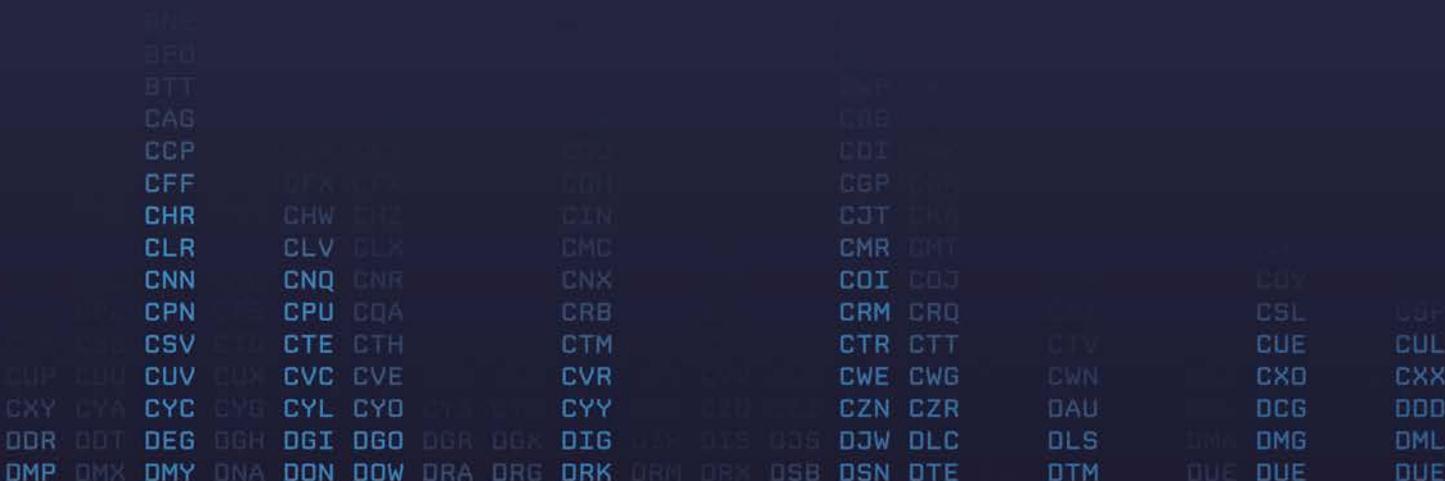




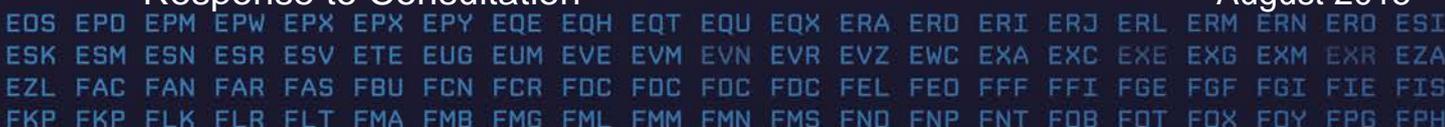
Facilitating Dual Listings by New Zealand Companies

Updating ASX's Foreign Exempt Listing Rules



Response to Consultation

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Update to the rule amendment package

1. On 11 March 2015, ASX released a consultation paper seeking comments on a package of proposed amendments to the ASX Listing Rules to facilitate dual listings by New Zealand companies. The objective of the amendments is to provide Australian investors with access to a wider range of well-regulated public companies by reducing the regulatory costs imposed under the ASX Listing Rules on the dual listing of NZX-listed companies.
2. ASX received 15 responses to this consultation paper. The responses were broadly supportive of the proposal. Some common issues raised and ASX's responses are summarised below.
3. A number of changes have been made to the rule amendment package during the regulatory review process. ASX considers that the changes will provide further assurance of the quality of entities admitted to listing on ASX while still meeting the objective of the amendments. The changes are summarised below. The updated rule amendments incorporating these changes have been lodged for final regulatory approval.
4. In connection with this rule amendment package, ASX's website disclosure in relation to dual listed entities (see <http://www.asx.com.au/listings/listing-capital-raising/listing-requirements.htm>) will be updated to include further information about ASX Foreign Exempt Listings, including entities admitted as ASX Foreign Exempt Listings under the new rules.

Responses to consultation

5. A number of responses to ASX's consultation paper asked for confirmation that entities currently admitted as a standard ASX Listing will be able to reclassify as an ASX Foreign Exempt Listing, and asked for an explanation of the process that would be involved in that reclassification.
6. ASX confirms that any entity with its primary listing on the NZX Main Board that is currently admitted as an ASX Listing will be able to apply to change its admission category to ASX Foreign Exempt Listing. The process for a change of admission category is expected to be straightforward and will not require the payment of any fees to ASX. However, the process will not be automatic – an entity that wishes to change its admission category will need to apply to ASX to do so. ASX will shortly write to all eligible entities explaining this process.
7. ASX also confirms that an eligible entity will be able to apply for admission as an ASX Foreign Exempt Listing under the new rules contemporaneously with its admission to the NZX Main Board.
8. One submission made the point that an entity admitted under the new rules would not be in a position to issue securities on the basis of a cleansing statement under section 708AA of the Corporations Act (rights issues that do not need disclosure), or to have its securities offered for sale on the basis of a cleansing statement under section 708A of the Corporations Act (sale offers that do not need disclosure). This is because securities in an ASX Foreign Exempt Listing are not "ED securities" and an ASX Foreign Exempt Listing is not a "listed disclosing entity" for purposes of the Corporations Act (refer to regulation 1.2A.01 of the Corporations Regulations, and sections 111AC, 111AD, 111AE, 111AJ and 111AL of the Corporations Act). The submission asked ASX to request relief from ASIC to allow entities admitted under the new rules to have the benefit of sections 708AA and 708A.

9. An entity with a primary listing on the NZX Main Board and admitted as an ASX Foreign Exempt Listing under the proposed new rules would not be subject to continuous disclosure obligations under rule 3.1 (see rule 1.15) or section 674 of the Corporations Act (as it will not be a "listed disclosing entity" – see above). However, the entity will be subject to continuous disclosure obligations under rule 10.1 of the NZX Listing Rules, and the information disclosed to the NZX market under that rule must be immediately provided to ASX under rule 1.15.2. As a consequence of these rules, Australian investors must be kept informed on a timely and ongoing basis about information that is material to an investment in the entity's securities.
10. This rule framework for entities admitted under the proposed new rules appears to provide some support for an application for relief to allow an entity admitted under the new rules to have the benefit of sections 708AA and 708A. ASIC has indicated to ASX that it is not currently in a position to progress an application for class relief for all entities admitted under the proposed rules, but could consider an individual relief application on its merits.

Summary of changes to the rule amendment package

11. A number of changes have been made to the rule amendment package in response to feedback during the regulatory review process. These changes are summarised below.
12. The rules will now require any applicant for ASX Foreign Exempt Listing status to inform ASX of any waivers that it has from the rules of its home exchange (new rule 1.11 condition 3A). Once admitted, the entity must also promptly inform ASX of any waivers that it is granted by its home exchange (new rule 1.15.4). These rules apply to all ASX Foreign Exempt Listings, and not only to those with a primary listing on the NZX Main Board. ASX will normally require disclosure to the market of any such waiver only if disclosure to the market would be required in relation to an equivalent waiver granted by ASX.
13. As a consequence of the rule amendments, an applicant for ASX Foreign Exempt Listing status with a primary listing on the NZX Main Board will not be required to comply with the profits or assets test in rules 1.12 and 1.13. However, the rules now require the entity to comply with the profits or assets test in rules 1.2 and 1.3 (with some minor exceptions reflecting the circumstances of ASX Foreign Exempt Listings) (new rule 1.11 condition 7A). The effect of this is that an entity with a primary listing on the NZX Main Board must meet the lower financial tests that apply to a standard ASX Listing and not the much higher financial tests for ASX Foreign Exempt Listings. The spread test will not apply at all, as these entities are subject to an ongoing spread requirement under the NZX Listing Rules.
14. The rules will now require the directors of an applicant for ASX Foreign Exempt Listing status with a primary listing on the NZX Main Board to meet an equivalent "good fame and character" test as that which applies to the directors of a standard ASX Listing (new rule 1.11 condition 13).
15. The requirement for foreign companies to be registered under the Corporations Act (rule 1.11 condition 9) has been retained. This will ensure that there is no impairment to the ability of Australian regulators to take any necessary action against an entity admitted as an ASX Foreign Exempt Listing.
16. The rules will now require an ASX Foreign Exempt Listing to immediately request a trading halt on ASX if a trading halt has been applied on its home exchange (new rule 1.15.5). Similarly, an ASX Foreign Exempt Listing must

immediately request a suspension of quotation of its securities on ASX if a suspension has been applied on its home exchange ([new rule 1.15.6](#)). These rules apply to all ASX Foreign Exempt Listings, and not only to those with a primary listing on the NZX Main Board. Rules 17.1 and 17.2 apply so that ASX can require the request to be in writing, and is not required to act on the request if it does not consider that the trading halt or suspension should be applied.

17. ASX and NZX are finalising a protocol describing the cooperation between the two exchanges in relation to matters impacting on the trading of securities in dual listed entities, including entities admitted as ASX Foreign Exempt Listings under the proposed new rules. The protocol will include arrangements in relation to communication and coordination of trading halts and suspensions of securities in dual listed entities.
18. A drafting change has been made to new rules 1.11 condition 6, 1.11 condition 7 and 1.11 condition 8 to replace the words "the entity's overseas home exchange" with the words "the place of the entity's primary listing". This is simply to emphasise that an entity must have its primary listing on the NZX Main Board to be admitted as an ASX Foreign Exempt Listing under the new rules.
19. The updated rule amendment package has been lodged for final regulatory approval. ASX will update the market on the effective date for the rules, subject to that approval. ASX thanks all respondents to the consultation process on this rule package for their thoughtful and constructive feedback.

Proposed Amendments to the ASX Listing Rules – Foreign Exempt Listings

Chapter 1

Listing Rule 1.11 Condition 3A

Condition 3A The entity must inform ASX of any waiver of all or part of any listing rule (or the equivalent) of its +overseas home exchange that will be in effect in respect of the entity on its admission to the +official list. If ASX requires, the entity must release details of any such waiver to the market.

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

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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 place of the entity's primary listing 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 place of the entity's primary listing is the NZX Main Board.

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Listing Rule 1.11 Condition 7A

Condition 7A If the place of the entity's primary listing is the NZX Main Board, the entity must satisfy either the profit test in rule 1.2 or the assets test in rule 1.3 (with the exception of rules 1.3.2 and 1.3.3(a)).

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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 place of the entity's primary listing is the NZX Main Board.](#)

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Listing Rule 1.11 Condition 13

[Condition 13](#) [If the place of the entity's primary listing is the NZX Main Board, the entity must satisfy ASX that each director or proposed director of the entity at the date of listing on ASX is of good fame and character.](#)

[Note: For the purposes of satisfying this condition, ASX will primarily have regard to the documents provided by the entity in response to the Information Form and Checklist \(ASX Foreign Exempt Listing\). However, it may also have regard to any other information it has about the directors or proposed directors and, in an appropriate case, may require an entity to provide additional information about its directors or proposed directors.](#)

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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 +CHESS 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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Listing Rule 1.15.4

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

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

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Listing Rule 1.15.5

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

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Listing Rule 1.15.6

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

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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).