodged with ASX by an entity applying for admission under the profits test (be they audited full year accounts or audited or reviewed half year accounts) to be tier 1 general purpose financial statements.¹⁷³ If the entity has not been required to prepare tier 1 general purpose financial statements for the previous years, ASX will generally accept tier 2 general purpose financial statements for those years.

The fact that an applicant may have acquired another entity or business during the most recent 3 or 3½ years does not preclude it from applying for admission under the profit test, provided the acquisition did not result in a change to its main business activity over that period. However, ASX will require the entity¹⁷⁴ to provide audited accounts for that other entity or business for any accounting period over those 3 or 3½ years where the results of the other entity or business have not been consolidated into the audited accounts of the applicant.¹⁷⁵

An entity that has not conducted the same main business activity during the last 3 full financial years or that is not able to provide audited accounts for the last 3 full financial years which meet the requirements above must apply for admission under the assets test, even if it has otherwise achieved the required profit levels to be admitted under the profit test.

3.11 Satisfying the assets test

As mentioned previously, 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 1.3.¹⁷⁶

To satisfy the assets test, an entity that is **not an investment entity**¹⁷⁷ 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;¹⁷⁸
- either:
 - less than half of its total tangible assets (after raising any funds) are cash or in a form readily convertible to cash;¹⁷⁹ or

¹⁷² If the oldest set of accounts provided to ASX are the first audited accounts prepared by the entity, ASX will generally accept the usual qualifications about the inability to inspect inventory (provided the inventory levels are not material to the financial position of the entity), the opening balances not being subject to audit 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.

¹⁷³ This is on the basis that the most recent set of accounts will generally have been compiled in contemplation of the entity's equity instruments trading in a public market and are therefore expected, under Australian Accounting Standard AASB 1053 *Application of Tiers of Australian Accounting Standards*, to be tier 1 general purpose financial statements.

¹⁷⁴ Under Listing Rule 1.17.

¹⁷⁵ Example 2 in Annexure B illustrates the point.

¹⁷⁶ Listing Rule 1.1 condition 9. See also '3.10 Satisfying the profit test'.

¹⁷⁷ 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 derivatives and whose objectives do not include exercising control over or managing any entity, or the business of any entity, in which it invests (Listing Rule 19.12).

¹⁷⁸ Listing Rule 1.3.1.

¹⁷⁹ Listing Rule 1.3.2(a).

- it has commitments consistent with its stated business objectives¹⁸⁰ to spend at least half of its cash and assets readily convertible to cash – in this case, the entity's listing prospectus, PDS or information memorandum must include an expenditure program setting out these commitments;¹⁸¹ and
- it must meet the working capital requirements summarised in section 3.12 below.

For these purposes, an entity's market capitalisation is calculated by multiplying the number of securities in the entity's main class¹⁸² by the price determined by ASX to be a fair measure of the market value of those securities. Where an entity is undertaking a material capital raising in connection with its listing, ASX will normally use the price at which the entity's main class of securities are offered under the prospectus, PDS or information memorandum for that capital raising as an acceptable proxy for the market value of those securities. ASX may, however, use a different price to determine an entity's market capitalisation if it 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. In an appropriate case, ASX may require an entity's market capitalisation to be verified by an independent expert.¹⁸³

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**¹⁸⁴ 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.¹⁸⁵

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 (if the entity applies for admission less than 90 days after the end of its last financial year and it does not have audited accounts for its latest full financial

¹⁸⁰ As set out in its listing prospectus, PDS or information memorandum pursuant to Listing Rule 1.3.3(a): see '3.12 [Working capital requirements](#)Working capital requirements for entities applying under the assets test'.

¹⁸¹ Listing Rule 1.3.2(b).

¹⁸² "Main class" means the ordinary securities of the entity or, if ordinary securities are not to be quoted, the class of securities designated by ASX (Listing Rule 19.12). Generally speaking, if an entity has fully paid ordinary securities quoted on ASX, they will be its main class. If an entity only has partly paid ordinary securities quoted on ASX, they will be its main class. If the entity has both fully paid and partly paid ordinary securities quoted on ASX, its fully paid ordinary securities will be its main class and its partly paid ordinary securities will be excluded from the calculation of its market capitalisation for the purposes of the Listing Rules.

¹⁸³ Under Listing Rule 1.17.

¹⁸⁴ For the definition of "investment entity", see note [177-177](#) above.

¹⁸⁵ Listing Rule 1.3.4.

year, ASX will accept audited accounts for the 2 years to the end of the previous financial year along with the entity's audited or reviewed accounts for its most recent half year);¹⁸⁶

- if the entity applies for admission more than 6 months and 75 days after the end of its last financial year, the entity's audited or reviewed accounts for its most recent half year (or longer period if available);¹⁸⁷
- 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 business¹⁸⁸ that is significant in the context of the entity:
 - audited accounts for the last 2 full financial years for that other entity or business (if the entity applies for admission less than 90 days after the end of the last financial year for that other entity or business and the other entity or business does not have audited accounts for its latest full financial year, ASX will accept audited accounts for the 2 years to the end of the previous financial year along with the audited or reviewed accounts for its most recent half year);¹⁸⁹ and
 - if the entity applies for admission more than 6 months and 75 days after the end of the last financial year for that other entity or business, audited or reviewed accounts for that other entity or business for its most recent half year (or longer period if available);¹⁹⁰ and
- a reviewed pro forma statement of financial position showing the effect of any material transactions (including any acquisitions, disposals or issues of securities) expected to occur in conjunction with the entity's admission to the official list. 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.¹⁹¹

In each case above, the entity must provide the audit report or review report to ASX and that report must not contain a modified opinion, emphasis of matter or other matter paragraph that ASX considers unacceptable.¹⁹²

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 calls into question 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 and require that opinion to be published as pre-quotation disclosure.¹⁹³

Subject to the comments below about "roll-up" listings, ASX requires the most recent set of accounts lodged with ASX by an entity applying for admission under the assets test (be they audited full year accounts or audited or reviewed half year accounts) to be tier 1 general purpose financial statements and not special purpose or tier 2 general purpose financial statements.¹⁹⁴ If the entity has not been required to prepare tier 1 general purpose

¹⁸⁶ Listing Rule 1.3.5(a). While this will satisfy ASX's requirements, applicants should also have regard to ASIC Regulatory Guide 228 *Prospectuses: Effective disclosure for retail investors*. In some cases, ASIC expects a listing prospectus to include audited financial information for the three most recent financial years. See also Annexure B.

¹⁸⁷ Listing Rule 1.3.5(b).

¹⁸⁸ This does not apply if what is being acquired is more properly characterised as an acquisition of assets rather than an acquisition of a business. Like ASIC, ASX applies the guidance in Appendix B of Australian Accounting Standard AASB 3 *Business combinations* to help determine whether an entity has acquired, or is acquiring, a business rather than a collection of assets (see note [290290](#) below).

¹⁸⁹ Listing Rule 1.3.5(c) first bullet point. While this will satisfy ASX's requirements, applicants should also have regard to ASIC Regulatory Guide 228 *Prospectuses: Effective disclosure for retail investors*. In some cases, ASIC expects a listing prospectus to include audited financial information for the three most recent financial years. See also Annexure B.

¹⁹⁰ Listing Rule 1.3.5(c) second bullet point.

¹⁹¹ Listing Rule 1.3.5(d).

¹⁹² See note [172472](#) above for the type of qualifications that ASX will usually accept.

¹⁹³ Under Listing Rule 1.17.

¹⁹⁴ See note [173473](#) above.

financial statements for the previous year(s), ASX will generally accept tier 2 general purpose financial statements for those years.

To illustrate:

- An entity applying for admission under the assets test with a 30 June balance date lodges its listing application with ASX on 30 November 2024. The entity must provide to ASX its audited accounts for the years ended 30 June 2023 and 30 June 2024. The accounts for the year ended 30 June 2024 should be tier 1 general purpose financial statements. If the entity has not been required to prepare tier 1 general purpose financial statements for the preceding year, the accounts for the year ended 30 June 2023 can be tier 2 general purpose financial statements.
- An entity applying for admission under the assets test with a 30 June balance date lodges its listing application with ASX on 31 March 2024. The entity must provide to ASX its audited accounts for the years ended 30 June 2022 and 30 June 2023, as well as its audited or reviewed accounts for the half year ended 31 December 2023. The accounts for the half year ended 31 December 2023 should be tier 1 general purpose financial statements. If the entity has not been required to prepare tier 1 general purpose financial statements for the preceding years, the accounts for the years ended 30 June 2022 and 30 June 2023 can be tier 2 general purpose financial statements.

The same rules apply to the accounts of a significant entity or business that an assets test entity has acquired in the 12 months prior to, or is proposing to acquire in connection with, its application for admission.

ASX will apply the above rules in a common sense way and in a manner that is consistent with their spirit, intention and purpose.¹⁹⁵ So, for example, ASX will generally agree to accept less than 2 full financial years of audited accounts from an applicant (and, if applicable, from any significant entity or business the applicant has acquired or is proposing to acquire) if it has only been carrying on business for less than 2 full financial years or where ASX is satisfied that it has undergone 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.¹⁹⁶ ASX will generally also agree to accept accounts from the applicant that are not audited or reviewed (save as part of the review of the applicant's pro forma statement of financial position) where the applicant is effectively a shell that is not conducting a business and has nominal assets and liabilities and is providing a reviewed statement of financial position.¹⁹⁷

Similarly, where an assets test entity is proposing to acquire in connection with its application for admission a number of businesses in the same sector, none of which is significant in its own right (ie a "roll-up listing"), ASX will accept:

- pro forma audited accounts on an aggregated basis for the rolled up entity for the most recent financial year; and
- if the entity applies for admission more than 6 months and 75 days after the end of the most recent financial year, pro forma audited or reviewed accounts on an aggregated basis for the rolled up entity for the most recent half year.

ASX understands that, by definition, these pro forma audited accounts on an aggregated basis must be special purpose financial statements rather than general purpose financial statements due to the non-application of Australian Accounting Standard *AASB 10 Consolidated Financial Statements*. ASX will however expect them to comply with all other applicable measurement and recognition standards.

¹⁹⁵ As it is required to do under Listing Rule 19.2.

¹⁹⁶ See also example 1 in table 10 of RG 228.

¹⁹⁷ Examples 3 and 7-12 in Annexure B are cases in point. In such a case, the reviewed pro forma statement of financial position required under Listing Rule 1.2.3(c) or 1.3.5(d) should provide sufficient financial information about Listco to investors. Requiring an entity that is not carrying on a business and has only nominal assets and liabilities to produce audited accounts in relation to itself would subject it to unnecessary expense without providing any real benefit to investors.

Annexure B has guidance on the accounts that ASX will generally agree to accept from an applicant for listing in most common situations, including those where ASX will agree to accept less than 2 full financial years of audited accounts for an entity applying for admission under the assets test. It also has guidance on the financial information that ASIC expects a listing prospectus to include in those situations under Part F of RG 228.

In terms of the requirement above to provide accounts for another “significant entity or business” that an entity has acquired or is proposing to acquire, ASX will generally consider an entity or business to be “significant” if, at the entity’s most recent balance date, it accounted 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.¹⁹⁸

ASX acknowledges that there may be circumstances where the utilisation of some of the individual measures in (a) to (e) in the preceding paragraph 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 ASX at the earliest opportunity to determine whether ASX may agree in its particular circumstances to accept something less than what would otherwise be required under the Listing Rules.

Any agreement by ASX to accept less than 2 full financial years of audited accounts for an entity applying for admission under the assets test 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.¹⁹⁹

ASX may also 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, for release to the market as supplemental pre-quotation disclosure.²⁰⁰ This may include, for example, audited or reviewed accounts that the applicant has prepared for the purposes of meeting ASIC’s guidance in RG 228 that would not otherwise be required to be lodged with ASX under the specific requirements in Listing Rules 1.2.3 and 1.3.5.²⁰¹

3.12 Working capital requirements for entities applying under the assets test

An entity applying for admission under the assets test²⁰² that is not an investment entity²⁰³ must meet the following additional requirements:

- * its listing prospectus, PDS or information memorandum must:
 - * state the objectives the entity is seeking to achieve from its admission and any capital raising undertaken in connection with its admission;²⁰⁴ and

¹⁹⁸ 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.

¹⁹⁹ Pursuant to its power in that regard under Listing Rule 1.17.

²⁰⁰ Again, pursuant to its power in that regard under Listing Rule 1.17.

²⁰¹ 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.

²⁰² Entities applying for admission under the profit test are not required to comply with these working capital requirements as it is assumed that because they have been profitable for a 3 year period, they should be generating sufficient working capital to support themselves.

²⁰³ The definition of “investment entity” is set out in note [177477](#) above.

²⁰⁴ Listing Rule 1.3.3(a).

- * 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 objectives, or else the entity must give ASX an equivalent statement from an independent expert;²⁰⁵ and
- * its working capital, as shown in its reviewed pro forma statement of financial position under Listing Rule 1.3.5(d), must be at least \$1.5 million.²⁰⁶

ASX generally will not grant a waiver of the requirement for an entity to have minimum working capital of \$1.5 million, even where the entity has available to it funding facilities that it can draw upon to obtain this amount of working capital, if and when it is required.²⁰⁷

For these purposes, “working capital” is defined as the difference between an entity’s current assets and its current liabilities.²⁰⁸

Assets and liabilities should only be classified as “current” if they meet the requirements in this regard in Australian Accounting Standard AASB 101 *Presentation of financial statements*.²⁰⁹ In accordance with that standard, ASX will not accept deferred tax assets as a current asset for these purposes.²¹⁰ Nor will ASX accept a building under construction as a current asset, even if the entity expects to complete and sell the building “within its normal operating cycle”.²¹¹

ASX recognises that entities will often approach the market for capital progressively, as they prove up their business model.²¹² This is particularly so for entities with speculative or start-up businesses. Junior explorers, for example, will often raise only enough capital at the time of their initial public offering (“IPO”) to conduct their initial drilling program, with the intention of raising further capital if the initial drilling program confirms the prospectivity of their mining tenement. ASX has no issues with this as long as the entity meets the minimum \$1.5 million working capital requirement mentioned above and:

- the entity is clear in its listing prospectus, PDS or information memorandum what business objectives it is trying to achieve with the funds raised in its IPO;
- those business objectives appear to ASX to be [a](#)-reasonable in the context of the applicant’s business;
- the entity’s working capital statement confirms that it will have enough working capital to achieve those business objectives and ASX has no concerns about the accuracy or basis of this statement; and
- the entity’s listing prospectus, PDS or information memorandum clearly discloses that the entity will need to raise further capital if it successfully achieves those business objectives, as well as the risks and consequences of it not achieving those business objectives.

ASX has, however, had issues with applicants for listing with a reasonably well established business making substantial losses, where the amount of capital they are seeking to raise at the minimum subscription level appears to ASX to be insufficient to sustain their business for any reasonable length of time. In such cases, ASX may question the sufficiency of the capital being raised by the entity and/or the basis on which the directors have made their working capital statement. ASX may require the entity to disclose in its listing prospectus or PDS how long it expects to be able to fund its business if it only raises its minimum subscription and the likelihood and risks of it

²⁰⁵ Listing Rule 1.3.3(b). If the working capital statement is provided by an independent expert, ASX will release it to the market by way of pre-quotation disclosure.

²⁰⁶ Listing Rule 1.3.3(c).

²⁰⁷ If an entity is obtaining some or all of its minimum \$1.5 million working capital via a funding facility, the working capital must have been drawn down and be available for use as a current asset.

²⁰⁸ Listing Rule 19.12.

²⁰⁹ Listing Rule 19.11A.

²¹⁰ See paragraph 56 of AASB 101 (December 2022).

²¹¹ See paragraph 66(a) of AASB 101 (December 2022).

²¹² Being able to raise capital progressively is in the interests of both entities and investors – it enables entities to raise capital efficiently as and when they need it and investors to provide that capital as a clearer picture of the entity’s prospects emerges.

having to undertake a further capital raising in the not too distant future. ASX will also look carefully at the way in which the entity has framed its business objectives and its working capital statement in its listing prospectus or PDS to ensure they are consistent with such disclosures.

It should be noted that a working capital statement is a forward-looking statement and must be based on reasonable grounds.²¹³ 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 expert²¹⁴ or it may refuse to admit the applicant to the official list.²¹⁵ This applies whether or not the entity has met the \$1.5 million working capital requirement, which is a minimum requirement only.

3.13 Restricted securities

An entity seeking admission in the ASX Listing category that has issued or proposes to issue "restricted securities" before or in connection with its admission to the official list, must comply with Chapter 9 of the Listing Rules.²¹⁶ Among other things that chapter requires the entity to give a restriction notice to the holder in the form of Appendix 9C, notifying them of the applicable restrictions.

If:

- (a) in the 2 years prior to the date of the entity's application for admission to the official list the entity has acquired; or in connection with its listing is proposing to acquire, a classified asset²¹⁷ from a related party or a promoter, or an associate of a related party or promoter, of the entity, the consideration for the acquisition must have been, or be, equity securities issued by the entity and those securities must be restricted securities; or
- (b) in the 12 months prior to its admission to the official list the entity has acquired, or in connection with its listing is proposing to acquire, a classified asset from someone who is not a related party or promoter, or an associate of a related party or promoter, of the entity and part or all of the consideration for the acquisition was or will be securities in a class that is to be quoted, those securities must be restricted securities,²¹⁸

Paragraphs (a) and (b) above do not apply if under Listing Rule 9.2²¹⁹ the entity is not required to apply the restrictions in Appendix 9B. Paragraph (a) above also does not apply if, and to the extent that, the consideration was or is reimbursement of expenditure incurred by the related party, promoter or associate in developing the classified asset.²²⁰

Restricted securities are placed in escrow and not quoted on ASX until the expiry of the escrow period. This effectively prevents their transfer or other disposal during that period.

²¹³ See sections 728(2) and 769C of the Corporations Act.

²¹⁴ Under Listing Rule 1.17.

²¹⁵ Using its general discretion in that regard under Listing Rule 1.19.

²¹⁶ Listing Rule 1.1 condition 10.

²¹⁷ A "classified asset" is defined in Listing Rule 19.12 as:

- (a) an interest in a mining tenement or petroleum tenement that is substantially explorative or unproven;
- (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) or (c) above.

²¹⁸ Listing Rule 1.1 conditions 11(a) and (b) respectively.

²¹⁹ Listing Rule 9.2 provides that unless ASX decides otherwise, the escrow restrictions in Appendix 9B of the Listing Rules do not apply to an entity that is admitted under the profit test in Listing Rule 1.2, that otherwise has a track record of profitability acceptable to ASX or that, in the opinion of ASX, has a substantial proportion of its assets as tangible assets or assets with a readily ascertainable value.

²²⁰ For guidance on what ASX will permit by way of cash reimbursement, see section 4.4 of Guidance Note 11 *Restricted Securities and Voluntary Escrow*.

Further guidance on the escrow requirements applicable to restricted securities can be found in Guidance Note 11 *Restricted Securities and Voluntary Escrow*.

An editable version of the Appendix 9C restriction notice²²¹ can be downloaded from the ASX website.

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 Spreadsheet. An editable version of the spreadsheet can also be downloaded from the ASX website. The Restricted Securities Spreadsheet should include the following details in respect of each class of securities on issue (eg ordinary shares, preference shares, performance securities, options, convertible notes, etc):

- * the full name of the holder;
- * the holder's relationship with the applicant (eg related party, promoter, professional adviser etc);
- * the total number of securities held by the holder;
- * the date of issue of the securities (if a holder was issued securities on more than one occasion, details of each issue should be listed separately in the spreadsheet);
- * the issue price of the security; and
- * the nature of the consideration given by the holder for the issue of the securities (eg cash, assets, services, etc).

Where restricted securities have been transferred after issue, the information above should be provided in respect of the transferor.²²²

The spreadsheet will automatically calculate the applicable escrow period of each holding and, where cash formula relief applies, the number of securities that are required to be restricted.

Changes to the information contained in the Restricted Securities Spreadsheet (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.

ASX will impose as a standard condition of admission on all listings that are subject to escrow that a sample of any restriction notice and a list with the names, addresses and security holdings of all recipients of the notice is provided to ASX no later than 5 business days prior to its anticipated date of admission to the official list. This is to allow ASX to satisfy itself that the entity has complied with its escrow obligations before quotation commences.

The application of ASX's escrow requirements to a new listing can be complex. The Listing Rules also confer substantial discretions on ASX in terms of imposing or modifying escrow requirements. ASX would therefore strongly recommend that an entity contemplating a listing that may be subject to escrow²²³ have early discussions with ASX on how ASX is likely to apply the escrow requirements in its particular circumstances.

²²¹ These are standard form notices and ASX will not agree to any changes. Hence, any edits to a restriction notice should be confined to inserting the name of the entity and the holder at the start of the notice, the particulars of the restricted securities and escrow period in the schedule, the date of the notice and an appropriate execution clause for the entity.

²²² Under paragraph 9 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.

²²³ Because it will not fall within the exceptions to escrow in Listing Rule 9.2 described in note [219249](#) above.

3.14 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.²²⁴ This requirement applies even where the options are not intended to be quoted.

It should be noted that some instruments labelled as ‘performance rights’ or ‘warrants’, properly construed, confer an option over an issued or unissued share and will therefore need to have a minimum exercise price for each underlying security of at least 20 cents in cash or else ASX must have granted a waiver from this requirement.

3.15 Person responsible for communications

An entity seeking admission in the ASX Listing category must appoint at least one person to be responsible²²⁵ for communication with ASX in relation to Listing Rule matters.²²⁶ It can, if it wishes, appoint more than one person to cater for one of its contacts being absent or on leave.

Each person so 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,²²⁷

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.²²⁸

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

²²⁴ Listing Rule 1.1 condition 12.

²²⁵ 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.

²²⁶ 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 Listing)* 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.

²²⁷ 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.

²²⁸ 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.

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.

3.16 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.²²⁹

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 ASX Online. An editable version of the ASX Online Agreement can be downloaded from the ASX website. 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.

3.17 ASX Corporate Governance [Council recommendations Principles and 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 out in the ASX](#) Corporate Governance Principles and Recommendations.²³⁰

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.²³¹

[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.](#)

3.18 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 out in](#) the ASX Corporate Governance [Council Principles and Recommendations](#) in relation to the composition and operation of the audit committee.²³²

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.

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 & Poor's (S&P).

²²⁹ Listing Rule 1.1 condition 14.

²³⁰ Listing Rule 1.1 condition 16.

²³¹ 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.

²³² Listing Rule 1.1 condition 17.

3.19 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.²³³

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.

3.20 Trading policy

An entity seeking admission in the ASX Listing category must have a trading policy that complies with Listing Rule 12.9.²³⁴ A copy of the trading policy must accompany the application.

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

3.21 Directors, CEO and CFO must be of good fame and character

An entity seeking admission in the ASX Listing category must satisfy ASX:

- if it is a body corporate, that each director or proposed director of the entity, its CEO or proposed CEO, and its CFO or proposed CFO; or
- if it is a trust, that each director or proposed director of the responsible entity, the responsible entity's CEO or proposed CEO, and the responsible entity's CFO or proposed CFO,

at the date of listing (together, "relevant officers") is of good fame and character.²³⁵

The references to a "proposed director", "proposed CEO" or "proposed CFO" at the date of listing are intended to capture persons named in the entity's listing prospectus, PDS or information memorandum as persons to be appointed to those roles after the entity's admission to the official list.

For these purposes, the applicant is required to include with their application for each relevant officer:²³⁶

- (1) if they are, or have been in the past 10 years, a resident of Australia, an original or certified true copy of:
 - (a) a national criminal history check²³⁷ obtained from the Australian Federal Police, a State or Territory police service or a broker accredited by the Australian Criminal Intelligence Commission;²³⁸ and
 - (b) a search of the Australian Financial Security Authority National Personal Insolvency Index,²³⁹
 in each case, which is not more than 12 months old;
- (2) if they are, or have been in the past 10 years, a resident of [a](#) country other than Australia, an original or certified true copy of:

²³³ Listing Rule 1.1 condition 18.

²³⁴ Listing Rule 1.1 condition 19.

²³⁵ Listing Rule 1.1 condition 20.

²³⁶ The *Information Form and Checklist (ASX Listing)* that must accompany an Appendix 1A application form requires the applicant to provide these documents.

²³⁷ A national criminal history check in Australia covers offences at a federal, state and territory level.

²³⁸ Refer to the Australian Criminal Intelligence Commission's website for a list of accredited brokers.

²³⁹ The National Personal Insolvency Index provides information about individuals who have been subject to proceedings under the *Bankruptcy Act 1966* (Cth).

- (a) an equivalent national²⁴⁰ criminal history check²⁴¹ to that mentioned in (1)(a) above for each country in which they have 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 them confirming that fact and that they have not been convicted in that country of:
 - (i) any criminal offence involving fraud, dishonesty, misrepresentation, concealment of material facts or breach of their duties as a director or officer of a company or other entity; 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 they were sentenced),

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 check²⁴² to that mentioned in (1)(b) above for each country in which they have 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 them confirming that fact and that they have 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;

ASX will only accept a statutory declaration in place of a national criminal history check or a bankruptcy check where those checks are not available from the country in question and the entity provides satisfactory evidence to ASX that this is the case.

- (3) a statutory declaration from each relevant officer specifying whether they have used any other name or alias in the past 10 years and confirming that:
 - (a) they have not been the subject of any criminal or civil penalty proceedings or other enforcement action by any government agency in which they were found to have engaged in behaviour involving fraud, dishonesty, misrepresentation, concealment of material facts or breach of duty;
 - (b) they have not been refused membership of, or had their membership suspended or cancelled by, any professional body on the ground that they have engaged in behaviour involving fraud, dishonesty, misrepresentation, concealment of material facts or breach of duty;
 - (c) they have 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 their obligations as a director or officer of a listed entity;
 - (d) no listed entity of which they were a relevant officer (or, in the case of a listed trust, in respect of which they were a relevant officer of the responsible entity of the trust) 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

²⁴⁰ Where the relevant officer has resided in a federation (such as the US), the criminal history check should cover both federal offences and state offences in any state where the relevant officer has resided in the past 10 years. Information about foreign authorities that can provide criminal history checks may be found on the Department of Immigration and Border Protection website.

²⁴¹ ASX will accept a national criminal history check for a country other than Australia from a broker acceptable to ASX. ASX has previously accepted such checks from AIM Screening Pty Limited (trading as 'RISQ Group'), CV Check Ltd and People Check Pty Ltd.

²⁴² ASX will accept a national bankruptcy check for a country other than Australia from a broker acceptable to ASX. ASX has previously accepted such checks from AIM Screening Pty Limited (trading as 'RISQ Group'), CV Check Ltd and People Check Pty Ltd.

- (e) they are 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 they are 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 the ASX website.

If a relevant officer has used another name or alias (including a maiden name or married name) in the past 10 years, the criminal record and bankruptcy checks referred to in (1) and (2) above must cover all of the names or aliases the relevant officer has used over that period.

Example

A relevant officer of an applicant for listing has resided in New York, USA for 6 years and Australia for 4 years before its listing application is lodged with ASX. The applicant will need to provide ASX with the following “good fame and character” documentation for that person:

- * for a criminal history check:*
 - * an original or certified true copy of a criminal history check obtained from the FBI or from a third party search provider which covers US federal level offences committed during the 6 years they resided in New York;*
 - * an original or certified true copy of a criminal history check from a third party search provider which covers state level offences in New York committed during the 6 years they resided in New York; and*
 - * a national criminal history check obtained from the Australian Federal Police, a State or Territory police service or a broker accredited by the Australian Criminal Intelligence Commission covering the 4 years they resided in Australia;*
- * for a bankruptcy check:*
 - * an original or certified true copy of a bankruptcy check obtained from the Public Access to Court Electronic Records database or an original or certified true copy of a bankruptcy check obtained from a third party search provider which covers the 6 years they resided in New York; and*
 - * a search of the Australian Financial Security Authority National Personal Insolvency Index which covers the 4 years they resided in Australia; and*
- * a statutory declaration covering the matters in (3) above.*

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.

In considering whether the applicant’s relevant officers meet the “good fame and character” requirement, ASX will primarily have regard to the criminal record and bankruptcy checks and statutory declaration mentioned above. However, ASX may also have regard to any other information in its possession about a relevant officer from any source, including any prior dealings ASX may have had with the relevant officer in any capacity, and may require an applicant for listing to provide additional information about the background of its relevant officers.²⁴³

²⁴³ Listing Rule 1.17.

Where ASX has removed an entity from the official list or censured an entity for breaching the listing rules,²⁴⁴ any officer of the entity who in ASX's opinion was culpably responsible for the breach or breaches is likely to have some difficulty in satisfying ASX that they are of good fame and character.

It should be noted that ASX will not waive its "good fame and character" requirements. If an applicant is not able to provide the criminal record and bankruptcy checks and statutory declaration mentioned above for a relevant officer and it wants to proceed with its listing:

- * in the case of an existing relevant officer, the relevant officer will need to resign before the applicant is admitted to the official list and the applicant will need to provide a written undertaking to ASX that it will not re-appoint that person as a relevant officer; and
- * in the case of a proposed relevant officer, the applicant will need to provide a written undertaking to ASX that it will not appoint that person as a relevant officer,

in each case until it has received documentation acceptable to it and to ASX confirming their "good fame and character".

It should also be noted that, in an appropriate case, ASX may require "good fame and character" checks from persons who are not currently, or proposed to be, relevant officers of the entity (or, in the case of a trust, relevant officers of the responsible entity of the trust) but who are likely to be involved in its management.²⁴⁵ This is especially so if ASX has any inkling that the reason they are not being appointed as a relevant officer is to avoid ASX's good fame and character requirements for relevant officers.²⁴⁶ Alternatively, ASX may simply exercise its absolute discretion not to admit the entity in these circumstances.²⁴⁷

3.22 Additional requirements for foreign entities

A foreign company²⁴⁸ seeking admission as an ASX Listing must be registered as a foreign company carrying on business in Australia under the Corporations Act.²⁴⁹ 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 trust²⁵⁰ 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.²⁵¹ If it registers as a managed investment scheme, this effectively converts it into an Australian trust for the purposes of the Listing Rules.²⁵²

A foreign trust that is exempted from the requirement to be a registered managed investment scheme must have as its responsible entity either an Australian company or an entity that is registered as a foreign company carrying

²⁴⁴ Under Listing Rules 17.12 (removal from official list) and 18.8A (censure). In each case, ASX will generally only impose these sanctions where the breach or breaches are egregious.

²⁴⁵ Pursuant to Listing Rule 1.17. ASX may also require disclosure of any material information revealed by the good fame and character checks in the entity's listing prospectus, PDS or information memorandum.

²⁴⁶ An example ASX has encountered is a person who was the largest shareholder in a company applying to list on ASX who had been appointed as the company secretary but not as a director of the company. Another example involved the largest investor in a company the subject of a back door listing who was known to have issues with his fame and character and who was being appointed as a consultant to the board when two other investors with smaller shareholdings were being appointed as directors. In each case, ASX considered this a fairly transparent attempt to circumvent ASX's good fame and character requirements for directors but to allow the individual to attend board meetings in an official capacity and act as a de facto director.

²⁴⁷ Pursuant to Listing Rule 1.19.

²⁴⁸ "Foreign company" means a body corporate that is not formed or established in Australia (see Listing Rule 19.12).

²⁴⁹ Listing Rule 1.1 condition 4.

²⁵⁰ "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).

²⁵¹ Listing Rule 1.1 condition 5(a).

²⁵² See the definition of "Australian trust" in Listing Rule 19.12.

on business in Australia under the Corporations Act.²⁵³ 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 entity²⁵⁴ 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, PDS or information memorandum 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 summary²⁵⁵ of the rights and obligations of security holders under the law of its home jurisdiction²⁵⁶ 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;
 - 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;
- a concise summary²⁵⁷ of how the disclosure of substantial holdings and takeovers are regulated under the law of its home jurisdiction; and
- a summary of any taxes or duties payable in its place of incorporation, registration or establishment by an investor in relation to the acquisition, holding or disposal of securities in the entity or, if there are no such taxes or duties, a statement to that effect.

Where the entity has CDIs issued over its securities, the information above in the entity’s listing prospectus, PDS or information memorandum should be supplemented to explain the specific rights and obligations of CDI holders

²⁵³ Listing Rule 1.1 condition 5(b).

²⁵⁴ “Foreign entity” means a foreign company or a foreign trust (see Listing Rule 19.12 and notes [248248](#) and [250250](#) above).

²⁵⁵ 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.

²⁵⁶ 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.

²⁵⁷ See note [255255](#) above.

under the entity's local law. Guidance Note 5 *CHESS Depositary Interests* has further guidance on the requirements for entities that have CDIs issued over its securities.

If the information above is not included in the foreign entity's listing prospectus, PDS or information memorandum, ASX will require the information to be given to ASX as supplemental pre-quotation disclosure for release to the market.²⁵⁸

3.23 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 Settlement²⁵⁹ 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.²⁶⁰

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 rules²⁶¹ of the CHESS facility²⁶² and also have its main class of securities approved for participation in that facility.²⁶³ 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.²⁶⁴ The entity is responsible for establishing its own issuer sponsored subregister for its quoted securities²⁶⁵ 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.²⁶⁶ To issue CDIs, the entity must be approved as a foreign issuer of CDIs under the operating rules of the CHESS facility²⁶⁷ and also have its CDIs approved for participation in that facility.²⁶⁸ Once these approvals have been obtained, ASX Settlement will then establish the CHESS 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 CDIs²⁶⁹ and, again, in practice, will usually engage an Australian registry to establish and administer that subregister on its behalf.

²⁵⁸ Using its powers in this regard under Listing Rule 1.17.

²⁵⁹ ASX Settlement Pty Limited, a wholly owned subsidiary of ASX and the operator of the ASX Settlement facility.

²⁶⁰ 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.

²⁶¹ References to the operating rules of the CHESS facility mean the ASX Settlement Operating Rules.

²⁶² Listing Rule 1.1 condition 15(a).

²⁶³ 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).

²⁶⁴ Pursuant to ASX Settlement Operating Rules 8.1.3, 8.6.1 and 8.6.2.

²⁶⁵ Listing Rule 8.2.

²⁶⁶ 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*.

²⁶⁷ Listing Rule 1.1 condition 15(b).

²⁶⁸ Listing Rule 2.1 condition 3(b) and ASX Settlement Operating Rule 13.2.1.

²⁶⁹ Listing Rule 8.2.

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 CHESS facility.²⁷⁰

It should be noted that ASX's CDI facility can only be availed of by an entity that is established in a place overseas whose laws have the effect that CHESS cannot be used for holding legal title to its securities. An entity that is established in Australia or in a place overseas whose laws allow CHESS to be used for holding legal title to its securities must have its securities (rather than CDIs) approved for participation in CHESS.²⁷¹ If there is any doubt on this issue, ASX may ask the entity to provide an opinion from a legal practitioner in the overseas jurisdiction acceptable to ASX to clarify that doubt.

4. Other issues

4.1 The role of the *Information Form and Checklist (ASX Listing)*

The *Information Form and Checklist (ASX Listing)* that must accompany an Appendix 1A application is broken into two parts. Part 1 asks for various information about the applicant and its officers and advisers so that it can be set up in ASX's systems, both for the purposes of processing its listing application and, if the application is successful, the inclusion of its securities in ASX's trading, clearing and settlement systems. Part 2 is a checklist that the applicant must complete to confirm that it meets all of ASX's requirements for admission to the official list as an ASX Listing and has provided all of the information and documents ASX requires in that regard.

ASX would observe that a good deal of the information referred to in Part 2 of the *Information Form and Checklist (ASX Listing)* would typically need to be included in the applicant's listing prospectus, PDS or information memorandum, on the basis that it is material information for investors.²⁷² By way of example this includes (without limitation):

- a diagram showing the group structure of the entity, identifying (where applicable) each material child entity and the nature and location of the business activities it undertakes;
- if the entity has any child entities, a list of all material child entities stating, in each case, its name, where it is incorporated or established, the nature of its business and the entity's percentage holding in it;
- if the entity has any investments in associated entities for which it will apply equity accounting, a list of all associated entities stating, in each case, its name, where it is incorporated or established, the nature of its business and the entity's percentage holding in it;
- if the entity has a material interest in a joint venture, a description of the joint venture agreement, including the parties to the agreement and their respective rights and obligations under the agreement;
- if the entity does not hold its material assets and business operations directly itself or indirectly through a child entity, an explanation of why that structure has been employed and the risks associated with it;
- a table showing the existing and proposed capital structure of the entity, broken down as follows:
 - the number and class of each equity security and each debt security currently on issue;
 - the number and class of each equity security and each debt security proposed to be issued between the date of the application and the date the entity is admitted to the official list;
 - the resulting total number of each class of equity security and debt security proposed to be on issue at the date the entity is admitted to the official list; and

²⁷⁰ ASX Settlement Operating Rule 8.1.1 and Procedure 8.1.1.

²⁷¹ This is the combined effect of Listing Rule 1.1 condition 15, Listing Rule 2.1 condition 3 and Appendix 1A clauses 11 and 12.

²⁷² Hence the questions in Part 2 of the *Information Form and Checklist (ASX Listing)* are often framed as: "Where in the Offer Document is there ...?"

- the number and class of each equity security proposed to be issued following admission in accordance with material contracts or agreements;²⁷³
- if any of the securities referred to in the capital table are not ordinary securities, the terms applicable to those securities;²⁷⁴
- a description of the history of the entity;
- a description of the entity's existing and proposed activities;
- a description of the material business risks the entity faces;
- a table setting out the proposed use of the proceeds of the offer;
- a description of the entity's proposed dividend/distribution policy; and
- if the entity has or proposes to have an employee incentive scheme, the existence and material terms of the scheme and a statement as to whether directors are entitled to participate in the scheme and, if they are, the extent to which they currently participate or are proposed to participate.

4.2 Accounts that fall due after the lodgement of a listing application

If a reporting deadline passes after an entity has lodged its application for admission, but before it is admitted, to the official list, ASX will require the entity to lodge audited (or in the case of a half year end, audited or reviewed) accounts for the relevant reporting period as a condition of admission and release them as pre-quotation disclosure. The accounts lodged must be tier 1 general purpose financial statements and comply with the periodic reporting obligations in [Chapter 4](#) of the Listing Rules, as if the entity were already listed.

In addition to the above requirement, if a reporting deadline passes after an entity has lodged its application for admission, but before it is admitted to the official list, ASX may also require an applicant to provide an updated reviewed pro-forma statement of financial position based on the relevant reporting period as a condition of admission and released as pre-quotation disclosure.

The same broadly applies if the entity is applying for admission under the assets test and it 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 business that is significant in the context of the entity and a reporting deadline passes for that other entity or business – if the results of that other entity or business have not been consolidated into the applicant's most recent financial statements lodged with ASX, ASX will require the applicant to lodge audited (or in the case of a half year end, audited or reviewed) accounts for that other entity or business for the relevant reporting period as a condition of admission and release them as pre-quotation disclosure.

To illustrate, suppose an entity ("Listco") with a 30 June balance date is seeking to be admitted under the assets test. It lodges its application for admission to the official list with ASX on 1 February 2025. Listco is admitted to the official list on 5 May 2025. Suppose further:

- Listco is an operating business. Listco's audited accounts for the years ended 30 June 2023 and 30 June 2024 are lodged with the application. However, Listco's accounts for the half year ended 31 December 2024 are not included as they have not yet been finalised. ASX will require Listco to provide to ASX audited or

²⁷³ This applies whether the securities are to be quoted on ASX or not. If the entity is proposing to issue a minimum, maximum or oversubscription number of securities, the table should be presented to disclose each scenario.

²⁷⁴ Again, this applies whether the securities are to be quoted on ASX or not. For equity securities (other than options to acquire unissued securities or convertible debt securities), this should state whether they are fully paid or partly paid; if they are partly paid, the amount paid up and the amount owing per security; voting rights; rights to dividends or distributions; and conversion terms (if applicable). For options to acquire unissued securities, this should state the number outstanding, exercise prices; exercise terms and expiry dates. For debt securities or convertible debt securities, this should state their nominal or face value; rate of interest; dates of payment of interest; date and terms of redemption; and conversion terms (if applicable).

reviewed accounts for Listco for the half year ended 31 December 2024 as a condition of admission and they will be released by ASX as pre-quotation disclosure.

- Listco is acquiring an operating entity (“Opco”) which is significant in the context of Listco and which also has a 30 June balance date. Listco’s and Opco’s audited accounts for the years ended 30 June 2023 and 30 June 2024 are lodged with the application. However, Listco’s and Opco’s accounts for the half year ended 31 December 2024 are not included as they have not yet been finalised. Listco completes the acquisition of Opco on 30 April 2025 just prior to its admission to the official list on 5 May 2025. ASX will require Listco to provide to ASX audited or reviewed accounts for Listco and Opco for the half year ended 31 December 2024 as a condition of admission and they will be released by ASX as pre-quotation disclosure.
- Listco is a newly incorporated shell entity undertaking a “roll-up” listing of a number of businesses, none of which is significant in the context of Listco. It lodged with its application pro forma audited accounts on an aggregated basis for the rolled up entity for the year ended 30 June 2024.²⁷⁵ Listco completes the acquisitions of the businesses on 30 April 2025 just prior to its admission to the official list on 5 May 2025. ASX will require Listco to provide to ASX pro forma audited or reviewed accounts on an aggregated basis for the rolled up entity for the half year ended 31 December 2024 as a condition of admission and they will be released by ASX as pre-quotation disclosure.

4.3 Disclosure of adviser fees and perquisites

Part 2 of the *Information Form and Checklist (ASX Listing)* will ask the applicant, if an adviser to its IPO has a material interest in the success of the IPO over and above normal professional fees for services rendered in connection with the IPO, where in its listing prospectus or PDS is there a clear and concise statement explaining in one location all of the interests that adviser has in the success of the IPO, including (without limitation):

- the number and type of securities in the entity in which the adviser and its associates²⁷⁶ currently have a relevant interest;
- details of the consideration paid or provided by the adviser or its associates for the securities referred to in (a) above;
- the fees or other consideration the adviser or an associate may receive for services provided in connection with the IPO;
- the fees or other consideration the adviser or an associate may receive under any ongoing mandate they may have with the entity post the IPO;
- if the consideration in (c) or (d) above includes any convertible securities (including options, performance shares or performance rights), details of the number and terms of those securities, the percentage of the entity’s issued capital at listing they will convert into if they are converted, the value the entity believes the convertible securities are worth and the basis on which the entity has determined that value; and
- if the adviser or any of its associates have participated in a placement of securities by the entity in the preceding 2 years, full details of the securities they received in the placement and the consideration they paid or provided for those securities?

If there is an adviser who has a material interest in the success of the IPO over and above normal professional fees for services rendered in connection with the IPO, ASX will expect the information above to be clearly disclosed immediately after the “use of proceeds” section of the entity’s listing prospectus or PDS.

4.4 Disclosure of placements involving related parties, promoters or advisers

ASX sometimes comes across situations where an entity contemplating a listing and IPO will undertake an issue of securities to related parties, promoters, professional advisers involved in the transaction, and their family, friends

²⁷⁵ See example 9 in Annexure B.

²⁷⁶ See note [146146](#) above.

and associates, at a significant discount to the anticipated IPO price. If it has and ASX forms the view that the purpose of the issue was not to raise genuinely needed seed capital but rather to confer a benefit on the recipients through the prospective re-pricing of their securities if the IPO is successful, ASX is likely to classify those securities as restricted securities,²⁷⁷ making them subject to the escrow requirements in Chapter 9 and Appendices 9B and 9C of the Listing Rules.²⁷⁸ ASX is also likely to designate the recipients as promoters,²⁷⁹ subjecting their securities to escrow for 2 years from the date the entity is quoted on ASX. In an egregious case, ASX may exercise its absolute discretion²⁸⁰ not to admit the entity to the official list or not to quote the securities in question.

To enable ASX to identify these types of situations, Part 2 of the *Information Form and Checklist (ASX Listing)* will ask the applicant to state whether it has undertaken a placement of securities in the last 2 years in which a related party or their associates, a promoter or their associates, or an adviser involved in the IPO or their associates, have participated and, if it has, to attach a statement:

- explaining the circumstances of the placement;
- listing the names and addresses of the participants in the placement, the number of securities they received in the placement and the consideration they provided for those securities; and
- identifying the participants in the placement who are a related party or associate of a related party, a promoter or associate of a promoter, or an adviser or an associate of an adviser.

4.5 Disclosure of certain information about bookbuilds

Part 2 of the *Information Form and Checklist (ASX Listing)* will ask the applicant to indicate whether it proposes to undertake an offer of securities by way of bookbuild in conjunction with its listing and, if it does, to confirm that it is aware of the disclosure requirements for bookbuilds in Annexure A to this Guidance Note.

Where the applicant so indicates, ASX will impose a condition on the quotation of its securities²⁸¹ that it disclose the information referred to in Annexure A to this Guidance Note.

This requirement does not apply where an applicant has completed a front-end bookbuild prior to lodgement of its prospectus or PDS and listing application.

²⁷⁷ Using its powers in that regard under paragraph (b) of the definition of “restricted securities” in Listing Rule 19.12 (if they are not already restricted securities under paragraph (a) of that definition).

²⁷⁸ See ‘3.13 Restricted securities’.

²⁷⁹ Using its powers in that regard under paragraph (c) of the definition of “promoter” in Listing Rule 19.12 (if they are not already promoters under paragraphs (a) and (b) of that definition).

²⁸⁰ Under Listing Rules 1.19 and 2.9 respectively.

²⁸¹ Pursuant to Listing Rule 2.9.

Annexure A: Disclosure of information about bookbuilds

Where an entity indicates to ASX that it has undertaken an offer of securities by way of bookbuild in connection with its application for listing, ASX will require²⁸² 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 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.

²⁸² Pursuant to Listing Rules 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 \$1.03.²⁸³

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.

²⁸³ 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 '3.9 Minimum spread').

Annexure B: Overview of ASX and ASIC accounts requirements

The table below summarises the different accounts requirements an applicant for listing must meet under the ASX Listing Rules and under ASIC Regulatory Guide 228 *Prospectuses: Effective disclosure for retail investors* (“RG 228”).²⁸⁴ It covers most common scenarios but is not intended to be exhaustive. As it is a summary only, applicants should carefully consider the applicable provisions in ASX Listing Rules and RG 228. Applicants for listing who are unsure of ASX’s accounts requirements should speak to ASX Listings Compliance. Applicants for listing who are unsure of ASIC’s accounts requirements should speak to ASIC.

For simplicity, the table below assumes that the entity applies to ASX for admission to the official list on the same date as its listing prospectus or PDS is lodged with ASIC.

By way of introduction, the accounts requirements an applicant for listing must meet under the Listing Rules are summarised above in sections 3.10, 3.11 and 4.2 above. ASX’s requirements can be met by reproducing the full set of accounts (including the notes and audit or review reports) in the applicant’s listing prospectus, PDS or information memorandum or by separately lodging the relevant accounts with ASX by way of pre-quotation disclosure.²⁸⁵

As a general rule, under RG 228, ASIC expects an applicant for listing that has an existing business to include in its listing prospectus:²⁸⁶

- an audited consolidated statement of financial position for the most recent financial year or audited or reviewed consolidated statement of financial position for the most recent half year (depending on the date of the applicant’s prospectus) showing the major asset, liability and equity groups and a corresponding reviewed pro forma statement of financial position showing the effect of the offer and any acquisitions contemplated to occur in conjunction with the offer.
- the following audited financial information²⁸⁷ for the three most recent financial years or audited information for the most recent two financial years and reviewed information for the most recent half year (depending on the date of the applicant’s prospectus):
 - a consolidated income statement showing major revenues and expense items, and profit or loss, including earnings before interest and taxes (EBIT) and net profit after tax (NPAT);
 - a consolidated cash flow statement showing, at a minimum, operating and investing cash flows;
 - other information that is material from financial statements, notes to the financial statements and other documents attached to the financial report;²⁸⁸ and
 - any modified opinion by the auditor (eg a going concern emphasis of matter or qualification);
- all events that have had a material effect on the applicant since the date of the most recent financial statements; and
- a warning that past performance is not a guide to future performance.

²⁸⁴ RG 228 only covers ASIC’s disclosure expectations for a prospectus lodged with ASIC and does not address its expectations in relation to a listing PDS. However, ASX understands that ASIC will generally draw appropriate analogies from RG 228 where a PDS is required rather than a prospectus.

²⁸⁵ Typically the reviewed pro forma statement of financial position required by ASX under Listing Rule 1.2.3(c) or 1.3.5(d) will be included in the applicant’s listing prospectus, PDS or information memorandum rather than separately lodged with ASX.

²⁸⁶ RG 228.87. As there noted, this general rule does not apply in the circumstances outlined in RG 228.102.

²⁸⁷ A note to RG 228.87 also recommends that the applicant consider providing pro forma income and cash flow statements for this period.

²⁸⁸ Examples of other material information will depend on the specific circumstances and may include matters such as details of material exposures through financial instruments and contingent liabilities, and details of any related party transactions or unusual transactions: see RG 228.87(b)(iii).

If the applicant is proposing to acquire a business, ASIC expects its prospectus to include the same financial information as set out above for that business.²⁸⁹

However, if the applicant is proposing to acquire assets rather than a business and is also a start-up or newly incorporated entity with no existing business and nominal assets and liabilities, ASIC only expects its prospectus to include its most recent audited or reviewed statement of financial position and a corresponding reviewed pro forma statement of financial position showing the effect of the offer and any acquisitions contemplated to occur in conjunction with the offer.²⁹⁰

ASIC expects the financial information included in a prospectus to be current. For these purposes, ASIC generally²⁹¹ considers financial information to be current if it is extracted from:

- where the prospectus is lodged with ASIC less than 3 months after year end (ie before the next year-end audited financial statements are due to be lodged with ASIC), the most recent half year audited or reviewed financial statements; or
- where the prospectus is lodged with ASIC less than 75 days after half year end (ie before the next half year audited or reviewed financial statements are due to be lodged with ASIC), the most recent financial year audited financial statements.²⁹²

However, if an applicant seeks to use a prospectus after it has commenced business and before it has completed its first financial year end audit, ASIC will expect the financial information in its half year accounts (or lesser period) to be audited rather than reviewed.²⁹³

In the table below, references to accounts for a financial year or half year mean, where an entity [has](#) only been in existence for part of that period, accounts from the date the entity was established to its financial year end or half year end (as applicable).

Where the table below refers to accounts being required for a period from when an entity commenced business, practically [speaking](#), the entity may prefer to compile and audit accounts from the date of its establishment rather than the date it commenced business.

Finally, examples 10-13 in the table below deal with the situation where an applicant for listing under the assets test has in the 12 months prior to applying to ASX for admission acquired, or is proposing in connection with its application for admission to acquire, another entity ("Opco") with an operating business that is significant in the context of the applicant. If an applicant has acquired, or is proposing to acquire more than one such entity, then it should give to ASX the accounts and include in its listing prospectus the financial information required for Opco in those examples for each such entity.

²⁸⁹ RG 228.87.

²⁹⁰ RG 228.98 and 228.99. ASIC applies the guidance in Appendix B of Australian Accounting Standard AASB 3 *Business combinations* to help determine whether an entity has acquired, or is acquiring, a business rather than a collection of assets (RG 228.96).

²⁹¹ This is subject to the proviso that the existing business the subject of the fundraising has not had a major change (see RG 228.90) and has an acceptable audit history (see RG 228.91–RG 228.95).

²⁹² RG 228.89.

²⁹³ RG 228.100.

Nº	Type of applicant	Lodgement date	ASX requires lodgement of ...	ASIC expects the prospectus to include...
1.	Entity operating the same business for 3 full financial years or more applying to ASX for admission under the profit test	Less than 90 days after the end of the entity's most recent full financial year (FY X) ²⁹⁴	• Audited or reviewed accounts for the entity for 1H FY X • Audited accounts for the entity for FY X-1, X-2 and X-3 • Reviewed pro forma statement of financial position	• Audited or reviewed statement of financial position for the entity as at the end of 1H FY X • Audited or reviewed income and cash flow statements for the entity for 1H FY X and comparables for 1H FY X-1 • Audited income and cash flow statements for the entity for FY X-1 and X-2 • Reviewed pro forma statement of financial position
		More than 90 days, but less than 6 months and 75 days, after the end of FY X ²⁹⁵	• Audited accounts for the entity for FY X, X-1 and X-2 • Reviewed pro forma statement of financial position	• Audited statement of financial position for the entity as at the end of FY X • Audited income and cash flow statements for the entity for FY X, X-1 and X-2 • Reviewed pro forma statement of financial position
		More than 6 months and 75 days after the end of the FY X	• Audited or reviewed accounts for the entity for 1H FY X+1 • Audited accounts for the entity for FY X, X-1 and X-2 • Reviewed pro forma statement of financial position	• Audited or reviewed statement of financial position for the entity as at the end of 1H FY X+1 • Audited or reviewed income and cash flow statements for the entity for 1H FY X+1 and comparables for 1H FY X • Audited income and cash flow statements for the entity for FY X and X-1 • Reviewed pro forma statement of financial position
2.	Entity operating the same business for 3 full financial years or more ("Listco") applying to ASX for admission under the profit test which has since its most recent audited or reviewed accounts acquired, or is proposing in connection with its application for admission to acquire, another entity ("Addco") that is operating the same type of business	Any date	• The same accounts for Listco as for the entity applying for listing in example 1 above (based on the lodgement date) • The same accounts for Addco as for the entity applying for listing in example 1 above (based on the lodgement date and subject to the proviso that if Addco has not been carrying on business for 3 full financial years, it must provide the applicable accounts for the period it has been carrying on business) • Reviewed pro forma statement of financial position	• The same financial information for Listco as for the entity applying for listing in example 1 above (based on the lodgement date) • If Addco is significant in the context of Listco, the same financial information for Addco as for the entity applying for listing in example 1 above (based on the lodgement date and subject to the provisos that: • if Addco has not been carrying on business for 2 full financial years, it must provide the applicable financial information for the period it has been carrying on business, and

²⁹⁴ This example assumes the entity does not yet have audited accounts for FY X. If it does have audited accounts for FY X, it should provide those accounts to ASX and include in its listing prospectus the financial information referenced in the next row.

²⁹⁵ This example assumes the entity does not yet have audited or reviewed financial information for 1H FY X+1. If it does have audited or reviewed accounts for 1H FY X+1, it should provide those accounts to ASX and include in its listing prospectus the financial information referenced in the next row.

Nº	Type of applicant	Lodgement date	ASX requires lodgement of ...	ASIC expects the prospectus to include...
				- if Addco has been carrying on business for 2 or more full financial years and the lodgement date is more than 90 days, but less than 6 months and 75 days, after the end of FY X, ASIC will only expect audited income and cash flow statements for Addco for FY X and FY X-1 - Reviewed pro forma statement of financial position
3.	Newly established or dormant shell ²⁹⁶ ("Listco") which has in the 12 months prior to applying to ASX for admission acquired, or is proposing in connection with its application for admission to acquire, an entity ("Opco") operating the same business for 3 or more full financial years and which is applying to ASX for admission under the profit test ²⁹⁷²⁹⁸	Less than 90 days after the end of Opco's most recent full financial year (FY X)²⁹⁹ More than 90 days, but less than 6 months and 75 days, after the end of FY X³⁰⁰ More than 6 months and 75 days after the end of FY X	- The same accounts for Opco as for the entity applying for listing in example 1 above (based on the lodgement date) - If Listco was in existence at the end of 1H FY X-1, management accounts for Listco for 1H FY X-1 - If Listco was not in existence at the end of 1H FY X-1, management accounts for Listco from the date of its establishment to a balance date not more than 2 months prior to the lodgement date - Reviewed pro forma statement of financial position - The same accounts for Opco as for the entity applying for listing in example 1 above (based on the lodgement date) - If Listco was in existence at the end of FY X-1, management accounts for Listco for FY X-1 - If Listco was not in existence at the end of FY X-1, management accounts for Listco from the date of its establishment to a balance date not more than 2 months prior to the lodgement date - Reviewed pro forma statement of financial position - The same accounts for Opco as for the entity applying for listing in example 1 above (based on the lodgement date)	- Audited or reviewed statement of financial position for Opco as at the end of 1H FY X - Audited or reviewed income and cash flow statements for Opco for 1H FY X and comparables for 1H FY X-1 - Audited income and cash flow statements for Opco for FY X-1 and X-2 - Reviewed pro forma statement of financial position - Audited statement of financial position for Opco as at the end of FY X - Audited income and cash flow statements for Opco for FY X, X-1 and X-2³⁰¹ - Reviewed pro forma statement of financial position - Audited or reviewed statement of financial position for Opco as at the end of 1H FY X+1

²⁹⁶ The references in this example and in examples 7-12 below to a "newly established or dormant shell" mean an entity with no existing business and nominal assets and liabilities.

²⁹⁷ This example and examples 7-12 below assume that Listco only has management accounts for itself (ie accounts that have not been audited or reviewed). If Listco does have audited or reviewed accounts, it should provide those accounts to ASX, and include in its listing prospectus the financial information contained in those accounts, rather than its management accounts.

²⁹⁸ This example and examples 10-12 below apply equally to an internal transaction with the same corporate group where Listco is established to act as a holding company for Opco or to an external transaction where Listco has acquired or is proposing to acquire Opco from a third party.

²⁹⁹ This example assumes Opco does not yet have audited accounts for FY X. If it does, the applicant should provide those accounts to ASX and include in its listing prospectus the financial information referenced in the next row.

³⁰⁰ This example assumes Opco does not yet have audited or reviewed accounts for 1H FY X+1. If it does, the applicant should provide those accounts to ASX and include in its listing prospectus the financial information referenced in the next row.

³⁰¹ An audited income and cash flow statement for Opco for FY X-2 may not be required if Opco did not operate its business for any part of that financial year (see the note to RG 228.88).

Nº	Type of applicant	Lodgement date	ASX requires lodgement of ...	ASIC expects the prospectus to include...
			• If Listco was in existence at the end of 1H FY X, management accounts for Listco for 1H FY X • If Listco was not in existence at the end of 1H FY X, management accounts for Listco from the date of its establishment to a balance date not more than 2 months prior to the lodgement date • Reviewed pro forma statement of financial position	• Audited or reviewed income and cash flow statements for Opco for 1H FY X+1 and comparables for 1H FY X • Audited income and cash flow statements for Opco for FY X and X-1 • Reviewed pro forma statement of financial position
4.	Entity operating a business for 2 or more full financial years applying to ASX for admission under the assets test	Less than 90 days after the end of the entity's most recent full financial year (FY X) ³⁰²	• Audited or reviewed accounts for the entity for 1H FY X • Audited accounts for the entity for FY X-1 and X-2 • Reviewed pro forma statement of financial position	• Audited or reviewed statement of financial position for the entity as at the end of 1H FY X • Audited or reviewed income and cash flow statements for the entity for 1H FY X and comparables for 1H FY X-1 • Audited income and cash flow statements for FY X-1 and X-2³⁰³ • Reviewed pro forma statement of financial position
		More than 90 days, but less than 6 months and 75 days, after the end of FY X ³⁰⁴	• Audited accounts for the entity for FY X and X-1 • Reviewed pro forma statement of financial position	• Audited statement of financial position for the entity as at the end of FY X • Audited income and cash flow statements for the entity for FY X, X-1 and X-2³⁰⁵ • Reviewed pro forma statement of financial position
		More than 6 months and 75 days after the end of FY X	• Audited or reviewed accounts for the entity for 1H FY X+1 • Audited accounts for the entity for FY X and X-1 • Reviewed pro forma statement of financial position	• Audited or reviewed statement of financial position for the entity as at the end of 1H FY X+1 • Audited or reviewed income and cash flow statements for the entity for 1H FY X+1 and comparables for 1H FY X • Audited income and cash flow statements for FY X and X-1 • Reviewed pro forma statement of financial position
5.	Entity that has operated its business for at least 1, but less than 2, full financial years	Less than 90 days after the end of the entity's most	• Audited or reviewed accounts for the entity for 1H FY X • If the entity was operating a business for any part of FY X-1, audited accounts for the entity for FY X-1	• Audited or reviewed statement of financial position for the entity as at the end of 1H FY X • Audited or reviewed income and cash flow statements for the entity for 1H FY X and comparables for 1H FY X-1

³⁰² This example assumes the entity does not yet have audited accounts for FY X. If it does have audited accounts for FY X, it should provide those accounts to ASX and include in its listing prospectus the financial information referenced in the next row.

³⁰³ An audited income and cash flow statement for FY X-2 may not be required if the entity did not operate its business for any part of that financial year (see the note to RG 228.88).

³⁰⁴ This example assumes the entity does not yet have audited or reviewed financial information for 1H FY X+1. If it does have audited or reviewed accounts for 1H FY X+1, it should provide those accounts to ASX and include in its listing prospectus the financial information referenced in the next row.

³⁰⁵ An audited income and cash flow statement for FY X-2 may not be required if the entity did not operate its business for any part of that financial year (see the note to RG 228.88).

Nº	Type of applicant	Lodgement date	ASX requires lodgement of ...	ASIC expects the prospectus to include...
	applying to ASX for admission under the assets test	recent full financial year (FY X) ³⁰⁶	Reviewed pro forma statement of financial position	- If the entity was operating a business for any part of FY X-1, audited income and cash flow statements for FY X-1 - Reviewed pro forma statement of financial position
		More than 90 days, but less than 6 months and 75 days, after the end of FY X ³⁰⁷	- Audited accounts for the entity for FY X and, if the entity was operating a business for any part of FY X-1, for FY X-1 as well - Reviewed pro forma statement of financial position	- Audited statement of financial position for the entity as at the end of FY X - Audited income and cash flow statements for the entity for FY X and, if the entity was operating a business for any part of FY X-1, for FY X-1 as well - Reviewed pro forma statement of financial position
		More than 6 months and 75 days after the end of FY X	- Audited or reviewed accounts for the entity for 1H FY X+1 - Audited accounts for the entity for FY X and, if the entity was operating a business for any part of FY X-1, for FY X-1 as well - Reviewed pro forma statement of financial position	- Audited or reviewed statement of financial position for the entity as at the end of 1H FY X+1 - Audited or reviewed income and cash flow statements for the entity for 1H FY X+1 and comparables for 1H FY X - Audited income and cash flow statements for FY X and, if the entity was operating a business for any part of FY X-1, for FY X-1 as well - Reviewed pro forma statement of financial position
6.	Entity that has operated its business for less than 1 full financial year and is applying to ASX for admission under the assets test (ie that commenced business during financial year FY X and is applying for admission during FY X or at any time before the end of FY X+1)	At any time up to 6 months and 75 days after the beginning of FY X ³⁰⁸	- Audited accounts for the entity from the date it commenced business to a balance date not more than 2 months prior to the lodgement date - Reviewed pro forma statement of financial position	- Audited statement of financial position for the entity as at a recent balance date - Audited income and cash flow statements for the entity for the period from the date it commenced business to a recent balance date - Reviewed pro forma statement of financial position
		More than 6 months and 75 days after the beginning of, but less than 90 days after the end of, FY X ³⁰⁹	If the entity was in existence and carrying on business at the end of 1H FY X, audited accounts for the entity for 1H FY X	- If the entity was in existence and carrying on business at the end of 1H FY X: - Audited statement of financial position for the entity as at the end of 1H FY X

³⁰⁶ This example assumes the entity does not yet have audited accounts for FY X. If it does have audited accounts for FY X, it should provide those accounts to ASX and include in its listing prospectus the financial information referenced in the next row.

³⁰⁷ This example assumes the entity does not yet have audited or reviewed accounts for 1H FY X+1. If it does have audited or reviewed accounts for 1H FY X+1, it should provide those accounts to ASX and include in its listing prospectus the financial information referenced in the next row.

³⁰⁸ This example assumes the entity does not yet have audited accounts for 1H FY X. If it does have audited accounts for 1H FY X, it should provide those accounts to ASX and include in its listing prospectus the financial information referenced in the next row.

³⁰⁹ This example assumes the entity does not yet have audited accounts for FY X. If it does have audited accounts for FY X, it should provide those accounts to ASX and include in its listing prospectus the financial information referenced in the next row.

Nº	Type of applicant	Lodgement date	ASX requires lodgement of ...	ASIC expects the prospectus to include...
			- If the entity was not in existence and carrying on business at the end of 1H FY X, audited accounts for the entity from the date it commenced business to a balance date not more than 2 months prior to the lodgement date - Reviewed pro forma statement of financial position	- Audited income and cash flow statements for the entity for 1H FY X - If the entity was not in existence and carrying on business at the end of 1H FY X: - Audited statement of financial position for the entity as at a recent balance date - Audited income and cash flow statements for the entity from the date of its establishment to a recent balance date - Reviewed pro forma statement of financial position
		More than 90 days, but less than 6 months and 75 days, after the end of FY X ³¹⁰	- Audited accounts for the entity for FY X - Reviewed pro forma statement of financial position	- Audited statement of financial position for the entity as at the end of FY X - Audited income and cash flow statements for the entity for FY X - Reviewed pro forma statement of financial position
		More than 6 months and 75 days after the end of FY X but before the end of, FY X+1	- Audited or reviewed accounts for the entity for 1H FY X+1 - Audited accounts for the entity for FY X - Reviewed pro forma statement of financial position	- Audited or reviewed statement of financial position for the entity as at the end of 1H FY X+1 - Audited or reviewed income and cash flow statements for the entity for 1H FY X+1 - Audited income and cash flow statements for the entity for FY X - Reviewed pro forma statement of financial position
7.	Newly established or dormant shell ("Listco") which has recently acquired, or is proposing in connection with its application for admission to acquire, mining tenements or other assets that are not an operating business and which is applying to ASX for admission under the assets test ³¹¹	Within the first 90 days of Listco's current financial year (FY X)	- If Listco was in existence at the end of 1H FY X-1, management accounts for Listco for 1H FY X-1 - If Listco was not in existence at the end of 1H FY X-1, management accounts for Listco from the date of its establishment to a balance date not more than 2 months prior to the lodgement date - Reviewed pro forma statement of financial position	Reviewed pro forma statement of financial position
		More than 90 days, but less than 6 months and 75 days, after the beginning of FY X	If Listco was in existence at the end of FY X-1, management accounts for Listco for FY X-1	Reviewed pro forma statement of financial position

³¹⁰ This example assumes the entity does not yet have audited or reviewed accounts for 1H FY X+1. If it does have audited or reviewed accounts for 1H FY X+1, it should provide those accounts to ASX and include in its listing prospectus the financial information referenced in the next row.

³¹¹ See notes 296 and 297 above.

Nº	Type of applicant	Lodgement date	ASX requires lodgement of ...	ASIC expects the prospectus to include...
			• If Listco was not in existence at the end of FY X-1, management accounts for Listco from the date of its establishment to a balance date not more than 2 months prior to the lodgement date • Reviewed pro forma statement of financial position	
		More than 6 months and 75 days after the beginning of, but on or before the end of, FY X	• If Listco was in existence at the end of 1H FY X, management accounts for Listco for 1H FY X • If Listco was not in existence at the end of 1H FY X, management accounts for Listco from the date of its establishment to a balance date not more than 2 months prior to the lodgement date • Reviewed pro forma statement of financial position	• Reviewed pro forma statement of financial position
8.	Newly established or dormant shell ("Listco") which is proposing to list as an investment company and which is applying to ASX for admission under the assets test ³¹²	Any date	• The same accounts for Listco as in example 7 above • Reviewed pro forma statement of financial position	• Reviewed pro forma statement of financial position

³¹² This example assumes that Listco will use the proceeds of its IPO to acquire its initial portfolio of investments. See also notes 296 and 297 above.

Nº	Type of applicant	Lodgement date	ASX requires lodgement of ...	ASIC expects the prospectus to include...
9.	Newly established or dormant shell ("Listco") which is proposing in connection with its application for admission to acquire many immaterial businesses without audited financial statements in the same sector (ie a "roll-up listing") and which is applying to ASX for admission under the assets test ³¹³	Less than 90 days after the end of Listco's most recent full financial year (FY X) ³¹⁴	• The same accounts for Listco as in example 7 above • Pro forma aggregated audited or reviewed accounts for Listco and the entities being acquired for 1H FY X • Pro forma aggregated audited accounts for Listco and the entities being acquired for FY X-1 • Reviewed pro forma statement of financial position³¹⁵	• At least 75% of the historical financial information for the entities being acquired must be audited for no less than one year³¹⁶ • Reviewed pro forma statement of financial position
		More than 90 days, but less than 6 months and 75 days, after the end of FY X ³¹⁷	• The same accounts for Listco as in example 7 above • Pro forma aggregated audited accounts for Listco and the entities being acquired for FY X • Reviewed pro forma statement of financial position	• At least 75% of the historical financial information for the entities being acquired must be audited for no less than one year • Reviewed pro forma statement of financial position
		More than 6 months and 75 days after the end of FY X	• The same accounts for Listco as in example 7 above • Pro forma aggregated audited or reviewed accounts for Listco and the entities being acquired for 1H FY X+1 • Pro forma aggregated audited accounts for Listco and the entities being acquired for FY X • Reviewed pro forma statement of financial position	• At least 75% of the historical financial information for the entities being acquired must be audited for no less than one year • Reviewed pro forma statement of financial position

³¹³ See notes 296 and 297 above.

³¹⁴ This example assumes Opco does not yet have audited accounts for FY X. If it does, the applicant should provide those accounts to ASX and include in its listing prospectus the financial information referenced in the next row.

³¹⁵ ASX generally would not require Listco in this example to lodge any accounts for the individual entities being acquired.

³¹⁶ See RG 228 Table 10 Example 7.

³¹⁷ This example assumes Listco does not yet have audited or reviewed accounts for 1H FY X+1. If it does, the applicant should provide those accounts to ASX and include in its listing prospectus the financial information referenced in the next row.

Nº	Type of applicant	Lodgement date	ASX requires lodgement of ...	ASIC expects the prospectus to include...
10.	Newly established or dormant shell ("Listco") which has in the 12 months prior to applying to ASX for admission acquired, or is proposing in connection with its application for admission to acquire, an entity ("Opco") with a business that has been operating for 2 or more full financial years and which is applying to ASX for admission under the assets test ³¹⁸	Less than 90 days after the end of Opco's most recent full financial year (FY X) ³¹⁹	• The same accounts for Listco as in example 7 above • Audited or reviewed accounts for Opco for 1H FY X • Audited accounts for Opco for FY X-1 and X-2 • Reviewed pro forma statement of financial position	• Audited or reviewed statement of financial position for Opco as at the end of 1H FY X • Audited or reviewed income and cash flow statements for Opco for 1H FY X and comparables for 1H FY X-1 • Audited income and cash flow statements for Opco for FY X-1 and X-2³²⁰ • Reviewed pro forma statement of financial position
		More than 90 days, but less than 6 months and 75 days, after the end of FY X ³²¹	• The same accounts for Listco as in example 7 above • Audited accounts for Opco for FY X and X-1 • Reviewed pro forma statement of financial position	• Audited statement of financial position for Opco as at the end of FY X • Audited income and cash flow statements for Opco for FY X, X-1 and X-2³²² • Reviewed pro forma statement of financial position
		More than 6 months and 75 days after the end of FY X	• The same accounts for Listco as in example 7 above • Audited or reviewed accounts for Opco for 1H FY X+1 • Audited accounts for Opco for FY X and X-1 • Reviewed pro forma statement of financial position	• Audited or reviewed statement of financial position for Opco as at the end of 1H FY X+1 • Audited or reviewed income and cash flow statements for Opco for 1H FY X+1 and comparables for 1H FY X • Audited income and cash flow statements for Opco for FY X and X-1 • Reviewed pro forma statement of financial position

³¹⁸ See notes 296, 297 and 298 above. Note that in this example and examples 11 and 12 below, since Listco is a shell with no existing business and nominal assets and liabilities, Opco will inevitably be "significant" in the context of Listco and therefore trigger Listing Rule 1.3.5(c).

³¹⁹ This example assumes Opco does not yet have audited accounts for FY X. If it does, the applicant should provide those accounts to ASX and include in its listing prospectus the financial information referenced in the next row.

³²⁰ An audited income and cash flow statement for Opco for FY X-2 may not be required if Opco did not operate its business for any part of that financial year (see the note to RG 228.88).

³²¹ This example assumes Opco does not yet have audited or reviewed accounts for 1H FY X+1. If it does, the applicant should provide those accounts to ASX and include in its listing prospectus the financial information referenced in the next row.

³²² An audited income and cash flow statement for Opco for FY X-2 may not be required if Opco did not operate its business for any part of that financial year (see the note to RG 228.88).

Nº	Type of applicant	Lodgement date	ASX requires lodgement of ...	ASIC expects the prospectus to include...
11.	Newly established or dormant shell ("Listco") which has in the 12 months prior to applying to ASX for admission acquired, or is proposing in connection with its application for admission to acquire, an entity ("Opco") with a business that has been operated a business for at least 1, but less than 2, full financial years and which is applying to ASX for admission under the assets test ³²³	Less than 90 days after the end of Opco's most recent full financial year (FY X) ³²⁴	• The same accounts for Listco as in example 7 above • Audited or reviewed accounts for Opco for 1H FY X • If Opco was operating a business for any part of FY X-1, audited or reviewed accounts for Opco for FY X-1 • Reviewed pro forma statement of financial position	• Audited or reviewed statement of financial position for Opco as at the end of 1H FY X • Audited or reviewed income and cash flow statements for Opco for 1H FY X and comparables for 1H FY X-1 • If Opco was operating a business for any part of FY X-1, audited income and cash flow statements for Opco for FY X-1 • Reviewed pro forma statement of financial position
		More than 90 days, but less than 6 months and 75 days, after the end of FY X ³²⁵	• The same accounts for Listco as in example 7 above • Audited accounts for Opco for FY X • If Opco was operating a business for any part of FY X-1, audited accounts for Opco for FY X-1 • Reviewed pro forma statement of financial position	• Audited statement of financial position for Opco as at the end of FY X • Audited income and cash flow statements for Opco for FY X • If Opco was operating a business for any part of FY X-1, audited income and cash flow statements for Opco for FY X-1 • Reviewed pro forma statement of financial position
		More than 6 months and 75 days after the end of FY X	• The same accounts for Listco as in example 7 above • Audited or reviewed accounts for Opco for 1H FY X+1 • Audited accounts for Opco for FY X and, if Opco was operating a business for any part of FY X-1, for FY X-1 as well • Reviewed pro forma statement of financial position	• Audited or reviewed statement of financial position for Opco as at the end of 1H FY X+1 • Audited or reviewed income and cash flow statements for Opco for 1H FY X+1 and comparables for 1H FY X • Audited income and cash flow statements for Opco for FY X and X-1 • Reviewed pro forma statement of financial position

³²³ See notes 296, 297, 298 and [318348](#) above.

³²⁴ This example assumes Opco does not yet have audited accounts for FY X. If it does, the applicant should provide those accounts to ASX and include in its listing prospectus the financial information referenced in the next row.

³²⁵ This example assumes Opco does not yet have audited or reviewed accounts for 1H FY X+1. If it does, the applicant should provide those accounts to ASX and include in its listing prospectus the financial information referenced in the next row.

Nº	Type of applicant	Lodgement date	ASX requires lodgement of ...	ASIC expects the prospectus to include...
12.	Newly established or dormant shell ("Listco") which has in the 12 months prior to applying to ASX for admission acquired, or is proposing in connection with its application for admission to acquire, an entity ("Opco") with a business that has been operating for less than 1 financial year and which is applying to ASX for admission under the assets test (ie. that commenced business during its first financial year (FY X) and is applying for admission during FY X or at any time before the end of FY X+1) ³²⁶	At any time up to 6 months and 75 days after the beginning of FY X ³²⁷	- The same accounts for Listco as in example 7 above - Audited accounts for Opco from the date it commenced business to a balance date not more than 2 months prior to the date of application - Reviewed pro forma statement of financial position	- Audited statement of financial position for Opco as at a recent balance date - Audited income and cash flow statements for Opco for the period from the date it commenced operations to a recent balance date - Reviewed pro forma statement of financial position
		More than 6 months and 75 days after the beginning of, but less than 90 days after the end of, FY X ³²⁸	- The same accounts for Listco as in example 7 above - If Opco was in existence and carrying on business at the end of 1H FY X, audited accounts for Opco for 1H FY X - If Opco was not in existence and carrying on business at the end of 1H FY X, audited accounts for Opco from the date it commenced business to a balance date not more than 2 months prior to the lodgement date - Reviewed pro forma statement of financial position	- If Opco was in existence and carrying on business at the end of 1H FY X: - Audited statement of financial position for Opco as at the end of 1H FY X - Audited income and cash flow statements for Opco for 1H FY X - If Opco was not in existence and carrying on business at the end of 1H FY X: - Audited statement of financial position for Opco as at a recent balance date - Audited income and cash flow statements for Opco from the date of its establishment to a recent balance date - Reviewed pro forma statement of financial position
		More than 90 days, but less than 6 months and 75 days, after the end of FY X ³²⁹	- The same accounts for Listco as in example 7 above - Audited accounts for Opco for FY X - Reviewed pro forma statement of financial position	- Audited statement of financial position for Opco as at the end of FY X - Audited income and cash flow statements for Opco for FY X - Reviewed pro forma statement of financial position
		More than 6 months and 75 days after the end of FY X before the end of, FY X+1	- The same accounts for Listco as in example 7 above - Audited or reviewed accounts for Opco for 1H FY X+1 - Audited accounts for Opco for FY X - Reviewed pro forma statement of financial position	- Audited or reviewed statement of financial position for Opco as at the end of 1H FY X+1 - Audited or reviewed income and cash flow statements for Opco for 1H FY X+1

³²⁶ See notes 296, 297, 298 and 318 above.

³²⁷ This example assumes the entity does not yet have audited or reviewed accounts for 1H FY X. If it does, the applicant should provide those accounts to ASX and include in its listing prospectus the financial information referenced in the next row.

³²⁸ This example assumes Opco does not yet have audited or reviewed accounts for FY X. If it does, the applicant should provide those accounts to ASX and include in its listing prospectus the financial information referenced in the next row.

³²⁹ This example assumes Opco does not yet have audited or reviewed accounts for 1H FY X+1. If it does, the applicant should provide those accounts to ASX and include in its listing prospectus the financial information referenced in the next row.

Nº	Type of applicant	Lodgement date	ASX requires lodgement of ...	ASIC expects the prospectus to include...
				- Audited income and cash flow statements for Opco for FY X - Reviewed pro forma statement of financial position
13.	Established entity ("Listco") with an existing business which has in the 12 months prior to applying to ASX for admission acquired, or is proposing in connection with its application for admission to acquire, another entity ("Opco") with an operating business that is significant in the context of the entity, and which is applying to ASX for admission under the assets test	Any date	- The same accounts for Listco as for the entity applying for listing in examples 4, 5 or 6 above (based on the lodgement date and the period of time Listco has been operating its business) - The same accounts for Opco in examples 10, 11 and 12 above (based on the lodgement date and the period of time Opco has been operating its business) - Reviewed pro forma statement of financial position	- The same financial information for Listco as for the entity applying for listing in examples 4, 5 or 6 above (based on the lodgement date and the period of time Listco has been operating its business) - The same accounts for Opco in examples 10, 11 and 12 above (based on the lodgement date and the period of time Opco has been operating its business) save that if Opco has been carrying on business for 2 or more full financial years (ie Example 10 applies) and the lodgement date is more than 90 days, but less than 6 months and 75 days, after the end of FY X, ASIC will only expect audited income and cash flow statements for Opco for FY X and FY X-1 - Reviewed pro forma statement of financial position
14.	Established entity ("Listco") with an existing business which is proposing in connection with its application for admission to acquire many immaterial businesses without audited financial statements in the same sector (ie a "roll-up listing") and which is applying to ASX for admission under the assets test	Any date	- The same accounts for Listco as for the entity applying for listing in examples 4, 5 or 6 above (based on the lodgement date and the period of time Listco has been operating its business) - The same pro forma aggregated accounts for Listco and the entities being acquired for the last full financial years as in example 9 above (based on the lodgement date) - Reviewed pro forma statement of financial position³³⁰	- The same financial information for Listco as for the entity applying for listing in examples 4, 5 or 6 above (based on the lodgement date and the period of time Listco has been operating its business) - At least 75% of the historical financial information for the entities being acquired must be audited for no less than one year³³¹ - Reviewed pro forma statement of financial position

³³⁰ ASX generally would not require Listco in this example to lodge any accounts for the entities being acquired.

³³¹ See RG 228 Table 10 Example 7.

FOREIGN ENTITIES LISTING ON ASX

The purpose of this Guidance Note	To assist entities established outside of Australia (foreign entities) considering a listing on ASX to understand the options available to them
The main points it covers	- The three categories of ASX listings available to foreign entities – an ASX Foreign Exempt Listing, a standard ASX Listing and an ASX Debt Listing - The requirements to be admitted as an ASX Foreign Exempt Listing - Particular issues that a foreign entity applying for admission as a standard ASX Listing should consider, over and above those addressed in Guidance Note 1 <i>Applying for Admission – ASX Listings</i> - Particular issues that a foreign entity applying for admission as an ASX Debt Listing should consider, over and above those addressed in Guidance Note 29 <i>Applying for Admission – ASX Debt Listings</i> - Common issues for foreign entities that apply to all 3 categories of ASX listings
Related materials you should read	- Guidance Note 1 <i>Applying for Admission – ASX Listings</i> - Guidance Note 5 <i>CHESS Depositary Interests (CDIs)</i> - Guidance Note 7 <i>US Entities - Regulation S Offerings on ASX</i> - Guidance Note 8 <i>Continuous Disclosure: Listing Rules 3.1 – 3.1B</i> ~~Guidance Note 9 <i>Disclosure of Corporate Governance Practices</i>~~ - Guidance Note 17 <i>Waivers and In-Principle Advice</i> - Guidance Note 20 <i>ASX Online</i> - Guidance Note 29 <i>Applying for Admission – ASX Debt Listings</i> - Guidance Note 30 <i>Notifying ~~an Issue of Changes in Issued~~ Securities and Applying for ~~Their~~ Quotation <u>of New or Additional Securities</u></i> - Guidance Note 34 <i>Naming Conventions for Debt and Hybrid Securities</i>

History: Guidance Note 4 amended [28/08/20xx/xx/xx](#). Previous versions of this Guidance Note were issued in 07/00, 09/01, 05/02 (transitional copy), 06/02, 01/03, 09/07, 01/12, 05/13, 09/14, 02/15, 08/15, 09/15, 12/15, 12/16, 12/17, 06/18 and, 12/19, [08/20](#).

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 established outside of Australia (foreign entities) considering a listing on ASX Limited ("ASX") to understand the options available to them.

1.1 The benefits of an ASX listing

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 in excess of \$2 trillion;

- 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.

1.2 Listing categories

There are two ways a foreign entity may list equity securities on ASX:

- as an **ASX Foreign Exempt Listing**: this category is for entities listed on another securities exchange that wish to have a secondary listing on ASX and that meet certain eligibility criteria. Entities in this category are expected to comply primarily with the Listing Rules of their home exchange and are exempt from complying with most of ASX's Listing Rules.
- as a standard **ASX Listing**: this category is for entities that wish to have ASX as their primary listing venue or that do not meet the eligibility criteria to be admitted as an ASX Foreign Exempt Listing. Entities in this category are subject to ASX's Listing Rules, even if they are listed on another securities exchange.

A foreign entity may also list debt securities on ASX as an **ASX Debt Listing**.

This Guidance Note provides guidance in:

- section 2 to foreign entities seeking an ASX Foreign Exempt Listing on how to prepare their applications for admission;
- section 3 on issues specifically relevant to foreign entities seeking a standard ASX Listing;
- section 4 on issues specifically relevant to foreign entities seeking an ASX Debt Listing; and
- section 5 on common issues relevant to foreign entities seeking any category of ASX listing.

More general guidance on standard ASX listings can be found in Guidance Note 1 *Applying for Admission – ASX Listings*, while more general guidance on ASX Debt Listings can be found in Guidance Note 29 *Applying for Admission – ASX Debt Listings*.

Some other Guidance Notes of general application that foreign entities may find helpful are Guidance Note 5 *CHESS Depositary Interests (CDIs)*, Guidance Note 14 *ASX Market Announcements Platform* and Guidance Note 20 *ASX Online*.

Guidance for foreign entities that are already listed on ASX on how to prepare applications for quotation of additional securities can be found in Guidance Note 30 *Notifying an Issue of Securities and Applying [for Their Quotation for Quotation of New or Additional Securities](#)*.

Guidance for United States entities on how they can offer their securities on the ASX market under the safe harbour provisions of Regulation S of the US *Securities Act 1933* can be found in Guidance Note 7 *US Entities – Regulation S Offerings on ASX*.

2. ASX Foreign Exempt Listings

2.1 Admission requirements

To be admitted as an ASX Foreign Exempt Listing, a foreign entity must meet the requirements in Listing Rule 1.11. The key requirements are:

- the entity must be a foreign entity and have as its overseas home exchange a stock exchange or market that is acceptable to ASX;¹

¹ Listing Rule 1.11 condition 1. Note that if an entity admitted as an ASX Foreign Exempt Listing ceases to be listed on its overseas home exchange and it wishes to maintain its listing on ASX, it will need to change its category of listing from ASX Foreign Exempt Listing to ASX Listing (see generally Guidance Note 1 *Applying for Admission – ASX Listings*).

- the entity must be subject to, and ASX must be satisfied that it complies with, the Listing Rules (or their equivalent) of its overseas home exchange;²
- the entity must inform ASX of any waiver of all or part of any listing rule (or the equivalent) of its overseas home exchange that will be in effect in respect of the entity on its admission to the official list and, if ASX requires, the entity must release details of any such waiver to the market;³
- if the entity is a foreign company,⁴ it must be registered as a foreign company carrying on business in Australia⁵ under the *Corporations Act 2001* (Cth);⁶
- if the entity is a trust:
 - if the entity is not a “qualifying NZ entity”,⁷ it must have an exemption from the Australian Securities and Investments Commission (“ASIC”) from the requirement to be a registered scheme in Australia⁸ and its responsible entity⁹ must be an Australian company or registered as a foreign company carrying on business in Australia under the Corporations Act;¹⁰ and
 - no-one must be under an obligation to buy back units in the trust or to allow a security holder to withdraw from the trust;¹¹ and
- the entity must either:
 - be approved to act as an issuer of quoted securities under the operating rules of an approved clearing and settlement facility;¹² or
 - if it is established in a jurisdiction whose laws have the effect that its securities cannot be registered or transferred under the operating rules of an approved clearing and settlement facility, be approved as a foreign issuer of CDIs under the operating rules of an approved clearing and settlement facility.¹³

In terms of the first requirement above that an applicant have an overseas home exchange that is acceptable to ASX, the main boards of the principal exchanges in developed markets are generally acceptable to ASX for these

² Listing Rule 1.11 conditions 2 and 3.

³ Listing Rule 1.11 condition 4.

⁴ “Foreign company” means a body corporate that is not formed or established in Australia (Listing Rule 19.12).

⁵ For further information about the process involved in registering as a foreign company, see ‘5.1 [Registration as a foreign company under the Corporations Act](#)’ on page 23.

⁶ Listing Rule 1.11 condition 7. [The Corporations Act 2001 \(Cth\) is the principal legislation governing companies and securities matters in Australia.](#) It is referred to in the balance of 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.

⁷ “Qualifying NZ entity” means a foreign company or foreign trust that is formed or established in New Zealand, that has NZX as its overseas home exchange and whose securities are admitted to quotation on the main board of NZX (Listing Rule 19.12).

⁸ “Registered scheme” means a managed investment scheme registered under Part 5C.1 of the Corporations Act. If an entity is a registered scheme in Australia, it is by definition an Australian trust and therefore not a foreign entity. Qualifying NZ entities that are trusts do not need to be a registered scheme in Australia nor have an exemption from that requirement by virtue of the trans-Tasman mutual recognition scheme embodied in Chapter 8 of the Corporations Act and related regulations. See ASIC Regulatory Guide 190 *Offering financial products in New Zealand and Australia under mutual recognition*.

⁹ “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; (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 (Listing Rule 19.12).

¹⁰ Listing Rule 1.11 condition 8(a).

¹¹ Listing Rule 1.11 condition 8(b).

¹² Listing Rule 1.11 condition 12(a). See also ‘5.4 [Clearing and settlement](#)’ on page 26 below.

¹³ Listing Rule 1.11 condition 12(b). See also ‘5.4 [Clearing and settlement](#)’ on page 26 below.

purposes.¹⁴ Second boards in developed markets and exchanges in emerging or developing markets¹⁵ are considered more closely by ASX and will only be acceptable to ASX if they have a regulatory framework broadly equivalent to the framework applying to Australian entities with their primary listing on ASX. An applicant seeking a foreign exempt listing that has its primary listing on a second board or in an emerging or developing market may be required by ASX to make submissions on this point.

In addition to the general requirements above, if the entity is a qualifying NZ entity,¹⁶ it must meet the following additional requirements to be admitted as an ASX Foreign Exempt Listing:

- it must satisfy either the profit test in Listing Rule 1.2 or the assets test in Listing Rule 1.3 (with the exceptions of Listing Rules 1.3.2 and 1.3.3(a) and (b));¹⁷
- it must apply for and be granted permission for quotation of all of the securities that are in the class for which it seeks quotation;¹⁸ and
- it must satisfy ASX that each director or proposed director, the CEO or proposed CEO, and the CFO or proposed CFO, of the entity at the date of listing on ASX (together, “relevant officers”) is of good fame and character.¹⁹ Further guidance on what documentation has to be produced to meet this requirement can be found in section 3.21 of Guidance Note 1 *Applying for Admission – ASX Listings*. In the case of a relevant officer who is or has in the past 10 years been a resident of New Zealand, it will include:²⁰
 - an original or certified copy of a criminal history check from the NZ Ministry of Justice which is not more than 12 months old;
 - an original or certified copy of a bankruptcy check from the NZ Insolvency and Trustee Service or a search of its insolvency register which is not more than 12 months old; and
 - a statutory declaration²¹ confirming that:
 - (a) the relevant officer 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 relevant officer 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;

¹⁴ Borsa Italiana, Deutsche Börse, EuroNext (Amsterdam), EuroNext (Brussels), EuroNext (Lisbon), EuroNext (Paris), Frankfurt Stock Exchange, HKSE, LSE, SGX, SIX Swiss Exchange, TASE (Israel), TSE (Tokyo), TSX (Toronto), NASDAQ, NYSE and NZX are therefore all acceptable home exchanges for the purposes of Listing Rule 1.11 condition 1.

¹⁵ For these purposes, ASX generally 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 https://www.dfat.gov.au/sites/default/files/list-developing-countries.pdf](https://www.dfat.gov.au/sites/default/files/list-developing-countries.pdf)) (available online on the Department of Foreign Affairs and Trade website) as an emerging or developing market. However, even though South Africa and Malaysia are considered emerging or developing markets on that list, JSE and Bursa Malaysia are considered by ASX to be acceptable home exchanges for the purposes of Listing Rule 1.11 condition 1.

¹⁶ See note 7 above.

¹⁷ Listing Rule 1.11 condition 6(a). Further guidance on what is required to meet the profit test in Listing Rule 1.2 and the assets test in Listing Rule 1.3 can be found in sections 3.10 and 3.11 of Guidance Note 1 *Applying for Admission – ASX Listings*.

¹⁸ Listing Rule 1.11 condition 5(a).

¹⁹ Listing Rule 1.11 condition 11.

²⁰ Additional documentation will be required if the relevant officer has been a resident of another country at any time in the past 10 years.

²¹ An editable version of this statutory declaration can be downloaded from www.asx.com.au/regulation/compliance/compliance-downloads.htm the ASX website.

- (c) the relevant officer 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 or officer of a listed entity;
- (d) no listed entity of which he or she was a relevant officer (or, in the case of a listed trust, in respect of which he or she was a relevant officer of the responsible entity of the trust) 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 relevant officer 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 relevant officer is not able to give such confirmation, a statement to that effect and a detailed explanation of the circumstances involved.²²

If the entity is not a qualifying NZ entity,²³ it must meet the following additional requirements to be admitted as a Foreign Exempt Listing:

- it must have at least A\$200 million operating profit before tax for each of the last three years or, at the time of admission, have net tangible assets of at least A\$2,000 million or a market capitalisation of at least A\$2,000 million;²⁴ and
- the entity must apply for and be granted quotation of securities in a class for which it seeks quotation (it may apply for quotation of all or a subset of the securities in that class).²⁵

2.2 Initial discussion in advance of application

Before submitting an application for admission as an ASX Foreign Exempt Listing, ASX strongly recommends that the applicant first have an initial discussion with the admissions team in ASX Listings Compliance. This is particularly the case if the application involves any of the following:

- the applicant has its primary listing on a second board or in an emerging or developing market;
- the applicant is proposing to request any waivers from, or rulings in respect of, the Listing Rules in conjunction with its application; or
- there are circumstances present that could lead to ASX exercising its absolute discretion not to admit the applicant to the official list.²⁶

In addition to providing a preliminary view on any of the matters mentioned above,²⁷ ASX Listings Compliance will be able to provide general guidance on the listing process and on the expected timeframe for listing, given its

²² In considering whether the applicant's relevant officers meet the "good fame and character" requirement, ASX will primarily have regard to the documents mentioned in the text above. However, ASX may also have regard to any other information it has about the relevant officers from any source and, in an appropriate case, may require an applicant for listing to provide additional information about its relevant officers.

²³ See note 7 above.

²⁴ Listing Rule 1.11 condition 6(b) and Listing Rules 1.12 and 1.13.

²⁵ Listing Rule 1.11 condition 5(b).

²⁶ See '2.6 [The listing decision](#)' on page 10.

²⁷ In an appropriate case, ASX Listings Compliance may suggest to the applicant that it seek in-principle advice from ASX about a matter mentioned above before it goes to the effort and expense of lodging a listing application (see Guidance Note 17 *Waivers and In-Principle Advice*).

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.²⁸

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.²⁹

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.

2.3 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 admission as an ASX Foreign Exempt Listing is Appendix 1C – *Application for Admission to the ASX Official List (ASX Foreign Exempt Listing)*. An editable version of the Appendix 1C application form can be downloaded from: [the ASX website](http://www.asx.com.au/regulation/compliance/compliance-downloads.htm).
<http://www.asx.com.au/regulation/compliance/compliance-downloads.htm>.

The application must be properly completed and dated. It must also be accompanied by:

- the *Information Form and Checklist (ASX Foreign Exempt Listings)* published on the ASX website;³⁰ and
- all of the information and documents referred to in that Form/Checklist.

The *Information Form and Checklist (ASX Foreign Exempt Listings)* has two annexures – annexure 1 for applicants that are not qualifying NZ entities and annexure 2 for applicants that are qualifying NZ entities. The applicable annexure must also be completed and all of the information and documents referred to in it provided to ASX.

The *Information Form and Checklist (ASX Foreign Exempt Listings)* requires the applicant to provide certain information about itself, including a copy of its constitution and 10 copies of its most recent annual report and any subsequent interim report it has issued.

In the case of an entity that is not a qualifying NZ entity, annexure I to the *Information Form and Checklist (ASX Foreign Exempt Listings)* also requires the entity to provide a concise summary³¹ of:

- the rights and obligations of security holders under the law of its home jurisdiction and/or the rules of its home exchange 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;
 - what rights do security holders have to seek relief for oppressive conduct;

²⁸ On the reservation of trading codes, see Guidance Note 18 *Market Codes and Trading Procedures*.

²⁹ 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).

³⁰ An editable version of the *Information Form and Checklist (ASX Foreign Exempt Listings)* can also be downloaded from <http://www.asx.com.au/regulation/compliance/compliance-downloads.htm> the ASX website.

³¹ 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.

- 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;
- the obligations of the entity under the law of its home jurisdiction and/or the rules of its home exchange regarding:
 - the disclosure of material information;
 - the disclosure of periodic financial information and the accounting and auditing standards that apply;
 - requirements for information to be sent to security holders; and
 - regulation of dealings with directors and controlling holders of equity securities;
- how the disclosure of substantial holdings and takeovers are regulated under the law of its home jurisdiction; and
- a summary of any taxes or duties payable under the law of its home jurisdiction by an investor in relation to the acquisition, holding or disposal of securities in the entity or, if there are no such taxes or duties, a statement to that effect.

Where the entity has CDIs issued over its securities, the information provided by the entity should be supplemented to explain the specific rights and obligations of CDI holders under the law of its home jurisdiction.

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

Given the limited number of ASX Listing Rules that apply to an ASX Foreign Exempt listing,³² it would be unusual for an applicant seeking to list in that category to ask ASX for a waiver of, or in-principle advice about, a Listing Rule in connection with its listing. If it wishes to do so, its application for listing should be accompanied by 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*.

2.4 Processing time

ASX Listings Compliance aims to process applications for listing as quickly as it reasonably can, given its workload at the time. Typically, an application for an ASX Foreign Exempt 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 that might cause ASX to exercise its absolute discretion under Listing Rule 1.19 to refuse the application;³³
- the applicant is seeking an atypical number or type of waivers from the Listing Rules;
- the application is incomplete or of a poor standard; or
- the applicant is tardy in responding to any requests by ASX for further information or documents required to process its listing application.

³² See ‘2.10 [Continuing requirements](#)’ on page 11.

³³ See ‘2.6 [The listing decision](#)’ on page 10.

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 conjunction 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 and completeness 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 would therefore strongly encourage an applicant for listing to engage professional advisers who are experienced in ASX listings and to seek their advice and assistance in preparing its 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 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.

2.5 Payment of initial listing fee

An entity applying for admission as an ASX Foreign Exempt Listing must pay an 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. ASX will not begin processing an application for listing until it has received the initial listing fee.

In the case of a qualifying NZ entity, the initial listing fee is calculated by reference to the value of all of the securities in the relevant class the entity is seeking to have quoted on ASX.³⁴ In any other case, the initial listing fee is calculated by reference to the value of the specific securities or CHESS Depositary Interests ("CDIs")³⁵ to be included on the entity's Australian register³⁶ which it is seeking to have quoted on ASX.³⁷ If an entity is unsure about the number of its securities or CDIs that will or should be included on its Australian register, it should discuss that issue with the ASX Listings Adviser handling its listing application.

Payment of the initial listing fee 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.

³⁴ Listing Rules 1.11 condition 5(a) and 2.4.

³⁵ See Guidance Note 5 *CHESS Depositary Interests (CDIs)*.

³⁶ The reference here to an entity's Australian register includes its CHESS sub-register and its issuer sponsored sub-register. See '5.4 [Clearing and settlement](#)' on page 26 below for an explanation of CHESS and issuer sponsored sub-registers.

³⁷ Listing Rule 1.11 condition 5(b).

Further guidance about the calculation and payment of listing fees is set out in Guidance Note 15 *ASX Listing Fees*.

2.6 The listing decision

Decisions on whether or not an entity meets the conditions for admission as an ASX Foreign Exempt Listing 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 senior management within the ASX Listings Compliance function. ASX'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.³⁸ Given the specific admission conditions an ASX Foreign Exempt Listing must meet, it would be rare for ASX to exercise this discretion for an ASX Foreign Exempt Listing. However, ASX does retain the 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 where ASX may do so include where:

- 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.³⁹

2.7 Admission/quotation conditions

ASX may impose such conditions on admission and/or quotation as it considers appropriate.⁴⁰

In practice, ASX's decision to admit an entity as an ASX Foreign Exempt Listing and to quote its securities is usually expressed to be subject to conditions that must be satisfied before the decision becomes effective. For example, if the entity is proposing to raise funds domestically by offering securities under a prospectus or product disclosure statement (PDS) in conjunction with its application for admission, these conditions will typically include:

- the close of the offer under the applicant's prospectus or PDS and the completion of the allotment and issue of any required minimum subscription;
- ASX receiving written⁴¹ confirmation from the applicant of the final number of securities issued under the applicant's prospectus or PDS and of the number of securities to be quoted on ASX no later than midday at least one business day prior to the intended date for initial quotation of the securities;
- 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 for the securities issued under the applicant's prospectus or PDS;
- the mailing of CHESS or issuer sponsored holding statements to the successful applicants;⁴² and
- provision to ASX of any remaining documents referred to in the *Information Form and Checklist (ASX Foreign Exempt Listings)* that have not yet been lodged with ASX.

³⁸ Listing Rules 1.19 and 2.9.

³⁹ The list of examples in the text where this discretion may be exercised is not intended to be exhaustive.

⁴⁰ Listing Rules 1.19 and 2.9.

⁴¹ This may be in the form of an email (Listing Rule 19.3(l)).

⁴² CHESS stands for 'Clearing House Electronic Subregister System'. CHESS 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 '5.4 [Clearing and settlement](#)~~Clearing and settlement~~' on page 26.

If the entity is not raising any funds domestically but it has existing Australian shareholders, ASX may require that these holders are given the opportunity to convert their shares into CHESS Depository Interests as a condition of admission. Further guidance on this topic can be found in Guidance Note 5 *CHESS Depository Interests (CDIs)*.

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.

2.8 Documents released to the market

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

- the entity's Appendix 1C application form and the accompanying *Information Form and Checklist (ASX Foreign Exempt Listings)*;
- the entity's constitution; and
- any annual report or other financial statements given to ASX with the application.

The documents released to the ASX Market Announcements Platform will not include any letter applying for a waiver or in-principle advice.

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 a waiver of a Listing Rule and the terms of that waiver.

2.9 Requirements for additional information

ASX has the power to require an applicant for listing to disclose additional information over and above that required in its Appendix 1C application form and the accompanying *Information Form and Checklist (ASX Foreign Exempt Listings)*.⁴³ ASX also has the power to impose a condition on admission or quotation that the applicant disclose certain information to the market before quotation commences.⁴⁴

It would be uncommon for ASX to exercise either of these powers in relation to an ASX Foreign Exempt Listing. ASX would generally only do so if it formed the view that investors in Australia required additional information, over and above that which had been disclosed under the listing rules of the entity's overseas home exchange, in order for trading in the entity's securities on the Australian market to take place on a reasonably informed basis.

2.10 Continuing requirements

Once listed on ASX, an ASX Foreign Exempt Listing is exempt from complying with most of ASX's Listing Rules. However, it must comply with the following requirements:

- it must immediately provide to ASX all information it provides to its overseas home exchange that is, or is to be, made public⁴⁵ – the information must be in English or accompanied by an English translation;⁴⁶
- it must continue to comply with the listing rules of its overseas home exchange and, by no later than the lodgement of its full year accounts with ASX in each year, give ASX a statement that it continues to comply with those rules for release to the market;⁴⁷

⁴³ Listing Rule 1.17. ASX may require this information to be submitted to the scrutiny of an expert selected by ASX. The applicant must pay for the expert.

⁴⁴ Listing Rules 1.19 and 2.9.

⁴⁵ Listing Rule 1.15.2.

⁴⁶ Listing Rule 15.2A.

⁴⁷ Listing Rule 1.15.3.

- it must promptly inform ASX if it is granted a waiver of all or part of any listing rule of its overseas home exchange and, if ASX requires, the entity must release details of any such waiver to the market;⁴⁸
- it must immediately request a trading halt in respect of its securities or a class of them if trading in those securities or that class is halted on its overseas home exchange;⁴⁹
- it must immediately request a suspension in respect of its securities or a class of them if those securities or that class have been suspended from quotation on its overseas home exchange;⁵⁰
- if it has a dual listing on ASX and an overseas exchange and has CDIs issued over its quoted securities, it must lodge with ASX on a monthly basis an Appendix 4A *Statement of CDIs on Issue*;⁵¹
- it must comply with various ASX Listing Rules relating to transfers and registers of securities;⁵²
- if it is a qualifying NZ entity, it must apply for quotation of all additional securities in a class of securities that is to be quoted or is already quoted on ASX;⁵³
- it must comply with the requirement to lodge with ASX copies of notices it receives from substantial holders;⁵⁴
- it must comply with some ASX Listing Rules relating to certain procedural and administrative matters:
 - the requirement to appoint a person responsible for communications with ASX;⁵⁵
 - if it is a foreign company, the requirement to remain registered as a foreign company carrying on business in Australia under the Corporations Act;⁵⁶
 - if it is a foreign trust which has as its responsible entity an entity which is not an Australian company, the requirement for its responsible entity to remain registered as a foreign company carrying on business in Australia under the Corporations Act;⁵⁷
 - the way announcements are lodged with ASX, including those announcements that have to be made using an online form provided by ASX;⁵⁸
 - trading halts, suspension and removal;⁵⁹
 - the application of the Listing Rules;⁶⁰ and

⁴⁸ Listing Rule 1.15.4.

⁴⁹ Listing Rule 1.15.5. Listing Rule 17.1 applies to any such request. This requirement does not limit the application of Chapter 17 to an entity.

⁵⁰ Listing Rule 1.15.6. Listing Rule 17.2 applies to any such request. This requirement does not limit the application of Chapter 17 to an entity.

⁵¹ Listing Rules 1.15.1 and 4.11.

⁵² Being Listing Rules 2.2, 2.7, 8.1, 8.2, 8.3, 8.5, 8.6, 8.7, 8.10, 8.11, 8.17 and 8.21 (Listing Rule 1.15.1). See also '5.4 [Clearing and settlement](#)' on page 26.

⁵³ Listing Rules 1.15.1A and 2.4.

⁵⁴ Listing Rules 1.15.1, 3.17.3 and 3.17.4. See also '3.8 [Information about substantial holdings](#)' on page 24.

⁵⁵ Listing Rules 1.15.1 and 12.6. See also '5.2 [Appointment of person responsible for communications with ASX](#)' on page 25.

⁵⁶ Listing Rules 1.15.1B and 12.6A. See also '5.1 [Registration as a foreign company under the Corporations Act](#)' on page 23.

⁵⁷ Listing Rules 1.15.1C and 12.6B. See also '5.1 [Registration as a foreign company under the Corporations Act](#)' on page 23.

⁵⁸ Listing Rules 1.15.1, 15.2 to 15.6, 15.8 and 15.9.

⁵⁹ Listing Rule 1.15.1 and Chapter 17.

⁶⁰ Listing Rule 1.15.1 and Chapter 18.

- interpretation and definitions;⁶¹ and
- it must pay ASX's prescribed fees under Chapter 16 of the Listing Rules.⁶²

2.11 ASX's discretion to apply other rules

ASX has the power to prescribe additional Listing Rules with which an ASX Foreign Exempt Listing must comply.⁶³

It would be uncommon for ASX to exercise this power in relation to an ASX Foreign Exempt Listing. ASX would generally only do so if it formed the view that there are significant gaps in the listing rules of the entity's overseas home exchange compared to the ASX Listing Rules, or if those listing rules are not being enforced in a way that is consistent with the legitimate expectations of investors trading on ASX.

One such example is where ASX becomes concerned that insufficient information has been disclosed by the entity under the Listing Rules of its overseas home exchange for trading in its securities to take place on a reasonably informed basis. In those circumstances, ASX may consider imposing a requirement that the entity comply with ASX's continuous disclosure requirements in Listing Rules 3.1 - 3.1B.

Another example is where ASX becomes concerned about the quality of information contained in the entity's financial statements. In those circumstances, ASX may consider imposing a requirement that the entity comply with some or all of ASX's accounting requirements in Listing Rule 19.11A.

2.12 Timetables for corporate actions

ASX Foreign Exempt Listings are not subject to ASX's Listing Rules relating to timetables for corporate actions (dividend payments, rights issues, reconstructions, etc.). However ASX encourages ASX Foreign Exempt Listings to consult with ASX about the timing of their corporate actions to ensure that the needs of the ASX market are taken into consideration and, to the extent possible, that the ASX market and the entity's home exchange trade on the same basis when it comes to entitlement to participate in corporate actions.

3. Standard ASX Listings

3.1 Admission requirements

A foreign entity seeking a standard ASX Listing is subject to the same admission requirements as an Australian entity, irrespective of whether it is listed on another stock exchange. Detailed information about those requirements can be found in Guidance Note 1 *Applying for Admission – ASX Listings*.

Additionally, a foreign company that wishes to list on ASX as a standard ASX Listing must be registered as a foreign company carrying on business in Australia under the Corporations Act.⁶⁴

A foreign trust 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.⁶⁵ If it registers as a managed investment scheme, this effectively converts it into an Australian trust for the purposes of the Listing Rules.⁶⁶

⁶¹ Listing Rule 1.15.1 and Chapter 19.

⁶² Listing Rule 1.15.1.

⁶³ Listing Rule 1.15.1. This power may be exercised before or after the entity is listed.

⁶⁴ Listing Rule 1.1 condition 4. See also '5.1 [Registration as a foreign company under the Corporations Act](#)~~Registration as a foreign company under the Corporations Act~~ on page 23.

⁶⁵ Listing Rule 1.1 condition 5(a).

⁶⁶ See the definition of "Australian trust" in Listing Rule 19.12.

A foreign trust that is exempted from the requirement to be a registered managed investment scheme must have as its responsible entity either an Australian company or an entity that is registered as a foreign company carrying on business in Australia under the Corporations Act.⁶⁷

The discussion below highlights some additional considerations that are relevant to foreign entities applying for an ASX Listing.

3.2 Prospectus/product disclosure statement

Unless ASX agrees to accept an information memorandum in lieu of a prospectus or PDS (which it will only do in very limited circumstances),⁶⁸ an entity seeking admission in the ASX Listing category must issue a prospectus or PDS, lodge it with ASIC and give it to ASX.⁶⁹

Guidance Note 1 *Applying for Admission – ASX Listings* has further information about ASX's requirements for prospectuses, PDSs and information memoranda. As noted in that Guidance Note, ASX expects the prospectus, PDS or information memorandum 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 summary⁷⁰ of the rights and obligations of security holders under the law of its home jurisdiction⁷¹ 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;
 - 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;

⁶⁷ Listing Rule 1.1 condition 5(b).

⁶⁸ See ‘3.5 When ASX will accept an information memorandum in lieu of a prospectus or PDS’ in Guidance Note 1.

⁶⁹ Listing Rule 1.1 condition 3.

⁷⁰ 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.

⁷¹ 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: see ‘3.10 [Information about material changes in the rights and obligations of security holders](#)’ on page 22.

- a concise summary⁷² of how the disclosure of substantial holdings and takeovers are regulated under the law of its home jurisdiction; and
- a summary of any taxes or duties payable in its place of incorporation, registration or establishment by an investor in relation to the acquisition, holding or disposal of securities in the entity or, if there are no such taxes or duties, a statement to that effect.

If this information is not included in the entity's prospectus, PDS or information memorandum, ASX will require the information to be given to ASX under Listing Rule 1.17 as supplemental pre-quotation disclosure for release to the market.

3.3 Minimum free float, minimum spread and connection with Australia

It is not considered an obstacle to an ASX Listing that an entity does not conduct any major business activities or have management or staff based in Australia.⁷³ Accessing the substantial pool of capital in Australia in and of itself is a sufficient business reason for an entity to want to list in Australia.

An entity applying for a standard ASX Listing must satisfy ASX's minimum free float⁷⁴ and minimum spread requirements.⁷⁵ This is to ensure that there is sufficient investor interest in the entity to justify its listing and to aid liquidity.

To meet the minimum float requirement, 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%.

"Free float"⁷⁶ means the percentage of the entity's main class of securities that:

- are not "restricted securities"⁷⁷ or subject to voluntary escrow;⁷⁸ and
- are held by non-affiliated security holders.

"Non-affiliated security holders" means security holders who are not:

- a related party⁷⁹ of the entity;
- an associate⁸⁰ of a related party of the entity; or

⁷² See note 70 above.

⁷³ Provided the entity has someone who can communicate with ASX on Listing Rule matters during the Sydney time zone: see '5.2 [Appointment of person responsible for communications with ASX](#)' ~~Appointment of person responsible for communications with ASX on page 25.~~

⁷⁴ Listing Rule 1.1 condition 7.

⁷⁵ Listing Rule 1.1 condition 8.

⁷⁶ See the definition of "free float" in Listing Rule 19.12.

⁷⁷ The concept of "restricted securities" is explained in greater detail in Guidance Note 11 *Restricted Securities and Voluntary Escrow*.

⁷⁸ As defined in Listing Rule 19.12.

⁷⁹ As defined in Listing Rule 19.12.

⁸⁰ "Associate" is defined in Listing Rule 19.12. The definition is based on, but in some respects is broader than, the definition of "associate" in section 12 of the Corporations Act. For example, in the Listing Rules definition, the references to a body corporate in section 12(2)(a) have been replaced with references to an entity so as to capture trusts, partnerships and other unincorporated bodies and a paragraph has been added specifying that if the primary person is natural person, their associates include any entity they control.

The Listing Rules definition also includes a provision deeming a related party of a natural person to be their associate unless the contrary is proven. This provision exists as an evidentiary aid and is intended to put the evidentiary burden on a person who asserts that they do not control and are not acting in concert with a related party to prove that is so. It is based on the premise that because of the close connection between an individual and their related parties, it should be presumed that the individual is able to control a related party, or that a related party is acting in concert with the individual, unless the contrary is proven. Otherwise it is too easy for the individual and the related party simply to deny any association and to put others to the task of proving that they are associates.

The definition of "associate" in Listing Rule 19.12 has an equivalent carve-out to that provided in section 16 of the Corporations Act, which states that a person is not an associate of another person merely because of one or more of the following: (a) one gives advice to the other,

/cont.

- (c) a person whose relationship to the entity or to a person referred to in (a) or (b) is such that, in ASX's opinion, they should be treated as affiliated with the entity.⁸¹

To meet the minimum spread requirement, the entity must have at least 300 non-affiliated security holders, each of whom holds a parcel of the entity's main class of securities that are not restricted securities or subject to voluntary escrow with a value of at least \$2,000.⁸²

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 established 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.

Further guidance on ASX's minimum spread requirements can be found in section 3.9 of Guidance Note 1 *Applying for Admission – ASX Listings*.

3.4 Continuing compliance with Listing Rules and ASX's waiver power

A foreign entity which is granted an ASX Listing must comply with all applicable ASX Listing Rule requirements, in the same way as any Australian entity, unless it is granted a specific waiver by ASX. This applies even where the entity is listed on another exchange.

ASX may, in very limited situations, recognise compliance by a foreign entity which has its primary listing on an overseas exchange with a particular obligation imposed by its home exchange as constituting, in principle, sufficient reason to justify the granting of a waiver from a comparable, but inconsistent, obligation under the ASX Listing Rules. Such waivers have historically been granted sparingly and the onus is on the applicant to show good cause why it should be granted such a waiver. ASX has no obligation to recognise the regulation of an ASX Listing by any other exchange and will only do so where it is satisfied that the exchange in question imposes comparable standards to ASX that meet the general principles on which the ASX Listing Rules are based, as outlined in the introduction to the Listing Rules.

All applications for such waivers are considered on their merits on a case-by-case basis. In considering such an application, ASX will be guided by considerations such as:

- the stature and reputation of the home exchange on which the foreign entity is listed;

or acts on the other's behalf, in the proper performance of the functions attaching to a professional capacity or a business relationship; (b) one, a client, gives specific instructions to the other, whose ordinary business includes dealing in financial products, to acquire financial products on the client's behalf in the ordinary course of that business; (c) one has sent, or proposes to send, to the other an offer under a takeover bid for securities held by the other; or (d) one has appointed the other, otherwise than for valuable consideration given by the other or by an associate of the other, to vote as a proxy or representative at a meeting of members, or of a class of members, of the listed entity.

⁸¹ Listing Rule 19.12. Securities held by or for an employee incentive plan are not regarded by ASX as forming a part of an entity's free float. 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.

⁸² Where an entity is undertaking a material capital raising in conjunction with its listing, ASX will normally use the offer price under the prospectus, PDS or information memorandum for that capital raising to calculate the value of a parcel of securities for the purposes of spread. ASX may, however, use a different price to determine value if the entity is not undertaking a material capital raising in conjunction 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 Listing Rule 1.1 condition 8). In an appropriate case, ASX may require these values to be verified by an independent expert (Listing Rule 1.17).

- the period of time the entity has been listed on that exchange;
- the entity's track record in complying with the listing rules of that exchange;
- the proportion of trading in the entity's securities that occurs, or is likely to occur, on that exchange compared to ASX;
- the proportion of the entity's business that is conducted in Australia;⁸³
- whether the corresponding requirement of the overseas exchange is consistent with the underlying policy of the ASX Listing Rule from which a waiver is sought and with the principles that underpin ASX's Listing Rules (as set out in the introduction to the Listing Rules); and
- whether the inconvenience to the listed company in satisfying two sets of comparable, but inconsistent, requirements outweighs any detriment to users of ASX markets from the non-application of ASX's requirements.

A foreign entity applying for an ASX Listing that wishes to receive such a waiver must apply in writing for the waiver, identifying the particular ASX Listing Rule or Rules from which a waiver is sought. In its application for the waiver, the foreign entity should:

- describe in detail the corresponding rules of its home exchange with which it must comply;
- confirm that it is in full compliance with those rules;
- explain why it is considered burdensome that it should have to comply with the relevant ASX Listing Rules in addition to the rules of its home exchange; and
- justify why compliance with the rules of its home exchange in lieu of the relevant ASX Listing Rules will meet the general principles on which the ASX Listing Rules are based, as outlined in the introduction to the Listing Rules.

Further guidance on how to apply for waivers and the principles that ASX applies in deciding whether or not to grant them can be found in Guidance Note 17 *Waivers and In-Principle Advice*.

If ASX is minded to grant such a waiver, it will be subject to a condition that the listed entity continues to comply with the comparable rules of its home exchange. The waiver will also usually be granted for a nominated period only (typically one year) so that there is an opportunity to review the need for the waiver on a regular basis. ASX may withdraw the waiver at any time⁸⁴ and, among other circumstances, will consider doing so if there is a change in the regulatory regime that applies to the foreign entity.

If ASX grants such a waiver, the applicant will be required to make an announcement on the ASX Market Announcements Platform that the waiver has been granted.

A foreign entity applying for admission as an ASX Listing that has a primary listing on an overseas exchange other than the NZX main board and that intends to use CHESS Depository Interests (CDIs) to facilitate the holding and transfer of its ASX-quoted securities⁸⁵ should note one waiver, in particular, that it can seek from ASX. ASX will usually, on request, grant a waiver to such an entity from Listing Rules 1.1 condition 6 and 2.4 to relieve the entity from the obligation to apply for quotation of all the securities in its main class and instead allow it to apply for quotation of the portion of its securities that will be represented by CDIs. This will have the result that the entity will

⁸³ An entity which has its central management and control or a significant proportion of its business operations in Australia is unlikely to be granted a waiver from any ASX Listing Rules, other than standard waivers granted to Australian entities generally. This is intended to prevent essentially Australian businesses incorporating or registering themselves offshore to circumvent ASX's listing requirements and also to maintain a level playing field between entities that are listed on ASX and carrying on essentially Australian businesses, regardless of their place of incorporation or registration.

⁸⁴ Listing Rule 18.3.

⁸⁵ See '5.4 [Clearing and settlement](#)~~Clearing and settlement~~' on page 26 below and Guidance Note 5 *CHESS Depository Interests (CDIs)*.

pay ASX listing fees only on the portion of its securities represented by CDIs (ie on the Australian component of its register rather than on its full register).⁸⁶ This puts such entities in the same position as ASX Foreign Exempt Listings when it comes to the amount of ASX listing fees they pay.

3.5 Continuous disclosure requirements

Listing Rule 3.1 requires an entity admitted as an ASX Listing to tell ASX of any information that a reasonable person would expect to have a material effect on the price or value of the entity's securities, immediately upon becoming aware of such information.

Compliance with Listing Rule 3.1 is critical to the integrity and efficiency of the ASX market and other markets that trade in ASX quoted securities or derivatives of those securities. Reflecting this, Parliament has given the rule statutory force in section 674 of the Corporations Act. A listed entity which breaches Listing Rule 3.1 may also breach that section and this can attract serious legal consequences for the entity and its officers.

Further guidance about an entity's continuous disclosure obligations can be found in Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*. Foreign entities admitted to the official list as an ASX Listing must ensure that they are thoroughly familiar with Guidance Note 8 and their continuous disclosure obligations under the ASX Listing Rules.

3.6 Financial reporting requirements

Foreign entities admitted as an ASX Listing must give periodic financial reports to ASX. These requirements are set out in Chapters 4 and 5 of the Listing Rules and are essentially the same for Australian and foreign entities.

It is important that a foreign entity admitted as an ASX Listing has internal accounting staff and external auditors with a knowledge of, and the appropriate skills and expertise in the applicable accounting and auditing standards needed to comply with, ASX's periodic financial reporting requirements.⁸⁷

In brief, a foreign entity admitted as an ASX Listing must provide the following:

- in the case of an entity that is not a mining exploration entity⁸⁸ or oil and gas exploration entity,⁸⁹ a half year report containing the information in Appendix 4D;⁹⁰
- the following half yearly accounts and documents:
 - if the entity is subject in its home jurisdiction to an equivalent law to section 320 of the Corporations Act requiring it to prepare half yearly accounts, the accounts and other documents prepared under that law;⁹¹ or
 - if the entity is not subject in its home jurisdiction to an equivalent law to section 320 of the Corporations Act requiring it to prepare half yearly accounts, accounts for the half year equivalent to

⁸⁶ Where the entity has CDIs issued over its quoted securities, it will be required to lodge with ASX on a monthly basis an Appendix 4A *Statement of CDIs on Issue* showing the net movement in CDIs (Listing Rule 4.11). If new securities are issued and will be held in the form of CDIs, a separate Appendix 2A will also need to be lodged seeking quotation of those CDIs (Listing Rule 2.7).

⁸⁷ The *Information Form and Checklist (ASX Listing)* that must accompany its application for listing requires an applicant applying for admission to the official list as an ASX Listing to disclose the name of its auditor. In certain cases, ASX may also require the applicant to provide information about the qualifications and experience of the auditor for release to the market before quotation commences.

⁸⁸ A mining exploration entity means an entity whose main undertaking consists of exploration for minerals or which has been advised by ASX that it is a mining exploration entity for the purposes of the Listing Rules (Listing Rule 19.12).

⁸⁹ An oil and gas exploration entity means an entity whose main undertaking consists of exploration for petroleum or which has been advised by ASX that it is an oil and gas exploration entity for the purposes of the Listing Rules (Listing Rule 19.12).

⁹⁰ Listing Rule 4.2A.3. Mining exploration entities and oil and gas exploration entities are exempt from the requirement to provide an Appendix 4D half year report on the basis that they are required to provide quarterly activity reports under Listing Rules 5.3 and 5.4 and quarterly Appendix 5B cash flow reports under Listing Rule 5.5.

⁹¹ Listing Rule 4.2A.2. The accounts must be audited or subject to review and the audit or review report must be given to ASX with the accounts.

those it would be required to prepare in its home jurisdiction if its governing legislation included a provision equivalent to section 320 of the Corporations Act;⁹²

- in the case of an entity that is not a mining exploration entity or oil and gas exploration entity, a preliminary final (full year) report containing the information set out in Appendix 4E;⁹³
- the following full year accounts and documents:⁹⁴
 - if the entity is a registered foreign company that is required to comply with section 601CK of the Corporations Act,⁹⁵ a copy of the accounts and other documents it must lodge with ASIC under that section;⁹⁶ or
 - if the entity is not a registered foreign company that is required to comply with section 601CK of the Corporations Act, a copy of the accounts and other documents that it would be required to give ASX under the paragraph immediately above if it had to comply with the requirements of that section;⁹⁷ and
- the annual report it sends to security holders.⁹⁸

The Appendix 4D half year report and the Appendix 4E preliminary final report must be provided as soon as they are ready to be given to ASX and no later than two months from the end of the relevant accounting period.⁹⁹

Half yearly accounts must be lodged with ASX at the same time as they are lodged with the relevant overseas regulator and in any event:

- in the case of an entity that is not a mining exploration entity or oil and gas exploration entity, no later than two months after half year end; or
- in the case of a mining exploration entity or oil and gas exploration entity, no later than 75 days after half year end.¹⁰⁰

Full year accounts lodged with ASIC under section 601CK of the Corporations Act must be given to ASX at the same time as they are lodged with ASIC and no later than three months after year end.¹⁰¹ If an entity does not have to file full year accounts with ASIC under section 601CK of the Corporations Act, then it must give the equivalent documents to ASX no later than three months after year end.¹⁰²

There are additional quarterly reporting requirements in Chapter 5 for mining and oil and gas entities. A mining producing entity or an oil and gas producing entity must provide a detailed report of its production and development activities and a summary of its exploration activities within one month after quarter end.¹⁰³ A mining exploration

⁹² Listing Rule 4.2A.2A. This effectively requires the accounts to be audited or subject to review and the audit or review report to be given to ASX with the accounts.

⁹³ Listing Rule 4.3A. Again, mining exploration entities and oil and gas exploration entities are exempt from the requirement to provide an Appendix 4E preliminary final report on the basis that they are required to provide quarterly activity reports under Listing Rules 5.3 and 5.4 and quarterly Appendix 5B cash flow reports under Listing Rule 5.5.

⁹⁴ Entities that change their financial reporting year also need to file an Appendix 4F if the transitional period of the change is longer than 12 months. Entities should contact ASX for specific guidance if they are considering a change to their reporting periods.

⁹⁵ The documents required to be lodged with ASIC under section 601CK are a balance sheet, cash flow statement, and profit and loss statement.

⁹⁶ Listing Rule 4.5.2. The accounts must be audited and the audit report must be given to ASX with the accounts.

⁹⁷ Listing Rule 4.5.3. This effectively requires the accounts to be audited and the audit report to be given to ASX with the accounts.

⁹⁸ Listing Rule 4.7.

⁹⁹ Listing Rules 4.2B and 4.3B.

¹⁰⁰ Listing Rule 4.2B.

¹⁰¹ Listing Rule 4.5.2.

¹⁰² Listing Rule 4.5.3.

¹⁰³ Listing Rules 5.1 and 5.2 respectively.

entity or an oil and gas exploration entity must provide a detailed report of its exploration, development and production activities and certain other information,¹⁰⁴ as well as an Appendix 5B quarterly cash flow report,¹⁰⁵ within one month after quarter end.

An entity admitted under the assets test on the basis of commitments to spend funds¹⁰⁶ will normally be required to provide quarterly activity reports and Appendix 4C cash flow reports within one month after quarter end, for at least the first two years after its listing.¹⁰⁷ Other entities may also be required by ASX to provide quarterly activity reports and Appendix 4C cash flow reports.¹⁰⁸

The information required by the various ASX reports (Appendices 4C, 4D, 4E, 5A and 5B) does not need to be audited or reviewed unless ASX explicitly requires an audit or review of a specific report. However, the statutory accounts which are part of the half year report must be audited or reviewed and the annual accounts underlying the preliminary final report must be audited. The audit of the annual accounts can be completed after the Appendix 4E Preliminary final report is lodged with ASX.

If these reporting requirements are not met by an ASX Listing, the quotation of its securities will be suspended until the required reports have been given to ASX.¹⁰⁹

Financial statements given to ASX must be prepared in accordance with Australian Accounting Standards or other standards agreed to by ASX.¹¹⁰ This applies not only to the periodic financial reports referred to above, but also to other financial statements, such as those included in prospectuses, PDSs, information memoranda and the like. For these purposes, ASX will accept International Financial Reporting Standards (IFRS) as adopted by the EU and the accounting standards and generally accepted accounting principles applied in Bermuda, Canada, Cayman Islands, Hong Kong, New Zealand, Singapore, South Africa, UK and USA as acceptable standards for these purposes. Entities that wish to use any other accounting standards in preparing financial statements must apply to ASX for advice as to whether those standards are acceptable to ASX.

If an entity wishes to use accounting standards in the preparation of its financial statements which ASX considers are not acceptable, ASX will generally require it to attach a statement reconciling the financial information in those statements to the equivalent financial information prepared using either Australian Accounting Standards or IFRS.

Similarly, the audit/review standards applied to any audited/reviewed accounts that are required to be lodged with ASX must be Australian Auditing Standards or other standards agreed to by ASX.¹¹¹ ASX will accept International Standards on Auditing or US Auditing Standards as acceptable standards for these purposes. Entities which wish to use any other audit/review standards must apply to ASX for advice as to whether those standards are acceptable to ASX.

Foreign companies listing on ASX should note that the discussion above only addresses their financial reporting obligations under the ASX Listing Rules. They should also have regard to their financial reporting obligations under the Corporations Act, discussed in further detail in '5.1 Registration as a foreign company under the Corporations Act' below.¹¹²

¹⁰⁴ Listing Rules 5.3 and 5.4 respectively.

¹⁰⁵ Listing Rule 5.5.

¹⁰⁶ Listing Rule 1.3.2(b).

¹⁰⁷ Listing Rules 4.7B and 4.7C.

¹⁰⁸ See section 15 in Guidance Note 23 *Quarterly Reports*.

¹⁰⁹ Listing Rule 17.5.

¹¹⁰ Listing Rule 19.11A(b).

¹¹¹ Listing Rule 19.11A(c) and (d).

¹¹² See the text following note 132 below.

3.7 Financial documents given by a dual listed entity to an overseas exchange

In addition to the accounts and other documents it must give to ASX under chapters 4 and 5 of the Listing Rules, an entity with a dual listing on the ASX and an overseas securities exchange must immediately give to ASX a copy of any document it gives to the overseas exchange that meets the following requirements:

- the document is given to the overseas stock exchange by the entity in its capacity as an entity listed on that exchange;
- the document is, or will be, made public by the overseas stock exchange;
- the document includes accounts or other similar financial information; and
- the document is not materially the same as another document that the entity has already given to ASX.¹¹³

Such documents, if not in English, must be accompanied by an English translation.¹¹⁴

3.8 Information about substantial holdings

The provisions of the Corporations Act dealing with notification of substantial holdings do not apply to entities established outside Australia. To ensure that the market is properly informed of such matters, the Listing Rules require an entity not established in Australia to give to ASX:

- a copy of a document it receives about a substantial holdings of securities under any overseas law or provisions in the entity's constitution equivalent to Part 6C.1 of the Corporations Act;¹¹⁵ and
- a copy of a document it receives about a substantial holding of securities under any overseas law or provisions in the entity's constitution equivalent to Part 6C.2 of the Corporations Act that reveals materially different information to the most current information it has received (if any) about that substantial holding under the overseas law or provisions in the entity's constitution referred to in the preceding bullet point.¹¹⁶

3.9 Requisitions from security holders

An entity established in Australia is required to give ASX within two business days of receipt:

- information about the material terms of any notice it receives under certain provisions of the Corporations Act from a holder or holders of securities calling, or requesting the calling of, or proposing to move a resolution at, a general meeting; and
- information that a notice previously notified to ASX under this requirement has been withdrawn by the holder or holders who gave it.¹¹⁷

¹¹³ Listing Rule 3.17B.

¹¹⁴ Listing Rule 15.2A. If the announcement is being made under Listing Rules 3.1 or 3.1B and the preparation of an English translation is likely to take some time, to meet the requirement to disclose information immediately, the entity should lodge the original foreign language version with a short summary in English of the material contents of the document and then lodge the translation as soon as it reasonably can thereafter.

¹¹⁵ Listing Rule 3.17.3. Part 6C.1 of the Corporations Act requires the disclosure of substantial (5%+) holdings of voting securities in listed entities established in Australia. A person who gives a substantial holding notice to an entity established in Australia under Part 6C.1 of the Corporations Act is required to give a copy of that notice to ASX (section 671B(1)) and therefore it is not necessary for the entity to give a separate copy of that notice to ASX. Hence there is no equivalent to Listing Rule 3.17.3 for entities established in Australia.

¹¹⁶ Listing Rule 3.17.4. Part 6C.2 of the Corporations Act empowers a listed entity established in Australia to serve "tracing notices" to uncover the ultimate beneficial owner/controller of voting securities in the entity. Listing Rule 3.17.2 requires an Australian entity to give ASX a copy of a document it receives about a substantial holding of securities under Part 6C.2 of the Corporations Act that reveals materially different information to the most current information (if any) it has received about that substantial holding under Part 6C.1 of the Corporations Act.

¹¹⁷ Listing Rule 3.17A. The specific provisions referenced in that rule are sections 249D, 249F, 249N, 252B, 252D or 252L of the Corporations Act.

An entity not established in Australia is required to give equivalent information in relation to any notice it receives under any equivalent overseas law or equivalent provisions in the entity's constitution.

3.10 Information about material changes in the rights and obligations of security holders

Material changes to the provisions of the Corporations Act conferring rights or imposing obligations on the holders of securities in entities established in Australia are likely to be a matter of such public notoriety that investors trading in those securities on ASX can be presumed to be aware of those changes. The same may not be true, however, of changes in the rights or obligations of security holders in an entity not established in Australia under the law of its home jurisdiction.

To ensure that the market is properly informed of such matters, the Listing Rules require an entity not established in Australia, 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.¹¹⁸

Examples of the types of matters that would need to be notified to ASX in this regard include any material change to the law of its home jurisdiction in terms of:

- the types of transactions that require security holder approval;
- the right of security holders to request or requisition a meeting of security holders;
- the right of security holders to appoint proxies to attend and vote at meetings on their behalf;
- how changes in the rights attaching to securities are regulated;
- the right of security holders to seek relief for oppressive conduct;
- the right of security holders to bring or intervene in legal proceedings on behalf of the entity;
- the adoption of, or any material change to, any equivalent to the "two strikes" rule in relation to remuneration reports in Part 2G.2 Division 9 of the Corporations Act; or
- how the disclosure of substantial holdings and takeovers are regulated.

4. ASX Debt Listings

4.1 Admission requirements

A foreign entity seeking an ASX Debt Listing is subject to the same admission requirements as an Australian entity, irrespective of whether it is already listed on another securities exchange. Detailed information about those requirements can be found in Guidance Note 29 *Applying for Admission – ASX Debt Listings*.

A foreign entity must also satisfy the following additional requirements:

- ASX must be satisfied that the entity complies with its constitution and the laws that govern it and the Listing Rules (or their equivalent) of its overseas home exchange (if any);¹¹⁹
- if it is a foreign company, it must be registered as a foreign company carrying on business in Australia under the Corporations Act;¹²⁰ and

¹¹⁸ Listing Rule 3.17C.

¹¹⁹ Listing Rule 1.8 condition 6.

¹²⁰ Listing Rule 1.8 condition 7. See also '5.1 [Registration as a foreign company under the Corporations Act](#)~~Registration as a foreign company under the Corporations Act~~' on page 23.

- if it is a foreign trust¹²¹ which has as its responsible entity an entity which is not an Australian company, its responsible entity must be registered as a foreign company carrying on business in Australia under the Corporations Act.¹²²

To meet the first requirement above, ASX will generally require a legal opinion from a reputable law firm in the applicant's home jurisdiction which is satisfactory to ASX and which confirms that the applicant is validly existing in that jurisdiction and that the business it carries on complies with its constitution, the laws of that jurisdiction and, if it is listed on an overseas stock exchange, the listing rules (or their equivalent) of that exchange.

4.2 Prospectus requirements for retail debt securities

Guidance Note 29 *Applying for Admission – ASX Debt Listings* has further information about certain Corporations Act requirements that apply to retail debt securities, including the requirement to have lodged a prospectus in relation to the securities with ASIC. As noted in that Guidance Note, ASX expects the prospectus for a foreign entity to include:

- a statement of its place of incorporation or registration; and
- 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*].”

5. Common issues relevant to foreign entities seeking any listing on ASX

5.1 Registration as a foreign company under the Corporations Act

As mentioned previously, a foreign company which is seeking any type of listing on ASX must be registered as a foreign company carrying on business in Australia for the purposes of the Corporations Act.¹²³

Likewise, the responsible entity of a foreign trust¹²⁴ which is seeking any type of listing on ASX must, if it is not an Australian company, be registered as a foreign company carrying on business in Australia under the Corporations Act.¹²⁵

The process to register as a foreign company, and the obligations that apply to registered foreign companies, are set out in Part 5B.2 Division 2 of the Corporations Act.

Among other things, to register as a foreign company under the Corporations Act, an entity must appoint a local agent in Australia who is authorised to accept service of process and notices on behalf of the entity.¹²⁶ ASIC has prescribed a form of Memorandum of Appointment of Local Agent for these purposes.¹²⁷

¹²¹ “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 (Listing Rule 19.12).

¹²² Listing Rule 1.8 condition 8(d).

¹²³ Listing Rule 1.1 condition 4 (ASX Listing), Listing Rule 1.8 condition 7 (ASX Debt Listing) and Listing Rule 1.11 condition 7 (ASX Foreign Exempt Listing).

¹²⁴ As defined in note 121 above. A foreign trust that wishes to list on ASX in any category of listing also has the option to register as a managed investment scheme under the Corporations Act. This effectively converts it into an Australian trust for the purposes of the Listing Rules (see the definition of “Australian trust” in Listing Rule 19.12).

¹²⁵ Listing Rule 1.1 condition 5(b) (ASX Listing), Listing Rule 1.8 condition 8(d) (ASX Debt Listing) and Listing Rule 1.11 condition 8(a) (ASX Foreign Exempt Listing).

¹²⁶ Section 601CF(2) of the Corporations Act. The name and address of the entity's local agent must be notified to ASX in the *Information Form and Checklist* lodged with the applicant's application for listing on ASX.

¹²⁷ ASIC Form 418, available [online at: http://download.asic.gov.au/media/2948596/418_v2.pdf](http://download.asic.gov.au/media/2948596/418_v2.pdf) on the ASIC website

Registration as a foreign company carrying on business in Australia brings with it a number of regulatory obligations, including:

- to have a registered office in Australia to which communications and notices may be addressed that is open between certain hours and at which a representative of the company is present at all times the office is open;¹²⁸
- to display its name and its place of origin in a conspicuous position and in legible characters outside its registered office and every office and place of business in Australia that is open and accessible to the public;¹²⁹
- to display its name, its Australian Registered Body Number (ARBN), its place of origin and, if the liability of the members is limited and the last word of its name is neither 'Limited' nor 'Ltd.', notice of the fact that the liability of its members is limited on:
 - every public document issued, signed or published by or on behalf of the company in Australia; and
 - every negotiable instrument signed or issued by or on behalf of the company in Australia;¹³⁰
- to retain a local agent who is answerable for the doing of all acts, matters and things that the company is required to do by or under the Corporations Act;¹³¹
- unless exempted by ASIC,¹³² to lodge with ASIC at least once every calendar year and at intervals of not more than 15 months¹³³ financial statements comprising a copy of the company's balance sheet, profit and loss statement and cash flow statement (all made up to the end of the last financial year), together with a Form 405 *Statement to verify financial statements of a foreign company*.¹³⁴ These documents must be in such form, contain such particulars and include copies of such documents as the company is required to prepare under the law applicable in its place of origin (emphasis added).¹³⁵

Where a registered foreign company is not required by the law applicable in its place of origin to prepare a balance sheet, profit and loss statement and/or cash flow statement, the company must prepare and lodge that financial statement, within such period, in such form, containing such particulars and including such documents as the company would have been required to prepare if the company were an Australian public company. ASIC can, and in the case of a listed company usually will, require the financial statement in

¹²⁸ See section 911D.

¹²⁹ Section 601CW.

¹³⁰ Section 601DE. The company must also display its ARBN on all documents required to be lodged with ASIC under the Corporations Act: Corporations Regulations 1.0.07 – 1.0.10.

¹³¹ Section 601CF.

¹³² ASIC may declare a registered foreign company to be exempt from these financial reporting requirements: see section 601CK(7) and (8) and ASIC Regulatory Guide 58 *Reporting requirements—Registered foreign companies and Australian companies with foreign company shareholders*. An exempt registered foreign company must lodge a Form 406 *Annual return of a foreign company*, instead of the financial statements referred to in the text above, at least once in every calendar year. The annual return must be made up to the date of the company's annual general meeting and lodged with ASIC within 1 month after the date to which it is made up, or within such further period as ASIC, in special circumstances, allows (section 601CK(9) and (10)).

¹³³ ASIC may extend the period for lodgement of these documents (section 601CK(2)).

¹³⁴ Section 601CK(1). When a foreign company that holds an Australian Financial Services Licence lodges its financial statements with ASIC, it can either: (a) rely on ASIC *Corporations (Foreign Licensees and ADIs) Instrument 2016/186* and lodge a Form 405 (in which case it must include an auditor's report with this form); or (b) lodge Forms FS70 *Australian financial services licensee profit and loss statement and balance sheet* and FS71 *Auditor's report for AFS licensee*.

¹³⁵ If ASIC is of the opinion that these documents do not sufficiently disclose a registered foreign company's financial position, ASIC can require the company to lodge a balance sheet, profit and loss statement and/or cash flow statement within such period, in such form, containing such particulars and including such documents as ASIC by notice in writing to the company requires (section 601CK(3)). The registered foreign company must comply with the requirements set out in the notice (section 601CK(4)). However, ASIC cannot require a balance-sheet or a profit and loss statement to contain any particulars or include any documents that would not be required to be given if the company were an Australian public company (section 601CK(3)).

question to be audited.¹³⁶ This will effectively require the company to prepare the financial statements it is required to lodge with ASIC in accordance with Australian Accounting Standards and, if ASIC requires them to be audited (which it usually will in the case of an ASX listed foreign company), to have them audited in accordance with Australian Auditing Standards.

ASX understands that some US corporations are not required by the law of the US State in which they are incorporated to prepare and lodge accounts with their local corporations' office. If they are also not required to prepare and lodge accounts with the US Securities and Exchange Commission,¹³⁷ they will fall within the preceding paragraph. Likewise, ASX understands that some companies incorporated in "low disclosure" regimes, such as Bermuda, Cayman Islands and the British Virgin Islands, are not required to prepare and lodge accounts with their local companies' office and they too will fall within the preceding paragraph. Hence, on the face of it, they will be required under the Corporations Act to prepare and lodge with ASIC accounts prepared under Australian Accounting Standards and audited under Australian Auditing Standards.

ASX understands that ASIC is prepared to consider on a case-by-case basis granting relief to a foreign entity in this situation from the Corporations Act requirement to lodge accounts prepared under Australian Accounting Standards and audited under Australian Auditing Standards and instead allow it to lodge accounts prepared under its local accounting standards and audited under its local auditing standards.¹³⁸

Companies in this position that wish to prepare their accounts under their local accounting standards and have them audited under their local auditing standards¹³⁹ should approach ASIC to investigate whether ASIC will be prepared to grant such relief to them.

It should be noted that the laws regulating registered foreign companies carrying on business in Australia fall within the regulatory remit of ASIC. Any questions about those laws should be directed to ASIC rather than ASX.

Further information about the process for registering as a foreign company and the ongoing obligations that apply to registered foreign companies can be found on the ASIC website [at: https://asic.gov.au/for-business/registering-a-company/steps-to-register-a-company/foreign-companies/](https://asic.gov.au/for-business/registering-a-company/steps-to-register-a-company/foreign-companies/).

5.2 Appointment of person responsible for communications with ASX

Every foreign entity listed on ASX, whether as an ASX Listing, an ASX Foreign Exempt Listing or an ASX Debt Listing, must nominate at least one person¹⁴⁰ to be responsible¹⁴¹ for communication with ASX in relation to Listing Rule matters.¹⁴² 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:

¹³⁶ Sections 601CK(5), (5A) and (6).

¹³⁷ For example, via a Form 10-K.

¹³⁸ See paragraphs 72-75 of ASIC Report 664 *Overview of decisions on relief applications (October 2019 to March 2020)*, available online at https://download.asic.gov.au/media/5638843/rep664_published_23_june_2020.pdf on the ASIC website.

¹³⁹ Which ASX will generally allow for its purposes provided the local accounting and auditing standards are acceptable (see the text accompanying note 110 above).

¹⁴⁰ 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.

¹⁴¹ 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.

¹⁴² Listing Rule 1.1 condition 13 (ASX Listings), Listing Rule 1.11 condition 9 (ASX Foreign Exempt Listings) and Listing Rule 1.8 condition 9 (ASX Debt Listings). See also Listing Rule 12.6, which 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.

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* lodged with an applicant's application for listing on ASX.

- 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,¹⁴³

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.¹⁴⁴

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.

5.3 Electronic lodgement of announcements

Every foreign entity listed on ASX, whether as an ASX Listing, an ASX Foreign Exempt Listing or an ASX Debt Listing, must establish facilities for electronically lodging announcements with the ASX Market Announcements office.¹⁴⁵

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 the attachment to Guidance Note 20 ASX Online. An editable version of the ASX Online Agreement can be downloaded from <http://www.asx.com.au/regulation/compliance/compliance-downloads.htm>, the ASX website.. 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.

5.4 Clearing and settlement

Trades in securities quoted on the ASX market 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.

¹⁴³ 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).

¹⁴⁴ 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.

¹⁴⁵ Listing Rule 1.1 condition 14 (ASX Listings), Listing Rule 1.11 condition 10 (ASX Foreign Exempt Listings) and Listing Rule 1.8 condition 10 (ASX Debt Listings). See also Listing Rule 8.2.

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 Settlement¹⁴⁶ 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.¹⁴⁷

Ordinarily, to allow ASX to clear and settle transactions in its securities, an entity seeking admission to the ASX official list must be approved as an issuer under the operating rules¹⁴⁸ of the CHESS facility¹⁴⁹ and also have the securities it is seeking to have quoted on ASX approved for participation in that facility.¹⁵⁰ Once these approvals have been obtained, ASX Settlement will then establish the CHESS subregister for its securities, which ASX Settlement will administer as the entity's agent.¹⁵¹ The entity is responsible for establishing its own issuer sponsored subregister for its securities¹⁵² 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.¹⁵³ To issue CDIs, the entity must be approved as a foreign issuer of CDIs under the operating rules of the CHESS facility¹⁵⁴ and also have its CDIs approved for participation in that facility.¹⁵⁵ Once these approvals have been obtained, ASX Settlement will then establish the CHESS 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 CDIs¹⁵⁶ and, again, in practice, will usually engage an Australian registry to establish and administer that subregister on its behalf.

An entity's Appendix 1A, 1B or 1C 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 CHESS facility.¹⁵⁷

It should be noted that ASX's CDI facility can only be availed of by an entity that is established in a place overseas whose laws have the effect that CHESS cannot be used for holding legal title to its securities.¹⁵⁸ An entity that is established in a place overseas whose laws allow CHESS to be used for holding legal title to its securities must

¹⁴⁶ ASX Settlement Pty Limited, a wholly owned subsidiary of ASX and the operator of the ASX Settlement facility.

¹⁴⁷ 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.

¹⁴⁸ References to the operating rules of the CHESS facility mean the ASX Settlement Operating Rules.

¹⁴⁹ Listing Rule 1.1 condition 15(a) (ASX Listings), Listing Rule 1.11 condition 12(a) (ASX Foreign Exempt Listings) and Listing Rule 1.8 condition 11(a) (ASX Debt Listings).

¹⁵⁰ Listing Rule 2.1 condition 3(a) (ASX Listings and ASX Debt Listings), Listing Rule 2.2(a) (ASX Foreign Exempt Listings) 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).

¹⁵¹ Pursuant to ASX Settlement Operating Rules 8.1.3, 8.6.1 and 8.6.2.

¹⁵² Listing Rule 8.2(a).

¹⁵³ Listing Rule 8.2(b) 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)*.

¹⁵⁴ Listing Rule 1.1 condition 15(b) (ASX Listings), Listing Rule 1.11 condition 12(b) (ASX Foreign Exempt Listings) and Listing Rule 1.8 condition 11(b) (ASX Debt Listings).

¹⁵⁵ Listing Rules 2.1 condition 3(b) (ASX Listings and ASX Debt Listings) and 2.2(b) (ASX Foreign Exempt Listings). See also ASX Settlement Operating Rule 13.2.1.

¹⁵⁶ Listing Rule 8.2.

¹⁵⁷ ASX Settlement Operating Rule 8.1.1 and Procedure 8.1.1.

¹⁵⁸ At the date of this Guidance Note, ASX understands that New Zealand, Papua New Guinea, Israel and Bermuda all allow CHESS to be used for holding legal title to securities in entities established in those countries (although, in the case of Israel, ASX understands that this requires a provision in the entity's constitution to the effect that a shareholder is not entitled to a share certificate). Entities established in those countries are therefore able to, and must, have their securities traded directly on the ASX market without using CDIs.

have its securities (rather than CDIs) approved for participation in CHESS.¹⁵⁹ If there is any doubt on this issue, ASX may ask the entity to provide an opinion from a legal practitioner in the overseas jurisdiction acceptable to ASX to clarify that doubt.

5.5 Foreign regulatory approvals

Some foreign jurisdictions restrict the listing of their domestic entities on foreign exchanges. An entity incorporated or registered in one of these jurisdictions seeking to list on ASX should get any necessary approval before applying to be listed and give ASX evidence of the approval when making its application.

5.6 Governing law

Listing Rules 19.2A and 19.2B provide for the listing agreement between ASX and a listed entity to be governed by the law of New South Wales and for ASX and listed entities to submit to the jurisdiction of the courts of New South Wales (New South Wales is the State of Australia in which ASX has its principal office).

¹⁵⁹ This is the combined effect of Listing Rule 1.1 condition 15, Listing Rule 2.1 condition 3 and Appendix 1A clauses 11 and 12 (for ASX Listings); Listing Rule 1.8 condition 11, Listing Rule 2.1 condition 3 and Appendix 1B clauses 11 and 12 (for ASX Debt Listings); and Listing Rule 1.11 condition 12, Listing Rule 2.2 and Appendix 1C clause 12 and 13 (for ASX Foreign Exempt Listings).

CONTINUOUS DISCLOSURE: LISTING RULES 3.1 – 3.1B

The purpose of this Guidance Note	• To assist listed entities to understand and comply with their continuous disclosure obligations under Listing Rules 3.1, 3.1A and 3.1B • Listing Rule 3.1 requires a listed entity to disclose "market sensitive" information to ASX immediately • Listing Rule 3.1A sets out the exceptions to that general rule • Listing Rule 3.1B requires information to be disclosed to ASX if ASX asks for it to correct or prevent a false market
The main points it covers	• When is information "market sensitive"? • What does "immediately" mean? • How to use trading halts to manage disclosure obligations • The exceptions to the requirement to disclose immediately • What is a "false market"? • Responding to media/analyst commentary/speculation and market rumours • Earnings guidance and earnings surprises • ASX's enforcement practices (including price queries and aware letters)
Related materials you should read	• Annexure A: Worked examples of the operation of Listing Rule 3.1 • Annexure B: Relevant provisions of the Corporations Act • Annexure C: Guidance on compliance policies • Guidance Note 12 <i>Significant Changes to Activities</i> • Guidance Note 14 <i>ASX Market Announcements Platform</i> • Guidance Note 16 <i>Trading Halts and Voluntary Suspensions</i>

History: Guidance Note 8 amended [27/05/24xx/xx](#). Previous versions of this Guidance Note were issued in 11/98, 09/01, 03/02, 01/03, 06/05, 05/13, 01/14, 07/15, 08/15, 12/16, 03/18, 05/18, 08/18, 08/19, 02/20, 12/20, [06/21](#), and [06/24-05/24](#).

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. This Guidance Note expresses ASX's views on how certain provisions of the Corporations Act incorporated by reference into the Listing Rules should be interpreted for the purposes of the Listing Rules. It should be noted that those views are ASX's views only and that a court may ultimately reach a different view on the interpretation of those provisions.

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1. Introduction

This Guidance Note is published to assist listed entities to understand and comply with their disclosure obligations under Listing Rules 3.1, 3.1A and 3.1B of ASX Limited (ASX). These rules provide:

- 3.1 *Once an entity is or becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities, the entity must immediately tell ASX that information.*
- 3.1A *Listing rule 3.1 does not apply to particular information while each of the following requirements is satisfied in relation to the information:*
- 3.1A.1 *One or more of the following 5 situations applies:*
- *It would be a breach of a law to disclose the information;*
 - *The information concerns an incomplete proposal or negotiation;*
 - *The information comprises matters of supposition or is insufficiently definite to warrant disclosure;*
 - *The information is generated for the internal management purposes of the entity; or*
 - *The information is a trade secret; and*
- 3.1A.2 *The information is confidential and ASX has not formed the view that the information has ceased to be confidential; and*
- 3.1A.3 *A reasonable person would not expect the information to be disclosed.*
- 3.1B *If ASX considers that there is or is likely to be a false market in an entity's securities and asks the entity to give it information to correct or prevent a false market, the entity must immediately give ASX that information.*

These rules apply to all entities¹ admitted to the ASX Official List in the ASX Listing category, including entities that are established in countries other than Australia.² They also apply to entities in the ASX Debt Listing category, but only in relation to their debt securities.³ They do not apply to entities in the ASX Foreign Exempt Listing category.⁴

Compliance with Listing Rule 3.1 is critical to the integrity and efficiency of the ASX market and other markets that trade in ASX quoted securities or derivatives of those securities.⁵ Reflecting this, Parliament has given the rule statutory force in section 674 of the *Corporations Act 2001* (Cth).⁶ An entity which breaches Listing Rule 3.1 may also breach that section and this can attract serious legal consequences for the entity and its officers. Those consequences are outlined in greater detail in Annexure B.

¹ Unless the context otherwise requires, references in this Guidance Note to an "entity" are to an entity admitted to the Official List in the ASX Listing or ASX Debt Listing category.

² For more detail on the disclosure obligations that apply to foreign entities listed on ASX, see Guidance Note 4 *Foreign Entities Listing on ASX*.

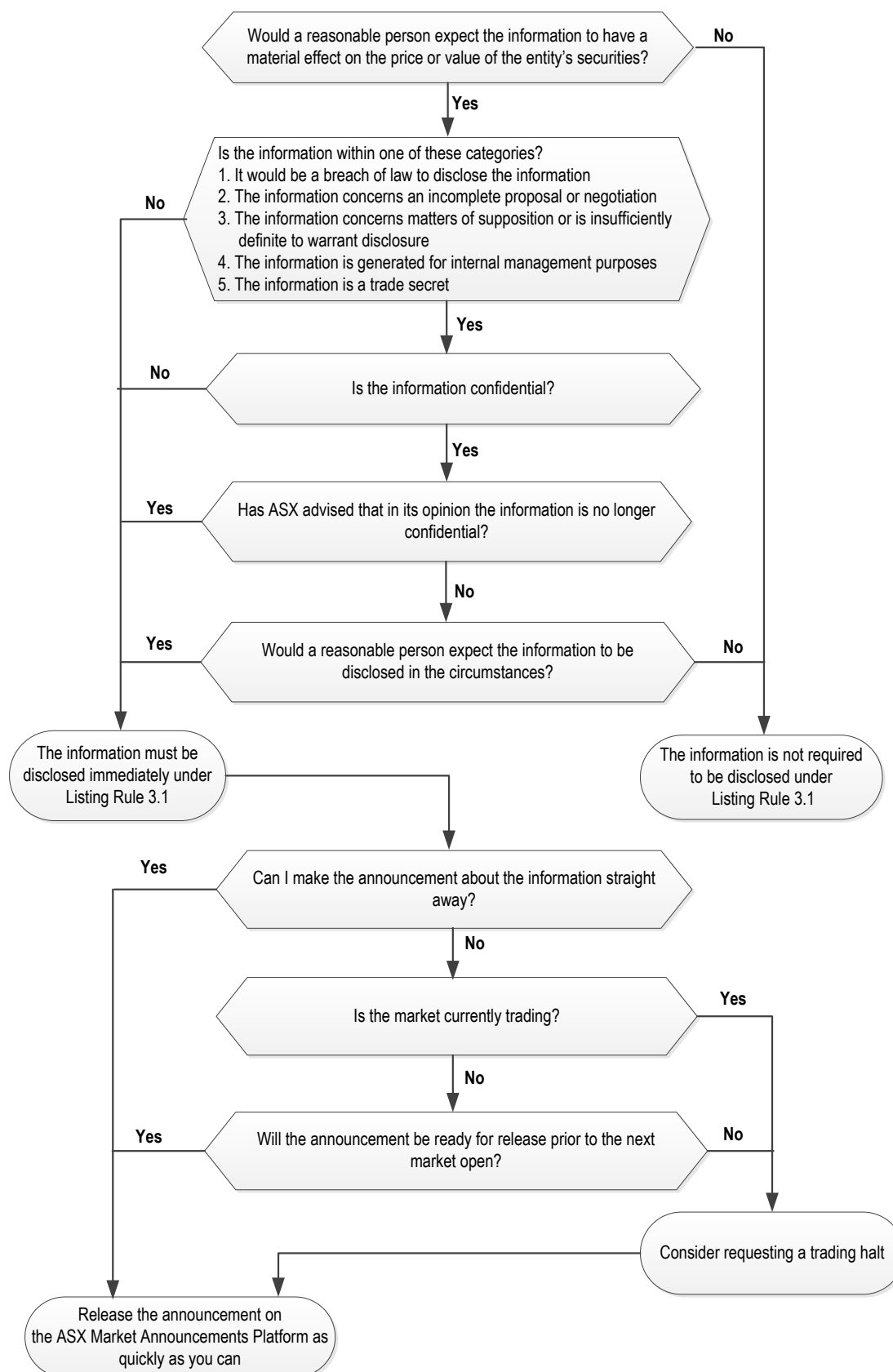
³ Listing Rule 1.10.1.

⁴ Entities listed in the ASX Foreign Exempt category are generally expected to comply with the disclosure obligations of their overseas home exchange (Listing Rule 1.15.3) and to immediately provide to ASX any information that they provide to their home exchange that is, or is to be, made public (Listing Rule 1.15.2). That said, it should be noted that ASX does have a discretion in respect of any particular ASX Foreign Exempt Listing under Listing Rule 1.15.2, to specify additional Listing Rules with which the entity must comply and therefore, in an appropriate case, ASX could require an entity admitted to the Official List in the ASX Foreign Exempt Listing category to comply with Listing Rules 3.1 – 3.1B

⁵ See note 10 below and the accompanying text.

⁶ 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.

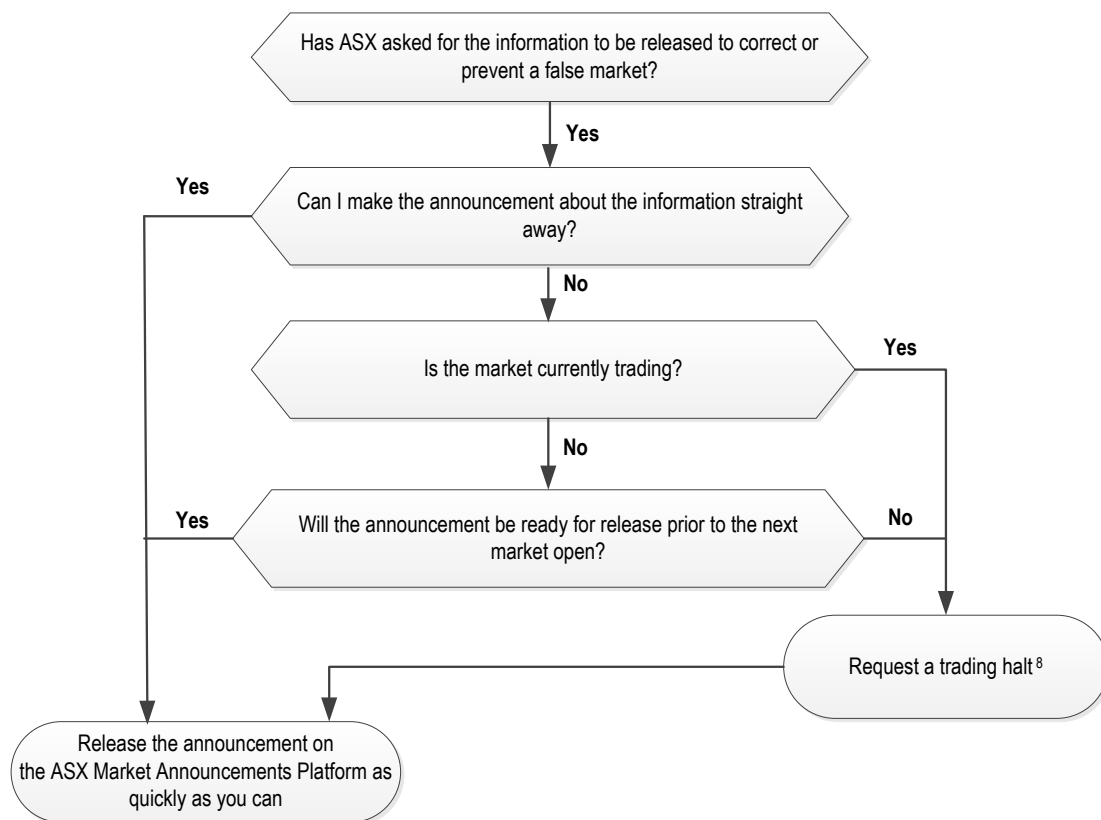
2. An overview of the continuous disclosure decision process



The diagram above outlines the decision process an entity should generally follow, if it becomes aware of information that could have a material effect on the price or value of its securities, to determine whether the information needs to be disclosed under Listing Rules 3.1 and 3.1A and, if it does and the entity is not in a position to issue an announcement straight away, whether it should consider requesting a trading halt.

The questions in the second to fifth hexagons in the diagram go to whether the information falls within the carve-outs to immediate disclosure in Listing Rule 3.1A. It should be noted that these questions may need to be re-appraised from time to time as circumstances change (eg, as a previously incomplete proposal or negotiation approaches completion or if the information has ceased to be confidential).⁷

The diagram below outlines the decision process an entity should generally follow if ASX asks it under Listing Rule 3.1B to disclose information needed to correct or prevent a false market in its securities:



3. The policy objective of the continuous disclosure regime

The policy objective of Australia's continuous disclosure regime has been described judicially as:

"to enhance the integrity and efficiency of Australian capital markets by ensuring that the market is fully informed.⁹ The timely disclosure of market sensitive information is essential to maintaining and increasing

⁷ See generally '5 [Listing Rule 3.1A – the exceptions to immediate disclosure](#)~~Listing Rule 3.1A – the exceptions to immediate disclosure~~ on page 34 and following.

⁸ Note the difference between this diagram and the one above on Listing Rule 3.1 when it comes to trading halts. Where ASX asks an entity to give it information to correct or prevent a false market and the market is or will be trading before the information is released, it will invariably be the case that the entity should request a trading halt.

⁹ ASX generally prefers to use the term "reasonably informed" rather than "fully informed" in recognition of the fact that certain types of information do not have to be disclosed to the market under Listing Rules 3.1 and 3.1A and therefore the market is never really "fully informed".

the confidence of investors in Australian markets, and to improving the accountability of company management. It is also integral to minimising incidences of insider trading and other market distortions.”¹⁰

Listing Rules 3.1, 3.1A and 3.1B form an integrated set of rules intended to strike an appropriate balance between the interests of the market in receiving information that will affect the price or value of, or which is needed to correct or prevent a false market in, an entity’s securities at the earliest reasonable time, and the interests of the entity in not having to disclose information prematurely or where it would clearly be inappropriate to do so.

Thus, if there is or may be a false market in an entity’s securities, the interests of the market prevail and ASX can require the entity under Listing Rule 3.1B to disclose immediately whatever information ASX considers necessary to correct or prevent that situation. Otherwise, the time at which market sensitive information must be disclosed will be determined by the interplay of Listing Rules 3.1 and 3.1A:

- for information that falls within Listing Rule 3.1A, the requirement to disclose will not arise unless and until that rule ceases to apply; but
- for information that falls outside Listing Rule 3.1A, the requirement to disclose will arise as soon as the entity is aware of the information.

In each case, once the requirement to disclose has been triggered, the information must be disclosed immediately to ASX for release to the market.

Listing Rule 3.1A is the balancing factor here. It seeks to avoid the premature disclosure of information initially by excluding from the requirement for immediate disclosure in Listing Rule 3.1 confidential information that is not yet ripe for disclosure (eg, because it concerns an incomplete proposal or negotiation or is insufficiently definite to warrant disclosure) and then only requiring it to be disclosed if and when it has ripened to an appropriate degree (eg, because the relevant proposal or negotiation has been completed or the matter has become sufficiently definite to warrant disclosure) or it has ceased to be confidential. It also seeks to avoid the inappropriate disclosure of information by excluding from the requirement for immediate disclosure in Listing Rule 3.1 confidential information that is a trade secret, that is generated for internal management purposes or that would give rise to a breach of law if it were disclosed.

¹⁰ Per the NSW Court of Appeal in *James Hardie Industries NV v ASIC* [2010] NSWCA 332 (“James Hardie case”), at paragraph 355.

4. Listing Rule 3.1 – the obligation to disclose “market sensitive” information immediately

4.1 What type of information has to be disclosed?

Listing Rule 3.1 requires an entity to disclose information¹¹ “concerning it” that “a reasonable person would expect to have a material effect on the price or value¹² of the entity’s securities”. This type of information is referred to in this Guidance Note as “market sensitive information”.¹³

The notes to Listing Rule 3.1 give the following examples of the type of information that could be market sensitive:

- a transaction that will lead to a significant change in the nature or scale of the entity’s activities;¹⁴
- a material mineral or hydrocarbon discovery;¹⁵
- a material acquisition or disposal;
- the granting or withdrawal of a material licence;
- the entry into, variation or termination of a material agreement;
- becoming a plaintiff or defendant in a material law suit;
- the fact that the entity’s earnings will be materially different from market expectations;
- the appointment of a liquidator, administrator or receiver;
- the commission of an event of default under, or other event entitling a financier to terminate, a material financing facility;
- under subscriptions or over subscriptions to an issue of securities (a proposed issue of securities is separately notifiable to ASX under Listing Rule 3.10.3);
- giving or receiving a notice of intention to make a takeover; and
- any rating applied by a rating agency to an entity or its securities and any change to such a rating.

¹¹ Under Listing Rule 19.12, “information” is defined to include: (1) matters of supposition and other matters that are insufficiently definite to warrant disclosure to the market; and (2) matters relating to the intentions, or likely intentions, of a person. This definition is based on section 1042A.

¹² Where securities are traded on a licensed market, one would generally expect information that will have a material effect on the value of an entity’s securities also to have a material effect on their price, through the ordinary forces of supply and demand. There could be circumstances, however, where information has a material effect on the market’s assessment of the value of a security without that translating into a material change in the price of the security. This might occur, for example, if security prices in the market generally or in a particular sector are moving materially in one direction and the information causes the market to assess the value of the security differently and to hold its price at or about the current level. It might also occur if the information involves the entity having met a milestone which triggers the conversion of performance shares, options or rights into a material number of ordinary securities and which ordinarily might be expected to cause a material drop in the market price of the entity’s securities because of the dilutionary impact but again the information causes the market to re-assess the value of the security and to hold its price at or about the current level. In each of these cases, ASX considers that the information is still having a material effect on the price of the security in question, in the sense that it is maintaining the price at a level that would not otherwise be the case, but the reference to “value” in Listing Rule 3.1 puts this issue beyond any doubt. It also caters for the situation where there is no market price for an entity’s securities, such as might be the case if its securities are in a trading halt or suspension.

¹³ References in this Guidance Note to market sensitive information should be read as including information which causes the market to maintain the price of a security at or about its current level when it would otherwise be expected to move materially in a particular direction, given price movements in the market generally or in the entity’s sector – see note 12.

¹⁴ See also Listing Rule 11.1 and Guidance Note 12 *Significant Changes to Activities*, which gives guidance as to when a significant transaction is required to be notified to ASX under that rule.

¹⁵ Note that information about a material mineral or hydrocarbon discovery must also comply with the reporting requirements in Chapter 5 of the Listing Rules.

This list is by no means exhaustive and there are many other examples of information that potentially could be market sensitive.

For these purposes, “information” extends beyond pure matters of fact and includes matters of opinion and intention.¹⁶ It is not limited to information that is generated by, or sourced from within, the entity. Nor is it limited to information that is financial in character or that is measurable in financial terms. Under Listing Rule 3.1, an entity must disclose all information “concerning it” that it becomes aware of from any source¹⁷ and of any character, if a reasonable person would expect the information to have a material effect on the price or value of its securities.

Nevertheless, the qualification that the information must “concern” the entity is an important one. Generally speaking, an entity would not be expected under Listing Rule 3.1 to disclose publicly available information about external events or circumstances that affect all entities in the market, or in a particular sector, in the same way. That is not information “concerning it”. The situation may be different, however, if the information will have a particular impact on the entity different to the impact it will generally have on other entities in the market or that sector.

For instance, a gold producer would not generally be expected to disclose publicly available information about daily changes in the gold price on major metals exchanges or about a proposed increase in the taxes that miners generally are required to pay. This type of information will be available to the market at large and the market can be assumed to have absorbed its impact on the price or value of the entity’s securities within a relatively short period after it became publicly available. By contrast, if the entity has previously given earnings guidance to the market and the change in the gold price or taxes is likely to cause its earnings to differ from that guidance by a material amount, that is information “concerning it” which it would be expected to disclose.¹⁸ Likewise, if the change in the gold price or taxes will mean that the entity can no longer economically operate and therefore will have to shut its mines, that is information “concerning it” which it would be expected to disclose.

4.2 When is information market sensitive?

The test for determining whether information is market sensitive and therefore needs to be disclosed under Listing Rule 3.1 is set out in section 677 of the Corporations Act.¹⁹ Under that section, a reasonable person is taken to

¹⁶ See the definition of “information” in Listing Rule 19.12 quoted in note 11 above. See also McLure JA in *Jubilee Mines NL v Riley* [2009] WASCA 62 (“Jubilee Mines case”), at paragraph 161 (quoted in note 118 below), and Perrem J in *Grant-Taylor v Babcock & Brown Limited (In Liquidation)* [2015] FCA 149, at paragraph 156 (noting that, on appeal, the Full Federal Court found that it was neither necessary nor appropriate to express concluded views on the meaning of the word “information”: *Grant-Taylor v Babcock & Brown Limited (In Liquidation)* [2016] FCAFC 60 at paragraph 94).

¹⁷ For example, information a listed entity receives from another entity in which the listed entity has a significant investment that materially affects the value of that investment or from a third party that it intends to launch a hostile takeover offer for the listed entity.

¹⁸ This obligation may arise under Listing Rule 3.1 if a reasonable person would expect information about the difference in earnings to have a material effect on the price or value of the entity’s securities, or it may arise under section 1041H because the failure by the entity to update its published guidance could constitute misleading conduct on its part: see the discussion on earnings guidance under ‘7.3 [Market sensitive earnings surprises](#)’ and ‘[Example F – material difference in earnings compared to earnings guidance](#)’ on pages 48 and 84 respectively.

¹⁹ See Listing Rule 19.3, which provides that expressions given a particular meaning in the Corporations Act have the same meaning when used in the Listing Rules. See further the Jubilee Mines case, note 16 above, where Martin CJ held (Le Miere AJA agreeing but McLure JA dissenting) that, in light of this rule, the test in the precursor to section 677 should be applied to determine whether a reasonable person would expect information to have a material effect on the price or value of an entity’s securities under the Listing Rules, and the decision of the Full Federal Court in *Grant-Taylor v Babcock & Brown Limited (In Liquidation)*, [2016] FCAFC 60, note 16 above, at paragraph 95, holding that “reading the Listing Rule 3.1 concept to implicitly embrace the elaboration in s 677 avoids difficulties of discordance between the two. The Listing Rule 3.1 concept should be taken to implicitly embrace the s 677 concept.”

In the Jubilee Mines case, Martin CJ also held (Le Miere AJA agreeing) that because section 677 does not include the parenthetical qualification “(but only if)” which appears in the corresponding section in the insider trading provisions of the Corporations Act (section 1042D), it may also be possible to show that a reasonable person would expect information to have a material effect on the price or value of securities in some other manner, without necessarily proving that it would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of an entity’s securities. However, Martin CJ added (at paragraph 59) that:

“in practical terms, it is very difficult to envisage a circumstance in which a reasonable person would expect information to have a material effect on the price or value of securities if the information would not be likely to influence persons who commonly invest in those securities in deciding whether or not to subscribe for, or buy or sell them. The price of securities quoted on a stock exchange is essentially a function of the interplay of the forces of supply and demand. It is therefore difficult to see how a reasonable person could expect information to have a material effect on price, if it was not likely to influence either supply or demand.”

expect information to have a material effect on the price or value of an entity's securities if the information "would, or would be likely to, influence²⁰ persons who commonly invest in securities in deciding whether to acquire or dispose of" the entity's securities.

In applying this test for the purposes of the Listing Rules, ASX interprets the reference to "persons who commonly invest in securities"²¹ as a reference to persons who commonly buy and hold securities for a period of time, based on their view of the inherent value of the security. In ASX's view, it therefore does not include traders who seek to take advantage of very short term (usually intraday) price fluctuations and who trade into and out of securities without reference to their inherent value and without any intention to hold them for any meaningful period of time.²²

²⁰ ASX notes that some commentators have expressed concern about the potential breadth of the "influence" test in section 677 and the fact that it could capture information that is not material in any relevant sense. Those concerns stem from a particular reading of the term "influence" in that section, where it is given its wider meaning of merely "to have some effect upon". ASX does not agree with that reading of the section.

Whether information would or would be likely to influence a decision has been used as a proxy to test the materiality of information in other contexts and in other jurisdictions. For example, in addressing the test for disclosure of information in scheme documents under the precursor to section 411(3)(b) (requiring the disclosure of information material to the making of a decision by a member participating in the scheme on whether or not to agree to the scheme), Brooking J commented in *Phosphate Co-Operative Co of Australia Pty Ltd v Shears* [1989] VR 665 that: "If a fact would tend to influence a sensible member's decision on whether the scheme is in his interests, then it is "material" for the purposes of [that section]."

Used in the context of section 677, ASX considers that the word "influence" carries its own connotation of materiality and is used in the sense of 'to move or impel (a person) to some action'. In ASX's view, to trigger section 677, the information in question must be of a character that would, or would be likely to, move or impel persons who commonly invest in securities to make a decision to acquire or dispose of the entity's securities and not merely play some minor and immaterial role in such a decision.

ASX considers that this view of materiality is supported by the decision of the Full Federal Court in *Grant-Taylor v Babcock & Brown Limited (In Liquidation)*, [2016] FCAFC 60, note 16 above, at paragraph 96:

"The concept of "materiality" in terms of its capacity to influence a person whether to acquire or dispose of shares must refer to information which is non-trivial at least. It is insufficient that the information "may" or "might" influence a decision: it is "would" or "would be likely" that is required to be shown ... Materiality may also then depend upon a balancing of both the indicated probability that the event will occur and the anticipated magnitude of the event on the company's affairs ... Finally, the accounting treatment of "materiality" may not be irrelevant if the information is of a financial nature that ought to be disclosed in the company's accounts. But accounting materiality does have a different, albeit not completely unrelated, focus."

²¹ The meaning of the phrase "persons commonly invest in securities" was explored in *Grant-Taylor v Babcock & Brown Limited (In Liquidation)*, [2016] FCAFC 60, note 16 above. At first instance, Perrem J opined (at paragraph 70):

"Section 677 should be interpreted in light of its ordinary language. The subject matter of Chapter 6CA is continuous disclosure by 'listed disclosing entit[ies]': s 674(1). I would therefore read the word 'securities' in s 677 somewhat more narrowly than the extensive definition of securities contained in s 92(3) and would confine it to listed securities because the context appears unavoidably to require this. The section therefore refers to persons who ordinarily or usually invest in listed securities. The plural is significant – what is posited is not a single investor but a class and the attributes which are to be identified are class attributes and not individual ones. I do not think 'commonly' means that the investors must be professionals in the sense that a livelihood must be derived from investing activities but it does denote a degree of sophistication which might be expected from those who have more than a passing or occasional interest in the activities of securities exchanges."

On appeal, the Full Federal Court reached a different conclusion (at paragraphs 115-6):

"We are of the view that the expression "persons who commonly invest in securities" is a *class* description. First, the plural "persons" is used in contradistinction to the singular "a reasonable person" in s 677. Secondly, to treat this as a class description avoids distinctions dealing with large or small, frequent or infrequent, sophisticated or unsophisticated *individual* investors. Such idiosyncratic distinctions are made irrelevant if one is looking at a class of investors. There is no reason to confine "likely to influence persons ..." to the sophisticated. The unsophisticated also need protection. Likewise the small investor and likewise the infrequent investor. But not the irrational investor. Thirdly, in the context of s 676, the question is whether the information has been made known to the relevant class, albeit that the class may be narrower than for s 677. We accept that the phrase does not use the express language of "class", but in using the plural "persons", the legislature appears to be generalising to a group description.

The word "commonly" in s 677 has been employed to underline that the objective question of materiality posed by ss 674 and 675 by reference to the hypothetical reasonable person in turn has regard to what information would or would be likely to influence a *hypothetical* class of persons namely "persons who commonly invest in securities".

²² The exclusion of such traders from the class of "persons who commonly invest in securities" is an important one. These types of traders often make trading decisions on the basis of very small movements in market price and so their inclusion in that class could artificially reduce the level of price movement that might be regarded as "material" under Listing Rule 3.1 and section 674. Also, their trading decisions typically are made without any regard to the underlying fundamentals of the securities in which they trade. They therefore are not the type of person to whom section 677 was addressed, namely, persons who commonly "invest in" securities and whose decision to buy or sell any given security is determined by their assessment of the information available about that security.

/cont.

It should be noted that the test in section 677 is an objective one and the fact that an entity's officers may honestly believe that information is not market sensitive and therefore does not need to be disclosed will not avoid a breach of Listing Rule 3.1, if that view is ultimately found to be incorrect.²³

ASX acknowledges that because of this, the test for determining the materiality of information in section 677 can give rise to some difficulty in practice for entities in assessing whether or not they have an obligation to disclose information under Listing Rule 3.1. They are effectively required to predict how investors will react to particular information when it is disclosed. In some cases this may be fairly obvious but in others not so.²⁴ However, this difficulty is inescapable. It is the entity, and only the entity, that can and must form a view as to whether the information it knows, and the rest of the market does not, is market sensitive and therefore needs to be disclosed under Listing Rule 3.1.

A director or other officer of an entity who is faced with a decision on whether information needs to be disclosed under Listing Rule 3.1 may find it helpful to ask two questions:

- (1) "Would this information influence my decision to buy or sell securities in the entity at their current market price?"²⁵
- (2) "Would I feel exposed to an action for insider trading if I were to buy or sell securities in the entity at their current market price, knowing this information had not been disclosed to the market?"²⁶

If the answer to either question is "yes", then that should be taken to be a cautionary indication that the information may well be market sensitive and, if it does not fall within the carve-outs to immediate disclosure in Listing Rule 3.1A, may need to be disclosed to ASX under Listing Rule 3.1.

Entities may also find the 5/10% parameters mentioned below²⁷ that ASX uses for determining whether or not to refer a potential breach of Listing Rule 3.1 to ASIC helpful in understanding the order of magnitude of the likely

ASX considers that this view is supported by the findings of Nicholas J in *ASIC v Vocation Limited (In Liquidation)* [2019] FCA 807 at paragraphs 552-3 that:

"the use of the word "invest" rather than purchase or acquire in s 677 suggests that the hypothetical reasonable person referred to in that section will be someone who makes an assessment as to whether to buy or sell securities on the basis of a company's earnings or potential earnings and the potential return the investment offers after making an allowance for risk.

I do not think a knowledge of the investing behaviour of speculators and day traders who seek to profit on the back of rumour or momentum rather than company fundamentals would be of any assistance in determining what information would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of particular securities. That observation would also hold true for hedge funds at least in circumstances where they are not making their investment decisions based on company fundamentals."

²³ Per the NSW Court of Appeal in the *James Hardie* case, note 10 above, at paragraph 454:

"the statutory obligation to disclose involves an objective test ... Therefore, the views of a company's senior management or its directors cannot determine whether disclosure of any given information is required. That is not to say that the views of those who make the decision as to disclosure may not be relevant. For example, if there was particular information that informed the decision making of management, such information may be relevant to the determination of whether or not, objectively determined, disclosure was required. However, the ultimate decision of management or the directors to the disclosure or not of information is not determinative."

²⁴ For example, information about a material acquisition may be:

- materially price positive, if the market assesses that the acquirer has struck a good bargain or will garner significant synergies from the acquisition;
- materially price negative, if the market assesses that the acquirer has overpaid for the asset; or
- price neutral, if the market assesses that the acquirer has paid what the asset is worth.

See also the discussion in notes 230-233 above and the accompanying text about the factors that might affect how the market will react to information that an entity's earnings for a particular reporting period will be materially different to market expectations.

²⁵ This question is particularly pertinent if the officer is someone who commonly invests in securities.

²⁶ This question recognises that the test for whether information is material for the purposes of continuous disclosure laws (section 677) is similar to the test for whether it is material for the purposes of insider trading laws (section 1042D). Hence, any officer who is aware of information concerning an entity that a reasonable person would expect to have a material effect on the price or value of its securities (as that phrase is defined in section 677), and who trades in the entity's securities before that information is generally available to the market, is likely to breach the prohibition against insider trading in section 1043A.

²⁷ See '8.7 [Referrals to ASIC](#) [Referrals to ASIC](#) on page 74.

change in price or value of their securities that ASX considers will trigger a disclosure obligation under Listing Rule 3.1.

Given the significant penalties that a breach of Listing Rule 3.1 and section 674 can attract,²⁸ ASX recommends that entities and their officers exercise appropriate caution in assessing whether information is market sensitive or falls within the carve-outs from disclosure in Listing Rule 3.1A and that they carefully weigh up the potential consequences of not disclosing particular information in any given case.

If an entity decides not to disclose particular information because in its opinion it is not market sensitive and there is a sudden and unexplained movement in the market price or traded volumes of its securities, it may need to revisit its decision about whether the information ought to be disclosed. Such a movement could indicate that the information has leaked and that its initial decision about the market sensitivity of the information was incorrect.²⁹

4.3 The need to assess information in context

In assessing whether or not information is market sensitive and therefore needs to be disclosed under Listing Rule 3.1, the information needs to be looked at in context, rather than in isolation, against the backdrop of:

- the circumstances affecting the entity at the time;³⁰
- any external information that is publicly available at the time; and
- any previous information the entity has provided to the market (eg, in a prospectus or PDS, under its continuous or periodic disclosure obligations or by way of earnings guidance).³¹

For example, a small drop in earnings, by itself, may not be considered market sensitive. However, if that small drop in earnings results in the entity breaching a financial covenant and committing an event of default under its banking facilities, the situation is quite different. Conversely, information that an entity has received a formal offer from someone interested in purchasing a major asset at a premium price would usually be considered market sensitive.³² However, if at the time it receives the offer, the entity has no intention of selling,³³ or no capacity to sell,³⁴ the asset, or the prospective purchaser does not have the wherewithal to complete the transaction, the information may not be market sensitive.³⁵

²⁸ See Annexure B.

²⁹ As mentioned below, it may also be evidence that the information is no longer confidential and therefore the carve-out from disclosure in Listing Rule 3.1A no longer applies, or that a false market is developing in its securities and therefore Listing Rule 3.1B applies.

³⁰ See the Jubilee Mines case, note 16 above. See also the following observations of O'Loughlin J in *Flavel v Roget* (1990) [1 ACSR 5958](#) [ACLC 237](#), at 602-3 (dealing with the issue of whether a memorandum of confirmation and variation of a contract should have been notified to ASX under a predecessor to Listing Rule 3.1):

"a close examination must be made of the contents of the memorandum so that its significance or importance can be evaluated. This represents a two-fold task; first, the contents of the memorandum itself must be individually assessed, but, secondly, that assessment must then be made within the framework of the company and its affairs as they existed at the time of the execution of the memorandum. Sometimes this second test may not be necessary; sometimes the nature of the document might speak for itself. Its importance might be of such magnitude that, irrespective of the size of the company, irrespective of the general affairs of the company, irrespective of the state of the economy of the country, its importance achieves such prominence that immediate advice to the Home Exchange is the only course of action to adopt. But there can be many cases where the contents of the document are not susceptible to such an immediate and obvious evaluation. Much will depend upon the identity of the particular company; what one company should advise the Stock Exchange might not have to be advised by a second company; what should be advised by a company at one stage in its career might not have to be advised at another stage of its career because of changed circumstances."

³¹ See also Example H5 in Annexure A.

³² Although, under Listing Rule 3.1A, the entity may not be required to disclose information about the offer for so long as it remains confidential and negotiations on the transaction are incomplete.

³³ ['Example B – control transaction' on page 76 in Annexure A](#) explores a similar theme.

³⁴ For example, because it is subject to binding pre-emption arrangements or other contractual commitments that preclude a sale on the terms proposed.

³⁵ The finding of the Court of Appeal in the Jubilee Mines case, note 16 above, also illustrates the point that information about a particular opportunity may not be market sensitive if the entity is not capable of exploiting the opportunity to its advantage.

The need to assess information in context also means that new information may need to be disclosed because of its impact on information previously disclosed. For example, information that an entity has investigated and decided not to pursue a particular material business opportunity may not be market sensitive, if the market has no knowledge or expectation that the entity has been considering the opportunity. However, if the entity has previously announced that it was intending to pursue the opportunity, the fact that it has changed its mind may well be market sensitive and therefore need to be disclosed under Listing Rule 3.1. Example H5 in Annexure A is a further illustration of this point. The fact that the drill cores from holes drilled by a mining exploration entity on part of its tenement have returned negative assay results, by itself, may not be market sensitive if the market has no particular expectation about the results from those holes. However, if the entity has previously announced very positive drill results in that part of its tenement and the latest negative drill results cast real doubts about the size and economic viability of the mineral deposit, then that information may be market sensitive and may need to be disclosed under Listing Rule 3.1.

4.4 When does an entity become aware of information?

Under the Listing Rules, an entity becomes aware of information if, and as soon as, an officer of the entity (or, in the case of a trust, an officer of the responsible entity) has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of that entity.³⁶

The term “officer” has the same meaning as in the Corporations Act³⁷ and includes a director, secretary or senior manager of an entity.³⁸

The extension of an entity’s awareness beyond the information its officers in fact know to information that its officers “ought reasonably have come into possession of” effectively deems an entity to be aware of information if it is known by anyone within the entity and it is of such significance that it ought reasonably to have been brought to the attention of an officer of the entity in the normal course of performing their duties as an officer. Without this extension, an entity would be able to avoid or delay its continuous disclosure obligations by the simple expedient of not bringing market sensitive information to the attention of its officers in a timely manner.³⁹

In light of this extension, it is important that entities have in place appropriate reporting and escalation processes to ensure that information which is potentially market sensitive is promptly brought to the attention of its officers so that there are no gaps between the information they in fact know and the information they are deemed to know for the purposes of Listing Rule 3.1.⁴⁰

³⁶ Listing Rule 19.12. This definition is based on section 1042G, although that section only captures information that an officer actually knows and does not extend to information that an officer ought reasonably to know.

For an explanation of how the definition of “aware” should be applied in relation to an opinion, see the first instance decision of Perrem J in *Grant-Taylor v Babcock & Brown Limited (In Liquidation)*, [2015] FCA 149, note 16 above, at paragraphs 153-161.

³⁷ Listing Rule 19.3

³⁸ See section 9. For these purposes, “senior manager” means a person:

- who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the entity;
- who has the capacity to affect significantly the corporation’s financial standing; or
- in accordance with whose instructions or wishes the directors of the entity are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person’s professional capacity or their business relationship with the directors or the entity).

The definition of “officer” in section 9 also extends to

- a receiver, or receiver and manager, of the property of the entity;
- an administrator of the entity;
- an administrator of a deed of company arrangement executed by the entity;
- a liquidator of the entity; or
- a trustee or other person administering a compromise or arrangement made between the entity and someone else.

³⁹ The extension of an entity’s awareness to information that an officer “ought reasonably have come into possession of” effectively buttresses the obligation that the directors of an entity have under the general law to ensure that the entity has appropriate information reporting systems in place: see note 400394 below and the accompanying text.

⁴⁰ Annexure C has further guidance on the policies that an entity should implement to comply with its obligations under Listing Rule 3.1.

In applying the definition of “aware”, it must be remembered that the information which has to be disclosed under Listing Rule 3.1 is market sensitive information, that is, information that a reasonable person would expect to have a material effect on the price or value of an entity’s securities. An entity may receive information about a particular event or circumstance in instalments over time. Sometimes the initial information about the event or circumstance is such that the entity cannot reasonably form a view on whether or not it is market sensitive and the entity may need to await further, more complete, information, or to make further enquiries or obtain expert advice, in order to be able to make that determination.⁴¹ In such a case, the entity will only become aware of information that needs to be disclosed under Listing Rule 3.1 when an officer has, or ought reasonably to have, come into possession of sufficient information about the event or circumstance in order to be able to appreciate its market sensitivity.

It should not be thought, however, that this opens up an avenue for an entity to avoid or delay its disclosure obligations – for example, by forming a convenient view that it needs further information before it can assess market sensitivity⁴² or by not making or delaying any further enquiries or request for expert advice needed for that purpose. As noted previously,⁴³ the test for whether or not information is market sensitive is an objective one and, if the entity in fact has information that is market sensitive, the subjective opinion of its officers that it needs further information before it can assess market sensitivity will not avoid a breach of Listing Rule 3.1. Also, the extension of an entity’s awareness to information that an officer ought reasonably have come into possession of will effectively require the entity, when it is on notice of information that potentially could be market sensitive, to make any further enquiries or obtain any expert advice needed to confirm its market sensitivity within a reasonable period.

4.5 The meaning of “immediately”

Under Listing Rule 3.1, market sensitive information must be disclosed to ASX *immediately* upon the entity becoming aware of the information, unless it falls within the carve-outs from disclosure in Listing Rule 3.1A.

Judicial authority in analogous situations confirms that the word “immediately” should not be read as meaning “instantaneously”, but rather as meaning “promptly and without delay”:

“The words forthwith and immediately have the same meaning. They are stronger than the expression within a reasonable time, and imply prompt, vigorous action, without any delay, and whether there has been such action is a question of fact, having regard to the circumstances of the particular case.”⁴⁴

Doing something “promptly and without delay” means doing it as quickly as it can be done in the circumstances (acting promptly) and not deferring, postponing or putting it off to a later time (acting without delay).⁴⁵

⁴¹ For example, where an entity is served with a writ or summons commencing litigation against it, in some cases, it may be immediately apparent that the matter is market sensitive and needs to be disclosed under Listing Rule 3.1. In other cases, the entity may need to obtain legal advice before it is aware that the matter is market sensitive.

⁴² As the director of S may be attempting to do in Example H5 in Annexure A.

⁴³ See note 23 above and the accompanying text.

⁴⁴ Per Cockburn CJ in *Queen v Berkshire Justices* (1879) 4 QBD 469, 471. Cited with apparent approval by Isaacs J in *Measures v McFadyen* (1910) 11 CLR 723, at 736, and by Forster CJ in *Dorsman v Nichol* (1978) 20 ALR 231, at 237.

⁴⁵ The infringement notice the subject of ASIC Media Release 09-199 is an example where a relatively short delay in the release of information was found by ASIC not to meet the standard of immediacy required under Listing Rule 3.1. In that case, ASIC alleged that an entity was aware of information about a material deterioration in its loan impairment expense ratio by no later than 3 pm on a particular day, when the market was still trading. However, the entity did not issue an announcement about that information until 7:14 pm that day, when it was included with an announcement about an institutional placement of shares that had been made after market close.

ASX believes that the issue in that case was not so much the period of time it took for the entity to make an announcement to the market (since the market ceased trading on that day at approximately 4.10 pm, the information was effectively only withheld from the market for a little over an hour) but more the fact that the entity postponed the announcement to coincide with the announcement about the placement. As noted in the text, postponing something to a later time involves a “delay” and therefore does not meet the required standard of acting promptly and without delay.

ASX understands that the entity had given instructions to the financial institution managing the placement that the information in question needed to be disclosed to participants in the placement before they took up any shares. Postponing the announcement therefore also had the effect of denying those investors buying shares on market between 3 pm and 4.10 pm access to the same information.

ASX would note that the fact that an entity complies with an infringement notice is not to be taken as an admission of guilt or liability (see section 1317DAF).

A period of time will necessarily pass between when an entity first becomes obliged to give information to ASX under Listing Rule 3.1⁴⁶ and when it is able to give that information to ASX in the form of a market announcement. This passing of time, of itself, does not mean that there has been a “delay” in the provision of the information to ASX. Some announcements may be able to be prepared and given to ASX relatively quickly, while others may take longer to complete. The question ~~is in~~ each case is whether the entity is going about this process as quickly as it can in the circumstances and not deferring, postponing or putting it off to a later time.

ASX recognises that how quickly an entity can give an announcement of particular information to ASX will be dictated by the circumstances confronting it at the time. Relevant factors may include:

- where and when the information originated;
- the forewarning (if any) the entity had of the information;
- the amount and complexity of the information concerned;
- the need in some cases to verify the accuracy or bona fides of the information;
- the need for an announcement to be carefully drawn so that it is accurate, complete and not misleading;⁴⁷
- the need in some cases for an announcement to comply with specific legal or Listing Rule requirements, such as the requirement for an announcement that relates to mining or oil and gas activities to comply with Chapter 5 of the Listing Rules;⁴⁸ and
- the need in some cases for an announcement to be approved by the entity’s board or disclosure committee.⁴⁹

ASX will take these factors into account in assessing whether an entity has complied with its obligation to disclose information under Listing Rule 3.1 promptly and without delay.

ASX will also take into account the state of the market in assessing whether an entity has complied with the spirit, intention and purpose of Listing Rule 3.1⁵⁰ and whether it ought to refer a possible breach of the rule to ASIC.⁵¹ In this regard, ASX recognises that the sensitivity of the market to information is at its highest during trading hours on licensed Australian securities markets,⁵² which is when and where most trading in ASX-listed securities takes place and when the need to issue information promptly takes on greater significance. Thus, if the obligation to disclose information under Listing Rule 3.1 is triggered during a period that licensed Australian securities markets are not trading (eg, overnight or on a weekend), it will generally be sufficient from ASX’s perspective for the entity to give the information to ASX for release to the market before trading next resumes.⁵³ Conversely, if the obligation to disclose information under Listing Rule 3.1 is triggered while licensed Australian securities markets are trading, the

⁴⁶ In the case of market sensitive information that does not fall within the carve-outs to immediate disclosure in Listing Rule 3.1A, this will be when the entity first becomes “aware” of the information or, in the case of information that initially falls within the carve-outs to immediate disclosure in Listing Rule 3.1A, when the carve-outs no longer apply.

⁴⁷ See ‘4.15 [Guidelines on the contents of announcements under Listing Rule 3.1](#)~~Guidelines on the contents of announcements under Listing Rule 3.1~~’ on page 26~~;~~.

⁴⁸ See ‘[Example D – material mineral discovery](#)~~Example D – material mineral discovery~~’ on page 82 in [Annexure A](#). Guidance Note 31 *Reporting on Mining Activities* and Guidance Note 32 *Reporting on Oil & Gas Activities* have further guidance on the reporting obligations applicable to mining and oil and gas activities.

⁴⁹ See ‘4.8 [Does the board need to approve an announcement under Listing Rule 3.1?](#)~~Does the board need to approve an announcement under Listing Rule 3.1?~~’ on page 20~~;~~.

⁵⁰ As entities are required to do under Listing Rule 19.2.

⁵¹ See ‘8.7 [Referrals to ASIC](#)~~Referrals to ASIC~~’ on page 71~~;~~.

⁵² Generally 10.00 am to 4.12 pm Sydney time, Monday to Friday, excluding certain public holidays. Of course, entities that are dual listed on ASX and an overseas exchange will need to consider their disclosure obligations under the rules of the overseas exchange and their exposure to liability if information is not released in a timely manner during the normal trading hours of the overseas exchange.

⁵³ See also the guidance in note 84 about when an announcement must be received by ASX if it is to be released to the market before the market opens.

entity will be expected to give the information to ASX as quickly as it can in the circumstances and without delay, or else to request a trading halt.

ASX will expect an entity to act particularly quickly if ASX asks it to make an announcement under Listing Rule 3.1B because of a sudden and significant movement in the market price or traded volumes of its securities⁵⁴ or otherwise to correct or prevent a false market in its securities. In such cases, if the entity is not in a position to issue its announcement to the market straight away, ASX will generally expect it to request a trading halt.⁵⁵

ASX will also expect an entity to act particularly quickly if the information to be announced is especially damaging and likely to cause a significant fall in the market price of the entity's securities (eg, information that the board of the entity has resolved to appoint an administrator or that a lender has declared an event of default and appointed a receiver). Again, in such a case, if the entity is not in a position to issue its announcement to the market straight away, ASX will generally expect the entity to request a trading halt.

Given the requirement in Listing Rule 3.1 for immediate disclosure and the significant legal and financial consequences that can follow from a breach of that rule, it is important that entities have in place appropriate compliance systems to ensure that information which is potentially market sensitive is promptly assessed to determine whether it requires disclosure under that rule and, if it does, that it is promptly given to ASX.⁵⁶

The need to disclose information to ASX immediately can give rise to particular issues for dual listed entities. Those issues are explored in greater detail below.⁵⁷

4.6 The use of trading halts and voluntary suspensions to manage disclosure issues

If the market is or will be trading at any time after an entity first becomes obliged to give market sensitive information to ASX under Listing Rule 3.1 and before it can give an announcement with that information to ASX for release to the market, the entity should consider carefully whether it is appropriate to request a trading halt⁵⁸ or a voluntary suspension.⁵⁹

The application of a trading halt or voluntary suspension in an appropriate case can often be beneficial for both the market and the entity. It will ensure that the entity's securities are not trading on ASX and other licensed securities markets in Australia⁶⁰ on an uninformed basis. It will also signal to investors that market sensitive information may be about to be released and that they should be wary of trading in, or entering into derivative transactions over, the entity's securities off-market or on other trading venues. Both of these things may help to reduce the exposure of

⁵⁴ Indicating that the information in question may have leaked ahead of the entity's announcement.

⁵⁵ ASX understands that ASIC has a similar expectation: see ASIC Media Release 08-117. In that case, ASIC issued an infringement notice against an entity for taking approximately 70 minutes to request a trading halt, and a further 20 minutes to issue an announcement, responding to an article that had appeared in the Dow Jones newswire service containing fairly specific details of a very material acquisition the entity was close to consummating. ASX had in the meantime contacted the entity and suggested that it needed to put out an announcement straight away or request a trading halt, noting that by that point 3 reasonably specific news items had appeared on the Dow Jones and Reuters newswire services regarding the transaction and that there had been a significant spike in the market price and traded volumes of its securities. Instead of requesting an immediate trading halt, the entity told ASX that it would consider its position and respond. It took a further 38 minutes to do that and to finally request a trading halt.

Again, ASX would note that the fact that an entity complies with an infringement notice is not to be taken as an admission of guilt or liability (see section 1317DAF).

⁵⁶ Annexure C has further guidance on the policies that an entity should implement to comply with its obligations under Listing Rule 3.1.

⁵⁷ See '4.19 [Dual listed entities](#)' on page 31.

⁵⁸ An entity can request a trading halt under Listing Rule 17.1.

⁵⁹ An entity can request a voluntary suspension under Listing Rule 17.2.

⁶⁰ As a matter of practice, whenever ASX applies a trading halt to an ASX quoted security, it generally also applies a trading halt to any ASX exchange traded options related to that security (although ASX may open a short trading window on the day of expiry of an exchange traded option to allow option holders the opportunity to roll or close out their option position). Also, under Part 6.1 of the ASIC Market Integrity Rules (Competition in Exchange Markets) 2011, whenever ASX places a security into a trading suspension (as defined in those rules), it is required to notify that action to all other licensed market operators in Australia who quote the security and they in turn are required to immediately take corresponding action to place the security into a trading suspension.

Hence, ASX placing securities into a trading halt on its market effectively leads to an equivalent trading halt on other licensed securities and derivatives markets in Australia.

the entity and its officers to the legal and financial consequences that could follow if the entity is ultimately found to have breached its obligation to disclose information in accordance with Listing Rule 3.1.

A trading halt or voluntary suspension will not be suitable in every case. In particular, since a trading halt can only last for a maximum of two trading days,⁶¹ a trading halt will not be appropriate or of assistance for those more complex or protracted disclosure issues which are unlikely to be resolved within two trading days (although a voluntary suspension might be).

An entity's primary obligation under Listing Rule 3.1 and section 674 is to give market sensitive information to ASX for release to the market promptly and without delay. ASX would not expect an entity to request a trading halt or voluntary suspension before it has assessed whether particular information is in fact market sensitive and therefore needs to be disclosed under Listing Rule 3.1. Having made that assessment, if the entity is able to give the required announcement to ASX promptly and without delay then, in most cases, it will not need a trading halt or voluntary suspension to manage its disclosure obligations.

A trading halt may, however, be necessary in the following scenarios:

- there are indications that the information may have leaked ahead of the announcement⁶² and it is having, or (where the market is not trading) is likely when the market resumes trading to have, a material effect on the market price or traded volumes of the entity's securities;
- the entity has been asked by ASX to provide information to correct or prevent a false market; or
- the information is especially damaging and likely to cause a significant fall in the market price of the entity's securities (eg, information that the board of the entity has resolved to appoint an administrator or that a lender has declared an event of default and appointed a receiver),

and in each such scenario:

- where the market is trading, the entity is not in a position to give an announcement to ASX straight away; or
- where the market is not trading, the entity will not be in a position to give an announcement to ASX before trading next resumes.

As indicated above, these are each scenarios where ASX will expect an entity to act particularly quickly and, if it is not in a position to issue an announcement to the market straight away, to request a trading halt.

A trading halt or voluntary suspension will also be necessary if for any reason there is going to be a delay⁶³ in the release of an announcement under Listing Rule 3.1 and the market is trading during any part of the delay. Examples include:

⁶¹ Under the ASX Operating Rule Procedure 3301, the longest a trading halt can last is the commencement of "open session state" on the second trading day after the day the trading halt is imposed or, if the trading halt is imposed after the end of that day's "CSPA session state", the commencement of open session state on the third trading day after the trading halt is imposed.

The "open session state" refers to the state that the ASX market platform operates in during normal trading, where overlapping buy orders and sell orders are matched in accordance with price/time priority. The "CSPA session state" refers to the state the ASX market platform operates in during the closing auction on a trading day.

Thus, the longest a trading halt can last is effectively two full trading days. It may in fact be less than two full trading days if the trading halt is put in place part-way through a trading day. For example, if the trading halt is put in place at any time before the close of trading on ASX on a Monday, the maximum period it can operate will be up to the commencement of trading on the following Wednesday (assuming the Monday, Tuesday and Wednesday are all trading days), regardless of whether it was put in place before trading started, or while trading was under way, on the Monday. If the trading halt is put in place after the close of trading on ASX on the Monday, the maximum period it can operate will be up to the commencement of trading on the following Thursday (assuming the Tuesday, Wednesday and Thursday are all trading days).

⁶² See '5.8 [Listing Rule 3.1A.2 – the requirement for information to be confidential](#)~~Listing Rule 3.1A.2 – the requirement for information to be confidential~~' on page 38.

⁶³ As above, the word "delay" here is not intended to capture a mere passing of time between when an entity first becomes obliged to give information to ASX and when it gives an announcement to ASX but rather a deferring, postponing or putting off of the announcement to a later time.

- where the entity considers the announcement to be so significant that it ought to be approved by its board before it is released to the market but, due to the unavailability of directors, the board meeting is not able to be held promptly and without delay;
- where the situation is uncertain or evolving but is likely to resolve itself within a relatively short period (in the case of a trading halt, within two trading days) and the entity considers that it would be better for the announcement to be delayed until there is greater certainty or clarity around the outcome – a case in point would be where the announcement is required because of a leak of information about a transaction under negotiation, where the entity reasonably expects to conclude the negotiations within a short period and it considers that it would be better to delay its announcement until after the negotiations have concluded and it can give a more definitive and informative announcement about the transaction, rather than to make an immediate announcement about the current state of the negotiations; and
- Example H4 in Annexure A.

A voluntary suspension is generally only going to be appropriate where:

- the entity has been in a trading halt but the relevant disclosure issue has not been resolved within the maximum period permitted for a trading halt;
- the situation would warrant the granting of a trading halt but the entity does not believe that the relevant disclosure issue will be resolved within the maximum period permitted for a trading halt; or
- the entity is in serious financial difficulties and it is reasonably of the view that continued trading in its securities is likely to be materially prejudicial to its ability to successfully complete a complex transaction that is, or a series of interdependent transactions that are, critical to its continued financial viability.⁶⁴

ASX would strongly encourage an entity which is unsure about whether it should be requesting a trading halt or voluntary suspension to cover the period required to prepare an announcement, to contact its listings adviser at ASX to discuss the situation.

If the entity decides not to request a trading halt or voluntary suspension to prevent the market trading ahead of an announcement, ASX would also strongly encourage the entity to monitor:

- the market price of its securities;
- major national and local newspapers;
- if it has access to them, major news wire services such as Reuters and Bloomberg;
- any investor blogs, chat-sites or other social media it is aware of that regularly post comments about the entity;⁶⁵ and
- enquiries from analysts or journalists,

for signs that the information to be covered in the announcement may have leaked and, if it detects any such signs, to contact ASX immediately to discuss whether it is appropriate to request a trading halt.

It should be noted that the Listing Rules, including Listing Rule 3.1, continue to apply while an entity's securities are in a trading halt or voluntary suspension.⁶⁶ Hence, the mere fact that an entity has requested and been granted

⁶⁴ See '5.10 [Entities in financial difficulties](#)~~Entities in financial difficulties~~' on page 42.

⁶⁵ For example, the "shareholder action" blogs that exist for some entities. An entity which is the subject of such a blog would often be aware of that fact from communications with its shareholders and, in ASX's experience, would generally be monitoring the blog for an insight into what its shareholders are saying about it. Some (generally larger) entities would also be monitoring certain investor blogs, chat-sites and other social media sites through their investor relations function, again for the purposes of understanding what is being said about them on those sites. Where a market sensitive announcement is pending, ASX considers that the entity should also be monitoring these sites for signs that the information in the pending announcement may have leaked.

⁶⁶ Listing Rule 18.6.

a trading halt or voluntary suspension technically does not relieve it of the obligation to announce information under Listing Rule 3.1 promptly and without delay. However, ASX does not apply the Listing Rules in a technical manner but rather in a manner that accords with their spirit, intention and purpose, and in a way that best promotes the principles on which they are based.⁶⁷ Whether and how promptly an entity has requested a trading halt or voluntary suspension so as to prevent trading in its securities happening on an uninformed basis are significant factors that ASX takes into account in assessing whether the entity has complied with the spirit, intention and purpose of Listing Rule 3.1⁶⁸ and whether it ought to refer a possible breach of the rule to ASIC.⁶⁹

4.7 The approach ASX takes to requests for disclosure-related trading halts/voluntary suspensions

As stated in ASX Guidance Note 16 *Trading Halts and Voluntary Suspensions*:

“The general principle applied by ASX in considering requests for a trading halt or a voluntary suspension is that interruptions to trading should be kept to a minimum and, therefore, a trading halt or a voluntary suspension should only be permitted:

- *where there is a material risk that trading in a particular security might occur while the market as a whole is not reasonably informed; or*
- *where it is needed to correct or prevent a false or disorderly market.”*

ASX recognises that, faced with the difficulty of predicting whether information will have a material effect on the price or value of its securities and the serious legal consequences that may follow if information is not disclosed when required, an entity may err on the side of caution and seek to disclose information where there may be some doubt as to whether the information is in fact market sensitive. Not all announcements an entity may wish to make will warrant a trading halt or voluntary suspension. It is for this reason that when an entity requests ASX for a trading halt or voluntary suspension to allow it the time it needs to prepare an announcement under Listing Rule 3.1, ASX will usually ask the entity to outline the nature of the information in question and assess for itself whether the circumstances warrant the granting of a trading halt or voluntary suspension.⁷⁰

If ASX considers that the information is of a character that is likely to be market sensitive and that the circumstances warrant a trading halt or voluntary suspension, ASX will invariably agree to the request so as to afford the entity the time it needs to prepare and issue an announcement. In that case, provided the entity has requested a trading halt or voluntary suspension promptly after it became obliged to disclose the information under Listing Rule 3.1 and, after the trading halt or voluntary suspension has been granted, then acts to issue an announcement as quickly as it can in the circumstances, ASX will regard the entity as having complied with the spirit, intention and purpose of Listing Rule 3.1.⁷¹

If ASX considers that the information is of a character that is unlikely to be market sensitive or that the circumstances do not warrant the granting of a trading halt or voluntary suspension, ASX may decline the request and ask the

⁶⁷ Listing Rule 19.2.

⁶⁸ As entities are required to do under Listing Rule 19.2.

⁶⁹ ASX understands that ASIC will also take into account whether or not an entity has promptly requested a trading halt in determining whether it will take enforcement action in relation to a possible breach of section 674: see, for example, ASIC Media Release 08-117, referred to above in note 55, and ASIC Media Release 07-69. In the latter case, a listed company received an offer to acquire all of its ordinary shares. At approximately noon the following day, reasonably specific details of the proposal were reported in a Dow Jones Newswire article, indicating that the proposal was no longer confidential. The company did not make an announcement about the proposal until approximately 8.30 am the following morning. ASIC issued an infringement notice and the company elected to comply with the notice.

In both ASIC Media Release 08-117 and ASIC Media Release 07-69, the delay in requesting a trading halt was specifically mentioned by ASIC as a factor in its decision to issue the infringement notice.

Again, ASX would note that the fact that an entity complies with an infringement notice is not to be taken as an admission of guilt or liability (see section 1317DAF).

⁷⁰ An entity is required to tell ASX its reasons for wanting a trading halt or voluntary suspension – see the first bullet point in Listing Rules 17.1 and 17.2.

⁷¹ It should be noted that the fact that ASX may regard the entity as having complied with the spirit, intention and purpose of Listing Rule 3.1 will not preclude ASIC or a civil litigant from taking a different view and arguing that the entity has failed to comply with its disclosure obligations under Listing Rule 3.1 and section 674.

entity to complete and lodge its announcement as quickly as it can.⁷² In that case, should the information ultimately turn out to be market sensitive,⁷³ provided the entity approached ASX promptly after it became obliged to disclose the information under Listing Rule 3.1 to discuss its request for a trading halt or voluntary suspension and, after the request was refused, then acted to issue an announcement as quickly as it could in the circumstances, ASX will regard the entity as having complied with the spirit, intention and purpose of Listing Rule 3.1.⁷⁴

When approached by an entity for a trading halt or voluntary suspension, ASX will usually explore with the entity the scope and timing of the announcement that will bring an end to the halt or suspension.⁷⁵ In some cases where the situation is uncertain or evolving but is likely to resolve itself within a relatively short period (in the case of a trading halt, within two trading days), ASX may agree that it is appropriate for the announcement to be delayed until there is greater certainty or clarity around the outcome so that a more definitive and informative announcement can be made to the market and for the halt or suspension to last long enough to allow that to occur. In other cases, it may be appropriate for an announcement to be made as soon as possible that simply explains the current situation so that the entity can come out of the halt or suspension at the earliest opportunity.

ASX Guidance Note 16 *Trading Halts and Voluntary Suspensions* has further guidance on how to apply for a trading halt or voluntary suspension.

4.8 Does the board need to approve an announcement under Listing Rule 3.1?

The courts have acknowledged that it is appropriate for some particularly significant continuous disclosure announcements to be considered and approved by the board of directors of an entity before they are released.⁷⁶ They have also made it clear, however, that this is not legally necessary in all cases.⁷⁷

Given the requirement for announcements under Listing Rule 3.1 to be issued immediately, an entity should have suitable arrangements in place to enable this to occur. Such arrangements may include giving appropriate delegations⁷⁸ to senior management to release some announcements of their own accord⁷⁹ and, if the matter falls outside those delegations, having a disclosure committee⁸⁰ that can meet by phone or on short notice to consider the announcement.

Where an entity considers an announcement to be so significant that it ought to be approved by its full board before release, it needs to think carefully about how it will manage its disclosure obligations. This will require a close

⁷² This would be a fairly rare circumstance. If an entity tells ASX that it needs a trading halt to give it time to make an announcement about information that it considers to be market sensitive, ASX will usually err on the side of caution and grant the trading halt, so as to avoid any suggestion of the market trading on an uninformed basis. ASX will generally only deny such a request where, in its opinion, the information is clearly not market sensitive or a trading halt is clearly not appropriate.

⁷³ Of course, if the information turns out not to be market sensitive, then it was not technically disclosable under Listing Rule 3.1 in the first place.

⁷⁴ Again, it should be noted that the fact that ASX may regard the entity as having complied with the spirit, intention and purpose of Listing Rule 3.1 will not preclude ASIC or a civil litigant from taking a different view and arguing that the entity has failed to comply with its disclosure obligations under Listing Rule 3.1 and section 674.

⁷⁵ An entity is required to tell ASX the event it expects to happen that will end a trading halt or voluntary suspension – see the third bullet point in Listing Rules 17.1 and 17.2.

⁷⁶ See *ASIC v Macdonald (No 11)* [2009] NSWSC 287, at paragraph 333, and *ASIC v Hellicar* [2012] HCA 17, at paragraph 56.

⁷⁷ See *Morley v ASIC* [2010] NSWCA 331, at paragraph 808.

⁷⁸ Those delegations could, for example, be set out in the entity's continuous disclosure policy (see Recommendation 5.1 of the ASX Corporate Governance [Council's Corporate Governance Principles and Recommendations](#)) or in the entity's board charter in the section specifying the functions reserved to the board and those delegated to senior executives (see Recommendation 1.1 of the ASX Corporate Governance [Council's Corporate Governance Principles and Recommendations](#)).

⁷⁹ Where an announcement under Listing Rule 3.1 is issued by senior management under delegated authority, it would be common practice for a copy also to be circulated immediately to directors (usually by email) and for it to be noted at the next board meeting. See also Recommendation 5.2 of the ASX Corporate Governance [Council's Corporate Governance Principles and Recommendations](#) (a listed entity should ensure that its board receives copies of all material market announcements promptly after they have been made).

⁸⁰ Such committees often comprise or include the chairperson of directors, the chief executive officer, the company secretary and the general counsel. [Further guidance on disclosure committees can be found in the Governance Institute of Australia publication Good Governance Guide – Disclosure and communications policy, available online at:
<https://www.governanceinstitute.com.au/resources/resource-centre/>](#)

consideration of the nature of the information to be disclosed, the applicability of the exceptions in Listing Rule 3.1A and whether the circumstances warrant requesting a trading halt.

Where it is the decision of the board itself that is the information to be disclosed under Listing Rule 3.1 (such as a decision by the board to declare a dividend, to implement a scheme of arrangement or to appoint an administrator), the obligation to disclose generally will not arise until the board has made that decision. It usually will not be necessary to request a trading halt ahead of that decision (although that could change if there are signs that information about the impending board decision has leaked and this has had or could have a material impact on the market price or traded volumes of the entity's securities).

Where the information to be disclosed falls within the exceptions to immediate disclosure in Listing Rule 3.1A but the board determines that it is now appropriate and timely to announce the matter to the market, it will be that decision of the board that is the trigger for the announcement rather than any legal obligation under Listing Rule 3.1.⁸¹ Again, it usually will not be necessary to request a trading halt ahead of that decision (although that could change if there are signs that information about the matter has leaked ahead of the announcement and this has had or could have a material impact on the market price or traded volumes of the entity's securities).

Where, however, the information to be disclosed relates to something that has already happened and:

- it does not and never did fall within the exceptions to immediate disclosure in Listing Rule 3.1A, or
- it originally fell within those exceptions but has since ceased to do so,

the obligation to disclose will usually already have arisen before the board comes to consider the matter – in the former case at the point when the entity first became “aware” of the information⁸² and in the latter case at the point when Listing Rule 3.1A ceased to apply. To comply with the timing requirements of Listing Rule 3.1, an announcement with that information must be given to ASX promptly and without delay. In turn, this means that the requisite board meeting to consider the announcement must be convened and the board must settle and approve the announcement promptly and without delay. Consideration of the announcement cannot be delayed to a previously scheduled regular board meeting or to a meeting to be convened at a future date.

In addition, if the market will be trading at any time after the entity first became obliged to give market sensitive information to ASX under Listing Rule 3.1 and before the board can approve the giving of an announcement with that information to ASX for release to the market, the entity should consider carefully whether it ought to request a trading halt to prevent the market trading on an uninformed basis over that period, applying the guidance above in [‘4.6 The use of trading halts and voluntary suspensions to manage disclosure issues’](#).

Again, ASX would strongly encourage an entity which is unsure about whether it should be requesting a trading halt to cover the time required for the board to approve an announcement, to contact its listings adviser at ASX to discuss the situation.

4.9 What other steps can an entity take to facilitate compliance with Listing Rule 3.1?

Steps that an entity can take to help manage the requirement to disclose information immediately under Listing Rule 3.1 include:

⁸¹ This situation needs to be distinguished from the situation where market sensitive information ceases to fall within the exceptions to immediate disclosure in Listing Rule 3.1A (eg, previously incomplete and confidential negotiations about a market sensitive transaction are completed) and therefore needs to be disclosed immediately under Listing Rule 3.1. In that case, the obligation to disclose arises at the point Listing Rule 3.1A ceases to apply.

⁸² See [‘4.4 When does an entity become aware of information?’](#) on page 13 above.

1. Have a template letter requesting ASX to grant a trading halt ready for use at all times. In this way, if it needs to request an urgent trading halt, it can do so without delay.⁸³
2. Anticipate what might happen if information about a confidential transaction being negotiated leaks and have a template announcement ready that can be updated and issued straight away (see Example H1 in Annexure A).
3. Where it has advance notice of an event that is likely to require an announcement under Listing Rule 3.1, prepare a draft announcement ahead of time that can be issued straight away (see Examples H2 and H3 in Annexure A).
4. Where the event that gives rise to the need to make an announcement is within its control, be sensitive to the hours when licensed markets in Australia are trading and, where possible, try to ensure that the event happens and the announcement is made before trading commences or after trading has closed,⁸⁴ to avoid disrupting the normal course of trading on licensed markets (see Example H3 in Annexure A).
5. Ensure that the person (or each of the persons⁸⁵) appointed under Listing Rule 12.6 to be responsible for communications with ASX in relation to Listing Rule matters:
 - has the organisational knowledge to have meaningful discussions on disclosure matters;
 - is able to request a trading halt and/or issue an announcement to the market, if that is what is required,⁸⁶

and that person (or at least one of those persons) is readily contactable by ASX by telephone, and available to discuss any pressing disclosure issues that may arise, 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.⁸⁷

This requires that the person has a high degree of familiarity with the 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.

On this last point, ASX acknowledges that the decision to request a trading halt is a serious one and that an entity will often have internal 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 promptly. They should also include appropriate contingencies for when key approvers are not available.

⁸³ Listing Rule 17.1 provides that ASX may require a request for a trading halt to be in writing. In practice, ASX will act upon a verbal request from an entity for an urgent trading halt but will require that request to be confirmed in writing as soon as practicable thereafter. ASX will release the entity's written request for a trading halt through the ASX Market Announcements Platform ("MAP").

⁸⁴ Entities should note the guidance in Guidance Note 14 *ASX Market Announcements Platform* about the lodgement of notices in peak periods, such as prior to market open and market close. For an announcement that must be released prior to market open at 10:00am Sydney time, the announcement should be submitted prior to 9:30am Sydney time. For an announcement that must be released prior to market close at 4:00pm Sydney time, the announcement should be submitted prior to 3:40pm Sydney time.

⁸⁵ 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.

⁸⁶ Where an entity's nominated representative under Listing Rule 12.6 is not available, ASX will accept a request from any director or other officer of the entity for a trading halt.

⁸⁷ 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.

The need to resolve a continuous disclosure issue can be extremely time critical. If for any reason ASX is not able to resolve such an issue to its satisfaction reasonably promptly,⁸⁸ ASX may be left with little option but to suspend the quotation of the entity's securities until the issue can be properly resolved. The entity may also expose itself to regulatory action by ASIC.⁸⁹

4.10 How does Listing Rule 3.1 interact with other disclosure obligations?

The obligation of an entity under Listing Rule 3.1 to notify ASX of information that a reasonable person would expect to have a material effect on the price or value of its securities is separate to, but operates in tandem with, its obligations to notify ASX of:

- the specific matters referred to in Listing Rules 3.4 – 3.21;⁹⁰ and
- a significant change to the nature or scale of its activities under Listing Rule 11.1.⁹¹

Notification of information under any of these rules will satisfy the obligation to notify ASX of that information under Listing Rule 3.1 provided, in each case, the notification is given within the timeframe required under Listing Rule 3.1.

The continuous disclosure obligations in Listing Rule 3.1 also operate in parallel with:

- the periodic disclosure obligations in Chapters 4 and 5 of the Listing Rules;
- the half-yearly and annual financial reporting requirements in the Corporations Act; and
- the disclosure obligations in relation to [a](#)-prospectuses, PDSs, cleansing notices, bidders' statements, targets' statements and scheme documents under the Corporations Act,⁹²

(together, "periodic disclosure documents").

Once these periodic disclosure documents have been released to the market, the information in them is regarded by ASX as "generally available" and therefore not something that requires a separate disclosure under Listing Rule 3.1.

Generally speaking, an entity is not expected to release the information in a periodic disclosure document ahead of the scheduled release date for that document.⁹³ Sometimes, however, in the course of preparing a periodic

⁸⁸ For example, because ASX is not able to contact an entity's nominated representative(s) under Listing Rule 12.6, because they do not have the organisational knowledge to have a meaningful discussion on the matter or because they are not able to obtain promptly any necessary internal approvals to issue an announcement or to request a trading halt.

⁸⁹ See, for example, ASIC Media Release 08-117, referred to above in note 55.

⁹⁰ This includes notifications of specific information about takeover bids; buy-backs; changes in capital; the release of restricted securities and securities subject to voluntary escrow; changes in the exercise price of, or the entry of underwriting agreements for, the exercise of options; auctions of forfeited shares by NL companies; security holder meetings; changes to the entity's registered and principal administrative offices; changes to the location or the closing of any register of securities; changes in chairperson, directors, chief executive officer, company secretary or auditor; the material terms of employment, service or consultancy agreements entered into with the CEO or a director of an entity or their related parties; documents sent to security holders; substantial holdings; requisitions received from security holders; financial documents given to overseas exchanges; in the case of an entity that is not established in Australia, changes to the law of its home jurisdiction that materially affect the rights or obligations of security holders; ownership limits; directors' interests; record dates; and dividends and distributions.

⁹¹ See generally Guidance Note 12 *Significant Changes to Activities*.

⁹² The list of disclosure obligations here that an entity may have under the Corporations Act is not intended to be exhaustive.

⁹³ ASX understands that it is common market practice for a listed entity's board or a committee of the board to review and approve in principle its half year/annual financial statements, an interim/preliminary final profit announcement and an interim/final dividend ahead of the scheduled date for the announcement of its results and then for the board or a committee of the board to formally approve the financial statements and profit announcement and to formally resolve to pay the dividend just prior to the scheduled time for the announcement of its results (eg, on the morning of the announcement or in the evening beforehand). Among other reasons, this is to ensure that there have been no late breaking material post-balance date events that might need to be reflected in the financial statements and profit announcement or factored into the dividend decision.

ASX has no issue with this particular practice and (subject to the discussion in the text about the possible need to disclose market sensitive earnings surprises or material post-balance date events) would not expect the entity's financial statements to be released, its profit

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disclosure document, market sensitive information may become apparent that ought to be disclosed immediately under Listing Rule 3.1. Two areas where this issue commonly arises are market sensitive “earnings surprises”⁹⁴ and market sensitive material post-balance date events.

If, in the course of preparing a periodic disclosure document, it becomes apparent to an entity that its reported earnings will differ so significantly from market expectations that a reasonable person would expect information about its reported earnings to have a material effect on the price or value of its securities, the entity must disclose that information to ASX immediately under Listing Rule 3.1.⁹⁵ It cannot wait until the periodic disclosure document is released. The same is true for information about a material post-balance date event that a reasonable person would expect to have a material effect on the price or value of its securities.

Entities should also be aware of Listing Rule 4.3D, which requires an entity to tell ASX immediately of any circumstances which are likely to affect the results or other information contained in its preliminary final report and to explain their effect on the entity’s current or future financial performance or financial position. This rule reflects the primacy of continuous disclosure obligations over periodic disclosure obligations. If particular information is market sensitive, it must be disclosed immediately and cannot be withheld until the scheduled release date for a periodic disclosure document.

4.11 Who can make an announcement under Listing Rule 3.1?

Announcements can only be given under Listing Rule 3.1 by an entity or someone authorised by it to make an announcement on its behalf.

ASX cannot and will not accept an announcement under Listing Rule 3.1 from a third party, such as a security holder or former office holder.⁹⁶

4.12 Can an announcement under Listing Rule 3.1 be embargoed?

Given the need for disclosure to be made immediately under Listing Rule 3.1, ASX cannot accept, and will disregard, any embargo⁹⁷ an entity attempts to place on an announcement given to ASX under that rule.⁹⁸

announcement to be made, or its dividend decision to be notified, to ASX ahead of the scheduled release date just because they may have been discussed and approved in principle by the board or a committee of the board beforehand.

⁹⁴ ASX prefaces the phrase “earnings surprises” with “market sensitive” to limit it to those situations where an entity’s reported earnings differ so significantly from market expectations that a reasonable person would expect information about its reported earnings to have a material effect on the price or value of its securities. This is to differentiate those lesser situations, sometime also referred to as an earnings surprise, where an entity’s reported earnings differ from the consensus estimate (often described as “surprising on the upside” if the entity’s earnings are higher than the consensus estimate and “surprising on the downside” if the entity’s earnings are lower than the consensus estimate) but not necessarily to an extent that a reasonable person would expect information about its reported earnings to have a material effect on the price or value of its securities.

⁹⁵ See ‘7.3 [Market sensitive earnings surprises](#)’, ‘[Example F – material difference in earnings compared to earnings guidance](#)’, ‘[Example F – material difference in earnings compared to earnings guidance](#)’ and ‘[Example G – material difference in earnings compared to consensus estimates](#)’ on pages 48, 85 and 86 respectively.

⁹⁶ Where ASX receives information from a third party which they assert should be, or should have been, disclosed by an entity under Listing Rule 3.1, ASX will make enquiries of the entity as to the accuracy and materiality of the information. If ASX forms the view that the information is accurate, market sensitive and not within the carve-outs from disclosure in Listing Rule 3.1A, ASX will ask the entity to make an announcement under Listing Rule 3.1: see ‘8.5 [Complaints or allegations of non-compliance](#)’ on page 70.

⁹⁷ That is, a condition that ASX cannot release the announcement to the market until a certain time.

⁹⁸ ASX does not recognise any embargo on a document given to it for public release: see Listing Rule 15.8.

4.13 What form should an announcement under Listing Rule 3.1 take?

A disclosure under Listing Rule 3.1 must be in the form of a written announcement⁹⁹ and given to the ASX Market Announcements office for release to the market.¹⁰⁰

4.14 Guidelines on the headers to announcements under Listing Rule 3.1

For announcements of prescribed corporate actions made via online forms, ASX Online automatically supplies a header for the announcement. For all other announcements, the ASX Online announcements lodgement screen includes a “title header” field where a title for the announcement can be inserted. It is common for an entity to insert the heading, or an abridged version¹⁰¹ of the heading, to the announcement in that field.

Entities should take care with the title headers that they give to their announcements. ASX will generally use the title header supplied in that field on ASX Online as the name or description of the announcement on the ASX website and in the message about the announcement that gets published on its trading platform and displayed on broker trading terminals. Many brokers and investors will use this name or description to assess whether they ought to read the full announcement.

The header to an announcement should briefly and accurately convey its contents (eg, “Appointment of CEO” or “Cleansing Notice”). Not only will this assist brokers and investors in assessing the significance of the announcement, it will also assist ASX in determining more quickly whether an announcement could be market sensitive and therefore warrants a halt to trading under ASX Operating Rule 3301(a).¹⁰²

The header for an announcement should also convey a fair and balanced impression of what the announcement is about so as not to mislead readers as to its contents or significance. For example, the header to an announcement that contains essentially negative information should not attempt to disguise that fact by picking out a small piece of positive information in the announcement and just mentioning that (sometimes referred to as “putting spin” on the announcement). Likewise, the header to an announcement that contains forward-looking information (such as earnings guidance or an exploration or production target) that is speculative or highly qualified should be careful not to overstate or sensationalise the true character of the information it contains.¹⁰³

ASX has experienced difficulties in the past with announcements that have been given a fairly innocuous header (such as “Chairman’s Address to AGM”) but have had market sensitive material embedded in them. ASX would ask entities to ensure that the header to such an announcement clearly identifies the fact that it contains market sensitive information (eg, “Chairman’s Address to AGM and Buyback Announcement”) or, better still, that market sensitive announcements are made on a stand-alone basis and not embedded in other announcements that may not be market sensitive.

⁹⁹ Listing Rule 19.10.

¹⁰⁰ See Listing Rule 15.2.1 and Guidance Note 14 *ASX Market Announcements Platform*. The announcement must be in final form. ASX cannot and will not accept a draft announcement under Listing Rule 3.1 for comment or pre-vetting, since that would be inconsistent with the need for disclosure to be made immediately under that rule.

¹⁰¹ This field is limited to 60 characters.

¹⁰² See ‘4.18 What steps does ASX take when it receives an announcement under Listing Rule 3.1?’ on page 31. ~~What steps does ASX take when it receives an announcement under Listing Rule 3.1?’ on page 31.~~

¹⁰³ See note ~~399393~~ below and the accompanying text. See also ASIC Regulatory Guide 170 *Prospective financial information*.

4.15 Guidelines on the contents of announcements under Listing Rule 3.1

Wherever possible,¹⁰⁴ an announcement under Listing Rule 3.1 should contain sufficient detail for investors¹⁰⁵ or their professional advisers¹⁰⁶ to understand its ramifications and to assess its impact on the price or value of the entity's securities.

For example, depending on the circumstances, ASX would generally expect an announcement about the signing of a market sensitive contract for an acquisition or disposal to include information about:

- the counterparty to the contract;¹⁰⁷
- where there is little or no information regarding the counterparty in the public domain (for example, because it is a private or a recently incorporated entity), a description of the counterparty and a summary of the due diligence undertaken by the listed entity on the counterparty's financial and other capacity to perform their obligations in relation to the transaction;¹⁰⁸
- a description of the assets or businesses proposed to be acquired or disposed of;¹⁰⁹
- the consideration for the acquisition or disposal;
- the expected date for completion of the acquisition or disposal;
- in the case of an acquisition, the intended source of funds to pay for the acquisition and, if that involves a capital raising, details of the capital raising, including the timetable and its effect on the total issued capital of the entity;
- in the case of a disposal, the intended use of funds (if any) received for the disposal;
- any material conditions that need to be satisfied before the contract becomes legally binding or proceeds to completion;
- any security holder approvals that may be required in relation to the transaction and the timetable for those approvals;
- any changes to the board or senior management proposed as a consequence of the transaction; and

¹⁰⁴ Note that the words "Wherever possible", are not intended to limit or qualify the information required to be disclosed under Listing Rule 3.1. They simply recognise that at the time an announcement is required to be made under Listing Rule 3.1, an entity may not know all of the information that investors or their professional advisers will need to understand the ramifications of the announcement and to assess its impact on the price or value of the entity's securities. In such a case, the entity may need to do an interim announcement setting out whatever market-sensitive information it currently knows, and foreshadow that will make a further announcement if and when it comes into possession of more market-sensitive information about the matter.

¹⁰⁵ In *Forrest v ASIC* [2012] HCA 39, the majority of the High Court said (at paragraph 36) that it was sufficient to describe the intended audience of an announcement under Listing Rule 3.1 "as investors (both present and possible future investors) and, perhaps, as some wider section of the commercial or business community." In a concurring judgment, Heydon J (at paragraph 135) described the intended audience with greater specificity as "superannuation funds, other large institutions, other wealthy investors, stock brokers and other financial advisers, specialised financial journalists, as well as smaller investors reliant on advice."

¹⁰⁶ As Heydon J recognised in *Forrest v ASIC*, note 105 above, smaller investors are often reliant on professional advice to understand the ramifications of an announcement under Listing Rule 3.1, particularly if it involves a more complex or technical matter. On these types of matters, ASX considers that the announcement should include sufficient details for professional advisers to be able to understand its ramifications, to assess its impact on the price or value of the entity's securities and to advise their clients accordingly.

¹⁰⁷ For the avoidance of doubt, this applies even where the counterparty does not want to be named and has imposed confidentiality obligations in this regard (see '4.22 Disclosure must be made even if it is contrary to contractual commitments' [on page 33](#)).

If the counterparty to the contract is a child entity of, or acting as nominee for, another more well known entity, ASX would generally expect the announcement to include the details of that other entity as well.

¹⁰⁸ If ASX finds instances where a listed entity has not disclosed an appropriate level of information about the counterparty to a material transaction, ASX may suspend trading in the entity's securities until an appropriate level of information has been disclosed to the market.

¹⁰⁹ If the asset being acquired is a mining exploration tenement, the information to be disclosed might include details of the tenement, where it is located and a summary of previous exploration activity and expenditure on the tenement.

- any other material information relevant to assessing the impact of the transaction on the price or value of the entity's securities.

Similarly, depending on the circumstances, ASX would generally expect an announcement about the signing of a market sensitive contract¹¹⁰ with a customer to include information about:

- the name of the customer;¹¹¹
- the term of the contract;
- the nature of the products or services to be supplied to the customer;
- the significance of the contract to the entity;
- any material conditions that need to be satisfied before the customer becomes legally bound to proceed with the contract; and
- any other material information relevant to assessing the impact of the contract on the price or value of the entity's securities.

In disclosing the significance of the contract to the entity, regard should be had to the guidance below about forward-looking statements. For example, a statement about the projected revenue to be derived from a customer contract or any other projection that is a proxy for revenue¹¹² will be a forward-looking statement and therefore must be based on reasonable grounds or else it will be deemed to be misleading.¹¹³

The disclosure of the name of the counterparty/customer with whom an entity has entered into a market sensitive contract is often particularly significant. It allows the market to assess the standing and creditworthiness of the counterparty/customer.¹¹⁴ In the case of a customer contract, it also allows the market to assess the quality of the customers the entity is dealing with and the quality of the revenue it is earning from them.

In very limited circumstances, where ASX is satisfied that a counterparty/customer has strong and legitimate reasons for not wanting to be named in a market announcement (as may occur with some government agencies or entities in the defence or security industries), ASX may accept a description of the counterparty/customer that is sufficiently detailed to allow the market to assess the counterparty's standing and creditworthiness without the counterparty/customer being named.

ASX strongly recommends that any entity wishing to describe a counterparty/customer in a market announcement about a market sensitive contract rather than name them first discuss that issue with ASX prior to making the

¹¹⁰ One area that has proved to be problematic for some listed entities is failing to disclose when a previously announced material customer contract does not proceed or is terminated (ie only disclosing good news, not bad news). Generally speaking, if information about the entry of a customer contract is sufficiently material to justify its disclosure, ASX's starting assumption will be that information about its failure to proceed or termination is also sufficiently material to justify its disclosure, unless the entity can make a clear and convincing argument to the contrary.

¹¹¹ Again, for the avoidance of doubt, this applies even where the customer does not want to be named and has imposed confidentiality obligations in this regard (see '4.22 Disclosure must be made even if it is contrary to contractual commitments' [on page 33](#)).

Again also, if the customer is a child entity of, or acting as nominee for, another more well known entity, ASX would generally expect the announcement to include the details of that other entity as well.

¹¹² For example, if the entity charges its customers on a per-transaction or per-quantity basis, an estimate of the number of transactions that will be entered into or of the quantities that will be supplied.

¹¹³ See notes 121 and 122 below and the accompanying text. Note also that if an entity does make a statement about the projected revenue to be derived from a customer contract or any other projection that is a proxy for revenue and the entity becomes aware that the projection is materially overstated, this may trigger an obligation under Listing Rule 3.1 to make a corrective announcement.

¹¹⁴ See, for example, *ASIC v Big Star Energy Limited (No 3)* [2020] FCA 1442, holding that a listed entity breached Listing Rule 3.1 and section 674(2) of the Corporations Act by announcing the sale of a significant asset without disclosing: (a) the identity of the purchaser; (b) that the entity had done no due diligence to verify the capacity of the purchaser to complete the purchase; and (c) that the entity had in fact been informed by the purchaser that it had not yet received all funding approvals required to complete the purchase. The transaction ultimately failed to complete. The court specifically rejected an argument by the entity that because the purchase was for a cash consideration, the identity of the purchaser was not material.

announcement to determine whether ASX is agreeable to the counterparty/customer not being named and is happy with the proposed description. Otherwise, it is likely to find itself having to request a trading halt or face a suspension while it addresses ASX's concerns about not having disclosed material information about the contract.

It is open to an entity which signs a market sensitive agreement to lodge a copy of the agreement on MAP, if it wishes to do so. This will help to reduce the amount of material about the agreement that needs to be included in its announcement¹¹⁵ and also avoid any issues about whether any material terms of the agreement have been properly disclosed. However, ASX recognises that there are cases where an entity will not wish to lodge a copy of an agreement on MAP.¹¹⁶ In those cases, the announcement about the agreement should contain a fair and balanced summary of the material terms of the agreement and include any other material information that could affect an investor's assessment of its impact on the price or value of the entity's securities.

It is also open to an entity to include in an announcement references or hyperlinks to other documents where further information can be found. However, if those documents have not been lodged on MAP, the announcement itself should include sufficient detail about the material contents of those documents for investors to understand and assess their significance and determine whether they need to read them.

An announcement under Listing Rule 3.1 must be accurate, complete¹¹⁷ and not misleading. A listed entity cannot satisfy its obligation to disclose market sensitive information under Listing Rule 3.1 by disclosing information that is materially inaccurate, incomplete or misleading.¹¹⁸ If it attempts to do so, that will likely trigger a separate obligation under Listing Rule 3.1 to correct the inaccurate, incomplete or misleading information, causing the entity to be in breach of that rule and section 674 of the Corporations Act until it does so.¹¹⁹ It will also likely cause a false market in its securities, empowering ASX to require the entity to give ASX any information ASX asks for to correct the false market.¹²⁰

To not be misleading, opinions expressed in an announcement should be honestly held and balanced and should be clearly identified as a statement of opinion rather than a statement of fact. Any forward-looking statements in an announcement must also be based on reasonable grounds or else by law they will be deemed to be misleading.¹²¹ Any material assumptions or qualifications that underpin a forward-looking statement in an announcement under Listing Rule 3.1 should also be stated in the announcement.¹²²

¹¹⁵ In such a case, it will generally only be necessary for the announcement to include a summary of the key commercial terms of the underlying transaction, a general description of the agreement and a statement that a copy of the agreement is available on MAP.

¹¹⁶ For example, it may contain commercially sensitive information that the entity is not required to disclose under Listing Rule 3.1 and that the entity would prefer was not disclosed (although see '4.20 [Commercially sensitive information](#)~~Commercially sensitive information~~' on [page 32](#)), or it may include a confidentiality clause that would make its full publication on MAP inappropriate (see notes 343 and 360 below and the accompanying examples in Annexure A).

¹¹⁷ "Complete" in this context means not omitting material information.

¹¹⁸ Giving materially false or misleading information to ASX potentially breaches sections 1041H and 1309 of the Corporations Act (see '[The statutory prohibitions against false or misleading disclosures](#)~~The statutory prohibitions against false or misleading disclosures~~' on [page 92](#)). Note also the observation of McLure JA in the Jubilee Mines case, note 16 above, at paragraphs 161-162, that:

"The 'information' [to be disclosed] must also include all matters of fact, opinion and intention that are necessary in order to prevent the disclosing company otherwise engaging in conduct that is misleading or deceptive or is likely to mislead or deceive ... The disclosure regime does not countenance disclosure of incomplete information just because that information alone would influence persons who commonly invest to buy or sell shares."

¹¹⁹ See, for example, ASIC Media Release 05-223 (since withdrawn), concerning an initially misleading announcement about the results of a trial for a cancer treatment drug that did not include material adverse information about the results of animal testing of the drug. See also *ASIC v Fortescue* [2011] FCAFC 19, the Full Federal Court held (at paragraph 181) that making a false or misleading announcement under Listing Rule 3.1 could in certain circumstances (and did in the circumstances of that case) trigger a separate obligation under that Listing Rule and section 674 to make a corrective announcement. While the Full Federal Court decision was overturned by the High Court, the High Court was not required to rule on this point as it found that the announcement in question was not misleading (see *Forrest v ASIC*, note 105 above, at paragraph 66).

¹²⁰ See '6 Listing Rule 3.1B – correcting or preventing false markets' [on page 44](#).

¹²¹ See note [399393](#) below and the accompanying text. See also ASIC Regulatory Guide 170 *Prospective financial information*.

¹²² See ASIC Information Release IR 01/05 dated 7 February 2001, which refers to ASIC's guidance on prospective financial information, now set out in ASIC Regulatory Guide 170 *Prospective financial information*. From an entity's standpoint, the inclusion of material

Entities should not use an announcement under Listing Rule 3.1 as a guise to publish material that is really promotional, political or tendentious in nature rather than being information that a reasonable person would expect to have a material effect on the price or value of its securities.

Generally speaking,¹²³ an entity should not submit:

- a broker or analyst research report about the entity; or
- an announcement about the issuance of, containing an extract from, or referring or including a hyperlink to, such a report,¹²⁴

for publication on MAP under Listing Rule 3.1. Any market sensitive fact-based material in such a report should already have been released by the entity under that rule beforehand and so it can reasonably be inferred that the entity is seeking to publish or draw attention to the report for its opinion-based material (such as the broker's or analyst's buy recommendation, price target or earnings estimates). This will raise an issue about whether the report is really being published for promotional rather than informational reasons. It may also raise concerns about whether the entity is impliedly endorsing any price target, earnings estimates or other forward-looking financial information in the report.¹²⁵ For these reasons, ASX is likely to refuse to allow an entity to publish such a report or announcement on MAP without a detailed and acceptable explanation as to why the entity considers this information to be market sensitive.

If an entity does happen to publish such a report or announcement on MAP without pre-clearing it with ASX Listings Compliance, ASX may require the entity to make a further announcement addressing the concerns mentioned in

assumptions and qualifications in an announcement under Listing Rule 3.1 may also help to avoid future legal liability (eg, for misleading or deceptive conduct) if the assumptions prove to be incorrect or the qualifications are triggered.

Note also that Chapter 5 of the Listing Rules requires mining entities to disclose the following assumptions behind certain forward-looking statements:

- (1) the mining and metallurgical assumptions used when estimating and reporting mineral resources (Table 1 of the JORC Code in Appendix 5A);
- (2) the cost and revenue assumptions used when estimating and reporting ore reserves (Table 1 of the JORC Code in Appendix 5A);
- (3) the material assumptions from the relevant preliminary feasibility study or feasibility study and the mining and processing assumptions used to support estimates of ore reserves (Listing Rule 5.9.1);
- (4) to the extent known, the key assumptions used to prepare historical estimates or foreign estimates of mineralisation in relation to a material mining project (Listing Rule 5.12.5); and
- (5) the material assumptions underpinning certain mining production targets or forecast financial information based on such mining production targets (Listing Rules 5.16.1 and 5.17.1).

¹²³ There may be particular circumstances where a broker or analyst research report is required to be lodged on MAP, eg, where it forms part of, or has been incorporated by reference into, a prospectus or PDS that is required to be lodged with ASX under Listing Rule 3.10.4. There may also be particular circumstances where a document referring to a broker or analyst research report is required to be lodged on MAP, eg in response to a price query letter from ASX where the entity genuinely believes that the broker or analyst research report has been responsible for moving the price of its securities.

¹²⁴ For the avoidance of doubt, this includes an announcement mentioning that a copy of the broker or analyst research report is available on the entity's website or on the research provider's website.

ASX has no objection to an entity publishing a broker or analyst research report about it on its website provided it does not draw attention to the report in an announcement published on MAP and it does not otherwise contain material that ASX considers to be objectionable (see the examples mentioned in note 126 below). An entity that does so, however, needs to be alert to the legal issues that this may raise and should take advice on those issues. For example, in the absence of a suitable disclaimer, the publication of the report may imply that the entity endorses the contents of the report, including any price target, earnings forecast or other statement about the entity's prospects. Also, the broker or analyst will most likely have copyright in the report and therefore their consent should be sought to its publication, in the form and context in which it will appear.

If a broker or analyst research report has been commissioned or paid for by an entity, or there is some other material commercial relationship between the broker and the entity (eg, if the broker is acting as an underwriter or placement agent for an issue of securities by the entity), then that fact should generally be disclosed in the report itself (see ASIC Regulatory Guide 79 *Research report providers: Improving the quality of investment* and ASIC Regulatory Guide 264 *Sell-side research*). In addition, such a report should not be described on the entity's website or elsewhere as "independent", since that could be misleading.

¹²⁵ See also the discussion in '7.5 [Publishing analyst forecasts or consensus estimates](#)' [Publishing analyst forecasts or consensus estimates' on page 60.](#)

the preceding paragraph. Further, if the report contains material that ASX considers objectionable,¹²⁶ ASX may also require the entity to publish an announcement withdrawing or retracting the objectionable material and advising investors not to make any investment decision based on it.

Finally, an announcement must be couched in language that is appropriate for release to the market. It should be factual, relevant and expressed in a clear and objective manner. Emotive, intemperate or defamatory language should not be used, nor should vague or imprecise terms such as “single digit” or “double digit”, which do not allow investors to assess the value of the information for the purpose of making an investment decision.

ASX may refuse to accept or publish an announcement from an entity that does not meet the standards described above.¹²⁷ If such an announcement is released to the market, ASX may require the entity to lodge a corrective announcement¹²⁸ and may suspend trading in its securities until it does so.¹²⁹

4.16 Announcements must be given to ASX first

Subject to an exception for dual listed entities discussed below, under Listing Rule 15.7, an entity must not release information that is required to be given to ASX under Listing Rule 3.1 to anyone else, unless and until it has been given to ASX and the entity has received an acknowledgement from ASX that the information has been released to the market. This includes releasing the information to the media or to analysts, even on an embargoed basis.

The reason for this requirement is to make MAP the central collection and dissemination point for market sensitive information. This ensures that such information is quickly and broadly disseminated to all sections of the market, enhancing the efficiency and integrity of that process and helping to reduce the risk of informational inequities and insider trading.

ASX acknowledges that the requirement to give information to ASX first can pose practical difficulties for entities that have business operations in countries in different time zones to Australia. ASX encourages any entity in this situation which has advance warning that it may need to make an announcement in another country at a time when the ASX Market Announcements office is not open,¹³⁰ to contact its ASX home branch to discuss the arrangements that can be made to facilitate that occurring in a manner that does not undermine the policy behind Listing Rule 15.7.

ASX also recognises that sometimes events will occur outside of the hours of operation of the ASX Market Announcements office, whether in Australia or overseas, which require an immediate public announcement (eg, a major natural disaster affecting the operations of an entity where an announcement may be required for health and safety reasons or for the peace of mind of staff and relatives). If an entity has a pressing commercial or legal need to make a market sensitive announcement outside of the hours of operation of the ASX Market Announcements office, provided it gives a copy of the announcement to the ASX Market Announcements office at the same time as it makes the announcement, so that it is queued for processing by the ASX Market Announcements office before licensed markets in Australia next open for trading, ASX will generally not take any action against the entity for infringing Listing Rule 15.7.

4.17 What if information is released to someone else before it is given to ASX?

If an entity becomes aware that market sensitive information which has not been given to ASX under Listing Rule 3.1 has been released to a section of the market (eg, at an investor or analyst briefing or at a meeting of

¹²⁶ For example, information about exploration results, mineral resources, ore reserves or a production target that does not comply with the JORC Code or Chapter 5 of the Listing Rules, or an estimate of earnings or other forward-looking financial information that does not meet the expectations outlined in ASIC Regulatory Guide 170 *Prospective financial information*.

¹²⁷ In the exercise of its statutory obligation under section 792A(a) of the Corporations Act to do all things necessary, to the extent that it is reasonably practicable to do so, to ensure that the ASX market is fair, orderly and transparent.

¹²⁸ Under Listing Rules 3.1B and/or 18.8(b).

¹²⁹ Under Listing Rules 17.3.1, 17.3.2 or 17.3.4.

¹³⁰ The ASX Market Announcements office is generally staffed from 7.00 am to 7.30 pm AEST (8.30 pm during daylight saving) on each trading day. ASX usually starts releasing announcements by entities with a dual listing in New Zealand at or just before 8.00 am Sydney time (to coincide with the open of trading on NZX) and by other entities at 8.30 am Sydney time. Announcements received by the ASX Market Announcements office after 7.30 pm (8.30 pm during daylight saving) or on a non-trading day are queued for review and release on the morning of the next following trading day.

security holders) or to a section of the public (eg, at a media briefing or through its publication on a website or in social media), the entity should immediately give the information to ASX under Listing Rule 3.1 in a form suitable for release to the market.¹³¹

The fact that information released through other outlets may be, or eventually become, “generally available” for the purposes of sections 674¹³² is not an excuse for failing to disclose it to ASX under Listing Rule 3.1.

4.18 What steps does ASX take when it receives an announcement under Listing Rule 3.1?

Information given to ASX under Listing Rule 3.1 is quickly reviewed¹³³ and then released by ASX to the market.¹³⁴ Guidance Note 14 *ASX Market Announcements Platform* has further guidance on how this process occurs.

Where ASX receives an announcement from an entity which it considers is likely to be market sensitive, it will halt trading in the entity’s securities under ASX Operating Rule 3301(a). If the announcement relates to a takeover offer by or for, or a scheme of arrangement involving, the entity, the halt will last for a minimum period of one hour. In all other cases, the halt will last for approximately 10 minutes. The purpose of the halt is to allow the market to absorb and react to the information in the announcement.

4.19 Dual listed entities

A dual listed entity (ie, an entity listed on ASX and on another exchange or exchanges) which becomes aware of information outside of the hours of operation of the ASX Market Announcements office¹³⁵ and which is required to release that information to an overseas exchange may do so provided that it gives the information to the ASX Market Announcements office at the same time, together with written advice that the information has been released to the overseas exchange.¹³⁶

A dual listed entity which requests and is given a trading halt or voluntary suspension on ASX to manage its disclosure obligations will need to consider carefully whether it should be taking action in relation to the other exchange or exchanges on which it is listed to prevent its securities trading there on an uninformed basis.

If another exchange on which it is listed permits a disclosure-related trading halt or voluntary suspension and there is a possibility of its securities trading on that exchange while ASX is in a trading halt or voluntary suspension, it will generally be appropriate for the entity to request that exchange to grant an equivalent halt or suspension to ASX. It is the responsibility of the entity to co-ordinate the application and lifting of that halt or suspension with its halt or suspension on ASX.

Not all exchanges, however, are as accommodating as ASX when it comes to granting disclosure-related trading halts and voluntary suspensions. If an entity’s securities will be trading on another exchange while they are in a trading halt or voluntary suspension on ASX and the entity is not able to obtain an equivalent halt or suspension on

¹³¹ If the entity has been relying on the carve-outs from disclosure in Listing Rule 3.1A, the release of the information in any of these ways will result in it ceasing to be confidential and therefore Listing Rule 3.1A.2 will no longer be satisfied – see the discussion of the carve-outs from disclosure below.

¹³² See in particular section 674(2)(c)(i). Section 676 defines what is meant by information being “generally available”. Under that section, information is generally available if: (a) it consists of readily observable matter; or (b) it has been made known in a manner that would, or would be likely to, bring it to the attention of persons who commonly invest in securities of a kind whose price or value might be affected by the information and, since it was so made known, a reasonable period for it to be disseminated among such persons has elapsed; or (c) it consists of deductions, conclusions or inferences made or drawn from information referred to in (a) or (b).

¹³³ That review is necessarily quick and cursory and directed primarily to determining: (1) whether the announcement is likely to be market sensitive and therefore warrants the application of a halt to trading under ASX Operating Rule 3301(a); and (2) whether the announcement materially affects an entity apart from the lodging party and therefore should be captured in the list of announcements for that entity on the MAP. It is not intended to be, and cannot be, a detailed review of the contents of the announcement, given the need for market sensitive information to be released to the market promptly. ASX therefore cannot accept, and expressly disclaims, any responsibility or legal liability to anyone whatsoever for failing to detect or prevent the release of an announcement that is inaccurate, incomplete, misleading, defamatory or otherwise defective.

¹³⁴ If ASX has any queries or concerns about an announcement, it may delay the release of the announcement pending a discussion between the entity and a listings adviser to clear up those queries or concerns.

¹³⁵ See note 130 above.

¹³⁶ Listing Rule 15.7.1.

that exchange, it may be appropriate for it to publish a notice to that exchange indicating that an announcement is pending and investors should be wary of buying or selling securities ahead of that announcement.

Likewise, a dual listed entity which requests and is given a trading halt or voluntary suspension on another exchange to manage its disclosure obligations for a period during which ASX is also trading will need to contact ASX to request an equivalent trading halt or voluntary suspension to prevent its securities trading on ASX on an uninformed basis. Again, it is the responsibility of the entity to co-ordinate the application and lifting of the halt or suspension on ASX with its halt or suspension on the other exchange.

It should be noted that in addition to any market sensitive information that it is required to give to ASX under Listing Rule 3.1, an entity with a dual listing on the ASX and an overseas securities exchange must immediately give to ASX a copy of any document it gives to the overseas exchange that meets the following requirements:

- the document is given to the overseas stock exchange by the entity in its capacity as an entity listed on that exchange;
- the document is, or will be, made public by the overseas stock exchange;
- the document includes accounts or other similar financial information; and
- the document is not materially the same as another document that the entity has already given to ASX.¹³⁷

Such documents, if not in English, must be accompanied by an English translation.¹³⁸

4.20 Commercially sensitive information

Issues can sometimes arise under Listing Rule 3.1 in relation to the disclosure of commercially sensitive matters, such as the pricing given to a major customer or supplier under a material contract. ASX recognises that the disclosure of such information could be used by the entity's competitors or by other customers or suppliers, to the detriment of the entity and investors in the entity.

Some commercially sensitive information may be a trade secret and therefore protected from disclosure under Listing Rule 3.1A.¹³⁹ Some commercially sensitive information, however, may be difficult to characterise in that manner.

ASX has no issue with an entity structuring an announcement about a particular transaction to avoid disclosing commercially sensitive matters, provided it includes sufficient information in the announcement to enable the market to assess the impact of the transaction on the price or value of the entity's securities.¹⁴⁰

If an announcement is structured in this manner, care must be taken to ensure that it is accurate, includes all material information that would influence investors in deciding whether to buy or sell the entity's securities and is not misleading. If the announcement is not capable of being drafted to meet these requirements without including the commercially sensitive information, then Listing Rule 3.1 will require the commercially sensitive information to be disclosed.

4.21 Disclosure must be made even if it is contrary to the short term interests of the entity

An entity must comply with its disclosure obligations under Listing Rule 3.1 and section 674, even if [it](#) does not appear to be in its short term interests to do so (eg, because the information might have a materially negative impact on the price of its securities and perhaps jeopardise a transaction that it is trying to conclude).

¹³⁷ Listing Rule 3.17B.

¹³⁸ Listing Rule 15.2A. If the preparation of an English translation is likely to take some time, to meet the requirement to disclose information immediately, the entity should lodge the original foreign language version with a short summary in English of the material contents of the document and then lodge the translation as soon as it reasonably can thereafter.

¹³⁹ See '5.7 [Trade secrets](#)~~Trade secrets~~' on page 38.

¹⁴⁰ Guidance Note 31 *Reporting on Mining Activities* and Guidance Note 32 *Reporting on Oil & Gas Activities* have further guidance on the reporting of commercially sensitive information in announcements relating to mining and oil and gas activities.

As mentioned previously, a breach by an entity of Listing Rule 3.1 and section 674 can attract serious legal consequences for the entity and its officers and it is no defence to say that it was in the interests of the entity not to disclose the information in question.

Entities concerned about the disclosure of negative information should also refer to the guidance under '5.10 [Entities in financial difficulties](#)~~Entities in financial difficulties~~' below.

4.22 Disclosure must be made even if it is contrary to contractual commitments

An entity must comply with its disclosure obligations under Listing Rule 3.1 and section 674, even where it is party to a confidentiality or non-disclosure agreement that might otherwise require it to keep information confidential.¹⁴¹

Generally speaking, any entity entering into a confidentiality or non-disclosure agreement should insist upon an express carve-out for the disclosure of information that is required by law or under the rules of a stock exchange so as not to create a conflict with its disclosure obligations under section 674 and Listing Rule 3.1. However, even if such an express carve-out is not included, it is highly likely that one will be implied in any event, on the basis that a commercial contract cannot require a party to act in a manner contrary to the general law.¹⁴²

It should be noted that the ASX Listing Rules are contractually binding on, and are enforceable against, an entity under both the Corporations Act and the general law.¹⁴³ A party to a confidentiality or non-disclosure agreement who seeks to enforce it against an entity in an attempt to prevent the entity from disclosing information it is required to disclose under Listing Rule 3.1 may have difficulty doing so, since that would interfere with the contractual relations between the entity and ASX. It should also consider its potential liability under section 674(2A) and 1317HA (as someone who has procured, and therefore been "involved in", a breach of section 674(2) by the entity) should it succeed in that endeavour.¹⁴⁴

4.23 Suspended entities

Entities whose securities have been suspended from trading continue to be subject to the Listing Rules, including their continuous disclosure obligations under Listing Rule 3.1.¹⁴⁵

Where an entity has been suspended from quotation under Listing Rule 17.3.1¹⁴⁶ or 17.5¹⁴⁷ for breaching an ASX Listing Rule, ASX will expect the entity to make an immediate announcement to the market to that effect, explaining the reason for the breach and when the entity expects to be in a position to rectify the breach so that trading in its securities can resume.

Where an entity has been suspended from quotation for any other reason, ASX will expect the entity to make an immediate announcement to the market to that effect, explaining the reason for the suspension, the event that is likely to lead to the suspension being lifted and when the entity expects that event to occur so that trading in its securities can resume.

Where an entity is subject to a longer-term suspension (eg, as a result of an administration or liquidation), ASX recommends that it implement a system of periodic (at least quarterly) disclosures to ensure that the market and

¹⁴¹ See ASIC Media Release 08-149 (enforceable undertaking accepted from an entity to review its continuous disclosure compliance procedures, among other reasons, because it had delayed an announcement of market sensitive information for 6 days while it sought consent from the counterparty to a confidentiality agreement).

¹⁴² See *Smorgon v Australian and New Zealand Banking Group Ltd* (1976) 134 CLR 475, at 488-9 and *Parry-Jones v Law Society* [1969] 1 Ch 1, at 6-7. See also the comments of Santow J in *Cultus Petroleum v OMV Australia* [1999] NSWSC 422, at paragraph 73 (confirming that the statutory obligation to disclose material information in a bidder's statement would override a contractual obligation in a confidentiality agreement to keep that information confidential).

¹⁴³ Sections 793B and 793C. See also clause 5 of Appendices 1A and 1B of the Listing Rules.

¹⁴⁴ See notes [387384](#) and [388382](#) below and the accompanying text.

¹⁴⁵ Listing Rule 18.6.

¹⁴⁶ That is, where the entity is unable or unwilling to comply with, or has broken, a Listing Rule.

¹⁴⁷ That is, where the entity has failed to lodge with ASX a document required by Listing Rule 4.2A, 4.3A, 4.4A, 4.5, 4.7B, 4.7C, 4.12, 5.1, 5.2, 5.3, 5.4 or 5.5 or the annual report required under Listing Rule 4.7.

its security holders are provided with regular updates as to its status and, in particular, the plans it may have for trading in its securities to resume and its progress in implementing those plans.

An entity that fails voluntarily to make such disclosures at least quarterly may be required by ASX to provide such information to ASX for release to the market.¹⁴⁸

5. Listing Rule 3.1A – the exceptions to immediate disclosure

5.1 General

Listing Rule 3.1A sets out exceptions to the requirement to make immediate disclosure of market sensitive information under Listing Rule 3.1. These exceptions seek to balance the legitimate commercial interests of entities and their security holders with the legitimate expectations of investors and regulators concerning the timely release of market sensitive information. They also seek to ensure that information is not disclosed prematurely when, rather than inform the market, it could misinform or mislead the market.

Unless the requirements in all three of Listing Rules 3.1A.1, 3.1A.2 and 3.1A.3 are satisfied in respect of particular market sensitive information, Listing Rule 3.1A does not apply and the entity must disclose the information immediately under Listing Rule 3.1.

If the requirements in all three of Listing Rules 3.1A.1, 3.1A.2 and 3.1A.3 are initially satisfied in respect of particular market sensitive information but any one of them ceases to be satisfied thereafter,¹⁴⁹ Listing Rule 3.1A ceases to apply at that point and the entity must then disclose the information immediately under Listing Rule 3.1.

5.2 Listing Rule 3.1A.1 – the categories of information excluded

The first requirement for Listing Rule 3.1A to apply is that the information must fall within one of the categories mentioned below:

- it would be a breach of a law to disclose the information;
- the information concerns an incomplete proposal or negotiation;
- the information comprises matters of supposition or is insufficiently definite to warrant disclosure;
- the information is generated for the internal management purposes of the entity; or
- the information is a trade secret.

Information may fall within more than one of these categories. For example, embryonic thinking that an entity may do about a potential transaction it is interested in pursuing may qualify both as an incomplete proposal and as a matter that is insufficiently definite to warrant disclosure.

5.3 Breach of law to disclose

This category of information is excluded from disclosure because it would clearly be inappropriate and potentially harmful to an entity and its security holders to force it to disclose information if it is subject to a law prohibiting it from doing so.

To fall within this category, the disclosure of the relevant information must breach a specific statute, regulation, rule, administrative order or court order binding on the entity.

¹⁴⁸ Under Listing Rule 18.7 or 18.8.

¹⁴⁹ For example, because previously incomplete negotiations (as referred to in the second bullet point of Listing Rule 3.1A.1) are completed or because the information has ceased to be confidential (as referred to in Listing Rule 3.1A.2).

The fact that information may be subject to a confidentiality agreement or to duties of confidentiality under the general law, such that its disclosure might give rise to a legal action for damages or for injunctive or other relief, is not sufficient to attract this category.

5.4 Incomplete proposals or negotiations

This category of information is excluded from disclosure¹⁵⁰ because of the prejudice it could cause to an entity and its security holders if it was effectively required to develop its corporate proposals and conduct its commercial negotiations in public. It is also excluded because of the propensity of markets to overreact in the short term to information that an entity may be contemplating a market sensitive transaction, even where the likelihood of the transaction proceeding is low or unclear.

The word “incomplete” in this rule qualifies both “proposal” and “negotiation”.

A proposal is a course of action put forward for adoption. It may be unilateral (eg, a proposal to declare a dividend) or it may be multi-lateral (eg, a proposal to or from another party to enter into a transaction). Where it is multi-lateral, it will often lead to negotiations about the proposal with a view to the parties entering into an agreement to give effect to it.

A proposal involving an entity is incomplete unless and until the entity has adopted it and is committed to proceeding with it. Negotiations are incomplete unless and until they result in a legally binding agreement or the entity is otherwise committed to proceeding with the transaction being negotiated.¹⁵¹

Hence, all other things being equal:

- where a unilateral proposal requires the approval of the board of directors of an entity, and nothing more, for the entity to be committed to it (such as a proposal to declare a dividend¹⁵²), it will be complete when the board formally approves the proposal and resolves to proceed with it, and not beforehand. If the proposal is market sensitive, it will need to be announced immediately after the board resolves to proceed with it.¹⁵³
- where a unilateral proposal requires additional steps to be taken over and above the approval of the board of directors of an entity for the entity to be committed to it (such as a unilateral proposal¹⁵⁴ to make a takeover bid, which requires a bidder’s statement and, in the case of an off market bid an offer document, to be lodged

¹⁵⁰ The fact that this type of information may not be required to be disclosed under Listing Rule 3.1A does not prevent an entity from voluntarily disclosing it, should it consider it to be in its interests to do so. However, an entity which chooses to announce such information needs to take care that its announcement is not misleading. The announcement should make it absolutely clear that the relevant proposal is, or negotiations are, incomplete and ensure that readers are not misled as to the likelihood of the proposal coming to fruition or the negotiations being successfully concluded. Further, by voluntarily disclosing the existence of the proposal or negotiations, the entity may come under an obligation to update the market on any material developments as they arise.

¹⁵¹ The reference to an entity otherwise being committed to proceeding with a transaction is intended to capture those situations where an entity may become legally bound to proceed with a transaction without having signed a legally binding agreement (eg, through the principles of estoppel). It is also intended to capture those situations where an entity enters into an arrangement or understanding committing itself to proceed with a transaction without having signed a legally binding agreement. Once the entity is so committed, the transaction is no longer an incomplete proposal or the subject of incomplete negotiations.

¹⁵² A decision by an entity (a) to declare a dividend or other distribution on a quoted security, or (b) not to pay a dividend or distribution on a quoted security in respect of a period if it has previously announced an intention to pay a dividend or distribution for that period or paid a dividend or distribution in respect of the prior corresponding period, must be immediately notified to ASX under Listing Rule 3.21, regardless of whether it will have a material effect on the price or value of its securities.

¹⁵³ In applying this guidance, an entity needs to differentiate carefully between those situations where board approval is required for the entity to be committed to proceeding with a market sensitive proposal and those situations where the entity is in fact already committed to a market sensitive proposal and is simply having that decision noted by the board. The former will not generally need to be announced until after the board has approved the proposal. The latter will need to be announced when the entity is committed to proceeding with the proposal, since the proposal will no longer be incomplete and the exception to immediate disclosure in Listing Rule 3.1A will cease to apply at that point.

¹⁵⁴ A bilateral proposal to make a friendly takeover bid will generally need to be disclosed as soon as the parties have entered into an agreement to proceed with the takeover bid and this will usually be earlier than the lodgement of the acquirer’s bidder’s statement with ASIC.

with ASIC¹⁵⁵), it will be complete when those steps have been taken, and not beforehand. If the proposal is market sensitive, it will need to be announced immediately after those steps have been completed.

- where an entity is negotiating a transaction with another party or parties, those negotiations will be complete when the parties enter into an agreement to implement or give effect to the transaction,¹⁵⁶ and not beforehand.¹⁵⁷ If the transaction is market sensitive, it will need to be announced immediately after the agreement has been entered into.

Generally speaking, an agreement is not legally binding until it is signed or formally adopted in some other way. Until that point, any party is free to walk away from the agreement or to re-open negotiations. This fact does afford a degree of flexibility to an entity, in terms of when it chooses to sign a market sensitive agreement and to make an announcement about it.

It is perfectly acceptable for an entity to arrange the signing of, and an announcement about, a market sensitive agreement at a convenient time before licensed securities markets have opened or after the licensed securities markets have closed. In fact, ASX would encourage entities to consider doing this to avoid disrupting the normal course of trading on licensed markets.¹⁵⁸

It is not acceptable, however, for an entity to commit itself to an agreement (eg, by “hand shake” or side letter) but to delay signing in an attempt to delay its disclosure. As soon as an agreement is legally binding on an entity or it is otherwise committed to proceeding with the transaction in question, the proposal inherent in that agreement and the negotiations about it are completed and this exception no longer applies.

It should be noted that the fact that an agreement to implement or give effect to a market sensitive transaction may be subject to conditions precedent to it becoming legally binding,¹⁵⁹ or conditions subsequent that must be satisfied before the transaction proceeds to completion, does not alter the fact that it will usually need to be disclosed at the point of signing. At that point, it is no longer an incomplete proposal or negotiation and so this exception will no longer apply.

5.5 Matters of supposition or that are insufficiently definite to warrant disclosure

This category of information is excluded from disclosure¹⁶⁰ because of its propensity to misinform or mislead the market.

The term “supposition” refers to something which is assumed or believed without knowledge or proof.

Information about a matter will be “insufficiently definite to warrant disclosure” if:

¹⁵⁵ See sections 632 – 635. An entity may also become committed to making a takeover bid by publicly announcing its intention to make the bid (see section 631).

¹⁵⁶ An agreement that is entered into to facilitate a negotiation about a transaction (eg, a confidentiality agreement or an exclusivity agreement), rather than to implement or give effect to a transaction, would not be expected to be disclosed, provided the requirements in Listing Rules 3.1A.2 and 3.1A.3 continue to be satisfied.

¹⁵⁷ This assumes that the entity has not otherwise committed itself to proceeding with the transaction before the agreement is signed: see note 151 above and the accompanying text.

¹⁵⁸ Albeit with the caveat that the entity remains at risk of the other party or parties walking away or re-opening negotiations unless and until the agreement is signed.

Entities that have reached substantive agreement on the terms of a material transaction but which have not yet signed legally binding documentation should be especially vigilant in monitoring the market and the media for signs that information about the transaction may have leaked and be prepared to make an immediate announcement about the transaction should that occur (see the text accompanying notes 165 and 166).

¹⁵⁹ For the avoidance of doubt, this includes, but is not limited to, a condition precedent requiring approval by the board of directors of one or more of the parties to the agreement before it is legally binding.

¹⁶⁰ Again, the fact that this type of information may not be required to be disclosed under Listing Rule 3.1A does not prevent an entity from voluntarily disclosing it, should it consider it to be in its interests to do so. However, an entity which chooses to announce such information needs to take care that its announcement is not misleading. The announcement should make it absolutely clear that it is a matter of supposition and/or not definite and ensure that readers are not misled as to the likelihood of that changing.

- the information is so vague, embryonic or imprecise;
- the veracity of the information is so open to doubt; or
- the likelihood of the matter occurring, or its impact if it does occur, is so uncertain,

that a reasonable person would not expect it to be disclosed to the market. In some cases, information in this category may be so uncertain or indefinite that it is not in fact market sensitive and therefore not required to be disclosed under Listing Rule 3.1, regardless of whether it falls within the carve-outs from disclosure in Listing Rule 3.1A.

The situation identified in the last bullet point above needs to be differentiated from the situation where an entity is aware of information about a known event or circumstance and also aware that the event or circumstance will have a material effect on the price or value of its securities, but where it may take time for the entity to put a figure or estimate on the financial impact of the event or circumstance.¹⁶¹ Listing Rule 3.1 will generally require such information to be disclosed immediately and it is not appropriate for the entity to delay announcing the information just because it is not in a position to state the financial impact of the event or circumstance in its announcement. Example G in Annexure A illustrates the point.

If an entity is not in a position to disclose to the market the financial impact of information that it knows to be market sensitive, the appropriate course is for it to announce whatever information is in its possession immediately but to signal that it will make a further announcement when it has had the opportunity to assess the financial impact of the information. If the entity is concerned that releasing information without disclosing its financial impact could lead to a false market in its securities, it should raise that concern with ASX and discuss whether it would be appropriate to request a trading halt or a voluntary suspension to afford it the time it needs to assess the financial impact of the information and to make a more complete announcement to the market.

5.6 Information generated for the internal management purposes of the entity

This category of information is excluded from disclosure because of the prejudice it could cause to an entity and its security holders, as well as the administrative burden it would create, if it was required to disclose information generated for internal management purposes.

To fall within this category, the information must have been “generated for the internal management purposes of the entity”. The expression “entity” here is to be read in a commercial rather than a legal sense.¹⁶² It includes not only information generated for the internal management purposes of the entity itself, but also for the internal management purposes of any child entity or other entity in which the entity may have an economic interest.

Information does not have to be generated internally to fall within this category. Information generated externally (eg, by an adviser or consultant) may fall within this category provided it is going to be used for the internal management purposes of the entity (eg, to help inform a management decision).

Management documents such as budgets, forecasts, management accounts, business plans, strategic plans, contingency plans, decision papers, minutes of management meetings and the like clearly fall within this category, as do board papers and board minutes. Professional advice (eg, from lawyers, accountants and financial advisers) will also usually fall within this category.

However, for the avoidance of doubt, the mere fact that information may happen to be mentioned in a document generated for internal management purposes does not mean that the information itself falls within this category. Management documents often include information about potentially market sensitive events or circumstances,

¹⁶¹ This latter situation in turn needs to be differentiated from the situation where the initial information an entity receives about an event or circumstance is incomplete and the entity needs to await further, more complete, information, or to make further enquiries or obtain expert advice, in order to be able to reasonably form a view on whether or not it is market sensitive. As indicated above in ‘4.4 [When does an entity become aware of information?](#)’, in such a case, the entity will only become aware of information that needs to be disclosed under Listing Rule 3.1 when the entity has come into possession of sufficient information about the event or circumstance in order to be able to appreciate its market sensitivity.

¹⁶² See Listing Rule 19.2.

where those events or circumstances (as distinct from the document that refers to them) could not fairly be described as being information generated for internal management purposes. Information about such events or circumstances is not protected from disclosure by this category.

5.7 Trade secrets

This category of information is excluded from disclosure because of the proprietary nature of the information in question and the prejudice it could cause to an entity and its security holders if it was required to disclose it. It is also excluded because requiring a trade secret to be disclosed on the basis that it is needed to understand the value of the entity's securities, when the very value of those securities is dependent on the matter remaining secret, would lead to a perverse outcome.

The term "trade secret" refers to something which has economic value to a business because it is not generally known or easily discoverable by observation and for which efforts have been made to maintain secrecy. This may include a formula, recipe, device, program, method, technique or process. It may also include a compilation of information, such as a client list or database.

Often trade secrets will be protected by copyright or give rise to rights in equity that are capable of being protected by an action for breach of confidence. In some jurisdictions they may also be protected by statute.

5.8 Listing Rule 3.1A.2 – the requirement for information to be confidential

The second requirement for Listing Rule 3.1A to apply has two components: (1) the information must be confidential; and (2) ASX has not formed the view that the information has ceased to be confidential.

The word "confidential" in Listing Rule 3.1A.2 means "secret". Thus, information will be confidential for the purposes of that rule if:

- it is known to only a limited number of people;
- the people who know the information understand that it is to be treated in confidence and only to be used for permitted purposes; and
- those people abide by that understanding.¹⁶³

Whether information has the quality of being confidential is a question of fact, not one of the intention or desire of the entity. Accordingly, even though an entity may consider information to be confidential and its disclosure to be a breach of confidence, if it is in fact disclosed by those who know it, then it is no longer a secret and it ceases to be confidential information for the purposes of this rule.

It is therefore incumbent on an entity which wishes to rely on the carve-outs from disclosure in Listing Rule 3.1A to ensure that it has in place suitable and effective arrangements to preserve confidentiality. Guidance on the steps that can be taken in this regard can be found in the joint publication by the Governance Institute of Australia and the Australasian Investor Relations Association entitled *Handling confidential, market-sensitive information: Principles of good practice*.¹⁶⁴

Even with strong confidentiality safeguards, it is important to recognise that the more people who know information, the greater the risk that it will cease to be confidential. So, for example, if a party proposing to acquire a business

¹⁶³ Information can be disclosed by an entity to its employees (who have a duty to their employer under the general law to maintain confidences), advisers (who have a duty to their clients under the general law to maintain confidences), bankers (who have a duty to their customers under the general law to keep information about their financial affairs confidential), and to regulators (who generally have statutory duties to maintain confidences) without it losing confidentiality, provided in each case the recipient of the information in fact treats it in confidence. It can also be disclosed to someone who has entered into a confidentiality agreement or is subject to a duty of confidence in equity without it losing confidentiality, provided again in each case the recipient of the information in fact treats it in confidence.

Thus, it is permissible for an entity to disclose management accounts and internal budgets and forecasts (being in each case information prepared for internal management purposes) to bankers, insurers or rating agencies on a confidential basis without having to disclose that information to the rest of the market under Listing Rule 3.1.

¹⁶⁴ Available online at: <https://www.governanceinstitute.com.au/resources/resource-centre/>.

wants, as part of its due diligence, to make enquiries of employees, customers or suppliers, or a party proposing to undertake an issue of securities wants to take soundings from brokers and potential investors, it and the other parties involved in the transaction need to be prepared for the chance that information about the transaction will not be kept in confidence.

An entity which is relying on Listing Rule 3.1A not to disclose information about a market sensitive transaction it is negotiating should as a matter of course be monitoring, either itself or through its advisers:

- the market price of its securities and of the securities of any other listed entity involved in the transaction;
- major national and local newspapers;
- if it or its advisers have access to them, major news wire services such as Reuters and Bloomberg;
- any investor blogs, chat-sites or other social media it is aware of that regularly post comments about the entity;¹⁶⁵ and
- enquiries from analysts or journalists,

for signs that information about the transaction may no longer be confidential and have a draft letter to ASX requesting a trading halt and a draft announcement about the negotiations ready to send to ASX to cater for that eventuality.¹⁶⁶ The closer the transaction gets to being concluded, the higher the risk of leaks and the more diligent that monitoring should be.

In relation to the second component of Listing Rule 3.1A.2, ASX may form the view that information about a matter involving an entity has ceased to be confidential if there is:

- a reasonably specific and reasonably accurate¹⁶⁷ media or analyst report about the matter;
- a reasonably specific and reasonably accurate¹⁶⁸ rumour known to be circulating the market about the matter; or
- a sudden and significant movement in the market price or traded volumes of the entity's securities that cannot be explained by other events or circumstances.

Each of these is an indication that the matter is no longer confidential and therefore Listing Rule 3.1A.2 no longer applies.

In the case of the first two bullet points immediately above, ASX will have regard to the degree of specificity in the media or analyst report or market rumour in assessing the extent to which there has been a loss of confidentiality. For example, if the report/rumour simply refers to an entity being about to enter into a particular transaction with another party without including any of the transaction details, ASX will generally only require the entity to disclose the fact that it is in negotiations with that party concerning that transaction, without disclosing any of the details under negotiation. If the report/rumour includes some specific and accurate transaction details, ASX will generally expect the entity to confirm those details. If it includes some inaccurate transaction details, the response required will depend on the circumstances – in some cases, it may be appropriate to correct those details, while in others it may be appropriate simply to indicate that they are inaccurate or that they are still under negotiation.

In relation to the third bullet point immediately above, ASX occasionally finds an entity or its advisors wanting to debate whether a sudden and significant movement in the market price or traded volumes of its securities can fairly be attributed to information about a particular matter ceasing to be confidential. ASX considers any such debate to

¹⁶⁵ See note 65 above.

¹⁶⁶ See Example H1 in Annexure A.

¹⁶⁷ A media or analyst report that is wholly or partially inaccurate may give rise to a requirement to disclose information under Listing Rule 3.1B: see '6.4 [Responding to comment or speculation in media or analyst reports and market rumours](#)[Responding to comment or speculation in media or analyst reports and market rumours](#)' on page 44.

¹⁶⁸ See note 167 above.

be misplaced.¹⁶⁹ If an entity advises ASX that there is market sensitive information that has not been disclosed in reliance on Listing Rule 3.1A (as it must when it is asked that question by ASX¹⁷⁰) and it is not able to point to any other event or circumstance which explains the movement in the market price or traded volumes of its securities, ASX has no choice but to assume that the information in question has become known to some of those trading in the market and therefore is no longer confidential.¹⁷¹ Upon the entity being advised by ASX that it is of the view that the information has ceased to be confidential, Listing Rule 3.1A will no longer apply and the entity will then be obliged to make an immediate announcement about the information under Listing Rule 3.1.¹⁷²

The processes ASX generally follows in these situations are explained under '6.4 [Responding to comment or speculation in media or analyst reports and market rumours](#)~~Responding to comment or speculation in media or analyst reports and market rumours~~' and '8.2 [The action ASX takes when it detects abnormal trading](#)~~The action ASX takes when it detects abnormal trading~~' below.¹⁷³

5.9 Listing Rule 3.1A.3 – the reasonable person test

The third requirement for Listing Rule 3.1A to apply is that a reasonable person would not expect the information to be disclosed.

The reasonable person test is an objective one. It is to be judged from the perspective of an independent and judicious bystander and not from the perspective of someone whose interests are aligned with the entity or with the investment community.¹⁷⁴

As a general rule, information that falls within the prescribed categories in Listing Rule 3.1A.1 and that meets the confidentiality requirements in Listing Rule 3.1A.2 will also satisfy the reasonable person test in Listing Rule 3.1A.3. The very reason why the categories in Listing Rule 3.1A.1 are prescribed is because they reflect a value judgment on the part of ASX that a reasonable person would not expect that type of information to be disclosed, at least while it remains confidential.

Consequently, the reasonable person test in Listing Rule 3.1A.3 has a very narrow field of operation. It will only be tripped if there is something in the surrounding circumstances sufficient to displace the general rule described above. Two prime examples would be:

- where an entity has “cherry-picked” its disclosures, disclosing “good” information of a particular type that is likely to have a positive effect on the price or value of its securities but then declining to disclose “bad”

¹⁶⁹ In cases where there is a sudden and significant movement in the market price or traded volumes of an entity's securities which cannot be explained by other events or circumstances apart from a possible leakage of market sensitive information, ASX will generally take the view that a reasonable person would expect that information to be disclosed and therefore Listing Rule 3.1A.3 is no longer satisfied. It may also form the view that the movement in the market price or traded volumes of the entity's securities is evidence of a false market in those securities and require the release of that information under Listing Rule 3.1B.

¹⁷⁰ See notes 196 and 307 below and the accompanying text.

¹⁷¹ This is in line with the approach taken by regulators and exchanges in other markets. The appropriateness of this approach has been confirmed by European courts: see *Super de Boer*, Utrecht District Court, 30 March 2011, LJN BP9796, holding that substantial increases in trading volumes in the shares in Super de Boer at a time when it was negotiating a takeover bid from Jumbo was sufficient to indicate that information about the takeover bid was no longer confidential and therefore should have been disclosed to the market.

¹⁷² A sudden and significant movement in the market price or traded volumes of an entity's securities may also be evidence of a false market in those securities. In such a case, under Listing Rule 3.1B, ASX may require the entity to release whatever information ASX asks for the correct or prevent the false market.

One of the unavoidable consequences of information leaking about a confidential market sensitive transaction and causing a sudden and significant movement in the market price or traded volumes of an entity's securities is that if the entity happens to be negotiating two (or more) confidential market sensitive transactions at the time and it is not able to identify which particular transaction has leaked, it may have to disclose both (or all) of those transactions. The disclosure that will be required will depend on the circumstances. In some cases, it may be sufficient for the entity to make an announcement that it is negotiating a number of market sensitive transactions and that a further announcement will be made to the market if and when any of those negotiations are successfully concluded. In others, it may be necessary for the entity to make a more detailed announcement about the transactions being negotiated.

¹⁷³ — See pages 44 and 67 respectively. — See sections below.

¹⁷⁴ Listing Rule 3.1A.3 notably uses the term “reasonable person”, rather than “reasonable entity” or “reasonable investor”. See also McLure JA in the Jubilee Mines case, note 16 above, at paragraph 160: “the hypothetical reasonable person in [the predecessor to Listing Rule 3.1A.3] ... in my view is an objective outsider”.

information of the same type that is likely to [have](#) a negative effect on the price or value of its securities, on the pretence¹⁷⁵ that it is not market sensitive or protected from disclosure by Listing Rule 3.1A – Example H5 in Annexure A is an illustration; or

- where the information needs to be disclosed in order to prevent an announcement of other information under Listing Rule 3.1 from being misleading or deceptive.¹⁷⁶

These two examples are manifestations of the point made above that an announcement under Listing Rule 3.1 must be accurate, complete and not misleading.¹⁷⁷ Listing Rule 3.1A.3 operates to ensure that a listed entity cannot rely on a particular piece of information falling within a carve-out to immediate disclosure under Listing Rule 3.1A.1 and satisfying the confidentiality requirements in Listing Rule 3.1A.2, to justify excluding that information from an announcement to the market under Listing Rule 3.1, if the failure to include that information would render the announcement materially inaccurate, incomplete or misleading. A reasonable person clearly would expect a listed entity, acting responsibly and in accordance with its statutory obligation not to mislead or deceive, to disclose the information in this scenario.

The reasonable person test also performs two subsidiary purposes: it reinforces the fact that Listing Rule 3.1A does not operate to protect information from disclosure if it has ceased to be confidential or if it is required to correct or prevent a false market. In the former case, this is because a reasonable person would expect that once information has become known to, and is being traded on by, some in the market (as evidenced, for example, by a sudden and significant movement in the market price or traded volumes of an entity's securities), that information should be disclosed immediately to the whole market. In the latter case, this is because a reasonable person would expect an entity, acting responsibly, to immediately disclose any information necessary to correct or prevent a false market in its securities.

ASX is aware that some entities and their advisers have taken the view that the reasonable person test may have a broader operation than ASX has suggested above and require the disclosure of information that is of a particular type or quality.¹⁷⁸ ASX does not agree. The issue of whether information is of a type or quality that is protected from immediate disclosure under Listing Rule 3.1A is answered by whether it falls within or outside the prescribed categories in Listing Rule 3.1A.1. If it falls within those categories, it will only require immediate disclosure if it does not meet the confidentiality requirements in Listing Rule 3.1A.2 or if there is something in the surrounding circumstances sufficient to displace the general rule described above.

For the avoidance of doubt, here are some specific examples of information that ASX considers a reasonable person would not expect to be disclosed under Listing Rule 3.1A.3:

- Confidential information that an entity is planning to make a unilateral takeover bid for another entity. Premature disclosure of that information could jeopardise the transaction, which in turn could prejudice the interests of the entity and investors in both the entity and the target. A reasonable person would not expect this information to be disclosed until the bidding entity formally launches its takeover bid for the target.

¹⁷⁵ The use of the word "pretence" here is quite intentional. In many cases of "cherry-picking", the information in question is market sensitive under Listing Rule 3.1 and falls outside the categories of information protected by Listing Rule 3.1A.1. The information therefore needs to be disclosed immediately, whether or not the "reasonable person" test in Listing Rule 3.1A.3 is satisfied.

¹⁷⁶ See for example *GPG (Australia Trading) Pty Ltd v GIO Australia Holdings Ltd* [2001] FCA 1761, where it was assumed (without deciding) that a heavily qualified actuarial report which predicted that the defendant would make larger than expected reinsurance losses, by itself, was insufficiently definite to warrant disclosure under Listing Rule 3.1. However, when the defendant and its major shareholder announced a scheme a few days later to acquire the shares held by minority shareholders for a cash payment plus a contingent debt instrument tied to the value of the reinsurance business, the report should have been disclosed then. See also *TPT Patrol Pty Ltd as trustee for Amies Superannuation Fund v Myer Holdings Limited* [2019] FCA 1747 (the "Myer case"), at paragraphs 1298-9 and 1303, holding that the fact Myer's CEO had made a public earnings forecast meant that, for the purposes of Listing Rule 3.1A.3, a reasonable person would expect corrective disclosure to be made when Myer became aware that its earnings were likely to be materially lower than the forecast, even though that information might not otherwise require disclosure under Listing Rules 3.1A.1 and 3.1A.2 on the basis that it was generated for internal management purposes, comprised matters of supposition and/or was insufficiently definite to warrant disclosure, and was otherwise confidential.

¹⁷⁷ See notes 117-120 above and the accompanying text.

¹⁷⁸ See notes 344 and 347 below.

- Confidential information that an entity has received an offer from another entity to enter into a control transaction. Again, premature disclosure of that information could jeopardise the transaction, which in turn could prejudice the interests of the entity and investors in the entity. A reasonable person would not expect this information to be disclosed until any negotiations entered into concerning the transaction are successfully concluded.¹⁷⁹
- Confidential legal advice concerning litigation in which the entity is or could be involved. The disclosure of that information could result in a loss of legal professional privilege in the advice, prejudice the legal position of the entity and, because of that, prejudice both the entity and investors in the entity.

5.10 Entities in financial difficulties

Entities in financial difficulties are subject to the same disclosure standards under Listing Rules 3.1 – 3.1B as other entities.

ASX has sometimes heard it argued that an entity in financial difficulties should not have to disclose negative information about its financial circumstances because that could affect its ability to continue as a going concern and a reasonable person would not expect it to do that. ASX does not agree. The fact that information may have a materially negative impact on the price or value of an entity's securities, or even inhibit its ability to continue as a going concern, does not mean that a reasonable person would not expect the information to be disclosed. Quite the contrary, in ASX's view, this is information that a reasonable person would generally expect to be disclosed.¹⁸⁰

Hence, if there is an adverse development affecting the financial condition or prospects of an entity that falls outside the carve-outs to immediate disclosure in Listing Rule 3.1A and a reasonable person would expect information about that development to have a material effect on the price or value of its securities, the entity must immediately disclose that information under Listing Rule 3.1.

For example, information that the board of an entity has resolved to appoint an administrator should be notified to the market immediately under Listing Rule 3.1.¹⁸¹ Such information does not fall within any of the categories of information protected from immediate disclosure under Listing Rule 3.1A.1 and a reasonable person would expect it to have a material effect on the price or value of the entity's securities.¹⁸²

For the same reasons, information that a major lender to the entity has declared an event of default and called for the immediate repayment of the outstanding balance of its loan, causing the entity to become insolvent, should also be notified to the market immediately under Listing Rule 3.1.¹⁸³

ASX has been asked whether the fact that the entity's directors are relying on the insolvent trading safe harbour in section 588GA of the Corporations Act requires disclosure to the market. Section 588GA is a conditional carve-out from a director's potential liability for insolvent trading that does not affect an entity's continuous disclosure obligations or reduce the entity's obligation to disclose the extent of its financial difficulties.¹⁸⁴ The fact that an

¹⁷⁹ See also ['Example B – control transaction' on page 76.](#)

¹⁸⁰ Many of the class actions against entities alleging a breach of Listing Rule 3.1 and section 674 have involved security holders who purchased securities in the entity when adverse information having a negative effect on the value of its securities was alleged to have been withheld from the market.

¹⁸¹ If the announcement cannot be made straight away after the board meeting, the entity should consider requesting a trading halt to prevent uninformed trading in its securities: see '4.6 The use of trading halts and voluntary suspensions to manage disclosure issues' [on page 16.](#) As a matter of best practice, ASX would also suggest that if the entity is aware when the meeting is convened that there is a reasonable likelihood that the board will appoint an administrator and the market is or will be trading before the meeting is scheduled to finish, the entity also request a trading halt to prevent uninformed trading ahead of or during the meeting.

¹⁸² Among other things, the appointment of an administrator signals that the entity is insolvent or likely to become insolvent. It also results in shareholders no longer being able to transfer their shares except with the consent of the administrator (see section 437F).

¹⁸³ Again, if the announcement cannot be made straight away after the receipt of the call from the lender for immediate repayment, the entity should consider requesting a trading halt to prevent uninformed trading in its securities: see '4.6 The use of trading halts and voluntary suspensions to manage disclosure issues' [on page 16.](#)

¹⁸⁴ Paragraph 1.15 of the Explanatory Memorandum for the Treasury Laws Amendment (2017 Enterprise Incentives No. 2) Bill which introduced section 588GA into the Corporations Act specifically stated that the safe harbour "does not affect any obligation of a company (or

entity's directors are relying on the insolvent trading safe harbour to develop a course of action that may lead to a better outcome for the entity than an insolvent administration, in and of itself, is not something that ASX would generally require an entity to disclose under Listing Rule 3.1. Most investors would expect directors of an entity in financial difficulty to be considering whether there is a better alternative for the entity and its stakeholders than an insolvent administration. The fact that they are doing so is not likely to require disclosure unless it ceases to be confidential or a definitive course of action has been determined.¹⁸⁵

ASX recognises that for an entity in financial difficulties, the requirement to disclose materially negative market sensitive information immediately can be a significant impediment to completing a financial restructure or reorganisation necessary for its survival. However, the proper course for the entity in such a situation is not to disregard its continuous disclosure obligations but instead to approach ASX to discuss the possibility of a voluntary suspension¹⁸⁶ to manage its disclosure obligations while it completes the transaction in question.

As indicated in ASX Guidance Note 16 *Trading Halts and Voluntary Suspensions*, ASX may agree to suspend quotation of an entity's securities (or continue an existing suspension) where ASX is satisfied that the entity is in genuine financial difficulties and continued trading in its securities is likely to be materially prejudicial to its ability to complete a transaction critical to its continued financial viability.

In such a case, the entity must make a written request for the suspension that includes the information required under Listing Rule 17.2, including the reasons for the suspension (or continued suspension) and a proposed timetable for trading in its securities to resume, for release to the market. The stated reasons for the suspension must include a forthright account of the entity's current financial situation, details of the transaction that the entity says is critical to its continued financial viability, and an affirmation that, in the entity's opinion, continued trading of its securities is likely to be materially prejudicial to its ability to complete that transaction.

Entities in financial difficulties that are the subject of a suspension should also have regard to the guidance above under '4.23 [Suspended entities](#)~~Suspended entities~~'.

6. Listing Rule 3.1B – correcting or preventing false markets

6.1 What is a “false market”?

The term “false market” refers to a situation where there is material misinformation or materially incomplete information in the market which is compromising proper price discovery. This may arise, for example, where:

- an entity has made a false or misleading announcement;
- there is other false or misleading information, including a false rumour, circulating in the market; or
- a segment of the market is trading on the basis of market sensitive information that is not available to the market as a whole.

6.2 ASX's powers to correct or prevent a false market

Under Listing Rule 3.1B, if ASX considers that there is or is likely to be a false market in an entity's securities, it may require the entity to give ASX any information it asks for to correct or prevent the false market.

To correct or prevent a false market, ASX may require an entity to disclose market sensitive information, even if the entity considers that the information falls within Listing Rule 3.1A and therefore does not require immediate

any of its officers) to comply with any continuous disclosure obligations under the law, including section 674 of the Act, or any continuous disclosure rules imposed by a market operator which apply.”

¹⁸⁵ Until that point, information about the possible alternatives to administration being pursued by the directors is likely to fall within the carve-outs to immediate disclosure in Listing Rule 3.1A on the basis that it concerns an incomplete proposal or negotiation or is insufficiently definite to warrant disclosure. This is subject to the proviso that the information continues to be confidential.

¹⁸⁶ Generally, these situations will require a voluntary suspension rather than a trading halt, as they are likely to persist for longer than the maximum 2 trading days for which a trading halt may be granted: see note 61 above.

disclosure under Listing Rule 3.1.¹⁸⁷ It may also require an entity to disclose information that of itself is not market sensitive and therefore not required to be disclosed under Listing Rule 3.1 (eg, to correct a false rumour that the entity is about to enter into a market sensitive transaction when it is not).

If ASX has a concern that there is, or is likely to be, a false market in an entity's securities, it will usually try to contact the person the entity has appointed under Listing Rule 12.6 to be responsible for communications with ASX on Listing Rule matters to discuss the situation and the steps that could be taken to correct or prevent the false market. This may include the entity making an announcement to correct any misinformation in the market. It may also include the entity requesting a trading halt¹⁸⁸ to stop trading in its securities on licensed markets in Australia until the market is properly informed.

If ASX is not able to contact the entity's nominated representative under Listing Rule 12.6 or the entity does not co-operate with ASX in making an announcement or requesting a trading halt, ASX will generally be left with little option but to suspend trading in its securities to prevent a false market from happening.¹⁸⁹

6.3 What form should a disclosure under Listing Rule 3.1B take?

A disclosure under Listing Rule 3.1B must be in writing¹⁹⁰ and given to the ASX Market Announcements office for release to the market.¹⁹¹ If the announcement includes market sensitive information, ASX will treat the disclosure in the same manner as an announcement under Listing Rule 3.1.¹⁹²

6.4 Responding to comment or speculation in media or analyst reports and market rumours

Issues often arise under Listing Rule 3.1B in the context of reports in the media (both conventional and online) or from analysts commenting or speculating on a particular matter involving an entity (eg, that it is about to enter into a material transaction or that it is in material financial difficulties). They can also arise in the context of rumours circulating the market orally or via emails, blogs, bulletin boards, chat sites, [FaceBookFacebook](#), Twitter or other social media.¹⁹³

On the one hand, if a report/rumour appears to contain or to be based on credible market sensitive information about an entity but it is wholly or partially inaccurate, a failure by the entity to correct it could lead to a false market in the entity's securities. On the other hand, if the report/rumour is accurate, a failure by the entity to confirm that fact could contribute to doubt about its veracity and that too could lead to a false market in the entity's securities. If the report has not been widely disseminated or the rumour is not widely known, it can also raise issues about whether the segment of the market that is aware of the report/rumour is trading on the basis of market sensitive information that is not available to the market as a whole.

ASX does not expect an entity to respond to every comment concerning it that appears in a media or analyst report or every rumour about it circulating the market. In particular, where a report/rumour:

- appears to be mere supposition or idle speculation; or
- simply confirms a matter that is generally understood by the market (eg, because of previous announcements or media or analyst commentary),

¹⁸⁷ Although, in most instances where ASX requires market sensitive information to be disclosed to correct or prevent a false market, ASX will likely have taken the view that the information is no longer confidential and/or that a reasonable person would expect the information to be disclosed in the circumstances, and therefore the information no longer falls within Listing Rule 3.1A.

¹⁸⁸ Under Listing Rule 17.1, a trading halt can only be granted at the request of an entity.

¹⁸⁹ ASX may impose a suspension under Listing Rule 17.3.2 to prevent a disorderly or uninformed market. It may also impose a suspension under Listing Rule 17.3.1 for a breach of Listing Rule 3.1B.

¹⁹⁰ Listing Rule 19.10.

¹⁹¹ Listing Rule 15.2.1.

¹⁹² See '4.18 What steps does ASX take when it receives an announcement under Listing Rule 3.1?' on page 31.

¹⁹³ Rumours will often also be confirmed or commented upon in, and in some cases fuelled by, media or analyst reports.

and, in either case, it does not appear to be having a material effect on the market price or traded volumes of the entity's securities, then ASX will not generally require the entity to respond to the report/rumour.

Where, however, a media or analyst report or market rumour appears to contain or to be based on credible market sensitive information (whether that information is accurate or not) and:

- there is a material change in the market price or traded volumes of the entity's securities which appears to be referable to the report/rumour (in the sense that it is not readily explicable by any other event or circumstance); or
- if the market is not trading at the time but the report/rumour is of a character that when the market does start trading, it is likely to have a material effect on the market price or traded volumes of the entity's securities,¹⁹⁴

ASX considers that the entity has a responsibility to the market to respond to the report in a timely manner. If the entity does not do so voluntarily, ASX will consider exercising its power under Listing Rule 3.1B to require it to do so.¹⁹⁵

In saying this, ASX understands that many entities have a stated policy position of not commenting on media speculation or market rumours. Absent a false market, that is a perfectly reasonable stance for them to take. However, that policy must give way where there is, or is likely to be, a false market and ASX requires the matter to be commented upon under Listing Rule 3.1B.

Where ASX has concerns that a media or analyst report or market rumour has caused, or is likely to cause, a false market in an entity's securities, it will usually endeavour to contact the person the entity has appointed under Listing Rule 12.6 to be responsible for communications with ASX on Listing Rule matters to discuss the situation. In those discussions, ASX will usually ask the person to confirm whether the report/rumour is accurate. When asked this question, that person is expected to answer it frankly and honestly, even if he or she considers the matter to be confidential and not something that otherwise requires formal disclosure to ASX under Listing Rule 3.1A. A failure to do so will deny ASX the opportunity to assist the entity with its disclosure obligations when that could be of benefit to the entity and to the market. Refusing to answer the question will also constitute a breach of Listing Rules 18.7 and/or 18.8 entitling ASX to suspend trading in the entity's securities under Listing Rule 17.3.1, while answering it dishonestly may constitute a criminal offence under section 1309.¹⁹⁶

Depending on the circumstances, if ASX is concerned that there is or is likely to be a false market in the entity's securities and the entity advises ASX that:

- the report/rumour is wholly accurate, ASX may ask the entity to make a short announcement that confirms the report/rumour or it may ask the entity to make a more detailed announcement about the matter under Listing Rule 3.1;¹⁹⁷
- the report/rumour is only partially accurate, ASX may ask the entity to make an announcement that corrects or clarifies the report/rumour or, again, it may ask the entity to make a more detailed announcement about the matter under Listing Rule 3.1;¹⁹⁸

¹⁹⁴ As evidenced perhaps by orders queued in ASX's central limit order book.

¹⁹⁵ As mentioned above, comment or speculation about a matter in a media or analyst report or market rumour may also be evidence that it is no longer confidential and therefore the carve-out from disclosure in Listing Rule 3.1A no longer applies.

¹⁹⁶ See [The statutory prohibitions against false or misleading disclosures](#) ~~The statutory prohibitions against false or misleading disclosures~~ on page 92.

¹⁹⁷ A more detailed announcement may be required in this case, for example, because the report/rumour is reasonably specific and ASX forms the view that the matter is no longer confidential, in which case, Listing Rule 3.1A.2 no longer applies and the entity is consequently obliged to make an announcement about the matter under Listing Rule 3.1.

¹⁹⁸ A more detailed announcement may be required in this case, for example, because the report/rumour is reasonably specific and, while some of the details are partially inaccurate, overall it is sufficiently accurate for ASX to form the view that the matter is no longer confidential and therefore Listing Rule 3.1A.2 no longer applies.

- the report/rumour is wholly inaccurate, ASX may ask the entity to make an announcement that denies the report/rumour;¹⁹⁹ or
- it doesn't know whether the report/rumour is accurate or not (which might be the case, for example, where the report/rumour is speculating that the entity is about to be the subject of a hostile takeover bid and the entity has not been approached by the putative bidder), ASX may ask the entity to make an announcement that it has no knowledge of the matter and therefore can neither confirm nor deny the report/rumour.²⁰⁰

Where the entity advises ASX that it needs time to prepare such an announcement²⁰¹ and the market is either currently trading or will commence trading before the announcement is released, ASX will usually suggest that the entity also request a trading halt.

ASX will take all the circumstances of each case into consideration in deciding whether or not a media or analyst report or market rumour has caused, or is likely to cause, a false market in the entity's securities and, if so, how that should be corrected or prevented. In this regard, ASX is more likely to act under Listing Rule 3.1B where:

- a report/rumour appears to include reasonably specific details about a matter or quotes or is attributed to sources who might be knowledgeable about the matter, suggesting that it is more than just mere supposition or idle speculation; and
- where there has been a material change in the market price or traded volumes of the entity's securities or, if the market is not currently trading, in the opinion of ASX there is likely to be when trading commences,

than in cases where that is not so.²⁰²

If a report/rumour breaks while the market is not trading and it is unclear whether it is likely to cause a material change in the market price or traded volumes of the entity's securities, ASX may adopt a "wait and see" approach before requiring the entity to respond.

6.5 Dealing proactively with potential false market situations

Where an entity becomes aware of a media or analyst report or market rumour that could lead to a false market in its securities, ASX would encourage it to contact its ASX listings adviser immediately to discuss the situation and not wait to receive an enquiry from ASX. In that way, ASX will be able to provide it with guidance on whether there is or could be a false market, the scope of the announcement that it might make to address that situation and whether it is appropriate for it to request a trading halt to prevent trading in its securities in the meantime. It will also assist ASX in determining whether it would be appropriate to institute a halt to trading in the entity's securities under ASX Operating Rule 3301(a) once the announcement is made to allow the market time to absorb and react to the announcement.²⁰³

Where an entity makes an announcement to prevent or correct a false market in its securities, it should make that clear in the announcement so that investors understand the context for the announcement.

¹⁹⁹ ASX would note that, in such a case, if the author of the report or the instigator of the rumour was intentionally spreading false or misleading information about the entity, that may well breach any or all of sections 1041E, 1041F, 1041G and 1041H. If ASX has reasonable grounds to suspect such a breach, it will refer the matter to ASIC under section 792B(2)(c).

²⁰⁰ The examples in paragraph 8A of 'Example B – control transaction' and paragraphs 9A and 9B of 'Example C – security issue' in Annexure A illustrate how ASX generally deals with media comment about market sensitive matters. The example in paragraph 8B of 'Example B – control transaction' in Annexure A illustrates how ASX generally deals with rumours about market sensitive matters.

²⁰¹ For example, because it needs time to verify the accuracy or bona fides of the information in the report.

²⁰² This applies even where the details, quotes or attributions in the report are inaccurate or have been fabricated. The accuracy or otherwise of a report is largely irrelevant to the application of Listing Rule 3.1B. It is the likely impact of the report on the market for an entity's securities that matters.

²⁰³ See '4.18 What steps does ASX take when it receives an announcement under Listing Rule 3.1?' on page 31.

7. Particular disclosure issues

7.1 Earnings guidance

Generally speaking, an entity is not required by Listing Rule 3.1 to release its internal budgets or earnings projections to the market. They are generated for internal management purposes²⁰⁴ and, provided they remain confidential, clearly fall within the carve-outs to immediate disclosure in Listing Rule 3.1A. Accordingly, subject to the exceptions mentioned below,²⁰⁵ it is perfectly acceptable for an entity to have a policy of not providing earnings guidance to the market.

Notwithstanding this, some entities have a practice of providing periodic earnings guidance to the market in order to assist investors in assessing the value of their securities. Some entities also give “one-off” earnings guidance in disclosure documents, such as prospectuses, PDSs, bidders’ statements, targets’ statements and scheme documents.

Without wishing in any way to discourage this practice, ASX would remind entities of the regulatory issues that need to be considered when issuing earnings guidance.

As a forward-looking statement, earnings guidance must be based on reasonable grounds or else it will be deemed to be misleading,²⁰⁶ with all the significant legal consequences that entails.²⁰⁷ For this reason, appropriate due diligence needs to be applied to the preparation of earnings guidance. The underlying figures and assumptions²⁰⁸ should be carefully vetted and signed off at a suitably senior level before the guidance is released.

Since it is the directors who are ultimately responsible for confirming that an entity’s financial statements have been prepared in accordance with applicable accounting standards and give a true and fair view of its financial performance,²⁰⁹ it will also generally be appropriate for the guidance to be approved by the board before it is released.

7.2 De facto earnings guidance

An entity that has a policy of not giving earnings guidance needs to be careful in its communications with security holders, analysts and the press that it preserves the confidentiality of its internal budgets and projections²¹⁰ and, in particular, does not make statements that could be construed as de facto earnings guidance. For example, a comment that the entity:

- is “happy” or “comfortable” with, or expects its earnings to be “in line with”, or above or below, analysts’ forecasts or consensus; or

²⁰⁴ See *Masters v Lombe (liquidator): In the Matter of Babcock & Brown Limited (In Liq)* [2019] FCA 1720 holding that various documents with earnings projections had been prepared for internal management purposes and therefore fell within the fourth bullet point of Listing Rule 3.1A.1.

²⁰⁵ See ‘7.2 [De facto earnings guidance](#)’ and ‘7.3 [Market sensitive earnings surprises](#)’ below.

²⁰⁶ See note [399393](#) below and the accompanying text. See also ASIC Regulatory Guide 170 *Prospective financial information* and ASIC Media Release 02-379 (enforceable undertaking accepted from an entity to review its continuous disclosure compliance procedures, among other reasons, because the entity had published a potentially misleading revenue forecast for which it did not have a reasonable basis).

²⁰⁷ See ‘[The statutory prohibitions against false or misleading disclosures](#)’ on page 92.

²⁰⁸ Entities should again note ASIC’s guidance that any material assumptions or qualifications that underpin forward-looking statements (such as an earnings forecast) in an announcement under Listing Rule 3.1 should be stated in the announcement: see note 122 above and the accompanying text.

²⁰⁹ For entities established in Australia, see sections 295(4)(d) (annual financial reports) and 303(4)(d) (half-yearly financial reports).

²¹⁰ If an entity’s internal budgets or forecasts cease to be confidential, they will lose the protection of Listing Rule 3.1A and, if and to the extent they contain market sensitive information, that information will have to be disclosed immediately to the market under Listing Rule 3.1: see ‘5.8 [Listing Rule 3.1A.2 – the requirement for information to be confidential](#)’ on page 38.

- expects its earnings to be in line with, or above²¹¹ or below, its earnings for the prior corresponding period (“pcp earnings”),

is de facto earnings guidance.

If ASX becomes aware of such a comment being made in a public forum or to an investor, analyst or journalist, it may ask the entity to issue an announcement to the market confirming the comment so that the whole market is informed of the guidance it has given.²¹² In the case of comments about analysts’ forecasts, ASX may ask the entity to clarify in the announcement which particular analysts’ forecasts the entity was commenting on, the range of those forecasts and, if the range is relatively wide, where within that range the entity expects its earnings to fall. In the case of comments about consensus, ASX may ask the entity to clarify in the announcement the consensus estimate the entity was commenting on.

7.3 Market sensitive earnings surprises

Generally speaking, an entity’s earnings for a particular reporting period are not required to be reported to the market until the due date for the release of that information under Chapter 4 of the Listing Rules.

However, for many entities, the market’s expectations of its earnings over the near term may be a material driver of the price or value of its securities. Those expectations may have been informed by:

- earnings guidance²¹³ the entity has given to the market;
- in the case of entities covered by sell-side analysts, the earnings forecasts of those analysts; or
- the entity’s pcp earnings.

Those expectations may also have been informed or modified by:

- “outlook statements” made by the entity in its last annual report or at its last results announcement or annual general meeting;
- other disclosures the entity has made to the market over the reporting period;²¹⁴ and
- market-wide²¹⁵ or sector-wide²¹⁶ events that can reasonably be expected to affect the entity.

If an entity becomes aware that its earnings for the current reporting period²¹⁷ will differ materially (downwards or upwards) from market expectations, it needs to consider carefully whether it has a legal obligation to notify the

²¹¹ See the Myer case, note 176 above, at paragraphs 1266-9, holding that a statement by an entity’s CEO at its 2014 results presentation that he expected its 2015 NPAT to be higher than its 2014 NPAT was de facto earnings guidance.

²¹² Using its powers under Listing Rules 3.1B, 18.7 and/or 18.8.

²¹³ References to “earnings guidance” in this Guidance Note should be read broadly as covering any type of guidance that an entity may give in relation to its expected earnings for the current reporting period regardless of the particular measure used (eg, operating revenue, EBITDA, EBIT, underlying profit before tax, underlying profit after tax, statutory profit after tax, or earnings per share).

²¹⁴ For example, some entities release periodic (monthly or quarterly) production reports, sales reports or other statistics that may give an early signal of a change in earnings. Some also give interim updates on their earnings or outlook at broker conferences or “investor days”.

For guidance on the practices to follow at broker conferences and investor days, see the Addendum to AIRA Best Practice Guidelines, *Expanded Guidance for Lodging Presentations for Material Events with ASX/NZX & Making Them Widely Accessible* April 2020, available online [at: on the Australasian Investor Relations Association website](https://www.aira.org.au/common/Uploaded%20files/AIRA%20Documents/Best%20Practice%20Guidelines/AIRA_BP_Guidelines_Addendum_Final.pdf).

https://www.aira.org.au/common/Uploaded%20files/AIRA%20Documents/Best%20Practice%20Guidelines/AIRA_BP_Guidelines_Addendum_Final.pdf.

²¹⁵ Such as the global financial crisis (“GFC”) in 2007 and the coronavirus pandemic in 2020.

²¹⁶ For example, in the case of a mining producing entity, a material fall in ore prices.

²¹⁷ ASX uses the term “current reporting period” to mean the financial half year or full year in respect of which the entity will next publish financial reports. An entity will not generally publish its financial report until some weeks after the end of the relevant half year or full year. During those weeks, references to the current reporting period should be taken to mean the reporting period that has just passed.

/cont.

market of that fact. This obligation may arise under Listing Rule 3.1 and section 674,²¹⁸ if the difference is of such magnitude that a reasonable person would expect it to have a material effect on the price or value of the entity's securities – referred to in this Guidance Note as a “market sensitive earnings surprise”.²¹⁹ Alternatively, in the case of an entity which becomes aware that its earnings for a reporting period will differ materially from earnings guidance it has published to the market, it may arise under section 1041H, because failing to inform the market that its published guidance is no longer accurate could constitute misleading conduct on its part.²²⁰

This raises a number of important questions:

1. *How does an entity determine what the market is expecting its earnings for the current reporting period to be?*

There are three base indicators to which the market may have regard in forming its expectations for an entity's earnings for the current reporting period. They are (in decreasing order of relevance and reliability):

- if the entity has published earnings guidance²²¹ for the current reporting period, that guidance;
- if the entity is covered by sell-side analysts, the earnings forecasts of those analysts for the current reporting period; and
- the entity's pcg earnings.

Of these three indicators, the first will usually be the most authoritative, since it comes from the source that can reasonably be expected to have the most accurate and up-to-date information about an entity's likely earnings for the current reporting period – the entity itself.²²²

Sell-side analysts play a key role in informing markets through their research and valuations, although they mostly cover only larger stocks in the ASX 300. In the absence of earnings guidance from the entity itself, sell-side analyst forecasts will usually be the next best indicator of the market's expectations of an entity's likely earnings for the current reporting period.

The guidance in this section is limited to market sensitive earnings surprises that arise in relation to the current reporting period. If an entity has published a longer term forecast (eg, in a prospectus, PDS, bidder statement, target statement or scheme document), it may also have an obligation to disclose an expected variance in earnings compared to that forecast, either because the information is market sensitive or to avoid engaging in misleading conduct.

²¹⁸ ASX does not regard market sensitive information that an entity's earnings will differ from market expectations as falling within any of the categories of information protected from immediate disclosure under Listing Rule 3.1A.1. The information that is required to be disclosed in such a case is not the entity's internal budgets or earnings, which as mentioned above are generated for internal management purposes and, provided they remain confidential, clearly fall within the carve-outs to immediate disclosure in Listing Rule 3.1A. Rather it is the fact that the entity's earnings will differ so significantly from market expectations that a reasonable person would expect information about that difference to have a material effect on the price or value of its securities.

²¹⁹ See, for example, ASIC Media Releases 06-124, 01-027 and 06-443, the first involving an infringement notice against, and the latter two an enforceable undertaking by, an entity for not informing the market of market sensitive information that its reported earnings would be significantly lower than a profit forecast it had previously provided to the market. See also ASIC Media Release 17-342, involving an infringement notice against an entity for not informing the market of market sensitive information that it was unlikely to achieve market consensus forecasts for the financial year. See further ASIC Media Release 10-255AD, involving an infringement notice against, and an enforceable undertaking by, an entity for not informing the market of market sensitive information that its reported earnings for the first half would be significantly lower than for the corresponding previous half.

Again, it should be noted that the fact that an entity complies with an infringement notice is not to be taken as an admission of guilt or liability (see section 1317DAF).

²²⁰ This will give rise to similar legal exposures as a misleading announcement: see [‘The statutory prohibitions against false or misleading disclosures’ on page 92.](#)

²²¹ This includes earnings guidance the entity may have previously given in order to avoid or correct a potential “earnings surprise”.

²²² This applies even where the entity is covered by sell-side analysts and their earnings forecasts differ from the entity's published guidance. In this regard, ASX would only expect an entity that has published earnings guidance to make an announcement to the market about a potential earnings surprise if its earnings were going to be materially different from its published guidance. It would not expect an entity that has published earnings guidance which is still current to make an announcement about a potential earnings surprise just because sell-side analysts were forecasting a different result.

An entity's pcg earnings reflect past performance and in many cases will not be a particularly reliable indicator of the entity's likely earnings for the current reporting period. However, in the absence of earnings guidance from the entity itself and earnings forecasts from sell-side analysts, pcg earnings may help inform the market's expectations for an entity's earnings for the current reporting period, at least where the entity has a track record of relatively stable earnings from one reporting period to the next and there is no other reason for the market to anticipate that the entity's earnings for the current reporting period will differ materially from its pcg earnings.

In the case of all three measures above, as mentioned previously, market expectations can be informed or modified by the disclosures the entity makes to the market over the reporting period and by market-wide or sector-wide events affecting an entity.²²³ For example, if an entity announces an event, or is known to be affected by a market-wide or sector-wide event, that will obviously have a material downward impact on its earnings, then the market is likely to infer that any earnings guidance²²⁴ it has previously given, and any earnings forecasts analysts have previously published, are now out of date and should be disregarded until they have been updated for that event. Similarly, if an entity has included a negative outlook statement in its last annual report or is known to be affected by a negative market-wide or sector-wide event,²²⁵ the fact that its earnings for the current reporting period turn out to be lower than its pcg earnings, of itself, is unlikely to surprise the market.

2. How does an entity translate sell-side analyst forecasts into an estimate of the market's expectations for its earnings?

An entity's published earnings guidance and its pcg earnings provide a single point of reference from a single source, making it comparatively straightforward to factor them into an estimate of the market's expectations for an entity's earnings. The same is not true, however, for sell-side analysts' forecasts.

There are a number of approaches that an entity may take in using sell-side analyst forecasts for the current reporting period²²⁶ to estimate the market's expectations for its earnings.

Some entities may use a "consensus estimate"²²⁷ as a central measure of analyst forecasts and the best available estimate of the expectations of the market as a whole for their earnings. They may obtain this from a market data vendor or they may calculate it for themselves.

If it is apparent to the entity that the consensus estimate is being distorted by one or more anomalous analyst forecasts, they might use an adjusted consensus estimate that excludes the forecast(s) in question. This might be the case if, for example, a forecast:

- does not reflect a material announcement or the most recent financial statements published by the entity and is therefore materially out of date;
- contains a manifest error; or

²²³ See *Masters v Lombe (liquidator): In the Matter of Babcock & Brown Limited (In Liq)*, note 204 above, holding that earnings guidance given by Babcock & Brown Limited ("BBL") in an outlook statement in its 2007 annual report that it expected its 2008 group net profit to exceed its 2007 group net profit (\$643 million), and then subsequently at its AGM to exceed \$750 million, had been superseded by the events of the GFC and various market announcements that BBL had made over the course of 2008 indicating that it was experiencing financial difficulties. The court also noted that BBL's share price had fallen from \$34.63 in June 2007 to \$2.43 in August 2008 and therefore the fact that BBL would fall well short of its earnings guidance had already been incorporated into its share price.

²²⁴ Although, where an entity that has published earnings guidance announces an event, or is affected by a market-wide or sector-wide event, that will obviously have a material impact on its earnings, it would be appropriate for the entity to mention in any announcement about the event that it will impact on the entity's published earnings guidance and, as applicable, that the entity is either withdrawing its guidance or will provide updated guidance to the market in due course.

²²⁵ Again, see the example in note 216 above.

²²⁶ While ASX considers that an entity which has not published earnings guidance for the current reporting period and which is covered by sell-side analysts may have an obligation to notify the market if its earnings for the current reporting period will differ significantly from the market expectations reflected in those forecasts, ASX does not take a similar view in relation to longer term analyst forecasts (eg, 2, 3 or 5 year forecasts). Such longer term forecasts are inherently uncertain.

²²⁷ For a discussion of some of the issues involved with the use of consensus estimates for these purposes, see Australasian Investor Relations Association *The what, when and where of consensus estimates for listed entities in Australia* (February 2010).

- is a clear outlier that is materially out of line with the entity's internal forecasts and other analysts' forecasts.²²⁸

Other entities may not use consensus at all, but simply plot the various analyst forecasts and, if all or most of them are clustered within a reasonable range, treat that range as representing the market's view of their likely earnings and the mid-point of that range as the "best estimate" of the market's expectations.

ASX recognises that using sell-side analysts' forecasts to estimate the market's expectations for an entity's earnings is not an exact science. Provided the method chosen by the entity appears reasonable, ASX is unlikely to take issue with it.

3. *How large does an earnings surprise have to be to trigger a disclosure obligation?*

An earnings surprise will need to be disclosed to the market under Listing Rule 3.1 if it is market sensitive – that is, it is of such a magnitude that a reasonable person would expect information about the earnings surprise to have a material effect on the price or value of the entity's securities. In this regard, it is important to note that the determining factor for whether a disclosure obligation arises is the materiality of the effect that information about the earnings surprise will have on the price or value of the entity's securities, not the materiality of the size of the earnings surprise. The fact that an entity may disclose that it expects its earnings to be X% lower (or higher) than market expectations will not necessarily translate into an X% fall (or rise) in the price or value of its securities – the fall (or rise) in price or value could be more or less than X%. This makes providing broadly applicable percentage guidelines on when a difference in actual or projected earnings compared to market expectations might be considered market sensitive (and therefore required to be disclosed under Listing Rule 3.1) challenging.

Assessing whether or not information about a potential earnings surprise is market-sensitive will require a consideration of factors such as:

- the extent of the earnings surprise (in both percentage and absolute terms);²²⁹
- whether the market has an expectation that the entity's earnings will be stable or volatile;
- whether near term earnings is a material driver of the value of the entity's securities;²³⁰
- whether the earnings surprise is attributable to a non-cash item (such as depreciation, amortisation or an impairment charge) that may not impact on underlying cash earnings;
- whether the earnings surprise is a permanent one or is simply due to a timing issue (eg, a material revenue or expense item that was expected to be booked in one reporting period is booked in a different reporting period);
- whether the earnings surprise is attributable to one-off or recurring factors;²³¹
- whether the earnings surprise is attributable to a change in accounting standards or policies;

²²⁸ While it is acceptable for an entity, in its internal assessment of the market's expectations for its earnings and whether it has a disclosure obligation in relation to a potential earnings surprise, to exclude an outlier analyst forecast that is distorting the consensus estimate, additional considerations will come into play if the entity decides to publish analyst forecasts or consensus estimates. These additional considerations are outlined in '7.5 [Publishing analyst forecasts or consensus estimates to the market](#)~~Publishing analyst forecasts or consensus estimates to the market~~' on page 60.

²²⁹ If an entity has very low earnings, even a relatively high percentage change in expected earnings may have very little impact on the price or value of its securities since, in absolute terms, the entity will still have very low earnings.

²³⁰ For start-ups and entities with high growth expectations or operating in more speculative sectors, longer term earnings expectations may be a more significant driver of the price or value of their securities than near term earnings.

²³¹ The market generally prices securities on the basis of forward earnings estimates rather than earnings results for past periods. Hence, all other things being equal, if a change in expected earnings is attributable to a one-off event that is unlikely to affect earnings in future periods, it may have very little impact on the price or value of the entity's securities.

- whether the earnings surprise will affect the entity's expected dividend for the current reporting period or future periods;²³²
- whether the relative outlook for the entity in coming financial periods is positive or negative;²³³ and
- the extent to which the earnings surprise may have been signalled to the market in previous announcements by the entity, or is attributable to known market-wide or sector-wide events, that the market has already factored into the price or value of the entity's securities.²³⁴

It will also depend upon whether the earnings surprise relates to:

- earnings guidance published by the entity;
- the earnings forecasts of analysts covering the entity's securities; or
- the entity's pcg earnings.

In this regard, as mentioned previously, the relevance and reliability of these measures as an indicator of the market's expectations for an entity's earnings decreases from the first to the second and from the second to the third. Hence, all other things being equal, it is likely to take a comparatively smaller variation between the entity's actual or projected earnings and the first measure above for that to be considered market sensitive. It is likely to take a somewhat larger variation between the entity's actual or projected earnings and the second measure above, and a larger variation again between the entity's actual or projected earnings and the third measure above, for that to be considered market sensitive. This underpins the percentage guidelines ASX suggests in response to question 4 below.

4. What guidance can ASX give on when an earnings surprise should be disclosed ...

(a)... where an entity has published earnings guidance on foot?

Where an entity has published earnings guidance on foot for the current reporting period,²³⁵ ASX would recommend that the entity carefully consider updating its published guidance if and when it expects there to be a material difference between its actual or projected earnings for the period and the guidance it has given to the market. For these purposes, ASX would suggest that entities apply the guidance on materiality that formerly appeared in the Australian Accounting Standards,²³⁶ that is:

- treat an expected variation in earnings compared to its published guidance equal to or greater than 10% as material and presume that its guidance needs updating; and
- treat an expected variation in earnings compared to its published guidance equal to or less than 5% as not being material and presume that its guidance therefore does not need updating,

²³² Dividend yield can be an important consideration for some investors. Accordingly, all other things being equal, the market may be more likely to react to a change in expected earnings that also triggers a change in dividend than one that does not.

²³³ Again, the market generally prices securities on the basis of forward earnings estimates rather than earnings results for past periods. Hence it is not uncommon for the market price of securities of an entity that announces higher than expected earnings in one period to remain steady, or even go down, if its outlook for future periods is less positive. Similarly, it is not uncommon for the market price of securities of an entity that announces lower than expected earnings in one period to remain steady, or even go up, if its outlook for future periods is more positive.

²³⁴ See note 223 above for an example.

²³⁵ Again, this includes earnings guidance the entity may have previously given to avoid or correct a potential "earnings surprise".

²³⁶ See paragraph 15 of Accounting Standard AASB 1031 *Materiality* (July 2004). Under that Standard, an amount equal to or greater than 10% of the applicable base amount was generally presumed to be material, and an amount equal to or less than 5% of the applicable base amount was generally presumed not to be material, unless, in either case, there was evidence or convincing argument to the contrary. AASB 1031 was effectively withdrawn on 1 January 2014 as being "unnecessary local guidance on matters covered by IFRSs", although the Australian Accounting Standards Board did expressly note that "it would not expect the withdrawal to change practice regarding the application of materiality in financial reporting" (see Interim Accounting Standard AASB 1031 *Materiality* (December 2013)).

unless, in either case, there is evidence or convincing argument to the contrary.²³⁷

Where the expected variation in earnings compared to its published earnings guidance is between 5% and 10%, the entity needs to form a judgment as to whether or not it is material. Entities in the ASX 300 or that normally have very stable or predictable earnings should consider applying a materiality threshold of 5% rather than 10%.²³⁸ Entities outside the ASX 300 that have relatively variable earnings may consider it more appropriate to apply a materiality threshold of 10%.²³⁹

This recommendation has regard to the fact that entities that have published earnings guidance on foot have made a positive representation to the market that will serve to set the market's expectations for their earnings. If they subsequently expect their earnings to differ from their published guidance, not only will they need to consider their potential disclosure obligations under Listing Rule 3.1 and section 674 (ie, whether information about the difference is market sensitive in all of the circumstances), they will also need to consider their potential liability under section 1041H²⁴⁰ for having misled the market as to their likely earnings.²⁴¹ By contrast, entities that do not have published earnings guidance on foot will generally only need to consider their potential disclosure obligations under Listing Rule 3.1 and section 674.

Where an entity has published its earnings guidance as a range rather than a single figure, ASX will generally interpret that as a composite representation that its earnings will not be less than the lower point of the range, nor more than the higher point of the range. Accordingly, the 5%/10% guidance above should be applied by reference to the lower point of the range (in the case of a negative earnings surprise²⁴²) or the higher point of the range (in the case of a positive earnings surprise²⁴³).

ASX hastens to add that the guidance above on earnings surprises is not intended in any way to discourage listed entities or their boards from issuing earnings guidance. It is simply intended to ensure that the market is kept properly informed if an entity's actual or projected earnings is expected to differ materially from its guidance.

(b) ... where an entity does not have published earnings guidance on foot and it is covered by sell-side analysts?

Where an entity does not have published earnings guidance on foot for the current reporting period and it is covered by sell-side analysts, ASX would recommend that the entity carefully consider notifying the market of a potential earnings surprise if and when it expects there to be a 15% or greater difference between its actual or projected earnings for the period and its best estimate of the market's expectations for its earnings (applying the guidance under the question 2 above [How does an entity translate sell-side analyst forecasts](#)

²³⁷ An example of where there might be convincing argument that a 5-10% variation between an entity's actual or projected earnings and its published guidance is not material would be where an entity has particularly low earnings, meaning that a 5-10% variation would be very low in absolute terms and therefore unlikely to have a material effect on the price or value of the entity's securities. Another example would be where an entity has particularly "lumpy" revenue or expenses – the fact that it may be more than 5-10% above or below its published guidance part way through a financial period may not be market sensitive if that situation is expected to correct itself over the course of the financial period.

²³⁸ See the Myer case, note 176 above, at paragraphs 1166 and 1272-84, finding that Myer should have applied a 5% materiality threshold in determining whether a change in guidance warranted disclosure. The same materiality threshold was applied by Gleeson J in *Crowley v Worley Limited* [2020] FCA 1522 (at paragraph 87). This section of Guidance Note 8 has been updated since the decision in the Myer case to reflect this aspect of the decision.

²³⁹ For similar reasons to why, for smaller entities, ASX generally adopts a materiality threshold that is 10% or close to it when considering whether or not to refer a potential breach of Listing Rule 3.1 and section 674 to ASIC: see notes 328-334 below and the accompanying text.

²⁴⁰ An entity that contravenes section 1041H may be liable to pay compensation to anyone who suffers loss or damage as a consequence of the misleading conduct (see section 1041I).

²⁴¹ A liability could arise under section 1041H and 1041I if the original guidance was misleading. It could also arise if the original guidance was not misleading at the time but where subsequent events have rendered it misleading. In the latter case, the relevant misleading conduct is failing to correct the guidance after it has become misleading.

²⁴² That is, where the entity's earnings for the current reporting period are materially lower than the market is expecting.

²⁴³ That is, where the entity's earnings for the current reporting period are materially higher than the market is expecting.

into an estimate of the market's expectations for its earnings? How does an entity translate sell-side analyst forecasts into an estimate of the market's expectations for its earnings?').

In addition to the factors outlined in the guidance under question 3 above 'How large does an earnings surprise have to be to trigger a disclosure obligation?', other factors that in this case will bear upon whether the entity needs to disclose a potential earnings surprise include:

- the number, quality and reputation of the analysts covering its securities;
- how up-to-date their forecasts are; and
- whether those forecasts are reasonably consistent or vary widely.

(c) ... where an entity does not have published earnings guidance on foot and it is not covered by sell-side analysts?

As mentioned above, an entity's pcg earnings reflect past performance and in many cases will not be a particularly reliable indicator of the entity's likely earnings for the current reporting period. Accordingly, ASX does not consider it appropriate to suggest any percentage guidelines on when an entity should consider announcing a potential earnings surprise vis-à-vis pcg earnings.

In addition to the factors outlined in the guidance under question 3 above 'How large does an earnings surprise have to be to trigger a disclosure obligation?', other factors that will bear upon whether the entity needs to disclose a potential earnings surprise vis-à-vis pcg earnings include:

- whether the entity has a track record of relatively stable earnings from one reporting period to the next;
- whether the entity's pcg earnings are regarded as reflecting "normal state" earnings or whether its pcg earnings themselves were affected by one-off factors or timing issues; and
- whether the entity has made any announcements or been affected by market-wide or sector-wide events over the current reporting period that would lead the market to expect that the entity's earnings for the current reporting period will differ materially from its pcg earnings.

(d) In all three cases above?

The guidelines in (a), (b) and (c) above are purely ASX's suggestions to assist entities in determining if and when they should consider notifying the market of a potential earnings surprise. The mere fact that an entity may expect its actual or projected earnings to differ from market expectations by more (or less) than those particular percentages will not necessarily mean that information about the difference is (or is not) market sensitive or, where the entity has published earnings guidance on foot, that its guidance is (or is not) misleading.

In addition to having regard to the guidelines in (a), (b) and (c) above, ASX would also recommend that any director or other officer of an entity who is confronted by a decision on whether or not to disclose a potential earnings surprise, ask themselves the two questions mentioned previously²⁴⁴ to test whether that information may be market sensitive:

- (1) "Would information about the potential earnings surprise influence my decision to buy or sell securities in the entity at their current market price?"
- (2) "Would I feel exposed to an action for insider trading if I were to buy or sell securities in the entity at their current market price, knowing information about a potential earnings surprise had not been disclosed to the market?"

²⁴⁴ See '4.2 When is information market sensitive?' [on page 9 above.](#)

If the answer to either question is “yes”, then that should be taken to be a cautionary indication that information about the potential earnings surprise may well be market sensitive and may therefore need to be disclosed to ASX under Listing Rule 3.1.

ASX would also note that negative earnings surprises²⁴⁵ tend to be more problematical than positive earnings surprises.²⁴⁶ Experience shows that negative earnings surprises, when disclosed, will often have an immediate negative impact on the price or value of an entity’s securities. Positive earnings surprises, on the other hand, when disclosed, will not necessarily have a positive impact on the price or value of an entity’s securities, particularly if the market regards them as attributable to “one-off” factors or they are accompanied by a less positive outlook statement.²⁴⁷ Further, class action litigation for continuous disclosure breaches relating to earnings surprises has to date only arisen in relation to negative earnings surprises, not positive earnings surprises.

ASX would therefore recommend that the board and management of listed entities take particular care when it comes to making a decision on whether or not to disclose a negative earnings surprise and, if there is any doubt in their mind on whether it is disclosable, that they err on the side of caution and disclose it to the market.²⁴⁸

5. *When does an entity become aware of a market sensitive earnings surprise?*

In ASX’s opinion, for an entity to have to disclose under Listing Rule 3.1 market sensitive information about an expected difference in its earnings for the current reporting period compared to market expectations, there needs to be a reasonable degree of certainty that there will be such a difference.²⁴⁹

The fact that an entity’s earnings may be comparatively ahead of or behind market expectations part way through a reporting period does not mean that this situation will prevail at the end of the reporting period. Its earnings may change due to changes in the many variables that can affect an entity’s earnings over a reporting period.²⁵⁰ They may also change because the entity adjusts its business plans in response.

The market’s expectations also may change over the course of a reporting period as it factors in relevant market-wide or sector-wide events and absorbs the various disclosures the entity has made over that period.

Consequently, disclosure issues about potential earnings surprises are generally more likely to arise towards the end of the reporting period than at the beginning, when there will be comparatively greater certainty as to whether or not the entity’s earnings for the period are going to differ from market expectations.

Whether and when an entity is aware of a market sensitive earnings surprise ultimately requires an exercise of judgment by the entity and its directors and other officers. In some cases, they may have sufficient information before the end of the reporting period to have the requisite degree of certainty that the entity is facing a market sensitive earnings surprise. In other cases, they may not have the requisite degree of certainty until after the end of the reporting period, when the entity is in the course of finalising its financial statements for the period and having them audited.²⁵¹

²⁴⁵ See note 242 above.

²⁴⁶ See note 243 above.

²⁴⁷ See notes 231 and 233 above.

²⁴⁸ See, for example, the Myer case (note 176 above), *Grant-Taylor v Babcock & Brown Limited (In Liquidation)* (note 16 above) and *Masters v Lombe (liquidator): In the Matter of Babcock & Brown Limited (In Liq)* (note 204 above).

²⁴⁹ Listing Rule 3.1 does not require the disclosure of matters of supposition or matters that are insufficiently definite to warrant disclosure (see the second bullet point under Listing Rule 3.1A.1) provided the requirements in Listing Rules 3.1A.2 and 3.1A.3 are also met.

²⁵⁰ For example, earnings may be affected by changes in general business conditions, prices of inputs and outputs, interest rates, exchange rates, labour costs, transportation costs and taxes. They may also be affected by breaks in the continuity of operations (eg, because of natural disasters, power outages, equipment breakdowns, industrial disputes, etc).

²⁵¹ As mentioned in the text accompanying note 95, in such a case, the information must be disclosed immediately and cannot wait until the release of the entity’s financial statements for the period.

6. *What should be included in an announcement about a market-sensitive earnings surprise?*

Subject to the rider below, in most circumstances, ASX would expect an announcement that an entity anticipating its earnings for the current reporting period will differ materially from market expectations to include:

- if the earnings surprise relates to the entity's published guidance and:
 - the announcement is made before the end of the reporting period:
 - a statement to the effect that the entity is updating its earnings guidance for the current reporting period;
 - the amount or range of earnings it was previously guiding for the current reporting period and the date it gave that guidance; and
 - the amount or range of earnings it is now guiding for the current reporting period;
 - the announcement is made after the end of, and prior to the publication of its financial statements for, the reporting period:
 - a statement to the effect that the entity is expecting its earnings for the current reporting period to differ materially from its published guidance;
 - the amount or range of earnings it was previously guiding for the current reporting period and the date it gave that guidance; and
 - the amount or range of earnings it is now expecting to report for the current reporting period;
- if the earnings surprise relates to analysts' forecasts:
 - a statement to the effect that the entity is expecting its earnings for the current reporting period to differ materially from the current range of current analysts' forecasts or consensus (as applicable);
 - if the announcement is made before the end of the reporting period, the amount or range of earnings it is projecting for the current reporting period; and
 - if the announcement is made after the end of, and prior to the publication of its financial statements for, the reporting period, the amount or range of earnings it is expecting to report for the current reporting period; and
- if the earnings surprise relates to the entity's pcg earnings:
 - a statement to the effect that the entity is expecting its earnings for the current reporting period to differ materially from its pcg earnings;
 - the amount of its pcg earnings;
 - if the announcement is made before the end of the reporting period, a reasonable indication of the order of magnitude of the difference between its projected earnings for the current reporting period and its pcg earnings; and
 - if the announcement is made after the end of, and prior to the publication of its financial statements for, the reporting period, the amount or range of earnings it is expecting to report for the current reporting period; and
- in each case above, an explanation of the main factors resulting in the entity's earnings being different to market expectations.

Whether or not such an announcement is described in this way, it will effectively constitute earnings guidance. It should therefore be subject to the same due diligence in its preparation, and to the same vetting and sign-off processes at a senior level, as any earnings guidance.²⁵²

Again, since it is the directors who are ultimately responsible for confirming that an entity's financial statements have been prepared in accordance with applicable accounting standards and give a true and fair view of its financial performance, it will also generally be appropriate for an announcement that an entity is expecting its earnings for the current reporting period to differ materially from market expectations to be approved by the board before it is released.

The one rider to the above is that earnings guidance is a forward-looking statement and must therefore be based on reasonable grounds or else it will be deemed to be misleading,²⁵³ with all the significant legal consequences that entails.²⁵⁴ There may be extraordinary circumstances where market, sector or entity-specific events mean that an entity is not able to forecast its earnings with any degree of confidence.²⁵⁵ In those cases, the entity legally will not be able to include in an announcement about a market sensitive earnings surprise any updated earnings projections or guidance. In such a case, it will suffice if the entity explains why it is not able to include any updated earnings projections or guidance in the announcement.

7. When should an announcement be made about a market-sensitive earnings surprise?

Where Listing Rule 3.1 applies, information about a market sensitive earnings surprise has to be released "immediately". As indicated above, this does not mean "instantaneously" but rather "promptly and without delay".

In assessing whether an entity has acted immediately under Listing Rule 3.1, ASX will make due allowance for the fact that any announcement that an entity's earnings will be less than the market is expecting will be of such import that it will likely need to be approved by the entity's board before it is released to the market. Where the announcement is to be accompanied by new or updated earnings guidance, ASX will also make due allowance for the fact that the preparation of such guidance will take time and will need to be properly vetted and signed off by the entity's CEO and CFO, and most likely again approved by the board, before it is released to the market.

Nonetheless, an entity in this situation should be working diligently to ensure that the announcement and any new or updated guidance is approved and released to the market as quickly as reasonably practicable in the circumstances.

Concluding remarks on earnings surprises

ASX acknowledges that the issues addressed in questions 1, 2 and 3 above can be difficult ones for an entity and its officers. Forecasting its earnings for the current reporting period with an appropriate degree of confidence, assessing what the market is expecting its earnings to be and then predicting how the market will react if its earnings differ materially from those expectations involves many variables and requires considerable judgment. ASX is mindful of this when it considers whether it should refer a potential breach of Listing Rule 3.1 to ASIC involving a market sensitive earnings surprise. The matters ASX refers to ASIC usually involve an obviously significant difference in earnings compared to the relevant base used to measure market expectations mentioned in question 1

²⁵² See '7.1 [Earnings guidance](#)' on page 47.

²⁵³ See note [399393](#) below and the accompanying text. See also ASIC Regulatory Guide 170 *Prospective financial information*.

²⁵⁴ See '[The statutory prohibitions against false or misleading disclosures](#)' on page 92.

²⁵⁵ An example was the early and middle stages of the coronavirus pandemic in 2020, where many entities were facing extraordinary uncertainty about their earnings in the near term. At the time, ASX guided: "a listed entity's continuous disclosure obligations do not extend to predicting the unpredictable" and that ASX does not "expect listed entities to make forward-looking statements to the market unless they have a clear and reasonable basis for doing so". ASX also guided that it was both acceptable and understandable for entities affected by the pandemic to withdraw their pre-coronavirus earnings guidance without issuing updated earnings guidance. See *Listed@ASX Compliance Update* No 03/20 issued on 31 March 2020, available online at: <https://www2.asx.com.au/content/dam/asx/documents/listings/compliance-updates/2020/listed-compliance-update-20200331.pdf> on the ASX website.

above and where the announcement of the entity's results in fact triggers a material change in the market price of its securities.²⁵⁶

Finally, it should be noted that the guidance in points 1 – 7 above relates specifically to the disclosure of updated earnings guidance. Where the trigger for disclosing an earnings surprise is a particular event (eg, a natural disaster affecting a particular project, the cancellation of a material contract or the loss of a material licence) that can reasonably be expected to have a material effect on the price or value of an entity's securities, Listing Rule 3.1 will generally require information about that event to be disclosed immediately and it will not be appropriate for the entity to delay announcing the information because it wishes to provide updated earnings guidance in light of that event. In such a case, the entity should announce whatever information is in its possession about that event immediately but signal that it will make a further announcement when it has had the opportunity to prepare updated earnings guidance in light of that event. Example G in Annexure A illustrates the point.²⁵⁷ If the entity is concerned that releasing information without updated earnings guidance could lead to a false market in its securities, it should raise that concern with ASX and discuss whether it would be appropriate to request a trading halt or a voluntary suspension to afford it the time it needs to prepare that guidance.

7.4 Correcting analyst forecasts and consensus estimates

Subject to the comments above and below in relation to market sensitive earnings surprises, ASX does not believe that an entity has any obligation, whether under the Listing Rules or otherwise, to correct the earnings forecast of any individual analyst, or the consensus estimate of any individual market data vendor, to bring it into line with the entity's internal earnings projections. Nor does ASX believe that an entity has any obligation, whether under the Listing Rules or otherwise, to publish its internal earnings projections just because they happen to differ from an analyst's forecast or a consensus estimate of analysts' forecasts.

In this regard, an analyst's earnings forecast for an entity is prepared at a point in time and reflects the analyst's professional judgment and acumen, as well as the analyst's individual views and assumptions at that time on the many variables that can affect the entity's earnings over a period.²⁵⁸ It will typically be based on a data set that is less complete and less up-to-date than the one available to the entity. Consensus estimates published by market data vendors are affected by the same factors that affect the underlying earnings forecasts they incorporate and can also be affected by the different processes employed by those vendors for gathering and normalising data. The fact that an entity's actual or projected earnings may differ from the forecast prepared by a particular analyst, or from the consensus estimate of a group of analysts, of itself, is not surprising and does not concern ASX.

As indicated above, however, in those cases where an entity has not published earnings guidance to the market, analyst forecasts are the next best indicators of the market's expectations for its earnings and an entity will have an obligation under the Listing Rules to make an appropriate announcement if it becomes aware that its earnings for the current reporting period are likely to differ materially from market expectations and that information is market sensitive.

Given that obligation, ASX would generally expect an entity that has not published earnings guidance and that is covered by sell-side analysts to be monitoring analyst forecasts and/or consensus estimates on a regular basis so that the entity has an understanding of the market's expectations for its earnings and is alive to any potential market sensitive earnings surprise that may be emerging.

²⁵⁶ See the various matters the subject of the ASIC media releases referred to in note 219 above, most of which were referred by ASX to ASIC for enforcement action under section 792B(2)(c) of the Corporations Act. In each case, the size of the earnings surprise was substantially greater than the percentage guidelines mentioned in question 4 above '[What guidance can ASX give on when an earnings surprise should be disclosed ... What guidance can ASX give on when an earnings surprise should be disclosed ...](#)'.

²⁵⁷ See ASIC Media Release 12-53MR, where ASIC issued 3 infringement notices against an entity for failing to disclose immediately losses on two material construction projects and a material write-down of an investment. The entity in that case had delayed the disclosure of the information about the losses and their causes, pending the release of revised earnings guidance to the market. ASIC found that the loss on one of the construction projects had contributed significantly to the change in the entity's earnings guidance from a profit of \$480 million after tax announced in February 2011 to a loss of \$427 million announced in April 2011.

Again, it should be noted that the fact that an entity complies with an infringement notice is not to be taken as an admission of guilt or liability (see section 1317DAF).

²⁵⁸ See note 250 above.

If a significant difference does emerge between the entity's internal earnings projections on the one hand and the earnings forecasts of a significant proportion of analysts and/or consensus estimates on the other, then it behoves the entity to ask itself why that might be so. It could be because the entity's forecast incorporates information that, legitimately, has not been disclosed to the market under Listing Rule 3.1A and therefore is not available to analysts. It could also be because the entity's forecast is based on materially different assumptions, is more up-to-date, or reflects a more complete and accurate data set, than the analysts' forecasts. Alternatively, it could indicate that the market is not necessarily aware of all of the material information it needs to estimate the entity's earnings, and through that, the price or value of the entity's securities. This in turn may warrant careful consideration by the entity as to whether there is any information, not protected by the carve-outs from disclosure in Listing Rule 3.1A, that should have been, but has not been, disclosed under Listing Rule 3.1. It could also indicate that the market has not fully appreciated the import of the entity's previous announcements under Listing Rule 3.1, which may warrant careful consideration by the entity as to whether it needs to publish a further announcement with more information.

If an individual analyst's forecast differs significantly from other analysts' forecasts, then again it may be appropriate for the entity to ask itself why that is so. It may be that the analyst has made a factual or computational error or has missed a particular announcement the entity has made to ASX. In such a case, there is nothing wrong in the entity pointing that error out to the analyst, provided it does not disclose to the analyst any market sensitive information that has not previously been released to the market or say anything that could be construed as de facto earnings guidance.

Having said this, ASX would caution listed entities that choose to have conversations with analysts about their earnings forecasts that they need to tread very carefully so as not to breach their continuous disclosure obligations.

Where an entity has published earnings guidance to the market, analyst forecasts are largely irrelevant when it comes to setting market expectations around earnings. However, ASX would still recommend that an entity that has published earnings guidance and that is covered by sell-side analysts monitor their forecasts and/or consensus estimates for the useful information they may reveal. For example, if analyst forecasts or consensus estimates are diverging materially from the entity's guidance, that may indicate that the analysts no longer attach any credence to its guidance and that, in turn, may warrant an inquiry as to why that is so.

It goes without saying that in any case where an entity's assessment of analyst forecasts or consensus estimates leads it to the conclusion that further information needs to be disclosed, the proper way to address this is to make an announcement to the market and not by selectively divulging the information to analysts.

7.5 Publishing analyst forecasts or consensus estimates to the market

From time to time, ASX is asked for its view on whether an entity should publish information about analyst forecasts or consensus estimates so that retail investors in particular have better access to that information and a better understanding of the market's expectations for its earnings.

Generally speaking,²⁵⁹ a single analyst's forecast or a single consensus estimate is not information that is required to be, or that should be, published on MAP under Listing Rule 3.1.²⁶⁰ Publishing this information on MAP implies that the entity considers it to be market sensitive. It could only be market sensitive if it reflects or approximates the entity's own view of its likely earnings. Hence, the very act of publishing an analyst's forecast or consensus estimate on MAP constitutes an implied endorsement of the forecast or estimate.²⁶¹ It therefore amounts to de facto earnings

²⁵⁹ There may be particular circumstances where an analyst's forecast or consensus estimate is required to be lodged on MAP, eg where it forms part of, or has been incorporated by reference into, a prospectus or PDS that is required to be lodged with ASX under Listing Rule 3.10.4. There may also be particular circumstances where a document referring to an analyst's forecast is required to be lodged on MAP, eg in response to a price query letter from ASX where the entity genuinely believes that the analyst's forecast has been responsible for moving the price of its securities.

²⁶⁰ This is essentially for the same reasons as mentioned previously as to why an entity should not submit a broker or analyst research report about the entity, or any announcement about the issuance of, containing an extract from, or referring or including a hyperlink to, such a report, for publication on MAP under Listing Rule 3.1: see the text accompanying notes 123 - 126.

²⁶¹ This applies even where the entity publishes a disclaimer stating that it does not endorse, confirm, or express a view as to the accuracy of, the forecast or estimate.

guidance, with the potential consequences described in '7.2 [De facto earnings guidance](#)~~De facto earnings guidance~~' above.

For these reasons, ASX is likely to refuse to allow an entity to publish a single analyst's forecast or a single consensus estimate on MAP without a detailed and acceptable explanation as to why the entity considers this information to be market sensitive.²⁶²

ASX has no objection to an entity publishing information about analyst forecasts or consensus estimates on its website. An entity that does so, however, needs to be alert to the legal issues this may raise and should take advice on those issues.²⁶³

An entity that publishes on its website a single analyst's forecast or a single consensus estimate, in particular, should be aware of the risk that this will be seen by many readers as a tacit representation by the entity that its results will be somewhere close to that forecast or estimate and therefore interpreted as de facto earnings guidance. This tacit representation arises because most readers will know that the entity is obliged to disclose a market sensitive earnings surprise. They are therefore likely to infer that if an entity has published an analyst's forecast or consensus estimate on its website and not made any announcement about an earnings surprise, the entity expects its results to be somewhere near the published forecast or estimate.²⁶⁴

The risk that publishing a consensus estimate, in particular, will be seen as de facto earnings guidance increases further if the entity has selective discussions with analysts or investors referring to the estimate. For example, a comment:

- to an analyst noting that their forecast differs materially from the published consensus estimate, hinting or implying that they should amend their forecast to be closer to the consensus estimate, or
- to an investor in response to a query about the entity's earnings referring them to the published consensus estimate,

could be seen as an endorsement of the consensus estimate and therefore de facto earnings guidance.

If an entity wants to publish information about analyst forecasts then, to reduce the risk of this being seen as de facto earnings guidance, ASX would recommend that, in preference to publishing a single analyst's forecast or a single consensus estimate, the entity publish either:

- a list of the individual earnings forecasts of the analysts known to be covering its stock; or
- a range showing the low, average (or consensus)²⁶⁵ and high earnings forecasts of the analysts known to be covering its stock,

along with a disclaimer making it clear that it does not endorse, confirm, or express a view as to the accuracy of, the forecasts nor does it make any representation that its earnings will fall within the range of forecasts provided.

To facilitate equality of access to information, ASX will allow an entity that has published such a list or range with a disclaimer to this effect on its website to also publish it by way of an announcement on MAP.

Having published information about analyst forecasts in this format and with this disclaimer on its website and/or in a market announcement, ASX would have no issue with an entity referring an interested party with an enquiry about

²⁶² If ASX detects the inclusion of this material in an announcement before the announcement is released to the market, ASX will usually decline to release the announcement to the market. If ASX does not detect the inclusion of this material in an announcement until after the announcement has been released to the market, ASX may require the entity to publish a correction or retraction.

²⁶³ Again, this applies even where the entity publishes a disclaimer stating that it does not endorse, confirm, or express a view as to the accuracy of, the consensus estimate.

²⁶⁴ For example, this may well raise copyright issues requiring the consent of an analyst before the entity publishes the analyst's forecast or the consent of, or a licence from, a market data provider before the entity publishes a consensus estimate prepared by the provider.

²⁶⁵ If it wishes, it could also include a median of the forecasts.

analyst forecasts to the relevant web page or market announcement for further information. ASX would not regard that as de facto guidance, provided the entity does not do or say anything that conflicts with the disclaimer.

A listed entity should take its own legal advice about the form and content of the disclaimer. It should reflect the entity's particular circumstances and the key underlying principles set out in this Guidance Note.

An entity that does publish information about analyst forecasts or consensus estimates on its website or in a market announcement should also take particular care not to mislead²⁶⁶ readers and, to that end, should disclose the source,²⁶⁷ completeness and currency²⁶⁸ of the information in question.

Generally it is best if an entity publishing information about analyst forecasts on its website or in a market announcement includes all analysts known to cover its securities. If the entity excludes a particular analyst's forecast from the published information, that fact should be clearly disclosed in the published information, along with an acceptable explanation as to why it has been excluded.

Examples of acceptable explanations for excluding an analyst's forecast include the forecast does not reflect a material announcement or the most recent financial statements published by the entity and is therefore materially out of date, or it contains a manifest error.

An unacceptable explanation for excluding an analyst's forecast would be a bare statement that the entity regards the forecast as an "outlier". This explanation carries with it an inference that the entity considers the forecast to be materially out of line with other analyst forecasts and the entity's internal forecasts. As such, it substantially increases the risk that the published information could be regarded as de facto earnings guidance.²⁶⁹

7.6 Publishing analyst forecasts or consensus estimates to analysts

ASX is aware that some entities provide to the analysts covering their securities a periodic summary of all of their forecasts so that each analyst has an understanding of where its forecast sits vis-à-vis its peers and consensus. The reason generally given for doing this is so that analysts have more accurate and up-to-date information about consensus than may be available from market data providers and so that their comments about consensus, or the entity's performance vis-à-vis consensus, are more likely to be correct.

Entities that do this need to be alive to the appearance it creates of selective disclosure and to the risk that it will be interpreted as de facto earnings guidance. If an entity wants to provide analysts with this information, it will generally be safer for it to make the information available to the market at large by publishing it on its website or in a market announcement in the form and with the disclaimer recommended in section 7.5 above.

Having published information about analyst forecasts in this form and with this disclaimer on its website and/or in a market announcement, ASX would have no issue with an entity referring an analyst to the relevant web page or market announcement for further information.²⁷⁰ ASX would not regard that as de facto guidance, provided the entity does not do or say anything that conflicts with the disclaimer. An example of doing something that would

²⁶⁶ See [The statutory prohibitions against false or misleading disclosures](#) on page 92.

²⁶⁷ For example, if contrary to ASX's recommendation above, an entity chooses to publish a single consensus estimate and it has compiled the estimate itself, it should disclose that fact and the methodology it has used to do so. If it has obtained the estimate from a third party (such as a market data provider), it should disclose the third party and where information can be obtained as to how the third party has compiled the estimate. If it publishes a list or range of individual analyst forecasts, it should explain how it has compiled the list or range.

²⁶⁸ Analysts' forecasts and consensus estimates are prepared at a point in time and are likely to be updated from time to time. Readers therefore need to know the date at which a forecast or estimate was prepared in order to assess how up-to-date it is.

In a similar vein, an entity should consider how frequently it will update any information it has published about analyst forecasts or consensus estimates so as to avoid its published figures becoming misleading because they are no longer current.

²⁶⁹ An entity excluding an analyst's forecast from a published table of analysts' forecasts or from its published calculation of consensus simply because it considers the forecast to be an "outlier" presents the following difficulty. To avoid misleading readers, the entity will need to disclose that it has excluded the outlier. However, by disclosing that it has excluded the outlier, the entity is effectively indicating that the excluded forecast is a significant distance from, and by necessary implication that the forecasts not excluded are much closer to, its own internal earnings projections. This then runs the risk of being seen as de facto guidance.

²⁷⁰ Although ASX would repeat its caution above that listed entities that choose to have conversations with analysts about their earnings forecasts need to tread very carefully so as not to breach their continuous disclosure obligations.

conflict with the disclaimer would be an entity referring an “outlier” analyst to the relevant webpage or announcement and hinting that the analyst should amend its forecast to be closer to the average of the other analysts.

7.7 Analyst and investor briefings²⁷¹

Analyst and investor briefings²⁷² are an important contributor to an informed market but require particular care to avoid the selective disclosure of market sensitive information.

An entity should not be disclosing at an analyst or investor briefing any market sensitive information, unless and until it has first been disclosed to ASX under Listing Rules 3.1 and 15.7.²⁷³

It is prudent practice for an entity to ensure that any new presentation to be given to, or printed materials to be handed out at, an analyst or investor briefing are first given to ASX and published on MAP before the briefing,²⁷⁴ and thereafter published on its website. This ensures both that the entity complies with its obligations under the Listing Rules and also that the materials are available to all analysts and investors alike, including those not invited to, or not able to attend, the briefing. If the materials presented or given at such a briefing contain different or more up-to-date information than has previously been given to the market, the entity runs the risk that someone might assert that the materials are market sensitive and therefore should have been disclosed under Listing Rule 3.1.²⁷⁵

ASX recognises that entities may give a series of presentations to analysts and investors over a short period that contain materially the same information but have been tailored for each presentation. ASX would not regard any the second and subsequent presentations in such a series as “new” presentations for these purposes and, provided they do not contain any new market sensitive information, would not expect them to be published on MAP.

Entities should also be alive to the risk that market-sensitive information may inadvertently be discussed at an analyst or investor briefing that is not included in the presentation pack or written materials handed out at the briefing (eg, in response to a question asked at the briefing).

In this regard, an entity should pay particular heed to the guidance in principles 8 and 9 in ASIC Regulatory Guide 62, as set out in Annexure C.²⁷⁶ An entity should, as a matter of practice, review proceedings at analyst and investor briefings, including responses provided to any questions asked at the briefing, shortly afterwards to verify that no market sensitive information has been inadvertently disclosed and, if it has, the entity should ensure that the information is published immediately on MAP and thereafter on its website.

It is in an entity’s interests for all analysts and investors to have access to the same information so that they can prepare their forecasts off the same fact base. To that end, an entity should not provide preferential treatment to favoured analysts,²⁷⁷ nor should it “blacklist” or ban an analyst it may not favour from analyst briefings.

²⁷¹ While this section focuses on analyst and investor briefings, other briefings, such as may be given at an industry conference or to lenders or insurers, can also raise similar continuous disclosure issues to the ones discussed in this section.

²⁷² For example, at ‘one-on-one’ briefings with major investors or ‘invitation only’ investor events organised by brokers or analysts.

²⁷³ See *ASIC v Southcorp Limited (No 2)* [2003] FCA 1369.

²⁷⁴ See also [Recommendation 5.3 of the fourth edition of the ASX Corporate Governance Council’s Corporate Governance Principles and Recommendations](#) (“[a] listed entity that gives a new and substantive investor or analyst presentation should release a copy of the presentation materials on MAP ahead of the presentation”), discussed below in Annexure C.

²⁷⁵ *ASIC v Newcrest Mining Limited* [2014] FCA 698 is a case in point demonstrating this particular risk.

²⁷⁶ See [ASIC Regulatory Guide 62](#) [ASIC Regulatory Guide 62](#) on page 96.

²⁷⁷ Giving an analyst preferential access to information will raise the question whether any of that information is market sensitive. If it is, not only will that give rise to continuous disclosure issues for the entity (in that the information will cease to be confidential by reason of having been disclosed to the analyst and will therefore have to be disclosed immediately under Listing Rule 3.1), it may also give rise to insider trading issues for both the entity and the analyst under section 1043A(2) (the prohibition against tipping).

7.8 Other financial forecasts and exploration and production targets

Other financial forecasts (such as forecast sales or forecast operational or capital expenditure²⁷⁸) published by entities, and exploration and production targets published by mining or oil and gas entities, can raise similar considerations to earnings guidance. As forward-looking statements, these must be based on reasonable grounds or else they will be deemed to be misleading,²⁷⁹ with all the significant legal consequences that entails.²⁸⁰ For this reason, appropriate due diligence needs to be applied to their preparation and the underlying figures and assumptions²⁸¹ should be carefully vetted and signed off at a suitably senior level before they are released.

If an entity becomes aware that its financial results will differ materially (downwards or upwards) from any financial forecast it has published, or that its exploration or production results for a period will differ materially (downwards or upwards) from any target it has published, it may have a legal obligation to notify the market of that fact. This obligation may arise under Listing Rule 3.1 and section 674,²⁸² if the difference is of such magnitude that a reasonable person would expect it to have a material effect on the price or value of the entity's securities. It may also arise under section 1041H, because failing to inform the market that its published forecast or target is no longer accurate could constitute misleading conduct on its part.

Guidance Note 31 *Reporting on Mining Activities* has further guidance on exploration and production targets and financial forecasts based on such targets.

7.9 Cancelling, deferring or reducing a dividend, distribution or interest payment

Listing Rule 3.21²⁸³ requires a listed entity to:

- (a) notify ASX immediately²⁸⁴ if it makes a decision:
 - (i) to pay a dividend or distribution on a quoted security;²⁸⁵
 - (ii) not to pay a dividend or distribution on a quoted security in respect of a period if it has previously announced an intention to pay a dividend or distribution for that period or paid a dividend or distribution in respect of the prior corresponding period; or

²⁷⁸ *ASIC v Newcrest Mining Limited*, note 275 above, is a case in point showing the dangers of not correcting information about forecast capital expenditure once it is no longer accurate.

²⁷⁹ See note [399393](#) below and the accompanying text. See also ASIC Regulatory Guide 170 *Prospective financial information*.

²⁸⁰ See ['The statutory prohibitions against false or misleading disclosures'](#) [The statutory prohibitions against false or misleading disclosures'](#) on page 92.

²⁸¹ Entities should again note ASIC's guidance that any material assumptions or qualifications that underpin forward-looking statements (such as an exploration or production target) in an announcement under Listing Rule 3.1 should be stated in the announcement: see note 122 above and the accompanying text.

²⁸² See ASIC Advisory 10-198AD, involving an infringement notice against an entity for not informing the market about a material reduction in its gold production compared to a production forecast it had released earlier. Again, it should be noted that the fact that an entity complies with an infringement notice is not to be taken as an admission of guilt or liability (see section 1317DAF).

²⁸³ While Listing Rule 3.21 only applies to dividends or distributions on quoted securities, a decision to pay, or not to pay, a dividend or distribution on unquoted securities may need disclosure under Listing Rule 3.1 if it is information that a reasonable person would expect to have a material effect on the price or value of its securities.

²⁸⁴ As mentioned in note 93 above, ASX understands that it is common market practice for a listed entity's board or a committee of the board to review and approve in principle its half year/annual financial statements, an interim/preliminary final profit announcement and an interim/final dividend ahead of the scheduled date for the announcement of its results and then for the board or a committee of the board to formally approve the financial statements and profit announcement and to formally resolve to pay the dividend just prior to the scheduled time for the announcement of its results (eg, on the morning of the announcement or in the evening beforehand). Among other reasons, this is to ensure that there have been no late breaking material post-balance date events that might need to be reflected in the financial statements and profit announcement or factored into the dividend decision.

ASX has no issue with this particular practice and (subject to the discussion in the text accompanying notes 93-95 above about the possible need to disclose market sensitive earnings surprises or material post-balance date events) would not expect the entity's financial statements to be released, its profit announcement to be made or its dividend decision to be notified, to ASX ahead of the scheduled release date just because they may have been discussed and approved in principle by the board or a committee of the board beforehand.

²⁸⁵ The decision to pay a dividend or distribution on a quoted security is notified to ASX via an Appendix 3A.1.

- (iii) to cancel, defer or reduce a dividend or distribution²⁸⁶ on a quoted security that it has previously announced it will pay;²⁸⁷
- (b) provide a completed Appendix 3A.1 to ASX not less than 4 business days before the intended record date to identify security holders entitled to a dividend or distribution on a quoted security; and
- (c) if it has notified an estimated dividend or distribution amount to ASX in an Appendix 3A.1, notify ASX immediately the final dividend or distribution amount has been determined.²⁸⁸

An announcement under Listing Rule 3.21(a)(iii) must include an explanation satisfactory to ASX of the entity's reasons for cancelling,²⁸⁹ deferring or reducing²⁹⁰ the dividend or distribution.

ASX will expect this explanation to be reasonably detailed and to justify in reasonably clear terms why the entity considers it necessary to cancel, defer or reduce the dividend or distribution after it has been announced to the market and the market has traded on the expectation of receiving the dividend or distribution. A simple statement along the lines of "the board thought it prudent to [cancel/defer/reduce] the [dividend/distribution] in the current economic climate" will not be sufficient. In an appropriate case, ASX may ask the entity to include in the explanation a discussion of any alternatives the entity's board considered to cancelling, deferring or reducing the dividend or distribution.

Listing Rule 3.22 imposes substantially similar requirements²⁹¹ to those in Listing Rules 3.21(a) and (b) in relation to interest payments on quoted debt securities and quoted convertible debt securities.²⁹²

7.10 Ramping announcements

ASX is alive to listed entities making market announcements with a view to "ramping up" the price of their securities.²⁹³ Ramping announcements come in many forms, including:

²⁸⁶ If a dividend or distribution is subsequently cancelled, the cancellation must be notified to ASX under Listing Rule 3.21(a)(iii) using the 'cancel' function in the Appendix 3A.1. If payment of a dividend or distribution is subsequently deferred or the amount of the dividend or distribution is subsequently reduced, that must be notified to ASX under Listing Rule 3.21(a)(iii) using the 'update' function in the Appendix 3A.1.

²⁸⁷ Listing Rule 3.21(a)(iii) and the requirement for a notice under that rule to include an explanation satisfactory to ASX of the entity's reasons for cancelling, deferring or reducing a previously announced dividend or distribution only applies to actual dividends or distributions that an entity has announced it will pay. It does not apply to estimated dividends or distributions. That said, if an entity subsequently decides not to pay an estimated dividend or distribution, or the final dividend or distribution is materially different to the estimated dividend or distribution, an explanation of the reasons for the cancellation or difference may be appropriate or required under Listing Rule 3.1.

²⁸⁸ If an entity notifies ASX of the estimated amount of a dividend or distribution in an Appendix 3A.1, it must notify ASX of the final amount of the dividend or distribution under Listing Rule 3.21(c). If the entity decides not to proceed with the estimated dividend or distribution (ie the final amount of the dividend or distribution is nil), that should be notified using the 'cancel' function in the Appendix 3A.1. Otherwise, any differences between the estimated dividend or distribution and the final dividend or distribution (including any changes to the payment date) should be notified using the 'update' function in the Appendix 3A.1.

²⁸⁹ The required explanation of the entity's reasons for cancelling a dividend or distribution must be included in the 'Reason for cancellation' field in the Appendix 3A.1 or in a separate announcement to the market.

²⁹⁰ The required explanation of the entity's reasons for deferring or reducing a dividend or distribution must be included in the 'Reason for update' field in the Appendix 3A.1 or in a separate announcement to the market.

²⁹¹ The decision to pay interest on a quoted debt security or quoted convertible debt security is notified to ASX via an Appendix 3A.2, rather than an Appendix 3A.1. If the interest payment is subsequently cancelled, the cancellation must be notified to ASX under Listing Rule 3.22(a)(iii) using the 'cancel' function in the Appendix 3A.2 and the required explanation of the entity's reasons for cancelling the interest payment must be included in the 'Reason for cancellation' field in the Appendix 3A.2 or in a separate announcement to the market. If the interest payment is subsequently deferred or the amount of the interest payment is subsequently reduced, that must be notified to ASX under Listing Rule 3.22(a)(iii) using the 'update' function in the Appendix 3A.2. The required explanation of the entity's reasons for deferring or reducing the interest payment must be included in the 'Reason for update' field in the Appendix 3A.2 or in a separate announcement to the market.

²⁹² While Listing Rule 3.22 only applies to interest payments on quoted debt securities or quoted convertible debt securities, a decision by an entity to pay, or not to pay, interest on unquoted debt securities or unquoted convertible debt securities may need disclosure under Listing Rule 3.1 if it is information that a reasonable person would expect to have a material effect on the price or value of its securities.

²⁹³ ASX has observed instances of ramping announcements being made: (a) just before a capital raising, with the apparent intent of boosting the price for the capital raising; (b) just after a capital raising, with the apparent intent of facilitating a profitable exit for some of the investors

- the release of a “business update” or something similar,²⁹⁴ which will typically be worded in an exuberant fashion but which on closer examination contains little in the way of substance that has not already been disclosed to the market;
- a series of announcements in close proximity, none of which is particularly material but which together are intended to pique investor interest in the entity;
- an announcement that has no substance but seeks to ride on the back of strong market sentiment in a particular sector;²⁹⁵ and
- an announcement that an entity has entered into what appears to be a material contract or transaction but without disclosing key information that investors and their professional advisers reasonably need to understand the materiality of the contract or transaction and to assess its impact on the price or value of the entity's securities.²⁹⁶

The last example above occurs not infrequently in the context of announcements about customer contracts. Some examples that ASX has observed include an entity:

- announcing a contract with a major customer of substantial repute without providing any details of the nature of the contract or its significance to the entity (ie seeking to benefit from the association with the customer without providing proper disclosure);
- announcing what appears to be a material customer contract without disclosing that it is:
 - a non-binding heads of agreement only and that material contractual terms have yet to be agreed;
 - a “master” or “framework” agreement only that establishes the contractual arrangements that will apply to any order a customer may place in the future for the entity's goods or services but which does not commit the customer to place any orders;
 - for an initial trial period only and may not proceed if the customer is not satisfied with the trial; or
 - for a small and immaterial quantity of the entity's goods or services;
- projecting very substantial revenues from a customer contract where it is not apparent that the projection [is](#) based on reasonable grounds; and
- describing a customer contract as “material” or with other superlatives when plainly it is not.²⁹⁷

Whenever ASX detects what it suspects to be a ramping announcement, it will give careful consideration to suspending the entity's securities from trading and issuing a query letter to the entity²⁹⁸ asking the entity:

- if it marked the announcement as market sensitive when it was lodged on MAP, to identify what information in the announcement the entity considered was market sensitive and why;

who acquired securities in the capital raising; and (c) following the appointment of a new adviser who is remunerated in whole or in part by the issue of securities in the entity.

²⁹⁴ These types of updates are more appropriately given in a quarterly activities report under Listing Rule 4.7C rather than in a stand-alone announcement.

²⁹⁵ An example being an announcement by an entity that it had established a subsidiary to “explore opportunities” in the medical marijuana sector, when that sector was in a substantial bull market, without disclosing that it had not identified any specific opportunities that it was seeking to pursue in that sector.

²⁹⁶ See the list of matters that ASX would generally expect to be addressed in an announcement about the signing of a market sensitive contract with a customer in ‘4.15 Guidelines on the contents of announcements under Listing Rule 3.1’ above.

²⁹⁷ A notable example being a listed entity that disclosed a “material commercial agreement with a leading financial entity”, under which it was to receive less than \$1,000 in revenue.

²⁹⁸ Under Listing Rule 18.7.

- if it marked the announcement as not being market sensitive when it was lodged on MAP, to explain its purpose in lodging the announcement on MAP, given its evident view that the information was not market sensitive and therefore not required to be disclosed under Listing Rule 3.1; and
- if the announcement includes a revenue projection or other forward-looking statement, to identify the reasonable grounds on which that statement was made²⁹⁹ and any material assumptions or qualifications underpinning the statement.³⁰⁰

If the announcement relates to a contract, ASX may ask the entity to provide a copy of the contract to ASX³⁰¹ (not for release to the market) so that ASX can verify that the entity has complied with its disclosure obligations under the Listing Rules in relation to the contract.

In an appropriate case, ASX may also require the entity to publish a corrective announcement³⁰² confirming that the information in the ramping announcement was not material, or was incomplete or misleading, and that investors should not make investment decisions based on the announcement.

8. ASX's enforcement practices

8.1 Monitoring and surveillance

As a licensed market operator, ASX is obliged to have adequate arrangements to monitor and enforce compliance with its Listing Rules.³⁰³ To meet this obligation, ASX conducts various monitoring and surveillance activities to detect possible breaches of Listing Rule 3.1.

ASX Listings Compliance assigns each entity a listings adviser, who is available to advise it on any questions or concerns it may have, and who will liaise with it on any questions or concerns ASX may have, under the Listing Rules. The listings adviser assigned to an entity monitors all of the announcements it makes on MAP and will have discussions with it if an announcement raises any continuous disclosure or other issues under the Listing Rules.

ASX Listings Compliance reviews all major state and national newspapers before the market opens each trading day to identify any article about an entity that may raise continuous disclosure issues. If such an article is identified, it is referred to the relevant listings adviser to discuss with the entity.

ASX also has a Surveillance Group, which uses sophisticated computer technology to monitor trading in ASX quoted securities on a real time basis across all licensed markets in Australia seeking to identify abnormal trading³⁰⁴ which could indicate that there has been a leak of market sensitive information yet to be announced under Listing Rule 3.1. It also reviews various news services, investor forums, chat sites and published broker research looking for similar indications. Again, any concerns that the Surveillance Group may have on this score are referred to the relevant listings adviser to follow up with the entity.³⁰⁵

8.2 The action ASX takes when it detects abnormal trading

If ASX identifies any abnormal trading in an entity's securities which raises a potential continuous disclosure issue, it will endeavour to contact the person the entity has appointed under Listing Rule 12.6 to be responsible for communications with ASX on Listing Rule matters to discuss the situation. In that conversation, ASX will usually

²⁹⁹ See note [399393](#) below. See also ASIC Regulatory Guide 170 *Prospective financial information*.

³⁰⁰ This list of questions is not intended to be exhaustive. ASX may ask additional questions about a suspected ramping announcement if it considers it appropriate to do so.

³⁰¹ Under Listing Rule 18.7.

³⁰² Under Listing Rule 3.1B and/or 18.8(b).

³⁰³ Section 792A(c)(ii).

³⁰⁴ Such as a sudden and significant movement in the market price or traded volumes of an entity's securities which cannot be explained by announcements the entity has made or by movements in the market or its sector generally.

³⁰⁵ The processes ASX generally follows when it detects information in a news service, investor forum, chat site or published broker or analyst research which could indicate that there has been a leakage of market sensitive information yet to be announced under Listing Rule 3.1 are explained under '6.4 [Responding to comment or speculation in media or analyst reports and market rumours](#)[Responding to comment or speculation in media or analyst reports and market rumours](#)' on page 44.

ask the person if they are aware of any information concerning the entity which has not been announced to the market and which, if known, could explain the abnormal trading in its securities. When asked this question, that person is expected to answer it frankly and honestly and, if there is any such information, to tell ASX of the general nature of the information, even if he or she considers the information to be confidential and not something that otherwise requires formal disclosure to ASX under Listing Rule 3.1A.³⁰⁶ A failure to do so will deny ASX the opportunity to assist the entity with its disclosure obligations when that could be of benefit to the entity and to the market. Refusing to answer the question will also constitute a breach of Listing Rules 18.7 and/or 18.8 entitling ASX to suspend trading in the entity's securities under Listing Rule 17.3.1, while answering it dishonestly may constitute a criminal offence under section 1309.³⁰⁷

ASX recognises that these discussions can sometimes put entities in a difficult position, particularly in relation to hitherto confidential and incomplete negotiations concerning a market sensitive transaction, where premature disclosure could be prejudicial to the entity. Nonetheless, an entity is expected to be frank and honest in these discussions with ASX and to tell ASX about such a transaction, even if it considers information about the transaction to be confidential.

Typically, these discussions will have one of two conclusions – the entity will tell ASX that:

- it is not aware of any such information – in which case, depending on the circumstances, ASX may issue a price query letter asking the entity to confirm that fact in writing (see below); or
- it is aware of such information – in which case, this will generally lead to a discussion about whether there are any reasons, apart from a possible leakage of that information, which might explain the abnormal trading.

In the latter case, if ASX is satisfied in that discussion that the information remains confidential and is otherwise protected from disclosure by Listing Rule 3.1A, ASX will not release, or require the entity to release, the information to the market.

It will often be the case, however, that the entity is not able to identify any reason to explain the abnormal trading in its securities other than a possible leakage of market sensitive information. As explained above,³⁰⁸ in such a case, ASX has no choice but to assume that the information in question is no longer confidential and to require an immediate announcement about the information under Listing Rule 3.1 and/or 3.1B.

Where this occurs, ASX will endeavour to work with the entity to achieve an outcome that meets its disclosure obligations under Listing Rule 3.1 and section 674 but, within that constraint, seeks to avoid any undue prejudice to the entity.

For example, where the information relates to an incomplete negotiation that is very close to completion, at the entity's request, ASX may grant the entity a trading halt to allow it the time needed to conclude the negotiations and to make a more definitive and informative announcement to the market. This may be preferable from the entity's perspective than having to put out an immediate announcement about the current state of the negotiations. It may also avoid the market overreacting to the prospect of a transaction that has yet to be successfully concluded.

ASX's aim in these discussions will be to avoid a situation where the market is trading on an uninformed basis. Hence, where these matters arise during normal market trading hours, they will have a high degree of urgency attached. The window for consultation will be limited and, absent a trading halt or suspension, will not accommodate detailed argument or protracted negotiations with the entity or its advisers.

³⁰⁶ ASX will generally advise the entity in this conversation that if it has been relying on Listing Rule 3.1A not to announce information which would otherwise require disclosure under Listing Rule 3.1, the recent trading in its securities would suggest that this information has ceased to be confidential and therefore the information is no longer protected from disclosure by Listing Rule 3.1A.

³⁰⁷ See [‘The statutory prohibitions against false or misleading disclosures’ on page 92.](#)

³⁰⁸ See [‘5.8 Listing Rule 3.1A.2 – the requirement for information to be confidential’ on page 38.](#)

8.3 Price query letters

As mentioned above, ASX will generally issue a price query letter when it detects abnormal trading in an entity's securities and, in its discussions with the entity about that matter, the entity tells ASX that it is not aware of any information which has not been announced to the market and which could explain the abnormal trading.³⁰⁹ Usually a price query letter is issued on the same day as those discussions and requires the entity to provide a prompt response – often before the beginning of trading on the next trading day but sometimes even more promptly.

The purpose of a price query letter is to enable ASX to be satisfied that the entity is in compliance with its continuous disclosure obligations under the Listing Rules.³¹⁰ The entity must respond to a price query letter by the time specified by ASX in the letter.³¹¹

Price query letters tend to follow a standard format. Generally, they will identify the abnormal trading and ask the entity to respond separately to each of the following questions and requests for information:³¹²

1. *Is the entity aware of any information concerning it that has not been announced to the market which, if known by some in the market, could explain the recent trading in its securities?*
2. *If the answer to question 1 is “yes”:*
 - (a) *Is the entity relying on Listing Rule 3.1A not to announce that information under Listing Rule 3.1?*
Please note that the recent trading in the entity's securities would suggest to ASX that such information may have ceased to be confidential and therefore the entity may no longer be able to rely on Listing Rule 3.1A. Accordingly, if the answer to this question is “yes”, you need to contact us immediately to discuss the situation.
 - (b) *Can an announcement be made immediately?*
Please note, if the answer to this question is “no”, you need to contact us immediately to discuss requesting a trading halt.
 - (c) *If an announcement cannot be made immediately, why not and when is it expected that an announcement will be made?*
3. *If the answer to question 1 is “no”, is there any other explanation that the entity may have for the recent trading in its securities?*
4. *Please confirm that the entity is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.*
5. *Please confirm that the entity's responses to the questions above have been authorised and approved in accordance with its published continuous disclosure policy or otherwise by its board or an officer of the entity with delegated authority from the board to respond to ASX on disclosure matters.*³¹³

³⁰⁹ As noted above, if the entity tells ASX that it is aware of information which has not been announced to the market and which could explain the abnormal trading in its securities and it cannot point to any other reason to explain that abnormal trading, ASX will generally require the entity to make an immediate announcement about the information under either Listing Rule 3.1 or 3.1B. The making of such an announcement avoids the need for a price query letter.

³¹⁰ Price query letters are issued under Listing Rule 18.7.

³¹¹ Listing Rule 18.7.

³¹² Additional questions may be added to a price query letter if there are other disclosure issues about which ASX wishes to be satisfied. For example, if the price query letter is issued around half-year or full-year balance date, it may include questions intended to elicit whether the entity is expecting to announce earnings that might come as a surprise to the market.

A price query letter will usually ask for a response to be sent to a nominated listings adviser by email and advise that it should not be sent to the ASX Market Announcements office. It will also contain a statement that ASX reserves the right, under Listing Rule 18.7A, to release the letter and the entity's response to the market and therefore ask the entity to prepare its response in a form suitable for release to the market.

³¹³ The reference here to the entity's response having been authorised and approved by the entity's board is intended to cater for situations where that has occurred and should not be interpreted as suggesting that the response needs to be authorised and approved by the board

Once the entity's response has been received and reviewed by a listings adviser, both the price query letter and the response will usually be published on MAP together, so that the market is aware that ASX has made enquiries of the entity about the abnormal trading in its securities and of the entity's response to those enquiries.³¹⁴

8.4 Aware letters

When ASX has concerns about whether an entity has disclosed market sensitive information at the time it should have under Listing Rule 3.1, it will typically issue an "aware letter" to the entity.

The purpose of an aware letter is to enable ASX to be satisfied that the entity is in compliance with its continuous disclosure obligations under the Listing Rules.³¹⁵ The entity must respond to an aware letter by the time specified by ASX in the letter.³¹⁶

Aware letters tend to follow a standard format. Generally, they will identify the information in question and the relevant date it was announced and ask the entity to respond separately to each of the following questions and requests for information:³¹⁷

1. *Does the entity consider the information to be information that a reasonable person would expect to have a material effect on the price or value of its securities?*
2. *If the answer to question 1 is "no", please advise the basis for that view.*
3. *If the answer to question 1 is "yes", when did the entity first become aware of the information?*
4. *If the answer to question 1 is "yes" and the entity first became aware of the information before the relevant date, did the entity make any announcement prior to the relevant date which disclosed the information? If so, please provide details. If not, please explain why this information was not released to the market at an earlier time, commenting specifically on when you believe the entity was obliged to release the information under Listing Rules 3.1 and Listing Rule 3.1A and what steps the entity took to ensure that the information was released promptly and without delay.*
5. *Please confirm that the entity is in compliance with the Listing Rules and, in particular, Listing Rule 3.1.*
6. *Please confirm that the entity's responses to the questions above have been authorised and approved in accordance with its published continuous disclosure policy or otherwise by its board or an officer of the entity with delegated authority from the board to respond to ASX on disclosure matters.*³¹⁸

in any particular case (see '4.8 [Does the board need to approve an announcement under Listing Rule 3.1?](#)~~Does the board need to approve an announcement under Listing Rule 3.1?~~ on page 20'). In most cases, ASX would expect an entity to have a continuous disclosure policy (see Annexure C 'Guidance on Compliance Policies' ~~on page 95~~) and its response to have been authorised and approved in accordance with that policy. If the entity does not have such a policy, or in the circumstances is not able to apply it, ASX would expect the entity's response either to have been authorised and approved by the board or by an officer of the entity with delegated authority from the board to respond to ASX on disclosure matters.

³¹⁴ Under a protocol agreed between ASIC and ASX, ASX also notifies the ASIC Market Surveillance team whenever it issues a price query letter so that ASIC is aware, ahead of the publication of the price query letter and the entity's response on MAP, that ASX is taking action about the abnormal trading.

³¹⁵ Aware letters are issued under Listing Rule 18.7.

³¹⁶ Listing Rule 18.7.

³¹⁷ Again, an aware letter will usually ask for a response to be sent to a nominated listings adviser by email and advise that it should not be sent to the ASX Market Announcements office. It will also contain a statement that ASX reserves the right, under Listing Rule 18.7A, to release the letter and the entity's response to the market and therefore ask the entity to prepare its response in a form suitable for release to the market.

³¹⁸ Again, the reference here to the entity's response having been authorised and approved by the entity's board is intended to cater for situations where that has occurred and should not be interpreted as suggesting that the response needs to be authorised and approved by the board in any particular case (see '4.8 [Does the board need to approve an announcement under Listing Rule 3.1?](#)~~Does the board need to approve an announcement under Listing Rule 3.1?~~ on page 20'). In most cases, ASX would expect an entity to have a continuous disclosure policy (see Annexure C 'Guidance on Compliance Policies' ~~on page 95~~) and its response to have been authorised and approved in accordance with that policy. If the entity does not have such a policy, or in the circumstances is not able to apply it, ASX would expect the

/cont.

Once the entity's response has been received and reviewed by a listings adviser, both the aware letter and the response will usually be published on MAP together, so that the market is aware that ASX has made enquiries of the entity about the timeliness of its disclosure and of the entity's response to those enquiries.³¹⁹

8.5 Complaints or allegations of non-compliance

If ASX receives a complaint or allegation from a third party asserting that an entity has failed to disclose particular information that should have been disclosed under Listing Rule 3.1, ASX will usually make enquiries of the entity as to the accuracy and materiality of the information. If, as a result of those enquiries, ASX forms the view that the information is accurate, market sensitive and not within the carve-outs from disclosure in Listing Rule 3.1A, ASX will ask the entity to make an announcement about the matter under Listing Rule 3.1. If the information should have been disclosed earlier, ASX may also issue an aware letter (see above) and/or refer the matter to ASIC (see below).

8.6 Requests for further information

If ASX has concerns that:

- an entity may have failed to disclose information that should have been disclosed under Listing Rule 3.1; or
- an announcement under Listing Rule 3.1 or 3.1B may be inaccurate, incomplete or misleading,

ASX may ask the entity to provide it with any information, document or explanation about that matter to enable ASX to be satisfied that the entity is in compliance with its obligations under the Listing Rules. The entity must comply with that request within the time specified by ASX.³²⁰

Depending on the nature of the information requested, ASX may require that information to be released to the market. ASX's request for the information will make it clear whether ASX is intending to release, or reserves the right to release, the information to the market so that the entity will have the opportunity to respond in a suitable form.³²¹

8.7 Referrals to ASIC

If ASX suspects that an entity has committed a significant contravention of the Listing Rules, or that an entity or any other person (such as a director, secretary or other officer of the entity) has committed a significant contravention of the Corporations Act,³²² it is required under that Act³²³ to give a notice to ASIC with details of the contravention. The purpose of such a notice is so that ASIC can then consider what action, if any, it may wish to take in relation to the suspected contravention.

Given the critical importance of timely disclosure of market sensitive information to the integrity and efficiency of the market, ASX will regard any contravention of Listing Rule 3.1 or of section 674 as a "significant" contravention for these purposes and refer the matter to ASIC.³²⁴

In deciding whether or not to refer a potential contravention of Listing Rule 3.1 and/or section 674 to ASIC, ASX will need to form a view on whether the information in question was market sensitive. As mentioned previously,³²⁵ the test for determining this is set out in section 677 of the Corporations Act. Under that section, a reasonable person is taken to expect information to have a material effect on the price or value of an entity's securities if the

entity's response either to have been authorised and approved by the board or by an officer of the entity with delegated authority from the board to respond to ASX on disclosure matters.

³¹⁹ Under a protocol agreed between ASIC and ASX, ASX also notifies the ASIC Market Surveillance team whenever it issues an aware letter so that ASIC is aware, ahead of the publication of the aware letter and the entity's response on MAP, that ASX is taking action in relation to the matter.

³²⁰ Listing Rule 18.7.

³²¹ Listing Rule 18.7A.

³²² This would include a breach of the various sections referred to in Annexure B.

³²³ Section 792B(2)(c).

³²⁴ The same is true of any contravention of Listing Rule 3.1B.

³²⁵ See 4.2 [When is information market sensitive?](#) ~~When is information market sensitive? on page 9.~~

information “would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of” those securities. Applying this test literally would require ASX to put itself into the shoes of persons who commonly invest in securities at the time the information was required to be disclosed under Listing Rules 3.1 and 3.1A and hypothetically form a view on whether the information would have influenced their decision to acquire or dispose of the entity’s securities at that time.

Instead of undertaking that hypothetical task, ASX will generally look to the actual effect that the information had on the market price of the entity’s securities³²⁶ when it was finally announced to the market³²⁷ and assess for itself whether or not the information in fact had a material effect on the market price. For these purposes, ASX will generally apply the materiality guidelines that formerly appeared in the Australian Accounting Standards³²⁸ as a reasonable measure of materiality. Thus, if the information appears to ASX to have moved³²⁹ the market price of the entity’s securities (relative to prices in the market generally or in the entity’s sector) by roughly:³³⁰

- 10% or more, ASX will generally³³¹ regard that as confirmation that the information was market sensitive and therefore refer a potential breach of Listing Rule 3.1 and section 674 to ASIC;
- 5% or less, ASX will generally regard that as confirmation that the information was not market sensitive and therefore not refer the matter to ASIC.

Where the price movement is between 5% and 10%, ASX will have regard to a number of factors to determine whether the information should be regarded as market sensitive. This includes the nature and significance of the information, the market capitalisation of the entity,³³² the beta of its securities,³³³ the bid-offer spread at which its securities normally trade,³³⁴ and whether there was a noticeable spike in the volume of its securities traded in the lead up to and shortly after the announcement. For smaller entities outside of the ASX 300, ASX would generally expect the application of these factors to result in it applying a materiality threshold that is 10% or close to it. For larger entities within the ASX 300, ASX would generally expect the application of these factors to result in it applying a materiality threshold that is closer to 5% than to 10%.

It should be noted that the fact that ASX takes this approach in assessing whether or not to refer a potential breach of Listing Rule 3.1 and section 674 to ASIC does not displace the test for materiality of information in section 677, nor does it preclude ASIC or a litigant taking a different view to ASX as to the materiality of information. If ASIC institutes criminal or civil penalty proceedings against, or a litigant institutes civil proceedings to recover damages

³²⁶ Case law confirms that it is acceptable for a court (and, *a fortiori*, ASX or ASIC) to look at the actual effect that information had on the market price of an entity’s securities as a cross-check on whether it would have influenced the decision of persons who commonly invest in securities to acquire or dispose of the entity’s securities: see *Rivkin Financial Services Ltd v Sofcom Ltd* [2004] FCA 1538, at paragraphs 113-6; *ASIC v Fortescue Metals Group* (No 5) [2009] FCA 1586, at paragraphs 474-7; *ASIC v Macdonald* (No 11), note 76 above, at paragraphs 1063-7; and the *James Hardie* case, note 10 above, at paragraph 537.

³²⁷ This includes any movements in the market price of the entity’s securities (relative to prices in the market generally or in the entity’s sector) in the lead up to the announcement that may have occurred because of a possible leak of, or rumour about, the information.

³²⁸ Paragraph 15 of Accounting Standard AASB 1031 *Materiality* (July 2004), discussed in further detail in note 237 above.

³²⁹ References to moving the market price of an entity’s securities should be understood as including the maintenance of the market price at or about its current level when it would otherwise be expected to move materially in a particular direction, given price movements in the market generally or in the entity’s sector – see notes 12 and 13 above.

³³⁰ ASX does not apply the 5%/10% materiality guidelines in a mathematically precise manner. Isolating the price effect of particular information from the other factors that may have affected the market price of an entity’s securities and then adjusting for price movements in the market generally and in the entity’s sector is not an exercise that can be done with mathematical precision.

³³¹ In the case of securities in entities with a small market capitalisation and whose market price is less than 10¢, ASX may determine that the indicative threshold for whether a price movement is material should be higher than 10%, having regard to the fact that these securities trade in price steps of 0.1¢ and often have higher percentage bid-offer spreads than securities in entities with a larger market capitalisation.

³³² Generally speaking, the higher the market capitalisation of an entity, the lower the threshold is likely to be for ASX to consider a movement in the price of its securities to be material.

³³³ Beta measures the sensitivity of an entity’s securities to fluctuations in the market (a beta greater than one indicates greater volatility, and a beta of less than one indicates lower volatility, than the market as a whole). Generally speaking, the higher the beta of an entity’s securities, the higher the threshold is likely to be for ASX to consider a movement in the price of its securities to be material.

³³⁴ Generally speaking, the higher the bid-offer spread at which an entity’s securities normally trade, the higher the threshold is likely to be for ASX to consider a movement in the price of its securities to be material.

from, an entity for breaching section 674, it will have to prove its case using the test for materiality of information in section 677, regardless of any view that ASX may have taken on the issue of materiality.

Further, the fact that ASX may decide not to refer a potential breach of Listing Rule 3.1 and section 674 to ASIC does not prevent ASIC from forming a different view as to whether there has been such a breach and from taking action in relation to that potential breach under its various enforcement powers.

It should also be noted that in determining whether or not to issue a price query letter,³³⁵ ASX may have regard to other factors, in addition to the percentage movement in the market price of an entity's securities, including whether there has been a material change in the traded volumes of those securities. Hence, ASX may issue a price query letter even where the percentage movement in an entity's securities is less than 5%.

8.8 ASX's enforcement powers

ASX has a range of enforcement powers it can exercise if an entity commits a breach³³⁶ of Listing Rule 3.1 or 3.1B.

ASX may:

- direct the entity to give specified information to ASX for release to the market;³³⁷
- direct the entity to update, correct or retract information previously released to the market;³³⁸ and/or
- suspend the quotation of the entity's securities until the matter has been dealt with to ASX's satisfaction.³³⁹

More generally, where an entity commits a breach of Listing Rule 3.1 or 3.1B and ASX considers the breach to be an egregious one, ASX may:

- censure the entity for breaching the Listing Rules;³⁴⁰ and/or
- terminate the entity's admission to the official list.³⁴¹

The type of action ASX will take will depend on the nature and severity of the breach.

Whenever ASX takes enforcement action against an entity for breaching Listing Rule 3.1, ASX will usually require the entity to make an announcement to the market explaining that action and why it was taken.

Given the critical importance of timely disclosure of market sensitive information to the integrity and efficiency of the market, directors who are repeat offenders of Listing Rule 3.1/section 674(2A), or of equivalent provisions in the listing rules or regulations in overseas markets, are likely to find it difficult to satisfy ASX that they are of "good fame and character" and therefore appropriate persons to be a director of an entity seeking admission to the Official List under Listing Rule 1.1 condition 20.

8.9 Evidentiary matters

Entities and their officers should be aware that statements they make to ASX listings advisers on disclosure matters may be recorded in written or electronic file notes. Those file notes may be subpoenaed and used as evidence in criminal or civil proceedings.

³³⁵ See '8.3 [Price query letters](#)~~Price query letters~~ on page 68.

³³⁶ For these purposes, "breach" includes not only failing to release relevant information to the market when required, but also releasing information that is false or misleading. This is on the basis that the release of false or misleading information does not satisfy the disclosure obligations in Listing Rule 3.1 or 3.1B or, alternatively, gives rise to a separate obligation under Listing Rule 3.1 or 3.1B to correct the false or misleading information (see note 128 above).

³³⁷ Listing Rule 18.8(a).

³³⁸ Listing Rule 18.8(b).

³³⁹ Listing Rule 17.3.1.

³⁴⁰ Listing Rule 18.8A.

³⁴¹ Listing Rule 17.12.

They should also be aware that their responses to price query letters and aware letters will generally be published on MAP and, as public documents, may be used as evidence in criminal or civil proceedings. Even in those rare instances where they are not published on MAP, they may still be subpoenaed and used for that purpose.

Annexure A:

Worked examples of the operation of Listing Rule 3.1

The following examples illustrate the principles described in Guidance Note 8. For convenience, except for Example F, it is assumed that a reasonable person would regard the underlying transaction or event referenced in the heading of each example as likely to have a material effect on the price or value of the entity's securities. It is also assumed that information remains confidential, unless otherwise indicated.

Example A – material acquisition

1. Listed entity A wishes to acquire a material business. It contacts the owner of the business, B, with a view to commencing confidential discussions.

Disclosure would not normally be required. The information clearly concerns an incomplete proposal or negotiation and is insufficiently definite to warrant disclosure.

2. A submits a confidential non-binding indicative offer to B to purchase the business for a nominated price, which is subject to a number of conditions, including the satisfactory completion of due diligence and the negotiation and signing of legally binding documentation.

Disclosure would not normally be required. The information clearly concerns an incomplete proposal or negotiation. Even though the offer includes an indicative price, it is also insufficiently definite to warrant disclosure, since the parties have yet to agree the terms of the transaction.

3. A and B sign a confidentiality agreement with a view to A commencing due diligence.

Disclosure would not normally be required. The matter is still incomplete and insufficiently definite to warrant disclosure.

4. A completes its due diligence and indicates to B that it is prepared to purchase the business at the original price stated in its confidential non-binding indicative offer, subject to the negotiation and signing of legally binding documentation with suitable warranties and indemnities. A and B agree to commence negotiations on the legal documentation required for the transaction.

Disclosure would not normally be required. The matter is still incomplete and insufficiently definite to warrant disclosure.

5. After a month of negotiations, A and B are close to reaching agreement, but have yet to resolve one outstanding issue. It is expected that this could take another day or two to resolve. That morning, as the market opens, there is a very material spike in both the market price and traded volumes of A's securities. A price alert is triggered in ASX's surveillance system and ASX contacts A to discuss whether it is aware of any information concerning it which has not been announced to the market and which, if known, could explain the abnormal trading in its securities. A tells ASX that it is in the final stages of negotiating a material business acquisition. A is not able to point to any other circumstance or event that could explain the abnormal trading in its securities.

ASX advises A that in its opinion the matter is no longer confidential and therefore an announcement must be made immediately under Listing Rule 3.1. ASX also advises A that in view of the abnormal trading in its securities, unless it can release an announcement straight away, it ought to request a trading halt to stop the market trading on an uninformed basis.

Disclosure would be required. While the transaction is still incomplete, in light of the abnormal trading in A's securities, ASX has to infer that information about the transaction is no longer confidential and/or that there is now potentially a false market in A's securities.

In this scenario, ASX will invariably suggest to an entity that if it cannot release an announcement to the market straight away, it ought to request a trading halt to quell the uninformed trading in its securities. If the

entity does not agree to do so, ASX will generally be left with little choice but to impose a suspension to prevent the market trading on an uninformed basis.

6. A indicates to ASX that it is agreeable to requesting a trading halt. A and ASX discuss the scope and timing of the announcement that will bring an end to the trading halt. A indicates that since it is very close to concluding the transaction negotiations, rather than put out an announcement now advising the market about the current state of the negotiations with B, it would prefer for the announcement to be delayed to allow the negotiations to be completed, so that a more definitive and informative announcement can be made to the market. A formally requests a trading halt, indicating in its request simply that it is in negotiations about a material acquisition and that it expects to be able to make a further announcement about the transaction shortly. The trading halt is duly granted by ASX.

Alternative A: The negotiations between A and B are successfully concluded within the next two trading days³⁴² and the parties sign an agreement for A to buy the business from B. The agreement contains a boilerplate clause requiring its terms to be kept confidential.

A would be expected to disclose the key commercial terms of the acquisition and the material terms of the agreement immediately after it is signed. The confidentiality clause in the agreement does not override or displace A's disclosure obligations under the Listing Rules.³⁴³

A's announcement should include sufficient information about the agreement for investors to understand its ramifications and to assess its impact on the price or value of A's securities. Depending on the circumstances, that information might include:

- *information about the business, such as the type of business, location, numbers of employees, length of operation, financial history, etc;*
- *the total consideration to be paid by A for the business;*
- *whether the consideration is to be cash or securities of A;*
- *if the consideration includes cash, whether it will be funded from internal sources or by debt;*
- *if the consideration includes securities, the number of securities to be issued and the price at which they will be issued;*
- *any material conditions to completion under the agreement;*
- *the expected timetable for completion of the transaction; and*
- *the expected impact of the transaction on A's financial position.*

The publication of the announcement will result in the trading halt being lifted.

Alternative B: The negotiations between A and B reach a stalemate and the parties decide to terminate their discussions.

Disclosure would be required. The announcement made when A requested the trading halt would have given rise to an expectation in the market that an agreement was imminent. A should announce that it has not been able to reach an agreement with the other party and that discussions have been terminated. The publication of the announcement will result in the trading halt being lifted.

³⁴² Two trading days is the maximum permissible period for a trading halt: see note 61 above and the accompanying text.

³⁴³ See '4.22 [Disclosure must be made even if it is contrary to contractual commitments](#)~~Disclosure must be made even if it is contrary to contractual commitments~~' on page 33. In this case, given the confidentiality clause in the agreement, it would generally not be appropriate to lodge a copy of the agreement on MAP. While the confidentiality clause cannot prevent the disclosure of information required to be disclosed under Listing Rule 3.1, the agreement may well contain other information that is not be required to be disclosed under Listing Rule 3.1 and the publication of that information on MAP could give rise to a breach of the confidentiality clause.

Example B – control transaction

1. An overseas entity C submits a confidential non-binding indicative offer to listed entity D proposing that the two entities merge by way of a scheme of arrangement. Under the proposed terms of the scheme, D's security holders will transfer their securities in D to C in return for a cash payment equivalent to a 25% premium over their current market price. The offer is expressed to be subject to a number of conditions, including satisfactory completion of due diligence by C, and D's board unanimously recommending the scheme to security holders in the absence of a higher offer. It also contains a boilerplate clause affirming that the offer relates to an incomplete proposal, is subject to further negotiation, is strictly confidential and may be withdrawn if it is disclosed by D.

Disclosure would not be normally required. The information clearly concerns an incomplete proposal or negotiation and is confidential. For the avoidance of doubt, ASX does not consider that Listing Rule 3.1A.3 (the reasonable person test) requires the disclosure of such information, provided the information continues to be confidential.³⁴⁴

2. The following day, D's board meets to consider the offer and resolves to reject it on the basis that it undervalues D and is opportunistic. D's advisers write a private and confidential letter to C confirming D's rejection of the offer.

Disclosure would not be normally required.³⁴⁵ The fact that D has received and its board has rejected a confidential offer from C is only likely to have a material effect on the price or value of D's securities if it gives rise to speculation that D is now "in play" and that C or some other person might make a further offer for D in the near term at a price materially above its current market price. If C does make a further offer, then the matter is still an incomplete proposal or negotiation. If C does not, then the prospect of some other person making an offer would generally be pure speculation and therefore a matter of supposition and/or insufficiently definite to warrant disclosure.³⁴⁶ The information falls within Listing Rule 3.1A.1, and provided it continues to be confidential, does not require disclosure under Listing Rule 3.1.

³⁴⁴ ASX is aware that some entities in the past may have disclosed the fact that they have received such a confidential offer because of a view that they or their advisers have taken that a reasonable person would expect such a disclosure under Listing Rule 3.1A.3. ASX does not agree with this interpretation of the reasonable person test.

If Listing Rule 3.1A.3 did require the disclosure of such information, that would make it impossible for entities to have confidential negotiations about a potential control transaction. This in turn could have a chilling effect on the market for corporate control.

For these reasons, ASX considers that a reasonable person would not expect D to disclose information about the confidential offer received from C, provided the information continues to be confidential.

³⁴⁵ Even though disclosure would not normally be required under Listing Rule 3.1, there would be nothing to stop D from voluntarily disclosing information about the offer and its rejection for its own corporate purposes (eg, because it wanted to put itself "in play" and initiate an auction for control). C's unilateral stipulation that the offer would be withdrawn if disclosed would no longer have any relevance once the offer had been rejected.

³⁴⁶ It has been suggested to ASX that the relevant information to be disclosed in this case is simply that D has rejected C's offer to enter into a control transaction and that this is a known and definite fact and therefore not a matter of supposition, nor a matter insufficiently definite to warrant disclosure. Accordingly, it is not protected from disclosure by Listing Rule 3.1A and, if it is market sensitive (as it may well be), it must be disclosed immediately under Listing Rule 3.1. ASX does not agree. In ASX's view, this suggestion suffers from the same flaw as that highlighted by McLure JA in the Jubilee Mines case, note 16 above, at paragraph 161:

"The respondent would narrowly confine the 'information' by taking it out of its broader factual and commercial/corporate context then gauge whether that information has the deemed material effect on the price of the companies [sic] securities by reference to the common investor who assesses the information in the context of publicly available information. That in my view is inconsistent with the purpose of the disclosure regime which is a fully informed market. ... The disclosure regime does not countenance disclosure of incomplete information just because that information alone would influence persons who commonly invest to buy or sell shares."

Martin CJ (Le Miere AJA agreeing) similarly observed at paragraphs 87 and 90 that:

"the legislative objective is to ensure that all participants in the market for listed securities have equal access to all information which is relevant to, or more accurately, likely to, influence decisions to buy or sell those securities. It would be entirely contrary to that evident purpose to construe either the listing rule or the statutory provisions as countenancing the disclosure of incomplete or misleading information. ... Jubilee's obligations of disclosure must be assessed having regard to the totality of relevant information."

Viewed in its totality and in its broader commercial/corporate context, in ASX's opinion, confidential information that D has received and rejected C's confidential offer is not something that requires disclosure under Listing Rule 3.1, for the reasons given in the text.

Note also that speculation about a further offer (whether from C or someone else) could also potentially give rise to a false market in D's securities.

If another offer does emerge (whether from C or someone else), it should be disclosed at the appropriate point then (eg, when it is no longer confidential or it reaches the stage of no longer being an incomplete proposal or negotiation).

Again, for the avoidance of doubt, ASX does not consider that Listing Rule 3.1A.3 (the reasonable person test) requires the disclosure of information that D has received and its board has rejected the confidential offer from C, provided the information continues to be confidential.³⁴⁷

3. A week later C submits a revised confidential non-binding indicative offer to D increasing the consideration payable to D's security holders to a 30% premium over the current market price of D's securities. Again, the offer is expressed to be subject to a number of conditions, including satisfactory completion of due diligence by C, and D's board unanimously recommending the scheme to security holders in the absence of a higher offer.

Disclosure would not normally be required. The information clearly concerns an incomplete proposal or negotiation.

4. This time, D's board resolves to enter into negotiations with C about the merger. D's advisers write a private and confidential letter to C confirming that D's board is prepared to recommend such an offer to D's security holders in the absence of a higher offer, subject to the final transaction terms being satisfactory to D's board.

Disclosure would not normally be required. The information still concerns an incomplete proposal or negotiation.

5. C and D sign a confidentiality agreement with a view to C commencing due diligence.

Disclosure would not normally be required. The information still concerns an incomplete proposal or negotiation.

6. C completes its due diligence and indicates to D that it is prepared to proceed with the transaction at the price indicated in its second confidential non-binding indicative offer, subject to the negotiation and signing of a legally binding merger implementation agreement and various other conditions.

Disclosure would not normally be required. The information still concerns an incomplete proposal or negotiation.

7. The parties complete their negotiations and sign a merger implementation agreement.

D would be expected to disclose the material terms of the merger implementation agreement immediately after it is signed.

D could make this disclosure by lodging a copy of the agreement on MAP with a relatively short announcement containing a summary of the key commercial terms of the merger, a general description of the agreement and a statement that a copy of the agreement is available on MAP. Alternatively, D could make this disclosure without lodging a copy of the agreement on MAP by making a more detailed

³⁴⁷ Again, ASX is aware that some entities in the past may have disclosed the fact that they have rejected such a confidential offer because of a view that they or their advisers have taken that a reasonable person would expect such a disclosure under Listing Rule 3.1A.3. ASX does not agree with this interpretation of the reasonable person test.

These transactions often involve multiple offers and counter offers. If Listing Rule 3.1A.3 did require the disclosure of each rejection of an offer, that would make it impossible for entities to have confidential negotiations about a potential control transaction. This in turn could have a chilling effect on the market for corporate control.

In addition, where C's offer has been expressly rejected by D's board, disclosing information about the offer could also cause undue speculation about the likelihood of a follow-up offer by C and potentially give rise to a false market in D's securities.

For these reasons, ASX considers that a reasonable person would not expect D to disclose confidential information that it had rejected the confidential offer from C.

announcement that includes a summary of the material terms of the agreement. In the latter case, the announcement should include sufficient information about the agreement for investors to understand its ramifications and to assess its impact on the price or value of the entity's securities.

Depending on the circumstances, D's announcement might include:

- *the proposed terms of the scheme including, in particular, the consideration payable to D's security holders under the scheme;*
- *the steps and timetable for completion of the scheme;*
- *confirmation that C has or will have the funds necessary to complete its obligations under the scheme; and*
- *any material conditions to the scheme becoming effective.*

8A. As a gloss on this example, suppose that before C approached D about the merger (ie, before step 1 above), an article had appeared in a major newspaper suggesting that the industry was ripe for rationalisation and mentioning that C was looking to expand its operations in Australia and that D might be a potential candidate for takeover. When the market opened on the morning the article was published, there was no noticeable impact on the market price or traded volume of D's securities.

In these circumstances, where the article has not had any impact on the market price or traded volume of D's securities, ASX would normally not require a response to the article. The comment appears to be speculative and based on generally known circumstances in the industry, rather than any specific information about the intentions of C and/or D.

However, if the publication of the article had coincided with a material movement in the market price or traded volume of D's securities, then ASX may contact D to discuss whether it is aware of any information concerning it which has not been announced to the market and which, if known, could explain the abnormal trading in its securities.

8B. As an alternative gloss on this example, suppose that, unbeknownst to D, a rumour starts circulating the market that C is about to make a takeover bid for D. The market price and traded volumes of D's securities increase materially off the back of the rumour and ASX contacts D to discuss whether the rumour is correct and whether it should be making an announcement regarding the rumour under Listing Rule 3.1 or 3.1B. This happens:

- *before C has approached D about the merger (ie, before step 1 above). D advises ASX that it has not been approached by C and that it knows of no other reason to explain the trading in its securities.*

ASX would normally require D to make an announcement to the market referring to the rumour and stating that it has not been approached by C and therefore it can neither confirm nor deny the rumour.

- *after the initial offer by C but before the board of D has met to consider the offer (ie, is, between steps 1 and 2 above). D advises ASX that it has received an offer from C regarding a potential merger but its board has not yet met to consider the offer.*

ASX would normally require D to make an announcement to the market referring to the rumour and stating that it has received an offer from C but that its board has not yet had an opportunity to consider the detailed terms of the offer.

Whether ASX would expect the material terms of the offer by C to be announced at this stage would depend on the extent of the leak of information about the offer. If the substance of the rumour was simply that C is about to make a takeover offer for D, ASX would not expect the material terms of the offer to be disclosed. However, if the rumour included more specific information about the offer (including, for example, the offer price), ASX would expect the material terms of the offer to be disclosed.

- after the initial offer by C has been rejected by the board of D but before the second offer has been received from C (ie, between steps 2 and 3 above). D advises ASX that it has been approached by C regarding a potential merger but that it has rejected the approach.

ASX would normally require D to make an announcement to the market referring to the rumour and stating that it had received an offer from C but that D's board has rejected the offer. In these circumstances, ASX would generally expect the announcement to include the material terms of the offer by C and an explanation as to the reasons why D's board rejected it.

- while the parties are in negotiations over the second offer by C (ie, somewhere between steps 4 and 8 above). D advises ASX that it is in confidential negotiations with C regarding a potential merger.

ASX would normally require D to make an announcement to the market confirming that it is in confidential negotiations with C regarding a merger. ASX would not normally require the terms of the merger to be disclosed at this point, since they are still under negotiation.

If completion of the negotiations between C and D is imminent, D may prefer to request a trading halt so that it can delay its announcement until after the transaction terms have been agreed and it can make a more definitive and informative announcement to the market.

Note that in each of these cases, ASX would generally advise D that in view of the abnormal trading in its securities, unless it can release an announcement straight away responding to the rumour, it ought to request a trading halt to stop the market trading on an uninformed basis.

Note also that in each of these cases, if D was in fact aware of the market rumour and the impact it was having on the trading in its securities, it should be contacting its ASX listings adviser immediately to discuss the situation and not wait to receive an enquiry from ASX. In that way, ASX will be able to provide it with guidance on whether there is or could be a false market in its securities, the scope of the announcement that it might make to address that situation and whether it is appropriate for it to request a trading halt to prevent trading in its securities in the meantime.

Example C – security issue

1. Listed entity E made a major iron ore discovery a few years back and is now proposing to construct a mine and a rail system to transport the ore to the nearest port for export. Its last annual report foreshadowed that it would consider proceeding with the project in the current financial year and that it would require in the order of \$1.5 billion in total funding. E approaches its house broker F in confidence asking it whether it would be prepared to act as lead manager and underwriter of a \$1 billion capital issue (E intends to approach its bankers to provide a debt facility for the balance of the construction cost).

Disclosure would not normally be required. The information clearly concerns an incomplete proposal and is insufficiently definite to warrant disclosure.

2. F suggests to E that for a capital raising of this size a joint lead manager and underwriter would be required. E and F approach G in confidence to act as joint lead manager and underwriter to the issue with F.

Disclosure would not normally be required. The matter is still incomplete and insufficiently definite to warrant disclosure.

3. E, F and G enter into an engagement letter under which E appoints F and G as the joint lead managers and underwriters to the proposed issue. The engagement letter foreshadows that the parties will enter an underwriting agreement in relation to the issue, on terms to be agreed.

Disclosure would not normally be required. The matter is still incomplete and insufficiently definite to warrant disclosure.

4. On F's and G's advice, E proposes to proceed with a renounceable accelerated pro rata entitlement offer of new fully paid ordinary shares to raise \$1 billion and to be offered to shareholders in Australia and New

Zealand and certain other jurisdictions selected by E in accordance with Listing Rule 7.7.1. In accordance with normal underwriting practice, E, F and G propose to wait until just before the announcement of the capital raising to finalise the ratio of the entitlement offer and the price of the new shares to be issued. E, through its lawyers, approaches ASX for confirmation that the timetable for the proposed capital issue is acceptable to ASX. ASX informs E's lawyers in writing that the proposed timetable is acceptable.

Disclosure would not normally be required. The fact that an approach has been made to ASX for confirmation about the timetable for the issue does not affect the confidentiality of the information. The matter is still incomplete and insufficiently definite to warrant disclosure.

5. Prior to market open on the scheduled date for the announcement of the offer, a board meeting of E is held to approve the final terms of the proposed capital issue and to authorise the execution of the underwriting agreement. E, F and G duly execute an underwriting agreement under which F and G agree to manage and fully underwrite the entitlement offer. The agreement specifies the ratio of the entitlement offer and the price of the new shares to be issued. E applies to ASX for, and is granted, a back-to-back trading halt for four trading days to allow it to complete the institutional component of the offer.

E would be expected to disclose the material terms of the offer immediately after the underwriting agreement has been signed. The announcement should include sufficient information about the offer for investors to understand its ramifications and to assess its impact on the price or value of A's securities. Depending on the circumstances, that information might include:

- *the amount and purpose of the capital raising;*
- *the key terms of the entitlement offer;*
- *the key dates for the entitlement offer, including details of the trading halt that has been granted to facilitate the institutional component of the offer;*
- *the fact that the offer is underwritten and by whom;*
- *the material terms of the underwriting agreement, including any material conditions precedent or termination events;*
- *an update on its negotiations with its bankers regarding the debt facility for the balance of the construction cost;*
- *the impact of the capital issue, the debt facility and the construction project on E's financial position; and*
- *any other material information relevant to whether shareholders should take up their entitlement.*

6. Prior to the end of the trading halt, E successfully closes the institutional entitlement component of the capital issue.

Disclosure would be required. The details to be disclosed should include the dollar amount raised in the institutional component, the number of new shares taken up by institutional shareholders pursuant to their entitlement, the number of new shares sold in the bookbuild for any shortfall and the clearing price for the bookbuild. If the bookbuild has involved the bookrunner entering into:

- *any concessionary fee or other arrangements which have had the result that the effective issue price paid by some allottees differs materially from the bookbuild price announced by the entity;*
- *any arrangements 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 entity and which is not received by other allottees; or*

- any other arrangements with associates of the entity or the bookrunner to avoid a shortfall, or the appearance of a shortfall, in the bookbuild,

then information about those arrangements should also be disclosed.³⁴⁸

7. Approximately 4 weeks later E successfully closes the retail entitlement component of the capital issue.

Disclosure would be required. The details to be disclosed should include the dollar amount raised in the retail component and the number of new shares taken up by retail shareholders pursuant to their entitlement.

8. The retail shortfall bookbuild commences after market close and closes overnight.

Disclosure would be required. The details to be disclosed should include the number of new shares sold in the bookbuild for the retail shortfall and the clearing price for the bookbuild. Again, if the bookbuild has involved the bookrunner entering into:

- any concessionary fee or other arrangements which have had the result that the effective issue price paid by some allottees differs materially from the bookbuild price announced by the entity;
- any arrangements 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 entity and which is not received by other allottees; or
- any other arrangements with associates of the entity or the bookrunner to avoid a shortfall, or the appearance of a shortfall, in the bookbuild,

then information about those arrangements should also be disclosed.³⁴⁹

- 9A. As a gloss on this example, suppose that at some time prior to the announcement of the issue (ie, before step 5 above), a short article appeared in a major newspaper commenting that E is rumoured to be looking to raise in excess of a billion dollars to fund its iron ore project. When the market opened on the morning the article was published, there was no noticeable impact on the market price or traded volume of E's securities.

In these circumstances, where the article has not had any impact on the market price or traded volume of E's securities, ASX normally would not require a response to the article. The comment appears to be repeating information that the market is already aware of from the material in E's annual report.

However, if the publication of the article had coincided with a material movement in the market price or traded volume of E's securities, then ASX may contact E to discuss whether it is aware of any information concerning it which has not been announced to the market and which, if known, could explain the abnormal trading in its securities. ASX would expect E to disclose to it the fact that it is about to undertake a major capital raising, which in turn would lead to a discussion on whether an announcement might be required because the material movement in the market price or traded volumes of its securities might indicate that this information is no longer confidential or that there is, or could be, a false market in its securities.

- 9B. As an alternative gloss on this example, suppose that the day before E was due to announce its capital raising (ie, just before step 5 above), an article appeared in a major newspaper stating that E will shortly announce an underwritten billion dollar rights issue.

Disclosure would be required. While the matter is still incomplete, given the specificity and accuracy of the information in the newspaper article, it has to be assumed that information about the capital raising is no longer confidential. Since the setting of the offer terms and the execution of the underwriting agreement are imminent, E may prefer to request a trading halt so that it can delay its announcement until after the

³⁴⁸ See the materials under '4.12 Requirements for additional information' in Guidance Note 30 [Notifying Changes in Issued Securities and Applying for Quotation of New or Additional Securities and Securities and](#) the Annexure to Guidance Note 1 [Applying for Admission – ASX Listings](#).

³⁴⁹ See the materials cited in note 348.

underwriting terms have been agreed and it can make a more definitive and informative announcement to the market. In its request for a trading halt, E would state that the reason for the trading halt is that it is in the final stages of setting the terms for a renounceable accelerated pro rata entitlement offer of securities.³⁵⁰

Example D – material mineral discovery

1. Listed entity H, a junior mining exploration company, has recently acquired a tenement from another entity. When it announced the acquisition to the market, it highlighted that the previous owner had conducted a VTEM³⁵¹ survey which had indicated near surface nickel-copper sulphide mineralisation and that it was proposing to undertake a 5 hole drilling campaign to test the prospectivity of the tenement. The first two holes appeared to contain small traces of copper sulphide mineralisation. When the third hole was completed, however, it was apparent from a visual inspection of the drill core that there was a significant nickel and copper sulphide intercept close to the surface.

Whether disclosure is required at this stage would depend on the circumstances. In many cases, information derived solely from a visual inspection of a core sample and before it has been assayed and analysed, would be a matter of supposition and insufficiently definite to warrant disclosure. In those circumstances, disclosure of the drilling results would not normally be expected until the drill core had been assayed and analysed.

There may be cases, however, depending on the style of mineralisation and what is apparent from the visual inspection, where an announcement would be appropriate at this stage. In those cases, the announcement should make it clear that it is based solely on a visual inspection of the core sample and that the sample is yet to be assayed and analysed. It would generally be inappropriate to make any comments about the grade or quality of the mineralisation in the announcement in the absence of an assay.

Regardless of whether the announcement is made on the basis of an assay and analysis or a visual inspection of the core sample, the announcement must comply with the requirements in Chapter 5 and Appendix 5A³⁵² of the Listing Rules for reporting exploration results.³⁵³

If H has any concerns that information about the exploration results might leak ahead of the announcement being made to the market (eg while the core sample is being assayed and analysed or while an announcement is being prepared that complies with the requirements for reporting exploration results in Chapter 5 and Appendix 5A of the Listing Rules), H should request a trading halt or voluntary suspension to prevent a potential false market in its securities.

2. The core samples for all 3 holes are sent for analysis. The assay results confirm the presence of high grade sulphides in a wide intercept. H's CEO immediately instructs the company secretary to prepare a draft announcement about the drilling results to be reviewed and settled by H's geologist (a 'competent person' under the JORC Code) and approved by H's board of directors. She also instructs the company secretary to keep an eye on the company's share price for any signs that news about the discovery may have leaked. The company secretary and the geologist promptly and diligently work on the announcement, making sure that it complies with the requirements in Chapter 5 and Appendix 5A of the Listing Rules for reporting exploration results. The company secretary convenes a meeting of H's board on short notice to consider the draft announcement. H's board reviews the draft announcement and approves its release.

³⁵⁰ To the extent that this trading halt has had to be applied for earlier than intended, it would utilise part of the maximum period of four trading days that E can apply for by way of a back-to-back trading halt. If E needed a longer period to finalise the institutional component of the offer, it would need to request a voluntary suspension to cover that longer period.

³⁵¹ VTEM refers to a Versatile Time Domain Electromagnetic survey.

³⁵² The Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves (otherwise known as the JORC Code).

³⁵³ Including, in particular, Listing Rule 5.7 and clauses 9, 10, 11, 18 and 19 of the JORC Code. See also the ethics ruling posted by the Australian Institute of Geoscientists on its website on 29 October 2015 entitled Reporting Sulphide Mineral Observations in Drilling Intersections (available online at: <https://www.aig.org.au/blog/2015/10/29/the-ethics-column-reporting-sulphide-mineral-observations-in-drilling-intersections/>).

Disclosure would be required immediately after the board has approved the announcement.

This example recognises that the board of a junior mining exploration company is likely to want to, and a reasonable person would expect it to, approve any announcement of material exploration results before it is released. In a case such as this, the requirement to disclose information immediately can accommodate the need for a board to review and approve a continuous disclosure announcement, provided it is done promptly and without delay.³⁵⁴

Again, if H has any concerns that information about the exploration results might leak ahead of the board approving the announcement, H should request a trading halt or voluntary suspension to prevent a potential false market in its securities.

3. H conducts a further drilling program with a view to proving up a mineral resource. As each set of material drill results are received, H follows the process outlined in 2 above and releases information about the results to the market.
4. H's geologist determines that there is now enough drilling information to estimate a mineral resource and begins the work needed to do that. Upon receipt of the geologist's resource estimate, H instructs the company secretary to prepare an announcement that complies with the requirements in Chapter 5 and Appendix 5A of the Listing Rules for reporting a mineral resource. The company secretary convenes a meeting of H's board on short notice to consider the draft announcement. The announcement is tabled and approved at a board meeting.

Disclosure would be required immediately after the board has approved the announcement.

5. As a gloss on this example, suppose that at some time after the initial core samples had been inspected but prior to the announcement of the drill results (ie, between steps 1 and 2 above), H notices that there is a sudden spike in the market price and trade volumes of its securities. There are no other reasons to explain the spike in price and volume apart from a suspicion that news about the drill results may have leaked.

In these circumstances, it is likely that ASX will contact H to ask whether it is aware of any information concerning it which has not been announced to the market and which, if known, could explain the abnormal trading in its securities. In anticipation of this, H should be contacting its listings adviser to request a trading halt so that trading in its securities is not taking place in a false market while it continues the work involved in preparing the announcement of its drill results.

Example E – material law suit

1. Listed entity J, a mining exploration company whose principal asset is a particular mining tenement, is served with legal proceedings by a plaintiff K challenging the validity of J's title and asserting a competing claim to the tenement.

Disclosure would be required.³⁵⁵ The information does not fall within any of the categories of information excluded from disclosure under Listing Rule 3.1A.1. The point at which disclosure would be required would depend on the circumstances. If J has sufficient facts at hand to assess that information about the legal proceedings is market sensitive (noting that the proceedings on their face appear to be highly significant as they threaten J's principal asset), the disclosure would be required immediately after the service of the legal proceedings. If J doesn't have sufficient facts at hand to make that assessment (which might be the case, for example, if the proceedings have "come out of the blue" and J needs legal advice to assess whether K's

³⁵⁴ See '4.8 [Does the board need to approve an announcement under Listing Rule 3.1?](#)~~Does the board need to approve an announcement under Listing Rule 3.1?~~' on page 20.

³⁵⁵ Note the observation of Nicholas J in *ASIC v Vocation Limited (In Liquidation)*, note 22 above, at paragraph 587 that:

"The assessment of materiality takes place on an *ex ante* basis. Hence, a company may be required to disclose the existence of a lawsuit that would, if decided against the company, substantially reduce its earning capacity notwithstanding that the outcome of the lawsuit is not known at the date of its commencement. That is not to say that disclosure would be required if such a lawsuit could reasonably be characterised as bound to fail."

claim has any merit or is totally frivolous), the disclosure would be required immediately J has, or ought reasonably to have, collected sufficient facts to be able to make that assessment.³⁵⁶

The details to be disclosed would also depend on the circumstances but might include:

- *a summary of the matters raised and the relief being sought by K in the legal proceedings; and*
- *whether J intends to defend the proceedings.³⁵⁷*

2. J instructs its lawyers to defend the claim. They conduct a detailed investigation into the matter and provide written advice to J about the relative merits of the claim.

Alternative A: J's lawyers advise that K's claim has some chance of success and that it would be prudent for J to attempt to settle the claim at the earliest opportunity.

Disclosure would not normally be required. The advice has been prepared for internal management purposes (the conduct of the litigation). A reasonable person would not expect the advice to be disclosed.³⁵⁸

Alternative B: J's lawyers advise that K's claim has very little merit and almost no chance of success.

Disclosure would not normally be required. The advice has been prepared for internal management purposes (the conduct of the litigation). A reasonable person would not expect the advice to be disclosed.

J, of course, may choose voluntarily to disclose the fact that it has received legal advice that the claim has little merit, even though it is not legally obliged to do so. However, it should be aware that if it does so, that will potentially waive any legal professional privilege it might otherwise be able to assert in the advice.

3. In due course, J's lawyers commence discussions with K's lawyers with a view to settling the claim.

Disclosure would not normally be required. The information concerns an incomplete negotiation and is insufficiently indefinite to warrant disclosure.

4. After some months of negotiation, J and K, through their lawyers, reach an agreement to settle the claim. J and K execute a deed to record and give effect to the settlement. The deed includes a clause requiring the settlement to be kept confidential, save to the extent that disclosure is required by law.

Alternative A: reflecting the fact that that the claim had some chance of success, the settlement provides for K to withdraw its claim in consideration for a "free" issue of ordinary shares in J to K equivalent to 15% of J's issued capital and a cash payment by J to K.

Disclosure of the material terms of the settlement would be required immediately after the deed of settlement is signed.³⁵⁹ Depending on the circumstances, this might include:

- *the fact that the claim has been settled;*

³⁵⁶ See '4.4 [When does an entity become aware of information?](#)~~When does an entity become aware of information?~~ on page 13 and, in particular, the example given in note 41.

³⁵⁷ It would be imprudent for H to include in the announcement the statement that not infrequently appears in such announcements that the claim has little or no merit and therefore will be vigorously defended, unless H has received considered legal advice to that effect. If it makes this statement and it transpires that the claim in fact does have some merit, H may leave itself open to an action for misleading or deceptive conduct under section 1041H.

³⁵⁸ See '5.9 [Listing Rule 3.1A.3 – the reasonable person test](#)~~Listing Rule 3.1A.3 – the reasonable person test~~' on page 40.

³⁵⁹ In this case, given the confidentiality clause in the deed of settlement, it would generally not be appropriate to lodge a copy of the deed on MAP. While the confidentiality clause cannot prevent the disclosure of information required to be disclosed under Listing Rule 3.1, the deed may well contain other information that is not be required to be disclosed under Listing Rule 3.1 and the publication of that information on MAP could give rise to a breach of the confidentiality clause.

- *the number of ordinary shares to be issued by J to K (this information does not fall within the confidentiality provision in the deed since it is plainly market sensitive and therefore required to be disclosed by law under Listing Rule 3.1 and section 674);³⁶⁰*
- *if the information about the cash payment by J to K is market sensitive,³⁶¹ the amount of that cash payment (again, if this information is market sensitive, it does not fall within the confidentiality provision in the deed since it is required to be disclosed by law under Listing Rule 3.1 and section 674); and*
- *the impact of the settlement on J's financial position.*

Alternative B: reflecting the fact that that the claim had very little merit, the settlement provides for K to withdraw its claim without any compensation from J and for each party to bear its own legal costs.

Disclosure of the material terms of the settlement would be required immediately after the deed of settlement is signed. Depending on the circumstances, this might include:

- *the fact that the claim has been settled; and*
- *that the terms of the settlement are confidential but it is not expected that the settlement will have any material impact on J's financial position.³⁶²*

Example F – material difference in earnings compared to earnings guidance

1. Listed entity L, a relatively small manufacturing company outside of the ASX 300 that uses imported components to produce goods for the local market, has published earnings guidance for the current financial year stating that it expects its net profit after tax to be in the region of \$10 million to \$11 million. Ten months into the financial year, it becomes reasonably apparent that L's net profits for the year will be less than \$9 million due to poorer than expected trading conditions and adverse movements in key exchange rates over the year to date. Mindful that this is more than a 10% difference to its published earnings guidance and of ASX's percentage guidelines on when an entity should consider updating its earnings guidance, the board of L determines that it ought to publish updated earnings guidance and asks management to prepare a detailed earnings forecast for the financial year and a draft announcement with revised guidance for its review.

The information in this case that L's earnings are likely to be materially lower than its published earnings guidance by 10% or more will have to be announced under Listing Rule 3.1 if that information is market sensitive (ie, if a reasonable person would expect the information to have a material effect on the price or value of L's securities). A variation in earnings of this magnitude may, or may not, be market sensitive, depending on the circumstances.³⁶³ For example, if the market regards this as a "one-off" or temporary situation and that trading conditions and exchange rates are likely to be more favourable in future years, then the lower than expected result this year may not have a material effect on the price or value of L's securities, especially if it is not expected to affect L's final dividend for the year or its dividend for future years.

If Listing Rule 3.1 does apply, it will require information about the revised guidance to be disclosed to the market immediately (ie, promptly and without delay) upon L becoming aware of it. This in turn will require the detailed earnings forecast and draft announcement to be prepared, reviewed and approved by the board and the approved announcement released to the market promptly and without delay.

³⁶⁰ It is also separately disclosable to ASX under Listing Rule 3.10.3 and to ASIC under section 254X.

³⁶¹ If the information about the cash payment by J to K was not market sensitive (eg, it was only a relatively small amount), it would be sufficient for the announcement to state that the settlement also provides for a cash payment by J to K but that the amount is not considered material and is confidential.

³⁶² This assumes that the legal costs that J has incurred to date, and which J must bear under the terms of the settlement, will not have a material impact on J's financial position.

³⁶³ See the discussion under '7.3 [Market sensitive earnings surprises](#)~~Market sensitive earnings surprises~~' on page 48.

Even if Listing Rule 3.1 does not apply, L may still have an exposure under section 1041H if it allows its published guidance to stay on foot without correction. To help minimise that exposure, it would be prudent for L to prepare the detailed earnings forecast and draft announcement and have them reviewed and approved by the board and the approved announcement released to the market promptly and without delay.

2. L's management completes a detailed earnings forecast and a draft announcement as quickly as it reasonably can in the circumstances, having regard to the need to ensure that the forecast is prepared with appropriate care and diligence and is not misleading. The forecast confirms that L's net profits for the financial year are likely to be in the region of \$7 million to \$8 million. The draft announcement states that L is revising its earnings guidance for the current year from net profit after tax being in the range of \$10 million to \$11 million to it being in the range of \$7 million to \$8 million. Notwithstanding the reduction in earnings, the draft announcement states that L still expects to pay a final dividend for the year of the same size as the previous year. It also explains the factors that have led the entity to revise its profits downward and, in accordance with ASIC's guidance,³⁶⁴ sets out the material assumptions or qualifications that underpin the revised earnings guidance.

L's secretary convenes a board meeting on short notice to consider the revised detailed earnings forecast and draft announcement. L's board carefully vets the figures in the detailed earnings forecast and the assumptions underpinning it. It also reviews the draft announcement and approves its release.

*The announcement should be disclosed to the market immediately after the board has approved the detailed earnings forecast and announcement.*³⁶⁵

Example G – material difference in earnings compared to consensus estimates

1. Listed entity M is in the business of providing contract construction, engineering and operational services to mining businesses. It has a policy of not providing earnings guidance. It is covered by 5 sell-side analysts. M's investor relations officer monitors their forecasts and provides a regular report to the board with information about their individual forecasts and the consensus estimate.

The estimates of the 5 analysts for M's net profit after tax for the current financial year presently range from \$450 million to \$550 million, with the consensus estimate being \$500 million. Until recently, this has been broadly in line with M's internal forecast for its net profit after tax for the current financial year of \$475 million. However, 9 months into the financial year, one of M's major projects, which was close to completion and on which it was expecting to make a substantial profit, is hit by a severe cyclone. The damage is considerable and it is reasonably apparent that it will have a significant impact on the profitability of the project and, because of that, is likely to have a material effect on the price or value of M's securities. However, M needs to conduct an on-site assessment of the extent of the damage and review its contractual obligations to repair the damage, its liability to penalties for late delivery and its ability to make an insurance claim, before it can put a figure on the financial impact of the cyclone.

*M is aware of market sensitive information (the fact that its major project has suffered considerable damage caused by a severe cyclone and that this is likely to have a material effect on the price or value of its securities). M therefore should immediately give that information to ASX under Listing Rule 3.1 without waiting for the results of the review.*³⁶⁶

Since M doesn't yet know the financial impact of the cyclone, its announcement need not say anything on that issue at this point beyond saying that it will be conducting a review to determine the extent of the damage caused by the cyclone and that it will provide an update to the market after it has completed that

³⁶⁴ See note 122 above and the accompanying text.

³⁶⁵ This assumes that a reasonable person would expect information about the revised earnings forecast to have a material effect on the price or value of L's securities and therefore the information has to be disclosed immediately under Listing Rule 3.1. Even if there is some doubt as to whether that is the case, L should disclose the information immediately in order to minimise its exposure under section 1041H for having potentially misleading guidance on foot.

³⁶⁶ See ASIC Media Release 12-53MR, referred to in note 257 above.

review.³⁶⁷ The announcement might also usefully mention the likely timeframe for the review and when an update to the market can be expected.

Note that to comply with the timing requirements that underpin Listing Rule 3.1, the review should be conducted and the results announced promptly and without delay.

2. The review identifies that M is likely to incur additional costs on the project of \$200 million due to penalties for late delivery and other costs not covered by insurance. M's management is now projecting net profit after tax for the current year of \$270 million. A meeting of M's board is convened on short notice to consider the results of the review and a draft market announcement prepared by management to announce the results of the review. The board determines that information about the additional costs is likely to have a material effect on the price or value of M's securities. It approves the draft announcement with some minor modifications and instructs management to release it to the market immediately. Having regard to its policy of not providing earnings guidance, M's board considers it sufficient at this point to announce the additional costs to be incurred on the project and that there is presently no need for M to provide any earnings guidance to the market.

M is aware of market sensitive information (the fact that it now expects to incur additional costs on the project of \$200 million and that this is likely to have a material effect on the price or value of its securities). The announcement about those additional costs should be disclosed to the market under Listing Rule 3.1 immediately after the board has approved it.

3. M's management is now projecting net profit after tax for the current year of \$260 million, reflecting a slow-down in business activity in the sector in the past month or so.

Alternative A: Within a reasonable period of the announcement about the increased costs, all of the analysts covering M revise their earnings forecasts. They now range from \$250 million to \$350 million, with consensus being \$300 million. M's board considers this information and whether it should update the market about its revised internal profit projection. Noting that its internal profit projection is within 15% of consensus and having regard to ASX's percentage guidelines on when an entity should consider announcing a difference to consensus and its policy of not providing earnings guidance, M's board determines that a market update is not warranted at this point.

ASX would have no objections to the approach taken by M. ASX would recommend that M's board carefully minute its discussion of the issue and the reasons it considered that a market update was not warranted at this point.

Alternative B: Within a reasonable period of the announcement about the increased costs, 4 of the 5 analysts covering M revise their earnings forecasts to be in the range of \$250 million to \$350m, with the average of their forecasts being \$300 million. One analyst, however, has not updated its published forecast and it still stands at \$550 million, lifting the published consensus figure to \$350 million. M's board considers this information and whether it should update the market about its revised internal profit projection. While it notes that its internal profit project is more the 25% away from consensus, M determines that it should disregard the earnings forecast of the tardy analyst and only have regard to the updated forecasts of the other four analysts in ascertaining the market's expectations for its earnings. Noting that its internal profit projection is within 15% of the adjusted consensus number of \$300 million and having regard to ASX's percentage guidelines on when an entity should consider announcing a difference to consensus and its policy of not providing earnings guidance, M's board determines that a market update is not warranted at this point.

ASX would have no objections to the approach taken by M. Again, ASX would recommend that M's board carefully minute its discussion of the issue and the reasons it considered that a market update was not warranted at this point.

³⁶⁷ See ASIC Media Release 12-53MR, referred to in note 257 above.

Alternative C: Within a reasonable period of the announcement about the increased costs, all of the analysts covering M revise their earnings forecasts downwards. However, they do not appear to have appreciated the effect of the slow-down in business activity in the sector in the past month or so and all have rosier assumptions than M on its profit for the balance of the financial year. Their updated forecasts now range from \$300 million to \$450 million, with consensus being \$350 million. M's board considers this information and whether it should update the market about its revised internal profit projection. Noting that its internal profit projection is now more than 25% away from consensus and having regard to ASX's percentage guidelines on when an entity should consider announcing a difference to consensus, the board of M determines that it ought to notify the market that its profit will be less than consensus and asks management to prepare a detailed profit forecast for the financial year validating the \$260 million internal projection and a draft announcement to the market for its review.

M's management completes a detailed profit forecast and a draft announcement as quickly as it reasonably can in the circumstances, having regard to the need to ensure that the forecast is prepared with appropriate care and diligence and is not misleading. The forecast confirms that M's net profit after tax for the financial year is likely to be in the region of \$255 million to \$265 million. The draft announcement states that M expects its net profit after tax for the year to be less than the current consensus and is projecting it to be in the region of \$255 million to \$265 million. Notwithstanding the reduction in earnings, the draft announcement states that L still expects to pay a final dividend for the year of the same size as the previous year. It also explains the factors behind the decrease in expected profit and, in accordance with ASIC's guidance,³⁶⁸ sets out the material assumptions or qualifications that underpin the profit projection.

M's secretary convenes a board meeting on short notice to consider the detailed profit forecast and draft announcement. M's board carefully vets the figures in the detailed profit forecast and the assumptions underpinning it. It also reviews the draft announcement and approves its release.

*The announcement should be disclosed to the market immediately after the board has approved the detailed profit forecast and announcement.*³⁶⁹

It should be noted that the information in this case that M's forecast earnings are going to be lower than consensus forecasts will only have to be announced under Listing Rule 3.1 if that information is market sensitive (ie, if a reasonable person would expect the information to have a material effect on the price or value of M's securities). A variation in earnings of this magnitude may, or may not, be market sensitive, depending on the circumstances.³⁷⁰ For example, if the market regards this as a "one-off" or temporary situation and that trading conditions are likely to be more favourable in future years, then the lower than expected result this year may not have a material effect on the price or value of M's securities, especially if it is not expected to affect M's final dividend for the year or its dividend for future years.

Example H – other examples illustrating some of the principles in Guidance Note 8

- 1. Anticipate what might happen if information about a confidential transaction leaks and have a template announcement ready that can be updated and issued straight away:**

Example H1: *listed entity N is in confidential negotiations with overseas entity O regarding a merger of the two entities. N recognises that, even with careful precautions to preserve the confidentiality of the negotiations, there is always a risk that information about the transaction could leak. N monitors the market price of its securities, newswire services, the press, certain social media sites that it is aware of that regularly include postings about it, and enquiries from analysts and journalists for signs of information leakage. In the final stages of negotiations, a press article appears referring to the transaction. N understands that this means that information about the transaction is no longer confidential and that it is therefore no longer able*

³⁶⁸ See note 122 above and the accompanying text.

³⁶⁹ This assumes that a reasonable person would expect information about the revised earnings forecast to have a material effect on the price or value of L's securities and therefore the information has to be disclosed immediately under Listing Rule 3.1. Even if there is some doubt as to whether that is the case, L should disclose the information immediately in order to minimise its exposure under section 1041H for having potentially misleading guidance on foot.

³⁷⁰ See the discussion under '7.3 [Market sensitive earnings surprises](#)~~Market sensitive earnings surprises~~' on page 48.

to rely on the carve-outs from disclosure in Listing Rule 3.1A. It must therefore immediately make an announcement about the transaction under Listing Rule 3.1.

N anticipated this possibility when it commenced negotiations with O and had prepared a draft letter to ASX requesting a trading halt and a draft announcement stating that it is in merger discussions with O. It has been keeping the draft announcement updated as the negotiations have progressed. The current version states that N and O are in the final stages of negotiation and expect to be in a position to make a further announcement about a concluded transaction within the next 48 hours.

N is therefore able to issue an immediate announcement about the fact that it is in negotiations with O and to request an immediate trading halt. This will allow it time to finalise those negotiations and to make a more complete announcement about the transaction when the negotiations have concluded.

2. Where you have advance notice of an event that is likely to require an announcement under Listing Rule 3.1, prepare a draft announcement ahead of time that can be issued straight away:

Example H2: *listed company P is proposing a scheme of arrangement to merge with another entity. It has approached the court for orders convening the necessary scheme meetings under section 411(1) of the Corporations Act. The convening of the meetings has been opposed by some security holders. The court is due to hand down its decision on whether or not to convene the meetings at 2.15 pm.*

Being proactive and anticipating the need to issue an announcement to the market about the court's decision, P's company secretary prepares 2 draft announcements ahead of time – one announcing that the court has granted orders convening the scheme meetings and outlining the timetable for the meetings, and the other announcing that the court has declined those orders and outlining what that means for the company. In this way, P is in a position to release an announcement to the market straight away, regardless of how the court rules on the matter.

See also Example H3 below.

3. Where the event that gives rise to the need to make an announcement is within your control, be sensitive to the hours when licensed markets in Australia are trading and, where possible, try to ensure that the event happens and the announcement is made before trading commences or after trading has closed, to avoid disrupting the normal course of trading on licensed markets:

Example H3: *listed entity Q has been negotiating the purchase of a material business. It has not yet made an announcement about the transaction because it has been confidential, incomplete and subject to negotiation. The outstanding commercial points being negotiated are finally agreed late one afternoon and Q's lawyers are instructed to finalise the transaction agreements with the lawyers for the vendor and to have them ready for signing the following morning. Q's financial advisers are instructed to prepare a draft ASX announcement and a draft press release reflecting the final negotiated outcome and to circulate them to all parties for approval overnight.*

Knowing that the transaction will need to be announced immediately after the transaction agreements are signed, Q arranges for the signing to take place at 9.00 am Sydney time and for a press conference to take place at 9.30 am. As soon as the transaction agreements are signed, Q transmits the agreed ASX announcement to the ASX Market Announcements office and shortly thereafter receives back a confirmation that it has been released to the market. Q then holds its press conference, as scheduled, at which it releases the agreed press announcement.³⁷¹

Since this has all taken place before the market opens, Q has been able to ensure the orderly release of information without having to request a trading halt. Licensed securities markets will have an opportunity to

³⁷¹ Any material information in the press release in this example must also be included in the ASX announcement. Also, if any material information is revealed in response to questions at the press conference that is not contained in the ASX announcement, Q would be obliged to make an immediate announcement to ASX regarding that information.

absorb the information and to reflect it appropriately in the price of Q's securities when trading commences later that morning.

4. **If a market sensitive announcement has to be delayed for any reason and the market will be trading during any part of the delay, request a trading halt to avoid having the market trade on an uninformed basis:**

Example H4: *listed entity R has been negotiating a major contract with the Australian government. The contract is to be signed at 9.00 am Sydney time on a trading day and the relevant Minister has scheduled a major press conference for midday Sydney time on that day to announce the contract. Protocol dictates that the contract should be announced by the government and R therefore considers it appropriate to delay issuing its announcement to the market until immediately after the Minister has held the press conference.*

R should request a trading halt before the commencement of trading on the morning the contract is signed, recognising that the obligation to announce the signing of the contract would have arisen at the time it was signed.

5. **An example of a situation where a reasonable person would expect information to be disclosed under Listing Rule 3.1A.3:**

Example H5: *listed exploration company S has been conducting an infill drilling program. The assay results for the first five completed drill holes were very promising. S announced them to the market as soon as they became available and its share price increased by 20% and there was a significant uptick in the traded volume of its shares.*

S has just completed drilling on the next five holes, which are in close proximity to the first five. These drill holes have returned assay results which are far less promising, casting real doubts on the size and economic viability of the deposit.

One of S's directors asserts that the information from the latest holes is not sufficient for S to be able to form a view about the market sensitivity of the information and that S needs to drill further holes to have a more complete picture of the size and grade of the deposit before making any further announcement to the market.

Even if this assertion was correct, S would be expected to make an immediate announcement regarding the latest assay results. In these circumstances, given the significant impact that the original promising assay results had on the market price of its shares and the far less promising results from holes in close proximity, a reasonable person would expect S to make such a disclosure.

Example I – Data Breach

1. **Listed Entity T holds a significant amount of personal information about its customers. This includes sensitive information provided by customers in the ordinary course of T's business and financial information such as credit card details. T's IT team, while conducting a routine system review, finds that there has been a breach of T's systems and that some information is likely to have been accessed. It is not yet clear what information has been accessed and whether anything has been taken or "exfiltrated". T routinely holds the personal information it has about its customers in encrypted form. T urgently calls in a forensic expert to assess the situation and provide further assistance, but has kept information about the breach confidential. T's material business functions continue to operate as normal.**

Disclosure would not normally be required at this time.

As with any other matter, the first step is careful consideration of whether, based on what T is aware of at this stage, the matter is materially price sensitive. Based on the limited information available, T is not yet in a position to determine that the breach is material to the price or value of T's securities. However, even if it

was, at this stage the three requirements of the Listing Rule 3.1A exception³⁷² are met, including that the matter is insufficiently definite to warrant disclosure.

T has only just identified the system breach and has incomplete information about the situation which remains highly uncertain. Without more information about the circumstances of the incident (including the potential implications of the incident), it is too early to form any assessment of whether the breach may lead to any adverse consequences for T and, if so, what they might be. T also believes that all of the personal information stored on its system is routinely encrypted, and on that basis T believes that any personal information, to the extent it may have been exfiltrated, will not be able to be used by whoever has breached the system.

2. Shortly after this discovery, one of T's directors receives a ransom demand by email. The sender claims they will publicly release personal information obtained from T's system if T does not pay a ransom. However, the sender states that if T does not tell anyone about the breach and pays the ransom, the sender will ensure that the information is destroyed and will not release it. The sender has also threatened that if T publicly discloses that an attack has occurred, the sender will release some sample information publicly to show it is serious. The forensic expert is continuing to work to determine whether any data was exfiltrated and indicates that it appears all the relevant data that was accessed was encrypted.

Disclosure would not normally be required at this time. It is still not yet clear whether the breach is materially price sensitive. The requirements of the Listing Rule 3.1A exception also continue to be met, including that information about the breach remains insufficiently definite to warrant disclosure.

However, ASX would expect T to continue the forensic work with urgency to determine whether the matter is materially price sensitive and whether a disclosure obligation has been triggered, bearing in mind that under the Listing Rules an entity becomes aware of information if, and as soon as, an officer of the entity has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of the entity³⁷³.

3. Given the data breach potentially relates to personal information that includes the sensitive information of customers, T engages with relevant regulators in relation to the data breach. It does so on a confidential basis.

Disclosure is not required at this time. It is still not yet clear whether the breach is materially price sensitive. The requirements of the Listing Rule 3.1A exception also continue to be met.

If information about the breach is materially price sensitive, T will not be able to rely on the Listing Rule 3.1A exception once confidentiality of the fact of the breach is lost. However, engagement with regulators or with ASX on a confidential basis in this context does not cause confidentiality to be lost for the purpose of Listing Rule 3.1A.

T should prepare a draft announcement that can be rapidly released if at any point the breach ceases to be confidential and disclosure is required (or T otherwise considers disclosure to be appropriate).

The content of a market announcement by T will depend on all of the facts and actual knowledge at the time. However, ASX would expect that a draft announcement prepared by T at this time, based on the facts above, might include a description of what has occurred, the material facts that T knows about the breach, any material impact on T's operations or financial position that T is aware of at the relevant time, the action that T is taking in response to the breach, and when T expects to be in a position to update the market.

³⁷² See '5 Listing Rule 3.1A – the exceptions to immediate disclosure' [on page 34](#). In brief, the information must (1) come within one of the categories of excluded information in Listing Rule 3.1A.1 (such as, in this case, information that "comprises matters of supposition or is insufficiently definite to warrant disclosure"), (2) be confidential and (3) be information that a reasonable person would not expect to be disclosed.

³⁷³ See '4.4 When does an entity become aware of information?' [on page 13](#), including the guidance [on page 14](#) that "the extension of an entity's awareness to information that an officer ought reasonably to have come into possession of will effectively require the entity, when it is on notice of information that could potentially be market sensitive, to make any further enquiries or obtain any expert advice needed to confirm its market sensitivity within a reasonable period".

Again based on the facts above, ASX would expect that the material facts included in the draft announcement at this time might include T's awareness of the type of data accessed, whether data has been exfiltrated, the number of customers or accounts impacted, whether data was accessed through T's systems or a third party system, and whether the incident is continuing. It will be important for T to be clear that it is still investigating the breach and does not at this stage know the full extent of the breach or what all of the impacts might be.

4. The forensic expert now confirms to T that, despite previous indications, some unencrypted personal information has been exfiltrated, including sensitive information of customers. It is still uncertain precisely how much information was taken. T is advised by its lawyers that T will need to formally notify the Office of the Australian Information Commissioner (OAIC)³⁷⁴ that sensitive information has been taken from T's systems, and T will need to notify the affected individuals.

Disclosure is not required at this time.

It is still not yet clear whether the breach is materially price sensitive. The extent of the breach still remains highly uncertain. Even if T determined that information about the breach was materially price sensitive, the requirements of the Listing Rule 3.1A exception continue to be met.

However, at the point when T notifies the affected individuals, the breach will cease to be confidential, and T will no longer be able to rely on the Listing Rule 3.1A exception, remembering that all three requirements of the exception must be met in order for T to rely on it (see footnote 372).

Accordingly, at the time when T intends to notify affected individuals, it would be prudent for T to first release a market announcement (and receive confirmation that it has been released to the market) to ensure that it complies with its Listing Rule 3.1 obligations.

If T chooses not to make a market announcement and ASX detects abnormal trading in T's securities or ASX considers that there is or is likely to be a false market in T's securities (for example, as a result of rumours or commentary in the media about the breach), ASX may require T to make an announcement about the breach even if T does not consider the breach to be materially price sensitive. ASX will expect T to act particularly quickly in this situation³⁷⁵.

In preparation for this, it would be prudent for T to update its draft announcement based on the facts of which it is now aware, including that T has been advised that sensitive personal information of some customers has been taken, and T's arrangements for notifying impacted customers.

5. The next day, the forensic expert confirms to T that the cyber criminal has exfiltrated unencrypted personal information about a large number of T's customers including sensitive information provided by customers in the ordinary course of T's business and financial information such as credit card details. T is also approached by a journalist saying that they have had reports of a cyber incident and asking for a comment for an article they are planning to write.

Disclosure to the market is now required.

The fact that this information about a large number of customers has been accessed is new information that is likely to have a material effect on the price or value of T's securities. This is now sufficiently certain to warrant immediate disclosure even though T does not yet have complete information from the forensic review.

While the expert has not yet completed its investigation, ASX expects an announcement would be made to inform the market at this stage.

³⁷⁴ The timing of the notification to the OAIC in this example is for illustration purposes only. This Guidance Note does not provide any views or guidance as to an entity's obligations under the *Privacy Act 1988* (Cth), or the appropriate timing in respect of those obligations.

³⁷⁵ See '4.5 The meaning of "immediately"' [on page 14](#).

In addition, the journalist's approach indicates that confidentiality has been lost and accordingly that limb of the Listing Rule 3.1A exception is no longer satisfied. T must release a market announcement (and receive confirmation that it has been released to the market) before the information in the announcement can be provided to the journalist.

T may at this point, in consultation with ASX, request and be granted a trading halt to allow T time to prepare an announcement to the market in relation to the scope of the incident which complies with Listing Rule 3.1. T must make this announcement promptly and without delay. Given T is able to inform the market of what it knows now and can provide updates as it receives further information, ASX would expect T to make an announcement within the ordinary timeframe for a trading halt. It would not be appropriate for T to delay disclosure and go into a voluntary suspension.

While T has prudently prepared a draft market announcement in anticipation of this release, it should ensure that this announcement is updated prior to release, to reflect the market sensitive information of which T is aware at this time. While this will depend on all the facts, ASX would expect that an announcement released by T at this time would include information about the number of impacted customers, and the fact that sensitive personal information of customers has been accessed and taken.

While no more than a short trading halt was required in this example, entities should keep in mind some general principles. It is ASX's decision whether or not a trading halt or voluntary suspension is granted, and how long it is granted for. In these circumstances, a trading halt will never be granted for longer than two trading days, and a voluntary suspension will typically only be granted for the period that ASX thinks is reasonably necessary for the entity to release an announcement that complies with Listing Rule 3.1.³⁷⁶ ASX recognises the need for an announcement made in this context to be carefully drafted so that the announcement is accurate, complete (i.e. does not omit material information known to the entity at the relevant time) and not misleading.

The fact that the situation is developing and all of the relevant facts are not yet known is unlikely to be, of itself, a reason to delay disclosure of what is known. It is important to keep in mind that the question of a trading halt or voluntary suspension only arises because the entity is aware of market sensitive information and is unable to rely on the exceptions in Listing Rule 3.1A (which provides the normal mechanism for avoiding the premature disclosure of information).

But if, for example, the factual uncertainty is expected to be sufficiently resolved by the receipt of new information within a short period, then ASX may agree that it is preferable to grant a voluntary suspension so that the entity can make a more definitive and informative announcement, while still keeping the interruption to trading to a minimum. Each situation will turn on its facts, and the facts may be much more complicated than this example. ASX strongly encourages listed entities to engage with ASX as early as possible if they consider that they may need a trading halt or voluntary suspension to appropriately manage their disclosure obligations in connection with a cyber-incident³⁷⁷.

6. T has now released an announcement informing the market about the cyber incident, and its securities are trading. The cyber criminal sends another message to T threatening to publish all of the personal information it holds if T does not pay the ransom within 24 hours. T's forensic expert indicates that this cyber criminal has previously carried out such threats. T urgently convenes a board meeting and determines not to pay the ransom.

Further disclosure to the market would not normally be required. ASX would not consider T's decision with respect to the ransom demand to be disclosable since T has already informed the market of all materially price sensitive information regarding the cyber incident of which it is currently aware.

³⁷⁶ See '4.7 The approach ASX takes to requests for disclosure-related trading halts/ voluntary suspensions' [on page 19](#).

³⁷⁷ See Listing Rule 17.1 and Listing Rule 17.2 for the information that must be included in a request for a trading halt or voluntary suspension, and ASX Guidance Note 16 *Trading Halts and Voluntary Suspensions* for guidance on how to apply.

7. The cyber criminal releases a large volume of personal information onto the dark web.

At the time of T's earlier announcement, T had confirmed that it was not aware of any personal information having been released by the cyber criminal.

Further disclosure would now be required in light of this material new development which a reasonable person would expect to have a material effect on the price or value of T's securities.

ASX would not consider that the requirements of the Listing Rule 3.1A exception could be satisfied in respect of this information, including because the release of the information onto the dark web means that the release of the information cannot be regarded as confidential. There is also sufficient certainty that the information has been released to warrant disclosure.

8. Three months after the information was released on the dark web, T becomes aware of commentary from class action lawyers indicating they are considering potential material claims and inviting impacted customers and interested shareholders to get in touch to register their interest.

Disclosure would not normally be required. Of itself, the fact that legal claims may potentially be brought against T in these circumstances is unlikely to be materially price sensitive.

T should however be prepared to immediately disclose if and when a class action is served, or the facts otherwise develop such that the information about potential material legal claims becomes materially price sensitive, particularly bearing in mind that T is unlikely to be able to maintain confidentiality with respect to this information, and so the Listing Rule 3.1A exception is unlikely to be available to it.

Annexure B: Relevant provisions of the Corporations Act

This annexure has been included to give entities and their officers guidance on the interaction of Listing Rule 3.1 with some key provisions in the Corporations Act. It is not intended to be an exhaustive analysis of the disclosure obligations of an entity under the Corporations Act.

The statutory requirement for timely disclosure

The importance of Listing Rule 3.1 is recognised and reinforced by section 674(2) of the Corporations Act. This section provides, in effect, that where:

- (a) an ASX listed entity has information about specified events or matters that the provisions of the Listing Rules require the entity to notify to ASX as they arise for the purpose of ASX making that information available to participants in the market; and
- (b) that information is not generally available and is information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of ED securities³⁷⁸ of the entity;

the entity must notify ASX of that information in accordance with those provisions.

The consequences for an entity in failing to make timely disclosure

The consequences for an entity in breaching section 674(2) are potentially serious. It is a criminal offence punishable by a fine of up to 6,000 penalty units.³⁷⁹ It is also a financial services civil penalty provision punishable by a pecuniary penalty equal to the greatest of: (1) 50,000 penalty units; (2) if the court can determine the amount of the benefit derived and detriment avoided because of the breach, 3 times that amount; or (3) 10% of the entity's annual turnover during the 12-month period ending at the end of the month in which the entity breached, or began breaching, section 674(2) up to a cap equivalent to 2,500,000 penalty units).³⁸⁰

Alternatively, if ASIC has reasonable grounds to suspect such a breach it may, by administrative action, issue an infringement notice imposing a penalty of up to \$100,000.³⁸¹

Persons who suffer loss or damage as a result of an entity's breach of section 674(2)³⁸² may recover that amount from the entity under section 1317HA.³⁸³ ASIC may bring representative proceedings on behalf of such persons³⁸⁴

³⁷⁸ "ED securities" stands for "enhanced disclosure securities". The term is defined in section 111AD and the following sections. For an ASX listed entity, it includes any class of securities to which the ASX Listing Rules apply. For an entity admitted to the Official List in the ASX Listing category, this will inevitably include its ordinary shares (in the case of a company) and ordinary units (in the case of a trust). It will also include any other class of the entity's securities that are quoted on ASX.

³⁷⁹ Sections 1311 – 1311E and schedule 3 of the Corporations Act.

³⁸⁰ See sections 1317E(3) and 1317G(4).

³⁸¹ See generally ASIC Regulatory Guide 73 *Continuous disclosure obligations: infringement notices*. The size of the penalty that can be imposed varies, based on the market capitalisation of the entity (section 1317DAE). If an entity satisfies the infringement notice by paying the specified penalty and disclosing to the market any specific information referred to in the notice within the required timeframe, ASIC is then precluded from taking civil or criminal proceedings against the entity for the alleged breach specified in the infringement notice (section 1317DAF(5)). Compliance with the infringement notice does not, however, preclude ASIC from taking civil penalty proceedings under section 674(2A) of the Corporations Act against people involved in the alleged breach, nor does it affect the right of third parties who may have been adversely affected by the entity's conduct, to bring compensation proceedings against the entity in relation to the alleged breach (section 1317DAF(6)).

³⁸² For example, someone who has purchased or sold securities in the entity while the information was withheld from the market.

³⁸³ There have been a number of high profile class actions against entities under sections 674 and 1317HA, predominantly involving security holders who purchased securities in an entity when adverse information having a negative effect on the value of its securities was alleged to have been withheld from the market.

³⁸⁴ Section 1317J(1).

and has used its power to enter into enforceable undertakings³⁸⁵ to require an entity to establish a compensation fund to meet prospective claims under section 1317HA.³⁸⁶

The consequences for directors, secretaries and other officers in failing to make timely disclosure

A director, secretary or other officer of an entity who is “involved in”³⁸⁷ a contravention by the entity of section 674(2) may breach section 674(2A). This is also a financial services civil penalty provision punishable by a pecuniary penalty equal to the greater of: (1) 5,000 penalty units; or (2) if the court can determine the amount of the benefit derived and detriment avoided because of the breach, 3 times that amount.³⁸⁸ Again, persons who suffer loss or damage as a result of an officer’s breach of section 674(2A) may recover that amount from the officer in question under section 1317HA.

There is a due diligence defence in section 674(2B), which protect officers of an entity from civil penalties and civil claims for damages if they can prove that they:

- took all steps (if any) that were reasonable in the circumstances to ensure that the entity complied with its continuous disclosure obligations; and
- after doing so, believed on reasonable grounds that the entity was complying with those obligations.

Hence, it is important that an entity has in place appropriate policies and procedures to comply with its disclosure obligations under Listing Rule 3.1.³⁸⁹ The absence of such policies and procedures may make it difficult for an officer of an entity to rely on the due diligence defence in section 674(2B).

A director, secretary or other officer of an entity who aids or abets a contravention by the entity of section 674(2) can also be criminally liable to the same penalties as the entity for breaching that section.³⁹⁰

Finally, it should be noted that an officer of an entity who is involved in a breach of Listing Rule 3.1 may also breach his or her statutory duties of care and diligence to the entity under section 180(1) (in the case of a listed company) or sections 601FD(1)(b) and (3) (in the case of a listed trust).³⁹¹ These sections are corporation/scheme civil penalty provisions. Breaching them can lead to the imposition of a pecuniary penalty of up to 5,000 penalty units, a liability to compensate the entity for any loss or damage it suffers and the person being disqualified from managing a corporation.³⁹²

The statutory prohibitions against false or misleading disclosures

Not only must the disclosure of information that may have a material effect on the price or value of an entity’s securities be timely, it must also be accurate and not misleading.

³⁸⁵ Section 93AA of the *Australian Securities and Investments Commission Act 2001* (Cth) (referred to in this Guidance Note as the “ASIC Act”).

³⁸⁶ See ASIC Media Release 06-443.

³⁸⁷ Section 79 defines what it means to be “involved in” a breach of the Corporations Act. It includes aiding, abetting, counselling or procuring the breach or being in any way, by act or omission, directly or indirectly, knowingly concerned in the breach.

³⁸⁸ Section 1317E(3) and 1317G(4). It should be noted that while the directors, secretaries and other officers of an entity are the class most likely to attract liability under section 674(2A), that section is not confined to such officers and extends to any person who is involved in an entity’s contravention of section 674(2).

³⁸⁹ For further guidance on continuous disclosure compliance policies, see Annexure C.

³⁹⁰ See, for example, ASIC Media Release 17-018.

³⁹¹ See *ASIC v Macdonald (No 11)*, note 76 above, where the court found that the non-executive directors, CEO, CFO and company secretary/general counsel of a listed company all breached their duties to the company under section 180(1) as a result of their involvement in a failure by the company to announce certain information in breach of Listing Rule 3.1 and section 674 and in the company making a misleading announcement about other information in breach of section 1041H. The decision against the non-executive directors and the company secretary/general counsel was ultimately affirmed on appeal by the High Court in *ASIC v Hellicar*, note 76 above, and *Shafren v ASIC* [2012] HCA 18 respectively. The decision against the CFO was affirmed on appeal by the NSW Court of Appeal in *Morley v ASIC*, note 77 above). The CEO did not appeal the decision at first instance.

³⁹² See respectively sections 1317E(3), 1317G(3), 1317H and 206C. See also *ASIC v Helou (No 2)* [2020] FCA 1650.

A misleading or deceptive announcement under Listing Rule 3.1 breaches section 1041H of the Corporations Act and section 12DA of the ASIC Act. While this does not attract criminal or civil penalties, it will empower the court to grant an injunction to cure the breach or to order the disclosure of corrective information.³⁹³ In addition, any person who has suffered loss or damage as a result of the breach may recover that amount from the entity, as well as from any other person (such as a director, secretary or other officer) who was “involved in”³⁹⁴ the entity’s breach.³⁹⁵

An officer or employee of an entity who gives, or authorises or permits the giving of, materially false or misleading³⁹⁶ information to ASX under Listing Rule 3.1:

- knowingly, breaches section 1309(1) of the Corporations Act, which is a criminal offence punishable by 5 years jail and/or a fine of up to 600 penalty units; 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 2 years jail and/or a fine of up to 240 penalty units.³⁹⁷

Depending on the circumstances, the making of a false or misleading announcement to ASX may also breach section 1041E (knowingly or carelessly making a false or misleading statement that is likely to induce persons to acquire or dispose of financial products or to have the effect of increasing, reducing, maintaining or stabilising the price for trading in financial products on a financial market) or 1041F (inducing another person to deal in financial products by knowingly or recklessly making a statement that is false or misleading). These are very serious criminal offences, punishable:

- in the case of an individual, by up to 15 years’ jail and/or a fine of up to the greater of: (a) 4,500 penalty units; or (b) if the court can determine the amount of the benefit derived and detriment avoided because of the offence, 3 times that amount; and
- in the case of a body corporate, a fine of up to the greatest of: (a) 45,000 penalty units; or (b) if the court can determine the amount of the benefit derived and detriment avoided because of the offence, 3 times that amount; or (c) 10% of the body corporate’s annual turnover during the 12 month period ending at the end of the month in which the body corporate committed, or began committing, the offence.³⁹⁸

Entities and their officers should note, in particular, the legal issues that may arise when making forward-looking announcements (eg, announcements containing earnings guidance or exploration or production targets). Under both the Corporations Act and the ASIC Act, when a person makes a representation with respect to any future matter and the person does not have reasonable grounds for making the representation, the representation is taken to be misleading.³⁹⁹

The duty to implement proper information reporting systems

As a matter of general law, it seems reasonably clear that the directors of an entity have a duty to ensure that the entity has appropriate information reporting systems in place so that they are kept apprised of material

³⁹³ Sections 1324 and 1324B.

³⁹⁴ See note [387384](#) above.

³⁹⁵ Section 1041I of the Corporations Act and section 12GF of the ASIC Act.

³⁹⁶ This includes omitting material which renders the information given to ASX misleading in a material respect.

³⁹⁷ See, for example, ASIC Media Release 17-018.

³⁹⁸ Section 1311 – 1311E and schedule 3 of the Corporations Act.

³⁹⁹ See section 769C of the Corporations Act and section 12BB(1) of the ASIC Act. Under the ASIC Act, a person making a representation as to the future is taken not to have had reasonable grounds for making the representation unless they adduce evidence to the contrary: section 12BB(2) of the ASIC Act.

See also ASIC Regulatory Guide 170 *Prospective financial information* and *ASC v MacLeod* [2000] WASCA 101 (reversed on jurisdictional grounds in *MacLeod v ASIC* [2002] HCA 37).

developments affecting the entity in a timely manner.⁴⁰⁰ Failure to do so is likely to breach their statutory duties of care and diligence to the entity under section 180(1) (in the case of a listed company) or section 601FD(1)(b) and (3) (in the case of a listed trust). As mentioned above, such a breach may lead to the imposition of a pecuniary penalty of up to \$200,000, a liability to compensate the entity for any loss or damage it suffers and the person being disqualified from managing a corporation.

Hence, it is important that an entity has in place appropriate policies and procedures to ensure that information which may be market sensitive and which may require disclosure under Listing Rule 3.1 is brought to the attention of its directors, secretaries and senior managers in a timely manner.

Annexure C has further guidance on the policies and procedures that an entity should implement to comply with its obligations under Listing Rule 3.1.

⁴⁰⁰ See *ASIC v Adler* [2002] NSWSC 171, where Santow J held that directors are required to take reasonable steps to place themselves in a position to guide and monitor the management of the company, including becoming familiar with the fundamentals of the business in which the company is engaged and "a continuing obligation to keep informed about the activities of the corporation". See also *Re Caremark International Inc. Derivative Litigation* (1996) 698 A.2d 959, where the Delaware Court of Chancery held that the directors of a corporation have an obligation to be reasonably informed concerning the corporation and that includes an obligation to assure themselves that information and reporting systems exist in the corporation that are reasonably designed to provide to senior management and to the board itself timely, accurate information sufficient to allow management and the board, each within its scope, to reach informed judgments concerning both the corporation's compliance with law and its business performance.

Annexure C: Guidance on compliance policies

Every entity should have an effective⁴⁰¹ written policy on continuous disclosure aimed at ensuring that information which may be market sensitive and which may require disclosure under Listing Rule 3.1:

- is brought to the attention of its directors, secretaries and senior managers in a timely manner;
- is promptly assessed to determine whether it requires disclosure under Listing Rule 3.1; and
- if it does, is promptly given to ASX.

Not only will this aid the entity in complying with its obligations under Listing Rule 3.1, in the event that the entity does happen to breach those obligations, the fact that it has such a policy may well be taken into account by a court as a mitigating factor in assessing the level of penalty that should be imposed in relation to that breach.⁴⁰² It may also assist the directors, secretaries and other officers of the entity in being able to assert the due diligence defence in section 674(2B).⁴⁰³

The recommendations ~~ofset out in~~ the ASX Corporate Governance ~~Council~~Principles and Recommendations

In designing their disclosure policies, entities should have regard to Recommendation 5.1 of the ASX Corporate Governance ~~Council's Corporate Governance~~Principles and Recommendations,⁴⁰⁴ which recommends that a listed entity "should have and disclose a written policy for complying with its continuous disclosure obligations ~~under Listing Rule 3.1.~~"

~~Box 5.1 in the commentary~~The explanatory materials to Recommendation 5.1 ~~makes the following suggestions for the contents of a~~observe that an entity's continuous disclosure policy typically:

⁴⁰¹ The case law on compliance systems suggests that to be effective, a compliance system should:

- be actively implemented (*ACCC v Australian Safeway Stores Pty Ltd* [1997] ATPR ¶41-562, especially at page 43,815);
- be communicated to all affected staff (*Evans v Lee and Commonwealth Bank of Australia* (1996) EOC 92-822 and *Hopper v Mount Isa Mines Ltd* [1997] QADT 3). In this regard, it is not sufficient just to provide manuals or place material on the intranet – all relevant staff must be informed about the system and properly trained (*Coyne v P & O Ports* [2000] VCAT 657);
- include proper escalation procedures so that actual or potential breaches are brought to the attention of senior managers (*EPA v Great Southern Energy* [1999] NSWLEC 192);
- be properly supervised or policed to make sure it is applied (*Videon v Barry Burroughs Pty Ltd* (1981) 53 FLR 425 and *Ali v Hartley Poynton Ltd* [2002] VSC 113);
- be monitored or audited for effectiveness (*Hopper v Mount Isa Mines Ltd* [1997] QADT 3); and
- be kept under review and updated when necessary (*TPC v CSR Ltd* [1991] ATPR ¶41-076).

⁴⁰² See *ASIC v Chemeq Ltd* [2006] FCA 936, especially at paragraphs 84-99, and cf *ACCC v Rural Press Ltd* [2001] ATPR ¶41-833, at page 43,291.

⁴⁰³ See ~~'The consequences for directors, secretaries and other officers in failing to make timely disclosure'~~The consequences for directors, secretaries and other officers in failing to make timely disclosure' on page 92.

⁴⁰⁴ Recommendation 5.1 supports Principle 5 of the ASX Corporate Governance Principles and Recommendations, namely, that ~~"a~~the listed entity should make timely ~~and~~and balanced and accurate disclosure of all matters concerning it that a reasonable person would expect to have a material effect on the price or value of its securities."

The ASX Corporate Governance Principles and Recommendations are underpinned by Listing Rule 4.10.3, which requires a listed entity each annual reporting period to publish a corporate governance statement disclosing the extent to which it has followed those recommendations during the reporting period. If the entity has not followed a recommendation for any part of the reporting period, its corporate governance statement must separately must identify that recommendation and the period during which it was not followed and state its reasons for not following the ~~re~~ recommendation and what (if any) alternative governance practices it adopted in lieu of the recommendation during that period.

The ASX Corporate Governance Principles and Recommendations are available online at:
<https://www.asx.com.au/documents/regulation/cgc-principles-and-recommendations-fourth-edn.pdf> on the ASX website.

- highlight the importance of the entity's market announcements being accurate, balanced and expressed in a clear and objective manner that allows investors to assess the impact of the information when making investment decisions;
- is directed to ensuring that it complies with its continuous disclosure obligations, so that all investors and creditors have equal and timely access to material information concerning the entity – including its financial position, performance, ownership and governance;
- outline the roles and responsibilities of directors, officers, the board and employees/management in complying with the entity's continuous disclosure obligations/system;
- ~~set out~~ emphasises the entity's processes to review and authorise market announcements;
- highlight the importance/need for rapid escalation of safeguarding the confidentiality of corporate/potentially price sensitive information to avoid premature disclosure; ⁴⁰⁵ by all personnel;
- ~~set out or cross refer to the entity's policy on media contact and comment;~~
- ~~address the potential supports the~~ disclosure issues associated of information that is accurate, complete and not misleading; ⁴⁰⁶ and
- is board-approved and supplemented with analyst briefing/training to support roles and responses to security holder questions/responsibilities.
- ~~set out the entity's processes for responding to or avoiding the emergence of a false market in its securities; and~~
- ~~state that the policy will be periodically reviewed to check that it is operating effectively and whether any changes are required to the policy.~~

The commentary to Recommendation 5.1 also suggests that an entity's disclosure policy should have regard to the 10 principles set out in ASIC Regulatory Guide 62 *Better disclosure for investor* (as set out below)

An entity's disclosure policy should also have regard to the 10 principles set out in ASIC Regulatory Guide 62: *Better disclosure for investors* (as set out below).

Entities should, in addition, note Recommendations 5.2 (a listed entity should ensure that its board receives copies of all material market announcements promptly after they have been made) and 5.3 (a listed entity that gives a new and substantive investor or analyst presentation should release a copy of the presentation materials on MAPthe ASX Market Announcements Platform ahead of the presentation). The former recommendation is directed to ensuring that the board has timely visibility of the nature and quality of the information being disclosed to the market and the frequency of such disclosures. The latter recommendation is directed to ensuring equality of information among investors and applies regardless of whether the presentation contains material new information required to be disclosed under Listing Rule 3.1.

ASIC Regulatory Guide 62

The 10 principles set out in ASIC Regulatory Guide 62 *Better disclosure for investors* are:⁴⁰⁷

⁴⁰⁵ See the joint publication by Chartered Secretaries Australia (now Governance Institute of Australia) and the Australian Investor Relations Association entitled *Handling confidential information: Principles of good practice* available online at: <https://www.governanceinstitute.com.au/confidentialprinciples>.

⁴⁰⁶ See the joint publication by Chartered Secretaries Australia (now Governance Institute of Australia) and the Australian Investor Relations Association entitled *Handling confidential information: Principles of good practice* available online on the Governance Institute Website.

⁴⁰⁷ This Regulatory Guide was originally published in August 2000 under the title "*Better disclosure for investors*". It was the result of a joint exercise by ASIC and ASX. The introduction to the Guide notes that the measures in the Guide:

/cont.

1. Establish written policies and procedures on information disclosure. Focus on continuous disclosure and improving access to information for all investors.
2. Use current technology to give investors better access to your information. In particular, post price sensitive information on your company's website as soon as it is disclosed to the market.
3. Nominate a senior officer to have responsibility for:
 - making sure that your company complies with continuous disclosure requirements;
 - overseeing and co-ordinating disclosure of information to the stock exchange, analysts, brokers, shareholders, the media and the public; and
 - educating directors and staff on the company's disclosure policies and procedures and raising awareness of the principles underlying continuous disclosure.⁴⁰⁸

In smaller companies, this person is likely to be the company secretary.

4. Keep to a minimum the number of directors and staff authorised to speak on your company's behalf. Make sure that these persons know they can clarify information that the company has released publicly through the stock exchange, but they should avoid commenting on price sensitive matters. The senior officer responsible for disclosure should outline the company's disclosure history to these persons before they brief anyone outside the company. This will safeguard against inadvertent disclosure of price sensitive information.⁴⁰⁹
5. The senior officer responsible for disclosure should be aware of information disclosures in advance, including information to be presented at private briefings. This will minimise the risk of breaching the continuous disclosure requirements.
6. Price sensitive information must be publicly released through the stock exchange before disclosing it to analysts or others outside the company. Further dissemination to investors is desirable following release through the stock exchange. Posting information on your company's website immediately after the stock exchange confirms an announcement has been made is one method of making it accessible to the widest audience. Investor information should be posted in a separate area of your website from promotional material about the company or its products.
7. Develop procedures for responding to market rumours, leaks and inadvertent disclosures. Even if leaked or inadvertently disclosed information is not price sensitive, give investors equal access by posting it on the company website.
8. Have a procedure for reviewing briefings and discussions with analysts afterward to check whether any price sensitive information has been inadvertently disclosed. If so, give investors access to it by announcing it immediately through the stock exchange, then posting it on the company website. Slides and presentations used in briefings should be given to the stock exchange for immediate release to the market and posted on the company website.
9. Be particularly careful when dealing with analysts' questions that raise issues outside the intended scope of discussion. Some useful ground rules are:

"should be implemented flexibly and sensibly to fit the situation of individual companies. Each listed company needs to exercise its own judgement and develop a disclosure regime that meets legal requirements and its own needs and circumstances."

A footnote to the Guide also notes that references in the Guide to listed companies are to be read as including other listed entities.

⁴⁰⁸ As to who would be a suitable person to have this responsibility, note point 5 under '4.9 [What other steps can an entity take to facilitate compliance with Listing Rule 3.1?](#)' on page 22.

⁴⁰⁹ As noted under '5.8 [Listing Rule 3.1A.2 – the requirement for information to be confidential](#)' on page 38, it is incumbent on a listed entity which wishes to rely on the carve-out from disclosure in Listing Rule 3.1A to ensure that it has in place suitable and effective arrangements to preserve confidentiality.

- only discuss information that has been publicly released through the stock exchange;
 - if a question can only be answered by disclosing price sensitive information, decline to answer or take it on notice. Then announce the information through the stock exchange before responding.
10. Confine your comments on market analysts' financial projections to errors in factual information and underlying assumptions. Seek to avoid any response which may suggest that the company's or the market's current projections are incorrect. The way to manage earnings expectations is by using the continuous disclosure regime to establish a range within which earnings are likely to fall.⁴¹⁰ Publicly announce any change in expectations before commenting to anyone outside the company.

Additional guidance

In addition to the guidance in the [ASX](#) Corporate Governance Principles and Recommendations and ASIC Regulatory Guide 62, ASX would suggest that an entity's disclosure policy should also:

- address how and when to use trading halts to manage continuous disclosure issues; and
- provide a clear delineation between those announcements that require prior board approval and those that management can make.

~~Additional guidance on the contents of a disclosure policy can also be found in the Governance Institute of Australia publication *Good Governance Guide – Disclosure and communications policy*.⁴¹¹~~

⁴¹⁰ This sentence should not be taken to be suggesting that an entity has any obligation to "manage" earnings expectations. Rather it is simply stating that if an entity wishes to release information about its earnings – for example, to avoid a market sensitive earnings surprise – the appropriate way to do that is through a market announcement under Listing Rule 3.1 and not through selective disclosures to analysts (see '7.1 ~~Earnings guidance~~*Earnings guidance*', '7.3 ~~Market sensitive earnings surprises~~*Market sensitive earnings surprises*' and '7.4 ~~Correcting analyst forecasts and consensus estimates~~*Correcting analyst forecasts and consensus estimates*' on pages 47, 48 and 58 respectively).⁴¹¹

⁴¹¹ Available online at: <https://www.governanceinstitute.com.au/resources/resource-centre/>.

QUARTERLY REPORTS

The purpose of this Guidance Note	To assist listed entities subject to the quarterly reporting regime in Listing Rules 4.7B, 4.7C and 5.1 - 5.5 to understand and comply with their obligations in that regard
The main points it covers	- Which entities must give quarterly reports to ASX and for how long? - When must a quarterly report be given to ASX? - What happens if a quarterly report is not given to ASX by the due date? - The accounting standards applicable to a quarterly cash flow report - Who should approve a quarterly report? - The circumstances in which ASX may be prepared to waive the requirement for a quarterly report - The circumstances in which ASX will exercise its discretion to require “commitments test” entities to continue providing quarterly reports beyond eight quarters - The circumstances in which ASX will exercise its discretion to require other entities to provide quarterly reports - The circumstances in which ASX may require a quarterly reporter to report more frequently than each quarter
Related materials you should read	- Guidance Note 1 <i>Applying for Admission – ASX Listings</i> - Guidance Note 17 <i>Waivers and In-Principle Advice</i>

History: Guidance Note 23 ~~amended 12/11/21~~ ~~amended xx/xx~~. Previous versions of this Guidance Note were issued in 03/02, 04/15, 12/16, [12/19](#) and ~~12/19~~ [11/21](#).

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 by ASX Limited ("ASX") to assist entities admitted to the ASX Official List in the ASX Listing category¹ that are subject to the quarterly reporting regime in Listing Rules 4.7B, 4.7C and 5.1 - 5.5 to understand and comply with their obligations in that regard. For convenience, these entities are referred to in this Guidance Note as "quarterly reporting entities" and the quarterly activity reports and (where applicable) quarterly cash flow reports they are required to give to ASX for publication to the market are referred to collectively as "quarterly reports".

2. Background

The requirements for mining producing entities² and oil and gas producing entities³ to produce quarterly activity reports, and for mining exploration entities⁴ and oil and gas exploration entities⁵ to produce both quarterly activity reports and quarterly cash flow reports, are long standing ones.

The requirement for commitment test entities⁶ to produce quarterly cash flow reports in Listing Rule 4.7B was introduced in March 2000, following the publication of an exposure draft in January 2000. Similarities were noted between entities with developing businesses admitted under the commitments test and mining exploration entities. Mining exploration entities are usually admitted under the commitments test and they are required to provide quarterly activity and quarterly cash flow reports to assist the market to understand whether they are meeting their

¹ Listing Rules 4.7B, 4.7C and 5.1 - 5.5 do not apply to entities admitted to the ASX Official List in the ASX Debt Listing category (Listing Rule 1.10) or the ASX Foreign Exempt Listing category (Listing Rule 1.15.1). Unless otherwise indicated, references in this Guidance Note to an "entity" are to an entity admitted to the ASX Official List in the ASX Listing category.

² A "mining producing entity" is an entity whose main undertaking consists of extraction of minerals or which has been advised by ASX that it is a mining producing entity for the purposes of the Listing Rules (Listing Rule 19.12).

³ An "oil and gas producing entity" is an entity whose main undertaking consists of the extraction of petroleum or which has been advised by ASX that it is an oil and gas producing entity for the purposes of the Listing Rules (Listing Rule 19.12).

⁴ A "mining exploration entity" is an entity whose main undertaking consists of exploration for minerals or which has been advised by ASX that it is a mining exploration entity for the purposes of the Listing Rules (Listing Rule 19.12).

⁵ An "oil and gas exploration entity" is an entity whose main undertaking consists of exploration for petroleum or which has been advised by ASX that it is an oil and gas exploration entity for the purposes of the Listing Rules (Listing Rule 19.12).

⁶ The phrase "commitments test entity" refers both to an entity that was admitted under the commitments test in Listing Rule 1.3.2(b) and to an entity that has been required to re-comply with the commitments test in Listing Rule 1.3.2(b) because it has undergone a significant change in the nature or scale of its activities and ASX has required it to re-comply with the admission requirements in Chapters 1 and 2 of the Listing Rules.

exploration objectives. By analogy, it was thought appropriate that other commitments test entities should also provide quarterly cash flow reports to assist the market to understand the extent to which they were meeting their business objectives.

In terms of how long the quarterly reporting obligation should last, it was noted that mining exploration entities had to provide quarterly cash flow reports while they continued to be mining exploration entities but this obligation ceased if and when they became mining producing entities. There was no corresponding generic milestone that could be applied to commitments test entities that would mark a suitable end point for quarterly cash flow reporting. Accordingly, it was determined that the requirement should apply for at least eight consecutive quarters or for such longer period as ASX requires.

It was also considered appropriate that ASX should have the discretion to extend the quarterly reporting regime to other types of entities on a case-by-case basis.

The requirement for commitment test entities to produce quarterly activity reports in Listing Rule 4.7C was introduced in December 2019 to better align the reporting frameworks for quarterly reporters.

3. Which entities must give quarterly reports and for how long?

Under Listing Rules 5.1 and 5.2, a mining producing entity and an oil and gas producing entity must complete an activity report for each quarter and give it to ASX. The entity must continue giving such reports to ASX for so long as it remains a mining producing entity or an oil and gas producing entity. The entity is not required to give any quarterly cash flow reports to ASX.

Under Listing Rules 5.3, 5.4 and 5.5, a mining exploration entity and an oil and gas exploration entity must complete both an activity report and an Appendix 5B cash flow report for each quarter and give it to ASX. The entity must continue giving such reports to ASX for so long as it remains a mining exploration entity or an oil and gas exploration entity. It will only cease to have that obligation when it graduates to being a mining producing entity or an oil and gas producing entity, as applicable, or it becomes some other type of entity.⁷

Under Listing Rules 4.7B and 4.7C, an entity must complete both an activity report and an Appendix 4C cash flow report each quarter and give it to ASX if:

- (a) the entity is not an investment entity,⁸ mining producing entity, mining exploration entity, oil and gas producing entity or oil and gas exploration entity and it was admitted under the “commitments test”⁹ in Listing Rule 1.3.2(b);
- (b) the entity is not an investment entity, mining producing entity, mining exploration entity, oil and gas producing entity or oil and gas exploration entity and it has been required to re-comply with the commitments test in Listing Rule 1.3.2(b) because it has undergone a significant change in the nature or scale of its activities

⁷ Although, if an entity ceases to be a mining producing entity, mining exploration entity, oil and gas producing entity or oil and gas exploration entity as a result of a significant change in the nature of its activities and ASX has required it to re-comply with the admission requirements in Chapters 1 and 2 of the Listing Rules, including the commitments test in Listing Rule 1.3.2(b), it may become a “commitments test entity” that is required to give Appendix 4C quarterly cash flow reports to ASX under Listing Rule 4.7B (see below).

⁸ An “investment entity” is an entity that, in ASX’s opinion, has as its sole or principal activities investing, directly or through a child entity, in listed or unlisted securities or derivatives and whose objectives do not include exercising control over or managing any entity, or the business of any entity, in which it invests. Investment entities are not subject to the commitments test in Listing Rule 1.3.2(b) (see the opening words to Listing Rule 1.3). Instead they must have net tangible assets of at least \$15 million after deducting the costs of fund raising or they must be a pooled development fund and have net tangible assets of at least \$2 million after deducting the costs of fund raising (Listing Rule 1.3.4).

⁹ To be admitted to the ASX Official List in the ASX Listing category, an entity must meet either the “profit test” in Listing Rule 1.2 or the “assets test” in Listing Rule 1.3 (Listing Rule 1.1 condition 9). The commitments test in Listing Rule 1.3.2(b) is part of the assets test. It requires an entity which has at the time of its listing half or more of its total tangible assets (after raising any funds) in cash or in a form readily convertible to cash, to have commitments consistent with its business objectives to spend at least half of that cash and those assets. The entity’s listing prospectus, PDS or information memorandum must include an expenditure program setting out those commitments. The purpose of the commitments test is to prevent entities that are essentially “cash boxes” from listing on ASX.

and ASX has required it to re-comply with the admission requirements in Chapters 1 and 2 of the Listing Rules;¹⁰ or

- (c) ASX has asked the entity to do so.

In cases (a) and (b) above, the entity must give ASX quarterly reports for at least the first full eight quarters after its admission or re-admission (as the case may be) and continue giving them to ASX for each quarter thereafter until it is advised by ASX that it is no longer required to do so.¹¹ ASX will generally tell the entity at the time of its admission or re-admission that it is subject to Listing Rules 4.7B and 4.7C and confirm the requirement for it to provide quarterly reports for at least the next eight quarters.

In case (c) above, the entity must continue to give ASX quarterly reports until advised otherwise by ASX.

4. When must quarterly reports be given to ASX?

A mining producing entity or oil and gas producing entity must give its quarterly activity report to ASX within one month after the end of the quarter.

A mining exploration entity, oil and gas exploration entity or commitments test entity must give its quarterly cash flow report to ASX immediately the information is available for release to the market, and in any event within one month after the end of the quarter. It must give its quarterly activity report to ASX at the same time

ASX interprets the term “immediately” in Listing Rule 4.7B and 5.5 in the same way as it does for the continuous disclosure requirements in Listing Rule 3.1 – that is, as meaning “promptly and without delay”.¹² A quarterly cash flow report must therefore be given to ASX promptly and without delay after the information it contains is “available for release to the market”.

For these purposes, information about an entity’s quarterly cash flows is “available for release to the market” when it has been properly compiled, verified and approved.¹³

For an entity whose financial year ends on 30 June, the applicable quarters will be the 3 month periods ending on 30 September, 31 December, 31 March and 30 June and its quarterly reports will be due by no later than 31 October, 31 January, 30 April and 31 July respectively.¹⁴

An entity whose financial year ends on a different date will need to determine its quarters and the due dates for its quarterly reports by reference to its financial year end.¹⁵

If an entity is admitted or re-admitted as a mining exploration entity or an oil and gas exploration entity or under the commitments test on the first day of a quarter, the first quarter for which it should provide quarterly reports is the quarter commencing on the day of its admission or re-admission (ie, the current quarter).

¹⁰ Pursuant to ASX’s powers in that regard under Listing Rule 11.1.3. For convenience, the time at which an entity re-complies with the admission requirements in Chapters 1 and 2 of the Listing Rules is referred to in this Guidance Note as “re-admission”.

¹¹ See ‘14 ASX’s discretion to extend the reporting period for commitments test entities’ [on page 12](#).

¹² See ASX Listing Rules Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*.

¹³ See the notes to Listing Rules 4.7B and 4.7C.

¹⁴ Likewise for an entity whose financial year ends on 30 September, 31 December or 31 March.

¹⁵ An entity whose financial year ends on a particular day rather than a particular date (for example, the last Friday in June) may choose either to report on the corresponding days in each quarter (in the example given, on the last Friday in September, December, March and June) or on corresponding dates in each quarter (so, if the last Friday in June was the 26th, on 26 September, 26 December, 26 March and 26 June), whichever is the more convenient for it. In the latter case, for quarters that occur after a financial year end, it will need to adjust its quarter end to keep the alignment between the date of each quarter end and its next financial year end. To illustrate, suppose an entity was admitted to the ASX Official List on 15 April 2015 and its financial year end was the last Friday in June. Its next financial year end would be Friday 26 June 2015, the one after that Friday 24 June 2016 and the one after that Friday 30 June 2017. If it chooses to provide quarterly reports using the latter option above, it would prepare its quarterly reports for the period from 27 March to 26 June 2015, 27 June to 24 September (adjusting for the change in financial year end), 25 September to 24 December 2015, 25 December 2015 to 24 March 2016, 25 March to 24 June 2016, 25 June to 30 September (adjusting again for the change in financial year end), 1 October to 30 December 2015, and 31 December 2015 to 30 March 2016.

If an entity is admitted or re-admitted as a mining exploration entity or an oil and gas exploration entity or under the commitments test on the last day of a quarter, the first quarter for which it should provide quarterly reports is the quarter commencing on the day after its admission or re-admission (ie, the next quarter).

If an entity is admitted or re-admitted as a mining exploration entity or an oil and gas exploration entity or under the commitments test part way through a quarter, the first quarter for which it should provide quarterly reports is the quarter during which it was admitted or re-admitted (ie, the current quarter). Its first quarterly reports should cover the full quarter and not just the period from the date of its admission or re-admission to the end of that quarter.

ASX understands that, as a matter of good corporate governance, most listed entities require their quarterly reports to be approved by their board, a committee of the board or senior management before the reports are released to the market.¹⁶ In such a case, ASX takes the view that the information is not “available for release to the market” unless and until it has been through the applicable approval process. Of course, to meet the one month reporting deadline after quarter end in Listing Rule 4.7B, 4.7C and 5.1 - 5.5, the reports will have to be approved by no later than the end of that month.

In the case of quarterly cash flow reports, once they have been approved, they must be given to ASX promptly thereafter. Their release cannot, and should not, be deferred until the end of the month after quarter end just because that is the last date for giving them to ASX.

5. What happens if quarterly reports are not given to ASX by the due date?

If an entity does not give ASX its quarterly reports by the due date, ASX will automatically suspend its securities from quotation from the commencement of trading on the first trading day after that date.¹⁷ ASX will not reinstate its securities to quotation unless and until it gives the required reports to ASX.

6. The contents of a quarterly activity report

The quarterly activity report for a mining producing entity must include:

- details of its mining production and development activities for the quarter and a summary of the expenditure incurred on those activities (if there were no substantive mining production and development activities during the quarter, that fact must be stated); and
- a summary of its mining exploration activities for the quarter and a summary of the expenditure incurred on those activities (if there were no substantive mining exploration activities during the quarter, that fact must be stated).¹⁸

The quarterly activity report for an oil and gas producing entity must include:

- details of its oil and gas production and development activities for the quarter and a summary of the expenditure incurred on those activities (if there were no substantive oil and gas production or development activities during the quarter, that fact must be stated); and
- a summary of its oil and gas exploration activities for the quarter and a summary of the expenditure incurred on those activities (if there were no substantive oil and gas exploration activities during the quarter, that fact must be stated).¹⁹

The quarterly activity report for a mining exploration entity must include:

¹⁶ As indicated in the text accompanying note 36 below, as a matter of good corporate governance, ASX would generally expect an entity's quarterly activity and quarterly cash flow reports to be approved by its board or a committee of the board.

¹⁷ Suspension occurs automatically under Listing Rule 17.5. ASX will not waive that Listing Rule.

¹⁸ Listing Rule 5.1.

¹⁹ Listing Rule 5.2.

- details of its mining exploration activities for the quarter, including any material developments or material changes in those activities, and a summary of the expenditure incurred on those activities (if there were no substantive mining exploration activities during the quarter, that fact must be stated);
- details of its mining production and development activities for the quarter and a summary of the expenditure incurred on those activities (if there were no substantive mining production and development activities during the quarter, that fact must be stated);
- details of:
 - any mining tenements acquired or disposed of during the quarter and their location;
 - the mining tenements held at the end of the quarter and their location;
 - any farm-in or farm-out agreements it entered into during the quarter; and
 - the beneficial percentage interests it held at the end of the quarter in farm-in or farm-out agreements;
- if the quarter is included in a period covered by a “use of funds” statement or expenditure program in the prospectus, PDS or information memorandum lodged by the entity with ASX under Listing Rule 1.1 condition 3, a comparison of the entity’s actual expenditure on the individual items in the “use of funds” statement or expenditure program since the date of its admission or re-admission to the official list against the estimated expenditure on those items in the “use of funds” statement or expenditure program in the prospectus, PDS or information memorandum, and an explanation of any material variances; and
- a description of, and an explanation for, any payments to, or to an associate²⁰ of, a related party of the entity included in its Appendix 5B for the quarter.²¹

The quarterly activity report for an oil and gas exploration entity must include:

- details of its oil and gas exploration activities for the quarter, including any material developments or material changes in those activities, and a summary of the expenditure incurred on those activities (if there were no substantive oil and gas exploration activities during the quarter, that fact must be stated);
- details of its oil and gas production and development activities for the quarter and a summary of the expenditure incurred on those activities (if there were no substantive oil and gas production and development activities during the quarter, that fact must be stated);
- details of:
 - any petroleum tenements it acquired or disposed of during the quarter and their location;
 - the petroleum tenements held by it at the end of the quarter and their location;
 - any farm-in or farm-out agreements it entered into during the quarter; and
 - the beneficial percentage interests it held at the end of the quarter in farm-in or farm-out agreements;
- if the quarter is included in a period covered by a “use of funds” statement or expenditure program in the prospectus, PDS or information memorandum lodged by the entity with ASX under Listing Rule 1.1 condition 3, a comparison of the entity’s actual expenditure on the individual items in the “use of funds” statement or expenditure program since the date of its admission or re-admission to the official list against the estimated expenditure on those items in the “use of funds” statement or expenditure program in the prospectus, PDS or information memorandum, and an explanation of any material variances; and

²⁰ As defined in Listing Rule 19.12. Note that the definition of “associate” includes a provision deeming a related party of a natural person to be their associate unless the contrary is proven.

²¹ Listing Rule 5.3.

- a description of, and an explanation for, any payments to, or to an associate²² of, a related party of the entity included in its Appendix 5B for the quarter.²³

The quarterly activity report for a commitments test entity must include:

- details of its business activities for the quarter, including any material developments or material changes in those activities, and a summary of the expenditure incurred on those activities (if there were no substantive business activities during the quarter, that fact must be stated);
- if the quarter is included in a period covered by a “use of funds” statement or expenditure program in the prospectus, PDS or information memorandum lodged by the entity with ASX under Listing Rule 1.1 condition 3, a comparison of the entity’s actual expenditure on the individual items in the “use of funds” statement or expenditure program since the date of its admission or re-admission to the official list against the estimated expenditure on those items in the “use of funds” statement or expenditure program in the prospectus, PDS or information memorandum, and an explanation of any material variances; and
- a description of, and an explanation for, any payments to, or to an associate²⁴ of, a related party of the entity included in its Appendix 4C for the quarter.²⁵

In each case, the quarterly activity report must cover the entity and its child entities on a consolidated basis.

The obligation for a mining exploration entity, oil and gas exploration entity or commitments test entity to include in a quarterly activity report information about variances in actual expenditures against estimated expenditures in a “use of funds” statement or expenditure program in a prospectus, PDS or information memorandum only applies where the prospectus, PDS or information memorandum has been lodged with ASX in connection with an entity’s admission or re-admission to the official list under Listing Rule 1.1 condition 1. It does not apply to variances as against a “use of funds” statement or expenditure program in a prospectus, PDS or information memorandum lodged in connection with a post-admission secondary capital raising (although those variances may have to be separately disclosed under Listing Rule 3.1 if they are market-sensitive²⁶ or under the *Corporations Act 2001* (Cth)²⁷ if failure to report them might mislead investors²⁸).

ASX understands that:

- the “use of funds” statement or expenditure program in a prospectus, PDS or information memorandum will typically cover a period substantially longer than a single quarter – often one or two years;
- expenditure on the individual items in the statement or program is unlikely to occur at a linear rate over that period; and
- the individual amounts set out in the statement or program are estimates only and the actual expenditure on those items is likely to vary.

Hence, the fact that the entity may be a given proportion of the way through the period covered by a “use of funds” statement or expenditure program and its actual expenditure on an item is a higher or lower proportion of the estimated total expenditure on that item over the entire period does not mean that it is ahead of, or behind, its planned rate of expenditure.

²² See note 20 above.

²³ Listing Rule 5.4.

²⁴ See note 20 above.

²⁵ Listing Rule 4.7C.

²⁶ See Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*.

²⁷ 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.

²⁸ For an outline of the Corporations Act provisions applying to misleading market announcements, see Annexure B of Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*.

ASX expects entities to set out, preferably in tabular form, a list of the different items in the “use of funds” statement or expenditure program with the total amount estimated in the prospectus, PDS or information memorandum to be spent on each item in one column, and the amount the entity has actually spent on that item during the period from its admission or re-admission to the official list up to the end of the quarter covered by the activity report in an adjacent column.

This table should be accompanied by commentary explaining whether the entity is “on track”, or ahead of or behind schedule, in terms of meeting the business objectives that sit behind the “use of funds” statement or expenditure program. If the entity has decided to quicken or slow its planned expenditure on a particular item, or to abandon it altogether, the commentary should mention that fact and explain why. If the entity finds that it has under or over budgeted for a particular item in its “use of funds” statement or expenditure program, the commentary should also mention that fact and explain why.

7. The contents of a quarterly cash flow report

The prescribed form of a quarterly cash flow report for a commitments test entity subject to Listing Rule 4.7B is set out in Appendix 4C, and for a mining exploration entity or oil and gas exploration entity subject to Listing Rule 5.5 in Appendix 5B, of the Listing Rules.

The two forms are largely consistent and require broadly the same information (with necessary differences reflecting the nature of a mining or oil and gas exploration business compared to other businesses).

Entities should note section 8 of Appendices 4C and 5B, which requires an entity to calculate the estimated quarters of funding it has available, based on its cash burn for the latest quarter. If it has less than 2 quarters of funding available, it will be required to answer 3 further questions in its Appendix 4C or 5B:

- Does the entity expect that it will continue to have the current level of net operating cash flows for the time being and, if not, why not?
- Has the entity taken any steps, or does it propose to take any steps, to raise further cash to fund its operations and, if so, what are those steps and how likely does it believe that they will be successful?
- Does the entity expect to be able to continue its operations and to meet its business objectives and, if so, on what basis?

These questions go to whether the entity meets the requirements in Listing Rules 12.1 and 12.2 that the entity’s level of operations is sufficient, and its financial condition is adequate, in ASX’s opinion, to warrant the continued quotation of its securities and its continued listing.

Section 8 may require the entity to disclose confidential information about an incomplete transaction, such as a new capital raising or other financial accommodation it is working on to address its cash requirements. If this is likely to cause the entity any concern or embarrassment, the proper course is not to “fudge” its disclosures in section 8 of its Appendix 4C or 5B but rather to indicate in its answers to the questions in section 8 that the entity is in incomplete and confidential negotiations for a transaction that, if successful, will improve its financial position and, if its securities are still trading, that it will be requesting a trading halt or voluntary suspension to allow it to progress the negotiations to a point where it can make a more detailed announcement to the market about the transaction.²⁹

8. Disclosure of additional information

An entity’s quarterly reports provide a basis for informing the market about the entity’s activities for the past quarter, how they have been financed and the effect this has had on its cash position. An entity that wishes to disclose additional information over and above the minimum required under the Listing Rules is encouraged to do so.³⁰

²⁹ Note that if an entity delays lodging its quarterly reports past their due date, this will result in a mandatory suspension under Listing Rule 17.5: see ‘5 What happens if quarterly reports are not given to ASX by the due date?’ [on page 5](#).

³⁰ See note 1 at the foot of Appendices 4C and 5B.

9. The accounting standards applicable to a quarterly cash flow report

An Appendix 4C or 5B quarterly cash flow report is required to be prepared in accordance with Australian Accounting Standards³¹ or, if the entity is a foreign entity, other standards agreed by ASX.³² It must also give a true and fair view of the matters disclosed.³³

If the quarterly cash flow report has been prepared in accordance with Australian Accounting Standards, the definitions in, and provisions of, AASB 107: *Statement of Cash Flows* and, in the case of a mining exploration entity or oil and gas exploration entity, AASB 6: *Exploration for and Evaluation of Mineral Resources* apply to the report. If the quarterly cash flow report has been prepared in accordance with other accounting standards agreed by ASX, the corresponding equivalent standards apply to the report.³⁴

Dividends received may be classified either as cash flows from operating activities or cash flows from investing activities, depending on the accounting policy of the entity.³⁵

10. Who should approve a quarterly report?

The compliance statement at the foot of Appendices 4C and 5B requires an entity to disclose the name of the body or officer authorising the release of the quarterly cash flow report to the market.

If the report has been authorised for release to the market by the entity's board of directors, this can be completed by inserting: "By the board". If it has been authorised for release by a committee of the entity's board of directors, this can be completed by inserting: "By the [name of board committee – eg Audit and Risk Committee]". If it has been authorised for release by the entity's disclosure committee, this can be completed by inserting: "By the Disclosure Committee".

ASX would generally expect an entity's quarterly reports to be approved and authorised for release by the entity's board or a committee of the board. This is not a Listing Rule requirement but rather a matter of good corporate governance. The activities reported in the quarterly activity report will effectively become a component part of the operating and financial review in the directors' report in the entity's annual report. The quarterly cash flows reported in an entity's quarterly cash flow report will effectively form a component part of the statement of cash flows required to be included in the entity's half yearly and annual financial statements, which the board will be required to approve in due course.³⁶ It therefore makes sense that the board should have early visibility and oversight of the entity's quarterly reports.

If an entity's quarterly reports are not approved and authorised by its board, as a matter of good governance, ASX would expect them to be circulated to the board contemporaneously with their release to the market so that the board is aware of the contents of the reports.³⁷

~~If a quarterly cash flow report is approved by an entity's board, then it should note recommendation 4.2 the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations (4th edition), which provides that:~~

~~The board of a listed entity should, before it approves the entity's financial statements for a financial period, receive from its CEO and CFO a declaration that, in their opinion, the financial records of the entity have been properly maintained and that the financial statements comply with the appropriate accounting~~

³¹ See generally Australian Accounting Standard AASB 107 *Statement of Cash Flows*.

³² See Listing Rule 19.11A and paragraph (c) of the definition of "accounts" in Listing Rule 19.12. See also the compliance statement at the foot of Appendices 4C and 5B.

³³ See the compliance statement at the foot of Appendices 4C and 5B.

³⁴ See note 2 at the foot of Appendices 4C and 5B.

³⁵ See note 3 at the foot of Appendices 4C and 5B.

³⁶ In the case of an Australian entity, see sections 292-301 (annual financial report) and sections 302-306 (half-yearly financial report) of the Corporations Act and Australian Accounting Standard AASB 101 *Presentation of Financial Statements*.

³⁷ See also recommendation 5.2 of the ASX Corporate Governance Council's ~~Corporate Governance Principles and Recommendations (4th edition)~~, which recommends that a listed entity "should ensure that its board receives copies of all material market announcements promptly after they have been made".

standards and give a true and fair view of the financial position and performance of the entity and that the opinion has been formed on the basis of a sound system of risk management and internal control which is operating effectively.

On its face, this recommendation applies to any financial statement that the board of a listed entity may approve, including an Appendix 4C quarterly cash flow report under Listing Rule 4.7B or an Appendix 5B quarterly cash flow report under Listing Rule 5.5.

Therefore, if an entity has its Appendix 4C or 5B quarterly cash flow reports approved by its board and it wishes to comply with recommendation 4.2, the board should be receiving a declaration from its CEO and CFO in the terms set out in that recommendation before the board approves each report.³⁸

11. The auditor's review of quarterly cash flow reports

An entity's quarterly cash flow reports are not required to be audited or reviewed by its auditors before they are released to the market. However, ASX expects an entity's auditor will inspect the entity's:

- first two quarterly reports when it is auditing or reviewing the entity's half year financial statements;³⁹ and
- all four quarterly reports when it is auditing the entity's full year financial statements,⁴⁰

as part of its work plan for that audit or review and, if it identifies any material errors or omissions in the quarterly reports, to communicate those to the entity's board.

If the entity's board receives such a communication from its auditor, ASX will expect the entity to make an announcement to the market highlighting and correcting the errors or omissions.

12. ASX's review of quarterly reports

ASX reviews quarterly reports after lodgement to assess the entity's compliance with Listing Rules 4.7B, 4.7C and 5.1 - 5.5 (as applicable) and the requirements in Listing Rules 12.1 and 12.2 that the entity's level of operations is sufficient, and its financial condition is adequate, in ASX's opinion, to warrant the continued quotation of its securities and its continued listing.

If the entity indicates in section 8 of its quarterly cash flow report⁴¹ that it may not have enough cash to fund its next two quarters, based on the cash burn indicated in its Appendix 4C or 5B for its most recent quarter, ASX will carefully examine the report and any recent announcements the entity has made that go to its capacity to continue its operations and to meet its business objectives. ASX may suspend trading in the entity's securities⁴² if ASX has any concerns in this regard.

Upon suspension, ASX is likely to send the entity a query letter⁴³ asking it for further information about its level of operations and financial condition and what steps it intends to take to comply with Listing Rules 12.1 and 12.2.

ASX's query letter and the entity's response will typically be released as a market announcement.⁴⁴

³⁸ See [ASX Listing Rules Guidance Note 9 Disclosure of Corporate Governance Practices](#).

³⁹ See Auditing Standard on Review Engagements ASRE 2410 *Review of a Financial Report Performed by the Independent Auditor of the Entity*.

⁴⁰ See Auditing Standard ASA 315 *Identifying and Assessing the Risks of Material Misstatement through Understanding the Entity and Its Environment* (at paragraph A18).

⁴¹ See the discussion of section 8 in '7 The contents of a quarterly cash flow report' [on page 8](#).

⁴² Pursuant to Listing Rule 17.3.1 and/or 17.3.4.

⁴³ Pursuant to Listing Rule 18.7.

⁴⁴ Pursuant to Listing Rule 18.7A.

If ASX is not satisfied with the entity's response, ASX is likely to continue the entity's suspension until ASX is satisfied that the entity is in compliance with Listing Rules 12.1 and 12.2. Alternatively, ASX may remove the entity from the official list.⁴⁵

13. ASX's policy on waiving quarterly reports

Given the history and purpose of the quarterly reporting rules, ASX is highly unlikely to grant a waiver of those rules unless there is a compelling case to do so.

ASX may be prepared to grant a waiver from Listing Rules 4.7B and 4.7C to an entity at the time of its admission or re-admission where it has binding contracts or other firm arrangements that are expected to be completed before its first quarterly report is due under that rule, which will have the effect of reducing the proportion of its total tangible assets in the form of cash or in a form readily convertible to cash to less than half of its total tangible assets (after raising any funds).⁴⁶ The waiver will be subject to a condition that the entity makes an announcement to the market confirming the expenditure under the contracts or arrangements in question before its first quarterly report is due under Listing Rule 4.7B.

ASX is unlikely to grant a waiver from Listing Rule 4.7B or 4.7C to a commitments test entity after its admission or re-admission, even if the entity has expended its cash and assets in a form readily convertible to cash in accordance with its commitments well within the minimum eight quarter period for quarterly reporting provided for in that rule. ASX is of the opinion that once the market has developed an expectation for quarterly reporting, it is generally not appropriate for ASX to waive the requirement to provide quarterly reports.

A US entity subject to US SEC quarterly reporting obligations should note one waiver, in particular, that it can seek from ASX in relation to its ASX quarterly reporting obligations. ASX will usually, on request, grant to such an entity a waiver from Listing Rules 4.7B and 4.7C to allow the entity to lodge with ASX:

- in lieu of an Appendix 4C and a quarterly activity report for the first, second and third quarters of its financial year:
 - a copy of the Forms 10-Q the entity has filed with the SEC for those quarters; and
 - for each of those quarters, if there is any information that ought to have been disclosed in the entity's quarterly activity report for that quarter under Listing Rule 4.7C that is not included in the entity's Form 10-Q for that quarter, a supplement to the Form 10-Q for that quarter that discloses the information; and
- in lieu of an Appendix 4C and a quarterly activity report for the fourth quarter of its financial year:
 - a copy of the Form 10-K the entity has filed with the SEC for that financial year; and
 - if there is any information that ought to have been disclosed in the entity's quarterly activity report for the fourth quarter under Listing Rule 4.7C that is not included in the entity's Form 10-K, a supplement to the Form 10-K that discloses the information.

For further details of the waiver, see Guidance Note 17 *Waivers and In-Principle Advice*.⁴⁷

14. ASX's discretion to extend the reporting period for commitments test entities

The initial period of eight quarters for which a commitments test entity must provide quarterly reports under Listing Rules 4.7B and 4.7C is a minimum reporting period. The obligation of a commitments test entity to provide quarterly

⁴⁵ Pursuant to the first and third bullet points of Listing Rule 17.12.

⁴⁶ This is on the basis that if the expenditure under the contracts or arrangements had occurred before admission or re-admission, the entity would satisfy Listing Rule 1.3.2(a) and would not be subject to the commitments test in Listing Rule 1.3.2(b), nor to the quarterly reporting requirement in Listing Rules 4.7B and 4.7C.

⁴⁷ See standard waiver number 2 in the Annexure to Guidance Note 17. The waiver also extends to the US entity's obligation to give to ASX an Appendix 4D under Listing Rule 4.2A.3 and an Appendix 4E under Listing Rule 4.3A.

reports continues for as long as ASX requires – in effect, until ASX advises the entity that it is no longer required to provide quarterly reports.

If after the expiration of that initial eight quarter period, a commitments test entity wishes to cease providing quarterly reports, it should approach ASX to discuss whether ASX is agreeable to that course of action.

As a general rule, before it will allow a commitments test entity to cease provide quarterly reports, ASX usually likes to see at least four consecutive quarters of positive net operating cash flows. To that end:

- an entity that has reported positive net operating cash flows for the last four quarters will not usually be required by ASX to continue providing quarterly reports;
- an entity that has reported positive net operating cash flows:
 - for the last three quarters but had negative net operating cash flows for the preceding quarter will usually be required by ASX to provide at least one more quarterly report;
 - for the last two quarters but had negative net operating cash flows for the preceding quarter will usually be required by ASX to provide at least two more quarterly reports;
 - for the last quarter but had negative net operating cash flows for the preceding quarter will usually be required by ASX to provide at least three more quarterly reports,

after which ASX may agree to re-assess the position in accordance with the principles above; and

- an entity that has reported negative net operating cash flows for the last quarter will usually be required by ASX to provide at least four more quarterly reports, after which ASX may agree to re-assess the position in accordance with the principles above.

ASX considers these issues on a case-by-case basis and will have regard to all relevant circumstances in determining whether or not it will allow an entity to cease providing quarterly reports. For example, an entity which has had positive net operating cash flows in three out of the last four quarters may not be required to provide further reports if it appears to have reasonable and established positive cash flows and the one negative report was clearly referable to cyclical factors that are transparent and well understood by investors or to an identifiable and extraordinary “one-off” event.

Where ASX agrees that a commitments test entity is no longer required to provide quarterly reports, it will expect the entity to make an announcement to the market confirming that fact.

15. ASX’s discretion to require quarterly reports from other entities

ASX has a general discretion to admit an entity to the official list on such conditions as it thinks appropriate.⁴⁸ This may include a condition that the entity submit quarterly reports for such period as ASX determines or until ASX determines otherwise.

ASX also has a general discretion to require quarterly reports from any entity at any time and for any period that it considers appropriate.⁴⁹ For the avoidance of doubt, this includes:

- mining producing entities and oil and gas producing entities,⁵⁰ even though these entities have graduated from the quarterly reporting regime that applies to mining exploration entities and oil and gas exploration entities under Listing Rules 5.3 - 5.5;
- investment entities, even though these entities are not subject to the commitments test; and

⁴⁸ Listing Rule 1.19.

⁴⁹ Listing Rule 4.7B(c).

⁵⁰ ASX will not generally exercise this discretion in relation to mining exploration entities or oil and gas exploration entities, as these entities are subject to the separate quarterly reporting regime in Listing Rules 5.3 - 5.5.

- commitments test entities and other entities that have previously been required to provide quarterly reports under Listing Rules 4.7B and 4.7C and that have been allowed by ASX to cease providing such reports.

ASX exercises these discretions on a case-by-case basis where it considers it appropriate that an entity should provide quarterly reports to supplement its continuous disclosure obligations. Some relevant examples include:

- where the entity is not a commitments test entity, mining exploration entity or oil and gas exploration entity but its cash flow position appears to ASX to be critical to the entity achieving its business objectives and its capacity to generate positive cash flow at the time of listing is unproven or unclear (in which case, ASX again will typically impose a condition under Listing Rule 1.19 requiring the provision of quarterly reports as a condition of listing);
- where the entity's audited or reviewed financial statements include a modified opinion, emphasis of matter or other matter paragraph that questions whether the entity can continue as a going concern;
- where the entity's securities have been re-instated to trading after a lengthy period of suspension; or
- where ASX otherwise has concerns about the financial condition of the entity or the sustainability of its business.

16. ASX's discretion to require more frequent reports

ASX general discretion to admit an entity to the official list on such conditions as it thinks appropriate⁵¹ empowers ASX to impose a requirement at listing that an entity provide periodic activity and cash flow reports more frequently than quarterly (for example, monthly).

ASX also has general powers:

- to require an entity to provide any information or document that ASX asks for to be satisfied that an entity is complying with the Listing Rules;⁵² and
- to impose any requirements on an entity in order to ensure compliance with the Listing Rules.⁵³

This includes compliance with the requirement in Listing Rules 12.1 and 12.2 that an entity's level of operations must be sufficient, and its financial condition must be adequate, in ASX's opinion, to warrant the continued quotation of its securities and its continued listing.

Again, in an appropriate case, ASX may exercise these powers to require an entity at any time to provide periodic activity and cash flow reports more frequently than might otherwise be required under the Listing Rules (for example, monthly).

⁵¹ Listing Rule 1.19.

⁵² Listing Rule 18.7.

⁵³ Listing Rule 18.8.

TRADING POLICIES

The purpose of this Guidance Note	To assist listed entities to comply with their obligations under Listing Rules 12.9 – 12.12 regarding trading policies
The main points it covers	- Why listed entities are expected to have a trading policy - Who should be restricted from trading in an entity's securities - When should trading in an entity's securities be restricted - What types of trading should be restricted - Exceptions where trading may be permitted - Procedures to clear trading - Other matters that could be addressed in a trading policy - Disclosure requirements applicable to trading policies - Compliance measures for trading policies
Related materials you should read	~~Governance Institute of Australia, Good Governance Guide: Issues to consider in developing or reviewing the policy on trading in company securities~~

History: Guidance Note 27 amended ~~23/08/19xx/xx~~. Previous versions of this Guidance Note were issued in 01/11, 01/12, 01/15, 12/16, ~~07/17~~ and ~~07/1708/19~~.

Important notice: ASX has published this Guidance Note to assist listed entities to understand and comply with their obligations under the ASX Listing Rules. Nothing in this Guidance Note necessarily binds ASX in the application of the ASX 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 by ASX Limited (ASX) to assist listed entities to comply with their obligations under Listing Rules 12.9 – 12.12 regarding trading policies.

Listing Rule 12.9 requires each entity admitted to the Official List in the ASX Listing category¹ to have a trading policy² that regulates trading in its securities by its key management personnel (KMP) during certain prohibited periods and to give a copy of that trading policy to ASX for release to the market. The trading policy must comply with the minimum requirements set out in Listing Rule 12.12. This requires the following five matters to be covered in the policy:

- the entity's "closed periods";³
- the restrictions on trading that apply to the entity's KMP;
- any trading that is excluded from the entity's trading policy;
- any exceptional circumstances in which the entity's KMP may be permitted to trade during a "prohibited period"⁴ with prior written clearance; and
- the procedures for obtaining such clearance.

Entities are free to adopt a trading policy that covers other matters and that suits their individual circumstances, as long as it meets the minimum requirements in Listing Rule 12.12.

The purpose of this Guidance Note is to give guidance on the minimum requirements that a trading policy must address and also on some other issues that it might address. ~~Further guidance on these issues can be found in the Governance Institute of Australia's publication *Good Governance Guide: Issues to consider in developing or reviewing the policy on trading in company securities*.⁵~~

2. The policy objective of Listing Rules 12.9 – 12.12

Most people agree that it is generally beneficial for directors and employees of a listed entity to own securities in the entity. It gives them a bigger stake in the success of the entity and helps to align their interests with the interests of investors.

That said, directors and employees (particularly senior executives) of an entity who trade in its securities need to be mindful that:

¹ Listing Rules 12.9 – 12.12 do not apply to entities admitted to the Official List in the ASX Debt Listing or ASX Foreign Exempt Listing categories (although it should be noted that ASX does have a discretion in respect of any particular ASX Debt Listing under Listing Rule 1.10.2, or ASX Foreign Exempt Listing under Listing Rule 1.15.2, to specify additional Listing Rules with which the entity must comply and therefore, in an appropriate case, ASX could require an entity admitted to the Official List in the ASX Debt Listing or ASX Foreign Exempt Listing category to comply with Listing Rules 12.9 – 12.12).

Unless the context otherwise requires, therefore, references in this Guidance Note to an "entity" are to entities admitted to the Official List in the ASX Listing category.

² The term "trading policy" is defined in Listing Rule 19.12 to mean "an entity's policy relating to trading in [its] securities by [its] key management personnel during prohibited periods." The definition of "key management personnel" is set out in the text accompanying note 17 below. The definition of "prohibited period" is set out in note 4 below.

³ The term "closed period" is defined in Listing Rule 19.12 to mean "fixed periods specified in the [entity's] trading policy when [its] key management personnel are prohibited from trading in [its] securities."

⁴ The term "prohibited period" is defined in Listing Rule 19.12 to mean: "(a) any closed period [see note 3 above]; or (b) any additional periods when an entity's key management personnel are prohibited from trading, which are imposed by the entity from time to time when [it] is considering matters which are subject to Listing Rule 3.1A."

⁵ Available online at <https://www.governanceinstitute.com.au/resources/resource-centre/>.

- they will often be, or be perceived to be, in possession of “market sensitive information” or “inside information”⁶ concerning the entity that is not generally available to investors;⁷
- they have legal obligations not to engage in insider trading⁸ or market manipulation⁹ and not to use information acquired as a director or employee to gain an improper advantage for themselves or anyone else;¹⁰
- if they breach those obligations, very significant legal consequences can follow;¹¹ and

⁶ “Market sensitive information” is the term used by ASX to describe information that is subject to the continuous disclosure regime in Listing Rule 3.1 and section 674 of the Corporations Act – that is, information concerning an entity that a reasonable person would expect to have a material effect on the price or value of the entity’s securities (see generally Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*).

“Inside information” refers to information that triggers the insider trading prohibition in section 1043A of the Corporations Act – that is, information that is not generally available and that, if it were generally available, a reasonable person would expect it to have a material effect on the price or value of particular financial products (see the definition of “inside information” in section 1042A).

While there are some subtle differences in the statutory provisions that underpin these regimes and that define what is meant by a material effect on price or value (compare sections 677 and 1042D), the two terms are largely synonymous. In other words, information that is market sensitive information is likely also to be inside information and vice versa.

In this Guidance Note, a reference to the “Corporations Act” means the Corporations Act 2001 (Cth) and, unless otherwise indicated, references to a section of an Act are to a section of that Act.

⁷ For example, confidential market sensitive information about an incomplete proposal or negotiation the entity is pursuing that has not been released to the market under Listing Rule 3.1A.

⁸ Under Australian law, the obligation not to engage in insider trading can be found in section 1043A of the Corporations Act. Section 1043A applies to conduct involving the securities of entities established in Australia, regardless of where the conduct takes place (sections 1042B(a) and (b)(ii)). It also applies to conduct involving the securities of entities established outside Australia, if the conduct occurs in Australia or the entity carries on business in Australia (sections 1042B(a) and (b)(i)).

Entities that are established, listed or have operations in jurisdictions outside Australia may also be subject to insider trading laws in those jurisdictions.

It should be noted that section 1043A not only prohibits a person from trading in securities while they are in possession of inside information about those securities (section 1043A(1)(c)), it also prohibits them from procuring someone else to trade in those securities (section 1043A(1)(d)) and, if the securities are traded on a licensed market in Australia (such as ASX), from communicating the inside information to another person whom they know or ought reasonably to know will trade or procure someone else to trade in the securities (section 1043A(2)). References in this Guidance Note to insider trading should be read as covering all of these activities.

⁹ The obligation not to engage in market manipulation in relation to Australian markets can be found in sections 1041A, 1041B and 1041C of the Corporations Act 2001 (Cth). Persons who engage in market manipulation in relation to markets outside Australia may be subject to similar provisions under the laws applicable in those markets.

¹⁰ The obligation of a director or employee not to use information acquired in that capacity to gain an improper advantage for themselves or someone else can be found, in the case of listed companies established in Australia, in section 183 and, in the case of listed trusts established as managed investment schemes in Australia, in sections 601FD(1)(d) and 601FE(1)(a), of the Corporations Act. Entities established outside Australia may be subject to similar provisions under the laws applicable in their home jurisdiction.

¹¹ A breach of section 1043A, 1041A, 1041B or 1041C is a criminal offence. In the case of an individual, it is punishable by 15 years’ jail and/or a fine equal to the greater of: (1) 4,500 penalty units; or (2) if the court can determine the amount of the benefit derived and detriment avoided because of the offence, 3 times that amount. In the case of a body corporate, it is punishable by a fine equal to the greatest of: (1) 45,000 penalty units; (2) if the court can determine the amount of the benefit derived and detriment avoided because of the offence, 3 times that amount; or (3) 10% of the body corporate’s annual turnover during the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence (sections 1311 – 1311E and schedule 3 of the Corporations Act).

A person who is convicted of breaching section 1043A, 1041A, 1041B or 1041C is automatically disqualified from being a director of or managing any corporation for 5 years (section 206B).

Sections 1043A, 1041A, 1041B and 1041C are also financial services civil penalty provisions (section 1317E(3)). If an individual is found to have breached these provisions, the court may impose a pecuniary penalty equal to the greater of: (1) 5,000 penalty units; or (2) if the court can determine the amount of the benefit derived and detriment avoided because of the breach, 3 times that amount (section 1317G(3)). If a body corporate is found to have breached these provisions, the court may impose a pecuniary penalty equal to the greatest of: (1) 50,000 penalty units; (2) if the court can determine the amount of the benefit derived and detriment avoided because of the breach, 3 times that amount; or (3) 10% of the body corporate’s annual turnover during the 12-month period ending at the end of the month in which the body corporate breached, or began breaching, the provision up to a cap equivalent to 2,500,000 penalty units (section 1317G(4)). The court may also make compensation orders in favour of anyone suffering damage as a result of the breach (section 1317HA) and relinquishment orders directing a person who has breached these provisions to pay over the benefit derived or detriment avoided by the breach to the Commonwealth (section 1317GAB).

- any suggestion that they have breached those obligations can have a significant impact on their personal reputation, on the entity's standing with investors and on the broader image of the ASX market.

The market is particularly sensitive to directors and senior executives trading in the lead up to the release of:

- periodic financial reports or other financial data; and
- an announcement of market sensitive information under Listing Rule 3.1,¹² such as a material upgrade or downgrade in forecast earnings, a material trading update or the announcement of a material transaction.

During these times, a director or senior executive is likely to have, or be perceived to have, access to the information in the release ahead of the broader market. If it becomes known that a director or senior executive of an entity has traded in its securities shortly prior to the publication of the release to the market, there is a risk that some will speculate that the trade was motivated by inside knowledge of the impending release. This speculation is likely to increase if the market price of the entity's securities moves in response to the release in a way that favours the trade.¹³ This may attract criticism from market commentators (including investors, investment advisers, proxy advisers, research analysts and the financial press), as well as the scrutiny of market regulators.

Good governance therefore demands that an entity has in place a fit-for-purpose trading policy, tailored to its particular circumstances, that regulates when and how its directors and senior executives may trade in its securities. The purpose of such a policy is not only to minimise the risk of insider trading but also to avoid the appearance of insider trading and the significant reputational damage that may cause.

As mentioned previously, an entity must give a copy of its trading policy to ASX for release to the market.¹⁴ This allows the market to judge whether the trading policy is indeed fit-for-purpose and more generally to form a view on the governance standards adhered to by the entity.

3. Who should be restricted from trading?

3.1. KMP

The Listing Rules specifically require an entity's trading policy to restrict trading in its securities by its KMP.¹⁵ This reflects the fact that the KMP of an entity are the ones most likely to be in possession of inside information about the entity and therefore the ones most vulnerable to allegations of insider trading.¹⁶ It also reflects the fact that the market is more sensitive to allegations of insider trading by KMP than by more junior staff, given the higher levels of trust and confidence that investors repose in KMP and the correspondingly higher ethical standards that investors expect of them.

The Listing Rules define "key management personnel" to have the same meaning as in Accounting Standard AASB 124 *Related Party Disclosures*,¹⁷ which requires subject entities to disclose the name, position, remuneration and shareholdings of, and any related party transactions involving, its KMP.

A breach of section 1043A can also give rise to civil liability to disgorge any profit made by insider trading in a financial product to the issuer of the product and/or to the other party to the trade (section 1043L).

Section 183 is a corporation/scheme civil penalty provision, which if breached empowers the court to impose the same civil penalties as set out above for a breach of sections 1043A, 1041A, 1041B and 1041C and to make compensation orders in favour of the relevant corporation or scheme for any damage it suffers as a result of the breach (section 1317H).

¹² See generally Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*.

¹³ In other words, if the director or senior executive has bought securities and the market price rises following the release or if the director or senior executive has sold securities and the market price falls following the release.

¹⁴ See '9. Disclosure matters' [on page 19](#).

¹⁵ See the definition of "trading policy" in Listing Rule 19.12 (mentioned in note 2 above) and Listing Rule 12.12.2, which requires an entity's trading policy to include the restrictions on trading in its securities that apply to its KMP.

¹⁶ In some cases, KMP may also be vulnerable to allegations of market manipulation: see, for example, *ASIC v Soust* [2010] FCA 68 (KMP found to have manipulated the market price of shares to increase his performance bonus) and *R v Jacobson* [2014] VSC 592 (KMP found to have manipulated the market price of shares to avoid a margin call).

¹⁷ Listing Rule 19.12.

AASB 124, in turn, defines “key management personnel” as “those persons having authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly, including any director (whether executive or otherwise) of that entity.”

Hence, an entity’s trading policy must apply to all of its directors and to any senior executive who has authority and responsibility for planning, directing and controlling its activities. Typically, this will include the CEO and other senior executives who report to the CEO and have the authority and responsibility for planning, directing and controlling the activities of the entity.¹⁸

An entity should be aware of which of its senior executives are KMP, since it has to form a view on that issue for the purposes of preparing its financial statements. If an entity has any queries about whether a particular senior executive is a KMP, it should in the first instance discuss that issue with its external auditor or legal adviser.

It is good practice for an entity to include a requirement in the contractual arrangements it has with its KMP¹⁹ that they must comply with its trading policy.²⁰ This will put the basis for requiring compliance with the policy by the KMP on a firm legal footing and facilitate the taking of appropriate disciplinary action if the policy is breached.

3.2. Family members and entities closely connected to KMP

While the Listing Rules only require a trading policy to cover trading by its KMP, an entity should consider carefully whether it is appropriate to extend its trading policy to cover trading by close family members of a KMP, such as the KMP’s spouse and minor children, and any family company or family trust that the KMP or the KMP’s close family members may control or have an interest in (closely connected persons and entities).

A KMP will often be, or be perceived to be, in a position to control or influence the trading of the KMP’s closely connected persons and entities. Their trading can therefore raise similar insider trading issues and risks as trading by the KMP personally.

If an entity does extend its trading policy to cover trading by a KMP’s closely connected persons and entities, it will need to consider the legal basis on which it does so. Typically this will be done through the contractual arrangements the entity has with its KMP, by including a requirement in those arrangements²¹ that the KMP must ensure that his or her closely connected persons are aware of the trading policy and comply with it.

3.3. Other employees

While the Listing Rules only require a trading policy to cover trading by its KMP, an entity should consider carefully whether it is appropriate to extend its trading policy to cover trading by a wider group of employees, in addition to its KMP.

For example, depending on their individual circumstances, some entities may consider it appropriate to apply their trading policy to:

- staff who work closely with, on in close proximity to, KMP (including their executive assistants);
- staff who work in the finance area or in a strategic planning group;

¹⁸ Not all senior executives reporting to the CEO will necessarily be KMP. The test is whether they have the authority and responsibility for planning, directing and controlling the activities of the entity.

¹⁹ Typically, this will be a letter of appointment for a non-executive director and a service contract for an executive director or other senior executive. See also the [commentary explanatory materials](#) to Recommendation 1.32.6 of the ASX ~~Corporate Governance Council’s~~ Corporate Governance Principles and Recommendations, which recommends that the written agreement between a listed entity and a ~~director or senior non-executive~~ should set out “the requirement director include obligations to comply with ~~key corporate~~ policies, (including the entity’s code of conduct in relation to approval and notification of share trading policy”).

²⁰ This could take the form of a specific requirement that its KMP comply with its trading policy or a more general requirement that its KMP comply with all of its policies and procedures.

²¹ Either directly, by including such a provision in the KMP’s letter of appointment or service contract, or indirectly, by including such a provision in the entity’s trading policy and then including in the KMP’s letter of appointment or service contract a requirement that they must comply with the trading policy.

- the next layer of management below KMP; and/or
- staff (such as IT staff) who may have access to a KMP's email or document folders,

on the basis that they too may come into possession of market sensitive information ahead of the market.

Some entities may also consider it appropriate to include a provision in their trading policy allowing them to designate from time to time individual staff members to whom the trading policy applies, which they can use on an appropriate occasion to impose ad hoc trading restrictions on staff below KMP level working on a particular market-sensitive matter.

Some entities – particularly those in the finance industry that are subject to broader regulatory obligations requiring them to supervise all trading in financial products by directors and employees and not just trading in the entity's securities by KMP²² – may choose to apply their trading policy to all employees.

If an entity does extend its trading policy to a wider group of employees in addition to its KMP, it would be good practice to include a specific requirement in their employment contracts that they must comply with the entity's trading policy. Again, this will put the basis for requiring compliance with the policy on a firm legal footing and facilitate the taking of appropriate disciplinary action if the policy is breached.

Entities that do extend their trading policy to a wider group of employees in addition to their KMP are technically only required to lodge with ASX the relevant provisions in the trading policy that apply to KMP.²³ ASX will therefore accept in satisfaction of the requirement to lodge a copy of the trading policy with ASX, either a copy of the full trading policy or a verbatim extract of the relevant provisions in the trading policy that apply to KMP. However, ASX prefers an entity to lodge a full copy of its trading policy so that the market has a better appreciation of the governance standards adhered to by the entity.

4. When should trading be restricted?

4.1. The requirement to have “closed periods”

Listing Rule 12.12.1 requires a trading policy to include information on the entity's closed periods. By necessary implication, this means that an entity's trading policy must have one or more closed periods.

A “closed period” is a fixed period specified by an entity in its trading policy when its KMP are generally prohibited²⁴ from trading in its securities.²⁵

Hence, to comply with Listing Rule 12.12.1, an entity's trading policy must provide for at least one fixed period during which trading in securities by its KMP is generally prohibited. A trading policy that does not specify any such fixed period, or that specifies that there is no such fixed period, does not comply with Listing Rule 12.12.1.

4.2. How can an entity define its closed periods?

A trading policy can comply with the requirement to specify closed periods either by:

²² For example, entities that are participants (ie, brokers and dealers) in the ASX market have an obligation under rule 5.4.2 of the ASIC Market Integrity Rules (Securities Market) 2017 to have arrangements to supervise all trading on the ASX market by their directors, employees and other “connected persons”, not just trading in the entity's securities by their KMP. Entities involved in the broader securities industry are likely to have arrangements to supervise all trading by directors and employees to manage their insider trading risks and monitor the effectiveness of their “Chinese walls”, while entities involved in the investment management industry are also likely to have arrangements to supervise all trading by their directors and employees to comply with the guidance issued by the Financial Services Council in its Guidance Note 7 *Personal Trading*.

²³ See ‘9. Disclosure matters’ [on page 19](#) and the definition of “trading policy” in Listing Rule 19.12.

²⁴ We say “generally prohibited” because, under Listing Rule 12.12.3, certain types of trading by KMP may be excluded from the operation of the trading policy. Also, under Listing Rule 12.12.4, prior written clearance may be given to KMP to trade during a closed period where there are exceptional circumstances.

²⁵ See note 3 above.

- generally prohibiting trading by KMP at all times except during certain specified “trading windows” (in which case, the closed period is the whole of the year apart from the specified trading windows); or
- specifying fixed periods, generally referred to as “black-out periods”, throughout the year where trading by KMP is generally prohibited (in which case, the closed periods are the specified black-out periods).

Many people consider trading windows to be preferable to blackout periods, since they typically lead to shorter periods during which KMP are permitted to trade, making them more effective in reducing the risk of insider trading and easier to administer, but either approach complies with Listing Rule 12.12.1.

4.3. What periods should an entity choose as its closed periods?

The Listing Rules do not prescribe the periods an entity must have as its closed periods. Each entity has to choose closed periods that are appropriate to its circumstances and specify those closed periods in its trading policy.

In choosing its closed periods, an entity should consider the spirit, intention and purpose behind Listing Rules 12.9-12.12, as it is required to do under Listing Rule 19.2, and that trading policies are intended not only to minimise the risk of insider trading but also to avoid the appearance of insider trading. In that regard, an entity should be especially mindful of the point mentioned previously about the market’s sensitivity to KMP trading in the lead up to the release of periodic financial reports or other financial data, when they may have, or be perceived to have, access to financial information ahead of other investors.

For this reason, ASX would generally expect entities to include within their closed periods the period from, or just prior to,²⁶ the close of books at half- and full-year end until a reasonable period²⁷ after the release of their financial results for the half- and full-year respectively. They can address this in their trading policy:

- if they prescribe trading windows, by excluding those periods from their permitted trading windows; or
- if they prescribe black-out periods, by including those periods within their nominated black-out periods.

Entities that periodically publish other financial information, for example:

- “commitments test” entities required to file quarterly Appendix 4C consolidated cash flow statements under Listing Rule 4.7B;
- mining producing entities required to file quarterly mining activity reports under Listing Rule 5.1;
- oil and gas producing entities required to file quarterly oil and gas activity reports under Listing Rule 5.2;
- mining exploration entities and oil and gas exploration entities required to file quarterly exploration activity reports and Appendix 5B consolidated cash flow statements under Listing Rules 5.3, 5.4 and 5.5;
- listed investment entities required to publish monthly the net tangible asset backing of their securities under Listing Rule 4.12; and
- other entities that voluntarily release periodic (monthly or quarterly) trading updates, sales figures, turnover figures or the like,

should carefully consider the likelihood that these statements or reports might contain, or be perceived to contain, market-sensitive information. Unless the likelihood of that is fairly low, they also may wish to include within their closed periods the period from the month- or quarter-end at which those statements or reports are compiled until a

²⁶ Generally, it would be considered best practice for the closed period to commence one or two weeks before close of books to align with when KMP may be expected to receive unaudited information about the probable financial position at balance date.

²⁷ The reference here to a “reasonable period” means a period that will allow the market sufficient time to absorb the results and reflect them in the market price of the entity’s securities, as contemplated in section 1042C(1)(b)(ii) of the Corporations Act. Entities that release their results in the morning well before the commencement of trading may regard that as sufficient time to enable the market to absorb the results and therefore end their closed period, or begin their trading window, at the commencement of trading on the day of release. Other entities may feel it is safer to fix as the end of their blackout period, or the beginning of their trading window, the beginning of trading on the first trading day after the day on which its results are released.

reasonable period²⁸ after the release of those statements or reports to the market. Again, they can address this in their trading policy:

- if they prescribe trading windows, by excluding those periods from their permitted trading windows; or
- if they prescribe black-out periods, by including those periods within their nominated black-out periods.

4.4. Generally acceptable trading windows

The risk of insider trading in an entity's securities is generally lower during periods immediately following the release of up-to-date financial information about the entity, such as occurs:

- on the release of half- and full-year results;
- for "commitments test" entities, mining exploration entities and oil and gas exploration entities that file quarterly consolidated cash flow statements under Listing Rules 4.7B or 5.5, on the release of those quarterly statements;
- at an annual general meeting, where typically security holders are provided with a trading update and information about material post-balance date events;²⁹ and
- when a prospectus, product disclosure statement or cleansing notice is issued in connection with an offer of securities.³⁰

Entities that use trading windows in preference to black-out periods will therefore typically choose as their permitted trading windows:

- short windows (usually around 4 weeks) commencing in each case a reasonable period³¹ after:
 - the release of their half- and full-year results;
 - for "commitments test" entities, mining exploration entities and oil and gas exploration entities that file quarterly consolidated cash flow statements under Listing Rules 4.7B or 5.5, the release of those quarterly statements; and
 - their annual general meeting; and
- the duration of the offer period for an offer of securities made pursuant to a prospectus, product disclosure statement or cleansing notice.

The appropriate length for a trading window may vary, depending on an entity's individual circumstances. A longer trading window may be more appropriate for a smaller entity whose securities are relatively illiquid (and therefore less easily traded) or for an entity with a relatively stable business that is not frequently considering matters under Listing Rule 3.1A.³² A shorter trading window may be more appropriate for a larger entity whose securities are highly liquid (and therefore more easily traded) and which has a relatively dynamic business that is frequently considering matters under Listing Rule 3.1A.³³

²⁸ See note 27 above.

²⁹ These matters are typically covered in the chairperson's or CEO's address to the meeting and released to the market ahead of the meeting under Listing Rule 3.13.3.

³⁰ This would also include any period where a supplementary or replacement prospectus, product disclosure statement or cleansing notice has been released as a result of the original prospectus, product disclosure statement or cleansing notice being found to be defective or because a significant new matter has arisen.

³¹ See note 27 above.

³² That is, potentially market sensitive matters that are not required to be disclosed immediately to the market under Listing Rule 3.1 because of the application of the exceptions in Listing Rule 3.1A.

³³ See note 32 above.

4.5. Other periods during which trading should be prohibited

In addition to the restrictions that apply during the fixed closed periods required under Listing Rule 12.12.1, the Listing Rules³⁴ contemplate that an entity may wish to impose ad hoc restrictions on its KMP from trading in its securities at times when it is considering a matter subject to Listing Rule 3.1A.³⁵ These ad hoc restrictions may apply to individual KMP (for example, those KMP who are aware of the matter being considered under Listing Rule 3.1A) or to all KMP generally.³⁶

ASX would strongly encourage entities to reserve the right to impose such ad hoc trading restrictions in their trading policies and to exercise that right without hesitation in appropriate cases. In this regard, an entity should be especially mindful of the point mentioned previously about the market's sensitivity to KMP trading in the lead up to the announcement of market sensitive information under Listing Rule 3.1, when they may have, or be perceived to have, access to information about the announcement ahead of other investors.

Entities can do this in their trading policy:

- if they prescribe trading windows, by providing that the entity can impose a restriction on trading during any period, including one that would otherwise fall within a permitted trading window under the policy; or
- if they prescribe black-out periods, by providing that the entity can impose a restriction on trading during any period, in addition to the fixed black-out periods provided for in the policy.

Entities need to be careful how they handle the process of imposing ad hoc restrictions on trading by its KMP or other employees covered by its trading policy. If news leaks that the entity has imposed such a restriction, this could lead to conjecture that the reason for the ad hoc restriction is because the entity is about to release market sensitive information or is involved in market sensitive negotiations, which in turn could lead to speculative trading. In a worst case scenario, this could result in the entity having to make an announcement about the matter earlier than might otherwise have been the case, because the matter has ceased to be confidential³⁷ or to correct or prevent a false market in its securities.³⁸

Some entities tackle this issue by requiring KMP and other employees covered by the trading policy to seek a clearance for any trading in the entity's securities, regardless of whether it is happening within a permitted trading window, or outside a black-out period, specified in the entity's trading policy. By doing this, the entity can impose an ad hoc restriction on an individual trade, as and when needed. This eliminates the need to communicate the imposition of an ad hoc restriction more widely to KMP and other employees covered by the trading policy.

Others tackle this issue by ensuring that the communication of an ad hoc restriction is limited to KMP and, if other employees are covered by the policy, those employees who are directly involved in, or have knowledge of, the matter being considered under Listing Rule 3.1A. They will typically warn recipients of the communication that the matter is highly confidential and they must not disclose to anyone not directly involved in the matter that a restriction has been imposed on trading in the entity's securities.

4.6. A cautionary note about the application of insider trading laws

It should be noted that the fact a trade occurs during a permitted trading window, or outside a black-out period, under an entity's trading policy does not preclude it from breaching insider trading laws, if it is undertaken or procured by someone in possession of inside information at the time. ASX would therefore recommend that an entity include a warning in its trading policy that a person who possesses inside information about an entity's securities is generally prohibited from trading in those securities under insider trading laws and that this applies

³⁴ See paragraph (b) of the definition of "prohibited period" in Listing Rule 19.12 mentioned in note 4 above.

³⁵ Again, see note 32 above.

³⁶ If the entity extend its trading policy to cover other employees, these ad hoc restrictions might apply to an individual employee, a group of employees or all employees generally.

³⁷ See '5.8. Listing Rule 3.1A.2 – the requirement for information to be confidential' in Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*.

³⁸ See '6. Listing Rule 3.1B – correcting or preventing false markets' in Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*.

even where the trade occurs within a permitted trading window, or outside a black-out period, specified in the policy.³⁹

5. What types of trading should be restricted?

5.1. Trading in securities

Strictly speaking, a trading policy is only required by the Listing Rules to cover trading in an entity's securities.

In the case of a listed company, "securities" include:

- any share in, or debenture of, the company;
- an option over an unissued share in, or debenture of, the company; and
- a renounceable or unrenounceable right to subscribe for a share in, or debenture of, the company.⁴⁰

In the case of a listed trust that is a registered managed investment scheme under the Corporations Act, "securities" include:

- any unit or other interest in the scheme;
- an option over an unissued unit or other interest in the scheme; and
- a renounceable or unrenounceable right to subscribe for a unit or other interest in the scheme.⁴¹

5.2. Trading in derivatives

Many listed entities, particularly larger ones, have derivative products (for example, warrants, exchange-traded and over-the-counter options, and contracts for differences) issued over or in respect of their securities.

Trading by KMP in derivative products issued over or in respect of an entity's securities raises the same issues and poses the same risks as trading by KMP in its securities.⁴² Indeed, many would argue that trading in derivatives poses a greater risk as the gearing inherent in these products allows larger insider trading plays for a smaller outlay and the trading may not be as visible as trading in the entity's securities, particularly if it is in over-the-counter products.

For these reasons, while the Listing Rules only require an entity's trading policy to cover trading in its securities, where an entity is aware that there are derivative products issued over or in respect of its securities, ASX would strongly recommend that it extend its trading policy to cover trading in those derivative products as well.

5.3. Short-term trading

Short-term trading refers to trading in and out of an entity's securities, or derivatives products issued over or in respect of its securities, over a short period. Views differ as to what is a "short period" for these purposes, but it is not uncommon for entities to specify periods of 1, 2, 3 or 6 months.

Short-term trading has a speculative element to it that raises a number of issues. If it becomes known that a KMP of an entity is trading in and out of its securities over short periods, some may see it as an indication that the KMP's interests are not aligned with the interests of long term investors. Some may also speculate that the KMP is doing so because they are taking advantage of information about the entity that the market is not aware of or has not fully absorbed and therefore is engaging in insider trading.

For these reasons, while it is not a matter required to be dealt with under the Listing Rules, an entity should consider carefully whether its trading policy should specifically prohibit short-term trading in its securities (and, where the

³⁹ See also '8.2 The primacy of insider trading laws' [on page 18](#).

⁴⁰ See the definition of "security" in Listing Rule 19.12 and in section 92 of the Corporations Act.

⁴¹ Again, see the definition of "security" in Listing Rule 19.12 and in section 92 of the Corporations Act.

⁴² The prohibition on insider trading in Division 3 of Part 7.10 of the Corporations Act applies to so-called "Division 3 financial products". Paragraph (b) of the definition of "Division 3 financial products" in section 1042A specifically includes derivatives.

entity is aware that there are derivative products issued over or in respect of its securities, also in such derivatives products) by its KMP and any other employees covered by its trading policy.⁴³

5.4. Short selling

Short selling is a legitimate technique used by traders who believe that the market price of a security is likely to fall. They will borrow the security and sell it in the hope that they will be able to buy the security back at a lower price at some point in the future and close out their short position at a profit.

If it becomes known that a KMP of an entity has short sold its securities, however, it sends a negative message to the market about the level of confidence that the KMP has in the prospects of the entity. Some may label it an act of disloyalty by the KMP. Some may also speculate that the KMP did so because they were aware of negative information about the entity that the market was not aware of or had not fully absorbed and therefore had engaged in insider trading.

For these reasons, while it is not a matter required to be dealt with under the Listing Rules, an entity should consider carefully whether its trading policy should specifically prohibit the short selling of its securities by KMP and any other employees covered by its trading policy.

5.5. Hedging transactions

The Corporations Act⁴⁴ prohibits the KMP of an ASX listed company established in Australia and their “closely related parties” from entering into an arrangement that would have the effect of limiting their exposure to risk relating to an element of their remuneration that either has not vested or has vested but remains subject to a holding lock. While it is not a matter required to be dealt with under the Listing Rules, it would be prudent for an entity established in Australia to reiterate that prohibition in its trading policy.⁴⁵

Even though it is not prohibited by the Corporations Act, where an entity’s trading policy extends to employees beyond its KMP and it has an equity-based remuneration scheme that extends to those employees, it should consider carefully whether its trading policy⁴⁶ should prohibit those employees from entering into hedging transactions to limit their exposure in respect of any unvested entitlement to securities they receive under the scheme. [As noted in the Corporate Governance Council’s Principles and Recommendations:](#)

[“Allowing participants in an equity-based remuneration scheme to hedge or otherwise limit the economic risk of participating in the scheme may act counter to the aims of the scheme and blur the relationship between remuneration and performance. A listed entity which has an equity-based remuneration scheme should establish a policy on whether participants can enter into these sorts of transactions and disclose that policy to investors. This applies whether the participants in the scheme are directors, senior executives or other employees.”⁴⁷](#)

More generally, if it becomes known that a KMP of an entity has entered into a hedging transaction to limit his or her exposure to its securities (whether received under an equity-based remuneration scheme or otherwise and whether vested or unvested), this may be interpreted by the market and market commentators as a lack of confidence in the long term prospects of the entity and/or as contributing to a misalignment with the interests of long-term investors. For those reasons, an entity may wish to consider whether its trading policy should also prohibit its KMP and any other employees covered by its trading policy from entering into any transaction to hedge their

⁴³ An entity that does elect to prohibit short-term trading in its trading policy may also wish to consider how it deals with sales of securities received by KMP and any other employees covered by its trading policy under an equity-based remuneration scheme. Entities commonly exclude that situation from the prohibition on short-term trading in their trading policies. This is to cater for those recipients who need to sell some of their securities to cover their tax liability on the vesting of the securities and also for those recipients who simply wish to cash out their entitlements at the end of the vesting period.

⁴⁴ Section 206J.

⁴⁵ It is likely that many entities will address this issue with a specific provision in their equity-based remuneration schemes. Nevertheless, repeating the prohibition in the entity’s trading policy will help to reinforce the point.

⁴⁶ Again, an entity could address this issue with a specific provision in its equity-based remuneration scheme, but repeating the prohibition in the entity’s trading policy will help to reinforce the point.

⁴⁷ [See the commentary in the Principles and Recommendations in relation to Recommendation 8.3.](#)

exposure to its securities or, at the very least, require such arrangements to be approved by the entity before they are entered into so that the entity can consider their appropriateness on a case-by-case basis.

5.6. Margin lending and other secured financing arrangements

Margin lending and other secured financing arrangements entered into by a KMP in relation to an entity's securities can give rise to a number of issues. For example, during the GFC, concerns were raised that short sellers may have been targeting entities whose KMP had substantial margined holdings and attempting to push the market price of their securities to the point where the margin loan would be called and the substantial holding would be sold (thereby causing a further drop in the market price of the entity's securities and increasing the profit on the seller's short position). There were also cases of KMP with substantial margined holdings in an entity's securities manipulating the market price of its securities to avoid a margin call.⁴⁸

It can be embarrassing, both for the entity and the KMP, if there is a default and the lender/financier sells some or all of the securities to cover the default. This is especially so if the sale occurs during a prohibited period when the KMP would otherwise be precluded from selling. However, it can still be embarrassing even if the sale occurs outside of a prohibited period. For example, it may reflect negatively on the business and financial acumen of the KMP in gearing themselves to that extent. If the sale involves a large holding in the entity, it may also overhang or depress the market price of the entity's securities for a period, which will not please investors. These things in turn may reflect negatively on the entity and its board in allowing this situation to occur.

For these reasons, while it is not a matter required to be dealt with under the Listing Rules, an entity should consider carefully whether its trading policy should prohibit KMP and any other employees covered by its trading policy from entering into margin lending or other secured financing arrangements in respect of its securities or, at the very least, require the disclosure of such arrangements so that the board and senior management are not caught unawares if there is a default.

5.7. Trading in securities of other entities

The Listing Rules only require an entity's trading policy to cover trading in its securities.

Trading in securities of other entities – for example, trading by an officer or employee of an entity in the securities of another entity with which the entity is in confidential negotiations about a material transaction or trading by officers or employees of a listed investment company or fund in the securities of an entity in which the company or fund is about to undertake a material trade – can also raise insider trading issues. It would be common for an entity's trading policy to acknowledge this fact and to prohibit expressly any form of insider trading as a result of the information acquired through the KMP's (or other employee's) role with the entity, not just insider trading in the entity's securities.

Some entities in the finance industry are subject to broader regulatory obligations requiring them to supervise all trading in financial products by directors and employees, not just in their own securities.⁴⁹ They may find it convenient to cover these requirements in their trading policy and to split their policy into two sections – one covering trading in the entity's securities and the other covering trading in any other financial products about which an employee may have inside information.

Entities that do extend their trading policy to cover trading in financial products more generally are technically only required to lodge with ASX the relevant provisions in the trading policy that apply to trading in its securities by KMP.⁵⁰ ASX will therefore accept in satisfaction of the requirement to lodge a copy of the trading policy with ASX, either a copy of the full trading policy or a verbatim extract of the relevant provisions in the trading policy that apply to trading in the entity's securities by its KMP. However, ASX prefers an entity to lodge a full copy of its trading policy so that the market has a better appreciation of the governance standards adhered to by the entity.

⁴⁸ See, for example, *R v Jacobson* [2014] VSC 592.

⁴⁹ See note 22 above.

⁵⁰ See '9. Disclosure matters' [on page 19](#) and the definition of "trading policy" in Listing Rule 19.12.

6. Exceptions where trading may be permitted

6.1. Excluded trading

Listing Rule 12.12.3 requires an entity to disclose any trading that is excluded from the entity's trading policy. This requirement implicitly recognises that an entity may appropriately exclude certain types of trading from the restrictions that would otherwise apply under its trading policy, where the risk of insider trading, or the appearance of insider trading, is low.

Again, the Listing Rules do not prescribe the types of trading an entity may exclude from its trading policy. Each entity has to choose exclusions that are appropriate to its circumstances and specify those exclusions in its trading policy.⁵¹

Some examples of trading that is commonly excluded from the restrictions in a trading policy are:

- transfers of securities between a KMP and someone closely related to the KMP (such as a spouse, minor child, family company or family trust) or by a KMP to their superannuation fund, in respect of which prior written clearance has been provided in accordance with procedures set out in the trading policy;
- a disposal of securities arising from the acceptance of a takeover offer, scheme of arrangement or equal access buy-back;
- a disposal of rights acquired under a pro rata issue;
- an acquisition of securities under a pro rata issue;
- an acquisition of securities under a security purchase plan or a dividend or distribution reinvestment plan where:
 - the KMP did not commence or amend their participation in the plan during a prohibited period; and
 - the entity's trading policy does not permit the KMP to withdraw from the plan during a prohibited period other than in exceptional circumstances;
- the obtaining by a director of a share qualification;⁵²
- an acquisition of securities under an employee incentive scheme;⁵³
- where the entity has an employee incentive scheme with a KMP as a trustee of the scheme, an acquisition of securities by the KMP in his or her capacity as a trustee of the scheme;⁵⁴
- an acquisition or disposal of securities under a pre-determined investment or divestment plan for which prior written clearance has been provided in accordance with procedures set out in the trading policy and where:
 - the KMP did not enter into or amend the plan during a prohibited period;
 - the plan does not permit the KMP to exercise any discretion over how, when, or whether to acquire or dispose of securities; and

⁵¹ Again, in doing so, an entity should consider the spirit, intention and purpose behind Listing Rules 12.9-12.12, as it is required to do under Listing Rule 19.2, and that trading policies are intended not only to minimise the risk of insider trading but also to avoid the appearance of insider trading.

⁵² The obtaining by a director of a share qualification is specifically excluded from the insider trading prohibition in section 1043A(1) by Corporations Regulation 9.12.01(a).

⁵³ An acquisition of securities under an employee incentive scheme is specifically excluded from the insider trading prohibition in section 1043A(1) by Corporations Regulation 9.12.01(b).

⁵⁴ An acquisition of securities by a trustee of an employee incentive scheme is also specifically excluded from the insider trading prohibition in section 1043A(1) by Corporations Regulation 9.12.01(b).

- the entity's trading policy does not allow for the cancellation of the plan during a prohibited period other than in exceptional circumstances;
- indirect and incidental trading that occurs as a consequence of a KMP dealing in securities issued by a managed investment scheme, listed investment company, exchange-traded fund or similar investment vehicle that is managed by a third party and that happens to hold as part of its portfolio securities in the entity; and
- where the entity's trading policy permits KMP to enter into a margin lending or other secured financing arrangement in relation to the entity's securities,⁵⁵ an involuntary disposal of securities that results from the margin lender or financier exercising its rights under the arrangement.

It should be noted that a trade that falls within an exclusion in an entity's trading policy may still breach insider trading laws if it is undertaken or procured by someone in possession of inside information at the time. ASX would therefore recommend that an entity include a warning in its trading policy that a person who possesses inside information about an entity's securities is generally prohibited from trading in those securities under insider trading laws and that this applies even where the trading falls within an exclusion in the entity's trading policy.⁵⁶

6.2. Trading in exceptional circumstances with prior written clearance

Listing Rule 12.12.4 requires a trading policy to specify any exceptional circumstances in which KMP may be permitted to trade during a prohibited period with prior written clearance.

This requirement implicitly recognises that there may be extraordinary circumstances in which a KMP ought to be granted special dispensation to trade in what would otherwise be a prohibited period, subject to receiving prior written clearance from someone in a position of authority who can provide a safety check that the risk of insider trading, or the appearance of insider trading, is not unacceptable.

Again, the Listing Rules do not prescribe the exceptional circumstances in which an entity may permit its KMP to trade during a prohibited period. Each entity has to choose exceptional circumstances that are appropriate to its circumstances and specify those exceptional circumstances in its trading policy.⁵⁷

One example of an exceptional circumstance that is commonly specified in this regard is where a KMP is facing severe financial hardship and can only meet their financial commitments by selling their securities. It is for an entity that adopts this exception to define clearly what "severe financial hardship" is for these purposes, what evidence it requires to establish that the KMP is facing severe financial hardship and who makes the determination as to whether that evidence is sufficient for the exception to apply.

Another example of an exceptional circumstance that is commonly specified is where a KMP is required by a court order or a court enforceable undertaking (for example, in a bona fide family settlement) or some other overriding legal or regulatory requirement to transfer, or accept a transfer of, securities.

In recognition that exceptional circumstances, by their nature, may not be able to be foreseen, ASX considers it acceptable for a trading policy to include a "catch-all" discretionary power for a senior officer of the entity (for example, the chairperson or the chief executive officer) to determine that there are exceptional circumstances that warrant the granting of approval to a KMP to trade during a prohibited period. ASX would expect this power to be exercised sparingly and with caution.

⁵⁵ As mentioned in section 5.6 above, an entity should consider carefully whether its trading policy should prohibit KMP and any other employees covered by its trading policy from entering into margin lending or other secured financing arrangements in respect of its securities.

⁵⁶ See also '8.2 The primacy of insider trading laws' [on page 18](#).

⁵⁷ Again, in doing so, an entity should consider the spirit, intention and purpose behind Listing Rules 12.9-12.12, as it is required to do under Listing Rule 19.2, and that trading policies are intended not only to minimise the risk of insider trading but also to avoid the appearance of insider trading.

7. Procedures to clear trading

7.1. The requirement for clearance procedures

Listing Rule 12.12.5 requires a trading policy to set out the procedures for a KMP to obtain prior written clearance to trade during a prohibited period under Listing Rule 12.12.4.

Again, the Listing Rules do not prescribe the procedures an entity should have in this regard. Each entity has to determine procedures that are appropriate to its circumstances and specify those procedures in its trading policy.

Even though it is not strictly required under the Listing Rules, in addition to the special circumstances an entity may specify for the purposes of Listing Rule 12.12.4, some entities require prior written clearance for KMP (and other employees covered by their trading policy) to trade in other circumstances. For example, it is not uncommon for some of the excluded trading an entity specifies under Listing Rule 12.12.3 to require some form of prior approval before the exclusion applies.

Indeed, some entities require a prior clearance for any trading by KMP and other employees covered by the trading policy, even if the trading will take place within a permitted trading window, or outside a black-out period, specified in the entity's trading policy. Some entities involved in the finance industry do this because they are subject to broader regulatory obligations requiring them to supervise all trading in financial products by directors and employees.⁵⁸ Some entities do it as a way of facilitating the imposition of an ad hoc restriction without having to communicate the ad hoc restriction more broadly.⁵⁹ Others simply do it as an additional safeguard so that someone in a position of authority can determine whether the trading might give rise to an unacceptable risk of insider trading, or the appearance of insider trading, even though it will occur within a permitted trading window, or outside a black-out period, specified in the entity's trading policy.

The guidance in this section 7 covers clearances for a KMP to trade during a prohibited period in exceptional circumstances under Listing Rule 12.12.4 and also any other approval to trade required under an entity's trading policy.

7.2. Who should grant a clearance to trade?

The person designated in an entity's trading policy to approve trading in its securities by its KMP should be someone in a position of authority whose decision will be respected by the KMP.

There are different ways of tackling this issue. Some entities require trades by KMP to be cleared by the chairperson – unless the chairperson is not available or it is the chairperson doing the trading, in which case, the trade must be cleared by the chief executive officer or, if the entity has an audit committee with an independent chair⁶⁰ or a senior independent director,⁶¹ by the chair of the audit committee or the senior independent director (as the case may be). Others require trades by KMP to be cleared by the chief executive officer – unless it is the chief executive officer doing the trading, in which case, the trade must be cleared by the chairperson.

Entities that extend their trading policy to cover other employees as well as KMP and that require prior clearance for those employees to trade may choose to delegate the decision to grant a clearance to trade to a slightly less senior officer, such as the company secretary or, if the entity has a compliance function, the head of that function.

In all cases, the person given the responsibility to grant a clearance to trade should be someone in a position to know if the entity is:

- about to release a periodic financial report or other financial data that might come as a surprise to the market;

⁵⁸ See note 22 above.

⁵⁹ See '4.5 Other periods during which trading should be prohibited' [on page 10](#).

⁶⁰ As entities in the S&P / ASX 300 index are required to do under Listing Rule 12.7.

⁶¹ As discussed in the [commentary-explanatory materials](#) to Recommendations 1.1 and 2.5 of the ASX Corporate Governance [Council's Corporate Governance Principles and Recommendations](#).

- about to make an announcement of market sensitive information under Listing Rule 3.1; or
- considering a matter subject to Listing Rule 3.1A,

when it could be unwise or embarrassing for a KMP or other employee covered by the entity's trading policy to be granted a clearance to trade.

It is also important that the person given the responsibility to grant a clearance to trade has a good understanding of the laws governing insider trading or is able to seek advice on that matter.

7.3. What factors should be taken into account when granting a clearance to trade?

The decision to grant a KMP or other employee covered by an entity's trading policy a clearance to trade is one that should be made judiciously, especially if the trade will occur during a prohibited period. Almost by definition, these are periods when the risk of insider trading, or the appearance of insider trading, is high.

The person granting a clearance to trade needs to remember that the underlying purpose of a trading policy is not only to minimise the risk of insider trading but also to avoid the appearance of insider trading and the significant reputational damage that may cause.

For this reason, the person generally should not grant a clearance to trade if they are aware that the entity is likely in the short-term to release a periodic financial report or other financial data that might come as a surprise to the market or make an announcement of market sensitive information under Listing Rule 3.1.

7.4. How long should a clearance to trade last?

A trading policy should address the period for which any clearance to trade is valid. Typically, such a clearance would be expressed to expire after a relatively short period (usually one week or less), especially where it is being given to facilitate trading in exceptional circumstances when the KMP or other employee covered by the entity's trading policy would otherwise be precluded from trading.

How long a clearance to trade should be valid may vary, depending on an entity's individual circumstances. A longer period may be appropriate for a smaller entity whose securities are relatively illiquid (and therefore less easily traded). A shorter period may be more appropriate for a larger entity whose securities are highly liquid (and therefore more easily traded).

7.5. Other issues around clearances to trade

It would be prudent for a trading policy to state that:

- any clearance to trade can be given or refused by the entity in its discretion, without giving any reasons;
- a clearance to trade can be withdrawn if new information comes to light or there is a change in circumstances;
- the entity's decision to refuse clearance is final and binding on the person seeking the clearance; and
- if clearance to trade is refused, the person seeking the clearance must keep that information confidential and not disclose it to anyone.

On this last point, if news leaks that the entity has refused a clearance to trade, this could lead to conjecture that the reason for the refusal is because the entity is about to release market sensitive information or is involved in market sensitive negotiations, which in turn could lead to speculative trading and the risk identified previously.⁶²

It should be noted that a trade that has been granted a clearance under an entity's trading policy may still breach insider trading laws if it is undertaken or procured by someone in possession of inside information at the time. ASX would therefore recommend that an entity include a warning in its trading policy that a person who possesses inside information about an entity's securities is generally prohibited from trading in those securities under insider trading

⁶² See notes 37 and 38 and the accompanying text.

laws and that this applies even where the person has been given clearance under the policy to trade (whether in exceptional circumstances or otherwise).⁶³

8. Other matters that could be addressed in a trading policy

8.1. The reason for having a trading policy

While it is not a matter that is required to be included in a trading policy under Listing Rule 12.12, it will generally be helpful for an entity's trading policy to put some context around why the policy has been adopted, by explaining:

- the laws prohibiting insider trading and directors and employees using information acquired in that capacity to gain an improper advantage for themselves or someone else;⁶⁴ and
- the ramifications for the entity and its directors and employees if those laws are breached.

It will also be helpful for the policy to state that a breach of the policy will be regarded as serious misconduct which may lead to disciplinary action, up to and including dismissal.

8.2. The primacy of insider trading laws

Again, while these are not matters that are required to be included in a trading policy under Listing Rule 12.12, it would be prudent for an entity's trading policy:

- to prohibit expressly any conduct by KMP and any other employees covered by the trading policy in breach of insider trading laws;
- as mentioned previously, to caution that under insider trading laws, a person who possesses inside information about an entity's securities is generally prohibited from trading in those securities and that this applies even where:
 - the trading occurs at a time that would otherwise be within a permitted trading window, or outside a black-out period, specified in the entity's trading policy;
 - the trading falls within an exclusion in the entity's trading policy; or
 - the person has been given clearance under the policy to trade (whether in exceptional circumstances or otherwise);
- to further caution that any clearance to trade under the policy is not an endorsement of the proposed trade and that the person doing the trading is individually responsible for their investment decisions and their compliance with insider trading laws;
- to mention, therefore, that before a KMP (or any other employee covered by the trading policy) trades in the entity's securities, they should consider carefully whether they are in possession of any inside information that might preclude them from trading at that time and, if they have any doubt on that score, they should not trade;
- to require a KMP (or any other employee covered by the trading policy) seeking a clearance to trade in the entity's securities, to certify that they are not in possession of any inside information that might preclude them from trading at that time; and
- to warn that if they do come into possession of inside information after receiving a clearance to trade, they must not trade despite having received the clearance.

⁶³ See also '8.2 The primacy of insider trading laws' below.

⁶⁴ See notes 8 and 10 and the accompanying text. This would include explaining that the prohibitions against insider trading extend beyond personal trading and include procuring others to trade and tipping others about inside information in circumstances where the tipper knows or ought reasonably to know that the tippee will trade or procure others to trade.

8.3. Substantial holding notices

An entity established in Australia that has a KMP with relatively significant holdings of securities in the entity may wish to include in its trading policy guidance on the obligation to give a notice to the entity and to ASX if they begin to have, or cease to have, a “substantial holding”⁶⁵ in the entity or if they have a substantial holding in the entity and there is a movement of at least 1% in their holding.⁶⁶

9. Disclosure matters

9.1. Initial disclosure to ASX

Entities that were admitted to the official list as at 1 January 2011, the date on which Listing Rules 12.9 – 12.12 first came into effect, were required to give a copy of their trading policy to ASX at that time.

Entities admitted to the official list after that date have been required under Listing Rule 1.1 condition 19 to give a copy of their trading policy to ASX as part of the admission process.

These trading policies have been released to the market via the ASX Market Announcements Platform.

9.2. Disclosure of material changes to ASX

Listing Rule 12.10 requires an entity which makes a material change to its trading policy to give a copy of the amended trading policy to ASX Market Announcements Office for release to the market within five business days of the change taking effect.

For the purposes of Listing Rule 12.10, ASX would consider the following amendments to an entity’s trading policy to constitute a material change:

- changes to the fixed periods specified in the trading policy when the entity’s KMP are prohibited from trading in the entity’s securities;
- changes with respect to the trading that is excluded from the operation of the entity’s trading policy; and
- changes with respect to the exceptional circumstances in which the entity’s KMP may be permitted to trade during a prohibited period.

For the avoidance of doubt, ASX will accept a lodgement of any change to a trading policy under Listing Rule 12.10, even if it might not be considered material.

9.3. Disclosure to ASX on request

Listing Rule 12.11 requires an entity to provide a copy of its trading policy to ASX immediately upon request.

In view of the disclosure requirements mentioned in sections 9.1 and 9.2 above, this is not a power that ASX is often called upon to exercise. Generally, ASX will only do so if it has concerns that the version of an entity’s trading policy currently available on the ASX Market Announcements Platform may be materially out-of-date.

9.4. Disclosure on an entity’s website

Recommendation 6.1 of the ASX Corporate Governance ~~Council’s Corporate Governance~~ Principles and Recommendations states that “[a] listed entity should provide set out information about itself and its governance ~~to investors via on~~ its website.”

⁶⁵ As defined in section 9 of the Corporations Act.

⁶⁶ Section 671B of the Corporations Act. Entities established outside Australia may be subject to similar provisions under the laws applicable in their home jurisdiction.

The [commentary explanatory materials](#) to that recommendation suggests that an entity's website would typically have an "investor relations" landing page from where all relevant corporate governance information can be accessed. ~~should include in the corporate governance area of its website a link to its corporate governance policies.~~

ASX regards an entity's trading policy to be a key corporate governance policy for these purposes and, in keeping with recommendation 6.1, it would strongly encourage entities to publish an up-to-date version of their trading policy on their website.

9.5. Appendix 3Y disclosures

The form of notification of a change in a director's interests that must be given to ASX under Listing Rule 3.19A.2 (Appendix 3Y)⁶⁷ requires the following information to be included:

- whether the interests the subject of the notification were traded during a closed period where prior written clearance under the trading policy was required;
- if so, whether prior written clearance was obtained; and
- if prior written clearance was obtained, the date on which it was provided.

It should be noted that the obligation to include this information in an Appendix 3Y applies only to trading that occurs during a closed period and not to trading during any additional prohibited period that an entity has imposed on an ad hoc basis because it is considering a matter subject to Listing Rule 3.1A. This is so that an entity does not have to disclose to the market that it has imposed such a prohibition, which would signal the fact that it is considering a potentially market sensitive matter.

10. Compliance matters

10.1. Compliance measures generally

Implicit in the requirement for an entity to have a trading policy is that it should also have appropriate measures to ensure that its KMP are aware of, and understand, their obligations under the policy and to monitor and enforce compliance with the policy. For it not to do so would be a failure to comply with its obligation under Listing Rule 19.2 to honour the spirit, intention and purpose of the Listing Rules.

It is up to an entity to determine what those measures should be, having regard to its individual circumstances.

At a minimum, an entity's compliance measures should include appropriate record keeping procedures to capture details of all applications by KMP for clearance to trade under the policy and its decisions on such applications.⁶⁸

10.2. Awareness and understanding⁶⁹

Measures an entity could take to ensure that its KMP are aware of, and understand, their obligations under its trading policy include:

- incorporating a requirement in the contractual arrangements it has with its KMP that they must comply with the trading policy;⁷⁰

⁶⁷ Under ASIC Class Order 01/1519, Appendix 3Y disclosures are also taken to satisfy the obligation of a director to notify ASX of their "notifiable interests" under section 205G of the Corporations Act: see generally Guidance Note 22 [Disclosure of Notifiable Interests of Directors-Director Disclosure of Interests and Transactions in Securities - Obligations of Listed Entities](#).

⁶⁸ In particular, the entity should have appropriate record keeping procedures in place to capture details of written clearances given under Listing Rule 12.12.4 to directors to trade during closed periods, given the obligation to disclose those details in an Appendix 3Y (see '9.5 Appendix 3Y disclosures' above).

⁶⁹ The guidance in this section 10.2 relates specifically to KMP. However, an entity that applies its trading policy to a wider group of employees in addition to its KMP could also apply the same measures in relation to those employees.

⁷⁰ As mentioned in the text accompanying note 19 above, it will also put the basis for requiring compliance with the policy on a firm legal footing and facilitate the taking of appropriate disciplinary action if the policy is breached.

- including a copy of the trading policy in the “new starter” packs for KMP;
- placing a copy of the trading policy on the entity’s intranet;
- conducting training programs for KMP in relation to the trading policy;
- circulating reminders to KMP (eg by email) of the start and finish dates for a trading window or black-out period as they are about to occur; and
- requiring periodic (eg annual) sign-offs by KMP that they are aware of, and understand, the trading policy and are in compliance with it.

10.3. Monitoring compliance⁷¹

Measures an entity could take to monitor compliance with its trading policy include:

- requiring KMP to notify the entity of any acquisition or disposal of the entity’s securities (and, if the entity’s policy covers trading in derivatives, of any derivatives issued over, or in respect of, its securities) within a nominated time period;
- requiring KMP to notify the entity of the HINs or SRNs of their holdings (and, if the entity’s policy covers trading by closely connected persons or entities, of the holdings of closely connected persons and entities) and putting in place an alert service with the entity’s share registry for it to be notified of any changes in those holdings;
- ensuring that the board is notified of any trading by a KMP (and, if the entity’s policy covers trading by closely connected persons or entities, by a closely connected person or entity) so that it is not caught unawares if the trading attracts criticism by market commentators or scrutiny by market regulators; and
- requiring KMP to keep a register of their trading in the entity’s securities (and, if the entity’s policy covers trading in derivatives, in any derivatives issued over, or in respect of, its securities) and to make a copy of that register available to the entity upon request.

Some entities involved in the finance industry are subject to broader regulatory obligations requiring them to supervise all trading in financial products by directors and employees, not just trading in their own securities by KMP.⁷² They are likely to have more comprehensive measures to monitor compliance with their trading policies, such as:

- having a staff trading policy that requires staff to obtain a clearance for any trade in relevant financial products, regardless of when it occurs;
- where the entity is, or has a subsidiary that is, a participant in the ASX market, requiring all trading on that market by staff to be undertaken through that participant, so that the trading can be monitored internally;⁷³
- if the entity allows staff to trade through an external broker, requiring copies of confirmations to be sent by the external broker to the entity’s compliance group; and
- maintaining watch lists and restricted lists⁷⁴ to monitor staff trading in financial products about which the entity may have market sensitive information.

⁷¹ Again, the guidance in this section 10.3 relates specifically to KMP. However, an entity that applies its trading policy to a wider group of employees in addition to its KMP could also apply the same measures in relation to those employees.

⁷² See note 22 above.

⁷³ And, in the case of acquisitions of securities able to be traded on the ASX market by employees involved in its business of dealing in financial products, so as to comply with section 991F(3) of the Corporations Act.

⁷⁴ Sometimes referred to as grey lists and black lists.

10.4. Enforcing compliance⁷⁵

To meet the standards of good governance expected of listed entities, an entity should regard a breach of its trading policy by a KMP as a serious matter that warrants an investigation as to the circumstances of the breach and, depending on the circumstances, appropriate disciplinary or remedial action.

It is up to each entity to determine the appropriate disciplinary or remedial action for a breach of its trading policy, having regard to the circumstances of the breach and relevant legal and commercial considerations.

Without wishing to limit in any way the types of disciplinary or remedial action an entity may consider imposing for a breach of its trading policy, one remedial measure an entity could consider in relation to a KMP who has:

- disposed of securities in breach of its trading policy, is to have the KMP donate any profit derived from the disposal to charity; or
- acquired securities in breach of its trading policy, is to have the KMP sell the securities at the earliest opportunity they are able to under insider trading laws and donate any profit derived from the sale to charity.

If ASX has concerns that an entity may not be taking appropriate measures to enforce compliance with its trading policy, ASX may require the entity to give any information, document or explanation that ASX asks for to enable it to be satisfied that the entity is, and has been, complying with the Listing Rules.⁷⁶ ASX can also impose a requirement with which the entity must comply in order to ensure compliance with the Listing Rules.⁷⁷

10.5. Directors trading in closed periods without prior clearance

Where a director of an entity breaches its trading policy by trading in securities during a closed period without prior written clearance, that breach will generally be a matter of public record because of the disclosures in the Appendix 3Y (Change of Director's Interest Notice) required to be lodged with ASX in relation to that trading.⁷⁸ In this situation, to meet the standards of good governance expected of listed entities and their directors, an entity should give careful consideration to whether it ought to make an announcement to the market explaining the circumstances of the breach and what (if any) disciplinary or remedial action the entity has taken, or proposes to take, in relation to the breach.

If an Appendix 3Y is lodged with ASX that discloses a breach of its trading policy by a director of an entity and the entity has not made an announcement of the type referred to in the previous paragraph, ASX will give careful consideration to whether it should exercise its powers⁷⁹ to require the entity to explain the circumstances of the breach and what (if any) disciplinary or remedial action the entity has taken, or proposes to take, in relation to the breach and to publish its correspondence with the entity to the market.

10.6. Referrals to ASIC

Finally, it should be noted that if ASX has reason to suspect that a person has committed a significant contravention of the Corporations Act, it is required under section 792B(2)(c) of the Corporations Act to give a notice to ASIC with details of the contravention. The purpose of such a notice is so that ASIC can then consider what action (if any) it may wish to take under its various enforcement powers.

If ASX comes into possession of information which gives it cause to suspect that a KMP or other officer or employee of an entity has engaged in insider trading or market manipulation in breach of the Corporations Act, it will invariably regard that as a "significant contravention" and refer the matter to ASIC under section 792B(2)(c).

⁷⁵ Again, the guidance in this section 10.4 relates specifically to KMP. However, an entity that applies its trading policy to a wider group of employees in addition to its KMP could also apply the same measures in relation to those employees.

⁷⁶ Listing Rule 18.7 requires an entity to give ASX any information or explanation that ASX asks for to enable it to be satisfied that the entity is, and has been, complying with the Listing Rules. Under Listing Rule 18.7A, ASX may publish any correspondence between it and an entity if ASX has reserved the right to do so and considers that it is necessary for an informed market.

⁷⁷ Listing Rule 18.8.

⁷⁸ See '9.5 Appendix 3Y disclosures' [on page 20](#).

⁷⁹ Under Listing Rules 18.7 and 18.7A (see note 76 above).

SECURITY HOLDER RESOLUTIONS

The purpose of this Guidance Note	To assist listed entities and their registries and advisers to understand the requirements for security holder resolutions under the Listing Rules
The main points it covers	- The type of resolution required under the Listing Rules - The form of resolution required under the Listing Rules - The information to be included in a notice of meeting - The requirement to give to ASX a draft notice of meeting for review - Voting exclusions - The voting process - The power of ASX to require the appointment of scrutineers to decide the validity of votes cast at a general meeting - Supplementary disclosures - Notifying ASX of the results of voting - Stale resolutions
Related materials you should read	- Guidance Note 12 <i>Significant Changes to Activities</i> - Guidance Note 13 <i>Spin-outs of Major Assets</i> - Guidance Note 19 <i>Performance Shares</i> - Guidance Note 21 <i>The Restrictions on Issuing Equity Securities in Chapter 7 of the Listing Rules</i> - Guidance Note 24 <i>Acquisitions and Disposals of Substantial Assets Involving Persons in a Position of Influence</i> - Guidance Note 25 <i>Issues of Securities to Persons in a Position of Influence</i> - Guidance Note 33 <i>Removal of Entities from the ASX Official List</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 by ASX Limited ("ASX") to assist listed entities and their registries and advisers to understand the requirements for security holder resolutions under the Listing Rules.

This includes resolutions approving:

- an issue of options with certain terms attached under Listing Rule 6.20.3 or 6.22.2A, a cancellation of options for consideration under Listing Rule 6.23.2 or change in the terms of options under Listing Rule 6.23.4;
- the issue of securities under the placement restrictions in Listing Rules 7.1, 7.1A, 7.2 (exception 13), 7.4, 7.6 (exception 6) or 7.9 (exception 6);¹
- the cancellation of forfeited shares by a limited liability company under Listing Rule 7.26;
- an acquisition or disposal of a substantial asset involving a person in a position of influence under Listing Rule 10.1;²
- an issue of securities to a person in a position of influence under Listing Rule 10.11 or 10.14;³
- an increase in the aggregate remuneration payable to non-executive directors under Listing Rule 10.17;
- the payment of termination benefits to officers in excess of 5% of the entity's equity interests under Listing Rule 10.19;
- a significant change to the nature or scale of a listed entity's activities under Listing Rule 11.1.2;⁴
- the disposal of an entity's main undertaking under Listing Rule 11.2;⁵
- the spin-off of a major asset under Listing Rule 11.4.1(b);⁶

¹ See Guidance Note 21 *The Restrictions on Issuing Equity Securities in Chapter 7 of the Listing Rules*.

² See Guidance Note 24 *Acquisitions and Disposals of Substantial Assets Involving Persons in a Position of Influence*.

³ See Guidance Note 25 *Issues of Equity Securities to Persons in a Position of Influence*.

⁴ See Guidance Note 12 *Significant Changes to Activities*.

⁵ See Guidance Note 12 *Significant Changes to Activities*.

⁶ See Guidance Note 13 *Spin-outs of Major Assets*.

- the issue of performance shares under Guidance Note 19 *Performance Shares*; and
- the voluntary removal of an entity from the official list under Guidance Note 33 *Removal of Entities from the ASX Official List*.

2. The type of resolution required under the Listing Rules

With two exceptions, the type of resolution required to approve something for the purposes of the Listing Rules is an ordinary resolution.⁷

The two exceptions are a resolution approving:

- an entity to have the additional capacity to issue equity securities provided for in Listing Rule 7.1A (commonly referred to as a “7.1A mandate”); and
- the voluntary removal of an entity from the official list under Guidance Note 33 *Removal of Entities from the ASX Official List*,

which in each case is required to be a special resolution.

The Listing Rules do not define the terms “ordinary resolution” or “special resolution”.

The term “ordinary resolution” takes its ordinary English meaning, that is, a resolution passed by a simple majority of security holders.

The term “special resolution” takes its meaning from the *Corporations Act 2001* (Cth).⁸ Under that Act, for a resolution to be a special resolution:

- the notice of meeting proposing the resolution must state both the intention to propose the resolution as a special resolution and the terms of the resolution; and
- it must be passed by at least 75% of the votes cast by members entitled to vote on the resolution.⁹

3. The terms of resolution required under the Listing Rules

The Listing Rules generally do not stipulate the specific terms of the resolution required to approve something under the rules.

Where ASX has issued a Guidance Note on the rule in question, ASX will generally include a suggested resolution that will suffice for the purposes of the rule. Where ASX has not issued a Guidance Note on the rule in question, the entity should phrase the resolution to reflect the terms of the rule. For example, a resolution approving an act or transaction under a particular Listing Rule should generally be in the form.

“That [description of act or transaction] is approved under and for the purposes of ASX Listing Rule [insert rule number].”

Generally, where there are multiple transactions requiring approvals under the Listing Rules (such as multiple issues of securities that require approval under Listing Rule 7.1, 7.4, 7.6 exception 6, 7.9 exception 6, 10.11 or 10.14), there should be separate resolutions approving each relevant transaction. Combining multiple transactions

⁷ Listing Rule 14.9.

⁸ Listing Rule 19.3. That Act is 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.

⁹ See section 249L (Australian companies) and 252J(c) (registered managed investment schemes). Even though the expression “special resolution” is only defined in the Corporations Act in relation to an Australian company and a registered management investment scheme, ASX applies the definition to listed foreign companies and to listed Australian and foreign trusts that are not registered managed investment schemes.

within the one approval resolution can be coercive and ASX is likely to object to any draft notice of meeting that seeks to do this.¹⁰

Where a single transaction requires multiple approvals under the Listing Rules (such as an acquisition of a substantial asset for an issue of securities where the acquisition requires approval under Listing Rule 10.1 or 11.1.3 and the issue of securities requires approval under Listing Rule 7.1 or 10.11),¹¹ ASX has no objection to the approvals being combined in the one resolution and being expressed in terms that the transaction “is approved under and for the purposes of the Listing Rules”, provided:

- the notice of meeting or explanatory statement given to security holders for the meeting makes it clear which elements of the transaction are being approved under which Listing Rules; and
- the voting exclusion statements required under the Listing Rules in respect of each of the resolutions are not substantively different.

The requirement to include a voting exclusion statement for a resolution under the Listing Rules will generally make it inappropriate to combine that resolution with any other resolution required in relation to an act or transaction under the Corporations Act.¹²

4. The information required in a notice of meeting

A notice of meeting proposing a resolution under a particular Listing Rule must include a summary of the rule and what will happen if security holders give, or do not give, the approval sought under that rule.¹³

Where ASX has issued a Guidance Note on the rule in question, ASX will generally include a summary of the rule that entities can use for this purpose. Where ASX has not issued a Guidance Note on the rule in question, the entity should phrase the summary to reflect the terms of the rule.

Some Listing Rules requiring a security holder resolution itemise the information that must be included in the notice of meeting proposing the resolution.¹⁴ If a rule does so, the notice of meeting must include all of that information or else the resolution will not be effective.¹⁵

As a matter of general law, a notice of meeting must include such material as will fully and fairly inform security holders of the matters to be considered at the meeting and enable them to make a properly informed judgement on those matters.¹⁶ This applies even where the Listing Rules itemise information that must be included in the notice of meeting for a particular resolution. Hence, if there is additional information that is needed in an individual case to fully and fairly inform security holders and to enable them to make a properly informed judgement on whether or not to pass a resolution under the Listing Rules, that information must also be included in the notice, even though it is not itemised in the Listing Rule in question.

A number of Listing Rules requiring a security holder resolution do not itemise the information that needs to be included in the notice of meeting proposing the resolution.¹⁷ In such a case, the notice of meeting must meet the general law test mentioned above of providing security holders with such material as will fully and fairly inform them of the matters to be considered at the meeting and enable them to make a properly informed judgement on those matters. Where ASX has issued a Guidance Note on the rule in question, ASX will generally provide guidance on

¹⁰ Listing Rules 15.1 and 15.1.4.

¹¹ For example, where the transaction requires approval under Listing Rule 7.1, 10.1 or 10.11, as well as under Listing Rule 11.1.2 or 11.2.

¹² For example, a resolution under the Corporations Act approving a scheme of arrangement, reduction of capital or share buy-back, where there generally are no comparable voting exclusions.

¹³ Listing Rule 14.1A.

¹⁴ For example, Listing Rules 7.3 (resolutions under Listing Rule 7.1), 7.3A (resolutions under Listing Rule 7.1A), 7.5 (resolutions under Listing Rule 7.4), 10.5 (resolutions under Listing Rule 10.1), 10.13 (resolutions under Listing Rule 10.11) and 10.15 (resolutions under Listing Rule 10.14).

¹⁵ Listing Rule 14.6.

¹⁶ See *Bulfin v Bebarfalds Ltd* (1938) 38 SR (NSW) 423 and *Chequepoint Securities Ltd v Claremont Petroleum NL* (1986) 11 ACLR 94.

¹⁷ For example, Listing Rules 6.20.3, 6.22.2A, 6.23.2, 6.23.4, 7.26, 10.17, 10.19, 11.1.2 and 11.2.

the minimum information that should be included in the notice of meeting under this general law requirement. Again, if there is additional information that is needed in an individual case to fully and fairly inform security holders and to enable them to make a properly informed judgement on whether or not to pass a resolution under the Listing Rules, that information must also be included in the notice, even though it is not mentioned in the Guidance Note in question.

5. The requirement to give a draft notice to ASX for review

Before a listed entity dispatches a notice of meeting that includes a resolution under the Listing Rules, it must give ASX a copy of the draft notice for review.¹⁸ It must not finalise the notice until ASX tells it that ASX does not object to the notice.¹⁹

The draft notice should be sent by email to the entity's ASX listings adviser at its home branch (not to the ASX Market Announcements Office)²⁰ and clearly marked "not for public release".²¹

In most situations, ASX tries to review, and notify the entity whether it has any objections to, a draft notice of meeting within 5 business days of receiving the draft notice.²² It may take longer during particularly busy periods such as August and September, when 30 June reporters are lodging their draft notices of annual general meeting for review by ASX. It may also take longer for some more complex notices²³ or if the draft notice is of poor quality.

ASX will generally tell an entity within 5 business days if it needs more time to examine a draft notice of meeting. However, an entity should not assume just because it has not heard from ASX within 5 business days of lodging a draft notice with ASX that ASX must not have any objections to the draft notice. The entity must not dispatch the notice unless and until it receives specific confirmation from ASX that it has no objection to the draft notice.

Entities should make due allowance in setting their timetable for a general meeting for the time ASX will require to review the draft notice of meeting and make sure they get the draft notice to ASX at the earliest opportunity.

ASX may object to a draft notice of meeting if it appears to ASX that:

- it does not include the information specifically required under the Listing Rules;
- it does not satisfy the general law disclosure obligation mentioned in section 4 above;
- it does not include the required voting exclusion statement or the voting exclusion statement it includes is incorrectly worded or insufficiently clear;²⁴ or
- ASX considers the notice to be inaccurate or misleading.

The fact that ASX notifies an entity that it has no objections to a draft notice of meeting does not prevent ASX from raising subsequently that the notice of meeting did not meet the requirements above.

¹⁸ Listing Rules 15.1, 15.1.4 and 15.1.7.

¹⁹ Listing Rule 15.1.

²⁰ Listing Rules 15.2.2.

²¹ Listing Rules 15.6.

²² Listing Rule 15.1.

²³ This includes draft notices relating to transactions involving a significant change in the nature or scale of an entity's activities, where ASX has exercised its discretion both to require security holder approval under Listing Rule 11.1.2 and the entity to re-comply with ASX's admission and quotation requirements under Listing Rule 11.1.3: see section 7.3 of Guidance Note 12 *Significant Changes to Activities*.

²⁴ This includes a voting exclusion statement describing an excluded person whose votes are to be disregarded when in ASX's opinion it would be clearer for all concerned for the excluded person to be specifically named.

6. Voting exclusions

Most resolutions under the Listing Rules attract a voting exclusion prohibiting certain nominated parties (“excluded persons”) and their associates from voting in favour of the resolution.²⁵

A voting exclusion is applied by including a “voting exclusion statement” in the notice of meeting. This is a statement to the effect that the entity will disregard any votes cast in favour of the resolution by or on behalf of an excluded person or an associate of an excluded person, save where it is cast by:

- a person as proxy or attorney for a person who is entitled to vote on the resolution, in accordance with directions given to the proxy or attorney to vote on the resolution in that way;
- the chair of the meeting as proxy or attorney for a person who is entitled to vote on the resolution, in accordance with a direction given to the chair to vote on the resolution as the chair decides; or
- a holder acting solely in a nominee, trustee, custodial or other fiduciary capacity on behalf of a beneficiary, provided the following conditions are met:
 - the beneficiary provides written confirmation to the holder that the beneficiary is not excluded from voting, and is not an associate of a person excluded from voting, on the resolution; and
 - the holder votes on the resolution in accordance with directions given by the beneficiary to the holder to vote in that way.²⁶

In the last case above, the entity is entitled to rely on a representation from the nominee, trustee, custodian or fiduciary that it has obtained the required written confirmation from the beneficiary and that it is voting in accordance with the beneficiary’s directions unless the entity has reason to believe that the representation may not be correct. If the entity has reason to believe that the representation may not be correct, then it should request the nominee, trustee, custodian or fiduciary to provide a copy of the written confirmation and evidence of the beneficiary’s voting directions. If the nominee, trustee, custodian or fiduciary is not able to provide this to the entity’s satisfaction, the entity should disregard any votes the nominee, trustee, custodian or fiduciary may cast on behalf of the beneficiary.

An entity must in fact disregard the votes it says it will disregard in a voting exclusion statement or else the resolution to which it relates will not be valid.²⁷

The table in Listing Rule 14.11.1 specifies who are “excluded persons” for the various resolutions under the Listing Rules. The excluded persons identified in that table must be named or described in the notice of meeting proposing the resolution.²⁸ If the number of excluded persons is small, ASX will generally expect them to be specifically named in the voting exclusion statement (eg “X and its associates” or “X, Y and their respective associates”). If the number is not small, ASX will generally accept a description of the excluded persons, provided the description is precise enough to be understood by a reasonable reader (eg, in the case of a resolution approving an issue of securities, “the persons who subscribed for shares in the issue and their associates”).

The final entry in the table in Listing Rule 14.11.1 gives ASX a general discretion to treat as an “excluded person” any person whose votes, in ASX’s opinion, should be disregarded. If ASX exercises this discretion, the person in question must be named or described in the voting exclusion statement in the notice of meeting.²⁹ Their associates will also be precluded from voting in favour of the resolution.³⁰

ASX also has a general discretion to designate any person whose votes, in ASX’s opinion, should be disregarded, despite the notice of meeting having already been sent out.³¹ Where ASX exercises this discretion, it will typically

²⁵ See Listing Rule 14.11.1.

²⁶ Listing Rule 14.11.

²⁷ Listing Rules 14.6 and 14.7.

²⁸ Listing Rule 14.11.1.

²⁹ See the note to the final entry in the table in Listing Rule 14.11.1.

³⁰ By virtue of Listing Rule 14.11.

³¹ Listing Rule 14.11.2.

name or describe the person or persons whose votes are to be disregarded in a written communication³² to the entity. For example, ASX may require the votes of “[named person X] and their associates” to be disregarded. If ASX does exercise this discretion, it is not necessary for the entity to send a further notice of meeting with an amended voting exclusion statement naming or describing the relevant person or persons whose votes have been excluded by ASX.³³ However, ASX will expect the entity to make an announcement to the market of ASX’s determination. ASX will also expect the chair of the meeting to advise the meeting of ASX’s determination at the commencement of the meeting or at the commencement of the discussion on the relevant resolution.

In some cases, ASX may impose a requirement under the Listing Rules for security holder approval even though the Listing Rules themselves do not specifically require such an approval. For example, where an entity requests to be removed from the ASX official list under Listing Rule 17.11 and its securities are not readily able to be traded on another exchange, ASX will generally impose a requirement that the entity obtain the approval of its ordinary security holders to the removal by a special resolution.³⁴ In this case, this requirement is imposed under Listing Rule 17.11 itself, pursuant to the provision in that rule stating that ASX may require conditions to be satisfied before ASX will act on the request by the entity to be removed from the official list. Similarly, where an entity proposes to issue performance shares, ASX will generally impose a requirement that the entity obtain the approval of its ordinary security holders to the issue by an ordinary resolution.³⁵ In this case, the requirement is imposed through a combination of the requirement in Listing Rule 6.1 that the terms that apply to each class of equity securities must in ASX’s opinion be appropriate and equitable and ASX’s general power to impose conditions in relation to any exercise of a power or discretion under the Listing Rules.³⁶

ASX considers that these are nonetheless a resolution under and for the purposes of the Listing Rules and therefore ASX may require the application of a voting exclusion in relation to the resolution under the final entry in the table in Listing Rule 14.11.1 or under Listing Rule 14.11.2.

7. Associates excluded from voting

As mentioned in section 6 above, where a person is excluded from voting in favour of a resolution under the Listing Rules, the associates of that person are also excluded from voting in favour of the resolution.

An excluded person’s associates include:

- if the excluded person is a natural person, any entity³⁷ the excluded person controls;
- if the excluded person is an entity:³⁸
 - any entity the excluded person controls;
 - any entity that controls the excluded person;
 - any entity that is controlled by an entity that controls the excluded person;

³² This includes an email communication (Listing Rule 19.3(l)).

³³ See the note to Listing Rule 14.11.2.

³⁴ See section 2.7 of Guidance Note 33 *Removal of Entities from the ASX Official List*.

³⁵ See section 9 of Guidance Note 19 *Performance Shares*.

³⁶ Listing Rule 18.5A.

³⁷ “Entity” in this context means a body corporate, partnership, unincorporated body or a trust and includes, in the case of a trust, the responsible entity of the trust (see the definition of “associate” in Listing Rule 19.12).

³⁸ See note 37 above.

- any person with whom the excluded person has, or proposes to enter into, a relevant agreement³⁹ for the purpose of controlling or influencing the composition of the listed entity's board⁴⁰ or the conduct of the listed entity's affairs; or
- any person with whom the excluded person is acting, or proposing to act, in concert in relation to the listed entity's affairs.⁴¹

Where the excluded person is a natural person, their related parties are taken to be their associates unless the contrary is established.⁴² This provision exists as an evidentiary aid. It is based on the premise that because of the close connection between an individual and their related parties, it should be presumed that the individual is able to control a related party, or that a related party is acting in concert with the individual, unless the contrary is proven. Otherwise it is too easy for the individual and the related party simply to deny any association and to put others to the task of proving that they are associates.

The related parties of an individual include:

- (i) the individual's spouse or de facto spouse;
- (ii) the parents and children of the individual and the parents and children of the individual's spouse or de facto spouse;
- (iii) an entity controlled by the individual or anyone referred to in (i) or (ii) above;
- (iv) anyone who has fallen within (i) – (iii) above within the past 6 months;
- (v) anyone who believes or has reasonable grounds to believe that they are likely to fall within (i) – (iii) above at any time in the future; and
- (vi) a person who acts in concert with the individual or anyone referred to in (i) – (v) above.⁴³

8. Voting by employee incentive schemes

Securities held by or for an employee incentive scheme must only be voted on a resolution under the Listing Rules if and to the extent that:

- they are held for the benefit of a nominated participant in the scheme;
- the nominated participant is not excluded from voting on the resolution under the Listing Rules; and

³⁹ "Relevant agreement" has the same meaning as in section 9 of the Corporations Act (Listing Rule 19.3). It includes an agreement, arrangement or understanding: (a) whether formal or informal or partly formal and partly informal; (b) whether written or oral or partly written and partly oral; and (c) whether or not having legal or equitable force and whether or not based on legal or equitable rights.

⁴⁰ If the listed entity is an externally managed trust, the reference to controlling or influencing the composition of the listed entity's board is taken to be a reference to controlling or influencing whether a particular entity becomes or remains the trust's responsible entity. If the listed entity is an internally managed trust, the reference to controlling or influencing the composition of the listed entity's board is taken to be a reference to controlling or influencing the board of the trust's responsible entity.

⁴¹ See the definition of "associate" in Listing Rule 19.12. This definition is based on, but in some respects is broader than, the definition of "associate" in section 12 of the Corporations Act. For example, in the Listing Rules definition, the references to a body corporate in section 12(2)(a) have been replaced with references to an entity so as to capture trusts, partnerships and other unincorporated bodies (see note 37 above) and a new paragraph has been added specifying that if the primary person is a natural person, their associates include any entity they control.

The definition of "associate" in Listing Rule 19.12 has an equivalent carve-out to that provided in section 16 of the Corporations Act, which states that a person is not an associate of another person merely because of one or more of the following: (a) one gives advice to the other, or acts on the other's behalf, in the proper performance of the functions attaching to a professional capacity or a business relationship; (b) one, a client, gives specific instructions to the other, whose ordinary business includes dealing in financial products, to acquire financial products on the client's behalf in the ordinary course of that business; (c) one has sent, or proposes to send, to the other an offer under a takeover bid for securities held by the other; or (d) one has appointed the other, otherwise than for valuable consideration given by the other or by an associate of the other, to vote as a proxy or representative at a meeting of members, or of a class of members, of the listed entity.

⁴² See the final paragraph of the definition of "associate" in Listing Rule 19.12.

⁴³ Paragraph (d) of the definition of "related party" in Listing Rule 19.12.

- the nominated participant has directed how the securities are to be voted.⁴⁴

This limitation is separate to, and does not need to be mentioned in, the voting exclusion statement for the resolution.

9. Identifying security holders excluded from voting

Where a voting exclusion applies to a resolution under the Listing Rules, it is the responsibility of the entity to identify all security holders who are “excluded persons” and to use all reasonable endeavours to ensure that they and their associates do not vote in favour of the resolution or, if they do, that their votes are identified and excluded from the result of the vote.

In most cases, this should not prove unduly onerous. For example, where a voting exclusion applies to a counterparty who has entered into a transaction with the entity, the entity should be aware of the identity of the counterparty and it should be a relatively easy task for the entity to:

- include terms in the transaction documentation requiring the counterparty:
 - to disclose the identity of any associates who hold securities in the entity, either directly or beneficially through an arrangement with a nominee, trustee, custodian or fiduciary; and
 - not to vote, and to procure that its associates do not vote, in favour of the resolution in question; and
- validate, or have its registry or auditor validate, that the counterparty and the named associates did not vote in favour of the resolution in question or, if they did, that their votes were disregarded.

Similarly, where a voting exclusion applies to some or all of the related parties of the entity, the entity should be aware of the identity of its related parties⁴⁵ and it should be a relatively easy task for the entity to:

- request its related parties ahead of the vote to identify any associates who hold securities in the entity, either directly or beneficially through an arrangement with a nominee, trustee, custodian or fiduciary;
- advise its related parties that they must not vote, and must procure that their associates do not vote, in favour of the resolution in question; and
- validate, or have its registry or auditor validate, that its related parties and their named associates did not vote in favour of the resolution in question or, if they did, that their votes were disregarded.

Likewise, where a voting exclusion applies to a substantial holder of its securities, the entity should be aware of the identity of the substantial holder and its associates through the substantial holding notices they will have given to the entity under section 671B of the Corporations Act (or equivalent overseas legislation) and it should be a relatively easy task for the entity to validate, or have its registry or auditor validate, that the substantial holder and its named associates did not vote in favour of the resolution in question or, if they did, that their votes were disregarded.

ASX accepts that there may be some cases where it will be unduly burdensome for an entity to have to take steps to determine the identity of all of the associates of the excluded persons caught by a voting exclusion statement. An example would be a resolution approving an issue of securities to a material number of security holders under Listing Rule 7.1 or 7.4, where each of those security holders will be an “excluded person”. In such a case, ASX will accept that the entity has complied with the spirit of the Listing Rules⁴⁶ provided it:

⁴⁴ Listing Rule 14.10.

⁴⁵ Including for the purposes of complying with the various accounting requirements applicable to related party transactions under Accounting Standard AASB 124 *Related Party Disclosures* and its legal obligations in relation to related party transactions under Chapter 2E of the Corporations Act (or equivalent overseas legislation) and Chapter 10 of the Listing Rules.

⁴⁶ As it is required to do under Listing Rule 19.2.

- compares the names of the persons who participated in the issue against the names of the security holders who voted on the resolution and validates that none of those persons voted in favour of the resolution or, if they did, that their votes were disregarded; and
- where the entity is specifically on notice of an association between a person who participated in the issue and another person who holds securities in the entity (for example, through related party or substantial holder disclosures), it validates that the associate did not vote in favour of the resolution or, if they did, that their votes were disregarded.

10. The voting process

A listed entity must conduct a properly managed voting process and keep appropriate records of that process to corroborate that a resolution under the Listing Rules was duly passed at a properly convened meeting of security holders. This includes having proper processes to:

- validate the authenticity and validity of proxies and powers of attorney received from security holders ahead of the meeting;
- screen the attendees at the meeting to verify that only security holders on the register of members at the closing date for determining voting entitlements, or their duly appointed proxies or attorneys, receive voting papers; and
- ensure that all valid votes are collected and tallied and that invalid votes (such as those covered by a voting exclusion statement) are identified and excluded from the result.

Australian listed companies are required by law to decide resolutions that are included in a notice of meeting, and resolutions for which the company has given notice in accordance with section 249O of the Corporations Act, on a poll.⁴⁷ For entities not covered by this law, ASX would not ~~note~~ that most resolutions under the Listing Rules attract a voting exclusion, it is, in ASX's view, that for an entity to determine with any confidence that the votes that should have been disregarded under a voting exclusion statement were in fact disregarded, it is essential that the vote on the resolution is conducted by a poll rather than by a show of hands.

Accordingly, as a matter of proper governance, all Listing Rule resolutions must be decided by a poll rather than by a show of hands.⁴⁸

If ASX is not satisfied that an entity has conducted a properly managed and recorded voting process in relation to a resolution under the Listing Rules, ASX may require the entity to seek a fresh approval from its security holders under the rule in question.⁴⁹

11. ASX's power to require scrutineers to be appointed

ASX may require an entity to appoint its auditors, or some other person acceptable to ASX, to act as a scrutineer to decide the validity of votes cast at a general meeting and whether the votes that should have been disregarded were in fact disregarded.⁵⁰

On the face of it, this power applies to any and all resolutions being considered at a general meeting of a listed entity and not just those under the Listing Rules. Having said this, ASX is generally reluctant to exercise this power except:

⁴⁷ See section 250JA of the Corporations Act.

⁴⁸ ASX would note that recommendation 69.4 of the ~~ASX Corporate Governance Council's~~ ASX - Corporate Governance Principles and Recommendations provides that all substantive resolutions, not just those under the Listing Rules, should be decided by a poll rather than by a show of hand: for listed entities established outside Australia.

⁴⁹ ASX may do this either by treating the original resolution as not being effective for the purposes of the Listing Rules or by imposing a requirement in that regard under Listing Rule 18.8.

⁵⁰ Listing Rule 14.8.

- in relation to a Listing Rule resolution, where ASX wants to ensure that the entity is complying with its obligations under the Listing Rules and ASX has the jurisdiction to take corrective action if the resolution is not validly passed; or
- at the request of the Australian Securities and Investments Commission ("ASIC"), in relation to a resolution under the Corporations Act or the general law, where ASIC has the jurisdiction to take corrective action if the resolution is not validly passed.

If ASX requires the voting on a resolution to be scrutineered, ASX will expect the vote to be decided by way of a poll, rather than by a show of hands, so that the scrutineer can in fact opine on whether the resolution has been validly passed.⁵¹ ASX will also expect the scrutineer to prepare a written report for the entity confirming the following matters in relation to the resolution and to make that report available to ASX upon request.⁵²

- the number of securities that were voted for the resolution and the percentage they represented of the total number of securities that were voted on the resolution, broken down in each case to show those who voted in person, by proxy or attorney, or electronically;
- the number of securities that were voted against the resolution and the percentage they represented of the total number of securities that were voted on the resolution, broken down in each case to show those who voted in person, by proxy or attorney, or electronically;
- the number of securities that formally abstained from voting on the resolution, broken down in each case to show those who abstained from voting in person, by proxy or attorney, or electronically;
- the aggregate number and percentage of securities for which valid proxies were received before the meeting, showing separately:
 - the aggregate number of securities in respect of which the proxy was directed to vote for the resolution;
 - the aggregate number of securities in respect of which the proxy was directed to vote against the resolution;
 - the aggregate number of securities in respect of which the proxy was directed to abstain from voting on the resolution; and
 - the aggregate number of securities in respect of which the proxy could vote at their discretion;
- the aggregate number of securities in respect of which proxies were received before the meeting that were ruled to be invalid, showing separately:
 - the aggregate number of securities in respect of which the proxy was directed to vote for the resolution;
 - the aggregate number of securities in respect of which the proxy was directed to vote against the resolution;
 - the aggregate number of securities in respect of which the proxy was directed to abstain from voting on the resolution; and
 - the aggregate number of securities in respect of which the proxy could vote at their discretion;

⁵¹ In ASX's view, for a scrutineer to decide with any confidence the validity of votes cast on a resolution and whether the votes that should have been disregarded were in fact disregarded, it is necessary for the vote to be conducted by a poll rather than by a show of hands.

⁵² Listing Rule 18.7.

- where a voting exclusion applied, information about the process used to identify the persons excluded from voting and to validate that they did not vote in favour of the resolution or, if they did, that their votes were disregarded; and
- in light of the above, whether the resolution was duly passed or not passed (as the case may be).

12. Supplementary disclosures

Where materially new or different information emerges after a notice of meeting proposing a resolution under the Listing Rules has been sent to security holders but before the vote on the resolution, the entity may need to make supplementary disclosure to security holders. This should be done in sufficient time ahead of the meeting to allow security holders to consider, and if necessary take advice on, how the new or different information should affect their vote on the resolution.

In line with ASIC guidance on similar matters,⁵³ ASX generally considers that security holders should receive the supplementary information at least 10 days before they are required to vote. Anything less may warrant an adjournment of the meeting or the calling of a new meeting. Generally speaking, this information should be sent to security holders in the same manner as the original notice of meeting. However, in an appropriate case, ASX may agree to allow the information to be disseminated by a market announcement published on the ASX Market Announcements Platform.

13. Notifying ASX of the results of voting

Immediately⁵⁴ after a meeting of security holders, the entity must notify ASX of the outcome of each resolution put to the meeting showing separately:

- both the number and a short description of the resolution;
- whether the resolution was passed or not passed;
- whether the resolution was decided on a show of hands or a poll;
- if the resolution was decided on a poll:
 - the number of securities that were voted for the resolution and the percentage they represented of the total number of securities that were voted on the resolution
 - the number of securities that were voted against the resolution and the percentage they represented of the total number of securities that were voted on the resolution; and
 - the number of securities that formally abstained from voting on the resolution;
- regardless of how the resolution was decided, the aggregate number of securities for which valid proxies were received before the meeting, showing separately:
 - the aggregate number of securities in respect of which the proxy was directed to vote for the resolution;
 - the aggregate number of securities in respect of which the proxy was directed to vote against the resolution;
 - the aggregate number of securities in respect of which the proxy was directed to abstain from voting on the resolution; and

⁵³ See section E of ASIC Regulatory Guide 60 *Schemes of arrangement*.

⁵⁴ ASX interprets the word “immediately” in this context in the same manner as it does for Listing Rule 3.1, that is, promptly and without delay (see Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*).

- the aggregate number of securities in respect of which the proxy could vote at their discretion; and
- if the resolution related to the adoption of the entity's remuneration report and the outcome constitutes a "first strike" or "second strike" under section 250U of the Corporations Act, that fact,

and, if a resolution was proposed in the notice of meeting but not put to the meeting, the number and a short description of the resolution, the fact that it was not put to the meeting and an explanation of why it was not put to the meeting.⁵⁵

This applies to all resolutions considered at a meeting of security holders, not just those under the Listing Rules.

If the meeting is adjourned, the entity must immediately tell ASX of the adjournment and the outcome in respect of each resolution dealt with before the adjournment.⁵⁶

The notification given to ASX must be headed "Results of Meeting" or something similar.⁵⁷

ASX has prepared a pro forma notification that entities can use to notify ASX of the results of a meeting of security holders. An editable version in both Word and Excel format can be downloaded from the ASX website [at: www.asx.com.au/regulation/compliance/compliance_downloads.htm](http://www.asx.com.au/regulation/compliance/compliance_downloads.htm).

14. Stale resolutions

Where a transaction is approved by a listed entity's security holders under the Listing Rules and, in ASX's opinion:

- materially new or different information emerges after security holders have voted on the resolution;
- there is a material change in the terms of the transaction from those approved by security holders;
- there is a material change in the entity's circumstances from those applicable at the time of the resolution; or
- there is an excessive delay in consummating the transaction,

ASX may require the entity to seek a fresh approval from its security holders under the applicable Listing Rule.⁵⁸ Without limiting its discretion to require this earlier, ASX will look very carefully at this last issue in any case where an entity takes longer than 6 months to consummate a transaction after the passing of the resolution approving the transaction.

⁵⁵ Listing Rule 3.13.2.

⁵⁶ Listing Rule 3.13.2, penultimate paragraph.

⁵⁷ Listing Rule 3.13.2, final sentence.

⁵⁸ Again, ASX may do this either by treating the original resolution as not being effective for the purposes of the Listing Rules or by imposing a requirement in that regard under Listing Rule 18.8.