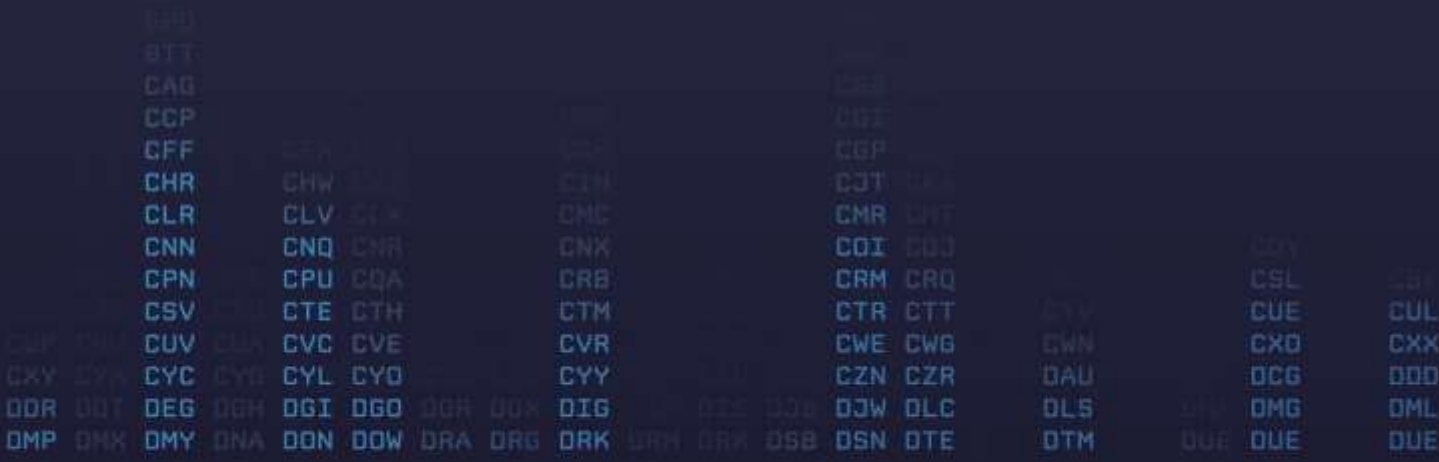




Facilitating Dual Listings by New Zealand Companies

Updating ASX's Foreign Exempt Listing Rules



Invitation to comment

Contacts ASX is seeking submissions on the proposal canvassed in this paper by Monday 20 April 2015. Submissions should be sent to:

E regulatorypolicy@asx.com.au

Regulatory & Public Policy, ASX Limited
20 Bridge Street Sydney NSW 2000

Attention: Ms Diane Lewis

ASX prefers to receive submissions in electronic form. Submissions not marked as 'confidential' will be made publicly available on ASX's website.

If you would like your submission, or any part of it, to be treated as 'confidential', please indicate this clearly in your submission. ASX is available to meet with interested parties for bilateral discussions on this proposal.

Contacts

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Executive summary

1. The purpose of this consultation is to seek comment on a proposal to facilitate the dual listing on the ASX market of companies that are listed on the main board of the New Zealand Exchange (NZX), to provide Australian investors greater access to a wider range of well-regulated public companies.
2. The proposal involves removing regulatory costs imposed under the ASX Listing Rules to the dual listing of NZX-listed companies that are no longer supported by a strong policy rationale and create an unnecessary compliance burden. Under the current ASX Listing Rules framework, nearly all NZX-listed companies who have sought a secondary listing on the ASX market have been required to do so as a standard ASX Listing subject to compliance with the full suite of ASX Listing Rules in addition to being required to comply with the NZX Listing Rules. NZX-listed companies with a secondary listing on ASX have been subject to this overlapping compliance burden because they have been restricted from listing as an ASX Foreign Exempt Listing by the imposition of very high admission criteria for profits, net tangible assets and shareholder spread. ASX Foreign Exempt Listings are not required to comply with the full suite of ASX Listing Rules. The ASX Listing Rules takes a 'substituted compliance' approach to ASX Foreign Exempt Listings, which means there is reliance on the company complying with the listing rules of the home exchange.
3. It is proposed that the profits, net tangible assets and shareholder spread admission criteria for ASX Foreign Exempt Listings be removed for companies with a primary listing on the main board of NZX to allow these companies to dual-list on ASX without imposing a dual compliance burden. ASX considers that these admission criteria for ASX Foreign Exempt Listings can be removed on the basis of reliance on the admission criteria and the ongoing requirements under the main board NZX Listing Rules. The NZX Listing Rules are materially equivalent to the ASX Listing Rules and set an appropriate standard for admission and ongoing regulation, including in relation to continuous disclosure, of these companies.
4. The proposal reflects the close economic relationship between Australia and New Zealand which has been advanced under the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) over the last 30 years. ASX considers that the proposal reaffirms efforts to deepen economic integration and provide for free flows of capital between our two countries in advancing a single economic market. It also recognises and builds on the strong corporate and securities regulatory co-operation, and the level of regulatory mutual recognition that has been developed under the trans-Tasman relationship.

Overview of the proposal

5. There are three categories of ASX listings available to foreign companies: a standard ASX Listing, an ASX Debt Listing (for foreign companies quoting only debt securities), and an ASX Foreign Exempt Listing.¹
6. An ASX Foreign Exempt Listing is a listing category available to entities that have a primary listing on an exchange in another jurisdiction and wish to have a secondary listing on ASX. The home exchange must be a member of the World Federation of Exchanges (WFE).²
7. Currently, to be eligible for admission as an ASX Foreign Exempt Listing, a company must meet eligibility tests which are significantly higher than the equivalent tests for standard ASX Listings. To be eligible, the entity must have had an operating profit for each of the past 3 financial years of at least A\$200 million or net tangible assets of at least A\$2 billion (as compared with an aggregated profit of A\$1 million for the past 3 financial years or net tangible assets of at least A\$3 million for a standard ASX Listing), and it must have at least 1,000 shareholders (as compared with at least 300-400 shareholders for a standard ASX Listing).
8. A company admitted as an ASX Foreign Exempt Listing is required to comply with the rules of its home exchange and to immediately release information to ASX that is released to its home exchange. It is also required to comply with a limited set of ASX Listing Rules specified in rule 1.15. The ASX Foreign Exempt Listing category is based on a principal of substituted compliance, recognising that for secondary listings, the primary regulatory role and oversight rest with the home exchange and the supervisory regulator in that jurisdiction.
9. These eligibility tests have limited the effectiveness of the ASX Foreign Exempt Listing category, particularly for NZ-domiciled companies. There are currently 35 NZ-based companies listed on ASX, 32 of which have a primary listing on the New Zealand Exchange (NZX). Currently, none of the 32 NZX-listed companies with a secondary listing on ASX is admitted as ASX Foreign Exempt Listing. They are all admitted as standard ASX Listings.
10. ASX considers that as a listing category based on substituted compliance, the ASX Foreign Exempt Listing category should be particularly suitable for NZ-domiciled companies with a primary listing on NZX. This not only reflects the strong economic and business links between Australia and New Zealand fostered under the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA), it recognises the high level of cooperation and mutual recognition in corporate and securities regulation between the two countries.
11. In view of this, ASX proposes to remove the additional eligibility tests for ASX Foreign Exempt Listings in the case of entities that are listed on the main board of NZX. The NZX admission requirements applicable to these entities will ensure quality of listings without the need to impose additional requirements. This new framework will apply to entities listed on NZX's main board, but not its NZAX and NXT markets. The ongoing requirements for ASX Foreign Exempt Listings will continue to apply: the requirement to continue to comply with the NZX Listing Rules, the requirement to comply with the ASX Listing Rules specified in rule 1.15, and the requirement to immediately release information to ASX that is released to NZX. ASX is also introducing some related amendments to rule 1.15.3 and Appendix 1C, to

¹ In this consultation paper, references to companies include all entities eligible for admission to ASX.

² A list of WFE member exchanges is available on its website at <http://www.world-exchanges.org>.

allow for better confirmation of ongoing compliance by ASX Foreign Exempt Listings with the rules of their home exchange. These related amendments are outlined below in paragraph 23.

12. At the same time, ASX will also replace the current requirement for a foreign company seeking admission as an ASX Foreign Exempt Listing to be registered as a foreign company under the Corporations Act. The replacement requirement will be for the company either to be registered as a foreign company, or else to have a local agent appointed for service of process. This change will apply to all foreign companies company seeking admission as an ASX Foreign Exempt Listing, and not only those that are admitted to the main board of NZX.
13. By streamlining the path to admission as ASX Foreign Exempt Listings, ASX will remove unnecessary obstacles to the listing of main board NZX-listed companies on ASX and potentially give Australian investors easier access to a greater range of well-regulated public companies.

The profit and assets tests

14. The requirements for admission of an entity as an ASX Foreign Exempt Listing include that the entity must satisfy either a profit test or a net tangible assets test. The profit/ net tangible assets tests are intended to assist ASX to satisfy itself that the entity satisfies appropriate minimum standards of quality and size, consistently with the principles on which the ASX Listing Rules are based.
15. The profit test for ASX Foreign Exempt Listings is that the entity's operating profit before income tax for each of the last 3 full financial years before admission must have been at least \$200 million. The net tangible assets test is that the entity must have net tangible assets at the time of admission of at least \$2 billion.
16. Similar requirements apply to standard ASX Listings, but with significantly lower thresholds. An ASX Listing must meet a profit test of A\$1 million in aggregate for the 3 full financial years before admission, or an assets test which is net tangible assets of A\$3 million or a market capitalisation of \$10 million. The equivalent test for a listing on the NZX main board looks at the anticipated market capitalisation of the applicant, which under the current rules is effectively NZ\$50 million for a company on the main board.³
17. ASX proposes to retain the profits/ net tangible assets requirements for ASX Foreign Exempt Listings at their current levels, but to put in place an exception for NZX-listed entities. However, this exception will only apply to those entities that have met the requirements for admission to the main board of NZX. It will not apply to entities that are listed on NZX's alternative markets, NZAX and NXT. ASX will regard these NZX main board-listed entities as meeting its own eligibility requirements on the basis that they have already met the anticipated market capitalisation requirement for listing on the main board of NZX and have continued to comply with NZX's listing requirements, including those requirements relating to periodic disclosure of financial information. This is sufficient to provide ASX with the comfort that the entity is suitable for listing.

³ See NZX Listing Rule 5.1.3 and NXT Guidance Note: *Migration to NZX Main Board*.

The spread test

18. The requirements for admission of an ASX Foreign Exempt Listing also include that the entity must have at least 1,000 holders of securities in the class to be quoted with a value of at least \$500. This includes holders on the entity's overseas home exchange and any holders on ASX. The spread test is intended to assist ASX to satisfy itself that there is sufficient investor interest in the entity's securities.
19. The equivalent requirement for a standard ASX Listing is for 300 to 400 holders (depending on the circumstances) of securities with a value of at least \$2,000. For a listing on the NZX main board, the requirement is for 500 holders of securities with a value determined under the rules (but in the order of NZ\$500). In addition, 25% of the issued securities must be held by members of the public.⁴
20. ASX proposes to retain the spread requirement for ASX Foreign Exempt Listings, but to put in place an exception for NZX-listed entities. As with the profits/ net tangible assets requirements, this exception will only apply to those entities that have met the requirements for admission to the main board of NZX. It will not apply to entities that are listed on NZX's alternative markets, NZAX and NXT. ASX will regard these NZX main board-listed entities as meeting its own eligibility requirements on the basis that they meet the equivalent requirement for listing on the main board of NZX. The NZX spread requirement is an ongoing obligation. Under the NZX Listing Rules, the entity must maintain a spread of security holders that is sufficient to ensure a sufficiently liquid market in its securities.⁵ ASX considers that the entity's compliance with this requirement is sufficient to provide it with the comfort that the entity is suitable for listing. Because NZ entities can have their securities CHESSE-approved, and so do not need to quote CDIs, they will continue to be required to quote all of their quoted class of securities on ASX, as with any standard ASX Listing. This is consistent with the objectives of our two countries in advancing a single economic market.

The requirement to be registered as a foreign company

21. The requirements for admission of an entity as an ASX Foreign Exempt Listing include, if the entity is a foreign company, that it must be registered as a foreign company under the Corporations Act. ASX proposes to replace this with a requirement that the foreign company either be registered as a foreign company carrying on business in Australia under the Corporations Act, or else that it have appointed an agent for service of process in Australia. This will apply to all Foreign Exempt Listings, and not only those that are listed on the main board of NZX.

⁴ See NZX Listing Rule 5.2.3 and Appendix 2, and NZX Guidance Note: *Spread*.

⁵ See NZX Listing Rule 5.2.3. Under NZX Listing Rule 5.4.3(c), NZX can suspend quotation or cancel listing as a consequence of failure to meet the spread requirement on an ongoing basis.

22. Whether or not a foreign company needs to register as a foreign company carrying on business in Australia is a matter regulated by the Corporations Act.⁶ By requiring a foreign company at a minimum to have appointed an agent for service of process, ASX ensures that it has the ability to enforce compliance with its rules. This change is a streamlining of requirements consistent with the equivalent amendments to the admission requirements for foreign participants in the ASX Operating Rules.⁷

Related amendments

23. To allow for better confirmation of ongoing compliance by ASX Foreign Exempt Listings with the rules of their home exchange, ASX proposes to introduce an amendment requiring all ASX Foreign Exempt Listings to release an annual statement to the ASX market confirming their continuing compliance with those rules. An amendment will also be introduced to the application form for ASX Foreign Exempt Listings, providing the company's express consent to the provision of information by third parties to ASX for the purpose of assessing the company's application and its ongoing compliance with the rules.
24. ASX is also making some minor drafting amendments to rule 1.15.1 to remove some cross-references to rules that have since been deleted.

⁶ Corporations Act Part 5B Division 2, in particular section 601CD.

⁷ Outlined in ASX's consultation paper *Reducing red tape – proposed amendments to ASX's admission and notification requirements* available at <http://www.asx.com.au/regulation/public-consultations.htm>.



Proposed Amendments to the ASX Listing Rules – Foreign Exempt Listings

Chapter 1

Listing Rule 1.11 Condition 6

Condition 6 The entity must apply for and be granted permission for +quotation of +securities that are in the +class for which it seeks +quotation. [However, if the entity’s +overseas home exchange is the NZX Main Board, the entity must apply for and be granted permission for +quotation of all of the +securities that are in that +class.](#)

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Listing Rule 1.11 Condition 7

Condition 7 The entity must satisfy either the profit test in rule 1.12 or the net tangible assets test in rule 1.13. [Condition 7 does not apply if the entity’s +overseas home exchange is the NZX Main Board.](#)

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Listing Rule 1.11 Condition 8

Condition 8 There must be at least 1,000 holders each having a parcel of +securities that are in the +class for which it seeks +quotation with a value of at least \$500. [Condition 8 does not apply if the entity’s +overseas home exchange is the NZX Main Board.](#)

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Listing Rule 1.11 Condition 9

Condition 9 If the entity is a foreign company, ~~it must be~~ [and it is not](#) registered as a foreign company [carrying on business in Australia](#) under the Corporations Act, [it must appoint and maintain an agent for service of process in Australia.](#)

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Listing Rule 1.15.1

1.15.1 Rules 2.2, 2.16, 8.2, 8.10, 8.15, ~~8-18, Appendix 8A 8.21~~, 15.2 to 15.6, 15.8, 15.9, Chapters 16, 17, 18 and 19 and any listing rules that ASX specifies, either before or after it is admitted. If the entity’s +securities are +CHES approved, it must also comply with listing rules ~~2-14~~, 8.1, 8.3, 8.5, 8.6, 8.7, 8.11, [and](#) 8.17 ~~and 8-21~~.

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Listing Rule 1.15.3

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

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Appendix 1C

15. We consent to any third party (including, without limitation, any regulatory authority, financial market or clearing and settlement facility) disclosing any information in respect of us and each of our directors from time to time, to ASX for the purpose of ASX’s assessment of this application and of our ongoing compliance with the operating rules of ASX (including, without limitation, any requirement that we must comply with the listing rules (or their equivalent) of our +overseas home exchange).