



Listing Rule Amendments – new rules and timetables for common forms of capital raisings

ASX Consultation Paper and Exposure Draft

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WHAT THIS PAPER IS ABOUT

This paper sets out amendments ASX proposes to make to its Listing Rules to facilitate common forms of renounceable and non-renounceable capital raisings without the need for listing rule waiver. These types of capital raisings are commonly referred to as “accelerated rights issues” or “Jumbo”, “Rapid” and “Sareo”.

The proposed new timetables have been developed taking into account the evolution of corporate actions and settlement facility operational requirements. The evolution of corporate actions has included these types of corporate actions, which were initially novel and accelerated relative to the more traditional forms, but which are now mainstream.

Comments received as a result of this consultation will be considered in finalising the amendments to the Listing Rules and the accompanying timetables.

ASX hopes to introduce these rule changes in 2Q 11, however the actual effective date for the rule changes will be confirmed when ASX has commenced the usual regulatory process for rule change with ASIC.

INVITATION TO COMMENT

ASX is seeking comments on the proposed amendments to the Listing by **Friday 25 February, 2011**. Submissions can be forwarded to:

regulatorypolicy@asx.com.au

or

ASX Regulatory & Public Policy Unit
Level 7, 20 Bridge Street
Sydney NSW 2000

ASX prefers to receive comments in electronic form.

For enquiries, please call Heidi Gaussen on +61 2 9227 0844

Confidentiality

If you would like your submission, or any part of it, to be treated as ‘confidential’ please indicate this clearly.

Facilitating Common Forms of Capital Raising

ASX Proposal

1. ASX proposes to amend the Listing Rules to introduce a new exception to listing rule 7.1 to facilitate common forms of capital raisings, being those which are eligible for ASIC relief from Prospectus disclosure in Class Order 08/35.¹The ASX rule will apply irrespective of whether the entity elects to rely on the Class Order, or to issue full offer documentation.
2. The rule change will not expand the scope or type of capital raisings that can be undertaken without shareholder approval; this is because these capital raisings are currently facilitated by way of listing rule waiver.
3. ASX also proposes to introduce standard timetables for the renounceable and non-renounceable accelerated offers that are captured by the new exception to listing rule 7.1. Timetables are currently approved on a case-by-case basis as part of the waiver process. Where possible, the proposed timetables contain flexibility, so that an entity can tailor the timing of an offer to its needs.
4. ASX is introducing a notification requirement and a fee as a mechanism to help it manage the orderliness of associated Exchange Traded Option (ETOs) markets, where an entity intends to undertake a capital raising and the trading halt component of the raising will coincide with the monthly expiry of ETOs traded over the entity's securities. Past experience suggests that only a small number of capital raisings each year would trigger the notification and fee rules. The fee may be waived where the coincidence in timing is proven unavoidable (e.g. due to continuous disclosure obligations).
5. Notwithstanding these rule changes, an entity will continue to have the option of applying for a rule waiver i) where an entity is not eligible for ASIC CO relief; ii) where the entity proposes to use a timetable that does not accord with the new timetables in Appendix 7A, or iii) where the entity otherwise forms the view that its proposed capital raising does not fall within the exceptions to listing rule 7.1. There will be no change to the process by which the Listings unit within ASX Compliance considers and approves or does not approve rule waiver requests.
6. Draft listing rules and timetables are attached.

Objectives and benefits

7. The main objectives of the proposed amendments are to contemporise the listing rules in relation to capital raisings and to accommodate within the rule framework the types of raisings that have become commonplace in recent years.
8. The benefits of these changes to entities listed on ASX, investors and to ASX are:
 - increased transparency around the types of capital raisings that can be undertaken under the ASX listing rules;
 - continuing flexibility for entities to tailor their capital raising but without the need for ASX approval of individual timetables;
 - elimination of the time and expense associated with obtaining waiver relief to conduct these types of capital raisings;
 - clear alignment between ASX and ASIC policies in regard to capital raisings;

¹ <http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/coo8-35.pdf/sfile/coo8-35.pdf>

- the ability to facilitate innovative structures via rule waiver is retained.

Background

Accelerated rights issues

In January 2010, ASX released a paper “Capital Raising in Australia: Experiences and Lessons from the Global Financial Crisis”.² That paper contains a detailed analysis of capital raising trends over recent years and is useful background reading when considering this proposal.

ASX-listed entities can issue shares of up to 15% of issued capital on a non-pro-rata basis in a 12-month period without seeking shareholder approval. There are no restrictions on the number of shares that can be issued on a pro-rata basis through a renounceable rights issue, or on the discount that can be offered on the share issue price under such issues. There is, however, a limit on how much can be raised through a non-renounceable pro-rata offer (i.e. no greater than a 1:1 offer ratio).

Accelerated rights issues are not exceptions to the 15% capital raising limit in listing rule 7.1. This is because ASX defines pro-rata as “an issue which has been offered to all holders of securities in a class on a pro rata basis”. This definition does not capture accelerated entitlement offers, which are structured as a two-stage process with an initial (accelerated) institutional component and a secondary (non-accelerated) retail component.

Companies frequently request waivers from ASX listing rules 3.20, 7.1, 7.40 and 10.11 to undertake non-traditional accelerated rights issues without shareholder approval. ASX also approves each timetable on a case-by-case basis.

During the years 2007 – 2009, rights issues and accelerated issues comprised 31% secondary capital raisings conducted by ASX listed entities. In 2008, there were 22 accelerated issues offers. In 2009, there were 61 and as at end October 2010, 20 had been completed.

The listing rule changes proposed in this paper are intended to remove the need for waivers in respect of the commonly used forms of accelerated offers. The policy basis for extending the exception to listing rule 7.1 is that these offers are considered to be functionally equivalent to a pro-rata offer.

The main types of accelerated rights issue structures are:

- **Jumbo** structure – a ‘first round’ non-renounceable pro-rata offer is made to institutional shareholders over a two-day period while the security is in a trading halt. Entitlements not taken up are then offered to other institutional investors by the entity. This stage is followed by a ‘second round’ non-renounceable offer to retail investors on the same terms as the institutional offer;
- **RAPIDS** (Renounceable Accelerated Pro-rata Issue with Dual book-build Structure) or **AREO** (Accelerated Renounceable Entitlement Offer) structure that provides for a renounceable accelerated pro-rata rights issue (initially to institutions and then to retail investors), with a dual book-build structure. That is, an institutional book-build and a separate, subsequent retail book-build to sell the rights not exercised by institutional investors and retail investors respectively. Any ‘premium’ received above the offer price is remitted to those investors who don’t take up their rights; and
- **SAREO** – Simultaneous Accelerated Renounceable Entitlement Offer which has emerged as a variation of the AREO structure, in that the rights which have been renounced are sold through a single book-build (open only to institutional investors) after both the institutional and the retail offers have been completed.

² http://www.asx.com.au/about/pdf/20100129_asx_information_paper_capital_raising_in_australia.pdf

Trading Halts and Option Expiry

Exchange Traded Options (ETO) may be listed over the shares in an entity listed on ASX, over a share price index or an Exchange Traded Fund (ETF). At present, those entities are (identified here by their ASX codes):

AGK, AIO, AMC, AMP, ANN, ANZ, ASX, AWC, AXA, BHP, BLD, BSL, BXB, CBA, CCL, CFX, CGF, COH, CPU, CSL, CSR, DJS, EQN, FGL, FMG, FXJ, GPT, GTP, HGG, HVN, IAG, IFL, IPL, ITO, JHX, LEI, LGL, LLC, MAP, MGR, MQA, MQG, MYR, NAB, NCM, ORG, ORI, OSH, OST, OZL, PBG, PPX, QAN, QBE, RIO, SEV, SGP, SGT, STO, STW, SUN, TAH, TCL, TEL, TEN, TLS, TOL, TTS, WBC, WDC, WES, WOR, WOW & WPL.

Corporate actions (and any associated trading halt) can impact the ETO market, especially if the requested trading halt crosses over the ETO expiry date for ETOs listed over that entity's securities. ASX Market Rules prohibit the ETO market being open when the listed entity is in a trading halt.

Any such trading halt over the ETO expiry causes increased risk for options holders and options writers concerning the expiry process. Only about 12% of open positions in the ASX ETO market are exercised. Most open positions look to roll or close out their positions 1 or 2 days prior to expiry or on the expiry day, but are precluded from doing so if the entity is in a trading halt. Furthermore, options holders/writers are left without any recent pricing history or a final closing price for the entity on which to base their decisions concerning exercise. Difficulties may also arise concerning stock borrowing, etc, to ensure successful settlement of all expiry exercise obligations. Often the affected parties will be shareholders (using options as an enhancement) in the entity which is subject to the trading halt.

To mitigate these difficulties ASX does and will re-open the ETO market for an entity in a trading halt for 2 hours on the afternoon of the expiry day. ASX does this to offer a mechanism whereby options holders/writers looking to roll or close out prior to the ETO expiry get a chance to do so. However, this is a somewhat limited solution, as there will always be some degree of supposition about what the buyers and sellers may perceive to be the appropriate "basis" price.

The ASX ETO Expiry dates for 2010 and 2011 are set out below.

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2010	28	25	25	29	27	24	29	26	23	28	25	23
2011	27	24	24	28	26	23	28	25	29	27	24	22

It is proposed that ASX introduce a rule requiring an entity to notify ASX if it intends to enter into a trading halt which will coincide with ETO expiry. The aim of the notification is to give ASX time to notify ETO holders of the special arrangements that will apply for expiry, and to put those arrangements into place. ASX currently obtains this information through the waiver and timetable approval process. A fee will also be payable, unless the timing of the halt is outside the control of the entity.

Invitation to Comment

ASX invites comment on any aspect of this proposal. In particular, ASX invites comments on the proposed timetables. ASX's aim is to provide timetables that capture as many accelerated capital raisings as possible, thereby significantly reducing the need for waivers.

Draft Listing Rule Amendments

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Record Date and compliance with timetable

3.20.1 An entity must tell ASX immediately it decides a proposed +record date or any change to a proposed +record date.

3.20.2 An entity must give ASX not less than seven +business days notice of a proposed ±record date or any change to a proposed +record date and must comply with Appendix 3A unless a specific timetable applies.

Introduced 1/7/96. Origin: Listing Rule 3A(5)(a). Amended 30/9/2001. Amended 24/10/2005.

Note: If an entity fails to tell ASX of a change to a proposed record date, ASX may require the entity to adhere to the record date originally advised to ASX.

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

An entity should take into account a number of factors when determining when it is appropriate to tell ASX of a proposed record date, including whether ETOs are issued in respect of any of the entity's securities.

Cross reference: Timetables are in Appendix 6A and Appendix 7A. For the record date in relation to interest on quoted debt securities and convertible debt securities, see Appendix 6A(2). See also listing rules 7.13, 7.14 and 7.15.

3.20.3 Where an entity relies on an Exception to Listing rule 7.1 and intends to request a +trading halt over its +securities that would coincide with the exchange traded option (ETO) expiry date for ETO's listed over that entity's +securities, the entity must notify ASX of such request two +business days prior to the +trading halt commencing.

Introduced X/X/XX.

Cross reference: Timetables are in Appendix 7A.

Note: ASX will not publicly release this information.

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Exceptions to rule 7.1

7.2 Rule 7.1 does not apply in any of the following cases.

...

Exception 1A A rights issue or related issue of +securities eligible for exemption from issuing a disclosure document or Product Disclosure Statement in accordance with relief granted by +ASIC.

Note: See ASIC Class Order CO 08/35 which provides relief from the prospectus and product disclosure statement provisions of the Corporations Act for a non-traditional rights issue.

Cross reference: Listing rule 3.20.3.

Introduced X/X/XX.

Exceptions to rule 10.11

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

...

Exception 1A The person receives the securities under a rights issue or related issue of ⁺securities eligible for exemption from issuing a disclosure document or Product Disclosure Statement in accordance with relief granted by ⁺ASIC.

Note: See ASIC Class Order CO 08/35 which provides relief from the prospectus and product disclosure statement provisions of the Corporations Act for a non-traditional rights issue.

Cross reference: Listing rule 3.20.3.

Introduced X/X/XX.

Non-Renounceable Accelerated Entitlement Offers

An entity must follow any minimum or maximum time limits set out in this timetable when making a non-renounceable accelerated entitlement issue. All entities must consult with ASX prior to the publication of a timetable to ensure the timetable is acceptable to ASX.

As set out in listing rule 3.20.3, where there are Exchange Traded Options traded over an entity's securities, the entity must notify ASX if the trading halt component of the timetable will coincide with an option expiry date prescribed by ASX. For a list of prescribed dates, see: http://www.asx.com.au/data/options_code_list.csv

Event	Time limits	Business Day: 2 day trading halt	Business Day: 3 day trading halt
Entity requests trading halt before market open. Entity announces non-renounceable accelerated entitlement issue. ³ Entity applies for quotation (Appendix 3B). Entity lodges cleansing notice with ASX (if applicable).	prior to the commencement of trading on day 0.	0	0
Entity conducts institutional offer	Not more than 1(2) business days after trading halt requested	1	2
Announcement of results of institutional offer. Entity releases copy of prospectus to ASX (if applicable) Trading resumes on an ex-entitlement basis.	Before the commencement of trading At the commencement of trading.	2	3
⁺ Record date to identify ⁺ security holders entitled to participate in the issue. Cross reference: rules 7.13, 7.14 and 7.15.	Not earlier than the 3 rd business day after day 0.	3	4

³ Entities must announce at this time:

- the fixed issue ratio and fixed issue (ie subscription) price, and
- whether or not the new securities will be entitled to any announced dividend or distribution amount, and the ex-date for that dividend or distribution, that the existing securities will receive.

If the entity on day 0 is only in a position to announce an indicative issue ratio, and/or indicative issue (ie subscription) price, then the entity must announce the final issue ratio and/or final issue price by no later than 2pm on the day before the trading halt is lifted and trading resumes on an ex-entitlement basis.

Event	Time limits	Business Day: 2 day trading halt	Business Day: 3 day trading halt
Day before quotation of securities issued under institutional offer, entity provides ASX with the following: <ul style="list-style-type: none"> • The date of allotment and number of securities for which quotation is sought. • A statement setting out the issued capital of the entity following allotment. Entity provides ASX updated Appendix 3B (if required).	Not later than 12:00pm on the day before quotation of the securities issued under institutional offer.	3	4
Quotation of securities issued under institutional offer ⁴	Occurs same day as issue of securities under institutional offer, and not before updated Appendix 3B is provided to ASX (if required)	4	5
Entity sends offer documentation and serially numbered entitlement and acceptance forms to eligible retail holders. Entity announces that despatch of offer documents has been completed. Retail offer period opens	Not less than 1 business day after record date or more than 5 business days after record date.	4	5
Retail offer close	Not less than 10 or more than 21 business days from despatch of offer documents.	13	14
Announce results of retail offer	Not later than 1 business day after the close of the retail offer	14	15

⁴ Based on DvP settlement occurring on the business day before quotation of institutional offer

Event	Time limits	Business Day: 2 day trading halt	Business Day: 3 day trading halt
<p>Day before quotation of securities issued under retail offer, entity provides ASX with the following:</p> <ul style="list-style-type: none"> • The date of allotment and number of securities for which quotation is sought. • A statement setting out the issued capital of the entity following allotment. • A statement setting out the names of 20 largest holders of this class of security and the percentage held by each • A distribution schedule of the securities, if the issued securities form a new class <p>Issue of securities to retail holders no later than this day</p> <p>Entity provides ASX updated Appendix 3B (if required).</p>	<p>Not later than 5 business days after the close of the retail offer</p> <p>Not later than 12:00pm day before quotation.</p>	18	19
Quotation of securities issued under retail offer	Not later than 6 business days after the close of the retail offer, and not before updated Appendix 3B is provided to ASX (if required)	19	20
Despatch of holding statements to retail holders	Not more than 8 business days after the close of the retail offer	21	22

Renounceable Accelerated Entitlement Offers

An entity must follow any minimum or maximum time limits set out in this timetable when making a renounceable accelerated entitlement issue. All entities must consult with ASX prior to the publication of a timetable to ensure the timetable is acceptable to ASX.

As set out in listing rule 3.20.3, where there are Exchange Traded Options traded over an entity's securities, the entity must notify ASX if the trading halt component of the timetable will coincide with an option expiry date prescribed by ASX. For a list of prescribed dates, see: http://www.asx.com.au/data/options_code_list.csv

Event	Time limits	Business Day: 2 day trading halt	Business Day: 4 day trading halt
Entity requests trading halt before market open. Entity announces renounceable accelerated entitlement issue. ⁵ Entity applies for quotation (Appendix 3B). Entity lodges cleansing notice with ASX (if applicable).	prior to the commencement of trading on day 0	0	0
Entity conducts institutional Offer	Not more than 2 (4) business days after trading halt requested	1	3
Bookbuild for shortfall from institutional offer (if required). Announcement of results of institutional offer. Entity releases copy of prospectus to ASX (if applicable) Trading resumes on an ex-entitlement basis.	Before the commencement of trading At the commencement of trading.	2	4
⁺ Record date to identify ⁺ security holders entitled to participate in the issue.	Not earlier than the 3 rd business day after day 0.	3	5

Cross reference: rules 7.13, 7.14 and 7.15.

⁵ Entities must announce at this time:

- the fixed issue ratio and fixed issue (ie subscription) price, and
- whether or not the new securities will be entitled to any announced dividend or distribution amount, and the ex-date for that dividend or distribution, that the existing securities will receive.

If the entity on day 0 is only in a position to announce an indicative issue ratio, and/or indicative issue (ie subscription) price, then the entity must announce the final issue ratio and/or final issue price by no later than 2pm on the day before the trading halt is lifted and trading resumes on an ex-entitlement basis..

Event	Time limits	Business Day: 2 day trading halt	Business Day: 4 day trading halt
<p>Day before quotation of securities issued under institutional offer, entity provides ASX with the following:</p> <ul style="list-style-type: none"> • The date of allotment and number of securities for which quotation is sought. • A statement setting out the issued capital of the entity following allotment. <p>Entity provides ASX updated Appendix 3B (if required).</p>	Not later than 12:00pm on the day before quotation of the securities issued under institutional offer.	3	5
Quotation of securities issued institutional offer ⁶	Occurs same day as issue of securities under institutional offer, and not before updated Appendix 3B is provided to ASX (if required)	4	6
<p>Entity sends offer documentation and serially numbered entitlement and acceptance forms to eligible retail holders.</p> <p>Entity announces that despatch of offer documents has been completed.</p> <p>Retail offer period opens</p>	Not less than 1 business day after record date or more than 5 business days after record date.	4	6
Retail offer close	Not less than 10 or more than 21 business days from despatch of offer documents.	13	15
Announce results of retail offer	Not later than 1 business day after the close of the retail offer	14	16
Bookbuild for shortfall from retail offer (if required)	Not later than 5 business days after the close of the retail offer	18	20

⁶ Based on DvP settlement

Event	Time limits	Business Day: 2 day trading halt	Business Day: 4 day trading halt
<p>Day before quotation of securities issued under retail offer, entity provides ASX with the following:</p> <ul style="list-style-type: none"> • The date of allotment and number of securities for which quotation is sought. • A statement setting out the issued capital of the entity following allotment. • A statement setting out the names of 20 largest holders of this class of security and the percentage held by each • A distribution schedule of the securities, if the issued securities form a new class <p>Issue of securities to retail holders no later than this day</p> <p>Entity provides ASX updated Appendix 3B (if required).</p>	<p>Not later than 5 business days after the close of the retail offer</p> <p>Not later than 12:00pm day before quotation.</p>	18	20
Quotation of securities issued under retail offer	Not later than 6 business days after the close of the retail offer, and not before updated Appendix 3B is provided to ASX (if required)	19	21
Despatch of holding statements to retail holders	Not more than 8 business days after the close of the retail offer	21	23

Simultaneous Renounceable Accelerated Rights Entitlement Offers

An entity must follow any minimum or maximum time limits set out in this timetable when making a simultaneous renounceable accelerated rights entitlement issue. All entities must consult with ASX prior to the publication of a timetable to ensure the timetable is acceptable to ASX.

As set out in listing rule 3.20.3, where there are Exchange Traded Options traded over an entity's securities, the entity must notify ASX if the trading halt component of the timetable will coincide with an option expiry date prescribed by ASX. For a list of prescribed dates, see: http://www.asx.com.au/data/options_code_list.csv

Event	Time limits	Business Day: 2 day trading halt	Business Day: 4 day trading halt
Entity requests trading halt before market open. Entity announces simultaneous renounceable accelerated rights entitlement issue. ⁷ Entity applies for quotation (Appendix 3B). Entity lodges cleansing notice with ASX (if applicable).	prior to the commencement of trading on day 0	0	0
Entity conducts institutional offer	Not more than 2 (4) business days after trading halt requested	1	3
Announcement of results of institutional offer. Entity provides ASX updated Appendix 3B (if required). Entity releases copy of prospectus to ASX (if applicable) Trading resumes on an ex-entitlement basis	Before commencement of trading At commencement of trading.	2	4

⁷ Entities must announce at this time:

- the fixed issue ratio and fixed issue (ie subscription) price, and
- whether or not the new securities will be entitled to any announced dividend or distribution amount, and the ex-date for that dividend or distribution, that the existing securities will receive.

If the entity on day 0 is only in a position to announce an indicative issue ratio, and/or indicative issue (ie subscription) price, then the entity must announce the final issue ratio and/or final issue price by no later than 2pm on the day before the trading halt is lifted and trading resumes on an ex-entitlement basis..

Event	Time limits	Business Day: 2 day trading halt	Business Day: 4 day trading halt
<p>+Record date to identify +security holders entitled to participate in the issue.</p> <p>Cross reference: rules 7.13, 7.14 and 7.15.</p>	Not earlier than the 3rd business day after day o.	3	5
<p>Entity sends offer documentation and serially numbered entitlement and acceptance forms to retail holders.</p> <p>Entity announces that despatch of offer documents has been completed.</p> <p>Retail offer opens</p>	Not later than the day after the resumption of trading following the trading halt	3	5
<p>Day before quotation of securities issued under institutional offer, entity provides ASX with the following:</p> <ul style="list-style-type: none"> • The date of allotment and number of securities for which quotation is sought. • A statement setting out the issued capital of the entity following allotment. <p>Entity provides ASX updated Appendix 3B (if required).</p>	Not later than 12:00pm on the day before quotation of the securities issued under the institutional offer.	3	5
Quotation of institutional offer ⁸	Occurs same day as issue of securities under the institutional offer, and not before entity provides ASX updated Appendix 3B (if required).	4	6
Retail offer close	Not less than 10 or more than 21 business days from despatch of offer documents.	13	15
<p>Announce results of retail offer</p> <p>Bookbuild for shortfall from institutional and retail offers (if required)</p>	Not later than 1 business day after the close of the retail offer	14	16
Bookbuild settlement	Not later than 5 business days after the close of the retail offer	18	20

⁸ Based on DvP Settlement

Event	Time limits	Business Day: 2 day trading halt	Business Day: 4 day trading halt
<p>Issue of securities to retail holders no later than this day</p> <p>Entity provides ASX updated Appendix 3B (if required).</p> <p>Before quotation of retail offer securities (incl. bookbuild securities), entity provides ASX with the following:</p> <ul style="list-style-type: none"> • The date of allotment and number of securities for which quotation is sought. • A statement setting out the issued capital of the entity following allotment. • A statement setting out the names of 20 largest holders of this class of security and the percentage held by each • A distribution schedule of the securities, if the issued securities form a new class 	Not later than 12:00pm day before quotation.	19	21
Quotation of securities issued under retail offer	Not later than 7 business days after the close of the retail offer and not before updated Appendix 3B is provided to ASX (if required)	20	22
Despatch of holding statements to retail holders	Not more than 9 business days after the close of the retail offer	22	24