

Chapter 12

On-going requirements

Table of Contents

The main headings in this chapter	Rules
Level of operations	12.1
Financial condition	12.2
Proportion of assets in cash	12.3
Level of spread	12.4
Appropriate structure and operations	12.5
Person responsible for communications with ASX	12.6
Registration as a foreign company	12.6A – 12.6B
Audit committee	12.7
Remuneration committee	12.8
Trading Policy	12.9 – 12.12

Level of operations

12.1 The level of an entity's operations must, in ASX's opinion, be sufficient to warrant the continued *quotation of the entity's *securities and its continued listing.

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

Financial condition

12.2 An entity's financial condition (including operating results) must, in ASX's opinion, be adequate to warrant the continued *quotation of its *securities and its continued listing.

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

Note: Composition of the balance sheet, relative size of liabilities to assets and access to funds are some of the indicators of an entity's financial condition.

Proportion of assets in cash

12.3 If half or more of an entity's total assets is cash or in a form readily convertible to cash, ASX may suspend *quotation of the entity's *securities until it invests those assets or uses them for the entity's business. The entity must give holders of *ordinary securities in writing details of the investment or use. This rule does not apply to the following.

- A bank or a non-bank financial institution.
- A *mining exploration entity or an *oil and gas exploration entity, unless ASX decides otherwise.

Introduced 01/07/96 Origin: Listing Rule 3J(14) Amended 24/10/05, 01/12/13

Note: Listing rule 1.3.2 and this rule prevent the listing, or continued quotation, of “cash box” entities. In the case of an entity meeting the admission test for investment entities, ASX generally will not apply this rule provided that the entity has adequately disclosed the time within which it proposes to invest its funds and updates that disclosure if the proposal is revised or altered.

Advice to holders must be released to the market. See listing rule 3.17.

The entity may also have to comply with listing rule 11.1.

Level of spread

- 12.4 An entity must 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. If *CDIs are issued over *securities in the *main class, holders of *CDIs will be included.

Introduced 01/07/96 Origin: Listing Rule 3J(9) Amended 01/09/99

Note: This rule ensures that an entity has enough holders in its main class of securities. If the entity also has another class quoted, and the number of holders in that other class falls below the number needed for quotation of it, ASX may end quotation of that class. See Listing rule 17.10.

- 12.4.1 If ASX requires the entity to obtain sufficient spread, the entity must do each of the following.

- (a) Obtain the required spread within 3 months after the date ASX requires it to do so.
- (b) Tell all holders of its quoted *securities in writing that if the required spread is not obtained within 3 months after the date when ASX requires the entity to obtain it, ASX may suspend *quotation of the entity’s *securities. The entity must tell the holders in writing within 10 *business days after the date ASX requires it to obtain the spread.

Introduced 01/07/96 Origin: Listing Rule 3J(9)

Note: Advice to holders must be released to the market. See listing rule 3.17.

- 12.4.2 ASX’s requirement is not met if the spread is obtained by artificial means.

Introduced 01/07/96

Examples: The following ways of obtaining spread are examples of artificial means.

- Giving shares away.
- Offering non-recourse loans to prospective shareholders to acquire their shares.
- Using combinations of nominee companies and names.

Appropriate structure and operations

- 12.5 An entity’s structure and operations must be appropriate for a listed entity.

Introduced 01/07/96

Example: When deciding if an entity’s structure and operations are appropriate for that entity to be listed, one matter that ASX may have regard to is the principles on which the listing rules are based.

Person responsible for communications with ASX

- 12.6 An entity must appoint and at all times have a person responsible for communication with ASX in relation to listing rule matters. If the entity is admitted as an ASX Listing and the person is appointed on or after 1 July 2020, the person must have completed an *approved listing rule compliance course and attained a satisfactory pass mark in the examination for that course. The entity must tell ASX of the initial appointment and any change in the person.

Introduced 30/09/01 Amended 11/03/02, 01/12/19

Note: For many entities, the company secretary will be an appropriate person to be responsible for communication with ASX. ASX expects that the person appointed will have a high degree of familiarity with an entity’s operations and have ready access to senior management who have responsibility for day to day management of the entity.

An entity may nominate more than one person to be responsible for communication with ASX under this rule. If it does so, each person must have completed an approved listing rule compliance course and attained a satisfactory pass mark in that examination.

The nomination of such a person is for administrative convenience only and does not in any way abrogate the responsibility of the listed entity to comply with the Listing Rules.

For the avoidance of doubt, the obligation for a person appointed by an entity on or after 1 July 2020 to be responsible for communication with ASX to have completed an approved listing rule compliance course and attained a satisfactory pass mark in the examination for that course does not apply to ASX Debt Listings or ASX Foreign Exempt Listings.

Registration as a foreign company

- 12.6A A *foreign company must remain registered as a foreign company carrying on business in Australia under the Corporations Act.

Introduced 19/12/16

- 12.6B A trust that is exempted from the requirement to be a registered managed investment scheme must continue to have as its *responsible entity either an *Australian company or a *foreign company that is registered as a foreign company carrying on business in Australia under the Corporations Act.

Introduced 19/12/16

Audit committee

- 12.7 An entity which was included in the *S & P All Ordinaries Index at the beginning of its financial year must have an audit committee during that year. If the entity was included in the *S & P / ASX 300 Index at the beginning of its financial year it must also comply with the recommendations set by the *ASX Corporate Governance Council in relation to composition and operation of the audit committee for the whole of that financial year, unless it had been included in that index for the first time less than 3 months before the beginning of that financial year. An entity that is included in the *S & P / ASX 300 Index for the first time less than 3 months before the first day of its financial year but did not comply with the recommendations set by the *ASX Corporate Governance Council in relation to composition and operation of the audit committee at that date must take steps so that it complies with those recommendations within 3 months of the beginning of the financial year.

Introduced 01/01/03 Origin: Listing rule 4.10.2 Amended 03/05/04, 11/01/10, 01/05/13, 01/07/14

Note: If the entity is a trust, its audit committee may also be the responsible entity's audit committee.

The S&P/ASX 300 Index is reviewed semi-annually.

If an entity was included in the index on the first day of its financial year but is subsequently not included in the index following a review, it must comply with this rule for the whole of the financial year. If an entity was not included in the index on the first day of its financial year but is subsequently included in the index following a review, it need not comply with this rule for that financial year.

Entities which are included in the S&P/ASX 300 Index for the first time have a transitional period to constitute an audit committee that complies with the recommendations of the ASX Corporate Governance Council.

Examples: (1) An entity has a balance date of 30 June. It is included in the S&P/ASX 300 Index for the first time in September 2010. It will be required to have an audit committee that complies with the recommendations of the ASX Corporate Governance Council constituted by no later than 1 July 2011.

(2) An entity has a balance date of 31 March. It is included in the S&P/ASX 300 for the first time in early March 2010. It will be required to have an audit committee that complies with the recommendations of the ASX Corporate Governance Council constituted by no later than 1 July 2010.

Cross reference: Listing rule 4.10.3.

Remuneration Committee

- 12.8 An entity, which was included in the *S & P / ASX 300 Index at the beginning of its financial year, must have a *remuneration committee, comprised solely of non executive directors, for the entire duration of that financial year.

Introduced 01/07/11

Note: The +S & P / ASX 300 Index is reviewed semi-annually. If an entity was included in the Index on the first day of its financial year, but is subsequently not included in the Index following a semi-annual review, it must comply with this rule for the whole of the financial year. If an entity was not included in the Index on the first day of its financial year, but is subsequently included in the Index following a semi-annual review, it need not comply with this rule for that financial year.

If the entity is a trust its remuneration committee may also be the responsible entity's remuneration committee.

Where an entity is part of a corporate group, that has one or more related bodies corporate in the +S & P / ASX 300 Index, the board of that entity may utilise a remuneration committee of a related body corporate in the +S & P / ASX 300 Index in order to satisfy the requirements of listing rule 12.8.

Trading Policy

- 12.9 An entity must have a *trading policy that complies with the requirements of ASX listing rule 12.12. An entity must give its *trading policy to the *market announcements office for release to the market.

Introduced 01/01/11 Amended 01/05/13

- 12.10 Where an entity makes a material change to their *trading policy such entity must give the amended *trading policy to the *market announcements office for release to the market within 5 *business days of the material changes taking effect.

Introduced 01/01/11 Amended 01/05/13

- 12.11 An entity must give its *trading policy to ASX immediately on request by ASX.

Introduced 01/01/11

Content of Trading Policy

- 12.12 At a minimum, an entity's *trading policy must include the following information:

12.12.1 The entity's *closed periods.

12.12.2 The restrictions on trading that apply to the entity's *key management personnel.

12.12.3 Any trading which is not subject to the entity's *trading policy.

12.12.4 Any exceptional circumstances in which the entity's *key management personnel may be permitted to trade during a *prohibited period with prior written clearance.

12.12.5 The procedures for obtaining prior written clearance for trading under rule 12.12.4.

Introduced 01/01/11

Cross-reference: ASX Guidance Note 27 – Trading Policies.

End of Section. Next page is no. 1301.