

### REASONABLE FEES FOR ACTIVITIES COVERED BY LISTING RULE 8.14.1

<b>The purpose of this Guidance Note</b>	<ul style="list-style-type: none"> <li>To assist listed entities and their registries to understand how ASX assesses the reasonableness of any fees they may charge for the activities referred to in Listing Rule 8.14.1</li> </ul>
<b>The main points it covers</b>	<ul style="list-style-type: none"> <li>When can a reasonable fee be charged for undertaking certain registry activities</li> <li>How ASX assesses the reasonableness of a fee in this context</li> <li>The interaction between Listing Rules 8.10 and 8.14.1</li> </ul>
<b>Related materials you should read</b>	<ul style="list-style-type: none"> <li>Nil</li> </ul>

**History:** Guidance Note 28 amended 19/12/16. Previous versions of this Guidance Note were issued in 01/11 and 03/16.

**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 listed entities and their registries to understand how ASX Limited (ASX) assesses the reasonableness of any fees<sup>1</sup> they may charge for the activities referred to in Listing Rule 8.14.1.

## 2. Prohibition on charging for standard registry activities

Listing Rule 8.14 prohibits a listed entity, or its registry acting on its behalf, from charging a fee for:

- registering transfer documents;
- splitting certificates, renunciations and transfer forms;
- effecting shunts between registers;
- issuing certificates and transmission receipts;
- effecting conversions between subregisters;
- noting transfer forms;
- issuing a statement showing the opening balance of the holding on the issuer sponsored subregister;
- issuing a routine transaction statement<sup>2</sup> to a security holder on the issuer sponsored subregister; or
- sending a security holder details of a change to the holding which arises from an issue of securities or an acquisition of rights.

## 3. Permission to charge reasonable fees for non-standard registry activities

Listing Rule 8.14.1 operates as an exception to Listing Rule 8.14 and permits an entity or its registry to charge a reasonable fee for:

- issuing a certificate to replace one that is lost or destroyed;
- marking a transfer form, or marking a renunciation and transfer form,<sup>3</sup> within 2 business days after the form is lodged;
- issuing a special transaction statement;<sup>4</sup> or

<sup>1</sup> All references to fees are exclusive of GST.

<sup>2</sup> That is, a statement of transactions in a security holder's account issued by the entity (see Listing Rule 19.12). This would include a statement issued by an entity or its registry of its own volition or in accordance with the requirements of the ASX Settlement Operating Rules.

<sup>3</sup> To "mark" a share transfer form means to make a notation indicating that there is a share certificate held by the registry to support the transfer.

<sup>4</sup> That is, a statement of transactions in a security holder's account issued by the entity at the request of the holder (see Listing Rule 19.12).

- registering paper-based transfers in registrable form.

The freedom to charge a reasonable fee for the activities referred to in Listing Rule 8.14.1 reflects the fact that these activities are “out of the ordinary” and therefore involve additional time and effort on the part of the entity or its registry. They also require particular care and diligence on the part of the entity or its registry to avoid fraud.

#### 4. ASX’s approach to assessing the reasonableness of fees

Subject to the two exceptions mentioned below, ASX will generally accept a flat fee of \$50 (plus applicable GST), or any lesser fee, for an activity referred to Listing Rule 8.14.1 as being reasonable.

ASX does not consider it reasonable for an entity or registry to charge an *ad valorem* fee based on the value of the securities being processed under Listing Rule 8.14.1, unless the maximum fee is capped at \$50 (plus applicable GST). The work involved in processing an activity referred to in that rule does not change because the size of the holding being processed is larger or smaller.

The first exception to the general rule above is that ASX would not expect an entity to charge separate fees for both marking and registering a paper-based transfer, since both activities are part and parcel of the one transaction (namely, registering the paper-based transfer). In such a case, ASX will generally accept a combined flat fee of \$50 (plus applicable GST), or any lesser fee, for the two activities as being reasonable.

The second exception to the general rule above relates to the provision of special transaction statements involving a period greater than the current and immediately prior financial year. ASX recognises that extracting records beyond that period may require additional work on the part of a listed entity or its registry that would justify a fee higher than \$50 (plus applicable GST).

If a listed entity or its registry wishes to charge a fee higher than \$50 (plus applicable GST) for any of the activities referred to in Listing Rule 8.14.1 (including for both marking and registering a paper-based transfer or for the provision of a special transaction statement beyond the current and immediately prior financial year), it should formally notify ASX in advance of the fee that it proposes to charge and make formal written submissions to ASX to justify why it considers that fee to be reasonable. The notification should be sent to the entity’s home branch.<sup>5</sup>

In assessing the reasonableness of a fee, ASX will take into account all relevant factors including, but not limited to:

- any information provided by the listed entity or its registry about the basis for charging the fee and the costs involved in processing the activities referred to in Listing Rule 8.14.1;
- any representations or complaints received by ASX from investors as to the unreasonableness of the fee;
- the fees charged for comparable services by other listed entities or their registries; and
- the fees charged by settlement participants for comparable activities in relation to securities registered in the entity’s CHESS subregister.

ASX reserves the right to determine that any fee for an activity referred to Listing Rule 8.14.1 that is not notified to ASX in advance is “unreasonable”. If it does so, the entity or its registry may be required by ASX not only to reduce the fee going forward to an amount that is reasonable, but also to refund to anyone who has been charged a fee that ASX determines to be unreasonable, the excess above what ASX considers to have been reasonable in the circumstances.<sup>6</sup>

ASX also reserves the right, where a fee for an activity referred to Listing Rule 8.14.1 is notified to ASX in advance and initially determined by ASX to be reasonable, to reconsider whether that initial determination was correct. ASX will generally only exercise this right where there has been a substantial number of representations or complaints

<sup>5</sup> 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 Sydney, Perth and Melbourne.

<sup>6</sup> ASX has the power to require this under Listing Rule 18.8.

received by ASX from investors as to the unreasonableness of the fee. In such a case, if ASX changes its initial determination and rules that the fee is not reasonable, ASX will require the entity or its registry to reduce the fee going forward to an amount that is reasonable, but will not usually require the entity or its registry to make any refunds.

It should be noted that ASX can at any time call for information from a listed entity or its registry about the fees they charge for the activities referred to in Listing Rule 8.14.1 to test whether those fees are reasonable and therefore comply with that rule.<sup>7</sup>

### **5. Interaction with Listing Rule 8.10**

A listed entity or registry carrying out checks in the ordinary course of business to determine the authenticity of an off-market transfer form submitted for registration will not be considered by ASX to “prevent, delay or interfere with the registration of a transfer document relating to quoted securities” under Listing Rule 8.10.

A listed entity or its registry can undertake reasonable steps to satisfy itself that the document is in fact a proper instrument of transfer and has been properly authorised and executed, even if from time to time those steps take longer than the standard settlement time of 2 business days.

Examples of checks carried out in the ordinary course may include, but are not limited to, a requirement to produce originals or provide certified copies of identification documentation relating to the transferor of the securities or of any power of attorney or grant of probate or letters of administration under which the transfer is executed.

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<sup>7</sup> ASX has the power to require this under Listing Rule 18.7.