

Shareholder approval of dilutive acquisitions and changes in admission status



Consultation Response: Changes to
Listing Rules and Guidance Notes



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Introduction

This report summarises the feedback received in response to ASX’s June 2026 consultation response paper and exposure draft of ASX Listing Rule and Guidance Note amendments concerning shareholder approval requirements for dilutive acquisitions and changes in admission status.

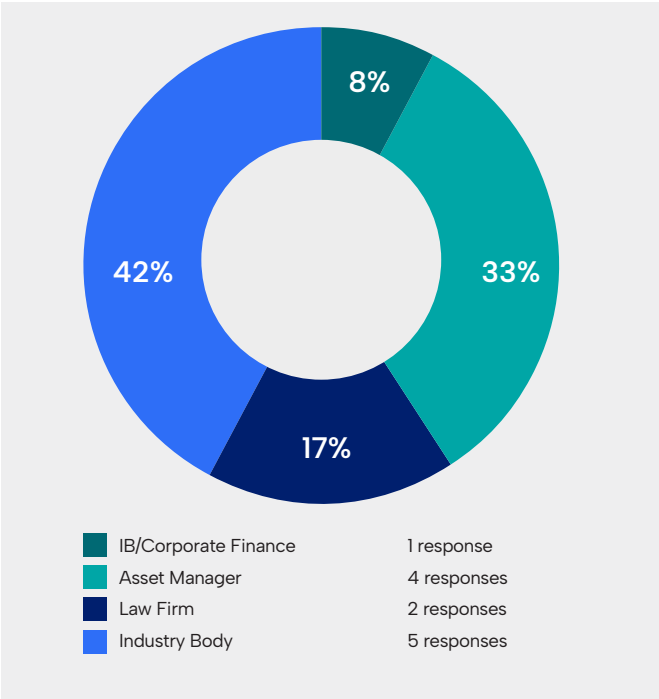
The June 2026 consultation invited feedback on the clarity, operability and implementation of the proposed Listing Rule and Guidance Note amendments (**Draft Amendments**). ASX received twelve submissions from a range of market participants, comprising four asset managers, five industry bodies, two law firms and one investment bank. No submissions were received from listed entities.

Overall, respondents were broadly supportive of ASX’s targeted reform package. In particular, submissions supported the proposed shareholder approval requirement for changes to ASX Foreign Exempt Listing (**ASX FEL**) status, the proposed rule-based framework for voluntary delistings (including for dual listed entities) and the proposed 25% threshold for S&P/ASX 300 entities issuing scrip in connection with regulated takeovers and mergers.

Respondents also raised a number of matters for ASX to consider before finalising the Draft Amendments. These included the scope of proposed pre-approvals for a prescribed transaction threshold above 25%, the proposed implementation date, transitional arrangements for transactions already underway, drafting clarity and the treatment of post-approval issuance timing.

The respondent profile is set out in Figure 1.

Figure 1: Respondent profile



Purpose of this report

The purpose of this report is to summarise feedback received in response to the consultation questions in the ASX’s June 2026: [Shareholder approval of dilutive acquisitions and changes in admission status – Response to public consultation and exposure draft of ASX Listing Rule amendments](#) (**June 2026 Response Report**), identify key matters raised by respondents in relation to the Draft Amendments, outline ASX’s proposed approach to those matters, and identify matters to be addressed in the final amendments and implementation arrangements.

This report should be read together with the June 2026 Response Report, which sets out ASX’s policy position following submissions to ASX’s public consultation in October 2025: [Shareholder approval of dilutive acquisitions and changes in admission status](#).

Our approach

In finalising amendments to the Listing Rules and Guidance Notes to support ASX’s policy position as set out in the June 2026 Response Report, ASX has continued to apply the approach set out in that report, being to:

1. adopt targeted and proportionate changes rather than broader, structural reforms;
2. rely on clear, objective and administrable thresholds where possible, avoiding case by case discretion that reduces predictability;
3. elevate into the Listing Rules certain processes or arrangements currently set out in Guidance Notes – in particular, aspects of the voluntary delisting framework – to streamline, simplify and improve transparency and predictability; and
4. maintain ASX’s attractiveness and competitiveness as a first-class listing and capital-raising venue.

These settings operate alongside existing legal protections, including directors’ duties, that continue to apply to decisions affecting shareholder interests.

Consistent with that approach ASX's response does not re-open or shift any of the key policy positions in the June 2026 Response Report. In particular, subject to the refinements to certain rules set out in this report, the following matters on which submissions were received continue to rely on the rule-based implementation arrangements and clear, objective and administrable thresholds:

1. Change in an admission category from an ASX Listing to an ASX FEL, by way of an ordinary resolution with no voting exclusions (Listing Rule 18.10);
2. Shareholder approvals for a voluntary delisting where a listed entity first listed on ASX, by way of an ordinary resolution with no voting exclusions other than the exclusion introduced in response to consultation topic 1, theme 1 (Listing Rules 17.11A and 17.11C);
3. The circumstances in which a listed entity may voluntarily delist without shareholder approval, being where the listed entity is an ASX FEL, or first listed on an overseas exchange, or does not have a material Australian shareholder base (Listing Rule 17.11B);
4. The scope of listed entities to which a 25% limit on the issue of equity securities without shareholder approval under Listing Rule 7.2 Exceptions 6 and 7 applies (the 25% cap), being entities within the S&P/ASX 300 (Chapter 19 definition of "prescribed transaction");
5. A jurisdiction neutral approach to apply to Listing Rule 7.2 Exceptions 6 and 7 regulated transactions through removal of jurisdiction-specific equivalence assessments (Chapter 19 definition of "regulated takeover or merger");
6. Listing rule pathways allowing a listed entity to increase the 25% cap (up to 100%), by an amendment to its constitution approved by shareholders after admission or by ordinary resolution for up to three years (Listing Rule 7.3B, Chapter 19 definition of "prescribed threshold").

A number of submissions also proposed higher voting thresholds for these approvals, including approval by special resolution and majority of minority approval. The resolution thresholds were settled in the June 2026 Response Report and are not re-opened. ASX's reasons are set out under consultation topic 1, theme 2.

What we consulted on in June 2026

To assist ASX in finalising the Draft Amendments, ASX invited submissions on the following topics directed to the clarity, operability and implementation of the revised framework:

Operation and interactions

Whether there are interactions with other ASX Listing Rules or Guidance Notes that ASX should address to ensure the amended framework operates clearly, consistently and as intended.

Definitions and drafting clarity

Whether the key definitions and concepts used in the Draft Amendments are clear, objective and administrable, and whether targeted drafting refinements would improve clarity without adding complexity.

Post-approval issuance timing

Whether the different time limits for issuing securities following shareholder approval depending on the transaction type in Listing Rule 7.3.4 should be standardised across approvals to a 12-month period for all approvals under Listing Rules 7.1 and 7.4.

Implementation date and transitional arrangements

Whether the proposed commencement date of 21 October 2026 is appropriate and whether practical scenarios should be addressed through transitional provisions, examples or additional guidance.

What we heard

Submissions generally supported ASX's targeted, rule-based approach and the use of clear, objective and administrable thresholds in preference to case-by-case discretion. Most feedback focused on improving drafting clarity and implementation certainty, rather than changing the underlying policy settings.

Key areas of feedback sought clarity on:

- whether an S&P/ASX 300 entity can adopt a prescribed threshold higher than 25% through its constitution before listing;
- how voting exclusions apply to voluntary delisting requests following a takeover bid;
- whether post-approval issuance periods should be standardised; and
- the commencement date and transitional arrangements.

What we are doing

ASX proposes to proceed with the core policy settings in the Draft Amendments, subject to targeted refinements to improve clarity, operability and implementation of ASX's targeted reform package.

Operation and interactions

ASX will proceed with the framework as consulted, with one targeted additional notice of meeting requirement in connection with a voluntary delisting following a takeover bid.

Definitions and drafting clarity

ASX will refine the definition of "prescribed threshold" to provide that an S&P/ASX 300 entity may adopt a prescribed threshold higher than 25% through its constitution only where the amendment has been approved by shareholders after admission, and the definition of "regulated takeover or merger" to improve certainty and administrability, without changing the underlying policy.

Post-approval issuance timing

ASX will not standardise all post-approval issuance periods to 12 months, but will align the reverse takeover period with the 12-month period that applies to a "prescribed transaction".

Implementation date

The Draft Amendments will take effect on 21 October 2026, subject to completion of the statutory process for amending ASX's rules.



Consultation feedback and ASX's response

Submissions generally endorsed ASX's targeted reform package as set out in the Draft Amendments. Investor respondents supported more robust shareholder rights in circumstances where a transaction or listing category change could materially dilute ownership, alter governance protections or affect liquidity. Legal and adviser respondents focused more heavily on execution certainty, market competitiveness, operational clarity and the need to preserve flexibility in public mergers and acquisitions.

The strongest areas of support were the proposed shareholder approval requirement for changes from an ASX Listing to ASX FEL status, clearer rule-based voluntary delisting settings, and a 25% approval threshold for S&P/ASX 300 entities issuing scrip in connection with regulated takeovers and mergers.

The main areas of qualification concerned whether approval should be by ordinary or special resolution, whether the 25% cap should apply beyond the S&P/ASX 300, how higher thresholds may be approved, and how the new rules should apply to transactions already underway.

Subject to the refinements noted in this report, ASX will proceed with amendments to Listing Rules and Guidance Notes broadly as consulted by introducing clearer, rule-based requirements for shareholder approvals of voluntary delistings, changes in admission status, and dilutive acquisitions by S&P/ASX 300 entities.

Consultation topic 1: Operation and interactions

Six submissions provided feedback on the operation and interaction of the Draft Amendments with other Listing Rules and Guidance Notes. The main themes, suggestions and ASX's response to each of the operational and rule interaction matters raised are summarised below and in consultation topic 2 where those themes related to definitions.

ASX will retain the overall structure of the Draft Amendments but make targeted refinements to improve clarity, operability and predictability as set out below.

Theme 1 – Voluntary delistings: notice of meeting and voting exclusions following a takeover bid

Summary of feedback

Two submissions raised a concern that streamlining Guidance Note 33 could reduce certainty about ASX's approach to voluntary delistings in certain circumstances. This included voting exclusions, particularly where a voluntary delisting is sought shortly after a takeover bid in which the bidder does not meet the conditions for compulsory acquisition.

The concern was that the removal of existing guidance about ASX's approach to impose a condition of removal – namely, that the bidder be excluded from voting in favour of a delisting resolution within 12 months of the close of a takeover bid that did not reach the compulsory acquisition threshold – risked removing a minority protection in circumstances where a bidder could use the threat of voluntary delisting to coerce minority shareholders into accepting a current or planned takeover offer.

ASX response

ASX will proceed broadly as consulted, with one targeted amendment to address the concern raised.

ASX will move the existing guidance set out in Guidance Note 33 into the rules where an entity seeks removal from the official list shortly after a takeover bid that has not resulted in compulsory acquisition. The new sub-rule provides:

17.11C.9: For a notice of meeting containing a resolution for the purposes of rule 17.11A, a *voting exclusion statement if the entity has been the subject of a *takeover which closed in the 12 months preceding the date of the notice and the bidder and its *associates hold at least 50% of the *ordinary securities of the entity but have not met the conditions to proceed to compulsory acquisition under applicable law.

The sub-rule does not apply where the bidder is entitled to proceed to compulsory acquisition¹ nor where the bidder and its associates do not hold at least 50% of the ordinary securities on issue.

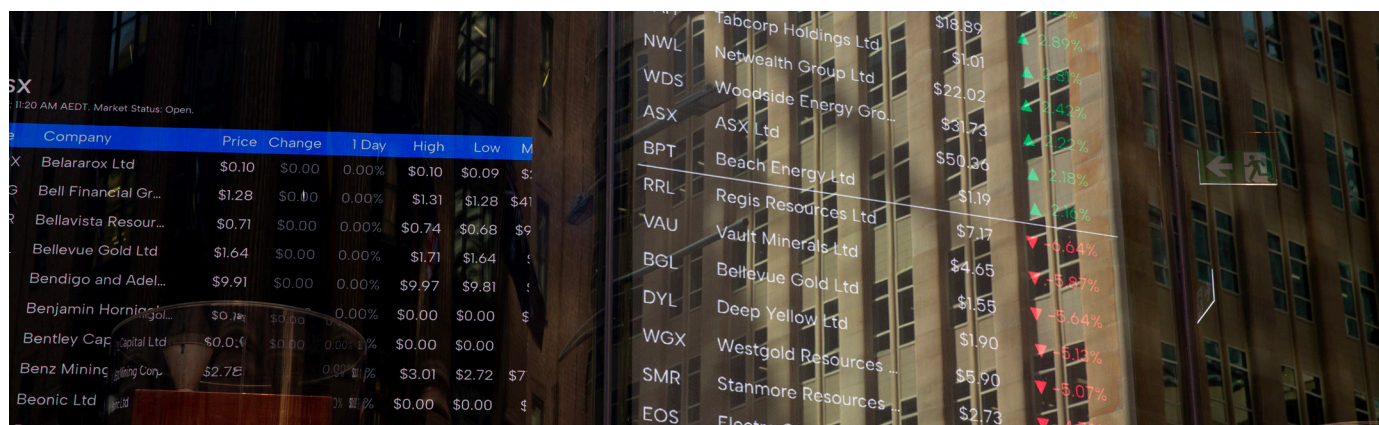
An objective threshold of at least 50% of the ordinary securities of the entity has been set in this sub-rule because it is a clear and objective threshold at which ASX considers a bidder can, in practice, determine the outcome of a delisting resolution despite not having reached the threshold for compulsory acquisition.

The key elements of the voluntary delisting framework will otherwise be incorporated into the Listing Rules rather than Guidance Note 33. As set out in the June 2026 Response Report, ASX does not consider that there is a need for further guidance on notice requirements or conditions as these are now set out in the rules, improving transparency and certainty.

Relevant Listing Rule / Guidance Note

Listing Rule 17.11C; Listing Rule 14.11.1; Guidance Note 33

¹If the bidder proceeds with compulsory acquisition following a takeover, suspension and removal will typically follow under Listing Rules 17.4 and 17.14.



Company	Price	Change	1 Day	High	Low	M
Belarox Ltd	\$0.10	\$0.00	0.00%	\$0.10	\$0.09	\$
Bell Financial Gr...	\$1.28	\$0.00	0.00%	\$1.31	\$1.28	\$41
Bellavista Resour...	\$0.71	\$0.00	0.00%	\$0.74	\$0.68	\$9
Bellevue Gold Ltd	\$1.64	\$0.00	0.00%	\$1.71	\$1.64	\$
Bendigo and Adel...	\$9.91	\$0.00	0.00%	\$9.97	\$9.81	\$
Benjamin Horning...	\$0.10	\$0.00	0.00%	\$0.00	\$0.00	\$
Bentley Cap...	\$0.00	\$0.00	0.00%	\$0.00	\$0.00	\$
Benz Mining Corp.	\$2.75	\$0.00	0.00%	\$3.01	\$2.72	\$7
Beonic Ltd	\$0.00	\$0.00	0.00%	\$0.00	\$0.00	\$
Berkley En...	\$0.50	\$0.00	0.00%	\$0.50	\$0.49	\$

NWL	Tabcorp Holdings Ltd	\$18.89	▲ 0.89%
NWL	Netwealth Group Ltd	\$1.01	▲ 0.99%
WDS	Woodside Energy Gro...	\$22.02	▲ 0.42%
ASX	ASX Ltd	\$31.73	▲ 0.22%
BPT	Beach Energy Ltd	\$50.36	▲ 2.18%
RRL	Regis Resources Ltd	\$1.19	▲ 0.16%
VAU	Vault Minerals Ltd	\$7.17	▼ -0.64%
BGL	Bellevue Gold Ltd	\$4.65	▼ -0.87%
DYL	Deep Yellow Ltd	\$1.55	▼ -0.64%
WGX	Westgold Resources ...	\$1.90	▼ -0.13%
SMR	Stanmore Resources	\$5.90	▼ -0.07%
EOS	Electro Opti...	\$2.73	▼ -0.70%

Theme 2 – Resolution thresholds and minority protections

Summary of feedback

Several submissions proposed higher voting thresholds than those consulted on. This included approval by special resolution for a change in admission category and for voluntary delisting, and a majority of minority requirement where the listed entity has a controlling shareholder.

One submission also proposed additional guidance or protections for minority investors on a change to ASX FEL status. The concern was that the change may affect the governance, disclosure and shareholder rights framework that applies to the listed entity, and that shareholders should have clear information about the practical consequences before voting.

ASX response

ASX will proceed broadly as consulted, without introducing further rules or guidance to address this feedback.

Changes in admission status, including the decision for a listed entity to be removed from the official list, and a change from an ASX Listing to an ASX FEL, are structural and enduring decisions rather than routine administrative ones. In relation to the latter, ASX records indicate only three listed entities have made the change since 2020.

An ordinary resolution is appropriate in that context: it gives shareholders a direct approval right over a structural change to listing status, while the uncommon nature of such transitions means the requirement is not expected to impose an undue burden on listed entities.

The new shareholder approval requirement in Listing Rule 18.10 gives shareholders a direct vote on whether the listed entity should change to ASX FEL status. That is the appropriate protection in this context because the listed entity remains admitted to ASX, shareholders can continue to trade on ASX, and there is no transfer of control or compulsory acquisition. ASX therefore does not consider that takeover-style protections, including voting exclusions, are appropriate.

Similarly, the ordinary resolution requirement for dual listed entities to be removed from the official list is appropriate because the listed entity's securities will be readily able to be traded on another exchange and the entity will remain listed on another exchange. In any case, shareholders will be properly informed through the notice of meeting requirements under Listing Rule 17.11C.

Relevant Listing Rule / Guidance Note

Listing Rule 17.11A.1 and Listing Rule 18.10

Consultation topic 2: Definitions and drafting clarity

Submissions were broadly supportive of ASX's objective of using clear, objective and administrable tests. Respondents nevertheless identified a number of drafting matters that should be addressed before the Draft Amendments are finalised. The main themes, the concerns raised and ASX's response to each of the definitions and drafting matters are summarised below.

A key matter raised in four submissions was whether an S&P/ASX 300 entity should adopt a prescribed threshold higher than 25% through its constitution prior to listing. On this key matter, ASX will require a threshold between 25% and 100% in the listed entity's constitution to have been approved by its shareholders post-admission. This preserves the intended balance between shareholder protection and transaction flexibility.

ASX's response to the definition and drafting issues is intended to preserve the policy settings in the Draft Amendments as consulted while improving certainty, consistency and administrability in the final amendments.

Theme 1 – Prescribed threshold definition: pre-listing constitutional thresholds and multiple thresholds

Summary of feedback

Some respondents raised concerns about listed entities adopting a higher threshold in their constitution before listing. The concern was that post-listing shareholders may not have a meaningful opportunity to approve a higher dilution threshold, which could weaken the effectiveness of the shareholder approval requirement.

Another respondent sought clarity on the interaction between a threshold approved by shareholders under Listing Rule 7.3B and a higher threshold included in a listed entity's constitution. The concern was that, where both mechanisms exist, it may be unclear which threshold applies.

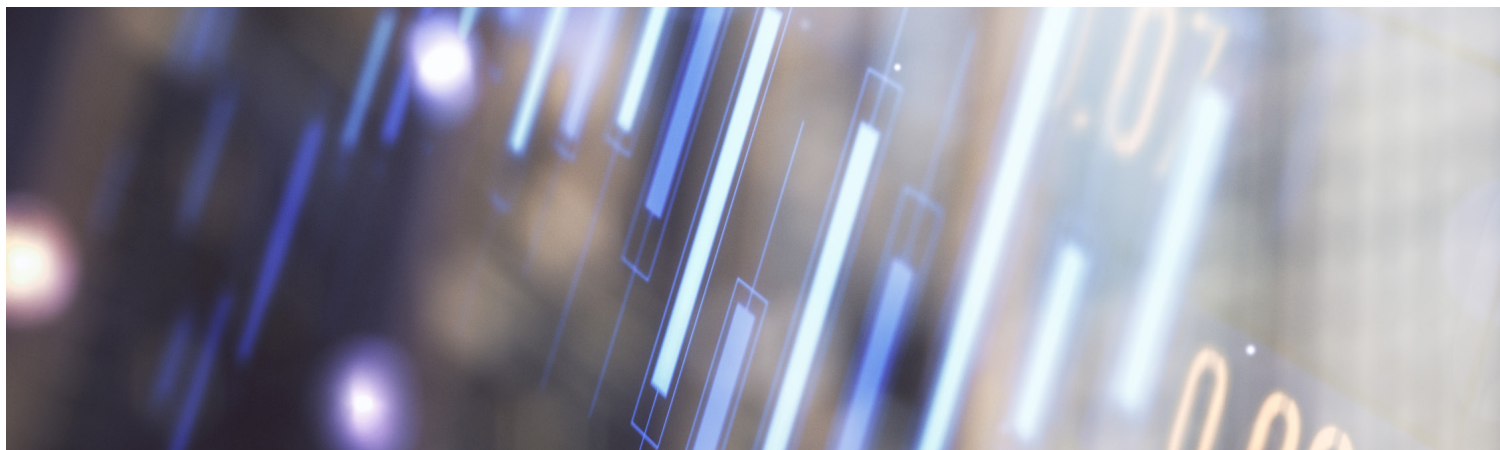
ASX response

With respect to the definition of "prescribed threshold", ASX will adopt:

1. the additional requirement in paragraph (c) that the percentage between 25% and up to 100% set out in a listed entity's constitution must be approved by shareholders after admission. This ensures that a constitutional amendment for a higher prescribed threshold can only be made by the post-listing investor base of the listed entity. A constitutional amendment is not an approval under the Listing Rules, and the Listing Rules therefore do not prescribe notice requirements for it.
It requires a special resolution, a higher voting threshold than the ordinary resolution required for an approval under Listing Rule 7.3B.
2. a prescribed threshold that is "the higher of" 25%, the relevant constitutional threshold, and the threshold approved under Listing Rule 7.3B. This gives listed entities and market participants certainty about the applicable prescribed threshold and clarifies the interaction between a shareholder-approved threshold and a constitutional threshold.

Relevant Listing Rule / Guidance Note

Chapter 19 definition of "prescribed threshold"; Listing Rule 7.3B



Theme 2 – Prescribed threshold: Notice of meeting requirements for a higher prescribed threshold

Summary of feedback

Submissions provided feedback that, where shareholders are asked to approve a higher prescribed threshold, the notice of meeting should clearly explain the effect of the approval. This included the potential dilution, the period for which the approval would operate, the types of transactions it may apply to and why the board considers the higher threshold to be in shareholders' interests.

Another respondent was concerned about the information required in notices of meeting for shareholder approval of a higher threshold. The concern was that the current disclosure requirement may be too burdensome if it requires historical disclosure over the full period since listing, particularly for long-listed entities, while investor respondents emphasised the importance of clear disclosure about the scope, duration and consequences of any higher threshold.

ASX response

ASX will proceed as consulted and has not made any changes to the notice requirements.

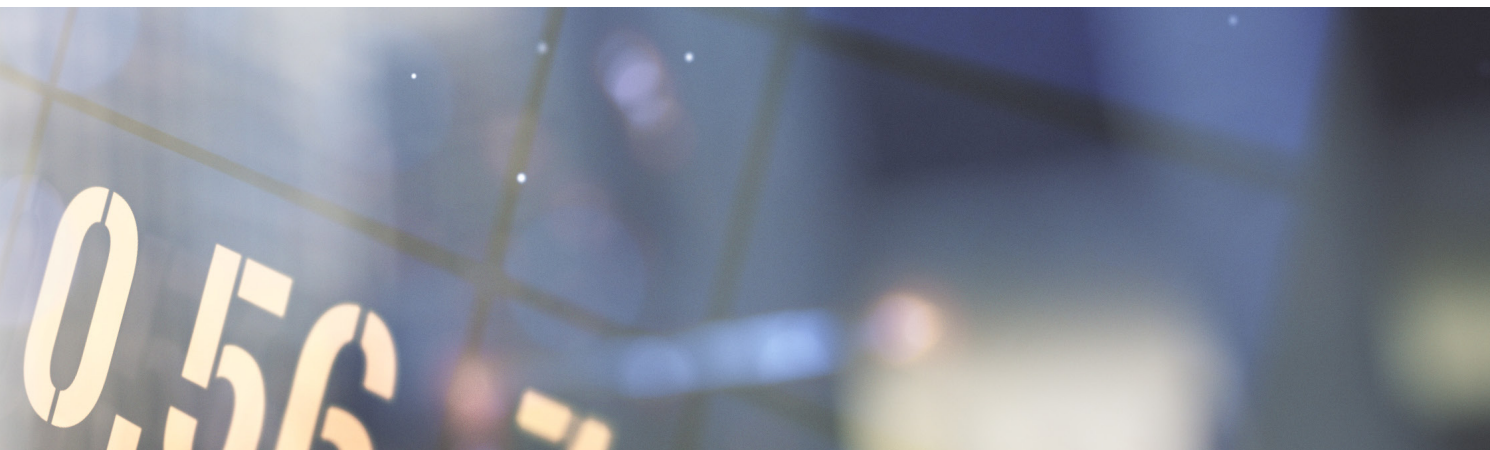
These requirements remain proportionate and workable, with the notice of meeting providing clear and sufficient information for shareholders to assess the proposed higher threshold through the provision of information set out in Listing Rule 7.3B that give shareholders the scope, duration and consequences of the approval.

The information required is limited in scope and readily available to the listed entity. A listed entity putting a case to its shareholders for larger issuance capacity is best placed to explain how it has used the existing exceptions, and ASX expects it to do so. The entity holds records of its issuances, and each issuance to be disclosed must have been connected with a regulated takeover or merger.

The approval mechanism is intended to allow larger listed entities to put themselves in the same position that applies to most other listed entities, so the disclosure requirements are not onerous. In particular, ASX does not require disclosure of confidential and incomplete proposals that may be under consideration at the time the notice of meeting is approved or at the time of the meeting. The purpose of the approval is to authorise the board to execute current or future proposals at its discretion, not to authorise specific issues.

Relevant Listing Rule / Guidance Note

Listing Rule 7.3B; Guidance Note 21



Theme 3 – Prescribed transaction: timing of S&P/ASX 300 status

Summary of feedback

Respondents sought clarity on when an entity's S&P/ASX 300 status is tested for the prescribed transaction framework.

The concern was that uncertainty about the testing date could make it difficult to determine whether the 25% threshold applies. One respondent also suggested ASX should retain discretion to require approval where a transaction is announced shortly before, or in anticipation of, S&P/ASX 300 inclusion.

ASX response

ASX will proceed as consulted.

The Draft Amendments provide that S&P/ASX 300 Index status is tested on the date on which the regulated takeover or merger is announced. This provides a clear, objective and administrable point in time.

ASX recognises that this may result in situations where a listed entity that will be included in the index in the future does not need to obtain shareholder approval for a transaction that would have required shareholder approval if the transaction were to be announced when it was included in the index. Listed entities in this situation can seek shareholder approval voluntarily if they wish.

Relevant Listing Rule / Guidance Note

Chapter 19 definition of "prescribed transaction"; Listing Rule 7.2 Exceptions 6 and 7; Guidance Note 21



Theme 4 – Regulated takeover or merger definition

Summary of feedback

Some respondents sought clarity on the proposed new definition of “regulated takeover or merger”, including how it interacts with existing takeover terminology in the Listing Rules, the scope of foreign transactions and the jurisdictions intended to be captured by the revised framework.

The concerns included:

- an overlap with the existing definition of “takeover” could create uncertainty about which transactions are covered by the amended exceptions and when shareholder approval is required;
- the new definition includes a broad range of foreign business combination structures that may not have equivalent Australian law protections;
- uncertainty about whether the approval requirement applied in certain types of cross-border transactions; and
- clarity about which foreign jurisdictions fall within paragraph (c) of the definition.

ASX response

ASX will refine the Chapter 19 definition of “regulated takeover or merger” to improve clarity and ensure the amended exceptions operate as intended.

ASX has included at paragraph (c) of this definition the types of foreign regulated public offer, court-approved or shareholder approval processes intended to be captured. This approach adopts a jurisdiction-neutral framework for regulated takeovers and mergers. A single framework applying to Australian and foreign regulated transactions is clearer and more predictable than a waiver-based regime.

ASX will not publish a list of qualifying jurisdictions. Where a transaction meets the criteria in paragraph (c), it is within the definition regardless of the jurisdiction in which it occurs.

Guidance Note 21 sets out ASX’s expectations. A listed entity relying on the exception should be able to demonstrate the basis on which it concluded the exception applies, and be prepared to disclose its reasons, including any advice obtained, to ASX and the market if requested. Where a listed entity is unsure whether paragraph (c) applies, it should obtain advice from an appropriately qualified legal practitioner in the relevant jurisdiction. If that advice is qualified, equivocal or otherwise gives rise to uncertainty, ASX expects the listed entity to seek shareholder approval.

The existing defined term “takeover” is a subset of “regulated takeover or merger” and continues to be used in a limited number of Listing Rules where a narrower concept applies.

Relevant Listing Rule / Guidance Note

Chapter 19 definition of “regulated takeover or merger”; Listing Rule 7.2 Exceptions 6 and 7; Guidance Note 21



Consultation topic 3: Post-approval issuance timing

Respondents expressed differing views on standardising time limits for issuing securities following shareholder approval across transaction types for all approvals under Listing Rules 7.1 and 7.4. A majority of those who responded to this question supported standardisation to 12 months. The main themes and concerns identified are summarised below.

Theme – Post-approval issuance timing

Summary of feedback

Respondents in support of standardisation considered that a 12-month period would simplify the Listing Rules, reduce regulatory complexity and better accommodate transactions requiring court, regulatory or foreign approvals.

A smaller number of respondents that did not support universal standardisation considered that shorter approval periods help ensure shareholder approval remains connected to the transaction and market circumstances disclosed at the time of approval, and as a result, reduce the risk that approvals are used for purposes materially different from those originally explained to shareholders.

Some respondents suggested that, if ASX does not adopt a general 12-month period, it should consider targeted extensions for transactions that are subject to court, regulatory or foreign approvals, or other conditions outside the listed entity's control.

ASX response

ASX will adopt standardisation in part.

The post-approval issuance period for a "reverse takeover" will move from 6 months to 12 months, aligning it with the 12-month period that applies to a "prescribed transaction" on the basis that these transactions are of comparable execution complexity and are commonly subject to court, regulatory or foreign approval processes that determine their timetable. A 12-month period provides a workable completion window for regulated transactions that require court or regulatory steps, while maintaining an objective limit on stale approvals.

However, ASX will not extend standardisation to all approvals under Listing Rules 7.1 and 7.4 at this time. The existing shorter 3-month period for general securities issuances will continue. ASX considers that the shorter period is appropriate for general issuances, which do not ordinarily depend on court, regulatory or foreign approvals, and that it preserves the connection between the approval and the circumstances disclosed to shareholders.

Relevant Listing Rule / Guidance Note

Listing Rule 7.3.4; Listing Rule 7.3.8; Guidance Note 21

Consultation topic 4: Implementation date and transitional arrangements

Respondents sought clarity on the implementation of the Draft Amendments, in particular with respect to transactions that have been publicly announced prior to the commencement date. The main themes and concerns identified are summarised below.

ASX's response seeks to provide a clear and orderly transition to the new framework, while preserving certainty for transactions, approvals and applications that have been publicly announced or are in progress.

To support a clear and orderly commencement, the new rules apply to a regulated takeover or merger that is publicly announced on or after the commencement date. Transitional arrangements for transactions publicly announced before that date are set out in Theme 2 below.

Theme 1 – Commencement date

Summary of feedback

Respondents expressed differing views on the proposed 21 October 2026 commencement date. A majority of responses to this question supported the timely implementation of the Draft Amendments on the commencement date. Others noted that additional time would be desirable for listed entities and other market participants to prepare for the implementation of ASX's final rules and guidance prior to commencement.

ASX response

ASX will proceed as consulted, with the amendments to commence on 21 October 2026, subject to completion of the statutory process for amending its rules. ASX will confirm the final commencement date by way of a Market Notice once that process has been completed.

This means that the amendments to Listing Rule 7.2 Exceptions 6 and 7 will apply to regulated takeovers and mergers that are publicly announced on or after the commencement date only. Any relevant transaction publicly announced prior to the commencement date will remain subject to the Listing Rules and Guidance Notes (including any applicable waivers) in force prior to the commencement date (**Prior Rules**).

This approach balances timely implementation of the reforms while allowing the market time to prepare and granting certainty with respect to publicly announced transactions in progress.

Relevant Listing Rule / Guidance Note

N/A





Theme 2 – Transitional arrangements

Summary of feedback

Respondents sought clarity with respect to how the Draft Amendments would apply to transactions that have been publicly announced or are in progress prior to commencement. The matters raised with respect to the new shareholder approvals of dilutive acquisitions included:

1. whether pre-commencement transactions or delistings would be grandfathered;
2. how the rules would apply if a transaction materially changed after commencement; and
3. the status of pre-commencement shareholder approvals or standing mandates.

Respondents also sought clarity on voluntary delisting or admission status requests lodged prior to commencement.

ASX response

To support a clear and orderly commencement of the Draft Amendments, ASX will adopt the following transitional arrangements:

1. **In-progress transactions:** Transactions publicly announced prior to the commencement date will remain subject to the Prior Rules and will not be subject to the amended Listing Rules following the commencement date.
2. **Material changes to in-progress transactions:** Where a transaction was publicly announced prior to the commencement date and the terms of that transaction materially change on or after the commencement date, such that in substance the transaction is better characterised as a new transaction, ASX may require that transaction to be assessed under the post-commencement Listing Rules rather than the Prior Rules.
3. **Increased threshold:** A shareholder approval under and for the purposes of Listing Rule 7.3B can only be obtained at a meeting held on or after the commencement date. A listed entity can rely upon a constitutional amendment that satisfies paragraph (c) of the definition of “prescribed threshold” provided that the amendment was approved by shareholders after the entity was admitted to the official list. Such an amendment may be made before the commencement date.
4. **Voluntary delistings:** Formal requests for voluntary delistings received by ASX prior to the commencement date will remain subject to the Prior Rules. Requests received on or after that date will be subject to the post-commencement Listing Rules. ASX may also consider applications for a waiver of Listing Rule 17.11A, applying the Prior Rules, where a takeover bid is in progress or closed within the 12 months before the commencement date, the bidder holds more than 75% of the listed entity’s securities but cannot proceed to compulsory acquisition, and fewer than 150 holders retain a marketable parcel.

Relevant Listing Rule / Guidance Note

Insert: Listing Rule 17.11A; Listing Rule 18.1; Listing Rule 18.4

Additional Amendments

ASX will also make certain additional amendments that were not expressly consulted upon as part of the June 2026 Response Report. These amendments are minor and technical in nature, as summarised in the table below.

Additional change	Detail of amendment
Cboe and Chi-X references	Consequential amendments have been made to reflect the change of name of Cboe Australia to TMX Australia Exchange following completion of its acquisition by TMX Group on 2 August 2026 to relevant Listing Rules (Chapters 3 and 19) and Guidance Notes (Guidance Notes 21, 25 and 33).
17.11B.1(c)	Amendments have been made so that any ordinary securities held by a depositary nominee for CDIs will not be included in the calculation for the purposes of the rule. A depositary nominee for CDIs is a single registered holder that holds securities on behalf of CDI holders. Excluding the depositary nominee from the calculation avoids the outcome being materially influenced by the nominee’s registered address and results in CDI holders being treated consistently with ordinary securityholders for the purposes of the test.
Guidance Notes 5 and 35	ASX has identified that both Guidance Notes contain references to the former voluntary delisting process in Guidance Note 33 and has made consequential updates only. No policy change is made to either Guidance Note.

Next steps

ASX will finalise the amendments to the Listing Rules and Guidance Notes having regard to the feedback received as set out above.

The final amendments to the Listing Rules and Guidance Notes, in mark-up to the current Listing Rules and Guidance Notes, are set out in **Annexure A**.

An extract of the Draft Amendments showing the changes to be made to the Listing Rules following consultation feedback as set out above, in mark-up to the exposure draft in the June 2026 Response Report, is set out in **Annexure B**. A full mark-up of the Guidance Note amendments against the exposure draft is also included in Annexure B.

ASX proposes that the final amendments to the Listing Rules and Guidance Notes as set out in Annexure A become effective on 21 October 2026, subject to completion of the statutory process for amending its rules, as set out under consultation topic 4, theme 1 of this report.



Annexure A

Final amendments to ASX Listing Rules
and Guidance Notes (subject to
regulatory approvals)

Chapter 3

Continuous disclosure

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Corporate actions	3.20 - 3.22

Explanatory note

This chapter sets out the continuous disclosure requirements that an entity must satisfy. Information for release to the market must be given to ASX's *market announcements office.

Entities should note chapter 4, which deals with periodic disclosure, and chapter 5, which deals with additional reporting requirements for *mining entities, *oil and gas entities and other entities reporting on mining and oil and gas activities. Chapter 15 sets out where the draft and final documents must be lodged.

For further guidance on continuous disclosure, see Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*.

Amended 01/05/13, 01/12/13, 01/12/19

Immediate notice of material information

General rule

- 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.

Introduced 01/07/96 Origin: Listing Rule 3A(1) Amended 01/07/00, 01/01/03, 01/05/13

Note: Section 677 of the Corporations Act defines material effect on price or value. As at 1 May 2013 it said for the purpose of sections 674 and 675 a reasonable person would be taken to expect information to have a material effect on the price or value of securities if the information would, or would be likely to, influence persons who commonly invest in securities in deciding whether or not to subscribe for, or buy or sell, the first mentioned securities.

"Information" may include information necessary to prevent or correct a false market, see Listing Rule 3.1B. It may also include matters of supposition and other matters that are insufficiently definite to warrant disclosure to the market, and matters relating to the intentions, or likely intentions, of a person (see Listing Rule 19.12).

A confidentiality agreement cannot prevent an entity from complying with its obligations under the Listing Rules and, in particular, its obligation to give ASX information for release to the market where required by the Listing Rules.

Examples: The following are non-exhaustive examples of the type of information that, depending on the circumstances, could require disclosure by an entity under this rule:

- a transaction that will lead to a significant change in the nature or scale of the entity's activities (see also Listing Rule 11.1 and Guidance Note 12 *Significant Changes to Activities*);
- a material mineral or hydro-carbon discovery;

- 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.

Cross-reference: Listing Rules 3.1A, 3.1B, 5.18, 15.7, 18.7A, 19.2, Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1-3.1B*.

Exception to rule 3.1

3.1A Listing Rule 3.1 does not apply to particular *information while each of the following 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.

Introduced 01/01/03 Amended 01/05/13

Cross-reference: Listing Rules 3.1, 3.1B, 18.8A; Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1-3.1B*.

False market

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.

Introduced 01/01/03 Amended 01/05/13

Note: The obligation to give information under this rule arises even if the exception under Listing Rule 3.1A applies.

Cross-reference: Listing Rules 3.1, 3.1A, 18.7A; Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1-3.1B*.

Notice of specific information

Entity making a takeover bid

3.2 [Deleted]

Introduced 01/07/96 Origin: Listing Rule 3R(7) Amended 13/03/00 Deleted 11/01/10

+ See chapter 19 for defined terms

3.3 [Deleted]

Introduced 01/07/96 Origin: Listing Rule 3R(8) Amended 01/07/97, 13/03/00 Deleted 11/01/10

3.4 Within 10 *business days after the end of the offer period for a takeover bid, an entity must give ASX the following information.

3.4.1 If the entity (or one of its *child entities) made the takeover bid and the consideration was *equity securities in the entity, a distribution schedule as set out in rule 4.10.7; and the names of, and percentages held by, the 20 largest holders as set out in rule 4.10.9.

Introduced 01/07/96 Origin: Listing Rule 3R(8A) Amended 01/07/97, 13/03/00

3.4.2 If the entity was subject to the takeover bid and compulsory acquisition will not proceed, a distribution schedule as set out in rule 4.10.7; and the names of, and percentages held by, the 20 largest holders as set out in rule 4.10.9.

Introduced 01/07/96 Origin: Listing Rule 3R(8A) Amended 13/03/00

3.5 [Deleted]

Introduced 01/07/96 Origin: Listing Rule 3V(11)(a)(ii) Amended 01/07/98 Deleted 01/09/99 Refer rule 3.8A

3.6 [Deleted]

Introduced 01/07/96 Origin: Listing Rule 3V(11)(b) Deleted 01/09/99 Refer rule 3.8A

3.7 [Deleted]

Introduced 01/07/96 Origin: Listing Rule 3V(11)(a)(i) Deleted 01/09/99 Refer rule 3.8A

3.8 [Deleted]

Introduced 01/07/96 Origin: Listing Rules 3V(8)(a), (b) Deleted 01/09/99 Refer rule 3.8A

Entity making a buy-back

3.8A An entity must give the following notifications to ASX at the times set out below.

Notification/ event	Type of buy-back					When notification must be given to ASX
	Minimum holding	Employee share scheme	On- market	Equal access scheme	Selective	
<i>Appendix 3C Parts 1 – 3D Announcement of buy-back</i>	x	✓	✓	✓	✓	In the case of an on-market buy back, immediately the entity decides that it wants to buy back *securities. Example: On 1 February an entity decides that it wants to buy back securities in March. The Appendix 3C must be given to ASX on 1 February. In the case of any other buy-back, immediately the entity decides to buy back *securities.

+ See chapter 19 for defined terms

Notification/ event	Type of buy-back					When notification must be given to ASX
	Minimum holding	Employee share scheme	On- market	Equal access scheme	Selective	
<i>Appendix 3C Parts 1 – 3D (using the update or cancel function)</i> Change relating to buy-back	x	✓	✓	✓	✓	Immediately any change is made to information the entity has given to ASX in an earlier Appendix 3C.
<i>Appendix 3C Part 4 Daily notification</i>	x	✓	✓	✓	x	At least half an hour before the commencement of trading on the business day after any day on which +securities are bought back.
<i>Appendix 3C Part 5 Final notice</i>	x	✓	✓	✓	✓	In the case of an on- market buy back, at least half an hour before the commencement of trading on the business day after any of the following. • The entity buys back the maximum number of +securities that it wanted. • The entity decides it will stop buying back +securities. In the case of an equal access scheme buy-back, one business day after the offer closing date.
<i>Appendix 3H Notice of cessation of securities</i>	✓	✓	✓	✓	✓	In the case of a minimum holding buy-back, within 5 +business days of the completion of the buy- back. In all other cases, within 5 +business days of giving ASX the final notice for the buy-back.

Introduced 01/09/99 Origin: Listing Rules 3.5, 3.6, 3.7, 3.8, 7.29, 7.30, 7.31 and 7.32 Amended 11/01/10, 01/12/19, 05/06/21

Note: Unless ASX decides otherwise, “equal access scheme” includes a selective buy-back which does not require shareholder approval as a result of a modification by ASIC of the Corporations Act.

Cross reference: Rule 3.10.3E, Appendix 3C, Appendix 3H, Appendix 7A section 11.

Note: ASIC Corporations (ASX-listed Schemes On-market Buy-backs) Instrument 2016/1159 sets out modifications to Chapter 5C of the Corporations Act relating to on-market buy-backs by ASX-listed managed investment schemes.

- 3.9 If an agreement constituting a buy-back is rescinded or discharged except by performance, the company must tell ASX. It must also tell ASX the number of shares to which the agreement related. It must do so at least half an hour before the commencement of trading on the *business day following the day on which the agreement was rescinded or discharged.

Introduced 01/07/96 Origin: Listing Rule 3V(11)(a)(iii) Amended 11/01/10, 01/12/19

Cross reference: Listing Rules 7.29 - 7.35.

Note: ASIC Corporations (ASX-listed Schemes On-market Buy-backs) Instrument 2016/1159 sets out modifications to Chapter 5C of the Corporations Act relating to on-market buy-backs by ASX-listed managed investment schemes.

Capital

- 3.10 An entity must tell ASX the following information. It must do so immediately unless otherwise specified.

- 3.10.1 Details of a reorganisation to be made to its capital (in the case of a trust, interests). The notification to ASX must be in the form of or accompanied by:

- (a) if the reorganisation involves a split or consolidation of *securities, an Appendix 3A.3;
- (b) if the reorganisation involves a cash return of capital, an Appendix 3A.4; or
- (c) if the reorganisation involves a return of capital by way of an in specie distribution of *securities in another entity, an Appendix 3A.5.

Introduced 01/07/96 Origin: Listing Rule 3A(10A) Amended 01/12/19, 05/06/21

- 3.10.2 [Deleted]

Introduced 01/07/96 Origin: Listing Rule 3A(10) Amended 01/12/19 Deleted 05/06/21

- 3.10.3 Details of a proposed issue of:

- (a) *equity securities (other than an issue to be made under a *dividend or distribution plan or an *employee incentive scheme or as a consequence of the conversion of any *convertible securities); or
- (b) *debt securities in a *class of *securities that is already quoted, or that is intended to be quoted, on ASX.

The notification to ASX must be in the form of, or accompanied by, an Appendix 3B.

The entity must also immediately tell ASX if there is a material error in, or a material change to, any of the information it has given to ASX about a proposed issue of *securities.

Introduced 01/07/96 Origin: Listing Rules 3E(5)(a)(i), 3E(5)(a)(iii), 3E(5)(a)(v), 3E(5)(b), 3T(1)(a), Appendix 5 Amended 01/07/00, 14/04/14, 01/12/19, 05/06/21

Note: Convertible debt securities are equity securities for these purposes (see the definition of "equity security" in rule 19.12).

Rule 3.10.3 requires an entity to notify ASX of certain *proposed* issues of securities. When and if the securities in question are issued, the entity will need to separately notify ASX of their *actual* issue, either under rule 3.10.3C or in accordance with any applicable timetable for the issue in Appendix 6A or 7A. This notification will generally take the form of an Appendix 2A, if the securities are intended to be quoted on ASX, or an Appendix 3G, if the securities are not intended to be quoted on ASX.

Rule 3.10.3 applies to all proposed issues of equity securities apart from a proposed issue of equity securities to be made under a dividend or distribution plan or an employee incentive scheme or as a consequence of the conversion of any convertible securities. In most cases, a proposed issue of equity securities under a dividend or distribution plan is notified to ASX under rule 3.21 via an Appendix 3A.1, while the actual issue is notified to ASX via an Appendix 2A or 3G (see rule 6.24 and section 1 of Appendix 6A). An issue of equity securities under an employee incentive scheme is notified to ASX under rule 3.10.3A via an Appendix 2A or 3G. An issue of equity securities as a consequence of the conversion of any convertible securities is notified to ASX under rule 3.10.3B via an Appendix 2A or 3G.

Rule 3.10.3 only applies to a proposed issue of debt securities if they are in a class of debt securities that is already quoted, or that is intended to be quoted, on ASX. However, information about an issue of debt

securities in a class that is not already quoted or intended to be quoted on ASX may be separately notifiable to ASX under rule 3.1 if a reasonable person would expect information about the issue to have a material effect on the price or value of the entity's securities.

If any of the securities are proposed to be issued to a person referred to in rule 10.11, the issue may require approval under that rule. If the securities are issued to a director or a director will otherwise have a notifiable interest in them, the entity will also need to lodge an Appendix 3Y in relation to those securities under rule 3.19A.2.

If there is a material error in, or material change to, the information about a proposed issue of securities notified to ASX in an Appendix 3B (including, but not limited to, a change to a date referred to in a timetable for the proposed issue of securities set out in Appendix 7A), the entity must immediately notify ASX using the 'update' function in the Appendix 3B.

If a proposed issue of securities is cancelled or otherwise does not proceed, the entity must immediately notify ASX using the 'cancel' function in the Appendix 3B.

Guidance Note 30 *Notifying Changes in Issued Securities and Applying for Quotation of New or Additional Securities* has further guidance on the operation of rule 3.10.3.

3.10.3A Details of an issue of *equity securities under an *employee incentive scheme:

- (a) to *key management personnel or an *associate, within 5 *business days of the issue; or
- (b) to someone who is not *key management personnel or an *associate, within 10 *business days of the end of the quarter in which they were issued.

If the securities are intended to be immediately quoted on ASX, the notification must be in the form of, or accompanied by, an Appendix 2A. The Appendix 2A must be received by ASX no later than midday (Sydney time) at least one *business day prior to the intended date for quotation of the *securities.

Otherwise, the notification must be in the form of, or accompanied by, an Appendix 3G.

Introduced 01/12/19 Amended 05/06/21

Note: The grant of options or conditional rights to equity securities under an employee incentive scheme is an issue of equity securities for the purposes of rule 3.10.3A and must be notified to ASX under this rule. This applies even where the securities to be acquired on the exercise of the options or pursuant to the terms of the rights are required by the terms of the scheme to be purchased on-market and transferred to the holder of the option or right.

Under rules 2.4 and 2.8.6, securities issued under an employee incentive scheme in a class of securities that is already quoted, or that is intended to be quoted, on ASX and that are subject to restrictions on transfer can either be immediately quoted on ASX (in which case notification of their issue under this rule should be in the form of, or accompanied by, an Appendix 2A) or their quotation may be deferred until the restrictions on transfer cease to apply (in which case notification of their issue under this rule should be in the form of, or accompanied by, an Appendix 3G).

The reference in this rule to securities that are "intended to be immediately quoted on ASX" includes securities which are in a class of securities that is already quoted on ASX and which are not subject to restrictions on transfer, where the entity is consequently obliged under rules 2.4 and 2.8.6 to apply for their quotation within the specified period of their issue. It also includes securities which are subject to restrictions on transfer where the entity elects to apply for quotation of the securities within the specified period of their issue rather than wait until the restrictions on transfer have ceased to apply.

Where convertible securities (such as options or conditional rights to equity securities) are issued under an employee incentive scheme and they are subsequently converted into the underlying securities, that conversion should be notified to ASX under rule 3.10.3B rather than under rule 3.10.3A. This applies even where the conversion occurs via a new issue of the underlying securities. The issue of the underlying securities in these circumstances is not regarded as an issue of equity securities *under the employee incentive scheme* for the purposes of rule 3.10.3A but rather as an issue of equity securities under the terms of the convertible security.

Where options or conditional rights to equity securities are issued under an employee incentive scheme to a director or a director will otherwise have a notifiable interest in them, the entity will need to lodge an Appendix 3Y in relation to those options or rights under rule 3.19A.2 and their issue may require approval under rule 10.11 or 10.14. The lodgement of a further Appendix 3Y will also be required under rule 3.19A.2 if and when the options are exercised or the rights are satisfied, whether that be by the issue of new securities or the acquisition and transfer of existing securities.

Guidance Note 30 *Notifying Changes in Issued Securities and Applying for Quotation of New or Additional Securities* has further guidance on the operation of rule 3.10.3A.

3.10.3B Details of the conversion of any +convertible securities:

- (a) if the +convertible securities are quoted and are being converted on their conversion date or expiry date, in accordance with the timetable in section 5 of Appendix 6A;
- (b) if the +convertible securities are quoted and are being converted prior to their conversion date or expiry date, within 5 +business days of their conversion;
- (c) if the +convertible securities are not quoted and were issued under an +employee incentive scheme:
 - (i) to +key management personnel or an +associate, within 5 +business days of their conversion;
 - (ii) to someone who is not +key management personnel or an +associate, within 10 +business days of the end of the quarter in which the conversion occurred; and
- (d) if the +convertible securities are not quoted and rule 3.10.3B(c) does not apply, within 5 +business days of their conversion.

If the underlying securities are intended to be quoted on ASX, the notification must be in the form of, or accompanied by, an Appendix 2A. The Appendix 2A must be received by ASX no later than midday (Sydney time) at least one +business day prior to the intended date for quotation of the +securities.

Otherwise, the notification must be in the form of, or accompanied by, an Appendix 3G.

Introduced 01/12/19 Amended 05/06/21

Note: An exercise of options and the issue or transfer of securities as a consequence of the conditions to a conditional right to equity securities being satisfied are both conversions of convertible securities for the purposes of this rule.

For the purposes of this rule, a conversion of convertible securities into the underlying securities is regarded as occurring:

- if the conversion involves a reclassification of the convertible securities as the underlying securities, when the reclassification takes effect;
- if the conversion involves an issue of new underlying securities, when the issue is made; or
- if the conversion involves a transfer of existing underlying securities, when the transfer is made.

Where convertible securities are converted into the underlying securities via the transfer of existing quoted securities, the notification of their conversion should be given in the form of, or accompanied by, an Appendix 3G (in this case, as the underlying securities are already quoted on ASX, it would be inappropriate to lodge an Appendix 2A applying for their quotation).

As mentioned in the note to rule 3.10.3A above, where convertible securities (such as options or conditional rights to equity securities) are issued under an employee incentive scheme and they are subsequently converted into the underlying securities, that conversion should be notified to ASX under rule 3.10.3B rather than under rule 3.10.3A. This applies even where the conversion occurs via a new issue of the underlying securities. The issue of the underlying securities in these circumstances is not regarded as an issue of equity securities *under the employee incentive scheme* for the purposes of rule 3.10.3A but rather as an issue of equity securities under the terms of the convertible security.

Where convertible securities are held by a director or a director otherwise has a notifiable interest in them, the entity will also need to lodge an Appendix 3Y in relation to the conversion of those securities under rule 3.19A.2. This applies regardless of how the conversion occurs.

The reference in this rule to underlying securities that are "intended to be quoted on ASX" includes underlying securities in a class of securities that is already quoted on ASX, where the entity is consequently obliged under rule 2.4 to apply for their quotation.

Guidance Note 30 *Notifying Changes in Issued Securities and Applying for Quotation of New or Additional Securities* has further guidance on the operation of rule 3.10.3B.

3.10.3C Details of the issue of:

- (a) any +equity securities not otherwise notifiable to ASX under rules 3.10.3A or 3.10.3B or the timetables in Appendix 6A or 7A; or
- (b) any +debt securities that are intended to be quoted on ASX,

within 5 *business days of the issue. If the *securities are intended to be quoted, the notification must be in the form of, or accompanied by, an Appendix 2A. The Appendix 2A must be received by ASX no later than midday (Sydney time) at least one *business day prior to the intended date for quotation of the *securities.

Otherwise, the notification must be in the form of, or accompanied by, an Appendix 3G.

Introduced 05/06/21

Note: Rules 3.10.3A and 3.10.3B and the timetables in Appendix 6A and Appendix 7A have notification requirements for various different issues of equity securities. Rule 3.10.3C is a “catch-all” to ensure that other issues of equity securities, and issues of debt securities that are intended to be quoted on ASX, are also notified to ASX.

The reference in this rule to debt securities that are “intended to be quoted on ASX” includes debt securities in a class of securities that is already quoted on ASX, where the entity is consequently obliged under rule 2.4 to apply for their quotation.

Guidance Note 30 *Notifying Changes in Issued Securities and Applying for Quotation of New or Additional Securities* has further guidance on the operation of rule 3.10.3C.

3.10.3DDetails of a call, instalment or other amount paid up on any partly paid *equity securities:

- (a) in the case of a call or instalment on quoted partly paid *equity securities, in accordance with the timetable in section 3 or 4 of Appendix 6A (as applicable);
- (b) in the case of an amount paid up on quoted partly paid *equity securities other than by way of a call or instalment, within 5 *business days of the payment;
- (c) in the case of a call or instalment on unquoted partly paid *equity securities, within 5 *business days of the last date for the payment of the call or instalment; or
- (d) in the case of an amount paid up on unquoted partly paid *equity securities other than by way of a call or instalment, within 5 *business days of the payment.

In the case of (a), (b) and (d) above, the notification must be in such form as ASX may require.

In the case of (c) above, if the payment of the call, instalment or other amount results in the *securities becoming fully paid *securities that are intended to be quoted on ASX, the notification must be in the form of, or accompanied by, an Appendix 2A. The Appendix 2A must be received by ASX no later than midday (Sydney time) at least one *business day prior to the intended date for quotation of the fully paid *securities. Otherwise, the notification must be in the form of, or accompanied by, an Appendix 3G.

Introduced 01/12/19 Amended 05/06/21

The reference in this rule to fully paid securities that are “intended to be quoted on ASX” includes fully paid securities in a class of securities that is already quoted on ASX, where the entity is consequently obliged under rule 2.4 to apply for their quotation.

An example of an amount paid up on partly paid equity securities other than by way of a call or instalment for the purposes of rules 3.10.3D(b) or (d) would be an amount voluntarily paid up by the holder of the partly paid equity securities.

Guidance Note 30 *Notifying Changes in Issued Securities and Applying for Quotation of New or Additional Securities* has further guidance on the operation of rule 3.10.3D.

3.10.3EDetails of the cessation of:

- (a) any securities issued under an *employee incentive scheme:
 - (i) to *key management personnel or an *associate, within 5 *business days of their cessation;
 - (ii) to someone who is not *key management personnel or an *associate, within 10 *business days of the end of the quarter in which the cessation occurred;

+ See chapter 19 for defined terms

- (b) any other *equity securities not otherwise notifiable to ASX under rule 3.8A, within 5 *business days of their cessation; or
- (c) any quoted *debt securities, within 5 *business days of their cessation.

The notification must be in the form of, or accompanied by, an Appendix 3H.

Introduced 05/06/21

Note: For the purposes of this rule, the “cessation” of a security includes:

- the expiry of an option or other convertible security without it being exercised or converted;
- the lapse of a conditional right to equity securities because the conditions have not been, or have become incapable of being, satisfied;
- the cancellation of a security pursuant to a minimum holding buy-back, employee share scheme buy-back, on-market buy back, equal access scheme buy-back, selective buy-back or other form of buy-back
- the cancellation of a security pursuant to a reduction of capital, scheme of arrangement or other reconstruction;
- the cancellation of a security by agreement between the entity and the holder;
- the repayment or redemption of a debt security or convertible debt security;
- the redemption of redeemable preference securities;
- the redemption of units in a trust; and
- the cancellation of partly paid securities upon a call or instalment not being paid.

The conversion of a convertible security (which is notifiable to ASX under rule 3.10.3B) is not regarded as the “cessation” of the convertible security for the purposes of this rule. Likewise, the payment up of a partly paid security resulting in it becoming a fully paid security (which is notifiable to ASX under rule 3.10.3D) is not regarded as the “cessation” of the partly paid security for the purposes of this rule.

The cancellation of securities pursuant to a buy-back is required to be notified to ASX via the lodgement of an Appendix 3H within the time frame specified in rule 3.8A and is therefore excluded from rule 3.10.3E(b).

Guidance Note 30 *Notifying Changes in Issued Securities and Applying for Quotation of New or Additional Securities* has further guidance on the operation of rule 3.10.3E.

- 3.10.4 The lodging of any *disclosure document or *PDS with *ASIC or an equivalent overseas regulator or the issuing of any *information memorandum. A copy of any *disclosure document or *PDS must be given to ASX immediately after it is lodged with *ASIC or the overseas regulator. A copy of the *information memorandum must be given to ASX before it is issued to prospective investors.

Introduced 01/07/96 Origin: Listing Rules 3E(5)(a)(v), (vi) Amended 13/03/00, 11/03/02, 19/12/16, 01/12/19

Cross reference: Listing Rule 3.1.

- 3.10.5 If the entity issues a new *class of quoted *equity securities:

- (a) a list of the names of the 20 largest recipients of those *securities, and the number and percentage of those *securities received by each of those recipients; and
- (b) a distribution schedule for those *securities setting out the number of recipients in the following categories and the total percentage of those *securities held by the recipients 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 Rule 3E(5)(a)(iv) Amended 01/09/99, 01/07/00, 30/09/01, 14/04/14, 19/12/16, 01/12/19

Note: An entity will normally provide this information in or with its Appendix 2A seeking quotation of the new class of equity securities. If the information is not available at the time the entity lodges its Appendix 2A, it will need to give it separately to ASX as soon as it becomes available.

3.10.5A[Deleted]

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

3.10.6 Details of the exercise by an *underwriter of a right to terminate an *underwriting agreement or to avoid or change the *underwriter's obligations under an *underwriting agreement.

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

Cross reference: Listing Rule 3.11.3.

3.10.7 In the case of *convertible securities, an event has occurred that gives *security holders a right of conversion or exercise, and details of that event and the resulting conversion or exercise period.

Introduced 01/09/99 Amended 01/12/19

Cross reference: Appendix 6A, section 5.

3.10.8 If a *dividend or distribution plan is established, amended, deactivated or reactivated. A copy of the terms of the plan or any amendment to it must be given to ASX.

Introduced 31/03/04 Amended 01/05/13, 01/12/19

Cross reference: Listing Rules 7.2 exception 4 and Listing Rule 10.12 exception 3.

3.10.9 If it enters into or activates an *underwriting agreement in relation to the level of reinvestment of a particular dividend or distribution under a *dividend or distribution plan. The entity must tell ASX the name of the *underwriter, the extent of the *underwriting, the fee, commission or other consideration payable, and a summary of the significant events that could lead to the *underwriting being terminated.

Introduced 01/12/19

Note: The obligation to disclose details of the underwriting does not extend to sub-underwriting arrangements (see the definition of "underwrite" in rule 19.12).

The reference to the "extent of the underwriting" means the level of reinvestment of the particular dividend or distribution that is underwritten.

The reference to the "fee, commission or other consideration payable" includes any applicable discount the underwriter receives to the issue price for securities under the dividend or distribution plan.

Cross reference: Listing Rules 7.2 exception 4 and Listing Rule 10.12 exception 3, Appendix 3A.1.

Forthcoming release of restricted securities and securities subject to voluntary escrow

3.10A An entity must tell ASX that *restricted securities or *securities subject to *voluntary escrow will be released from escrow not less than 5 *business days before the end of the escrow period. The notice must include details of the number and class of securities to be released, and the date they will be released, from escrow.

Introduced 30/09/01 Amended 02/11/15, 19/12/16, 01/12/19

Note: If necessary, the entity must make arrangements with the allottees of restricted securities or securities subject to *voluntary escrow that will enable it to comply with this rule.

In the case of restricted securities, the entity must also apply for their quotation no later than 5 *business days after the end of the escrow period using an Appendix 2A (see rule 2.8.5).

In the case of securities which are subject to *voluntary escrow, those securities will generally already be quoted on ASX.

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 2.8.5 and 4.10.14.

Options

3.11 An entity must tell ASX the following information.

+ See chapter 19 for defined terms

3.11.1 [Deleted]

Introduced 01/07/96 Origin: Listing Rule 3T(2)(b) Deleted 01/07/98

3.11.2 A change to the exercise price of an option, or the number of *underlying securities over which the option is exercisable, and the date the change becomes effective. The entity must tell ASX at least 5 *business days before the change becomes effective.

Introduced 01/07/96 Origin: Listing Rule 3G(1)(c)(iii), 3G(6)

Cross reference: chapter 6 sets out ways in which the exercise price of an option may change.

3.11.3 Immediately after it enters into an *underwriting agreement for the exercise of options. The entity must tell ASX the name of the *underwriter, the extent of the *underwriting, the fee, commission or other consideration payable, and a summary of the significant events that could lead to the *underwriting being terminated.

Introduced 01/07/96 Origin: Listing Rule 3G(4A) Amended 01/12/19

Note: The obligation to disclose details of the underwriting does not extend to sub-underwriting arrangements (see the definition of "underwrite" in rule 19.12).

The reference to the "extent of the underwriting" means the amount or proportion of the option exercise that is underwritten.

The reference to the "fee, commission or other consideration payable" includes any applicable discount the underwriter receives to the option exercise price payable by the holders of options.

Cross reference: Listing Rule 3.10.6, 7.2 Exception 10.

Forfeited shares in NL companies

3.12 If shares in a no liability company are forfeited, the company must immediately tell ASX of the forfeiture. It must also tell ASX the following information at the times set out in the following rules.

Introduced 01/07/96 Origin: Listing Rule 3P(4)(a)

3.12.1 The time and date of the auction of the forfeited shares. It must do this at least 10 *business days before the date of the auction.

Introduced 01/07/96 Origin: Listing Rule 3P(3)(a), (b)

Cross reference: Listing Rule 7.39.

3.12.2 Until the auction, the number of shares redeemed by former holders each week. It must do this by midday each Monday until the date on which it proposes to sell the remaining forfeited shares by auction.

Introduced 01/07/96 Origin: Listing Rule 3P(4)(b)

3.12.3 After the auction, the number of shares offered for sale, the number sold, the number remaining forfeited, the average sale price (or range of prices) and the proceeds of sale. It must do this by midday on the day after the auction.

Introduced 01/07/96 Origin: Listing Rule 3P(4)(c)

3.12.4 After the auction, any net amount payable to former holders of shares forfeited for non-payment of calls, and the amount payable per share. It must do this within 5 *business days after the auction.

Introduced 01/07/96 Origin: Listing Rule 3P(4)(d)

3.12.5 The number of shares re-issued, the proceeds raised and the number of shares remaining forfeited. It must do this immediately after the close of any offer to shareholders.

Introduced 01/07/96 Origin: Listing Rule 3P(4)(e)

- 3.12.6 The number of shares to be sold, and the way in which this will be done. It must do this on the day before the sale.

Introduced 01/07/96 Origin: Listing Rule 3P(4)(f)

Example: If the shares will be placed this must be stated.

- 3.12.7 The number of shares sold, the number remaining forfeited, the average price (or range of prices) and the proceeds of sale. It must do this at least once each week.

Introduced 01/07/96 Origin: Listing Rule 3P(4)(f)

- 3.12.8 The number of shares cancelled. It must do this by midday on the day after the general meeting held to consider cancellation.

Introduced 01/07/96 Origin: Listing Rule 3P(4)(g)

Cross reference: ASX Settlement Operating Rule 5.12.

Meetings

- 3.13 An entity must tell ASX the following information.

- 3.13.1 If the entity is not an *externally managed trust and directors may be elected at a meeting of *security holders, the entity must tell ASX the date of the meeting and the closing date for the receipt of nominations from persons wishing to be considered for election as a director, at least 5 *business days before the closing date for the receipt of such nominations. However, the failure to give such notice does not invalidate the meeting or the election of any director at the meeting.

Introduced 01/07/96 Origin: Listing Rule 3A(8)(a) Amended 01/12/19

Note: The entity may satisfy this obligation by giving to ASX a calendar of key dates which shows the date of the meeting and the closing date for the receipt of director nominations, as well as other key dates (such as the dates for its half yearly and annual results presentations and dividend payment dates).

- 3.13.2 The outcome in respect of each resolution put to a meeting of *security holders, showing separately:

- (a) both the number and a short description of the resolution;
- (b) whether the resolution was passed or not passed;
- (c) whether the resolution was decided on a show of hands or a poll;
- (d) if the resolution was decided on a poll:
 - (i) 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;
 - (ii) 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
 - (iii) the number of *securities that formally abstained from voting on the resolution;
- (e) regardless of how the resolution was decided, the aggregate number of *securities for which valid proxies were received before the meeting, showing separately:
 - (i) the aggregate number of *securities in respect of which the proxy was directed to vote for the resolution;
 - (ii) the aggregate number of *securities in respect of which the proxy was directed to vote against the resolution;
 - (iii) the aggregate number of *securities in respect of which the proxy was directed to abstain from voting on the resolution; and

- (iv) the aggregate number of *securities in respect of which the proxy could vote at their discretion; and
- (f) 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.

The entity must do so immediately after the meeting has been held. 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.

The notification given to ASX must be headed "Results of Meeting" or something similar.

Introduced 01/07/96 Origin: Listing Rule 3A(9) Amended 01/12/19

- 3.13.3 The contents of any prepared announcement (including any prepared address by the *chair or *CEO) that will be delivered at a meeting of *security holders. A copy must be given to ASX no later than the start of the meeting.

Introduced 01/07/96 Origin: Listing Rule 3J(8) Amended 01/07/97, 01/12/19

Note: ASX does not recognise embargoes on the release of information (see Listing Rule 15.8).

Statements must comply with Listing Rule 5.6.

If other material information is released at the meeting, the entity must immediately tell ASX. See Listing Rule 3.1.

Offices

- 3.14 An entity must immediately tell ASX of a change of the address, telephone number or facsimile number of its registered office or principal administrative office.

Introduced 01/07/96 Origin: Listing Rule 3A(13) Amended 01/07/00

Registers

- 3.15 An entity must immediately tell ASX the following information.

- 3.15.1 A change of address of an office at which a register of its *securities is kept.

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

- 3.15.2 If the entity is an *Australian entity, a proposal to cease operating in Australia an Australian register (or subregister) of its *securities. It must do so at least 20 *business days before the date the register (or subregister) will cease to operate. The entity must also tell ASX the address of the register (or subregister) on which *securities will be recorded.

Introduced 01/07/96 Origin: Listing Rules 3A(13A)(ii), (iii) Amended 19/12/16

Cross reference: Listing Rule 8.2. ASX Settlement Operating Rule 5.4.3 requires an entity with CHES approved financial products to tell ASX Settlement if it intends to cease operating certain issuer sponsored or certificated subregisters.

- 3.15.3 If the entity is a *foreign entity, a proposal to cease operating in Australia a *securities register (or subregister) or a register of depository receipts. It must do so at least 20 *business days before the date the register (or subregister) will cease to operate. The entity must also tell ASX the address of the register (or subregister) on which *securities will be recorded, or give ASX information necessary to facilitate registration of its *securities overseas.

Introduced 01/07/96 Origin: Listing Rules 3A(13A)(ii), (iii), (iv) Amended 19/12/16

+ See chapter 19 for defined terms

Cross reference: Listing Rules 1.1 Condition 4, 8.2 and 8.15. ASX Settlement Operating Rule 5.4.3 requires an entity with CHES approved financial products to tell ASX Settlement and each holder if it intends to cease operating certain issuer sponsored or certificated subregisters.

Chair, directors, responsible entity, auditors etc

3.16 An entity must immediately tell ASX the following information.

3.16.1 If the entity is not an *externally managed trust, a change of *chair, director, *CEO, *CFO or secretary.

Introduced 01/07/96 Origin: Listing Rule 3A(14)(a) Amended 01/07/97, 24/10/05, 01/12/19

3.16.2 If the entity is an *externally managed trust:

- (a) a change of the *responsible entity, or a change of *chair, director, *CEO, *CFO or secretary of the *responsible entity, of the trust; and
- (b) the names of the members of the first compliance committee (if any) and any change in members of the compliance committee.

Introduced 01/07/96 Amended 01/07/97, 01/07/98, 30/09/01, 01/12/19

3.16.3 A change of its auditor.

Introduced 01/07/96 Origin: Listing Rule 3A(14)(a) Amended 01/07/97

Note: When an entity tells ASX of a change under Listing Rule 3.16, the position of the new person should be given with the name.

3.16.4 If the entity is not an *externally managed trust, the material terms of any employment, service or consultancy agreement it or a *child entity enters into with:

- its *CEO;
- any of its directors; or
- any other person or entity who is a *related party of its *CEO or any of its directors,

and of any material variation to such an agreement.

Note: The entity may satisfy this obligation by giving a copy of the agreement or variation to ASX or an announcement summarising its material terms.

An entity, however, is not required to disclose under this rule:

- non-executive director fees paid out of a pool of remuneration approved by security holders;
- superannuation contributions in relation to such fees;
- an increase in director fees approved by security holders;
- periodic remuneration reviews in accordance with the terms of an employment, service or consultancy agreement;
- provisions entitling a *CEO or director to reimbursement of reasonable out of pocket expenses;
- provisions requiring the entity to indemnify officers or exempt them from liability that conform with section 199A of the Corporations Act (or, if the entity is a *foreign entity, the laws applicable in the jurisdiction where it is established);
- provisions requiring the entity to maintain directors and officers liability insurance that conform with section 199B of the Corporations Act (or, if the entity is a *foreign entity, the laws applicable in the jurisdiction where it is established);

- provisions (commonly referred to as “access arrangements”) allowing a +CEO or director access to entity records for a period of time after they cease to be a +CEO or director; or
- a bona fide employment, service or consultancy agreement, or any bona fide variation to such an agreement, that it or a +child entity has entered into with a relative of its +CEO, or a relative of any of its directors, that is on arms’ length and ordinary commercial terms.

Introduced 01/05/13 Amended 01/07/14, 19/12/16, 01/12/19

Documents sent to or received from security holders

3.17 An entity must immediately give ASX:

3.17.1 A copy of a document it sends to holders of +securities generally or in a +class.

Introduced 01/07/96 Origin: Listing Rules 3E(8)(b), 3E(8)(c), 3J(1)(a) Amended 01/05/13

Example: A company must give ASX a copy of a letter sent to shareholders. A trust must give ASX a copy of a document sent to holders of interests in the trust under section 1017D of the Corporations Act so far as that document relates to the circumstances of holders of interests generally, and not to the individual circumstances of a holder.

Note: In some cases, an entity must give ASX a draft document (eg, a notice of meeting) in advance of it being sent out to holders of securities. See chapter 15.

Note: Where an entity sends a letter or other communication to holders of securities generally or in a class that encloses or attaches another document that has already be given to ASX (eg, a letter to security holders enclosing an annual report that the entity has already given to ASX under Listing Rule 4.7), it is sufficient compliance with this rule that it give to ASX a copy of the letter or other communication and that it state in a covering letter to ASX that the document attached to the letter or other communication has already been given to ASX and the state the date on which it was so given.

Cross reference: Chapter 14 deals with the requirements for meetings. Chapter 4 deals with accounts and related disclosure.

3.17.2 If the entity is an +Australian entity, 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.

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

Information that:

- a substantial holding differs (upwards or downwards) from a previously disclosed substantial holding by less than 1%; or
- the list of related entities that have a substantial holding has changed because of the creation, acquisition, dissolution or disposal of related entities,

is not considered materially different for the purposes of this rule.

3.17.3 If the entity is a +foreign entity, 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.1 of the Corporations Act.

Introduced 01/05/13 Amended 14/04/14, 19/12/16

Note: Where an entity is established in Australia, a person who gives a substantial holding notice to the entity 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 copy of that notice to ASX.

3.17.4 If the entity is a +foreign entity, 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 rule 3.17.3.

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

Again, information that:

- a substantial holding differs (upwards or downwards) from a previously disclosed substantial holding by less than 1%; or
- the list of related entities that have a substantial holding has changed because of the creation, acquisition, dissolution or disposal of related entities,

is not considered materially different for the purposes of this rule.

Requisitions from security holders

3.17A An entity must give ASX within two business days of receipt:

3.17A.1 Information about the material terms of any notice it receives under section 249D, 249F, 249N, 252B, 252D or 252L of the Corporations Act or under any equivalent overseas law or equivalent provisions in the entity's constitution from a holder or holders of *securities calling, or requesting the calling of, or proposing to move a resolution at, a general meeting; and

Introduced 01/05/13

Note: The entity may satisfy this obligation by giving a copy of the notice to ASX or an announcement summarising its material terms. If the entity gives a copy of the notice, it may redact any defamatory material that it would not otherwise be required to circulate to security holders under the Corporations Act or any equivalent overseas law or equivalent provisions in its constitution. If the entity gives an announcement summarising the material terms of the notice, it may exclude from the summary any such defamatory material.

An entity is not required to give information to ASX about such a notice if the notice is withdrawn by the relevant holder or holders of securities within two business days of it having been received by the entity.

It should be noted that if a reasonable person would expect information about such a notice to have a material effect on the price or value of the entity's securities, the information must be given to ASX immediately under Listing Rule 3.1 and not within two business days of receipt.

3.17A.2 Information that a notice previously notified to ASX under rule 3.17A.1 has been withdrawn by the holder or holders who gave it.

Introduced 01/05/13

Financial documents given to an overseas stock exchange

3.17B If an entity admitted to the *official list is also listed on an overseas stock exchange, it must immediately give ASX a copy of any document it gives to the overseas stock exchange that meets the following requirements:

3.17B.1 the document is given to the overseas stock exchange by the entity in its capacity as an entity listed on that exchange; and

Introduced 01/05/13

3.17B.2 the document is, or will be, made public by the overseas stock exchange; and

Introduced 01/05/13

3.17B.3 the document includes *accounts or other similar financial information; and

Introduced 01/05/13

3.17B.4 the document is not materially the same as another document that the entity has already given to ASX.

Introduced 01/05/13

Note: If the document is not in English, it must be accompanied by an English translation (see Listing Rule 15.2A).

A document that does not include accounts or other similar financial information given by an entity listed on an overseas exchange to that exchange may also need to be given to ASX under Listing Rule 3.1 if a reasonable person would expect the information it contains to have a material effect on the price or value of the entity's securities.

+ See chapter 19 for defined terms

For the avoidance of doubt, where two entities form part of a dual-listed entity structure (ie where one entity is listed and has its home exchange on ASX and the other is listed and has its home exchange on an overseas stock exchange), this rule only applies to the entity listed on ASX and then only if the entity listed on ASX is also listed on an overseas stock exchange. It does not require documents that the other entity may give to its overseas home stock exchange or to any other overseas stock exchange where it may be listed to be given to ASX.

Laws affecting the rights or obligations of security holders in *foreign entities

- 3.17C If a *foreign entity becomes aware of a change to the laws applicable in the jurisdiction where it is established that materially affects the rights or obligations of security holders, it must immediately give ASX details of that change.

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

ASX Guidance Note 4 *Foreign Entities Listing on ASX* has guidance on the types of changes to law that may need to be disclosed under this rule.

Additional disclosure if loans are an asset

- 3.18 If ASX asks, an entity with loans included in its assets must tell ASX the following information.

- The amount of each loan.
- The identity of the borrower, and any direct or indirect interest which a director of the entity (or, in the case of a trust, any direct or indirect interest which the *responsible entity, or a director of the *responsible entity, of the trust) has in the borrower.
- The security held.
- The interest rate.
- The maturity date.
- Any other information in relation to the loan that ASX asks for.

Introduced 01/07/96 Origin: Listing Rule 3J(22) Amended 01/07/98, 24/10/05, 01/12/19

Ownership limits

- 3.19 If an entity's constitution with ASX's agreement, or a law (except the Corporations Act or the Foreign Acquisitions and Takeovers Act), restricts the ownership or control of *securities or control of votes to a specified percentage, and the entity becomes *aware that the percentage held by a class of *persons restricted to owning or controlling that percentage has come within 5 percentage points of the restriction, or equals or exceeds it, the following rules apply.

3.19.1 If the entity becomes *aware of any changes of more than 1 percentage point in the capital (in the case of a trust, interests) or votes held by *persons in the class the entity must immediately tell ASX of the change. It must do so for each change it becomes *aware of until rule 3.19.3 applies.

3.19.2 Each time the entity tells ASX of any change, it must state what action it will take to divest the *securities, or to remove or change the voting or other rights attaching to them, if it receives a transfer document for *securities whose transfer would result in the restriction being exceeded.

3.19.3 If the entity becomes *aware that the percentage of capital (interests) or votes held by the class of *persons referred to in rule 3.19.1 has ceased to be within 5 percentage points of the restriction, or to equal or exceed it, the entity must immediately tell ASX.

Introduced 01/07/96 Origin: Listing Rule 3A(18C) Amended 30/09/01, 11/03/02

Example: A law requires a company to restrict ownership to a class of persons to no more than 40% of its total ordinary capital. If the entity becomes aware that ownership of its ordinary capital has reached 35% of its total ordinary capital it must tell ASX under this rule. It must tell ASX under Listing Rule 3.19.1 if it becomes aware of changes that reach 36%, 37% of its total ordinary capital etc. It must tell ASX under Listing Rule 3.19.3 if it becomes aware of changes that take the level of restricted ownership below 35%.

Cross reference: Listing Rule 8.11.

+ See chapter 19 for defined terms

Disclosure of directors' interests

3.19A An entity must tell ASX the following.

3.19A.1 The ⁺notifiable interests of a director of the entity (or in the case of a trust, a director of the ⁺responsible entity of the trust) at the following times.

- On the date that the entity is admitted to the ⁺official list.
- On the date that a director is appointed.

The entity must complete Appendix 3X and give it to ASX no more than 5 business days after the entity's admission or a director's appointment.

Introduced 30/09/01 Amended 24/10/05

Note: An entity is not required to give information to ASX under this rule that, notwithstanding that it has complied with Listing Rule 3.19B, it does not have.

If a director has no interests at the time when the entity is required to complete an Appendix 3X, the entity must lodge an Appendix 3X that discloses that the director has no interests.

Cross reference: Guidance Note 22 *Disclosure of Directors' Interests*.

3.19A.2A change to a ⁺notifiable interest of a director of the entity (or in the case of a trust, a director of the ⁺responsible entity of the trust) including whether the change occurred during a ⁺closed period where prior written clearance was required and, if so, whether prior written clearance was provided. The entity must complete Appendix 3Y and give it to ASX no more than 5 business days after the change occurs.

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

Note: An entity is not required to give information to ASX under this rule that a director has not given to it under the arrangements mentioned in Listing Rule 3.19B and of which it is otherwise not aware. In such a case, the director is personally obliged to give that information to ASX and may breach section 205G of the Corporations Act if they fail to do so.

If a director has no interests at the time when the entity is required to complete an Appendix 3X under Listing Rule 3.19A.1, the entity must lodge an Appendix 3Y when the director first acquires an interest.

Cross reference: Guidance Note 22 *Disclosure of Directors' Interests*.

Examples: The event giving rise to the requirement to give ASX an Appendix 3Y is an on market purchase or sale of shares on the ASX market or ~~TMXChi-X~~ market. The entity has five business days after the date the relevant trade was executed on-market (T) and not when that trade settles (T+2) to give ASX the Appendix.

The event giving rise to the requirement to give ASX an Appendix 3Y is the exercise of options. The entity has five business days after the date the options were exercised to give ASX the Appendix.

3.19A.3 The ⁺notifiable interests of a director of the entity (or in the case of a trust, a director of the ⁺responsible entity of the trust) at the date that the director ceases to be a director. The entity must complete Appendix 3Z and give it to ASX no more than 5 business days after the director ceases to be a director.

Introduced 30/09/01 Amended 11/03/02

Note: An entity is not required to give information to ASX under this rule that, notwithstanding that it has complied with Listing Rule 3.19B, it does not have.

Cross reference: Guidance Note 22 *Disclosure of Directors' Interests*.

3.19B An entity must make such arrangements as are necessary with a director of the entity (or in the case of a trust, a director of the ⁺responsible entity of the trust) to ensure that the director discloses to the entity all the information required by the entity to give ASX completed Appendices 3X, 3Y and 3Z within the time period allowed by Listing Rule 3.19.A. The entity must enforce the arrangements with the director.

Introduced 30/09/01

Cross reference: Guidance Note 22 *Disclosure of Directors' Interests*.

⁺ See chapter 19 for defined terms

Corporate actions

- 3.20.1 An entity must tell ASX immediately it decides a proposed *record date, or any change to a proposed *record date, for a *corporate action.

Amended 01/12/19

Note: An entity is required to tell ASX of a proposed record date under this rule when the record date is reasonably certain. ASX would not require notification where an entity has determined a time period in which a record date may occur for internal management purposes.

- 3.20.2 In addition to its obligation under rule 3.20.1, an entity must give ASX not less than four *business days' notice of a proposed record date or any change to a proposed *record date for a *corporate action.

Introduced 01/07/96 Origin: Listing Rule 3A(5)(a) Amended 30/09/01, 24/10/05, 14/04/14, 07/03/16, 01/12/19

Note: If an entity fails to give notice to ASX of a change to a proposed record date under this rule, ASX may require the entity to adhere to the record date originally advised to ASX.

- 3.20.3 An entity must notify ASX by 10.00am one *business day prior to the proposed commencement of any *trading halt that it intends to request in connection with an *accelerated pro rata issue of *equity securities to which Listing Rule 7.2 applies, if the first day of the proposed *trading halt will be the expiry date for any exchange traded options quoted over that entity's *securities.

Introduced 14/04/14 Amended 01/12/19

Note: A notification under this rule must include details of the issue of equity securities. ASX will not release this information publicly.

ASX may require an entity to request a trading halt earlier than the date notified under this rule if ASX considers that it is necessary for the entity to manage its continuous disclosure obligations.

Expiry dates for exchange traded options are published on www.asx.com.au and are subject to change.

A fee will apply where an entity fails to provide the required period of notice in accordance with Listing Rule 3.20.3.

Cross reference: The timetables for accelerated pro rate issues are in Appendix 7A. For the fee where an entity fails to provide the required period of notice in accordance with Listing Rule 3.20.3, see Listing Rule 16.7 and Guidance Note 15A.

- 3.20.4 Unless ASX agrees otherwise, an entity must provide the information in Appendices 3A.1 to 3A.6 within the timeframes specified therein.

Introduced 22/09/14 Amended 01/12/19

Cross reference: Listing Rule 15.3(b)

- 3.20.5 Unless ASX agrees otherwise, an entity must comply with Appendix 3A for any *corporate action for which there is not a specific timetable in Appendix 6A or 7A.

Introduced 01/12/19

Cross reference: Specific timetables for most corporate actions can be found in Appendix 6A and Appendix 7A.

Dividends or distributions

- 3.21 An entity must:

- (a) notify ASX immediately if it makes a decision:
 - (i) to pay a dividend or distribution on a quoted *security;
 - (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
 - (iii) to cancel, defer or reduce a dividend or distribution on a quoted *security that it has previously announced it will pay;

+ See chapter 19 for defined terms

- (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.

An announcement under rule 3.21(a)(iii) must include an explanation satisfactory to ASX of the entity's reasons for cancelling, deferring or reducing the dividend or distribution.

Introduced 01/05/13 Amended 01/12/19, 05/06/21

Note: The decision to pay a dividend or distribution on a quoted security is notified to ASX via an Appendix 3A.1.

If the dividend or distribution is subsequently cancelled, the cancellation must be notified to ASX under rule 3.21(a)(iii) using the 'cancel' function in the Appendix 3A.1. The required explanation of the entity's reasons for cancelling the 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.

If payment of the dividend or distribution is subsequently deferred or the amount of the dividend or distribution is subsequently reduced, that should be notified to ASX under rule 3.21(a)(iii) using the 'update' function in the Appendix 3A.1. The required explanation of the entity's reasons for deferring or reducing the 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.

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 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.

To be clear, 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 being 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 rule 3.1.

If the entity is issuing securities under a dividend or distribution plan in a class of securities that is already quoted, or that is intended to be quoted, on ASX, the entity will also need to lodge an Appendix 2A application for quotation (see rules 2.7 and 2.8 and the timetable in section 1 of Appendix 6A).

While this rule 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 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.

Interest payments

3.22 An entity must:

- (a) notify ASX immediately if it makes a decision:
 - (i) to pay interest on a quoted *debt security or quoted *convertible debt security in respect of a period when, but for that decision, interest would not have been paid for that period;
 - (ii) not to pay interest on a quoted *debt security or quoted *convertible debt security in respect of a period when, but for that decision, interest would have been paid for that period; or
 - (iii) to cancel, defer or reduce an interest payment on a quoted *debt security or quoted *convertible debt security that it has previously announced it will pay; and
- (b) provide a completed Appendix 3A.2 to ASX not less than 4 *business days before the intended *record date to identify security holders entitled to an interest payment on a quoted *debt security or quoted *convertible debt security.

An announcement under rule 3.22(a)(iii) must include an explanation satisfactory to ASX of the entity's reasons for cancelling, deferring or reducing the interest payment.

Introduced 01/12/19 Amended 05/06/21

Note: The decision to pay interest on a quoted debt security or quoted convertible debt security is notified to ASX via an Appendix 3A.2.

If the interest payment is subsequently cancelled, the cancellation must be notified to ASX under rule 3.22(a)(iii) using the 'cancel' function in the Appendix 3A.2. 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 should be notified to ASX under 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.

While this rule 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 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.

End of Section. Next page is no. 401.

Chapter 7

Changes in capital and new issues

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Explanatory note

This chapter deals principally with entities changing their capital, either by issuing *securities or reorganising existing capital (including reconstructions and buy-backs). Because of the complexity that often surrounds issues and reorganisations, entities are encouraged to discuss proposals with ASX before finalising them.

This chapter also contains rules that apply to an issue of *securities in a different entity.

Timetables relating to changes in capital are in Appendix 7A.

New issues

Issues exceeding 15% of capital

- 7.1 Subject to rules 7.1A and 7.1B, without the approval of the holders of its *ordinary securities, an *entity must not issue or agree to issue more *equity securities than the number calculated according to the following formula.

$$(A \times B) - C$$

where:

A = the number of fully paid *ordinary securities on issue at the commencement of the relevant period,

- plus the number of fully paid +ordinary securities issued in the relevant period under an exception in rule 7.2 other than exception 9, 16 or 17,
- plus the number of fully paid +ordinary securities issued in the relevant period on the +conversion of +convertible securities within rule 7.2 exception 9 where:
 - the +convertible securities were issued or agreed to be issued before the commencement of the relevant period; or
 - the issue of, or agreement to issue, the +convertible securities was approved, or taken under these rules to have been approved, under rule 7.1 or rule 7.4,
- plus the number of fully paid +ordinary securities issued in the relevant period under an agreement to issue +securities within rule 7.2 exception 16 where:
 - the agreement was entered into before the commencement of the relevant period; or
 - the agreement or issue was approved, or taken under these rules to have been approved, under rule 7.1 or rule 7.4,
- plus the number of any other fully paid +ordinary securities issued in the relevant period with approval under rule 7.1 or rule 7.4,

Note: This may include fully paid ordinary securities issued in the relevant period under an agreement to issue securities within rule 7.2 exception 17 where the issue is subsequently approved under rule 7.1.

- plus the number of partly paid +ordinary securities that became fully paid in the relevant period,
- less the number of fully paid +ordinary securities cancelled in the relevant period;

B = 15%

C = the number of +equity securities issued or agreed to be issued in the relevant period that are *not* issued:

- with the approval of the holders of its +ordinary securities under rule 7.1 or rule 7.4;
- under rule 7.1A.2; or
- under an exception in rule 7.2; and

“relevant period” means:

- if the entity has been admitted to the official list for 12 months or more, the 12 month period immediately preceding the date of the issue or agreement; or
- if the entity has been admitted to the official list for less than 12 months, the period from the date the entity was admitted to the official list to the date immediately preceding the date of the issue or agreement.

Introduced 01/07/96 Origin: Listing Rules 3E(6)(a)(i), 3E(6)(b), 3E(6)(c)(i) Amended 01/07/97, 01/07/98, 01/08/12, 04/03/13, 01/12/19

Note: Where security holders approve an issue of or agreement to issue securities under rule 7.1, the securities must be issued within the applicable 3 or 6 month period referred to in rule 7.3.4 or else the approval will lapse. If the approval lapses, the securities can no longer be counted in variable A above as securities issued with an approval under rule 7.1 and must instead be counted in variable C above.

Securities issued without security holder approval with the benefit of a waiver from rule 7.1 are usually treated as being issued with security holder approval under rule 7.1 unless the terms of the waiver provide otherwise.

Where an eligible entity obtains security holder approval to increase its issuance capacity under rule 7.1A, any ordinary securities issued under that additional issuance capacity will not be counted in variable “A” in the formula in rule 7.1 until their issue has been approved subsequently under rule 7.4, or 12 months has passed since their issue.

Additional issuance capacity for eligible entities

- 7.1A Subject to rule 7.1B, an *eligible entity may seek the 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 this rule 7.1A.

Introduced 01/08/12

- 7.1A.1 An approval under this rule 7.1A commences on the date of the annual general meeting at which the approval is obtained and expires on the first to occur of the following.

- (a) The date that is 12 months after the date of the annual general meeting at which the approval is obtained.
- (b) The time and date of the entity's next annual general meeting.
- (c) The time and date of the approval by holders of the *eligible entity's *ordinary securities of a transaction under rule 11.1.2 or rule 11.2.

Introduced 01/08/12 Amended 01/12/19

- 7.1A.2 In addition to issues under rule 7.1, an *eligible entity which has obtained the approval of the holders of its *ordinary securities under this rule 7.1A may, during the period of the approval, issue or agree to issue a number of *equity securities calculated in accordance with the following formula:

$$(A \times D) - E$$

where:

A = has the same meaning as in rule 7.1;

D = 10%;

E = the number of *equity securities issued or agreed to be issued under rule 7.1A.2 in the relevant period where the issue or agreement has not been subsequently approved by the holders of its *ordinary securities under rule 7.4; and

“relevant period” has the same meaning as in rule 7.1.

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

Note: Securities issued with security holder approval under rule 7.1 are not considered to have been issued or agreed to be issued under rule 7.1A. Securities issued without security holder approval with the benefit of a waiver from listing rule 7.1 are treated as being issued with security holder approval under rule 7.1 unless the terms of the waiver provide otherwise.

Where an eligible entity obtains security holder approval to increase its issuance capacity under rule 7.1A:

- any ordinary securities issued under that additional issuance capacity are not counted in variable “A” in the formula in rule 7.1 until their issue has been approved subsequently under rule 7.4, or 12 months has passed since their issue; and
- any securities issued under that additional issuance capacity are counted in variable “E” until their issue has been approved subsequently under rule 7.4 or 12 months has passed since their issue.

- 7.1A.3 Any *equity securities issued under rule 7.1A.2 must be in an existing quoted *class of the *eligible entity's *equity securities and issued for a cash consideration per *security which is not less than 75% of the *volume weighted average market price for *securities in that *class, calculated over the 15 *trading days on which trades in that *class were recorded immediately before:

- (a) the date on which the price at which the *securities are to be issued is agreed by the entity and the recipient of the *securities; or

- (b) if the *securities are not issued within 10 *trading days of the date in paragraph (a), the date on which the *securities are issued.

Introduced 01/08/12 Amended 04/03/13, 01/07/14, 01/12/19

7.1A.4 When an entity issues any *equity securities under rule 7.1A, the entity must:

- (a) state in its announcement of the proposed issue under rule 3.10.3 or in its application for quotation of the *securities under rule 2.7 that the *securities are being issued under rule 7.1A; and
- (b) give to ASX immediately after the issue a list of names of the persons to whom the entity issued the *equity securities and the number of *equity securities issued to each. This list is not for release to the market.

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

Rules applicable to placements under Rules 7.1 and 7.1A

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

Introduced 01/08/12

7.1B.1 In working out:

- (a) the number of *equity securities that an entity may issue or agree to issue under rule 7.1 (including the amount “C” referred to in that rule) or that an *eligible entity may issue or agree to issue under rule 7.1A.2 (including the amount “E” referred to in that rule); or
- (b) whether a transaction is a *reverse takeover [or *prescribed transaction](#) for the purposes of these rules by reference to the number of *equity securities that are issued or to be issued by the entity under or to fund the *reverse takeover [or *prescribed transaction](#),

unless ASX determines otherwise, apply the following rules:

- (c) if the *equity securities are fully paid *ordinary securities, each *security is counted as one;
- (d) if the *equity securities are partly paid *securities, each *security is counted as the maximum number of fully paid *ordinary securities into which it can be paid up;
- (e) if the *equity securities are *convertible securities, each *security is counted as the maximum number of fully paid *ordinary securities into which it can be converted; and
- (f) in any other case, each *security is counted as ASX decides.

Introduced 01/08/12 Amended 04/03/13, 01/12/17, 01/12/19, [XX/XX/XX](#)

Note: Guidance Note 21 *The Restrictions on Issuing Equity Securities in Chapter 7 of the Listing Rules* has guidance on how this rule is applied by ASX.

7.1B.2 [Deleted]

Introduced 01/08/12 Deleted 01/12/19

7.1B.3 In working out if there is an issue of *equity securities, the sale or reissue of forfeited *equity securities is treated as an issue of *equity securities.

Introduced 01/08/12

7.1B.4 An issue is taken to be made under rule 7.1 rather than under rule 7.1A.2 unless rule 7.1B.5 applies.

Introduced 01/12/19

7.1B.5 An issue is taken to be made under rule 7.1A.2 rather than under rule 7.1 if:

- (a) the issue complies with all of the requirements in rule 7.1A; and
- (b) either:
 - (i) the entity has stated in its announcement of the proposed issue under rule 3.10.3 or in its application for quotation of the securities under rule 2.7 that the issue is being, or has been, made under rule 7.1A.2; or
 - (ii) ASX determines that the issue should be taken to have been made under rule 7.1A.2; and
- (c) ASX has not determined that the issue should be taken to have been made under rule 7.1.

Introduced 01/12/19

Exceptions to rule 7.1 and rule 7.1A

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

Amended 01/08/12

Exception 1

An issue of *securities to holders of *ordinary securities made under a *pro rata issue and to holders of other *equity securities to the extent that the terms of issue of the *equity securities permit participation in the *pro rata issue.

Introduced 01/07/96 Origin: Listing Rule 3E(6)(c)(ii) Amended 01/07/97, 01/12/19

Note: 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 (see the definition of "pro rata issue" in rule 19.12).

Cross reference: rules 6.19 and 6.20.

Exception 2

An issue of *securities under an agreement to *underwrite the shortfall on:

- a *pro rata issue to holders of *ordinary securities; or
- a *pro rata issue to holders of *ordinary securities and to holders of other *equity securities to the extent that the terms of issue of the *equity securities permit participation in the *pro rata issue.

The entity must:

- have disclosed:
 - the name of the *underwriter(s),
 - the extent of the *underwriting;
 - the fee, commission or other consideration payable to the *underwriter(s); and
 - a summary of the significant events that could lead to the *underwriting being terminated;

in the Appendix 3B lodged under rule 3.10.3 in relation to the *pro rata issue or, if the *underwriting was entered into after the Appendix 3B was lodged, by market announcement as soon as practicable following the entry of the *underwriting agreement; and

- make the issue not later than 15 *business days after the close of the offer.

+ See chapter 19 for defined terms

Introduced 01/07/96 Origin: Listing Rule 3E(6)(c)(ii) Amended 01/07/97, 14/04/14, 01/12/19

Note: Exception 2 only applies to an issue of securities to make up the shortfall from a pro rata issue. It does not apply to any other issue of securities under an underwriting agreement (for example, in payment of an underwriting fee or other amount due under an underwriting agreement).

The obligation to disclose details of the underwriting does not extend to sub-underwriting arrangements (see the definition of "underwrite" in rule 19.12).

The reference to the "extent of the underwriting" means the amount or proportion of the issue that is underwritten.

The reference to the "fee, commission or other consideration payable" includes any applicable discount the underwriter receives to the issue price payable by participants in the issue.

Exception 3

An issue of *securities to make up the shortfall on:

- a *pro rata issue to holders of *ordinary securities; or
- a *pro rata issue to holders of *ordinary securities and to holders of other *equity securities to the extent that the terms of issue of the *equity securities permit participation in the *pro rata issue.

The directors of the entity (or, in the case of a trust, the *responsible entity of the trust) must have stated as part of the offer that they reserve the right to issue the shortfall and what their allocation policy will be in relation to the shortfall. The entity must make the issue to make up the shortfall not later than 3 months after the close of the offer and the issue price must not be less than the price at which the *securities were offered under the *pro rata issue.

Introduced 01/07/96 Origin: Listing Rule 3E(6)(c)(vi) Amended 01/07/98, 24/10/05, 14/04/14, 01/12/19

Exception 4

An issue of *securities under:

- a *dividend or distribution plan; or
- an agreement to *underwrite the shortfall on a *dividend or distribution plan where:
 - details of the *underwriting agreement were disclosed prior to the date for payment of the *dividend or distribution in accordance with rule 3.10.9; and
 - the entity makes the issue within 15 *business days after the date for payment of the *dividend or distribution.

Exception 4 is only available where the *dividend or distribution plan does not impose a limit on participation.

Introduced 01/07/96 Origin: Listing Rule 3E(6)(c)(vii)a & b Amended 01/07/98, 11/03/02, 31/03/04, 01/12/19

Note: Exception 4 only applies where security holders are able to elect to receive all of their dividend or distribution as securities. For example, Exception 4 would not apply in the following circumstances:

- The entity has specified a dollar limit on the level of participation e.g. security holders can only participate to a maximum value of \$x in respect of their entitlement.
- The entity has specified a maximum number of securities that can participate in the plan e.g. security holders can only receive securities in lieu of dividend payable for x number of securities.

Exception 5

An issue of *securities under a *security purchase plan that satisfies the conditions in ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547 or that would otherwise satisfy those conditions but

for the fact that the entity's securities have been suspended from trading on ASX for more than a total of 5 days during the 12 months before the day on which the offer is made under the plan or, if the securities have been quoted on ASX for less than 12 months, during the period of quotation.

Exception 5 is only available once in any 12 month period and if:

- the number of *securities to be issued is not greater than 30% of the number of fully paid *ordinary securities already on issue; and
- the issue price of the *securities is at least 80% of the *volume weighted average market price for *securities in that *class, calculated over the last 5 days on which sales in the *securities were recorded, either before the day on which the issue was announced or before the day on which the issue was made.

Exception 5 does not apply to an issue of *securities under an agreement to *underwrite the shortfall on a *security purchase plan.

Introduced 31/03/04 Amended 01/06/10, 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 Corporations Act for qualifying share and interest purchase plans. Where the conditions in that class order are not satisfied, the entity will generally need to prepare a disclosure document or PDS for an offer of securities under a security purchase plan.

Exception 6

An issue of *securities under a *regulated takeover bid or under a merger ~~by way of scheme of arrangement under Part 5.1 of the Corporations Act~~. Exception 6 is not available if the issue is being made under a *reverse takeover or *prescribed transaction.

Introduced 01/07/96 Origin: Listing Rule 3E(6)(c)(iv) Amended 01/07/97, 13/03/00, 30/09/01, 01/12/17, 01/12/19, XX/XX/XX

~~Note: "Takeover bid" has the same meaning as in section 9 of the Corporations Act. The reference to a "merger" by way of scheme of arrangement under Part 5.1 of the Corporations Act covers any form of business combination effected via such a scheme.~~

Note: The limitation on *reverse takeovers applies to all entities that are subject to Listing Rule 7.1. The effect of the definition of *prescribed transaction is that entities in the S&P / ASX 300 Index cannot rely on this exception to issue 25% or more of their issued capital, unless their constitution provides otherwise or the entity has obtained advance security holder approval for a higher threshold. The notice requirements for approving a higher threshold are set out in Listing Rule 7.3B.

Exception 7

An issue of *securities to fund the cash consideration payable under a *regulated takeover bid or under a merger ~~by way of scheme of arrangement under Part 5.1 of the Corporations Act~~ where the terms of the issue are disclosed in the takeover or ~~scheme~~ merger documents. Exception 7 is not available if the issue is being made to fund a *reverse takeover or *prescribed transaction.

Introduced 01/07/96 Origin: Listing Rule 3E(6)(c)(v) Amended 01/07/97, 01/09/99, 13/03/00, 30/09/01, 01/12/17, 01/12/19, XX/XX/XX

~~Note: "Takeover bid" has the same meaning as in section 9 of the Corporations Act. The reference to a "merger" by way of scheme of arrangement under Part 5.1 of the Corporations Act covers any form of business combination effected via such a scheme.~~

Note: The limitation on *reverse takeovers applies to all entities that are subject to Listing Rule 7.1. The effect of the definition of *prescribed transaction is that entities in the S&P / ASX 300 Index cannot rely on this exception to issue 25% or more of their issued capital, unless their constitution provides otherwise or the entity has obtained advance security holder approval for a higher threshold. The notice requirements for approving a higher threshold are set out in Listing Rule 7.3B.

Exception 8

An issue of *securities that is approved for the purposes of Item 7 of section 611 of the Corporations Act.

Introduced 31/03/04 Amended 01/12/19

Cross reference: rule 4.10.22

Exception 9

An issue of *securities as a result of the *conversion of *convertible securities.- The entity must have issued the *convertible securities:

- (a) before it was listed and disclosed the existence and material terms of the *convertible securities in the *prospectus, *PDS or *information memorandum lodged with ASX under rule 1.1 condition 3; or
- (b) after it was listed and complied with the listing rules when it did so.

In the case of (a) above, the issue is taken to have been approved under rule 7.1.

Introduced 01/07/96 Origin: Listing Rule 3E(6)(c)(iii) Amended 01/07/98, 01/12/19

Note: An option is a convertible security for the purposes of the Listing Rules.

Exception 10

An issue of *securities under an agreement to *underwrite the shortfall on an exercise of options. Exception 10 is only available if:

- (a) the entity issued the options:
 - (i) before it was listed and disclosed the existence and material terms of the options in the *prospectus, *PDS or *information memorandum lodged with ASX under rule 1.1 condition 3; or
 - (ii) after it was listed and complied with the listing rules when it did so;
- (b) details of the *underwriting agreement are disclosed prior to the expiry of the options in accordance with rule 3.11.3; and
- (c) the *underlying securities are issued within 15 *business days after expiry of the options.

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

Exception 11

An issue of preference shares which do not have any rights of *conversion into another *class of *equity security. The preference shares must comply with chapter 6.

Introduced 01/07/96 Origin: Listing Rule 3E(6)(f) Amended 01/12/19

Exception 12

The reissue or sale of forfeited shares within 6 weeks after the day on which the call was due and payable.

Introduced 01/07/96 Origin: Listing Rule 3E(6)(h) Amended 01/12/19

Exception 13

An issue of *securities under an *employee incentive scheme if within 3 years before the *issue date:

- (a) in the case of a scheme established before the entity was listed – a summary of the *terms of the scheme and the maximum number of *equity securities proposed to be issued under the scheme were set out in the *prospectus, *PDS or *information memorandum lodged with ASX under rule 1.1 condition 3; or
- (b) the holders of the entity's *ordinary securities have approved the issue of *equity securities under the scheme as an exception to this rule. The notice of meeting must have included:
 - a summary of the *terms of the scheme.

- the number of *securities issued under the scheme since the entity was listed or the date of the last approval under this rule;
- the maximum number of *equity securities proposed to be issued under the scheme following the approval; and
- a *voting exclusion statement.

Exception 13 is only available if and to the extent that the number of *equity securities issued under the scheme does not exceed the maximum number set out in the entity's *prospectus, *PDS or *information memorandum (in the case of (a) above) or in the notice of meeting (in the case of (b) above).

Exception 13 ceases to be available if there is a material change to the terms of the scheme from those set out in the entity's *prospectus, *PDS or *information memorandum (in the case of (a) above) or in the notice of meeting (in the case of (b) above).

Introduced 01/07/96 Origin: Listing Rule 7.2 Exception 8(a) & (b); Listing Rule 3E(6)(c)(viii)b Amended 01/07/00, 11/03/02, 31/04/04, 04/03/13, 19/12/16, 01/12/19

Exception 14

An issue of *securities made with the approval of the holders of the entity's *ordinary securities under rule 10.11 or 10.14.

Introduced 01/07/00 Amended 01/07/14, 01/12/19

Cross reference: rules 10.13 and 10.15.

Exception 15

A grant of options or other rights to acquire *equity securities under an *employee incentive scheme, where the *equity securities to be acquired on the exercise of the options or in satisfaction of the rights are required by the *terms of the scheme to be purchased on-market (as referred to in rule 10.16(b)).

Introduced 01/12/19

Cross reference: Rule 4.10.22

Note: Exception 15 does not apply to on-market purchases of equity securities of the type referred to in rule 10.16(a). Such purchases do not involve an issue of equity securities. They therefore are not caught by rule 7.1 and no exception to that rule is needed in relation to them.

Exception 16

An issue of *securities under an agreement to issue *securities. The entity must have entered into the agreement:

- (a) before it was listed and disclosed the existence and material terms of the agreement in the *prospectus, *PDS or *information memorandum lodged with ASX under rule 1.1 condition 3; or
- (b) after it was listed and complied with the listing rules when it did so.

In the case of (a) above, the issue is taken to have been approved under rule 7.1.

Introduced 01/09/99 Amended 01/12/19

Exception 17

An agreement to issue *equity securities that is conditional on the holders of the entity's *ordinary securities approving the issue under rule 7.1 before the issue is made. If an entity relies on this exception it must not issue the *equity securities without such approval.

Introduced 01/12/19

Notice requirements for approval under rule 7.1

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

7.3.1 The names of the persons to whom the entity will issue the *securities or the basis upon which those persons were or will be identified or selected.

Note: In the case of an issue under a *reverse takeover or *prescribed transaction where the entity is acquiring (or increasing its proportionate interest in) securities in another body, it is sufficient to describe the class or classes of security holders in the ~~reverse takeover target~~ other body who will be issued securities in the entity.

7.3.2 The number and class of *securities the entity will issue.

Note: Where the number of securities to be issued is not fixed, this may be expressed as a maximum number or as a formula.

7.3.3 If the *securities are not fully paid *ordinary securities, a summary of the material terms of the *securities.

7.3.4 The date or dates on or by which the entity will issue the *securities. This must be:

- if the *securities are being issued under, or to fund, a *reverse takeover or a *prescribed transaction, no later than ~~6~~ 12 months after the date of the meeting;
- if court approval of a reorganisation of capital (in the case of a trust, interests) is required before the issue, no later than 3 months after the date of the court approval; or
- otherwise, no later than 3 months after the date of the meeting.

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

7.3.5 The price or other consideration the entity will receive for the *securities.

Note: Where the price at which the securities will be issued is not fixed, this may be expressed as a minimum amount or as a formula.

7.3.6 The purpose of the issue, including the intended use of any funds raised by the issue.

7.3.7 If the *securities are being issued under an agreement, a summary of any other material terms of the agreement.

7.3.8 If the *securities are being issued under, or to fund, a *reverse takeover or *prescribed transaction, information about the *reverse takeover or *prescribed transaction.

7.3.9 A *voting exclusion statement.

Introduced 01/07/96 Origin: Listing Rule 3E(6)(e)(viii) Amended 01/07/97, 13/03/00, 01/07/00, 30/09/01, 11/03/02, 31/03/04, 01/08/12, 04/03/13, 01/07/14, 01/12/17, 01/12/19, XX/XX/XX

Notice requirements for approval under rule 7.1A

7.3A For the holders of *ordinary securities of an *eligible entity to approve the *eligible entity having the additional capacity to issue *equity securities under rule 7.1A, the notice of meeting must include each of the following.

7.3A.1 A statement of the period for which the approval will be valid (as set out in rule 7.1A.1).

7.3A.2 A statement of the minimum price at which the *equity securities may be issued under rule 7.1A.2 (as set out in rule 7.1A.3).

+ See chapter 19 for defined terms

Note: Securities can only be issued under rule 7.1A for a cash consideration.

7.3A.3 A statement of the purposes for which the funds raised by an issue of *equity securities under rule 7.1A.2 may be used.

Note: Securities can only be issued under rule 7.1A for a cash consideration.

7.3A.4 A statement of the risk of economic and voting dilution to existing ordinary security holders that may result from an issue of *equity securities under rule 7.1A.2, including the risk that:

- the market price for *equity securities in that *class may be significantly lower on the *issue date than on the date of the approval under rule 7.1A; and
- the *equity securities may be issued at a price that is at a discount to the market price for those *equity securities on the *issue date.

This statement must be accompanied by a table describing the potential dilution of existing ordinary security holders on the basis of at least three different assumed issue prices and values for the variable “A” in the formula in rule 7.1A.2, including at least one example that assumes that “A” is double the number of fully paid *ordinary securities on issue at the time of the approval under rule 7.1A and that the price of fully paid *ordinary securities has fallen by at least 50%.

7.3A.5 Details of the *eligible entity’s allocation policy for issues under rule 7.1A.2.

7.3A.6 If the *eligible entity has issued or agreed to issue any *equity securities under rule 7.1A.2 in the 12 months preceding the date of the meeting:

- (a) the total number of *equity securities issued or agreed to be issued under rule 7.1A.2 in that 12 month period and the percentage they represent of the total number of *equity securities on issue at the commencement of that 12 month period;
- (b) for each such issue:
 - the names of the persons to whom the entity issued or agreed to issue the *securities or the basis on which those persons were identified or selected;
 - the number and class of *equity securities issued or agreed to be issued;
 - the price at which the *equity securities were issued or agreed to be issued and the discount (if any) that the issue price represented to *closing market price on the date of the issue or agreement; and
 - the total cash consideration received or to be received by the entity, the amount of that cash that has been spent, what it was spent on, and what is the intended use for the remaining amount of that cash (if any),

and, if the *eligible entity has agreed before that 12 month period to issue any *equity securities under rule 7.1A.2 but as at the date of the meeting not yet issued those *equity securities, a statement giving all material details of that agreement and an explanation why the *equity securities have not yet been issued.

7.3A.7 If at the time of dispatching the notice the entity is proposing to make an issue of equity securities under rule 7.1A.2, a *voting exclusion statement.

Introduced 01/08/12 Amended 04/03/13, 01/07/14, 01/12/19

Notice requirements to approve a higher threshold for Listing Rule 7.2, Exceptions 6 and 7

7.3B For the holders of *ordinary securities to approve a higher *prescribed threshold, the notice of meeting must include each of the following.

7.3B.1 The entity's reasons for seeking approval for a higher *prescribed threshold.

7.3B.2 The proposed higher threshold, which must be less than 100%.

7.3B.3 A statement of the period for which the approval will be valid, being the earlier of:

- (a) the date that is 36 months after the date of the meeting at which the approval is obtained; and
- (b) the time and date of the approval by holders of the entity's *ordinary securities of a transaction under rule 11.1.2 or rule 11.2.

7.3B.4 The number of *securities issued under rule 7.2 exception 6 or 7 since the entity was listed or the date of the last approval under this rule.

Introduced XX/XX/XX

Note: For the purposes of Listing Rule 7.2, Exceptions 6 and 7, the prescribed threshold for a prescribed transaction is 25% unless the entity has obtained approval under this rule to increase the prescribed threshold or the entity's constitution provides for a higher threshold. In both cases, the limit cannot be higher than the 100% reverse takeover threshold.

Subsequent approval of an issue of securities

7.4 An issue of, or agreement to issue, *securities made without approval under rule 7.1 is treated as having been made with approval for the purpose of rule 7.1 if each of the following apply.

7.4.1 The issue or agreement did not breach rule 7.1.

7.4.2 The holders of the entity's *ordinary securities subsequently approve it.

Introduced 01/07/96 Origin: Listing Rule 3E(6)(d) Amended 01/12/19

Note: Where security holders approve an agreement to issue securities under rule 7.4, the securities must be issued within 3 months of that approval or else the approval will lapse (see rule 7.5.4). If the approval lapses, the securities can no longer be counted as securities issued with an approval under rule 7.4 in variable A in the formula in rule 7.1 above and must instead be counted in variable C in that formula. Likewise, they can no longer be counted as securities issued with an approval under rule 7.4 in variable A in the formula in rule 7.1A.2 above and must instead be counted in variable E in that formula.

An issue made in accordance with rule 7.1A can be approved subsequently under rule 7.4 and, if it is, the issue will then be excluded from variable E in rule 7.1A.2. Such issues do not breach rule 7.1 and therefore satisfy the requirement in rule 7.4.1 above.

7.5 For the holders to approve the issue or agreement subsequently under rule 7.4, the notice of meeting must include each of the following.

7.5.1 The names of the persons to whom the entity issued or agreed to issue the *securities or the basis on which those persons were identified or selected.

7.5.2 The number and class of *securities the entity issued or agreed to issue.

Note: Where the securities have not yet been issued and the number of securities to be issued is not fixed, this may be expressed as a maximum number or as a formula.

7.5.3 If the *securities are not fully paid *ordinary securities, a summary of the material terms of the *securities.

- 7.5.4 The date or dates on which the *securities were or will be issued. If the securities have not yet been issued, the date of issue must be no later than 3 months after the date of the meeting.
- 7.5.5 The price or other consideration the entity has received or will receive for the issue.
Note: Where the securities have not yet been issued and the price at which the securities will be issued is not fixed, this may be expressed as a minimum amount or as a formula.
- 7.5.6 The purpose of the issue, including the use or intended use of any funds raised by the issue.
- 7.5.7 If the *securities were or will be issued under an agreement, a summary of any other material terms of the agreement.
- 7.5.8 A *voting exclusion statement.

Introduced 01/07/96 Origin: Listing Rule 3E(6)(d) Amended 04/03/13, 01/12/19

No issue without approval before a meeting to appoint or remove directors or responsible entity

- 7.6 An entity must not issue or agree to issue any *equity securities, without the approval of the holders of its *ordinary securities, for 3 months after it is told in writing by a person or persons holding more than 50% of the *ordinary securities that they intend to call, or request the directors to call, a general meeting to appoint or remove directors of the entity (or, if the entity is a trust, that they intend to call, or request the *responsible entity of the trust to call, a general meeting to appoint or remove the *responsible entity of the trust). This rule does not apply to an issue or agreement to issue in any of the following cases.

Introduced 01/07/96 Origin: Listing Rule 3E(9) Amended 01/07/98, 30/09/01, 01/12/19

Note: An approval by security holders of an eligible entity under rule 7.1A for the entity to have the additional issuance capacity under that rule for a period of 12 months is not an approval for the purposes of rule 7.6.

A notice proposing a resolution to approve an issue of equity securities under this rule must include a voting exclusion statement (see rule 14.11.1).

Exception 1 An issue notified to ASX, or made under an agreement to issue notified to ASX, before the entity was told.

Introduced 01/12/19

Exception 2 A *pro rata issue to holders of *ordinary securities and to holders of other *equity securities to the extent that the terms of issue of the *equity securities permit participation in the *pro rata issue.

Introduced 01/12/19

Exception 3 An issue made under a *dividend or distribution plan that is in operation at the time the entity was told.

Introduced 01/12/19

Exception 4 An issue made under a *regulated takeover bid or ~~under a merger by way of scheme of arrangement under Part 5.1 of the Corporations Act.~~

Introduced 01/12/19 Amended XX/XX/XX

~~Note: "Takeover bid" has the same meaning as in section 9 of the Corporations Act. The reference to a "merger" by way of scheme of arrangement under Part 5.1 of the Corporations Act covers any form of business combination effected via such a scheme.~~

Exception 5 An issue made on the exercise of rights of *conversion.

Introduced 01/12/19

Exception 6 An agreement to issue *equity securities that is conditional on the holders of its *ordinary securities approving the issue before the issue is made. If an entity relies on this exception it must not issue the *equity securities without such approval.

Introduced 01/12/19

Exception 7 An issue made after the person or persons tell the entity in writing that they are no longer intending to call, or request the directors (or, if the entity is a trust, the *responsible entity of the trust) to call, a general meeting to appoint or remove directors of the entity (or, if the entity is a trust, to appoint or remove the *responsible entity of the trust).

Introduced 01/12/19

Exception 8 An issue made with the approval of the person or persons.

Introduced 01/12/19

Note: An issue that falls within an exception above and therefore does not require security holder approval under rule 7.6 may still require security holder approval under rule 7.1, 10.11 or 10.14.

Issues to Australian and New Zealand holders and overseas holders

7.7 If an entity proposes a *pro rata issue, it must offer the *securities to all holders with registered addresses in Australia or New Zealand.

7.7.1 An entity must also offer the *securities to all holders with registered addresses *outside* Australia and New Zealand. However, this rule does not apply in relation to a particular place if each of the following conditions is met.

- (a) The entity decides that it is unreasonable to make the offer having regard to each of the following.
 - The number of holders in the place where the offer would be made.
 - The number and value of *securities the holders would be offered.
 - The cost of complying with the legal requirements, and requirements of a regulatory authority, in the place.
- (b) The entity sends each holder to whom it will not offer the *securities details of the issue and advice that the entity will not offer *securities to the holder.
- (c) In the case of a renounceable *pro rata issue, the entity also does each of the following.
 - Appoints a nominee to arrange for the sale of the entitlements that would have been given to those holders and to account to them for the net proceeds of the sale.
 - Advises each holder not given the entitlements that a nominee in Australia will arrange for sale of the entitlements and, if they are sold, for the net proceeds to be sent to the holder.

Introduced 01/07/96 Origin: Listing Rules 3E(10)(b), 3E(11) Amended 01/08/12

Cross reference: rule 15.10.

Issues under a dividend or distribution plan

7.8 An entity may only make an issue under a *dividend or distribution plan if each of the following conditions is met.

7.8.1 The *securities rank equally with a *class of quoted *securities (ignoring the fact that they do not rank equally for the next dividend – in the case of a trust, next distribution – and any right to participate in a concurrent offer).

+ See chapter 19 for defined terms

Introduced: 01/07/96 Origin: Listing Rule 3J(29)(a)

- 7.8.2 The plan allows participants to choose whether to participate for part or all of their holdings. However, the plan may limit participation on the following terms:
- (a) the limit is a number of *securities, or a sum of money, that is the same for all holders (except a brokers' *clearing account, a trustee or a nominee); and
 - (b) if the *securities are held in a brokers' *clearing account, or by a trustee or nominee, the broker, trustee or nominee must be allowed to participate for each *person whose *securities are held in that way.

Introduced 01/07/96 Origin: Listing Rule 3J(29)(b)

Example: The exception for clearing accounts enables transferees to participate despite the temporary holding of the securities by the broker.

Issues during a takeover

- 7.9 An entity must not issue or agree to issue *equity securities, without the approval of the holders of its *ordinary securities, for 3 months after it is told in writing that a *person is making, or proposes to make, a *takeover for *securities in it. This rule does not apply to an issue or agreement to issue in any of the following cases.

Introduced 01/07/96 Origin: Listing Rule 3R(3) Amended 01/07/97, 01/07/98, 01/09/99, 13/03/00, 01/12/19

Cross reference: Rule 7.1 allows issues of up to 15%. However this rule stops any issue except as provided in it.

Note: An approval by security holders of an eligible entity under rule 7.1A for the entity to have the additional issuance capacity under that rule for a period of 12 months is not an approval for the purposes of rule 7.9.

A notice proposing a resolution to approve an issue of equity securities under this rule must include a voting exclusion statement (see rule 14.11.1).

Exception 1 An issue notified to ASX, or made under an agreement to issue notified to ASX, before the entity was told.

Introduced 01/07/96 Origin: Listing Rule 3R(3) Amended 01/07/98, 01/09/99, 01/12/19

Exception 2 A *pro rata issue to holders of *ordinary securities and to holders of other *equity securities to the extent that the terms of issue of the *equity securities permit participation in the *pro rata issue.

Introduced 01/07/96 Origin: Listing Rule 3R(3) Amended 01/12/19

Exception 3 An issue made under a *dividend or distribution plan that is in operation at the time the entity was told.

Introduced 01/07/96 Origin: Listing Rule 3R(3) Amended 01/12/19

Exception 4 An issue made under a *regulated takeover bid or ~~under a merger by way of scheme of arrangement under Part 5.1 of the Corporations Act.~~

Introduced 01/07/96 Origin: Listing Rule 3R(3) Amended 13/03/00, 30/09/01, 01/12/19, [XX/XX/XX](#)

~~Note: "Takeover bid" has the same meaning as in section 9 of the Corporations Act. The reference to a "merger" by way of scheme of arrangement under Part 5.1 of the Corporations Act covers any form of business combination effected via such a scheme.~~

Exception 5 An issue made on the exercise of rights of *conversion.

Introduced 01/07/96 Origin: Listing Rule 3R(3) Amended 01/12/19

Exception 6 An agreement to issue *equity securities that is conditional on the holders of the entity's *ordinary securities approving the issue before the issue is made. If an entity relies on this exception it must not issue the *equity securities without such approval.

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

Exception 7 An issue made after the person tells the entity in writing that it is no longer making, or proposing to make, a *takeover for *securities in it.

Introduced 01/12/19

Exception 8 An issue made with the approval of the person.

Introduced 01/12/19

Note: An issue that falls within an exception above and therefore does not require security holder approval under rule 7.9 may still require security holder approval under rule 7.1, 10.11 or 10.14.

No interference etc with issue of securities

7.10 Introduced 01/07/96 Origin: Listing Rule 3D(1C) Deleted 24/10/05

Rules that apply to all pro rata issues

7.11 An entity that makes a *pro rata issue of its securities must also meet each of the following requirements.

Amended 01/12/19

7.11.1 The basis for deciding the entitlement must not change during the offer period.

Introduced 01/07/96 Origin: Listing Rule 3E(12)(a)(ii)b

7.11.2 The issue price of each *security must not contain a fraction of a cent unless the minimum bid that may be made under the ASX Operating Rules in relation to *securities of the same *class may contain a fraction of a cent, in which case the issue price may contain the same fraction.

Introduced 01/07/96 Origin: Listing Rule 3E(12)(a)(ii)c Amended 01/09/99, 03/05/04, 01/08/12

Note: Bids and offers may only be entered in the ASX market in multiples of the price steps set out in the ASX Operating Rules. See ASX Operating Rule 4020.

7.11.3 The ratio of *securities offered must not be greater than one *security for each *security held. This rule does not apply to a *bonus issue. This rule also does not apply if the following conditions are met.

(a) The offer is renounceable.

(b) The issue price is not more than the *volume weighted average market price for *securities in that *class, calculated over the last 5 days on which sales in the *securities were recorded before the day on which the issue was announced.

Introduced 01/07/96 Origin: Listing Rule 3E(13)(a) Amended 01/07/00, 01/07/14

Note: If free attaching options are offered, they are not taken into account. However see rule 7.16.

7.11.4 The *disclosure document, *PDS or offer may allow offerees to subscribe for a greater number of *securities than their entitlement only if subscriptions in excess of entitlements are made out of the shortfall.

Introduced 01/07/96 Origin: Listing Rule 3E(13)(b) Amended 13/03/00, 11/03/02, 01/12/19

7.11.5 The offer must not include alternatives, except to allow full or part payment on acceptance.

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

7.11.6 The offer must be pro rata without restriction on the number of *securities to be held before entitlements accrue.

Introduced 01/12/19

Rules that apply to all entitlements issues

7.12 [Deleted]

Introduced 01/07/96 Origin: Listing Rule 3E(12)(a)(v)b Amended 01/07/00, 24/10/05 Deleted 01/12/19

- 7.13 If an entity is undertaking more than 1 *corporate action, it must not have a *record date to identify holders entitled to participate in a subsequent one until it has updated its register in relation to the preceding one.

Introduced: 01/07/96 Origin: Listing Rule 3A(5)(d)

Example: Following a bonus issue, the entity must have entered the bonus securities into the uncertificated holdings of the holders, and issued certificates in relation to its certificated subregister, before the record date for determining those entitled to a proposed pro rata issue.

- 7.14 An entity must not have a *record date for any purpose until at least 3 *business days after its last *record date. This rule does not prevent an entity having identical *record dates for different purposes.

Introduced 01/07/96 Origin: Listing Rule 3A(5)(e) Amended 01/02/99, 14/04/14, 07/03/16

- 7.15 If an entity must get the approval of holders of *ordinary securities to make an offer, or issue *securities, the *record date to decide entitlements must be at least 4 *business days after the date of the meeting.

Introduced 01/07/96 Origin: Listing Rule 3E(13)(c) Amended 01/02/99, 14/04/14, 07/03/16

Rules that apply to issues of options

- 7.16 An entity must not issue options if it would have more options on issue than *underlying securities, except under an offer of one *ordinary security and one option for each *ordinary security.

Introduced 01/07/96 Origin: Listing Rule 3E(13)(g) Amended 01/07/97

Rules that apply to any issue in a different entity

- 7.17 If an entity offers its *security holders an entitlement to *securities in another entity, it must meet the following requirements.

7.17.1 The offers must be pro rata, or made in another way that, in ASX's opinion, is fair in all the circumstances.

7.17.2 The *record date to decide entitlements must be at least 4 *business days after the *disclosure document, *PDS or *information memorandum for the offer is given to ASX.

7.17.3 There must be no restriction on the number of *securities which a holder must hold before the entitlement accrues. This rule does not apply if the resulting holding would be less than a holding with a value of \$500 and no facility to round up is offered.

Introduced 01/07/96 Origin: Listing Rule 3E(15)(a) Amended 01/12/19

Cross reference: rule 11.4.

Reorganisations of capital

General rule for an orderly market

- 7.18 If an entity proposes to reorganise its capital (in the case of a trust, interests) in any way, it must consult ASX to ensure that an orderly market is maintained in its *securities.

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

+ See chapter 19 for defined terms

Cross reference: chapter 8.

Notifying ASX

7.19 An entity that has applied to a court for approval of a reorganisation of its capital (in the case of a trust, interests) must tell ASX of each of the following steps.

7.19.1 Court approval. It must do so immediately after the court has approved the application.

7.19.2 If the court order will be lodged with a regulatory authority, the date when the court order will be lodged with the regulatory authority. It must do so at least 24 hours before the court order is lodged.

7.19.3 Lodgement of the court order with the regulatory authority. It must do so immediately after it is lodged with the regulatory authority. The entity must give ASX a copy of the court order at the same time.

Introduced 01/07/96 Origin: Listing Rule 3N(2) Amended 01/07/98

Cross reference: rule 3.10.1.

Reorganisation of shares and units

7.20 If an entity proposes to reorganise its capital, (in the case of a trust, interests) it must tell *equity security holders in writing each of the following.

7.20.1 The effect of the proposal on the number of *securities and the amount unpaid (if any) on the *securities.

7.20.2 The proposed treatment of any fractional entitlements arising from the reorganisation.

7.20.3 The proposed treatment of any *convertible securities on issue.

Introduced 01/07/96 Origin: Listing Rule 3N(1)(a) Amended 01/07/98

Note: The definition of convertible securities includes options.

Reorganisation of convertible securities (except options)

7.21 An entity which has *convertible securities (except options) on issue may only reorganise its capital (in the case of a trust, interests) if, in respect of the *convertible securities, the number of *securities or the *conversion price, or both, is reorganised so that the holder of the *convertible securities will not receive a benefit that holders of *ordinary securities do not receive. This rule does not prevent a rounding up of the number of *securities to be received on conversion if the rounding up is approved at the *security holders' meeting which approves the reorganisation.

Introduced 01/07/96 Origin: Listing Rules 3N(3)(a)

Reorganisation of options

7.22 An entity with options on issue must comply with the following rules in relation to the way the options are treated under a reorganisation.

7.22.1 *In a consolidation of capital* – the number of options must be consolidated in the same ratio as the ordinary capital and the exercise price must be amended in inverse proportion to that ratio.

Introduced: 01/07/96 Origin: Listing Rule 3N(4)(a)

Example: Company A consolidates 2 fully paid ordinary shares of into 1 fully paid ordinary share. Every 2 options exercisable at \$1.00 each are consolidated into 1 option exercisable at \$2.00 for 1 fully paid ordinary share.

+ See chapter 19 for defined terms

- 7.22.2** *In a sub-division of capital* – the number of options must be sub-divided in the same ratio as the ordinary capital and the exercise price must be amended in inverse proportion to that ratio.

Introduced: 01/07/96 Origin: Listing Rule 3N(4)(b)

Example: Company A splits 1 fully paid ordinary share into 2 fully paid ordinary shares. Every option exercisable at \$2.00 each is split into 2 options exercisable at \$1.00 each for an ordinary fully paid share.

- 7.22.3** *In a return of capital* – the number of options must remain the same, and the exercise price of each option must be reduced by the same amount as the amount returned in relation to each *ordinary security.

Introduced: 01/07/96 Origin: Listing Rule 3N(4)(c) Amended 01/07/98

Example: Company A has fully paid shares on issue. It returns \$1.00 per ordinary share to shareholders. Every option exercisable at \$2.00 each for a fully paid share becomes an option exercisable at \$1.00 each for a fully paid share.

- 7.22.4** *In a reduction of capital by a cancellation of paid up capital that is lost or not represented by available assets where no securities are cancelled* – the number of options and the exercise price of each option must remain unaltered.

Introduced: 01/07/96 Origin: Listing Rule 3N(4)(d) Amended 01/07/98

Example: Company A has fully paid shares on issue. It has lost the equivalent of \$1.00 per share and cancels the equivalent of \$1.00 from each share. Every option exercisable at \$2.00 each for a fully paid share remains an option exercisable at \$2.00 each for a fully paid share.

- 7.22.5** *In a pro rata cancellation of capital* – the number of options must be reduced in the same ratio as the ordinary capital and the exercise price of each option must be amended in inverse proportion to that ratio.

Introduced: 01/07/96 Origin: Listing Rule 3N(4)(e)

Example: Company A has fully paid shares on issue. It has lost \$1.00 per share and cancels half the shares. Its capital is reduced from 1,000,000 shares to 500,000 shares. It has on issue 1,000,000 options exercisable at \$2.00 each for a fully paid share. Following the reorganisation, it has on issue 500,000 options exercisable at \$4.00 each for a fully paid share.

- 7.22.6** *In any other case* – the number of options or the exercise price, or both, must be reorganised so that the holder of the option will not receive a benefit that holders of *ordinary securities do not receive. This rule does not prevent a rounding up of the number of *securities to be received on exercise if the rounding up is approved at the *security holders' meeting which approves the reorganisation.

Introduced: 01/07/96 Origin: Listing Rules 3G(1)(d), 3N(4)(f), 3N(4)(g)

Amending convertible securities to allow reorganisation

- 7.23** If in a reorganisation the terms of *convertible securities do not allow them to be treated in accordance with the listing rules, the terms must be amended so that the *convertible securities can be treated in accordance with the listing rules.

Introduced 01/07/96 Origin: Listing Rule 3N(3)(b)

Note: If the terms of the convertible securities cannot be amended, this rule prevents the reorganisation being undertaken. This rule also covers options.

Example: The terms may be amended by court order or agreement of the holders of the convertible securities.

Cross reference: rule 6.16.

Reorganisation of partly paid securities

- 7.24** An entity which has partly paid shares on issue must comply with the following specific rules in relation to the way the partly paid shares are treated under a reorganisation.

- 7.24.1** The number of partly paid shares must be reorganised in the same proportion as the other *classes of shares.

+ See chapter 19 for defined terms

7.24.2 The reorganisation must not involve cancellation or reduction of the total amount payable and unpaid by the holder.

Introduced 01/07/96 Origin: Listing Rule 3N(5)

7.24A An entity must not return capital to holders of +restricted securities.

Introduced 24/10/05

Note: A return of capital may be in cash or in specie.

Example: Company A has 10,000,000 fully paid shares on issue, of which 1,000,000 are restricted securities. It proposes to return \$1.00 per ordinary share to shareholders, ie a total of \$10,000,000. It must structure the reduction of capital as a selective reduction that excludes the 1,000,000 restricted securities, ie as a return of \$1.11 per unrestricted ordinary share.

Cross reference: Chapter 9

Issues and reorganisations affecting trading prices

7.25 An entity must not issue bonus +securities or reorganise its capital (in the case of a trust, interests) if the effect of doing so would be to decrease the price at which its +main class of +securities would be likely to trade after the issue or reorganisation to an amount less than 20 cents.

Introduced 01/07/96 Origin: Listing Rule 3J(6) Amended 01/07/98

Example: An entity with a trading price of 14 cents would be permitted to reorganise its capital if the result was to increase its trading price to 18 cents. It would not be permitted to reorganise its capital if the result is likely to be any decrease in its trading price.

An entity with a trading price of 28 cents would be permitted to reorganise its capital if the result is likely to be a decrease in its trading price to 21 cents. It would not be permitted to reorganise its capital if the result is likely to be a decrease in its trading price to 19 cents.

Cross reference: rules 2.1 condition 2, 6.14, 7.18.

Cancelling forfeited shares by a limited liability company

7.26 A limited liability company may only cancel forfeited shares if each of the following conditions is met.

7.26.1 The cancellation is approved by holders of +ordinary securities. The notice of meeting must include each of the following.

- (a) Details of the forfeited shares, including their total issue price, the amount called but unpaid, and the amount uncalled.
- (b) The outstanding liability of the former holder, and what action the company has taken (and will take) to recover that amount.
- (c) A +voting exclusion statement.

Introduced: 01/07/96 Origin: Listing Rule 3J(32)(a) Amended 01/07/98

7.26.2 Under the company's constitution the former holder must remain liable (in the absence of the approval of holders of ordinary shares) for any amount called but unpaid on the shares despite the fact that they have been forfeited.

Introduced: 01/07/96 Origin: Listing Rule 3J(32)(a) Amended 01/07/98

7.26.3 Liability for the amount called but unpaid in respect of forfeited shares which have been cancelled is not released or waived without the approval of holders of ordinary shares. This approval may be given at the meeting that approves the cancellation, or at another meeting. If the approval is given at another meeting, the notice of meeting must include each of the following.

- (a) Details of the forfeited shares, including their total issue price, the amount called but unpaid and the amount that is uncalled.

- (b) The outstanding liability of the former holder, what action the company has taken to recover those amounts (and what action it will take if the meeting does not release the liability).
- (c) A *voting exclusion statement.

Introduced 01/07/96 Origin: Listing Rule 3J(32)(a) Amended 01/07/98

7.27 Introduced 01/07/96 Origin: Listing Rule 3J(32)(b) Deleted 01/07/98

7.28 Introduced: 01/07/96 Origin: Listing Rule 3J(32)(b)(ii) Deleted 01/07/98

On-market buy-backs

Pre-condition for an on-market buy-back

- 7.29 A company may only buy shares under an on-market buy-back if transactions in the company's shares were recorded on ASX on at least 5 days in the 3 months before it buys back the shares.

Introduced 01/09/99 Origin: Listing Rules 3V(4) and 7.29.2 Amended 11/01/10

Cross reference: rule 3.8A.

Note: Class Order 07/422 sets out the modification to Chapter 5C of the Corporations Act relating to on-market buy-backs by ASX-listed managed investment schemes. This provides, amongst other things, that a responsible entity that buys back an interest in the scheme must comply with the listing rules of ASX (as in force on [the date of commencement of s. 601KH]) that apply to buy-backs as if:

- (i) the scheme were a company included in the official list of the financial market of ASX; and
- (ii) interests in the scheme were shares in the company.

7.29.1 Introduced 01/07/96 Origin: Listing Rule 3V(4) Amended 01/09/97 Deleted 01/09/99 Refer rule 3.8A

7.29.2 Introduced 01/07/96 Origin: Listing Rule 3V(4) Amended 01/07/97 Deleted 01/09/99 Refer rule 7.29

7.30 Introduced 01/07/96 Origin: Listing Rule 3V(4), (5) Amended 01/07/97 Deleted 01/09/99 Refer rule 3.8A

7.31 Introduced 01/07/96 Origin: Listing Rule 3V(8) Amended 01/07/97 Deleted 01/09/99

7.31.1 Introduced 01/07/97 Deleted 01/09/99

7.31.2 Introduced 01/07/97 Deleted 01/09/99

7.32 Introduced 01/07/96 Deleted 01/09/99

Purchase price under on-market buy-back

- 7.33 A company may only buy back shares under an on-market buy-back at a price which is not more than 5% above the *volume weighted average market price for *securities in that *class, calculated over the last 5 days on which sales in the shares were recorded before the day on which the purchase under the buy-back was made.

Introduced 01/07/96 Origin: Listing Rule 3V(7)(b) Amended 11/01/10, 01/07/14

Note; Class Order 07/422 sets out the modification to Chapter 5C of the Corporations Act relating to on-market buy-backs by ASX-listed managed investment schemes. This provides, amongst other things, that a responsible entity that buys back an interest in the scheme must comply with the listing rules of ASX (as in force on [the date of commencement of s. 601KH]) that apply to buy-backs as if:

- (i) the scheme were a company included in the official list of the financial market of ASX; and
- (ii) interests in the scheme were shares in the company.

7.34 Introduced 01/07/96 Origin: Listing Rules 3V(7)(c) Amended 01/09/99 Deleted 30/09/01

7.35 Introduced 01/07/96 Origin: Listing Rule 3V(10) Deleted 01/09/99 Refer rule 3.8A

Buy-backs not under the Corporations Act

- 7.36 An entity not subject to the buy-back provisions of the Corporations Act may buy back its *securities on-market only if it consults ASX before the buy-back and complies with any requirements ASX sets. ASX may require the entity to comply with the Corporations Act as if it were a company, or with the listing rules relating to on-market buy-backs by companies, with any adaptations that, in ASX's opinion, are appropriate.

Introduced 01/07/96 Origin: Listing Rule 3V(12) Amended 30/09/01, 11/01/10

Note: Trusts cannot have withdrawal or buy-back provisions in their trust deeds that operate while they are listed. See rule 1.1 Condition 5. Therefore this rule will apply to a trust that wants to make a buy-back of units. Class Order 07/422 sets out the modification to Chapter 5C of the Corporations Act relating to on-market buy-backs by ASX-listed managed investment schemes. This provides, amongst other things, that a responsible entity that buys back an interest in the scheme must comply with the listing rules of ASX (as in force on [the date of commencement of s. 601KH]) that apply to buy-backs as if:

- (i) the scheme were a company included in the official list of the financial market of ASX; and
- (ii) interests in the scheme were shares in the company.

7.37 Introduced 01/07/96 Origin: Listing Rule 3W(1)(a), (b) Deleted 01/07/00

7.38 Introduced 01/07/96 Origin: Listing Rule 3W(2)(c) Deleted 01/07/00

Forfeited shares

- 7.39 If forfeited shares are auctioned, the auction must be held at the entity's *home branch or at another place within the capital city of an Australian State or Territory which investors can conveniently attend. The following must be terms of the auction.

7.39.1 Settlement must be effected on the day of the auction or, if the purchaser chooses, the next day on which banks are open for business.

7.39.2 The shares must not be offered in parcels larger than 10% of the total number to be offered.

Introduced 01/07/96 Origin: Listing Rule 3P(3) Amended 01/12/19

Cross reference: rule 2.11.

Compliance with timetables

- 7.40 An entity must comply with Appendix 7A.

Introduced 01/07/96

End of Section. Next page is no. 801.

Chapter 10

Transactions with persons in a position of influence

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Explanatory note

This chapter deals with transactions between an entity (including its *child entities) and persons in a position to influence the entity. Transactions covered by this chapter include *acquiring and *disposing of substantial assets by the entity, and *acquiring *securities in the entity.

The chapter also deals with participation by directors (and persons associated with directors) in *employee incentive schemes, payments to directors and termination benefits.

Acquisition and disposal of assets

Approval required for certain acquisitions or disposals

10.1 An entity (or, in the case of a trust, the *responsible entity of the trust) must ensure that neither the entity, nor any of its *child entities, *acquires or agrees to *acquire a substantial asset from, or *disposes of or *agrees to dispose of a substantial asset to, any of the following *persons without the approval of the holders of the entity's *ordinary securities.

10.1.1 A *related party of the entity.

10.1.2 A *child entity of the entity.

10.1.3 A *person who is, or was at any time in the 6 months before the transaction or agreement, a *substantial (10%+) holder in the entity.

10.1.4 An *associate of a *person referred to in rules 10.1.1 to 10.1.3.

10.1.5 A *person whose relationship to the entity or a *person referred to in rules 10.1.1 to 10.1.4 is such that, in ASX's opinion, the transaction should be approved by *security holders.

The notice of meeting to obtain approval must comply with rule 10.5.

Introduced 01/07/96 Origin: Listing Rules 3J(3)(a), (b) Amended 01/07/98, 13/03/00, 30/09/01, 01/07/14, 01/12/19

What is a substantial asset?

- 10.2 An asset is substantial if its value or the value of the consideration being paid or received by the entity for it is, or in ASX's opinion is, 5% or more of the *equity interests of the entity, as set out in the latest *accounts given to ASX under the listing rules.

Note: The entity's equity interests are consolidated equity interests, if applicable.

Cross reference: chapter 4, which deals with periodic disclosure, and rule 19.11A.

- 10.2.1 In determining whether an asset meets the threshold in rule 10.2 to be a substantial asset:

- whether an asset is classified as a tangible or intangible asset is irrelevant;
- if ASX accepts that an asset should be valued using its book value, any provisions for depreciation and amortisation and any impairment charges affecting the asset are to be deducted from its value;
- liabilities assumed by the entity as part of an *acquisition or assumed by someone else as part of a *disposal are not to be deducted from the value of the asset being *acquired or *disposed of; and
- separate *acquisitions or *disposals will be aggregated if, in ASX's opinion, they form part of the same commercial transaction.

Introduced 01/07/96 Origin: Listing Rules 3J(3)(a), (b) Amended 01/07/00, 01/12/19

Exceptions to rule 10.1

- 10.3 Rule 10.1 does not apply to any of the following.

- (a) An agreement or transaction between the entity and a wholly owned *child entity.
- (b) An agreement or transaction between wholly owned *child entities of the entity.
- (c) An agreement or transaction between:
 - (i) entities that are part of a *stapled group;
 - (ii) an entity that is part of a *stapled group and a wholly owned *child entity of that entity;
 - (iii) an entity that is part of a *stapled group and a wholly owned *child entity of another entity in the *stapled group;
 - (iv) wholly owned *child entities of an entity that is part of a *stapled group;
 - (v) a wholly owned *child entity of an entity that is part of a *stapled group and a wholly owned *child entity of another entity in the *stapled group.
- (d) An issue of, or agreement to issue, *securities by the entity for cash.
- (e) An acquisition or disposal under an agreement to acquire or dispose of a substantial asset. The entity must have entered into the agreement before it was listed and disclosed the existence and material terms of the agreement in the *prospectus, *PDS or *information memorandum lodged with ASX under rule 1.1 condition 3, or else complied with the listing rules when it entered into the agreement.
- (f) An agreement to acquire or dispose of a substantial asset that is conditional on the holders of the entity's *ordinary securities approving the transaction under rule 10.1 before the agreement is given effect to. If an entity relies on this exception it must not give effect to the agreement without such approval.
- (g) An agreement or transaction between the entity and a person who would not otherwise be a *related party but for the fact that they believe, or have reasonable grounds to believe, that they are likely to become a *related party in the future because of the agreement or transaction.

Introduced 01/07/97 Origin: Listing Rules 3J(3)(h) Amended 13/03/00, 01/12/19

Application of rule 10.1 to options

- 10.4 In the case of an *acquisition or *disposal of an asset by the grant or exercise of an option, the following rules apply.
- 10.4.1 The consideration for the *acquisition or *disposal is the total of the issue price of the option and its exercise price.
- 10.4.2 Whether the asset is a substantial asset is to be assessed when the option is granted and also when the option is exercised.
- 10.4.3 If at the time an option is granted, an asset is not a substantial asset but at the time the option is to be exercised the asset has become a substantial asset, the exercise of the option must be approved under rule 10.1. This can be done at any time before the option is exercised (including before the asset became a substantial asset).
- Examples: An asset is a substantial asset at the time an option is given to or taken from a party referred to in rule 10.1. The giving or taking of the option must be approved under rule 10.1. No further approval is required under rule 10.1 for the exercise of the option.
- An asset is not a substantial asset at the time an option is given to or taken from a party referred to in rule 10.1. The giving or taking of the option does not require approval under rule 10.1. However, recognising that the asset could become a substantial asset before the option is exercised, the entity seeks and obtains approval under rule 10.1 to the acquisition or disposal of the asset. No further approval is required under rule 10.1 for the exercise of the option.

Introduced 01/07/96 Origin: Listing Rule 3J(3)(c)(i) Amended 01/07/97, 01/12/19

Requirements for the notice of meeting under rule 10.1

- 10.5 The notice of meeting to approve a transaction under rule 10.1 must include each of the following.
- 10.5.1 The name of the *person from whom the entity is acquiring the substantial asset or to whom the entity is disposing of the substantial asset.
- 10.5.2 Which category in rules 10.1.1 – 10.1.5 the person falls within and why.
- 10.5.3 Details of the asset being acquired or disposed of.
- 10.5.4 The consideration for the acquisition or disposal.
- 10.5.5 In the case of an acquisition, the intended source of funds (if any) to pay for the acquisition.
- 10.5.6 In the case of a disposal, the intended use of funds (if any) received for the disposal.
- 10.5.7 The timetable for completing the acquisition or disposal.
- 10.5.8 If the acquisition or disposal is occurring under an agreement, a summary of any other material terms of the agreement.
- 10.5.9 A *voting exclusion statement.
- 10.5.10 A report on the transaction from an independent expert. The report must state the expert's opinion as to whether the transaction is fair and reasonable to the holders of the entity's *ordinary securities whose votes in favour of the transaction are not to be disregarded under rule 14.11. The expert's opinion as to whether the transaction is fair and reasonable must be displayed prominently in the notice of meeting and on the covering page of any accompanying documents.

Introduced 01/07/96 Origin: Listing Rule 3J(3) Amended 01/06/12, 01/12/19

Requirements for independent expert's report

- 10.6 The report on the transaction from the independent expert referred to in rule 10.5.10 must meet the following requirements.
- 10.6.1 The report must be given individually to each holder of the entity's ordinary securities using the same method as that used to give the notice of meeting.
- 10.6.2 Regardless of the method used to distribute the report on the transaction from an independent expert, the entity must:
- a) ensure that the report on the transaction by an independent expert is easily accessible on the entity's website;
 - b) ensure that the address of the entity's website is provided to the holders of ordinary securities; and
 - c) if requested by a holder of ordinary securities, send to the holder a hard copy of the report on the transaction from an independent expert, at no cost to the holder, and ensure holders are notified of this option in the notice of meeting.

Introduced 01/06/12 Amended 01/12/19

Note: A copy of the independent expert's report on the transaction must also be given to ASX under Listing Rule 15.1.7.

Classified assets

- 10.7 If an *acquisition to which rule 10.1 applies is of a *classified asset, the consideration must be *securities in the entity only and those *securities must be *restricted securities. This requirement does not apply if, and to the extent that, the consideration is reimbursement of expenditure incurred by the vendor in developing the *classified asset.

Introduced 01/07/96 Origin: Listing Rules 3J(37), 3J(3)(e) Amended 01/12/19

Note: If restricted securities are issued as consideration for the acquisition or disposal the entity must comply with Chapter 9.

Cross reference: Appendix 9B.

- 10.8 [Deleted]

Introduced 01/07/96 Origin: Listing Rules 3J(3)(g)(i), 3J(3)(g)(ii) Deleted 01/12/19

- 10.9 [Deleted]

Introduced 01/07/96 Origin: Listing Rule 3J(3)(g)(ii) Deleted 01/12/19

- 10.10 [Deleted]

Introduced 01/07/96 Origin: Listing Rule 3J(3)(c)(ii), 3J(3)(d) Amended 01/06/12 Deleted 01/12/19

- 10.10A [Deleted]

Introduced 01/06/12 Deleted 01/12/19

Acquisition of securities in the entity

Approval required for certain issues of securities

- 10.11 Unless one of the exceptions in rule 10.12 applies, an entity must not issue or agree to issue *equity securities to any of the following *persons without the approval of the holders of its *ordinary securities.

- 10.11.1 A *related party.

- 10.11.2 A *person who is, or was at any time in the 6 months before the issue or agreement, a *substantial (30%+) holder in the entity.
- 10.11.3 A *person who is, or was at any time in the 6 months before the issue or agreement, a *substantial (10%+) holder in the entity and who has nominated a director to the board of the entity (in the case of a trust, to the board of the *responsible entity of the trust) pursuant to a relevant agreement which gives them a right or expectation to do so.
- 10.11.4 An *associate of a *person referred to in rules 10.11.1 to 10.11.3.
- 10.11.5 A *person whose relationship with the entity or a *person referred to in rules 10.11.1 to 10.11.4 is such that, in ASX's opinion, the issue or agreement should be approved by *security holders.

The notice of meeting to obtain approval must comply with rule 10.13.

Introduced 01/07/96 Origin: Listing Rules 3E(8)(a), 3E(8)(a)c Amended 01/07/00, 30/09/01, 01/12/19

Note: Where security holders approve an issue of or agreement to issue securities under rule 10.11, the securities must be issued within one month of that approval or else the approval will lapse (see rule 10.13.5).

Exceptions to rule 10.11

10.12 The exceptions referred to in rule 10.11 are as follows.

Exception 1

An issue of *securities to holders of *ordinary securities made under a *pro rata issue and to holders of other *equity securities to the extent that the terms of issue of the *equity securities permit participation in the *pro rata issue.

Introduced 01/07/96 Origin: Listing Rule 3E(8)(a) Amended 01/12/19

Note: 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 (see the definition of "pro rata issue" in rule 19.12).

Exception 1 only applies to securities taken up as part of a pro rata issue. It does not apply to a person taking up all or part of the shortfall of a pro rata issue. For example, a director who has taken up their entitlement in a pro rata issue cannot take up shortfall securities under this exception, even if the shortfall is allocated on a pro rata basis to those participating in the shortfall.

Exception 2

An issue of *securities to an *underwriter under an agreement to *underwrite the shortfall on:

- a *pro rata issue to holders of *ordinary securities; or
- a *pro rata issue to holders of *ordinary securities and to holders of other *equity securities to the extent that the terms of issue of the *equity securities permit participation in the *pro rata issue.

The entity must:

- have disclosed:
 - the name of the *underwriter,
 - the extent of the *underwriting;
 - the fee, commission or other consideration payable to the *underwriter; and
 - a summary of the significant events that could lead to the *underwriting being terminated,

in the Appendix 3B lodged under rule 3.10.3 in relation to the *pro rata issue or, if the *underwriting was entered into after the

Appendix 3B was lodged, by market announcement as soon as practicable following the entry of the *underwriting agreement; and

- make the issue to the *underwriter not later than 15 *business days after the close of the offer.

In this rule, a reference to an *underwriter (and cognate expressions) includes a sub-underwriter.

Introduced 01/07/96 Origin: Listing Rule 3E(8)(a)b Amended 02/11/15, 01/12/19

Note: Exception 2 only applies to an issue of securities to make up the shortfall from a pro rata issue. It does not apply to any other issue of securities under an underwriting agreement (for example, in payment of an underwriting fee or other amount due under an underwriting agreement).

The reference in Exception 2 to an “underwriter” includes a sub-underwriter. If a party referred to in rule 10.1.1 to 10.1.5 is issued securities as a sub-underwriter, to fit within this exception, the details disclosed in the Appendix 3B or market announcement referred to in the exception must include the name of that party, the extent of their sub-underwriting, the fee or commission payable to them as sub-underwriter and a summary of the significant events that could lead to the sub-underwriting being terminated.

The reference to the “extent of the underwriting” means the amount or proportion of the issue that is underwritten or sub-underwritten (as the case may be).

The reference to the “fee, commission or other consideration payable” includes any applicable discount the underwriter or sub-underwriter receives to the issue price payable by participants in the issue.

Exception 3

An issue of *securities under a *dividend or distribution plan. Exception 3 is only available where the *dividend or distribution plan does not impose a limit on participation.

Exception 3 does not apply to an issue of *securities under an agreement to *underwrite the shortfall on a *dividend or distribution plan.

Introduced 01/07/96 Origin: Listing Rules 3E(8)(a)e., 3E(8)(b)(ii) Amended 11/03/02, 31/03/04, 01/12/19

Note: Exception 3 only applies where security holders are able to elect to receive all of their dividend or distribution as securities. For example, Exception 3 would not apply in the following circumstances:

- The entity has specified a dollar limit on the level of participation e.g. security holders can only participate to a maximum value of \$x in respect of their entitlement.
- The entity has specified a maximum number of securities that can participate in the plan e.g. security holders can only receive securities in lieu of dividend payable for x number of securities.

A restriction on employees participating in a dividend or distribution plan in respect of securities held under an employee incentive scheme is not a limit on participation for the purposes of Exception 3.

Cross reference: rule 10.16.

Exception 4

An issue of *securities under a *security purchase plan that satisfies the conditions in ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547 or that would otherwise satisfy those conditions but for the fact that the entity's securities have been suspended from trading on ASX for more than a total of 5 days during the 12 months before the day on which the offer is made under the plan or, if the securities have been quoted on ASX for less than 12 months, during the period of quotation.

Exception 4 is only available once in any 12 month period and both of the following must apply:

- The number of *securities to be issued is not greater than 30% of the number of fully paid *ordinary securities already on issue.
- The issue price of the *securities is at least 80% of the *volume weighted average market price for *securities in that *class,

calculated over the last 5 days on which sales in the *securities were recorded before the day on which the issue was announced, or the day on which the issue was made.

Exception 4 does not apply to an issue of *securities under an agreement to *underwrite the shortfall on a *security purchase plan.

Introduced 01/07/00 Amended 31/03/04, 01/06/10, 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 Corporations Act for qualifying share and interest purchase plans. Where the conditions in that class order are not satisfied, the entity will generally need to prepare a prospectus or PDS for an offer of securities under a security purchase plan.

Exception 5

An issue of *securities under a ~~takeover bid or under a merger by way of scheme of arrangement under Part 5.1 of the Corporations Act~~^{*regulated takeover or merger}.

Introduced 01/07/96 Origin: Listing Rule 3E(8)(a)f Amended 01/07/97, 13/03/00, 30/09/01, 01/12/19, XX/XX/XX

~~Note: "Takeover bid" has the same meaning as in section 9 of the Corporations Act. The reference to a "merger" by way of scheme of arrangement under Part 5.1 of the Corporations Act covers any form of business combination effected via such a scheme.~~

Exception 6

An issue of *securities that is approved for the purposes of item 7 of section 611 of the Corporations Act.

Introduced 01/12/19

Cross reference: rule 4.10.22

Exception 7

An issue of *securities resulting from the *conversion of *convertible securities. The entity must have issued the *convertible securities:

- (a) before it was listed and disclosed the existence and material terms of the *convertible securities in the *prospectus, *PDS or *information memorandum lodged with ASX under rule 1.1 condition 3, or
- (b) after it was listed and complied with the listing rules when it did so.

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

Note: An option is a convertible security for the purposes of the Listing Rules.

Exception 8

An issue of *equity securities under an *employee incentive scheme made, or taken to have been made, with the approval of the holders of the entity's *ordinary securities under rule 10.14.

Introduced 01/07/96 Origin: Listing Rule 3E(8)(a)d Amended 01/07/14, 01/12/19

Exception 9

A grant of options or other rights to acquire *equity securities under an *employee incentive scheme, where the *securities to be acquired on the exercise of the options or in satisfaction of the rights are required by the *terms of the scheme to be purchased on-market.

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

Note: Exception 9 does not apply to on-market purchases of equity securities of the type referred to in paragraph (a) of listing rule 10.16. Such purchases do not involve an issue of equity securities. They therefore are not caught by listing rule 10.11 and no exception to that rule is needed in relation to them.

Exception 10

An issue under an agreement to issue *securities. The entity must have entered into the agreement:

- (a) before it was listed and disclosed the existence and material terms of the agreement in the *prospectus, *PDS or *information memorandum lodged with ASX under rule 1.1 condition 3, or

(b) after it was listed and complied with the listing rules when it did so.

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

Exception 11 An agreement to issue *securities that is conditional on the holders of the entity's *ordinary securities approving the issue under rule 10.11 before the issue is made. If an entity relies on this exception it must not issue the *securities without such approval.

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

Exception 12 An issue of *equity securities under an agreement or transaction between the entity and a *person who would not otherwise be a *related party but for the fact that they believe, or have reasonable grounds to believe, that they are likely to become a *related party in the future because of the agreement or transaction.

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

Requirements for the notice of meeting under rule 10.11

10.13 The notice of meeting to approve the issue of *securities to a *person under rule 10.11 must include each of the following.

10.13.1 The name of the *person.

10.13.2 Which category in rules 10.11.1 – 10.11.5 the person falls within and why.

10.13.3 The number and class of *securities to be issued to the *person.

Note: Where the number of the securities to be issued is not fixed, this may be expressed as a maximum number or as a formula.

10.13.4 If the *securities are not fully paid *ordinary securities, a summary of the material terms of the *securities.

10.13.5 The date or dates on or by which the entity will issue the *securities, which must not be more than 1 month after the date of the meeting.

10.13.6 The price or other consideration the entity will receive for the issue.

Note: Where the price at which the securities are to be issued is not fixed, this may be expressed as a minimum amount or as a formula.

10.13.7 The purpose of the issue, including the intended use of any funds raised by the issue.

10.13.8 If the person is:

- a director and therefore a related party under rule 10.11.1; or
- an *associate of, or *person connected with, a director under rules 10.11.4 or 10.14.5,

and the issue is intended to remunerate or incentivise the director, details (including the amount) of the director's current total remuneration package.

10.13.9 If the *securities are issued under an agreement, a summary of any other material terms of the agreement.

10.13.10 A *voting exclusion statement.

Introduced 01/07/96 Origin: Listing Rule 3E(8)(a)c Amended 01/07/98, 01/07/00, 30/09/01, 24/10/05, 01/12/19

Approval required to acquire securities under an employee incentive scheme

10.14 An entity must not permit any of the following *persons to *acquire *equity securities under an *employee incentive scheme without the approval of the holders of its *ordinary securities.

10.14.1 A director of the entity (in the case of a trust, a director of the *responsible entity of the trust).

10.14.2 An *associate of a *person referred to in rule 10.14.1.

10.14.3 A *person whose relationship with the entity or a *person referred to in rule 10.14.1 or 10.14.2 is such that, in ASX's opinion, the acquisition should be approved by *security holders.

The notice of meeting to obtain approval must comply with rule 10.15.

An approval under this rule ceases to be valid if there is a material change to the terms of the scheme from those set out in the entity's notice of meeting.

Introduced 01/07/96 Origin: Listing Rules 3E(8)(a)d., 3W(10) Amended 01/07/00, 30/09/01, 24/10/05, 01/07/14, 01/12/19

Example: An acquisition of securities by a director's private company or family trust will generally be caught by rule 10.14.2 or 10.14.3.

Requirements for the notice of meeting under rule 10.14

10.15 The notice of meeting to approve the *acquisition of *equity securities by a *person under an *employee incentive scheme under rule 10.14 must include each of the following.

10.15.1 The name of the *person.

10.15.2 Which category in rules 10.14.1 – 10.14.3 the *person falls within and why.

10.15.3 The number and class of *securities proposed to be issued to the *person under the scheme for which approval is being sought.

Note; where the number of the securities that may be acquired is not fixed, this may be expressed as a maximum number or as a formula.

10.15.4 If the person is:

- a director under rule 10.14.1; or
- an *associate of, or *person connected with, a director under rules 10.14.2 or 10.14.3,

details (including the amount) of the director's current total remuneration package.

10.15.5 The number of *securities that have previously been issued to the *person under the scheme and the average *acquisition price (if any) paid by the *person for those *securities.

10.15.6 If the *securities are not fully paid *ordinary securities:

- a summary of the material terms of the *securities;
- an explanation of why that type of security is being used; and
- the value the entity attributes to that security and its basis.

10.15.7 The date or dates on or by which the entity will issue the *securities to the *person under the scheme. This must be no later than 3 years after the date of the meeting.

10.15.8 The price at which the entity will issue the *securities to the *person under the scheme.

+ See chapter 19 for defined terms

Note: where the price at which the securities will be issued is not fixed, this may be expressed as a formula.

10.15.9 A summary of the material terms of the scheme.

Note: The entity may satisfy this obligation by including in, or annexing to the notice of meeting, a copy of the scheme.

10.15.10 A summary of the material terms of any loan that will be made to the *person in relation to the *acquisition.

Note: The entity may satisfy this obligation by including in, or annexing to the notice of meeting, a copy of the loan agreement.

10.15.11 A statement to the following effect.

- Details of any *securities issued under the scheme will be published in the annual report of the entity relating to the period in which they were issued, along with a statement that approval for the issue was obtained under listing rule 10.14.
- Any additional *persons covered by listing rule 10.14 who become entitled to participate in an issue of *securities under the scheme after the resolution is approved and who were not named in the notice of meeting will not participate until approval is obtained under that rule.

10.15.12 A *voting exclusion statement.

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

10.15A [Deleted]

Introduced 30/09/01 Amended 01/07/14 Deleted 01/12/19

Exceptions to rule 10.14

10.16 Rule 10.14 does not apply to the following.

- (a) *Securities purchased on-market by or on behalf of directors or their *associates under an *employee incentive scheme where the *terms of the scheme permit such purchases.
- (b) The grant of options or other rights to acquire *securities to directors or their *associates under an *employee incentive scheme, where the *securities to be acquired on the exercise of the options or in satisfaction of the rights are required by the *terms of the scheme to be purchased on-market.
- (c) An issue of *equity securities pursuant to the exercise of an option or in satisfaction of a right to acquire such *securities granted to directors or their *associates under an *employee incentive scheme. The entity must have issued the option or right:
 - (i) before it was listed and disclosed the information referred to in rules 10.15.1 – 10.15.10 in relation to the option or right in the *prospectus, *PDS or *information memorandum lodged with ASX under rule 1.1 condition 3; or
 - (ii) after it was listed and with the approval of the holders of its *ordinary securities under rule 10.14.

In each case, the issue of the *equity securities pursuant to the exercise of the option or the performance of the right is taken to have been made with the approval of the holders of its *ordinary securities under rule 10.14.

Introduced 01/07/14 Amended 01/12/19 to be re-numbered as rule 10.16. The previous rule 10.16 was deleted on that date.

Notes: On-market purchases of securities by or on behalf of directors or their associates under an employee incentive scheme, or to satisfy the entitlements of directors or their associates under options or other rights to acquire securities granted under an employee incentive scheme, are required to be notified to the market under rule 3.19A. They will also generally form part of the remuneration of directors and will therefore be disclosed in an entity's remuneration report. They are excluded from rule 10.14 on the basis that they do not dilute the interests of other security holders

+ See chapter 19 for defined terms

and, because they are effected at market prices, do not raise the same concerns about pricing as an issue of securities.

The term "on-market" in this rule has the same meaning as in section 9 of the Corporations Act (rule 19.3). It effectively excludes "special crossings" and crossings effected outside of normal market hours.

Payments to directors

- 10.17 An entity must not increase the total aggregate amount of directors' fees payable to all of its non-executive directors without the approval of holders of its *ordinary securities.

The notice of meeting must include the following:

- the amount of the increase;
- the maximum aggregate amount of directors' fees that may be paid to all of the entity's non-executive directors;
- details of any *securities issued to a non-executive director under rule 10.11 or 10.14 with the approval of the holders of the entity's *ordinary securities at any time within the preceding 3 years; and
- a *voting exclusion statement.

For the purposes of this rule, "directors' fees" means all fees payable by the entity or any of its *child entities to a non-executive director for acting as a director of the entity or any *child entity (including attending and participating in any board committee meetings) and includes superannuation contributions for the benefit of a non-executive director and any fees which a non-executive director agrees to sacrifice for other benefits. It does not include reimbursement of genuine out-of-pocket expenses, genuine "special exertion" fees paid in accordance with the entity's constitution, or *securities issued to a non-executive director under rule 10.11 or 10.14 with the approval of the holders of the entity's *ordinary securities).

Introduced 01/07/96 Origin: Listing Rule 3L(7) Amended 01/06/10, 01/07/14

Note 1: This rule does not apply to the director's fees paid to a non-executive director of a child entity who is not also a director of the entity.

Note 2: For the avoidance of doubt, directors' fees sacrificed to pay for the purchase of securities in the entity (whether under an employee incentive scheme of the type referred to in rule 10.15B or otherwise) must come out of the total amount of directors' fees approved by the holders of its ordinary securities under rule 10.17.

Note 3: ASX does not regard acting as a director of a child entity or attending and participating in normal board committee meetings (such as an audit, nomination, remuneration or risk committee) of the entity or a child entity as a "special exertion" by a director and therefore the fees paid by an entity or any of its child entities to a non-executive director for such services must come out of the total amount of directors' fees approved by the holders of its ordinary securities under rule 10.17.

- 10.17A The total amount of directors' fees paid to the directors of an entity by the entity or any of its *child entities must not exceed the total amount of directors' fees approved by the holders of its *ordinary securities under rule 10.17.

Introduced 01/07/14

Note: This rule does not apply to the director's fees paid to a non-executive director of a child entity who is not also a director of the entity.

- 10.17B Rules 10.17 and 10.17A do not apply to the remuneration of an executive director. However, an executive director's remuneration must not include a commission on, or percentage of, operating revenue.

Introduced 01/07/14

Termination benefits

- 10.18 An entity must ensure that no officer of the entity or of any of its *child entities will be entitled to *termination benefits (or any increase in them) if a change occurs in the shareholding or control of the listed entity or *child entity.

Introduced 01/07/96 Origin: Listing Rule 3J(16)(a)

- 10.19 Without the approval of holders of *ordinary securities, an entity must ensure that no officer of the entity or any of its *child entities will be, or may be, entitled to *termination benefits if the value of those benefits and the *termination benefits that are or may become payable to all officers together exceed 5% of the *equity interests of the entity as set out in the latest *accounts given to ASX under the listing rules. The notice of meeting must include a *voting exclusion statement.

Introduced 01/07/96 Origin: Listing Rule 3J(16)(b) Amended 01/07/00

Cross reference: rule 19.11A.

End of Section. Next page is no. 1101.

Chapter 14

Meetings

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The main headings in this chapter	Rules
General meetings	14.1 - 14.9
Voting exclusion statement	14.11

Explanatory note

The following table gives an overview of rules which require meetings. It also indicates if there are special notice requirements under the rules for those meetings.

Rule	Heading of rule	Particular notice requirements under the listing rules to be in the notice of meeting?
6.20.3	Participation in new issues of underlying securities	Yes
6.22.2A	Change of option's exercise price or the number of underlying securities	Yes
6.23.1, 6.23.2 and 6.23.4	Other changes in terms of options	Yes
7.1	Issues exceeding 15% of capital	Yes
7.1A-2	Additional issuance capacity for eligible entities Introduced 01/08/12	Yes
7.2 Exception 13(b)	Exceptions to Rule rule 7.1 and rule 7.1A	Yes
7.3B	Notice requirements to approve a higher threshold for Listing Rule 7.2, Exceptions 6 and 7	Yes
7.4	Subsequent approval of an issue of securities	Yes
7.6	Issues No issue without approval before a meeting to appoint or remove directors or *responsible entity	No
7.9	Issues during a takeover	No

+ See chapter 19 for defined terms
~~1-December-2019~~[\[insert date\]](#)

Rule	Heading of rule	Particular notice requirements under the listing rules to be in the notice of meeting?
7.21	Reorganisation of convertible securities (except options)	No
7.22.6	Reorganisation of options	No
7.26.1 and 7.26.3	Cancelling forfeited shares by a limited liability company	Yes
10.1	Approval required for certain acquisitions or disposals	Yes
10.11	Approval required for certain issues of securities	Yes
10.14	Approval required for certain issues of securities under an employee incentive scheme	Yes
10.17	Payments to directors	Yes
10.19	Termination benefits	Yes
11.1.2	Change Proposed change to nature or scale of activities	If ASX specifies
11.2	Change involving main undertaking	If ASX specifies
11.4.1	No disposal of major asset, without offer, or approval for no offer	If ASX specifies
17.11A	Removal with the approval of security holders	Yes
18.10	Change of admission category	Yes

General meetings

Content of notice

- 14.1 If a listing rule requires a notice of meeting to include information, that information may be in the notice or accompany it.

Introduced 01/07/96

- 14.1A A notice of meeting which contains a resolution seeking an approval of *security holders under the listing rules must summarise the relevant rule and what will happen if *security holders give, or do not give, that approval.

Introduced 01/12/19

Example: A notice of meeting seeking an approval to an issue of equity securities under Rule 7.1 or 7.4 should explain the effect that giving the approval will have on the entity's ongoing capacity to issue equity securities without security holder approval under Rule 7.1.

+ See chapter 19 for defined terms

Requirements for proxy forms

14.2 A notice of meeting must include a proxy form which satisfies the following rules.

14.2.1 The proxy form must, in respect of each resolution, provide for the *security holder to direct the proxy:

- to vote for the resolution;
- to vote against the resolution; or
- to abstain from voting on the resolution.

Introduced 01/07/96 Origin: Listing Rule 3K(4) Amended 01/07/14

Note: The form may also provide that in the absence of such a direction the proxy is authorised to vote or abstain from voting on any resolution in their discretion.

14.2.2 If the proxy form specifies that the Chair of the meeting is appointed as proxy if the *security holder does not appoint another person to act as the *security holder's proxy or the Chair is appointed proxy by default, the form must also include a statement as to how the Chair of the meeting intends to vote undirected proxies.

Introduced 01/07/14

Note: An entity may wish to include in a proxy form an acknowledgement to the effect that the statement as to how the Chair of the meeting intends to vote undirected proxies necessarily expresses the Chair's intention at a particular point in time and that, in exceptional circumstances, the Chair's intention may change subsequently. If there is a change to how the Chair intends to vote undirected proxies, ASX would expect the entity to make an immediate announcement to the market stating that fact and explaining the reasons for the change.

14.2.3A [Deleted]

Deleted 01/07/14

14.2.3B [Deleted]

Introduced 30/09/01 Amended 24/10/05 Deleted 01/07/14

CDIs

14.2A If an *entity has *CDIs issued over its *securities, it must allow *CDI holders to attend any meeting of holders of the *underlying securities unless the laws of the jurisdiction in which the entity is established prevent the *CDI holders attending the meeting.

Introduced 01/09/99

Election of directors – nominations

14.3 An entity must accept nominations for the election of directors up to 35 *business days (in the case of a meeting that members have requested directors to call, 30 *business days) before the date of a general meeting at which directors may be elected, unless the entity's constitution provides otherwise. This rule does not apply to an externally managed trust.

Introduced 01/07/96 Origin: Listing Rule 3L(2) Amended 01/09/99, 24/10/05, 01/12/19

Note: This rule applies to meetings called by the entity of its own accord and to meetings requested under the Corporations Act and called by the entity. See section 249D.

Cross reference: Rule 3.13.

Election of directors – rotation

14.4 A director of an entity must not hold office (without re-election) past the third annual general meeting following the director's appointment or 3 years, whichever is longer. However, a director appointed to fill a casual vacancy or as an addition to the board must not hold office (without re-election) past the next annual general meeting of the entity. This rule does not

+ See chapter 19 for defined terms

apply to the managing director (but if there is more than one managing director, only one is entitled not to be subject to re-election). This rule also does not apply to an externally managed trust.

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

Note: This rule applies from the time of an entity's admission to the official list. A director appointed prior to the entity's admission to the official list must not hold office (without re-election) past the third annual general meeting following the entity's admission to the official list or 3 years following the entity's admission to the official list, whichever is longer. A director appointed to fill a casual vacancy or as an addition to the board prior to an entity's admission to the official list is not required to stand for re-election at the next annual general meeting following the entity's admission to the official list, provided she or he does not hold office past the time limits mentioned in the preceding sentence and the requirements of Listing Rule 14.5 are otherwise met.

Cross-reference: Rule 14.5.

14.5 An entity which has directors must hold an election of directors at each annual general meeting.

Introduced 01/07/96 Origin: Listing Rule 3L(1) Amended 02/11/15

Note: This rule applies even where no director is required to stand for re-election at an annual general meeting under Rule 14.4. An entity must have at least one director stand for election or re-election at each annual general meeting. If it is not having a new director stand for election and no director is due to stand for re-election under Rule 14.4, the entity must select at least one of its existing directors to stand for re-election. Typically an entity will do this by calling for a volunteer or by drawing lots.

Cross-reference: Listing Rule 14.4.

Compliance with listing rule requirements

14.6 The approval of *security holders is not effective for the purpose of the listing rules unless the notice of meeting includes everything that the relevant rule requires it to include and the entity complies with Rule 14.7.

Introduced 01/07/96 Origin: Listing Rule 3J(36) and 3K(6)

14.7 If an entity states in a notice of meeting that it will do something that the listing rules require it to do, the entity must do that thing. If the thing is to be done by another *person, the entity must take all reasonable steps to ensure that the other *person does it.

Introduced 01/07/96 Origin: Listing Rules 3J(36) and 3K(6)

Scrutinising votes

14.8 If ASX asks, an entity must appoint its auditor, or another *person selected with the approval of ASX, as scrutineer to decide the validity of votes cast at a general meeting and whether the votes that should have been disregarded were disregarded.

Introduced 01/07/96 Origin: Listing Rule 3K(7)

Approval usually means ordinary resolution

14.9 A requirement in the listing rules for approval by *security holders means approval by ordinary resolution at a general meeting of the holders of *ordinary securities unless otherwise specified.

Introduced 01/07/96

Voting by employee incentive schemes

14.10 *Securities held by or for an employee incentive scheme must only be voted on a resolution under these rules if and to the extent that:

- (a) they are held for the benefit of a nominated participant in the scheme;
- (b) the nominated participant is not excluded from voting on the resolution under these rules; and

+ See chapter 19 for defined terms

- (c) the nominated participant has directed how the +securities are to be voted.

Introduced 01/12/19

Voting exclusion statement

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

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

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

However, this does not apply to a vote cast in favour of a resolution 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; or*
- *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.*

Introduced 01/07/96 Amended 01/07/14, 01/12/17, 01/12/19

Note: Where a proposed resolution relates directly or indirectly to the remuneration of key management personnel and the entity is a company that is subject to section 250BD of the Corporations Act, the entity must remember to also include the voting exclusions required under that section.

Cross reference: Listing Rule 14.2.3.

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

Rule	Disregard votes cast by:
6.20.3	a +person who is expected to participate in the proposed issue Introduced 01/07/96 Amended 01/12/19
6.22.2A	a +person who is expected to participate in the proposed issue Introduced 01/07/97 Amended 01/12/19
6.23	a +person who holds an option that is the subject of the approval Introduced 01/07/96

Rule	Disregard votes cast by:
7.1	in the case of a proposed issue under a *reverse takeover, or <u>*prescribed transaction where</u> the *reverse takeover target <u>entity is acquiring (or increasing its proportionate interest in) securities in another body, the other body</u> and any *person who will obtain a material benefit as a result of the *reverse takeover, <u>*prescribed transaction</u> or the proposed issue (except a benefit solely by reason of being a holder of *ordinary securities in the entity or the *reverse takeover target <u>other body</u>) in the case of a proposed issue to fund a *reverse takeover, or <u>*prescribed transaction where</u> the *reverse takeover target <u>entity is acquiring (or increasing its proportionate interest in) securities in another body, the other body</u>, any *person who is expected to participate in the proposed issue, and any *person who will obtain a material benefit as a result of the *reverse takeover, <u>*prescribed transaction</u> or the proposed issue (except a benefit solely by reason of being a holder of *ordinary securities in the entity or the *reverse takeover target <u>other body</u>) otherwise, a *person who is expected to participate in, or who will obtain a material benefit as a result of, the proposed issue (except a benefit solely by reason of being a holder of *ordinary securities in the entity) Introduced 01/07/96 Origin: Listing Rule 3E(6)(c)(viii) Amended 01/07/97, 30/09/01, 01/07/14, 01/12/17, 01/12/19, <u>XX/XX/XX</u> Note: Guidance Note 21 <i>The Restrictions on Issuing Equity Securities in Chapter 7 of the Listing Rules</i> has guidance on what constitutes a material benefit for the purposes of this voting exclusion.
7.1A	if at the time the approval is sought the entity is proposing to make an issue of equity securities under Rule 7.1A.2, any *person who is expected to participate in, or who will obtain a material benefit as a result of, the proposed issue (except a benefit solely by reason of being a holder of *ordinary securities in the entity) Introduced 01/12/19 Note: Guidance Note 21 <i>The Restrictions on Issuing Equity Securities in Chapter 7 of the Listing Rules</i> has guidance on what constitutes a material benefit for the purposes of this voting exclusion.
7.2 Exception 13(b)	a person who is eligible to participate in the *employee incentive scheme Introduced 01/07/96 Origin: Listing Rule 3E(6)(c)(viii)b.iii Amended 01/10/96, 01/07/98, 24/10/05, 01/12/19, <u>XX/XX/XX</u>
7.4	a *person who participated in the issue or is a counterparty to the agreement being approved Introduced 01/07/96 Origin: Listing Rule 3E(6)(d)(vi) Amended 01/12/19
7.6 Exception 6	a *person who is expected to participate in the proposed issue Introduced 01/12/19
7.9 Exception 6	a *person who is expected to participate in the proposed issue Introduced 01/12/19

Rule	Disregard votes cast by:
7.26	a *person whose shares are to be cancelled or liability released or waived Introduced 01/07/96 Origin: Listing Rule 3J(32)(a)(i)c, 3J(32)(a)(iii)c
10.1	the person disposing of the substantial asset to, or acquiring the substantial asset from, the entity and any other *person who will obtain a material benefit as a result of the transaction (except a benefit solely by reason of being a holder of *ordinary securities in the entity) Introduced 01/07/96 Origin: Listing Rule 3J(3)(d) Amended 01/12/19 Note: Guidance Note 24 <i>Acquisitions and Disposals of Assets Involving Persons in a Position of Influence</i> has guidance on what constitutes a material benefit for the purposes of this voting exclusion.
10.11	the *person who is to receive the *securities in question and any other *person who will obtain a material benefit as a result of the issue of the *securities (except a benefit solely by reason of being a holder of *ordinary securities in the entity) Introduced 01/07/96 Origin: Listing Rule 3E(8)(a)c.iii Amended 01/12/19 Note: Guidance Note 25 <i>Issues of Securities to Persons in a Position of Influence</i> has guidance on what constitutes a material benefit for the purposes of this voting exclusion.
10.14	a person referred to in Rule 10.14.1, 10.14.2 or 10.14.3 who is eligible to participate in the *employee incentive scheme in question. Introduced 01/07/96 Origin: Listing Rules 3E(8)(a)d.(v), 3W(10)(vi) Amended 01/10/96, 01/07/98, 24/10/05, 01/07/14, 01/12/19
10.17	a director of the entity (or, in the case of a trust, a director of the *responsible entity of the trust). Introduced 01/07/96 Amended 01/07/98, 24/10/05, 01/12/19
10.19	an officer of the entity or any of its *child entities who is entitled to participate in a *termination benefit. Introduced 01/07/96 Origin: Listing Rule 3J(16)(b)
11.1.2	a counterparty to the transaction that, of itself or together with one or more other transactions, will result in a significant change to the nature or scale of the entity's activities and any other *person who will obtain a material benefit as a result of the transaction (except a benefit solely by reason of being a holder of *ordinary securities in the entity) Introduced 01/07/96 Amended 30/09/01, 01/07/14, 01/12/19 Note: Guidance Note 12 <i>Significant Changes to Activities</i> has guidance on what constitutes a material benefit for the purposes of this voting exclusion.
11.2	the acquirer of the entity's main undertaking and any other *person who will obtain a material benefit as a result of the disposal of the entity's main undertaking (except a benefit solely by reason of being a holder of *ordinary securities in the entity) Introduced 01/07/96 Origin: Listing Rule 3S(2)(a) Amended 30/09/01, 01/07/14, 01/12/19 Note: Guidance Note 12 <i>Significant Changes to Activities</i> has guidance on what constitutes a material benefit for the purposes of this voting exclusion.

Rule	Disregard votes cast by:
11.4	the acquirer of the asset and any other *person who will obtain a material benefit as a result of the transaction (except a benefit solely by reason of being a holder of *ordinary securities in the entity) Introduced 01/07/96 Amended 01/12/19 Note: Guidance Note 13 <i>Spin-outs of Major Assets</i> has guidance on what constitutes a material benefit for the purposes of this voting exclusion.
17.11C.9	the bidder Introduced XX/XX/XX
in all cases	a *person whose votes, in ASX's opinion, should be disregarded. Introduced 01/07/96 Amended 01/07/14, 01/12/19 Note: If ASX exercises this discretion before the notice of meeting is sent out, that person must be named or described in the notice.

- 14.11.2 ASX may identify a *person whose votes, in its opinion, should be disregarded despite the notice of meeting having been sent out. If so, the votes of that *person must also be disregarded. The provisions of rules 14.6 and 14.7 apply (with necessary adaptation).

Introduced 01/07/96

Note: This rule does not require a further notice of meeting with the name of the person identified by ASX to be sent out.

End of Section. Next page is no. 1501.

Chapter 17

Trading halts, suspension, removal

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Explanatory note

This chapter deals with *trading halts, suspending *quotation of an entity's *securities and removal of an entity from the *official list.

An entity's *securities, or a *class of them, are quoted if they have been granted *quotation under chapter 2. If ASX ends *quotation of the *class, they are no longer a *class of quoted *securities. Application for *quotation would have to be made again in relation to them, and granted, before they could be quoted again. On the other hand, suspension does not amount to a permanent ending of *quotation, and does not mean that the *securities are not quoted *securities.

*Securities are not suspended merely because:

- transactions in them are interrupted (ie, cannot be effected on *SEATS because ASX has received a market sensitive announcement in relation to the entity); or
- they are subject to a *trading halt.

Note: For Corporations Act purposes securities which are suspended may lose the character of being quoted. See, for example, Division 2 of Part 1.2A.

*Securities that are suspended, or subject to a *trading halt or interruption, may be reinstated to *quotation without a fresh application.

If the entity is removed from the *official list, *quotation of all its *securities ends. Application for admission to the *official list and *quotation of *securities would have to be made again, and granted, before the *securities could be quoted again.

ASX has issued a Guidance Note on *trading halts.

Trading Halts

How and when a trading halt occurs

17.1 ASX may grant a *trading halt at the request of an entity. ASX may require the request to be in writing. ASX is not required to act on the entity's request. The entity must tell ASX each of the following.

- Its reasons for the *trading halt.
- How long it wants the *trading halt to last.

- The event it expects to happen that will end the *trading halt.
- That it is not *aware of any reason why the *trading halt should not be granted.
- Any other information necessary to inform the market about the *trading halt, or that ASX asks for.

17.1.1 The length of the *trading halt cannot exceed the period permitted under ASX's Operating Rules.

Amended 11/03/04

Note: ASX Operating Rule 16.4.2 says that a trading halt can be applied for a period not exceeding the commencement of normal trading on the second trading day following the day on which it is requested.

Example: On a Monday afternoon a company tells ASX that it expects an important announcement to be made regarding a major acquisition. Owing to the status of negotiations it is uncertain whether the announcement will be made that day or the following day. The company asks for and is granted a trading halt. The trading halt will operate until the announcement is made or the commencement of trading on the Wednesday, whichever occurs sooner.

17.1.2 ASX may suspend *quotation of an entity's *securities, even if the *securities are subject to a *trading halt. However, if the entity requested the *trading halt (without ASX's intervention) to prevent trading in its *securities taking place in an uninformed market, ASX will not suspend *quotation of the *securities before the expiry of the *trading halt.

Introduced 01/07/96 Amended 01/07/98

Example: ASX intervenes by querying a price or volume movement that results in the request for the trading halt.

Cross reference: ASX Guidance Note on trading halts.

Suspension of securities from quotation

Suspension at entity's request

17.2 ASX may at any time suspend an entity's *securities, or a *class of them, from *quotation at the request of the entity. ASX may require the request to be in writing. ASX is not required to act on the entity's request. The entity must tell ASX each of the following.

- Its reasons for the suspension.
- How long it expects the suspension to last.
- The event it expects to happen that will end the suspension.
- That it is not *aware of any reason why its *securities should not be suspended.
- Any other information necessary to inform the market about the suspension, or that ASX asks for.

Introduced 01/07/96

Suspension not at entity's request

General rule

17.3 ASX may at any time suspend an entity's *securities, or a *class of them, from *quotation if in ASX's opinion any of the following applies.

17.3.1 The entity is unable or unwilling to comply with, or breaks, a listing rule.

Note: Listing Rule 8.1 requires an entity to comply with the ASX Settlement Operating Rules. Listing Rule 17.3 may therefore operate if an entity breaks an ASX Settlement Operating Rule.

17.3.2 It is necessary to suspend *quotation to prevent a disorderly or uninformed market.

17.3.3 ASX's rules require the suspension.

Note: ASX's rules are its listing rules, market rules, and articles of association.

17.3.4 It is appropriate for some other reason.

Introduced 01/07/96

Example: If ASX Settlement suspends an entity's participation in CHESS, ASX may suspend quotation of the entity's securities. This may occur for a reason that does not break the ASX Settlement Operating Rules, but it would still affect transfers.

Compulsory acquisition

17.4 In the case of a compulsory acquisition following a takeover bid, ASX will suspend *quotation of an entity's *securities 5 *business days after it receives a copy of the compulsory acquisition notice sent to holders of *securities in the bid class that the bidder is entitled to acquire their *securities.

Introduced 01/07/96 Origin: Procedure 2(a) Amended 13/03/00

Note: At 13/3/2000, section 9 of the Corporations Act says that the bid class of securities for a takeover bid is the class of securities to which the securities being bid for belong.

17.4.1 ASX may decide not to suspend *quotation of *securities in a *class that was not the bid class.

Introduced 01/07/96 Origin: Procedure 2(a) Amended 01/07/97, 13/03/00

Note: At 13/03/00, section 9 of the Corporations Act says that the bid class of securities for a takeover bid is the class of securities to which the securities being bid for belong.

Cross reference: Listing Rule 17.14 deals with removal of the entity.

17.4A In the case of a compulsory acquisition under Part 6A.2 of the Corporations Act, ASX will suspend *quotation of an entity's *securities 5 *business days after it receives written notice from the entity of either of the following.

- The objection period set out in the compulsory acquisition notice has ended and holders of at least 10% of the *securities covered by the compulsory acquisition notice have not objected to the acquisition before the end of the objection period.
- The court has approved the acquisition under section 664F of the Corporations Act.

Introduced 13/03/00 Amended 30/09/01

Note: As at 13/3/2000, if holders of at least 10% of the securities covered by a compulsory acquisition notice object to the proposed acquisition, the 90% holder may apply to the court under section 664F for court approval of the compulsory acquisition.

17.4A.1 ASX may decide not to suspend *quotation of *securities in a *class that was not the *class to which the *securities covered by the compulsory acquisition notice belong.

Introduced 13/3/00

Cross reference: Listing Rule 17.14 deals with removal of the entity.

Failure to lodge documents

17.5 If an entity fails to give ASX the documents required under rules 4.2A, 4.3A, 4.4A, 4.5 (other than the documents required to be prepared under section 292A and section 301A of the Corporations Act), 4.7B, 4.7C, 4.12, 5.1, 5.2, 5.3, 5.4 or 5.5 or the *annual report required under rule 4.7, ASX will suspend its *securities from *quotation on the *trading day after the date on which the documents were due. ASX will not waive this rule.

Introduced 01/07/96 Origin: Procedures 8(a)(i), 8(b) Amended 01/09/99, 31/03/00, 01/07/00, 01/01/03, 11/01/10, 01/07/14, 01/12/19, 16/01/26

Note: The entity's securities are suspended before trading commences.

Failure to pay annual listing fees

- 17.6 If ASX does not receive payment of an entity's annual listing fees within 15 *business days after the due date, ASX will suspend *quotation of the entity's *securities on the next business day. ASX will not waive this rule.

Introduced 01/07/96 Origin: Procedures 8(c)(i), 8(d) Amended 01/07/97

Note: The due date is 31 July (see rule 16.5 and Guidance Note on fees). The entity's securities are suspended before trading commences.

Cross reference: rule 17.15 deals with removal of the entity.

Reinstatement of securities to quotation

General rule

- 17.7 ASX may at any time reinstate an entity's *securities to *quotation.

Introduced 01/07/96

Note: Reinstatement does not necessarily mean that ASX accepts that the entity is complying with the rules.

Reinstatement after lodging documents

- 17.8 If an entity's *securities are suspended under rule 17.5 for failure to lodge documents, ASX will normally reinstate *quotation of the *securities before the commencement of trading on the day after ASX receives the documents and any outstanding fees payable by the entity to ASX.

Introduced 01/07/96 Origin: Procedure 8(a)(ii) Amended 01/12/19

Note: ASX may decide not to reinstate quotation if the securities should be suspended for another reason. See rule 17.3.

Cross reference: rule 16.7.

Reinstatement after payment of annual listing fees

- 17.9 If an entity's *securities are suspended under rule 17.6 for failure to pay the listing fees, ASX will normally reinstate *quotation of the *securities before the commencement of trading on the *business day after it receives the listing fees and any other outstanding fees payable by the entity to ASX.

Introduced 01/07/96 Origin: Procedure 8(c)(ii) Amended 01/07/97, 01/12/19

Note: ASX may decide not to reinstate quotation if the securities should be suspended for another reason. See rule 17.3.

Cross reference: rule 17.15.

Ending quotation

- 17.10 ASX may at any time end *quotation of a *class of an entity's *securities if either of the following applies.

- The entity requests it.
- The *securities no longer meet the requirements necessary for *quotation.

ASX is not required to act on the entity's request.

Introduced 01/07/96

Note: ASX may require the entity to advise security holders before ending quotation.

Example: A class of preference shares may no longer be held by enough holders, because of redemption or conversion of them, and ASX may end quotation of the class.

Removal from the official list

Removal at entity's request

Requesting removal

- 17.11 ASX may at any time remove an entity from the *official list at the request of the entity.- ASX may require the entity to establish the authority of the *person making the request. If the entity has a seal, ASX may require the request to be under seal. ASX may require conditions to be satisfied before it will act on the request. Subject to rules 17.11A and 17.11B, ASX is not required to act on the entity's request, ~~or may require conditions to be satisfied before it will act on the request.~~

Introduced 01/07/96 Origin: Procedure 2(b) Amended XX/XX/XX

Note: Removal is usually effective from the close of business on a date ASX chooses.

Removal with the approval of security holders

- 17.11A Subject to any conditions ASX considers appropriate, ASX will remove an entity from the *official list at the request of the entity in each of the following circumstances:

17.11A.1 The entity is listed on another securities exchange and the holders of its *ordinary securities have approved the removal by ordinary resolution, provided that ASX is satisfied that its ASX quoted securities will be readily able to be traded on the other exchange after its removal. The notice of meeting must include the information specified in rule 17.11C.

17.11A.2 The holders of its *ordinary securities have approved the removal by special resolution. The notice of meeting must include the information specified in rule 17.11C.

17.11A.3 The entity has implemented a scheme of arrangement under Part 5.1 of the Corporations Act or other process that requires approval by a special majority of security holders that is determined in accordance with applicable law. If the scheme or process will not result in the bidder and its associates holding all outstanding +ordinary securities, the intention to seek removal must have been set out in a document provided to security holders for the purpose of deciding whether to approve the scheme or process.

Introduced XX/XX/XX

Note: Removal is usually effective from the close of business on a date ASX chooses.

Removal of dual listed entities without the approval of security holders

- 17.11B Subject to any conditions ASX considers appropriate, if an entity is listed on another securities exchange, ASX will remove the entity from the *official list at the request of the entity, provided that:

17.11B.1 One of the following applies:

- _____ (a) the entity has an ASX Foreign Exempt Listing;
- _____ (b) the entity was listed on the other exchange at the time it was admitted to the *official list or was listed on the other exchange no later than 20 *business days after it was admitted to the *official list provided the intention to list on the

other exchange was clearly disclosed in the +prospectus, +PDS or +information memorandum given to ASX under rule 1.1 condition 3; or

(c) as at the date of request, the aggregate number of fully paid +ordinary securities:

(i) held by holders (other than a depositary nominee for +CDIs); and

(ii) represented by +CDIs held by +CDI holders.

in each case, that have a registered address in Australia, is less than 25% of the total number of fully paid +ordinary securities on issue in the entity;

17.11B.2 ASX is satisfied that the entity's ASX quoted securities will be readily able to be traded on the other exchange after its removal; and

17.11B.3 The entity has given the holders of its ASX quoted securities the information specified in rule 17.11C. The entity must give the information to holders of its ASX quoted securities in the same manner that it would give notice of a meeting of holders in the relevant class or classes.

Introduced XX/XX/XX

Note: Removal is usually effective from the close of business on a date ASX chooses.

Notice requirements for rules 17.11A and 17.11B

17.11C The following information is specified for the purposes of rules 17.11A and 17.11B.

17.11C.1 The entity's reasons for seeking removal from the +official list.

17.11C.2 The intended last date of trading in the entity's quoted securities.

17.11C.3 The earliest time and date when the entity will be removed from the +official list, as determined by ASX. The earliest time and date for removal must be no earlier than one month after:

(a) approval has been obtained for the purposes of rule 17.11A.1 or 17.11A.2; or

(b) the information referred to in rule 17.11B.3 has been released on the market announcements platform.

17.11C.4 A statement that holders of ASX quoted securities who wish to sell their securities on ASX will need to do so before the entity is removed from the +official list, and an explanation of what holders will need to do to sell their securities after removal.

17.11C.5 If the entity's securities are traded on ASX in the form of +CDIs, a statement explaining:

(a) the steps that holders must take to convert their +CDIs to the +underlying securities before they are able to sell them on the other exchange or exchanges where the entity is listed; and

(b) the steps that the depositary nominee of the +CDIs will take if security holders do not convert their +CDIs to the +underlying securities by a nominated date determined by ASX.

17.11C.6 Details of any facility that the entity will put in place to allow holders of ASX quoted securities to sell or redeem their securities and receive the proceeds in Australian

dollars, including information about the intentions of *substantial holders to participate in the facility to the extent that the entity is *aware of those intentions.

17.11C.7 Details of any agreement that entitles a *person to a benefit (or any increase in a benefit) if the entity is removed from the *official list, but only to the extent that the entity is *aware of the agreement and the benefit is not available to security holders generally.

17.11C.8 An explanation of the remedies that a security holder may pursue under the Corporations Act (or any other applicable legislation if the entity is a *foreign entity) if the security holder considers the removal to be contrary to laws that protect minority holders or contrary to laws relating to corporate control.

17.11C.9 For a notice of meeting containing a resolution for the purposes of rule 17.11A, a +voting exclusion statement if the entity has been the subject of a +takeover which closed in the 12 months preceding the date of the notice and the bidder and its +associates hold at least 50% of the +ordinary securities of the entity but have not met the conditions to proceed to compulsory acquisition under applicable law.

Introduced XX/XX/XX

Removal not at entity's request

General rule

17.12 ASX may at any time remove an entity from the *official list if, in ASX's opinion, any of the following applies.

- The entity is unable or unwilling to comply with, or breaks, a listing rule.

Note: Rule 8.1 requires an entity to comply with the ASX Settlement Operating Rules -if the securities of the entity are CHES Approved.- Rule 17.12 may therefore operate if an entity breaks an ASX Settlement Operating Rule.

- The entity has no quoted *securities.
- It is appropriate for some other reason.

Introduced 01/07/96

Automatic removal after a long suspension

17.13 [Deleted]

Introduced 01/07/96 Deleted 30/09/01

Removal following compulsory acquisition notices

17.14 If all the quoted *securities of an entity have been suspended under rule 17.4 or rule 17.4A, ASX will remove the entity at the close of trading on a date decided by ASX.

Introduced 01/07/96 Origin: Procedure 2(a) Amended 01/07/97, 13/03/00

Note: Normally the removal takes place on the 3rd business day following the date on which the entity's securities were suspended. No request for removal is required.

Removal for non-payment of annual listing fee

17.15 If an entity does not pay an annual listing fee as required under rule 16.5, ASX will remove the entity from the *official list at the close of trading on the 20th *business day after the due date. ASX will not waive this rule.

Introduced 01/07/96 Origin: Procedure 8(c)(i) Amended 01/07/97

Cross reference: rule 17.6.

When removal from the official list occurs

- 17.16 If ASX's decision to remove an entity from the *official list is conditional, the entity is removed after the conditions are met on a date decided by ASX. -If the decision is unconditional, the entity is removed on the date specified in the decision. - If no date is specified, the entity is removed on a date decided by ASX.

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

Note: Removal is usually effective from the close of trading on a date decided on by ASX.

Example: ASX may require an entity to notify its security holders that it has requested removal and the removal will take place on a set date.

End of Section. Next page is no. 1801.

Chapter 18

Application of listing rules

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Waivers

Granting waivers

- 18.1 ASX may at any time waive a listing rule, or part of a rule, unless the rule specifies that ASX will not waive it. It may do so:
- on the application of an entity or of its own accord;
 - in relation to a specific entity or class of entities or in relation to all entities generally; and
 - on any conditions and, if it does so, the conditions must be complied with for the waiver to be effective.

ASX will publish waivers periodically.

Introduced 01/07/96 Origin: Foreword Amended 01/12/19

Example: ASX may waive a rule of its own accord if an entity applies for waivers of a number of listing rules which ASX is prepared to grant and it becomes apparent that an additional rule should also be waived.

On-going waivers

- 18.2 If a waiver applied on 30 June 1996, it continues to apply in relation to the equivalent rule in these rules, unless ASX decides otherwise.

Introduced 01/07/96

Varying and revoking decisions

- 18.3 ASX may at any time vary a decision under these rules in any way, or revoke it. It may do so on the application of the entity or of its own accord. The variation or revocation has effect from the date specified by ASX.

- 18.3.1 ASX will only vary or revoke a decision with effect from the date on which it notifies the entity of the variation or revocation, unless materially incorrect or incomplete information was given to ASX in support of the decision. In that case, ASX may vary or revoke the decision with effect from the date it was made.

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

Example: Rules 18.3 and 18.3.1 apply to decisions by ASX to grant a waiver under Rule 18.1, to take no action in response to a breach of a listing rule under Rule 18.5 and to exercise or not exercise any power or discretion conferred under the listing rules under Rule 18.5A.

Transitional arrangements

- 18.4 ASX may publish transitional arrangements in relation to any new rule. An entity must comply with the transitional arrangements published by ASX.

Introduced 01/07/96

Discretion applying the rules

- 18.5 ASX may decide to take no action in response to a breach by an entity of a listing rule or a condition imposed under the listing rules. It may do so on any conditions and, if it does so, the entity must comply with the conditions. If ASX takes no action, it is not a waiver of the rule.

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

- 18.5A ASX may exercise, or decide not to exercise, any power or discretion conferred under the listing rules in relation to an entity in its absolute discretion. It may do so on any conditions and, if it does so, the entity must comply with the conditions.

Introduced 01/12/19

Obligations in relation to the rules

Complying with the listing rules

- 18.6 On admission to the *official list, an entity must comply with the listing rules. This applies even if *quotation of the entity's *securities is deferred, suspended or subject to a *trading halt.

Introduced 01/07/96 Origin: Foreword and Appendices 1, 1B, 2

Giving ASX information

- 18.7 An entity must give ASX any information, document or explanation that ASX:

- (a) asks for to enable ASX to be satisfied that the entity is, and has been, complying with, or will comply with, the listing rules or any conditions or requirements imposed under the listing rules; or
- (b) reasonably requires to perform its obligations as a licensed market operator.

The entity must do so within the time specified by ASX. In the case of paragraph (a) above, ASX may:

- submit, or require the entity to submit, any information, document or explanation given to ASX to the scrutiny of an expert selected by ASX and the entity must pay for the expert; and/or
- require the information, document or explanation to be verified under oath.

Introduced 01/07/96 Origin: Preamble to Section 3A Amended 01/07/00, 01/12/19

Release of correspondence between ASX and entity

- 18.7A ASX may release to the market 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.

+ See chapter 19 for defined terms

Introduced 01/01/03, 01/12/19

Note: ASX does not generally release to the market correspondence between it and an entity except for the following.

- A price query issued by ASX and the entity's response.
- A query issued by ASX in respect of compliance with a listing rule, and the entity's response, if the response includes information not previously released to the market.

ASX will tell the entity at the outset if the correspondence will be, or may be, released to the market and will give the entity the opportunity to respond in a form that is suitable for release to the market. If an entity believes that information it gives ASX comes within the exception to Listing Rule 3.1 in Listing Rule 3.1A, the entity should raise this issue with ASX at the time the information is given to ASX.

Cross-reference: Listing Rules 3.1, 3.1A, 3.1B, 15.6, 18.7; Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*.

Complying with ASX requirements

18.8 ASX may require an entity to do or refrain from doing any act or thing that, in ASX's opinion, is necessary to ensure or facilitate compliance with the listing rules, including (without limitation):

- (a) to give specified information to ASX for release to the market;
- (b) to update, correct or retract information previously released to the market;
- (c) not to enter into or perform an agreement or transaction that would breach the listing rules;
- (d) to cancel or reverse an agreement or transaction entered into in breach of the listing rules;
- (e) to seek the approval of the holders of its ⁺ordinary ⁺securities to an agreement or transaction required under the listing rules;
- (f) to include specified information in a notice of meeting proposing a resolution under the listing rules;
- (g) to update, correct or retract any information in a notice of meeting proposing a resolution under the listing rules;
- (h) to impose a ⁺holding lock on specified ⁺securities;
- (i) to enforce a provision in its constitution required under the listing rules;
- (j) to enforce a provision in a deed or any other legal document required to be entered into by the entity under the listing rules;
- (k) to introduce or update a policy or process to comply with the listing rules;
- (l) to engage an independent expert to review its policies and processes to comply with the listing rules and to release to the market the findings of, and any changes the entity proposes to make to its compliance policies and processes in response to, the review; and
- (m) to cause specified officers or employees to undertake a compliance education program in relation to the listing rules,

and the entity must comply with that requirement.

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

Note: The reference in this rule to ensuring or facilitating compliance with the listing rules includes ensuring or facilitating compliance with the spirit, intention and purpose of the listing rules (Rule 19.2).

In deciding whether or not to impose a requirement under (c) or (d) above, ASX will have due regard to the impact that such a requirement may have on innocent third parties (noting that ASX does not regard a person who enters into an agreement or transaction with a listed entity where they know, or ought to know, that the agreement or transaction is a breach of the listing rules, or will be a breach of the listing rules if security holder approval is not obtained, to be an innocent third party for these purposes).

Censure for breach of the rules

- 18.8A Without limiting any other powers ASX may exercise under these rules in relation to the breach, if ASX considers that an entity has breached the listing rules or a condition or requirement imposed under the listing rules and that it is appropriate to do so, ASX may formally censure the entity and release the censure and the reasons for it to the market.

Introduced 01/12/19

Note: ASX will generally only exercise its power of censure against an entity where it considers the entity's breach of the listing rules to be egregious and after first providing the entity with an opportunity to comment on the proposed terms of the censure.

Change of admission category

- 18.9 ASX may at any time change an entity's admission category to another category. It may do so on the request of the entity or of its own accord. ASX is not required to act on the entity's request, or may require conditions to be satisfied before it will act on the request. Following advice of the change, the entity must comply with the listing rules applicable to an entity in the new category.

Introduced 01/07/96 Origin: Listing Rule 1B(6)

Example: ASX may require an ASX Debt Listing to comply with the requirements of chapters 1 and 2 for general admission if the entity seeks quotation of equity securities.

18.9.1 [Deleted]

Introduced 01/06/02 Deleted 24/10/05

18.9.2 [Deleted]

Introduced 01/06/02 Deleted 24/10/05

~~18.10 [Deleted]~~

18.10 If an entity requests ASX to change its admission category from an ASX Listing to an ASX Foreign Exempt Listing, ASX will require the entity to obtain the approval of the holders of its *ordinary securities as a condition of ASX acting on the request. For the holders of *ordinary securities to approve a change of admission category for the purposes of this rule, the notice of meeting must include each of the following.

18.10.1 The entity's reasons for seeking to change its admission category.

18.10.2 The date when the change in admission category is intended to take effect.

18.10.3 A summary of the material differences between the listing rules and the rules of the entity's proposed *overseas home exchange.

18.10.4 Details of any agreement that entitles a *person to a benefit (or any increase in a benefit) if the entity changes its admission category, but only to the extent that the entity is *aware of the agreement and the benefit is not available to security holders generally.

18.10.5 An explanation of the remedies that a security holder may pursue under the legislation applicable to the entity if the security holder considers the change in admission category to be contrary to laws that protect minority holders or contrary to laws relating to corporate control.

This rule does not apply to a *qualifying NZ entity.

Introduced 31/03/08 Amended 01/08/10 Deleted 24/12/15 Amended XX/XX/XX

18.11 [Deleted]

Introduced 31/03/08 Amended 01/08/10 Deleted 24/12/15

End of Section. Next page is no. 1901.

Chapter 19

Interpretation and definitions

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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

~~5 June 2024~~ [\[insert date\]](#)

- (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:

+ See chapter 19 for defined terms

- (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 1/7/2004 in the case of an entity which is required to comply with sections 295 and 303 of the Corporations Act, accounts include the documents referred to in sections 295(1) and 303(1) of the Law, 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 <i>second person</i>) is an associate of another person (the <i>primary person</i>) 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.

Introduced 01/01/03

ASX market

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

Introduced 01/07/14

+ See chapter 19 for defined terms

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 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 <i>not</i> 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.

+ See chapter 19 for defined terms

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) DIs".

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".

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

CHESS

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 CHESS 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 Transfers.

ASX Clear means ASX Clear Pty Ltd (ABN 48 001 314 503)

ASX Settlement means ASX Settlement Pty Ltd (ABN 49 008 504 532)

CHESS 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)

CHESS subregister

that part of an entity's register for a *class of *CHESS 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 CHESS 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 act (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.

+ See chapter 19 for defined terms

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 ASX Settlement Operating Rules a corporate action is:

- (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 the *ASX Corporate Governance Council during a particular reporting period. Introduced 01/07/14 This definition applies in respect of financial years ending on or after 30 June 2015.
CS facility	the meaning in section 768A of the Corporations Act. 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 the case of an entity which is required to comply with Chapter 2M of the Corporations Act, directors' report includes the documents referred to in sections 298(1) 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 of 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 Corporations Act (Rule 19.3 and section 9 of the Corporations Act).
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 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 <i>Applying for Admission – ASX Listings</i> 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 <i>The Restrictions on Issuing Equity Securities in Chapter 7 of the Listing Rules</i> 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, 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 Corporations Act) 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 Pooled Development Funds Act 1992 (Commonwealth). 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.

<u>prescribed threshold</u>	the higher of: (a) <u>25%;</u> (b) <u>the percentage (between 25% and 100%) approved by holders of its *ordinary securities under rule 7.3B; and</u> (c) <u>the percentage (between 25% and 100%) set out in an entity's constitution for the purposes of these rules by way of an amendment approved by holders of its *ordinary securities after the entity was admitted to the *official list.</u> <u>Introduced XX/XX/XX</u>
<u>prescribed transaction</u>	<u>a *regulated takeover or merger by an entity that is included in the S&P / ASX 300 Index where the aggregate number of *equity securities issued or to be issued by the entity:</u> <u>• under the *regulated takeover or merger; and/or</u> <u>• to fund the cash consideration payable under the *regulated takeover or merger.</u> <u>is equal to or greater than the *prescribed threshold of the number of fully paid *ordinary securities on issue in the entity at the date of announcement of the *regulated takeover or merger. Separate issues may be aggregated if, in ASX's opinion, they form part of the same commercial transaction.</u> <u>Introduced XX/XX/XX</u>
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. any *closed period; or ii. 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) a *person who, in ASX's opinion, has had a material involvement in the formation or promotion of the entity; (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 bachelors 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

<u>regulated takeover or merger</u>	(a) <u>a takeover bid or a merger by way of scheme of arrangement under Part 5.1 of the Corporations Act;</u> (b) <u>a transaction involving an entity acquiring (or that would otherwise result in the entity increasing its proportionate interest in) listed securities of a registered scheme and which is effected by way of an amendment to the constitution of the registered scheme (after obtaining judicial advice), provided that Chapter 6 of the Corporations Act applies to the acquisition; or</u> (c) <u>a takeover of, or business combination with, or the acquisition of securities in, a *person that is effected by:</u> <u>(i) a public offer process;</u> <u>(ii) a security holder approval process governed by the rules of another exchange; or</u> <u>(iii) a security holder approval process that is approved by a court or securities regulator,</u> <u>under laws or regulations, or rules made under laws or regulations, in a foreign jurisdiction.</u>
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Introduced XX/XX/XX

Note: "Takeover bid" has the same meaning as in section 9 of the Corporations Act. The reference to a "merger" by way of scheme of arrangement under Part 5.1 of the Corporations Act covers any form of business combination effected via such a scheme.

"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).

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 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.

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 Corporations Act;
- (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 Corporations Act (Rule 19.3 and section 9 of the Corporations Act).

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 *regulated takeover ~~bid or a merger by way of scheme of arrangement under Part 5.1 of the Corporations Act where by~~ an entity ~~where 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 *regulated takeover ~~bid or~~ scheme merger; and/or
- to fund the cash consideration payable under the *regulated takeover ~~bid or~~ scheme merger,

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 *regulated takeover ~~bid or~~ scheme merger. Separate issues may be aggregated if, in ASX's opinion, they form part of the same commercial transaction.

Introduced 01/12/17 Amended XX/XX/XX

reverse takeover target

~~the body in which an entity is proposing to acquire securities in a reverse takeover.~~

Introduced 01/12/17 Deleted XX/XX/XX

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

rights issue	the meaning in section 9A of the Corporations Act as modified by any instrument or class order. Note: ASIC Class Order [CO 08/35] modifies section 9A of the Corporations Act and provides relief from the disclosure provisions of the Corporations Act 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 from time to time Introduced 11/01/10
S & P All Ordinaries Index	The Standard & Poor's index of the top 500 listed entities, by market capitalisation. Introduced 01/01/03
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 Corporations Act 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 number, which is allocated by an issuer to identify a holder on the issuer sponsored 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 Corporations Act; 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). At 01/12/19, paragraph (a) of the definition of "substantial holder" in section 9 of the Corporations Act (as modified by ASIC Class Order 13/620) 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 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 (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 holderholding" 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, XX/XX/XX

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 holderholding” 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 Amended XX/XX/XX
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 holderholding” 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 Amended XX/XX/XX
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 Corporations Act.

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)
TMX market	the market for trading in securities operated in Australia by TMX Australia Exchange Pty Limited or any successor. Introduced 01/07/14 Amended XX/XX/XX
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 chapter 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 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~~TMX 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 [Amended XX/XX/XX](#)

Trading on the ASX market and ~~Chi-X~~TMX 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.

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</i> (CDIs) - 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 <u>Changes in Issued</u> Securities and Applying for Their <u>for</u> 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 ~~28/08/20~~XX/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, 12/19 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)*,¹ 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*~~ [*Notifying Changes in Issued Securities and Applying 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
- 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

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*).

² Listing Rule 1.11 conditions 2 and 3.

³ Listing Rule 1.11 condition 4.

- 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 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

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.

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)) as published from time to time) 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.

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;
 - (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

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.

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 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

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](#) ~~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*).

²⁸ On the reservation of trading codes, see Guidance Note 18 *Market Codes and Trading Procedures*.

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 1 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;

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](#)~~Continuing requirements~~' on page 11.

³³ See '2.6 [The listing decision](#)~~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

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](#)' ~~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).

applying for admission, the ASX home branch where the entity has lodged its application (ie Sydney, Melbourne or Perth) and the amount paid.

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;

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)).

- 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.

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 ~~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.

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.

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.

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
- 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

⁴⁵ Listing Rule 1.15.2.

⁴⁶ Listing Rule 15.2A.

⁴⁷ Listing Rule 1.15.3.

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](#)~~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](#)~~Information about substantial holdings~~' on page 21.

⁵⁵ Listing Rules 1.15.1 and 12.6. See also '5.2 [Appointment of person responsible for communications with ASX](#)~~Appointment of person responsible for communications with ASX~~' on page 25.

- 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
- 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.

⁵⁶ Listing Rules 1.15.1B and 12.6A. See also 'see '5.1 [Registration as a foreign company under the Corporations Act](#)~~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](#)~~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.

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.

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

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].”

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.

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.

- 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;
- 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.

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.

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](#)’ on page 25.

⁷⁴ Listing Rule 1.1 condition 7.

⁷⁵ Listing Rule 1.1 condition 8.

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) a related party⁷⁹ of the entity;
- (b) an associate⁸⁰ 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.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,

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, 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).

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;
- [whether the entity was first listed on ASX or on the other exchange and](#) the period of time the entity has been listed on that [other](#) 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

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. [When considering waiver requests made by an entity that has redomiciled from Australia to another jurisdiction, ASX will take into account any disclosure the entity made about the continued application of the ASX Listing Rules when it sought any security holder approvals connected with its redomicile.](#)

- 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. If the waiver relates to a security holder approval requirement under the ASX Listing Rules (such as ASX Listing Rules 7.1, 10.11 and 10.14), ASX will normally require the entity to obtain security holder approval in the same manner as the security holder approval requirement sought to be waived (i.e. either by ordinary or special resolution, as the case may be) before the nominated period commences. 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 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.

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)~~.

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).

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 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

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.

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.

- 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 entity or an oil and gas exploration entity must provide a detailed report of its exploration, development and

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.

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 holding¹¹⁵ 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

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.

- information that a notice previously notified to ASX under this requirement has been withdrawn by the holder or holders who gave it.¹¹⁷

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

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.

¹¹⁸ Listing Rule 3.17C.

¹¹⁹ Listing Rule 1.8 condition 6.

- 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
- 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.

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.

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).

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

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

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> from the ASIC website.

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 by 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, /cont.

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 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/>.~~

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)).

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~~ [from the ASIC website](https://www.asic.gov.au/asic/media/5638843/rep664_published_23_june_2020.pdf).

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).

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:

- 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.

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.

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.

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.

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

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.

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).

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 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).

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 Depository 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.

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).

CHESS DEPOSITARY INTERESTS

The purpose of this Guidance Note	To explain what CHESS Depositary Interests (CDIs) are and how they operate
The main points it covers	- What are CDIs? - The legal effect of CDIs - The steps involved in becoming an issuer of CDIs - The entitlements of CDI Holders, including how dividends, corporate actions and voting rights are dealt with - Converting underlying securities into CDIs and vice versa - Divestment of small holdings of CDIs - What happens to CDIs when an entity ceases its ASX listing
Related materials you should read	- Guidance Note 1 <i>Applying for Admission – ASX Listings</i> - Guidance Note 4 <i>Foreign Entities Listing on ASX</i> - Guidance Note 29 <i>Applying for Admission – ASX Debt Listings</i> - Guidance Note 30 <i>Notifying <u>Changes in-an</u> Issue of Securities and Applying for Their Quotation <u>of New or Additional Securities</u></i> - Guidance Note 33 <i>Removal of Entities from the ASX Official List</i> CHESS Depositary Nominees Pty Limited and CHESS Depositary Interests page on the ASX website

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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 explain what CHESS Depositary Interests (“CDIs”) are and how they operate.

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.

Under the CHESS system, the principal register of securities for most listed entities is effectively made up of two electronic uncertificated subregisters – a “CHESS subregister” maintained by ASX Settlement¹ 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.²

¹ ASX Settlement Pty Limited, a wholly owned subsidiary of ASX and the operator of the ASX Settlement facility.

² 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.

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 issuer³ under the operating rules of the CHESS facility⁴ and also have the securities it is seeking to have quoted on ASX approved for participation in that facility.⁵ Once these approvals have been obtained, ASX Settlement will then establish the CHESS subregister for the entity's quoted securities, which ASX Settlement will administer as the entity's agent.⁶ The entity is responsible for establishing its own issuer sponsored subregister for its quoted securities⁷ and, in practice, will usually engage an Australian registry to establish and administer that subregister on its behalf.⁸

Where, however, an entity is established in a place overseas whose laws have the effect that CHESS cannot be used for holding legal title to its securities,⁹ it must instead have CDIs issued over its ASX quoted securities and establish a CHESS subregister and an issuer sponsored subregister in those CDIs.¹⁰ To issue CDIs, the entity must be approved as a foreign issuer of CDIs under the operating rules of the CHESS facility¹¹ and also have its CDIs approved for participation in that facility.¹² Once these approvals have been obtained, ASX Settlement will then establish the CHESS subregister for the entity's CDIs, which ASX Settlement will administer as the entity's agent.¹³ The entity must establish its own issuer sponsored subregister for its CDIs¹⁴ and again, in practice, will usually engage an Australian registry to establish and administer that subregister on its behalf.¹⁵

ASX's CDI arrangements 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.¹⁶ If there is any doubt on this issue, ASX

³ Listing Rule 1.1 condition 15(a) (ASX Listings), Listing Rule 1.11 condition 12(a) (ASX Foreign Exempt Listings), Listing Rule 1.8 condition 11(a) (ASX Debt Listings) and ASX Settlement Operating Rules 8.1.1, 8.1.3 and 8.1.4.

⁴ References to the CHESS operating rules or to the operating rules of the CHESS facility mean the ASX Settlement Operating Rules.

⁵ 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 Rules 8.1.1, 8.1.3 and 8.1.4. Once its securities have been approved for participation in the CHESS system, the entity must continue to comply with the operating rules for that system in relation to its quoted securities (Listing Rule 8.1).

⁶ Pursuant to ASX Settlement Operating Rules 5.2.1, 8.6.1 and 8.6.2.

⁷ Listing Rule 8.2(a) and ASX Settlement Operating Rule 5.2.2.

⁸ Even though an entity may have appointed an Australian registry to maintain an issuer sponsored subregister for its quoted securities, the entity remains responsible for the performance of those obligations (ASX Settlement Operating Rule 5.1.1).

⁹ 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 have their securities traded directly on the ASX market without using CDIs.

¹⁰ ASX Settlement Operating Rule 13.5.1(a)(ii) requires an entity which has had CDIs approved for participation in the CHESS system to maintain a "CDI Register". This is defined in ASX Settlement Operating Rule 2.13.1 to include both a CHESS subregister for CDIs and an issuer sponsored subregister for CDIs. Note that ASX may agree to allow an issuer of CDIs to have a CHESS subregister only and not to have an issuer sponsored subregister if the CDIs can only be held by institutional investors (see the note to the definition of "CDI Register" in ASX Settlement Operating Rule 2.13.1). In practice, this will only apply to an ASX Debt Listing which only has wholesale debt securities quoted on ASX (although, in practice, these types of securities are generally held in Austraclear rather than in CHESS).

¹¹ Listing Rule 1.1 condition 15(b) (ASX Listings), Listing Rule 1.11 condition 12(b) (ASX Foreign Exempt Listings), Listing Rule 1.8 condition 11(b) (ASX Debt Listings) and ASX Settlement Operating Rule 13.2.1.

¹² Listing Rules 2.1 condition 3(b) (ASX Listings and ASX Debt Listings), Listing Rule 2.2(b) (ASX Foreign Exempt Listings) and ASX Settlement Operating Rule 13.2.1. Once the CDIs have been approved for participation in the CHESS system, the entity must continue to comply with the operating rules for that system (Listing Rule 8.1).

¹³ Pursuant to ASX Settlement Operating Rules 5.2.1 (as modified by ASX Settlement Operating Rule 13.9.1(e)), 8.6.1 and 8.6.2.

¹⁴ Listing Rule 8.2(b) and ASX Settlement Operating Rules 13.5.1(a)(ii) and 13.5.4(a).

¹⁵ Where an entity uses an Australian registry to maintain an issuer sponsored subregister for its CDIs, the registry is taken to perform those obligations on behalf of the entity (ASX Settlement Operating Rule 13.5.6). Again, even though an entity may have appointed an Australian registry to maintain an issuer sponsored subregister for its CDIs, the entity remains responsible for the performance of those obligations (ASX Settlement Operating Rule 5.1.1).

¹⁶ 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).

may ask the entity to provide an opinion from a legal practitioner in the overseas jurisdiction acceptable to ASX to clarify that doubt.

2. What are CDIs?

CDIs are similar to American Depositary Interests in the United States and CREST Depositary Interests in the United Kingdom. They are a type of depository receipt that allows 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.

A CDI effectively represents a unit of beneficial ownership in an underlying security that is held on trust for the CDI holder by a depository nominee. CDIs are able to be held in uncertificated form and transferred electronically via CHESS even where the underlying securities themselves are not able to be so held and transferred.

The underlying securities represented by a CDI are registered in the name of the depository nominee as legal owner but, under the operating rules for the CHESS facility, all of the economic benefits attaching to the underlying securities accrue to the holder of the CDI. The holder also has the right to request the depository nominee to convert (or “transmute”) the CDI into the underlying security at any time so that they become the legal owner of the security and become directly entitled to receive the economic benefits of ownership if and when they wish to.¹⁷

Section 13 of the operating rules of the CHESS facility sets out the rules governing CDIs including the requirement to appoint a Depository Nominee. The definition of “Depository Nominee” is in Rule 2.13.1 of the operating rules of the CHESS facility. While the rules contemplate that other entities may also act as a Depository Nominee, CHESS Depository Nominees Pty Ltd (“CDN”) has historically been the only depository nominee offering CDI services for ASX quoted securities.

CDN is a wholly owned subsidiary of ASX Limited established specifically to fulfil the functions of a depository nominee in the CHESS settlement system. CDN holds an Australian Financial Services Licence that authorises it to provide custodial or depository services to retail and wholesale clients. It is also admitted as a participant in the CHESS facility.

The terms on which CDN holds securities are set out in the CHESS Depository Nominees – Nominee Terms for Principal Financial Products other than Government Bonds dated 1 May 2026 (“CDN Nominee Terms”) and as supplemented by Section 13 of the operating rules of the CHESS facility.¹⁸

3. The legal effect of offering and trading CDIs

An offer of CDIs to investors by a foreign issuer is treated as an offer of the underlying securities and regulated accordingly under the Corporations Act.¹⁹

Likewise, when CDIs are quoted on ASX, it is the underlying securities that are regarded as having been quoted on ASX.²⁰

When CDIs are bought and sold on the ASX market, the seller of the CDIs meets their settlement obligation by transferring the CDIs to the buyer.²¹ Legal title to the underlying securities remains in the name of the depository nominee. The result is a transfer of the beneficial ownership of the underlying securities to the buyer, with the

¹⁷ See ‘6.2 Transmuting CDIs to underlying securities’ ~~on page 12~~.

¹⁸ ASX Settlement Operating Rule 13.1.2. The CDN Nominee Terms do not apply in respect of Government Bond Depositary Interests.

¹⁹ See ASIC Regulatory Guide 253 *Fundraising: Facilitating offers of CHESS Depositary Interests* and the ASIC ~~Class Orders~~ [legislative instruments published-referred to in](#) ~~under~~ that guide.

²⁰ See Listing Rule 19.6B, which provides that, except in Listing 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.

²¹ Under ASX Settlement Operating Rule 13.3.2, the participant representing the seller is expressly prohibited from delivering a paper-based transfer of the underlying securities unless the participant representing the buyer has specifically agreed to that and must instead initiate an electronic message in CHESS transferring the applicable quantity of CDIs.

depository nominee now holding the underlying securities on trust for the buyer. The buyer may choose to leave their holdings in the form of CDIs (in which case, legal title remains in the name of the depository nominee) or to transmute the CDIs into the underlying security²² (in which case, legal title is transferred from the depository nominee to the buyer).

4. How to become an issuer of CDIs

4.1 Applying for approval as an issuer of CDIs

As mentioned previously,²³ to issue CDIs, an entity must be approved as a foreign issuer of CDIs under the operating rules of the CHES facility and also have its CDIs approved for participation in that facility.

An entity's Appendix 1A, 1B or 1C application for admission to the official list operates as an application by the entity for the requisite approvals under the CHES operating rules.²⁴ It includes:

- an appointment of CDN²⁵ to act as the depository nominee in respect of any CDIs issued over the securities which the entity is seeking to have quoted on ASX,²⁶ and an acknowledgement of the indemnity²⁷ given by the entity to CDN as the depository nominee, and an acceptance of the power of attorney²⁸ given to the entity by CDN as the depository nominee, under the CHES operating rules;
- an irrevocable authorisation for the approved clearing and settlement facility (ie CHES) to establish and administer a CHES subregister in respect of those CDIs;
- a commitment to satisfy the technical and performance requirements of the CHES facility and meet any other requirements CHES imposes in connection with the participation of the entity's CDIs in that facility;
- a commitment that when CDIs are issued, the entity will enter them in the CHES holding of the applicant before the securities they are over are quoted, if the applicant instructs the entity on the application form to do so; and
- a commitment from the entity that it will make sure that CDIs are issued over securities if the holder of quoted securities asks for CDIs.

If the entity is approved for admission to the ASX official list, ASX Settlement will notify the entity, usually by way of an emailed letter, that it has been approved as a foreign issuer of CDIs under the operating rules of the CHES facility and that its CDIs have also been approved for participation in that facility.

4.2 The ratio of CDIs to underlying securities

For ease of administration and to simplify matters for investors, CDIs are generally structured so that each holding of CDIs represents an equivalent number of underlying securities (that is, the transmutation ratio of CDIs to underlying securities is one for one).

²² Again, see '6.2 Transmuting CDIs to underlying securities' ~~on page 12~~.

²³ See notes 11 and 12 above and the accompanying text.

²⁴ ASX Settlement Operating Rule 13.2.1 and Procedure 13.2.1. The Information Forms and Checklists that must accompany an Appendix 1A, 1B or 1C admission application require a foreign issuer to disclose whether it will be issuing CDIs and, if so, the name, address and contact details of its CDI registry in Australia, the name, address and contact details of its principal registry offshore and what the proposed transmutation ratio for the CDIs will be.

²⁵ While the selection of depository nominee in the Appendices is CDN, an entity can choose to appoint another depository nominee that meets the requirements of the definition of "Depository Nominee" in ASX Settlement Operating Rule 2.13.1.

²⁶ ASX Settlement Operating Rule 13.2.2. In addition to the appointment of CDN in the entity's Appendix 1A, 1B or 1C, the entity must also give ASX Settlement written confirmation from CDN of its agreement to be appointed. Prior to its appointment as depository nominee, CDN will require the entity to enter into a Deed of Appointment and a Registry Side Deed. Copies of these documents can be obtained from the CHES Depository Nominees Pty Limited and CHES Depository Interests page on the ASX website.

²⁷ See '11.3 General indemnity' ~~on page 15~~.

²⁸ See note 38 below and the accompanying text.

With the agreement of ASX, CDIs may be issued with a transmutation ratio other than one for one. If an applicant for listing wishes to have a transmutation ratio for CDIs other than one for one, it should discuss that matter with ASX first before submitting an application for admission to the official list. Those discussions are generally best held with the branch office where the entity intends to lodge its application for admission. Typically, this will be the ASX branch office where the applicant will have its home branch if its application for admission is successful.²⁹

4.3 Vesting securities in the depositary nominee

After receiving the approvals referred to in section 4.1, the entity must make arrangements to vest title to the relevant number of underlying securities in the depositary nominee³⁰ and have its principal registry confirm to ASX Settlement in writing:³¹

- the number of CDIs that have been issued;
- the transmutation ratio of the CDIs into the underlying securities;³²
- that title to the underlying securities has been vested in the depositary nominee;
- if the underlying securities are certificated, that the certificate(s) representing the depositary nominee's holding of the underlying securities are held by the entity's principal registry for safekeeping; and
- if the underlying securities are held in an account with an approved clearing house, that the depositary nominee's holding of underlying securities are held in a segregated account with that clearing house.³²

4.4 The effect of vesting securities in the depositary nominee

Under the CHES operating rules, a person is entitled to all direct economic benefits and any other entitlements in relation to the underlying securities vested in a depositary nominee if:

- they are the holder of the underlying securities at the time they are transmuted to CDIs; or
- they are subsequently registered as the holder of CDIs for the underlying securities in the entity's CDI register.³³

The depositary nominee holds all right, title and interest in the securities vested in it subject to the right of the holder of a CDI to receive all direct economic benefits and any other entitlements in relation to those securities.³⁴

The depositary nominee is obliged not to dispose of the underlying securities, nor to create any interest (including a security interest) which is inconsistent with the title of the depositary nominee to the underlying securities or the interests of the holders of CDIs in respect of those securities, except as otherwise specifically allowed for under the CHES operating rules.³⁵

In addition, the depositary nominee is obliged:

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 ASX Settlement Operating Rule 13.2.3.

³¹ The requirement to provide this confirmation will be imposed as a condition of the entity's admission to the ASX official list to be satisfied before quotation of the entity's securities commences on ASX. The confirmation itself will be released as pre-quotation disclosure on the ASX Market Announcements Platform.

³² ASX Settlement Operating Rule 13.4.3(a). In practice, these obligations will be performed on behalf of the depositary nominee by the entity or its principal registry utilising the power of attorney referred to in note 38 below and the accompanying text.

³³ ASX Settlement Operating Rule 13.4.2.

³⁴ ASX Settlement Operating Rule 13.4.1. Additionally, see also clause 2.1 of the CDN Nominee Terms.

³⁵ ASX Settlement Operating Rule 13.4.3.

- where the underlying securities are certificated, to make satisfactory arrangements for any certificate representing its holding of the underlying securities to be held by the entity for safekeeping; and
- where the underlying securities are held in an account with an approved clearing house, to ensure that a segregated account is maintained in respect of those securities.³⁶

5. Entitlements of CDI holders

As mentioned previously,³⁷ under the CHESS operating rules, a person who holds CDIs in relation to underlying securities is entitled to all of the direct economic and other benefits attaching to those securities.

The CHESS operating rules contain provisions designed to ensure that, as far as practicable, a CDI holder receives those economic and other benefits to the same extent they would have if they held the underlying securities directly.

This includes a power of attorney from the depositary nominee to any entity that has CDIs issued over underlying securities to do all things necessary or desirable to give full effect to the rights and obligations of the depositary nominee under the CHESS operating rules.³⁸ The powers under that power of attorney are able to be delegated, for example, to the Australian registry administering the entity's CDI register on its behalf.³⁹ This enables the entity and its registry to deal directly with the holders of CDIs without the intervention of the depositary nominee. The entity must act in good faith and with due care in selecting the delegate and must monitor them. The entity is responsible for any conduct or omission of the delegate as if the conduct or omission was of the entity.⁴⁰

The Australian registry managing the entity's issuer sponsored subregister of CDIs also has electronic access to the registration details and holding balances of the holders of CDIs entered on the CHESS subregister, as well as the registration details and holding balances of the holders of CDIs entered on the issuer sponsored subregister. This enables the entity and its registry to communicate directly with all CDI holders when sending security holder communications and processing dividends and corporate actions.

5.1 Dividends

An entity that has issued CDIs over underlying securities is obliged to pay any dividend declared in respect of the underlying securities directly to the holders of the CDIs.⁴¹

If the entity has a dividend investment scheme or bonus share plan operating in respect of the underlying securities, it must also make available to the holders of the CDIs all benefits and entitlements arising under that scheme or plan.⁴² The right to make an election under the scheme or plan to receive securities in lieu of a cash dividend must be exercised by the holder of the CDIs rather than the depositary nominee.⁴³ If that right is exercised by the holder of a CDI, the entity must issue the relevant securities to the depositary nominee and distribute corresponding CDIs to the holder.⁴⁴

³⁶ ASX Settlement Operating Rule 13.4.3(a). In practice, these obligations will be performed on behalf of the depositary nominee by the entity or its principal registry utilising the power of attorney referred to in note 38 below and the accompanying text.

³⁷ See notes 33 and 34 above and accompanying text.

³⁸ ASX Settlement Operating Rule 13.5.8.

³⁹ ASX Settlement Operating Rule 13.5.9.

⁴⁰ ASX Settlement Operating Rule 13.5.9.

⁴¹ ASX Settlement Operating Rule 13.6.2. For these purposes, the entitlement of a CDI holder to a dividend is calculated using the holder's cum entitlement balance as at end of day on the record date for the dividend and applying the transmutation ratio. The depositary nominee is taken to have directed the entity to distribute any dividend that would otherwise be payable to it under the entity's constitution in accordance with these requirements (ASX Settlement Operating Rule 13.6.3). Payment by the issuer in accordance with these requirements is taken to discharge any obligation the entity might otherwise have to pay the dividend to the depositary nominee, as the legal owner of the underlying securities (ASX Settlement Operating Rule 13.6.4).

⁴² ASX Settlement Operating Rule 13.6.8(a). Again, the entitlement of a CDI holder to participate in a dividend reinvestment plan or bonus share plan is calculated using the holder's cum entitlement balance as at end of day on the record date for determining entitlements under the scheme or plan and applying the transmutation ratio (ASX Settlement Operating Rules 13.6.8(a) and (b)).

⁴³ ASX Settlement Operating Rule 13.6.8(c).

⁴⁴ ASX Settlement Operating Rule 13.6.8(d).

5.2 Corporate actions

Unless it is prohibited by the laws of its place of establishment from doing so, an entity that has issued CDIs over underlying securities is obliged to administer all corporate actions⁴⁵ that result in:

- the issue of additional or replacement securities in respect of the underlying securities; or
- the cancellation, buy back or any other reduction in number of all or any of the underlying securities,

as if each holder of CDIs was a holder of a corresponding number of underlying securities and to adjust the holding of each CDI holder as a result of the corporate action by:

- in the first case above, issuing additional or replacement CDIs to the holder; or
- in the second case above, cancelling or otherwise reducing the number of CDIs in the holder's existing holdings of CDIs.⁴⁶

If the benefits conferred in the corporate action are additional or replacement securities, the entity must ensure that title to those securities is vested in the depositary nominee as legal holder and the benefit of those securities is distributed to the holders of CDIs as additional or replacement CDIs.⁴⁷

Similarly, unless it is prohibited by the laws of its place of establishment from doing so, if a corporate action would give holders of CDIs a fractional entitlement to additional or replacement securities (assuming they held the underlying securities rather than CDIs), the entity must ensure that:

- the number of additional or replacement securities issued to the depositary nominee is calculated as if each holder of CDIs is a holder of the corresponding underlying securities; and
- the holders of CDIs receive additional or replacement CDIs reflecting the entitlements so calculated.⁴⁸

Where the laws of its place of establishment prevent the entity from complying with the above obligations, it must notify ASX in writing of that fact⁴⁹ and, if possible under those laws, put forward written details of an alternative proposal designed to put CDI holders, as nearly as practicable, in the same economic position they would have been in if the entity had administered the corporate action in the manner described above.⁵⁰ This may include, for example, the payment of a cash component to compensate the holders for any loss of, or inability to receive, entitlements under the corporate action and/or for any loss of fractional entitlements. The alternative proposal must be acceptable to ASX⁵¹ and the entity must also provide an undertaking to disclose the details of the corporate action and the alternative proposal to the holders of CDIs in due course.⁵²

⁴⁵ For these purposes, "corporate action" includes (but is not limited to) bonus issues, rights issues, mergers, reconstructions and any action taken by an entity to reduce, or that will have the effect of reducing, the number of underlying securities held by a depositary nominee (see the concluding paragraphs to ASX Settlement Operating Rules 13.6.7 and 13.6.10).

⁴⁶ ASX Settlement Operating Rule 13.6.7(a). Again, the entitlement of a CDI holder to participate in a corporate action is calculated using the holder's cum entitlement balance as at end of day on the record date for the corporate action and applying the transmutation ratio (ASX Settlement Operating Rules 13.6.7(a) and (c)). The depositary nominee is taken to have directed the entity to administer all corporate actions in accordance with these requirements, and compliance with these requirements is taken to discharge any obligation the entity might otherwise have to make the benefit of the corporate action available to the depositary nominee, as the legal owner of the underlying securities (ASX Settlement Operating Rule 13.6.11).

⁴⁷ ASX Settlement Operating Rule 13.6.7(b).

⁴⁸ ASX Settlement Operating Rule 13.6.10(a). Again, the depositary nominee is taken to have directed the entity to administer all corporate actions in accordance with these requirements and compliance with these requirements is taken to discharge any obligation the entity might otherwise have to make the benefit of the corporate action available to the depositary nominee, as the legal owner of the underlying securities (ASX Settlement Operating Rule 13.6.11).

⁴⁹ ASX Settlement Operating Rule 13.6.7(d)(ii)(A) and 13.6.10(b)(ii)(A).

⁵⁰ ASX Settlement Operating Rule 13.6.7(d)(ii)(B)a and 13.6.10(b)(ii)(B)a.

⁵¹ ASX Settlement Operating Rule 13.6.7(d)(iii) and 13.6.10(b)(iii).

⁵² ASX Settlement Operating Rule 13.6.7(d)(ii)(C) and 13.6.10(b)(ii)(C).

If the laws of its place of establishment prevent the entity from putting forward an alternative proposal, the entity must provide ASX a statement in writing to that effect.⁵³ Again, the statement must be acceptable to ASX⁵⁴ and the entity must also provide an undertaking to disclose the details of the corporate action and the statement to the holders of CDIs in due course.⁵⁵

ASX may require the entity to provide additional information or documents for the purpose of evaluating a corporate action and any alternative proposal or statement (as applicable). This may include, if ASX requires it, a legal opinion satisfactory to ASX confirming that the laws of the entity's place of incorporation require it [to](#) deal with a corporate action in a particular way and any other matters ASX may nominate in relation to the corporate action and the alternative proposal or statement.⁵⁶

Where ASX accepts such an alternative proposal or statement, the issuer must ensure that the corporate action is administered in accordance with that proposal or statement and the holding of each holder of CDIs is adjusted as a result of the corporate action accordingly.⁵⁷

5.3 Takeover offers

As a practical matter, where an entity (a 'target') has issued CDIs over some of its securities and a third party (a 'bidder') makes a takeover offer for those securities, ASX would generally expect the bidder to make corresponding offers directly to the holders of CDIs to acquire their CDIs.

Where this occurs, the target has an obligation to provide to the bidder the registered details of the CDI holders, including their HIN, PID or SRN, to facilitate the extension of the takeover offer to them.⁵⁸ This applies regardless of whether the CDIs are entered on the CHESSE subregister or the issuer sponsored subregister.

If the CDIs are held on the CHESSE subregister, takeover offers for the CDIs will be processed electronically by ASX Settlement in the same way that takeover offers for other CHESSE-approved securities are processed. A CDI holder will be able to accept the takeover offer either by:

- instructing its sponsoring participant to accept the offer on its behalf, in which case the sponsoring participant will transmit a message in CHESSE to that effect;⁵⁹ or
- completing an acceptance and transfer form and returning it to the bidder, in which case the "bidder participant"⁶⁰ may accept the offer on behalf of the CDI holder by transmitting a message in CHESSE to that effect,⁶¹ with that message taking effect if and when the sponsoring participant validates it.⁶²

⁵³ ASX Settlement Operating Rule 13.6.7(d)(2)(B)b and 13.6.10(b)(ii)(B)b.

⁵⁴ ASX Settlement Operating Rule 13.6.7(d)(iii) and 13.6.10(b)(iii).

⁵⁵ ASX Settlement Operating Rule 13.6.7(d)(ii)(C) and 13.6.10(b)(ii)(C).

⁵⁶ ASX Settlement Operating Rule 13.6.7(d)(ii)(D) and 13.6.10(b)(ii)(D).

⁵⁷ ASX Settlement Operating Rules 13.6.7(d)(iv) and (v) and 13.6.10(b)(iv) and (v).

⁵⁸ ASX Settlement Operating Rules 13.9.1(j) and 14.13.1. To trigger this obligation, the bidder must give a written notice to ASX Settlement under ASX Settlement Operating Rule 14.11.1 that it is making a takeover bid for the CDIs and a written notice to the entity requesting the information required under section 641(1), or a copy of the entity's CDI register under section 173(3), of the Corporations Act 2001 (Cth) (with these sections applied as if the entity were a company incorporated in Australia). If the bidder is not bound by the ASX Settlement Operating Rules, it must also give a written undertaking to the entity under ASX Settlement Operating Rule 14.13.2(b) to comply with the confidentiality obligations relating to HINs and SRNs in ASX Settlement Operating Rule 14.13.3.

⁵⁹ ASX Settlement Operating Rule 14.14.1.

⁶⁰ The participant bidder is a participant in the CHESSE facility representing the bidder who can process messages on its behalf in the CHESSE system (see ASX Settlement Operating Rules 14.12.4 and 14.12.6). If the bidder is a general settlement participant or account participant, it will typically also act as the participant bidder. If it is not general settlement participant or account participant, the bidder may appoint a general settlement participant or account participant to act as participant bidder on its behalf. Alternatively, it or an agent may apply to be admitted as a "specialist settlement participant" in the CHESSE facility whose sole function is to act as the participant bidder in relation to the bid.

⁶¹ ASX Settlement Operating Rule 14.14.7.

⁶² ASX Settlement Operating Rule 14.14.9(a).

If the CDIs are held on an issuer sponsored subregister, a CDI holder will be able to accept the takeover offer by completing an acceptance and transfer form and sending it to the person/place required under the offer document. Typically, the acceptance and transfer form will be required to be sent to the bidder or to a receiving agent acting for the bidder, who will then on-send it to the target's registry for processing in due course.⁶³

If an offer to the holder of a CDI is accepted and the CDI transferred to the bidder, the bidder will then have the choice to retain the CDI in that form or to transmute the CDI into the underlying securities.⁶⁴

In this scenario, the depositary nominee is not required to do, and in practice will not do, anything in relation to the takeover offer for the underlying securities it holds.

In the unlikely event in practice that the bidder chooses only to make a takeover offer for the underlying securities and not to make a corresponding offer for the CDIs, then the following procedures will be followed:

- For CDIs held on the CHESSE subregister, ASX Settlement will treat the offer for the underlying securities as an offer for the CDIs and process electronic instructions to accept that offer in the usual way. ASX will issue an announcement to participants in the ASX market advising them of receipt of the takeover offer and the time and date (the 'CHESSE cut-off time') by which an electronic message accepting the takeover offer must be submitted in CHESSE so that the depositary nominee can then accept the offer for the underlying securities on behalf of the CDI holder. Immediately after the CHESSE cut-off time, ASX Settlement will advise the depositary nominee of the number of acceptances received through the CHESSE facility and the depositary nominee will lodge an acceptance of the offer for the relevant number of underlying securities, together with a direction to the bidder to pay or transfer the offer consideration directly to the accepting CDI holders.⁶⁵
- For CDIs held on the issuer sponsored subregister, the depositary nominee will request the bidder⁶⁶ to send to each CDI holder copies of the offer documentation, including an acceptance and transfer form and any other accompanying documents sent to the holders of the underlying securities in connection with the offer, together with a notice which informs the CDI holder:
 - that they are entitled to accept the offer with respect to the underlying securities corresponding to their CDI holding;
 - that to accept the offer they must complete the acceptance and transfer form in accordance with the offer documentation; and
 - of the time and date (the 'acceptance form cut-off time') by which the acceptance and transfer form must be received by the offeror or its receiving agent to enable the processing of acceptances and the depositary nominee to lodge an acceptance of the offer as holder of the underlying securities prior to close of the offer.⁶⁷

Immediately after the acceptance form cut-off time, the offeror or its receiving agent will notify the depositary nominee of the number of underlying securities for which valid acceptance and transfer forms have been received from CDI holders and the depositary nominee will lodge an acceptance of the offer for that number of underlying securities, together with a direction to the bidder to pay or transfer the offer consideration directly to the accepting CDI holders.⁶⁸

⁶³ Pursuant to ASX Settlement Operating Rule 13.5.12(b).

⁶⁴ ASX Settlement Operating Rules 13.3.3, 13.5.12(d) and 13.9.2 to 13.9.6.

⁶⁵ ASX Settlement Operating Rule 13.7.2.

⁶⁶ In the unlikely event the bidder declines this request, the depositary nominee will request the target to send these documents to the holders of CDIs, relying on the power of attorney in ASX Settlement Operating Rule 13.5.8 and the indemnity in ASX Settlement Operating Rule 13.13.1.

⁶⁷ ASX Settlement Operating Rule 13.7.3 and Procedure 13.7.3.

⁶⁸ ASX Settlement Operating Rule 13.7.4.

The depositary nominee will only accept the offer for the underlying securities where it has been instructed to do so by CDI holders in accordance with the procedures above.⁶⁹

5.4 Voting at security holder meetings

As they are not the registered holders of the underlying securities, CDI holders generally are not able to vote those securities at a meeting of security holders. Rather it is the depositary nominee, as the registered holder of the underlying securities, who is generally entitled to vote the underlying securities.⁷⁰

The CHESS operating rules contain provisions designed to ensure that CDI holders, as a group, can exercise the same voting rights that they would otherwise be entitled to exercise as a group if they held the underlying securities. This is achieved through the mechanisms described below.

An entity that has issued CDIs over a class of its securities must give a notice of any meeting that the holders of that class of security holders are entitled to attend to all CDI holders at the same time as it gives the notice of meeting to the security holders in that class.⁷¹ The entity must permit the holders of the CDIs to attend the meeting unless the laws of the place in which it is established prevent this.⁷²

The entity must include in the notice of meeting:

- a statement informing the holders of CDIs of their right to direct the depositary nominee on how it should vote with respect to the resolutions described in the notice;
- provision for a direction to be given by the holders of CDIs in relation to how the depositary nominee should so vote; and
- a statement specifying the time and date by which the holders of CDIs must provide their directions to the depositary nominee.

The entity is required to collect and process any such directions from CDI holders and to provide the depositary nominee with a report in writing that clearly shows how the depositary nominee must exercise its right to vote by proxy at the meeting, in sufficient time to enable the depositary nominee to lodge a proxy for the meeting.⁷³

In the ordinary case, the depositary nominee will then appoint two proxies, one to vote in favour of, and the other to vote against, the relevant resolution.⁷⁴ The number of underlying securities for each proxy is determined by taking the number of CDIs in favour of or against the resolution (as the case may be), applying the transmutation ratio to those CDIs and then entering the resultant number of underlying securities on the appropriate proxy.⁷⁵

In those cases where the depositary nominee is only entitled to appoint a single proxy under the entity's constitution, the depositary nominee must instead take the number of CDIs in favour of the resolution, take the number of CDIs against the resolution, determine the net voting position either in favour of or against the resolution, apply the transmutation ratio to those CDIs and then enter the resultant number of underlying securities on the proxy.⁷⁶

⁶⁹ ASX Settlement Operating Rule 13.7.1.

⁷⁰ If a person holding CDIs wants to vote the underlying securities personally, generally they must first transmute the CDIs into the underlying securities in sufficient time to have their name entered on the entity's register of security holders before the cut-off time for determining voting entitlements at the relevant meeting. See '6.2 Transmuting CDIs to underlying securities' ~~on page 12~~.

⁷¹ ASX Settlement Operating Rule 13.8.2.

⁷² ASX Listing Rule 14.2A.

⁷³ ASX Settlement Operating Rule 13.8.9. Where a holder of CDIs, or a person nominated by a holder of CDIs, is to be appointed the depositary nominee's proxy in accordance with ASX Settlement Operating Rule 13.8.8, the entity must also collect and process all relevant proxy forms in sufficient time to enable the depositary nominee to lodge a proxy or proxies for the meeting.

⁷⁴ ASX Settlement Operating Rules 13.8.3 and 13.8.4.

⁷⁵ ASX Settlement Operating Rule 13.8.5.

⁷⁶ ASX Settlement Operating Rule 13.8.6.

Where the appointed proxy or proxies are required to vote on multiple resolutions, the depositary nominee must instruct the proxy or proxies to vote in such manner as will, in the reasonable opinion of the depositary nominee, best represent the wishes of the majority of holders of CDIs.⁷⁷

6. Transmutation

6.1 Transmuting underlying securities to CDIs

Where an entity has been approved as an issuer of CDIs in relation to underlying securities, a holder of those securities can elect at any time to have them converted into CDIs (referred to as “transmuting” the securities to CDIs) by giving a notice to the entity requesting the transmutation and delivering up any documents (including, if applicable, an executed transfer and any certificates or other documents of title) needed to transfer the underlying securities from the holder to the depositary nominee.⁷⁸

If the holder wants their CDIs entered on the CHESS subregister and has already appointed a sponsoring CHESS participant, they will usually make this request through their sponsoring CHESS participant, who will then liaise with the entity’s registry to facilitate the transmutation.⁷⁹ If the holder wants their CDIs entered on the issuer sponsored subregister or they haven’t yet appointed a sponsoring CHESS participant, they must make this request directly to the entity’s registry.

Upon receipt of such a request and the documents needed to transfer title to the underlying securities from the CDI holder to the depositary nominee, the entity is obliged to cause those securities to be registered in the name of the depositary nominee, to record the holder in its CDI register as being the holder of the relevant number of CDIs, and to notify the holder that the transmutation has been effected.⁸⁰ In practice, this will usually be done on the entity’s behalf by its Australian registry, co-ordinating where necessary with its principal registry offshore.

It should be noted that the requirements for transferring the underlying securities from the holder to the depositary nominee may vary, depending on the law and practice of the entity’s place of establishment.

6.2 Transmuting CDIs to underlying securities

A holder of CDIs can elect at any time to transmute them to the underlying securities by giving a notice to the entity requesting the transmutation and delivering up any documents (including, if applicable, an executed transfer) needed to transfer the underlying securities from the depositary nominee to the holder.

If the holder’s CDIs are entered on the CHESS subregister, they must make this request through their sponsoring CHESS participant, who will then liaise with the entity’s registry to facilitate the transmutation.⁸¹ If the holder’s CDIs are entered on the issuer sponsored subregister, they must make this request directly to the entity’s registry.

Upon receipt of such a request and any documents needed to transfer title to the underlying securities from the depositary nominee to the CDI holder, the entity is obliged to cause those securities to be registered in the name of the CDI holder and to make a corresponding reduction in the number of CDIs registered in the name of the CDI holder on its CDI register.⁸² In practice, this will usually be done on the entity’s behalf by its Australian registry, co-ordinating where necessary with its principal registry offshore.

⁷⁷ ASX Settlement Operating Rule 13.8.7.

⁷⁸ ASX Settlement Operating Rule 13.3.1.

⁷⁹ The process for this to occur is outlined in ASX Settlement Operating Rules 13.3.3 and 13.9.7 to 13.9.13.

⁸⁰ ASX Settlement Operating Rules 13.3.1 and 13.5.12(c). The power of attorney mentioned in the text accompanying note 38 above also empowers the entity to execute and complete any transfer of the underlying securities on the behalf of the depositary nominee needed to give effect to the transmutation.

⁸¹ The process for this to occur is outlined in ASX Settlement Operating Rules 13.3.3 and 13.9.2 to 13.9.6.

⁸² ASX Settlement Operating Rule 13.5.12(d). Again, the power of attorney mentioned in the text accompanying note 38 above also empowers the entity to execute and complete any transfer of the underlying securities on the behalf of the depositary nominee needed to give effect to the transmutation.

Again, it should be noted that the requirements for transferring the underlying securities from the depositary nominee to a CDI holder may vary, depending on the law and practice of the entity's place of establishment.

7. Registers and holding statements

7.1 Reconciliation obligations

An entity that has issued CDIs over underlying securities is required to ensure at all times that the total number of CDIs on its CDI register reconciles to the total number of underlying securities registered in the name of the depositary nominee on its principal register.⁸³

If the underlying securities are certificated and the entity is holding the certificates for those securities in safe custody for the depositary nominee, the entity is also required to ensure at all times that the certificates in its possession represent the same number of underlying securities as are registered in the name of the depositary nominee.⁸⁴

7.2 Right to inspect registers

An entity that has issued CDIs over underlying securities is required to make its CDI register available for inspection in Australia to the same extent and in the same manner as if that register were a register of members of an Australian listed public company.⁸⁵ Typically, this obligation will be met on the entity's behalf by its Australian registry.

7.3 CDI holding statements

CDI holders who are sponsored by a participant in CHESS will receive CHESS holding statements for their CDIs whenever they acquire or dispose of CDIs, transmute underlying securities into CDIs or transmute CDIs into the underlying securities, similar to the CHESS holding statements received by the holders of quoted securities in ASX listed entities. ASX Settlement is responsible for issuing these statements and will do so within 5 business days of the end of the month in which any change in holding occurs.⁸⁶

CDI holders who are issuer sponsored are required to receive holding statements from the entity whenever they acquire or dispose of CDIs, transmute underlying securities into CDIs or transmute CDIs into the underlying securities.⁸⁷ Usually the entity will engage an Australian registry to do this on its behalf. The statements must be sent within 5 business days of the end of the month in which any change in holding occurs.⁸⁸

8. Ongoing reporting obligations

An entity that has a dual listing on ASX and an overseas exchange and has CDIs issued over quoted securities must complete an Appendix 4A *Statement of CDIs on Issue* and give it to ASX within 5 business days of the end of each month.⁸⁹

The Appendix 4A compares the total number of each class of CDIs quoted on ASX at month end to the total number of that class of CDIs quoted on ASX at the end of the previous month. The net difference:

- if positive, represents the additional number of CDIs to be quoted on ASX at month end; or
- if negative, represents the additional number of CDIs to be removed from quotation on ASX at month end.

⁸³ ASX Settlement Operating Rule 13.5.2(a).

⁸⁴ ASX Settlement Operating Rule 13.5.2(b).

⁸⁵ ASX Settlement Operating Rule 13.5.3.

⁸⁶ ASX Settlement Operating Rule 8.20.1.

⁸⁷ ASX Settlement Operating Rule 5.25.1.

⁸⁸ ASX Listing Rule 8.6.1.

⁸⁹ ASX Listing Rule 4.11.

ASX will charge the entity an additional listing fee at the rate set out in Table 1C of Guidance Note 15A *Schedule of ASX Listing Fees* if the number of CDIs quoted on ASX exceeds the number for which the entity has previously paid an initial listing fee or an additional listing fee under Table 1A and 1C of Guidance Note 15A.

9. Divestment of small holdings

The CHES operating rules include provisions giving an entity that has issued CDIs over its securities the same ability to divest small holdings (that is, holdings worth less than A\$500 that are considered to be less than a “marketable parcel”) as any other listed entity has under the Listing Rules.⁹⁰

To qualify to exercise this right:

- the entity must have provisions in its constitution entitling it to divest or sell a holding of underlying securities of less than a specified number of securities;
- if the CDI holder held underlying securities directly instead of CDIs, they would be subject to divestment or sale under those provisions;
- the entity must give a notice of divestment to a holder of CDIs;⁹¹ and
- the entity must give the CDI holder the benefit of any notice and consent procedure contained in its constitution, the ASX Listing Rules and the rules of any financial market on which its underlying securities are listed or quoted to which the holder would have been entitled if they held the underlying securities directly.⁹²

If the depositary nominee is reasonably satisfied that the entity has complied with these obligations, the depositary nominee is authorised to consent to the sale or divestment of the number of underlying securities which correspond to the holder’s CDIs.⁹³ The entity must then distribute the proceeds of sale, net of transaction costs, expenses and fees, to the holder and cancel the holder’s CDIs.⁹⁴

10. What happens to CDIs when an entity ceases to be listed on ASX?

When an entity ceases to be listed on ASX, its approval as a foreign issuer of CDIs under the operating rules of the CHES facility and the approval of its CDIs for participation in that facility will be revoked. This will then require the entity (and the depositary nominee) to take steps to unwind the CDIs over the underlying securities.

In the first instance, this will usually involve a communication by the entity to CDI holders inviting them to transmute their CDIs to the underlying securities.⁹⁵ If they do not do so by a nominated date, the depositary nominee will usually revoke the trust under which it holds the underlying securities,⁹⁶ cancel the remaining CDIs and endeavour to transfer the underlying securities to the former holders of those CDIs.⁹⁷ If for any reason the depositary nominee is not able to complete the transfer of the underlying securities to a particular CDI holder, the depositary nominee

⁹⁰ See ASX Listing Rules 15.13, 15.13A and 15.13B.

⁹¹ The notice of divestment must accord with ASX Settlement Operating Rule 5.12.2. By giving a notice of divestment, the entity indemnifies the depositary nominee and ASX Settlement against any loss, cost, damage, expense or liability which they may suffer or incur as a result of any sale or divestment of the underlying securities and the cancellation of CDIs under these rules (ASX Settlement Operating Rule 13.6.16).

⁹² ASX Settlement Operating Rule 13.6.13.

⁹³ ASX Settlement Operating Rule 13.6.14.

⁹⁴ ASX Settlement Operating Rule 13.6.15. If the entity is required under the laws of its place of establishment to distribute the net proceeds to the depositary nominee in its capacity as the holder of the underlying securities, the depositary nominee is taken to have directed the entity to distribute the net proceeds to the CDI holder.

⁹⁵ See ‘6.2 Transmuting CDIs to underlying securities’ ~~on page 12~~.

⁹⁶ ASX Settlement Operating Rule 13.5A.1.

⁹⁷ ASX Settlement Operating Rule 13.5A.2.

will sell the underlying securities and either account for the net proceeds of sale to the holder or, if they are not able to be located, deal with the money in accordance with the laws applicable to unclaimed moneys.⁹⁸

If an entity [has issued CDIs over its securities and](#) is voluntarily relinquishing its ASX listing, [it will be required to include in its notice of meeting \(if requesting voluntary removal under Listing Rule 17.11A.1 or 17.11A.2\) or to include as part of the information given to the holders of its ASX quoted securities \(if requesting voluntary removal under Listing Rule 17.11B\)](#), ~~it should refer to Guidance Note 33 Removal of Entities from the ASX Official List for the conditions that ASX is likely to impose in those circumstances. These conditions will invariably include, where an entity has issued CDIs over its securities, that it send a written or electronic communication to all security holders, in form and substance satisfactory to ASX,~~ [disclosure](#), setting out:

- the steps they must take to convert their CDIs to the underlying securities; and
- [the steps that will be taken by the depositary nominee \(as outlined above\) if they do not convert their CDIs to the underlying securities by a nominated date.](#)⁹⁹
- [before ASX will remove the entity from the official list.](#)¹⁰⁰

If an entity is being delisted at the instigation of ASX, the depositary nominee will send,¹⁰¹ or cause to be sent,¹⁰² an equivalent communication.

11. Other matters

11.1 Fees

Fees are payable by an entity for services provided by CDN for acting as depositary nominee¹⁰³.

Neither ASX nor ASX Settlement¹⁰⁴ levies any additional charges to the entity for its participation in the ASX CDI arrangements beyond their usual fees and charges.

11.2 Compliance with tax laws

An entity that has issued CDIs over its securities is required to use its best endeavours to:

- comply with all applicable tax laws as agent and attorney of the depositary nominee;
- ensure that the depositary nominee complies with all applicable tax laws, including to uphold the absolute entitlement of a holder of CDIs to the underlying securities; and

⁹⁸ ASX Settlement Operating Rules 13.5A.2(c) and 13.5A.3.

⁹⁹ This date is to be ascertained by discussions between the entity and ASX Settlement.

¹⁰⁰ [Listing Rule 17.11C.](#)

¹⁰¹ ASX Settlement Operating Rule 13.5A.2(a).

¹⁰² The depositary nominee will often cause the entity to send this notification on its behalf, relying on the power of attorney in ASX Settlement Operating Rule 13.5.8 and the indemnity in ASX Settlement Operating Rule 13.13.1.

¹⁰³ The fees comprise a one-off CDN Appointment Fee and a CDN Annual Service Fee. The fees are set out in the CHES Depositary Nominees Schedule of Fees available online at [the ASX website](#): <https://www.asx.com.au/markets/market-resources/asx-schedule-of-fees>

¹⁰⁴ ASX Settlement does charge fees to bidders who make a takeover offer for an entity that has issued CDIs. ASX Settlement currently charges an offer establishment fee to accept an application from a bidder to be admitted to the CHES settlement facility as a specialist settlement participant and act as the "participant bidder". It also charges a further offer facilitation fee once that admission has been approved and the participant bidder has been allocated a "user identification code" in CHES. This latter fee covers the administration and monitoring of the takeover offer by ASX Settlement. Details of these fees are set out in the ASX Issuer Services Schedule of Fees available online at [the ASX website](#): <https://www.asx.com.au/markets/market-resources/asx-schedule-of-fees>.

- not do any act or thing which creates a tax liability, or not omit to do any act or thing, the omission of which creates a tax liability, which must be discharged by the depositary nominee, unless provision has been made for the discharge of the liability by some person other than the depositary nominee.¹⁰⁵

11.3 General indemnity

An entity that has issued CDIs over its securities is required to indemnify the depositary nominee against all expenses, losses, damages and costs that the depositary nominee may sustain or incur in connection with:

- CDIs;
- its capacity as holder of the underlying securities;
- any act done, or required to be done, by the entity (whether or not on behalf of the depositary nominee) under ASX Settlement Operating Rules 13.1 to 13.13; and
- any act otherwise done or required to be done by the depositary nominee under those Rules.¹⁰⁶

¹⁰⁵ ASX Settlement Operating Rule 13.11.1. The obligations of the entity and the depositary nominee under the ASX Settlement Operating Rules are subject to all relevant tax laws.

¹⁰⁶ ASX Settlement Operating Rule 13.13.1.

THE RESTRICTIONS ON ISSUING EQUITY SECURITIES IN CHAPTER 7 OF THE LISTING RULES

The purpose of this Guidance Note	To assist entities to understand and comply with the restrictions on issuing equity securities in Chapter 7 of the Listing Rules
The main points it covers	- The 15% limit on placements of equity securities without security holder approval in Listing Rule 7.1 - The additional 10% placement capacity available to an eligible entity under Listing Rule 7.1A and the conditions the entity must satisfy to access it - The exceptions to Listing Rules 7.1 and 7.1A in Listing Rule 7.2 - The application of Listing Rules 7.1 and 7.1A to convertible securities - Ratification of issues of, or agreements to issue, equity securities under Listing Rule 7.4 - The requirements for notices of meeting proposing a resolution under Listing Rules 7.1, 7.1A or 7.4 - The obligation to notify ASX immediately of a proposed issue of securities - The constraints on issues of equity securities in Listing Rules 7.6 and 7.9 - The powers ASX may exercise if an entity issues equity securities in breach of Chapter 7 of the Listing Rules
Related materials you should read	- Guidance Note 11 <i>Restricted Securities and Voluntary Escrow</i> - Guidance Note 17 <i>Waivers and In-Principle Advice</i> - Guidance Note 19 <i>Performance Shares Securities</i> Guidance Note 22 <i>Notification of Directors' Interests</i> Guidance Note 22 <i>Director Disclosure of Interests and Transactions in Securities - Obligations of Listed Entities</i> - Guidance Note 25 <i>Issues of Equity Securities to Persons in a Position of Influence</i> Guidance Note 30 <i>Notifying an Issue of Securities and Applying for Their Quotation</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> - Guidance Note 35 <i>Security Holder Resolutions</i>

History: Guidance Note 21 ~~introduced 01/12/19~~ ~~amended XX/XX/XX~~. [A previous version of this Guidance Note was issued in 12/19](#). It replaced a withdrawn Guidance Note entitled *Appeals*.

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 admitted to the ASX official list as an ASX Listing¹ to understand the framework regulating new issues of equity securities² in Chapter 7 of the Listing Rules, including in particular the constraints on placements in Listing Rules 7.1, 7.1A and 7.2. Those rules are part of a suite of Listing Rules intended to give effect to the principle set out in the introduction to the Listing Rules that securities should be issued in circumstances, and have rights and obligations attaching to them, that are fair to new and existing security holders.³

The constitutions of most listed entities⁴ will usually reserve to the board of directors of the entity an unfettered power to issue securities at such times, in such amounts and on such terms as the board decides. However, for so long as the entity remains listed on ASX, that power must be exercised in a manner that is consistent with the Listing Rules,⁵ including the requirement that the terms that apply to each class of equity securities must, in ASX’s opinion, be appropriate and equitable.⁶ In common with all other powers exercisable by directors, the power to issue securities must also be exercised in accordance with the statutory and common law duties of directors to act with due care and skill, in good faith, for a proper purpose and in the best interests of the entity.⁷

Listing Rule 7.1 seeks to balance the interests of an entity in being able to raise capital flexibly and the interests of its security holders in not being unfairly diluted. It does so by setting an aggregate limit on the number of equity securities an entity can issue over any 12 month period without security holder approval broadly equivalent to 15% of its fully paid ordinary issued capital. Up to that limit and subject to the constraints mentioned in the previous paragraph, the entity is free to issue equity securities at whatever price and on whatever terms its board considers appropriate. Once that limit is reached, the holders of the entity’s ordinary securities must approve the issue.

¹ Listing Rules 7.1, 7.1A and 7.2 do not apply to entities admitted to the official list as an ASX Debt Listing or as an ASX Foreign Exempt Listing (see Listing Rules 1.10 and 1.15.1). Unless otherwise indicated, references in this Guidance Note to a listed entity or entity mean an entity admitted to the ASX official list as an ASX Listing.

² The term “equity security” is defined in Listing Rule 19.12 as: (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); (f) a convertible security; and (g) any security that ASX decides to classify as an equity security; but not (h) a security ASX decides to classify as a debt security. See note 9 below for the definition of “debt security”.

³ Other Listing Rules directed to the same principle include 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; the requirement in Listing Rule 6.2 that an entity only have one class of ordinary securities unless ASX agrees otherwise; the provisions governing preference securities in Listing Rules 6.3 – 6.7; the provisions governing options in Listing Rules 6.14 – 6.23A; and the provisions in Chapter 9 dealing with restricted securities.

⁴ This statement does not necessarily apply to listed trusts. In the case of a listed trust, the power to issue securities is usually reserved to the responsible entity of the trust. Generally most listed trusts will be registered managed investment schemes under the *Corporations Act 2001* (Cth). They are therefore subject to a requirement that the constitution of the scheme must make “adequate provision” for the consideration that is to be paid to acquire an interest in the scheme (section 601GA(1)(a)). ASIC’s view on what this means can be found in ASIC Regulatory Guide 134 [Managed Investments Funds management: Constitutions](#).

The *Corporations Act 2001* (Cth) 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.

⁵ Listing Rule 1.1 condition 2 provides that an 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) for it to be eligible to be admitted to the official list as an ASX Listing. Listing Rule 15.11.1 requires any subsequent amendment to the constitution to be consistent with the Listing Rules unless the constitution includes the provisions in Appendix 15A or Appendix 15B (as applicable). Appendix 15A and Appendix 15B include overarching provisions that give the Listing Rules priority in the event of any conflict between those rules and the provisions of the constitution.

⁶ Listing Rule 6.1.

⁷ See, for example, sections 180 and 181 (officers of listed companies) and 601FD (officers of responsible entities of listed trusts) of the Corporations Act.

This 15% limit is often referred to as an entity's "placement capacity", reflecting the fact that the types of issues to which it applies would often (although not always) be characterised as "placements".

The 15% placement capacity under Listing Rule 7.1 is available to all listed entities. It is automatically replenished every 12 months on a rolling basis and there are no conditions on the type of equity securities that can be issued or the price at which they can be issued.

Listing Rule 7.1 is expressed to operate subject to Listing Rule 7.1A, which was introduced in 2012 to make it easier for small to mid-cap entities to raise additional equity capital.⁸ It allows an "eligible entity" to obtain at its annual general meeting ("AGM") an approval from the holders of its ordinary securities (a "7.1A mandate") to have an additional placement capacity broadly equivalent to 10% of its fully paid ordinary issued capital. The mandate expires at the date of the entity's next AGM or after 12 months, whichever is the earlier. It also expires if the entity receives security holder approval for a transaction under Listing Rule 11.1.2 (significant change in the nature or scale of activities) or 11.2 (disposal of main undertaking).

By comparison to Listing Rule 7.1, the additional 10% placement capacity under Listing Rule 7.1A is only available to eligible entities with a 7.1A mandate, which has to be renewed each year at the entity's AGM. There are also constraints on the type of equity securities that can be issued and the price at which they can be issued.

Listing Rule 7.2 sets out various types of equity security issues that are excluded from the operation of Listing Rules 7.1 and 7.1A.

It should be noted that Listing Rules 7.1 and 7.1A only restrict an entity's ability to issue equity securities. As far as the Listing Rules are concerned, debt securities⁹ can be issued at such times, in such amounts and on such terms as the directors of the entity may determine.

2. Calculating an entity's placement capacity

2.1 The formula for calculating an entity's 15% placement capacity

Listing Rule 7.1 provides that an entity must not, without the approval of the holders of its ordinary securities, issue or agree to issue more equity securities¹⁰ than the number calculated in accordance with the following formula:¹¹

⁸ Listing Rule 7.1A recognises that small to mid-cap entities often have limited access to venture capital and debt funding, particularly in the early stages of their life cycle when they are frequently earning limited revenue and/or are loss making. They also usually have a narrower base of shareholders than larger entities, which constrains their ability to use pro rata issues as a fundraising tool. They are therefore often critically reliant on being able to conduct placements of equity securities whenever a suitable opportunity presents itself to obtain additional funding.

⁹ The term "debt security" is defined in Listing Rule 19.12 as: (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; but not (c) a security ASX decides to classify as an equity security. See note 2 above for the definition of "equity security".

¹⁰ ASX would note that the granting of a simple put option by a third party to a listed entity that does nothing more than confer on the entity the right to require the third party to subscribe for an issue of equity securities in the entity if and when the entity exercises the put option will generally fall outside of the definition of "equity security", provided ASX does not exercise its discretion under paragraph (g) of that definition to classify the put option as an equity security for the purposes of the Listing Rules. Given that, provided there is nothing in the terms of the put option or in the surrounding circumstances that could be construed as an agreement by the entity to issue the underlying equity securities to the third party, the mere acceptance of the put option by the entity will fall outside of Listing Rules 7.1 and 7.1A, on the basis that it does not involve an issue or agreement to issue equity securities. It will only be if and when the put option is exercised and the equity securities are issued or agreed to be issued to the third party that Listing Rules 7.1 and 7.1A will become applicable. [ASX does not consider an agreement to pay deferred or contingent consideration to be a simple put option for these purposes. At the time a listed entity agrees to pay deferred or contingent consideration \(even if the consideration could take the form of cash rather than securities at the listed entity's election\), the maximum number of securities which may ultimately be issued under the agreement will count towards variable C and will reduce the entity's available placement capacity, unless the agreement provides that the future issue of securities will be subject to security approval.](#)

¹¹ For the avoidance of doubt, the formula in Listing Rule 7.1 follows the normal convention that operations in brackets or parentheses are performed first. Therefore, variable A is first multiplied by variable B, and variable C is then subtracted. If the result of that mathematical /cont.

$$(A \times B) - C$$

where:

- A = the number of fully paid ordinary securities on issue at the commencement of the relevant period,
- plus the number of fully paid ordinary securities issued in the relevant period under an exception in Listing Rule 7.2 other than exception 9, 16 or 17,¹²
 - plus the number of fully paid ordinary securities issued in the relevant period on the conversion of convertible securities within Listing Rule 7.2 exception 9 where:
 - the convertible securities were issued or agreed to be issued before the commencement of the relevant period;¹³ or
 - the issue of, or agreement to issue, the convertible securities was approved, or taken under these rules to have been approved,¹⁴ under Listing Rule 7.1 or 7.4,
 - plus the number of fully paid ordinary securities issued in the relevant period under an agreement to issue securities within Listing Rule 7.2 exception 16 where:
 - the agreement was entered into before the commencement of the relevant period;¹⁵ or
 - the agreement or issue was approved, or taken under these rules to have been approved,¹⁶ under Listing Rule 7.1 or 7.4,
 - plus the number of any other fully paid ordinary securities issued in the relevant period with approval under Listing Rule 7.1 or 7.4,¹⁷
 - plus the number of partly paid ordinary securities that became fully paid in the relevant period,

operation is zero or a negative number, the entity does not have the placement capacity available under Listing Rule 7.1 to make the issue without security holder approval.

¹² Issues under exceptions 9, 16 or 17 of Listing Rule 7.2 are excluded from the first bullet point in the definition of variable A and dealt with separately in the second, third and fourth bullet points to prevent them being prematurely included in variable A. To illustrate, without the exclusion of issues under exception 9, a listed entity could use its 15% issuance capacity under Listing Rule 7.1 to issue convertible securities that convert into fully paid ordinary securities, convert those securities shortly thereafter and have the resulting fully paid shares immediately counted in variable A (because those securities are then issued under an exception in rule 7.2).

¹³ The formula in Listing Rule 7.1 looks back over the relevant period to determine if the entity has exceeded its 15% placement limit over that period. If the convertible securities were issued or agreed to be issued before the commencement of the relevant period, they will cease to have any ongoing effect on the calculation of the entity's placement capacity (at the very latest) by the conclusion of the relevant period.

¹⁴ The reference to an issue of convertible securities being "taken to be approved" under Listing Rule 7.1 is a reference to an issue of convertible securities under paragraph (a) of Listing Rule 7.2 exception 9 (ie an issue of convertible securities made before the entity was listed where it disclosed the existence and material terms of the convertible securities in the prospectus, PDS or information memorandum lodged with ASX under Listing Rule 1.1 condition 3). Under Listing Rule 7.2 exception 9, such an issue is taken to be approved under Listing Rule 7.1.

¹⁵ Again, the formula in Listing Rule 7.1 looks back over the relevant period to determine if the entity has exceeded its 15% placement limit over that period. If the agreement to issue the equity securities was entered into before the commencement of the relevant period, it will cease to have any ongoing effect on the calculation of the entity's placement capacity (at the very latest) by the conclusion of the relevant period.

¹⁶ The reference to an agreement being "taken to be approved" under Listing Rule 7.1 is a reference to an agreement to issue of securities under paragraph (a) of Listing Rule 7.2 exception 16 (ie an agreement entered into before the entity was listed where it disclosed the existence and material terms of the agreement in the prospectus, PDS or information memorandum lodged with ASX under Listing Rule 1.1 condition 3). Under Listing Rule 7.2 exception 16, such an issue is taken to be approved under Listing Rule 7.1.

¹⁷ This includes fully paid ordinary securities issued in the relevant period under an agreement to issue securities within Listing Rule 7.2 exception 17 where the issue is subsequently approved under Listing Rule 7.1 in accordance with that exception.

- less the number of fully paid ordinary securities cancelled in the relevant period;¹⁸

B = 15%;

C = the number of equity securities issued or agreed to be issued in the relevant period that are not issued:

- with the approval of the holders of its ordinary securities under Listing Rule 7.1 or 7.4;
- under Listing Rule 7.1A.2; or
- under an exception in Listing Rule 7.2; and

“relevant period” means:

- if the entity has been admitted to the official list for 12 months or more, the 12 month period immediately preceding the date of the issue or agreement; or
- if the entity has been admitted to the official list for less than 12 months, the period from the date the entity was admitted to the official list to the date immediately preceding the date of the issue or agreement.

Variable A in the formula above is the base amount of capital on which the 15% placement capacity in Listing Rule 7.1 is calculated.

The product of A and B is the aggregate placement capacity available to an entity under Listing Rule 7.1 over the relevant period.

Variable C is the amount of the aggregate 15% placement capacity that has already been used during the relevant period.

The difference between the aggregate 15% placement capacity and C, therefore, is the remainder of that capacity available at the conclusion of the relevant period.

2.2 The formula for calculating an entity’s additional 10% placement capacity

Listing Rule 7.1A.2 provides that in addition to issues under Listing Rule 7.1, an eligible entity which has obtained a 7.1A mandate may, during the period of the mandate, issue or agree to issue a number of equity securities calculated in accordance with the following formula:¹⁹

$$(A \times D) - E$$

where:

A = has the same meaning as in Listing Rule 7.1;

D = 10%;

¹⁸ This includes fully paid ordinary securities that are the subject of a buy-back by the entity during the relevant period and that are cancelled pursuant to section 257H(3) of the Corporations Act.

¹⁹ Again, for the avoidance of doubt, the formula in Listing Rule 7.1A.2 follows the normal convention that operations in brackets or parentheses are performed first. Therefore variable A is first multiplied by variable D, and variable E is then subtracted. If the result of that mathematical operation is zero or a negative number, the entity does not have the placement capacity available under Listing Rule 7.1A.2 to make the issue and must either resort to its available placement capacity under Listing Rule 7.1 or seek security holder approval to the issue.

E = the number of equity securities issued or agreed to be issued under Listing Rule 7.1A.2 in the relevant period where the issue or agreement has not been subsequently approved by the holders of its ordinary securities under Listing Rule 7.4; and

“relevant period” has the same meaning as in Listing Rule 7.1.

Variable A in the formula above is the base amount of capital on which the 10% additional placement capacity in Listing Rule 7.1A.2 is calculated. It is the same as variable A in Listing Rule 7.1.

The product of A and D is the aggregate additional placement capacity available to an eligible entity under Listing Rule 7.1A.2 over the relevant period.

Variable E is the amount of the aggregate 10% additional placement capacity that has already been used during the relevant period.

The difference between the aggregate 10% additional placement capacity and E, therefore, is the remainder of that capacity available at the conclusion of the relevant period.

2.3 The relevant date for applying these formulae

Listing Rules 7.1 and 7.1A.2 both operate at a point in time, being the date (the “relevant date”) on which an entity is proposing to issue securities or to enter into an agreement to issue securities.

Where there is no distinct agreement to issue securities, as will typically be the case where there is an offer of securities to multiple investors under a prospectus, PDS or information memorandum, the relevant date will be the date the entity is proposing to issue those securities. The entity’s placement capacity under Listing Rules 7.1 and 7.1A.2 should be tested on that date.

Where there is a distinct agreement to issue securities, as will typically be the case under an agreement to issue securities to a single placee or small number of placees, the relevant date is the date of the agreement. The entity’s placement capacity under Listing Rules 7.1 and 7.1A.2 should be tested on the date of the agreement. Provided the entity has the placement capacity to agree to issue the securities on that date, the subsequent issue of securities under the agreement will fall within exception 16 in Listing Rule 7.2.

2.4 Applying these formulae on the relevant date

Where the entity is relying on its Listing Rule 7.1 placement capacity, the number of securities issued or agreed to be issued on the relevant date must be less than or equal to the number calculated in accordance with the formula in that rule or else the issue or agreement must be approved by the holders of the entity’s ordinary securities under Listing Rule 7.1.

Where the entity is relying on its Listing Rule 7.1A.2 placement capacity, the number of securities issued or agreed to be issued under Listing Rule 7.1A.2 on the relevant date must be less than or equal to the formula in that rule or else the issue or agreement falls outside of the entity’s additional placement capacity under Listing Rule 7.1A.2 and can only be made without the approval of the holders of the entity’s ordinary securities if it falls within the entity’s 15% placement capacity under Listing Rule 7.1.

If on the relevant date an entity is undertaking one or more issues of equity securities and/or entering into one or more agreements to issue equity securities, these must be aggregated to determine if the total number of equity securities being issued or agreed to be issued on the relevant date exceeds the formula in Listing Rule 7.1 or 7.1A.2 (as applicable).

2.5 The relevant period considered in these formulae

Listing Rules 7.1 and 7.1A.2 both require a determination of the “relevant period”. If the entity has been admitted to the official list for at least 12 months, this is the 12 month period immediately preceding the “relevant date”. If the

entity has been admitted to the official list for less than 12 months, this is the period from the date the entity was admitted to the official list to the date immediately preceding the “relevant date”.

For these purposes, “month” is taken to mean a calendar month and the relevant date itself is not counted in the period.²⁰

So, if the entity has been admitted to the official list for at least 12 months and the relevant date is 1 March ~~2017~~, the relevant period runs from the start of the day on 1 March ~~2016~~ of the previous calendar year²¹ and finishes at the end of the day on 28 February ~~2017~~.

If the entity was admitted to the official list on 15 July ~~2016~~ of the previous calendar year and the relevant date is 1 March ~~2017~~, the relevant period runs from the start of the day on 15 July ~~2016~~ of the previous calendar year and finishes at the end of the day on 28 February ~~2017~~.

2.6 Calculating variable A

Variable A in the formulae in Listing Rules 7.1 and 7.1A.2 only includes fully paid ordinary securities on issue at the commencement of the relevant period and certain fully paid ordinary securities that are issued, paid up or cancelled over the course of the relevant period.²²

An agreement to issue fully paid ordinary securities, even one that has been approved by security holders under Listing Rule 7.1 or 7.4, only gets factored into variable A if and when the securities agreed to be issued are actually issued.

Issues of, or agreements to issue, any other class of security are ignored for the purposes of calculating variable A.

Unless ASX determines otherwise, each fully paid ordinary security referred to in the definition of variable A counts as one security in working out the value of that variable.²³

An example of where ASX may determine that some or all of the fully paid ordinary securities referred to in variable A should count as some value other than one is where an entity has consolidated, subdivided or otherwise reconstructed its capital over the relevant period. In that case, ASX will make appropriate adjustments to ensure that the numbers are all calculated on a post consolidation, subdivision or reconstruction basis and the formulae in Listing Rules 7.1 and 7.1A.2 operate as intended.

2.7 Calculating variables C and E

Unlike variable A, variables C and E in the formulae in Listing Rules 7.1 and 7.1A.2 factor in all equity securities issued or agreed to be issued²⁴ over the relevant period, including partly paid ordinary securities and securities that are not ordinary securities.

Where any of the equity securities referenced in variable C or E are not fully paid ordinary securities, to “compare apples with apples”, it is necessary to convert them to their equivalent in fully paid ordinary securities. For these purposes, unless ASX determines otherwise:

²⁰ Cf ASIC Regulatory Guide 7 *Calculating time periods*.

²¹ Or, if you prefer, as at the end of the day on ~~29~~ the last day of February ~~2016~~, since the two points in time are the same.

²² The fact that securities may have been classified as “restricted securities” under the Listing Rules does not make them a separate class (see the note to the definition of “class” in Listing Rule 19.12). Accordingly, restricted fully paid ordinary securities on issue 12 months prior to the relevant date, or that fall within the different bullet points in the definition of variable A, are counted in variable A. The same applies to fully paid ordinary securities that are subject to voluntary escrow.

²³ Listing Rule 7.1B.1(c).

²⁴ If an agreement to issue equity securities is entered into but then cancelled during the relevant period, it is included in variables C and E from the point it is entered into but ceases to be included in variables C and E from the point it is cancelled.

- partly paid ordinary securities are counted as the maximum number of fully paid ordinary securities into which they can be paid up;²⁵
- convertible securities are counted as the maximum number of fully paid ordinary securities into which they can be converted;²⁶ and
- any other types of equity securities are counted as ASX decides.²⁷

Again, an example of where ASX may determine that some or all of the equity securities referred to in variable C or E should count as a different value to that set out above is where an entity has consolidated, subdivided or otherwise reconstructed its capital over the relevant period. In that case, ASX will make an appropriate adjustment to ensure that all numbers are calculated on a post consolidation, subdivision or reconstruction basis and the formulae in Listing Rules 7.1 and 7.1A.2 operate as intended.

To calculate variable E in Listing Rule 7.1A.2, it is also necessary to determine the number of equity securities issued or agreed to be issued under Listing Rule 7.1A.2 in the relevant period. For these purposes, unless ASX determines otherwise, an issue is taken to be made under Listing Rule 7.1A.2 if the issue complies with all of the requirements in Listing Rule 7.1A and either:

- the entity has stated in its announcement of the proposed issue under Listing Rule 3.10.3 or in its application for quotation of the securities under Listing Rule 2.7 that the issue is being, or has been, made under Listing Rule 7.1A.2; or
- ASX determines that the issue should be taken to have been made under Listing Rule 7.1A.2.²⁸

2.8 Calculating the number of securities being issued or agreed to be issued

Listing Rules 7.1 and 7.1A.2 allow an entity to issue equity securities without the approval of the holders of the entity's ordinary securities only if the number of securities issued or agreed to be issued on the relevant date is less than or equal to the formula in the applicable rule.

Again, where any of the equity securities issued or agreed to be issued on the relevant date are not fully paid ordinary securities, to "compare apples with apples", it is necessary to convert them to their equivalent in fully paid ordinary securities. The same rules apply here as apply when calculating variables C and E, set out in the preceding section.

2.9 The interaction between Listing Rules 7.1 and 7.1A

The placement capacities in Listing Rule 7.1 and 7.1A.2 operate independently of each other.

²⁵ Listing Rule 7.1B.1(d).

²⁶ Listing Rule 7.1B.1(e). Further guidance on how convertible securities are treated under Listing Rules 7.1 and 7.1A can be found in '5 The application of Listing Rules 7.1 and 7.1A to convertible securities' ~~on page 30.~~

²⁷ Listing Rule 7.1B.1(f). It would be most unusual for an entity to have a class of equity securities on issue that are not fully paid or partly paid ordinary securities or convertible securities and that required ASX to make a decision on how they should be counted under this rule (noting that an entity can generally only have one class of ordinary securities under Listing Rule 6.2 and that preference shares which do not have any rights of conversion into another class of equity security are excluded from the restrictions in Listing Rules 7.1 and 7.1A by Listing Rule 7.2 exception 11).

²⁸ Listing Rule 7.1B.5. Otherwise an issue is taken to be made under Listing Rule 7.1 rather than under Listing Rule 7.1A.2 (Listing Rule 7.1B.4). ASX will generally only make a determination that an issue should be taken to have been made under Listing Rule 7.1A.2 rather than Listing Rule 7.1 where it is clear to ASX that an entity was intending to use its additional 10% placement capacity under the former rule but overlooked mentioning that in its announcement of the proposed issue under Listing Rule 3.10.3 and in its application for quotation of the securities under Listing Rule 2.7 and where the market has not traded for any material period believing that the issue was made under Listing Rule 7.1 rather than Listing Rule 7.1A.2.

When an entity issues or agrees to issue equity securities under Listing Rule 7.1 without security holder approval, that issue or agreement uses up part of its 15% placement capacity under that rule.

Similarly, where an eligible entity with a 7.1A mandate issues or agrees equity securities under Listing Rule 7.1A.2, that issue or agreement uses up part of its 10% placement capacity under that rule.

An eligible entity with a 7.1A mandate which has capacity available under both Listing Rules 7.1 and 7.1A and which is making an issue that complies with all of the other requirements in Listing Rule 7.1A, can elect which of those capacities it wishes to use. Generally, it will make sense for the entity, where it can, to elect to use its Listing Rule 7.1A.2 capacity in preference to its Listing Rule 7.1 capacity, so as to retain the greater freedom to issue equity securities that Listing Rule 7.1 affords.

For these reasons, an eligible entity with a 7.1A mandate must be clear which rule it is proceeding under whenever it issues or agrees to issue equity securities.²⁹ If it is being done under Listing Rule 7.1A.2, that fact should be stated in its Appendix 3B announcement of the proposed issue under Listing Rule 3.10.3 or in its Appendix 2A application for quotation of the securities under Listing Rule 2.7.³⁰

2.10 Worked examples and work sheets for calculating placement capacities

Annexure A contains some worked examples of how to calculate an entity's placement capacity under Listing Rules 7.1 and 7.1A.2.

Annexures B and C contain work sheets to calculate an entity's placement capacity under Listing Rules 7.1 and 7.1A.2 respectively. They are available on ASX Online and can also be downloaded in an editable form from: [the ASX website](#).

~~www.asx.com.au/regulation/compliance/compliance-downloads.htm~~

Where an entity lodges an Appendix 3B announcing a proposed issue of equity securities without security holder approval using its Listing Rule 7.1 or 7.1A.2 placement capacity, the entity will be prompted by the Appendix 3B to complete the relevant work sheet to confirm that it has the available placement capacity under those rules and to send it to its ASX Listings Compliance adviser.³¹

Likewise, where an entity lodges an Appendix 2A applying for the quotation of equity securities issued without security holder approval using its Listing Rule 7.1 or 7.1A.2 placement capacity, and it hasn't lodged an Appendix 3B for the issue, the entity will be prompted by the Appendix 2A to complete the relevant work sheet to confirm that it has the available placement capacity under those rules and to send it to its ASX Listings Compliance adviser.³²

This ensures that entities contemplating an issue of equity securities using their placement capacity under Listing Rule 7.1 or 7.1A.2 undertake appropriate due diligence to verify that they have the available placement capacity to make the issue without security holder approval.

The work sheets provided to ASX Listings Compliance are for the internal use of ASX Listings Compliance and are not released by ASX to the market. ASX Listings Compliance does not "pre-vet" these work sheets and an entity does not have to wait after lodging the work sheets for any confirmation from ASX Listings Compliance before it can proceed with the proposed issue of equity securities.

²⁹ Among other reasons, where an issue is made under Listing Rule 7.1A.2, the entity will need to be able to demonstrate that it has complied with the minimum price requirement in Listing Rule 7.1A.3 (see '3.6 The consideration must be a cash amount not less than the prescribed minimum issue price' ~~on page 14~~).

³⁰ Listing Rule 7.1B.5. See also note 28 above and the accompanying text.

³¹ See '8.1 Appendix 3B requirements' ~~on page 52~~.

³² See '8.2 Appendix 2A requirements' ~~on page 53~~.

ASX Listings Compliance will review the work sheets in due course and, if it identifies any issues with the calculations in the work sheet, it will take those issues up with the entity.

It is the responsibility of the entity to correctly calculate its placement capacity under Listing Rules 7.1 and 7.1A.2 and to ensure that a proposed issue of equity securities will not exceed that capacity. An entity should not be relying on ASX Listings Compliance to identify errors in its work sheets or calculations.

If at any time ASX has concerns that an entity may have exceeded its placement capacity under Listing Rule 7.1 or 7.1A.2, ASX may require the entity to provide it with the applicable work sheet, with all details completed, to demonstrate that the entity is in compliance with those rules.³³

3. The requirements for accessing the additional 10% placement capacity

3.1 The entity must be an “eligible entity”

To be eligible to access the additional 10% placement capacity in Listing Rule 7.1A, at the date of the AGM at which the entity is seeking its 7.1A mandate,³⁴ it must:

- have a market capitalisation³⁵ of less than the prescribed amount³⁶ (currently \$300 million); and
- not be included in the S&P/ASX 300 Index.³⁷

If the entity meets both of these eligibility criteria at the date of the AGM and it obtains a 7.1A mandate, that mandate continues to be valid notwithstanding that the entity's market capitalisation may increase above \$300 million, or it may be included in the S&P/ASX 300 Index, at some time after that date and during the 12 month life of the mandate.³⁸

As to the first of these criteria, an entity's market capitalisation is calculated by multiplying the number of securities in the entity's main class³⁹ by the price determined by ASX to be a fair measure of the market value of those securities. For these purposes, ASX will generally treat the closing price of those securities on ASX on the last trading day before the date of the AGM as a fair measure of the market value of those securities.⁴⁰

As to the second of these criteria, the S&P/ASX 300 Index is re-balanced twice a year in March and September, with changes taking effect after market close on the third Friday of March and September. ASX publishes on the market announcements section of its website under the stock code “ZSP” an announcement with the names of the

³³ Listing Rule 18.7.

³⁴ See ‘3.2 The entity must have a 7.1A mandate’ and ‘3.3 The 7.1A mandate must be obtained at the entity's AGM’ below.

³⁵ “Market capitalisation” is defined in Listing Rule 19.12 to mean the number of securities in the entity's main class on issue multiplied by the price determined by ASX to be a fair measure of the market value of those securities.

³⁶ “Prescribed amount” is defined in Listing Rule 19.12 ~~to mean 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 AGM to have the additional capacity to issue equity securities under Listing Rule 7.1A.~~

³⁷ See the opening paragraph of Listing Rule 7.1A and the definition of “eligible entity” in Listing Rule 19.12.

³⁸ In the rare event that an entity adjourns its AGM without having passed a special resolution approving a 7.1A mandate and then passes that resolution at the adjourned meeting, eligibility is still determined as at the date of the original AGM rather than the date of the adjourned meeting. The 12 month life of the mandate also runs from the date of the original AGM and not from the date of the adjourned meeting. In each case, this is because, at law, the adjourned meeting is taken to be a continuation of the original meeting (*Scadding v Lorant* [1851] 3 HL Cas 418).

³⁹ “Main class” is defined in Listing Rule 19.12 to mean the ordinary securities of the entity or, if ordinary securities are not to be quoted, the class of securities designated by ASX. 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.

⁴⁰ ASX may use a different measure of fair market value if it considers that there is evidence that the closing price on ASX of the entity's main class of securities on the last trading day before the date of the AGM has been manipulated to reduce that price to a level where the entity's market capitalisation is less than \$300million.

entities that are to be added to or removed from the S&P/ASX 300 Index. These announcements are made on the second Friday of March and the first Friday of September.

3.2 The entity must have a 7.1A mandate

To access the additional 10% placement capacity in Listing Rule 7.1A, an entity must have secured a 7.1A mandate – that is, an approval from the holders of its ordinary securities by way of special resolution that it should have the additional capacity to issue securities provided for in Listing Rule 7.1A.⁴¹

The Listing Rules do not define the expression “special resolution” and so it takes its meaning under the Corporations Act.⁴² 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.⁴³

A 7.1A mandate is permissive and not obligatory. An entity with such a mandate is free to use it or not, as it determines.

3.3 The 7.1A mandate must be obtained at the entity’s AGM

A 7.1A mandate can only be sought at an entity’s AGM and not at any other meeting of security holders during the year.⁴⁴

For the 7.1A mandate to be valid, the notice of meeting for the AGM must include all of the disclosures required by Listing Rule 7.1A.3.⁴⁵ These are explained in further detail in section 7.3 below.

The Listing Rules do not define what is an AGM for these purposes. Most listed entities will designate a particular meeting of security holders each year to be its AGM and will deal with issues at that meeting such as the tabling of annual financial statements and elections of directors.⁴⁶ ASX will generally regard that meeting as the entity’s AGM for the purposes of Listing Rule 7.1A.⁴⁷

If an entity seeks to bootstrap itself into Listing Rule 7.1A by designating as an AGM a meeting that is really an extraordinary general meeting of security holders, any 7.1A mandate purportedly passed at the meeting is not effective for the purposes of the Listing Rules. In such a case, ASX may direct the entity⁴⁸ that it can only rely on its Listing Rule 7.1 placement capacity and that any issue of securities outside that capacity must be approved by the holders of its ordinary security holders.

⁴¹ See the opening paragraph of Listing Rule 7.1A.

⁴² Listing Rule 19.3.

⁴³ See section [249L-250MA](#) (Australian companies) and [252J\(e\)-253LA](#) (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~~[managed](#) investment scheme, ASX applies the definition to listed foreign companies and to listed Australian and foreign trusts that are not registered managed investment schemes.

⁴⁴ See the opening paragraph of Listing Rule 7.1A.

⁴⁵ An approval of security holders is not effective under the Listing Rules unless the notice of meeting includes everything that the Listing Rules require it to include: Listing Rule 14.6.

⁴⁶ Under the Corporations Act, an Australian company is required to hold its initial AGM within the first 18 months of its registration (section 250N(1)) and subsequent AGMs at least once in each calendar year and within 5 months after the end of its financial year (section 250N(2)).

⁴⁷ It is possible, although it would be rare, for an entity to have two AGMs within the one calendar year – for example, if it were to change its financial year end and to have an interim substituted accounting period of less than one year.

⁴⁸ Pursuant to Listing Rule 18.8.

ASX notes that listed trusts which are registered as managed investment schemes under the Corporations Act are not required under that Act to hold an AGM. Where such a trust is required by its constitution to hold an AGM, or otherwise has a demonstrated track record of voluntarily holding regular AGMs, ASX will treat each such meeting as an AGM for the purposes of Listing Rule 7.1A, even though it may not be considered to be an AGM under the Corporations Act.

If a listed trust does not hold an AGM, it cannot avail itself of the additional placement capacity in Listing Rule 7.1A.⁴⁹

3.4 The 7.1A mandate must still be current

To fit within Listing Rule 7.1A.2, an issue of equity securities must be made, or an agreement to issue equity securities must be entered into, during the period of the 7.1A mandate.⁵⁰

A 7.1A mandate commences on the date of the AGM at which the resolution approving the mandate is passed and expires on the earliest of:

- the date that is 12 months after the date of the AGM at which the mandate was approved;
- the time and date of the entity's next AGM;⁵¹ and
- the time and date on which the entity receives security holder approval for a transaction under either Listing Rule 11.1.2 (significant change to nature or scale of activities) or 11.2 (disposal of main undertaking).⁵²

Again, in calculating the 12 month life of a 7.1A mandate, "month" is taken to mean a calendar month and the date of the AGM approving the mandate is not counted in the period.⁵³ So, if the date of the AGM approving a 7.1A mandate is 30 September ~~2017~~, the mandate commences upon the passage of the special resolution at the AGM and expires at the earliest of:

- the end of the day on 30 September ~~2018~~[in the next calendar year](#);
- if the entity holds its next AGM on or before 30 September ~~2018~~[in the next calendar year](#), the commencement of its next AGM; or
- if the entity receives approval for a transaction under Listing Rule 11.1.2 or 11.2 before then, the time the resolution is passed conferring that approval.

An entity may seek a 7.1A mandate at the same meeting as it seeks approval for a transaction under Listing Rule 11.1.2 or 11.2, provided that meeting is its AGM and the special resolution conferring the mandate is passed after the resolution approving the transaction under Listing Rule 11.1.2 or 11.2.

⁴⁹ Where a listed trust is not required by its constitution and has not expressed an intent in its listing prospectus, PDS or information memorandum to hold a regular AGM, ASX will disregard any attempt by the trust to bootstrap itself into Listing Rule 7.1A by designating a meeting as an AGM.

⁵⁰ By virtue of the words "during the period of the approval" in the opening paragraph of Listing Rule 7.1A.2.

⁵¹ The termination of a 7.1A mandate at each AGM means that an entity's 7.1A mandate may not last a full 12 months. This will be the case where the entity's latest AGM occurs less than 12 months after the preceding AGM and a resolution approving a 7.1A mandate is not proposed or is defeated at the latest AGM. This is intentional. If a resolution approving a 7.1A mandate is not proposed or is defeated at an AGM, ASX does not consider it appropriate that the entity continue to rely on one approved at an earlier AGM.

⁵² Listing Rule 7.1A.1.

⁵³ See note 20 above and accompanying text.

3.5 The entity must be issuing securities in an existing class of quoted securities

Only securities in an existing class⁵⁴ of quoted equity securities can be issued under Listing Rule 7.1A.⁵⁵ If an entity wishes to issue securities in a class that is not presently quoted on ASX without security holder approval, it must rely on its Listing Rule 7.1 placement capacity or the issue must fall within an exception in Listing Rule 7.2.

3.6 The consideration must be a cash amount not less the prescribed minimum issue price

Securities can only be issued under Listing Rule 7.1A for a cash amount which is not less than the prescribed minimum issue price mentioned below. If an entity wishes to issue securities for a non-cash consideration or for a cash consideration that is lower than the prescribed minimum issue price without security holder approval, it must rely on its Listing Rule 7.1 placement capacity or the issue must fall within an exception in Listing Rule 7.2.

For the avoidance of doubt, an issue of securities in satisfaction of a debt owing by, or as payment for services rendered to, the entity is an issue for non-cash consideration and therefore not permitted under Listing Rule 7.1A.⁵⁶

The prescribed minimum issue price is 75% of the volume weighted average price ("VWAP")⁵⁷ for securities in the relevant quoted class, calculated over the 15 trading days on which trades in that class were recorded⁵⁸ immediately before:

- the date on which the price at which the securities are to be issued was agreed by the entity and the recipient of the securities; or
- if the securities are not issued within 10 trading days of that date, the date on which the securities were issued.⁵⁹

For convenience, whichever of these two dates is applicable is referred to as the "pricing date" and the 15 trading days on which trades in the relevant class of equity securities were recorded immediately prior to the pricing date are referred to as the "pricing period".

Setting the pricing period as the 15 trading days on which trades actually occur immediately prior to the pricing date, rather than a shorter period, is intended to minimise the risk that securities might be issued at an artificially low price when there has been a temporary drop in the market price of the entity's securities.

⁵⁴ The notion of a 'class' of securities in the Listing Rules differs in some respects from the equivalent notion under the Corporations Act. For example, the note to the definition of "class" in Listing Rule 19.12 confirms that partly paid securities are a different class to fully paid securities for the purposes of the Listing Rules, whereas section 605(2) of the Corporations Act provides that securities are not taken to be different classes merely because some of the securities are fully paid and others are partly paid, or because different amounts are paid up or remain unpaid on the securities.

⁵⁵ Listing Rule 7.1A.3.

⁵⁶ If an entity wishes to issue securities under its Listing Rule 7.1A.2 capacity to satisfy a debt (including a debt for services rendered), the proper course is for the entity to issue the securities for a cash amount and then to apply the cash received in payment of the debt. ASX may ask an entity under Listing Rule 18.7 to provide a copy of its bank statements to verify that it has issued securities for a cash amount, as required under Listing Rule 7.1A.

⁵⁷ "Volume weighted average price", or VWAP, in relation to particular securities for a particular period, means the volume weighted average price of trading in those securities on the ASX market and the ~~Chi-X~~TMX 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 (Listing Rule 19.12). Trading on the ASX market and ~~Chi-X~~TMX 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.

⁵⁸ Note that this period may therefore be longer than the previous 15 trading days, if on any of those days there were no trades recorded in the relevant class.

⁵⁹ Listing Rule 7.1A.3.

Setting the initial pricing date as the date on which the entity and the potential investor agree the price for the issue and calculating the minimum price by reference to VWAP over the 15 trading days on which trades actually occur immediately prior to that date allows the parties to calculate the minimum price required under Listing Rule 7.1A with certainty at that date and ensure that this requirement has been satisfied. This is subject to the proviso that the securities must be issued within 10 trading days of that date to ensure that the pricing is still reasonably current. If the securities are not able to be issued within that 10 trading day period, then the pricing date defaults to the date on which the securities are issued.

VWAP calculations can be obtained from ~~ASX Customer Service or other~~ third party service providers. A listed entity may use any recognised information service provider (such as Reuters, Bloomberg or IRESS) as the source of its VWAP calculation.

The Appendix 3B an entity is required to lodge when it announces a proposed issue of equity securities under Listing Rule 7.1A will prompt the entity to send to its ASX Listings Compliance adviser a completed work sheet in the form of Annexure C to confirm that the entity has the available capacity to issue the securities. The work sheet will require the entity to state the pricing date, the pricing period and the VWAP for securities in the relevant class over that period. It will also ask the entity to identify the source of its VWAP calculation.

ASX is alive to entities purporting to issue securities under a combination of their Listing Rules 7.1 and 7.1A.2 placement capacities and allocating a lower price to the former and a higher price to the latter in an effort to appear compliant with the minimum pricing requirement for issues under Listing Rule 7.1A. If the average price at which the securities are being issued across both capacities is less than the minimum price required under Listing Rule 7.1A, ASX will regard that as contrary to the spirit and intent of the Listing Rules.⁶⁰ In such a case, ASX is likely to direct the entity⁶¹ that it cannot rely on its Listing Rule 7.1A placement capacity to make the issue and, if the issue exceeds its Listing Rule 7.1 placement capacity, it must be approved by security holders under Listing Rule 7.1.

4. Permitted issues under Listing Rule 7.2

4.1 The effect of the exceptions in Listing Rule 7.2

Listing Rule 7.2 lists different types of security issues to which Listing Rules 7.1 and 7.1A do not apply.

Issues under an exception in Listing Rule 7.2 are specifically excluded from variables C and E and hence do not expend any of the entity's placement capacity under Listing Rules 7.1 and 7.1A.2.⁶² They can therefore be made without obtaining shareholder approval under Listing Rule 7.1,⁶³ regardless of their size and the amount of placement capacity an entity has left under Listing Rules 7.1 and 7.1A.2.

If the securities being issued under Listing Rule 7.2 are fully paid ordinary securities, they may⁶⁴ also be included in variable A and therefore increase the base level of fully paid ordinary securities on which the 15% and 10% placement capacities in Listing Rules 7.1 and 7.1A.2 are calculated.

⁶⁰ And therefore a breach by the entity of Listing Rule 19.2.

⁶¹ Pursuant to Listing Rule 18.8.

⁶² In the case of Listing Rule 7.1, this is because any issue under Listing Rule 7.2 is specifically excluded from variable C in the first bullet point of the definition of that variable. In the case of Listing Rule 7.1A, this is because variable E in Listing Rule 7.1A.2 only counts securities specifically issued under that rule and not those issued under Listing Rule 7.2.

⁶³ Although in some cases it may require approval under a different Listing Rule or other legal requirement – for example, exception 8, which applies to issues approved by security holders under item 7 of section 611 of the Corporations Act, and exception 14, which applies to issues of securities that have been approved by security holders under Listing Rule 10.11 or 10.14.

⁶⁴ They will count in variable A if they were issued:

- under an exception in Listing Rule 7.2 other than exception 9, 16 or 17;

/cont.

4.2 Exception 1 – pro rata issues

Listing Rule 7.2 exception 1⁶⁵ excludes from the restrictions in Listing Rules 7.1 and 7.1A an issue of securities to holders of ordinary securities made under a pro rata issue,⁶⁶ as well as an issue of securities to the holders of other equity securities to the extent that the terms of issue of those other equity securities permit participation in the pro rata issue.

These issues are excluded from the restrictions in Listing Rules 7.1 and 7.1A as all security holders have an opportunity to participate in the issue and to maintain their proportionate equity interest in the entity.

4.3 Exception 2 – underwritings of pro rata issues

Listing Rule 7.2 exception 2⁶⁷ excludes from the restrictions in Listing Rules 7.1 and 7.1A an issue of securities under an agreement to underwrite the shortfall⁶⁸ on:

- a pro rata issue to holders of ordinary securities; or
- a pro rata issue to holders of ordinary securities and to holders of other equity securities to the extent that the terms of issue of the equity securities permit participation in the pro rata issue.

These issues are excluded from the restrictions in Listing Rules 7.1 and 7.1A since the pro rata nature of the underlying issue ensures that all security holders have had an opportunity to participate in the issue and to maintain their proportionate equity interest in the entity.

To qualify for this exception, the entity must have disclosed:⁶⁹

- the name of the underwriter(s);
- the extent of the underwriting;⁷⁰

- on the conversion of convertible securities within Listing Rule 7.2 exception 9 where the convertible securities were issued or agreed to be issued before the commencement of the relevant period or the issue of, or agreement to issue the convertible securities was approved or taken to be approved under Listing Rule 7.1 or 7.4;
- under an agreement to issue securities within Listing Rule 7.2 exception 16 where the agreement was entered into before the commencement of the relevant period or was approved or taken to be approved under Listing Rule 7.1 or 7.4; or
- otherwise with approval under Listing Rule 7.1 or 7.4 (for example, under an agreement to issue securities within Listing Rule 7.2 exception 17 where the issue was subsequently approved under Listing Rule 7.1 in accordance with that exception).

See the first, second and third bullet points of Listing Rule 7.1 and notes 12, 14 and 16 above.

⁶⁵ There is an equivalent exception in Listing Rule 10.12 exception 1, meaning that a related party or other person caught by Listing Rule 10.11 can participate in a pro rata issue without obtaining security holder approval under Listing Rule 10.11.

⁶⁶ A pro rata issue must comply with Listing Rule 7.11. The issue can be renounceable or non-renounceable, although if the theoretical rights price for the issue is less than 0.1 cents, the lowest price point at which securities can be traded on ASX, as a practical matter, it will have to be non-renounceable. An issue is not precluded from being a pro rata issue for the purposes of the Listing Rules because security holders with addresses outside Australia and New Zealand are excluded from the issue under Listing Rule 7.7.1 or because security holders are allowed to subscribe for a greater number of securities than their entitlement under Listing Rule 7.11.4 (see the note to Listing Rule 7.2 exception 1 and the definition of “pro rata issue” in Listing Rule 19.12).

⁶⁷ There is an equivalent exception in Listing Rule 10.12 exception 2, meaning that a related party or other person caught by Listing Rule 10.11 can underwrite a pro rata issue without obtaining security holder approval under Listing Rule 10.11.

⁶⁸ Where security holders with addresses outside Australia and New Zealand are excluded from an issue under Listing Rule 7.7.1, ASX regards the securities that would otherwise have been issued to them as forming part of the shortfall.

⁶⁹ The obligation to disclose details of the underwriting does not extend to sub-underwriting arrangements: see the definition of “underwrite” in Listing Rule 19.12 and the note to Listing Rule 7.2 exception 2.

⁷⁰ The reference to the “extent of the underwriting” means the amount or proportion of the issue that is underwritten: see the note to Listing Rule 7.2 exception 2.

- the fee, commission or other consideration⁷¹ payable to the underwriter(s); and
- a summary of the significant events that could lead to the underwriting being terminated.

in the Appendix 3B lodged under Listing Rule 3.10.3 in relation to the pro rata issue or, if the underwriting was entered into after the Appendix 3B was lodged, by market announcement as soon as practicable following the entry of the underwriting agreement. It must also make the issue not later than 15 business days after the close of the offer.

The arrangement with the underwriter must also constitute a genuine underwriting. ASX agrees with the views expressed by the Australian Securities and Investments Commission (“ASIC”) in this regard:

“A central element of underwriting is the assumption of risk by the underwriter—in particular the obligation to subscribe for, or nominate other persons to subscribe for, shares in the event of a shortfall ...

Where an arrangement does not, in substance, involve the assumption of this risk, we take the view that the arrangement is not underwriting. This includes arrangements:

- incorporating terms or conditions that, in the circumstances, effectively give the ‘underwriter’ a general discretion to terminate the underwriting arrangement from the outset (e.g. terms or conditions giving the underwriter a termination right if one or more events over which the underwriter has effective control occur); or*
- that may otherwise be terminated in circumstances that mean that the ‘underwriter’ does not, in effect, bear the risk of the shortfall.*

For example, arrangements that permit the underwriter to be relieved of its obligations following a default by a sub-underwriter—either entirely through termination of the agreement, or by reducing the amount of the underwriting commitment by the amount in default—seek to relieve the underwriter of their obligation to subscribe for securities in the event of a shortfall. Accordingly, we do not consider such arrangements to constitute ‘underwriting’.

Further, arrangements that permit the underwriter to terminate on the basis of an event that is certain, or near certain, to occur (such as a token fall in a relevant market index) are also likely to mean that the underwriter has an option to underwrite and does not, in substance, assume shortfall risk.”⁷²

It should be noted that exception 2 only applies to issues of securities to make up the underwritten shortfall from a pro rata issue. It does not apply to any other issues of securities under an underwriting agreement (for example, in payment of the underwriting fee or any other amount due to the underwriter under the agreement). These other types of issues will therefore only be able to be made without security holder under Listing Rule 7.1 if the entity has sufficient placement capacity available at the time under Listing Rules 7.1 and (if applicable) 7.1A.

4.4 Exception 3 – allocation of shortfalls from pro rata issues

Listing Rule 7.2 exception 3⁷³ excludes from the restrictions in Listing Rules 7.1 and 7.1A an issue of securities to make up the shortfall⁷⁴ on:

⁷¹ The reference to the “fee, commission or other consideration payable” includes any applicable discount the underwriter receives to the issue price payable by participants in the issue: see the note to Listing Rule 7.2 exception 2.

⁷² See ASIC Regulatory Guide 6 *Takeovers: Exceptions to the general prohibition* at paragraphs 6.148 – 6.151. *A fortiori*, someone who has given an undertaking to place securities on a “best endeavours” basis is not an underwriter for the purposes of exception 2.

⁷³ There is no equivalent exception in Listing Rule 10.12 to Listing Rule 7.2 exception 3. Accordingly, a related party or other person caught by Listing Rule 10.11 can only participate in an issue of equity securities to make up the shortfall on a pro rata issue if they receive specific approval to do so under Listing Rule 10.11.

⁷⁴ See note 68 above.

- a pro rata issue to holders of ordinary securities; or
- a pro rata issue to holders of ordinary securities and to holders of other equity securities to the extent that the terms of issue of the equity securities permit participation in the pro rata issue.

These issues again are excluded from the restrictions in Listing Rules 7.1 and 7.1A since the pro rata nature of the underlying issue ensures that all security holders have had an opportunity to participate in the issue and to maintain their proportionate equity interest in the entity.

To fall within exception 3, the following additional conditions must be satisfied:

- the directors of the entity (or if the entity is a trust, the responsible entity of the trust) must have stated as part of the offer that they reserve the right to issue the shortfall and what their allocation policy will be in relation to the shortfall;
- the entity must make the issue no later than 3 months after the close of the offer; and
- the issue price must also not be less than the price at which the securities were offered under the pro rata issue.

In meeting the requirement to state their allocation policy, the directors (or in the case of a listed trust, the responsible entity) should be reasonably specific. It is not sufficient, for example, for them simply to state that they reserve the right to allocate the shortfall in their discretion. They should also state the factors they will take into account in exercising that discretion.

4.5 Exception 4 – DRPs

Listing Rule 7.2 exception 4 excludes from the restrictions in Listing Rules 7.1 and 7.1A an issue of securities under:

- a dividend or distribution plan (“DRP”);⁷⁵ or
- an agreement to underwrite the shortfall on a DRP⁷⁶ where:
 - details of the underwriting agreement were disclosed prior to the date for payment of the dividend or distribution in accordance with Listing Rule 3.10.9; and
 - the entity makes the issue within 15 business days after the date for payment of the dividend or distribution.⁷⁷

In each case above, the DRP must not impose a limit on participation and security holders must be able to elect to receive all of their dividend or distribution as securities.

These types of issues again are excluded from the restrictions in Listing Rules 7.1 and 7.1A because all security holders have an opportunity to participate in the DRP and to maintain their proportionate equity interest in the entity.

If a DRP does impose a limit on participation – for example, a maximum dollar limit on the amount of reinvestment or a maximum limit on the number of securities that a security holder can acquire under the DRP – any issue under

⁷⁵ There is an equivalent exception to this limb of Listing Rule 7.2 exception 4 in Listing Rule 10.12 exception 3, meaning that a related party or other person caught by Listing Rule 10.11 can participate in a DRP that meets the requirements above without obtaining security holder approval under Listing Rule 10.11.

⁷⁶ Under Listing Rule 3.10.9, if an entity enters into or activates an underwriting agreement in relation to a DRP, it must immediately tell ASX the name of the underwriter, the extent of the underwriting, the fee, commission or other consideration payable, and a summary of the significant events that could lead to the underwriting being terminated.

⁷⁷ There is no equivalent exception to this limb of Listing Rule 7.2 exception 4 in Listing Rule 10.12, meaning that a related party or other person caught by Listing Rule 10.11 can only take up equity securities as an underwriter of a DRP if they receive specific approval to do so under Listing Rule 10.11.

the DRP will not qualify under exception 4 and will only be able to be made without security holder under Listing Rule 7.1 if the entity has sufficient placement capacity available at the time under Listing Rules 7.1 and (if applicable) 7.1A.

4.6 Exception 5 – SPPs

Listing Rule 7.2 exception 5⁷⁸ excludes from the restrictions in Listing Rules 7.1 and 7.1A an issue of securities under a security purchase plan (“SPP”) provided:

- the number of securities to be issued is not greater than 30% of the number of fully paid ordinary securities already on issue; and
- the issue price of the securities is at least 80% of the VWAP for securities in that class, calculated over the last 5 days on which sales in the securities were recorded, either before the day on which the issue is announced or before the day on which the issue is made.

Exception 5 is only available once in any 12 month period. This applies even where the size of the issue is less than the 30% limit in the first of the two bullet points above.⁷⁹

Issues under an SPP are excluded from the restrictions in Listing Rules 7.1 and 7.1A because all security holders have an opportunity to participate in the issue, up to the \$30,000 cap imposed in ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547 ~~(as discussed below).~~

An SPP is defined to have the same meaning as a “purchase plan” in ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547.⁸⁰ This instrument allows ASX listed companies and managed investment schemes to offer securities to existing members without a prospectus or PDS provided they meet certain conditions summarised below. The offer must be made to each registered holder of securities in the class in question whose address (as recorded in the register of members) is in a place in which, in the reasonable opinion of the entity, it is lawful and practical for the entity to offer and issue securities to that person.⁸¹

~~For an entity to qualify for the relief in ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547, the following conditions must be satisfied:⁸²~~

- ~~• the entity must be in compliance with its continuous disclosure and financial reporting obligations;~~
- ~~• offers of securities under the SPP must only be made to registered holders of securities in the same class;~~
- ~~• each offer must be made on similar terms and conditions and on a non-renounceable basis;~~
- ~~• a registered holder who is not a custodian must not be issued more than \$30,000 worth of securities under the ASIC relief in any consecutive 12 month period;~~
- ~~• where a registered holder is a custodian:~~

⁷⁸ There is an equivalent exception in Listing Rule 10.12 exception 4, meaning that a related party or other person caught by Listing Rule 10.11 can participate in an SPP that meets the requirements above without obtaining security holder approval under Listing Rule 10.11.

⁷⁹ ASX has sometimes been approached by entities seeking a waiver of the requirement that exception 5 can only be used once in any 12 month period. ASX will only contemplate such a waiver where the total number of shares issued or to be issued under the entity’s SPP over a 12 month period complies with the 30% limit mentioned in the text and the entity satisfies ASX that it will be in compliance with, or has an exemption from, the \$30,000 issuance limit in any 12 month period imposed under ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547.

⁸⁰ Listing Rule 19.12. See also ASIC Regulatory Guide 125 *Share purchase plans*.

⁸¹ See paragraph (a) of the definition of “purchase plan” in section 4 of ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547.

⁸² ~~This is a summary only of the conditions that must be satisfied to qualify for the relief provided in ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547. Entities wishing to rely on that relief should read that instrument in full.~~

- ~~the custodian must certify in writing to the entity that certain conditions have been met;~~
- ~~the custodian must provide the entity with particulars of the relevant beneficiary wishing to participate in the SPP offer and the existing interests of the beneficiary in the relevant securities; and~~
- ~~the entity must be reasonably satisfied that in any consecutive 12 month period, the total application price of the securities to be issued to, or in relation to, any beneficiary of that custodian under the ASIC relief (excluding securities applied for by the custodian on behalf of a beneficiary but not issued) is not more than \$30,000;~~
- ~~the entity must have lodged a cleansing notice with ASX;~~
- ~~the issue price must be less than the market price during a specified period (determined by the entity) in the 30 days before either the date of the offer or the date of the issue;~~
- ~~the written offer document must disclose the method used to calculate the issue price, the relationship between the issue and market price, and the risk that the market price may change between the date of the offer and the date when the securities are issued; and~~
- ~~the entity's securities must not have been suspended from trading on ASX for more than a total of 5 days during the 12 months before the day on which the offer is made under the SPP or, if the securities have been quoted on ASX for less than 12 months, during the period of quotation.~~

For an issue of securities to fall within exception 5, the entity must meet all of the conditions in ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547 apart from the ~~last~~ requirement ~~above that the entity's securities not be suspended from trading on ASX for the prescribed period~~. If the entity does not meet ~~the last~~ that requirement, it can still avail itself of exception 5 but it will not qualify for the relief in ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547 and will therefore have to prepare a prospectus or PDS for the offer under the SPP.

Unlike exceptions 2 and 4, exception 5 does not extend to an issue of securities under an agreement to underwrite the shortfall on an SPP. Accordingly, such an issue will only be able to be made without security holder approval under Listing Rule 7.1 if the entity has sufficient placement capacity available at the time under Listing Rules 7.1 and (if applicable) 7.1A.

It should be noted that a standard waiver is available under Guidance Note 17 *Waivers and In-Principle Advice*, where an entity is seeking approval under Listing Rule 7.1 to an issue of securities under an SPP to which exception 5 of Listing Rule 7.2 would otherwise have applied but for the fact that the number of securities to be issued under the SPP is greater than 30% of the number of fully paid ordinary securities already on issue or because the issue price of the securities is less than 80% of the average market price for securities in that class. In such a case, ASX will grant a standard waiver of Listing Rule 7.3.⁸³ to permit a resolution in a notice of meeting approving the issue of securities under the SPP not to include a voting exclusion statement that excludes the votes of any person who may participate in the SPP or any associate of such a person, provided:

- the SPP is not underwritten; or
- if the SPP is underwritten, the entity excludes any votes cast on the resolution by any proposed underwriter or sub-underwriter of the SPP and their associates.

⁸³ The requirement for a notice of meeting proposing a resolution to approve an issue of securities under Listing Rule 7.1 to include a voting exclusion statement. See also Listing Rules 14.11 and 14.11.1.

4.7 Exceptions 6 and 7 – regulated takeovers and mergers

Listing Rule 7.2 exception 6⁸⁴ excludes from the restrictions in Listing Rules 7.1 and 7.1A an issue of securities under a regulated takeover ~~bid or under a merger by way of scheme of arrangement under Part 5.1 of the Corporations Act.~~

Listing Rule 7.2 exception 7 excludes from the restrictions in Listing Rules 7.1 and 7.1A an issue to fund the cash consideration payable under a regulated takeover ~~bid or under a merger by way of scheme of arrangement under Part 5.1 of the Corporations Act~~, where the terms of the issue are disclosed in the takeover or ~~scheme~~merger documents.

~~For these purposes, “takeover bid” has the same meaning as in section 9 of the Corporations Act—in other words, a takeover bid for an Australian company or managed investment scheme that is made in compliance with Chapter 6 of the Corporations Act.~~

~~Exceptions 6 and 7 therefore only apply to a takeover bid or merger by way of scheme of arrangement involving Australian entities that are regulated by the Corporations Act.~~

Exceptions 6 and 7 have been included as a concession to listed entities, in recognition of the fact that ~~a takeover or acquisition by way of a scheme of arrangement~~takeovers and mergers that are already subject to regulation could be difficult to complete in circumstances where the entity is required to seek approval from its security holders before it can issue securities under, or to fund, the takeover or ~~scheme~~merger. A requirement for security holder approval could also put ~~the entity~~ASX listed entities at a competitive disadvantage to an unlisted bidder ~~or~~ acquirer in a contested ~~takeover/acquisition~~situation. This exception will remain important as the ASX market becomes more global and ASX listed entities become more globally competitive.

~~Exceptions 6 and 7 also recognise the robust regulatory framework and the high level of regulatory and curial oversight applied to takeovers and schemes in Australia, including the regulation of unacceptable conduct and the provision of collateral benefits in Chapter 6 of the Corporations Act.~~

~~In an appropriate case, ASX will consider granting a waiver to extend exceptions 6 and 7 to a merger with an Australian trust by way of a “trust scheme of arrangement”, where the scheme is approved by a special resolution of unitholders and is subject to judicial approval under trustee legislation.⁸⁵ ASX will also consider granting a waiver to extend exceptions 6 and 7 to an entity making a takeover offer for, or merging with, a foreign company or trust that can satisfy ASX that the takeover or merger is subject to an acceptable regulatory regime equivalent to the Corporations Act.⁸⁶~~

ASX has extended this concession broadly to facilitate cross-border public M&A transactions that are regulated by reference to local legal, market and regulatory conditions in foreign jurisdictions. This approach supports efficient execution of corporate transactions and avoids imposing duplicative ASX specific requirements that could reduce the competitiveness of ASX listed entities when competing for assets and capital against offshore markets and private capital.

⁸⁴ There is an equivalent exception in Listing Rule 10.12 exception 5, meaning that a related party or other person caught by Listing Rule 10.11 can participate in ~~an issue made under a~~ regulated takeover ~~bid or a merger by way of scheme of arrangement under Part 5.1 of the Corporations Act~~ without obtaining security holder approval under Listing Rule 10.11.

⁸⁵ ~~The expression “trust scheme of arrangement” is a colloquial one that refers to an amendment to the constitution of a trust to achieve a merger of the trust with another entity. It has similar features to a scheme of arrangement under part 5.1 of the Corporations Act in that the amendment to the constitution typically requires a special resolution of unitholders and the overall arrangement is typically subject to judicial review, usually in the form of an application for judicial advice that the constitutional amendment is an appropriate one to be made by the responsible entity of the trust. Note that this waiver will not be granted if the entity is, in substance, engaging in a reverse takeover of the trust.~~

⁸⁶ ~~ASX has previously granted such waivers in relation to takeovers or mergers under the laws of the US, UK, Canada, New Zealand, Papua New Guinea and Singapore. Note again that this waiver will not be granted if the entity is, in substance, engaging in a reverse takeover of the foreign company or trust.~~

Entities that rely on this exception should be able to demonstrate the basis on which they have concluded that the exception applies, and be prepared to disclose their reasons to ASX (including any advice obtained) and the market if requested. The definition of 'regulated takeover or merger' is straight-forward and it will usually be clear whether it applies or not. If an entity is unsure about whether their transaction is covered by paragraph (c) of the definition of 'regulated takeover or merger',⁸⁷ the entity should seek advice from an appropriately qualified legal practitioner in the relevant jurisdiction. If that advice is qualified, equivocal or otherwise gives rise to uncertainty, ASX will expect the entity to seek security holder approval. If ASX is asked to give in-principle advice on the application of the exception, ASX will expect the entity to take this approach. If ASX gives in-principle advice to an entity and the transaction proceeds, ASX will usually require the entity to disclose its reasons for submitting why security holder approval was not required.

~~To avoid this concession being abused, exceptions 6 and 7 are not available, and ASX will not grant the waivers referred to above, if the issue in question is being made under or to fund a "reverse takeover" (or, in the case of a takeover offer for, or merger with, a foreign company or trust, the foreign equivalent of a "reverse takeover").~~

~~A "reverse takeover" is defined as a takeover bid or a merger by way of scheme of arrangement under Part 5.1 of the Corporations Act where an entity is proposing to acquire control 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.⁸⁸~~

Exceptions 6 and 7 are not available if the issue is being made under, or to fund, a reverse takeover. This recognises that in a reverse takeover the security holders of the ASX listed bidder are substantively in the position of target security holders and so should have a right to express their approval or disapproval of the transaction. A reverse takeover is a regulated takeover or merger that would result in the issue of 100% or more of the number of fully paid ordinary securities on issue in the entity.

In addition, exceptions 6 and 7 are not available if the issue is being made under, or to fund, a prescribed transaction. This applies to entities that are included in the S&P / ASX 300 Index on the date when a regulated takeover or merger is announced,⁸⁹ if the transaction would result in the issue of 25% or more of the number of fully paid ordinary securities on issue in the entity.⁹⁰

Larger entities subject to the 25% limit may increase the limit by either seeking security holder approval to increase the limit for a three-year period by ordinary resolution, or by including a provision in their constitution post-admission that increases the limit on an indefinite basis. In both cases, the limit cannot be higher than the 100% reverse takeover threshold.

⁸⁷ Paragraph (c) covers a takeover of, or business combination with, or the acquisition of securities in, a person that is effected by:

- (i) a public offer process;
- (ii) a security holder approval process governed by the rules of another exchange; or
- (iii) a security holder approval process that is approved by a court or securities regulator, under laws or regulations, or rules made under laws or regulations, in a foreign jurisdiction.

⁸⁸ ~~Listing Rule 19.12.~~

⁸⁹ Entities negotiating a regulated takeover or merger that are on the cusp of index inclusion and who are concerned that they may enter the index before the deal is announced should plan for security holder approval because ASX is very unlikely to grant a waiver.

⁹⁰ See Listing Rule 19.12 for the full definitions of 'reverse takeover' and 'prescribed transaction'.

The Listing Rules set out the notice of meeting disclosure requirements for a three-year approval to increase the limit. This approval mechanism is intended to allow larger entities to put themselves in the same position that applies to most other listed entities, so the disclosure requirements are not onerous. In particular, ASX does not require disclosure of confidential and incomplete proposals that may be under consideration at the time that the notice of meeting is approved or at the time of the meeting. The purpose of the approval is to authorise the board to execute current or future proposals at their discretion, not to authorise specific issues.

The dilution limits that apply to reverse takeovers and prescribed transactions are numerical thresholds that relate solely to the number of securities being issued. The control implications of these transactions are not governed by the Listing Rules but by the laws and regulations that apply in the jurisdictions where they take place.

It should be noted that the exceptions in Listing Rule 7.2 operate independently of each other. Hence the fact that exceptions 6 and 7 do not apply to an issue under or to fund a reverse takeover or prescribed transaction that exceeds the relevant dilution limit does not mean that other exceptions are not available for that purpose. For example, an entity could use an underwritten pro rata issue with a placement of the shortfall under exceptions 1, 2 and 3, or an issue under a DRP under exception 4 or an SPP under exception 5, to fund some or all of the cash consideration payable under a regulated takeover bid or scheme merger without requiring any security holder approval under Listing Rule 7.1. An entity may also have some placement capacity available to it under Listing Rules 7.1 and 7.1A.2 that it can use for these purposes.

~~However, given the way in which “reverse takeover” is defined and the size of the issue involved (100%+), an issue of securities under or to fund a reverse takeover will in many cases exceed the 15% and 10% placement limits in Listing Rules 7.1 and 7.1A.2 respectively and consequently require security holder approval under Listing Rule 7.1 before it can be made.~~

An entity cannot, however, use other exceptions to extend the application of exceptions 6 and 7. For example, if a proposed new issue under or to fund a regulated takeover or merger was equivalent in number to 110% of an entity's existing issued securities, the entity could not use exceptions 6 and 7 for 99% of the new issue and use other exceptions (or its placement capacity) for the remaining 11%.

4.8 Exception 8 – issues approved under item 7 of section 611

Listing Rule 7.2 exception 8⁹¹ excludes from the restrictions in Listing Rules 7.1 and 7.1A an issue of securities approved under item 7 of section 611 of the Corporations Act. These issues are excluded on the basis that the security holder approval requirements under item 7 of section 611 are more extensive than those under Listing Rules 7.1 and 7.1A⁹² and it would be an unnecessary duplication to require an additional security holder approval under Listing Rule 7.1 or 7.1A.

Item 7 of section 611, and therefore exception 8, only applies to an Australian company or registered managed investment scheme that is subject to the takeover provisions in Chapter 6 of the Corporations Act.

In an appropriate case, ASX will consider granting a waiver to extend exception 8 to an acquisition of securities in a foreign company or trust that is approved under equivalent legislation in its place of establishment.

It should be noted that, unlike issues made with security holder approval under Listing Rule 7.1, issues made with approval under item 7 of section 611 are not constrained by any time limit.⁹³ An entity must include a summary in

⁹¹ There is an equivalent exception in Listing Rule 10.12 exception 6.

⁹² Among other things, to comply with ASIC's regulatory guidance on item 7, an entity must obtain an independent expert's report opining on whether the issue is fair and reasonable to non-participating security holders.

⁹³ Although, an item 7 approval may need to be renewed if there is a material change in circumstances after the approval has been given and before the transaction is completed and may not be available for an acquisition that will complete in the distant future: see paragraphs 87 and 89 of ASIC Regulatory Guide 74 *Acquisitions approved by members*.

its annual report of any issues of securities approved for the purposes of item 7 of section 611 of the Corporations Act which have not been completed as at the date of the annual report.⁹⁴

4.9 Exception 9 – conversion of convertible securities

Listing Rule 7.2 exception 9⁹⁵ excludes from the restrictions in Listing Rules 7.1 and 7.1A an issue of securities as a result of the conversion of convertible securities.⁹⁶ The entity must have issued the convertible securities:

- (a) before it was listed and disclosed the existence and material terms of the convertible securities in the prospectus, PDS or information memorandum lodged with ASX under Listing Rule 1.1 condition 3; or
- (b) after it was listed and complied with the Listing Rules when it did so.

This [is](#) a technical exception intended to ensure that the Listing Rules deal appropriately with convertible securities. The time at which an issue of convertible securities is tested to determine whether it falls within an entity's placement capacity under Listing Rules 7.1 and 7.1A is when they are issued, not when they are converted. If at the time they are issued they comply with the Listing Rules, any subsequent conversion in accordance with their terms falls outside of Listing Rules 7.1 and 7.1A.

Where (a) above applies, the issue of the convertible securities is taken to have been approved under Listing Rule 7.1.⁹⁷ This means that the convertible securities fit within the second bullet point in the definition of variable A in Listing Rule 7.1. Accordingly, if they are eventually converted into fully paid ordinary securities, those fully paid ordinary securities will count in variable A in Listing Rules 7.1 and 7.1A.2 from the moment they are issued.

Where (b) above applies, the issue of the convertible securities is not taken to have been approved under Listing Rule 7.1. This means that if they are eventually converted into fully paid ordinary securities, those fully paid ordinary securities will only fit within the second bullet point in the definition of variable A if: (a) the convertible securities were issued or agreed to be issued before the commencement of the relevant period; or (b) the issue, or agreement to issue, the convertible securities was expressly approved by security holders under Listing Rule 7.1 or 7.4.⁹⁸

In the case of (a) above, the Listing Rules effectively treat the fact that security holders have agreed to invest in the entity after it has disclosed the existence and material terms of the convertible securities in its listing prospectus, PDS or information memorandum as an implicit approval by security holders to the issue of the convertible securities. However, this does not mean that the entity has carte blanche to issue whatever convertible securities it wants pre-listing. ASX may refuse to admit the entity to the official list and to quote its securities if ASX considers that the convertible securities breach Chapter 6 of the Listing Rules⁹⁹ or result in the entity not having an appropriate structure for a listed entity,¹⁰⁰ or it is otherwise appropriate for ASX to exercise its absolute discretion to refuse the entity's application for admission.¹⁰¹

⁹⁴ Listing Rule 4.10.21.

⁹⁵ There is an equivalent exception in Listing Rule 10.12 exception 7.

⁹⁶ An option is a convertible security for the purposes of this exception (see the notes to Listing Rule 7.2 exception 9 and the definition of "convertible security" in Listing Rule 19.12). Recognising this, the term 'convertible' is defined to include 'exercisable' (see the definition of "convertible" in Listing Rule 19.12).

⁹⁷ As noted in the text below, the Listing Rules effectively treat the fact that security holders have agreed to invest in the entity after it has disclosed the existence and material terms of the convertible securities in its listing prospectus, PDS or information memorandum as de facto approval by security holders of those terms.

⁹⁸ This is the effect of the first and second bullet points in the definition of variable A in listing Rule 7.1.

⁹⁹ Listing Rule 2.1 condition 1. This includes the requirement in Listing Rule 6.1 that the terms applying to the convertible securities are, in ASX's opinion, appropriate and equitable.

¹⁰⁰ Listing Rule 1.1 condition 1. See section 3.1 of Guidance Note 1 *Applying for Admission – ASX Listings* for examples of when ASX may determine that an entity does not have a structure or operations appropriate for a listed entity.

¹⁰¹ Listing Rule 1.19. See section 2.9 of Guidance Note 1 *Applying for Admission – ASX Listings* for examples of when ASX may exercise this discretion.

To meet the requirement in (a) above that the entity disclose the existence and material terms of the convertible securities in its listing prospectus, PDS or information memorandum, the entity should include in that document:¹⁰²

- the names of the persons to whom the entity issued the convertible securities or the basis upon which those persons were identified or selected.

In this regard, where the identity of a convertible security holder is likely to be material to a decision by investors to subscribe for securities under the entity's listing prospectus, PDS or information memorandum, the entity should name the convertible security holder in its prospectus, PDS or information memorandum rather than describe how they were identified or selected.

In ASX's view, the identity of a convertible security holder is likely to be material for these purposes if they are:

- a related party of the entity;
- a member of key management personnel;
- a substantial holder in the entity;
- an adviser to the entity; or
- an associate of any of the above,

and, if their convertible securities are converted, it will result in the holder being issued more than 1% of the entity's anticipated issued capital at the time of listing;

- the number of convertible securities that were issued to them;
- a summary of the material terms of the convertible securities;
- the date or dates on which the convertible securities were issued;
- the price or other consideration the entity received for the issue; and
- the purpose of the issue, including the use or intended use of any funds raised by the issue.

To meet the requirement in (b) above that the entity must have complied with the Listing Rules when it issued the convertible securities, the issue must not only be made in compliance with the placement restrictions in Listing Rules 7.1 and 7.1A,¹⁰³ it also must not breach the prohibitions in Listing Rule 7.6, 7.9, 10.11 or 10.14.¹⁰⁴

4.10 Exception 10 – underwritten exercise of options

Listing Rule 7.2 exception 10¹⁰⁵ excludes from the restrictions in Listing Rules 7.1 and 7.1A an issue of securities under an agreement to underwrite the shortfall on an exercise of options. The exception is only available if:

- (a) the entity issued the options:

¹⁰² By analogy with the information required to be disclosed under Listing Rule 7.3 in a notice of meeting seeking security holder approval under Listing Rule 7.1.

¹⁰³ Note that Listing Rule 7.1A only permits an issue of convertible securities if they are in a class of securities that is already quoted on ASX: see section '3.5 The entity must be issuing securities in an existing class of quoted securities' ~~on page 14.~~

¹⁰⁴ See '9.1 Listing Rule 7.6' ~~on page 54.~~, '9.2 Listing Rule 7.9' ~~on page 54~~ and Guidance Note 25 *Issues of Equity Securities to Related Parties Persons in a Position of Influence.*

¹⁰⁵ There is no equivalent exception in Listing Rule 10.12 to Listing Rule 7.2 exception 10, meaning that a related party or other person caught by Listing Rule 10.11 can only underwrite an exercise of options if they receive specific approval to do so under Listing Rule 10.11.

- (i) before it was listed and disclosed the existence and material terms of the options in the prospectus, PDS or information memorandum lodged with ASX under rule 1.1 condition 3; or
- (ii) after it was listed and complied with the Listing Rules when it did so;
- (b) details of the underwriting agreement are disclosed prior to the expiry of the options in accordance with Listing Rule 3.11.3;¹⁰⁶ and
- (c) the underlying securities are issued within 15 business days after expiry of the options.

In the case of (a)(i) above, the Listing Rules effectively treat the fact that security holders have agreed to invest in the entity after it has disclosed the existence and material terms of the options in its listing prospectus, PDS or information memorandum as an implicit approval by security holders to the issue of the options. Again, however, this does not mean that the entity has carte blanche to issue whatever options it wants pre-listing. ASX may refuse to admit the entity to the official list and to quote its securities if ASX considers that the options breach Chapter 6 of the Listing Rules or result in the entity not having an appropriate structure for a listed entity, or it is otherwise appropriate for ASX to exercise its absolute discretion to refuse the entity's application for admission.¹⁰⁷

To meet the requirement in (a)(i) above that the entity disclose the existence and material terms of the options in its listing prospectus, PDS or information memorandum, the entity should include in that document:¹⁰⁸

- the names of the persons to whom the entity issued the options or the basis upon which those persons were identified or selected.

In this regard, where the identity of an option holder is likely to be material to a decision by investors to subscribe for securities under the entity's listing prospectus, PDS or information memorandum, the entity should name the option holder in its prospectus, PDS or information memorandum rather than describe how they were identified or selected.

Again, in ASX's view, the identity of an option holder is likely to be material for these purposes if they are:

- a related party of the entity;
- a member of key management personnel;
- a substantial holder in the entity;
- an adviser to the entity; or
- an associate of any of the above,

and, if the option is exercised, it will result in the holder being issued more than 1% of the entity's anticipated issued capital at the time of listing;

- the number of options that were ~~has~~ issued to them;
- a summary of the material terms of the options;
- the date or dates on which the options were issued;

¹⁰⁶ Under Listing Rule 3.11.3, if an entity enters into an underwriting agreement for the exercise of options, it must immediately tell ASX the name of the underwriter, the extent of the underwriting, the fee, commission or other consideration payable, and a summary of the significant events that could lead to the underwriting being terminated.

¹⁰⁷ See the Listing Rules and Guidance Notes cited in notes 99, 100 and 101 above.

¹⁰⁸ By analogy with the information required to be disclosed under Listing Rule 7.3 in a notice of meeting seeking security holder approval under Listing Rule 7.1.

- the price or other consideration the entity received for the issue; and
- the purpose of the issue, including the use or intended use of any funds raised by the issue.

To meet the requirement in (a)(ii) above that the entity must have complied with the Listing Rules when it issued the options, the issue must not only be made in compliance with the placement restrictions in Listing Rules 7.1 and 7.1A,¹⁰⁹ it also must not breach the prohibitions in Listing Rule 7.6, 7.9, 10.11 or 10.14.¹¹⁰

4.11 Exception 11 – preference shares

Listing Rule 7.2 exception 11¹¹¹ excludes from the restrictions in Listing Rules 7.1 and 7.1A an issue of preference shares which do not have any rights of conversion into another class of equity security.

The preference shares in question must comply with Chapter 6 of the Listing Rules. Among other things, this means that they must have limited voting rights and they must be entitled to a dividend or distribution at a commercial rate and to a return of capital upon a winding up, in preference to the holders of ordinary securities.¹¹²

Issues of these types of securities are excluded from Listing Rules 7.1 and 7.1A as they are more akin to debt securities than equity securities and do not raise the same dilution issues that an issue of other types of equity securities may raise.

4.12 Exception 12 – forfeited shares

Listing Rule 7.2 exception 12 excludes from the restrictions in Listing Rules 7.1 and 7.1A a sale or reissue of forfeited shares¹¹³ within 6 weeks after the day on which the call on the shares was due and payable.

This exception is included as a concession to listed companies to facilitate the sale or reissue of forfeited shares in a timely manner. Otherwise, the need to obtain shareholder approval under Listing Rule 7.1 before the sale or reissue could add undue risk and delay to completion of the transaction.

There is also no dilution to existing shareholders from a sale or reissue of forfeited shares.

4.13 Exception 13 – approved issues under employee incentive schemes

Listing Rule 7.2 exception 13 excludes from the restrictions in Listing Rules 7.1 and 7.1A an issue of securities under an employee incentive scheme if within 3 years before the issue date:

- in the case of a scheme established before the entity was listed – a summary of the terms of the scheme¹¹⁴ and the maximum number of securities proposed to be issued under the scheme were set out in the prospectus, PDS or information memorandum lodged with ASX under Listing Rule 1.1 condition 3;¹¹⁵ or

¹⁰⁹ Note that Listing Rule 7.1A only permits an issue of options if they are in a class of securities that is already quoted on ASX: see section '3.5 The entity must be issuing securities in an existing class of quoted securities' ~~on page 14.~~

¹¹⁰ See the materials cited in note 104 above.

¹¹¹ There is no equivalent exception in Listing Rule 10.12 to Listing Rule 7.2 exception 11, meaning that a related party or other person caught by Listing Rule 10.11 can only take up preference shares if they receive specific approval to do so under Listing Rule 10.11.

¹¹² See Listing Rules 6.3 – 6.6.

¹¹³ Under Listing Rule 7.1B.3, the sale or reissue of forfeited equity securities is treated as an issue of equity securities under Listing Rules 7.1 and 7.1A.

¹¹⁴ The phrase "terms of the scheme" includes terms, conditions, rules, regulations or guidelines formulated to introduce or administer an employee incentive scheme (Listing Rule 19.12).

¹¹⁵ For these purposes, the Listing Rules effectively treat the fact that security holders have agreed to invest in the entity after it has disclosed a summary of the terms of the scheme and the maximum number of securities proposed to be issued under the scheme in its listing prospectus, PDS or information memorandum as de facto approval by security holders of the issue under the scheme. Despite this approval, the entity must still meet the requirements in Listing Rule 1.1 condition 1 that its structure and operations are appropriate for a listed entity /cont.

- (b) the holders of the entity's ordinary securities have approved the issue of securities under the scheme as an exception to Listing Rule 7.2.

In the latter case, the notice of meeting must have included a summary of the terms of the scheme,¹¹⁶ the number of securities issued under the scheme since the entity was listed or the date of the last approval under paragraph (b) above, the maximum number of securities proposed to be issued under the scheme following the approval and a voting exclusion statement¹¹⁷ that precludes any person who is eligible and likely to be extended an offer to participate in the employee incentive scheme and their associates from voting in favour of the Listing Rule 10.14 resolution.¹¹⁸

These issues are excluded from Listing Rules 7.1 and 7.1A on the basis that they have effectively already been approved by security holders and to require a separate approval under Listing Rule 7.1 would therefore be an unnecessary duplication. In the case of (b) above, the approval is explicit. In the case of (a) above, the approval is implicit and evidenced by security holders agreeing to invest in the entity with the material terms of the scheme having been disclosed in the entity's listing prospectus, PDS or information memorandum.

Exception 13 is only available if and to the extent that the number of securities issued under the scheme does not exceed the maximum number set out in the entity's prospectus, PDS or information memorandum (in the case of (a) above) or in the notice of meeting (in the case of (b) above).¹¹⁹ An issue of securities above that maximum will only be able to be made without security holder under Listing Rule 7.1 if the entity has sufficient placement capacity available at the time under Listing Rules 7.1 and (if applicable) 7.1A.

This maximum number is not intended to be a prediction of the actual number of securities to be issued under the employee incentive scheme but simply a maximum number specified by the entity for the purposes of setting a ceiling on the number of securities approved to be issued under and for the purposes of exception 13. In this regard, it is important that security holders know the maximum number of securities that are proposed be issued under an employee incentive scheme so that they can understand its dilutionary impact when they approve the scheme. Once that number is reached, if the entity wants to issue any further securities under the scheme, it will need to go back to security holders for a fresh approval under exception 13.

Exception 13 also ceases to be available if there is a material change to the terms of the scheme from those set out in the entity's prospectus, PDS or information memorandum (in the case of (a) above) or in the notice of meeting (in the case of (b) above).¹²⁰ If there has been a material change to the terms of the scheme, the scheme must be freshly approved by security holders as an exception under Listing Rule 7.2. If the approval is not refreshed, an issue under the scheme will only be able to be made without security holder under Listing Rule 7.1 if the entity has sufficient placement capacity available at the time under Listing Rules 7.1 and (if applicable) 7.1A.

What constitutes a "material change" for these purposes needs to be assessed on a case-by-case basis having regard to the terms of the scheme approved or taken to have been approved by security holders under exception 13. Examples of the types of amendments to an employee incentive scheme that could constitute a material change, depending on the circumstances, include (but are not limited to):

- if the approved terms of the scheme provide for an issue of a particular type of securities, such as ordinary securities or options over ordinary securities, an amendment that would permit the issue of other types of securities;

and in Listing Rule 2.1 condition 1 that its securities comply with Chapter 6 of the Listing Rules, including the requirement in Listing Rule 6.1 that the terms of each class of its equity securities are, in ASX's opinion, appropriate and equitable. If ASX considers the employee incentive scheme infringes these requirements, it may exercise its discretion under Listing Rule 1.19 to reject the entity's listing application.

¹¹⁶ See note 114 above.

¹¹⁷ See '7.7 Voting exclusions' ~~on page 49.~~

¹¹⁸ Listing Rule 14.11.1.

¹¹⁹ See the note to exception 13.

¹²⁰ Again, see the note to exception 13.

- if the approved terms of the scheme specify a mechanism to fix the price at which securities are issued, or in the case of options the price at which the options can be exercised, a change to that pricing mechanism;
- if the approved terms of the scheme specify vesting conditions that need to be satisfied before a participant receives their entitlement under the scheme, a reduction or easing of those vesting conditions;
- if the approved terms of the scheme exclude a particular category of officers or employees from participating in the scheme, a change that would allow those officers or employees to participate;
- if the approved terms of the scheme include a cap on the number of securities that can be issued to an individual participant, the removal of, or an increase in, that cap; and
- if the approved terms of the scheme do not include provision for the entity to provide financial assistance to participants in the scheme to take up their entitlements, a change that would require or permit the entity to provide such financial assistance.

ASX notes that it is not uncommon for an employee incentive scheme to confer on the board of directors very broad discretions in administering the scheme and to amend, replace or terminate the scheme at any time. Provided the entity's prospectus, PDS or information memorandum (in the case of (a) above) or notice of meeting (in the case of (b) above) appropriately highlighted this power, then the existence of this power will be a relevant (although not necessarily decisive) consideration in determining whether something is a material change to the terms of an employee incentive scheme approved by security holders. For example, if the approved terms of a scheme provided for options to be issued with an exercise price determined by the board, the fact that the board may in the future determine different exercise price would not be a material change to the terms of the scheme under exception 13.

4.14 Exception 14 – issues approved under Listing Rule 10.11 or 10.14¹²¹

Listing Rule 7.2 exception 14¹²² excludes from the restrictions in Listing Rules 7.1 and 7.1A an issue of securities made with the approval of the holders of the entity's ordinary securities under Listing Rule 10.11 or 10.14.

These issues are excluded from Listing Rules 7.1 and 7.1A on the basis that they have already been approved by security holders and therefore requiring a separate approval under Listing Rule 7.1 would be an unnecessary duplication.

It should be noted that the exception for an issue of securities under Listing Rule 10.11 only applies if the issue is completed within 1 month after the date of the meeting approving the issue.¹²³ This contrasts with the ~~3 or 6 month period~~time periods permitted for issues to unrelated parties made with the approval of security holders under Listing Rule 7.1.¹²⁴ The shorter period is intended to reduce the likelihood of there being a material change in circumstances between the time the issue is approved and the time it is made.

4.15 Exception 15 – issues of certain options and rights under employee incentive schemes

Listing Rule 7.2 exception 15¹²⁵ excludes from the restrictions in Listing Rules 7.1 and 7.1A a grant of options or other rights to acquire securities under an employee incentive scheme, where the securities to be acquired on the

¹²¹ ~~See also Guidance Note 25 Issues of Securities to Related Parties.~~ See also Guidance Note 25 Issues of Equity Securities to Persons in a Position of Influence.

¹²² There is an equivalent exception in Listing Rule 10.12 exception 8 for issues made with the approval of the holders of the entity's ordinary securities under Listing Rule 10.14.

¹²³ Listing Rule 10.13.5.

¹²⁴ Listing Rule 7.3.4.

¹²⁵ There is an equivalent exception in Listing Rule 10.12 exception 9. See also Listing Rule 10.16.

exercise of the options or in satisfaction of the rights are required by the terms of the scheme¹²⁶ to be purchased on-market.

These issues are excluded from Listing Rules 7.1 and 7.1A on the basis that they are effectively remuneration arrangements that properly fall to the board of directors for approval. Since the securities to be acquired on the exercise of the options or in satisfaction of the rights must be purchased on-market, there is no dilution to existing security holders.

4.16 Exception 16 – agreements to issue securities

Listing Rule 7.2 exception 16¹²⁷ excludes from the restrictions in Listing Rules 7.1 and 7.1A an issue under an agreement to issue securities. The entity must have entered into the agreement:

- (a) before it was listed and disclosed the existence and material terms of the agreement in the prospectus, PDS or information memorandum lodged with ASX under Listing Rule 1.1 condition 3; or
- (b) after it was listed and complied with the Listing Rules when it did so.

This is a technical exception intended to ensure that the Listing Rules deal appropriately with agreements to issue securities. The time at which an agreement to issue securities is tested to determine whether it falls within an entity's placement capacity under Listing Rules 7.1 and 7.1A is the time the agreement is entered into. If at that time the agreement complies with the Listing Rules, any subsequent issue of securities in accordance with the agreement falls outside of Listing Rules 7.1 and 7.1A.

Where (a) above applies, the agreement to issue securities is taken to have been approved under Listing Rule 7.1.¹²⁸ This means that the agreement to issue the securities fits within the third bullet point in the definition of variable A in Listing Rule 7.1. Accordingly, if the agreement provides for an issue of fully paid ordinary securities, those fully paid ordinary securities will count in variable A in Listing Rules 7.1 and 7.1A.2 from the moment they are issued.¹²⁹

Where (b) above applies, the agreement to issue securities is not taken to have been approved under Listing Rule 7.1. This means that any fully paid securities issued under the agreement will only fit within the third bullet point in the definition of variable A, if (a) the agreement was entered into before the commencement of the relevant period; or (b) the agreement or issue was expressly approved by security holders under Listing Rule 7.1 or 7.4.¹³⁰

In the case of (a) above, the Listing Rules effectively treat the fact that security holders have agreed to invest in the entity after it has disclosed the existence and material terms of the agreement to issue securities in its listing prospectus, PDS or information memorandum as an implicit approval by security holders of the agreement. Again, however, this does not mean that the entity has carte blanche to enter into whatever agreements to issue securities it wants pre-listing. ASX may refuse to admit the entity to the official list and to quote its securities if ASX considers that the securities the subject of the agreement breach Chapter 6 of the Listing Rules or result in the entity not

¹²⁶ See note 114 above.

¹²⁷ There is an equivalent exception in Listing Rule 10.12 exception 10.

¹²⁸ As noted above, the Listing Rules effectively treat the fact that security holders have agreed to invest in the entity after it has disclosed the existence and material terms of an agreement to issue securities in its listing prospectus, PDS or information memorandum as de facto approval by security holders of those terms.

¹²⁹ Note that paragraph (a) of exception 16 can also apply to an issue of securities under the entity's listing prospectus, PDS or information memorandum itself. Hence, if an entity issues securities under its listing prospectus, PDS or information memorandum before it is admitted to the official list (as most do), they count in variable A because they are "on issue at the commencement of the relevant period" and therefore within the opening paragraph of the definition of variable A. If the entity issues securities under its listing prospectus, PDS or information memorandum after it is admitted to the official list (as it may do if its securities are initially traded in a conditional market following listing and quotation), the issue is taken under Listing Rule 7.2 exception 16 to have been approved under Listing Rule 7.1 and the securities count in variable A from the moment they are issued under the third bullet point in the definition of variable A.

¹³⁰ This is the effect of the first and third bullet points in the definition of variable A in listing Rule 7.1.

having an appropriate structure for a listed entity, or it is otherwise appropriate for ASX to exercise its absolute discretion to refuse the entity's application for admission.¹³¹

To meet the requirement in (a) above that the entity disclose the existence and material terms of the agreement in its listing prospectus, PDS or information memorandum, the entity should include in that document:¹³²

- the names of the persons to whom the entity has agreed to issue the securities or the basis on which they were identified or selected.

In this regard, where the identity of a person to whom the entity has agreed to issue the securities is likely to be material to a decision by investors to subscribe for securities under the entity's listing prospectus, PDS or information memorandum, the entity should name the person in its prospectus, PDS or information memorandum rather than describe how they were identified or selected.

Again, in ASX's view, the identity of a person to whom the entity has agreed to issue equity securities is likely to be material for these purposes if they are:

- a related party of the entity;
- a member of key management personnel;
- a substantial holder in the entity;
- an adviser to the entity; or
- an associate of any of the above,

and the securities agreed to be issued constitute more than 1% of the entity's anticipated issued capital at the time of listing;

- the number and class of securities the entity has agreed to issue;
- if the securities are not fully paid ordinary securities, a summary of the material terms of the securities;
- the date or dates on which the securities will be issued;
- the price or other consideration the entity has received or will receive for the issue;
- the purpose of the issue, including the intended use of any funds raised by the issue; and
- a summary of any other material terms of the agreement.

To meet the requirement in (b) above that the entity must have complied with the Listing Rules when it entered into the agreement, the agreement must not only be made in compliance with the placement restrictions in Listing Rules 7.1 and 7.1A¹³³ it also must not breach the prohibitions in Listing Rule 7.6, 7.9, 10.11 or 10.14.¹³⁴

¹³¹ See the Listing Rules and Guidance Notes cited in notes 99, 100 and 101 above.

¹³² By analogy with the information required to be disclosed under Listing Rule 7.3 in a notice of meeting seeking security holder approval under Listing Rule 7.1.

¹³³ Note that Listing Rule 7.1A only permits an agreement to issue securities if they are in a class of securities that is already quoted on ASX: see section '3.5 The entity must be issuing securities in an existing class of quoted securities' ~~on page 14.~~

¹³⁴ See the materials cited in note 104 above.

4.17 Exception 17 – issues conditional on prior approval by security holders

Listing Rule 7.2 exception 17¹³⁵ excludes from the restrictions in Listing Rules 7.1 and 7.1A an agreement to issue equity securities that is conditional on the holders of its ordinary securities approving the issue under Listing Rule 7.1 before the issue is made. If an entity relies on this exception it must not issue the equity securities without such approval.

This too is a technical exception to address the point that Listing Rule 7.1 applies to an agreement to issue securities and requires security holder to approve the agreement before it is entered into. This exception allows an entity to enter into an agreement to issue equity securities that would otherwise fall outside its placement capacity under Listing Rule 7.1 and 7.1A.2 on condition that the issue of the securities is approved by the holders of its ordinary securities before the issue is made.

5. The application of Listing Rules 7.1 and 7.1A to convertible securities

The application of Listing Rules 7.1 and 7.1A to convertible securities raises particular issues that are explored in greater detail in this section.¹³⁶

5.1 What is a convertible security?

A “convertible security” is any security that is convertible¹³⁷ by the holder, by the issuer,¹³⁸ or otherwise by its terms of issue, into equity securities.¹³⁹ For the avoidance of doubt, this includes instruments that automatically convert into equity securities upon the occurrence of specified events.¹⁴⁰

Instruments styled as convertible notes, convertible bonds, convertible preference shares, performance shares¹⁴¹ and options¹⁴² will typically fall within the definition of “convertible security” in the Listing Rules.

With one exception, convertible securities are generally classified as equity securities for the purposes of the Listing Rules.¹⁴³ This applies whether they take the form of a convertible debt instrument (such as a convertible note or convertible bond)¹⁴⁴ or a convertible equity instrument (such as a convertible preference share, performance share or option). It also applies whether they convert into fully paid ordinary securities in the entity (as occurs in the vast majority of cases) or some other form of equity security.¹⁴⁵

The one exception to this general rule is that ASX has decided that a security¹⁴⁶ issued by an APRA-regulated entity that falls within the definition of “convertible security” in [rule Listing 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

¹³⁵ There is an equivalent exception in Listing Rule 10.12 exception 11.

¹³⁶ ASX would point out that the treatment of convertible securities set out in section 5 of this Guidance Note and in examples 3 – 8 in Annexure A represents a change to its previous practices in relation to these matters.

¹³⁷ The term ‘convertible’ includes exercisable (see the definition of that term in Listing Rule 19.12).

¹³⁸ ASX prefers to describe a security that is convertible into equity securities at the option of the issuer as ‘transformable’ rather than ‘convertible’ (see Guidance Note 34 *Naming Conventions for Debt and Hybrid Securities*).

¹³⁹ See the definition of “convertible security” in Listing Rule 19.12.

¹⁴⁰ See the note to the definition of “convertible security” in Listing Rule 19.12. ASX prefers to describe a security that automatically converts into equity securities upon the occurrence of certain events as ‘converting’ rather than ‘convertible’ (see Guidance Note 34 *Naming Conventions for Debt and Hybrid Securities*).

¹⁴¹ See Guidance Note 19 *Performance ~~Shares~~ Securities*.

¹⁴² See note 96 above.

¹⁴³ See paragraph (f) of the definition of “equity security” in Listing Rule 19.12.

¹⁴⁴ Note also the definition of “convertible debt security” in Listing Rule 19.12 – an instrument that would be a debt security but for the fact that it is a convertible security.

¹⁴⁵ See section 5.8 below for a discussion of the issues that can arise where convertible securities convert into something other than fully paid ordinary securities.

¹⁴⁶ These types of securities are often referred to as “capital notes” or “Tier 2 capital notes”.

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.¹⁴⁷ 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 the entity’s 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.

Subject to this one exception, since convertible securities are equity securities for the purposes of the Listing Rules, an issue of, or agreement to issue, convertible securities potentially triggers the restrictions on issuances of equity securities in Listing Rules 7.1 and 7.1A.

5.2 Calculating whether an issue of convertible securities falls within an entity’s placement capacity

To work out whether an entity has the placement capacity to issue, or agree to issue, particular convertible securities under Listing Rule 7.1 or 7.1A.2, to “compare apples with apples”, it is first necessary to translate those convertible securities to the number of fully paid ordinary securities they represent.

For these purposes, unless ASX determines otherwise, convertible securities are counted as the maximum number of fully paid ordinary securities into which they can be converted.¹⁴⁸ This applies no matter how likely or unlikely it is that the convertible security may or will convert into the underlying ordinary securities and no matter how far out into the future conversion may or will occur. In other words, there is no discount for uncertainty or for the time value of money.

Section 5.4 below has guidance on how to determine this maximum number.

5.3 How convertible securities are counted in variables C and E

If an entity has issued or agreed to issue convertible securities during the “relevant period”, to work out the impact that has on variables C and E, and therefore its remaining placement capacity under Listing Rules 7.1 and 7.1A.2, to “compare apples with apples”, it is first necessary to translate those convertible securities to the number of fully paid ordinary securities they represent.

For these purposes, unless ASX determines otherwise, convertible securities issued during the relevant period are counted as the maximum number of fully paid ordinary securities into which they can be converted.¹⁴⁹ Again, this applies no matter how likely or unlikely it is that the convertible security may or will convert into the underlying ordinary securities and no matter how far out into the future conversion may or will occur.

This maximum number is determined as at the relevant date that variables C and E are being calculated, not as at the date the convertible securities were originally issued or agreed to be issued. So, if the conversion formula has a variable in it (eg it is linked to the market value of the underlying security) and the maximum number of securities into which the convertible securities can convert has increased since their issue due to a change in the variable in the period up to the relevant date, it is the higher number applicable on the relevant date that must be used when calculating the available placement capacity under Listing Rules 7.1 and 7.1A.2, not the lower number that applied when they were issued. Conversely, if the maximum number of securities into which the convertible securities can convert has decreased since their issue due to a change in the variable in the period up to the relevant date, it is the lower number applicable on the relevant date that must be used when calculating the available placement capacity under Listing Rules 7.1 and 7.1A.2, not the higher number that applied when they were issued.¹⁵⁰

¹⁴⁷ As it is empowered to do under paragraph (h) of the definition of “equity security” in Listing Rule 19.12. This decision is confirmed in the note to the definition of “equity security” in that rule.

¹⁴⁸ Listing Rule 7.1B.1(e). See also ‘2.8 Calculating the number of securities being issued or agreed to be issued’ ~~on page 10.~~

¹⁴⁹ Listing Rule 7.1B.1(e). See also ‘2.7 Calculating variables C and E’ ~~on page 9.~~

¹⁵⁰ Example 6 in Annexure A illustrates the point.

Section 5.4 below has guidance on how to determine this maximum number.

5.4 Determining the maximum number of securities that can be issued under a convertible security

Subject to the three exceptions mentioned below, in determining the maximum number of fully paid ordinary securities that can be issued upon the conversion of a convertible security, ASX will generally assume that any conditions attached to the right of conversion have been, or will be, satisfied in full. This applies no matter how likely or unlikely it is that those conditions will in fact be satisfied.¹⁵¹

The three exceptions to this general rule are:

- where a convertible security has normal anti-dilution provisions attached that simply protect the value of the holders' rights of conversion in the case of future share splits, capital restructures and the like – in working out the maximum number of underlying securities that can be issued under the terms of the convertible security, ASX will generally assume that these anti-dilution provisions will not be triggered over the term of the convertible security;
- where a convertible security gives the issuer the ability to capitalise unpaid interest, dividends or other distributions, either at its option or in certain specified circumstances – in working out the maximum number of underlying securities that can be issued under the terms of the convertible security, ASX will generally assume that interest, dividends or other distributions are paid as and when due and therefore no unpaid amounts will be capitalised;¹⁵² and
- where the conversion rights attaching to a convertible security are only exercisable with security holder approval – that situation is addressed in section 5.6 below.

In many cases, the maximum number of ordinary securities into which a convertible security may or will convert is fixed in, or easily calculable by reference to, the terms of the convertible security.¹⁵³

It is not uncommon, however, for the number of equity securities into which a convertible security may or will convert to be linked to some measure of the market price of the underlying security (such as its VWAP over a specified period) or the value of a foreign currency at or near the date of conversion. In such cases, the inclusion of the market price or foreign currency variable in the conversion formula makes it impossible to determine, at the relevant date, the actual number of underlying securities that will be issued under the terms of the convertible security.

In these cases, ASX will generally¹⁵⁴ calculate the maximum number of underlying securities that can be issued under the terms of a convertible security assuming the security was being converted on the relevant date and applying the conversion formula accordingly.¹⁵⁵

Occasionally, an entity may issue a convertible security that has alternative formulae for calculating the number of underlying securities into which it converts, depending on the circumstances. In that case, the maximum number of underlying securities that can be issued under the terms of a convertible security is to be calculated at the relevant date using whichever of the formulae will result in the highest number of underlying securities being issued.

¹⁵¹ Example 4 in Annexure A illustrates the point.

¹⁵² If the issue of the convertible security has not been approved by security holders under Listing Rule 7.1 or 7.4 and equity securities are subsequently issued in lieu of interest, dividends or other distributions on the convertible security, the entity will need to have the available placement capacity under Listing Rules 7.1 and (if applicable) 7.1A.2 at the time the securities are issued or else the issue will need to be approved by security holders under Listing Rule 7.1.

¹⁵³ Example 5 in Annexure A illustrates the point.

¹⁵⁴ ASX may choose a different market price (such as its VWAP over an extended period) to calculate the maximum number of securities that can be issued under the terms of the convertible security if it suspects that the market price has been manipulated to achieve a more favourable calculation for the entity.

¹⁵⁵ Examples 6, 7 and 8 in Annexure A illustrate ASX's approach.

Very occasionally, the conversion formula for a convertible security may include a variable unrelated to the market price of the underlying security or the value of a foreign currency. An example is where the conversion formula varies by reference to the amount of dividends or other distributions that the entity has paid over the term of the convertible security.

If an entity is considering issuing a convertible security that converts by reference to a variable other than the market price of the underlying security or the value of a foreign currency, it should approach ASX at the earliest opportunity to determine how that security will be treated under Listing Rules 7.1 and, if relevant, 7.1A.2 and also whether it meets the requirements of Listing Rules 6.1 (the terms that apply to an equity security must, in ASX's opinion, be appropriate and equitable) and 12.5 (the entity must have a structure that is appropriate for a listed entity).¹⁵⁶

5.5 How Listing Rules 7.1 and 7.1A.2 apply to the conversion of convertible securities

If an issue of convertible securities complies with Listing Rules 7.1 or 7.1A – either because it falls within the entity's placement capacity at the date of issue or because the issue has been approved by the holders of its ordinary securities under Listing Rule 7.1 – then any subsequent issue of the underlying equity securities in accordance with the terms of issue of the convertible security will fall within Listing Rule 7.2 exception 9¹⁵⁷ and hence outside of Listing Rules 7.1 and 7.1A. It therefore will not require any further approval of security holders under those rules.¹⁵⁸

5.6 Conversion rights that are only exercisable with security holder approval

Listing Rule 7.2 exception 17 excludes from the restrictions in Listing Rules 7.1 and 7.1A an agreement to issue equity securities that is conditional on the holders of the entity's ordinary securities approving the issue before the issue is made.

Where a convertible security expressly provides that the right of conversion is not exercisable unless and until the holders of the entity's ordinary securities have approved the issue of the underlying securities, Listing Rule 7.2 exception 17 is attracted and the convertible security falls outside of the restrictions in Listing Rule 7.1. As a consequence, it can be issued without security holder approval under that rule and, when issued, will not count towards variable C in Listing Rule 7.1 or variable E in Listing Rule 7.1A.2.

If an entity relies on Listing Rule 7.2 exception 17 in this fashion, it must not issue the underlying equity securities without first obtaining the approval of the holders of its ordinary securities.¹⁵⁹ The entity must comply with the notice requirements in Listing Rule 7.3¹⁶⁰ in relation to the underlying securities. Among other things, absent a waiver from ASX,¹⁶¹ this will require the conversion to ordinary securities to occur no later than 3 months after the date of the meeting approving the issue of the underlying securities.¹⁶²

¹⁵⁶ See '5.9 The application of Listing Rule 6.1 to convertible securities' ~~on page 36.~~

¹⁵⁷ See '4.9 Exception 9 – conversion of convertible securities' ~~on page 22.~~

¹⁵⁸ Note that the issue may require approval under Listing Rule 10.11 or 10.14 if it is made to a person and in circumstances covered by those rules.

¹⁵⁹ If the entity issues the underlying securities without obtaining security holder approval, it will breach the second sentence in Listing Rule 7.2 exception 17. If security holder approval is not given, the convertible security ceases to be convertible and effectively becomes a debt security that will need to be repaid in cash upon maturity.

¹⁶⁰ See '7.2 Specific disclosure requirements for resolutions under Listing Rule 7.1' ~~on page 38.~~

¹⁶¹ ASX may be prepared to grant a waiver to allow the underlying securities to be issued outside the 3 month time constraint in Listing Rule 7.3.4 but only where there is a clear and compelling commercial reason for the issue to be made at a later date and security holders are in a ~~position~~ [position](#) to know with certainty the dilutive impact the issue will have and can therefore give a meaningful approval to the issue (see the text accompanying note 202 below). If the conversion formula includes a variable component, this will generally require the imposition of a floor or ceiling on that variable (as applicable) so that the maximum number of underlying securities that can be issued upon conversion is known at the date of the meeting approving their issue.

¹⁶² Listing Rule 7.3.4. Note however that if the securities are being issued to a related party or other person to whom Listing Rule 10.11 applies, they must be issued within 1 month of the date of the meeting approving the issue under that rule (Listing Rule 10.13.5).

For this reason, rather than including a Listing Rule 7.2 exception 17 condition in the convertible securities and seeking security holder approval subsequently for the issue of the underlying securities, it will generally be preferable for an entity either:

- to seek an upfront approval from its ordinary security holders under Listing Rule 7.1 to the issue of convertible securities; or
- to have its ordinary security holders subsequently approve the issue of convertible securities under Listing Rule 7.4 (although, if it relies on this alternative, the entity will need to have the available capacity under Listing Rule 7.1 and 7.1A.2 to issue the convertible securities ahead of the approval).

Where the issue of convertible securities is approved upfront under Listing Rule 7.1 or subsequently under Listing Rule 7.4, the conversion of those securities will fall within Listing Rule 7.2 exception 9 and therefore require no further approvals under Listing Rules 7.1 or 7.1A, no matter when conversion occurs.¹⁶³ Additionally, when the underlying securities are issued upon conversion, they are expressly excluded from variable C in Listing Rule 7.1 and variable E in Listing Rule 7.1A.2¹⁶⁴ and therefore have no ongoing effect on the entity's placement capacity under those rules.

5.7 Conversion rights that only apply where security holder approval is not required

ASX has in the past been approached by entities seeking to issue convertible securities on terms that the right of conversion cannot be exercised if it would require security holder approval and arguing that this effectively caps the right of conversion to an amount that will necessarily fall within its placement capacity under Listing Rule 7.1 and (if applicable¹⁶⁵) Listing Rule 7.1A. ASX does not agree with this argument.

This type of term is qualitatively different to a condition that the right of conversion is not exercisable unless and until the holders of the ordinary securities have approved the issue. It therefore does not attract Listing Rule 7.2 exception 17 mentioned in section 5.6 above. Consequently, whether the issue can be made without security holder approval under Listing Rule 7.1 requires a determination, at the date that the entity issues or agrees to issue the convertible security, whether or not the maximum number of underlying equity securities into which the convertible security can be converted exceeds the formulae in Listing Rule 7.1 and (if applicable) Listing Rule 7.1A.2.

This determination becomes problematical if the convertible security has a term of more than 12 months. The entity's 15% placement capacity under Listing Rule 7.1 will be replenished at each 12 month anniversary of the issue of the convertible security. Its approval to have the extra 10% placement capacity available under Listing Rule 7.1A, if applicable, can also be renewed at each AGM. Accordingly, the cumulative number of underlying equity securities the entity could issue over the term of the convertible security might well exceed its placement capacity under Listing Rules 7.1 and 7.1A at the time of issue, even though the right of conversion is limited in a way that prevents this occurring at the point of each individual conversion.

ASX is likely to have other concerns with a convertible security issued on these terms, including:

- whether the entity has a structure that is appropriate for a listed entity, as required by Listing Rule 12.5;¹⁶⁶

¹⁶³ See '4.9 Exception 9 – conversion of convertible securities' [on page 22](#).

¹⁶⁴ Variables C and E expressly exclude issues under an exception in Listing Rule 7.2.

¹⁶⁵ The entity would only be able to use its Listing Rule 7.1A.2 placement capacity to issue such a security if it was a class of security already quoted on ASX and the minimum pricing requirement was satisfied; see '3.5 The entity must be issuing securities in an existing class of quoted securities' [on page 14](#) and '3.6 The consideration must be a cash amount not less the prescribed minimum issue price' [on page 14](#).

¹⁶⁶ Having these types of 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.

- whether the terms that apply to the convertible security are appropriate and equitable, as required by Listing Rule 6.1;¹⁶⁷ and
- how Listing Rule 7.2 exceptions 9 and 16 operate in relation to the convertible security.¹⁶⁸

On the first two issues above, if the convertible security is able to be held by retail investors, ASX will be particularly concerned whether they will understand the intricacies of Listing Rules 7.1 and 7.1A and the possibility that they may be precluded from exercising their right to convert the securities if and to the extent that the entity no longer has any placement capacity under those rules.

5.8 Convertible securities that convert into other convertible securities

An issue of convertible securities that convert into other convertible securities rather than fully paid ordinary securities (such as options to acquire options,¹⁶⁹ options to acquire convertible notes and convertible notes that convert in whole or in part to options) can raise much wider issues under the Listing Rules than just Listing Rules 7.1 and 7.1A, including:

- whether the entity has a structure that is appropriate for a listed entity, as required by Listing Rule 12.5;¹⁷⁰
- whether the terms that apply to those securities are appropriate and equitable, as required by Listing Rule 6.1;¹⁷¹
- whether the entity's capital structure is consistent with the policy underlying Listing Rule 7.16, which provides that a listed entity cannot have more options on issue than underlying securities; and
- how those securities will be treated for the purposes of variables C and E in Listing Rules 7.1 and 7.1A.2 and the consequential effect they will have on the entity's placement capacity for the next 12 months and beyond.

An entity that wishes to issue convertible securities that convert into other convertible securities rather than fully paid ordinary securities should discuss that proposal at the earliest opportunity with ASX to gauge its reaction. In an appropriate case, ASX may recommend that the entity obtain in-principle advice¹⁷² on whether the securities are acceptable under the Listing Rules before it proceeds with the issue.

Generally speaking, if ASX allows an issue of convertible securities ("primary convertible securities") that convert into other convertible securities ("secondary convertible securities"), it will apply Listing Rules 7.1 and 7.1A on a look through basis – that is, it will assume that the primary convertible securities convert into the maximum number of secondary convertible securities that can be issued under the terms of the primary convertible securities, and then look to the maximum number of fully paid ordinary securities that can be issued upon conversion or exercise of the secondary convertible securities.

¹⁶⁷ See '5.9 The application of Listing Rule 6.1 to convertible securities' ~~on page 36.~~

¹⁶⁸ See '4.9 Exception 9 – conversion of convertible securities' ~~on page 22~~ and '4.16 Exception 16 – agreements to issue securities' ~~on page 28.~~

¹⁶⁹ Sometimes referred to as 'piggy back' options.

¹⁷⁰ Again, having these types of 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.

¹⁷¹ See '5.9 The application of Listing Rule 6.1 to convertible securities' ~~on page 36.~~

¹⁷² See Guidance Note 17 *Waivers and In-Principle Advice*.

5.9 The application of Listing Rule 6.1 to convertible securities

As with all equity securities, convertible securities are subject to the general requirement in Listing Rule 6.1 that the terms that apply to them must, in ASX's opinion, be appropriate and equitable.¹⁷³

In assessing whether Listing Rule 6.1 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 these 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".

As has been noted previously, convertible securities that:

- convert by reference to a variable other than the market price of the underlying security or the value of a foreign currency;
- convert into other convertible securities rather than fully paid ordinary securities; or
- specify that the right of conversion cannot be exercised if it would require security holder approval under the Listing Rules,

are all likely to raise concerns under Listing Rule 6.1.

In some situations, ASX may also raise concerns under Listing Rule 6.1 if an entity proposes to issue a convertible security where the price at which it converts is determined by reference to the market price of the underlying securities at a future date or over a future period and there is no floor on the conversion price. This is especially so if the entity has a relatively low market capitalisation and its securities have a history of significant price volatility or of periods where they have suffered a sustained fall in market price. In such a case, there is a very real risk that the issue could be highly dilutive to existing security holders if the market price of the underlying securities falls substantially before the convertible securities are converted.

5.10 Seeking approval under Listing Rule 7.1 or 7.4 to an issue of convertible securities

A notice of meeting seeking approval to an issue of convertible securities under Listing Rule 7.1 or 7.4 must include the material terms of the convertible securities.¹⁷⁴ This should include:

- who can convert them;
- when they can be converted;
- any conditions that have to be met before they can be converted;
- the class of equity securities into which they convert;
- if they convert into something other than fully paid ordinary securities, a summary of the material terms of the underlying securities;
- the price at which they convert and the resulting number of underlying securities into which they convert; and
- if the price at which they convert is not fixed but determined by reference to a formula, a description of the formula and at least 3 worked examples showing how the formula will operate in practice under different assumptions.

¹⁷³ This requirement applies regardless of whether the securities are quoted on ASX or not. It also applies regardless of whether the issue of securities has been or will be approved by security holders (eg under Listing Rule 7.1 or 10.11 or under item 7 of section 611 of the Corporations Act).

¹⁷⁴ Listing Rules 7.3.3 and 7.5.3.

On this last point, if the price at which the convertible securities convert is determined by the market price of the underlying securities at a future date or over a future period, the worked examples should show the number of underlying securities that would be issued at:

- the current market price (ie a market price at or shortly before the dispatch of the notice of meeting seeking approval to the issue which is representative of recent trading in the underlying security);
- twice the current market price; and
- half the current market price.

If there is no floor on the conversion price, the notice must prominently disclose that fact and that the issue could be highly dilutive to existing security holders if the market price of the underlying securities falls substantially over the period from when the convertible securities are issued to when they are converted.

5.11 Convertible loans and other contractual obligations

Where an entity has borrowed funds on terms that allow the entity or the lender to require any amount due under the loan to be paid or repaid in the form of equity securities, such an arrangement constitutes an agreement to issue equity securities. It is therefore subject to Listing Rule 7.1 and can only be entered into without security holder approval if the entity has the available placement capacity under Listing Rules 7.1 and 7.1A.2 at the time the loan is entered into.

The same applies to any other contract where the entity or the counterparty can require any of the entity's contractual obligations to be satisfied by an issue of equity securities.

ASX treats these as being the equivalent of convertible securities and applies the same principles as above in relation to them.

6. The ratification of issues or agreements under Listing Rule 7.4

6.1 The ability to ratify an issue or agreement to issue securities

Listing Rule 7.4 provides that an issue of, or agreement to issue, securities made without approval under Listing Rule 7.1 is treated as having been made with approval for the purpose of Listing Rule 7.1 if:

- the issue or agreement did not breach Listing Rule 7.1; and
- the holders of the entity's ordinary securities subsequently approve the issue.

To comply with the first requirement above, the issue must have come within the entity's placement capacity under Listing Rules 7.1 and (if applicable) 7.1A at the time it was made or agreed to be made. It is not possible to ratify under Listing Rule 7.4 an issue of, or agreement to issue, securities that exceeded an entity's placement capacities under those rules.

6.2 The effect of ratification on variable A

Where an issue of fully paid ordinary securities is ratified under Listing Rule 7.4, those securities are immediately counted in variable A, effectively increasing the base level of fully paid ordinary securities on which the 15% and 10% placement capacities in Listing Rules 7.1 and 7.1A are calculated to that extent.

Similarly, where an agreement to issue fully paid ordinary securities is ratified under Listing Rule 7.4, once issued, those securities are immediately counted in variable A, again effectively increasing the base level of fully paid ordinary securities on which the 15% and 10% placement capacities in Listing Rules 7.1 and 7.1A are calculated to that extent.

6.3 The effect of ratification on variables C and E

Where an issue of, or agreement to issue, equity securities is ratified under Listing Rule 7.4, it is excluded from variables C and E in Listing Rules 7.1 and 7.1A.2, effectively replenishing the entity's placement capacity to that extent.¹⁷⁵

7. Requirements for notices of meeting

7.1 The type and terms of resolution required

The resolution required to approve an issue of securities under Listing Rule 7.1 or 7.4 is an ordinary resolution.¹⁷⁶ The resolution required to approve a 7.1A mandate is a special resolution passed at the entity's AGM.¹⁷⁷

Listing Rules 7.1, 7.1A and 7.4 do not dictate the specific terms of the resolution required under those rules.

In case of Listing Rule 7.1 or 7.4, a resolution to the following effect will suffice:

"That the [*description of issue*] is approved under and for the purposes of Listing Rule [7.1/7.4]."

Generally there should be a separate resolution approving each relevant issue under Listing Rule 7.1 or 7.4. Combining multiple issues 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.¹⁷⁸

In the case of a resolution approving a 7.1A mandate, ASX considers that a resolution to the following effect will suffice:

"Resolved, as a special resolution, that [the entity] have the additional capacity to issue equity securities provided for in Listing Rule 7.1A."

7.2 Specific disclosure requirements for resolutions under Listing Rule 7.1

A notice of meeting proposing a resolution to approve an issue of, or an agreement to issue, equity securities under Listing Rule 7.1 must include a summary of Listing Rule 7.1 and what will happen if security holders give, or do not give, the approval sought under that rule.¹⁷⁹ This includes explaining the effect that giving the approval will have on the entity's ongoing capacity to issue equity securities without security holder approval under Listing Rule 7.1.¹⁸⁰

A summary along the following lines will suffice for these purposes:

"[*Name of entity*] [has entered into an agreement to/is proposing to] [*insert a description of the proposed issue of securities, defining it as the "Issue" (or something similar)*].

Broadly speaking, and subject to a number of exceptions, Listing Rule 7.1 limits the amount of equity securities that a listed [company/trust] can issue without the approval of its [shareholders/unitholders] over any 12 month period to 15% of the fully paid ordinary [shares/units] it had on issue at the start of that period.

[*If the Issue exceeds the 15% limit in Listing Rule 7.1A*] The Issue does not fall within any of these exceptions and exceeds the 15% limit in Listing Rule 7.1. It therefore requires the approval of [*name of entity*]'s [shareholders/unitholders] under Listing Rule 7.1.

¹⁷⁵ Listing Rule 7.1B.1(e). See also '2.7 Calculating variables C and E' ~~on page 9.~~

¹⁷⁶ Listing Rule 14.9.

¹⁷⁷ Listing Rule 7.1A.

¹⁷⁸ Pursuant to Listing Rules 15.1 and 15.1.4.

¹⁷⁹ Listing Rule 14.1A.

¹⁸⁰ See the note to Listing Rule 14.1A.

Resolution [nº] seeks the required [shareholder/unitholder] approval to the Issue under and for the purposes of Listing Rule 7.1.

If resolution [nº] is passed, [name of entity] will be able to proceed with the Issue and [outline the consequences that will follow]. In addition, the Issue will be excluded from the calculation of the number of equity securities that [name of entity] can issue without [shareholder/unitholder] approval under Listing Rule 7.1.

If resolution [nº] is not passed, [name of entity] will not be able to proceed with the Issue and [outline the consequences that will follow].

[If the Issue does not exceed the 15% limit in Listing Rule 7.1A] The Issue does not fit within any of these exceptions. While the Issue does not exceed the 15% limit in Listing Rule 7.1 and can therefore be made without breaching that rule, [name of entity] wishes to retain as much flexibility as possible to issue additional equity securities into the future without having to obtain [shareholder/unitholder] approval under Listing Rule 7.1. To do this, [name of entity] is asking [shareholders/unitholders] to approve the Issue under Listing Rule 7.1 so that it does not use up any of the 15% limit on issuing equity securities without [shareholder/unitholder] approval set out in Listing Rule 7.1.

To this end, resolution [nº] seeks [shareholder/unitholder] approval to the Issue under and for the purposes of Listing Rule 7.1.

If resolution [nº] is passed, the Issue can proceed without using up any of [name of entity]'s 15% limit on issuing equity securities without [shareholder/unitholder] approval set out in Listing Rule 7.1.

If resolution [nº] is not passed, the Issue can still proceed but it will reduce, to that extent, [name of entity]'s capacity to issue equity securities without [shareholder/unitholder] approval under Listing Rule 7.1 for 12 months following the Issue.]”

A notice of meeting proposing a resolution to approve an issue of, or an agreement to issue, equity securities under Listing Rule 7.1 must also include:¹⁸¹

- the names of the persons to whom the entity will issue the securities or the basis upon which those persons were or will be identified or selected.¹⁸²

In this regard, where an entity has already entered into an agreement with, or otherwise selected or identified, some or all of the investors who will participate in an issue of equity securities that requires approval under Listing Rule 7.1 and the identity of those investors is likely to be material to a decision by security holders to approve the issue, ASX will expect the notice seeking that approval to name those investors rather than describe how they were or will be identified or selected.¹⁸³

Again, in ASX's view, the identity of an investor is likely to be material for these purposes if they are:

- a related party of the entity;¹⁸⁴

¹⁸¹ An approval of security holders is not effective under the Listing Rules unless the notice of meeting includes everything that the Listing Rules require it to include: Listing Rule 14.6.

¹⁸² Listing Rule 7.3.1. In the case of an issue under a reverse takeover [or prescribed transaction where the entity is acquiring securities in another body](#), it is sufficient to describe the class or classes of security holders in the ~~reverse takeover target~~ [other body](#) who will be issued securities in the entity (see the note to Listing Rule 7.3.1).

¹⁸³ It is acceptable for an entity to name those investors whose identity is likely to be material to a decision by security holders to approve the issue and to describe the basis on which other investors will be identified or selected to participate in the issue.

¹⁸⁴ Noting that if the investor is a related party, any issue of, or agreement to issue, equity securities to them will require a separate security holder approval under Listing Rule 10.11 unless the issue or agreement falls within an exception in Listing Rule 10.12.

- a member of the entity's key management personnel;
 - a substantial holder in the entity;
 - an adviser to the entity; or
 - an associate of any of the above,
- and they are being issued more than 1% of the entity's current issued capital;
- the number¹⁸⁵ and class of the securities the entity will issue;¹⁸⁶
 - if the securities are not fully paid ordinary securities, a summary of the material terms¹⁸⁷ of the securities;¹⁸⁸
 - the date or dates on or by which the entity will issue the securities – this must be:
 - if the securities are being issued under, or to fund, a reverse takeover [or a prescribed transaction](#), no later than ~~6~~**12** months after the date of the meeting;
 - if court approval of a reorganisation of capital (in the case of a trust, interests) is required before the issue, no later than 3 months after the date of the court approval; or
 - otherwise, no later than 3 months after the date of the meeting;¹⁸⁹
 - the price¹⁹⁰ or other consideration the entity will receive for the issue;¹⁹¹
 - the purpose of the issue, including the intended use of any funds raised by the issue;¹⁹²
 - if the securities are being issued under an agreement, a summary of any other material terms of the agreement;¹⁹³
 - if the securities are being issued under, or to fund, a reverse takeover [or prescribed transaction](#), information about the reverse takeover [or prescribed transaction](#);¹⁹⁴ and
 - a voting exclusion statement that precludes:
 - where the resolution relates to a proposed issue under a reverse takeover [or prescribed transaction](#) [where the entity is acquiring \(or increasing its proportionate interest in\) securities in another body](#), the [other body](#) ~~reverse takeover target~~ and any person who will obtain a material benefit as a result

¹⁸⁵ Where the number of securities to be issued is not fixed, this may be expressed as a maximum number or as a formula (see the note to Listing Rule 7.3.2). In the latter case, it may be appropriate for the entity to include some worked examples in the notice of meeting to show how the formula will operate in practice under different assumptions.

¹⁸⁶ Listing Rule 7.3.2.

¹⁸⁷ See also '5.10 Seeking approval under Listing Rule 7.1 or 7.4 to an issue of convertible securities' ~~on page 36~~ for the information that should be disclosed in the notice of meeting about the material terms of a convertible security.

¹⁸⁸ Listing Rule 7.3.3.

¹⁸⁹ Listing Rule 7.3.4. Note that if the securities are being issued to a related party or other person to whom Listing Rule 10.11 applies, they must be issued within 1 month of the date of the meeting approving the issue under that rule (Listing Rule 10.13.5).

¹⁹⁰ Where the price at which the securities are to be issued is not fixed, this may be expressed as a minimum amount or as a formula (see the note to Listing Rule 7.3.5). In the latter case, it may be appropriate for the entity to include some worked examples in the notice of meeting to show how the formula will operate in practice under different assumptions.

¹⁹¹ Listing Rule 7.3.5.

¹⁹² Listing Rule 7.3.6.

¹⁹³ Listing Rule 7.3.7.

¹⁹⁴ Listing Rule 7.3.8.

of the reverse takeover, [prescribed transaction](#) or the proposed issue (except a benefit solely by reason of being the holder of ordinary securities in the entity or the [other body](#) ~~reverse takeover target~~);

- where the resolution relates to a proposed issue to fund a reverse takeover [or prescribed transaction where the entity is acquiring \(or increasing its proportionate interest in\) securities in another body, the other body](#), the ~~reverse takeover target~~ [other body](#), any person who is expected to participate in the proposed issue, and any person who will obtain a material benefit as a result of the reverse takeover, [prescribed transaction](#) or the proposed issue (except a benefit solely by reason of being the holder of ordinary securities in the entity or the ~~reverse takeover target~~ [other body](#)); and
- in any other case, any persons who are expected to participate in, or who will obtain a material benefit as a result of, the proposed issue (except a benefit solely by reason of being the holder of ordinary securities in the entity),

and their associates from voting in favour of the Listing Rule 7.1 resolution.¹⁹⁵

This information may be given in the notice itself or in an accompanying explanatory memorandum to security holders.¹⁹⁶

This information must be set out with reasonable particularity. ASX will not accept a notice that seeks an approval in gross under Listing Rule 7.1 to allow an issue to be made on such terms as the entity or its board may decide. Nor will it accept something that is the practical equivalent, such as a resolution that seeks approval to an issue of an indeterminate number of securities¹⁹⁷ across a broad price range.¹⁹⁸

ASX understands that entities seeking an approval under Listing Rule 7.1 to issue securities by way of a bookbuild or similar process will not be able to specify a fixed issue price and also may not be able to specify a fixed number of securities to be issued in their Listing Rule 7.1 resolution. Of necessity, they will need to specify a minimum issue price and possibly also a maximum number of securities to be issued. However, ASX expects the minimum issue price¹⁹⁹ and, where applicable the maximum number of securities to be issued,²⁰⁰ to be expressed within a commercially reasonable range.

The requirement for reasonable particularity extends to the requirement mentioned above to state the names of the persons to whom the entity will issue the securities or the basis upon which those persons will be identified or selected. In this regard, it is not sufficient to say, in relation to an offer or placement of securities, that the securities will be offered or issued to unnamed “sophisticated and professional investors”, without more. The entity must explain how those investors will be identified or selected. For example, if the entity is using a lead manager or broker to assist in the offer or placement, it should identify the lead manager/broker and explain (briefly) the lead manager/broker’s process for identifying or selecting prospective investors. If the entity is not using a lead manager/broker to assist with the offer or placement, the entity should explain its process for identifying or selecting prospective investors.

The intended use of the funds raised by an issue is also important information that security holders need to determine whether or not they should approve the issue under Listing Rule 7.1. Accordingly, the statement in the

¹⁹⁵ Listing Rules 7.3.9 and 14.11.1. See also ‘7.7 Voting exclusions’ ~~on page 49.~~

¹⁹⁶ Listing Rule 14.1.

¹⁹⁷ For example, an issue of “up to X securities” or “between X and Y securities”.

¹⁹⁸ For example, an issue of securities at a price “between \$X and \$Y” or at a price “no less than \$X”, or at discount to the prevailing market price of “up to X%”, where that allows a potentially wide range of prices.

¹⁹⁹ For the avoidance of doubt, this includes a minimum issue price expressed within a range (eg “between \$X and \$Y”, at a price “no less than \$X” or at discount to the prevailing market price of “up to X%”), provided the range is commercially reasonable.

²⁰⁰ Again, for the avoidance of doubt, this includes a maximum number of securities expressed within a range (eg “up to X securities” or “between X and Y securities”), provided the range is commercially reasonable.

notice of meeting on this matter should be reasonably detailed and specific. A brief and uninformative statement such as “the entity intends to use the funds raised as additional working capital” is not sufficient, save where the entity genuinely has no specific purpose in mind for the use of the funds and it clearly states that fact in its notice of meeting. Likewise a statement that “the entity intends to use the funds for future investments” is not sufficient if the entity has a specific investment or investments in mind for which it will be using the funds.

If ASX finds that an entity has not been forthright in its disclosures about the intended recipients of securities or the intended use of funds in the notice of meeting approving an issue under Listing Rule 7.1, ASX will give careful consideration to whether or not the approval was effective for the purposes of the Listing Rules.²⁰¹

ASX is sometimes approached for a waiver to allow an entity to issue securities at a date outside of the ~~3/6-month~~ time constraint mentioned above. This constraint is designed to strike a balance between giving entities the time practically necessary to complete an issue of equity securities, and ensuring that the securities are issued within a reasonable time frame after security holder approval so that the approval can still be considered to be current and not rendered stale by subsequent events. ASX will generally only grant such a waiver where there is a clear and compelling commercial reason for the issue to be made at a later date²⁰² and security holders are in a ~~position~~^{position} to know with certainty the dilutive impact the issue will have and can therefore give a meaningful approval to the issue. In the case of convertible securities, this may require the imposition of a floor price in the conversion formula so that the maximum dilutive impact can be determined at the date of the meeting approving their issue.

Otherwise ASX expects entities to arrange the date on which they seek approval to an issue under Listing Rule 7.1 to comply with the ~~3/6-month~~ time constraint mentioned above and, if for any reason the issue is not completed within that timeframe following the approval, to seek a fresh approval under that rule.

7.3 Specific disclosure requirements for resolutions under Listing Rule 7.1A

A notice of meeting proposing a resolution to approve a 7.1A mandate must include a summary of Listing Rule 7.1A and what will happen if security holders give, or do not give, the approval sought under that rule.²⁰³

A summary along the following lines will suffice for these purposes:

“Broadly speaking, and subject to a number of exceptions, Listing Rule 7.1 limits the amount of equity securities that a listed [company/trust] can issue without the approval of its [shareholders/unitholders] over any 12 month period to 15% of the fully paid ordinary securities it had on issue at the start of that period.

Under Listing Rule 7.1A, however, an eligible entity can seek approval from its members, by way of a special resolution passed at its annual general meeting, to increase this 15% limit by an extra 10% to 25%.

An ‘eligible entity’ means an entity which is not included in the S&P/ASX 300 Index and which has a market capitalisation of \$300 million or less. [*Name of entity*] is an eligible entity for these purposes.

Resolution [*nº*] seeks [shareholder/unitholder] approval by way of special resolution for [*name of entity*] to have the additional 10% capacity provided for in Listing Rule 7.1A to issue equity securities without [shareholder/unitholder] approval.

If resolution [*nº*] is passed, [*name of entity*] will be able to issue equity securities up to the combined 25% limit in Listing Rules 7.1 and 7.1A without any further [shareholder/unitholder] approval.

²⁰¹ An approval of security holders is not effective under the Listing Rules unless the notice of meeting includes everything that the Listing Rules require it to include: Listing Rule 14.6.

²⁰² An example would be “deferred consideration securities”, that is, securities issued by an entity in consideration for an acquisition of an asset or undertaking where a future tranche of securities will be issued outside of the ~~3/6-month~~^{applicable time} period mentioned in Listing Rule 7.3.4 if certain performance thresholds or other criteria are met.

²⁰³ Listing Rule 14.1A.

If resolution [n^o] is not passed, [name of entity] will not be able to access the additional 10% capacity to issue equity securities ~~to issue equity securities~~ without [shareholder/unitholder] provided for in Listing Rule 7.1A and will remain subject to the 15% limit on issuing equity securities without [shareholder/unitholder] approval set out in Listing Rule 7.1.”

A notice of meeting proposing a resolution to approve a 7.1A mandate must also include:²⁰⁴

- a statement of the period for which the mandate will be valid (as set out in Listing Rule 7.1A.1);²⁰⁵
- a statement of the minimum price at which the equity securities may be issued under the mandate (as set out in Listing Rule 7.1A.3);²⁰⁶
- a statement of the purposes for which the funds raised by an issue of equity securities under the mandate may be used;²⁰⁷
- a statement of the risk of economic and voting dilution of existing ordinary security holders that may result from an issue of equity securities under the mandate, including the risk that:
 - the market price for equity securities in that class may be significantly lower on the issue date than on the date the 7.1A mandate was approved; and
 - the equity securities may be issued at a price that is at a discount to the market price for those equity securities on the issue date,

which is accompanied by a table describing the potential dilution of existing ordinary security holders on the basis of at least three different assumed issue prices and values for variable A in Listing Rule 7.1A.2, including at least one example that assumes that A is double the number of fully paid ordinary securities on issue at the time of the approval under Listing Rule 7.1A and that the price of fully paid ordinary securities has fallen by at least 50%;²⁰⁸

- details of the entity’s allocation policy for issues under the mandate;²⁰⁹
- if the entity has issued or agreed to issue any equity securities under Listing Rule 7.1A.2 in the 12 months preceding the date of the AGM:
 - the total number of equity securities issued or agreed to be issued under Listing Rule 7.1A.2 in that 12 month period and the percentage they represent of the total number of equity securities on issue at the commencement of that 12 month period; and
 - for each such issue:
 - the names of the persons to whom the entity issued or agreed to issue the securities or the basis on which those persons were identified or selected.

In this regard, where the identity of a person to whom the entity has in the past 12 months issued or agreed to issue securities under Listing Rule 7.1A.2 is likely to be material to a

²⁰⁴ An approval of security holders is not effective under the Listing Rules unless the notice of meeting includes everything that the Listing Rules require it to include: Listing Rule 14.6.

²⁰⁵ Listing Rule 7.3A.1.

²⁰⁶ Listing Rule 7.3A.2.

²⁰⁷ Listing Rule 7.3A.3.

²⁰⁸ Listing Rule 7.3A.4. Generally, ASX would expect one of the examples in the table to assume that A is the current number of fully paid ordinary securities on issue, and that the price of fully paid ordinary securities is their prevailing market price, at or around the time the notice of AGM is being finalised, and the third example to be a mid-point between the other two examples.

²⁰⁹ Listing Rule 7.3A.5.

decision by investors to approve a 7.1A mandate, the notice seeking that approval should name the person rather than describe how they were identified or selected.

Again, in ASX's view, the identity of such a person is likely to be material for these purposes if they are:

- a related party of the entity;²¹⁰
- a member of key management personnel;
- a substantial holder in the entity;
- an adviser to the entity; or
- an associate of any of the above,

and the securities issued or agreed to be issued to them constituted more than 1% of the entity's issued capital at the time of the issue or agreement;

- the number and class of equity securities issued or agreed to be issued;
- the price at which the equity securities were issued or agreed to be issued and the discount (if any) that the issue price represented to closing market price on the date of issue or agreement; and
- the total cash consideration received or to be received by the entity, the amount of that cash that has been spent, what it was spent on, and what is the intended use for the remaining amount of that cash (if any),

and, if the entity has agreed before that 12 month period to issue any equity securities under Listing Rule 7.1A.2 but as at the date of the meeting not yet issued those equity securities, a statement giving all material details of that agreement and an explanation why the equity securities have not yet been issued.²¹¹ and

- if at the time of dispatching the notice the entity is proposing to make an issue of equity securities under the mandate, a voting exclusion statement that precludes any persons who are expected to participate in, or who will obtain a material benefit as a result of, the proposed issue (except a benefit solely by reason of being the holder of ordinary securities in the entity) and their associates from voting on the Listing Rule 7.1A resolution.²¹²

Again, this information may be given in the notice itself or in an accompanying explanatory memorandum to security holders.²¹³

If at the time the entity is preparing its notice of AGM, its market capitalisation is close to \$300 million or it is close to inclusion in the S&P/ASX 300 Index, it would also be prudent for the notice to state that if on the date of the AGM its market capitalisation exceeds \$300 million or it has been included in the S&P/ASX 300 Index, then the resolution for the 7.1A mandate will no longer be effective and will be withdrawn.

Again, the purposes for which the funds raised by an issue of equity securities under a 7.1A mandate may be used is important information that security holders need to determine whether or not they should approve the mandate.

²¹⁰ Noting again that if the investor is a related party, any issue of, or agreement to issue, equity securities to them will require a separate security holder approval under Listing Rule 10.11 unless the issue or agreement falls within an exception in Listing Rule 10.12.

²¹¹ Listing Rule 7.3A.6.

²¹² Listing Rule 7.3A.7 and 14.11.1. See also '7.7 Voting exclusions' ~~on page 49.~~

²¹³ Listing Rule 14.1.

However, as a 7.1A mandate is intended to cover prospective issues for up to 12 months after the date of the AGM, ASX understands that the entity may not be able to be as specific on this matter as it can be in relation to issues being approved under Listing Rule 7.1 or 7.4.

If ASX finds that an entity has not been forthright in its disclosures about the intended use of funds in the notice of meeting approving a 7.1A mandate, ASX will give careful consideration to whether or not the approval was effective for the purposes of the Listing Rules.²¹⁴

The requirement for the notice to disclose the entity's allocation policy for issues of securities under the 7.1A mandate differs from the corresponding requirement for notices approving an issue under Listing Rule 7.1 or 7.4 to disclose the names of the persons who were or will be issued securities or the basis upon which those persons were or will be identified or selected. This difference recognises that an issue under a 7.1A mandate may take place up to 12 months after the date of the AGM and there is likely to be a greater degree of uncertainty about whether an issue of securities will ultimately be made, and if so, to whom.

The disclosure of the allocation policy should address the question of how the entity intends to decide who to offer securities to under its 7.1A mandate in as much detail as is reasonably practicable in the circumstances, taking into account:

- the entity's intentions to raise funds during the period of the mandate;
- the number of issues it intends to make under the mandate and the time frame over which they will be made;
- whether the entity has any specific intentions in relation to parties that it may approach to participate in an issue of securities under the mandate; and
- whether the entity has formed an intention to offer securities under the mandate to existing security holders, or to a class or group of existing security holders, or whether, alternatively, it has formed an intention to offer the securities exclusively to new investors who have not previously been security holders of the entity.

The entity will be required when it announces a proposed issue of equity securities under Listing Rule 7.1A to disclose in its Appendix 3B why it has chosen to undertake that particular form of issue rather than a pro rata issue or other type of issue in which existing ordinary security holders would have been eligible to participate. In light of this, the entity may wish to set out as part of its allocation policy whether or not it intends to give consideration before making any issue of securities under its 7.1A mandate to whether the issue could be carried out by means of a pro rata offer, a placement and a pro rata offer, or a placement and an offer under an SPP.

7.4 Specific disclosure requirements for resolutions under Listing Rule 7.4

A notice of meeting proposing a resolution to ratify an issue of, or agreement to issue, equity securities under Listing Rule 7.4 must include a summary of Listing Rule 7.4 and what will happen if security holders give, or do not give, the approval sought under that rule.²¹⁵ This includes explaining the effect that giving the approval will have on the entity's ongoing capacity to issue equity securities without security holder approval under Listing Rule 7.1.²¹⁶

A summary along the following lines will suffice for these purposes:

“On [date] (“Issue Date”), [name of entity] [entered into an agreement to issue/issued] [insert a description of the agreement or issue, defining it as the “Issue” (or something similar)].

²¹⁴ See note 201 above and accompanying text.

²¹⁵ Listing Rule 14.1A.

²¹⁶ See the note to Listing Rule 14.1A.

Broadly speaking, and subject to a number of exceptions, Listing Rule 7.1 limits the amount of equity securities that a listed [company/trust] can issue without the approval of its [shareholders/unitholders] over any 12 month period to 15% of the fully paid ordinary securities it had on issue at the start of that period.

The Issue does not fit within any of these exceptions and, as it has not yet been approved by [name of entity]'s [shareholders/unitholders], it effectively uses up part of the 15% limit in Listing Rule 7.1, reducing [name of entity]'s capacity to issue further equity securities without [shareholder/unitholder] approval under Listing Rule 7.1 for the 12 month period following the Issue Date.

Listing Rule 7.4 allows the [shareholders/unitholders] of a listed [company/trust] to approve an issue of equity securities after it has been made or agreed to be made. If they do, the issue is taken to have been approved under Listing Rule 7.1 and so does not reduce the [company's/trust's] capacity to issue further equity securities without [shareholder/unitholder] approval under that rule.

[Name of entity] wishes to retain as much flexibility as possible to issue additional equity securities into the future without having to obtain [shareholder/unitholder] approval for such issues under Listing Rule 7.1.

To this end, resolution [n°] seeks [shareholder/unitholder] approval to the Issue under and for the purposes of Listing Rule 7.4.

If resolution [n°] is passed, the Issue will be excluded in calculating [name of entity]'s 15% limit²¹⁷ in Listing Rule 7.1, effectively increasing the number of equity securities it can issue without [shareholder/unitholder] approval over the 12 month period following the Issue Date.

If resolution [n°] is not passed, the Issue will be included in calculating [name of entity]'s 15% limit²¹⁸ in Listing Rule 7.1, effectively decreasing the number of equity securities it can issue without [shareholder/unitholder] approval over the 12 month period following the Issue Date.]”

A notice of meeting proposing a resolution to ratify an issue of, or agreement to issue, equity securities under Listing Rule 7.4 must also include:²¹⁹

- the names of the persons to whom the entity issued or agreed to issue the securities or the basis on which those persons were identified or selected;²²⁰
- the number²²¹ and class of securities the entity issued or agreed to issue;²²²
- if the securities are not fully paid ordinary securities, a summary of the material terms²²³ of the securities;²²⁴

²¹⁷ This paragraph may need adjustment if the entity has a current 7.1A mandate and therefore is subject to a combined 25% limit on issuing equity securities without shareholder or unitholder approval.

²¹⁸ Again, this paragraph may need adjustment if the entity has a current 7.1A mandate and therefore is subject to a combined 25% limit on issuing equity securities without shareholder or unitholder approval.

²¹⁹ An approval of security holders is not effective under the Listing Rules unless the notice of meeting includes everything that the Listing Rules require it to include: Listing Rule 14.6.

²²⁰ Listing Rule 7.5.1.

²²¹ Where the securities have not yet been issued and the number of securities to be issued is not fixed, this may be expressed as a maximum number or as a formula (see the note to Listing Rule 7.5.2). In the latter case, it may be appropriate for the entity to include some worked examples in the notice of meeting to show how the formula will operate in practice under different assumptions.

²²² Listing Rule 7.5.2.

²²³ See also ‘5.10 Seeking approval under Listing Rule 7.1 or 7.4 to an issue of convertible securities’ [on page 36](#) for the information that should be disclosed in the notice of meeting about the material terms of a convertible security.

²²⁴ Listing Rule 7.5.3.

- the date or dates on which the securities were or will be issued – if the securities have not yet been issued, the date of issue must be no later than 3 months after the date of the meeting;²²⁵
- the price²²⁶ or other consideration the entity has received or will receive for the issue;²²⁷
- the purpose of the issue, including the use or intended use of any funds raised by the issue;²²⁸
- if the securities were or will be issued under an agreement, a summary of any other material terms of the agreement;²²⁹ and
- a voting exclusion statement that precludes any persons who participated in the issue being ratified and their associates from voting on the Listing Rule 7.4 resolution.²³⁰

Again, this information may be given in the notice itself or in an accompanying explanatory memorandum to security holders.²³¹

The identity of the intended recipients of securities and the use or intended use of the funds raised by the issue again are important pieces of information that security holders need to determine whether or not they should approve an issue of securities under Listing Rule 7.4. The guidance given on these ~~point~~points in section 7.2 above in relation to approvals under Listing Rule 7.1 applies with equal force to approvals under Listing Rule 7.4.²³²

Hence, where an entity seeks approval under Listing Rule 7.4 to an issue or agreement to issue securities and the identity of a person to whom the entity has issued or agreed to issue the securities is likely to be material to a decision by security holders to approve the issue, ASX will expect the notice seeking that approval to name those persons rather than describe how they were identified or selected.

Again, in ASX's view, the identity of an investor is likely to be material for these purposes if they are:

- a related party of the entity;²³³
- a member of the entity's key management personnel;
- a substantial holder in the entity;
- an adviser to the entity; or
- an associate of any of the above,

and they are being issued more than 1% of the entity's current issued capital.

²²⁵ Listing Rule 7.5.4. ASX may be prepared to grant a waiver to allow an issue of securities outside this 3 month time constraint but only where there is a clear and compelling commercial reason for the issue to be made at a later date and security holders are in a ~~position~~position to know with certainty the dilutive impact the issue will have and can therefore give a meaningful approval to the issue: see the text accompanying note 202 above.

²²⁶ Where the securities have not yet been issued and the price at which the securities are to be issued is not fixed, this may be expressed as a minimum amount or as a formula (see the note to Listing Rule 7.5.5). In the latter case, it may be appropriate for the entity to include some worked examples in the notice of meeting to show how the formula will operate in practice under different assumptions.

²²⁷ Listing Rule 7.5.5.

²²⁸ Listing Rule 7.5.6.

²²⁹ Listing Rule 7.5.7.

²³⁰ Listing Rule 7.5.8. See also '7.7 Voting exclusions' ~~on page 49.~~

²³¹ Listing Rule 14.1.

²³² See note 201 above and accompanying text.

²³³ Noting that if the investor is a related party, any issue of, or agreement to issue, equity securities to them will require a separate security holder approval under Listing Rule 10.11 unless the issue or agreement falls within an exception in Listing Rule 10.12.

7.5 General disclosure requirements for a notice of meeting

As a matter of general law, a notice of meeting proposing a resolution under Listing Rule 7.1, 7.1A or 7.4 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 judgment on those matters.²³⁴ In some cases, this may require the entity to disclose additional information over and above that specifically required under the Listing Rules summarised in sections 7.2, 7.3 and 7.4 above.

For instance, where the notice relates to a resolution under Listing Rule 7.1 to approve an issue under, or to fund, a reverse takeover, ASX would expect the notice to include a reasonable level of information about the reverse takeover. Typically, this should include:

- the identity of the reverse takeover target;
- a summary of the reverse takeover target's principal activities and the jurisdictions in which it operates;
- a description of the reverse takeover target's business model, including any key dependencies and key risks;
- a copy of the reverse takeover target's most recent audited accounts or a link to where they can be viewed and downloaded;
- the consideration payable by the entity to security holders of the reverse takeover target;
- details of any regulatory approvals or waivers required or other material conditions that must be satisfied for the reverse takeover to proceed;
- information about the likely effect of the proposed issue and the reverse takeover on the entity, including its consolidated total assets, total equity interests, annual revenue, annual expenditure and annual profit before tax;
- a capital table showing the issued capital of the entity before and after the reverse takeover;
- if the entity is proposing to issue securities to raise funds in connection with the reverse takeover, the following information about the issue:
 - the nature of the issue (eg placement, pro rata offer or public offer pursuant to a prospectus, PDS or information memorandum);
 - the amount proposed to be raised by the issue;
 - any minimum subscription proposed; and
 - whether the issue will be underwritten and if so:
 - the name of the underwriter(s),
 - the extent of the underwriting;
 - the fee, commission or other consideration payable to the underwriter(s); and
 - a summary of the significant events that could lead to the underwriting being terminated;

²³⁴ See *Bulfin v Bebarfalds Ltd* (1938) 38 SR (NSW) 423 and *Chequepoint Securities Ltd v Claremont Petroleum NL* (1986) 11 ACLR 94.

- details of any person who will acquire control²³⁵ of, or voting power²³⁶ of 20% or more in, the entity as a result of the reverse takeover;
- if any changes are proposed to the entity's board or senior management, details of those changes; and
- the timetable for implementing the transaction including, if it has not already occurred, the timing for dispatch of the bidder's statement or scheme booklet to target security holders.

ASX notes that the bid or scheme documents provided to target security holders in a reverse takeover would typically include disclosures substantially equivalent to those set out above. Where the notice of meeting seeking bidder security holder approval under Listing Rule 7.1 is sent at the same time as, or after, the bid or scheme documents are sent to target security holders, the notice of meeting can, and should, include substantially equivalent disclosures to those made to the target security holders.

In some cases, bidder security holder approval may need to be sought before the bid or scheme documents for target security holders are finalised. In these cases, ASX will carefully monitor the disclosures made in the notice of meeting to ensure they satisfy the requirements above. If subsequently the bid or scheme documents provided to target security holders disclose materially new or different information that would have been relevant to a decision on how to vote on the Listing Rule 7.1 resolution, ASX may require an updated notice of meeting to be set to security holders or, if the resolution has already been passed, a fresh security holder approval to be obtained.²³⁷

7.6 The requirement to give a draft notice to ASX for review

Before a listed entity sends out a notice of meeting that includes a resolution under Listing Rule 7.1, 7.1A or 7.4, it must give ASX a copy of the draft notice for review. It must not finalise the notice until ASX tells it that ASX does not object to it.

ASX may object to a draft notice of meeting if it appears to ASX that:

- it does not include the information required under the Listing Rules summarised in sections 7.2, 7.3 and 7.4 above (as applicable);
- the draft notice does not satisfy the general law disclosure obligation mentioned in section 7.5 above;
- it does not include the required voting exclusion statement or the voting exclusion statement it includes is incorrectly worded or insufficiently clear;
- in the case of a notice including a resolution approving an issue of securities under Listing Rule 7.1 or 7.4, the entity is trying to include multiple issues within the one approval resolution;²³⁸ or
- in the case of a notice for an AGM seeking a 7.1A mandate, the entity is not an "eligible entity".

Where a larger entity is proposing to seek a 7.1A mandate at its AGM, to substantiate that it is an "eligible entity", the entity should include with the draft notice for the AGM it gives to ASX for review a detailed calculation demonstrating that its market capitalisation at the time is less than \$300 million and confirmation that it has checked and it is not included in the S&P/ASX 300 Index.

²³⁵ As defined in the Corporations Act.

²³⁶ As defined in the Corporations Act.

²³⁷ Under Listing Rules 14.6 and 18.8. ~~See also '1.1' on page 51.~~

²³⁸ Including multiple issues within the one approval resolution can be coercive. Security holders should be given the opportunity to approve each issue separately. For these purposes, an issue of securities on the same terms and conditions to multiple investors is regarded as one issue and not multiple issues.

7.7 Voting exclusions

A notice of meeting proposing a resolution to approve an issue or agreement to issue securities under Listing Rule 7.1 or 7.4 must include a voting exclusion statement in all cases.²³⁹

A notice of meeting proposing a resolution approving a 7.1A mandate must include a voting exclusion statement if at the time of dispatching the notice the entity is proposing to make an issue of equity securities under the mandate.²⁴⁰

A voting exclusion statement 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 associate²⁴¹ of an excluded person, save where it is cast by:

- a person as proxy or attorney for another 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 they are not excluded from voting, and are 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 (Listing Rule 14.11).²⁴²

In the case of a resolution under Listing Rule 7.1, the excluded persons are:

- where the resolution relates to a proposed issue under a reverse takeover or prescribed transaction – where the entity is acquiring (or increasing its proportionate interest in) securities in another body – the other body~~the reverse takeover target~~ and any person who will obtain a material benefit as a result of the reverse takeover, prescribed transaction or the proposed issue (except a benefit solely by reason of being the holder of ordinary securities in the entity or the ~~reverse takeover target~~other body);²⁴³
- where the resolution relates to a proposed issue to fund a reverse takeover or prescribed transaction where the entity is acquiring (or increasing its proportionate interest in) securities in another body – the reverse takeover target~~the other body~~, any person who is expected to participate in the proposed issue, and any person who will obtain a material benefit as a result of the reverse takeover, prescribed transaction or the proposed issue (except a benefit solely by reason of being the holder of ordinary securities in the entity or the ~~other person~~reverse takeover target);²⁴⁴ and

²³⁹ See Listing Rules 7.3.9 and 7.5.8 and the table in Listing Rule 14.11.1.

²⁴⁰ See Listing Rule 7.3A.7 and the table in Listing Rule 14.11.1.

²⁴¹ Guidance Note 35 *Security Holder Resolutions* has guidance on who is an associate of an excluded person for these purposes.

²⁴² See Listing Rules 14.11 and 14.11.1.

²⁴³ The voting exclusion generally would not prevent a person making a bid for the bidder or a competing bid for the ~~reverse takeover target~~other body from voting on the resolution to approve the reverse takeover or prescribed transaction since typically they will not obtain a material benefit as a result of the reverse takeover, prescribed transaction or proposed issue (other than possibly as a holder of securities in the bidder or the ~~reverse takeover target~~other body). More likely than not, it will be to their benefit if the reverse takeover or prescribed transaction does not proceed.

²⁴⁴ Again, the voting exclusion generally would not prevent a person making a bid for the bidder or a competing bid for the ~~reverse takeover target~~other body from voting on the resolution to approve an issue to fund the reverse takeover or prescribed transaction. See note 243 above.

- in any other case – any person who is expected to participate in, or who will obtain a material benefit as a result of, the proposed issue (except a benefit solely by reason of being the holder of ordinary securities in the entity).

In the case of a resolution approving a 7.1A mandate, the excluded persons are any persons who are expected to participate in, or who will obtain a material benefit as a result of, the proposed issue (except a benefit solely by reason of being the holder of ordinary securities in the entity).

In the case of a resolution under Listing Rule 7.4, the excluded persons are any persons who participated in the issue or are a party to the agreement being ratified.

For the purposes of the voting exclusion that applies to Listing Rules 7.1 and 7.1A, ASX considers a “material benefit” to be one that is likely to induce the recipient of the benefit to vote in favour of the transaction regardless on its impact on ordinary security holders. Examples include:

- if the issue is being made primarily for the purpose of raising cash to repay a debt or other amount owed by the entity to another person, that person;
- a professional adviser or other person who will be paid a success fee if the issue (or where the issue is being made under, or to fund, a reverse takeover [or prescribed transaction](#), if the reverse takeover [or prescribed transaction](#)) proceeds;²⁴⁵
- an underwriter or sub-underwriter of the issue who will be paid an underwriting or sub-underwriting fee in relation to the issue; and
- a lead manager of, or broker to, the issue who will be paid a fee or commission on the proceeds of the issue.²⁴⁶

The material benefit must be obtained as a result of the transaction in question. This would not capture payments made in the ordinary course of business that are not commercially connected with the transaction.

In the context of a reverse takeover, ASX would not typically consider any of the following to be a material benefit resulting from the reverse takeover:

- an agreement that someone will be appointed as a director of the entity or the reverse takeover target if the reverse takeover is successful;
- consideration payable to a holder of another class of securities under or in connection with the reverse takeover on the same terms as all other holders of securities in that class (unless it appears to ASX that the consideration materially exceeds the fair value of those securities and is, in effect, a disguised material benefit); and
- redundancy or termination benefits payable to an officer or an employee of the entity or the reverse takeover target if the transaction proceeds, provided the benefit is a bona fide payment made in accordance with contractual entitlements or established policy and generally available to all officers and employees whose office or employment may be terminated.

²⁴⁵ This is not intended to capture normal fixed or time-based fees paid to a professional adviser advising on the transaction. It is only intended to capture fees that are directly related to the success of the transaction.

²⁴⁶ This is not intended to capture normal handling fees payable to individual brokers who lodge acceptances or renunciations on behalf of security holders. It is only intended to capture fees and commissions payable to a lead manager of, or broker to, the issue that are directly related to the success of the transaction.

Guidance Note 35 *Security Holder Resolutions* has further guidance on voting exclusions and the procedures that should be followed at a meeting of security holders where a resolution under Listing Rule 7.1, 7.1A or 7.4 is being considered.

7.8 Stale resolutions

Where security holders approve an issue of or agreement to issue securities under Listing Rule 7.1, the securities must be issued within the applicable ~~3 or 6 month~~time period referred to in Listing Rule 7.3.4 or else the approval will lapse.²⁴⁷

Where security holders approve an agreement to issue securities under Listing Rule 7.4, the securities must be issued within 3 months of that approval or else the approval will lapse.²⁴⁸

In addition to these time constraints, where an entity's security holders vote in favour of a resolution under Listing Rule 7.1, 7.1A or 7.4 and in ASX's opinion:

- materially new or different information emerges after security holders have voted on the resolution; or
- there is a material change in the entity's circumstances from those applicable at the time of the resolution,

ASX may require the entity to seek a fresh approval from its security holders under that rule.²⁴⁹

This may occur, for example, if there is a material increase in the consideration being offered by the entity in a reverse takeover or prescribed transaction, compared to what was approved by security holders under Listing Rule 7.1.

For this purpose, ASX would suggest that entities apply the guidance on materiality that formerly appeared in the Australian accounting standards,²⁵⁰ that is:

- an increase in the consideration being offered over what was approved by security holders equal to or less than 5% ought not be considered material; while
- an increase in the consideration being offered over what was approved by security holders of equal to or greater than 10% ought to be considered material and therefore a fresh approval sought,

unless, in either case, there is evidence or convincing argument to the contrary. Where the increase is between 5% and 10%, a judgment will need to be made as to whether or not it is material in the circumstances.

Guidance Note 35 *Security Holder Resolutions* has further guidance on stale resolutions and the circumstances where ASX may require an entity to seek a fresh approval from its security holders under Listing Rule 7.1, 7.1A or 7.4.

²⁴⁷ Listing Rule 7.3.4. If the approval lapses, the securities can no longer be counted in variable A in the formula in Listing Rule 7.1 as securities issued with an approval under Listing Rule 7.1 and must instead be counted in variable C in that formula (see the note to Listing Rule 7.1).

²⁴⁸ Listing Rule 7.5.4. Again, if the approval lapses, the securities can no longer be counted in variable A in the formula in Listing Rule 7.1 as securities issued with an approval under Listing Rule 7.4 and must instead be counted in variable C in that formula. Likewise, they can no longer be counted as securities issued with an approval under rule 7.4 in variable A in the formula in Listing Rule 7.1A.2 and must instead be counted in variable E in that formula (see the note to Listing Rule 7.4).

²⁴⁹ Again, ASX may do this either by treating the original resolution as not being effective for the purposes of Listing Rule 7.1, 7.1A or 7.4 (as applicable) or by imposing a requirement in that regard under Listing Rule 18.8.

²⁵⁰ 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)).

8. Notification requirements

8.1 Appendix 3B requirements

An entity is required under Listing Rule 3.10.3 to notify ASX immediately of any proposed issue of equity securities (other than a proposed issue to be made under a DRP or an employee incentive scheme or as a consequence of the conversion of any convertible securities). This applies whether or not the securities are to be quoted on ASX and whether or not information about the issue is “market sensitive”.

A notification of a proposed issue of securities under Listing Rule 3.10.3 must be in the form of, or accompanied by, an Appendix 3B *Announcement of Proposed Issue of Securities*.²⁵¹

Most proposed issues of securities that potentially attract Listing Rules 7.1 and 7.1A, therefore, will have to be notified to ASX using an Appendix 3B.

The Appendix 3B is a smart form with different information requirements for different types of issues.

In all cases, the entity will be asked in the Appendix 3B if there any conditions that need to be satisfied before the proposed issue will be made. If the entity answers “yes”, it will be asked to identify those conditions and the date by which they are expected to be satisfied.

If the proposed issue is subject to security holder approval under Listing Rule 7.1, the entity should indicate accordingly in this part of the Appendix 3B.

Where the proposed issue being notified falls within the exceptions in Listing Rule 7.2, the Appendix 3B will not ask any specific questions about the possible application of Listing Rules 7.1 and 7.1A.

Where the proposed issue being notified falls outside the exceptions in Listing Rule 7.2, the Appendix 3B will ask:

- Are any of the securities proposed to be issued without security holder approval using the entity’s 15% placement capacity under Listing Rule 7.1?

If the entity answers “yes”, it will be asked how many securities are being issued using that capacity and to complete and separately send to the entity’s ASX Listings Compliance adviser a work sheet in the form of Annexure B to this Guidance Note confirming that the entity has the available capacity under Listing Rule 7.1 to issue that number of securities.

- Are any of the securities proposed to be issued without security holder approval using the entity’s additional 10% placement capacity under Listing Rule 7.1A (if applicable)?

If the entity answers “yes”, it will be asked how many securities are being issued using that capacity and to complete and separately send to the entity’s ASX Listings Compliance adviser a work sheet in the form of Annexure C to this Guidance Note confirming that the entity has the available capacity under Listing Rule 7.1A to issue that number of securities.

If an entity is relying on both its Listing Rule 7.1 and 7.1A placement capacities to make an issue without security holder approval, it should answer yes to both of the questions above and complete both the Annexure B and Annexure C work sheets and send them to its ASX Listings Compliance adviser.

As mentioned previously, the Annexure B and C work sheets are available on ASX Online and can also be downloaded ~~in an editable form~~ from: [the ASX website](#).

²⁵¹—[Listing Rule 3.10.3—Guidance Note 30 Notifying an Issue of Securities and Applying for Their Quotation](#) [Listing Rule 3.10.3. Guidance Note 30 Notifying Changes in Issued Securities and Applying for Quotation of New or Additional Securities](#) has detailed guidance on when ASX must be notified of a proposed issue of securities under Listing Rule 3.10.3 and what information must be included in the notification.

www.asx.com.au/regulation/compliance/compliance-downloads.htm

8.2 Appendix 2A requirements

If the entity intends to apply for quotation of equity securities issued under Listing Rule 7.1 or 7.1A, it must give ASX²⁵² a completed Appendix 2A *Application for quotation of securities*.²⁵³ The Appendix 2A is a smart form with different information requirements for different types of issues.

To avoid duplication of disclosure, the Appendix 2A will ask whether the securities to be quoted are being issued as part of a transaction or transactions previously announced to the market in an Appendix 3B.

If the entity answers “yes”, no questions will be asked in the Appendix 2A in relation to the application of Listing Rules 7.1 or 7.1A, on the assumption that the entity will have already addressed these issues in its Appendix 3B.

If the entity answers “no”, in an appropriate case,²⁵⁴ the Appendix 2A will go on to ask the following questions:

- Has the entity obtained, or is it obtaining, security holder approval for the issue under Listing Rule 7.1?

If the entity answers “yes”, it will be asked to state the date of the meeting or proposed meeting to approve the issue under Listing Rule 7.1 and that will be the end of the questions on this topic. If the entity answers “no”, it will be asked the next two questions.
- Are any of the securities being issued without security holder approval using the entity’s 15% placement capacity under listing rule 7.1?

If the entity answers “yes”, it will be asked how many securities are being issued using that capacity and to complete and separately send to the entity’s ASX Listings Compliance adviser a work sheet in the form of Annexure B to this Guidance Note confirming that the entity has the available capacity under Listing Rule 7.1 to issue that number of securities.
- Are any of the securities being issued without security holder approval under the entity’s additional 10% placement capacity in Listing Rule 7.1A (if applicable)?

If the entity answers “yes”, it will be asked how many securities are being issued using that capacity and to complete and separately send to the entity’s ASX Listings Compliance adviser a work sheet in the form of Annexure C to this Guidance Note confirming that the entity has the available capacity under Listing Rule 7.1A to issue that number of securities.

Again, if an entity is relying on both its Listing Rule 7.1 and 7.1A placement capacities to make an issue without security holder approval, it should answer “yes” to both of the last two questions above and complete both the Annexure B and Annexure C work sheets and send them to its ASX Listings Compliance adviser.

8.3 Additional disclosure requirements for issues under Listing Rule 7.1A

If an entity issues equity securities under Listing Rule 7.1A, it must give to ASX immediately after the issue a list of names of the persons to whom the entity issued the equity securities and the number of equity securities issued to each.²⁵⁵ This list is for ASX Listings Compliance’s internal purposes and not for release to the market.

²⁵² Listing Rule 15.2.1 requires an Appendix 2A to be given to the ASX Market Announcements office.

²⁵³ Listing Rule 2.7.

²⁵⁴ The Appendix 2A will ask the questions in the text if the entity indicates in its Appendix 2A that it is seeking to have quoted: (a) securities that have been issued under a DRP that has a limit on participation and therefore does not satisfy the conditions for Listing Rule 7.2 exception 4 to apply; or (b) other securities that potentially fall within the scope of Listing Rule 7.1 and 7.1A.

²⁵⁵ Listing Rule 7.1A.4(b).

9. Other Chapter 7 constraints on issues of equity securities

9.1 Listing Rule 7.6

Listing Rule 7.6 prohibits an entity from issuing or agreeing to issue any equity securities, without the approval of the holders of its ordinary securities,²⁵⁶ for 2 months after it is told in writing by the holders of more than 50% of the ordinary securities that they intend:

- to call, or request the directors to call, a general meeting to appoint or remove directors of the entity;²⁵⁷ or
- if the entity is a trust, to call, or request the responsible entity to call, a general meeting to appoint or remove the responsible entity of the trust.²⁵⁸

The intent behind Listing Rule 7.6 is to prevent the directors or responsible entity from issuing securities with a view to altering the outcome of the general meeting.

There are a number of exceptions to Listing Rule 7.6 which are summarised in section 9.3 below.

9.2 Listing Rule 7.9

Listing Rule 7.9 provides that an entity must not issue or agree to issue equity securities, without the approval of the holders of its ordinary securities,²⁵⁹ for 3 months after it is told in writing that a person is making, or proposes to make, a takeover for securities in the entity.

The intent behind Listing Rule 7.9 is to prevent the entity from issuing securities with a view to altering the outcome of the takeover.

Again, there are a number of exceptions to Listing Rule 7.9 which are summarised in section 9.3 below.

It should be noted that Listing Rule 7.9 is only triggered where an entity “is told in writing” that a person is making, or proposing to make, a “takeover” for securities in the entity. ASX considers an email to be a written notification for these purposes.²⁶⁰ However, a verbal notification does not trigger Listing Rule 7.9.

“Takeover” is defined to mean a takeover bid under Chapter 6 of the Corporations Act or a similar bid under a foreign regime.²⁶¹ A proposal to enter into any other type of transaction (for example, a scheme of arrangement under Part 5.1 of the Corporations Act) does not trigger Listing Rule 7.9.

The reference to a person “proposing” to make a takeover bid does not require that all of the details of the bid have been finalised or communicated to the entity or that the person has expressed a definitive intention to proceed with the bid.²⁶² However, in ASX’s view, an indicative non-binding statement that a person may be willing to make a takeover bid if certain conditions are met is not a proposed takeover bid for the purposes of Listing Rule 7.9.

²⁵⁶ An approval by security holders of an eligible entity for the entity to have the additional placement capacity under Listing Rule 7.1A is not an approval for the purposes of Listing Rule 7.6.

²⁵⁷ For example, under section 249D or 249F of the Corporations Act.

²⁵⁸ For example, under section 252B or 252D of the Corporations Act.

²⁵⁹ An approval by security holders of an eligible entity for the entity to have the additional placement capacity under Listing Rule 7.1A is not an approval for the purposes of Listing Rule 7.9.

²⁶⁰ This is on the basis that an email can be printed, if the recipient so desires, and by analogy with Listing Rule 19.10 (which requires an entity to tell ASX matters under the Listing Rules “in writing”) and Listing Rule 1.1 condition 14 (which requires an entity to communicate with ASX electronically).

²⁶¹ See Listing Rules 19.12 and 19.3.

²⁶² Cf ASIC Regulatory Guide 59 *Announcing and Withdrawing Takeover Bids*, especially at RG 59.20 – 59.22.

9.3 The exceptions to Listing Rules 7.6 and 7.9

Listing Rules 7.6 and 7.9 are subject to the following exceptions:

- (1) an issue notified to ASX before the entity was told, or made under an agreement to issue notified to ASX before the entity was told, of the intention to call the meeting or make the takeover (as applicable);
- (2) a pro rata issue to holders of ordinary securities and to holders of other equity securities to the extent that the terms of issue of the equity securities permit participation in the pro rata issue;
- (3) an issue made under a DRP that is in operation at the time the entity was told;
- (4) an issue made under a [regulated](#) takeover ~~bid or under a merger by way of scheme of arrangement under Part 5.1 of the Corporations Act;~~
- (5) an issue made on the exercise of rights of conversion;
- (6) an agreement to issue equity securities that is conditional on the holders of the entity's ordinary securities approving the issue before the issue is made;²⁶³
- (7) an issue made after the person tells the entity in writing that it is no longer intending to call the meeting or make the takeover (as applicable); and
- (8) an issue made with the approval of the person giving the notification referred to in Listing Rule 7.6 or 7.9 (as applicable).

The second, third, fourth, fifth and sixth exceptions above have broadly corresponding exceptions in Listing Rule 7.2 (although the third exception above for issues under a DRP is somewhat broader than the exception for issues under a DRP in Listing Rule 7.2).

The seventh and eighth exceptions above have no counterpart in Listing Rule 7.2 and so issues can only be made under these exceptions without security holder approval if the entity has the available placement capacity under Listing Rules 7.1 and 7.1A.

9.4 The effect of Listing Rules 7.6 and 7.9

Listing Rules 7.6 and 7.9 take precedence over Listing Rules 7.1, 7.1A and 7.2, and so receipt of a written notification under Listing Rules 7.6 and 7.9 effectively suspends an entity's placement capacity under Listing Rule 7.1 and 7.1A and its capacity to issue securities under an exception in Listing Rule 7.2 (other than an exception which is also an exception to Listing Rules 7.6 and 7.9).

10. ASX's enforcement powers

ASX has a range of enforcement powers it can exercise if an entity issues, or proposes to issue, securities in breach of Chapter 7 of the Listing Rules.

ASX may:

- suspend the quotation of the entity's securities until the matter has been dealt with to ASX's satisfaction;²⁶⁴

²⁶³ If an entity relies on this exception it must not issue the equity securities without approval. The notice of meeting seeking the approval must include a voting exclusion statement precluding a person who is expected to participate in the proposed issue and their associates from voting in favour of the resolution (see Listing Rule 14.11.1).

²⁶⁴ Listing Rule 17.3.1.

- require the entity to impose a holding lock on the securities to prevent them being disposed of until the matter has been dealt with to ASX's satisfaction;²⁶⁵
- if the issue has not yet taken place, direct the entity not to proceed with the issue;²⁶⁶
- if the issue has already taken place, direct the entity to cancel or reverse the issue;²⁶⁷ and/or
- direct the entity to convene a meeting of security holders to approve the issue under Listing Rule 7.1, 7.6 or 7.9 (as applicable).²⁶⁸

On the second last bullet point above, ASX recognises that in some cases there could be legal impediments to an entity cancelling or reversing an issue of securities at the direction of ASX.²⁶⁹ In those cases, ASX may instead direct the entity not to make any further issue of equity securities under Listing Rules 7.1 or 7.1A.2 for a period determined by ASX (often referred to as a "placement holiday"). The period of the placement holiday will usually be the minimum period ASX calculates it would have taken the entity to issue the number of securities in question under Listing Rule 7.1 if it had issued them in tranches that complied with that rule.²⁷⁰

On the last bullet point above, it should be noted that ASX will not generally allow an entity that has issued securities in breach of Chapter 7 of the Listing Rules to leave the issue on foot and seek to have it ratified by the holders of its ordinary securities at a subsequent meeting. For ASX to condone that course would open Chapter 7 to avoidance and abuse.²⁷¹ ASX is more likely instead to impose a placement holiday.

More generally, where an entity issues securities in breach of Chapter 7 and ASX considers the breach to be an egregious one, ASX may:

- censure the entity for breaching the Listing Rules;²⁷²
- exercise ASX's discretion not to quote the securities;²⁷³ and/or
- terminate the entity's admission to the official list.²⁷⁴

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 Chapter 7 of the Listing Rules, ASX will usually require the entity to make an announcement to the market explaining that action and why it was taken.

²⁶⁵ Listing Rule 18.8(h).

²⁶⁶ Listing Rule 18.8(c).

²⁶⁷ Listing Rule 18.8(d).

²⁶⁸ Listing Rule 18.8(e). Where ASX imposes such a requirement and security holders do not approve the issue, ASX may impose such further requirements as it considers appropriate under Listing Rule 18.8.

²⁶⁹ Those legal impediments will arise if the recipient of the securities was not aware of, and did not aid or abet, the breach of Chapter 7 and is unwilling to co-operate with the entity in having its securities cancelled to rectify the breach. A cancellation may also require approval from security holders or the court before it can be effected.

²⁷⁰ Listing Rule 18.8.

²⁷¹ If ASX were to allow this, it might encourage an entity to issue equity securities without seeking the required security holder approval in the hope of not being found out and in the knowledge that, if it is, the likely consequence would simply be a direction that it seek the approval it should have sought in the first place.

²⁷² Listing Rule 18.8A.

²⁷³ Listing Rule 2.9.

²⁷⁴ Listing Rule 17.12.

Annexure A:
Worked examples of calculations of placement capacity**Example 1**

An eligible entity has 200 million fully paid ordinary securities on issue at the time of its AGM. All of those securities have been on issue for at least 12 months. It has no other quoted securities on issue. At the AGM, a resolution conferring a 7.1A mandate is passed. No other resolution seeking approval for the issue of securities is voted on. Immediately after the AGM, the entity has the capacity to issue:

- 30 million (15% x 200 million) equity securities under Listing Rule 7.1; and
- 20 million (10% x 200 million) equity securities under Listing Rule 7.1A.2.

Six months after the AGM, the entity issues 10 million fully paid ordinary securities as a placement at 90% of the prevailing market price ("initial placement").²⁷⁵ This placement can be made under Listing Rule 7.1A because it complies with the discount limitation in Listing Rule 7.1A.3 and the securities are in a class already quoted on ASX. Following this placement, the entity has the capacity to issue:

- 30 million equity securities under Listing Rule 7.1; and
- 10 million equity securities under Listing Rule 7.1A.2.

One month later, the entity wishes to issue by way of a placement 20 million fully paid ordinary securities at 80% of the prevailing market price, and 20 million free attaching options that convert to ordinary securities on a one for one basis. It can do so, using both:

- its remaining capacity of 10 million equity securities under Listing Rule 7.1A.2 for half of the ordinary securities (because the ordinary securities are in a class already quoted on ASX and their issue price complies with the discount limitation in Listing Rule 7.1A.3), and
- its capacity of 30 million equity securities under Listing Rule 7.1 for the other 10 million ordinary securities and all 20 million options.

Until 12 months have passed following the initial placement, the entity does not have any further ability to issue equity securities under a placement without prior security holder approval.

Example 2

An eligible entity has 400 million fully paid ordinary securities on issue at the time of its AGM. It has no other quoted class of equity securities. All of the ordinary securities have been on issue for at least 12 months. At the AGM, a resolution conferring a 7.1A mandate is passed. No other resolution seeking approval for the issue of securities is voted on. Immediately following the AGM, the entity has the capacity to issue:

- 60 million (15% x 400 million) equity securities under Listing Rule 7.1; and
- 40 million (10% x 400 million) equity securities under Listing Rule 7.1A.2.

Three months after the AGM, the entity issues 55 million fully paid ordinary securities as a placement at 70% of the prevailing market price. This placement has to come under Listing Rule 7.1 because it does not comply with discount limitation in Listing Rule 7.1A.3. Following this placement, the entity has the capacity to issue:

²⁷⁵ References in the examples in this Annexure involving Listing Rule 7.1A to the "prevailing market price" mean the VWAP of the relevant class of equity securities over the 15 trading day pricing period referred to in Listing Rule 7.1A.3.

- 5 million equity securities under Listing Rule 7.1; and
- 40 million equity securities under Listing Rule 7.1A.2.

One month later, the entity wishes to issue 10 million options that convert to ordinary securities on a one for one basis under a placement. It cannot do so without obtaining prior ordinary security holder approval under Listing Rule 7.1. This is because it does not have sufficient capacity left under Listing Rule 7.1 to issue 10 million equity securities (it only has 5 million left), and it cannot use its capacity under Listing Rule 7.1A to issue equity securities in a new class.

Example 3 (issue of convertible securities)

An entity is proposing to issue convertible notes with a face value of \$100 each, a floating interest rate payable semi-annually in cash, and a term of three years. The convertible notes are a new class of security that has not been quoted on ASX. At maturity, the holder can elect to receive the principal of the note in cash or in fully paid ordinary shares at a fixed issue price of \$2 per share.

Twelve months before the proposed date of issue of the convertible notes, the entity had 100 million fully paid ordinary shares, 20 million partly paid shares and 20 million options on issue. In the intervening 12 month period, no other equity securities have been issued, no options have been exercised and no partly paid shares have been paid up. The number calculated in accordance with the formula in Listing Rule 7.1 is therefore 15 million (15% of the 100 million fully paid ordinary securities).

The entity could therefore issue up to 300,000 convertible notes (ie notes having an aggregate face value of \$30 million and convertible into a maximum amount of 15 million fully paid ordinary shares at maturity)²⁷⁶ without breaching the placement capacity in Listing Rule 7.1.

Suppose the entity decides to issue 200,000 convertible notes without shareholder approval under Listing Rule 7.1 or 7.4. For the next 12 months, that will reduce the entity's placement capacity under Listing Rule 7.1 by an amount equal to 10 million fully paid ordinary securities (being the maximum number of fully paid ordinary securities into which those notes may or will convert at maturity).²⁷⁷

Example 4 (convertible securities with limited rights of conversion)

An entity issues a bond to an institutional investor with a face value of \$10 million and a term of ten years. The bond is not quoted on ASX. The bond is not convertible except where the entity is the subject of a takeover bid under Chapter 6 of the Corporations Act at any time while the bond is on issue, in which case the holder may within one month of the takeover bid elect to convert the principal amount of the bond into fully paid ordinary shares in the entity at an issue price of \$1.00 per share.

The bond is a convertible security for the purposes of the Listing Rule even though the right of the holder to convert only applies if and when a takeover bid is made. The maximum number of ordinary securities that can be issued upon its conversion is 10 million. The issue of the bond will therefore require security holder approval under Listing Rule 7.1 if the entity does not have the capacity to issue at least 10 million fully paid ordinary securities under Listing Rule 7.1 at that time. If the bond is issued without security holder approval, it will reduce the entity's placement capacity under Listing Rule 7.1 by the equivalent of 10 million fully paid ordinary securities for the next 12 months.

Example 5 (convertible securities where the conversion formula only includes fixed amounts)

An entity issues convertible notes with an aggregate face value of \$10 million, a term of two years and a fixed interest rate of 5% per annum compounding annually and payable at maturity. The convertible notes are a new class of security that has not been quoted on ASX. At maturity, the holder can elect to have the principal plus

²⁷⁶ Calculated as 300,000 notes times the \$100 face value, divided by the \$2 fixed conversion price.

²⁷⁷ Calculated as 200,000 notes times the \$100 face value, divided by the \$2 fixed conversion price.

accumulated interest paid in cash or to receive fully paid ordinary shares in the entity at a fixed issue price of \$1 per share. The maximum number of ordinary securities into which the note can convert is 11,025,000 (being the sum of the note's principal and accumulated interest at maturity divided by the issue price of \$1).

The entity can issue the convertible notes without security holder approval provided its Listing Rule 7.1 placement capacity at the time is at least 11,025,000 fully paid ordinary securities.

If issued without security holder approval, the convertible notes will reduce the entity's placement capacity under Listing Rule 7.1 by 11,025,000 fully paid ordinary securities for the 12 months following their issue.

Example 6 (conversion tied to the market price of the underlying security with no floor)

An entity proposes to issue convertible notes with an aggregate face value of \$10 million. The convertible notes are a new class of security that has not been quoted on ASX. At maturity, the holder can elect to receive the principal of the note in cash or in fully paid ordinary shares. The issue price for the shares is an amount equal to 90% of the VWAP of the ordinary shares on ASX and ~~Chi-X~~ [TMX Australia Exchange](#) over a 10 trading day window that ends one week prior to the date of conversion. There is no floor price on conversion.

The VWAP of the entity's ordinary shares on ASX and ~~Chi-X~~ [TMX Australia Exchange](#) for the 10 day period ending one week prior to the proposed date of issue of the convertible notes was 50 cents. Using that value in the conversion formula, the maximum number of ordinary shares into which the notes would convert at the date of issue would therefore be $(\$10,000,000 / [90\% \times \$0.50])$, or 22,222,222 ordinary shares.²⁷⁸

The entity can issue the convertible notes without security holder approval provided its Listing Rule 7.1 placement capacity at the time is at least 22,222,222 ordinary shares.

If issued without security holder approval, the convertible notes will reduce the entity's placement capacity under Listing Rule 7.1 at the date of their issue by 22,222,222 ordinary shares. They will continue to affect its placement capacity for the next 12 months following their issue but the amount by which they do so will change with changes in the value of the underlying shares.

For instance, suppose the entity issues \$10 million of convertible notes. Six months later it wants to issue a further tranche of convertible notes.²⁷⁹ None of the initial tranche of convertible notes has been converted. The entity's ordinary shares have traded downwards since the issue of the first tranche of the convertible notes and the VWAP of the entity's ordinary shares on ASX and ~~Chi-X~~ [TMX Australia Exchange](#) for the 10 day period ending one week prior to the proposed date of issue of the second tranche of convertible notes is now 40 cents. ASX will use that price to calculate the maximum number of ordinary shares that can be issued under both the first tranche and the second tranche. Hence the value of the first tranche in variable C will now be $(\$10,000,000 / [90\% \times \$0.40])$, or 27,777,777 ordinary shares.

The downward movement in the market price of the entity's ordinary shares over the 6 month period has effectively reduced its placement capacity under Listing Rule 7.1 by 5,555,555 ordinary shares.

Suppose instead that the entity's ordinary shares have traded upwards since the issue of the first tranche of the convertible notes and the VWAP of the entity's ordinary shares on ASX and ~~Chi-X~~ [TMX Australia Exchange](#) for the 10 day period ending one week prior to the proposed date of issue of the second tranche of convertible notes is now 60 cents. ASX will use that price to calculate the maximum number of ordinary shares that can be issued under

²⁷⁸ As mentioned in '5.4 Determining the maximum number of securities that can be issued under a convertible security' ~~on page 32,~~ ASX will generally calculate the maximum number of underlying securities that can be issued under the terms of a convertible security assuming the security was being converted on the 'relevant date' and applying the conversion formula accordingly.

²⁷⁹ Note that the requirement to re-determine the maximum number of securities that may be issued under the first tranche of the convertible securities will apply to any subsequent issue of, or agreement to issue, equity securities made within 12 months after their issue, not just a further issue of convertible securities within those 12 months.

both the first tranche and the second tranche. Hence the value of the first tranche in variable C will now be $(\$10,000,000/[90\% \times \$0.60])$, or 18,518,518 ordinary shares.

The upward movement in the market price of the entity's ordinary shares over the 6 month period has effectively increased its placement capacity under Listing Rule 7.1 by 3,703,704 ordinary shares.

Example 7 (conversion tied to the market price of the underlying security but with a floor higher than the current market price)

An entity proposes to issue convertible notes with an aggregate face value of \$10 million. The convertible notes are a new class of security that has not been quoted on ASX. At maturity, the holder can elect to receive the principal of the note in cash or in fully paid ordinary shares. The issue price for the shares is an amount equal to the higher of \$1 per share and 90% of the VWAP of the ordinary shares on ASX and ~~Chi-X~~[TMX Australia Exchange](#) over a 10 trading day window that ends one week prior to the date of conversion.

The VWAP of the entity's ordinary shares on ASX and ~~Chi-X~~[TMX Australia Exchange](#) for the 10 day period ending one week prior to the proposed date of issue of ~~issue of~~ the convertible notes was 50 cents. Using that value, but for the \$1 floor on the conversion price, the maximum number of ordinary shares into which the notes would convert at the proposed date of issue would be $(\$10,000,000/[90\% \times \$0.50])$, or 22,222,222 ordinary shares. However, because of the \$1 floor on the conversion price, the maximum number of ordinary securities into which the notes would convert at the proposed date of issue is in fact 10,000,000 ordinary shares.

The entity can issue the convertible notes without security holder approval provided its Listing Rule 7.1 placement capacity at the time is at least 10,000,000 fully paid ordinary securities.

If issued without security holder approval, the convertible notes will reduce the entity's placement capacity under Listing Rule 7.1 at the date of their issue by 10,000,000 fully paid ordinary securities. They will continue to affect its placement capacity for the next 12 months following their issue but the amount by which they do so may change with changes in the value of the underlying shares (particularly if the 10 day VWAP trades above \$1.11 and hence the conversion formula will yield a conversion price higher than the \$1 floor).

Example 8 (conversion tied to the market price of the underlying security but with a floor lower than the current market price)

An entity proposes to issue convertible notes with an aggregate face value of \$10 million. The convertible notes are a new class of security that has not been quoted on ASX. At maturity, the holder can elect to receive the principal of the note in cash or in fully paid ordinary shares. The issue price for the shares is an amount equal to the higher of 25 cents per share and 90% of the VWAP of the ordinary shares on ASX and ~~Chi-X~~[TMX Australia Exchange](#) over a 10 trading day window that ends one week prior to the date of conversion.

The VWAP of the entity's ordinary shares on ASX and ~~Chi-X~~[TMX Australia Exchange](#) for the 10 day period ending one week prior to the proposed date of issue of the convertible notes was 50 cents. Using that value, the maximum number of ordinary shares into which the notes would convert at the proposed date of issue would be $(\$10,000,000/[90\% \times \$0.50])$, or 22,222,222 ordinary shares. This is not affected by the 25 cent floor on the conversion price since that does not come into play until the 10 day VWAP falls to under 27.78 cents.

The entity can issue the convertible notes without security holder approval provided its Listing Rule 7.1 placement capacity at the time is at least 22,222,222 ordinary shares.

If issued without security holder approval, the convertible notes will reduce the entity's placement capacity under Listing Rule 7.1 at the date of their issue by 22,222,222 ordinary shares. They will continue to affect its placement capacity for the next 12 months following their issue but the amount by which they do so will change with changes in the value of the underlying shares (as per example 6 above).

Annexure B:

Work sheet to calculate placement capacity under Listing Rule 7.1

Step 1: calculate "A" in rule 7.1	
Date of issue or agreement to issue securities	
The "relevant period" as defined in rule 7.1 Note: if the entity has been admitted to the official list for 12 months or more, this will be the 12 month period immediately preceding the date of the issue or agreement referred to in the previous cell; if the entity has been admitted to the official list for less than 12 months, this will be the period from the date the entity was admitted to the official list to the date immediately preceding the date of the issue or agreement).	
A1: total number of fully paid ordinary securities on issue at the commencement of the relevant period	
A2: number of fully paid ordinary securities issued in the relevant period under an exception in rule 7.2 other than exception 9, 16 or 17	
A3: number of fully paid ordinary securities issued in the relevant period on the conversion of convertible securities within rule 7.2 exception 9 where: (a) the convertible securities were issued or agreed to be issued before the commencement of the relevant period or (b) the issue of, or agreement to issue, the convertible securities was approved or taken to be approved under rule 7.1 or 7.4	
A4: number of fully paid ordinary securities issued in the relevant period under an agreement to issue securities within rule 7.2 exception 16 where: (a) the agreement was entered into before the commencement of the relevant period; or (b) the agreement or issue was approved or taken to be approved under rule 7.1 or 7.4	
A5: number of any other fully paid ordinary securities issued in the relevant period with approval under rule 7.1 or 7.4 Note: This may include fully paid ordinary securities issued in the relevant period under an agreement to issue securities within rule 7.2 exception 17 where the issue is subsequently approved under rule 7.1.	
A6: number of partly paid ordinary securities that became fully paid ordinary securities in the relevant period	
A7: number of fully paid ordinary securities cancelled in the relevant period	
"A" = A1 + A2 + A3 + A4 + A5 + A6 – A7	

Step 2: calculate the aggregate rule 7.1 placement capacity available	
Rule 7.1 capacity = A x 15%	
Step 3: calculate "C" in rule 7.1 (placement capacity already used)	
C1: total number of equity securities issued or agreed to be issued in the relevant period	
C2: number of equity securities issued or agreed to be issued in the relevant period with security holder approval under rule 7.1 or 7.4	
C3: number of equity securities issued or agreed to be issued in the relevant period under rule 7.1A	
C4: number of equity securities issued or agreed to be issued in the relevant period under an exception in rule 7.2	
"C" = C1 – C2 – C3 – C4	
Step 4: calculate remaining rule 7.1 placement capacity	
Remaining capacity = Rule 7.1 capacity – C	

Annexure C:

Work sheet to calculate placement capacity under Listing Rule 7.1A

Step 1: confirm entitlement to use rule 7.1A placement capacity	
Date of AGM approving additional placement capacity under rule 7.1A (must be not more than 12 months prior to the issue or agreement to issue securities in question)	
Confirm that at the date of the AGM above, the entity's market capitalisation was less than \$300 million and the entity was not included in the S&P/ASX 300 Index	
Confirm that since the date of the AGM above the entity has not had a subsequent AGM	
Confirm that since the date of the AGM above the entity's security holders have not passed a resolution approving a transaction under Listing Rule 11.1.2 or 11.2	
Confirm the securities being issued are in a class of securities presently quoted on ASX	
If the securities were issued within 10 trading days of date on which the price for the issue of the securities was agreed, state: - the date on which the price for the issue of the securities was agreed (the agreement date); - the period covered by the 15 trading days on which trades in that class were recorded immediately before the agreement date; and - the volume weighted average price ('VWAP') for securities in the relevant class over that period	
If the securities were not issued within 10 trading days of date on which the price for the issue of the securities was agreed, state: - the date on which the securities were issued (the issue date); - the period covered by the 15 trading days on which trades in that class were recorded immediately before the issue date; and - the volume weighted average price ('VWAP') for securities in the relevant class over that period	
Who was the source of the VWAP calculation referred to above	
Confirm the securities have been or are being issued for a cash consideration only	

State the cash consideration per security issued or being issued	
Confirm that the cash consideration per security issued or being issued is not less than 75% of the VWAP figure provided above	
Step 2: calculate "A" in rule 7.1A.2	
Date of issue or agreement to issue securities	
The "relevant period" as defined in rule 7.1 Note: if the entity has been admitted to the official list for 12 months or more, this will be the 12 month period immediately preceding the date of the issue or agreement referred to in the previous cell; if the entity has been admitted to the official list for less than 12 months, this will be the period from the date the entity was admitted to the official list to the date immediately preceding the date of the issue or agreement).	
A1: total number of fully paid ordinary securities on issue at the commencement of the relevant period	
A2: number of fully paid ordinary securities issued in the relevant period under an exception in rule 7.2 other than exception 9, 16 or 17	
A3: number of fully paid ordinary securities issued in the relevant period on the conversion of convertible securities within rule 7.2 exception 9 where: (a) the convertible securities were issued or agreed to be issued before the commencement of the relevant period; or (b) the issue of, or agreement to issue, the convertible securities was approved or taken to be approved under rule 7.1 or 7.4	
A4: number of fully paid ordinary securities issued in the relevant period under an agreement to issue securities within rule 7.2 exception 16 where: (a) the agreement was entered into before the commencement of the relevant period; or (b) the agreement or issue was approved or taken to be approved under rule 7.1 or 7.4	
A5: number of any other fully paid ordinary securities issued in the relevant period with approval under rule 7.1 or 7.4 Note: This may include fully paid ordinary securities issued in the relevant period under an agreement to issue securities within rule 7.2 exception 17 where the issue is subsequently approved under rule 7.1.	
A6: number of partly paid ordinary securities that became fully paid ordinary securities in the relevant period	
A7: number of fully paid ordinary securities cancelled in the relevant period	

"A" = A1 + A2 + A3 + A4 + A5 + A6 – A7	
Step 3: calculate the aggregate rule 7.1A placement capacity available	
Rule 7.1A capacity = A x 10%	
Step 4: calculate "E" in rule 7.1A.2 (placement capacity already used)	
E1: total number of equity securities issued or agreed to be issued in the relevant period under rule 7.1A.2	
E2: number of equity securities issued or agreed to be issued in the relevant period under rule 7.1A.2 where the issue or agreement was subsequently approved by security holders under rule 7.4	
"E" = E1 – E2	
Step 5: calculate remaining rule 7.1A placement capacity	
Remaining capacity = Rule 7.1A capacity – E	

ISSUES OF EQUITY SECURITIES TO PERSONS IN A POSITION OF INFLUENCE

The purpose of this Guidance Note	To assist listed entities to understand and comply with the framework in Listing Rules 10.11 – 10.16 regulating issues of equity securities to persons in a position of influence
The main points it covers	- The requirement in Listing Rule 10.11 for an entity's security holders to approve an issue of equity securities to a person in a position of influence - The exceptions to Listing Rule 10.11 in Listing Rule 10.12 - The requirement in Listing Rule 10.14 for an entity's security holders to approve an issue of equity securities under an employee incentive scheme to a director, an associate of a director or other closely connected party - The requirements for notices of meeting proposing a resolution to approve an issue of equity securities under Listing Rule 10.11 or 10.14 - The powers ASX may exercise if an entity issues equity securities in breach of Listing Rule 10.11 or 10.14
Related materials you should read	- Guidance Note 17 <i>Waivers and In-Principle Advice</i> - Guidance Note 21 <i>The Restrictions on Issuing Equity Securities in Chapter 7 of the Listing Rules</i> Guidance Note 22 <i>Notification of Directors' Interests</i> Guidance Note 22 <i>Director Disclosure of Interests and Transactions in Securities - Obligations of Listed Entities</i> - Guidance Note 24 <i>Acquisitions and Disposals of Substantial Assets Involving Persons in a Position of Influence</i> Guidance Note 30 <i>Notifying an Issue of Securities and Applying for Their Quotation</i> Guidance Note 30 <i>Notifying Changes in Issued Securities and Applying for Quotation of New or Additional Securities</i> - Guidance Note 35 <i>Security Holder Resolutions</i>

History: Guidance Note 25 ~~introduced 01/~~[amended XX/XX/XX](#). A previous version of this Guidance Note was issued in 12/19. It replaced a withdrawn Guidance Note entitled *The Exercise of ASX Discretions*.

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 admitted to the ASX official list as an ASX Listing¹ to understand and comply with the framework in Listing Rules 10.11 – 10.16 regulating issues of equity securities² to persons in a position of influence.

Listing Rule 10.11 provides:

“Unless one of the exceptions in rule 10.12 applies, an entity must not issue or agree to issue equity securities to any of the following persons without the approval of the holders of its ordinary securities.

10.11.1 *A related party.*

10.11.2 *A person who is, or was at any time in the 6 months before the issue or agreement, a substantial (30%+) holder in the entity.*

10.11.3 *A person who is, or was at any time in the 6 months before the issue or agreement, a substantial (10%+) holder in the entity and who has nominated a director to the board of the entity (in the case of a trust, to the board of the responsible entity of the trust) pursuant to a relevant agreement which gives them a right or expectation to do so.*

10.11.4 *An associate of a person referred to in rules 10.11.1 to 10.11.3.*

10.11.5 *A person whose relationship with the entity or a person referred to in rules 10.11.1 to 10.11.4 is such that, in ASX’s opinion, the issue or agreement should be approved by security holders.*

The notice of meeting to obtain approval must comply with rule 10.13.”

In this Guidance Note, for convenience, the parties mentioned in Listing Rules 10.11.1 – 10.11.5 are collectively referred to as “10.11 parties”, while the parties mentioned in Listing Rule 10.11.5 are referred to as “closely connected parties”.

Listing Rule 10.14 provides:

“An entity must not permit any of the following persons to acquire equity securities under an employee incentive scheme without the approval of the holders of its ordinary securities.

10.14.1 *A director of the entity (in the case of a trust, a director of the responsible entity of the trust).*

10.14.2 *An associate of a person referred to in rule 10.14.1.*

10.14.3 *A person whose relationship with the entity or a person referred to in rule 10.14.1 or 10.14.2 is such that, in ASX’s opinion, the acquisition should be approved by security holders.*

The notice of meeting to obtain approval must comply with rule 10.15.

An approval under this rule ceases to be valid if there is a material change to the terms of the scheme from those set out in the entity’s notice of meeting.”

¹ Listing Rules 10.11 and 10.14 do not apply to entities admitted to the official list as an ASX Debt Listing or as an ASX Foreign Exempt Listing (see Listing Rules 1.10 and 1.15.1). Unless otherwise indicated, references in this Guidance Note to a listed entity or entity mean an entity admitted to the ASX official list as an ASX Listing.

² The term “equity security” is defined in Listing Rule 19.12 as: (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); (f) a convertible security; and (g) any security that ASX decides to classify as an equity security; but not (h) a security ASX decides to classify as a debt security.

Again, for convenience, the parties mentioned in Listing Rule 10.14.3 are also referred to in this Guidance Note as “closely connected parties”.

2. Listing Rule 10.11

2.1 The scope of the rule

Listing Rule 10.11 effectively requires an entity to obtain the approval of the holders of its ordinary securities before it issues,³ or agrees to issue,⁴ any equity securities⁵ to a 10.11 party unless:

- the securities are issued under an employee incentive scheme with the approval of holders of ordinary securities under Listing Rule 10.14 (Listing Rule 10.12 exception 8); or
- another exception in Listing Rule 10.12 applies.

Listing Rule 10.11 does not apply to an issue of debt securities.⁶

Listing Rule 10.11 operates side-by-side with Chapter 2E of the Corporations Act 2001 (Cth),⁷ which regulates transactions between a public company or registered managed investment scheme⁸ on the one hand and its related parties on the other. Chapter 2E seeks to protect the interests of members by requiring the company or scheme to obtain approval from its members before it gives a financial benefit to a related party unless an exception applies.⁹

Listing Rule 10.11, however, is different in scope to Chapter 2E. Listing Rule 10.11 only applies to an issue of equity securities, whereas Chapter 2E applies to all forms of financial benefits, including an issue of securities.¹⁰ Conversely, Listing Rule 10.11 extends to a broader range of “connected” parties than just related parties and also does not include the broad exclusions that Chapter 2E has for transactions on arm’s length terms¹¹ and reasonable remuneration.¹²

2.2 The policy underpinning the rule

The policy that underpins Listing Rule 10.11 starts from the premise that a 10.11 party is likely to be in a position to influence whether the entity issues, or agrees to issue, equity securities to them, as well as the terms on which

³ Where options or other convertible securities are issued with the approval of the holders of ordinary securities under Listing Rule 10.11, the subsequent issue of the underlying securities when the options are exercised, or convertible securities are converted, does not require any further approval by security holders: see Listing Rule 10.12 exception 7.

⁴ Where an agreement to issue equity securities to a 10.11 party is approved by the holders of ordinary securities under Listing Rule 10.11, the subsequent issue of the equity securities pursuant to that agreement does not require any further approval by security holders: see Listing Rule 10.12 exception 10.

⁵ As defined in note 2 above.

⁶ The term “debt security” is defined in Listing Rule 19.12 as: (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; but not (c) a security ASX decides to classify as an equity security.

⁷ 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.

⁸ On its face, Chapter 2E only applies to transactions between a public company and its related parties. Part 5C.7 of the Corporations Act, however, extends Chapter 2E to transactions between a registered managed investment scheme and its related parties, with some modifications.

It should be noted that Chapter 2E and Part 5C.7 of the Corporations Act only apply to public companies established, and managed investment schemes registered, in Australia under that Act. Related party transactions by companies and trusts formed elsewhere may be subject to additional regulation in their country of formation, over and above Chapter 10 of the Listing Rules.

⁹ See sections 208 and 601LA.

¹⁰ See section 229(3)(e).

¹¹ Section 210.

¹² Section 211.

the issue or agreement is made. The harm it seeks to protect against is that the 10.11 party will exercise that influence to favour themselves at the expense of the entity.

To address the potential conflicts involved and to minimise the risk of this harm occurring, Listing Rule 10.11 displaces the general rule that the board of directors (or, in the case of a listed trust, the responsible entity¹³ (“RE”) of the trust) is responsible for managing the business of the entity to the exclusion of its security holders and requires the issue or agreement to be approved by the holders of ordinary securities in the entity. 10.11 parties who will participate in the issue and their associates are precluded from voting on the resolution to approve it.

2.3 Listing Rule 10.11.1 – related parties

Listing Rule 10.11.1 applies to an issue of equity securities to a related party.

The term “related party” is defined in similar terms under the Listing Rules as it is under the Corporations Act.

Where the listed entity is a body corporate, its related parties include:

- (i) an entity that controls the listed entity;
- (ii) if the listed entity is controlled by an entity that is not a body corporate, the persons making up that entity;
- (iii) directors of the listed entity or of an entity that controls the listed entity;
- (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 listed entity;
- (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.¹⁴

Where the listed entity is an internally managed¹⁵ trust, its related parties include:

- (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 RE 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 RE of the trust in its capacity as RE of the trust;

¹³ “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).

¹⁴ Paragraph (a) of the definition of “related party” in Listing Rule 19.12. This is essentially the same definition as in section 228 of the Corporations Act.

¹⁵ As defined in Listing Rule 19.12.

- (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) above at any time in the future; and
- (ix) anyone acting in concert with someone referred to in (i) – (viii) above.¹⁶

Where the listed entity is an externally managed¹⁷ trust, its related parties include:

- (i) the RE of the trust;
- (ii) an entity that controls the RE;
- (iii) if the RE is controlled by an entity that is not a body corporate, the persons making up that entity;
- (iv) directors of the RE or of an entity that controls the RE;
- (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 RE of the trust other than in its capacity as RE of the trust;
- (viii) an entity controlled by anyone referred to in (ii) – (vii) above unless it is also controlled by the RE of the trust in its capacity as RE 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) above at any time in the future; and
- (xi) anyone acting in concert with someone referred to in (i) – (x) above.¹⁸

For convenience, a person's spouse or de facto spouse, their parents and children, and the parents and children of their spouse or de facto spouse, are referred to in this Guidance Note as "prescribed relatives". Controllers of the entity (or in the case of an externally managed trust, of the RE) and the other entities they control are referred to as "group entities".

2.4 Listing Rule 10.11.2 – substantial (30%+) holders

Listing Rule 10.11.2 applies to an issue of equity securities to a person who is, or was at any time in the 6 months before the issue, a "substantial (30%+) holder" in the entity.¹⁹

The Listing Rules define a "substantial (30%+) holder" to mean:

¹⁶ Paragraph (b) of the definition of "related party" in Listing Rule 19.12.

¹⁷ As defined in Listing Rule 19.12.

¹⁸ Paragraph (c) of the definition of "related party" in Listing Rule 19.12. This is largely the same definition as in section 228 of the Corporations Act, as modified by section 601LA of the Corporations Act, but with the addition of paragraphs (i) and (vii), and the qualification of paragraph (viii) by the addition of the words "in its capacity as RE of the trust".

¹⁹—Listing Rule 10.11.2 was introduced on 1 December 2019. Prior to that date ASX had a general practice of applying Listing Rule 10.11 to issues of equity securities to substantial (30%+) holders. It did so by exercising its discretion in that regard under Listing Rule 10.11.5 (then Listing Rule 10.11.2). ASX deemed it appropriate to change this practice to a rule in 2019 for better transparency.

- in relation to an Australian company²⁰ or a trust which is a registered managed investment 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 Act²¹ if the reference in that paragraph to 5% was 30%;
- in relation to a trust which is not a registered managed investment scheme or which is a foreign trust,²² 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
- in relation to a foreign company,²³ a person who would have a “substantial holding” in the company under paragraph (a) of the definition of “substantial ~~holder~~holding” 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%.²⁴

2.5 Listing Rule 10.11.3 – substantial (10%+) holders with board representation

Listing Rule 10.11.3 applies to an issue of equity securities to a person who is, or was at any time in the 6 months before the issue, a substantial (10%+) holder in the entity and who has nominated a director to the board of the entity (or, in the case of a trust, to the board of the responsible entity of the trust) pursuant to a relevant agreement which gives them a right or expectation to do so.²⁵

The Listing Rules define a “substantial (10%+) holder” in the same terms as a “substantial (30%+) holder” above, but with the references to 30% changed to 10%.

“Relevant agreement” has the same meaning as in section 9 of the Corporations Act.²⁶ 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.

2.6 Listing Rule 10.11.4 – associates

Listing Rule 10.11.4 applies to an issue of equity securities to an associate of a person referred to in Listing Rules 10.11.1, 10.11.2 or 10.11.3.

Under the Listing Rules, a person’s associates include:

²⁰ “Australian company” means a body corporate that is formed or established in Australia (Listing Rule 19.12).

²¹ Paragraph (a) of the definition of “substantial holding” in section 9 of the Corporations Act ~~(as modified by ASIC Class Order 13/520)~~ effectively provides that a person has a substantial holding in a company or a listed registered managed investment 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)~~, 609(9B) (securities escrowed under listing rules) or 609B (securities subject to escrow agreement in connection with initial public offer etc) is 5% or more of the total votes attached to the voting shares in the company or the voting interests in the scheme.

²² “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).

²³ “Foreign company” means a body corporate that is not formed or established in Australia (Listing Rule 19.12).

²⁴ Listing Rule 19.12.

²⁵ ~~Listing Rule 10.11.3 was introduced on 1 December 2019. Prior to that date ASX had a general practice of applying Listing Rule 10.11 to issues of equity securities to substantial holders with board representation and with approximately 25%+ shareholdings. It did so by exercising its discretion in that regard under Listing Rule 10.11.5 (then Listing Rule 10.11.2). ASX deemed it appropriate to change this practice to a rule in 2019 for better transparency and to extend it to substantial (10%+) holders with board representation. ASX considered that a substantial (10%+) holding along with board representation was sufficient to give a person influence over any equity raisings the entity may undertake. This change also aligned Listing Rule 10.11.3 more closely with Listing Rule 10.1.3.~~

²⁶ Listing Rule 19.3.

- if the person is a natural person, any entity²⁷ the person controls;
- if the person is an entity:²⁸
 - any entity the person controls;
 - any entity that controls the person;
 - any entity that is controlled by an entity that controls the person;
- any person with whom the person has, or proposes to enter into, a relevant agreement²⁹ for the purpose of controlling or influencing the composition of the listed entity's board³⁰ or the conduct of the listed entity's affairs; and
- any person with whom the person is acting, or proposing to act, in concert in relation to the listed entity's affairs.³¹

Where the person is a natural person, their related parties are taken to be their associates unless the contrary is established. 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;

²⁷ "Entity" in this context means a body corporate, partnership, unincorporated body or a trust and includes, in the case of a trust, the RE of the trust (see the definition of "associate" in Listing Rule 19.12).

²⁸ See note 27 above.

²⁹ See the text accompanying note 26 above.

³⁰ 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 RE. 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 RE.

³¹ 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 27 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 Listing Rules definition also includes a provision deeming a related party of a natural person to be their associate unless the contrary is proven. As mentioned in the text, this 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.

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 had 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.

- (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.³²

2.7 Listing Rule 10.11.5 – ASX’s discretion to apply Listing Rule 10.11 to other parties

Listing Rule 10.11.5 applies where equity securities are issued to a person whose relationship to the entity or a person referred to in Listing Rules 10.11.1 to 10.11.4 is such that, in ASX’s opinion, the issue should be approved by security holders.

Listing Rule 10.11.5 effectively gives ASX a discretion to require that security holders approve an issue of equity securities to someone who is not one of the parties referred to in Listing Rules 10.11.1 to 10.11.4 but, in ASX’s opinion, is nonetheless in a position to exert influence over the entity’s decision to issue the securities.

Given the breadth of the parties captured by Listing Rules 10.11.1 to 10.11.4, this is not a discretion that ASX is often called upon to exercise and not one that it exercises lightly, since it imposes additional costs and delays on an entity in having to hold a meeting of security holders to approve an issue of securities that would otherwise be within the authority of the entity’s board (or, in the case of a listed trust, its RE). Nevertheless, it is a discretion that ASX can exercise at any time, including after the securities in question have been issued.

Examples of where ASX may apply Listing Rule 10.11.5 to an issue of securities include where the recipient of the securities is:

- a person or entity who has a close connection to a person referred to in Listing Rules 10.11.1 – 10.11.3 but who is not technically a related party (and therefore is not an assumed associate³³) of that person and ASX suspects that the transaction may have been deliberately structured in this way to avoid the operation of Listing Rule 10.11;³⁴
- someone, or a person or entity that has a close connection with someone, who has not been formally appointed as a director of the entity but who ASX suspects is acting as a de facto director;³⁵ and
- someone who the entity is arguing is not a party referred to in Listing Rules 10.11.1 – 10.11.4 but ASX has a contrary view – in which case, ASX may resolve that argument by applying Listing Rule 10.11.5 to the person.

³² Paragraph (d) of the definition of “related party” in Listing Rule 19.12.

³³ See the discussion of the provisions in the Listing Rules deeming an individual’s related parties to be their associates in ‘2.6 Listing Rule 10.11.4 – associates’ [on page 7](#).

³⁴ An example would be where the recipient of the securities is a brother or sister of a director. A sibling is not a “prescribed relative” and therefore not a related party of a director who would be deemed to be an associate of the director in the absence of proof to the contrary. Nevertheless, if the entity is not able to give ASX a compelling commercial justification as to why the securities are being issued to the sibling and compelling evidence that the sibling is not in fact an associate of the director, ASX is likely to apply Listing Rule 10.11.5 to the sibling. In this scenario, ASX considers it not unreasonable to assume, in the absence of evidence to the contrary, that the issue is intended indirectly to benefit the director and that it has been deliberately structured in this way in an attempt to avoid Listing Rule 10.11.

³⁵ In this context, “de facto director” means a person who acts in the position of director even though they have not been formally appointed to the role and any other person whose instructions or wishes are customarily followed by the board of the entity.

An example ASX has encountered in a related area 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 of a new listing (Listing Rule 1.1 condition 20) but to allow the individual to attend board meetings in an official capacity and act as a de facto director.

Ordinarily, ASX would not exercise its discretion to apply Listing Rule 10.11.5 to someone who is the chief executive officer (“CEO”) of an entity and who is not a director and not otherwise a 10.11 party, simply because of his or her position as CEO. This is on the premise that since the CEO is not a member of the board, the CEO is not in a position to influence the board’s determination on whether or not to issue securities to the CEO and the board, acting in accordance with its statutory and common law duties,³⁶ can be presumed to have exercised an independent judgement on the appropriateness of any such issue. However, there may be circumstances where this premise does not hold true and where ASX will consider applying Listing Rule 10.11.5 to an issue of equity securities to a CEO or to someone closely connected with a CEO. These include where:

- a close relative of the CEO or someone with whom the CEO has close business or personal ties is a director of the entity;
- ASX suspects that the CEO is acting as a de facto director; or
- the terms of the issue are so uncommercial as to call into question whether the board has properly exercised an independent judgement.

2.8 ASX’s approach to giving in-principle advice on the application of Listing Rule 10.11.5

ASX is sometimes approached to give in-principle advice that it will not apply Listing Rule 10.11.5 in relation to an issue of equity securities to a particular person.

For ASX to give that advice, it has to be satisfied that there is no reasonable prospect of the person influencing the terms of the issue to favour themselves at the expense of the entity. The entity seeking the advice must disclose candidly the full extent of the relationship between the person and their related parties on the one hand and the entity and its 10.11 parties on the other, and any influence that the recipient may have over the entity’s board (or, in the case of a listed trust, over the RE of the trust).

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. If the entity omits or misrepresents material facts in its application for in-principle advice, or if other material facts come to light after ASX provides its advice, ASX may withdraw or change its advice.

If ASX decides that it will not apply Listing Rule 10.11.5 in relation to an issue of equity securities to a particular person, it may impose conditions and, if it does so, the entity must comply with the conditions.³⁷ An example of a condition that ASX may impose is a condition that the entity disclose to the market the nature and extent of the relationship between the recipient of the securities and the entity or its 10.11 parties and the steps the board of the entity (or, in the case of a listed trust, the RE of the trust) has taken to satisfy itself that the issue of the securities is being made on arm’s length terms and is fair and reasonable from the perspective of the holders of the entity’s ordinary securities.

2.9 The responsibility for identifying 10.11 parties

It is the responsibility of a listed entity to identify whether it is issuing equity securities to a 10.11 party in circumstances that require security holder approval under Listing Rule 10.11 and, if so, to seek that approval ahead of the issue being made.

This should not prove unduly onerous. First, an entity should already have arrangements in place to identify its related parties and their associates so that it can comply with Chapter 2E (or equivalent overseas legislation) and

³⁶ In common with all other powers exercisable by directors, the power to issue securities must be exercised by the directors in accordance with their statutory and common law duties to act with due care and diligence, in good faith, in the best interests of the entity and for a proper purpose. See, for example, sections 180 and 181 (officers of listed companies) and 601FD (officers of responsible entities of listed trusts) of the Corporations Act.

³⁷ Listing Rule 18.5A provides that ASX may exercise, or decide not to exercise, any power or discretion conferred under the Listing Rules in its absolute discretion. It may do so on any conditions and, if it does so, the entity must comply with the conditions.

the various accounting requirements applicable to transactions with related parties.³⁸ It should also be aware of the identity of substantial holders of its securities and their associates through the substantial shareholding notices they will have given to the entity under section 671B of the Corporations Act (or equivalent overseas legislation).

Secondly, a number of the more common types of security issues, such as acquisitions under pro rata offers, dividend or distribution reinvestment plans, security purchase plans and approved employee incentive schemes, are specifically excepted from the requirement for security holder approval by Listing Rule 10.12. Listing Rule 10.11 will therefore only come into play where the entity is proposing to make an issue outside of those exceptions. Generally speaking, the most common instances of this will be placements and offers of securities under a prospectus, PDS or other offer document.

In the case of a placement, the identity of the placee should be known and it should be a relatively straight forward task for the entity to determine whether the placee is a 10.11 party.

In the case of an offer under a prospectus, PDS or other offer document, the entity may not necessarily know in advance whether 10.11 parties intend to participate in the offer. In that case, if the entity is not intending to seek security holder approval to allow 10.11 parties to take up the offer, the entity should include in the offer document a condition that 10.11 parties are precluded from accepting the offer and implement processes to check that any acceptances of the offer by a 10.11 party are identified and rejected.

The entity should also take appropriate steps to alert:

- its directors that they, their prescribed relatives, and entities controlled by them or their prescribed relatives; and
- any controllers of the entity that those controllers and all other group entities, directors of group entities, prescribed relatives of those directors, and entities controlled by those directors or their prescribed relatives,

are not able to take up the offer.

Directors of a listed entity (or, in the case of a listed trust, of the RE of the trust) have obligations to disclose any material personal interests they have in a matter that relates to the affairs of the entity³⁹ and to exercise due care and diligence to avoid causing the entity to breach the Listing Rules.⁴⁰ This includes, whenever they are considering a placement, an offer of securities under a prospectus, PDS or other offer document, or any other issue of securities that falls outside of the exceptions in Listing Rule 10.12, carefully considering whether they, any of their prescribed relatives, or any entities controlled by them or their prescribed relatives, may participate in the issue. If so, they should alert the entity to that fact so that it can seek security holder approval or take other action to avoid breaching Listing Rule 10.11.

2.10 The application of Listing Rule 10.11 to externally managed listed trusts

Listing Rule 10.11 potentially has a wider application to externally managed listed trusts than listed companies or internally managed listed trusts by dint of the fact that the related parties of an externally managed trust include its RE, any entities that control its RE ("controllers"), any entities controlled by its controllers (other than those

³⁸ See Accounting Standard AASB 124 *Related Party Disclosures*.

³⁹ See section 191 of the Corporations Act. While this section only applies to companies formed in Australia under that Act, companies formed in other jurisdictions are likely to be subject to an equivalent requirement under the governing legislation where they are formed or under the constitution of the company.

⁴⁰ See *ASIC v Macdonald (No 11)* [2009] NSWSC 287, 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* [2012] HCA 17 and *Shafron 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*, [2010] NSWCA 331). The CEO did not appeal the decision at first instance.

controlled by the RE in its capacity as the RE of the listed trust), and any entities that its RE controls other than in its capacity as the RE of the listed trust.

For the avoidance of doubt, an issue of equity securities by an externally managed listed trust to:

- the RE in its personal capacity;
- a related body corporate of the RE;
- another trust⁴¹ with the same RE; or
- another trust that has a related body corporate of the RE as its RE,

is plainly caught by Listing Rule 10.11.1 and will require security holder approval unless an exception in Listing Rule 10.12 applies or ASX grants a waiver.

2.11 ASX's approach to granting waivers of Listing Rule 10.11

ASX regards Listing Rule 10.11 as one of the fundamental protections afforded to investors under the Listing Rules. While ASX may consider procedural and other minor waivers of the rule,⁴² ASX will only waive the central requirement for security holders to approve an issue of equity securities to a 10.11 party, where it is clear to ASX that the harm Listing Rule 10.11 seeks to protect against is not present. The onus is firmly on the entity seeking the waiver to establish this to ASX's satisfaction.

Hence, to receive such a waiver, an entity must establish to ASX's satisfaction that there is no reasonable prospect of the recipient of the securities influencing the terms of the issue to favour themselves at the expense of the entity.

The mere fact that a director excuses himself or herself from participating in the discussion and decision at a board meeting concerning a proposed issue of securities to them or to someone connected to them will not be sufficient to establish an absence of influence.

ASX would note that, prior to 1 December 2019, it had previously granted waivers from Listing Rule 6.18, which prohibits a listed entity from granting anyone an option that is exercisable over a percentage of its capital, to permit an entity to give an anti-dilution right to a strategic security holder. The anti-dilution right allowed the strategic security holder and its related bodies corporate to maintain a particular percentage security holding in the entity. Typically, that percentage security holding was more than 10%, but less than 30%, of the entity's ordinary securities. Typically also, the strategic security holder was given a right to appoint one or more representatives to the entity's board.

The introduction on 1 December 2019 of Listing Rule 10.11.3 extending Listing Rule 10.11 to substantial (10%+) holders with board representation cuts across the operation of these waivers. Most strategic security holders with the benefit of these waivers will now fall within Listing Rule 10.11.3 and therefore, in the absence of a further waiver

⁴¹ References to an issue of equity securities to a trust include an issue of securities to the RE of the trust in that capacity or to a trustee, custodian or sub-custodian holding the securities on trust for the beneficiaries of the trust.

⁴² Guidance Note 17 *Waivers and In-Principle Advice* sets out some standard waivers that ASX will grant in relation to issues of securities that require security holder approval under Listing Rule 10.11. These include limited waivers of Listing Rule 14.7 to permit the securities to be issued more than one month after the date of the meeting granting that approval in cases where the issue is part of a transaction (such as a back door listing) requiring re-compliance with ASX's admission and quotation requirements under Listing Rule 11.1.3 or a recapitalisation pursuant to a deed of company arrangement, and the entity is not practically able to meet the one month deadline. They also include a waiver effectively extending exception 4 in Listing Rule 10.12 to issues under a share purchase plan to which that exception would otherwise have applied but for the fact that the number of securities to be issued under the plan is greater than 30% of the number of fully paid ordinary securities already on issue or because the issue price of the securities is less than 80% of the average market price for securities in that class. In this latter case, the issue must be approved by security holders under Listing Rule 7.1 in accordance with a concurrent waiver granted by ASX to Listing Rule 14.11.1 that permits security holders to vote on the resolution approving the issue despite them being able to participate in the issue.

from ASX, each new issue of equity securities under the anti-dilution right to the strategic security holder or its related bodies corporate will require security holder approval under Listing Rule 10.11.

In ASX's view, a security holder in a strategic relationship with a listed entity and with board representation is likely to have considerable influence over the types of capital raisings the entity undertakes. If the entity undertakes a non-pro rata capital raising that may potentially dilute the strategic security holder, it always has the option to buy securities on-market to top up its holding and therefore it should not need a separate anti-dilution right.

Accordingly, from 1 December 2019, ASX will no longer grant these types of waivers from Listing Rule 6.18.

Entities that had the benefit of a Listing Rule 6.18 waiver prior to 1 December 2019 should approach ASX to discuss its preparedness to grant a concurrent waiver of Listing Rule 10.11.3 to allow issues of equity securities to a strategic security holder and its related bodies corporate to continue to be made under their anti-dilution right without security holder approval. Before granting a concurrent Listing Rule 10.11.3 waiver, ASX will need to be satisfied that the basis for the original Listing Rule 6.18 waiver still holds true and that there is still a genuine strategic relationship between the entity and the security holder and that the security holder and its related bodies corporate have maintained their holding in the entity at the agreed percentage throughout the life of their anti-dilution right.⁴³ ASX will also need to be satisfied that the terms of the anti-dilution right continue to be appropriate and equitable.⁴⁴ Any concurrent Listing Rule 10.11.3 waiver ASX may grant may be subject to conditions⁴⁵ and may be varied or revoked by ASX at any time.⁴⁶

2.12 Notification obligations

An entity is required under Listing Rule 3.10.3 to notify ASX immediately of any proposed issue of securities, other than a proposed issue to be made under an employee incentive scheme⁴⁷ or a dividend or distribution plan⁴⁸ or as a consequence of the conversion of any convertible securities.⁴⁹ The notification must be in the form of, or accompanied by, an Appendix 3B ~~Announcement of Proposed Issue of Securities~~.

Any issue of equity securities that attracts Listing Rule 10.11,⁵⁰ therefore, will likely have to be notified to ASX under Listing Rule 3.10.3 immediately after it is "proposed".

~~Guidance Note 30 Notifying an Issue of Securities and Applying for Their Quotation~~ [Guidance Note 30 Notifying Changes in Issued Securities and Applying for Quotation of New or Additional Securities](#) has detailed guidance on the meaning of "proposed issue", when ASX must be notified of a proposed issue of securities under Listing Rule 3.10.3 and what information must be included in the notification.

Where a proposed issue of equity securities requires security holder approval under Listing Rule 10.11, the entity's Appendix 3B should disclose that fact and the proposed timetable for seeking that approval.

⁴³ In ASX's view, these anti-dilution rights should operate on a "use it or lose it" basis.

⁴⁴ Listing Rule 6.1.

⁴⁵ Listing Rule 18.1.

⁴⁶ Listing Rule 18.3.

⁴⁷ An issue under an employee incentive scheme must be notified to ASX within 5 business days of the issue under Listing Rule 3.10.3A.

⁴⁸ A proposed issue under a dividend or distribution plan is notified to ASX via an Appendix 3A.1.

⁴⁹ An issue made as a consequence of the conversion of any convertible securities must be notified to ASX within 5 business days of the issue under Listing Rule 3.10.3B. An exercise of options is treated as a conversion of convertible securities for these purposes.

⁵⁰ A proposed issue to be made under an employee incentive scheme typically is not caught by Listing Rule 10.11 because of exceptions 8 and 9 in Listing Rule 10.12. A proposed issue to be made under a dividend or distribution plan typically is not caught by Listing Rule 10.11 because of exception 3 in Listing Rule 10.12. A proposed issue to be made as a consequence of the conversion of any convertible securities typically is not caught by Listing Rule 10.11 because of exception 7 in Listing Rule 10.12.

Where an issue of securities leads to a change in the “notifiable interests”⁵¹ of a director, the entity must also give ASX an Appendix 3Y within 5 business days of the change occurring.⁵²

3. Permitted issues under Listing Rule 10.12

3.1 The policy underpinning the exceptions in Listing Rule 10.12

Listing Rule 10.12 lists different types of security issues to which Listing Rule 10.11 does not apply.

Some of these exceptions reflect the underlying nature of the issue and the fact that all security holders have an equal opportunity to participate in the issue on the same terms. They therefore do not present an opportunity for 10.11 parties to acquire securities on more favourable terms than other security holders. Others are of a technical nature to ensure that the framework regulating issues of equity securities to 10.11 parties operates as intended.

3.2 Exception 1 – pro rata issues

Listing Rule 10.12 exception 1⁵³ excludes from Listing Rule 10.11 an issue to holders of ordinary securities made under a pro rata issue,⁵⁴ as well as an issue to holders of other equity securities to the extent that the terms of issue of those other equity securities permit participation in the pro rata issue.

A pro rata issue is excluded from the restrictions in Listing Rule 10.11 as all security holders have an equal opportunity to participate in the issue on the same terms.⁵⁵

It should be noted that exception 1 only applies to securities taken up directly as part of a pro rata issue. It does not apply to a person taking up all or part of the shortfall of a pro rata issue.⁵⁶ For example, a director who has taken up their entitlement in a pro rata issue cannot take up shortfall securities under this exception, even if the shortfall is allocated on a pro rata basis to those participating in the shortfall.⁵⁷

3.3 Exception 2 – underwritings of pro rata issues

Listing Rule 10.12 exception 2⁵⁸ excludes from Listing Rule 10.11 an issue of securities to an underwriter under an agreement to underwrite the shortfall⁵⁹ on:

- a pro rata issue to holders of ordinary securities; or

⁵¹ As defined in Listing Rule 19.12.

⁵² Listing Rule 3.19A. See also Guidance Note 22 ~~Notification of Directors' Interests~~ [Director Disclosure of Interests and Transactions in Securities - Obligations of Listed Entities](#).

⁵³ There is an equivalent exception in Listing Rule 7.2 exception 1, meaning that pro rata issues that meet the requirements above are not subject to the placement limits in Listing Rules 7.1 and 7.1A.

⁵⁴ A pro rata issue must comply with Listing Rule 7.11. The issue can be renounceable or non-renounceable, although if the theoretical rights price for the issue is less than 0.1 cents, the lowest price point at which securities can be traded on ASX, as a practical matter, it will have to be non-renounceable. An issue is not precluded from being a pro rata issue for the purposes of the Listing Rules because security holders with addresses outside Australia and New Zealand are excluded from the issue under Listing Rule 7.7.1 or because security holders are allowed to subscribe for a greater number of securities than their entitlement under Listing Rule 7.11.4 (see the note to Listing Rule 10.12 exception 1 and the definition of “pro rata issue” in Listing Rule 19.12).

⁵⁵ Australian listed companies and managed investment schemes should note the guidance by the Takeovers Panel in Takeovers Panel Guidance Note 17 *Rights Issues* on its approach to rights issues which have, or are likely to have, an effect on control or the acquisition of a substantial interest in the company or scheme.

⁵⁶ In this regard, there is no exception in Listing Rule 10.12 equivalent to the one in Listing Rule 7.2 exception 3 dealing with issues to make up the shortfall on a pro rata issue.

⁵⁷ See also the note to Listing Rule 10.12 exception 1.

⁵⁸ There is an equivalent exception in Listing Rule 7.2 exception 2, meaning that issues under an agreement to underwrite the shortfall on a pro rata issue that meet the requirements above are not subject to the placement limits in Listing Rules 7.1 and 7.1A.

⁵⁹ Where security holders with addresses outside Australia and New Zealand are excluded from an issue under Listing Rule 7.7.1, ASX regards the securities that would otherwise have been issued to them as forming part of the shortfall.

- a pro rata issue to holders of ordinary securities and to holders of other equity securities to the extent that the terms of issue of the equity securities permit participation in the pro rata issue.

These issues are excluded from the restrictions in Listing Rule 10.11 since the pro rata nature of the underlying issue ensures that all security holders have had an equal opportunity to participate in the issue on the same terms.⁶⁰

To qualify for this exception, the entity must have disclosed:

- the name of the underwriter;
- the extent of the underwriting;⁶¹
- the fee, commission or other consideration payable to the underwriter;⁶² and
- a summary of the material circumstances that could lead to the underwriting being terminated,

in the Appendix 3B lodged under Listing Rule 3.10.3 in relation to the pro rata issue or, if the underwriting was entered into after the Appendix 3B was lodged with ASX, by market announcement as soon as practicable following the entry of the underwriting agreement.

It must also make the issue to the underwriter not later than 15 business days after the close of the offer.

The reference in this exception to an underwriter includes a sub-underwriter.⁶³ If a 10.11 party is sub-underwriting, rather than underwriting, a pro rata issue, the details disclosed in the Appendix 3B or market announcement referred to in the exception must include the name of that party, the extent of their sub-underwriting, the fee or commission payable to them as sub-underwriter and a summary of the material circumstances that could lead to the sub-underwriting being terminated.⁶⁴

This exception only applies where the arrangement with the underwriter constitutes a genuine underwriting or sub-underwriting. ASX agrees with the views expressed by the Australian Securities and Investments Commission (“ASIC”) in this regard:

“A central element of underwriting is the assumption of risk by the underwriter—in particular the obligation to subscribe for, or nominate other persons to subscribe for, shares in the event of a shortfall ...

Where an arrangement does not, in substance, involve the assumption of this risk, we take the view that the arrangement is not underwriting. This includes arrangements:

- (a) *incorporating terms or conditions that, in the circumstances, effectively give the ‘underwriter’ a general discretion to terminate the underwriting arrangement from the outset (e.g. terms or conditions*

⁶⁰ Australian listed companies and managed investment schemes again should note the guidance by the Takeovers Panel in Takeovers Panel Guidance Note 17 *Rights Issues* on its approach to rights issues which have, or are likely to have, an effect on control or the acquisition of a substantial interest in the company or scheme, including the comment in paragraph 2425 of that Guidance Note that:

“For many companies, a related party or major shareholder is the only realistic source of underwriting (sub-underwriting). Underwriting (sub-underwriting) by a related party or major shareholder does not, of itself, give rise to unacceptable circumstances. However, greater care is needed to mitigate the potential control effects if a related party or major shareholder underwrites (sub-underwrites). The failure of directors to properly canvass professional underwriters or seek out alternatives to a related party or major shareholder underwriter (sub-underwriter) may increase the likelihood of unacceptable circumstances.”

⁶¹ The reference to the “extent of the underwriting” means the amount or proportion of the issue that is underwritten or sub-underwritten, as the case may be (see the note to Listing Rule 10.12 exception 2).

⁶² The reference to the “fee, commission or other consideration payable” includes any applicable discount the underwriter or sub-underwriter receives to the issue price payable by participants in the issue (see the note to Listing Rule 10.12 exception 2).

⁶³ See the definition of “underwrite” in section 9 of the Corporations Act and Listing Rule 19.3.

⁶⁴ See the note to Listing Rule 10.12 exception 2. The Appendix 3B asks whether a party referred to in Listing Rule 10.11 is sub-underwriting the proposed issue and, if this is answered in the affirmative, will call for this information to be provided in relation to the sub-underwriting.

giving the underwriter a termination right if one or more events over which the underwriter has effective control occur); or

- (b) *that may otherwise be terminated in circumstances that mean that the ‘underwriter’ does not, in effect, bear the risk of the shortfall.*

For example, arrangements that permit the underwriter to be relieved of its obligations following a default by a sub-underwriter—either entirely through termination of the agreement, or by reducing the amount of the underwriting commitment by the amount in default—seek to relieve the underwriter of their obligation to subscribe for securities in the event of a shortfall. Accordingly, we do not consider such arrangements to constitute ‘underwriting’.

Further, arrangements that permit the underwriter to terminate on the basis of an event that is certain, or near certain, to occur (such as a token fall in a relevant market index) are also likely to mean that the underwriter has an option to underwrite and does not, in substance, assume shortfall risk.”⁶⁵

It should be noted that exception 2 also only applies to issues of securities to make up the underwritten shortfall from a pro rata issue. It does not apply to any other issues of securities under an underwriting agreement (for example, in payment of the underwriting fee or any other amount due to the underwriter under the agreement). These other types of issues will therefore only be able to be made to a 10.11 party if security holder approval is first obtained under Listing Rule 10.11.

3.4 Exception 3 – DRPs

Listing Rule 10.12 exception 3⁶⁶ excludes from the restrictions in Listing Rule 10.11 an issue of securities under a dividend or distribution plan (“DRP”) provided the DRP does not impose a limit on participation and security holders are able to elect to receive all of their dividend or distribution as securities.⁶⁷

These types of issues again are excluded from the restrictions in Listing Rule 10.11 because all security holders have an equal opportunity to participate in the DRP and to acquire securities on the same terms.

If a DRP does impose a limit on participation – for example, a maximum dollar limit on the amount of reinvestment or a maximum limit on the number of securities that a security holder can acquire under the DRP – any issue under the DRP to a 10.11 party will not qualify under exception 3 and will therefore require security holder [approval](#) under Listing Rule 10.11.

It should be noted that exception 3 does not extend to an issue of securities under an agreement to underwrite the shortfall on a DRP.⁶⁸ Accordingly, a 10.11 party can only take up securities as an underwriter of a DRP or by way of a sub-underwriting or similar arrangement with an underwriter of a DRP, if they receive specific approval to do so under Listing Rule 10.11.

⁶⁵ See ASIC Regulatory Guide 6 *Takeovers: Exceptions to the general prohibition* at paragraphs 6.148-6.149. A fortiori, someone who has given an undertaking to place securities on a “best endeavours” basis is not an underwriter for the purposes of exception 2.

⁶⁶ There is an equivalent exception in Listing Rule 7.2 exception 4, meaning that issues under a DRP that meet the requirements above are not subject to the placement limits in Listing Rules 7.1 and 7.1A.

⁶⁷ A restriction on employees participating in a dividend or distribution plan in respect of securities held under an employee incentive scheme is not a limit on participation for the purposes of exception 3 (see the note to Listing Rule 10.12 exception 3).

⁶⁸ There is no exception in Listing Rule 10.12 equivalent to the one in Listing Rule 7.2 exception 4 for issues under an agreement to underwrite the shortfall on a DRP.

3.5 Exception 4 – SPPs

Listing Rule 10.12 exception 4⁶⁹ excludes from Listing Rule 10.11 an issue of securities made under a security purchase plan (“SPP”) provided:

- the number of securities to be issued is not greater than 30% of the number of fully paid ordinary securities already on issue; and
- the issue price of the securities is at least 80% of the volume weighted average price⁷⁰ for securities in that class, calculated over the last 5 days on which sales in the securities were recorded, either before the day on which the issue is announced or before the day on which the issue is made.

Exception 4 is only available once in any 12 month period.

Issues under an SPP are excluded from Listing Rule 10.11 because all security holders have an equal opportunity to participate in the issue on the same terms up to the \$30,000 cap imposed in ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547 ~~(see below)~~.

An SPP is defined to have the same meaning as a “purchase plan” in ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547.⁷¹ This instrument allows ASX listed companies and managed investment schemes to offer securities to existing members without a prospectus or PDS provided they meet certain conditions summarised below. The offer must be made to each registered holder of securities in the class in question whose address (as recorded in the register of members) is in a place in which, in the reasonable opinion of the entity, it is lawful and practical for the entity to offer and issue securities to that person.⁷²

~~For an entity to qualify for the relief in ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547, the following conditions must be satisfied:⁷³~~

- ~~• the entity must be in compliance with its continuous disclosure and financial reporting obligations;~~
- ~~• offers of securities under the SPP must only be made to registered holders of securities in the same class;~~
- ~~• each offer must be made on similar terms and conditions and on a non-renounceable basis;~~
- ~~• a registered holder who is not a custodian must not be issued more than \$30,000 worth of securities under the ASIC relief in any consecutive 12 month period;~~
- ~~• where a registered holder is a custodian:~~

⁶⁹ There is an equivalent exception in Listing Rule 7.2 exception 5, meaning that issues under an SPP that meet the requirements above are not subject to the placement limits in Listing Rules 7.1 and 7.1A.

⁷⁰ “Volume weighted average price”, or VWAP, in relation to particular securities for a particular period, means the volume weighted average price of trading in those securities on the ASX market and the ~~Chi-X~~TMX 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 (Listing Rule 19.12). Trading on the ASX market and ~~Chi-X~~TMX 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.

⁷¹ Listing Rule 19.12. See also ASIC Regulatory Guide 125 *Share and interest purchase plans*.

⁷² See paragraph (a) of the definition of “purchase plan” in section 4 of ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547.

⁷³ ~~This is a summary only of the conditions that must be satisfied to qualify for the relief provided in ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547. Entities wishing to rely on that relief should read that instrument in full.~~

- ~~• the custodian must certify in writing to the entity that certain conditions have been met;~~
- ~~• the custodian must provide the entity with particulars of the relevant beneficiary wishing to participate in the SPP offer and the existing interests of the beneficiary in the relevant securities; and~~
- ~~• the entity must be reasonably satisfied that in any consecutive 12 month period, the total application price of the securities to be issued to, or in relation to, any beneficiary of that custodian under the ASIC relief (excluding securities applied for by the custodian on behalf of a beneficiary but not issued) is not more than \$30,000;~~
- ~~• the entity must have lodged a cleansing notice with ASX;~~
- ~~• the issue price must be less than the market price during a specified period (determined by the entity) in the 30 days before either the date of the offer or the date of the issue;~~
- ~~• the written offer document must disclose the method used to calculate the issue price, the relationship between the issue and market price, and the risk that the market price may change between the date of the offer and the date when the securities are issued; and~~
- ~~• the entity's securities must not have been suspended from trading on ASX for more than a total of 5 days during the 12 months before the day on which the offer is made under the SPP or, if the securities have been quoted on ASX for less than 12 months, during the period of quotation.~~

For an issue of securities to fall within exception 4, the entity must meet all of the conditions in ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547 apart from the ~~last~~ requirement ~~above that the entity's securities not be suspended from trading on ASX for the prescribed period~~. If the entity does not meet ~~the last~~ that requirement, it can still avail itself of exception 4 but it will not qualify for the relief in ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547 and will therefore have to prepare a prospectus or PDS for the offer under the SPP.

Exception 4 does not apply to an issue of securities under an agreement to underwrite the shortfall on an SPP. Accordingly, a 10.11 party can only take up securities as an underwriter of an SPP, or by way of a sub-underwriting or similar arrangement with an underwriter of an SPP, if they receive specific approval to do so under Listing Rule 10.11.

It should be noted that a standard waiver is available under Guidance Note 17 *Waivers and In-Principle Advice*, where an entity is seeking approval under Listing Rule 7.1 to an issue of securities under an SPP to which exception 5 of Listing Rule 7.2 would otherwise have applied but for the fact that the number of securities to be issued under the SPP is greater than 30% of the number of fully paid ordinary securities already on issue or because the issue price of the securities is less than 80% of the average market price for securities in that class. In such a case, ASX will grant a standard waiver of Listing Rule 7.3.⁷⁴ to permit a resolution in a notice of meeting approving the issue of securities under the SPP not to include a voting exclusion statement that excludes the votes of any person who may participate in the SPP or any associate of such a person, provided:

- the SPP is not underwritten; or
- if the SPP is underwritten, the entity excludes any votes cast on the resolution by any proposed underwriter or sub-underwriter of the SPP and their associates.

⁷⁴ That is, the requirement for a notice of meeting proposing a resolution to approve an issue of securities under Listing Rule 7.1 to include a voting exclusion statement.

Where such a resolution is passed by the holders of ordinary securities, ASX will also grant a concurrent waiver from Listing Rule 10.11 to permit directors and their associates to participate in the SPP on the same terms as other security holders without the approval of the holders of ordinary securities under that rule.⁷⁵

3.6 Exception 5 – regulated takeovers and mergers

Listing Rule 10.12 exception 5⁷⁶ excludes from the restrictions in Listing Rule 10.11 an issue of securities under a regulated takeover ~~bid or under a merger by way of scheme of arrangement under Part 5.1 of the Corporations Act.~~

~~For these purposes, “takeover bid” has the same meaning as in section 9 of the Corporations Act—in other words, a takeover bid for an Australian company or managed investment scheme that is made in compliance with Chapter 6 of the Corporations Act.~~

~~Exception 5 therefore only applies to a takeover bid or merger by way of scheme of arrangement involving an Australian company that is regulated by the Corporations Act.~~

Exception 5 has been included as a concession to listed entities, in recognition of the fact that ~~a takeover or merger by way of a scheme of arrangement~~ takeovers and mergers in Australia (including trust schemes) and certain other jurisdictions are already subject to regulation and could be difficult to complete in circumstances where the entity is required to seek approval from its security holders before it can issue securities under the takeover or ~~scheme~~ merger. A requirement for security holder approval could also put ASX-listed entities at a competitive disadvantage to an unlisted bidder or acquirer just because a 10.11 party happens to hold some securities in the takeover or merger target. Such a requirement could also put the entity at a significant competitive disadvantage ~~to an unlisted bidder/acquirer~~ in a contested takeover/acquisitions situation.

~~Exception 5 also recognises the robust regulatory framework and the high level of regulatory and curial oversight applicable to takeovers and schemes in Australia, including the regulation of unacceptable conduct and the provision of collateral benefits in Chapter 6 of the Corporations Act.~~

~~In an appropriate case, ASX will consider granting a waiver to extend exception 5 to securities received under a merger between an entity and an Australian trust by way of a “trust scheme of arrangement”, where the scheme is approved by a special resolution of unitholders and is subject to judicial approval under trustee legislation.⁷⁷ ASX will also consider granting a waiver to extend exception 5 to an entity making a takeover offer for, or merging with, a foreign company or trust that can satisfy ASX that the takeover or merger is subject to an acceptable regulatory regime equivalent to the Corporations Act.⁷⁸~~

It should be noted that Listing Rule 10.1 can apply to an acquisition of securities by an entity under a regulated takeover ~~bid or merger by scheme of arrangement~~⁷⁹ and there is no exception to Listing Rule 10.1 comparable to Listing Rule 10.12 exception 5.⁸⁰ Listing Rule 10.1 will apply if someone who is a party referred to in Listing Rules 10.1.1 to 10.1.5 is also a security holder in the takeover or merger target and the size of their holding is large

⁷⁵ This concurrent waiver effectively treats the offer under the SPP on the same basis as an offer falling within exception 4 of Listing Rule 10.12.

⁷⁶ There is an equivalent exception in Listing Rule 7.2 exception 6 (although that exception does not apply in relation to an issue of securities under a reverse takeover or prescribed transaction).

⁷⁷—The expression “trust scheme of arrangement” is a colloquial one that refers to an amendment to the constitution of a trust to achieve a merger of the trust with another entity. It has similar features to a scheme of arrangement under Part 5.1 of the Corporations Act in that the amendment to the constitution typically requires a special resolution of unitholders and the overall arrangement is typically subject to judicial review, usually in the form of an application for judicial advice that the constitutional amendment is an appropriate one to be made by the RE of the trust.

⁷⁸—ASX has granted such waivers in relation to takeovers or mergers under the laws of the US, UK, Canada, New Zealand, Papua New Guinea and Singapore.

⁷⁹ See generally Guidance Note 24 *Acquisitions and Disposals of Assets Involving Persons in a Position of Influence*.

⁸⁰ Listing Rule 10.3(d) excludes from Listing Rule 10.1 an issue of securities by an entity for cash. That exclusion plainly does not apply to an issue of securities in exchange for securities in the target of a takeover bid or in an entity being acquired or merged with under a scheme of arrangement: or other merger transaction.

enough to be a “substantial asset” (ie the value of their holding, or the value of the consideration to be paid for their holding, in the target exceeds 5% of the equity interests in the entity, as set out in the latest accounts given to ASX under the Listing Rules⁸¹). In such a case, absent a waiver from ASX, the acquisition by the entity of their holding under the [takeover bid](#) or [scheme merger](#) will require security holder approval under Listing Rule 10.1, even though the issue of securities to them as consideration for the acquisition is excepted from the requirement for security holder approval in Listing Rule 10.11 by Listing Rule 10.12 exception 5.

In these circumstances, ASX has typically received a request from the entity in question for a waiver of Listing Rule 10.1. Guidance Note 24 *Acquisitions and Disposals of Substantial Assets Involving Persons in a Position of Influence* has guidance on when ASX may be prepared to grant such a waiver.

3.7 Exception 6 – issues approved under item 7 of section 611

Listing Rule 10.12 exception 6⁸² excludes from the restrictions in Listing Rule 10.11 an issue of securities that is approved under item 7 of section 611 of the Corporations Act. These issues are excluded on the basis that the security holder approval requirements under item 7 of section 611 are more extensive than those under Listing Rule 10.11⁸³ and it would be an unnecessary duplication to require an additional security holder approval under Listing Rule 10.11.

Item 7 of section 611, and therefore exception 6, only applies to an Australian company or registered managed investment scheme that is subject to the takeover provisions in Chapter 6 of the Corporations Act.

In an appropriate case, ASX will consider granting a waiver to extend exception 6 to an acquisition of securities in a foreign entity or trust that is approved under equivalent legislation in its place of establishment.

It should be noted that, unlike issues made with security holder approval under Listing Rule 10.11, issues made with approval under item 7 of section 611 are not constrained by any time limit.⁸⁴ An entity must include a summary in its annual report of any issues of securities approved for the purposes of item 7 of section 611 of the Corporations Act which have not been completed as at the date of the annual report.⁸⁵

3.8 Exception 7 – conversion of convertible securities

Listing Rule 10.12 exception 7⁸⁶ excludes from Listing Rule 10.11 an issue of securities resulting from the conversion of convertible securities.⁸⁷ The entity must have issued the convertible securities:

- (a) before it was listed and disclosed the existence and material terms of the convertible securities in the prospectus, PDS or information memorandum lodged with ASX under Listing Rule 1.1 condition 3; or
- (b) after it was listed and complied with the Listing Rules when it did so.

This [is](#) a technical exception intended to ensure that the Listing Rules deal appropriately with convertible securities. The time at which an issue of convertible securities is tested to determine whether it requires security holder

⁸¹ See Listing Rule 10.2.

⁸² There is an equivalent exception in Listing Rule 7.2 exception 8.

⁸³ Among other things, to comply with ASIC’s regulatory guidance on item 7, an entity must obtain an independent expert’s report opining on whether the issue is fair and reasonable to non-participating security holders.

⁸⁴ Although, an item 7 approval may need to be renewed if there is a material change in circumstances after the approval has been given and before the transaction is completed and may not be available for an acquisition that will complete in the distant future: see paragraphs 87 and 89 of ASIC Regulatory Guide 74 *Acquisitions approved by members*.

⁸⁵ Listing Rule 4.10.21.

⁸⁶ There is an equivalent exception in Listing Rule 7.2 exception 9, meaning that the conversion of convertible securities that meet the conditions set out above are not subject to the placement limits in Listing Rules 7.1 and 7.1A.

⁸⁷ An option is a convertible security for the purposes of this exception (see the notes to Listing Rule 7.2 exception 9 and the definition of “convertible security” in Listing Rule 19.12). Reflecting this, the term ‘convertible’ is defined to include ‘exercisable’ (see the definition of that term in Listing Rule 19.12).

approval under Listing Rule 10.11 is when they are issued, not when they are converted. If at the time they are issued they comply with the Listing Rules, any subsequent conversion in accordance with their terms does not require security holder approval under Listing Rule 10.11.

In the case of (a) above, the Listing Rules effectively treat the fact that security holders have agreed to invest in the entity after it has disclosed the existence and material terms of the convertible securities in its listing prospectus, PDS or information memorandum as an implicit approval by security holders to the issue of the convertible securities. However, this does not mean that the entity has carte blanche to issue whatever convertible securities it wants to directors and their associates pre-listing. ASX may refuse to admit the entity to the official list and to quote its securities if ASX considers that the convertible securities breach Chapter 6 of the Listing Rules⁸⁸ or result in the entity not having an appropriate structure for a listed entity,⁸⁹ or it is otherwise appropriate for ASX to exercise its absolute discretion to refuse the entity's application for admission.⁹⁰

To meet the requirement in (a) above that the entity disclose the existence and material terms of the convertible securities in its listing prospectus, PDS or information memorandum, the entity should include in that document:⁹¹

- the name of the person to whom the entity issued the convertible securities;
- which category in rules 10.11.1 – 10.11.5 the person falls within and why;
- the number of convertible securities that were issued to the person;
- a summary of the material terms of the convertible securities;
- the date or dates on which the convertible securities were issued;
- the price or other consideration the entity received for the issue; and
- the purpose of the issue, including the use or intended use of any funds raised by the issue.

To meet the requirement in (b) above that the entity must have complied with the Listing Rules when it issued the convertible securities, the issue must not only be made in compliance with the requirements of Listing Rule 10.11, it also must not breach the prohibitions in Listing Rule 7.1, 7.1A,⁹² 7.6 or 7.9.⁹³

⁸⁸ Listing Rule 2.1 condition 1. This includes the requirement in Listing Rule 6.1 that the terms applying to the convertible securities are, in ASX's opinion, appropriate and equitable.

⁸⁹ Listing Rule 1.1 condition 1. See section 3.1 of Guidance Note 1 *Applying for Admission – ASX Listings* for examples of when ASX may determine that an entity does not have a structure or operations appropriate for a listed entity.

⁹⁰ Listing Rule 1.19. See section 2.9 of Guidance Note 1 *Applying for Admission – ASX Listings* for examples of when ASX may exercise this discretion.

⁹¹ By analogy with the information required to be disclosed under Listing Rule 10.13 in a notice of meeting seeking security holder approval under Listing Rule 10.11.

⁹² Note that Listing Rule 7.1A only permits an issue of convertible securities if they are in a class of securities that is already quoted on ASX.

⁹³ See Guidance Note 21 *The Restrictions on Issuing Equity Securities in Chapter 7 of the Listing Rules*.

3.9 Exception 8 – issues under employee incentive schemes approved by security holders

Listing Rule 10.12 exception 8⁹⁴ excludes from the restrictions in Listing Rule 10.11 an issue of equity securities under an employee incentive scheme made, or taken to have been made,⁹⁵ with the approval of holders of ordinary securities under Listing Rule 10.14.

These issues are excluded from Listing Rule 10.11 on the basis that they have already been approved by security holders and to require a separate approval under Listing Rule 10.11 would therefore be an unnecessary duplication.

3.10 Exception 9 – issues of certain options and rights under employee incentive schemes

Listing Rule 10.12 exception 9⁹⁶ excludes from the restrictions in Listing Rule 10.11 a grant of options or other rights to acquire securities under an employee incentive scheme, where the securities to be acquired on the exercise of the options or in satisfaction of the rights are required by the terms of the scheme⁹⁷ to be purchased on-market.

These issues are excluded from Listing Rule 10.11 on the basis that they are effectively remuneration arrangements that properly fall to the directors for approval. Since the securities to be acquired on the exercise of the options or in satisfaction of the rights must be purchased on-market, there is also no dilution to existing security holders.

3.11 Exception 10 – agreements to issue securities

Listing Rule 10.12 exception 10⁹⁸ excludes from Listing Rule 10.11 an issue under an agreement to issue securities. The entity must have entered into the agreement:

- (a) before it was listed and disclosed the existence and material terms of the agreement in the prospectus, PDS or information memorandum lodged with ASX under Listing Rule 1.1 condition 3; or
- (b) after it was listed and complied with the Listing Rules when it did so.

This is a technical exception intended to ensure that the Listing Rules deal appropriately with agreements to issue securities. The time at which an agreement to issue securities is tested to determine whether it requires approval under Listing Rule 10.11 is the time the agreement is entered into. If at that time the agreement complies with the Listing Rules, any subsequent issue of securities in accordance with the agreement does not require security holder approval under Listing Rule 10.11.

In the case of (a) above, the Listing Rules effectively treat the fact that security holders have agreed to invest in the entity after it has disclosed the existence and material terms of the agreement to issue securities in its listing prospectus, PDS or information memorandum as an implicit approval by security holders of the agreement. Again, however, this does not mean that the entity has carte blanche to enter into whatever agreements to issue securities

⁹⁴ There is an equivalent exception in Listing Rule 7.2 exception 14 for issues made with the approval of holders of ordinary securities under Listing Rule 10.14. There is also an exception in Listing Rule 7.2 exception 13, allowing issues to be made under an employee incentive scheme if, within 3 years before the issue date, either: (a) in the case of a scheme established before the entity was listed – a summary of the terms of the scheme were set out in the prospectus, PDS or information memorandum lodged with ASX under Listing Rule 1.1 condition 3; or (b) holders of ordinary securities have approved the issue of securities under the scheme as an exception to Listing Rule 7.2.

⁹⁵ The reference to an issue “taken to be made” with the approval of holders of ordinary securities under Listing Rule 10.14 is intended to pick up an issue of securities under the exception to Listing Rule 10.14 in Listing Rule 10.16(c)(i). That exception applies to an issue of equity securities pursuant to options or other rights to acquire securities granted to directors or their associates under an employee incentive scheme where the entity issued the options or other rights before it was listed and disclosed the information referred to in [rules Listing Rules 10.15.1 – 10.15.9](#) in relation to the issue in the prospectus, PDS or information memorandum lodged with ASX under [rule Listing Rule 1.1](#) condition 3. The issue of the options or other rights is taken to have been made with approval under Listing Rule 10.14, meaning that the issue of equity securities will also be exempt from Listing Rule 10.11 under exception 8 of Listing Rule 10.12.

⁹⁶ There is an equivalent exception in Listing Rule 7.2 exception 15. See also Listing Rule 10.16.

⁹⁷ The phrase “terms of the scheme” includes terms, conditions, rules, regulations or guidelines formulated to introduce or administer an employee incentive scheme (Listing Rule 19.12).

⁹⁸ There is an equivalent exception in Listing Rule 7.2 exception 16.

it wants with directors and their associates pre-listing. ASX may refuse to admit the entity to the official list and to quote its securities if ASX considers that the securities the subject of the agreement breach Chapter 6 of the Listing Rules or result in the entity not having an appropriate structure for a listed entity, or it is otherwise appropriate for ASX to exercise its absolute discretion to refuse the entity's application for admission.⁹⁹

To meet the requirement in (a) above that the entity disclose the existence and material terms of the agreement in its listing prospectus, PDS or information memorandum, the entity should include in that document:¹⁰⁰

- the name of the person to whom the entity has agreed to issue the securities;
- which category in rules 10.11.1 – 10.11.5 the person falls within and why;
- the number and class of the securities the entity has agreed to issue;
- if the securities are not fully paid ordinary securities, a summary of the material terms of the securities;
- the date or dates on which the securities will be issued;
- the price or other consideration the entity has received or will receive for the issue;
- the purpose of the issue, including the intended use of any funds raised by the issue; and
- a summary of any other material terms of the agreement.

To meet the requirement in (b) above that the entity must have complied with the Listing Rules when it entered into the agreement, the agreement must not only be made in compliance with the requirements of Listing Rule 10.11, it also must not breach the prohibitions in Listing Rules 7.1, 7.1A,¹⁰¹ 7.6 or 7.9.¹⁰²

3.12 Exception 11 – issues conditional on prior approval by security holders

Listing Rule 10.12 exception 11¹⁰³ excludes from Listing Rule 10.11 an agreement to issue equity securities that is conditional on holders of ordinary securities approving the issue under the latter rule before the issue is made. If an entity relies on this exception, it must not issue the equity securities without such approval.

This too is a technical exception to address the point that Listing Rule 10.11 applies to an agreement to issue securities and requires security holders to approve the agreement before it is entered into. This exception allows an entity to enter into an agreement to issue equity securities to a 10.11 party on condition that the issue of the securities is approved by the holders of ordinary securities before it is made.

3.13 Exception 12 – future related parties

Listing Rule 10.12 exception 12 excludes from the restrictions in Listing Rule 10.11 an issue of equity securities under an agreement or transaction between the entity and a person who would not otherwise be a related party but for the fact that they believe, or have reasonable grounds to believe, that they are likely to become a related party in the future because of the agreement or transaction.

This also is a technical exception to prevent Listing Rule 10.11 being triggered prematurely. The definition of “related party” extends to a person who believes, or has reasonable grounds to believe, that they are likely to

⁹⁹ See the Listing Rules and Guidance Notes cited in notes 88, 89 and 90 above.

¹⁰⁰ By analogy with the information required to be disclosed under Listing Rule 10.13 in a notice of meeting seeking security holder approval under Listing Rule 10.11.

¹⁰¹ Note that Listing Rule 7.1A only permits an agreement to issue securities if they are in a class of securities that is already quoted on ASX.

¹⁰² See Guidance Note 21 *The Restrictions on Issuing Equity Securities in Chapter 7 of the Listing Rules*.

¹⁰³ There is an equivalent exception in Listing Rule 7.2 exception 17.

become a related party in the future.¹⁰⁴ Hence, if a person is negotiating an agreement or transaction with an entity that will lead to them becoming a related party of the entity, as soon as they believe, or have reasonable grounds to believe, that the agreement or transaction is going ahead, they become a related party of the entity.

In practice, this most often arises where one of the terms of the agreement or transaction is that the person is to be appointed to the board of the entity once the agreement is concluded or the transaction has been completed.

This exception is based on the premise that because the person is not yet a related party of the entity, they have no influence over the board (or, in the case of a listed trust, the RE) of the entity and the board (or RE), acting in accordance with its statutory and common law duties,¹⁰⁵ can be presumed to have exercised an independent judgement on the appropriateness of entering into the agreement or transaction with the person. However, there may be circumstances where this premise does not hold true and where ASX will consider applying Listing Rule 10.11.5 to the person. These include where:

- a close relative of the person or someone with whom the person has close business or personal ties is a director of the entity (or of the RE); or
- the terms of the issue are so uncommercial as to call into question whether the board has properly exercised an independent judgement.

ASX interprets exception 12 as only applying to related parties caught by Listing Rule 10.11.1. Accordingly, if ASX does apply Listing Rule 10.11.5 to a person in these circumstances, exception 12 will no longer be available to them.

4. Listing Rule 10.14

4.1 The scope of the rule

Listing Rule 10.14 effectively requires an entity to obtain the approval of the holders of its ordinary securities before it issues any equity securities¹⁰⁶ under an employee incentive scheme to a director,¹⁰⁷ an associate of a director or other closely connected party. This extends to any options and performance rights that fall within the definition of “equity security” in the Listing Rules.¹⁰⁸

4.2 The policy underpinning the rule

The policy that underpins Listing Rule 10.14 starts from the premise that directors and other closely connected parties are likely to be in a position to influence both the terms of the scheme and the number of securities issued to them under the scheme. The harm it seeks to protect against is that the directors or other closely connected parties will exercise this influence to favour themselves at the expense of the entity.

To address the potential conflicts involved and to minimise the risk of this harm occurring, Listing Rule 10.14 displaces the general rule that the board of directors (or, in the case of a listed trust, the RE of the trust) is responsible for managing the business of the entity to the exclusion of its security holders and requires any issue of securities to directors and other closely connected parties under the scheme to be approved by the holders of

¹⁰⁴ See paragraph (viii) of the definition of “related party” in relation to a body corporate, paragraph (viii) of the definition of “related party” in relation to an internally managed trust and paragraph (x) of the definition of “related party” in relation to an externally managed trust set out in ‘2.3 Listing Rule 10.11.1 – related parties’ ~~on page 5 and following~~.

¹⁰⁵ See note 36 above.

¹⁰⁶ As defined in note 2 above.

¹⁰⁷ In the case of a trust, the references to a director mean a director of the responsible entity of the trust.

¹⁰⁸ See the definition of “equity security” in note 2 above. Options over issued or unissued shares or units specifically fall within paragraph (c) of that definition. Rights to issued or unissued shares or units fall within paragraph (d) of that definition. In ASX’s experience, many performance rights involve an option over, or a right to, an issued or unissued share or unit and are therefore equity securities. If they are, they must meet the requirements applicable to equity securities in Chapter 6 of the Listing Rules. If they are properly characterised as an option, they must also meet the requirements applicable to options in Chapter 6 of the Listing Rules.

ordinary securities in the entity. Directors and other closely connected parties who are eligible to participate in the scheme and their associates are precluded from voting on the resolution to approve the issue.

4.3 What is an “employee incentive scheme”?

The term “employee incentive scheme” is defined in the Listing Rules¹⁰⁹ to mean:

- a scheme for the issue or acquisition of equity securities in the entity to be held by, or for the benefit of, participating employees or non-executive directors of the entity or a related entity or their associates; or
- a scheme which, in ASX's opinion, is an employee incentive scheme.

The reference to “participating employees” in the definition above includes executive directors who participate in the scheme.

The reference to equity securities being “held for the benefit of” participating employees or non-executive directors captures trust arrangements where securities are held by a trustee for the benefit of those persons.

The fact that an employee incentive scheme allows participating employees or non-executive directors to elect to have equity securities issued to, or held for the benefit of, a relative or an entity controlled by them or a relative (such as 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 non-executive directors.¹¹⁰

A scheme can be an employee incentive scheme ~~eff~~for the purposes of the Listing Rules even if there is only one employee or non-executive director participating in the scheme.¹¹¹

4.4 Listing Rule 10.14.1 – directors

Listing Rule 10.14.1 applies to an issue of equity securities under an employee incentive scheme to a director (or, in the case of a listed trust, a director of the RE of the trust).

The term “director” is not defined in the Listing Rules and so takes its meaning under the Corporations Act.¹¹² Under that Act, a person is a director¹¹³ if:

- they are appointed to the position of director, or to the position of alternate director and acting in that capacity, regardless of the name that is given to their position;
- they are not validly appointed as a director but act in the position of a director; or
- they are not validly appointed as a director but the directors of the entity are accustomed to act in accordance with their instructions or wishes.¹¹⁴

4.5 Listing Rule 10.14.2 – associates

Listing Rule 10.14.2 applies to an issue of equity securities under an employee incentive scheme to an “associate” of a director.

¹⁰⁹ Listing Rule 19.12.

¹¹⁰ See the note to the definition of “employee incentive scheme” in Listing Rule 19.12.

¹¹¹ Again, see the note to the definition of “employee incentive scheme” in Listing Rule 19.12.

¹¹² Listing Rule 19.3.

¹¹³ See the definition of “director” in section 9 of the Corporations Act.

¹¹⁴ This does not apply merely because the directors act on advice given by the person in the proper performance of functions attaching to the person's professional capacity, or the person's business relationship with the directors or the entity.

The meaning of “associate” is explained above in section 2.6.

As mentioned there, a related party of a natural person is to be taken to be an associate of the person unless the contrary is established.

The related parties of a director include:

- (i) the director’s spouse or de facto spouse;
- (ii) the parents and children of the director and the parents and children of the director’s spouse or de facto spouse;
- (iii) an entity controlled by the director 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 director or anyone referred to in (i) – (v) above.

Hence an issue of equity securities under an employee incentive scheme to be held by or for the benefit of any of the related parties of a director mentioned above will, unless the contrary is established, be taken to be an issue to be held by or for the benefit of an associate of the director and require security holder approval under Listing Rule 10.14.2. This has particular ramifications where an entity employs a prescribed relative of a director and the relative is entitled to participate in an employee incentive scheme operated by the entity. These ramifications are explored in greater detail in section 4.9 below.

4.6 Listing Rule 10.14.3 – ASX’s discretion to apply Listing Rule 10.14 to other parties

Listing Rule 10.14.3 applies to an issue of equity securities under an employee incentive scheme to a person whose relationship with the entity or a person referred to in Listing Rule 10.14.1 or 10.14.2 is such that, in ASX’s opinion, the issue should be approved by security holders.

Listing Rule 10.14.3 effectively gives ASX a discretion to require that security holders approve an issue of equity securities under an employee incentive scheme to someone who is not a director or an associate of a director but whose relationship with the entity or a director or an associate of a director is, in ASX’s opinion, such that approval should be obtained.

Again, given the breadth of the definition of “associate” and the fact that a director’s related parties are deemed to be an associate unless the contrary is established, this is not a discretion that ASX is often called upon to exercise and not one that it exercises lightly, since it imposes additional costs and delays on an entity in having to hold a meeting of security holders to approve an issue of securities that would otherwise be within the authority of the entity’s board (or, in the case of a listed trust, its RE). Nevertheless, it is a discretion that ASX can exercise at any time, including after the securities have been issued.

Examples of where ASX may apply Listing Rule 10.14.3 to an issue of equity securities under an employee incentive scheme include where the securities are to be held by or for the benefit of:

- an employee who is a close (but not a prescribed) relative of a director and the size of the issue seems out of proportion to their role or level in the organisation, giving rise to a possibility that it could be intended to indirectly benefit the director rather than a bona fide issue to the employee under an employee incentive scheme;¹¹⁵

¹¹⁵ See the example in note 34 above.

- an employee who has not been formally appointed as a director of the entity but who ASX suspects is acting as a de facto director;¹¹⁶ and
- an employee who the entity is arguing is not an associate of a director but ASX has a contrary view – in which case, ASX may resolve that argument by applying Listing Rule 10.14.3 to the person.

Ordinarily, ASX would not exercise its discretion to apply Listing Rule 10.14.3 to someone who is the chief executive officer (“CEO”) of an entity and who is not a director or an associate of a director, simply because of his or her position as CEO. This is on the premise that since the CEO is not a member of the board, they are not in a position to influence the board’s determinations in relation to the employee incentive scheme and the board, acting in accordance with its statutory and common law duties,¹¹⁷ can be presumed to have exercised an independent judgement on the appropriateness of any issue under the scheme to the CEO. However, there may be circumstances where this premise does not hold true and where ASX will consider applying Listing Rule 10.14.3 to an issue of equity securities under an employee incentive scheme to be held by or for the benefit of a CEO. These include where:

- a close relative of the CEO or someone with whom the CEO has close business or personal ties is a director of the entity;
- ASX suspects that the CEO is acting as a de facto director; or
- the terms on which the CEO is participating in the scheme are so uncommercial as to call into question whether the board has properly exercised an independent judgement.

4.7 ASX’s approach to giving in-principle advice on the application of Listing Rule 10.14.3

ASX is sometimes approached to give in-principle advice that it will not apply Listing Rule 10.14.3 in relation to an issue of equity securities to a particular person under an employee incentive scheme.

For ASX to give that advice, it again has to be satisfied that there is no reasonable prospect of the recipient of the securities influencing either the terms of the scheme, or the size of the issue to them under the scheme, to favour themselves at the expense of the entity. The entity seeking the advice must disclose candidly the full extent of the relationship between the recipient of the securities and its related parties on the one hand and the entity and its directors on the other, and any influence that the recipient may have over the entity’s board (or, in the case of a listed trust, over the RE of the trust).

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. If the entity omits or misrepresents material facts in its application for in-principle advice, or if other material facts come to light after ASX provides its advice, ASX may withdraw or change its advice.

If ASX decides that it will not apply Listing Rule 10.14.3 in relation to an issue of equity securities to a particular person under an employee incentive scheme, it may impose conditions and, if it does so, the entity must comply with the conditions.¹¹⁸ An example of a condition that ASX may impose is a condition that the entity disclose to the market details of the issue, including the name of the employee/relative, the number of securities issued to them, their relationship to the director and the basis on which the entity has formed the view that Listing Rule 10.14 does not apply to the issue.

4.8 The exceptions in Listing Rule 10.16

Listing Rule 10.16 provides that Listing Rule 10.14 does not apply to:

¹¹⁶ See the example in note 35 above.

¹¹⁷ See note 36 above.

¹¹⁸ Listing Rule 18.5A provides that ASX may exercise, or decide not to exercise, any power or discretion conferred under the Listing Rules in its absolute discretion. It may do so on any conditions and, if it does so, the entity must comply with the conditions.

- (a) a purchase of securities on-market¹¹⁹ by or on behalf of directors or their associates under an employee incentive scheme where the terms of the scheme¹²⁰ permit such purchases;
- (b) the grant of options or other rights to acquire securities to directors or their associates under an employee incentive scheme, where the securities to be acquired on the exercise of the options or in satisfaction of the rights are required by the terms of the scheme to be purchased on-market;¹²¹ or
- (c) an issue of equity securities pursuant to options or other rights to acquire securities granted to directors or their associates under an employee incentive scheme. The entity must have issued the options or other rights:
 - (i) before it was listed and disclosed the information referred to in Listing Rules 10.15.1 – 10.15.9 in relation to the issue in the prospectus, PDS or information memorandum lodged with ASX under rule 1.1 condition 3; or
 - (ii) after it was listed and with the approval of holders of ordinary securities under Listing Rule 10.14.

In relation to (a) and (b) above, on-market purchases of securities by or on behalf of directors or their associates under an employee incentive scheme, or to satisfy the entitlements of directors or their associates under options or other rights to acquire securities granted under an employee incentive scheme, are excluded from Listing Rule 10.14 on the basis that they do not dilute the interests of other security holders and, because they are effected at market prices, they do not raise the same concerns as an issue of securities in terms of whether they are occurring at a price that is advantageous to a director or other closely connected party.¹²²

In relation to (c) above, these issues are excluded from Listing Rule 10.14 on the basis that the right to receive the underlying securities upon the exercise of the option or in satisfaction of the rights has effectively already been approved by security holders and to require a separate approval under Listing Rule 10.14 for the issue of the underlying securities would therefore be an unnecessary duplication. In the case of (c)(ii) above, the approval is explicit. In the case of (c)(i) above, the approval is implicit and evidenced by security holders agreeing to invest in the entity with the details of the options or other rights having been disclosed in the entity's listing prospectus, PDS or information memorandum.

Where (c) applies, the issue of the underlying securities will be taken to have been made with the approval of holders of ordinary securities under Listing Rule 10.14, meaning that the issue will also be exempt from Listing Rule 10.11 under Listing Rule 10.12 exception 8.¹²³

4.9 ASX's approach to granting waivers of Listing Rule 10.14

Like Listing Rule 10.11, ASX regards Listing Rule 10.14 as one of the fundamental protections afforded to investors under the Listing Rules. While ASX may consider procedural and other minor waivers of the rule, ASX will only waive the central requirement for security holders to approve an issue of equity securities to a director or closely connected party under an employee incentive scheme, where it is clear to ASX that the harm that Listing Rule 10.14

¹¹⁹ "On-market" has the same meaning for these purposes as it does in the definition of that term in section 9 of the Corporations Act. It is intended to exclude block trades, out of hours trades and certain other transactions effected off-market (even though they may ultimately be reported to a market operator).

¹²⁰ As defined in note 97 above.

¹²¹ Listing Rule 10.16.

¹²² On-market purchases of securities by or on behalf of directors or their associates under an employee incentive scheme, or to satisfy the entitlements of directors or their associates under options or other rights to acquire securities granted under an employee incentive scheme, will generally lead to an increase in the director's "notifiable interest" and therefore will need to be notified to the market via an Appendix 3Y under Listing Rule 3.19A. They will also generally form part of the remuneration of directors and therefore will need to be disclosed in an entity's remuneration report.

¹²³ See note 95 above and accompanying text.

seeks to protect against is not present. The onus is firmly on the entity seeking the waiver to establish this to ASX's satisfaction.

Hence, to receive such a waiver, an entity must establish to ASX's satisfaction that there is no reasonable prospect of the recipient of the securities, either themselves or through their connections to the board of the entity (or, in the case of a listed trust, to the RE of the trust), influencing the terms of the scheme or the size of the award to them under the scheme.

The mere fact that a director excuses himself or herself from participating in the discussion and decision at a board meeting concerning a proposed issue of securities under an employee incentive scheme to them or to someone connected to them will not be sufficient to establish an absence of influence.

One circumstance where ASX has been approached for a waiver of Listing Rule 10.14 is where an entity employs a prescribed relative of a director and the relative is entitled to participate in an employee incentive scheme operated by the entity. A director's related parties include his or her prescribed relatives and a director's related parties are assumed to be his or her associates unless the contrary is established. This has the consequence that, absent a waiver from ASX, any issue of equity securities to a prescribed relative of a director under an employee incentive scheme will require security holder approval under Listing Rule 10.14.2 unless it can be established that the relative is not an associate of the director (ie that they are not controlled by, or acting in concert with, the director).

ASX will not grant a waiver of Listing Rule 10.14.2 in these circumstances. Either the relative is an associate of a director – in which case a waiver would be inappropriate and the entity should obtain the approval of its ordinary security holders to the issue under Listing Rule 10.14.2 – or they are not – in which case Listing Rule 10.14.2 does not apply.

Rather than approach ASX for a waiver, an entity in this situation should either seek security holder approval to the issue or satisfy itself that the relative is not an associate of the director and therefore security holder approval is not required. To do the latter, it would be prudent for it to obtain a statutory declaration or similar form of certification from the relative and/or the director that they are not associates. It should also have regard to any other information in its possession that is relevant to forming a view on whether or not the relative is in fact an associate of the director.¹²⁴

It should be noted that the fact that an entity obtains a statutory declaration or similar form of certification from a director and/or a relative that they are not associates will not prevent or deter ASX from deciding that, because of the relationship between them, ASX should apply Listing Rule 10.14.3 to an issue of securities to the relative under an employee incentive scheme. ASX is likely to do this if it forms the view that the size of the issue objectively seems out of proportion to the relative's role or level in the organisation,¹²⁵ giving rise to a possibility that it could be intended to indirectly benefit the director rather than a bona fide issue to the relative under the employee incentive scheme.

ASX would strongly encourage listed entities that follow this path to disclose details of the issue to the relative in the notice they lodge with ASX about the issue under Listing Rule 3.10.3A, including the name of the employee/relative, the number of securities issued to them, their relationship to the director and the basis on which the entity has formed the view that Listing Rule 10.14 does not apply to the issue. Not only does this serve the interests of market transparency and good governance, it may also save the entity from having to answer a query

¹²⁴ As stated in the note to the definition of "associate" in Listing Rule 19.12: "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."

¹²⁵ For example, if the number of securities being issued to the relative is not consistent with the numbers issued to comparable level employees in the organisation.

from ASX on these matters.¹²⁶ In ASX's experience, these matters are best disclosed up-front and tend to be perceived in a less favourable light if they are disclosed after the event as a result of an ASX query.

4.10 Notification obligations for issues under an employee incentive scheme

Listing Rule 3.10.3A requires an entity to notify ASX within 5 business days of any issue of equity securities under an employee incentive scheme.

If the equity securities are to be quoted immediately¹²⁷ on ASX, the entity must also lodge an Appendix 2A *Application for quotation of securities* within 5 business days of their issue.¹²⁸ In that case, the Appendix 2A will also serve as the notification under Listing Rule 3.10.3A.

If the equity securities are not intended to be quoted immediately on ASX, the notification under Listing Rule 3.10.3A must be in the form of, or accompanied by, an Appendix 3G.

Where an issue of securities under an employee incentive scheme leads to a change in the "notifiable interests"¹²⁹ of a director, the entity must also give ASX an Appendix 3Y within 5 business days of the change occurring.¹³⁰

5. Requirements for notices of meeting

5.1 The type and terms of resolution required

The resolution required to approve an issue of securities under Listing Rule 10.11 or 10.14 is an ordinary resolution passed at a general meeting of the holders of ordinary securities.¹³¹

Listing Rules 10.11 and 10.14 do not dictate the specific terms of the resolution required under those rules. A resolution to the following effect will suffice:

"That the [*description of issue*] is approved under and for the purposes of Listing Rule [10.11/10.14]."

Generally there should be a separate resolution approving each relevant issue under Listing Rule 10.11 or 10.14. Combining multiple issues 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.¹³²

5.2 Specific disclosure requirements for resolutions under Listing Rule 10.11

A notice of meeting proposing a resolution to approve an issue of equity securities to a person under Listing Rule 10.11 must include a summary of Listing Rule 10.11 and what will happen if security holders give, or do not give, the approval sought under that rule.¹³³

A summary along the following lines will suffice for these purposes:

"[*Name of entity*] is proposing to [*insert a description of the proposed issue of securities, defining them as the "Issue" (or something similar)*]."

¹²⁶ Under Listing Rule 18.7.

¹²⁷ An application for quotation of securities issued under an employee incentive scheme must be made within 5 business days of their date of issue or, if they are subject to restrictions on transfer, within 5 business days after the end of the restrictions: Listing Rule 2.7 and 2.8.6.

¹²⁸ See note 127 above.

¹²⁹ As defined in Listing Rule 19.12.

¹³⁰ Listing Rule 3.19A. See also Guidance Note 22 ~~Notification of Directors' Interests~~ [Director Disclosure of Interests and Transactions in Securities - Obligations of Listed Entities](#).

¹³¹ Listing Rule 14.9.

¹³² Pursuant to Listing Rules 15.1 and 15.1.4.

¹³³ Listing Rule 14.1A.

Listing Rule 10.11 provides that unless one of the exceptions in Listing Rule 10.12 applies, a listed [company/trust] must not issue or agree to issue equity securities to:

- 10.11.1 a related party;
- 10.11.2 a person who is, or was at any time in the 6 months before the issue or agreement, a substantial (30%+) holder in the [company/trust];
- 10.11.3 a person who is, or was at any time in the 6 months before the issue or agreement, a substantial (10%+) holder in the [company/trust] and who has nominated a director to the board of the [company/responsible entity of the trust] pursuant to a relevant agreement which gives them a right or expectation to do so;
- 10.11.4 an associate of a person referred to in Listing Rules 10.11.1 to 10.11.3; or
- 10.11.5 a person whose relationship with the [company/trust] or a person referred to in Listing Rules 10.11.1 to 10.11.4 is such that, in ASX's opinion, the issue or agreement should be approved by its [shareholders/unitholders],

unless it obtains the approval of its [shareholders/unitholders].

The Issue falls within Listing Rule *[insert which of rules 10.11.1 to 10.11.5 applies]* and does not fall within any of the exceptions in Listing Rule 10.12. It therefore requires the approval of *[name of entity]*'s [shareholders/unitholders] under Listing Rule 10.11.

Resolution *[n°]* seeks the required [shareholder/unitholder] approval to the Issue under and for the purposes of Listing Rule 10.11.

If resolution *[n°]* is passed, *[name of entity]* will be able to proceed with the Issue and *[outline the consequences that will follow]*.

If resolution *[n°]* is not passed, *[name of entity]* will not be able to proceed with the Issue and *[outline the consequences that will follow]*."

A notice of meeting proposing a resolution to approve an issue of equity securities to a person under Listing Rule 10.11 must also include:¹³⁴

- the name of the person;¹³⁵
- which category in Listing Rules 10.11.1 – 10.11.5 the person falls within and why;¹³⁶
- the number and class of securities to be issued to the person;¹³⁷
- if the securities are not fully paid ordinary securities, a summary of the material terms of the securities;¹³⁸

¹³⁴ An approval of security holders is not effective under the Listing Rules unless the notice of meeting includes everything that the Listing Rules require it to include: Listing Rule 14.6.

¹³⁵ Listing Rule 10.13.1.

¹³⁶ Listing Rule 10.13.2.

¹³⁷ Listing Rule 10.13.3. Where the number of securities to be issued is not fixed, this may be expressed as a maximum number or as a formula (see the note to Listing Rule 10.13.3). In the latter case, it may be appropriate for the entity to include some worked examples in the notice of meeting to show how the formula will operate in practice under different assumptions.

¹³⁸ Listing Rule 10.13.4.

- the date or dates on or by which the entity will issue the securities, which must not be more than 1 month after the date of the meeting;¹³⁹
- the price or other consideration the entity will receive for the issue;¹⁴⁰
- the purpose of the issue, including the intended use of any funds raised by the issue;¹⁴¹
- if the person is:
 - a director and therefore a related party under Listing Rule 10.11.1; or
 - an associate of, or person connected with, a director under Listing Rules 10.11.4 or 10.11.5,
 and the issue is intended to remunerate or incentivise the director, details (including the amount) of the director's current total remuneration package;¹⁴²
- if the securities are issued under an agreement, a summary of any other material terms of the agreement;¹⁴³ and
- a voting exclusion statement.¹⁴⁴

This information may be given in the notice itself or in an accompanying explanatory memorandum to security holders.¹⁴⁵

ASX is sometimes approached for a waiver to allow an entity to issue securities at a date outside of the 1 month time constraint mentioned above. This constraint is designed to strike a balance between giving entities the time practically necessary to complete an issue of equity securities, and ensuring that the securities are issued within a reasonable time frame after security holder approval so that the approval can still be considered to be current and not rendered stale by subsequent events. ASX will generally only grant such a waiver where there is a clear and compelling commercial reason for the issue to be made at a later date¹⁴⁶ and security holders are in a ~~position~~ [position](#) to know with certainty the dilutive impact the issue will have and can therefore give a meaningful approval to the issue. In the case of convertible securities, this may require the imposition of a floor price in the

¹³⁹ Listing Rule 10.13.5. This requirement is designed to strike a balance between giving entities the time practically necessary to complete an issue of equity securities, and ensuring that the securities are issued within a reasonable time frame after security holder approval so that the approval can still be considered to be current and not rendered stale by subsequent events.

¹⁴⁰ Listing Rule 10.13.6. Where the price at which the securities are to be issued is not fixed, this may be expressed as a minimum amount or as a formula (see the note to Listing Rule 10.13.6). In the latter case, it may be appropriate for the entity to include some worked examples in the notice of meeting to show how the formula will operate in practice under different assumptions.

¹⁴¹ Listing Rule 10.13.7.

¹⁴² Listing Rule 10.13.8. For these purposes, ASX agrees with and applies the guidance in Table 2 of ASIC Regulatory Guide 76 *Related party transactions*:

"Where the financial benefit is to be conferred by way of remuneration or incentive, the amount of the total remuneration package must be disclosed to the members. For example, if options are to be granted to a director, the company or responsible entity must provide a proper valuation of those options as well as give members details of other remuneration the director will receive.

Members must be able to assess the value of the overall remuneration package the director will receive when taking into account the financial benefit to be conferred. It is not usually sufficient to include only the past remuneration of directors. However, if the remuneration a director will receive is not known but is anticipated to be similar to that received in the previous year, it may be sufficient to include the previous year's remuneration and a statement to that effect."

¹⁴³ Listing Rule 10.13.9.

¹⁴⁴ Listing Rule 10.13.10. See also '5.5 [Voting exclusions](#)~~Voting exclusions~~' on page 34.

¹⁴⁵ Listing Rule 14.1.

¹⁴⁶ An example would be "deferred consideration securities", that is, securities issued by an entity in consideration for an acquisition of an asset or undertaking where a future tranche of securities will be issued outside of the 1 month period mentioned in Listing Rule 10.13.5 if certain performance thresholds or other criteria are met.

conversion formula so that the maximum dilutive impact can be determined at the date of the meeting approving their issue.

Otherwise ASX expects entities to arrange the date on which they seek approval to an issue under Listing Rule 10.11 to comply with the 1 month time constraint mentioned above and, if for any reason the issue is not completed within that timeframe following the approval, to seek a fresh approval under that rule.

5.3 Specific disclosure requirements for resolutions under Listing Rule 10.14

A notice of meeting proposing a resolution under Listing Rule 10.14 to approve an issue of equity securities to a person under an employee incentive scheme must include a summary of Listing Rule 10.14 and what will happen if security holders give, or do not give, the approval sought under that rule.¹⁴⁷

A summary along the following lines will suffice for these purposes:

"[Name of entity] is proposing to [insert a description of the proposed issue of securities under the employee incentive scheme, defining them as the "Issue" (or something similar)].

Listing Rule 10.14 provides that a listed [company/trust] must not permit any of the following persons to acquire equity securities under an employee incentive scheme:

- 10.14.1 a director of the [company/responsible entity of the trust];
- 10.14.2 an associate of a director of the [company/responsible entity of the trust]; or
- 10.14.3 a person whose relationship with the [company/trust] or a person referred to in Listing Rule 10.14.1 or 10.14.2 is such that, in ASX's opinion, the acquisition should be approved by its [shareholders/unitholders],

unless it obtains the approval of its [shareholders/unitholders].

The Issue falls within Listing Rule [insert which of rules 10.14.1 to 10.14.3 applies] above and therefore requires the approval of [name of entity]'s [shareholders/unitholders] under Listing Rule 10.14.

Resolution [n°] seeks the required [shareholder/unitholder] approval to the Issue under and for the purposes of Listing Rule 10.14.

If resolution [n°] is passed, [name of entity] will be able to proceed with the Issue and [outline the consequences that will follow].

If resolution [n°] is not passed, [name of entity] will not be able to proceed with the Issue and [outline the consequences that will follow]."

A notice of meeting proposing a resolution under Listing Rule 10.14 to approve an issue of equity securities to a person under an employee incentive scheme must also include:¹⁴⁸

- the name of the person;¹⁴⁹
- which category in Listing Rules 10.14.1 – 10.14.3 the person falls within and why;¹⁵⁰

¹⁴⁷ Listing Rule 14.1A.

¹⁴⁸ An approval of security holders is not effective under the Listing Rules unless the notice of meeting includes everything that the Listing Rules require it to include: Listing Rule 14.6.

¹⁴⁹ Listing Rule 10.15.1.

¹⁵⁰ Listing Rule 10.15.2.

- the number¹⁵¹ and class of securities that are proposed to be issued to the ~~the~~ person under the scheme for which approval is being sought;¹⁵²
- if the person is:
 - a director under Listing Rule 10.14.1; or
 - an associate of, or person connected with, a director under Listing Rules 10.14.2 or 10.14.3,
 details (including the amount) of the director's current total remuneration package;¹⁵³
- the number of securities that have previously been issued to the person under the scheme and the average acquisition price (if any) paid by the person for those securities;¹⁵⁴
- if the securities are not fully paid ordinary securities:
 - a summary of the material terms of the securities;
 - an explanation of why that type of security is being used; and
 - the value the entity attributes to that security and its basis;¹⁵⁵
- the date or dates on or by which the entity will issue the securities to the person under the scheme, which must be no later than 3 years after the date of the meeting;¹⁵⁶
- the price¹⁵⁷ at which the entity will issue the securities to the person under the scheme;¹⁵⁸
- a summary¹⁵⁹ of the material terms of the scheme;¹⁶⁰
- a summary¹⁶¹ of the material terms of any loan that will be made to the person in relation to the acquisition;¹⁶²
- a statement to the following effect:

Details of any securities issued under the scheme will be published in the annual report of the entity relating to a period in which they were issued, along with a statement that approval for the issue was obtained under Listing Rule 10.14.

¹⁵¹ Where the number of securities to be issued is not fixed, this may be expressed as a maximum number or as a formula (see the note to Listing Rule 10.15.3).

¹⁵² Listing Rule 10.15.3.

¹⁵³ Listing Rule 10.15.4. Again, for these purposes, ASX agrees with and applies the guidance in Table 2 of ASIC Regulatory Guide 76 *Related party transactions*, quoted in note 142 above.

¹⁵⁴ Listing Rule 10.15.5.

¹⁵⁵ Listing Rule 10.15.6.

¹⁵⁶ Listing Rule 10.15.7.

¹⁵⁷ Where the price at which the securities are to be issued is not fixed, this may be expressed as a minimum amount or as a formula (see the note to Listing Rule 10.15.8).

¹⁵⁸ Listing Rule 10.15.8.

¹⁵⁹ The entity may instead of providing a summary include in, or annex to, the notice of meeting, a copy of the scheme (see the note to Listing Rule 10.15.9).

¹⁶⁰ Listing Rule 10.15.9.

¹⁶¹ The entity may instead of providing a summary include in, or annex to, the notice of meeting, a copy of the loan agreement (see the note to Listing Rule 10.15.10).

¹⁶² Listing Rule 10.15.10.

Any additional persons covered by Listing Rule 10.14 who become entitled to participate in the scheme after the resolution is approved and who were not named in the notice of meeting will not participate until approval is obtained under that rule.¹⁶³

- a voting exclusion statement.¹⁶⁴

Where the securities being issued are not fully paid ordinary securities, in explaining why that type of security is being used, the entity should address any accounting, taxation or other ramifications that arise from the use of this form of remuneration compared to other forms of remuneration that might be available to the entity. In explaining the value the entity attributes to that security and its basis, the entity should disclose whether it has received an independent valuation and, if it has, what that valuation was and, if it hasn't, how it has determined the value of the securities being acquired.

Again, this information may be given in the notice itself or in an accompanying explanatory memorandum to security holders.¹⁶⁵

5.4 General disclosure requirements for a notice of meeting

As a matter of general law, a notice of meeting proposing a resolution under Listing Rule 10.11 or 10.14 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.¹⁶⁶ In some cases, this may require the entity to disclose additional information over and above that specifically required under the Listing Rules summarised in sections 5.2 and 5.3 above.

If the issue also requires approval as a related party benefit under section 208 or 601LA of the Corporations Act, the notice must include or attach an explanatory statement that complies with section 219 of that Act.¹⁶⁷

5.5 Voting exclusions

A notice of meeting proposing a resolution to approve an issue of equity securities under Listing Rule 10.11 or 10.14 must include a voting exclusion statement.¹⁶⁸

A voting exclusion statement 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 associate¹⁶⁹ of an excluded person, save where it is cast by:

- a person as proxy or attorney for another 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 they are not excluded from voting, and are not an associate of a person excluded from voting, on the resolution; and

¹⁶³ Listing Rule 10.15.11.

¹⁶⁴ Listing Rule 10.15.12. See also '5.5 [Voting exclusions](#)~~Voting exclusions~~' on page 34.

¹⁶⁵ Listing Rule 14.1.

¹⁶⁶ See *Bulfin v Bebarfalds Ltd* (1938) 38 SR (NSW) 423 and *Chequepoint Securities Ltd v Claremont Petroleum NL* (1986) 11 ACLR 94.

¹⁶⁷ See ASIC Regulatory Guide 76 *Related party transactions*.

¹⁶⁸ Listing Rules 10.13.10 and 10.15.12 and the table in Listing Rule 14.11.1.

¹⁶⁹ Guidance Note 35 *Security Holder Resolutions* has guidance on who is an associate of an excluded person for these purposes.

- the holder votes on the resolution in accordance with directions given by the beneficiary to the holder to vote in that way.¹⁷⁰

In the case of a resolution under Listing Rule 10.11, the excluded persons are the person or persons receiving the securities under the issue or agreement being approved and any other person who will obtain a material benefit as a result of the issue (except a benefit solely by reason of being the holder of ordinary securities in the entity).

For these purposes, ASX considers a “material benefit” to be one that is likely to induce the recipient of the benefit to vote in favour of the issue regardless of its impact on ordinary security holders. Examples include:

- if the issue is being made primarily for the purpose of raising cash to repay a debt or other amount owed by the entity to another person, that person;
- a professional adviser or other person who will be paid a success (or similar) fee if the transaction proceeds;¹⁷¹
- if the issue being approved under Listing Rule 10.11 is part of a larger issue of securities:
 - an underwriter or sub-underwriter who will be paid an underwriting or sub-underwriting fee in relation to the larger issue; and
 - a lead manager of, or broker to, the larger issue who will be paid a fee or commission on the proceeds of the issue.¹⁷²

In the case of a resolution under Listing Rule 10.14, the excluded persons are all persons referred to in Listing Rule 10.14.1, 10.14.2 or 10.14.3 who are eligible to participate in the employee incentive scheme.

ASX also has a general discretion to designate any other person whose votes, in ASX’s opinion, should be disregarded. This discretion may be exercised both before¹⁷³ and after¹⁷⁴ the notice of meeting has been sent to security holders.

Where ASX exercises its discretion under Listing Rule 10.11.5 to apply Listing Rule 10.11 to a person who is closely connected to the entity or to a related party, it will usually consider whether there are any other parties that should be excluded from voting on the resolution under Listing Rule 10.11. For example, if ASX exercises its discretion to apply Listing Rule 10.11 to a person because they have a close connection with a director of the entity, ASX will usually make a determination that the director and his or her associates¹⁷⁵ are excluded from voting on the resolution.

¹⁷⁰ Listing Rule 14.11.

¹⁷¹ This is not intended to capture normal fixed or time-based fees paid to a professional adviser advising on the transaction. It is only intended to capture fees that are directly related to the success of the transaction.

¹⁷² This is not intended to capture normal handling fees payable to individual brokers who lodge acceptances or renunciations on behalf of security holders. It is only intended to capture fees and commissions payable to a lead manager of, or broker to, the issue that are directly related to the success of the transaction.

¹⁷³ See the final entry in the table in Listing Rule 14.11.1. If ASX exercises this discretion, the person must be named in the voting exclusion statement in the notice of meeting.

¹⁷⁴ Listing Rule 14.11.2. If ASX exercises this discretion, it is not necessary for the entity to send a further notice of meeting naming the person in the voting exclusion statement (see the note to Listing Rule 14.11.2). However, ASX would expect the entity to make an announcement to the market of ASX’s determination.

¹⁷⁵ If the voting exclusion is applied by ASX to a director under the final entry in the table in Listing Rule 14.11.1, it will automatically extend to the director’s associates under Listing Rule 14.11. If the voting exclusion is applied by ASX under Listing Rule 14.11.2, ASX will generally stipulate that the director’s associates are also excluded from voting in favour of the transaction.

Guidance Note 35 *Security Holder Resolutions* has further guidance on voting exclusions and the procedures that should be followed at a meeting of security holders where a resolution under Listing Rule 10.11 or 10.14 is being considered.

5.6 Stale resolutions

Where security holders approve an issue of or agreement to issue securities under Listing Rule 10.11, the securities must be issued within one month of that approval or else the approval will lapse.¹⁷⁶

Guidance Note 35 *Security Holder Resolutions* has further guidance on stale resolutions and the circumstances where ASX may require an entity to seek a fresh approval from its security holders under Listing Rule 10.11 or 10.14.

6. ASX's enforcement powers

ASX has a range of enforcement powers it can exercise if an entity issues, or proposes to issue, securities in breach of Listing Rule 10.11 or 10.14.

ASX may:

- suspend the quotation of the entity's securities until the matter has been dealt with to ASX's satisfaction;¹⁷⁷
- require the entity to impose a holding lock on the securities to prevent them being disposed of until the matter has been dealt with to ASX's satisfaction;¹⁷⁸
- if the issue has not yet taken place, direct the entity not to proceed with the issue;¹⁷⁹
- if the issue has already taken place, direct the entity to cancel or reverse the issue;¹⁸⁰ and/or
- direct the entity to convene a meeting of security holders to approve the issue under Listing Rule 10.11 or 10.14 (as applicable).¹⁸¹

On the second last point above, ASX recognises that in some cases there could be legal impediments to an entity cancelling or reversing an issue of securities at the direction of ASX.¹⁸² In those cases, if the securities are quoted on ASX, ASX may instead direct the entity to procure the recipient of the securities to dispose of the securities on-market and donate any profit from the sale to charity.¹⁸³

On the last bullet point above, it should be noted that ASX will not generally allow an entity that has issued securities in breach of Listing Rule 10.11 or 10.14 to leave the issue on foot and seek to have it ratified by the holders of its ordinary securities at a subsequent meeting. For ASX to condone that course would open Listing Rules 10.11 and 10.14 to avoidance and abuse.¹⁸⁴ If the securities are quoted on ASX, ASX is more likely instead to direct the entity

¹⁷⁶ Listing Rule 10.13.5.

¹⁷⁷ Listing Rule 17.3.1.

¹⁷⁸ Listing Rule 18.8(h).

¹⁷⁹ Listing Rule 18.8(c).

¹⁸⁰ Listing Rule 18.8(d).

¹⁸¹ Listing Rule 18.8(e). Where ASX imposes such a requirement and security holders do not approve the issue, ASX may impose such further requirements as it considers appropriate under Listing Rule 18.8.

¹⁸² A cancellation of an issue of shares, for example, may require approval from security holders or the court under the Corporations Act before it can be effected.

¹⁸³ Listing Rule 18.8.

¹⁸⁴ If ASX were to allow this, it might encourage an entity to issue equity securities without seeking the required security holder approval in the hope of not being found out and in the knowledge that, if it is, the likely consequence would simply be a direction that it seek the approval it should have sought in the first place.

to procure the recipient of the securities to dispose of the securities on-market and donate any profit from the sale to charity.

More generally, where an entity issues securities in breach of Listing Rule 10.11 or 10.14 and ASX considers the breach to be an egregious one, ASX may:

- censure the entity for breaching the Listing Rules;¹⁸⁵
- exercise ASX's discretion not to quote the securities;¹⁸⁶ and/or
- terminate the entity's admission to the official list.¹⁸⁷

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 10.11 or 10.14, ASX will usually require the entity to make an announcement to the market explaining that action and why it was taken.

¹⁸⁵ Listing Rule 18.8A.

¹⁸⁶ Listing Rule 2.9.

¹⁸⁷ Listing Rule 17.12.

REMOVAL OF ENTITIES FROM THE ASX OFFICIAL LIST

The purpose of this Guidance Note	To assist listed entities and their advisers to understand ASX's rules, policies and processes for the removal of entities from the ASX official list
The main points it covers	- The right of an entity to request removal from the official list When ASX will remove an entity from the official list Information that must be given to security holders where security holder approval is required for the removal The procedure for formally requesting removal How to make a request for removal from the official list What an entity should announce to the market when it makes a request for removal from the official list How ASX can respond to a request for removal from the official list The conditions that ASX will typically require to be satisfied before it will act upon a request for removal from the official list Where ASX requires security holder approval to an entity being removed from the official list, what the notice of meeting should include - The circumstances in which ASX may remove an entity from the official list at ASX's instigation
Related materials you should read	- Guidance Note 5 <i>Chess Depositary Interests</i> - Guidance Note 8 <i>Continuous Disclosure: Listing Rules 3.1 – 3.1B</i> - Guidance Note 14 <i>ASX Market Announcements Platform</i> - Guidance Note 17 <i>Waivers and In-Principle Advice</i> - Guidance Note 35 <i>Security Holder Resolutions</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 advisers to understand ASX's rules, policies and processes for the removal of entities from the ASX official list.

The circumstances in which a listed entity may be removed from the official list are set out in Listing Rules 17.11 – 17.16. These rules apply to all entities admitted to the official list, including those admitted as an ASX Debt Listing¹ or an ASX Foreign Exempt Listing.²

Once an entity has its admission to the official list terminated, it can no longer refer to itself as an ASX listed entity and it must cease using the “Listed on ASX” trademark. Its securities will also cease to be quoted and traded on the ASX market.³

Once an entity has been removed from the official list, if it subsequently wishes to have its securities quoted and traded on ASX again, it must complete a new admission application and satisfy the relevant admission requirements in Chapters 1 and 2 of the Listing Rules afresh.⁴

2. Removal from the official list at the request of an entity

2.1. The right to request removal from the official list

An entity may ask ASX to remove it from the ASX official list at any time.⁵

ASX may require the entity to establish the authority of the person making the request for removal and, if the entity has a common seal, may require the request to be under its common seal.⁶

Except in the specific circumstances set out in Listing Rules 17.11A and 17.11B, ASX is not required to act on an entity's request for removal from the official list. In all circumstances, ASX ~~and~~ may require conditions to be satisfied before it does so.⁷ If ASX's decision to remove an entity from the official list is conditional, the entity is removed after the conditions are met and on a date decided by ASX. If the decision is unconditional, the entity is removed on the date specified in the decision or, if no date is specified, on a date decided by ASX.⁸

An entity that wishes to be removed from the official list will usually need to obtain approval from its security holders before ASX will give effect to the request.

Before an entity sends out a notice of meeting that includes a resolution to approve its removal from the official list, the entity must give ASX a copy of the draft notice for review.⁹ If security holders approve the removal, the entity should then formally request removal.

If security holder approval is not required, the entity should include a copy of the draft announcement that it intends to release about its removal when it formally requests removal from ASX.

The process for requesting removal is outlined in section 2.3.

¹ Listing Rule 1.10.1.

² Listing Rule 1.15.1.

³ As of the date of this Guidance Note, ~~it~~ they will also cease to be quoted and traded on the ~~Chi-X~~ ~~TMX~~ market, since ~~that market is not a listing market and~~ it quotes and trades securities of listed entities that are quoted and traded on the ASX market.

⁴ Guidance on the admission process can be found in 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*.

⁵ Listing Rule 17.11.

⁶ Listing Rule 17.11.

⁷ Listing Rule 17.11.

⁸ Listing Rule 17.16.

⁹ Listing Rules 15.1 and 15.1.4. The draft notice should be sent by way of email to the entity's home branch listings adviser in accordance with Listing Rule 15.2.2. ASX generally tries to review and notify the entity whether it objects to a draft notice of meeting within 5 business days of receipt. ASX will tell an entity within 5 business days if it needs more time to examine a draft notice of meeting.

2.2. Specific disclosure requirements

A notice of meeting proposing a resolution to approve removal under Listing Rule 17.11A.1 or 17.11A.2 must include a summary of the relevant rule and what will happen if security holders give, or do not give, the approval sought under that rule.¹⁰

The notice of meeting must also contain the information set out in Listing Rule 17.11C. If the entity is dual listed and the removal does not require security holder approval, the same information must be provided to security holders of the dual listed entity.

Listing Rule 17.11C requires disclosure of the earliest time and date when the entity will be removed from the official list, as determined by ASX, as well as the intended last date of trading (which will usually be the business day before the proposed date of removal).¹¹ The earliest time and date for removal must be no earlier than one month after the removal has become certain. The entity should discuss and confirm these dates with ASX when it finalises its draft notice of meeting or draft announcement, as applicable.

Listing Rule 17.11C also requires disclosure of an explanation of the remedies that a security holder may pursue if the security holder considers the removal to be contrary to laws that protect minority holders or contrary to laws related to corporate control. This disclosure is required because ASX does not regulate these laws and security holders may not be aware of their rights. The disclosure should include an explanation of:

- Part 2F.1 of the Corporations Act (or any applicable overseas legislation), which deals with conduct that is contrary to the interests of security holders as a whole or oppressive to, unfairly prejudicial to, or unfairly discriminatory against, a security holder or security holders; and
- Part 6.10 Division 2 Subdivision B of the Corporations Act (or any applicable overseas legislation), which deals with “unacceptable circumstances” in a control situation.

2.3. Procedure for formally requesting removal

To formally request removal under Listing Rule 17.11, an entity should submit their request in writing. The request should be on the entity’s letterhead¹², clearly marked “Not for public release”¹³ and sent to the entity’s listings adviser at its ASX home branch.¹⁴

The request should be properly executed by the entity and the request should also include evidence to demonstrate that the entity satisfies the relevant requirements set out in Listing Rules 17.11A-17.11C, as applicable.

ASX will ordinarily agree to remove an entity that meets the requirements set out in Listing Rules 17.11A-17.11C. If ASX agrees to the removal, ASX will require the entity to make an announcement that confirms the last day of trading in the entity’s quoted securities and the date of removal.

~~In practice, ASX’s decision to act upon a request from an entity for removal from the official list is usually subject to the satisfaction of certain conditions directed to ensuring that the interests of security holders are not unduly prejudiced by the removal and that trading in the entity’s securities takes place in an orderly manner up to the date of its removal. In some cases, these conditions may include the approval of security holders to the removal.¹⁵~~

~~ASX’s power not to act on an entity’s request for removal from the official list exists to ensure that the removal is being sought for acceptable reasons. Some common and generally acceptable reasons why an entity might ask to be removed from the official list include:~~

¹⁰ Listing Rule 14.1A

¹¹ Listing Rule 17.11C.3.

¹² Listing Rule 15.5.

¹³ Listing Rule 15.6.

¹⁴ Listing Rule 15.2.2.

¹⁵ ~~See sections 2.7, 2.8 and 2.9 below.~~

- ~~the entity is re-domiciling to another jurisdiction and intends to move its listing from ASX to an overseas securities exchange as part of that transaction;~~
- ~~the entity has its primary listing on another exchange and no longer requires a secondary listing on ASX;~~
- ~~as a result of a takeover, scheme of arrangement or other control transaction, the entity only has one or a small number of remaining security holders and so its continued listing can no longer be justified;¹⁶~~
- ~~the directors of the entity consider that the prices at which its securities are trading on ASX are materially lower than the underlying value of its net assets and the entity is intending to provide security holders wishing to sell their holdings with an alternative mechanism (such as a redemption or buy-back facility) to liquidate their holdings at a price closer to their net asset value; or~~
- ~~the directors of the entity have determined for some other proper reason that it is no longer in the interests of the entity and its security holders for the entity to remain listed on ASX.~~

Some unacceptable reasons why an entity might ask to be removed from the official list include if it is doing so solely or primarily:

- ~~to avoid the application of Chapter 10 of the Listing Rules (transactions with persons in a position of influence) to a particular transaction that would otherwise require the approval of security holders;~~
- ~~to avoid the disclosure obligations the entity would otherwise have under the Listing Rules and sections 674 and 675 of the Corporations Act 2001 (Cth);¹⁷ or~~
- ~~to deny minority security holders a market for their securities in order to coerce them into accepting a current or planned offer from a controlling security holder to buy their securities at an undervalue.~~

2.2. Preliminary discussions with ASX

~~Before an entity submits a formal request for removal from the official list, ASX recommends that the entity first discuss the matter with ASX Listings Compliance at the earliest opportunity. Those discussions are generally best held with the entity's home branch. ASX Listings Compliance will be able to provide general guidance on the removal process and a preliminary view on the chances of ASX agreeing to the request for removal, the likely timeframe for a decision on the request and the likely conditions that ASX will impose.~~

~~In most cases, ASX Listings Compliance will recommend that an entity apply for in-principle advice on whether ASX is likely to agree to a request for removal from the official list and the conditions that ASX is likely to require to be satisfied before it will act on the request. By doing this, the entity can have a high degree of certainty about ASX's position on these matters and can reflect that position in the announcement that ASX will expect it to make when it lodges its formal request for removal from the official list.¹⁸~~

~~An application for in-principle advice must be in writing and submitted by the applicant or a professional adviser or representative acting on behalf of the applicant. It should be addressed to ASX Listings Compliance at the entity's home branch and clearly marked "Not for public release".¹⁹~~

~~The application should set out in detail:~~

- ~~information about the number of holders of the entity's securities and the size of their holdings;~~
- ~~the entity's reasons for seeking to be removed from the official list;~~

¹⁶ ~~See section 2.10 below.~~

¹⁷ ~~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.~~

¹⁸ ~~See section 2.4 below.~~

¹⁹ ~~Listing Rule 15.6.~~

- whether the entity is intending to seek the approval of security holders to the removal (for example, because it anticipates that ASX will require such approval or it is doing so of its own volition²⁰); and

- what, if any, arrangements will be in place to enable security holders to sell or otherwise realise their securities in the lead up to, and after, its removal from the official list;

and attach a draft of the announcement referred to in section 2.4 below that the entity proposes to make in relation to its request to be removed from the official list.

Any in-principle advice given by ASX will be expressed as a non-binding statement of ASX's intent 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 (typically 3 months). It is treated by ASX as a confidential communication and is not released by ASX to the market.²¹

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

2.3. Procedure for formally requesting removal

Unless the entity is already in a trading halt or suspension, an entity intending to make a formal request to be removed from the official list should request an immediate trading halt, with the reason stated for the halt being that it is proposing to make an announcement concerning an application to be removed from the official list.

As soon as practicable thereafter, the entity should lodge a formal request in writing to be removed from the official list. The request should be on its letterhead,²² addressed to the General Manager ASX Listings Compliance, clearly marked "Not for public release"²³ and sent to its ASX Listings Compliance home branch.²⁴ The request should be executed under the entity's common seal (if it has one) or else signed by its chairman of directors or its chief executive officer. If it is signed by anyone else, ASX may require the entity to provide evidence that the person has the authority to request something as serious as the removal of the entity from the official list.²⁵

Unless this information has already been provided to ASX in an application for in-principle advice (in which case, the formal request can simply reference the application for in-principle advice), the formal request for removal should set out in detail:

- information about the number of holders of the entity's securities and the size of their holdings;
- the entity's reasons for seeking to be removed from the official list;
- whether the entity is intending to seek the approval of security holders to the removal; and
- what, if any, arrangements will be in place to enable security holders to sell their securities in the lead up to, and after, its removal from the official list.

Accompanying the formal request should be a draft of the announcement the entity proposes to make regarding the request under section 2.4 below. The entity should not release the announcement to the market unless and until it has been approved by ASX Listings Compliance.

²⁰—A listed entity might seek security holder approval to its removal from the ASX official list of its own volition, for example, because it considers it both appropriate and a matter of good governance that security holders should be consulted on such a significant decision.

²¹—Noting that if it appears to ASX that information about the request has ceased to be confidential (as evidenced by media speculation, market rumours or an unexplained material movement in the price or traded volumes of the entity's securities), ASX may require the entity to disclose information about the request (and, where applicable, ASX's response) under Listing Rule 3.1 and/or 3.1B.

²²—Listing Rule 15.5.

²³—Listing Rule 15.6.

²⁴—Listing Rule 15.2.2.

²⁵—Listing Rule 17.11.

2.4. — Market announcement expected regarding lodgement of formal request for removal

As soon as practicable after making its formal request for removal, the entity should make an announcement to the market that has been approved by ASX Listings Compliance and that sets out the following information:²⁶

- the fact that it has applied to ASX for removal from the official list;
- its reasons for seeking removal from the official list;
- the consequences for the entity and its security holders if it is removed from the official list (including whether or not it will become an “unlisted disclosing entity” under the Corporations Act following its removal from the official list and the ramifications that will follow from it being, or not being, an “unlisted disclosing entity”²⁷);
- what, if any, arrangements will be in place to enable security holders to sell their securities in the lead up to, and after, its removal from the official list and how those arrangements can be accessed;
- if the entity has received in-principle advice from ASX that it will agree to the request unconditionally, that fact and the proposed date for the entity’s removal from the official list;
- if the entity has received in-principle advice from ASX that it will agree to the request on conditions:
 - details of those conditions; and
 - the proposed timetable for satisfying those conditions and, if they are met, the expected date for the entity’s removal from the official list;
- if the entity has not received in-principle advice from ASX that it will agree to the request, a statement to the effect that:
 - ASX is not required to act on the entity’s request and may require conditions to be satisfied before it will act on the request; and
 - the entity will make a further announcement to the market once it is advised by ASX whether or not it will agree to the request and of any conditions that ASX requires to be satisfied before it will act on the request; and
- an explanation of the remedies that security holders may pursue under:
 - Part 2F.1 of the Corporations Act (or any equivalent overseas legislation) if they consider the removal contrary to the interests of security holders as a whole or oppressive to, unfairly prejudicial to, or unfairly discriminatory against, a security holder or security holders; or
 - Part 6.10 Division 2 Subdivision B of the Corporations Act (or any equivalent overseas legislation) if they consider the removal involves “unacceptable circumstances”.

The entity should not release an announcement about the removal request unless and until it has been approved by ASX Listings Compliance.

2.5. — The removal decision

Decisions on whether or not to remove an entity from the official list of ASX and the conditions that must be satisfied before the removal takes effect are made on behalf of ASX by ASX Listing Compliance.²⁸ ASX’s decision on these

²⁶ Such an announcement will generally be required under Listing Rule 3.1 since, in most cases, a reasonable person would expect information about the removal to have a material effect on the price or value of the entity’s securities.

²⁷ See ‘4 Ongoing continuous disclosure obligations’ on page 17.

²⁸ Some removal decisions, such as removal for non-payment of annual listing fees under Listing Rule 17.15, occur automatically without a decision by ASX Listings Compliance (see ‘3.2 Automatic suspension and removal for failure to pay annual listing fee’ on page 14).

~~matters will be reduced to writing and communicated to the entity by ASX Listings Compliance, usually via an emailed letter.~~

~~As mentioned previously, in practice, ASX's decision to act upon a request from an entity for removal from the official list is usually subject to the satisfaction of certain conditions. Sections 2.6—2.10 below set out the conditions that ASX will usually apply in some common situations.~~

2.6. Usual conditions where securities are readily able to be traded on another exchange

~~This section applies where the entity requesting removal from the official list is:~~

- ~~• a standard ASX Listing that is, or will be,²⁹ listed on another exchange;~~
- ~~• an ASX Debt Listing that is, or will be,³⁰ listed on another exchange; or~~
- ~~• an ASX Foreign Exempt Listing with a primary listing on another exchange,³¹~~

~~where the class or classes of securities quoted on ASX are, or will be, readily able to be traded by security holders on that other exchange.³²~~

~~In these cases, ASX will not usually require the entity to obtain security holder approval to its removal from the official list (although it is always open to the entity to seek such approval of its own volition³³). This is on the basis that security holders will still have the opportunity to sell their securities on another exchange even though they will cease to have that opportunity on ASX.~~

~~In these cases, ASX will usually require the following conditions to be satisfied before it will act on a request from the entity for removal from the official list:~~

- ~~• the entity send a written or electronic communication to all security holders,³⁴ in form and substance satisfactory to ASX, setting out:~~
 - ~~• the nominated time and date³⁵ at which the entity will be removed from the ASX official list and that:~~
 - ~~• if they wish to sell their securities on ASX, they will need to do so before then; and~~
 - ~~• if they don't, thereafter they will only be able to sell their securities on market on the other exchange or exchanges where the entity is listed;~~
 - ~~• generally what they will need to do if they wish to sell their securities on the other exchange or exchanges where the entity is listed; and~~
 - ~~• specifically, if its securities are traded on ASX in the form of CHESS Depositary Interests (CDIs):³⁶~~

²⁹—Where an entity is currently only listed on ASX but is intending to list on another exchange, ASX's decision to agree to its removal from the ASX official list will be subject to a condition that the entity is admitted to the official list of, and its relevant securities are quoted on, that other exchange.

³⁰—See note 23.

³¹—An ASX Foreign Exempt Listing must be a foreign entity that has its overseas home exchange, a stock exchange or market which is acceptable to ASX (see Listing Rule 1.11 condition 1 and section 2.1 of Guidance Note 4 *Foreign Entities Listing on ASX*).

³²—In determining whether securities are "readily able" to be traded on another exchange, ASX will have regard to any practical difficulties that security holders may have in accessing that exchange and selling their securities at a fair price.

³³—See note 14 above.

³⁴—In the case of an ASX Listing or ASX Debt Listing, a copy of that communication should be given to ASX when it is sent to security holders under Listing Rule 3.17.1. In the case of an ASX Foreign Exempt Listing, ASX will generally impose a condition under Listing Rule 17.11 that the entity give a copy of the communication to ASX when it is sent to security holders.

³⁵—This time and date is to be ascertained by discussions between the entity and ASX Listing Compliance.

³⁶—For further guidance on CDIs, see Guidance Note 5 *CheSS Depositary Interests*.

- the steps holders must take to convert their CDIs to the underlying securities before they are able to sell them on the other exchange or exchanges where the entity is listed; and
- the steps that will be taken by the CHESS Depositary Nominee³⁷ if holders do not convert their CDIs to the underlying securities by a nominated date;³⁸ and
- the removal of the entity from the ASX official list not take place any earlier than one month after the above-mentioned communication has been sent to security holders, so that security holders have at least that period to sell their securities on ASX should they wish to do so.

In exercising its discretion to approve the entity's request for removal from the official list, ASX will look favourably upon the entity establishing an arrangement with a local Australian broker who for a period (say for 3 months after the entity has ceased to be listed on ASX) can facilitate sales on behalf of Australian security holders on the overseas exchange and, if requested by the security holder, convert and remit the net proceeds of sale in Australian dollars. Where it does establish such an arrangement, the entity should communicate information about the arrangement to all security holders, either in the communication mentioned above or in a follow-up communication.

2.7. Usual conditions where ordinary securities not readily able to be traded on another exchange

This section applies where the entity requesting removal from the official list is an ASX Listing whose ordinary securities are not, and will not be, readily able to be traded on another exchange.

Except in the situation mentioned in section 2.10 below, ASX will usually require the following conditions to be satisfied before it will act on a request from the entity for removal from the official list:

- the entity obtain the approval of its security holders to its removal from the official list by way of a special resolution;³⁹ and
- the removal of the entity from the ASX official list not take place any earlier than one month (or, the case of certain illiquid trusts mentioned in section 2.9 below, three months) after security holder approval has been obtained.

The first condition above ensures that the interests of security holders, as a group, are addressed and that all security holders have an opportunity to express a view on whether or not the entity should be removed from the official list. The second condition is imposed so that security holders have at least one month after security holder approval has been obtained to sell their securities on ASX, should they wish to do so.

A suitable form of resolution to satisfy the first condition above is:

"Resolved, as a special resolution, to approve the removal of [name of entity] from the ASX official list."

All holders of ordinary securities (including, for the avoidance of doubt, those with a 75%+ security holding who can secure the passage of a special resolution by their own vote), will generally be permitted to vote on the special resolution approving an entity's removal from the official list, except in the following five cases:⁴⁰

³⁷ See ASX Settlement Operating Rules 13.5A.2 and 13.5A.3.

³⁸ This date is to be ascertained by discussions between the entity and ASX Settlement.

³⁹ While Listing Rule 14.9 provides that an approval under the Listing Rules usually means an approval by ordinary resolution, ASX considers that the impact on minority security holders of a resolution approving the removal of an entity from the official list to be sufficiently serious as to warrant a special, rather than an ordinary, resolution. The Listing Rules do not define the expression "special resolution" and so it takes its meaning under the Corporations Act (see Listing Rule 19.3). Under that Act, for a resolution to be a special resolution: (a) 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 (b) it must be passed by at least 75% of the votes cast by members entitled to vote on the resolution (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.

⁴⁰ The voting exclusions referenced in the text will be imposed by ASX pursuant to its discretion in that regard under Listing Rule 14.11.1 (see the final row of the table set out in that rule).

- ~~where ASX is concerned that the removal may be intended, in part,⁴¹ to avoid the application of the Listing Rules to a particular transaction or situation that would otherwise require the approval of security holders and that would otherwise attract a voting exclusion under Listing Rule 14.11 in which case, ASX may impose an equivalent voting exclusion on the removal resolution;~~
- ~~where ASX is concerned that the removal will have the effect that the entity will no longer be subject to the disclosure obligations the entity would otherwise have under the Listing Rules and sections 674 and 675⁴² of the Corporations Act⁴³ in which case, ASX may impose a voting exclusion on any party whom ASX considers will have a material informational advantage over other security holders as a result of those disclosure obligations no longer applying to the entity, and their associates;⁴⁴~~
- ~~where ASX is concerned that a security holder or their associates are likely to obtain some other material advantage or benefit from the entity no longer being listed on ASX that is or may not be available to other security holders generally in which case, ASX may impose a voting exclusion on that security holder and their associates;~~
- ~~where the entity has been the subject of a takeover bid in the preceding 12 months⁴⁵ and, in ASX's opinion, the bidder and its associates have attained effective control of the entity without satisfying the conditions mentioned in section 2.10 below for ASX to agree to its removal without the approval of security holders in which case, ASX will require the removal to be approved by the entity's security holders and will also impose a voting exclusion on the bidder and its associates; or~~
- ~~where ASX otherwise considers it appropriate in any specific case to impose a voting exclusion on a resolution approving an entity's removal from the official list.~~

~~The second last requirement above is imposed to ensure that a successful bidder can only have the target removed from the official list without security holder approval within 12 months after the close of the takeover bid if it satisfies the safeguards mentioned in section 2.10 below. Otherwise, it must obtain the approval of the remaining security holders to the removal. This in turn helps prevent a bidder from unfairly using the threat of an imminent delisting to coerce security holders into accepting a takeover bid.~~

~~In all cases covered by this section, ASX will also usually impose a condition that the entity include in or with the notice convening the meeting of security holders to approve its removal from the official list a statement, in form and substance satisfactory to ASX, setting out:~~

- ~~(a) the time and date⁴⁶ at which the entity will be removed from the ASX official list if that approval is given;~~
- ~~(b) that:~~

⁴¹—As mentioned previously in section 2.1, if ASX considers that a request for removal from the official list is being made solely or primarily to avoid the application of Chapter 10 of the Listing Rules (transactions with persons in a position of influence) to a particular transaction that would otherwise require the approval of security holders, ASX may refuse to act on the request.

⁴²—Noting that, in many cases, an entity that is removed from the ASX official list is likely to become an "unlisted disclosing entity" and therefore subject to the continuous disclosure obligations in section 675 of the Corporations Act: see '4. Ongoing continuous disclosure obligations' on page 17.

⁴³—Again, as mentioned previously in section 2.1, if ASX considers that a request for removal from the official list is being made solely or primarily to avoid the disclosure obligations the entity would otherwise have under the Listing Rules and sections 674 and 675 of the Corporations Act, ASX may refuse to act on the request.

⁴⁴—The issue of informational advantage will generally arise in the context of a controlling security holder or directors and senior managers, where they may reasonably be expected to have better access to information about the entity and its performance than security holders generally.

⁴⁵—Where more than 12 months have elapsed since the close of the takeover bid, ASX will generally permit the bidder and its associates to vote on a resolution approving the target's removal from the official list. At this point, sufficient time has elapsed since the takeover bid to remove any inference that the removal is being sought to coerce the target's security holders into accepting the bid.

⁴⁶—This time and date is to be ascertained by discussions between the entity and ASX Listing Compliance.

- if holders wish to sell their securities on ASX, they will need to do so before the entity is removed from the ASX official list; and
- if they don't, details of the processes that will exist after the entity is removed from the official list to allow a security holder to dispose of their holdings and how they can access those processes;

(c) if its securities are traded on ASX in the form of CDIs:

- the steps holders must take to convert their CDIs to the underlying securities, if that is what they wish to do; and
- the steps that will be taken by the CHESS Depository Nominee⁴⁷ if holders do not convert their CDIs to the underlying securities by a nominated date;⁴⁸ and

(d) the other information to be included in the notice of meeting set out in section 2.11 below.

In exercising its discretion to approve the entity's request for removal from the official list, ASX will look favourably upon the entity implementing a buy-back or other facility that allows the holders of its ordinary securities to sell or redeem them for a nominated period up to, and/or following, the removal of the entity from the official list and to receive the proceeds in Australian dollars. Where it does establish such a facility, the entity should communicate information about the facility to all security holders in the notice convening the meeting of security holders to approve its removal from the official list.

2.8. Usual conditions where other classes of securities not readily able to be traded on another exchange

This section applies where the entity requesting removal from the official list is:

- a standard ASX Listing;
- an ASX Debt Listing; or
- an ASX Foreign Exempt Listing;

which has a class or classes of securities, other than its ordinary securities, quoted on ASX that are not readily able to be traded on another exchange.

In these cases, the conditions that ASX will require to be satisfied before it will act on a request from the entity for removal from the official list will be considered on a case-by-case basis, having regard to what is taking place vis-à-vis the entity's ordinary securities and the relative number and value of the securities in the relevant class or classes compared to the number and value of the entity's ordinary securities. In some cases, ASX may require the entity to obtain the approval of the relevant class or classes of security holders to its removal from the official list by way of a special resolution. In some cases, ASX may impose a condition that the entity puts in place a buy-back or other facility acceptable to ASX that allows the holders of the relevant class or classes of securities to sell or redeem them for a nominated period following the removal of the entity from the official list and to receive the proceeds in Australian dollars. And, in some cases, ASX may do both.

ASX will also generally impose conditions that the removal not take place for a minimum period, so that security holders have at least that period to sell their securities on ASX, should they wish to do so, and requiring equivalent information to that mentioned in paragraphs (a), (b), (c) and (d) in section 2.7 above to be included in or with the notice convening the meeting of security holders to approve its removal from the official list.

⁴⁷ See ASX Settlement Operating Rules 13.5A.2 and 13.5A.3.

⁴⁸ This date is to be ascertained by discussions between the entity and ASX Settlement.

~~2.9.— Usual conditions for trusts with redemption facilities~~

~~This section applies where the entity requesting removal from the official list is a trust with an ASX Listing that is not listed on another exchange but will have in place redemption facilities that enable the holders of its ordinary securities to convert their securities to cash after it has been removed from the official list.~~

~~In these cases, ASX will usually require the entity to obtain the approval of its security holders to its removal from the official list by way of a special resolution. This is on the basis that a redemption facility is qualitatively different to being able to sell on market. However, instead of a condition that the removal of the entity from the ASX official list not take place any earlier than one month after security holder approval has been obtained, if the trust is not “liquid” (as defined in section 601KA of the Corporations Act), that period will be extended to 3 months, so that security holders have that longer period to sell their securities on ASX, should they wish to do so.~~

~~ASX will also generally impose a condition requiring equivalent information to that mentioned in paragraphs (a), (b), (c) and (d) in section 2.7 above to be included in or with the notice convening the meeting of security holders to approve its removal from the official list.~~

~~2.10.— Usual conditions in certain takeover situations~~

~~This section applies where the entity requesting removal from the official list is an ASX Listing that has been the subject of a successful takeover bid for its ordinary securities where:~~

- ~~• the bidder and its related bodies corporate own or control at least 75% of the entity’s ordinary securities but have not met the conditions to proceed to compulsory acquisition of the remaining securities under the Corporations Act;⁴⁹~~
- ~~• excluding the bidder and its related bodies corporate, the number of holders of ordinary securities having holdings with a value of at least \$500⁵⁰ is fewer than 150;~~
- ~~• the bidder foreshadowed in its bidder’s statement that it intended, if it secured control of the entity, to cause the entity to apply for removal from the official list;~~
- ~~• the takeover bid remained open for at least two weeks following the bidder and its related bodies corporate having attained ownership or control of at least 75% of the entity’s ordinary securities; and~~
- ~~• the entity has applied for removal from the official list no later than one month after the close of the takeover bid.~~

~~In these cases, ASX will not usually require the entity to obtain security holder approval to its removal from the official list. This is on the basis that security holders had a reasonable opportunity to sell their holdings by accepting the bid after the bidder secured control of the entity and the entity is now at or near the margin where ASX may consider removing the entity from the official list for failure to maintain a sufficient spread of security holdings.⁵¹~~

~~In these cases, ASX will usually require the following conditions to be satisfied before it will act on a request for removal from the official list:~~

- ~~• the entity send a written or electronic communication to all security holders other than the bidder and its related bodies corporate, in form and substance satisfactory to ASX, advising them of the nominated time and date⁵² at which the entity will be removed from the ASX official list and that:~~
 - ~~• if they wish to sell their securities on ASX they will need to do so before then; and~~

⁴⁹— See note 56 below.

⁵⁰— A holding of \$500 is the size of a “marketable parcel”, is defined in Listing Rule 19.12 and as set out in the ASX Operating Rules Procedures.

⁵¹— See Listing Rules 12.4 and 17.12.

⁵²— This time and date is to be ascertained by discussions between the entity and ASX Listings Compliance.

- ~~if they don't, thereafter they will only be able to sell their securities off-market; and~~
- ~~the removal of the entity from the ASX official list not take place any earlier than 3 months after the above-mentioned communication has been sent to security holders, so that security holders have at least that period to sell their securities on ASX, should they wish to do so.~~

2.11. Requirements for notices of meeting

~~As a general proposition, 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 judgment on those matters.⁵³~~

~~Where an entity is required by ASX under Listing Rule 17.11 to seek the approval of security holders to its removal from the official list, ASX will expect the notice of meeting seeking that approval to include:~~

- ~~the reason why the approval is being sought and what will happen if the approval is given or not given⁵⁴—a summary along the following lines will suffice for these purposes:~~

~~“[Name of entity] has applied to ASX to be removed from the ASX official list under Listing Rule 17.11 (the “De-Listing”).~~

~~As is its usual practice, ASX has imposed a requirement under Listing Rule 17.11 and Guidance Note 33 *Removal of Entities From the ASX Official List*, that [name of entity] obtain [shareholder/unitholder] approval to its De-Listing.~~

~~Resolution [n^o] seeks the required [shareholder/unitholder] approval to the De-Listing under and for the purposes of the ASX Listing Rules.~~

~~If resolution [n^o] is passed, [name of entity] will be able to proceed with the De-Listing and [outline the consequences that will follow].~~

~~If resolution [n^o] is not passed, [name of entity] will not be able to proceed with the De-Listing and [outline the consequences that will follow].”~~

- ~~details of any other conditions that ASX requires to be satisfied before it will act on the request for removal from the official list;~~
- ~~details of any voting exclusions applied by ASX;⁵⁵~~
- ~~the entity's reasons for seeking removal from the official list;~~
- ~~the consequences for the entity and its security holders if it is removed from the official list (including whether or not it will become an “unlisted disclosing entity” under the Corporations Act following its removal from the official list and the ramifications that will follow from it being, or not being, an “unlisted disclosing entity”⁵⁶);~~
- ~~the advantages and disadvantages of removal from the official list compared to the advantages and disadvantages of remaining listed on ASX;~~
- ~~details of any buy back or other facility the entity is proposing to put in place that allows the holders of its securities to sell or redeem them for a nominated period up to, and/or following, the removal of those securities from the official list and to receive the proceeds in Australian dollars;~~

⁵³—See *Bulfin v Boverfalds Ltd* (1938) 38 SR (NSW) 423 and *Chequopoint Securities Ltd v Claremont Petroleum NL* (1986) 11 ACLR 94.

⁵⁴—Cf Listing Rule 14.1A.

⁵⁵—See also ‘2.12 Voting exclusions’ on page 13.

⁵⁶—See ‘4 Ongoing continuous disclosure obligations’ on page 17.

- ~~to the extent the entity is aware of it, information about the intentions of material security holders to participate in any such buy-back or other facility;~~
- ~~an explanation of the remedies that security holders may pursue under:~~
 - ~~Part 2F.1 of the Corporations Act (or any equivalent overseas legislation) if they consider the removal contrary to the interests of security holders as a whole or oppressive to, unfairly prejudicial to, or unfairly discriminatory against, a security holder or security holders; or~~
 - ~~Part 6.10 Division 2 Subdivision B of the Corporations Act (or any equivalent overseas legislation) if they consider the removal involves “unacceptable circumstances”.~~
- ~~the other information mentioned in sections 2.7, 2.8 and 2.9 above (as applicable) that ASX requires to be included in the notice of meeting; and~~
- ~~any other information specified by ASX, having regard to the particular circumstances of the entity and its proposed removal from the official list.~~

~~This information may be given in the notice itself or in an accompanying explanatory memorandum to security holders.⁵⁷~~

~~The information about the entity’s reasons for seeking removal from the official list is expected to be reasonably detailed. For example, if one of the reasons put forward for seeking removal is to save the costs associated with an ASX listing, the notice of meeting should include a breakdown of the amounts the entity expects to save, and specify any additional expenses it is likely to incur, if it is removed from the official list. Similarly, if one of the reasons for seeking removal is because the entity is not obtaining the benefits of a listing due to a lack of liquidity in the market for its securities on ASX, the notice of meeting should explain what steps the entity intends to take to provide its security holders with greater liquidity once it has been removed from the ASX official list.~~

~~Before a listed entity sends out a notice of meeting that includes a resolution by security holders approving its removal from the official list, it must give ASX a copy of the draft notice for review. It must not finalise the notice until ASX tells it that ASX does not object to it.⁵⁸~~

~~ASX may object to a draft notice of meeting if it appears to ASX that it does not meet the requirements of the Listing Rules or the required standard of disclosure mentioned above.~~

2.12. ~~Voting exclusions~~

~~As mentioned in section 2.7 above, ASX may impose a voting exclusion preventing certain persons (each an “excluded person”) from voting in favour of the resolution approving the removal of an entity from the official list.⁵⁹~~

~~A voting exclusion is effected in this instance by including a statement in the notice of meeting proposing the resolution 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 their associates,⁶⁰ save where it is cast by:~~

- ~~a person as proxy or attorney for another 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~~

⁵⁷—Listing Rule 14.1.

⁵⁸—Listing Rules 15.1 and 15.1.7. The draft notice should be sent by way of email to the entity’s home branch Listings Adviser in accordance with Listing Rule 15.2.2. ASX generally tries to review and notify the entity whether it objects to a draft notice of meeting within 5 business days of receipt. ASX will tell an entity within 5 business days if it needs more time to examine a draft notice of meeting.

⁵⁹—Pursuant to its powers in that regard under the last row in the table in Listing Rule 14.11.1.

⁶⁰—Guidance Note 35 *Security Holder Resolutions* has guidance on who is an associate of an excluded person for these purposes.

- ~~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 they are not excluded from voting, and are 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.~~

~~Guidance Note 35 *Security Holder Resolutions* has further guidance on voting exclusions and the procedures that should be followed at a meeting of security holders where a resolution to approve the removal of an entity from the official list is being considered.~~

2.13. Notification of meeting results

~~Immediately after a meeting has been held to consider a resolution seeking the approval of security holders to an entity's removal from the official list, the entity must notify ASX of the outcome of the resolution by way of a market announcement.⁶⁴~~

~~If security holders have approved its removal from the official list, ASX will expect the announcement to reiterate the information mentioned in paragraphs (a), (b) and (c) in section 2.7 above.~~

3. Removal from the official list at the instigation of ASX

3.1. ~~Automatic~~sSuspension and removal following compulsory acquisition

Where a listed entity is the subject of a takeover bid and the bidder proceeds to compulsory acquisition of the entity's securities under the Corporations Act,⁶² ASX will ~~automatically~~ suspend quotation of the entity's securities 5 business days after it receives a copy of the compulsory acquisition notice sent to holders of securities in the bid class⁶³ that the bidder is entitled to acquire their securities.⁶⁴

Similarly, where a 90% holder proceeds with the compulsory acquisition of an entity's securities under Part 6A.2 of the Corporations Act,⁶⁵ ASX will ~~automatically~~ suspend quotation of those securities 5 business days after it receives written notice from the entity that:

- the objection period set out in the compulsory acquisition notice has ended and holders of at least 10% of the securities covered by the compulsory acquisition notice have not objected to the acquisition before the end of the objection period; or

~~⁶⁴ In the case of an ASX Listing or ASX Debt Listing, the outcome of the resolution must be advised to ASX under Listing Rule 3.13.2. In the case of an ASX Foreign Exempt Listing, ASX will generally impose a condition under Listing Rule 17.11 that the entity notify ASX immediately of the outcome of the resolution.~~

⁶² Part 6A.1 Division 1 of the Corporations Act enables a bidder under a takeover bid to compulsorily acquire any remaining securities in the bid class if, by the end of the offer period, it and its associates have: (a) relevant interests in 90% (by number) of the securities in the bid class; and (b) acquired at least 75% (by number) of the securities that the bidder offered to acquire under the bid (whether or not the acquisitions occurred under the bid or otherwise). The bidder must give a notice of compulsory acquisition to all remaining holders of securities in the bid class during, or within one month after the end of, the offer period and lodge a copy of the notice with ASIC and ASX.

⁶³ Section 9 of the Corporations Act defines the bid class of securities for a takeover bid as the class of securities to which the securities being bid for belong.

⁶⁴ Listing Rule 17.4. ASX may decide not to suspend the quotation of securities in a class that was not the bid class (Listing Rule 17.4.1).

⁶⁵ Part 6A.2 of the Corporations Act enables a person who, either alone or with a related body corporate, has a full beneficial interest in at least 90% (by number) of any class of securities in a company to compulsorily acquire the outstanding securities in that class. It also enables a person who, either alone or with a related body corporate, has 90% voting power, and full beneficial interest in at least 90% (by value) of all the securities in the company that are either shares or convertible into shares, to compulsorily acquire all remaining classes of shares and securities convertible into shares. In each case, the power must be exercised within 6 months of becoming a 90% holder. The 90% holder must give a notice of compulsory acquisition to all relevant holders of securities giving them a period of at least one month to object to the acquisition. If the holders of at least 10% of the securities covered by the compulsory acquisition notice object to the acquisition before the end of that period, the court must approve the acquisition under section 664F of the Corporations Act.

- the court has approved the acquisition under section 664F of the Corporations Act.⁶⁶

In each case, the entity should notify their listings adviser of the compulsory acquisition, even if notification has been made on the market announcements platform. If the entity's listings adviser is not separately notified, the suspension may not be actioned.

~~In each case, if~~ Once all the entity's quoted securities have been suspended, ASX will remove the entity from the official list at the close of trading on a date decided by ASX.⁶⁷ This will normally be the third business day following the date on which the entity's securities were suspended under these provisions.

3.2. ~~Automatic~~ Suspension and removal for failure to pay annual listing fee

If an entity fails to pay its annual listing fee within 15 business days after the due date,⁶⁸ ASX will ~~automatically~~ suspend quotation of its securities.⁶⁹ The suspension will take effect at the commencement of trading on the next business day after the 15 business day grace period has expired.

If the entity fails to pay its annual listing fee within a further 5 business days (that is, within 20 business days after the due date), ASX will ~~automatically~~ remove it from the official list.⁷⁰ The removal will take effect at the close of trading on the 20th business day after the due date for payment of the fee.

An entity that is seeking voluntary removal from the official list should not seek to circumvent the approval process in Listing Rule 17.11⁷¹ by declining to pay its annual listing fee and thereby having itself ~~automatically~~ removed from the official list under Listing Rule 17.15. Such conduct will not only breach the obligation of the entity to act in accordance with spirit, intention and purpose of the Listing Rules,⁷¹ it is likely to raise issues as to whether the directors of the entity are complying with their statutory and common law obligations to discharge their duties with a reasonable degree of care and diligence⁷² and to exercise their powers in good faith and for a proper purpose.⁷³ In some cases, it could also leave the entity open to an action for oppressive conduct⁷⁴ or "just and equitable" winding up.⁷⁵

ASX reserves the right to take legal action against any entity that fails to pay its annual listing fee to recover the amount in question and to reinstate the entity to the official list after that has occurred.

3.3. Other circumstances in which ASX may terminate a listing

ASX may remove an entity from the official list at any time if in ASX's opinion:

- the entity is unwilling or unable to comply with, or breaks, any Listing Rule;
- the entity has no quoted securities; or
- it is appropriate for some other reason.⁷⁶

ASX has exercised its power to remove entities from the official list for:

⁶⁶ Listing Rule 17.4A. ASX may decide not to suspend the quotation of securities in a class that was not the class to which the securities covered by the compulsory acquisition notice belong (Listing Rule 17.4A.1).

⁶⁷ Listing Rule 17.14.

⁶⁸ As required under Listing Rule 16.5.

⁶⁹ Listing Rule 17.6. ASX will not waive this rule.

⁷⁰ Listing Rule 17.15. ASX will not waive this rule.

⁷¹ Listing Rule 19.2.

⁷² See sections 180(1) (listed companies) and 601FD(1)(b) (listed trusts) of the Corporations Act.

⁷³ See section 181(1) of the Corporations Act. In the case of a listed trust, it may also involve a breach of their duty to act in the best interests of members under section 601FD(1)(c) of the Corporations Act.

⁷⁴ See sections 232 and 461(1)(f) and (g) of the Corporations Act.

⁷⁵ See sections 461(1)(k) (listed companies) and section 601ND(1)(a) (listed trusts) of the Corporations Act.

⁷⁶ Listing Rule 17.12.

- persistent or egregious breaches of their continuous and periodic disclosure obligations under the Listing Rules;⁷⁷
- refusing to comply with their obligations under the JORC Code;⁷⁸
- breach of their obligations to have, in ASX's opinion, a sufficient level of operations or an adequate financial condition to warrant the continued quotation of their securities and their continued listing;⁷⁹
- failing to 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;⁸⁰ and
- not having a structure and operations appropriate for a listed entity.⁸¹

The power to terminate an entity's listing is not one that ASX exercises lightly, since it takes away from the entity's security holders the ability to trade their securities on a licensed securities exchange. However, it is a power that ASX will exercise to protect the reputation and integrity of the ASX market and to prevent future investors from buying into a listed entity that in ASX's opinion should not be listed on the ASX market.

3.4. ~~Automatic~~ Removal of entities suspended for an unacceptably long period

ASX's policy⁸² is to remove from the official list:

- an entity that fails to lodge any of the documents referred to in Listing Rule 17.5⁸³ for a continuous period of 1 year after the deadline for lodgement of that document; and
- an entity whose securities have been suspended from quotation for a continuous period of 2 years,⁸⁴

whichever occurs first. The removal will usually take effect from the open of trading on the first trading day after the expiration of the 1 or 2 year period referred to above.

ASX may agree to a short extension of the 1 and 2 year deadlines above for ~~automatic~~ removal if the entity can demonstrate to ASX's satisfaction that it is in the final stages of implementing a transaction that will lead to the resumption of trading in its securities. For these purposes, being in the "final stages" of implementing a transaction means that the entity has:

- announced the transaction to the market;
- signed definitive legal agreements for the transaction (including for any financing required in respect of the transaction);

⁷⁷ Chapters 3 and 4 of the Listing Rules.

⁷⁸ Chapter 5 of the Listing Rules.

⁷⁹ Listing Rules 12.1 and 12.2 respectively.

⁸⁰ Listing Rule 12.4.

⁸¹ Listing Rule 12.5.

⁸² ~~This policy will come into effect on Monday 3 February 2020. Unless ASX decides otherwise, entities that have failed to file any of the documents referred to in Listing Rule 17.5 on or before 31 January 2019 and have not rectified that failure by the close of trading on Friday 31 January 2020 will be automatically removed from the official list at the commencement of trading on Monday 3 February 2020. Likewise any other entities that have been continuously suspended since on or before 31 January 2018 and remain suspended at the close of trading on Friday 31 January 2020 will be automatically removed from the official list at the commencement of trading on Monday 3 February 2020.~~

⁸³ The documents referred to in Listing Rule 17.5 include an annual report, preliminary final report, annual accounts, half yearly accounts, quarterly activity report, quarterly cash flow report, an Appendix 4F (when required) and the monthly statement of net tangible asset backing per security required from a listed investment entity. Listing Rule 17.5 provides for the ~~automatic~~ suspension of an entity that fails to lodge any such document by the due date under the Listing Rules.

⁸⁴ ASX considers this to be "appropriate" for the purposes of Listing Rule 17.12 (see note ~~7670~~ and accompanying text).

- if the transaction requires a prospectus or product disclosure statement to be lodged with the Australian Securities and Investments Commission (“ASIC”), lodged that document with ASIC and it is not the subject of a stop order or other regulatory action by ASIC; and
- if the transaction requires approval by security holders or from a governmental agency or financier, obtained all such approvals.

The extension, if granted, will usually be for no more than 3 months (it may be shorter if ASX considers that the transaction ought to be reasonably capable of being consummated in a lesser period). Before it will grant the extension, ASX must be satisfied that the entity is reasonably capable of consummating the transaction and will be ready for trading in its securities to resume (including having lodged all outstanding accounts with ASX) within the period of the extension.

ASX may also agree to a short extension of the 1 year deadline above for ~~automatic~~ removal of an entity that has been suspended from quotation under Listing Rule 17.5 for failure to lodge accounts, if an external administrator has been appointed to the entity and the administrator has the benefit of a deferral of financial reporting obligations under ASIC Corporations (Externally-Administered Bodies) Instrument 2025/58415/254. In this case, the extension, if granted, will usually be for no more than 6 months after the appointment of the administrator.⁸⁵

For the avoidance of doubt, ASX can, and will in appropriate circumstances, remove an entity from the official list under Listing Rule 17.12 even if it has not been suspended for the 1 or 2 year periods referred to above. This is especially the case if, in ASX’s opinion, the entity no longer has a sufficient level of operations or an adequate financial condition to warrant its continued listing (Listing Rules 12.1 and 12.2), its structure and operations have ceased to be appropriate for a listed entity (Listing Rule 12.5) or the entity appears to ASX to have committed serious or wilful breaches of the Listing Rules (including failing to respond in a satisfactory manner to enquiries by ASX under Listing Rule 18.7).

4. Ongoing continuous disclosure obligations

An entity that is removed from the official list of ASX should note that, in many cases, it is likely to become an “unlisted disclosing entity” subject to the continuous disclosure obligations in section 675 of the Corporations Act.⁸⁶ These are substantively the same as those imposed under section 674 of the Corporations Act and Listing Rule 3.1.

ASIC Regulatory Guide 198 *Unlisted disclosing entities: Continuous disclosure obligations* provides guidance on what is an unlisted disclosing entity and how an unlisted disclosing entity should comply with its continuous disclosure obligations under the Corporations Act.

⁸⁵ This 6 month period is the same period during which the entity’s financial reporting obligations are deferred under ASIC Corporations (Externally-Administered Bodies) Instrument 2025/58415/254.

⁸⁶ This will apply, for example, under section 111AF(1) of the Corporations Act if:

- as part of its listing or any time subsequently, the entity has lodged a disclosure document with ASIC in relation to a class of securities;
- after an issue of securities in that class pursuant to the disclosure document, 100 or more persons held securities in that class; and
- securities in that class have been held by 100 or more persons at all times since that issue of securities.

See also sections 111AF(2), 111AFA and 111AG for other circumstances where an entity may become an unlisted disclosing entity.

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</i> SharesSecurities - 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 Equity Securities to Persons in a Position of Influence</i> - Guidance Note 33 <i>Removal of Entities from the ASX Official List</i>

History: Guidance Note 35 issued [XX/XX/XX](#)~~01/01/20~~. A previous version of this Guidance Note was issued in 12/19 and 01/20.

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 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
- [a higher prescribed threshold for the purposes of Listing Rule 7.2 \(exceptions 6 and 7\) under Listing Rule 7.3B;](#)
- 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;

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*.

- 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
- the issue of performance shares under Guidance Note 19 *Performance Shares*; ~~and~~ [Securities](#); ~~and~~
- ~~the voluntary removal of an entity from the official list under [Listing Rule 17.11A.1](#) or [17.11A.2](#)~~ [Guidance Note 33 Removal of Entities from the ASX Official List](#); ~~and~~
- [the change of admission category from an ASX Listing to an ASX Foreign Exempt Listing under Listing Rule 18.10.](#)

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~~ [Listing Rule 17.11A.2](#),

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.

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*.

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.

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 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

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), [17.11C \(resolutions under Listing Rule 17.11A\)](#) and [18.10 \(resolutions under that rule\)](#).

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.

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 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;

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.

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*.

- 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.

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

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.

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.

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 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~~ For example, where an entity proposes to issue performance ~~shares~~securities, ASX ~~will generally~~may 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;

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.

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 ~~9-12~~ of Guidance Note 19 Performance ~~Shares~~Securities.

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).

- 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;
- 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

³⁸ See note 37 above.

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.

(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
- 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

⁴³ Paragraph (d) of the definition of “related party” in Listing Rule 19.12.

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.

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:

- 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.

ASX would note that most resolutions under the Listing Rules attract a voting exclusion. In ASX's view, 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.⁴⁷

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.⁴⁸

⁴⁶ As it is required to do under Listing Rule 19.2.

⁴⁷ ASX would note that recommendation 6.4 of the ASX Corporate Governance Council's *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 hands.

⁴⁸ 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.

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.⁴⁹

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:

- 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.⁵⁰ 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:⁵¹

- 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:

⁴⁹ Listing Rule 14.8.

⁵⁰ 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.

⁵¹ Listing Rule 18.7.

- 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;
- 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,⁵² 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

Immediately⁵³ 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;

⁵² See section E of ASIC Regulatory Guide 60 *Schemes of arrangement*.

⁵³ 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*).

- 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
 - 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.⁵⁴

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.⁵⁵

The notification given to ASX must be headed "Results of Meeting" or something similar.⁵⁶

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.

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.⁵⁷ 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.

⁵⁴ Listing Rule 3.13.2.

⁵⁵ Listing Rule 3.13.2, penultimate paragraph.

⁵⁶ Listing Rule 3.13.2, final sentence.

⁵⁷ 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.

Annexure B

Final amendments tracked to the
exposure draft amendments to ASX
Listing Rules and Guidance Notes

Chapter 3

3.19A.2

A change to a *notifiable interest of a director of the entity (or in the case of a trust, a director of the *responsible entity of the trust) including whether the change occurred during a *closed period where prior written clearance was required and, if so, whether prior written clearance was provided. The entity must complete Appendix 3Y and give it to ASX no more than 5 business days after the change occurs.

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

Note: An entity is not required to give information to ASX under this rule that a director has not given to it under the arrangements mentioned in Listing Rule 3.19B and of which it is otherwise not aware. In such a case, the director is personally obliged to give that information to ASX and may breach section 205G of the Corporations Act if they fail to do so.

If a director has no interests at the time when the entity is required to complete an Appendix 3X under Listing Rule 3.19A.1, the entity must lodge an Appendix 3Y when the director first acquires an interest.

Cross reference: Guidance Note 22 *Disclosure of Directors' Interests*.

Examples: The event giving rise to the requirement to give ASX an Appendix 3Y is an on market purchase or sale of shares on the ASX market or ~~Cboe-TMX Australia~~ market. The entity has five business days after the date the relevant trade was executed on-market (T) and not when that trade settles (T+2) to give ASX the Appendix.

The event giving rise to the requirement to give ASX an Appendix 3Y is the exercise of options. The entity has five business days after the date the options were exercised to give ASX the Appendix.

Chapter 7

Listing Rule 7.2

Exception 6

An issue of *securities under a *regulated takeover or merger. Exception 6 is not available if the issue is being made under a *reverse takeover or *prescribed transaction.

Introduced 01/07/96 Origin: Listing Rule 3E(6)(c)(iv) Amended 01/07/97, 13/03/00, 30/09/01, 01/12/17, 01/12/19, XX/XX/XX

Note: The limitation on *reverse takeovers applies to all entities that are subject to Listing Rule 7.1. The effect of the definition of *prescribed transaction is that entities in the S&P / ASX 300 Index cannot rely on this exception to issue ~~more than~~ 25% or more of their issued capital, unless their constitution provides otherwise or the entity has obtained advance security holder approval for a higher threshold. The notice requirements for approving a higher threshold are set out in Listing Rule 7.3B.

Exception 7

An issue of *securities to fund the cash consideration payable under a *regulated takeover or merger where the terms of the issue are disclosed in the takeover or merger documents. Exception 7 is not available if the issue is being made to fund a *reverse takeover or *prescribed transaction.

Introduced 01/07/96 Origin: Listing Rule 3E(6)(c)(v) Amended 01/07/97, 01/09/99, 13/03/00, 30/09/01, 01/12/17, 01/12/19, XX/XX/XX

Note: The limitation on *reverse takeovers applies to all entities that are subject to Listing Rule 7.1. The effect of the definition of *prescribed transaction is that entities in the S&P / ASX 300 Index cannot rely on this exception to issue ~~more than~~ 25% or more of their issued capital, unless their constitution provides otherwise or the entity has obtained advance security holder approval for a higher threshold. The notice requirements for approving a higher threshold are set out in Listing Rule 7.3B.

Notice requirements for approval under rule 7.1

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

7.3.1 The names of the persons to whom the entity will issue the *securities or the basis upon which those persons were or will be identified or selected.

Note: In the case of an issue under a *reverse takeover or *prescribed transaction where the entity is acquiring (or increasing its proportionate interest in) securities in another body, it is sufficient to describe the class or classes of security holders in the other body who will be issued securities in the entity.

7.3.2 The number and class of *securities the entity will issue.

Note: Where the number of securities to be issued is not fixed, this may be expressed as a maximum number or as a formula.

7.3.3 If the *securities are not fully paid *ordinary securities, a summary of the material terms of the *securities.

7.3.4 The date or dates on or by which the entity will issue the *securities. This must be:

- if the *securities are being issued under, or to fund, a *reverse takeover or a *prescribed transaction, no later than ~~6-12~~ months after the date of the meeting;
- ~~if the *securities are being issued under, or to fund, a *prescribed transaction, no later than 12 months after the date of the meeting;~~

- if court approval of a reorganisation of capital (in the case of a trust, interests) is required before the issue, no later than 3 months after the date of the court approval; or
- otherwise, no later than 3 months after the date of the meeting.

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

7.3.5 The price or other consideration the entity will receive for the *securities.

Note: Where the price at which the securities will be issued is not fixed, this may be expressed as a minimum amount or as a formula.

7.3.6 The purpose of the issue, including the intended use of any funds raised by the issue.

7.3.7 If the *securities are being issued under an agreement, a summary of any other material terms of the agreement.

7.3.8 If the *securities are being issued under, or to fund, a *reverse takeover or *prescribed transaction, information about the *reverse takeover or *prescribed transaction.

7.3.9 A *voting exclusion statement.

Introduced 01/07/96 Origin: Listing Rule 3E(6)(e)(viii) Amended 01/07/97, 13/03/00, 01/07/00, 30/09/01, 11/03/02, 31/03/04, 01/08/12, 04/03/13, 01/07/14, 01/12/17, 01/12/19, XX/XX/XX

Notice requirements to approve a higher threshold for Listing Rule 7.2, Exceptions 6 and 7

7.3B For the holders of +ordinary securities to approve a higher +prescribed threshold, the notice of meeting must include each of the following.

7.3B.1 The entity's reasons for seeking approval for a higher *prescribed threshold.

7.3B.2 The proposed higher threshold, which must be less than 100%.

7.3B.3 A statement of the period for which the approval will be valid, being the earlier of:

- (a) the date that is 36 months after the date of the meeting at which the approval is obtained; and
- (be) the time and date of the approval by holders of the entity's *ordinary securities of a transaction under rule 11.1.2 or rule 11.2.

7.3B.4 The number of *securities issued under rule 7.2 exception 6 or 7 since the entity was listed or the date of the last approval under this rule.

Introduced XX/XX/XX

Note: For the purposes of Listing Rule 7.2, Exceptions 6 and 7, the prescribed threshold for a prescribed transaction is 25% unless the entity has obtained approval under this rule to increase the prescribed threshold or the entity's constitution provides for a higher threshold. In both cases, the limit cannot be higher than the 100% reverse takeover threshold.

Chapter 14

Listing Rule 14.11

Rule	Disregard votes cast by:
7.1	in the case of a proposed issue under a *reverse takeover or *prescribed transaction where the entity is acquiring (or increasing its proportionate interest in) securities in another body, the other body and any *person who will obtain a material benefit as a result of the *reverse takeover, *prescribed transaction or the proposed issue (except a benefit solely by reason of being a holder of *ordinary securities in the entity or the other body) in the case of a proposed issue to fund a *reverse takeover or *prescribed transaction where the entity is acquiring (or increasing its proportionate interest in) securities in another body, the other body, any *person who is expected to participate in the proposed issue, and any *person who will obtain a material benefit as a result of the *reverse takeover, *prescribed transaction or the proposed issue (except a benefit solely by reason of being a holder of *ordinary securities in the entity or the other body) otherwise, a *person who is expected to participate in, or who will obtain a material benefit as a result of, the proposed issue (except a benefit solely by reason of being a holder of *ordinary securities in the entity) Introduced 01/07/96 Origin: Listing Rule 3E(6)(c)(viii) Amended 01/07/97, 30/09/01, 01/07/14, 01/12/17, 01/12/19, XX/XX/XX Note: Guidance Note 21 <i>The Restrictions on Issuing Equity Securities in Chapter 7 of the Listing Rules</i> has guidance on what constitutes a material benefit for the purposes of this voting exclusion.
7.2 Exception 13(b)	a person who is eligible to participate in the *employee incentive scheme Introduced 01/07/96 Origin: Listing Rule 3E(6)(c)(viii)b.iii Amended 01/10/96, 01/07/98, 24/10/05, 01/12/19, XX/XX/XX
17.11C.9	the bidder Introduced XX/XX/XX

Chapter 17

Requesting removal

- 17.11 ASX may at any time remove an entity from the +official list at the request of the entity. ASX may require the entity to establish the authority of the +person making the request. If the entity has a seal, ASX may require the request to be under seal. ASX may require conditions to be satisfied before it will act on the request. Subject to rule [s 17.11A](#) and [17.11B](#), ASX is not required to act on the entity's request.

Introduced 01/07/96 Origin: Procedure 2(b) [Amended XX/XX/XX](#)

Note: Removal is usually effective from the close of business on a date ASX chooses.

Removal with the approval of security holders

- 17.11A Subject to any conditions ASX considers appropriate, ASX will remove an entity from the +official list at the request of the entity in each of the following circumstances:

17.11A.1 The entity is listed on another securities exchange and the holders of its +ordinary securities have approved the removal by ordinary resolution, provided that ASX is satisfied that its ASX quoted securities will be readily able to be traded on the other exchange after its removal. The notice of meeting must include the information specified in rule [17.11C](#).

17.11A.2 The holders of its +ordinary securities have approved the removal by special resolution. The notice of meeting must include the information specified in rule [17.11C](#).

17.11A.3 The entity has implemented a scheme of arrangement under Part 5.1 of the Corporations Act or other process that requires approval by a special majority of security holders that is determined in accordance with applicable law. If the scheme or process will not result in the bidder and its associates holding all outstanding +ordinary securities, the intention to seek removal must have been set out in a document provided to security holders for the purpose of deciding whether to approve the scheme or process.

Introduced XX/XX/XX

Note: Removal is usually effective from the close of business on a date ASX chooses.

Removal of dual listed entities without the approval of security holders

- 17.11B Subject to any conditions ASX considers appropriate, if an entity is listed on another securities exchange, ASX will remove the entity from the +official list at the request of the entity, provided that:

17.11B.1 ~~the entity~~ [One of the following applies](#):

- (a) [the entity](#) has an ASX Foreign Exempt Listing;
- (b) [the entity](#) was listed on the other exchange at the time it was admitted to the +official list or was listed on the other exchange no later than 20 +business days after it was admitted to the +official list provided the intention to list on the other exchange was clearly disclosed in the +prospectus, +PDS or

*information ~~statement~~ memorandum given to ASX under rule 1.1 condition 3;
or

(c) as at the date of request, the aggregate number of fully paid *ordinary securities:

(i) _____ held by holders (other than a depositary nominee for *CDIs); and

(ii) _____ represented by *CDIs held by *CDI holders.

in each case, that have a registered address in Australia, is ~~has~~ less than 25% of the total number of fully paid *ordinary securities on issue in the entity ~~held by holders who have a registered address in Australia as at the date of request;~~

17.11B.2 ASX is satisfied that the entity's ASX quoted securities will be readily able to be traded on the other exchange after its removal; and

17.11B.3 ~~the~~The entity has given the holders of its ASX quoted securities the information specified in rule 17.11C. The entity must give the information to holders of its ASX quoted securities in the same manner that it would give notice of a meeting of holders in the relevant class or classes.

Introduced XX/XX/XX

Note: Removal is usually effective from the close of business on a date ASX chooses.

Notice requirements for rules 17.11A and 17.11B

17.11C The following information is specified for the purposes of rules 17.11A and 17.11B.

17.11C.1 The entity's reasons for seeking removal from the *official list.

17.11C.2 The intended last date of trading in the entity's quoted securities.

17.11C.3 The earliest time and date when the entity will be removed from the *official list, as determined by ASX. The earliest time and date for removal must be no earlier than one month after:

(a) approval has been obtained for the purposes of rules ~~s~~ 17.11A.1 or 17.11A.2;
or

(b) the information referred to in rule 17.11B.3 has been released on the market announcements platform.

17.11C.4 A statement that holders of ASX quoted securities who wish to sell their securities on ASX will need to do so before the entity is removed from the *official list, and an explanation of what holders will need to do to sell their securities after removal.

17.11C.5 If the entity's securities are traded on ASX in the form of *CDIs, a statement explaining:

(a) the steps that holders must take to convert their +CDIs to the +underlying securities before they are able to sell them on the other exchange or exchanges where the entity is listed; and

(b) the steps that the depositary nominee of the +CDIs will take if security holders do not convert their +CDIs to the +underlying securities by a nominated date determined by ASX.

17.11C.6 Details of any facility that the entity will put in place to allow holders of ASX quoted securities to sell or redeem their securities and receive the proceeds in Australian

dollars, including information about the intentions of *substantial holders to participate in the facility to the extent that the entity is *aware of those intentions.

17.11C.7 Details of any agreement that entitles a *person to a benefit (or any increase in a benefit) if the entity is removed from the *official list, but only to the extent that the entity is *aware of the agreement and the benefit is not available to security holders generally.

17.11C.8 An explanation of the remedies that a security holder may pursue under the Corporations Act (or any other applicable legislation if the entity is a *foreign entity) if the security holder considers the removal to be contrary to laws that protect minority holders or contrary to laws relating to corporate control.

17.11C.9 For a notice of meeting containing a resolution for the purposes of rule 17.11A, a +voting exclusion statement if the entity has been the subject of a +takeover which closed in the 12 months preceding the date of the notice and the bidder and its +associates hold at least 50% of the +ordinary securities of the entity but have not met the conditions to proceed to compulsory acquisition under applicable law.

Introduced XX/XX/XX

Chapter 18

18.10 If an entity requests ASX to change its admission category from an ASX Listing to an ASX Foreign Exempt Listing ~~without the approval of the holders of its *ordinary securities~~, ASX will require the entity to obtain the approval of the holders of its *ordinary securities as a condition of ASX acting on the request. For the holders of *ordinary securities to approve a change of admission category for the purposes of this rule, the notice of meeting must include each of the following.

18.10.1 The entity's reasons for seeking to change its admission category.

18.10.2 The date when the change in admission category is intended to take effect.

18.10.3 A summary of the material differences between the listing rules and the rules of the entity's proposed *overseas home exchange.

18.10.4 Details of any agreement that entitles a *person to a benefit (or any increase in a benefit) if the entity changes its admission category, but only to the extent that the entity is *aware of the agreement and the benefit is not available to security holders generally.

18.10.5 An explanation of the remedies that a security holder may pursue under the legislation applicable to the entity if the security holder considers the change in admission category to be contrary to laws that protect minority holders or contrary to laws relating to corporate control.

This rule does not apply to a *qualifying NZ entity.

Introduced 31/03/08 Amended 01/08/10 Deleted 24/12/15 Amended XX/XX/XX

Chapter 19

19.12 The following expressions have the meanings set out below.

Expressions

Meanings

~~Cboe Australia market~~

~~the market for trading in securities operated in Australia by Cboe Australia Pty Ltd or any successor.~~

~~Introduced 01/07/14 Amended XX/XX/XX~~

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 ~~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".

prescribed threshold

the higher of:

- (a) 25%;
- (b) ~~any higher~~the percentage (~~less than~~between 25% and 100%) approved by holders of its ⁺ordinary securities under rule 7.3B; ~~and~~or
- (c) ~~any higher~~the percentage (~~less than~~between 25% and 100%) set out in an entity's constitution for the purposes of these rules by way of an amendment approved by holders of its ⁺ordinary securities after the entity was admitted to the ⁺official list.

Introduced XX/XX/XX

prescribed transaction

a *regulated takeover or merger ~~where~~ by an entity that is included in the S&P / ASX 300 Index ~~is proposing to acquire (or increase its proportionate interest in) securities of another body and~~ where the aggregate number of *equity securities issued or to be issued by the entity:

- under the *regulated takeover or merger; and/or
- to fund the cash consideration payable under the *regulated takeover or merger,

is equal to or greater than the *prescribed threshold of the number of fully paid *ordinary securities on issue in the entity at the date of announcement of the *regulated takeover or merger. Separate issues may be aggregated if, in ASX's opinion, they form part of the same commercial transaction.

Introduced XX/XX/XX

regulated takeover or merger

- (a) a takeover bid or a merger by way of scheme of arrangement under Part 5.1 of the Corporations Act;
- (b) a transaction involving an entity acquiring (or that would otherwise result in the entity increasing its proportionate interest in) listed securities of a registered scheme and which is effected by way of an amendment to the constitution of the registered scheme (after obtaining judicial advice), provided that ~~and regulated under~~ Chapter 6 of the Corporations Act applies to the acquisition; or
- (c) a takeover of, or business combination with, or the acquisition of securities in, a *person that is effected by:
- (i) a public offer process;
- (ii) a security holder approval process governed by the rules of ~~an~~ another exchange; or
- (iii) a security holder approval process that is approved by a court or securities regulator,
- under laws or regulations, or rules made under laws or regulations, in a foreign jurisdiction.

Introduced XX/XX/XX

Note: "Takeover bid" has the same meaning as in section 9 of the Corporations Act. The reference to a "merger" by way of scheme of arrangement under Part 5.1 of the Corporations Act covers any form of business combination effected via such a scheme.

"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).

reverse takeover

a +regulated takeover or merger ~~where~~ by an entity ~~is proposing to acquire (or increase its proportionate interest in) securities of another body and~~ where the aggregate number of +equity securities issued or to be issued by the entity:

- under the +regulated takeover or merger; and/or
- to fund the cash consideration payable under the +regulated takeover or merger,

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 +regulated takeover or merger. Separate issues may be aggregated if, in ASX's opinion, they form part of the same commercial transaction.

Introduced 01/12/17 Amended XX/XX/XX

TMX market

the market for trading in securities operated in Australia by TMX Australia Exchange Pty Limited or any successor.

Introduced 01/07/14 Amended XX/XX/XX

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 ~~+Cboe Australia~~ TMX 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 Amended XX/XX/XX

Trading on the ASX market and ~~TMX~~ ~~Cboe Australia~~ 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.

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</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 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 4 amended XX/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, 12/19 and 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*, 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 Changes in Issued Securities and Applying 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
- 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

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*).

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](#)’.

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](#)’.

- 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 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

¹³ Listing Rule 1.11 condition 12(b). See also ‘5.4 [Clearing and settlement](#) ~~Clearing and settlement~~’.

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 (as published from time to time) 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 [the ASX website](#).

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;
- (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

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).

- 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 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.

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;

²⁶ See '2.6 [The listing decision](#)~~The listing decision~~'.

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*).

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 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.

- 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;
- 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:

³² See '2.10 [Continuing requirements](#)~~Continuing requirements~~'.

- 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.

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.

³³ See '2.6 [The listing decision](#)~~The listing decision~~'.

³⁴ Listing Rules 1.11 condition 5(a) and 2.4.

³⁵ See Guidance Note 5 *CHESS Depositary Interests*.

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](#)~~Clearing and settlement~~' below for an explanation of CHESS and issuer sponsored sub-registers.

³⁷ Listing Rule 1.11 condition 5(b).

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.

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;

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.

- 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.

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 ~~found in~~ Guidance Note 5 *CHESS Depository Interests (GDIs)*.

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

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*'.

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.

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
- 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

⁴⁵ Listing Rule 1.15.2.

⁴⁶ Listing Rule 15.2A.

⁴⁷ Listing Rule 1.15.3.

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](#)~~Clearing and settlement~~'.

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](#)~~Information about substantial holdings~~'.

⁵⁵ Listing Rules 1.15.1 and 12.6. See also '5.2 [Appointment of person responsible for communications with ASX](#)~~Appointment of person responsible for communications with ASX~~'.

- 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
- 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.

⁵⁶ Listing Rules 1.15.1B and 12.6A. See also 'see '5.1 [Registration as a foreign company under the Corporations Act](#)~~Registration as a foreign company under the Corporations Act~~'.

⁵⁷ Listing Rules 1.15.1C and 12.6B. See also '5.1 [Registration as a foreign company under the Corporations Act](#)~~Registration as a foreign company under the Corporations Act~~'.

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.

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.

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

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].”

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~~'.

⁶⁵ Listing Rule 1.1 condition 5(a).

⁶⁶ See the definition of “Australian trust” in Listing Rule 19.12.

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.

- 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;
- 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%.

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](#)’.

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](#)’.

⁷⁴ Listing Rule 1.1 condition 7.

⁷⁵ Listing Rule 1.1 condition 8.

“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) a related party⁷⁹ of the entity;
- (b) an associate⁸⁰ 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.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.

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, 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).

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;
- whether the entity was first listed on ASX or on the other exchange and the period of time the entity has been listed on that other 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.

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. When considering waiver requests made by an entity that has redomiciled from Australia to another jurisdiction, ASX will take into account any disclosure the entity made about the continued application of the ASX Listing Rules when it sought any security holder approvals connected with its redomicile.

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. If the waiver relates to a security holder approval requirement under the ASX Listing Rules (such as ASX Listing Rules 7.1, 10.11 and 10.14), ASX will normally require the entity to obtain security holder approval in the same manner as the security holder approval requirement sought to be waived (i.e. either by ordinary or special resolution, as the case may be) before the nominated period commences. 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 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

⁸⁴ Listing Rule 18.3.

⁸⁵ See '5.4 [Clearing and settlement](#)~~Clearing and settlement~~' and Guidance Note 5 *CHESS Depository Interests*.

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).

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 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

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.

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.

- 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 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.

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.

¹⁰⁴ Listing Rules 5.3 and 5.4 respectively.

¹⁰⁵ Listing Rule 5.5.

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

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;

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.

- 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~~holding 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

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,

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.

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
- 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

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~~’.

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).

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

Registration as a foreign company carrying on business in Australia brings with it a number of regulatory obligations, including:

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 from the ASIC website.

- 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 question to be audited.¹³⁶ This will effectively require the company to prepare the financial statements it is

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 by registered foreign companies and Australian companies with foreign 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)).

¹³⁶ Sections 601CK(5), (5A) and (6).

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.

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:

- has the organisational knowledge to have meaningful discussions on Listing Rule matters;

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 from 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.

- 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 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

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

established 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.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).

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.

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).

THE RESTRICTIONS ON ISSUING EQUITY SECURITIES IN CHAPTER 7 OF THE LISTING RULES

The purpose of this Guidance Note	To assist entities to understand and comply with the restrictions on issuing equity securities in Chapter 7 of the Listing Rules
The main points it covers	- The 15% limit on placements of equity securities without security holder approval in Listing Rule 7.1 - The additional 10% placement capacity available to an eligible entity under Listing Rule 7.1A and the conditions the entity must satisfy to access it - The exceptions to Listing Rules 7.1 and 7.1A in Listing Rule 7.2 - The application of Listing Rules 7.1 and 7.1A to convertible securities - Ratification of issues of, or agreements to issue, equity securities under Listing Rule 7.4 - The requirements for notices of meeting proposing a resolution under Listing Rules 7.1, 7.1A or 7.4 - The obligation to notify ASX immediately of a proposed issue of securities - The constraints on issues of equity securities in Listing Rules 7.6 and 7.9 - The powers ASX may exercise if an entity issues equity securities in breach of Chapter 7 of the Listing Rules
Related materials you should read	- 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 22 <i>Director Disclosure of Interests and Transactions in Securities - Obligations of Listed Entities</i> - Guidance Note 25 <i>Issues of Equity Securities to Persons in a Position of Influence</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> - Guidance Note 35 <i>Security Holder Resolutions</i>

History: Guidance Note 21 amended XX/XX/XX. A previous version of this Guidance Note was issued in 12/19. It replaced a withdrawn Guidance Note entitled *Appeals*.

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 admitted to the ASX official list as an ASX Listing¹ to understand the framework regulating new issues of equity securities² in Chapter 7 of the Listing Rules, including in particular the constraints on placements in Listing Rules 7.1, 7.1A and 7.2. Those rules are part of a suite of Listing Rules intended to give effect to the principle set out in the introduction to the Listing Rules that securities should be issued in circumstances, and have rights and obligations attaching to them, that are fair to new and existing security holders.³

¹ Listing Rules 7.1, 7.1A and 7.2 do not apply to entities admitted to the official list as an ASX Debt Listing or as an ASX Foreign Exempt Listing (see Listing Rules 1.10 and 1.15.1). Unless otherwise indicated, references in this Guidance Note to a listed entity or entity mean an entity admitted to the ASX official list as an ASX Listing.

² The term "equity security" is defined in Listing Rule 19.12 as: (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); (f) a convertible security; and (g) any security that ASX decides to classify as an equity security; but not (h) a security ASX decides to classify as a debt security. See note 9 below for the definition of "debt security".

³ Other Listing Rules directed to the same principle include 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; the requirement in Listing Rule 6.2 that an entity only have one class of ordinary securities unless ASX agrees otherwise; the provisions governing preference securities in Listing Rules 6.3 – 6.7; the provisions governing options in Listing Rules 6.14 – 6.23A; and the provisions in Chapter 9 dealing with restricted securities.

The constitutions of most listed entities⁴ will usually reserve to the board of directors of the entity an unfettered power to issue securities at such times, in such amounts and on such terms as the board decides. However, for so long as the entity remains listed on ASX, that power must be exercised in a manner that is consistent with the Listing Rules,⁵ including the requirement that the terms that apply to each class of equity securities must, in ASX's opinion, be appropriate and equitable.⁶ In common with all other powers exercisable by directors, the power to issue securities must also be exercised in accordance with the statutory and common law duties of directors to act with due care and skill, in good faith, for a proper purpose and in the best interests of the entity.⁷

Listing Rule 7.1 seeks to balance the interests of an entity in being able to raise capital flexibly and the interests of its security holders in not being unfairly diluted. It does so by setting an aggregate limit on the number of equity securities an entity can issue over any 12 month period without security holder approval broadly equivalent to 15% of its fully paid ordinary issued capital. Up to that limit and subject to the constraints mentioned in the previous paragraph, the entity is free to issue equity securities at whatever price and on whatever terms its board considers appropriate. Once that limit is reached, the holders of the entity's ordinary securities must approve the issue.

This 15% limit is often referred to as an entity's "placement capacity", reflecting the fact that the types of issues to which it applies would often (although not always) be characterised as "placements".

The 15% placement capacity under Listing Rule 7.1 is available to all listed entities. It is automatically replenished every 12 months on a rolling basis and there are no conditions on the type of equity securities that can be issued or the price at which they can be issued.

Listing Rule 7.1 is expressed to operate subject to Listing Rule 7.1A, which was introduced in 2012 to make it easier for small to mid-cap entities to raise additional equity capital.⁸ It allows an "eligible entity" to obtain at its annual general meeting ("AGM") an approval from the holders of its ordinary securities (a "7.1A mandate") to have an additional placement capacity broadly equivalent to 10% of its fully paid ordinary issued capital. The mandate expires at the date of the entity's next AGM or after 12 months, whichever is the earlier. It also expires if the entity receives security holder approval for a transaction under Listing Rule 11.1.2 (significant change in the nature or scale of activities) or 11.2 (disposal of main undertaking).

By comparison to Listing Rule 7.1, the additional 10% placement capacity under Listing Rule 7.1A is only available to eligible entities with a 7.1A mandate, which has to be renewed each year at the entity's AGM. There are also constraints on the type of equity securities that can be issued and the price at which they can be issued.

⁴ This statement does not necessarily apply to listed trusts. In the case of a listed trust, the power to issue securities is usually reserved to the responsible entity of the trust. Generally most listed trusts will be registered managed investment schemes under the *Corporations Act 2001* (Cth). They are therefore subject to a requirement that the constitution of the scheme must make "adequate provision" for the consideration that is to be paid to acquire an interest in the scheme (section 601GA(1)(a)). ASIC's view on what this means can be found in ASIC Regulatory Guide 134 *Funds management: Constitutions*.

The *Corporations Act 2001* (Cth) 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.

⁵ Listing Rule 1.1 condition 2 provides that an 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) for it to be eligible to be admitted to the official list as an ASX Listing. Listing Rule 15.11.1 requires any subsequent amendment to the constitution to be consistent with the Listing Rules unless the constitution includes the provisions in Appendix 15A or Appendix 15B (as applicable). Appendix 15A and Appendix 15B include overarching provisions that give the Listing Rules priority in the event of any conflict between those rules and the provisions of the constitution.

⁶ Listing Rule 6.1.

⁷ See, for example, sections 180 and 181 (officers of listed companies) and 601FD (officers of responsible entities of listed trusts) of the Corporations Act.

⁸ Listing Rule 7.1A recognises that small to mid-cap entities often have limited access to venture capital and debt funding, particularly in the early stages of their life cycle when they are frequently earning limited revenue and/or are loss making. They also usually have a narrower base of shareholders than larger entities, which constrains their ability to use pro rata issues as a fundraising tool. They are therefore often critically reliant on being able to conduct placements of equity securities whenever a suitable opportunity presents itself to obtain additional funding.

Listing Rule 7.2 sets out various types of equity security issues that are excluded from the operation of Listing Rules 7.1 and 7.1A.

It should be noted that Listing Rules 7.1 and 7.1A only restrict an entity's ability to issue equity securities. As far as the Listing Rules are concerned, debt securities⁹ can be issued at such times, in such amounts and on such terms as the directors of the entity may determine.

2. Calculating an entity's placement capacity

2.1 The formula for calculating an entity's 15% placement capacity

Listing Rule 7.1 provides that an entity must not, without the approval of the holders of its ordinary securities, issue or agree to issue more equity securities¹⁰ than the number calculated in accordance with the following formula:¹¹

$$(A \times B) - C$$

where:

- A = the number of fully paid ordinary securities on issue at the commencement of the relevant period,
- plus the number of fully paid ordinary securities issued in the relevant period under an exception in Listing Rule 7.2 other than exception 9, 16 or 17,¹²
 - plus the number of fully paid ordinary securities issued in the relevant period on the conversion of convertible securities within Listing Rule 7.2 exception 9 where:
 - the convertible securities were issued or agreed to be issued before the commencement of the relevant period;¹³ or

⁹ The term "debt security" is defined in Listing Rule 19.12 as: (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; but not (c) a security ASX decides to classify as an equity security. See note 2 above for the definition of "equity security".

¹⁰ ASX would note that the granting of a simple put option by a third party to a listed entity that does nothing more than confer on the entity the right to require the third party to subscribe for an issue of equity securities in the entity if and when the entity exercises the put option will generally fall outside of the definition of "equity security", provided ASX does not exercise its discretion under paragraph (g) of that definition to classify the put option as an equity security for the purposes of the Listing Rules. Given that, provided there is nothing in the terms of the put option or in the surrounding circumstances that could be construed as an agreement by the entity to issue the underlying equity securities to the third party, the mere acceptance of the put option by the entity will fall outside of Listing Rules 7.1 and 7.1A, on the basis that it does not involve an issue or agreement to issue equity securities. It will only be if and when the put option is exercised and the equity securities are issued or agreed to be issued to the third party that Listing Rules 7.1 and 7.1A will become applicable. ASX does not consider an agreement to pay deferred or contingent consideration to be a simple put option for these purposes. At the time a listed entity agrees to pay deferred or contingent consideration (even if the consideration could take the form of cash rather than securities at the listed entity's election), the maximum number of securities which may ultimately be issued under the agreement will count towards variable C and will reduce the entity's available placement capacity, unless the agreement provides that the future issue of securities will be subject to security approval.

¹¹ For the avoidance of doubt, the formula in Listing Rule 7.1 follows the normal convention that operations in brackets or parentheses are performed first. Therefore, variable A is first multiplied by variable B, and variable C is then subtracted. If the result of that mathematical operation is zero or a negative number, the entity does not have the placement capacity available under Listing Rule 7.1 to make the issue without security holder approval.

¹² Issues under exceptions 9, 16 or 17 of Listing Rule 7.2 are excluded from the first bullet point in the definition of variable A and dealt with separately in the second, third and fourth bullet points to prevent them being prematurely included in variable A. To illustrate, without the exclusion of issues under exception 9, a listed entity could use its 15% issuance capacity under Listing Rule 7.1 to issue convertible securities that convert into fully paid ordinary securities, convert those securities shortly thereafter and have the resulting fully paid shares immediately counted in variable A (because those securities are then issued under an exception in rule 7.2).

¹³ The formula in Listing Rule 7.1 looks back over the relevant period to determine if the entity has exceeded its 15% placement limit over that period. If the convertible securities were issued or agreed to be issued before the commencement of the relevant period, they will cease to have any ongoing effect on the calculation of the entity's placement capacity (at the very latest) by the conclusion of the relevant period.

- the issue of, or agreement to issue, the convertible securities was approved, or taken under these rules to have been approved,¹⁴ under Listing Rule 7.1 or 7.4,
- plus the number of fully paid ordinary securities issued in the relevant period under an agreement to issue securities within Listing Rule 7.2 exception 16 where:
 - the agreement was entered into before the commencement of the relevant period;¹⁵ or
 - the agreement or issue was approved, or taken under these rules to have been approved,¹⁶ under Listing Rule 7.1 or 7.4,
- plus the number of any other fully paid ordinary securities issued in the relevant period with approval under Listing Rule 7.1 or 7.4,¹⁷
- plus the number of partly paid ordinary securities that became fully paid in the relevant period,
- less the number of fully paid ordinary securities cancelled in the relevant period;¹⁸

B = 15%;

C = the number of equity securities issued or agreed to be issued in the relevant period that are not issued:

- with the approval of the holders of its ordinary securities under Listing Rule 7.1 or 7.4;
- under Listing Rule 7.1A.2; or
- under an exception in Listing Rule 7.2; and

“relevant period” means:

- if the entity has been admitted to the official list for 12 months or more, the 12 month period immediately preceding the date of the issue or agreement; or
- if the entity has been admitted to the official list for less than 12 months, the period from the date the entity was admitted to the official list to the date immediately preceding the date of the issue or agreement.

Variable A in the formula above is the base amount of capital on which the 15% placement capacity in Listing Rule 7.1 is calculated.

¹⁴ The reference to an issue of convertible securities being “taken to be approved” under Listing Rule 7.1 is a reference to an issue of convertible securities under paragraph (a) of Listing Rule 7.2 exception 9 (ie an issue of convertible securities made before the entity was listed where it disclosed the existence and material terms of the convertible securities in the prospectus, PDS or information memorandum lodged with ASX under Listing Rule 1.1 condition 3). Under Listing Rule 7.2 exception 9, such an issue is taken to be approved under Listing Rule 7.1.

¹⁵ Again, the formula in Listing Rule 7.1 looks back over the relevant period to determine if the entity has exceeded its 15% placement limit over that period. If the agreement to issue the equity securities was entered into before the commencement of the relevant period, it will cease to have any ongoing effect on the calculation of the entity’s placement capacity (at the very latest) by the conclusion of the relevant period.

¹⁶ The reference to an agreement being “taken to be approved” under Listing Rule 7.1 is a reference to an agreement to issue of securities under paragraph (a) of Listing Rule 7.2 exception 16 (ie an agreement entered into before the entity was listed where it disclosed the existence and material terms of the agreement in the prospectus, PDS or information memorandum lodged with ASX under Listing Rule 1.1 condition 3). Under Listing Rule 7.2 exception 16, such an issue is taken to be approved under Listing Rule 7.1.

¹⁷ This includes fully paid ordinary securities issued in the relevant period under an agreement to issue securities within Listing Rule 7.2 exception 17 where the issue is subsequently approved under Listing Rule 7.1 in accordance with that exception.

¹⁸ This includes fully paid ordinary securities that are the subject of a buy-back by the entity during the relevant period and that are cancelled pursuant to section 257H(3) of the Corporations Act.

The product of A and B is the aggregate placement capacity available to an entity under Listing Rule 7.1 over the relevant period.

Variable C is the amount of the aggregate 15% placement capacity that has already been used during the relevant period.

The difference between the aggregate 15% placement capacity and C, therefore, is the remainder of that capacity available at the conclusion of the relevant period.

2.2 The formula for calculating an entity's additional 10% placement capacity

Listing Rule 7.1A.2 provides that in addition to issues under Listing Rule 7.1, an eligible entity which has obtained a 7.1A mandate may, during the period of the mandate, issue or agree to issue a number of equity securities calculated in accordance with the following formula:¹⁹

$$(A \times D) - E$$

where:

A = has the same meaning as in Listing Rule 7.1;

D = 10%;

E = the number of equity securities issued or agreed to be issued under Listing Rule 7.1A.2 in the relevant period where the issue or agreement has not been subsequently approved by the holders of its ordinary securities under Listing Rule 7.4; and

“relevant period” has the same meaning as in Listing Rule 7.1.

Variable A in the formula above is the base amount of capital on which the 10% additional placement capacity in Listing Rule 7.1A.2 is calculated. It is the same as variable A in Listing Rule 7.1.

The product of A and D is the aggregate additional placement capacity available to an eligible entity under Listing Rule 7.1A.2 over the relevant period.

Variable E is the amount of the aggregate 10% additional placement capacity that has already been used during the relevant period.

The difference between the aggregate 10% additional placement capacity and E, therefore, is the remainder of that capacity available at the conclusion of the relevant period.

2.3 The relevant date for applying these formulae

Listing Rules 7.1 and 7.1A.2 both operate at a point in time, being the date (the “relevant date”) on which an entity is proposing to issue securities or to enter into an agreement to issue securities.

Where there is no distinct agreement to issue securities, as will typically be the case where there is an offer of securities to multiple investors under a prospectus, PDS or information memorandum, the relevant date will be the date the entity is proposing to issue those securities. The entity's placement capacity under Listing Rules 7.1 and 7.1A.2 should be tested on that date.

¹⁹ Again, for the avoidance of doubt, the formula in Listing Rule 7.1A.2 follows the normal convention that operations in brackets or parentheses are performed first. Therefore variable A is first multiplied by variable D, and variable E is then subtracted. If the result of that mathematical operation is zero or a negative number, the entity does not have the placement capacity available under Listing Rule 7.1A.2 to make the issue and must either resort to its available placement capacity under Listing Rule 7.1 or seek security holder approval to the issue.

Where there is a distinct agreement to issue securities, as will typically be the case under an agreement to issue securities to a single placee or small number of placees, the relevant date is the date of the agreement. The entity's placement capacity under Listing Rules 7.1 and 7.1A.2 should be tested on the date of the agreement. Provided the entity has the placement capacity to agree to issue the securities on that date, the subsequent issue of securities under the agreement will fall within exception 16 in Listing Rule 7.2.

2.4 Applying these formulae on the relevant date

Where the entity is relying on its Listing Rule 7.1 placement capacity, the number of securities issued or agreed to be issued on the relevant date must be less than or equal to the number calculated in accordance with the formula in that rule or else the issue or agreement must be approved by the holders of the entity's ordinary securities under Listing Rule 7.1.

Where the entity is relying on its Listing Rule 7.1A.2 placement capacity, the number of securities issued or agreed to be issued under Listing Rule 7.1A.2 on the relevant date must be less than or equal to the formula in that rule or else the issue or agreement falls outside of the entity's additional placement capacity under Listing Rule 7.1A.2 and can only be made without the approval of the holders of the entity's ordinary securities if it falls within the entity's 15% placement capacity under Listing Rule 7.1.

If on the relevant date an entity is undertaking one or more issues of equity securities and/or entering into one or more agreements to issue equity securities, these must be aggregated to determine if the total number of equity securities being issued or agreed to be issued on the relevant date exceeds the formula in Listing Rule 7.1 or 7.1A.2 (as applicable).

2.5 The relevant period considered in these formulae

Listing Rules 7.1 and 7.1A.2 both require a determination of the "relevant period". If the entity has been admitted to the official list for at least 12 months, this is the 12 month period immediately preceding the "relevant date". If the entity has been admitted to the official list for less than 12 months, this is the period from the date the entity was admitted to the official list to the date immediately preceding the "relevant date".

For these purposes, "month" is taken to mean a calendar month and the relevant date itself is not counted in the period.²⁰

So, if the entity has been admitted to the official list for at least 12 months and the relevant date is 1 March, the relevant period runs from the start of the day on 1 March of the previous calendar year²¹ and finishes at the end of the day on 28 February.

If the entity was admitted to the official list on 15 July of the previous calendar year and the relevant date is 1 March, the relevant period runs from the start of the day on 15 July of the previous calendar year and finishes at the end of the day on 28 February.

2.6 Calculating variable A

Variable A in the formulae in Listing Rules 7.1 and 7.1A.2 only includes fully paid ordinary securities on issue at the commencement of the relevant period and certain fully paid ordinary securities that are issued, paid up or cancelled over the course of the relevant period.²²

²⁰ Cf ASIC Regulatory Guide 7 *Calculating time periods*.

²¹ Or, if you prefer, as at the end of the day on the last day of February, since the two points in time are the same.

²² The fact that securities may have been classified as "restricted securities" under the Listing Rules does not make them a separate class (see the note to the definition of "class" in Listing Rule 19.12). Accordingly, restricted fully paid ordinary securities on issue 12 months prior to the relevant date, or that fall within the different bullet points in the definition of variable A, are counted in variable A. The same applies to fully paid ordinary securities that are subject to voluntary escrow.

An agreement to issue fully paid ordinary securities, even one that has been approved by security holders under Listing Rule 7.1 or 7.4, only gets factored into variable A if and when the securities agreed to be issued are actually issued.

Issues of, or agreements to issue, any other class of security are ignored for the purposes of calculating variable A.

Unless ASX determines otherwise, each fully paid ordinary security referred to in the definition of variable A counts as one security in working out the value of that variable.²³

An example of where ASX may determine that some or all of the fully paid ordinary securities referred to in variable A should count as some value other than one is where an entity has consolidated, subdivided or otherwise reconstructed its capital over the relevant period. In that case, ASX will make appropriate adjustments to ensure that the numbers are all calculated on a post consolidation, subdivision or reconstruction basis and the formulae in Listing Rules 7.1 and 7.1A.2 operate as intended.

2.7 Calculating variables C and E

Unlike variable A, variables C and E in the formulae in Listing Rules 7.1 and 7.1A.2 factor in all equity securities issued or agreed to be issued²⁴ over the relevant period, including partly paid ordinary securities and securities that are not ordinary securities.

Where any of the equity securities referenced in variable C or E are not fully paid ordinary securities, to “compare apples with apples”, it is necessary to convert them to their equivalent in fully paid ordinary securities. For these purposes, unless ASX determines otherwise:

- partly paid ordinary securities are counted as the maximum number of fully paid ordinary securities into which they can be paid up;²⁵
- convertible securities are counted as the maximum number of fully paid ordinary securities into which they can be converted;²⁶ and
- any other types of equity securities are counted as ASX decides.²⁷

Again, an example of where ASX may determine that some or all of the equity securities referred to in variable C or E should count as a different value to that set out above is where an entity has consolidated, subdivided or otherwise reconstructed its capital over the relevant period. In that case, ASX will make an appropriate adjustment to ensure that all numbers are calculated on a post consolidation, subdivision or reconstruction basis and the formulae in Listing Rules 7.1 and 7.1A.2 operate as intended.

To calculate variable E in Listing Rule 7.1A.2, it is also necessary to determine the number of equity securities issued or agreed to be issued under Listing Rule 7.1A.2 in the relevant period. For these purposes, unless ASX

²³ Listing Rule 7.1B.1(c).

²⁴ If an agreement to issue equity securities is entered into but then cancelled during the relevant period, it is included in variables C and E from the point it is entered into but ceases to be included in variables C and E from the point it is cancelled.

²⁵ Listing Rule 7.1B.1(d).

²⁶ Listing Rule 7.1B.1(e). Further guidance on how convertible securities are treated under Listing Rules 7.1 and 7.1A can be found in [‘5 The application of Listing Rules 7.1 and 7.1A to convertible securities’](#). ~~The application of Listing Rules 7.1 and 7.1A to convertible securities~~

²⁷ Listing Rule 7.1B.1(f). It would be most unusual for an entity to have a class of equity securities on issue that are not fully paid or partly paid ordinary securities or convertible securities and that required ASX to make a decision on how they should be counted under this rule (noting that an entity can generally only have one class of ordinary securities under Listing Rule 6.2 and that preference shares which do not have any rights of conversion into another class of equity security are excluded from the restrictions in Listing Rules 7.1 and 7.1A by Listing Rule 7.2 exception 11).

determines otherwise, an issue is taken to be made under Listing Rule 7.1A.2 if the issue complies with all of the requirements in Listing Rule 7.1A and either:

- the entity has stated in its announcement of the proposed issue under Listing Rule 3.10.3 or in its application for quotation of the securities under Listing Rule 2.7 that the issue is being, or has been, made under Listing Rule 7.1A.2; or
- ASX determines that the issue should be taken to have been made under Listing Rule 7.1A.2.²⁸

2.8 Calculating the number of securities being issued or agreed to be issued

Listing Rules 7.1 and 7.1A.2 allow an entity to issue equity securities without the approval of the holders of the entity's ordinary securities only if the number of securities issued or agreed to be issued on the relevant date is less than or equal to the formula in the applicable rule.

Again, where any of the equity securities issued or agreed to be issued on the relevant date are not fully paid ordinary securities, to "compare apples with apples", it is necessary to convert them to their equivalent in fully paid ordinary securities. The same rules apply here as apply when calculating variables C and E, set out in the preceding section.

2.9 The interaction between Listing Rules 7.1 and 7.1A

The placement capacities in Listing Rule 7.1 and 7.1A.2 operate independently of each other.

When an entity issues or agrees to issue equity securities under Listing Rule 7.1 without security holder approval, that issue or agreement uses up part of its 15% placement capacity under that rule.

Similarly, where an eligible entity with a 7.1A mandate issues or agrees equity securities under Listing Rule 7.1A.2, that issue or agreement uses up part of its 10% placement capacity under that rule.

An eligible entity with a 7.1A mandate which has capacity available under both Listing Rules 7.1 and 7.1A and which is making an issue that complies with all of the other requirements in Listing Rule 7.1A, can elect which of those capacities it wishes to use. Generally, it will make sense for the entity, where it can, to elect to use its Listing Rule 7.1A.2 capacity in preference to its Listing Rule 7.1 capacity, so as to retain the greater freedom to issue equity securities that Listing Rule 7.1 affords.

For these reasons, an eligible entity with a 7.1A mandate must be clear which rule it is proceeding under whenever it issues or agrees to issue equity securities.²⁹ If it is being done under Listing Rule 7.1A.2, that fact should be stated in its Appendix 3B announcement of the proposed issue under Listing Rule 3.10.3 or in its Appendix 2A application for quotation of the securities under Listing Rule 2.7.³⁰

2.10 Worked examples and work sheets for calculating placement capacities

Annexure A contains some worked examples of how to calculate an entity's placement capacity under Listing Rules 7.1 and 7.1A.2.

²⁸ Listing Rule 7.1B.5. Otherwise an issue is taken to be made under Listing Rule 7.1 rather than under Listing Rule 7.1A.2 (Listing Rule 7.1B.4). ASX will generally only make a determination that an issue should be taken to have been made under Listing Rule 7.1A.2 rather than Listing Rule 7.1 where it is clear to ASX that an entity was intending to use its additional 10% placement capacity under the former rule but overlooked mentioning that in its announcement of the proposed issue under Listing Rule 3.10.3 and in its application for quotation of the securities under Listing Rule 2.7 and where the market has not traded for any material period believing that the issue was made under Listing Rule 7.1 rather than Listing Rule 7.1A.2.

²⁹ Among other reasons, where an issue is made under Listing Rule 7.1A.2, the entity will need to be able to demonstrate that it has complied with the minimum price requirement in Listing Rule 7.1A.3 (see '3.6 [The consideration must be a cash amount not less the prescribed minimum issue price](#)~~The consideration must be a cash amount not less the prescribed minimum issue price~~').

³⁰ Listing Rule 7.1B.5. See also note 28 above and the accompanying text.

Annexures B and C contain work sheets to calculate an entity's placement capacity under Listing Rules 7.1 and 7.1A.2 respectively. They are available on ASX Online and can also be downloaded in an editable form from the ASX website.

Where an entity lodges an Appendix 3B announcing a proposed issue of equity securities without security holder approval using its Listing Rule 7.1 or 7.1A.2 placement capacity, the entity will be prompted by the Appendix 3B to complete the relevant work sheet to confirm that it has the available placement capacity under those rules and to send it to its ASX Listings Compliance adviser.³¹

Likewise, where an entity lodges an Appendix 2A applying for the quotation of equity securities issued without security holder approval using its Listing Rule 7.1 or 7.1A.2 placement capacity, and it hasn't lodged an Appendix 3B for the issue, the entity will be prompted by the Appendix 2A to complete the relevant work sheet to confirm that it has the available placement capacity under those rules and to send it to its ASX Listings Compliance adviser.³²

This ensures that entities contemplating an issue of equity securities using their placement capacity under Listing Rule 7.1 or 7.1A.2 undertake appropriate due diligence to verify that they have the available placement capacity to make the issue without security holder approval.

The work sheets provided to ASX Listings Compliance are for the internal use of ASX Listings Compliance and are not released by ASX to the market. ASX Listings Compliance does not "pre-vet" these work sheets and an entity does not have to wait after lodging the work sheets for any confirmation from ASX Listings Compliance before it can proceed with the proposed issue of equity securities.

ASX Listings Compliance will review the work sheets in due course and, if it identifies any issues with the calculations in the work sheet, it will take those issues up with the entity.

It is the responsibility of the entity to correctly calculate its placement capacity under Listing Rules 7.1 and 7.1A.2 and to ensure that a proposed issue of equity securities will not exceed that capacity. An entity should not be relying on ASX Listings Compliance to identify errors in its work sheets or calculations.

If at any time ASX has concerns that an entity may have exceeded its placement capacity under Listing Rule 7.1 or 7.1A.2, ASX may require the entity to provide it with the applicable work sheet, with all details completed, to demonstrate that the entity is in compliance with those rules.³³

3. The requirements for accessing the additional 10% placement capacity

3.1 The entity must be an "eligible entity"

To be eligible to access the additional 10% placement capacity in Listing Rule 7.1A, at the date of the AGM at which the entity is seeking its 7.1A mandate,³⁴ it must:

- have a market capitalisation³⁵ of less than the prescribed amount³⁶ (currently \$300 million); and
- not be included in the S&P/ASX 300 Index.³⁷

³¹ See '8.1 Appendix 3B requirements'.

³² See '8.2 [Appendix 2A requirements](#)~~Appendix 2A requirements~~'.

³³ Listing Rule 18.7.

³⁴ See '3.2 [The entity must have a 7.1A mandate](#)~~The entity must have a 7.1A mandate~~' and '3.3 [The 7.1A mandate must be obtained at the entity's AGM](#)~~The 7.1A mandate must be obtained at the entity's AGM~~' below.

³⁵ "Market capitalisation" is defined in Listing Rule 19.12 to mean the number of securities in the entity's main class on issue multiplied by the price determined by ASX to be a fair measure of the market value of those securities.

³⁶ "Prescribed amount" is defined in Listing Rule 19.12.

³⁷ See the opening paragraph of Listing Rule 7.1A and the definition of "eligible entity" in Listing Rule 19.12.

If the entity meets both of these eligibility criteria at the date of the AGM and it obtains a 7.1A mandate, that mandate continues to be valid notwithstanding that the entity's market capitalisation may increase above \$300 million, or it may be included in the S&P/ASX 300 Index, at some time after that date and during the 12 month life of the mandate.³⁸

As to the first of these criteria, an entity's market capitalisation is calculated by multiplying the number of securities in the entity's main class³⁹ by the price determined by ASX to be a fair measure of the market value of those securities. For these purposes, ASX will generally treat the closing price of those securities on ASX on the last trading day before the date of the AGM as a fair measure of the market value of those securities.⁴⁰

As to the second of these criteria, the S&P/ASX 300 Index is re-balanced twice a year in March and September, with changes taking effect after market close on the third Friday of March and September. ASX publishes on the market announcements section of its website under the stock code "ZSP" an announcement with the names of the entities that are to be added to or removed from the S&P/ASX 300 Index. These announcements are made on the second Friday of March and the first Friday of September.

3.2 The entity must have a 7.1A mandate

To access the additional 10% placement capacity in Listing Rule 7.1A, an entity must have secured a 7.1A mandate – that is, an approval from the holders of its ordinary securities by way of special resolution that it should have the additional capacity to issue securities provided for in Listing Rule 7.1A.⁴¹

The Listing Rules do not define the expression "special resolution" and so it takes its meaning under the Corporations Act.⁴² 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.⁴³

A 7.1A mandate is permissive and not obligatory. An entity with such a mandate is free to use it or not, as it determines.

³⁸ In the rare event that an entity adjourns its AGM without having passed a special resolution approving a 7.1A mandate and then passes that resolution at the adjourned meeting, eligibility is still determined as at the date of the original AGM rather than the date of the adjourned meeting. The 12 month life of the mandate also runs from the date of the original AGM and not from the date of the adjourned meeting. In each case, this is because, at law, the adjourned meeting is taken to be a continuation of the original meeting (*Scadding v Lorient* [1851] 3 HL Cas 418).

³⁹ "Main class" is defined in Listing Rule 19.12 to mean the ordinary securities of the entity or, if ordinary securities are not to be quoted, the class of securities designated by ASX. 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.

⁴⁰ ASX may use a different measure of fair market value if it considers that there is evidence that the closing price on ASX of the entity's main class of securities on the last trading day before the date of the AGM has been manipulated to reduce that price to a level where the entity's market capitalisation is less than \$300million.

⁴¹ See the opening paragraph of Listing Rule 7.1A.

⁴² Listing Rule 19.3.

⁴³ See section 250MA (Australian companies) and 253LA (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 managed investment scheme, ASX applies the definition to listed foreign companies and to listed Australian and foreign trusts that are not registered managed investment schemes.

3.3 The 7.1A mandate must be obtained at the entity's AGM

A 7.1A mandate can only be sought at an entity's AGM and not at any other meeting of security holders during the year.⁴⁴

For the 7.1A mandate to be valid, the notice of meeting for the AGM must include all of the disclosures required by Listing Rule 7.1A.3.⁴⁵ These are explained in further detail in section 7.3 below.

The Listing Rules do not define what is an AGM for these purposes. Most listed entities will designate a particular meeting of security holders each year to be its AGM and will deal with issues at that meeting such as the tabling of annual financial statements and elections of directors.⁴⁶ ASX will generally regard that meeting as the entity's AGM for the purposes of Listing Rule 7.1A.⁴⁷

If an entity seeks to bootstrap itself into Listing Rule 7.1A by designating as an AGM a meeting that is really an extraordinary general meeting of security holders, any 7.1A mandate purportedly passed at the meeting is not effective for the purposes of the Listing Rules. In such a case, ASX may direct the entity⁴⁸ that it can only rely on its Listing Rule 7.1 placement capacity and that any issue of securities outside that capacity must be approved by the holders of its ordinary security holders.

ASX notes that listed trusts which are registered as managed investment schemes under the Corporations Act are not required under that Act to hold an AGM. Where such a trust is required by its constitution to hold an AGM, or otherwise has a demonstrated track record of voluntarily holding regular AGMs, ASX will treat each such meeting as an AGM for the purposes of Listing Rule 7.1A, even though it may not be considered to be an AGM under the Corporations Act.

If a listed trust does not hold an AGM, it cannot avail itself of the additional placement capacity in Listing Rule 7.1A.⁴⁹

3.4 The 7.1A mandate must still be current

To fit within Listing Rule 7.1A.2, an issue of equity securities must be made, or an agreement to issue equity securities must be entered into, during the period of the 7.1A mandate.⁵⁰

A 7.1A mandate commences on the date of the AGM at which the resolution approving the mandate is passed and expires on the earliest of:

- the date that is 12 months after the date of the AGM at which the mandate was approved;
- the time and date of the entity's next AGM;⁵¹ and

⁴⁴ See the opening paragraph of Listing Rule 7.1A.

⁴⁵ An approval of security holders is not effective under the Listing Rules unless the notice of meeting includes everything that the Listing Rules require it to include: Listing Rule 14.6.

⁴⁶ Under the Corporations Act, an Australian company is required to hold its initial AGM within the first 18 months of its registration (section 250N(1)) and subsequent AGMs at least once in each calendar year and within 5 months after the end of its financial year (section 250N(2)).

⁴⁷ It is possible, although it would be rare, for an entity to have two AGMs within the one calendar year – for example, if it were to change its financial year end and to have an interim substituted accounting period of less than one year.

⁴⁸ Pursuant to Listing Rule 18.8.

⁴⁹ Where a listed trust is not required by its constitution and has not expressed an intent in its listing prospectus, PDS or information memorandum to hold a regular AGM, ASX will disregard any attempt by the trust to bootstrap itself into Listing Rule 7.1A by designating a meeting as an AGM.

⁵⁰ By virtue of the words "during the period of the approval" in the opening paragraph of Listing Rule 7.1A.2.

⁵¹ The termination of a 7.1A mandate at each AGM means that an entity's 7.1A mandate may not last a full 12 months. This will be the case where the entity's latest AGM occurs less than 12 months after the preceding AGM and a resolution approving a 7.1A mandate is not proposed or is defeated at the latest AGM. This is intentional. If a resolution approving a 7.1A mandate is not proposed or is defeated at an AGM, ASX does not consider it appropriate that the entity continue to rely on one approved at an earlier AGM.

- the time and date on which the entity receives security holder approval for a transaction under either Listing Rule 11.1.2 (significant change to nature or scale of activities) or 11.2 (disposal of main undertaking).⁵²

Again, in calculating the 12 month life of a 7.1A mandate, “month” is taken to mean a calendar month and the date of the AGM approving the mandate is not counted in the period.⁵³ So, if the date of the AGM approving a 7.1A mandate is 30 September, the mandate commences upon the passage of the special resolution at the AGM and expires at the earliest of:

- the end of the day on 30 September in the next calendar year;
- if the entity holds its next AGM on or before 30 September in the next calendar year, the commencement of its next AGM; or
- if the entity receives approval for a transaction under Listing Rule 11.1.2 or 11.2 before then, the time the resolution is passed conferring that approval.

An entity may seek a 7.1A mandate at the same meeting as it seeks approval for a transaction under Listing Rule 11.1.2 or 11.2, provided that meeting is its AGM and the special resolution conferring the mandate is passed after the resolution approving the transaction under Listing Rule 11.1.2 or 11.2.

3.5 The entity must be issuing securities in an existing class of quoted securities

Only securities in an existing class⁵⁴ of quoted equity securities can be issued under Listing Rule 7.1A.⁵⁵ If an entity wishes to issue securities in a class that is not presently quoted on ASX without security holder approval, it must rely on its Listing Rule 7.1 placement capacity or the issue must fall within an exception in Listing Rule 7.2.

3.6 The consideration must be a cash amount not less the prescribed minimum issue price

Securities can only be issued under Listing Rule 7.1A for a cash amount which is not less than the prescribed minimum issue price mentioned below. If an entity wishes to issue securities for a non-cash consideration or for a cash consideration that is lower than the prescribed minimum issue price without security holder approval, it must rely on its Listing Rule 7.1 placement capacity or the issue must fall within an exception in Listing Rule 7.2.

For the avoidance of doubt, an issue of securities in satisfaction of a debt owing by, or as payment for services rendered to, the entity is an issue for non-cash consideration and therefore not permitted under Listing Rule 7.1A.⁵⁶

⁵² Listing Rule 7.1A.1.

⁵³ See note 20 above and accompanying text.

⁵⁴ The notion of a ‘class’ of securities in the Listing Rules differs in some respects from the equivalent notion under the Corporations Act. For example, the note to the definition of “class” in Listing Rule 19.12 confirms that partly paid securities are a different class to fully paid securities for the purposes of the Listing Rules, whereas section 605(2) of the Corporations Act provides that securities are not taken to be different classes merely because some of the securities are fully paid and others are partly paid, or because different amounts are paid up or remain unpaid on the securities.

⁵⁵ Listing Rule 7.1A.3.

⁵⁶ If an entity wishes to issue securities under its Listing Rule 7.1A.2 capacity to satisfy a debt (including a debt for services rendered), the proper course is for the entity to issue the securities for a cash amount and then to apply the cash received in payment of the debt. ASX may ask an entity under Listing Rule 18.7 to provide a copy of its bank statements to verify that it has issued securities for a cash amount, as required under Listing Rule 7.1A.

The prescribed minimum issue price is 75% of the volume weighted average price ("VWAP")⁵⁷ for securities in the relevant quoted class, calculated over the 15 trading days on which trades in that class were recorded⁵⁸ immediately before:

- the date on which the price at which the securities are to be issued was agreed by the entity and the recipient of the securities; or
- if the securities are not issued within 10 trading days of that date, the date on which the securities were issued.⁵⁹

For convenience, whichever of these two dates is applicable is referred to as the "pricing date" and the 15 trading days on which trades in the relevant class of equity securities were recorded immediately prior to the pricing date are referred to as the "pricing period".

Setting the pricing period as the 15 trading days on which trades actually occur immediately prior to the pricing date, rather than a shorter period, is intended to minimise the risk that securities might be issued at an artificially low price when there has been a temporary drop in the market price of the entity's securities.

Setting the initial pricing date as the date on which the entity and the potential investor agree the price for the issue and calculating the minimum price by reference to VWAP over the 15 trading days on which trades actually occur immediately prior to that date allows the parties to calculate the minimum price required under Listing Rule 7.1A with certainty at that date and ensure that this requirement has been satisfied. This is subject to the proviso that the securities must be issued within 10 trading days of that date to ensure that the pricing is still reasonably current. If the securities are not able to be issued within that 10 trading day period, then the pricing date defaults to the date on which the securities are issued.

VWAP calculations can be obtained from third party service providers. A listed entity may use any recognised information service provider (such as Reuters, Bloomberg or IRESS) as the source of its VWAP calculation.

The Appendix 3B an entity is required to lodge when it announces a proposed issue of equity securities under Listing Rule 7.1A will prompt the entity to send to its ASX Listings Compliance adviser a completed work sheet in the form of Annexure C to confirm that the entity has the available capacity to issue the securities. The work sheet will require the entity to state the pricing date, the pricing period and the VWAP for securities in the relevant class over that period. It will also ask the entity to identify the source of its VWAP calculation.

ASX is alive to entities purporting to issue securities under a combination of their Listing Rules 7.1 and 7.1A.2 placement capacities and allocating a lower price to the former and a higher price to the latter in an effort to appear compliant with the minimum pricing requirement for issues under Listing Rule 7.1A. If the average price at which the securities are being issued across both capacities is less than the minimum price required under Listing Rule 7.1A, ASX will regard that as contrary to the spirit and intent of the Listing Rules.⁶⁰ In such a case, ASX is likely to direct the entity⁶¹ that it cannot rely on its Listing Rule 7.1A placement capacity to make the issue and, if

⁵⁷ "Volume weighted average price", or VWAP, in relation to particular securities for a particular period, means the volume weighted average price of trading in those securities on the ASX market and the ~~Cbee~~[TMX Australia](#) 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 (Listing Rule 19.12). Trading on the ASX market and ~~Cbee~~[TMX Australia](#) 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.

⁵⁸ Note that this period may therefore be longer than the previous 15 trading days, if on any of those days there were no trades recorded in the relevant class.

⁵⁹ Listing Rule 7.1A.3.

⁶⁰ And therefore a breach by the entity of Listing Rule 19.2.

⁶¹ Pursuant to Listing Rule 18.8.

the issue exceeds its Listing Rule 7.1 placement capacity, it must be approved by security holders under Listing Rule 7.1.

4. Permitted issues under Listing Rule 7.2

4.1 The effect of the exceptions in Listing Rule 7.2

Listing Rule 7.2 lists different types of security issues to which Listing Rules 7.1 and 7.1A do not apply.

Issues under an exception in Listing Rule 7.2 are specifically excluded from variables C and E and hence do not expend any of the entity's placement capacity under Listing Rules 7.1 and 7.1A.2.⁶² They can therefore be made without obtaining shareholder approval under Listing Rule 7.1,⁶³ regardless of their size and the amount of placement capacity an entity has left under Listing Rules 7.1 and 7.1A.2.

If the securities being issued under Listing Rule 7.2 are fully paid ordinary securities, they may⁶⁴ also be included in variable A and therefore increase the base level of fully paid ordinary securities on which the 15% and 10% placement capacities in Listing Rules 7.1 and 7.1A.2 are calculated.

4.2 Exception 1 – pro rata issues

Listing Rule 7.2 exception 1⁶⁵ excludes from the restrictions in Listing Rules 7.1 and 7.1A an issue of securities to holders of ordinary securities made under a pro rata issue,⁶⁶ as well as an issue of securities to the holders of other equity securities to the extent that the terms of issue of those other equity securities permit participation in the pro rata issue.

These issues are excluded from the restrictions in Listing Rules 7.1 and 7.1A as all security holders have an opportunity to participate in the issue and to maintain their proportionate equity interest in the entity.

⁶² In the case of Listing Rule 7.1, this is because any issue under Listing Rule 7.2 is specifically excluded from variable C in the first bullet point of the definition of that variable. In the case of Listing Rule 7.1A, this is because variable E in Listing Rule 7.1A.2 only counts securities specifically issued under that rule and not those issued under Listing Rule 7.2.

⁶³ Although in some cases it may require approval under a different Listing Rule or other legal requirement – for example, exception 8, which applies to issues approved by security holders under item 7 of section 611 of the Corporations Act, and exception 14, which applies to issues of securities that have been approved by security holders under Listing Rule 10.11 or 10.14.

⁶⁴ They will count in variable A if they were issued:

- under an exception in Listing Rule 7.2 other than exception 9, 16 or 17;
- on the conversion of convertible securities within Listing Rule 7.2 exception 9 where the convertible securities were issued or agreed to be issued before the commencement of the relevant period or the issue of, or agreement to issue the convertible securities was approved or taken to be approved under Listing Rule 7.1 or 7.4;
- under an agreement to issue securities within Listing Rule 7.2 exception 16 where the agreement was entered into before the commencement of the relevant period or was approved or taken to be approved under Listing Rule 7.1 or 7.4; or
- otherwise with approval under Listing Rule 7.1 or 7.4 (for example, under an agreement to issue securities within Listing Rule 7.2 exception 17 where the issue was subsequently approved under Listing Rule 7.1 in accordance with that exception).

See the first, second and third bullet points of Listing Rule 7.1 and notes 12, 14 and 16 above.

⁶⁵ There is an equivalent exception in Listing Rule 10.12 exception 1, meaning that a related party or other person caught by Listing Rule 10.11 can participate in a pro rata issue without obtaining security holder approval under Listing Rule 10.11.

⁶⁶ A pro rata issue must comply with Listing Rule 7.11. The issue can be renounceable or non-renounceable, although if the theoretical rights price for the issue is less than 0.1 cents, the lowest price point at which securities can be traded on ASX, as a practical matter, it will have to be non-renounceable. An issue is not precluded from being a pro rata issue for the purposes of the Listing Rules because security holders with addresses outside Australia and New Zealand are excluded from the issue under Listing Rule 7.7.1 or because security holders are allowed to subscribe for a greater number of securities than their entitlement under Listing Rule 7.11.4 (see the note to Listing Rule 7.2 exception 1 and the definition of "pro rata issue" in Listing Rule 19.12).

4.3 Exception 2 – underwritings of pro rata issues

Listing Rule 7.2 exception 2⁶⁷ excludes from the restrictions in Listing Rules 7.1 and 7.1A an issue of securities under an agreement to underwrite the shortfall⁶⁸ on:

- a pro rata issue to holders of ordinary securities; or
- a pro rata issue to holders of ordinary securities and to holders of other equity securities to the extent that the terms of issue of the equity securities permit participation in the pro rata issue.

These issues are excluded from the restrictions in Listing Rules 7.1 and 7.1A since the pro rata nature of the underlying issue ensures that all security holders have had an opportunity to participate in the issue and to maintain their proportionate equity interest in the entity.

To qualify for this exception, the entity must have disclosed:⁶⁹

- the name of the underwriter(s);
- the extent of the underwriting;⁷⁰
- the fee, commission or other consideration⁷¹ payable to the underwriter(s); and
- a summary of the significant events that could lead to the underwriting being terminated.

in the Appendix 3B lodged under Listing Rule 3.10.3 in relation to the pro rata issue or, if the underwriting was entered into after the Appendix 3B was lodged, by market announcement as soon as practicable following the entry of the underwriting agreement. It must also make the issue not later than 15 business days after the close of the offer.

The arrangement with the underwriter must also constitute a genuine underwriting. ASX agrees with the views expressed by the Australian Securities and Investments Commission (“ASIC”) in this regard:

“A central element of underwriting is the assumption of risk by the underwriter—in particular the obligation to subscribe for, or nominate other persons to subscribe for, shares in the event of a shortfall ...

Where an arrangement does not, in substance, involve the assumption of this risk, we take the view that the arrangement is not underwriting. This includes arrangements:

- (a) *incorporating terms or conditions that, in the circumstances, effectively give the ‘underwriter’ a general discretion to terminate the underwriting arrangement from the outset (e.g. terms or conditions giving the underwriter a termination right if one or more events over which the underwriter has effective control occur); or*
- (b) *that may otherwise be terminated in circumstances that mean that the ‘underwriter’ does not, in effect, bear the risk of the shortfall.*

⁶⁷ There is an equivalent exception in Listing Rule 10.12 exception 2, meaning that a related party or other person caught by Listing Rule 10.11 can underwrite a pro rata issue without obtaining security holder approval under Listing Rule 10.11.

⁶⁸ Where security holders with addresses outside Australia and New Zealand are excluded from an issue under Listing Rule 7.7.1, ASX regards the securities that would otherwise have been issued to them as forming part of the shortfall.

⁶⁹ The obligation to disclose details of the underwriting does not extend to sub-underwriting arrangements: see the definition of “underwrite” in Listing Rule 19.12 and the note to Listing Rule 7.2 exception 2.

⁷⁰ The reference to the “extent of the underwriting” means the amount or proportion of the issue that is underwritten: see the note to Listing Rule 7.2 exception 2.

⁷¹ The reference to the “fee, commission or other consideration payable” includes any applicable discount the underwriter receives to the issue price payable by participants in the issue: see the note to Listing Rule 7.2 exception 2.

For example, arrangements that permit the underwriter to be relieved of its obligations following a default by a sub-underwriter—either entirely through termination of the agreement, or by reducing the amount of the underwriting commitment by the amount in default—seek to relieve the underwriter of their obligation to subscribe for securities in the event of a shortfall. Accordingly, we do not consider such arrangements to constitute ‘underwriting’.

Further, arrangements that permit the underwriter to terminate on the basis of an event that is certain, or near certain, to occur (such as a token fall in a relevant market index) are also likely to mean that the underwriter has an option to underwrite and does not, in substance, assume shortfall risk.”⁷²

It should be noted that exception 2 only applies to issues of securities to make up the underwritten shortfall from a pro rata issue. It does not apply to any other issues of securities under an underwriting agreement (for example, in payment of the underwriting fee or any other amount due to the underwriter under the agreement). These other types of issues will therefore only be able to be made without security holder under Listing Rule 7.1 if the entity has sufficient placement capacity available at the time under Listing Rules 7.1 and (if applicable) 7.1A.

4.4 Exception 3 – allocation of shortfalls from pro rata issues

Listing Rule 7.2 exception 3⁷³ excludes from the restrictions in Listing Rules 7.1 and 7.1A an issue of securities to make up the shortfall⁷⁴ on:

- a pro rata issue to holders of ordinary securities; or
- a pro rata issue to holders of ordinary securities and to holders of other equity securities to the extent that the terms of issue of the equity securities permit participation in the pro rata issue.

These issues again are excluded from the restrictions in Listing Rules 7.1 and 7.1A since the pro rata nature of the underlying issue ensures that all security holders have had an opportunity to participate in the issue and to maintain their proportionate equity interest in the entity.

To fall within exception 3, the following additional conditions must be satisfied:

- the directors of the entity (or if the entity is a trust, the responsible entity of the trust) must have stated as part of the offer that they reserve the right to issue the shortfall and what their allocation policy will be in relation to the shortfall;
- the entity must make the issue no later than 3 months after the close of the offer; and
- the issue price must also not be less than the price at which the securities were offered under the pro rata issue.

In meeting the requirement to state their allocation policy, the directors (or in the case of a listed trust, the responsible entity) should be reasonably specific. It is not sufficient, for example, for them simply to state that they reserve the right to allocate the shortfall in their discretion. They should also state the factors they will take into account in exercising that discretion.

⁷² See ASIC Regulatory Guide 6 *Takeovers: Exceptions to the general prohibition* at paragraphs 6.148 – 6.151. *A fortiori*, someone who has given an undertaking to place securities on a “best endeavours” basis is not an underwriter for the purposes of exception 2.

⁷³ There is no equivalent exception in Listing Rule 10.12 to Listing Rule 7.2 exception 3. Accordingly, a related party or other person caught by Listing Rule 10.11 can only participate in an issue of equity securities to make up the shortfall on a pro rata issue if they receive specific approval to do so under Listing Rule 10.11.

⁷⁴ See note 68 above.

4.5 Exception 4 – DRPs

Listing Rule 7.2 exception 4 excludes from the restrictions in Listing Rules 7.1 and 7.1A an issue of securities under:

- a dividend or distribution plan (“DRP”);⁷⁵ or
- an agreement to underwrite the shortfall on a DRP⁷⁶ where:
 - details of the underwriting agreement were disclosed prior to the date for payment of the dividend or distribution in accordance with Listing Rule 3.10.9; and
 - the entity makes the issue within 15 business days after the date for payment of the dividend or distribution.⁷⁷

In each case above, the DRP must not impose a limit on participation and security holders must be able to elect to receive all of their dividend or distribution as securities.

These types of issues again are excluded from the restrictions in Listing Rules 7.1 and 7.1A because all security holders have an opportunity to participate in the DRP and to maintain their proportionate equity interest in the entity.

If a DRP does impose a limit on participation – for example, a maximum dollar limit on the amount of reinvestment or a maximum limit on the number of securities that a security holder can acquire under the DRP – any issue under the DRP will not qualify under exception 4 and will only be able to be made without security holder approval under Listing Rule 7.1 if the entity has sufficient placement capacity available at the time under Listing Rules 7.1 and (if applicable) 7.1A.

4.6 Exception 5 – SPPs

Listing Rule 7.2 exception 5⁷⁸ excludes from the restrictions in Listing Rules 7.1 and 7.1A an issue of securities under a security purchase plan (“SPP”) provided:

- the number of securities to be issued is not greater than 30% of the number of fully paid ordinary securities already on issue; and
- the issue price of the securities is at least 80% of the VWAP for securities in that class, calculated over the last 5 days on which sales in the securities were recorded, either before the day on which the issue is announced or before the day on which the issue is made.

Exception 5 is only available once in any 12 month period. This applies even where the size of the issue is less than the 30% limit in the first of the two bullet points above.⁷⁹

⁷⁵ There is an equivalent exception to this limb of Listing Rule 7.2 exception 4 in Listing Rule 10.12 exception 3, meaning that a related party or other person caught by Listing Rule 10.11 can participate in a DRP that meets the requirements above without obtaining security holder approval under Listing Rule 10.11.

⁷⁶ Under Listing Rule 3.10.9, if an entity enters into or activates an underwriting agreement in relation to a DRP, it must immediately tell ASX the name of the underwriter, the extent of the underwriting, the fee, commission or other consideration payable, and a summary of the significant events that could lead to the underwriting being terminated.

⁷⁷ There is no equivalent exception to this limb of Listing Rule 7.2 exception 4 in Listing Rule 10.12, meaning that a related party or other person caught by Listing Rule 10.11 can only take up equity securities as an underwriter of a DRP if they receive specific approval to do so under Listing Rule 10.11.

⁷⁸ There is an equivalent exception in Listing Rule 10.12 exception 4, meaning that a related party or other person caught by Listing Rule 10.11 can participate in an SPP that meets the requirements above without obtaining security holder approval under Listing Rule 10.11.

⁷⁹ ASX has sometimes been approached by entities seeking a waiver of the requirement that exception 5 can only be used once in any 12 month period. ASX will only contemplate such a waiver where the total number of shares issued or to be issued under the entity’s SPP over a 12 month period complies with the 30% limit mentioned in the text and the entity satisfies ASX that it will be in compliance with, or

Issues under an SPP are excluded from the restrictions in Listing Rules 7.1 and 7.1A because all security holders have an opportunity to participate in the issue, up to the \$30,000 cap imposed in ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547.

An SPP is defined to have the same meaning as a “purchase plan” in ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547.⁸⁰ This instrument allows ASX listed companies and managed investment schemes to offer securities to existing members without a prospectus or PDS provided they meet certain conditions summarised below. The offer must be made to each registered holder of securities in the class in question whose address (as recorded in the register of members) is in a place in which, in the reasonable opinion of the entity, it is lawful and practical for the entity to offer and issue securities to that person.⁸¹

For an issue of securities to fall within exception 5, the entity must meet all of the conditions in ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547 apart from the requirement that the entity's securities not be suspended from trading on ASX for the prescribed period. If the entity does not meet that requirement, it can still avail itself of exception 5 but it will not qualify for the relief in ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547 and will therefore have to prepare a prospectus or PDS for the offer under the SPP.

Unlike exceptions 2 and 4, exception 5 does not extend to an issue of securities under an agreement to underwrite the shortfall on an SPP. Accordingly, such an issue will only be able to be made without security holder approval under Listing Rule 7.1 if the entity has sufficient placement capacity available at the time under Listing Rules 7.1 and (if applicable) 7.1A.

It should be noted that a standard waiver is available under Guidance Note 17 *Waivers and In-Principle Advice*, where an entity is seeking approval under Listing Rule 7.1 to an issue of securities under an SPP to which exception 5 of Listing Rule 7.2 would otherwise have applied but for the fact that the number of securities to be issued under the SPP is greater than 30% of the number of fully paid ordinary securities already on issue or because the issue price of the securities is less than 80% of the average market price for securities in that class. In such a case, ASX will grant a standard waiver of Listing Rule 7.3.⁸² to permit a resolution in a notice of meeting approving the issue of securities under the SPP not to include a voting exclusion statement that excludes the votes of any person who may participate in the SPP or any associate of such a person, provided:

- the SPP is not underwritten; or
- if the SPP is underwritten, the entity excludes any votes cast on the resolution by any proposed underwriter or sub-underwriter of the SPP and their associates.

4.7 Exceptions 6 and 7 – regulated takeovers and mergers

Listing Rule 7.2 exception 6⁸³ excludes from the restrictions in Listing Rules 7.1 and 7.1A an issue of securities under a regulated takeover or merger.

Listing Rule 7.2 exception 7 excludes from the restrictions in Listing Rules 7.1 and 7.1A an issue to fund the cash consideration payable under a regulated takeover or merger, where the terms of the issue are disclosed in the takeover or merger documents.

has an exemption from, the \$30,000 issuance limit in any 12 month period imposed under ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547.

⁸⁰ Listing Rule 19.12. See also ASIC Regulatory Guide 125 *Share purchase plans*.

⁸¹ See paragraph (a) of the definition of “purchase plan” in section 4 of ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547.

⁸² The requirement for a notice of meeting proposing a resolution to approve an issue of securities under Listing Rule 7.1 to include a voting exclusion statement. See also Listing Rules 14.11 and 14.11.1.

⁸³ There is an equivalent exception in Listing Rule 10.12 exception 5, meaning that a related party or other person caught by Listing Rule 10.11 can participate in a regulated takeover or merger without obtaining security holder approval under Listing Rule 10.11.

Exceptions 6 and 7 have been included as a concession to listed entities, in recognition of the fact that takeovers and mergers that are already subject to regulation could be difficult to complete in circumstances where the entity is required to seek approval from its security holders before it can issue securities under, or to fund, the takeover or merger. A requirement for security holder approval could also put ASX listed entities at a competitive disadvantage to an unlisted bidder or acquirer in a contested situation. This exception will remain important as the ASX market becomes more global and ASX listed entities become more globally competitive.

ASX has extended this concession broadly to facilitate cross-border public M&A transactions that are regulated by reference to local legal, market and regulatory conditions in foreign jurisdictions. This approach supports efficient execution of corporate transactions and avoids imposing duplicative ASX specific requirements that could reduce the competitiveness of ASX listed entities when competing for assets and capital against offshore markets and private capital.

Entities that rely on this exception should be able to demonstrate the basis on which they have concluded that the exception applies, and be prepared to disclose their reasons to ASX (including any advice obtained) and the market if requested. The definition of 'regulated takeover or merger' is straight-forward and it will usually be clear whether it applies or not. If an entity is unsure about whether their transaction is covered by paragraph (c) of the definition of 'regulated takeover or merger',⁸⁴ the entity should seek advice from an appropriately qualified legal practitioner in the relevant jurisdiction. If that advice is qualified, equivocal or otherwise gives rise to uncertainty, ASX will expect the entity to seek security holder approval. If ASX is asked to give in-principle advice on the application of the exception, ASX will expect the entity to take this approach. If ASX gives in-principle advice to an entity and the transaction proceeds, ASX will usually require the entity to disclose its reasons for submitting why security holder approval was not required.

Exceptions 6 and 7 are not available if the issue is being made under, or to fund, a reverse takeover. This recognises that in a reverse takeover the security holders of the ASX listed bidder are substantively in the position of target security holders and so should have a right to express their approval or disapproval of the transaction. A reverse takeover is a regulated takeover or merger that would result in the issue of 100% or more of the number of fully paid ordinary securities on issue in the entity.

In addition, exceptions 6 and 7 are not available if the issue is being made under, or to fund, a prescribed transaction. This applies to entities that are included in the S&P / ASX 300 Index on the date when a regulated takeover or merger is announced,⁸⁵ if the transaction would result in the issue of 25% or more of the number of fully paid ordinary securities on issue in the entity.⁸⁶

Larger entities subject to the 25% limit may increase the limit by either seeking security holder approval to increase the limit for a three-year period by ordinary resolution, or by including a provision in their constitution [post-admission](#) that increases the limit on an indefinite basis. In both cases, the limit cannot be higher than the 100% reverse takeover threshold.

The Listing Rules set out the notice of meeting disclosure requirements for a three-year approval to increase the limit. This approval mechanism is intended to allow larger entities to put themselves in the same position that applies to most other listed entities, so the disclosure requirements are not onerous. In particular, ASX does not require disclosure of confidential and incomplete proposals that may be under consideration at the time that the

⁸⁴ Paragraph (c) covers a takeover [of](#), or business combination [with, or the acquisition of securities in, a person](#) that is effected by:

- (i) a public offer process;
- (ii) a security holder approval process [governed by the rules of](#) another exchange; or
- (iii) a security holder approval process that is approved by a court or securities regulator, under laws or regulations, [or rules made under laws or regulations](#), in a foreign jurisdiction.

⁸⁵ Entities negotiating a regulated takeover or merger that are on the cusp of index inclusion and who are concerned that they may enter the index before the deal is announced should plan for security holder approval because ASX is very unlikely to grant a waiver.

⁸⁶ See Listing Rule 19.12 for the full definitions of 'reverse takeover' and 'prescribed transaction'.

notice of meeting is approved or at the time of the meeting. The purpose of the approval is to authorise the board to execute current or future proposals at their discretion, not to authorise specific issues.

The dilution limits that apply to reverse takeovers and prescribed transactions are numerical thresholds that relate solely to the number of securities being issued. The control implications of these transactions are not governed by the Listing Rules but by the laws and regulations that apply in the jurisdictions where they take place.

It should be noted that the exceptions in Listing Rule 7.2 operate independently of each other. Hence the fact that exceptions 6 and 7 do not apply to an issue under or to fund a reverse takeover or prescribed transaction that exceeds the relevant dilution limit does not mean that other exceptions are not available for that purpose. For example, an entity could use an underwritten pro rata issue with a placement of the shortfall under exceptions 1, 2 and 3, or an issue under a DRP under exception 4 or an SPP under exception 5, to fund some or all of the cash consideration payable under a regulated takeover or merger without requiring any security holder approval under Listing Rule 7.1. An entity may also have some placement capacity available to it under Listing Rules 7.1 and 7.1A.2 that it can use for these purposes.

An entity cannot, however, use other exceptions to extend the application of exceptions 6 and 7. For example, if a proposed new issue under or to fund a regulated takeover or merger was equivalent in number to 110% of an entity's existing issued securities, the entity could not use exceptions 6 and 7 for 99% of the new issue and use other exceptions (or its placement capacity) for the remaining 11%.

4.8 Exception 8 – issues approved under item 7 of section 611

Listing Rule 7.2 exception 8⁸⁷ excludes from the restrictions in Listing Rules 7.1 and 7.1A an issue of securities approved under item 7 of section 611 of the Corporations Act. These issues are excluded on the basis that the security holder approval requirements under item 7 of section 611 are more extensive than those under Listing Rules 7.1 and 7.1A⁸⁸ and it would be an unnecessary duplication to require an additional security holder approval under Listing Rule 7.1 or 7.1A.

Item 7 of section 611, and therefore exception 8, only applies to an Australian company or registered managed investment scheme that is subject to the takeover provisions in Chapter 6 of the Corporations Act.

In an appropriate case, ASX will consider granting a waiver to extend exception 8 to an acquisition of securities in a foreign company or trust that is approved under equivalent legislation in its place of establishment.

It should be noted that, unlike issues made with security holder approval under Listing Rule 7.1, issues made with approval under item 7 of section 611 are not constrained by any time limit.⁸⁹ An entity must include a summary in its annual report of any issues of securities approved for the purposes of item 7 of section 611 of the Corporations Act which have not been completed as at the date of the annual report.⁹⁰

⁸⁷ There is an equivalent exception in Listing Rule 10.12 exception 6.

⁸⁸ Among other things, to comply with ASIC's regulatory guidance on item 7, an entity must obtain an independent expert's report opining on whether the issue is fair and reasonable to non-participating security holders.

⁸⁹ Although, an item 7 approval may need to be renewed if there is a material change in circumstances after the approval has been given and before the transaction is completed and may not be available for an acquisition that will complete in the distant future: see paragraphs 87 and 89 of ASIC Regulatory Guide 74 *Acquisitions approved by members*.

⁹⁰ Listing Rule 4.10.21.

4.9 Exception 9 – conversion of convertible securities

Listing Rule 7.2 exception 9⁹¹ excludes from the restrictions in Listing Rules 7.1 and 7.1A an issue of securities as a result of the conversion of convertible securities.⁹² The entity must have issued the convertible securities:

- (a) before it was listed and disclosed the existence and material terms of the convertible securities in the prospectus, PDS or information memorandum lodged with ASX under Listing Rule 1.1 condition 3; or
- (b) after it was listed and complied with the Listing Rules when it did so.

This [is](#) a technical exception intended to ensure that the Listing Rules deal appropriately with convertible securities. The time at which an issue of convertible securities is tested to determine whether it falls within an entity's placement capacity under Listing Rules 7.1 and 7.1A is when they are issued, not when they are converted. If at the time they are issued they comply with the Listing Rules, any subsequent conversion in accordance with their terms falls outside of Listing Rules 7.1 and 7.1A.

Where (a) above applies, the issue of the convertible securities is taken to have been approved under Listing Rule 7.1.⁹³ This means that the convertible securities fit within the second bullet point in the definition of variable A in Listing Rule 7.1. Accordingly, if they are eventually converted into fully paid ordinary securities, those fully paid ordinary securities will count in variable A in Listing Rules 7.1 and 7.1A.2 from the moment they are issued.

Where (b) above applies, the issue of the convertible securities is not taken to have been approved under Listing Rule 7.1. This means that if they are eventually converted into fully paid ordinary securities, those fully paid ordinary securities will only fit within the second bullet point in the definition of variable A if: (a) the convertible securities were issued or agreed to be issued before the commencement of the relevant period; or (b) the issue, or agreement to issue, the convertible securities was expressly approved by security holders under Listing Rule 7.1 or 7.4.⁹⁴

In the case of (a) above, the Listing Rules effectively treat the fact that security holders have agreed to invest in the entity after it has disclosed the existence and material terms of the convertible securities in its listing prospectus, PDS or information memorandum as an implicit approval by security holders to the issue of the convertible securities. However, this does not mean that the entity has carte blanche to issue whatever convertible securities it wants pre-listing. ASX may refuse to admit the entity to the official list and to quote its securities if ASX considers that the convertible securities breach Chapter 6 of the Listing Rules⁹⁵ or result in the entity not having an appropriate structure for a listed entity,⁹⁶ or it is otherwise appropriate for ASX to exercise its absolute discretion to refuse the entity's application for admission.⁹⁷

To meet the requirement in (a) above that the entity disclose the existence and material terms of the convertible securities in its listing prospectus, PDS or information memorandum, the entity should include in that document:⁹⁸

⁹¹ There is an equivalent exception in Listing Rule 10.12 exception 7.

⁹² An option is a convertible security for the purposes of this exception (see the notes to Listing Rule 7.2 exception 9 and the definition of "convertible security" in Listing Rule 19.12). Recognising this, the term 'convertible' is defined to include 'exercisable' (see the definition of "convertible" in Listing Rule 19.12).

⁹³ As noted in the text below, the Listing Rules effectively treat the fact that security holders have agreed to invest in the entity after it has disclosed the existence and material terms of the convertible securities in its listing prospectus, PDS or information memorandum as de facto approval by security holders of those terms.

⁹⁴ This is the effect of the first and second bullet points in the definition of variable A in listing Rule 7.1.

⁹⁵ Listing Rule 2.1 condition 1. This includes the requirement in Listing Rule 6.1 that the terms applying to the convertible securities are, in ASX's opinion, appropriate and equitable.

⁹⁶ Listing Rule 1.1 condition 1. See section 3.1 of Guidance Note 1 *Applying for Admission – ASX Listings* for examples of when ASX may determine that an entity does not have a structure or operations appropriate for a listed entity.

⁹⁷ Listing Rule 1.19. See section 2.9 of Guidance Note 1 *Applying for Admission – ASX Listings* for examples of when ASX may exercise this discretion.

⁹⁸ By analogy with the information required to be disclosed under Listing Rule 7.3 in a notice of meeting seeking security holder approval under Listing Rule 7.1.

- the names of the persons to whom the entity issued the convertible securities or the basis upon which those persons were identified or selected.

In this regard, where the identity of a convertible security holder is likely to be material to a decision by investors to subscribe for securities under the entity's listing prospectus, PDS or information memorandum, the entity should name the convertible security holder in its prospectus, PDS or information memorandum rather than describe how they were identified or selected.

In ASX's view, the identity of a convertible security holder is likely to be material for these purposes if they are:

- a related party of the entity;
- a member of key management personnel;
- a substantial holder in the entity;
- an adviser to the entity; or
- an associate of any of the above,

and, if their convertible securities are converted, it will result in the holder being issued more than 1% of the entity's anticipated issued capital at the time of listing;

- the number of convertible securities that were issued to them;
- a summary of the material terms of the convertible securities;
- the date or dates on which the convertible securities were issued;
- the price or other consideration the entity received for the issue; and
- the purpose of the issue, including the use or intended use of any funds raised by the issue.

To meet the requirement in (b) above that the entity must have complied with the Listing Rules when it issued the convertible securities, the issue must not only be made in compliance with the placement restrictions in Listing Rules 7.1 and 7.1A,⁹⁹ it also must not breach the prohibitions in Listing Rule 7.6, 7.9, 10.11 or 10.14.¹⁰⁰

4.10 Exception 10 – underwritten exercise of options

Listing Rule 7.2 exception 10¹⁰¹ excludes from the restrictions in Listing Rules 7.1 and 7.1A an issue of securities under an agreement to underwrite the shortfall on an exercise of options. The exception is only available if:

- (a) the entity issued the options:
 - (i) before it was listed and disclosed the existence and material terms of the options in the prospectus, PDS or information memorandum lodged with ASX under rule 1.1 condition 3; or
 - (ii) after it was listed and complied with the Listing Rules when it did so;

⁹⁹ Note that Listing Rule 7.1A only permits an issue of convertible securities if they are in a class of securities that is already quoted on ASX: see section '3.5 The entity must be issuing securities in an existing class of quoted securities'.

¹⁰⁰ See '9.1 Listing Rule 7.6', '9.2 Listing Rule 7.9' and Guidance Note 25 *Issues of Equity Securities to Persons in a Position of Influence*.

¹⁰¹ There is no equivalent exception in Listing Rule 10.12 to Listing Rule 7.2 exception 10, meaning that a related party or other person caught by Listing Rule 10.11 can only underwrite an exercise of options if they receive specific approval to do so under Listing Rule 10.11.

- (b) details of the underwriting agreement are disclosed prior to the expiry of the options in accordance with Listing Rule 3.11.3;¹⁰² and
- (c) the underlying securities are issued within 15 business days after expiry of the options.

In the case of (a)(i) above, the Listing Rules effectively treat the fact that security holders have agreed to invest in the entity after it has disclosed the existence and material terms of the options in its listing prospectus, PDS or information memorandum as an implicit approval by security holders to the issue of the options. Again, however, this does not mean that the entity has carte blanche to issue whatever options it wants pre-listing. ASX may refuse to admit the entity to the official list and to quote its securities if ASX considers that the options breach Chapter 6 of the Listing Rules or result in the entity not having an appropriate structure for a listed entity, or it is otherwise appropriate for ASX to exercise its absolute discretion to refuse the entity's application for admission.¹⁰³

To meet the requirement in (a)(i) above that the entity disclose the existence and material terms of the options in its listing prospectus, PDS or information memorandum, the entity should include in that document:¹⁰⁴

- the names of the persons to whom the entity issued the options or the basis upon which those persons were identified or selected.

In this regard, where the identity of an option holder is likely to be material to a decision by investors to subscribe for securities under the entity's listing prospectus, PDS or information memorandum, the entity should name the option holder in its prospectus, PDS or information memorandum rather than describe how they were identified or selected.

Again, in ASX's view, the identity of an option holder is likely to be material for these purposes if they are:

- a related party of the entity;
- a member of key management personnel;
- a substantial holder in the entity;
- an adviser to the entity; or
- an associate of any of the above,

and, if the option is exercised, it will result in the holder being issued more than 1% of the entity's anticipated issued capital at the time of listing;

- the number of options that were ~~has~~ issued to them;
- a summary of the material terms of the options;
- the date or dates on which the options were issued;
- the price or other consideration the entity received for the issue; and
- the purpose of the issue, including the use or intended use of any funds raised by the issue.

¹⁰² Under Listing Rule 3.11.3, if an entity enters into an underwriting agreement for the exercise of options, it must immediately tell ASX the name of the underwriter, the extent of the underwriting, the fee, commission or other consideration payable, and a summary of the significant events that could lead to the underwriting being terminated.

¹⁰³ See the Listing Rules and Guidance Notes cited in notes [9599](#), [96400](#) and [97404](#) above.

¹⁰⁴ By analogy with the information required to be disclosed under Listing Rule 7.3 in a notice of meeting seeking security holder approval under Listing Rule 7.1.

To meet the requirement in (a)(ii) above that the entity must have complied with the Listing Rules when it issued the options, the issue must not only be made in compliance with the placement restrictions in Listing Rules 7.1 and 7.1A,¹⁰⁵ it also must not breach the prohibitions in Listing Rule 7.6, 7.9, 10.11 or 10.14.¹⁰⁶

4.11 Exception 11 – preference shares

Listing Rule 7.2 exception 11¹⁰⁷ excludes from the restrictions in Listing Rules 7.1 and 7.1A an issue of preference shares which do not have any rights of conversion into another class of equity security.

The preference shares in question must comply with Chapter 6 of the Listing Rules. Among other things, this means that they must have limited voting rights and they must be entitled to a dividend or distribution at a commercial rate and to a return of capital upon a winding up, in preference to the holders of ordinary securities.¹⁰⁸

Issues of these types of securities are excluded from Listing Rules 7.1 and 7.1A as they are more akin to debt securities than equity securities and do not raise the same dilution issues that an issue of other types of equity securities may raise.

4.12 Exception 12 – forfeited shares

Listing Rule 7.2 exception 12 excludes from the restrictions in Listing Rules 7.1 and 7.1A a sale or reissue of forfeited shares¹⁰⁹ within 6 weeks after the day on which the call on the shares was due and payable.

This exception is included as a concession to listed companies to facilitate the sale or reissue of forfeited shares in a timely manner. Otherwise, the need to obtain shareholder approval under Listing Rule 7.1 before the sale or reissue could add undue risk and delay to completion of the transaction.

There is also no dilution to existing shareholders from a sale or reissue of forfeited shares.

4.13 Exception 13 – approved issues under employee incentive schemes

Listing Rule 7.2 exception 13 excludes from the restrictions in Listing Rules 7.1 and 7.1A an issue of securities under an employee incentive scheme if within 3 years before the issue date:

- (a) in the case of a scheme established before the entity was listed – a summary of the terms of the scheme¹¹⁰ and the maximum number of securities proposed to be issued under the scheme were set out in the prospectus, PDS or information memorandum lodged with ASX under Listing Rule 1.1 condition 3;¹¹¹ or

¹⁰⁵ Note that Listing Rule 7.1A only permits an issue of options if they are in a class of securities that is already quoted on ASX: see section '3.5 The entity must be issuing securities in an existing class of quoted securities'.

¹⁰⁶ See the materials cited in note 100~~404~~ above.

¹⁰⁷ There is no equivalent exception in Listing Rule 10.12 to Listing Rule 7.2 exception 11, meaning that a related party or other person caught by Listing Rule 10.11 can only take up preference shares if they receive specific approval to do so under Listing Rule 10.11.

¹⁰⁸ See Listing Rules 6.3 – 6.6.

¹⁰⁹ Under Listing Rule 7.1B.3, the sale or reissue of forfeited equity securities is treated as an issue of equity securities under Listing Rules 7.1 and 7.1A.

¹¹⁰ The phrase "terms of the scheme" includes terms, conditions, rules, regulations or guidelines formulated to introduce or administer an employee incentive scheme (Listing Rule 19.12).

¹¹¹ For these purposes, the Listing Rules effectively treat the fact that security holders have agreed to invest in the entity after it has disclosed a summary of the terms of the scheme and the maximum number of securities proposed to be issued under the scheme in its listing prospectus, PDS or information memorandum as de facto approval by security holders of the issue under the scheme. Despite this approval, the entity must still meet the requirements in Listing Rule 1.1 condition 1 that its structure and operations are appropriate for a listed entity and in Listing Rule 2.1 condition 1 that its securities comply with Chapter 6 of the Listing Rules, including the requirement in Listing Rule 6.1 that the terms of each class of its equity securities are, in ASX's opinion, appropriate and equitable. If ASX considers the employee incentive scheme infringes these requirements, it may exercise its discretion under Listing Rule 1.19 to reject the entity's listing application.

- (b) the holders of the entity's ordinary securities have approved the issue of securities under the scheme as an exception to Listing Rule 7.2.

In the latter case, the notice of meeting must have included a summary of the terms of the scheme,¹¹² the number of securities issued under the scheme since the entity was listed or the date of the last approval under paragraph (b) above, the maximum number of securities proposed to be issued under the scheme following the approval and a voting exclusion statement¹¹³ that precludes any person who is eligible and likely to be extended an offer to participate in the employee incentive scheme and their associates from voting in favour of the Listing Rule 10.14 resolution.¹¹⁴

These issues are excluded from Listing Rules 7.1 and 7.1A on the basis that they have effectively already been approved by security holders and to require a separate approval under Listing Rule 7.1 would therefore be an unnecessary duplication. In the case of (b) above, the approval is explicit. In the case of (a) above, the approval is implicit and evidenced by security holders agreeing to invest in the entity with the material terms of the scheme having been disclosed in the entity's listing prospectus, PDS or information memorandum.

Exception 13 is only available if and to the extent that the number of securities issued under the scheme does not exceed the maximum number set out in the entity's prospectus, PDS or information memorandum (in the case of (a) above) or in the notice of meeting (in the case of (b) above).¹¹⁵ An issue of securities above that maximum will only be able to be made without security holder under Listing Rule 7.1 if the entity has sufficient placement capacity available at the time under Listing Rules 7.1 and (if applicable) 7.1A.

This maximum number is not intended to be a prediction of the actual number of securities to be issued under the employee incentive scheme but simply a maximum number specified by the entity for the purposes of setting a ceiling on the number of securities approved to be issued under and for the purposes of exception 13. In this regard, it is important that security holders know the maximum number of securities that are proposed be issued under an employee incentive scheme so that they can understand its dilutionary impact when they approve the scheme. Once that number is reached, if the entity wants to issue any further securities under the scheme, it will need to go back to security holders for a fresh approval under exception 13.

Exception 13 also ceases to be available if there is a material change to the terms of the scheme from those set out in the entity's prospectus, PDS or information memorandum (in the case of (a) above) or in the notice of meeting (in the case of (b) above).¹¹⁶ If there has been a material change to the terms of the scheme, the scheme must be freshly approved by security holders as an exception under Listing Rule 7.2. If the approval is not refreshed, an issue under the scheme will only be able to be made without security holder under Listing Rule 7.1 if the entity has sufficient placement capacity available at the time under Listing Rules 7.1 and (if applicable) 7.1A.

What constitutes a "material change" for these purposes needs to be assessed on a case-by-case basis having regard to the terms of the scheme approved or taken to have been approved by security holders under exception 13. Examples of the types of amendments to an employee incentive scheme that could constitute a material change, depending on the circumstances, include (but are not limited to):

- if the approved terms of the scheme provide for an issue of a particular type of securities, such as ordinary securities or options over ordinary securities, an amendment that would permit the issue of other types of securities;
- if the approved terms of the scheme specify a mechanism to fix the price at which securities are issued, or in the case of options the price at which the options can be exercised, a change to that pricing mechanism;

¹¹² See note [110](#)~~141~~ above.

¹¹³ See '7.7 [Voting exclusions](#)~~Voting exclusions~~'.

¹¹⁴ Listing Rule 14.11.1.

¹¹⁵ See the note to exception 13.

¹¹⁶ Again, see the note to exception 13.

- if the approved terms of the scheme specify vesting conditions that need to be satisfied before a participant receives their entitlement under the scheme, a reduction or easing of those vesting conditions;
- if the approved terms of the scheme exclude a particular category of officers or employees from participating in the scheme, a change that would allow those officers or employees to participate;
- if the approved terms of the scheme include a cap on the number of securities that can be issued to an individual participant, the removal of, or an increase in, that cap; and
- if the approved terms of the scheme do not include provision for the entity to provide financial assistance to participants in the scheme to take up their entitlements, a change that would require or permit the entity to provide such financial assistance.

ASX notes that it is not uncommon for an employee incentive scheme to confer on the board of directors very broad discretions in administering the scheme and to amend, replace or terminate the scheme at any time. Provided the entity's prospectus, PDS or information memorandum (in the case of (a) above) or notice of meeting (in the case of (b) above) appropriately highlighted this power, then the existence of this power will be a relevant (although not necessarily decisive) consideration in determining whether something is a material change to the terms of an employee incentive scheme approved by security holders. For example, if the approved terms of a scheme provided for options to be issued with an exercise price determined by the board, the fact that the board may in the future determine different exercise price would not be a material change to the terms of the scheme under exception 13.

4.14 Exception 14 – issues approved under Listing Rule 10.11 or 10.14¹¹⁷

Listing Rule 7.2 exception 14¹¹⁸ excludes from the restrictions in Listing Rules 7.1 and 7.1A an issue of securities made with the approval of the holders of the entity's ordinary securities under Listing Rule 10.11 or 10.14.

These issues are excluded from Listing Rules 7.1 and 7.1A on the basis that they have already been approved by security holders and therefore requiring a separate approval under Listing Rule 7.1 would be an unnecessary duplication.

It should be noted that the exception for an issue of securities under Listing Rule 10.11 only applies if the issue is completed within 1 month after the date of the meeting approving the issue.¹¹⁹ This contrasts with the time periods permitted for issues to unrelated parties made with the approval of security holders under Listing Rule 7.1.¹²⁰ The shorter period is intended to reduce the likelihood of there being a material change in circumstances between the time the issue is approved and the time it is made.

4.15 Exception 15 – issues of certain options and rights under employee incentive schemes

Listing Rule 7.2 exception 15¹²¹ excludes from the restrictions in Listing Rules 7.1 and 7.1A a grant of options or other rights to acquire securities under an employee incentive scheme, where the securities to be acquired on the exercise of the options or in satisfaction of the rights are required by the terms of the scheme¹²² to be purchased on-market.

These issues are excluded from Listing Rules 7.1 and 7.1A on the basis that they are effectively remuneration arrangements that properly fall to the board of directors for approval. Since the securities to be acquired on the

¹¹⁷ See also Guidance Note 25 Issues of Equity Securities to Persons in a Position of Influence.

¹¹⁸ There is an equivalent exception in Listing Rule 10.12 exception 8 for issues made with the approval of the holders of the entity's ordinary securities under Listing Rule 10.14.

¹¹⁹ Listing Rule 10.13.5.

¹²⁰ Listing Rule 7.3.4.

¹²¹ There is an equivalent exception in Listing Rule 10.12 exception 9. See also Listing Rule 10.16.

¹²² See note ~~110~~~~111~~~~112~~~~113~~~~114~~ above.

exercise of the options or in satisfaction of the rights must be purchased on-market, there is no dilution to existing security holders.

4.16 Exception 16 – agreements to issue securities

Listing Rule 7.2 exception 16¹²³ excludes from the restrictions in Listing Rules 7.1 and 7.1A an issue under an agreement to issue securities. The entity must have entered into the agreement:

- (a) before it was listed and disclosed the existence and material terms of the agreement in the prospectus, PDS or information memorandum lodged with ASX under Listing Rule 1.1 condition 3; or
- (b) after it was listed and complied with the Listing Rules when it did so.

This is a technical exception intended to ensure that the Listing Rules deal appropriately with agreements to issue securities. The time at which an agreement to issue securities is tested to determine whether it falls within an entity's placement capacity under Listing Rules 7.1 and 7.1A is the time the agreement is entered into. If at that time the agreement complies with the Listing Rules, any subsequent issue of securities in accordance with the agreement falls outside of Listing Rules 7.1 and 7.1A.

Where (a) above applies, the agreement to issue securities is taken to have been approved under Listing Rule 7.1.¹²⁴ This means that the agreement to issue the securities fits within the third bullet point in the definition of variable A in Listing Rule 7.1. Accordingly, if the agreement provides for an issue of fully paid ordinary securities, those fully paid ordinary securities will count in variable A in Listing Rules 7.1 and 7.1A.2 from the moment they are issued.¹²⁵

Where (b) above applies, the agreement to issue securities is not taken to have been approved under Listing Rule 7.1. This means that any fully paid securities issued under the agreement will only fit within the third bullet point in the definition of variable A, if (a) the agreement was entered into before the commencement of the relevant period; or (b) the agreement or issue was expressly approved by security holders under Listing Rule 7.1 or 7.4.¹²⁶

In the case of (a) above, the Listing Rules effectively treat the fact that security holders have agreed to invest in the entity after it has disclosed the existence and material terms of the agreement to issue securities in its listing prospectus, PDS or information memorandum as an implicit approval by security holders of the agreement. Again, however, this does not mean that the entity has carte blanche to enter into whatever agreements to issue securities it wants pre-listing. ASX may refuse to admit the entity to the official list and to quote its securities if ASX considers that the securities the subject of the agreement breach Chapter 6 of the Listing Rules or result in the entity not having an appropriate structure for a listed entity, or it is otherwise appropriate for ASX to exercise its absolute discretion to refuse the entity's application for admission.¹²⁷

¹²³ There is an equivalent exception in Listing Rule 10.12 exception 10.

¹²⁴ As noted above, the Listing Rules effectively treat the fact that security holders have agreed to invest in the entity after it has disclosed the existence and material terms of an agreement to issue securities in its listing prospectus, PDS or information memorandum as de facto approval by security holders of those terms.

¹²⁵ Note that paragraph (a) of exception 16 can also apply to an issue of securities under the entity's listing prospectus, PDS or information memorandum itself. Hence, if an entity issues securities under its listing prospectus, PDS or information memorandum before it is admitted to the official list (as most do), they count in variable A because they are "on issue at the commencement of the relevant period" and therefore within the opening paragraph of the definition of variable A. If the entity issues securities under its listing prospectus, PDS or information memorandum after it is admitted to the official list (as it may do if its securities are initially traded in a conditional market following listing and quotation), the issue is taken under Listing Rule 7.2 exception 16 to have been approved under Listing Rule 7.1 and the securities count in variable A from the moment they are issued under the third bullet point in the definition of variable A.

¹²⁶ This is the effect of the first and third bullet points in the definition of variable A in listing Rule 7.1.

¹²⁷ See the Listing Rules and Guidance Notes cited in notes [9599](#), [96400](#) and [97404](#) above.

To meet the requirement in (a) above that the entity disclose the existence and material terms of the agreement in its listing prospectus, PDS or information memorandum, the entity should include in that document:¹²⁸

- the names of the persons to whom the entity has agreed to issue the securities or the basis on which they were identified or selected.

In this regard, where the identity of a person to whom the entity has agreed to issue the securities is likely to be material to a decision by investors to subscribe for securities under the entity's listing prospectus, PDS or information memorandum, the entity should name the person in its prospectus, PDS or information memorandum rather than describe how they were identified or selected.

Again, in ASX's view, the identity of a person to whom the entity has agreed to issue equity securities is likely to be material for these purposes if they are:

- a related party of the entity;
- a member of key management personnel;
- a substantial holder in the entity;
- an adviser to the entity; or
- an associate of any of the above,

and the securities agreed to be issued constitute more than 1% of the entity's anticipated issued capital at the time of listing;

- the number and class of securities the entity has agreed to issue;
- if the securities are not fully paid ordinary securities, a summary of the material terms of the securities;
- the date or dates on which the securities will be issued;
- the price or other consideration the entity has received or will receive for the issue;
- the purpose of the issue, including the intended use of any funds raised by the issue; and
- a summary of any other material terms of the agreement.

To meet the requirement in (b) above that the entity must have complied with the Listing Rules when it entered into the agreement, the agreement must not only be made in compliance with the placement restrictions in Listing Rules 7.1 and 7.1A¹²⁹ it also must not breach the prohibitions in Listing Rule 7.6, 7.9, 10.11 or 10.14.¹³⁰

4.17 Exception 17 – issues conditional on prior approval by security holders

Listing Rule 7.2 exception 17¹³¹ excludes from the restrictions in Listing Rules 7.1 and 7.1A an agreement to issue equity securities that is conditional on the holders of its ordinary securities approving the issue under Listing Rule 7.1 before the issue is made. If an entity relies on this exception it must not issue the equity securities without such approval.

¹²⁸ By analogy with the information required to be disclosed under Listing Rule 7.3 in a notice of meeting seeking security holder approval under Listing Rule 7.1.

¹²⁹ Note that Listing Rule 7.1A only permits an agreement to issue securities if they are in a class of securities that is already quoted on ASX: see section '3.5 The entity must be issuing securities in an existing class of quoted securities'.

¹³⁰ See the materials cited in note [100404](#) above.

¹³¹ There is an equivalent exception in Listing Rule 10.12 exception 11.

This too is a technical exception to address the point that Listing Rule 7.1 applies to an agreement to issue securities and requires security holder to approve the agreement before it is entered into. This exception allows an entity to enter into an agreement to issue equity securities that would otherwise fall outside its placement capacity under Listing Rule 7.1 and 7.1A.2 on condition that the issue of the securities is approved by the holders of its ordinary securities before the issue is made.

5. The application of Listing Rules 7.1 and 7.1A to convertible securities

The application of Listing Rules 7.1 and 7.1A to convertible securities raises particular issues that are explored in greater detail in this section.¹³²

5.1 What is a convertible security?

A “convertible security” is any security that is convertible¹³³ by the holder, by the issuer,¹³⁴ or otherwise by its terms of issue, into equity securities.¹³⁵ For the avoidance of doubt, this includes instruments that automatically convert into equity securities upon the occurrence of specified events.¹³⁶

Instruments styled as convertible notes, convertible bonds, convertible preference shares, performance shares¹³⁷ and options¹³⁸ will typically fall within the definition of “convertible security” in the Listing Rules.

With one exception, convertible securities are generally classified as equity securities for the purposes of the Listing Rules.¹³⁹ This applies whether they take the form of a convertible debt instrument (such as a convertible note or convertible bond)¹⁴⁰ or a convertible equity instrument (such as a convertible preference share, performance share or option). It also applies whether they convert into fully paid ordinary securities in the entity (as occurs in the vast majority of cases) or some other form of equity security.¹⁴¹

The one exception to this general rule is that ASX has decided that a security¹⁴² issued by an APRA-regulated entity that falls within the definition of “convertible security” in Listing 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.¹⁴³ 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,

¹³² ASX would point out that the treatment of convertible securities set out in section 5 of this Guidance Note and in examples 3 – 8 in Annexure A represents a change to its previous practices in relation to these matters.

¹³³ The term ‘convertible’ includes exercisable (see the definition of that term in Listing Rule 19.12).

¹³⁴ ASX prefers to describe a security that is convertible into equity securities at the option of the issuer as ‘transformable’ rather than ‘convertible’ (see Guidance Note 34 *Naming Conventions for Debt and Hybrid Securities*).

¹³⁵ See the definition of “convertible security” in Listing Rule 19.12.

¹³⁶ See the note to the definition of “convertible security” in Listing Rule 19.12. ASX prefers to describe a security that automatically converts into equity securities upon the occurrence of certain events as ‘converting’ rather than ‘convertible’ (see Guidance Note 34 *Naming Conventions for Debt and Hybrid Securities*).

¹³⁷ See Guidance Note 19 *Performance Securities*.

¹³⁸ See note [9296](#) above.

¹³⁹ See paragraph (f) of the definition of “equity security” in Listing Rule 19.12.

¹⁴⁰ Note also the definition of “convertible debt security” in Listing Rule 19.12 – an instrument that would be a debt security but for the fact that it is a convertible security.

¹⁴¹ See section 5.8 below for a discussion of the issues that can arise where convertible securities convert into something other than fully paid ordinary securities.

¹⁴² These types of securities are often referred to as “capital notes” or “Tier 2 capital notes”.

¹⁴³ As it is empowered to do under paragraph (h) of the definition of “equity security” in Listing Rule 19.12. This decision is confirmed in the note to the definition of “equity security” in that rule.

that the ratio of the entity's 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.

Subject to this one exception, since convertible securities are equity securities for the purposes of the Listing Rules, an issue of, or agreement to issue, convertible securities potentially triggers the restrictions on issuances of equity securities in Listing Rules 7.1 and 7.1A.

5.2 Calculating whether an issue of convertible securities falls within an entity's placement capacity

To work out whether an entity has the placement capacity to issue, or agree to issue, particular convertible securities under Listing Rule 7.1 or 7.1A.2, to "compare apples with apples", it is first necessary to translate those convertible securities to the number of fully paid ordinary securities they represent.

For these purposes, unless ASX determines otherwise, convertible securities are counted as the maximum number of fully paid ordinary securities into which they can be converted.¹⁴⁴ This applies no matter how likely or unlikely it is that the convertible security may or will convert into the underlying ordinary securities and no matter how far out into the future conversion may or will occur. In other words, there is no discount for uncertainty or for the time value of money.

Section 5.4 below has guidance on how to determine this maximum number.

5.3 How convertible securities are counted in variables C and E

If an entity has issued or agreed to issue convertible securities during the "relevant period", to work out the impact that has on variables C and E, and therefore its remaining placement capacity under Listing Rules 7.1 and 7.1A.2, to "compare apples with apples", it is first necessary to translate those convertible securities to the number of fully paid ordinary securities they represent.

For these purposes, unless ASX determines otherwise, convertible securities issued during the relevant period are counted as the maximum number of fully paid ordinary securities into which they can be converted.¹⁴⁵ Again, this applies no matter how likely or unlikely it is that the convertible security may or will convert into the underlying ordinary securities and no matter how far out into the future conversion may or will occur.

This maximum number is determined as at the relevant date that variables C and E are being calculated, not as at the date the convertible securities were originally issued or agreed to be issued. So, if the conversion formula has a variable in it (eg it is linked to the market value of the underlying security) and the maximum number of securities into which the convertible securities can convert has increased since their issue due to a change in the variable in the period up to the relevant date, it is the higher number applicable on the relevant date that must be used when calculating the available placement capacity under Listing Rules 7.1 and 7.1A.2, not the lower number that applied when they were issued. Conversely, if the maximum number of securities into which the convertible securities can convert has decreased since their issue due to a change in the variable in the period up to the relevant date, it is the lower number applicable on the relevant date that must be used when calculating the available placement capacity under Listing Rules 7.1 and 7.1A.2, not the higher number that applied when they were issued.¹⁴⁶

Section 5.4 below has guidance on how to determine this maximum number.

5.4 Determining the maximum number of securities that can be issued under a convertible security

Subject to the three exceptions mentioned below, in determining the maximum number of fully paid ordinary securities that can be issued upon the conversion of a convertible security, ASX will generally assume that any

¹⁴⁴ Listing Rule 7.1B.1(e). See also '2.8 [Calculating the number of securities being issued or agreed to be issued](#)~~Calculating the number of securities being issued or agreed to be issued~~'.

¹⁴⁵ Listing Rule 7.1B.1(e). See also '2.7 [Calculating variables C and E](#)~~Calculating variables C and E~~'.

¹⁴⁶ Example 6 in Annexure A illustrates the point.

conditions attached to the right of conversion have been, or will be, satisfied in full. This applies no matter how likely or unlikely it is that those conditions will in fact be satisfied.¹⁴⁷

The three exceptions to this general rule are:

- where a convertible security has normal anti-dilution provisions attached that simply protect the value of the holders' rights of conversion in the case of future share splits, capital restructures and the like – in working out the maximum number of underlying securities that can be issued under the terms of the convertible security, ASX will generally assume that these anti-dilution provisions will not be triggered over the term of the convertible security;
- where a convertible security gives the issuer the ability to capitalise unpaid interest, dividends or other distributions, either at its option or in certain specified circumstances – in working out the maximum number of underlying securities that can be issued under the terms of the convertible security, ASX will generally assume that interest, dividends or other distributions are paid as and when due and therefore no unpaid amounts will be capitalised;¹⁴⁸ and
- where the conversion rights attaching to a convertible security are only exercisable with security holder approval – that situation is addressed in section 5.6 below.

In many cases, the maximum number of ordinary securities into which a convertible security may or will convert is fixed in, or easily calculable by reference to, the terms of the convertible security.¹⁴⁹

It is not uncommon, however, for the number of equity securities into which a convertible security may or will convert to be linked to some measure of the market price of the underlying security (such as its VWAP over a specified period) or the value of a foreign currency at or near the date of conversion. In such cases, the inclusion of the market price or foreign currency variable in the conversion formula makes it impossible to determine, at the relevant date, the actual number of underlying securities that will be issued under the terms of the convertible security.

In these cases, ASX will generally¹⁵⁰ calculate the maximum number of underlying securities that can be issued under the terms of a convertible security assuming the security was being converted on the relevant date and applying the conversion formula accordingly.¹⁵¹

Occasionally, an entity may issue a convertible security that has alternative formulae for calculating the number of underlying securities into which it converts, depending on the circumstances. In that case, the maximum number of underlying securities that can be issued under the terms of a convertible security is to be calculated at the relevant date using whichever of the formulae will result in the highest number of underlying securities being issued.

Very occasionally, the conversion formula for a convertible security may include a variable unrelated to the market price of the underlying security or the value of a foreign currency. An example is where the conversion formula varies by reference to the amount of dividends or other distributions that the entity has paid over the term of the convertible security.

¹⁴⁷ Example 4 in Annexure A illustrates the point.

¹⁴⁸ If the issue of the convertible security has not been approved by security holders under Listing Rule 7.1 or 7.4 and equity securities are subsequently issued in lieu of interest, dividends or other distributions on the convertible security, the entity will need to have the available placement capacity under Listing Rules 7.1 and (if applicable) 7.1A.2 at the time the securities are issued or else the issue will need to be approved by security holders under Listing Rule 7.1.

¹⁴⁹ Example 5 in Annexure A illustrates the point.

¹⁵⁰ ASX may choose a different market price (such as its VWAP over an extended period) to calculate the maximum number of securities that can be issued under the terms of the convertible security if it suspects that the market price has been manipulated to achieve a more favourable calculation for the entity.

¹⁵¹ Examples 6, 7 and 8 in Annexure A illustrate ASX's approach.

If an entity is considering issuing a convertible security that converts by reference to a variable other than the market price of the underlying security or the value of a foreign currency, it should approach ASX at the earliest opportunity to determine how that security will be treated under Listing Rules 7.1 and, if relevant, 7.1A.2 and also whether it meets the requirements of Listing Rules 6.1 (the terms that apply to an equity security must, in ASX's opinion, be appropriate and equitable) and 12.5 (the entity must have a structure that is appropriate for a listed entity).¹⁵²

5.5 How Listing Rules 7.1 and 7.1A.2 apply to the conversion of convertible securities

If an issue of convertible securities complies with Listing Rules 7.1 or 7.1A – either because it falls within the entity's placement capacity at the date of issue or because the issue has been approved by the holders of its ordinary securities under Listing Rule 7.1 – then any subsequent issue of the underlying equity securities in accordance with the terms of issue of the convertible security will fall within Listing Rule 7.2 exception 9¹⁵³ and hence outside of Listing Rules 7.1 and 7.1A. It therefore will not require any further approval of security holders under those rules.¹⁵⁴

5.6 Conversion rights that are only exercisable with security holder approval

Listing Rule 7.2 exception 17 excludes from the restrictions in Listing Rules 7.1 and 7.1A an agreement to issue equity securities that is conditional on the holders of the entity's ordinary securities approving the issue before the issue is made.

Where a convertible security expressly provides that the right of conversion is not exercisable unless and until the holders of the entity's ordinary securities have approved the issue of the underlying securities, Listing Rule 7.2 exception 17 is attracted and the convertible security falls outside of the restrictions in Listing Rule 7.1. As a consequence, it can be issued without security holder approval under that rule and, when issued, will not count towards variable C in Listing Rule 7.1 or variable E in Listing Rule 7.1A.2.

If an entity relies on Listing Rule 7.2 exception 17 in this fashion, it must not issue the underlying equity securities without first obtaining the approval of the holders of its ordinary securities.¹⁵⁵ The entity must comply with the notice requirements in Listing Rule 7.3¹⁵⁶ in relation to the underlying securities. Among other things, absent a waiver from ASX,¹⁵⁷ this will require the conversion to ordinary securities to occur no later than 3 months after the date of the meeting approving the issue of the underlying securities.¹⁵⁸

For this reason, rather than including a Listing Rule 7.2 exception 17 condition in the convertible securities and seeking security holder approval subsequently for the issue of the underlying securities, it will generally be preferable for an entity either:

- to seek an upfront approval from its ordinary security holders under Listing Rule 7.1 to the issue of convertible securities; or

¹⁵² See '5.9 The application of Listing Rule 6.1 to convertible securities'.

¹⁵³ See '4.9 Exception 9 – conversion of convertible securities'.

¹⁵⁴ Note that the issue may require approval under Listing Rule 10.11 or 10.14 if it is made to a person and in circumstances covered by those rules.

¹⁵⁵ If the entity issues the underlying securities without obtaining security holder approval, it will breach the second sentence in Listing Rule 7.2 exception 17. If security holder approval is not given, the convertible security ceases to be convertible and effectively becomes a debt security that will need to be repaid in cash upon maturity.

¹⁵⁶ See '7.2 Specific disclosure requirements for resolutions under Listing Rule 7.1'.

¹⁵⁷ ASX may be prepared to grant a waiver to allow the underlying securities to be issued outside the 3 month time constraint in Listing Rule 7.3.4 but only where there is a clear and compelling commercial reason for the issue to be made at a later date and security holders are in a position to know with certainty the dilutive impact the issue will have and can therefore give a meaningful approval to the issue (see the text accompanying note 198~~199~~ below). If the conversion formula includes a variable component, this will generally require the imposition of a floor or ceiling on that variable (as applicable) so that the maximum number of underlying securities that can be issued upon conversion is known at the date of the meeting approving their issue.

¹⁵⁸ Listing Rule 7.3.4. Note however that if the securities are being issued to a related party or other person to whom Listing Rule 10.11 applies, they must be issued within 1 month of the date of the meeting approving the issue under that rule (Listing Rule 10.13.5).

- to have its ordinary security holders subsequently approve the issue of convertible securities under Listing Rule 7.4 (although, if it relies on this alternative, the entity will need to have the available capacity under Listing Rule 7.1 and 7.1A.2 to issue the convertible securities ahead of the approval).

Where the issue of convertible securities is approved upfront under Listing Rule 7.1 or subsequently under Listing Rule 7.4, the conversion of those securities will fall within Listing Rule 7.2 exception 9 and therefore require no further approvals under Listing Rules 7.1 or 7.1A, no matter when conversion occurs.¹⁵⁹ Additionally, when the underlying securities are issued upon conversion, they are expressly excluded from variable C in Listing Rule 7.1 and variable E in Listing Rule 7.1A.¹⁶⁰ and therefore have no ongoing effect on the entity's placement capacity under those rules.

5.7 Conversion rights that only apply where security holder approval is not required

ASX has in the past been approached by entities seeking to issue convertible securities on terms that the right of conversion cannot be exercised if it would require security holder approval and arguing that this effectively caps the right of conversion to an amount that will necessarily fall within its placement capacity under Listing Rule 7.1 and (if applicable¹⁶¹) Listing Rule 7.1A. ASX does not agree with this argument.

This type of term is qualitatively different to a condition that the right of conversion is not exercisable unless and until the holders of the ordinary securities have approved the issue. It therefore does not attract Listing Rule 7.2 exception 17 mentioned in section 5.6 above. Consequently, whether the issue can be made without security holder approval under Listing Rule 7.1 requires a determination, at the date that the entity issues or agrees to issue the convertible security, whether or not the maximum number of underlying equity securities into which the convertible security can be converted exceeds the formulae in Listing Rule 7.1 and (if applicable) Listing Rule 7.1A.2.

This determination becomes problematical if the convertible security has a term of more than 12 months. The entity's 15% placement capacity under Listing Rule 7.1 will be replenished at each 12 month anniversary of the issue of the convertible security. Its approval to have the extra 10% placement capacity available under Listing Rule 7.1A, if applicable, can also be renewed at each AGM. Accordingly, the cumulative number of underlying equity securities the entity could issue over the term of the convertible security might well exceed its placement capacity under Listing Rules 7.1 and 7.1A at the time of issue, even though the right of conversion is limited in a way that prevents this occurring at the point of each individual conversion.

ASX is likely to have other concerns with a convertible security issued on these terms, including:

- whether the entity has a structure that is appropriate for a listed entity, as required by Listing Rule 12.5;¹⁶²
- whether the terms that apply to the convertible security are appropriate and equitable, as required by Listing Rule 6.1;¹⁶³ and
- how Listing Rule 7.2 exceptions 9 and 16 operate in relation to the convertible security.¹⁶⁴

¹⁵⁹ See '4.9 Exception 9 – conversion of convertible securities'.

¹⁶⁰ Variables C and E expressly exclude issues under an exception in Listing Rule 7.2.

¹⁶¹ The entity would only be able to use its Listing Rule 7.1A.2 placement capacity to issue such a security if it was a class of security already quoted on ASX and the minimum pricing requirement was satisfied; see '3.5 [The entity must be issuing securities in an existing class of quoted securities](#)' and '3.6 [The consideration must be a cash amount not less than the prescribed minimum issue price](#)'.

¹⁶² Having these types of 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.

¹⁶³ See '5.9 The application of Listing Rule 6.1 to convertible securities'.

¹⁶⁴ See '4.9 Exception 9 – conversion of convertible securities' and '4.16 [Exception 16 – agreements to issue securities](#)'.

On the first two issues above, if the convertible security is able to be held by retail investors, ASX will be particularly concerned whether they will understand the intricacies of Listing Rules 7.1 and 7.1A and the possibility that they may be precluded from exercising their right to convert the securities if and to the extent that the entity no longer has any placement capacity under those rules.

5.8 Convertible securities that convert into other convertible securities

An issue of convertible securities that convert into other convertible securities rather than fully paid ordinary securities (such as options to acquire options,¹⁶⁵ options to acquire convertible notes and convertible notes that convert in whole or in part to options) can raise much wider issues under the Listing Rules than just Listing Rules 7.1 and 7.1A, including:

- whether the entity has a structure that is appropriate for a listed entity, as required by Listing Rule 12.5;¹⁶⁶
- whether the terms that apply to those securities are appropriate and equitable, as required by Listing Rule 6.1;¹⁶⁷
- whether the entity's capital structure is consistent with the policy underlying Listing Rule 7.16, which provides that a listed entity cannot have more options on issue than underlying securities; and
- how those securities will be treated for the purposes of variables C and E in Listing Rules 7.1 and 7.1A.2 and the consequential effect they will have on the entity's placement capacity for the next 12 months and beyond.

An entity that wishes to issue convertible securities that convert into other convertible securities rather than fully paid ordinary securities should discuss that proposal at the earliest opportunity with ASX to gauge its reaction. In an appropriate case, ASX may recommend that the entity obtain in-principle advice¹⁶⁸ on whether the securities are acceptable under the Listing Rules before it proceeds with the issue.

Generally speaking, if ASX allows an issue of convertible securities ("primary convertible securities") that convert into other convertible securities ("secondary convertible securities"), it will apply Listing Rules 7.1 and 7.1A on a look through basis – that is, it will assume that the primary convertible securities convert into the maximum number of secondary convertible securities that can be issued under the terms of the primary convertible securities, and then look to the maximum number of fully paid ordinary securities that can be issued upon conversion or exercise of the secondary convertible securities.

5.9 The application of Listing Rule 6.1 to convertible securities

As with all equity securities, convertible securities are subject to the general requirement in Listing Rule 6.1 that the terms that apply to them must, in ASX's opinion, be appropriate and equitable.¹⁶⁹

In assessing whether Listing Rule 6.1 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 these 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".

As has been noted previously, convertible securities that:

¹⁶⁵ Sometimes referred to as 'piggy back' options.

¹⁶⁶ Again, having these types of 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.

¹⁶⁷ See '5.9 The application of Listing Rule 6.1 to convertible securities'.

¹⁶⁸ See Guidance Note 17 *Waivers and In-Principle Advice*.

¹⁶⁹ This requirement applies regardless of whether the securities are quoted on ASX or not. It also applies regardless of whether the issue of securities has been or will be approved by security holders (eg under Listing Rule 7.1 or 10.11 or under item 7 of section 611 of the Corporations Act).

- convert by reference to a variable other than the market price of the underlying security or the value of a foreign currency;
- convert into other convertible securities rather than fully paid ordinary securities; or
- specify that the right of conversion cannot be exercised if it would require security holder approval under the Listing Rules,

are all likely to raise concerns under Listing Rule 6.1.

In some situations, ASX may also raise concerns under Listing Rule 6.1 if an entity proposes to issue a convertible security where the price at which it converts is determined by reference to the market price of the underlying securities at a future date or over a future period and there is no floor on the conversion price. This is especially so if the entity has a relatively low market capitalisation and its securities have a history of significant price volatility or of periods where they have suffered a sustained fall in market price. In such a case, there is a very real risk that the issue could be highly dilutive to existing security holders if the market price of the underlying securities falls substantially before the convertible securities are converted.

5.10 Seeking approval under Listing Rule 7.1 or 7.4 to an issue of convertible securities

A notice of meeting seeking approval to an issue of convertible securities under Listing Rule 7.1 or 7.4 must include the material terms of the convertible securities.¹⁷⁰ This should include:

- who can convert them;
- when they can be converted;
- any conditions that have to be met before they can be converted;
- the class of equity securities into which they convert;
- if they convert into something other than fully paid ordinary securities, a summary of the material terms of the underlying securities;
- the price at which they convert and the resulting number of underlying securities into which they convert; and
- if the price at which they convert is not fixed but determined by reference to a formula, a description of the formula and at least 3 worked examples showing how the formula will operate in practice under different assumptions.

On this last point, if the price at which the convertible securities convert is determined by the market price of the underlying securities at a future date or over a future period, the worked examples should show the number of underlying securities that would be issued at:

- the current market price (ie a market price at or shortly before the dispatch of the notice of meeting seeking approval to the issue which is representative of recent trading in the underlying security);
- twice the current market price; and
- half the current market price.

¹⁷⁰ Listing Rules 7.3.3 and 7.5.3.

If there is no floor on the conversion price, the notice must prominently disclose that fact and that the issue could be highly dilutive to existing security holders if the market price of the underlying securities falls substantially over the period from when the convertible securities are issued to when they are converted.

5.11 Convertible loans and other contractual obligations

Where an entity has borrowed funds on terms that allow the entity or the lender to require any amount due under the loan to be paid or repaid in the form of equity securities, such an arrangement constitutes an agreement to issue equity securities. It is therefore subject to Listing Rule 7.1 and can only be entered into without security holder approval if the entity has the available placement capacity under Listing Rules 7.1 and 7.1A.2 at the time the loan is entered into.

The same applies to any other contract where the entity or the counterparty can require any of the entity's contractual obligations to be satisfied by an issue of equity securities.

ASX treats these as being the equivalent of convertible securities and applies the same principles as above in relation to them.

6. The ratification of issues or agreements under Listing Rule 7.4

6.1 The ability to ratify an issue or agreement to issue securities

Listing Rule 7.4 provides that an issue of, or agreement to issue, securities made without approval under Listing Rule 7.1 is treated as having been made with approval for the purpose of Listing Rule 7.1 if:

- the issue or agreement did not breach Listing Rule 7.1; and
- the holders of the entity's ordinary securities subsequently approve the issue.

To comply with the first requirement above, the issue must have come within the entity's placement capacity under Listing Rules 7.1 and (if applicable) 7.1A at the time it was made or agreed to be made. It is not possible to ratify under Listing Rule 7.4 an issue of, or agreement to issue, securities that exceeded an entity's placement capacities under those rules.

6.2 The effect of ratification on variable A

Where an issue of fully paid ordinary securities is ratified under Listing Rule 7.4, those securities are immediately counted in variable A, effectively increasing the base level of fully paid ordinary securities on which the 15% and 10% placement capacities in Listing Rules 7.1 and 7.1A are calculated to that extent.

Similarly, where an agreement to issue fully paid ordinary securities is ratified under Listing Rule 7.4, once issued, those securities are immediately counted in variable A, again effectively increasing the base level of fully paid ordinary securities on which the 15% and 10% placement capacities in Listing Rules 7.1 and 7.1A are calculated to that extent.

6.3 The effect of ratification on variables C and E

Where an issue of, or agreement to issue, equity securities is ratified under Listing Rule 7.4, it is excluded from variables C and E in Listing Rules 7.1 and 7.1A.2, effectively replenishing the entity's placement capacity to that extent.¹⁷¹

¹⁷¹ Listing Rule 7.1B.1(e). See also '2.7 [Calculating variables C and E](#) ~~Calculating variables C and E~~'.

7. Requirements for notices of meeting

7.1 The type and terms of resolution required

The resolution required to approve an issue of securities under Listing Rule 7.1 or 7.4 is an ordinary resolution.¹⁷² The resolution required to approve a 7.1A mandate is a special resolution passed at the entity's AGM.¹⁷³

Listing Rules 7.1, 7.1A and 7.4 do not dictate the specific terms of the resolution required under those rules.

In case of Listing Rule 7.1 or 7.4, a resolution to the following effect will suffice:

"That the [*description of issue*] is approved under and for the purposes of Listing Rule [7.1/7.4]."

Generally there should be a separate resolution approving each relevant issue under Listing Rule 7.1 or 7.4. Combining multiple issues 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.¹⁷⁴

In the case of a resolution approving a 7.1A mandate, ASX considers that a resolution to the following effect will suffice:

"Resolved, as a special resolution, that [the entity] have the additional capacity to issue equity securities provided for in Listing Rule 7.1A."

7.2 Specific disclosure requirements for resolutions under Listing Rule 7.1

A notice of meeting proposing a resolution to approve an issue of, or an agreement to issue, equity securities under Listing Rule 7.1 must include a summary of Listing Rule 7.1 and what will happen if security holders give, or do not give, the approval sought under that rule.¹⁷⁵ This includes explaining the effect that giving the approval will have on the entity's ongoing capacity to issue equity securities without security holder approval under Listing Rule 7.1.¹⁷⁶

A summary along the following lines will suffice for these purposes:

"[*Name of entity*] [has entered into an agreement to/is proposing to] [*insert a description of the proposed issue of securities, defining it as the "Issue" (or something similar)*].

Broadly speaking, and subject to a number of exceptions, Listing Rule 7.1 limits the amount of equity securities that a listed [company/trust] can issue without the approval of its [shareholders/unitholders] over any 12 month period to 15% of the fully paid ordinary [shares/units] it had on issue at the start of that period.

[*If the Issue exceeds the 15% limit in Listing Rule 7.1A*] The Issue does not fall within any of these exceptions and exceeds the 15% limit in Listing Rule 7.1. It therefore requires the approval of [*name of entity*]'s [shareholders/unitholders] under Listing Rule 7.1.

Resolution [*nº*] seeks the required [shareholder/unitholder] approval to the Issue under and for the purposes of Listing Rule 7.1.

If resolution [*nº*] is passed, [*name of entity*] will be able to proceed with the Issue and [*outline the consequences that will follow*]. In addition, the Issue will be excluded from the calculation of the number of

¹⁷² Listing Rule 14.9.

¹⁷³ Listing Rule 7.1A.

¹⁷⁴ Pursuant to Listing Rules 15.1 and 15.1.4.

¹⁷⁵ Listing Rule 14.1A.

¹⁷⁶ See the note to Listing Rule 14.1A.

equity securities that *[name of entity]* can issue without [shareholder/unitholder] approval under Listing Rule 7.1.

If resolution *[nº]* is not passed, *[name of entity]* will not be able to proceed with the Issue and *[outline the consequences that will follow].*

[If the Issue does not exceed the 15% limit in Listing Rule 7.1A] The Issue does not fit within any of these exceptions. While the Issue does not exceed the 15% limit in Listing Rule 7.1 and can therefore be made without breaching that rule, *[name of entity]* wishes to retain as much flexibility as possible to issue additional equity securities into the future without having to obtain [shareholder/unitholder] approval under Listing Rule 7.1. To do this, *[name of entity]* is asking [shareholders/unitholders] to approve the Issue under Listing Rule 7.1 so that it does not use up any of the 15% limit on issuing equity securities without [shareholder/unitholder] approval set out in Listing Rule 7.1.

To this end, resolution *[nº]* seeks [shareholder/unitholder] approval to the Issue under and for the purposes of Listing Rule 7.1.

If resolution *[nº]* is passed, the Issue can proceed without using up any of *[name of entity]*'s 15% limit on issuing equity securities without [shareholder/unitholder] approval set out in Listing Rule 7.1.

If resolution *[nº]* is not passed, the Issue can still proceed but it will reduce, to that extent, *[name of entity]*'s capacity to issue equity securities without [shareholder/unitholder] approval under Listing Rule 7.1 for 12 months following the Issue.]”

A notice of meeting proposing a resolution to approve an issue of, or an agreement to issue, equity securities under Listing Rule 7.1 must also include:¹⁷⁷

- the names of the persons to whom the entity will issue the securities or the basis upon which those persons were or will be identified or selected.¹⁷⁸

In this regard, where an entity has already entered into an agreement with, or otherwise selected or identified, some or all of the investors who will participate in an issue of equity securities that requires approval under Listing Rule 7.1 and the identity of those investors is likely to be material to a decision by security holders to approve the issue, ASX will expect the notice seeking that approval to name those investors rather than describe how they were or will be identified or selected.¹⁷⁹

Again, in ASX's view, the identity of an investor is likely to be material for these purposes if they are:

- a related party of the entity;¹⁸⁰
- a member of the entity's key management personnel;
- a substantial holder in the entity;
- an adviser to the entity; or

¹⁷⁷ An approval of security holders is not effective under the Listing Rules unless the notice of meeting includes everything that the Listing Rules require it to include: Listing Rule 14.6.

¹⁷⁸ Listing Rule 7.3.1. In the case of an issue under a reverse takeover or prescribed transaction where the entity is acquiring securities in another body, it is sufficient to describe the class or classes of security holders in the ~~reverse takeover target~~ other body who will be issued securities in the entity (see the note to Listing Rule 7.3.1).

¹⁷⁹ It is acceptable for an entity to name those investors whose identity is likely to be material to a decision by security holders to approve the issue and to describe the basis on which other investors will be identified or selected to participate in the issue.

¹⁸⁰ Noting that if the investor is a related party, any issue of, or agreement to issue, equity securities to them will require a separate security holder approval under Listing Rule 10.11 unless the issue or agreement falls within an exception in Listing Rule 10.12.

- an associate of any of the above,
and they are being issued more than 1% of the entity's current issued capital;
- the number¹⁸¹ and class of the securities the entity will issue;¹⁸²
- if the securities are not fully paid ordinary securities, a summary of the material terms¹⁸³ of the securities;¹⁸⁴
- the date or dates on or by which the entity will issue the securities – this must be:
 - ~~if the securities are being issued under, or to fund, a reverse takeover, no later than 6 months after the date of the meeting;~~
 - ~~if the securities are being issued under, or to fund,~~ or a prescribed transaction, no later than 12 months after the date of the meeting;
 - if court approval of a reorganisation of capital (in the case of a trust, interests) is required before the issue, no later than 3 months after the date of the court approval; or
 - otherwise, no later than 3 months after the date of the meeting;¹⁸⁵
- the price¹⁸⁶ or other consideration the entity will receive for the issue;¹⁸⁷
- the purpose of the issue, including the intended use of any funds raised by the issue;¹⁸⁸
- if the securities are being issued under an agreement, a summary of any other material terms of the agreement;¹⁸⁹
- if the securities are being issued under, or to fund, a reverse takeover or prescribed transaction, information about the reverse takeover or prescribed transaction;¹⁹⁰ and
- a voting exclusion statement that precludes:
 - where the resolution relates to a proposed issue under a reverse takeover or prescribed transaction, ~~the target~~ where the entity is acquiring (or increasing its proportionate interest in) securities in another body, the other body and any person who will obtain a material benefit as a result of the reverse takeover, prescribed transaction or the proposed issue (except a benefit solely by reason of being the holder of ordinary securities in the entity or the ~~target~~ other body);

¹⁸¹ Where the number of securities to be issued is not fixed, this may be expressed as a maximum number or as a formula (see the note to Listing Rule 7.3.2). In the latter case, it may be appropriate for the entity to include some worked examples in the notice of meeting to show how the formula will operate in practice under different assumptions.

¹⁸² Listing Rule 7.3.2.

¹⁸³ See also '5.10 Seeking approval under Listing Rule 7.1 or 7.4 to an issue of convertible securities' for the information that should be disclosed in the notice of meeting about the material terms of a convertible security.

¹⁸⁴ Listing Rule 7.3.3.

¹⁸⁵ Listing Rule 7.3.4. Note that if the securities are being issued to a related party or other person to whom Listing Rule 10.11 applies, they must be issued within 1 month of the date of the meeting approving the issue under that rule (Listing Rule 10.13.5).

¹⁸⁶ Where the price at which the securities are to be issued is not fixed, this may be expressed as a minimum amount or as a formula (see the note to Listing Rule 7.3.5). In the latter case, it may be appropriate for the entity to include some worked examples in the notice of meeting to show how the formula will operate in practice under different assumptions.

¹⁸⁷ Listing Rule 7.3.5.

¹⁸⁸ Listing Rule 7.3.6.

¹⁸⁹ Listing Rule 7.3.7.

¹⁹⁰ Listing Rule 7.3.8.

- where the resolution relates to a proposed issue to fund a reverse takeover or prescribed transaction, ~~the target~~ where the entity is acquiring (or increasing its proportionate interest in) securities in another body, the other body, the other body, any person who is expected to participate in the proposed issue, and any person who will obtain a material benefit as a result of the reverse takeover, prescribed transaction or the proposed issue (except a benefit solely by reason of being the holder of ordinary securities in the entity or the ~~target~~ other body); and
- in any other case, any persons who are expected to participate in, or who will obtain a material benefit as a result of, the proposed issue (except a benefit solely by reason of being the holder of ordinary securities in the entity),

and their associates from voting in favour of the Listing Rule 7.1 resolution.¹⁹¹

This information may be given in the notice itself or in an accompanying explanatory memorandum to security holders.¹⁹²

This information must be set out with reasonable particularity. ASX will not accept a notice that seeks an approval in gross under Listing Rule 7.1 to allow an issue to be made on such terms as the entity or its board may decide. Nor will it accept something that is the practical equivalent, such as a resolution that seeks approval to an issue of an indeterminate number of securities¹⁹³ across a broad price range.¹⁹⁴

ASX understands that entities seeking an approval under Listing Rule 7.1 to issue securities by way of a bookbuild or similar process will not be able to specify a fixed issue price and also may not be able to specify a fixed number of securities to be issued in their Listing Rule 7.1 resolution. Of necessity, they will need to specify a minimum issue price and possibly also a maximum number of securities to be issued. However, ASX expects the minimum issue price¹⁹⁵ and, where applicable the maximum number of securities to be issued,¹⁹⁶ to be expressed within a commercially reasonable range.

The requirement for reasonable particularity extends to the requirement mentioned above to state the names of the persons to whom the entity will issue the securities or the basis upon which those persons will be identified or selected. In this regard, it is not sufficient to say, in relation to an offer or placement of securities, that the securities will be offered or issued to unnamed “sophisticated and professional investors”, without more. The entity must explain how those investors will be identified or selected. For example, if the entity is using a lead manager or broker to assist in the offer or placement, it should identify the lead manager/broker and explain (briefly) the lead manager/broker’s process for identifying or selecting prospective investors. If the entity is not using a lead manager/broker to assist with the offer or placement, the entity should explain its process for identifying or selecting prospective investors.

The intended use of the funds raised by an issue is also important information that security holders need to determine whether or not they should approve the issue under Listing Rule 7.1. Accordingly, the statement in the notice of meeting on this matter should be reasonably detailed and specific. A brief and uninformative statement such as “the entity intends to use the funds raised as additional working capital” is not sufficient, save where the entity genuinely has no specific purpose in mind for the use of the funds and it clearly states that fact in its notice

¹⁹¹ Listing Rules 7.3.9 and 14.11.1. See also ‘7.7 Voting exclusions’.

¹⁹² Listing Rule 14.1.

¹⁹³ For example, an issue of “up to X securities” or “between X and Y securities”.

¹⁹⁴ For example, an issue of securities at a price “between \$X and \$Y” or at a price “no less than \$X”, or at discount to the prevailing market price of “up to X%”, where that allows a potentially wide range of prices.

¹⁹⁵ For the avoidance of doubt, this includes a minimum issue price expressed within a range (eg “between \$X and \$Y”, at a price “no less than \$X” or at discount to the prevailing market price of “up to X%”), provided the range is commercially reasonable.

¹⁹⁶ Again, for the avoidance of doubt, this includes a maximum number of securities expressed within a range (eg “up to X securities” or “between X and Y securities”), provided the range is commercially reasonable.

of meeting. Likewise a statement that “the entity intends to use the funds for future investments” is not sufficient if the entity has a specific investment or investments in mind for which it will be using the funds.

If ASX finds that an entity has not been forthright in its disclosures about the intended recipients of securities or the intended use of funds in the notice of meeting approving an issue under Listing Rule 7.1, ASX will give careful consideration to whether or not the approval was effective for the purposes of the Listing Rules.¹⁹⁷

ASX is sometimes approached for a waiver to allow an entity to issue securities at a date outside of the time constraint mentioned above. This constraint is designed to strike a balance between giving entities the time practically necessary to complete an issue of equity securities, and ensuring that the securities are issued within a reasonable time frame after security holder approval so that the approval can still be considered to be current and not rendered stale by subsequent events. ASX will generally only grant such a waiver where there is a clear and compelling commercial reason for the issue to be made at a later date¹⁹⁸ and security holders are in a position to know with certainty the dilutive impact the issue will have and can therefore give a meaningful approval to the issue. In the case of convertible securities, this may require the imposition of a floor price in the conversion formula so that the maximum dilutive impact can be determined at the date of the meeting approving their issue.

Otherwise ASX expects entities to arrange the date on which they seek approval to an issue under Listing Rule 7.1 to comply with the time constraint mentioned above and, if for any reason the issue is not completed within that timeframe following the approval, to seek a fresh approval under that rule.

7.3 Specific disclosure requirements for resolutions under Listing Rule 7.1A

A notice of meeting proposing a resolution to approve a 7.1A mandate must include a summary of Listing Rule 7.1A and what will happen if security holders give, or do not give, the approval sought under that rule.¹⁹⁹

A summary along the following lines will suffice for these purposes:

“Broadly speaking, and subject to a number of exceptions, Listing Rule 7.1 limits the amount of equity securities that a listed [company/trust] can issue without the approval of its [shareholders/unitholders] over any 12 month period to 15% of the fully paid ordinary securities it had on issue at the start of that period.

Under Listing Rule 7.1A, however, an eligible entity can seek approval from its members, by way of a special resolution passed at its annual general meeting, to increase this 15% limit by an extra 10% to 25%.

An ‘eligible entity’ means an entity which is not included in the S&P/ASX 300 Index and which has a market capitalisation of \$300 million or less. [Name of entity] is an eligible entity for these purposes.

Resolution [n°] seeks [shareholder/unitholder] approval by way of special resolution for [name of entity] to have the additional 10% capacity provided for in Listing Rule 7.1A to issue equity securities without [shareholder/unitholder] approval.

If resolution [n°] is passed, [name of entity] will be able to issue equity securities up to the combined 25% limit in Listing Rules 7.1 and 7.1A without any further [shareholder/unitholder] approval.

If resolution [n°] is not passed, [name of entity] will not be able to access the additional 10% capacity ~~to issue equity securities~~ to issue equity securities without [shareholder/unitholder] provided for in Listing

¹⁹⁷ An approval of security holders is not effective under the Listing Rules unless the notice of meeting includes everything that the Listing Rules require it to include: Listing Rule 14.6.

¹⁹⁸ An example would be “deferred consideration securities”, that is, securities issued by an entity in consideration for an acquisition of an asset or undertaking where a future tranche of securities will be issued outside of the applicable time period mentioned in Listing Rule 7.3.4 if certain performance thresholds or other criteria are met.

¹⁹⁹ Listing Rule 14.1A.

Rule 7.1A and will remain subject to the 15% limit on issuing equity securities without [shareholder/unitholder] approval set out in Listing Rule 7.1.”

A notice of meeting proposing a resolution to approve a 7.1A mandate must also include:²⁰⁰

- a statement of the period for which the mandate will be valid (as set out in Listing Rule 7.1A.1);²⁰¹
- a statement of the minimum price at which the equity securities may be issued under the mandate (as set out in Listing Rule 7.1A.3);²⁰²
- a statement of the purposes for which the funds raised by an issue of equity securities under the mandate may be used;²⁰³
- a statement of the risk of economic and voting dilution of existing ordinary security holders that may result from an issue of equity securities under the mandate, including the risk that:
 - the market price for equity securities in that class may be significantly lower on the issue date than on the date the 7.1A mandate was approved; and
 - the equity securities may be issued at a price that is at a discount to the market price for those equity securities on the issue date,

which is accompanied by a table describing the potential dilution of existing ordinary security holders on the basis of at least three different assumed issue prices and values for variable A in Listing Rule 7.1A.2, including at least one example that assumes that A is double the number of fully paid ordinary securities on issue at the time of the approval under Listing Rule 7.1A and that the price of fully paid ordinary securities has fallen by at least 50%;²⁰⁴

- details of the entity's allocation policy for issues under the mandate;²⁰⁵
- if the entity has issued or agreed to issue any equity securities under Listing Rule 7.1A.2 in the 12 months preceding the date of the AGM:
 - the total number of equity securities issued or agreed to be issued under Listing Rule 7.1A.2 in that 12 month period and the percentage they represent of the total number of equity securities on issue at the commencement of that 12 month period; and
 - for each such issue:
 - the names of the persons to whom the entity issued or agreed to issue the securities or the basis on which those persons were identified or selected.

In this regard, where the identity of a person to whom the entity has in the past 12 months issued or agreed to issue securities under Listing Rule 7.1A.2 is likely to be material to a

²⁰⁰ An approval of security holders is not effective under the Listing Rules unless the notice of meeting includes everything that the Listing Rules require it to include: Listing Rule 14.6.

²⁰¹ Listing Rule 7.3A.1.

²⁰² Listing Rule 7.3A.2.

²⁰³ Listing Rule 7.3A.3.

²⁰⁴ Listing Rule 7.3A.4. Generally, ASX would expect one of the examples in the table to assume that A is the current number of fully paid ordinary securities on issue, and that the price of fully paid ordinary securities is their prevailing market price, at or around the time the notice of AGM is being finalised, and the third example to be a mid-point between the other two examples.

²⁰⁵ Listing Rule 7.3A.5.

decision by investors to approve a 7.1A mandate, the notice seeking that approval should name the person rather than describe how they were identified or selected.

Again, in ASX's view, the identity of such a person is likely to be material for these purposes if they are:

- a related party of the entity;²⁰⁶
- a member of key management personnel;
- a substantial holder in the entity;
- an adviser to the entity; or
- an associate of any of the above,

and the securities issued or agreed to be issued to them constituted more than 1% of the entity's issued capital at the time of the issue or agreement;

- the number and class of equity securities issued or agreed to be issued;
- the price at which the equity securities were issued or agreed to be issued and the discount (if any) that the issue price represented to closing market price on the date of issue or agreement; and
- the total cash consideration received or to be received by the entity, the amount of that cash that has been spent, what it was spent on, and what is the intended use for the remaining amount of that cash (if any),

and, if the entity has agreed before that 12 month period to issue any equity securities under Listing Rule 7.1A.2 but as at the date of the meeting not yet issued those equity securities, a statement giving all material details of that agreement and an explanation why the equity securities have not yet been issued.²⁰⁷ and

- if at the time of dispatching the notice the entity is proposing to make an issue of equity securities under the mandate, a voting exclusion statement that precludes any persons who are expected to participate in, or who will obtain a material benefit as a result of, the proposed issue (except a benefit solely by reason of being the holder of ordinary securities in the entity) and their associates from voting on the Listing ~~Rule~~Rule 7.1A resolution.²⁰⁸

Again, this information may be given in the notice itself or in an accompanying explanatory memorandum to security holders.²⁰⁹

If at the time the entity is preparing its notice of AGM, its market capitalisation is close to \$300 million or it is close to inclusion in the S&P/ASX 300 Index, it would also be prudent for the notice to state that if on the date of the AGM its market capitalisation exceeds \$300 million or it has been included in the S&P/ASX 300 Index, then the resolution for the 7.1A mandate will no longer be effective and will be withdrawn.

Again, the purposes for which the funds raised by an issue of equity securities under a 7.1A mandate may be used is important information that security holders need to determine whether or not they should approve the mandate.

²⁰⁶ Noting again that if the investor is a related party, any issue of, or agreement to issue, equity securities to them will require a separate security holder approval under Listing Rule 10.11 unless the issue or agreement falls within an exception in Listing Rule 10.12.

²⁰⁷ Listing Rule 7.3A.6.

²⁰⁸ Listing Rule 7.3A.7 and 14.11.1. See also '7.7 Voting exclusions'.

²⁰⁹ Listing Rule 14.1.

However, as a 7.1A mandate is intended to cover prospective issues for up to 12 months after the date of the AGM, ASX understands that the entity may not be able to be as specific on this matter as it can be in relation to issues being approved under Listing Rule 7.1 or 7.4.

If ASX finds that an entity has not been forthright in its disclosures about the intended use of funds in the notice of meeting approving a 7.1A mandate, ASX will give careful consideration to whether or not the approval was effective for the purposes of the Listing Rules.²¹⁰

The requirement for the notice to disclose the entity's allocation policy for issues of securities under the 7.1A mandate differs from the corresponding requirement for notices approving an issue under Listing Rule 7.1 or 7.4 to disclose the names of the persons who were or will be issued securities or the basis upon which those persons were or will be identified or selected. This difference recognises that an issue under a 7.1A mandate may take place up to 12 months after the date of the AGM and there is likely to be a greater degree of uncertainty about whether an issue of securities will ultimately be made, and if so, to whom.

The disclosure of the allocation policy should address the question of how the entity intends to decide who to offer securities to under its 7.1A mandate in as much detail as is reasonably practicable in the circumstances, taking into account:

- the entity's intentions to raise funds during the period of the mandate;
- the number of issues it intends to make under the mandate and the time frame over which they will be made;
- whether the entity has any specific intentions in relation to parties that it may approach to participate in an issue of securities under the mandate; and
- whether the entity has formed an intention to offer securities under the mandate to existing security holders, or to a class or group of existing security holders, or whether, alternatively, it has formed an intention to offer the securities exclusively to new investors who have not previously been security holders of the entity.

The entity will be required when it announces a proposed issue of equity securities under Listing Rule 7.1A to disclose in its Appendix 3B why it has chosen to undertake that particular form of issue rather than a pro rata issue or other type of issue in which existing ordinary security holders would have been eligible to participate. In light of this, the entity may wish to set out as part of its allocation policy whether or not it intends to give consideration before making any issue of securities under its 7.1A mandate to whether the issue could be carried out by means of a pro rata offer, a placement and a pro rata offer, or a placement and an offer under an SPP.

7.4 Specific disclosure requirements for resolutions under Listing Rule 7.4

A notice of meeting proposing a resolution to ratify an issue of, or agreement to issue, equity securities under Listing Rule 7.4 must include a summary of Listing Rule 7.4 and what will happen if security holders give, or do not give, the approval sought under that rule.²¹¹ This includes explaining the effect that giving the approval will have on the entity's ongoing capacity to issue equity securities without security holder approval under Listing Rule 7.1.²¹²

A summary along the following lines will suffice for these purposes:

“On [date] (“Issue Date”), [name of entity] [entered into an agreement to issue/issued] [insert a description of the agreement or issue, defining it as the “Issue” (or something similar)].

²¹⁰ See note 197²⁰⁵ above and accompanying text.

²¹¹ Listing Rule 14.1A.

²¹² See the note to Listing Rule 14.1A.

Broadly speaking, and subject to a number of exceptions, Listing Rule 7.1 limits the amount of equity securities that a listed [company/trust] can issue without the approval of its [shareholders/unitholders] over any 12 month period to 15% of the fully paid ordinary securities it had on issue at the start of that period.

The Issue does not fit within any of these exceptions and, as it has not yet been approved by [name of entity]'s [shareholders/unitholders], it effectively uses up part of the 15% limit in Listing Rule 7.1, reducing [name of entity]'s capacity to issue further equity securities without [shareholder/unitholder] approval under Listing Rule 7.1 for the 12 month period following the Issue Date.

Listing Rule 7.4 allows the [shareholders/unitholders] of a listed [company/trust] to approve an issue of equity securities after it has been made or agreed to be made. If they do, the issue is taken to have been approved under Listing Rule 7.1 and so does not reduce the [company's/trust's] capacity to issue further equity securities without [shareholder/unitholder] approval under that rule.

[Name of entity] wishes to retain as much flexibility as possible to issue additional equity securities into the future without having to obtain [shareholder/unitholder] approval for such issues under Listing Rule 7.1.

To this end, resolution [n°] seeks [shareholder/unitholder] approval to the Issue under and for the purposes of Listing Rule 7.4.

If resolution [n°] is passed, the Issue will be excluded in calculating [name of entity]'s 15% limit²¹³ in Listing Rule 7.1, effectively increasing the number of equity securities it can issue without [shareholder/unitholder] approval over the 12 month period following the Issue Date.

If resolution [n°] is not passed, the Issue will be included in calculating [name of entity]'s 15% limit²¹⁴ in Listing Rule 7.1, effectively decreasing the number of equity securities it can issue without [shareholder/unitholder] approval over the 12 month period following the Issue Date.]”

A notice of meeting proposing a resolution to ratify an issue of, or agreement to issue, equity securities under Listing Rule 7.4 must also include:²¹⁵

- the names of the persons to whom the entity issued or agreed to issue the securities or the basis on which those persons were identified or selected;²¹⁶
- the number²¹⁷ and class of securities the entity issued or agreed to issue;²¹⁸
- if the securities are not fully paid ordinary securities, a summary of the material terms²¹⁹ of the securities;²²⁰

²¹³ This ~~paragraph~~ paragraph may need adjustment if the entity has a current 7.1A mandate and therefore is subject to a combined 25% limit on issuing equity securities without shareholder or unitholder approval.

²¹⁴ Again, this ~~paragraph~~ paragraph may need adjustment if the entity has a current 7.1A mandate and therefore is subject to a combined 25% limit on issuing equity securities without shareholder or unitholder approval.

²¹⁵ An approval of security holders is not effective under the Listing Rules unless the notice of meeting includes everything that the Listing Rules require it to include: Listing Rule 14.6.

²¹⁶ Listing Rule 7.5.1.

²¹⁷ Where the securities have not yet been issued and the number of securities to be issued is not fixed, this may be expressed as a maximum number or as a formula (see the note to Listing Rule 7.5.2). In the latter case, it may be appropriate for the entity to include some worked examples in the notice of meeting to show how the formula will operate in practice under different assumptions.

²¹⁸ Listing Rule 7.5.2.

²¹⁹ See also ‘5.10 Seeking approval under Listing Rule 7.1 or 7.4 to an issue of convertible securities’ for the information that should be disclosed in the notice of meeting about the material terms of a convertible security.

²²⁰ Listing Rule 7.5.3.

- the date or dates on which the securities were or will be issued – if the securities have not yet been issued, the date of issue must be no later than 3 months after the date of the meeting;²²¹
- the price²²² or other consideration the entity has received or will receive for the issue;²²³
- the purpose of the issue, including the use or intended use of any funds raised by the issue;²²⁴
- if the securities were or will be issued under an agreement, a summary of any other material terms of the agreement;²²⁵ and
- a voting exclusion statement that precludes any persons who participated in the issue being ratified and their associates from voting on the Listing Rule 7.4 resolution.²²⁶

Again, this information may be given in the notice itself or in an accompanying explanatory memorandum to security holders.²²⁷

The identity of the intended recipients of securities and the use or intended use of the funds raised by the issue again are important pieces of information that security holders need to determine whether or not they should approve an issue of securities under Listing Rule 7.4. The guidance given on these points in section 7.2 above in relation to approvals under Listing Rule 7.1 applies with equal force to approvals under Listing Rule 7.4.²²⁸

Hence, where an entity seeks approval under Listing Rule 7.4 to an issue or agreement to issue securities and the identity of a person to whom the entity has issued or agreed to issue the securities is likely to be material to a decision by security holders to approve the issue, ASX will expect the notice seeking that approval to name those persons rather than describe how they were identified or selected.

Again, in ASX's view, the identity of an investor is likely to be material for these purposes if they are:

- a related party of the entity;²²⁹
- a member of the entity's key management personnel;
- a substantial holder in the entity;
- an adviser to the entity; or
- an associate of any of the above,

and they are being issued more than 1% of the entity's current issued capital.

²²¹ Listing Rule 7.5.4. ASX may be prepared to grant a waiver to allow an issue of securities outside this 3 month time constraint but only where there is a clear and compelling commercial reason for the issue to be made at a later date and security holders are in a position to know with certainty the dilutive impact the issue will have and can therefore give a meaningful approval to the issue: see the text accompanying note [198206](#) above.

²²² Where the securities have not yet been issued and the price at which the securities are to be issued is not fixed, this may be expressed as a minimum amount or as a formula (see the note to Listing Rule 7.5.5). In the latter case, it may be appropriate for the entity to include some worked examples in the notice of meeting to show how the formula will operate in practice under different assumptions.

²²³ Listing Rule 7.5.5.

²²⁴ Listing Rule 7.5.6.

²²⁵ Listing Rule 7.5.7.

²²⁶ Listing Rule 7.5.8. See also '7.7 Voting exclusions'.

²²⁷ Listing Rule 14.1.

²²⁸ See note [197205](#) above and accompanying text.

²²⁹ Noting that if the investor is a related party, any issue of, or agreement to issue, equity securities to them will require a separate security holder approval under Listing Rule 10.11 unless the issue or agreement falls within an exception in Listing Rule 10.12.

7.5 General disclosure requirements for a notice of meeting

As a matter of general law, a notice of meeting proposing a resolution under Listing Rule 7.1, 7.1A or 7.4 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 judgment on those matters.²³⁰ In some cases, this may require the entity to disclose additional information over and above that specifically required under the Listing Rules summarised in sections 7.2, 7.3 and 7.4 above.

For instance, where the notice relates to a resolution under Listing Rule 7.1 to approve an issue under, or to fund, a reverse takeover, ASX would expect the notice to include a reasonable level of information about the reverse takeover. Typically, this should include:

- the identity of the reverse takeover target;
- a summary of the reverse takeover target's principal activities and the jurisdictions in which it operates;
- a description of the reverse takeover target's business model, including any key dependencies and key risks;
- a copy of the reverse takeover target's most recent audited accounts or a link to where they can be viewed and downloaded;
- the consideration payable by the entity to security holders of the reverse takeover target;
- details of any regulatory approvals or waivers required or other material conditions that must be satisfied for the reverse takeover to proceed;
- information about the likely effect of the proposed issue and the reverse takeover on the entity, including its consolidated total assets, total equity interests, annual revenue, annual expenditure and annual profit before tax;
- a capital table showing the issued capital of the entity before and after the reverse takeover;
- if the entity is proposing to issue securities to raise funds in connection with the reverse takeover, the following information about the issue:
 - the nature of the issue (eg placement, pro rata offer or public offer pursuant to a prospectus, PDS or information memorandum);
 - the amount proposed to be raised by the issue;
 - any minimum subscription proposed; and
 - whether the issue will be underwritten and if so:
 - the name of the underwriter(s),
 - the extent of the underwriting;
 - the fee, commission or other consideration payable to the underwriter(s); and
 - a summary of the significant events that could lead to the underwriting being terminated;

²³⁰ See *Bulfin v Bebarfalds Ltd* (1938) 38 SR (NSW) 423 and *Chequepoint Securities Ltd v Claremont Petroleum NL* (1986) 11 ACLR 94.

- details of any person who will acquire control²³¹ of, or voting power²³² of 20% or more in, the entity as a result of the reverse takeover;
- if any changes are proposed to the entity's board or senior management, details of those changes; and
- the timetable for implementing the transaction including, if it has not already occurred, the timing for dispatch of the bidder's statement or scheme booklet to target security holders.

ASX notes that the bid or scheme documents provided to target security holders in a reverse takeover would typically include disclosures substantially equivalent to those set out above. Where the notice of meeting seeking bidder security holder approval under Listing Rule 7.1 is sent at the same time as, or after, the bid or scheme documents are sent to target security holders, the notice of meeting can, and should, include substantially equivalent disclosures to those made to the target security holders.

In some cases, bidder security holder approval may need to be sought before the bid or scheme documents for target security holders are finalised. In these cases, ASX will carefully monitor the disclosures made in the notice of meeting to ensure they satisfy the requirements above. If subsequently the bid or scheme documents provided to target security holders disclose materially new or different information that would have been relevant to a decision on how to vote on the Listing Rule 7.1 resolution, ASX may require an updated notice of meeting to be set to security holders or, if the resolution has already been passed, a fresh security holder approval to be obtained.²³³

7.6 The requirement to give a draft notice to ASX for review

Before a listed entity sends out a notice of meeting that includes a resolution under Listing Rule 7.1, 7.1A or 7.4, it must give ASX a copy of the draft notice for review. It must not finalise the notice until ASX tells it that ASX does not object to it.

ASX may object to a draft notice of meeting if it appears to ASX that:

- it does not include the information required under the Listing Rules summarised in sections 7.2, 7.3 and 7.4 above (as applicable);
- the draft notice does not satisfy the general law disclosure obligation mentioned in section 7.5 above;
- it does not include the required voting exclusion statement or the voting exclusion statement it includes is incorrectly worded or insufficiently clear;
- in the case of a notice including a resolution approving an issue of securities under Listing Rule 7.1 or 7.4, the entity is trying to include multiple issues within the one approval resolution;²³⁴ or
- in the case of a notice for an AGM seeking a 7.1A mandate, the entity is not an "eligible entity".

Where a larger entity is proposing to seek a 7.1A mandate at its AGM, to substantiate that it is an "eligible entity", the entity should include with the draft notice for the AGM it gives to ASX for review a detailed calculation demonstrating that its market capitalisation at the time is less than \$300 million and confirmation that it has checked and it is not included in the S&P/ASX 300 Index.

²³¹ As defined in the Corporations Act.

²³² As defined in the Corporations Act.

²³³ Under Listing Rules 14.6 and 18.8.

²³⁴ Including multiple issues within the one approval resolution can be coercive. Security holders should be given the opportunity to approve each issue separately. For these purposes, an issue of securities on the same terms and conditions to multiple investors is regarded as one issue and not multiple issues.

7.7 Voting exclusions

A notice of meeting proposing a resolution to approve an issue or agreement to issue securities under Listing Rule 7.1 or 7.4 must include a voting exclusion statement in all cases.²³⁵

A notice of meeting proposing a resolution approving a 7.1A mandate must include a voting exclusion statement if at the time of dispatching the notice the entity is proposing to make an issue of equity securities under the mandate.²³⁶

A voting exclusion statement 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 associate²³⁷ of an excluded person, save where it is cast by:

- a person as proxy or attorney for another 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 they are not excluded from voting, and are 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 (Listing Rule 14.11).²³⁸

In the case of a resolution under Listing Rule 7.1, the excluded persons are:

- where the resolution relates to a proposed issue under a reverse takeover ~~—the reverse takeover target~~ or prescribed transaction where the entity is acquiring (or increasing its proportionate interest in) securities in another body – the other body and any person who will obtain a material benefit as a result of the reverse takeover, prescribed transaction or the proposed issue (except a benefit solely by reason of being the holder of ordinary securities in the entity or the ~~reverse takeover target~~ other body);²³⁹
- where the resolution relates to a proposed issue to fund a reverse takeover ~~—or prescribed transaction where the reverse takeover target~~ entity is acquiring (or increasing its proportionate interest in) securities in another body – the other body, any person who is expected to participate in the proposed issue, and any person who will obtain a material benefit as a result of the reverse takeover, prescribed transaction or the proposed issue (except a benefit solely by reason of being the holder of ordinary securities in the entity or the ~~reverse takeover target~~ other person);²⁴⁰ and

²³⁵ See Listing Rules 7.3.9 and 7.5.8 and the table in Listing Rule 14.11.1.

²³⁶ See Listing Rule 7.3A.7 and the table in Listing Rule 14.11.1.

²³⁷ Guidance Note 35 *Security Holder Resolutions* has guidance on who is an associate of an excluded person for these purposes.

²³⁸ See Listing Rules 14.11 and 14.11.1.

²³⁹ The voting exclusion generally would not prevent a person making a bid for the bidder or a competing bid for the ~~reverse takeover target~~ other body from voting on the resolution to approve the reverse takeover or prescribed transaction since typically they will not obtain a material benefit as a result of the reverse takeover, prescribed transaction or proposed issue (other than possibly as a holder of securities in the bidder or the ~~reverse takeover target~~ other body). More likely than not, it will be to their benefit if the reverse takeover or prescribed transaction does not proceed.

²⁴⁰ Again, the voting exclusion generally would not prevent a person making a bid for the bidder or a competing bid for the ~~reverse takeover target~~ other body from voting on the resolution to approve an issue to fund the reverse takeover ~~— or prescribed transaction~~. See note ~~240~~ 239 ~~243~~ above.

- in any other case – any person who is expected to participate in, or who will obtain a material benefit as a result of, the proposed issue (except a benefit solely by reason of being the holder of ordinary securities in the entity).

In the case of a resolution approving a 7.1A mandate, the excluded persons are any persons who are expected to participate in, or who will obtain a material benefit as a result of, the proposed issue (except a benefit solely by reason of being the holder of ordinary securities in the entity).

In the case of a resolution under Listing Rule 7.4, the excluded persons are any persons who participated in the issue or are a party to the agreement being ratified.

For the purposes of the voting exclusion that applies to Listing Rules 7.1 and 7.1A, ASX considers a “material benefit” to be one that is likely to induce the recipient of the benefit to vote in favour of the transaction regardless on its impact on ordinary security holders. Examples include:

- if the issue is being made primarily for the purpose of raising cash to repay a debt or other amount owed by the entity to another person, that person;
- a professional adviser or other person who will be paid a success fee if the issue (or where the issue is being made under, or to fund, a reverse takeover [or prescribed transaction](#), if the reverse takeover [or prescribed transaction](#)) proceeds;²⁴¹
- an underwriter or sub-underwriter of the issue who will be paid an underwriting or sub-underwriting fee in relation to the issue; and
- a lead manager of, or broker to, the issue who will be paid a fee or commission on the proceeds of the issue.²⁴²

The material benefit must be obtained as a result of the transaction in question. This would not capture payments made in the ordinary course of business that are not commercially connected with the transaction.

In the context of a reverse takeover, ASX would not typically consider any of the following to be a material benefit resulting from the reverse takeover:

- an agreement that someone will be appointed as a director of the entity or the reverse takeover target if the reverse takeover is successful;
- consideration payable to a holder of another class of securities under or in connection with the reverse takeover on the same terms as all other holders of securities in that class (unless it appears to ASX that the consideration materially exceeds the fair value of those securities and is, in effect, a disguised material benefit); and
- redundancy or termination benefits payable to an officer or an employee of the entity or the reverse takeover target if the transaction proceeds, provided the benefit is a bona fide payment made in accordance with contractual entitlements or established policy and generally available to all officers and employees whose office or employment may be terminated.

²⁴¹ This is not intended to capture normal fixed or time-based fees paid to a professional adviser advising on the transaction. It is only intended to capture fees that are directly related to the success of the transaction.

²⁴² This is not intended to capture normal handling fees payable to individual brokers who lodge acceptances or renunciations on behalf of security holders. It is only intended to capture fees and commissions payable to a lead manager of, or broker to, the issue that are directly related to the success of the transaction.

Guidance Note 35 *Security Holder Resolutions* has further guidance on voting exclusions and the procedures that should be followed at a meeting of security holders where a resolution under Listing Rule 7.1, 7.1A or 7.4 is being considered.

7.8 Stale resolutions

Where security holders approve an issue of or agreement to issue securities under Listing Rule 7.1, the securities must be issued within the applicable time period referred to in Listing Rule 7.3.4 or else the approval will lapse.²⁴³

Where security holders approve an agreement to issue securities under Listing Rule 7.4, the securities must be issued within 3 months of that approval or else the approval will lapse.²⁴⁴

In addition to these time constraints, where an entity's security holders vote in favour of a resolution under Listing Rule 7.1, 7.1A or 7.4 and in ASX's opinion:

- materially new or different information emerges after security holders have voted on the resolution; or
- there is a material change in the entity's circumstances from those applicable at the time of the resolution,

ASX may require the entity to seek a fresh approval from its security holders under that rule.²⁴⁵

This may occur, for example, if there is a material increase in the consideration being offered by the entity in a reverse takeover [or prescribed transaction](#), compared to what was approved by security holders under Listing Rule 7.1.

For this purpose, ASX would suggest that entities apply the guidance on materiality that formerly appeared in the Australian accounting standards,²⁴⁶ that is:

- an increase in the consideration being offered over what was approved by security holders equal to or less than 5% ought not be considered material; while
- an increase in the consideration being offered over what was approved by security holders of equal to or greater than 10% ought to be considered material and therefore a fresh approval sought,

unless, in either case, there is evidence or convincing argument to the contrary. Where the increase is between 5% and 10%, a judgment will need to be made as to whether or not it is material in the circumstances.

Guidance Note 35 *Security Holder Resolutions* has further guidance on stale resolutions and the circumstances where ASX may require an entity to seek a fresh approval from its security holders under Listing Rule 7.1, 7.1A or 7.4.

²⁴³ Listing Rule 7.3.4. If the approval lapses, the securities can no longer be counted in variable A in the formula in Listing Rule 7.1 as securities issued with an approval under Listing Rule 7.1 and must instead be counted in variable C in that formula (see the note to Listing Rule 7.1).

²⁴⁴ Listing Rule 7.5.4. Again, if the approval lapses, the securities can no longer be counted in variable A in the formula in Listing Rule 7.1 as securities issued with an approval under Listing Rule 7.4 and must instead be counted in variable C in that formula. Likewise, they can no longer be counted as securities issued with an approval under rule 7.4 in variable A in the formula in Listing Rule 7.1A.2 and must instead be counted in variable E in that formula (see the note to Listing Rule 7.4).

²⁴⁵ Again, ASX may do this either by treating the original resolution as not being effective for the purposes of Listing Rule 7.1, 7.1A or 7.4 (as applicable) or by imposing a requirement in that regard under Listing Rule 18.8.

²⁴⁶ 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)).

8. Notification requirements

8.1 Appendix 3B requirements

An entity is required under Listing Rule 3.10.3 to notify ASX immediately of any proposed issue of equity securities (other than a proposed issue to be made under a DRP or an employee incentive scheme or as a consequence of the conversion of any convertible securities). This applies whether or not the securities are to be quoted on ASX and whether or not information about the issue is “market sensitive”.

A notification of a proposed issue of securities under Listing Rule 3.10.3 must be in the form of, or accompanied by, an Appendix 3B *Proposed Issue of Securities*.²⁴⁷

Most proposed issues of securities that potentially attract Listing Rules 7.1 and 7.1A, therefore, will have to be notified to ASX using an Appendix 3B.

The Appendix 3B is a smart form with different information requirements for different types of issues.

In all cases, the entity will be asked in the Appendix 3B if there any conditions that need to be satisfied before the proposed issue will be made. If the entity answers “yes”, it will be asked to identify those conditions and the date by which they are expected to be satisfied.

If the proposed issue is subject to security holder approval under Listing Rule 7.1, the entity should indicate accordingly in this part of the Appendix 3B.

Where the proposed issue being notified falls within the exceptions in Listing Rule 7.2, the Appendix 3B will not ask any specific questions about the possible application of Listing Rules 7.1 and 7.1A.

Where the proposed issue being notified falls outside the exceptions in Listing Rule 7.2, the Appendix 3B will ask:

- Are any of the securities proposed to be issued without security holder approval using the entity’s 15% placement capacity under Listing Rule 7.1?

If the entity answers “yes”, it will be asked how many securities are being issued using that capacity and to complete and separately send to the entity’s ASX Listings Compliance adviser a work sheet in the form of Annexure B to this Guidance Note confirming that the entity has the available capacity under Listing Rule 7.1 to issue that number of securities.

- Are any of the securities proposed to be issued without security holder approval using the entity’s additional 10% placement capacity under Listing Rule 7.1A (if applicable)?

If the entity answers “yes”, it will be asked how many securities are being issued using that capacity and to complete and separately send to the entity’s ASX Listings Compliance adviser a work sheet in the form of Annexure C to this Guidance Note confirming that the entity has the available capacity under Listing Rule 7.1A to issue that number of securities.

If an entity is relying on both its Listing Rule 7.1 and 7.1A placement capacities to make an issue without security holder approval, it should answer yes to both of the questions above and complete both the Annexure B and Annexure C work sheets and send them to its ASX Listings Compliance adviser.

As mentioned previously, the Annexure B and C work sheets are available on ASX Online and can also be downloaded from the ASX website.

²⁴⁷ Listing Rule 3.10.3. Guidance Note 30 [Notifying Changes in Issued Securities and Applying For Quotation of New or Additional Securities](#) has detailed guidance on when ASX must be notified of a proposed issue of securities under Listing Rule 3.10.3 and what information must be included in the notification.

8.2 Appendix 2A requirements

If the entity intends to apply for quotation of equity securities issued under Listing Rule 7.1 or 7.1A, it must give ASX²⁴⁸ a completed Appendix 2A *Application for quotation of securities*.²⁴⁹ The Appendix 2A is a smart form with different information requirements for different types of issues.

To avoid duplication of disclosure, the Appendix 2A will ask whether the securities to be quoted are being issued as part of a transaction or transactions previously announced to the market in an Appendix 3B.

If the entity answers “yes”, no questions will be asked in the Appendix 2A in relation to the application of Listing Rules 7.1 or 7.1A, on the assumption that the entity will have already addressed these issues in its Appendix 3B.

If the entity answers “no”, in an appropriate case,²⁵⁰ the Appendix 2A will go on to ask the following questions:

- Has the entity obtained, or is it obtaining, security holder approval for the issue under Listing Rule 7.1?

If the entity answers “yes”, it will be asked to state the date of the meeting or proposed meeting to approve the issue under Listing Rule 7.1 and that will be the end of the questions on this topic. If the entity answers “no”, it will be asked the next two questions.
- Are any of the securities being issued without security holder approval using the entity’s 15% placement capacity under listing rule 7.1?

If the entity answers “yes”, it will be asked how many securities are being issued using that capacity and to complete and separately send to the entity’s ASX Listings Compliance adviser a work sheet in the form of Annexure B to this Guidance Note confirming that the entity has the available capacity under Listing Rule 7.1 to issue that number of securities.
- Are any of the securities being issued without security holder approval under the entity’s additional 10% placement capacity in Listing Rule 7.1A (if applicable)?

If the entity answers “yes”, it will be asked how many securities are being issued using that capacity and to complete and separately send to the entity’s ASX Listings Compliance adviser a work sheet in the form of Annexure C to this Guidance Note confirming that the entity has the available capacity under Listing Rule 7.1A to issue that number of securities.

Again, if an entity is relying on both its Listing Rule 7.1 and 7.1A placement capacities to make an issue without security holder approval, it should answer “yes” to both of the last two questions above and complete both the Annexure B and Annexure C work sheets and send them to its ASX Listings Compliance adviser.

8.3 Additional disclosure requirements for issues under Listing Rule 7.1A

If an entity issues equity securities under Listing Rule 7.1A, it must give to ASX immediately after the issue a list of names of the persons to whom the entity issued the equity securities and the number of equity securities issued to each.²⁵¹ This list is for ASX Listings Compliance’s internal purposes and not for release to the market.

²⁴⁸ Listing Rule 15.2.1 requires an Appendix 2A to be given to the ASX Market Announcements office.

²⁴⁹ Listing Rule 2.7.

²⁵⁰ The Appendix 2A will ask the questions in the text if the entity indicates in its Appendix 2A that it is seeking to have quoted: (a) securities that have been issued under a DRP that has a limit on participation and therefore does not satisfy the conditions for Listing Rule 7.2 exception 4 to apply; or (b) other securities that potentially fall within the scope of Listing Rule 7.1 and 7.1A.

²⁵¹ Listing Rule 7.1A.4(b).

9. Other Chapter 7 constraints on issues of equity securities

9.1 Listing Rule 7.6

Listing Rule 7.6 prohibits an entity from issuing or agreeing to issue any equity securities, without the approval of the holders of its ordinary securities,²⁵² for 2 months after it is told in writing by the holders of more than 50% of the ordinary securities that they intend:

- to call, or request the directors to call, a general meeting to appoint or remove directors of the entity;²⁵³ or
- if the entity is a trust, to call, or request the responsible entity to call, a general meeting to appoint or remove the responsible entity of the trust.²⁵⁴

The intent behind Listing Rule 7.6 is to prevent the directors or responsible entity from issuing securities with a view to altering the outcome of the general meeting.

There are a number of exceptions to Listing Rule 7.6 which are summarised in section 9.3 below.

9.2 Listing Rule 7.9

Listing Rule 7.9 provides that an entity must not issue or agree to issue equity securities, without the approval of the holders of its ordinary securities,²⁵⁵ for 3 months after it is told in writing that a person is making, or proposes to make, a takeover for securities in the entity.

The intent behind Listing Rule 7.9 is to prevent the entity from issuing securities with a view to altering the outcome of the takeover.

Again, there are a number of exceptions to Listing Rule 7.9 which are summarised in section 9.3 below.

It should be noted that Listing Rule 7.9 is only triggered where an entity “is told in writing” that a person is making, or proposing to make, a “takeover” for securities in the entity. ASX considers an email to be a written notification for these purposes.²⁵⁶ However, a verbal notification does not trigger Listing Rule 7.9.

“Takeover” is defined to mean a takeover bid under Chapter 6 of the Corporations Act or a similar bid under a foreign regime.²⁵⁷ A proposal to enter into any other type of transaction (for example, a scheme of arrangement under Part 5.1 of the Corporations Act) does not trigger Listing Rule 7.9.

The reference to a person “proposing” to make a takeover bid does not require that all of the details of the bid have been finalised or communicated to the entity or that the person has expressed a definitive intention to proceed with the bid.²⁵⁸ However, in ASX’s view, an indicative non-binding statement that a person may be willing to make a takeover bid if certain conditions are met is not a proposed takeover bid for the purposes of Listing Rule 7.9.

²⁵² An approval by security holders of an eligible entity for the entity to have the additional placement capacity under Listing Rule 7.1A is not an approval for the purposes of Listing Rule 7.6.

²⁵³ For example, under section 249D or 249F of the Corporations Act.

²⁵⁴ For example, under section 252B or 252D of the Corporations Act.

²⁵⁵ An approval by security holders of an eligible entity for the entity to have the additional placement capacity under Listing Rule 7.1A is not an approval for the purposes of Listing Rule 7.9.

²⁵⁶ This is on the basis that an email can be printed, if the recipient so desires, and by analogy with Listing Rule 19.10 (which requires an entity to tell ASX matters under the Listing Rules “in writing”) and Listing Rule 1.1 condition 14 (which requires an entity to communicate with ASX electronically).

²⁵⁷ See Listing Rules 19.12 and 19.3.

²⁵⁸ Cf ASIC Regulatory Guide 59 *Announcing and Withdrawing Takeover Bids*, especially at RG 59.20 – 59.22.

9.3 The exceptions to Listing Rules 7.6 and 7.9

Listing Rules 7.6 and 7.9 are subject to the following exceptions:

- (1) an issue notified to ASX before the entity was told, or made under an agreement to issue notified to ASX before the entity was told, of the intention to call the meeting or make the takeover (as applicable);
- (2) a pro rata issue to holders of ordinary securities and to holders of other equity securities to the extent that the terms of issue of the equity securities permit participation in the pro rata issue;
- (3) an issue made under a DRP that is in operation at the time the entity was told;
- (4) an issue made under a regulated takeover or merger;
- (5) an issue made on the exercise of rights of conversion;
- (6) an agreement to issue equity securities that is conditional on the holders of the entity's ordinary securities approving the issue before the issue is made;²⁵⁹
- (7) an issue made after the person tells the entity in writing that it is no longer intending to call the meeting or make the takeover (as applicable); and
- (8) an issue made with the approval of the person giving the notification referred to in Listing Rule 7.6 or 7.9 (as applicable).

The second, third, fourth, fifth and sixth exceptions above have broadly corresponding exceptions in Listing Rule 7.2 (although the third exception above for issues under a DRP is somewhat broader than the exception for issues under a DRP in Listing Rule 7.2).

The seventh and eighth exceptions above have no counterpart in Listing Rule 7.2 and so issues can only be made under these exceptions without security holder approval if the entity has the available placement capacity under Listing Rules 7.1 and 7.1A.

9.4 The effect of Listing Rules 7.6 and 7.9

Listing Rules 7.6 and 7.9 take precedence over Listing Rules 7.1, 7.1A and 7.2, and so receipt of a written notification under Listing Rules 7.6 and 7.9 effectively suspends an entity's placement capacity under Listing Rule 7.1 and 7.1A and its capacity to issue securities under an exception in Listing Rule 7.2 (other than an exception which is also an exception to Listing Rules 7.6 and 7.9).

10. ASX's enforcement powers

ASX has a range of enforcement powers it can exercise if an entity issues, or proposes to issue, securities in breach of Chapter 7 of the Listing Rules.

ASX may:

- suspend the quotation of the entity's securities until the matter has been dealt with to ASX's satisfaction;²⁶⁰

²⁵⁹ If an entity relies on this exception it must not issue the equity securities without approval. The notice of meeting seeking the approval must include a voting exclusion statement precluding a person who is expected to participate in the proposed issue and their associates from voting in favour of the resolution (see Listing Rule 14.11.1).

²⁶⁰ Listing Rule 17.3.1.

- require the entity to impose a holding lock on the securities to prevent them being disposed of until the matter has been dealt with to ASX's satisfaction;²⁶¹
- if the issue has not yet taken place, direct the entity not to proceed with the issue;²⁶²
- if the issue has already taken place, direct the entity to cancel or reverse the issue;²⁶³ and/or
- direct the entity to convene a meeting of security holders to approve the issue under Listing Rule 7.1, 7.6 or 7.9 (as applicable).²⁶⁴

On the second last bullet point above, ASX recognises that in some cases there could be legal impediments to an entity cancelling or reversing an issue of securities at the direction of ASX.²⁶⁵ In those cases, ASX may instead direct the entity not to make any further issue of equity securities under Listing Rules 7.1 or 7.1A.2 for a period determined by ASX (often referred to as a "placement holiday"). The period of the placement holiday will usually be the minimum period ASX calculates it would have taken the entity to issue the number of securities in question under Listing Rule 7.1 if it had issued them in tranches that complied with that rule.²⁶⁶

On the last bullet point above, it should be noted that ASX will not generally allow an entity that has issued securities in breach of Chapter 7 of the Listing Rules to leave the issue on foot and seek to have it ratified by the holders of its ordinary securities at a subsequent meeting. For ASX to condone that course would open Chapter 7 to avoidance and abuse.²⁶⁷ ASX is more likely instead to impose a placement holiday.

More generally, where an entity issues securities in breach of Chapter 7 and ASX considers the breach to be an egregious one, ASX may:

- censure the entity for breaching the Listing Rules;²⁶⁸
- exercise ASX's discretion not to quote the securities;²⁶⁹ and/or
- terminate the entity's admission to the official list.²⁷⁰

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 Chapter 7 of the Listing Rules, ASX will usually require the entity to make an announcement to the market explaining that action and why it was taken.

²⁶¹ Listing Rule 18.8(h).

²⁶² Listing Rule 18.8(c).

²⁶³ Listing Rule 18.8(d).

²⁶⁴ Listing Rule 18.8(e). Where ASX imposes such a requirement and security holders do not approve the issue, ASX may impose such further requirements as it considers appropriate under Listing Rule 18.8.

²⁶⁵ Those legal impediments will arise if the recipient of the securities was not aware of, and did not aid or abet, the breach of Chapter 7 and is unwilling to co-operate with the entity in having its securities cancelled to rectify the breach. A cancellation may also require approval from security holders or the court before it can be effected.

²⁶⁶ Listing Rule 18.8.

²⁶⁷ If ASX were to allow this, it might encourage an entity to issue equity securities without seeking the required security holder approval in the hope of not being found out and in the knowledge that, if it is, the likely consequence would simply be a direction that it seek the approval it should have sought in the first place.

²⁶⁸ Listing Rule 18.8A.

²⁶⁹ Listing Rule 2.9.

²⁷⁰ Listing Rule 17.12.

Annexure A: **Worked examples of calculations of placement capacity**

Example 1

An eligible entity has 200 million fully paid ordinary securities on issue at the time of its AGM. All of those securities have been on issue for at least 12 months. It has no other quoted securities on issue. At the AGM, a resolution conferring a 7.1A mandate is passed. No other resolution seeking approval for the issue of securities is voted on. Immediately after the AGM, the entity has the capacity to issue:

- 30 million (15% x 200 million) equity securities under Listing Rule 7.1; and
- 20 million (10% x 200 million) equity securities under Listing Rule 7.1A.2.

Six months after the AGM, the entity issues 10 million fully paid ordinary securities as a placement at 90% of the prevailing market price ("initial placement").²⁷¹ This placement can be made under Listing Rule 7.1A because it complies with the discount limitation in Listing Rule 7.1A.3 and the securities are in a class already quoted on ASX. Following this placement, the entity has the capacity to issue:

- 30 million equity securities under Listing Rule 7.1; and
- 10 million equity securities under Listing Rule 7.1A.2.

One month later, the entity wishes to issue by way of a placement 20 million fully paid ordinary securities at 80% of the prevailing market price, and 20 million free attaching options that convert to ordinary securities on a one for one basis. It can do so, using both:

- its remaining capacity of 10 million equity securities under Listing Rule 7.1A.2 for half of the ordinary securities (because the ordinary securities are in a class already quoted on ASX and their issue price complies with the discount limitation in Listing Rule 7.1A.3), and
- its capacity of 30 million equity securities under Listing Rule 7.1 for the other 10 million ordinary securities and all 20 million options.

Until 12 months have passed following the initial placement, the entity does not have any further ability to issue equity securities under a placement without prior security holder approval.

Example 2

An eligible entity has 400 million fully paid ordinary securities on issue at the time of its AGM. It has no other quoted class of equity securities. All of the ordinary securities have been on issue for at least 12 months. At the AGM, a resolution conferring a 7.1A mandate is passed. No other resolution seeking approval for the issue of securities is voted on. Immediately following the AGM, the entity has the capacity to issue:

- 60 million (15% x 400 million) equity securities under Listing Rule 7.1; and
- 40 million (10% x 400 million) equity securities under Listing Rule 7.1A.2.

Three months after the AGM, the entity issues 55 million fully paid ordinary securities as a placement at 70% of the prevailing market price. This placement has to come under Listing Rule 7.1 because it does not comply with discount limitation in Listing Rule 7.1A.3. Following this placement, the entity has the capacity to issue:

²⁷¹ References in the examples in this Annexure involving Listing Rule 7.1A to the "prevailing market price" mean the VWAP of the relevant class of equity securities over the 15 trading day pricing period referred to in Listing Rule 7.1A.3.

- 5 million equity securities under Listing Rule 7.1; and
- 40 million equity securities under Listing Rule 7.1A.2.

One month later, the entity wishes to issue 10 million options that convert to ordinary securities on a one for one basis under a placement. It cannot do so without obtaining prior ordinary security holder approval under Listing Rule 7.1. This is because it does not have sufficient capacity left under Listing Rule 7.1 to issue 10 million equity securities (it only has 5 million left), and it cannot use its capacity under Listing Rule 7.1A to issue equity securities in a new class.

Example 3 (issue of convertible securities)

An entity is proposing to issue convertible notes with a face value of \$100 each, a floating interest rate payable semi-annually in cash, and a term of three years. The convertible notes are a new class of security that has not been quoted on ASX. At maturity, the holder can elect to receive the principal of the note in cash or in fully paid ordinary shares at a fixed issue price of \$2 per share.

Twelve months before the proposed date of issue of the convertible notes, the entity had 100 million fully paid ordinary shares, 20 million partly paid shares and 20 million options on issue. In the intervening 12 month period, no other equity securities have been issued, no options have been exercised and no partly paid shares have been paid up. The number calculated in accordance with the formula in Listing Rule 7.1 is therefore 15 million (15% of the 100 million fully paid ordinary securities).

The entity could therefore issue up to 300,000 convertible notes (ie notes having an aggregate face value of \$30 million and convertible into a maximum amount of 15 million fully paid ordinary shares at maturity)²⁷² without breaching the placement capacity in Listing Rule 7.1.

Suppose the entity decides to issue 200,000 convertible notes without shareholder approval under Listing Rule 7.1 or 7.4. For the next 12 months, that will reduce the entity's placement capacity under Listing Rule 7.1 by an amount equal to 10 million fully paid ordinary securities (being the maximum number of fully paid ordinary securities into which those notes may or will convert at maturity).²⁷³

Example 4 (convertible securities with limited rights of conversion)

An entity issues a bond to an institutional investor with a face value of \$10 million and a term of ten years. The bond is not quoted on ASX. The bond is not convertible except where the entity is the subject of a takeover bid under Chapter 6 of the Corporations Act at any time while the bond is on issue, in which case the holder may within one month of the takeover bid elect to convert the principal amount of the bond into fully paid ordinary shares in the entity at an issue price of \$1.00 per share.

The bond is a convertible security for the purposes of the Listing Rule even though the right of the holder to convert only applies if and when a takeover bid is made. The maximum number of ordinary securities that can be issued upon its conversion is 10 million. The issue of the bond will therefore require security holder approval under Listing Rule 7.1 if the entity does not have the capacity to issue at least 10 million fully paid ordinary securities under Listing Rule 7.1 at that time. If the bond is issued without security holder approval, it will reduce the entity's placement capacity under Listing Rule 7.1 by the equivalent of 10 million fully paid ordinary securities for the next 12 months.

Example 5 (convertible securities where the conversion formula only includes fixed amounts)

An entity issues convertible notes with an aggregate face value of \$10 million, a term of two years and a fixed interest rate of 5% per annum compounding annually and payable at maturity. The convertible notes are a new class of security that has not been quoted on ASX. At maturity, the holder can elect to have the principal plus

²⁷² Calculated as 300,000 notes times the \$100 face value, divided by the \$2 fixed conversion price.

²⁷³ Calculated as 200,000 notes times the \$100 face value, divided by the \$2 fixed conversion price.

accumulated interest paid in cash or to receive fully paid ordinary shares in the entity at a fixed issue price of \$1 per share. The maximum number of ordinary securities into which the note can convert is 11,025,000 (being the sum of the note's principal and accumulated interest at maturity divided by the issue price of \$1).

The entity can issue the convertible notes without security holder approval provided its Listing Rule 7.1 placement capacity at the time is at least 11,025,000 fully paid ordinary securities.

If issued without security holder approval, the convertible notes will reduce the entity's placement capacity under Listing Rule 7.1 by 11,025,000 fully paid ordinary securities for the 12 months following their issue.

Example 6 (conversion tied to the market price of the underlying security with no floor)

An entity proposes to issue convertible notes with an aggregate face value of \$10 million. The convertible notes are a new class of security that has not been quoted on ASX. At maturity, the holder can elect to receive the principal of the note in cash or in fully paid ordinary shares. The issue price for the shares is an amount equal to 90% of the VWAP of the ordinary shares on ASX and [CboeTMX Exchange](#) Australia over a 10 trading day window that ends one week prior to the date of conversion. There is no floor price on conversion.

The VWAP of the entity's ordinary shares on ASX and [CboeTMX Exchange](#) Australia for the 10 day period ending one week prior to the proposed date of issue of the convertible notes was 50 cents. Using that value in the conversion formula, the maximum number of ordinary shares into which the notes would convert at the date of issue would therefore be $(\$10,000,000 / [90\% \times \$0.50])$, or 22,222,222 ordinary shares.²⁷⁴

The entity can issue the convertible notes without security holder approval provided its Listing Rule 7.1 placement capacity at the time is at least 22,222,222 ordinary shares.

If issued without security holder approval, the convertible notes will reduce the entity's placement capacity under Listing Rule 7.1 at the date of their issue by 22,222,222 ordinary shares. They will continue to affect its placement capacity for the next 12 months following their issue but the amount by which they do so will change with changes in the value of the underlying shares.

For instance, suppose the entity issues \$10 million of convertible notes. Six months later it wants to issue a further tranche of convertible notes.²⁷⁵ None of the initial tranche of convertible notes has been converted. The entity's ordinary shares have traded downwards since the issue of the first tranche of the convertible notes and the VWAP of the entity's ordinary shares on ASX and [CboeTMX Exchange](#) Australia for the 10 day period ending one week prior to the proposed date of issue of the second tranche of convertible notes is now 40 cents. ASX will use that price to calculate the maximum number of ordinary shares that can be issued under both the first tranche and the second tranche. Hence the value of the first tranche in variable C will now be $(\$10,000,000 / [90\% \times \$0.40])$, or 27,777,777 ordinary shares.

The downward movement in the market price of the entity's ordinary shares over the 6 month period has effectively reduced its placement capacity under Listing Rule 7.1 by 5,555,555 ordinary shares.

Suppose instead that the entity's ordinary shares have traded upwards since the issue of the first tranche of the convertible notes and the VWAP of the entity's ordinary shares on ASX and [CboeTMX Exchange](#) Australia for the 10 day period ending one week prior to the proposed date of issue of the second tranche of convertible notes is now 60 cents. ASX will use that price to calculate the maximum number of ordinary shares that can be issued under

²⁷⁴ As mentioned in '5.4 Determining the maximum number of securities that can be issued under a convertible security', ASX will generally calculate the maximum number of underlying securities that can be issued under the terms of a convertible security assuming the security was being converted on the 'relevant date' and applying the conversion formula accordingly.

²⁷⁵ Note that the requirement to re-determine the maximum number of securities that may be issued under the first tranche of the convertible securities will apply to any subsequent issue of, or agreement to issue, equity securities made within 12 months after their issue, not just a further issue of convertible securities within those 12 months.

both the first tranche and the second tranche. Hence the value of the first tranche in variable C will now be $(\$10,000,000/[90\% \times \$0.60])$, or 18,518,518 ordinary shares.

The upward movement in the market price of the entity's ordinary shares over the 6 month period has effectively increased its placement capacity under Listing Rule 7.1 by 3,703,704 ordinary shares.

Example 7 (conversion tied to the market price of the underlying security but with a floor higher than the current market price)

An entity proposes to issue convertible notes with an aggregate face value of \$10 million. The convertible notes are a new class of security that has not been quoted on ASX. At maturity, the holder can elect to receive the principal of the note in cash or in fully paid ordinary shares. The issue price for the shares is an amount equal to the higher of \$1 per share and 90% of the VWAP of the ordinary shares on ASX and [GbeeTMX Exchange](#) Australia over a 10 trading day window that ends one week prior to the date of conversion.

The VWAP of the entity's ordinary shares on ASX and [GbeeTMX Exchange](#) Australia for the 10 day period ending one week prior to the proposed date of issue of ~~issue of~~ the convertible notes was 50 cents. Using that value, but for the \$1 floor on the conversion price, the maximum number of ordinary shares into which the notes would convert at the proposed date of issue would be $(\$10,000,000/[90\% \times \$0.50])$, or 22,222,222 ordinary shares. However, because of the \$1 floor on the conversion price, the maximum number of ordinary securities into which the notes would convert at the proposed date of issue is in fact 10,000,000 ordinary shares.

The entity can issue the convertible notes without security holder approval provided its Listing Rule 7.1 placement capacity at the time is at least 10,000,000 fully paid ordinary securities.

If issued without security holder approval, the convertible notes will reduce the entity's placement capacity under Listing Rule 7.1 at the date of their issue by 10,000,000 fully paid ordinary securities. They will continue to affect its placement capacity for the next 12 months following their issue but the amount by which they do so may change with changes in the value of the underlying shares (particularly if the 10 day VWAP trades above \$1.11 and hence the conversion formula will yield a conversion price higher than the \$1 floor).

Example 8 (conversion tied to the market price of the underlying security but with a floor lower than the current market price)

An entity proposes to issue convertible notes with an aggregate face value of \$10 million. The convertible notes are a new class of security that has not been quoted on ASX. At maturity, the holder can elect to receive the principal of the note in cash or in fully paid ordinary shares. The issue price for the shares is an amount equal to the higher of 25 cents per share and 90% of the VWAP of the ordinary shares on ASX and [GbeeTMX Exchange](#) Australia over a 10 trading day window that ends one week prior to the date of conversion.

The VWAP of the entity's ordinary shares on ASX and [GbeeTMX Exchange](#) Australia for the 10 day period ending one week prior to the proposed date of issue of the convertible notes was 50 cents. Using that value, the maximum number of ordinary shares into which the notes would convert at the proposed date of issue would be $(\$10,000,000/[90\% \times \$0.50])$, or 22,222,222 ordinary shares. This is not affected by the 25 cent floor on the conversion price since that does not come into play until the 10 day VWAP falls to under 27.78 cents.

The entity can issue the convertible notes without security holder approval provided its Listing Rule 7.1 placement capacity at the time is at least 22,222,222 ordinary shares.

If issued without security holder approval, the convertible notes will reduce the entity's placement capacity under Listing Rule 7.1 at the date of their issue by 22,222,222 ordinary shares. They will continue to affect its placement capacity for the next 12 months following their issue but the amount by which they do so will change with changes in the value of the underlying shares (as per example 6 above).

Annexure B:

Work sheet to calculate placement capacity under Listing Rule 7.1

Step 1: calculate "A" in rule 7.1	
Date of issue or agreement to issue securities	
The "relevant period" as defined in rule 7.1 Note: if the entity has been admitted to the official list for 12 months or more, this will be the 12 month period immediately preceding the date of the issue or agreement referred to in the previous cell; if the entity has been admitted to the official list for less than 12 months, this will be the period from the date the entity was admitted to the official list to the date immediately preceding the date of the issue or agreement).	
A1: total number of fully paid ordinary securities on issue at the commencement of the relevant period	
A2: number of fully paid ordinary securities issued in the relevant period under an exception in rule 7.2 other than exception 9, 16 or 17	
A3: number of fully paid ordinary securities issued in the relevant period on the conversion of convertible securities within rule 7.2 exception 9 where: (a) the convertible securities were issued or agreed to be issued before the commencement of the relevant period or (b) the issue of, or agreement to issue, the convertible securities was approved or taken to be approved under rule 7.1 or 7.4	
A4: number of fully paid ordinary securities issued in the relevant period under an agreement to issue securities within rule 7.2 exception 16 where: (a) the agreement was entered into before the commencement of the relevant period; or (b) the agreement or issue was approved or taken to be approved under rule 7.1 or 7.4	
A5: number of any other fully paid ordinary securities issued in the relevant period with approval under rule 7.1 or 7.4 Note: This may include fully paid ordinary securities issued in the relevant period under an agreement to issue securities within rule 7.2 exception 17 where the issue is subsequently approved under rule 7.1.	
A6: number of partly paid ordinary securities that became fully paid ordinary securities in the relevant period	
A7: number of fully paid ordinary securities cancelled in the relevant period	
"A" = A1 + A2 + A3 + A4 + A5 + A6 – A7	

Step 2: calculate the aggregate rule 7.1 placement capacity available	
Rule 7.1 capacity = A x 15%	
Step 3: calculate "C" in rule 7.1 (placement capacity already used)	
C1: total number of equity securities issued or agreed to be issued in the relevant period	
C2: number of equity securities issued or agreed to be issued in the relevant period with security holder approval under rule 7.1 or 7.4	
C3: number of equity securities issued or agreed to be issued in the relevant period under rule 7.1A	
C4: number of equity securities issued or agreed to be issued in the relevant period under an exception in rule 7.2	
"C" = C1 – C2 – C3 – C4	
Step 4: calculate remaining rule 7.1 placement capacity	
Remaining capacity = Rule 7.1 capacity – C	

Annexure C:

Work sheet to calculate placement capacity under Listing Rule 7.1A

Step 1: confirm entitlement to use rule 7.1A placement capacity	
Date of AGM approving additional placement capacity under rule 7.1A (must be not more than 12 months prior to the issue or agreement to issue securities in question)	
Confirm that at the date of the AGM above, the entity's market capitalisation was less than \$300 million and the entity was not included in the S&P/ASX 300 Index	
Confirm that since the date of the AGM above the entity has not had a subsequent AGM	
Confirm that since the date of the AGM above the entity's security holders have not passed a resolution approving a transaction under Listing Rule 11.1.2 or 11.2	
Confirm the securities being issued are in a class of securities presently quoted on ASX	
If the securities were issued within 10 trading days of date on which the price for the issue of the securities was agreed, state: - the date on which the price for the issue of the securities was agreed (the agreement date); - the period covered by the 15 trading days on which trades in that class were recorded immediately before the agreement date; and - the volume weighted average price ('VWAP') for securities in the relevant class over that period	
If the securities were not issued within 10 trading days of date on which the price for the issue of the securities was agreed, state: - the date on which the securities were issued (the issue date); - the period covered by the 15 trading days on which trades in that class were recorded immediately before the issue date; and - the volume weighted average price ('VWAP') for securities in the relevant class over that period	
Who was the source of the VWAP calculation referred to above	
Confirm the securities have been or are being issued for a cash consideration only	

State the cash consideration per security issued or being issued	
Confirm that the cash consideration per security issued or being issued is not less than 75% of the VWAP figure provided above	
Step 2: calculate “A” in rule 7.1A.2	
Date of issue or agreement to issue securities	
The “relevant period” as defined in rule 7.1 Note: if the entity has been admitted to the official list for 12 months or more, this will be the 12 month period immediately preceding the date of the issue or agreement referred to in the previous cell; if the entity has been admitted to the official list for less than 12 months, this will be the period from the date the entity was admitted to the official list to the date immediately preceding the date of the issue or agreement).	
A1: total number of fully paid ordinary securities on issue at the commencement of the relevant period	
A2: number of fully paid ordinary securities issued in the relevant period under an exception in rule 7.2 other than exception 9, 16 or 17	
A3: number of fully paid ordinary securities issued in the relevant period on the conversion of convertible securities within rule 7.2 exception 9 where: (a) the convertible securities were issued or agreed to be issued before the commencement of the relevant period; or (b) the issue of, or agreement to issue, the convertible securities was approved or taken to be approved under rule 7.1 or 7.4	
A4: number of fully paid ordinary securities issued in the relevant period under an agreement to issue securities within rule 7.2 exception 16 where: (a) the agreement was entered into before the commencement of the relevant period; or (b) the agreement or issue was approved or taken to be approved under rule 7.1 or 7.4	
A5: number of any other fully paid ordinary securities issued in the relevant period with approval under rule 7.1 or 7.4 Note: This may include fully paid ordinary securities issued in the relevant period under an agreement to issue securities within rule 7.2 exception 17 where the issue is subsequently approved under rule 7.1.	
A6: number of partly paid ordinary securities that became fully paid ordinary securities in the relevant period	
A7: number of fully paid ordinary securities cancelled in the relevant period	

"A" = A1 + A2 + A3 + A4 + A5 + A6 – A7	
Step 3: calculate the aggregate rule 7.1A placement capacity available	
Rule 7.1A capacity = A x 10%	
Step 4: calculate "E" in rule 7.1A.2 (placement capacity already used)	
E1: total number of equity securities issued or agreed to be issued in the relevant period under rule 7.1A.2	
E2: number of equity securities issued or agreed to be issued in the relevant period under rule 7.1A.2 where the issue or agreement was subsequently approved by security holders under rule 7.4	
"E" = E1 – E2	
Step 5: calculate remaining rule 7.1A placement capacity	
Remaining capacity = Rule 7.1A capacity – E	

ISSUES OF EQUITY SECURITIES TO PERSONS IN A POSITION OF INFLUENCE

The purpose of this Guidance Note	To assist listed entities to understand and comply with the framework in Listing Rules 10.11 – 10.16 regulating issues of equity securities to persons in a position of influence
The main points it covers	- The requirement in Listing Rule 10.11 for an entity's security holders to approve an issue of equity securities to a person in a position of influence - The exceptions to Listing Rule 10.11 in Listing Rule 10.12 - The requirement in Listing Rule 10.14 for an entity's security holders to approve an issue of equity securities under an employee incentive scheme to a director, an associate of a director or other closely connected party - The requirements for notices of meeting proposing a resolution to approve an issue of equity securities under Listing Rule 10.11 or 10.14 - The powers ASX may exercise if an entity issues equity securities in breach of Listing Rule 10.11 or 10.14
Related materials you should read	- Guidance Note 17 <i>Waivers and In-Principle Advice</i> - Guidance Note 21 <i>The Restrictions on Issuing Equity Securities in Chapter 7 of the Listing Rules</i> - Guidance Note 22 <i>Director Disclosure of Interests and Transactions in Securities - Obligations of Listed Entities</i> - Guidance Note 24 <i>Acquisitions and Disposals of Substantial Assets Involving Persons in a Position of Influence</i> - Guidance Note 30 <i>Notifying Changes in Issued Securities and Applying For Quotation of New or Additional Securities</i> - Guidance Note 35 <i>Security Holder Resolutions</i>

History: Guidance Note 25 amended XX/XX/XX. A previous version of this Guidance Note was issued in 12/19. It replaced a withdrawn Guidance Note entitled *The Exercise of ASX Discretions*.

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 admitted to the ASX official list as an ASX Listing¹ to understand and comply with the framework in Listing Rules 10.11 – 10.16 regulating issues of equity securities² to persons in a position of influence.

Listing Rule 10.11 provides:

“Unless one of the exceptions in rule 10.12 applies, an entity must not issue or agree to issue equity securities to any of the following persons without the approval of the holders of its ordinary securities.

10.11.1 *A related party.*

10.11.2 *A person who is, or was at any time in the 6 months before the issue or agreement, a substantial (30%+) holder in the entity.*

10.11.3 *A person who is, or was at any time in the 6 months before the issue or agreement, a substantial (10%+) holder in the entity and who has nominated a director to the board of the entity (in the case of a trust, to the board of the responsible entity of the trust) pursuant to a relevant agreement which gives them a right or expectation to do so.*

10.11.4 *An associate of a person referred to in rules 10.11.1 to 10.11.3.*

10.11.5 *A person whose relationship with the entity or a person referred to in rules 10.11.1 to 10.11.4 is such that, in ASX’s opinion, the issue or agreement should be approved by security holders.*

The notice of meeting to obtain approval must comply with rule 10.13.”

In this Guidance Note, for convenience, the parties mentioned in Listing Rules 10.11.1 – 10.11.5 are collectively referred to as “10.11 parties”, while the parties mentioned in Listing Rule 10.11.5 are referred to as “closely connected parties”.

Listing Rule 10.14 provides:

“An entity must not permit any of the following persons to acquire equity securities under an employee incentive scheme without the approval of the holders of its ordinary securities.

10.14.1 *A director of the entity (in the case of a trust, a director of the responsible entity of the trust).*

10.14.2 *An associate of a person referred to in rule 10.14.1.*

10.14.3 *A person whose relationship with the entity or a person referred to in rule 10.14.1 or 10.14.2 is such that, in ASX’s opinion, the acquisition should be approved by security holders.*

The notice of meeting to obtain approval must comply with rule 10.15.

An approval under this rule ceases to be valid if there is a material change to the terms of the scheme from those set out in the entity’s notice of meeting.”

¹ Listing Rules 10.11 and 10.14 do not apply to entities admitted to the official list as an ASX Debt Listing or as an ASX Foreign Exempt Listing (see Listing Rules 1.10 and 1.15.1). Unless otherwise indicated, references in this Guidance Note to a listed entity or entity mean an entity admitted to the ASX official list as an ASX Listing.

² The term “equity security” is defined in Listing Rule 19.12 as: (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); (f) a convertible security; and (g) any security that ASX decides to classify as an equity security; but not (h) a security ASX decides to classify as a debt security.

Again, for convenience, the parties mentioned in Listing Rule 10.14.3 are also referred to in this Guidance Note as “closely connected parties”.

2. Listing Rule 10.11

2.1 The scope of the rule

Listing Rule 10.11 effectively requires an entity to obtain the approval of the holders of its ordinary securities before it issues,³ or agrees to issue,⁴ any equity securities⁵ to a 10.11 party unless:

- the securities are issued under an employee incentive scheme with the approval of holders of ordinary securities under Listing Rule 10.14 (Listing Rule 10.12 exception 8); or
- another exception in Listing Rule 10.12 applies.

Listing Rule 10.11 does not apply to an issue of debt securities.⁶

Listing [Rules](#) [Rule](#) 10.11 operates side-by-side with Chapter 2E of the Corporations Act 2001 (Cth),⁷ which regulates transactions between a public company or registered managed investment scheme⁸ on the one hand and its related parties on the other. Chapter 2E seeks to protect the interests of members by requiring the company or scheme to obtain approval from its members before it gives a financial benefit to a related party unless an exception applies.⁹

Listing Rule 10.11, however, is different in scope to Chapter 2E. Listing Rule 10.11 only applies to an issue of equity securities, whereas Chapter 2E applies to all forms of financial benefits, including an issue of securities.¹⁰ Conversely, Listing Rule 10.11 extends to a broader range of “connected” parties than just related parties and also does not include the broad exclusions that Chapter 2E has for transactions on arm’s length terms¹¹ and reasonable remuneration.¹²

2.2 The policy underpinning the rule

The policy that underpins Listing Rule 10.11 starts from the premise that a 10.11 party is likely to be in a position to influence whether the entity issues, or agrees to issue, equity securities to them, as well as the terms on which

³ Where options or other convertible securities are issued with the approval of the holders of ordinary securities under Listing Rule 10.11, the subsequent issue of the underlying securities when the options are exercised, or convertible securities are converted, does not require any further approval by security holders: see Listing Rule 10.12 exception 7.

⁴ Where an agreement to issue equity securities to a 10.11 party is approved by the holders of ordinary securities under Listing Rule 10.11, the subsequent issue of the equity securities pursuant to that agreement does not require any further approval by security holders: see Listing Rule 10.12 exception 10.

⁵ As defined in note 2 above.

⁶ The term “debt security” is defined in Listing Rule 19.12 as: (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; but not (c) a security ASX decides to classify as an equity security.

⁷ 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.

⁸ On its face, Chapter 2E only applies to transactions between a public company and its related parties. Part 5C.7 of the Corporations Act, however, extends Chapter 2E to transactions between a registered managed investment scheme and its related parties, with some modifications.

It should be noted that Chapter 2E and Part 5C.7 of the Corporations Act only apply to public companies established, and managed investment schemes registered, in Australia under that Act. Related party transactions by companies and trusts formed elsewhere may be subject to additional regulation in their country of formation, over and above Chapter 10 of the Listing Rules.

⁹ See sections 208 and 601LA.

¹⁰ See section 229(3)(e).

¹¹ Section 210.

¹² Section 211.

the issue or agreement is made. The harm it seeks to protect against is that the 10.11 party will exercise that influence to favour themselves at the expense of the entity.

To address the potential conflicts involved and to minimise the risk of this harm occurring, Listing Rule 10.11 displaces the general rule that the board of directors (or, in the case of a listed trust, the responsible entity¹³ (“RE”) of the trust) is responsible for managing the business of the entity to the exclusion of its security holders and requires the issue or agreement to be approved by the holders of ordinary securities in the entity. 10.11 parties who will participate in the issue and their associates are precluded from voting on the resolution to approve it.

2.3 Listing Rule 10.11.1 – related parties

Listing Rule 10.11.1 applies to an issue of equity securities to a related party.

The term “related party” is defined in similar terms under the Listing Rules as it is under the Corporations Act.

Where the listed entity is a body corporate, its related parties include:

- (i) an entity that controls the listed entity;
- (ii) if the listed entity is controlled by an entity that is not a body corporate, the persons making up that entity;
- (iii) directors of the listed entity or of an entity that controls the listed entity;
- (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 listed entity;
- (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.¹⁴

Where the listed entity is an internally managed¹⁵ trust, its related parties include:

- (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 RE 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 RE of the trust in its capacity as RE of the trust;

¹³ “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).

¹⁴ Paragraph (a) of the definition of “related party” in Listing Rule 19.12. This is essentially the same definition as in section 228 of the Corporations Act.

¹⁵ As defined in Listing Rule 19.12.

- (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) above at any time in the future; and
- (ix) anyone acting in concert with someone referred to in (i) – (viii) above.¹⁶

Where the listed entity is an externally managed¹⁷ trust, its related parties include:

- (i) the RE of the trust;
- (ii) an entity that controls the RE;
- (iii) if the RE is controlled by an entity that is not a body corporate, the persons making up that entity;
- (iv) directors of the RE or of an entity that controls the RE;
- (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 RE of the trust other than in its capacity as RE of the trust;
- (viii) an entity controlled by anyone referred to in (ii) – (vii) above unless it is also controlled by the RE of the trust in its capacity as RE 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) above at any time in the future; and
- (xi) anyone acting in concert with someone referred to in (i) – (x) above.¹⁸

For convenience, a person's spouse or de facto spouse, their parents and children, and the parents and children of their spouse or de facto spouse, are referred to in this Guidance Note as "prescribed relatives". Controllers of the entity (or in the case of an externally managed trust, of the RE) and the other entities they control are referred to as "group entities".

2.4 Listing Rule 10.11.2 – substantial (30%+) holders

Listing Rule 10.11.2 applies to an issue of equity securities to a person who is, or was at any time in the 6 months before the issue, a "substantial (30%+) holder" in the entity.

The Listing Rules define a "substantial (30%+) holder" to mean:

- in relation to an Australian company¹⁹ or a trust which is a registered managed investment 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 Act²⁰ if the reference in that paragraph to 5% was 30%;

¹⁶ Paragraph (b) of the definition of "related party" in Listing Rule 19.12.

¹⁷ As defined in Listing Rule 19.12.

¹⁸ Paragraph (c) of the definition of "related party" in Listing Rule 19.12. This is largely the same definition as in section 228 of the Corporations Act, as modified by section 601LA of the Corporations Act, but with the addition of paragraphs (i) and (vii), and the qualification of paragraph (viii) by the addition of the words "in its capacity as RE of the trust".

¹⁹ "Australian company" means a body corporate that is formed or established in Australia (Listing Rule 19.12).

²⁰ Paragraph (a) of the definition of "substantial holding" in section 9 of the Corporations Act effectively provides that a person has a substantial holding in a company or a listed registered managed investment 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

- in relation to a trust which is not a registered managed investment scheme or which is a foreign trust,²¹ 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
- in relation to a foreign company,²² a person who would have a “substantial holding” in the company under paragraph (a) of the definition of “substantial holding” 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%.²³

2.5 Listing Rule 10.11.3 – substantial (10%+) holders with board representation

Listing Rule 10.11.3 applies to an issue of equity securities to a person who is, or was at any time in the 6 months before the issue, a substantial (10%+) holder in the entity and who has nominated a director to the board of the entity (or, in the case of a trust, to the board of the responsible entity of the trust) pursuant to a relevant agreement which gives them a right or expectation to do so.

The Listing Rules define a “substantial (10%+) holder” in the same terms as a “substantial (30%+) holder” above, but with the references to 30% changed to 10%.

“Relevant agreement” has the same meaning as in section 9 of the Corporations Act.²⁴ 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.

2.6 Listing Rule 10.11.4 – associates

Listing Rule 10.11.4 applies to an issue of equity securities to an associate of a person referred to in Listing Rules 10.11.1, 10.11.2 or 10.11.3.

Under the Listing Rules, a person’s associates include:

- if the person is a natural person, any entity²⁵ the person controls;
- if the person is an entity:²⁶
 - any entity the person controls;
 - any entity that controls the person;
 - any entity that is controlled by an entity that controls the person;

sections 609(6) (market traded options and derivatives), 609(7) (conditional agreements), 609(9B) (securities escrowed under listing rules) or 609B (securities subject to escrow agreement in connection with initial public offer etc) is 5% or more of the total votes attached to the voting shares in the company or the voting interests in the scheme.

²¹ “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).

²² “Foreign company” means a body corporate that is not formed or established in Australia (Listing Rule 19.12).

²³ Listing Rule 19.12.

²⁴ Listing Rule 19.3.

²⁵ “Entity” in this context means a body corporate, partnership, unincorporated body or a trust and includes, in the case of a trust, the RE of the trust (see the definition of “associate” in Listing Rule 19.12).

²⁶ See note [25](#) above.

- any person with whom the person has, or proposes to enter into, a relevant agreement²⁷ for the purpose of controlling or influencing the composition of the listed entity's board²⁸ or the conduct of the listed entity's affairs; and
- any person with whom the person is acting, or proposing to act, in concert in relation to the listed entity's affairs.²⁹

Where the person is a natural person, their related parties are taken to be their associates unless the contrary is established. 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.³⁰

2.7 Listing Rule 10.11.5 – ASX's discretion to apply Listing Rule 10.11 to other parties

Listing Rule 10.11.5 applies where equity securities are issued to a person whose relationship to the entity or a person referred to in Listing Rules 10.11.1 to 10.11.4 is such that, in ASX's opinion, the issue should be approved by security holders.

²⁷ See the text accompanying note ~~24~~²⁶ above.

²⁸ 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 RE. 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 RE.

²⁹ 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 ~~25~~²⁷ 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 Listing Rules definition also includes a provision deeming a related party of a natural person to be their associate unless the contrary is proven. As mentioned in the text, this 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.

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 had 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.

³⁰ Paragraph (d) of the definition of "related party" in Listing Rule 19.12.

Listing Rule 10.11.5 effectively gives ASX a discretion to require that security holders approve an issue of equity securities to someone who is not one of the parties referred to in Listing Rules 10.11.1 to 10.11.4 but, in ASX's opinion, is nonetheless in a position to exert influence over the entity's decision to issue the securities.

Given the breadth of the parties captured by Listing Rules 10.11.1 to 10.11.4, this is not a discretion that ASX is often called upon to exercise and not one that it exercises lightly, since it imposes additional costs and delays on an entity in having to hold a meeting of security holders to approve an issue of securities that would otherwise be within the authority of the entity's board (or, in the case of a listed trust, its RE). Nevertheless, it is a discretion that ASX can exercise at any time, including after the securities in question have been issued.

Examples of where ASX may apply Listing Rule 10.11.5 to an issue of securities include where the recipient of the securities is:

- a person or entity who has a close connection to a person referred to in Listing Rules 10.11.1 – 10.11.3 but who is not technically a related party (and therefore is not an assumed associate³¹) of that person and ASX suspects that the transaction may have been deliberately structured in this way to avoid the operation of Listing Rule 10.11;³²
- someone, or a person or entity that has a close connection with someone, who has not been formally appointed as a director of the entity but who ASX suspects is acting as a de facto director;³³ and
- someone who the entity is arguing is not a party referred to in Listing Rules 10.11.1 – 10.11.4 but ASX has a contrary view – in which case, ASX may resolve that argument by applying Listing Rule 10.11.5 to the person.

Ordinarily, ASX would not exercise its discretion to apply Listing Rule 10.11.5 to someone who is the chief executive officer ("CEO") of an entity and who is not a director and not otherwise a 10.11 party, simply because of his or her position as CEO. This is on the premise that since the CEO is not a member of the board, the CEO is not in a position to influence the board's determination on whether or not to issue securities to the CEO and the board, acting in accordance with its statutory and common law duties,³⁴ can be presumed to have exercised an independent judgement on the appropriateness of any such issue. However, there may be circumstances where this premise does not hold true and where ASX will consider applying Listing Rule 10.11.5 to an issue of equity securities to a CEO or to someone closely connected with a CEO. These include where:

³¹ See the discussion of the provisions in the Listing Rules deeming an individual's related parties to be their associates in '2.6 Listing Rule 10.11.4 – associates'.

³² An example would be where the recipient of the securities is a brother or sister of a director. A sibling is not a "prescribed relative" and therefore not a related party of a director who would be deemed to be an associate of the director in the absence of proof to the contrary. Nevertheless, if the entity is not able to give ASX a compelling commercial justification as to why the securities are being issued to the sibling and compelling evidence that the sibling is not in fact an associate of the director, ASX is likely to apply Listing Rule 10.11.5 to the sibling. In this scenario, ASX considers it not unreasonable to assume, in the absence of evidence to the contrary, that the issue is intended indirectly to benefit the director and that it has been deliberately structured in this way in an attempt to avoid Listing Rule 10.11.

³³ In this context, "de facto director" means a person who acts in the position of director even though they have not been formally appointed to the role and any other person whose instructions or wishes are customarily followed by the board of the entity.

An example ASX has encountered in a related area 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 of a new listing (Listing Rule 1.1 condition 20) but to allow the individual to attend board meetings in an official capacity and act as a de facto director.

³⁴ In common with all other powers exercisable by directors, the power to issue securities must be exercised by the directors in accordance with their statutory and common law duties to act with due care and diligence, in good faith, in the best interests of the entity and for a proper purpose. See, for example, sections 180 and 181 (officers of listed companies) and 601FD (officers of responsible entities of listed trusts) of the Corporations Act.

- a close relative of the CEO or someone with whom the CEO has close business or personal ties is a director of the entity;
- ASX suspects that the CEO is acting as a de facto director; or
- the terms of the issue are so uncommercial as to call into question whether the board has properly exercised an independent judgement.

2.8 ASX's approach to giving in-principle advice on the application of Listing Rule 10.11.5

ASX is sometimes approached to give in-principle advice that it will not apply Listing Rule 10.11.5 in relation to an issue of equity securities to a particular person.

For ASX to give that advice, it has to be satisfied that there is no reasonable prospect of the person influencing the terms of the issue to favour themselves at the expense of the entity. The entity seeking the advice must disclose candidly the full extent of the relationship between the person and their related parties on the one hand and the entity and its 10.11 parties on the other, and any influence that the recipient may have over the entity's board (or, in the case of a listed trust, over the RE of the trust).

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. If the entity omits or misrepresents material facts in its application for in-principle advice, or if other material facts come to light after ASX provides its advice, ASX may withdraw or change its advice.

If ASX decides that it will not apply Listing Rule 10.11.5 in relation to an issue of equity securities to a particular person, it may impose conditions and, if it does so, the entity must comply with the conditions.³⁵ An example of a condition that ASX may impose is a condition that the entity disclose to the market the nature and extent of the relationship between the recipient of the securities and the entity or its 10.11 parties and the steps the board of the entity (or, in the case of a listed trust, the RE of the trust) has taken to satisfy itself that the issue of the securities is being made on arm's length terms and is fair and reasonable from the perspective of the holders of the entity's ordinary securities.

2.9 The responsibility for identifying 10.11 parties

It is the responsibility of a listed entity to identify whether it is issuing equity securities to a 10.11 party in circumstances that require security holder approval under Listing Rule 10.11 and, if so, to seek that approval ahead of the issue being made.

This should not prove unduly onerous. First, an entity should already have arrangements in place to identify its related parties and their associates so that it can comply with Chapter 2E (or equivalent overseas legislation) and the various accounting requirements applicable to transactions with related parties.³⁶ It should also be aware of the identity of substantial holders of its securities and their associates through the substantial shareholding notices they will have given to the entity under section 671B of the Corporations Act (or equivalent overseas legislation).

Secondly, a number of the more common types of security issues, such as acquisitions under pro rata offers, dividend or distribution reinvestment plans, security purchase plans and approved employee incentive schemes, are specifically excepted from the requirement for security holder approval by Listing Rule 10.12. Listing Rule 10.11 will therefore only come into play where the entity is proposing to make an issue outside of those exceptions. Generally speaking, the most common instances of this will be placements and offers of securities under a prospectus, PDS or other offer document.

³⁵ Listing Rule 18.5A provides that ASX may exercise, or decide not to exercise, any power or discretion conferred under the Listing Rules in its absolute discretion. It may do so on any conditions and, if it does so, the entity must comply with the conditions.

³⁶ See Accounting Standard AASB 124 *Related Party Disclosures*.

In the case of a placement, the identity of the placee should be known and it should be a relatively straight forward task for the entity to determine whether the placee is a 10.11 party.

In the case of an offer under a prospectus, PDS or other offer document, the entity may not necessarily know in advance whether 10.11 parties intend to participate in the offer. In that case, if the entity is not intending to seek security holder approval to allow 10.11 parties to take up the offer, the entity should include in the offer document a condition that 10.11 parties are precluded from accepting the offer and implement processes to check that any acceptances of the offer by a 10.11 party are identified and rejected.

The entity should also take appropriate steps to alert:

- its directors that they, their prescribed relatives, and entities controlled by them or their prescribed relatives; and
- any controllers of the entity that those controllers and all other group entities, directors of group entities, prescribed relatives of those directors, and entities controlled by those directors or their prescribed relatives,

are not able to take up the offer.

Directors of a listed entity (or, in the case of a listed trust, of the RE of the trust) have obligations to disclose any material personal interests they have in a matter that relates to the affairs of the entity³⁷ and to exercise due care and diligence to avoid causing the entity to breach the Listing Rules.³⁸ This includes, whenever they are considering a placement, an offer of securities under a prospectus, PDS or other offer document, or any other issue of securities that falls outside of the exceptions in Listing Rule 10.12, carefully considering whether they, any of their prescribed relatives, or any entities controlled by them or their prescribed relatives, may participate in the issue. If so, they should alert the entity to that fact so that it can seek security holder approval or take other action to avoid breaching Listing Rule 10.11.

2.10 The application of Listing Rule 10.11 to externally managed listed trusts

Listing Rule 10.11 potentially has a wider application to externally managed listed trusts than listed companies or internally managed listed trusts by dint of the fact that the related parties of an externally managed trust include its RE, any entities that control its RE ("controllers"), any entities controlled by its controllers (other than those controlled by the RE in its capacity as the RE of the listed trust), and any entities that its RE controls other than in its capacity as the RE of the listed trust.

For the avoidance of doubt, an issue of equity securities by an externally managed listed trust to:

- the RE in its personal capacity;
- a related body corporate of the RE;
- another trust³⁹ with the same RE; or

³⁷ See section 191 of the Corporations Act. While this section only applies to companies formed in Australia under that Act, companies formed in other jurisdictions are likely to be subject to an equivalent requirement under the governing legislation where they are formed or under the constitution of the company.

³⁸ See *ASIC v Macdonald (No 11)* [2009] NSWSC 287, 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* [2012] HCA 17 and *Shafron 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*, [2010] NSWCA 331. The CEO did not appeal the decision at first instance.

³⁹ References to an issue of equity securities to a trust include an issue of securities to the RE of the trust in that capacity or to a trustee, custodian or sub-custodian holding the securities on trust for the beneficiaries of the trust.

- another trust that has a related body corporate of the RE as its RE,

is plainly caught by Listing Rule 10.11.1 and will require security holder approval unless an exception in Listing Rule 10.12 applies or ASX grants a waiver.

2.11 ASX's approach to granting waivers of Listing Rule 10.11

ASX regards Listing Rule 10.11 as one of the fundamental protections afforded to investors under the Listing Rules. While ASX may consider procedural and other minor waivers of the rule,⁴⁰ ASX will only waive the central requirement for security holders to approve an issue of equity securities to a 10.11 party, where it is clear to ASX that the harm Listing Rule 10.11 seeks to protect against is not present. The onus is firmly on the entity seeking the waiver to establish this to ASX's satisfaction.

Hence, to receive such a waiver, an entity must establish to ASX's satisfaction that there is no reasonable prospect of the recipient of the securities influencing the terms of the issue to favour themselves at the expense of the entity.

The mere fact that a director excuses himself or herself from participating in the discussion and decision at a board meeting concerning a proposed issue of securities to them or to someone connected to them will not be sufficient to establish an absence of influence.

ASX would note that, prior to 1 December 2019, it had previously granted waivers from Listing Rule 6.18, which prohibits a listed entity from granting anyone an option that is exercisable over a percentage of its capital, to permit an entity to give an anti-dilution right to a strategic security holder. The anti-dilution right allowed the strategic security holder and its related bodies corporate to maintain a particular percentage security holding in the entity. Typically, that percentage security holding was more than 10%, but less than 30%, of the entity's ordinary securities. Typically also, the strategic security holder was given a right to appoint one or more representatives to the entity's board.

The introduction on 1 December 2019 of Listing Rule 10.11.3 extending Listing Rule 10.11 to substantial (10%+) holders with board representation cuts across the operation of these waivers. Most strategic security holders with the benefit of these waivers will now fall within Listing Rule 10.11.3 and therefore, in the absence of a further waiver from ASX, each new issue of equity securities under the anti-dilution right to the strategic security holder or its related bodies corporate will require security holder approval under Listing Rule 10.11.

In ASX's view, a security holder in a strategic relationship with a listed entity and with board representation is likely to have considerable influence over the types of capital raisings the entity undertakes. If the entity undertakes a non-pro rata capital raising that may potentially dilute the strategic security holder, it always has the option to buy securities on-market to top up its holding and therefore it should not need a separate anti-dilution right.

Accordingly, from 1 December 2019, ASX will no longer grant these types of waivers from Listing Rule 6.18.

Entities that had the benefit of a Listing Rule 6.18 waiver prior to 1 December 2019 should approach ASX to discuss its preparedness to grant a concurrent waiver of Listing Rule 10.11.3 to allow issues of equity securities to a strategic security holder and its related bodies corporate to continue to be made under their anti-dilution right without security holder approval. Before granting a concurrent Listing Rule 10.11.3 waiver, ASX will need to be satisfied

⁴⁰ Guidance Note 17 *Waivers and In-Principle Advice* sets out some standard waivers that ASX will grant in relation to issues of securities that require security holder approval under Listing Rule 10.11. These include limited waivers of Listing Rule 14.7 to permit the securities to be issued more than one month after the date of the meeting granting that approval in cases where the issue is part of a transaction (such as a back door listing) requiring re-compliance with ASX's admission and quotation requirements under Listing Rule 11.1.3 or a recapitalisation pursuant to a deed of company arrangement, and the entity is not practically able to meet the one month deadline. They also include a waiver effectively extending exception 4 in Listing Rule 10.12 to issues under a share purchase plan to which that exception would otherwise have applied but for the fact that the number of securities to be issued under the plan is greater than 30% of the number of fully paid ordinary securities already on issue or because the issue price of the securities is less than 80% of the average market price for securities in that class. In this latter case, the issue must be approved by security holders under Listing Rule 7.1 in accordance with a concurrent waiver granted by ASX to Listing Rule 14.11.1 that permits security holders to vote on the resolution approving the issue despite them being able to participate in the issue.

that the basis for the original Listing Rule 6.18 waiver still holds true and that there is still a genuine strategic relationship between the entity and the security holder and that the security holder and its related bodies corporate have maintained their holding in the entity at the agreed percentage throughout the life of their anti-dilution right.⁴¹ ASX will also need to be satisfied that the terms of the anti-dilution right continue to be appropriate and equitable.⁴² Any concurrent Listing Rule 10.11.3 waiver ASX may grant may be subject to conditions⁴³ and may be varied or revoked by ASX at any time.⁴⁴

2.12 Notification obligations

An entity is required under Listing Rule 3.10.3 to notify ASX immediately of any proposed issue of securities, other than a proposed issue to be made under an employee incentive scheme⁴⁵ or a dividend or distribution plan⁴⁶ or as a consequence of the conversion of any convertible securities.⁴⁷ The notification must be in the form of, or accompanied by, an Appendix 3B *Proposed Issue of Securities*.

Any issue of equity securities that attracts Listing Rule 10.11,⁴⁸ therefore, will likely have to be notified to ASX under Listing Rule 3.10.3 immediately after it is “proposed”.

Guidance Note 30 *Notifying Changes in Issued Securities and Applying [Forfeiture](#) Quotation of New or Additional Securities* has detailed guidance on the meaning of “proposed issue”, when ASX must be notified of a proposed issue of securities under Listing Rule 3.10.3 and what information must be included in the notification.

Where a proposed issue of equity securities requires security holder approval under Listing Rule 10.11, the entity's Appendix 3B should disclose that fact and the proposed timetable for seeking that approval.

Where an issue of securities leads to a change in the “notifiable interests”⁴⁹ of a director, the entity must also give ASX an Appendix 3Y within 5 business days of the change occurring.⁵⁰

3. Permitted issues under Listing Rule 10.12

3.1 The policy underpinning the exceptions in Listing Rule 10.12

Listing Rule 10.12 lists different types of security issues to which Listing Rule 10.11 does not apply.

Some of these exceptions reflect the underlying nature of the issue and the fact that all security holders have an equal opportunity to participate in the issue on the same terms. They therefore do not present an opportunity for 10.11 parties to acquire securities on more favourable terms than other security holders. Others are of a technical nature to ensure that the framework regulating issues of equity securities to 10.11 parties operates as intended.

⁴¹ In ASX's view, these anti-dilution rights should operate on a “use it or lose it” basis.

⁴² Listing Rule 6.1.

⁴³ Listing Rule 18.1.

⁴⁴ Listing Rule 18.3.

⁴⁵ An issue under an employee incentive scheme must be notified to ASX within 5 business days of the issue under Listing Rule 3.10.3A.

⁴⁶ A proposed issue under a dividend or distribution plan is notified to ASX via an Appendix 3A.1.

⁴⁷ An issue made as a consequence of the conversion of any convertible securities must be notified to ASX within 5 business days of the issue under Listing Rule 3.10.3B. An exercise of options is treated as a conversion of convertible securities for these purposes.

⁴⁸ A proposed issue to be made under an employee incentive scheme typically is not caught by Listing Rule 10.11 because of exceptions 8 and 9 in Listing Rule 10.12. A proposed issue to be made under a dividend or distribution plan typically is not caught by Listing Rule 10.11 because of exception 3 in Listing Rule 10.12. A proposed issue to be made as a consequence of the conversion of any convertible securities typically is not caught by Listing Rule 10.11 because of exception 7 in Listing Rule 10.12.

⁴⁹ As defined in Listing Rule 19.12.

⁵⁰ Listing Rule 3.19A. See also Guidance Note 22 [Director Disclosure of Interests and Transactions in Securities - Obligations of Listed Entities](#).

3.2 Exception 1 – pro rata issues

Listing Rule 10.12 exception 1⁵¹ excludes from Listing Rule 10.11 an issue to holders of ordinary securities made under a pro rata issue,⁵² as well as an issue to holders of other equity securities to the extent that the terms of issue of those other equity securities permit participation in the pro rata issue.

A pro rata issue is excluded from the restrictions in Listing Rule 10.11 as all security holders have an equal opportunity to participate in the issue on the same terms.⁵³

It should be noted that exception 1 only applies to securities taken up directly as part of a pro rata issue. It does not apply to a person taking up all or part of the shortfall of a pro rata issue.⁵⁴ For example, a director who has taken up their entitlement in a pro rata issue cannot take up shortfall securities under this exception, even if the shortfall is allocated on a pro rata basis to those participating in the shortfall.⁵⁵

3.3 Exception 2 – underwritings of pro rata issues

Listing Rule 10.12 exception 2⁵⁶ excludes from Listing Rule 10.11 an issue of securities to an underwriter under an agreement to underwrite the shortfall⁵⁷ on:

- a pro rata issue to holders of ordinary securities; or
- a pro rata issue to holders of ordinary securities and to holders of other equity securities to the extent that the terms of issue of the equity securities permit participation in the pro rata issue.

These issues are excluded from the restrictions in Listing Rule 10.11 since the pro rata nature of the underlying issue ensures that all security holders have had an equal opportunity to participate in the issue on the same terms.⁵⁸

To qualify for this exception, the entity must have disclosed:

- the name of the underwriter;

⁵¹ There is an equivalent exception in Listing Rule 7.2 exception 1, meaning that pro rata issues that meet the requirements above are not subject to the placement limits in Listing Rules 7.1 and 7.1A.

⁵² A pro rata issue must comply with Listing Rule 7.11. The issue can be renounceable or non-renounceable, although if the theoretical rights price for the issue is less than 0.1 cents, the lowest price point at which securities can be traded on ASX, as a practical matter, it will have to be non-renounceable. An issue is not precluded from being a pro rata issue for the purposes of the Listing Rules because security holders with addresses outside Australia and New Zealand are excluded from the issue under Listing Rule 7.7.1 or because security holders are allowed to subscribe for a greater number of securities than their entitlement under Listing Rule 7.11.4 (see the note to Listing Rule 10.12 exception 1 and the definition of “pro rata issue” in Listing Rule 19.12).

⁵³ Australian listed companies and managed investment schemes should note the guidance by the Takeovers Panel in Takeovers Panel Guidance Note 17 *Rights Issues* on its approach to rights issues which have, or are likely to have, an effect on control or the acquisition of a substantial interest in the company or scheme.

⁵⁴ In this regard, there is no exception in Listing Rule 10.12 equivalent to the one in Listing Rule 7.2 exception 3 dealing with issues to make up the shortfall on a pro rata issue.

⁵⁵ See also the note to Listing Rule 10.12 exception 1.

⁵⁶ There is an equivalent exception in Listing Rule 7.2 exception 2, meaning that issues under an agreement to underwrite the shortfall on a pro rata issue that meet the requirements above are not subject to the placement limits in Listing Rules 7.1 and 7.1A.

⁵⁷ Where security holders with addresses outside Australia and New Zealand are excluded from an issue under Listing Rule 7.7.1, ASX regards the securities that would otherwise have been issued to them as forming part of the shortfall.

⁵⁸ Australian listed companies and managed investment schemes again should note the guidance by the Takeovers Panel in Takeovers Panel Guidance Note 17 *Rights Issues* on its approach to rights issues which have, or are likely to have, an effect on control or the acquisition of a substantial interest in the company or scheme, including the comment in paragraph 25 of that Guidance Note that:

“For many companies, a related party or major shareholder is the only realistic source of underwriting (sub-underwriting). Underwriting (sub-underwriting) by a related party or major shareholder does not, of itself, give rise to unacceptable circumstances. However, greater care is needed to mitigate the potential control effects if a related party or major shareholder underwrites (sub-underwrites). The failure of directors to properly canvass professional underwriters or seek out alternatives to a related party or major shareholder underwriter (sub-underwriter) may increase the likelihood of unacceptable circumstances.”

- the extent of the underwriting;⁵⁹
- the fee, commission or other consideration payable to the underwriter;⁶⁰ and
- a summary of the material circumstances that could lead to the underwriting being terminated,

in the Appendix 3B lodged under Listing Rule 3.10.3 in relation to the pro rata issue or, if the underwriting was entered into after the Appendix 3B was lodged with ASX, by market announcement as soon as practicable following the entry of the underwriting agreement.

It must also make the issue to the underwriter not later than 15 business days after the close of the offer.

The reference in this exception to an underwriter includes a sub-underwriter.⁶¹ If a 10.11 party is sub-underwriting, rather than underwriting, a pro rata issue, the details disclosed in the Appendix 3B or market announcement referred to in the exception must include the name of that party, the extent of their sub-underwriting, the fee or commission payable to them as sub-underwriter and a summary of the material circumstances that could lead to the sub-underwriting being terminated.⁶²

This exception only applies where the arrangement with the underwriter constitutes a genuine underwriting or sub-underwriting. ASX agrees with the views expressed by the Australian Securities and Investments Commission (“ASIC”) in this regard:

“A central element of underwriting is the assumption of risk by the underwriter—in particular the obligation to subscribe for, or nominate other persons to subscribe for, shares in the event of a shortfall ...

Where an arrangement does not, in substance, involve the assumption of this risk, we take the view that the arrangement is not underwriting. This includes arrangements:

- incorporating terms or conditions that, in the circumstances, effectively give the ‘underwriter’ a general discretion to terminate the underwriting arrangement from the outset (e.g. terms or conditions giving the underwriter a termination right if one or more events over which the underwriter has effective control occur); or*
- that may otherwise be terminated in circumstances that mean that the ‘underwriter’ does not, in effect, bear the risk of the shortfall.*

For example, arrangements that permit the underwriter to be relieved of its obligations following a default by a sub-underwriter—either entirely through termination of the agreement, or by reducing the amount of the underwriting commitment by the amount in default—seek to relieve the underwriter of their obligation to subscribe for securities in the event of a shortfall. Accordingly, we do not consider such arrangements to constitute ‘underwriting’.

⁵⁹ The reference to the “extent of the underwriting” means the amount or proportion of the issue that is underwritten or sub-underwritten, as the case may be (see the note to Listing Rule 10.12 exception 2).

⁶⁰ The reference to the “fee, commission or other consideration payable” includes any applicable discount the underwriter or sub-underwriter receives to the issue price payable by participants in the issue (see the note to Listing Rule 10.12 exception 2).

⁶¹ See the definition of “underwrite” in section 9 of the Corporations Act and Listing Rule 19.3.

⁶² See the note to Listing Rule 10.12 exception 2. The Appendix 3B asks whether a party referred to in Listing Rule 10.11 is sub-underwriting the proposed issue and, if this is answered in the affirmative, will call for this information to be provided in relation to the sub-underwriting.

Further, arrangements that permit the underwriter to terminate on the basis of an event that is certain, or near certain, to occur (such as a token fall in a relevant market index) are also likely to mean that the underwriter has an option to underwrite and does not, in substance, assume shortfall risk.”⁶³

It should be noted that exception 2 also only applies to issues of securities to make up the underwritten shortfall from a pro rata issue. It does not apply to any other issues of securities under an underwriting agreement (for example, in payment of the underwriting fee or any other amount due to the underwriter under the agreement). These other types of issues will therefore only be able to be made to a 10.11 party if security holder approval is first obtained under Listing Rule 10.11.

3.4 Exception 3 – DRPs

Listing Rule 10.12 exception 3⁶⁴ excludes from the restrictions in Listing Rule 10.11 an issue of securities under a dividend or distribution plan (“DRP”) provided the DRP does not impose a limit on participation and security holders are able to elect to receive all of their dividend or distribution as securities.⁶⁵

These types of issues again are excluded from the restrictions in Listing Rule 10.11 because all security holders have an equal opportunity to participate in the DRP and to acquire securities on the same terms.

If a DRP does impose a limit on participation – for example, a maximum dollar limit on the amount of reinvestment or a maximum limit on the number of securities that a security holder can acquire under the DRP – any issue under the DRP to a 10.11 party will not qualify under exception 3 and will therefore require security holder [approval](#) under Listing Rule 10.11.

It should be noted that exception 3 does not extend to an issue of securities under an agreement to underwrite the shortfall on a DRP.⁶⁶ Accordingly, a 10.11 party can only take up securities as an underwriter of a DRP or by way of a sub-underwriting or similar arrangement with an underwriter of a DRP, if they receive specific approval to do so under Listing Rule 10.11.

3.5 Exception 4 – SPPs

Listing Rule 10.12 exception 4⁶⁷ excludes from Listing Rule 10.11 an issue of securities made under a security purchase plan (“SPP”) provided:

- the number of securities to be issued is not greater than 30% of the number of fully paid ordinary securities already on issue; and
- the issue price of the securities is at least 80% of the volume weighted average price⁶⁸ for securities in that class, calculated over the last 5 days on which sales in the securities were recorded, either before the day on which the issue is announced or before the day on which the issue is made.

⁶³ See ASIC Regulatory Guide 6 *Takeovers: Exceptions to the general prohibition* at paragraphs 6.142 – 6.145. *A fortiori*, someone who has given an undertaking to place securities on a “best endeavours” basis is not an underwriter for the purposes of exception 2.

⁶⁴ There is an equivalent exception in Listing Rule 7.2 exception 4, meaning that issues under a DRP that meet the requirements above are not subject to the placement limits in Listing Rules 7.1 and 7.1A.

⁶⁵ A restriction on employees participating in a dividend or distribution plan in respect of securities held under an employee incentive scheme is not a limit on participation for the purposes of exception 3 (see the note to Listing Rule 10.12 exception 3).

⁶⁶ There is no exception in Listing Rule 10.12 equivalent to the one in Listing Rule 7.2 exception 4 for issues under an agreement to underwrite the shortfall on a DRP.

⁶⁷ There is an equivalent exception in Listing Rule 7.2 exception 5, meaning that issues under an SPP that meet the requirements above are not subject to the placement limits in Listing Rules 7.1 and 7.1A.

⁶⁸ “Volume weighted average price”, or VWAP, in relation to particular securities for a particular period, means the volume weighted average price of trading in those securities on the ASX market and the [GbeeTMX Australia](#) 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 (Listing Rule 19.12). Trading on the ASX market and [GbeeTMX Australia](#) market includes trades executed on those markets and trades reported to those markets (other than block trades, large portfolio trades, permitted trades

Exception 4 is only available once in any 12 month period.

Issues under an SPP are excluded from Listing Rule 10.11 because all security holders have an equal opportunity to participate in the issue on the same terms up to the \$30,000 cap imposed in ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547.

An SPP is defined to have the same meaning as a “purchase plan” in ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547.⁶⁹ This instrument allows ASX listed companies and managed investment schemes to offer securities to existing members without a prospectus or PDS provided they meet certain conditions summarised below. The offer must be made to each registered holder of securities in the class in question whose address (as recorded in the register of members) is in a place in which, in the reasonable opinion of the entity, it is lawful and practical for the entity to offer and issue securities to that person.⁷⁰

For an issue of securities to fall within exception 4, the entity must meet all of the conditions in ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547 apart from the requirement that the entity’s securities not be suspended from trading on ASX for the prescribed period. If the entity does not meet that requirement, it can still avail itself of exception 4 but it will not qualify for the relief in ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547 and will therefore have to prepare a prospectus or PDS for the offer under the SPP.

Exception 4 does not apply to an issue of securities under an agreement to underwrite the shortfall on an SPP. Accordingly, a 10.11 party can only take up securities as an underwriter of an SPP, or by way of a sub-underwriting or similar arrangement with an underwriter of an SPP, if they receive specific approval to do so under Listing Rule 10.11.

It should be noted that a standard waiver is available under Guidance Note 17 *Waivers and In-Principle Advice*, where an entity is seeking approval under Listing Rule 7.1 to an issue of securities under an SPP to which exception 5 of Listing Rule 7.2 would otherwise have applied but for the fact that the number of securities to be issued under the SPP is greater than 30% of the number of fully paid ordinary securities already on issue or because the issue price of the securities is less than 80% of the average market price for securities in that class. In such a case, ASX will grant a standard waiver of Listing Rule 7.3.⁷¹ to permit a resolution in a notice of meeting approving the issue of securities under the SPP not to include a voting exclusion statement that excludes the votes of any person who may participate in the SPP or any associate of such a person, provided:

- the SPP is not underwritten; or
- if the SPP is underwritten, the entity excludes any votes cast on the resolution by any proposed underwriter or sub-underwriter of the SPP and their associates.

Where such a resolution is passed by the holders of ordinary securities, ASX will also grant a concurrent waiver from Listing Rule 10.11 to permit directors and their associates to participate in the SPP on the same terms as other security holders without the approval of the holders of ordinary securities under that rule.⁷²

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.

⁶⁹ Listing Rule 19.12. See also ASIC Regulatory Guide 125 *Share and interest purchase plans*.

⁷⁰ See paragraph (a) of the definition of “purchase plan” in section 4 of ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547.

⁷¹ That is, the requirement for a notice of meeting proposing a resolution to approve an issue of securities under Listing Rule 7.1 to include a voting exclusion statement.

⁷² This concurrent waiver effectively treats the offer under the SPP on the same basis as an offer falling within exception 4 of Listing Rule 10.12.

3.6 Exception 5 – regulated takeovers and mergers

Listing Rule 10.12 exception 5⁷³ excludes from the restrictions in Listing Rule 10.11 an issue of securities under a regulated takeover or merger.

Exception 5 has been included as a concession to listed entities, in recognition of the fact that takeovers and mergers in Australia (including trust schemes) and certain other jurisdictions are already subject to regulation and could be difficult to complete in circumstances where the entity is required to seek approval from its security holders before it can issue securities under the takeover or merger. A requirement for security holder approval could also put ASX-listed entities at a competitive disadvantage to an unlisted bidder or acquirer just because a 10.11 party happens to hold some securities in the takeover or merger target. Such a requirement could also put the entity at a significant competitive disadvantage in a contested situation.

It should be noted that Listing Rule 10.1 can apply to an acquisition of securities by an entity under a regulated takeover or merger⁷⁴ and there is no exception to Listing Rule 10.1 comparable to Listing Rule 10.12 exception 5.⁷⁵ Listing Rule 10.1 will apply if someone who is a party referred to in Listing Rules 10.1.1 to 10.1.5 is also a security holder in the takeover or merger target and the size of their holding is large enough to be a “substantial asset” (ie the value of their holding, or the value of the consideration to be paid for their holding, in the target exceeds 5% of the equity interests in the entity, as set out in the latest accounts given to ASX under the Listing Rules⁷⁶). In such a case, absent a waiver from ASX, the acquisition by the entity of their holding under the takeover ~~bid~~ or merger will require security holder approval under Listing Rule 10.1, even though the issue of securities to them as consideration for the acquisition is excepted from the requirement for security holder approval in Listing Rule 10.11 by Listing Rule 10.12 exception 5.

In these circumstances, ASX has typically received a request from the entity in question for a waiver of Listing Rule 10.1. Guidance Note 24 *Acquisitions and Disposals of Substantial Assets Involving Persons in a Position of Influence* has guidance on when ASX may be prepared to grant such a waiver.

3.7 Exception 6 – issues approved under item 7 of section 611

Listing Rule 10.12 exception 6⁷⁷ excludes from the restrictions in Listing Rule 10.11 an issue of securities that is approved under item 7 of section 611 of the Corporations Act. These issues are excluded on the basis that the security holder approval requirements under item 7 of section 611 are more extensive than those under Listing Rule 10.11⁷⁸ and it would be an unnecessary duplication to require an additional security holder approval under Listing Rule 10.11.

Item 7 of section 611, and therefore exception 6, only applies to an Australian company or registered managed investment scheme that is subject to the takeover provisions in Chapter 6 of the Corporations Act.

In an appropriate case, ASX will consider granting a waiver to extend exception 6 to an acquisition of securities in a foreign entity or trust that is approved under equivalent legislation in its place of establishment.

⁷³ There is an equivalent exception in Listing Rule 7.2 exception 6 (although that exception does not apply in relation to an issue of securities under a reverse takeover ~~or~~ [or prescribed transaction](#)).

⁷⁴ See generally Guidance Note 24 *Acquisitions and Disposals of Assets Involving Persons in a Position of Influence*.

⁷⁵ Listing Rule 10.3(d) excludes from Listing Rule 10.1 an issue of securities by an entity for cash. That exclusion plainly does not apply to an issue of securities in exchange for securities in the target of a takeover bid or in an entity being acquired or merged with under a scheme of arrangement or other merger transaction.

⁷⁶ See Listing Rule 10.2.

⁷⁷ There is an equivalent exception in Listing Rule 7.2 exception 8.

⁷⁸ Among other things, to comply with ASIC’s regulatory guidance on item 7, an entity must obtain an independent expert’s report opining on whether the issue is fair and reasonable to non-participating security holders.

It should be noted that, unlike issues made with security holder approval under Listing Rule 10.11, issues made with approval under item 7 of section 611 are not constrained by any time limit.⁷⁹ An entity must include a summary in its annual report of any issues of securities approved for the purposes of item 7 of section 611 of the Corporations Act which have not been completed as at the date of the annual report.⁸⁰

3.8 Exception 7 – conversion of convertible securities

Listing Rule 10.12 exception 7⁸¹ excludes from Listing Rule 10.11 an issue of securities resulting from the conversion of convertible securities.⁸² The entity must have issued the convertible securities:

- (a) before it was listed and disclosed the existence and material terms of the convertible securities in the prospectus, PDS or information memorandum lodged with ASX under Listing Rule 1.1 condition 3; or
- (b) after it was listed and complied with the Listing Rules when it did so.

This is a technical exception intended to ensure that the Listing Rules deal appropriately with convertible securities. The time at which an issue of convertible securities is tested to determine whether it requires security holder approval under Listing Rule 10.11 is when they are issued, not when they are converted. If at the time they are issued they comply with the Listing Rules, any subsequent conversion in accordance with their terms does not require security holder approval under Listing Rule 10.11.

In the case of (a) above, the Listing Rules effectively treat the fact that security holders have agreed to invest in the entity after it has disclosed the existence and material terms of the convertible securities in its listing prospectus, PDS or information memorandum as an implicit approval by security holders to the issue of the convertible securities. However, this does not mean that the entity has carte blanche to issue whatever convertible securities it wants to directors and their associates pre-listing. ASX may refuse to admit the entity to the official list and to quote its securities if ASX considers that the convertible securities breach Chapter 6 of the Listing Rules⁸³ or result in the entity not having an appropriate structure for a listed entity,⁸⁴ or it is otherwise appropriate for ASX to exercise its absolute discretion to refuse the entity's application for admission.⁸⁵

To meet the requirement in (a) above that the entity disclose the existence and material terms of the convertible securities in its listing prospectus, PDS or information memorandum, the entity should include in that document:⁸⁶

- the name of the person to whom the entity issued the convertible securities;
- which category in rules 10.11.1 – 10.11.5 the person falls within and why;

⁷⁹ Although, an item 7 approval may need to be renewed if there is a material change in circumstances after the approval has been given and before the transaction is completed and may not be available for an acquisition that will complete in the distant future: see paragraphs 87 and 89 of ASIC Regulatory Guide 74 *Acquisitions approved by members*.

⁸⁰ Listing Rule 4.10.21.

⁸¹ There is an equivalent exception in Listing Rule 7.2 exception 9, meaning that the conversion of convertible securities that meet the conditions set out above are not subject to the placement limits in Listing Rules 7.1 and 7.1A.

⁸² An option is a convertible security for the purposes of this exception (see the notes to Listing Rule 7.2 exception 9 and the definition of "convertible security" in Listing Rule 19.12). Reflecting this, the term 'convertible' is defined to include 'exercisable' (see the definition of that term in Listing Rule 19.12).

⁸³ Listing Rule 2.1 condition 1. This includes the requirement in Listing Rule 6.1 that the terms applying to the convertible securities are, in ASX's opinion, appropriate and equitable.

⁸⁴ Listing Rule 1.1 condition 1. See section 3.1 of Guidance Note 1 *Applying for Admission – ASX Listings* for examples of when ASX may determine that an entity does not have a structure or operations appropriate for a listed entity.

⁸⁵ Listing Rule 1.19. See section 2.9 of Guidance Note 1 *Applying for Admission – ASX Listings* for examples of when ASX may exercise this discretion.

⁸⁶ By analogy with the information required to be disclosed under Listing Rule 10.13 in a notice of meeting seeking security holder approval under Listing Rule 10.11.

- the number of convertible securities that were issued to the person;
- a summary of the material terms of the convertible securities;
- the date or dates on which the convertible securities were issued;
- the price or other consideration the entity received for the issue; and
- the purpose of the issue, including the use or intended use of any funds raised by the issue.

To meet the requirement in (b) above that the entity must have complied with the Listing Rules when it issued the convertible securities, the issue must not only be made in compliance with the requirements of Listing Rule 10.11, it also must not breach the prohibitions in Listing Rule 7.1, 7.1A,⁸⁷ 7.6 or 7.9.⁸⁸

3.9 Exception 8 – issues under employee incentive schemes approved by security holders

Listing Rule 10.12 exception 8⁸⁹ excludes from the restrictions in Listing Rule 10.11 an issue of equity securities under an employee incentive scheme made, or taken to have been made,⁹⁰ with the approval of holders of ordinary securities under Listing Rule 10.14.

These issues are excluded from Listing Rule 10.11 on the basis that they have already been approved by security holders and to require a separate approval under Listing Rule 10.11 would therefore be an unnecessary duplication.

3.10 Exception 9 – issues of certain options and rights under employee incentive schemes

Listing Rule 10.12 exception 9⁹¹ excludes from the restrictions in Listing Rule 10.11 a grant of options or other rights to acquire securities under an employee incentive scheme, where the securities to be acquired on the exercise of the options or in satisfaction of the rights are required by the terms of the scheme⁹² to be purchased on-market.

These issues are excluded from Listing Rule 10.11 on the basis that they are effectively remuneration arrangements that properly fall to the directors for approval. Since the securities to be acquired on the exercise of the options or in satisfaction of the rights must be purchased on-market, there is also no dilution to existing security holders.

⁸⁷ Note that Listing Rule 7.1A only permits an issue of convertible securities if they are in a class of securities that is already quoted on ASX.

⁸⁸ See Guidance Note 21 *The Restrictions on Issuing Equity Securities in Chapter 7 of the Listing Rules*.

⁸⁹ There is an equivalent exception in Listing Rule 7.2 exception 14 for issues made with the approval of holders of ordinary securities under Listing Rule 10.14. There is also an exception in Listing Rule 7.2 exception 13, allowing issues to be made under an employee incentive scheme if, within 3 years before the issue date, either: (a) in the case of a scheme established before the entity was listed – a summary of the terms of the scheme were set out in the prospectus, PDS or information memorandum lodged with ASX under Listing Rule 1.1 condition 3; or (b) holders of ordinary securities have approved the issue of securities under the scheme as an exception to Listing Rule 7.2.

⁹⁰ The reference to an issue “taken to be made” with the approval of holders of ordinary securities under Listing Rule 10.14 is intended to pick up an issue of securities under the exception to Listing Rule 10.14 in Listing Rule 10.16(c)(i). That exception applies to an issue of equity securities pursuant to options or other rights to acquire securities granted to directors or their associates under an employee incentive scheme where the entity issued the options or other rights before it was listed and disclosed the information referred to in Listing Rules 10.15.1 – 10.15.9 in relation to the issue in the prospectus, PDS or information memorandum lodged with ASX under Listing Rule 1.1 condition 3. The issue of the options or other rights is taken to have been made with approval under Listing Rule 10.14, meaning that the issue of equity securities will also be exempt from Listing Rule 10.11 under exception 8 of Listing Rule 10.12.

⁹¹ There is an equivalent exception in Listing Rule 7.2 exception 15. See also Listing Rule 10.16.

⁹² The phrase “terms of the scheme” includes terms, conditions, rules, regulations or guidelines formulated to introduce or administer an employee incentive scheme (Listing Rule 19.12).

3.11 Exception 10 – agreements to issue securities

Listing Rule 10.12 exception 10⁹³ excludes from Listing Rule 10.11 an issue under an agreement to issue securities. The entity must have entered into the agreement:

- (a) before it was listed and disclosed the existence and material terms of the agreement in the prospectus, PDS or information memorandum lodged with ASX under Listing Rule 1.1 condition 3; or
- (b) after it was listed and complied with the Listing Rules when it did so.

This is a technical exception intended to ensure that the Listing Rules deal appropriately with agreements to issue securities. The time at which an agreement to issue securities is tested to determine whether it requires approval under Listing Rule 10.11 is the time the agreement is entered into. If at that time the agreement complies with the Listing Rules, any subsequent issue of securities in accordance with the agreement does not require security holder approval under Listing Rule 10.11.

In the case of (a) above, the Listing Rules effectively treat the fact that security holders have agreed to invest in the entity after it has disclosed the existence and material terms of the agreement to issue securities in its listing prospectus, PDS or information memorandum as an implicit approval by security holders of the agreement. Again, however, this does not mean that the entity has carte blanche to enter into whatever agreements to issue securities it wants with directors and their associates pre-listing. ASX may refuse to admit the entity to the official list and to quote its securities if ASX considers that the securities the subject of the agreement breach Chapter 6 of the Listing Rules or result in the entity not having an appropriate structure for a listed entity, or it is otherwise appropriate for ASX to exercise its absolute discretion to refuse the entity's application for admission.⁹⁴

To meet the requirement in (a) above that the entity disclose the existence and material terms of the agreement in its listing prospectus, PDS or information memorandum, the entity should include in that document:⁹⁵

- the name of the person to whom the entity has agreed to issue the securities;
- which category in rules 10.11.1 – 10.11.5 the person falls within and why;
- the number and class of the securities the entity has agreed to issue;
- if the securities are not fully paid ordinary securities, a summary of the material terms of the securities;
- the date or dates on which the securities will be issued;
- the price or other consideration the entity has received or will receive for the issue;
- the purpose of the issue, including the intended use of any funds raised by the issue; and
- a summary of any other material terms of the agreement.

To meet the requirement in (b) above that the entity must have complied with the Listing Rules when it entered into the agreement, the agreement must not only be made in compliance with the requirements of Listing Rule 10.11, it also must not breach the prohibitions in Listing Rules 7.1, 7.1A,⁹⁶ 7.6 or 7.9.⁹⁷

⁹³ There is an equivalent exception in Listing Rule 7.2 exception 16.

⁹⁴ See the Listing Rules and Guidance Notes cited in notes [8388](#), [8489](#) and [8590](#) above.

⁹⁵ By analogy with the information required to be disclosed under Listing Rule 10.13 in a notice of meeting seeking security holder approval under Listing Rule 10.11.

⁹⁶ Note that Listing Rule 7.1A only permits an agreement to issue securities if they are in a class of securities that is already quoted on ASX.

⁹⁷ See Guidance Note 21 *The Restrictions on Issuing Equity Securities in Chapter 7 of the Listing Rules*.

3.12 Exception 11 – issues conditional on prior approval by security holders

Listing Rule 10.12 exception 11⁹⁸ excludes from Listing Rule 10.11 an agreement to issue equity securities that is conditional on holders of ordinary securities approving the issue under the latter rule before the issue is made. If an entity relies on this exception, it must not issue the equity securities without such approval.

This too is a technical exception to address the point that Listing Rule 10.11 applies to an agreement to issue securities and requires security holders to approve the agreement before it is entered into. This exception allows an entity to enter into an agreement to issue equity securities to a 10.11 party on condition that the issue of the securities is approved by the holders of ordinary securities before it is made.

3.13 Exception 12 – future related parties

Listing Rule 10.12 exception 12 excludes from the restrictions in Listing Rule 10.11 an issue of equity securities under an agreement or transaction between the entity and a person who would not otherwise be a related party but for the fact that they believe, or have reasonable grounds to believe, that they are likely to become a related party in the future because of the agreement or transaction.

This also is a technical exception to prevent Listing Rule 10.11 being triggered prematurely. The definition of “related party” extends to a person who believes, or has reasonable grounds to believe, that they are likely to become a related party in the future.⁹⁹ Hence, if a person is negotiating an agreement or transaction with an entity that will lead to them becoming a related party of the entity, as soon as they believe, or have reasonable grounds to believe, that the agreement or transaction is going ahead, they become a related party of the entity.

In practice, this most often arises where one of the terms of the agreement or transaction is that the person is to be appointed to the board of the entity once the agreement is concluded or the transaction has been completed.

This exception is based on the premise that because the person is not yet a related party of the entity, they have no influence over the board (or, in the case of a listed trust, the RE) of the entity and the board (or RE), acting in accordance with its statutory and common law duties,¹⁰⁰ can be presumed to have exercised an independent judgement on the appropriateness of entering into the agreement or transaction with the person. However, there may be circumstances where this premise does not hold true and where ASX will consider applying Listing Rule 10.11.5 to the person. These include where:

- a close relative of the person or someone with whom the person has close business or personal ties is a director of the entity (or of the RE); or
- the terms of the issue are so uncommercial as to call into question whether the board has properly exercised an independent judgement.

ASX interprets exception 12 as only applying to related parties caught by Listing Rule 10.11.1. Accordingly, if ASX does apply Listing Rule 10.11.5 to a person in these circumstances, exception 12 will no longer be available to them.

⁹⁸ There is an equivalent exception in Listing Rule 7.2 exception 17.

⁹⁹ See paragraph (viii) of the definition of “related party” in relation to a body corporate, paragraph (viii) of the definition of “related party” in relation to an internally managed trust and paragraph (x) of the definition of “related party” in relation to an externally managed trust set out in ‘2.3 Listing Rule 10.11.1 – related parties’.

¹⁰⁰ See note [3436](#) above.

4. Listing Rule 10.14

4.1 The scope of the rule

Listing Rule 10.14 effectively requires an entity to obtain the approval of the holders of its ordinary securities before it issues any equity securities¹⁰¹ under an employee incentive scheme to a director,¹⁰² an associate of a director or other closely connected party. This extends to any options and performance rights that fall within the definition of “equity security” in the Listing Rules.¹⁰³

4.2 The policy underpinning the rule

The policy that underpins Listing Rule 10.14 starts from the premise that directors and other closely connected parties are likely to be in a position to influence both the terms of the scheme and the number of securities issued to them under the scheme. The harm it seeks to protect against is that the directors or other closely connected parties will exercise this influence to favour themselves at the expense of the entity.

To address the potential conflicts involved and to minimise the risk of this harm occurring, Listing Rule 10.14 displaces the general rule that the board of directors (or, in the case of a listed trust, the RE of the trust) is responsible for managing the business of the entity to the exclusion of its security holders and requires any issue of securities to directors and other closely connected parties under the scheme to be approved by the holders of ordinary securities in the entity. Directors and other closely connected parties who are eligible to participate in the scheme and their associates are precluded from voting on the resolution to approve the issue.

4.3 What is an “employee incentive scheme”?

The term “employee incentive scheme” is defined in the Listing Rules¹⁰⁴ to mean:

- a scheme for the issue or acquisition of equity securities in the entity to be held by, or for the benefit of, participating employees or non-executive directors of the entity or a related entity or their associates; or
- a scheme which, in ASX’s opinion, is an employee incentive scheme.

The reference to “participating employees” in the definition above includes executive directors who participate in the scheme.

The reference to equity securities being “held for the benefit of” participating employees or non-executive directors captures trust arrangements where securities are held by a trustee for the benefit of those persons.

The fact that an employee incentive scheme allows participating employees or non-executive directors to elect to have equity securities issued to, or held for the benefit of, a relative or an entity controlled by them or a relative (such as 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 non-executive directors.¹⁰⁵

¹⁰¹ As defined in note 2 above.

¹⁰² In the case of a trust, the references to a director mean a director of the responsible entity of the trust.

¹⁰³ See the definition of “equity security” in note 2 above. Options over issued or unissued shares or units specifically fall within paragraph (c) of that definition. Rights to issued or unissued shares or units fall within paragraph (d) of that definition. In ASX’s experience, many performance rights involve an option over, or a right to, an issued or unissued share or unit and are therefore equity securities. If they are, they must meet the requirements applicable to equity securities in Chapter 6 of the Listing Rules. If they are properly characterised as an option, they must also meet the requirements applicable to options in Chapter 6 of the Listing Rules.

¹⁰⁴ Listing Rule 19.12.

¹⁰⁵ See the note to the definition of “employee incentive scheme” in Listing Rule 19.12.

A scheme can be an employee incentive scheme ~~eff~~[for](#) the purposes of the Listing Rules even if there is only one employee or non-executive director participating in the scheme.¹⁰⁶

4.4 Listing Rule 10.14.1 – directors

Listing Rule 10.14.1 applies to an issue of equity securities under an employee incentive scheme to a director (or, in the case of a listed trust, a director of the RE of the trust).

The term “director” is not defined in the Listing Rules and so takes its meaning under the Corporations Act.¹⁰⁷ Under that Act, a person is a director¹⁰⁸ if:

- they are appointed to the position of director, or to the position of alternate director and acting in that capacity, regardless of the name that is given to their position;
- they are not validly appointed as a director but act in the position of a director; or
- they are not validly appointed as a director but the directors of the entity are accustomed to act in accordance with their instructions or wishes.¹⁰⁹

4.5 Listing Rule 10.14.2 – associates

Listing Rule 10.14.2 applies to an issue of equity securities under an employee incentive scheme to an “associate” of a director.

The meaning of “associate” is explained above in section 2.6.

As mentioned there, a related party of a natural person is to be taken to be an associate of the person unless the contrary is established.

The related parties of a director include:

- (i) the director’s spouse or de facto spouse;
- (ii) the parents and children of the director and the parents and children of the director’s spouse or de facto spouse;
- (iii) an entity controlled by the director 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 director or anyone referred to in (i) – (v) above.

Hence an issue of equity securities under an employee incentive scheme to be held by or for the benefit of any of the related parties of a director mentioned above will, unless the contrary is established, be taken to be an issue to be held by or for the benefit of an associate of the director and require security holder approval under Listing Rule 10.14.2. This has particular ramifications where an entity employs a prescribed relative of a director and the

¹⁰⁶ Again, see the note to the definition of “employee incentive scheme” in Listing Rule 19.12.

¹⁰⁷ Listing Rule 19.3.

¹⁰⁸ See the definition of “director” in section 9 of the Corporations Act.

¹⁰⁹ This does not apply merely because the directors act on advice given by the person in the proper performance of functions attaching to the person’s professional capacity, or the person’s business relationship with the directors or the entity.

relative is entitled to participate in an employee incentive scheme operated by the entity. These ramifications are explored in greater detail in section 4.9 below.

4.6 Listing Rule 10.14.3 – ASX’s discretion to apply Listing Rule 10.14 to other parties

Listing Rule 10.14.3 applies to an issue of equity securities under an employee incentive scheme to a person whose relationship with the entity or a person referred to in Listing Rule 10.14.1 or 10.14.2 is such that, in ASX’s opinion, the issue should be approved by security holders.

Listing Rule 10.14.3 effectively gives ASX a discretion to require that security holders approve an issue of equity securities under an employee incentive scheme to someone who is not a director or an associate of a director but whose relationship with the entity or a director or an associate of a director is, in ASX’s opinion, such that approval should be obtained.

Again, given the breadth of the definition of “associate” and the fact that a director’s related parties are deemed to be an associate unless the contrary is established, this is not a discretion that ASX is often called upon to exercise and not one that it exercises lightly, since it imposes additional costs and delays on an entity in having to hold a meeting of security holders to approve an issue of securities that would otherwise be within the authority of the entity’s board (or, in the case of a listed trust, its RE). Nevertheless, it is a discretion that ASX can exercise at any time, including after the securities have been issued.

Examples of where ASX may apply Listing Rule 10.14.3 to an issue of equity securities under an employee incentive scheme include where the securities are to be held by or for the benefit of:

- an employee who is a close (but not a prescribed) relative of a director and the size of the issue seems out of proportion to their role or level in the organisation, giving rise to a possibility that it could be intended to indirectly benefit the director rather than a bona fide issue to the employee under an employee incentive scheme;¹¹⁰
- an employee who has not been formally appointed as a director of the entity but who ASX suspects is acting as a de facto director;¹¹¹ and
- an employee who the entity is arguing is not an associate of a director but ASX has a contrary view – in which case, ASX may resolve that argument by applying Listing Rule 10.14.3 to the person.

Ordinarily, ASX would not exercise its discretion to apply Listing Rule 10.14.3 to someone who is the chief executive officer (“CEO”) of an entity and who is not a director or an associate of a director, simply because of his or her position as CEO. This is on the premise that since the CEO is not a member of the board, they are not in a position to influence the board’s determinations in relation to the employee incentive scheme and the board, acting in accordance with its statutory and common law duties,¹¹² can be presumed to have exercised an independent judgement on the appropriateness of any issue under the scheme to the CEO. However, there may be circumstances where this premise does not hold true and where ASX will consider applying Listing Rule 10.14.3 to an issue of equity securities under an employee incentive scheme to be held by or for the benefit of a CEO. These include where:

- a close relative of the CEO or someone with whom the CEO has close business or personal ties is a director of the entity;
- ASX suspects that the CEO is acting as a de facto director; or

¹¹⁰ See the example in note 3234 above.

¹¹¹ See the example in note 3335 above.

¹¹² See note 3436 above.

- the terms on which the CEO is participating in the scheme are so uncommercial as to call into question whether the board has properly exercised an independent judgement.

4.7 ASX's approach to giving in-principle advice on the application of Listing Rule 10.14.3

ASX is sometimes approached to give in-principle advice that it will not apply Listing Rule 10.14.3 in relation to an issue of equity securities to a particular person under an employee incentive scheme.

For ASX to give that advice, it again has to be satisfied that there is no reasonable prospect of the recipient of the securities influencing either the terms of the scheme, or the size of the issue to them under the scheme, to favour themselves at the expense of the entity. The entity seeking the advice must disclose candidly the full extent of the relationship between the recipient of the securities and its related parties on the one hand and the entity and its directors on the other, and any influence that the recipient may have over the entity's board (or, in the case of a listed trust, over the RE of the trust).

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. If the entity omits or misrepresents material facts in its application for in-principle advice, or if other material facts come to light after ASX provides its advice, ASX may withdraw or change its advice.

If ASX decides that it will not apply Listing Rule 10.14.3 in relation to an issue of equity securities to a particular person under an employee incentive scheme, it may impose conditions and, if it does so, the entity must comply with the conditions.¹¹³ An example of a condition that ASX may impose is a condition that the entity disclose to the market details of the issue, including the name of the employee/relative, the number of securities issued to them, their relationship to the director and the basis on which the entity has formed the view that Listing Rule 10.14 does not apply to the issue.

4.8 The exceptions in Listing Rule 10.16

Listing Rule 10.16 provides that Listing Rule 10.14 does not apply to:

- (a) a purchase of securities on-market¹¹⁴ by or on behalf of directors or their associates under an employee incentive scheme where the terms of the scheme¹¹⁵ permit such purchases;
- (b) the grant of options or other rights to acquire securities to directors or their associates under an employee incentive scheme, where the securities to be acquired on the exercise of the options or in satisfaction of the rights are required by the terms of the scheme to be purchased on-market;¹¹⁶ or
- (c) an issue of equity securities pursuant to options or other rights to acquire securities granted to directors or their associates under an employee incentive scheme. The entity must have issued the options or other rights:
 - (i) before it was listed and disclosed the information referred to in Listing Rules 10.15.1 – 10.15.9 in relation to the issue in the prospectus, PDS or information memorandum lodged with ASX under rule 1.1 condition 3; or
 - (ii) after it was listed and with the approval of holders of ordinary securities under Listing Rule 10.14.

In relation to (a) and (b) above, on-market purchases of securities by or on behalf of directors or their associates under an employee incentive scheme, or to satisfy the entitlements of directors or their associates under options

¹¹³ Listing Rule 18.5A provides that ASX may exercise, or decide not to exercise, any power or discretion conferred under the Listing Rules in its absolute discretion. It may do so on any conditions and, if it does so, the entity must comply with the conditions.

¹¹⁴ "On-market" has the same meaning for these purposes as it does in the definition of that term in section 9 of the Corporations Act. It is intended to exclude block trades, out of hours trades and certain other transactions effected off-market (even though they may ultimately be reported to a market operator).

¹¹⁵ As defined in note 9297 above.

¹¹⁶ Listing Rule 10.16.

or other rights to acquire securities granted under an employee incentive scheme, are excluded from Listing Rule 10.14 on the basis that they do not dilute the interests of other security holders and, because they are effected at market prices, they do not raise the same concerns as an issue of securities in terms of whether they are occurring at a price that is advantageous to a director or other closely connected party.¹¹⁷

In relation to (c) above, these issues are excluded from Listing Rule 10.14 on the basis that the right to receive the underlying securities upon the exercise of the option or in satisfaction of the rights has effectively already been approved by security holders and to require a separate approval under Listing Rule 10.14 for the issue of the underlying securities would therefore be an unnecessary duplication. In the case of (c)(ii) above, the approval is explicit. In the case of (c)(i) above, the approval is implicit and evidenced by security holders agreeing to invest in the entity with the details of the options or other rights having been disclosed in the entity's listing prospectus, PDS or information memorandum.

Where (c) applies, the issue of the underlying securities will be taken to have been made with the approval of holders of ordinary securities under Listing Rule 10.14, meaning that the issue will also be exempt from Listing Rule 10.11 under Listing Rule 10.12 exception 8.¹¹⁸

4.9 ASX's approach to granting waivers of Listing Rule 10.14

Like Listing Rule 10.11, ASX regards Listing Rule 10.14 as one of the fundamental protections afforded to investors under the Listing Rules. While ASX may consider procedural and other minor waivers of the rule, ASX will only waive the central requirement for security holders to approve an issue of equity securities to a director or closely connected party under an employee incentive scheme, where it is clear to ASX that the harm that Listing Rule 10.14 seeks to protect against is not present. The onus is firmly on the entity seeking the waiver to establish this to ASX's satisfaction.

Hence, to receive such a waiver, an entity must establish to ASX's satisfaction that there is no reasonable prospect of the recipient of the securities, either themselves or through their connections to the board of the entity (or, in the case of a listed trust, to the RE of the trust), influencing the terms of the scheme or the size of the award to them under the scheme.

The mere fact that a director excuses himself or herself from participating in the discussion and decision at a board meeting concerning a proposed issue of securities under an employee incentive scheme to them or to someone connected to them will not be sufficient to establish an absence of influence.

One circumstance where ASX has been approached for a waiver of Listing Rule 10.14 is where an entity employs a prescribed relative of a director and the relative is entitled to participate in an employee incentive scheme operated by the entity. A director's related parties include his or her prescribed relatives and a director's related parties are assumed to be his or her associates unless the contrary is established. This has the consequence that, absent a waiver from ASX, any issue of equity securities to a prescribed relative of a director under an employee incentive scheme will require security holder approval under Listing Rule 10.14.2 unless it can be established that the relative is not an associate of the director (ie that they are not controlled by, or acting in concert with, the director).

ASX will not grant a waiver of Listing Rule 10.14.2 in these circumstances. Either the relative is an associate of a director – in which case a waiver would be inappropriate and the entity should obtain the approval of its ordinary security holders to the issue under Listing Rule 10.14.2 – or they are not – in which case Listing Rule 10.14.2 does not apply.

¹¹⁷ On-market purchases of securities by or on behalf of directors or their associates under an employee incentive scheme, or to satisfy the entitlements of directors or their associates under options or other rights to acquire securities granted under an employee incentive scheme, will generally lead to an increase in the director's "notifiable interest" and therefore will need to be notified to the market via an Appendix 3Y under Listing Rule 3.19A. They will also generally form part of the remuneration of directors and therefore will need to be disclosed in an entity's remuneration report.

¹¹⁸ See note 9095 above and accompanying text.

Rather than approach ASX for a waiver, an entity in this situation should either seek security holder approval to the issue or satisfy itself that the relative is not an associate of the director and therefore security holder approval is not required. To do the latter, it would be prudent for it to obtain a statutory declaration or similar form of certification from the relative and/or the director that they are not associates. It should also have regard to any other information in its possession that is relevant to forming a view on whether or not the relative is in fact an associate of the director.¹¹⁹

It should be noted that the fact that an entity obtains a statutory declaration or similar form of certification from a director and/or a relative that they are not associates will not prevent or deter ASX from deciding that, because of the relationship between them, ASX should apply Listing Rule 10.14.3 to an issue of securities to the relative under an employee incentive scheme. ASX is likely to do this if it forms the view that the size of the issue objectively seems out of proportion to the relative's role or level in the organisation,¹²⁰ giving rise to a possibility that it could be intended to indirectly benefit the director rather than a bona fide issue to the relative under the employee incentive scheme.

ASX would strongly encourage listed entities that follow this path to disclose details of the issue to the relative in the notice they lodge with ASX about the issue under Listing Rule 3.10.3A, including the name of the employee/relative, the number of securities issued to them, their relationship to the director and the basis on which the entity has formed the view that Listing Rule 10.14 does not apply to the issue. Not only does this serve the interests of market transparency and good governance, it may also save the entity from having to answer a query from ASX on these matters.¹²¹ In ASX's experience, these matters are best disclosed up-front and tend to be perceived in a less favourable light if they are disclosed after the event as a result of an ASX query.

4.10 Notification obligations for issues under an employee incentive scheme

Listing Rule 3.10.3A requires an entity to notify ASX within 5 business days of any issue of equity securities under an employee incentive scheme.

If the equity securities are to be quoted immediately¹²² on ASX, the entity must also lodge an Appendix 2A *Application for quotation of securities* within 5 business days of their issue.¹²³ In that case, the Appendix 2A will also serve as the notification under Listing Rule 3.10.3A.

If the equity securities are not intended to be quoted immediately on ASX, the notification under Listing Rule 3.10.3A must be in the form of, or accompanied by, an Appendix 3G.

Where an issue of securities under an employee incentive scheme leads to a change in the "notifiable interests"¹²⁴ of a director, the entity must also give ASX an Appendix 3Y within 5 business days of the change occurring.¹²⁵

¹¹⁹ As stated in the note to the definition of "associate" in Listing Rule 19.12: "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."

¹²⁰ For example, if the number of securities being issued to the relative is not consistent with the numbers issued to comparable level employees in the organisation.

¹²¹ Under Listing Rule 18.7.

¹²² An application for quotation of securities issued under an employee incentive scheme must be made within 5 business days of their date of issue or, if they are subject to restrictions on transfer, within 5 business days after the end of the restrictions: Listing Rule 2.7 and 2.8.6.

¹²³ See note [122](#) above.

¹²⁴ As defined in Listing Rule 19.12.

¹²⁵ Listing Rule 3.19A. See also Guidance Note 22 [Director Disclosure of Interests and Transactions in Securities - Obligations of Listed Entities](#).

5. Requirements for notices of meeting

5.1 The type and terms of resolution required

The resolution required to approve an issue of securities under Listing Rule 10.11 or 10.14 is an ordinary resolution passed at a general meeting of the holders of ordinary securities.¹²⁶

Listing Rules 10.11 and 10.14 do not dictate the specific terms of the resolution required under those rules. A resolution to the following effect will suffice:

“That the *[description of issue]* is approved under and for the purposes of Listing Rule *[10.11/10.14]*.”

Generally there should be a separate resolution approving each relevant issue under Listing Rule 10.11 or 10.14. Combining multiple issues 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.¹²⁷

5.2 Specific disclosure requirements for resolutions under Listing Rule 10.11

A notice of meeting proposing a resolution to approve an issue of equity securities to a person under Listing Rule 10.11 must include a summary of Listing Rule 10.11 and what will happen if security holders give, or do not give, the approval sought under that rule.¹²⁸

A summary along the following lines will suffice for these purposes:

“*[Name of entity]* is proposing to *[insert a description of the proposed issue of securities, defining them as the “Issue” (or something similar)]*.”

Listing Rule 10.11 provides that unless one of the exceptions in Listing Rule 10.12 applies, a listed *[company/trust]* must not issue or agree to issue equity securities to:

- 10.11.1 a related party;
- 10.11.2 a person who is, or was at any time in the 6 months before the issue or agreement, a substantial (30%+) holder in the *[company/trust]*;
- 10.11.3 a person who is, or was at any time in the 6 months before the issue or agreement, a substantial (10%+) holder in the *[company/trust]* and who has nominated a director to the board of the *[company/responsible entity of the trust]* pursuant to a relevant agreement which gives them a right or expectation to do so;
- 10.11.4 an associate of a person referred to in Listing Rules 10.11.1 to 10.11.3; or
- 10.11.5 a person whose relationship with the *[company/trust]* or a person referred to in Listing Rules 10.11.1 to 10.11.4 is such that, in ASX’s opinion, the issue or agreement should be approved by its *[shareholders/unitholders]*,

unless it obtains the approval of its *[shareholders/unitholders]*.

The Issue falls within Listing Rule *[insert which of rules 10.11.1 to 10.11.5 applies]* and does not fall within any of the exceptions in Listing Rule 10.12. It therefore requires the approval of *[name of entity]*’s *[shareholders/unitholders]* under Listing Rule 10.11.

¹²⁶ Listing Rule 14.9.

¹²⁷ Pursuant to Listing Rules 15.1 and 15.1.4.

¹²⁸ Listing Rule 14.1A.

Resolution [n°] seeks the required [shareholder/unitholder] approval to the Issue under and for the purposes of Listing Rule 10.11.

If resolution [n°] is passed, [name of entity] will be able to proceed with the Issue and [outline the consequences that will follow].

If resolution [n°] is not passed, [name of entity] will not be able to proceed with the Issue and [outline the consequences that will follow].”

A notice of meeting proposing a resolution to approve an issue of equity securities to a person under Listing Rule 10.11 must also include:¹²⁹

- the name of the person;¹³⁰
- which category in Listing Rules 10.11.1 – 10.11.5 the person falls within and why;¹³¹
- the number and class of securities to be issued to the person;¹³²
- if the securities are not fully paid ordinary securities, a summary of the material terms of the securities;¹³³
- the date or dates on or by which the entity will issue the securities, which must not be more than 1 month after the date of the meeting;¹³⁴
- the price or other consideration the entity will receive for the issue;¹³⁵
- the purpose of the issue, including the intended use of any funds raised by the issue;¹³⁶
- if the person is:
 - a director and therefore a related party under Listing Rule 10.11.1; or
 - an associate of, or person connected with, a director under Listing Rules 10.11.4 or 10.11.5,

and the issue is intended to remunerate or incentivise the director, details (including the amount) of the director’s current total remuneration package;¹³⁷

¹²⁹ An approval of security holders is not effective under the Listing Rules unless the notice of meeting includes everything that the Listing Rules require it to include: Listing Rule 14.6.

¹³⁰ Listing Rule 10.13.1.

¹³¹ Listing Rule 10.13.2.

¹³² Listing Rule 10.13.3. Where the number of securities to be issued is not fixed, this may be expressed as a maximum number or as a formula (see the note to Listing Rule 10.13.3). In the latter case, it may be appropriate for the entity to include some worked examples in the notice of meeting to show how the formula will operate in practice under different assumptions.

¹³³ Listing Rule 10.13.4.

¹³⁴ Listing Rule 10.13.5. This requirement is designed to strike a balance between giving entities the time practically necessary to complete an issue of equity securities, and ensuring that the securities are issued within a reasonable time frame after security holder approval so that the approval can still be considered to be current and not rendered stale by subsequent events.

¹³⁵ Listing Rule 10.13.6. Where the price at which the securities are to be issued is not fixed, this may be expressed as a minimum amount or as a formula (see the note to Listing Rule 10.13.6). In the latter case, it may be appropriate for the entity to include some worked examples in the notice of meeting to show how the formula will operate in practice under different assumptions.

¹³⁶ Listing Rule 10.13.7.

¹³⁷ Listing Rule 10.13.8. For these purposes, ASX agrees with and applies the guidance in Table 2 of ASIC Regulatory Guide 76 *Related party transactions*:

“Where the financial benefit is to be conferred by way of remuneration or incentive, the amount of the total remuneration package must be disclosed to the members. For example, if options are to be granted to a director, the company or responsible entity must provide a proper valuation of those options as well as give members details of other remuneration the director will receive.

- if the securities are issued under an agreement, a summary of any other material terms of the agreement;¹³⁸ and
- a voting exclusion statement.¹³⁹

This information may be given in the notice itself or in an accompanying explanatory memorandum to security holders.¹⁴⁰

ASX is sometimes approached for a waiver to allow an entity to issue securities at a date outside of the 1 month time constraint mentioned above. This constraint is designed to strike a balance between giving entities the time practically necessary to complete an issue of equity securities, and ensuring that the securities are issued within a reasonable time frame after security holder approval so that the approval can still be considered to be current and not rendered stale by subsequent events. ASX will generally only grant such a waiver where there is a clear and compelling commercial reason for the issue to be made at a later date¹⁴¹ and security holders are in a position to know with certainty the dilutive impact the issue will have and can therefore give a meaningful approval to the issue. In the case of convertible securities, this may require the imposition of a floor price in the conversion formula so that the maximum dilutive impact can be determined at the date of the meeting approving their issue.

Otherwise ASX expects entities to arrange the date on which they seek approval to an issue under Listing Rule 10.11 to comply with the 1 month time constraint mentioned above and, if for any reason the issue is not completed within that timeframe following the approval, to seek a fresh approval under that rule.

5.3 Specific disclosure requirements for resolutions under Listing Rule 10.14

A notice of meeting proposing a resolution under Listing Rule 10.14 to approve an issue of equity securities to a person under an employee incentive scheme must include a summary of Listing Rule 10.14 and what will happen if security holders give, or do not give, the approval sought under that rule.¹⁴²

A summary along the following lines will suffice for these purposes:

"[Name of entity] is proposing to [insert a description of the proposed issue of securities under the employee incentive scheme, defining them as the "Issue" (or something similar)].

Listing Rule 10.14 provides that a listed [company/trust] must not permit any of the following persons to acquire equity securities under an employee incentive scheme:

- 10.14.1 a director of the [company/responsible entity of the trust];
- 10.14.2 an associate of a director of the [company/responsible entity of the trust]; or
- 10.14.3 a person whose relationship with the [company/trust] or a person referred to in Listing Rule 10.14.1 or 10.14.2 is such that, in ASX's opinion, the acquisition should be approved by its [shareholders/unitholders],

Members must be able to assess the value of the overall remuneration package the director will receive when taking into account the financial benefit to be conferred. It is not usually sufficient to include only the past remuneration of directors. However, if the remuneration a director will receive is not known but is anticipated to be similar to that received in the previous year, it may be sufficient to include the previous year's remuneration and a statement to that effect."

¹³⁸ Listing Rule 10.13.9.

¹³⁹ Listing Rule 10.13.10. See also '5.5 [Voting exclusions](#)~~Voting exclusions~~'.

¹⁴⁰ Listing Rule 14.1.

¹⁴¹ An example would be "deferred consideration securities", that is, securities issued by an entity in consideration for an acquisition of an asset or undertaking where a future tranche of securities will be issued outside of the 1 month period mentioned in Listing Rule 10.13.5 if certain performance thresholds or other criteria are met.

¹⁴² Listing Rule 14.1A.

unless it obtains the approval of its [shareholders/unitholders].

The Issue falls within Listing Rule *[insert which of rules 10.14.1 to 10.14.3 applies]* above and therefore requires the approval of *[name of entity]*'s [shareholders/unitholders] under Listing Rule 10.14.

Resolution *[n°]* seeks the required [shareholder/unitholder] approval to the Issue under and for the purposes of Listing Rule 10.14.

If resolution *[n°]* is passed, *[name of entity]* will be able to proceed with the Issue and *[outline the consequences that will follow]*.

If resolution *[n°]* is not passed, *[name of entity]* will not be able to proceed with the Issue and *[outline the consequences that will follow]*."

A notice of meeting proposing a resolution under Listing Rule 10.14 to approve an issue of equity securities to a person under an employee incentive scheme must also include:¹⁴³

- the name of the person;¹⁴⁴
- which category in Listing Rules 10.14.1 – 10.14.3 the person falls within and why;¹⁴⁵
- the number¹⁴⁶ and class of securities that are proposed to be issued to the ~~the~~ person under the scheme for which approval is being sought;¹⁴⁷
- if the person is:
 - a director under Listing Rule 10.14.1; or
 - an associate of, or person connected with, a director under Listing Rules 10.14.2 or 10.14.3,
 details (including the amount) of the director's current total remuneration package;¹⁴⁸
- the number of securities that have previously been issued to the person under the scheme and the average acquisition price (if any) paid by the person for those securities;¹⁴⁹
- if the securities are not fully paid ordinary securities:
 - a summary of the material terms of the securities;
 - an explanation of why that type of security is being used; and
 - the value the entity attributes to that security and its basis;¹⁵⁰

¹⁴³ An approval of security holders is not effective under the Listing Rules unless the notice of meeting includes everything that the Listing Rules require it to include: Listing Rule 14.6.

¹⁴⁴ Listing Rule 10.15.1.

¹⁴⁵ Listing Rule 10.15.2.

¹⁴⁶ Where the number of securities to be issued is not fixed, this may be expressed as a maximum number or as a formula (see the note to Listing Rule 10.15.3).

¹⁴⁷ Listing Rule 10.15.3.

¹⁴⁸ Listing Rule 10.15.4. Again, for these purposes, ASX agrees with and applies the guidance in Table 2 of ASIC Regulatory Guide 76 *Related party transactions*, quoted in note [137](#)~~142~~ above.

¹⁴⁹ Listing Rule 10.15.5.

¹⁵⁰ Listing Rule 10.15.6.

- the date or dates on or by which the entity will issue the securities to the person under the scheme, which must be no later than 3 years after the date of the meeting;¹⁵¹
- the price¹⁵² at which the entity will issue the securities to the person under the scheme;¹⁵³
- a summary¹⁵⁴ of the material terms of the scheme;¹⁵⁵
- a summary¹⁵⁶ of the material terms of any loan that will be made to the person in relation to the acquisition;¹⁵⁷
- a statement to the following effect:

Details of any securities issued under the scheme will be published in the annual report of the entity relating to a period in which they were issued, along with a statement that approval for the issue was obtained under Listing Rule 10.14.

Any additional persons covered by Listing Rule 10.14 who become entitled to participate in the scheme after the resolution is approved and who were not named in the notice of meeting will not participate until approval is obtained under that rule.¹⁵⁸

- a voting exclusion statement.¹⁵⁹

Where the securities being issued are not fully paid ordinary securities, in explaining why that type of security is being used, the entity should address any accounting, taxation or other ramifications that arise from the use of this form of remuneration compared to other forms of remuneration that might be available to the entity. In explaining the value the entity attributes to that security and its basis, the entity should disclose whether it has received an independent valuation and, if it has, what that valuation was and, if it hasn't, how it has determined the value of the securities being acquired.

Again, this information may be given in the notice itself or in an accompanying explanatory memorandum to security holders.¹⁶⁰

5.4 General disclosure requirements for a notice of meeting

As a matter of general law, a notice of meeting proposing a resolution under Listing Rule 10.11 or 10.14 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.¹⁶¹ In some cases, this may require the entity to disclose additional information over and above that specifically required under the Listing Rules summarised in sections 5.2 and 5.3 above.

¹⁵¹ Listing Rule 10.15.7.

¹⁵² Where the price at which the securities are to be issued is not fixed, this may be expressed as a minimum amount or as a formula (see the note to Listing Rule 10.15.8).

¹⁵³ Listing Rule 10.15.8.

¹⁵⁴ The entity may instead of providing a summary include in, or annex to, the notice of meeting, a copy of the scheme (see the note to Listing Rule 10.15.9).

¹⁵⁵ Listing Rule 10.15.9.

¹⁵⁶ The entity may instead of providing a summary include in, or annex to, the notice of meeting, a copy of the loan agreement (see the note to Listing Rule 10.15.10).

¹⁵⁷ Listing Rule 10.15.10.

¹⁵⁸ Listing Rule 10.15.11.

¹⁵⁹ Listing Rule 10.15.12. See also '5.5 [Voting exclusions](#)~~Voting exclusions~~' on page 34.

¹⁶⁰ Listing Rule 14.1.

¹⁶¹ See *Bulfin v Bearfalds Ltd* (1938) 38 SR (NSW) 423 and *Chequepoint Securities Ltd v Claremont Petroleum NL* (1986) 11 ACLR 94.

If the issue also requires approval as a related party benefit under section 208 or 601LA of the Corporations Act, the notice must include or attach an explanatory statement that complies with section 219 of that Act.¹⁶²

5.5 Voting exclusions

A notice of meeting proposing a resolution to approve an issue of equity securities under Listing Rule 10.11 or 10.14 must include a voting exclusion statement.¹⁶³

A voting exclusion statement 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 associate¹⁶⁴ of an excluded person, save where it is cast by:

- a person as proxy or attorney for another 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 they are not excluded from voting, and are 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.¹⁶⁵

In the case of a resolution under Listing Rule 10.11, the excluded persons are the person or persons receiving the securities under the issue or agreement being approved and any other person who will obtain a material benefit as a result of the issue (except a benefit solely by reason of being the holder of ordinary securities in the entity).

For these purposes, ASX considers a “material benefit” to be one that is likely to induce the recipient of the benefit to vote in favour of the issue regardless ~~of~~^{of} its impact on ordinary security holders. Examples include:

- if the issue is being made primarily for the purpose of raising cash to repay a debt or other amount owed by the entity to another person, that person;
- a professional adviser or other person who will be paid a success (or similar) fee if the transaction proceeds;¹⁶⁶
- if the issue being approved under Listing Rule 10.11 is part of a larger issue of securities:
 - an underwriter or sub-underwriter who will be paid an underwriting or sub-underwriting fee in relation to the larger issue; and

¹⁶² See ASIC Regulatory Guide 76 *Related party transactions*.

¹⁶³ Listing Rules 10.13.10 and 10.15.12 and the table in Listing Rule 14.11.1.

¹⁶⁴ Guidance Note 35 *Security Holder Resolutions* has guidance on who is an associate of an excluded person for these purposes.

¹⁶⁵ Listing Rule 14.11.

¹⁶⁶ This is not intended to capture normal fixed or time-based fees paid to a professional adviser advising on the transaction. It is only intended to capture fees that are directly related to the success of the transaction.

- a lead manager of, or broker to, the larger issue who will be paid a fee or commission on the proceeds of the issue.¹⁶⁷

In the case of a resolution under Listing Rule 10.14, the excluded persons are all persons referred to in Listing Rule 10.14.1, 10.14.2 or 10.14.3 who are eligible to participate in the employee incentive scheme.

ASX also has a general discretion to designate any other person whose votes, in ASX's opinion, should be disregarded. This discretion may be exercised both before¹⁶⁸ and after¹⁶⁹ the notice of meeting has been sent to security holders.

Where ASX exercises its discretion under Listing Rule 10.11.5 to apply Listing Rule 10.11 to a person who is closely connected to the entity or to a related party, it will usually consider whether there are any other parties that should be excluded from voting on the resolution under Listing Rule 10.11. For example, if ASX exercises its discretion to apply Listing Rule 10.11 to a person because they have a close connection with a director of the entity, ASX will usually make a determination that the director and his or her associates¹⁷⁰ are excluded from voting on the resolution.

Guidance Note 35 *Security Holder Resolutions* has further guidance on voting exclusions and the procedures that should be followed at a meeting of security holders where a resolution under Listing Rule 10.11 or 10.14 is being considered.

5.6 Stale resolutions

Where security holders approve an issue of or agreement to issue securities under Listing Rule 10.11, the securities must be issued within one month of that approval or else the approval will lapse.¹⁷¹

Guidance Note 35 *Security Holder Resolutions* has further guidance on stale resolutions and the circumstances where ASX may require an entity to seek a fresh approval from its security holders under Listing Rule 10.11 or 10.14.

6. ASX's enforcement powers

ASX has a range of enforcement powers it can exercise if an entity issues, or proposes to issue, securities in breach of Listing Rule 10.11 or 10.14.

ASX may:

- suspend the quotation of the entity's securities until the matter has been dealt with to ASX's satisfaction;¹⁷²

¹⁶⁷ This is not intended to capture normal handling fees payable to individual brokers who lodge acceptances or renunciations on behalf of security holders. It is only intended to capture fees and commissions payable to a lead manager of, or broker to, the issue that are directly related to the success of the transaction.

¹⁶⁸ See the final entry in the table in Listing Rule 14.11.1. If ASX exercises this discretion, the person must be named in the voting exclusion statement in the notice of meeting.

¹⁶⁹ Listing Rule 14.11.2. If ASX exercises this discretion, it is not necessary for the entity to send a further notice of meeting naming the person in the voting exclusion statement (see the note to Listing Rule 14.11.2). However, ASX would expect the entity to make an announcement to the market of ASX's determination.

¹⁷⁰ If the voting exclusion is applied by ASX to a director under the final entry in the table in Listing Rule 14.11.1, it will automatically extend to the director's associates under Listing Rule 14.11. If the voting exclusion is applied by ASX under Listing Rule 14.11.2, ASX will generally stipulate that the director's associates are also excluded from voting in favour of the transaction.

¹⁷¹ Listing Rule 10.13.5.

¹⁷² Listing Rule 17.3.1.

- require the entity to impose a holding lock on the securities to prevent them being disposed of until the matter has been dealt with to ASX's satisfaction;¹⁷³
- if the issue has not yet taken place, direct the entity not to proceed with the issue;¹⁷⁴
- if the issue has already taken place, direct the entity to cancel or reverse the issue;¹⁷⁵ and/or
- direct the entity to convene a meeting of security holders to approve the issue under Listing Rule 10.11 or 10.14 (as applicable).¹⁷⁶

On the second last point above, ASX recognises that in some cases there could be legal impediments to an entity cancelling or reversing an issue of securities at the direction of ASX.¹⁷⁷ In those cases, if the securities are quoted on ASX, ASX may instead direct the entity to procure the recipient of the securities to dispose of the securities on-market and donate any profit from the sale to charity.¹⁷⁸

On the last bullet point above, it should be noted that ASX will not generally allow an entity that has issued securities in breach of Listing Rule 10.11 or 10.14 to leave the issue on foot and seek to have it ratified by the holders of its ordinary securities at a subsequent meeting. For ASX to condone that course would open Listing Rules 10.11 and 10.14 to avoidance and abuse.¹⁷⁹ If the securities are quoted on ASX, ASX is more likely instead to direct the entity to procure the recipient of the securities to dispose of the securities on-market and donate any profit from the sale to charity.

More generally, where an entity issues securities in breach of Listing Rule 10.11 or 10.14 and ASX considers the breach to be an egregious one, ASX may:

- censure the entity for breaching the Listing Rules;¹⁸⁰
- exercise ASX's discretion not to quote the securities;¹⁸¹ and/or
- terminate the entity's admission to the official list.¹⁸²

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 10.11 or 10.14, ASX will usually require the entity to make an announcement to the market explaining that action and why it was taken.

¹⁷³ Listing Rule 18.8(h).

¹⁷⁴ Listing Rule 18.8(c).

¹⁷⁵ Listing Rule 18.8(d).

¹⁷⁶ Listing Rule 18.8(e). Where ASX imposes such a requirement and security holders do not approve the issue, ASX may impose such further requirements as it considers appropriate under Listing Rule 18.8.

¹⁷⁷ A cancellation of an issue of shares, for example, may require approval from security holders or the court under the Corporations Act before it can be effected.

¹⁷⁸ Listing Rule 18.8.

¹⁷⁹ If ASX were to allow this, it might encourage an entity to issue equity securities without seeking the required security holder approval in the hope of not being found out and in the knowledge that, if it is, the likely consequence would simply be a direction that it seek the approval it should have sought in the first place.

¹⁸⁰ Listing Rule 18.8A.

¹⁸¹ Listing Rule 2.9.

¹⁸² Listing Rule 17.12.

REMOVAL OF ENTITIES FROM THE ASX OFFICIAL LIST

The purpose of this Guidance Note	To assist listed entities and their advisers to understand ASX's rules, policies and processes for the removal of entities from the ASX official list
The main points it covers	- The right of an entity to request removal from the official list - When ASX will remove an entity from the official list - Information that must be given to security holders where security holder approval is required for the removal - The procedure for formally requesting removal - The circumstances in which ASX may remove an entity from the official list at ASX's instigation
Related materials you should read	- Guidance Note 5 <i>Chess Depositary Interests</i> - Guidance Note 8 <i>Continuous Disclosure: Listing Rules 3.1 – 3.1B</i> - Guidance Note 14 <i>ASX Market Announcements Platform</i> - Guidance Note 17 <i>Waivers and In-Principle Advice</i> - Guidance Note 35 <i>Security Holder Resolutions</i>

History: Guidance Note 33 amended XX/XX/XX. Previous versions of this Guidance Note were issued in 01/14, 12/15, 12/16, 04/19 and 12/19.

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 advisers to understand ASX's rules, policies and processes for the removal of entities from the ASX official list.

The circumstances in which a listed entity may be removed from the official list are set out in Listing Rules 17.11 – 17.16. These rules apply to all entities admitted to the official list, including those admitted as an ASX Debt Listing¹ or an ASX Foreign Exempt Listing.²

Once an entity has its admission to the official list terminated, it can no longer refer to itself as an ASX listed entity and it must cease using the "Listed on ASX" trademark. Its securities will also cease to be quoted and traded on the ASX market.³

Once an entity has been removed from the official list, if it subsequently wishes to have its securities quoted and traded on ASX again, it must complete a new admission application and satisfy the relevant admission requirements in Chapters 1 and 2 of the Listing Rules afresh.⁴

2. Removal from the official list at the request of an entity

2.1. The right to request removal from the official list

An entity may ask ASX to remove it from the ASX official list at any time.⁵

ASX may require the entity to establish the authority of the person making the request for removal and, if the entity has a common seal, may require the request to be under its common seal.⁶

Except in the specific circumstances set out in Listing Rules 17.11A and 17.11B, ASX is not required to act on an entity's request for removal from the official list. In all circumstances, ASX may require conditions to be satisfied before it does so.⁷ If ASX's decision to remove an entity from the official list is conditional, the entity is removed

¹ Listing Rule 1.10.1.

² Listing Rule 1.15.1.

³ As of the date of this Guidance Note, they will also cease to be quoted and traded on the ~~CboeTMX Australia~~ market, since it quotes and trades securities of listed entities that are quoted and traded on the ASX market.

⁴ Guidance on the admission process can be found in 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*.

⁵ Listing Rule 17.11.

⁶ Listing Rule 17.11.

⁷ Listing Rule 17.11.

after the conditions are met and on a date decided by ASX. If the decision is unconditional, the entity is removed on the date specified in the decision or, if no date is specified, on a date decided by ASX.⁸

An entity that wishes to be removed from the official list will usually need to obtain approval from its security holders before ASX will give effect to the request.

Before an entity sends out a notice of meeting that includes a resolution to approve its removal from the official list, the entity must give ASX a copy of the draft notice for review.⁹ If security holders approve the removal, the entity should then formally request removal.

If security holder approval is not required, the entity should include a copy of the draft announcement that it intends to release about its removal when it formally requests removal from ASX.

The process for requesting removal is outlined in section 2.3.

2.2. Specific disclosure requirements

A notice of meeting proposing a resolution to approve removal under Listing Rule 17.11A.1 or 17.11A.2 must include a summary of the relevant rule and what will happen if security holders give, or do not give, the approval sought under that rule.¹⁰

The notice of meeting must also contain the information set out in Listing Rule 17.11C. If the entity is dual listed and the removal does not require security holder approval, the same information must be provided to security holders of the dual listed entity.

Listing Rule 17.11C requires disclosure of the earliest time and date when the entity will be removed from the official list, as determined by ASX, as well as the intended last date of trading (which will usually be the business day before the proposed date of removal).¹¹ The earliest time and date for removal must be no earlier than one month after the removal has become certain. The entity should discuss and confirm these dates with ASX when it finalises its draft notice of meeting or draft announcement, as applicable.

Listing Rule 17.11C also requires disclosure of an explanation of the remedies that a security holder may pursue if the security holder considers the removal to be contrary to laws that protect minority holders or contrary to laws related to corporate control. This disclosure is required because ASX does not regulate these laws and security holders may not be aware of their rights. The disclosure should include an explanation of:

- Part 2F.1 of the Corporations Act (or any applicable overseas legislation), which deals with conduct that is contrary to the interests of security holders as a whole or oppressive to, unfairly prejudicial to, or unfairly discriminatory against, a security holder or security holders; and
- Part 6.10 Division 2 Subdivision B of the Corporations Act (or any applicable overseas legislation), which deals with “unacceptable circumstances” in a control situation.

⁸ Listing Rule 17.16.

⁹ Listing Rules 15.1 and 15.1.4. The draft notice should be sent by way of email to the entity’s home branch listings adviser in accordance with Listing Rule 15.2.2. ASX generally tries to review and notify the entity whether it objects to a draft notice of meeting within 5 business days of receipt. ASX will tell an entity within 5 business days if it needs more time to examine a draft notice of meeting.

¹⁰ Listing Rule 14.1A

¹¹ Listing Rule 17.11C.3.

2.3. Procedure for formally requesting removal

To formally request removal under Listing Rule 17.11, an entity should submit their request in writing. The request should be on the entity's letterhead¹², clearly marked "Not for public release"¹³ and sent to the entity's listings adviser at its ASX home branch.¹⁴

The request should be properly executed by the entity and the request should also include evidence to demonstrate that the entity satisfies the relevant requirements set out in Listing Rules 17.11A-17.11C, as applicable.

ASX will ordinarily agree to remove an entity that meets the requirements set out in Listing Rules 17.11A-17.11C. If ASX agrees to the removal, ASX will require the entity to make an announcement that confirms the last day of trading in the entity's quoted securities and the date of removal.

3. Removal from the official list at the instigation of ASX

3.1. Suspension and removal following compulsory acquisition

Where a listed entity is the subject of a takeover bid and the bidder proceeds to compulsory acquisition of the entity's securities under the Corporations Act,¹⁵ ASX will suspend quotation of the entity's securities 5 business days after it receives a copy of the compulsory acquisition notice sent to holders of securities in the bid class¹⁶ that the bidder is entitled to acquire their securities.¹⁷

Similarly, where a 90% holder proceeds with the compulsory acquisition of an entity's securities under Part 6A.2 of the Corporations Act,¹⁸ ASX will suspend quotation of those securities 5 business days after it receives written notice from the entity that:

- the objection period set out in the compulsory acquisition notice has ended and holders of at least 10% of the securities covered by the compulsory acquisition notice have not objected to the acquisition before the end of the objection period; or
- the court has approved the acquisition under section 664F of the Corporations Act.¹⁹

In each case, the entity should notify their listings adviser of the compulsory acquisition, even if notification has been made on the market announcements platform. If the entity's listings adviser is not separately notified, the suspension may not be actioned.

¹² Listing Rule 15.5.

¹³ Listing Rule 15.6.

¹⁴ Listing Rule 15.2.2.

¹⁵ Part 6A.1 Division 1 of the Corporations Act enables a bidder under a takeover bid to compulsorily acquire any remaining securities in the bid class if, by the end of the offer period, it and its associates have: (a) relevant interests in 90% (by number) of the securities in the bid class; and (b) acquired at least 75% (by number) of the securities that the bidder offered to acquire under the bid (whether or not the acquisitions occurred under the bid or otherwise). The bidder must give a notice of compulsory acquisition to all remaining holders of securities in the bid class during, or within one month after the end of, the offer period and lodge a copy of the notice with ASIC and ASX.

¹⁶ Section 9 of the Corporations Act defines the bid class of securities for a takeover bid as the class of securities to which the securities being bid for belong.

¹⁷ Listing Rule 17.4. ASX may decide not to suspend the quotation of securities in a class that was not the bid class (Listing Rule 17.4.1).

¹⁸ Part 6A.2 of the Corporations Act enables a person who, either alone or with a related body corporate, has a full beneficial interest in at least 90% (by number) of any class of securities in a company to compulsorily acquire the outstanding securities in that class. It also enables a person who, either alone or with a related body corporate, has 90% voting power, and full beneficial interest in at least 90% (by value) of all the securities in the company that are either shares or convertible into shares, to compulsorily acquire all remaining classes of shares and securities convertible into shares. In each case, the power must be exercised within 6 months of becoming a 90% holder. The 90% holder must give a notice of compulsory acquisition to all relevant holders of securities giving them a period of at least one month to object to the acquisition. If the holders of at least 10% of the securities covered by the compulsory acquisition notice object to the acquisition before the end of that period, the court must approve the acquisition under section 664F of the Corporations Act.

¹⁹ Listing Rule 17.4A. ASX may decide not to suspend the quotation of securities in a class that was not the class to which the securities covered by the compulsory acquisition notice belong (Listing Rule 17.4A.1).

Once all the entity's quoted securities have been suspended, ASX will remove the entity from the official list at the close of trading on a date decided by ASX.²⁰ This will normally be the third business day following the date on which the entity's securities were suspended under these provisions.

3.2. Suspension and removal for failure to pay annual listing fee

If an entity fails to pay its annual listing fee within 15 business days after the due date,²¹ ASX will suspend quotation of its securities.²² The suspension will take effect at the commencement of trading on the next business day after the 15 business day grace period has expired.

If the entity fails to pay its annual listing fee within a further 5 business days (that is, within 20 business days after the due date), ASX will remove it from the official list.²³ The removal will take effect at the close of trading on the 20th business day after the due date for payment of the fee.

An entity that is seeking voluntary removal from the official list should not seek to circumvent the approval process in Listing Rule 17.11A by declining to pay its annual listing fee and thereby having itself removed from the official list under Listing Rule 17.15. Such conduct will not only breach the obligation of the entity to act in accordance with spirit, intention and purpose of the Listing Rules,²⁴ it is likely to raise issues as to whether the directors of the entity are complying with their statutory and common law obligations to discharge their duties with a reasonable degree of care and diligence²⁵ and to exercise their powers in good faith and for a proper purpose.²⁶ In some cases, it could also leave the entity open to an action for oppressive conduct²⁷ or "just and equitable" winding up.²⁸

ASX reserves the right to take legal action against any entity that fails to pay its annual listing fee to recover the amount in question and to reinstate the entity to the official list after that has occurred.

3.3. Other circumstances in which ASX may terminate a listing

ASX may remove an entity from the official list at any time if in ASX's opinion:

- the entity is unwilling or unable to comply with, or breaks, any Listing Rule;
- the entity has no quoted securities; or
- it is appropriate for some other reason.²⁹

ASX has exercised its power to remove entities from the official list for:

- persistent or egregious breaches of their continuous and periodic disclosure obligations under the Listing Rules;³⁰
- refusing to comply with their obligations under the JORC Code;³¹

²⁰ Listing Rule 17.14.

²¹ As required under Listing Rule 16.5.

²² Listing Rule 17.6. ASX will not waive this rule.

²³ Listing Rule 17.15. ASX will not waive this rule.

²⁴ Listing Rule 19.2.

²⁵ See sections 180(1) (listed companies) and 601FD(1)(b) (listed trusts) of the Corporations Act.

²⁶ See section 181(1) of the Corporations Act. In the case of a listed trust, it may also involve a breach of their duty to act in the best interests of members under section 601FD(1)(c) of the Corporations Act.

²⁷ See sections 232 and 461(1)(f) and (g) of the Corporations Act.

²⁸ See sections 461(1)(k) (listed companies) and section 601ND(1)(a) (listed trusts) of the Corporations Act.

²⁹ Listing Rule 17.12.

³⁰ Chapters 3 and 4 of the Listing Rules.

³¹ Chapter 5 of the Listing Rules.

- breach of their obligations to have, in ASX's opinion, a sufficient level of operations or an adequate financial condition to warrant the continued quotation of their securities and their continued listing;³²
- failing to 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;³³ and
- not having a structure and operations appropriate for a listed entity.³⁴

The power to terminate an entity's listing is not one that ASX exercises lightly, since it takes away from the entity's security holders the ability to trade their securities on a licensed securities exchange. However, it is a power that ASX will exercise to protect the reputation and integrity of the ASX market and to prevent future investors from buying into a listed entity that in ASX's opinion should not be listed on the ASX market.

3.4. Removal of entities suspended for an unacceptably long period

ASX's policy is to remove from the official list:

- an entity that fails to lodge any of the documents referred to in Listing Rule 17.5³⁵ for a continuous period of 1 year after the deadline for lodgement of that document; and
- an entity whose securities have been suspended from quotation for a continuous period of 2 years,³⁶

whichever occurs first. The removal will usually take effect from the open of trading on the first trading day after the expiration of the 1 or 2 year period referred to above.

ASX may agree to a short extension of the 1 and 2 year deadlines above for removal if the entity can demonstrate to ASX's satisfaction that it is in the final stages of implementing a transaction that will lead to the resumption of trading in its securities. For these purposes, being in the "final stages" of implementing a transaction means that the entity has:

- announced the transaction to the market;
- signed definitive legal agreements for the transaction (including for any financing required in respect of the transaction);
- if the transaction requires a prospectus or product disclosure statement to be lodged with the Australian Securities and Investments Commission ("ASIC"), lodged that document with ASIC and it is not the subject of a stop order or other regulatory action by ASIC; and
- if the transaction requires approval by security holders or from a governmental agency or financier, obtained all such approvals.

The extension, if granted, will usually be for no more than 3 months (it may be shorter if ASX considers that the transaction ought to be reasonably capable of being consummated in a lesser period). Before it will grant the extension, ASX must be satisfied that the entity is reasonably capable of consummating the transaction and will be ready for trading in its securities to resume (including having lodged all outstanding accounts with ASX) within the period of the extension.

³² Listing Rules 12.1 and 12.2 respectively.

³³ Listing Rule 12.4.

³⁴ Listing Rule 12.5.

³⁵ The documents referred to in Listing Rule 17.5 include an annual report, preliminary final report, annual accounts, half yearly accounts, quarterly activity report, quarterly cash flow report, an Appendix 4F (when required) and the monthly statement of net tangible asset backing per security required from a listed investment entity. Listing Rule 17.5 provides for the suspension of an entity that fails to lodge any such document by the due date under the Listing Rules.

³⁶ ASX considers this to be "appropriate" for the purposes of Listing Rule 17.12 (see note [2976](#) and accompanying text).

ASX may also agree to a short extension of the 1 year deadline above for removal of an entity that has been suspended from quotation under Listing Rule 17.5 for failure to lodge accounts, if an external administrator has been appointed to the entity and the administrator has the benefit of a deferral of financial reporting obligations under ASIC Corporations (Externally-Administered Bodies) Instrument 2025/584. In this case, the extension, if granted, will usually be for no more than 6 months after the appointment of the administrator.³⁷

For the avoidance of doubt, ASX can, and will in appropriate circumstances, remove an entity from the official list under Listing Rule 17.12 even if it has not been suspended for the 1 or 2 year periods referred to above. This is especially the case if, in ASX's opinion, the entity no longer has a sufficient level of operations or an adequate financial condition to warrant its continued listing (Listing Rules 12.1 and 12.2), its structure and operations have ceased to be appropriate for a listed entity (Listing Rule 12.5) or the entity appears to ASX to have committed serious or wilful breaches of the Listing Rules (including failing to respond in a satisfactory manner to enquiries by ASX under Listing Rule 18.7).

4. Ongoing continuous disclosure obligations

An entity that is removed from the official list of ASX should note that, in many cases, it is likely to become an "unlisted disclosing entity" subject to the continuous disclosure obligations in section 675 of the Corporations Act.³⁸ These are substantively the same as those imposed under section 674 of the Corporations Act and Listing Rule 3.1.

ASIC Regulatory Guide 198 *Unlisted disclosing entities: Continuous disclosure obligations* provides guidance on what is an unlisted disclosing entity and how an unlisted disclosing entity should comply with its continuous disclosure obligations under the Corporations Act.

³⁷ This 6 month period is the same period during which the entity's financial reporting obligations are deferred under ASIC Corporations (Externally-Administered Bodies) Instrument 2025/584.

³⁸ This will apply, for example, under section 111AF(1) of the Corporations Act if:

- (a) as part of its listing or any time subsequently, the entity has lodged a disclosure document with ASIC in relation to a class of securities;
- (b) after an issue of securities in that class pursuant to the disclosure document, 100 or more persons held securities in that class; and
- (c) securities in that class have been held by 100 or more persons at all times since that issue of securities.

See also sections 111AF(2), 111AFA and 111AG for other circumstances where an entity may become an unlisted disclosing entity.



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