

## APPLYING FOR ADMISSION – ASX LISTINGS

### Introduction

This Guidance Note is published to assist entities wishing to apply for admission to the official list of ASX Limited (ASX) as an ASX Listing to prepare their application for listing.<sup>1</sup>

This Guidance Note does not deal with applications for admission to the official list of ASX as an ASX Debt Listing or as an ASX Foreign Exempt Listing.<sup>2</sup> Guidance on those types of applications can be found in Guidance Note 29 *Applying for Admission – ASX Debt Listings* and Guidance Note 4 *Foreign Entities Listing on ASX*.

Further guidance of relevance to foreign entities wishing to apply for admission to the official list of ASX as an ASX Listing can also be found in Guidance Note 4 *Foreign Entities Listing on ASX*, Guidance Note 5 *CHESS Depository Interests (CDIs)* and Guidance Note 7 *US Entities - Regulation S Offerings on ASX*.

Further guidance for trusts wishing to apply for admission to the official list of ASX as an ASX Listing can be found in Guidance Note 6 *Trusts*.

Guidance for entities that are already listed on how to prepare applications for quotation of additional securities can be found in Guidance Note 30 *Quotation of Additional Securities*.

### Initial discussions in advance of application

Before submitting an application for admission to the official list, ASX recommends that applicants first discuss the matter with the ASX Listings Unit at the earliest opportunity. Those discussions are generally best held with the branch office where the entity intends to lodge its application for admission. Typically, this will be the ASX branch office where the applicant wishes to have its home branch if its application for admission is successful.<sup>3</sup>

The Listings Unit will be able to general advice on the listing process and a preliminary view on:

- whether the applicant's structure and operations are likely to meet the requirement in Listing Rule 1.1 condition 1 that they are appropriate for a listed entity;<sup>4</sup>
- whether any securities that have non-standard terms are likely to meet the requirement in Listing Rule 6.1 that, in ASX's opinion, their terms are appropriate and equitable;
- the likely application of chapter 9 and Appendix 9B in relation to any "restricted securities";<sup>5</sup>
- any waivers from, or rulings in respect of, the Listing Rules that the applicant may be proposing to request in conjunction with its application and the likelihood of those waivers or rulings being given; and

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<sup>1</sup> Listing Rules 1.1 to 1.7 and 1.16 to 1.20 set out the requirements for an entity to be admitted to ASX's official list as an ASX Listing. Listing Rule 2.1 sets out the requirements for the quotation of a listed entity's main class of securities and Listing Rule 2.5 sets out the requirements for the quotation of other classes of securities.

<sup>2</sup> Listing Rule 1.8 sets out the main requirements for an entity to be admitted to ASX's official list as an ASX Debt Listing. Listing Rule 1.11 sets out the main requirements for an entity to be admitted to ASX's official list as an ASX Foreign Exempt Listing.

<sup>3</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. There are currently home branches in Sydney, Perth, Melbourne, Brisbane and Adelaide.

<sup>4</sup> See "Appropriate structure and operations" below.

<sup>5</sup> See "Restricted securities" below.

- the expected timeframe for listing, given the nature and complexity of the application and the current workloads within the Listings Unit.

The Listings Unit can also provide information about available ASX trading codes and arrange the reservation of a suitable code for the applicant.

## The admission application

To apply for admission, an entity must complete an application in the prescribed form and give it to ASX. The prescribed form for an entity applying for an ASX Listing under Listing Rule 1.1 is Appendix 1A – *ASX Listing application and agreement*. An editable version of the Appendix 1A application can be downloaded from <http://www.asxgroup.com.au/asx-compliance/downloads.htm>.

The application in Appendix 1A is in 3 parts:

- *Part 1 - Application for admission to the official list*: the entity applies for admission to the official list and for quotation of its main class (and possibly other classes) of securities;
- *Part 2 - Information to be completed*: the entity provides information about itself, the securities to be quoted, its capital structure, its financial position and other information to confirm compliance with ASX's admission criteria; and
- *Part 3 - Agreement*: the entity agrees to certain fundamental matters, for example, that it will comply with the Listing Rules.

The application must be properly completed, dated and executed by the entity seeking admission to the official list.<sup>6</sup> It must also be accompanied by all of the documents referred to in it that are able to be lodged at the time of the application.<sup>7</sup> ASX may reject or defer consideration of an application for listing that is incomplete or not properly executed.

If the applicant is seeking a waiver from, or in-principle advice about the application of, any Listing Rule, the application should also include a letter from the entity or its advisers detailing the waiver or advice sought and providing the information set out in Guidance Note 17 *Waivers and In-Principle Advice*.

The ASX Listings Unit aims to process applications for listing as quickly as it reasonably can, given its workloads at the time. Typically, an application for ASX Listing will take ASX 4 to 6 weeks to process, from the time it is lodged until a decision is made on whether or not to admit the applicant to the official list and quote its securities.

The ASX Listings Unit will generally try to process applications for listing within a timeframe that is consistent with the timetable outlined in any prospectus or PDS the applicant may be issuing in connection with its listing. If an applicant intends to specify in its prospectus or PDS a timetable that is shorter than a typical application (as outlined in the previous paragraph), it should discuss the matter with the ASX Listings Unit at the earliest opportunity to ensure that the proposed timetable can be accommodated.

Two key factors that can bear on the time it takes ASX to process an application for listing are whether the application raises any issues under Listing Rule 1.1 condition 1 – the entity's structure and operations must be appropriate for a listed entity<sup>8</sup> – and number and complexity of any waivers the applicant may be seeking from the Listing Rules. If an applicant has an unusual or complex corporate/capital structure or intends to apply for an

<sup>6</sup> In the case of a trust, the application should be executed by the responsible entity of the trust.

<sup>7</sup> Certain documents required under an Appendix 1A typically will not be able to be lodged at the time the Appendix 1A is lodged with ASX. These include the statement setting out the names of the 20 largest holders of each class of securities to be quoted required under paragraph 47 of Appendix 1A and the distribution schedule of the numbers of holders in each class of security to be quoted required under paragraph 48 of Appendix 1A. These two documents can generally only be prepared and lodged with ASX after the applicant has completed the issue and allotment of securities under its prospectus or PDS.

<sup>8</sup> See "Appropriate structure and operations" below.

atypical number or type of waivers, it should discuss the matter with the ASX Listings Unit at the earliest opportunity to determine the impact that may have on its timetable for listing. Depending upon the issues, the ASX Listings Unit may suggest that the applicant apply for an 'in-principle' advice from ASX prior to lodging its application for admission. Further guidance on applications for in-principle advice can also be found in Guidance Note 17 *Waivers and In-Principle Advice*.

Where the applicant is making an offer of securities that is subject to a minimum subscription condition, ASX will generally not finalise its decision in relation to the application for listing until it is advised by the applicant in writing that the minimum subscription condition has been satisfied. For this reason, applications for admission where the offer of securities is fully underwritten are likely to be finalised more quickly than applications where the offer is not fully underwritten.

It should be noted that the time it takes ASX to process an application for listing is very much a function of the quality and completeness of the application. The better and more complete an application, the more quickly and efficiently ASX is likely to be able to process it. ASX therefore encourages applicants for listing to engage professional advisers who are experienced in ASX listings and to seek their advice and assistance in preparing their listing application.

## Timing requirements for lodgement

If an entity has issued a prospectus or PDS in conjunction with its listing application, as most will,<sup>9</sup> the Corporations Act imposes strict timing requirements as to when the application for admission must be lodged with ASX and when admission to quotation of its securities must be achieved.

In the case of securities to be listed on ASX that are offered under a prospectus, section 723(3) of the Corporations Act<sup>10</sup> provides:

*If [the prospectus] ... states or implies that the securities are to be quoted on [ASX] and:*

- (a) an application for the admission of the securities to quotation is not made within 7 days after the date of the [prospectus]; or*
- (b) the securities are not admitted to quotation within 3 months after the date of the [prospectus];*

*then:*

- (c) an issue or transfer of securities in response to an application made under the [prospectus] is void; and*
- (d) the person offering the securities must return the money received by the person from the applicants as soon as practicable.*

Similarly, in the case of financial products to be quoted on ASX that are offered under a PDS, section 1016D of the Corporations Act provides:

- (1) If [the PDS] ... states or implies that [the financial products] will be able to be traded on [ASX], the responsible person must only issue or sell [the financial products], pursuant to an application made in response to [the PDS], if:*
  - (a) the product is able to be traded on [ASX]; or*
  - (b) an application has, within 7 days after the relevant date (see subsection (3)), been made to [ASX] for the taking of such action as is necessary to enable [the financial products] to be traded on [ASX].*

<sup>9</sup> See "Prospectus or PDS" below.

<sup>10</sup> See also ASIC Regulatory Guide 99 *Quotation of Securities Offered by Prospectus*.

*Paragraph (b) ceases to apply to the [financial product] at the end of the period of 3 months starting on the relevant date.*

- (2) *If [the PDS] ... states or implies that [the financial products are] to be quoted on [ASX] and:*
- (a) *an application has not, within 7 days after the relevant date (see subsection (3)), been made to [ASX] for the taking of such action as is necessary to enable [the financial products] to be traded on [ASX]; or*
  - (b) *the product is not able to be traded on [ASX] at the end of 3 months after the relevant date;*
- then:*
- (c) *an issue or transfer to a person of [the financial products] is void if:*
    - (i) *the issue or transfer is pursuant to an application made in response to [the PDS]; or*
    - (ii) *the person should have been given [the PDS]; and*
  - (d) *if:*
    - (i) *an issue or transfer of a financial product to a person is void because of paragraph (c); and*
    - (ii) *the responsible person received money from that person on account of the issue or transfer—the responsible person must, as soon as practicable, return the money to that person.*
- (3) *For the purposes of this section, the **relevant date** in relation to an express or implied statement is:*
- (a) *if the statement is express or implied in a PDS, disregarding the effect of section 1014D—the date of the PDS; or*
  - (b) *if the statement is express or implied in a Supplementary PDS—the date of the Supplementary PDS; or*
  - (c) *if the statement is express or implied in a Replacement PDS (whether or not it is express or implied in the earlier PDS it replaces)—the date of the Replacement PDS.*

An entity should liaise with its professional advisers to ensure that its application for admission to the official list is lodged with ASX in sufficient time to satisfy the above time limits.

If it appears that the entity may not be able to meet these time limits, it is essential that the entity or its professional advisers immediately contact the Australian Securities & Investments Commission (ASIC), which administers the Corporations Act, to discuss how it can remedy the matter. The entity should ensure that it keeps ASX informed about the progress and outcome of those discussions.

## Appropriate structure and operations

Listing Rule 1.1 condition 1 requires an entity seeking admission in the ASX Listing category to have a structure and operations that are appropriate for a listed entity. In assessing whether this condition is met, ASX has regard to the principles on which the Listing Rules are based, as set out in the introduction to the Listing Rules.

Issues can arise under Listing Rule 1.1 condition 1 where an applicant's capital structure has a disproportionately large number of securities on issue that are not fully paid ordinary shares (such as partly paid ordinary shares, preference share, options or convertible notes) compared to the number of fully paid ordinary shares on issue. This may confuse investors and cause difficulties in valuing the entity's securities. This applies in particular to "piggy back" options (that is, options that attach other options), which in addition to potentially causing confusion and valuation issues, can also have a significant overhang effect.

Issues can also arise under Listing Rule 1.1 condition 1 where an applicant's main business operations are conducted through a joint venture with another party or parties and the joint venture agreement gives another joint venture participant disproportionate representation on the governing body of the joint venture or disproportionate decision making powers.

In assessing whether Listing Rule 1.1 condition 1 is met, ASX will also have regard to any management agreement that the applicant has entered into or is proposing to enter into.<sup>11</sup>

Further guidance on the requirement for an appropriate structure and operations can be found in Guidance Note 2 *Stapled Securities*, Guidance Note 3 *Co-operatives and Mutual Business Entities* and Guidance Note 26 *Management Agreements*.

## Constitution

Listing Rule 1.1 conditions 1A and 2 require an entity seeking admission in the ASX Listing category to have a constitution that is consistent with the Listing Rules or that includes the provisions in Appendix 15A (for use by entities which are not companies to which any replaceable rule<sup>12</sup> applies) or Appendix 15B (for use by companies to which any replaceable rule applies). These Appendices include pro forma constitutional provisions intended to ensure that if there is any inconsistency between the entity's constitution and the Listing Rules, the Listing Rules will prevail.

An applicant which has elected not to include the provisions of Appendix 15A or Appendix 15B in its constitution (as applicable) should include with its application a completed ASX Constitution Checklist to confirm that its constitution complies with the Listing Rules. An editable version of the checklist can be downloaded from <http://www.asxgroup.com.au/asx-compliance/downloads.htm>.

## Prospectus or PDS

Listing Rule 1.1 condition 3 requires an entity seeking admission in the ASX Listing category to issue a prospectus or PDS and to lodge it with ASIC. It is common for an entity applying for listing to need to undertake an offer of securities to raise capital and/or to satisfy ASX's minimum spread requirements<sup>13</sup> and it will usually be the prospectus or PDS for that offer<sup>14</sup> that is used to satisfy Listing Rule 1.1 condition 3.

The Corporations Act requires:

- a prospectus for securities to set out all the information that investors and their professional advisers would reasonably require, and reasonably expect to find in the prospectus, to make an informed assessment of the rights and liabilities attaching to the securities and of the issuer's assets and liabilities, financial position and performance, profits and losses and prospects;<sup>15</sup> and

<sup>11</sup> Listing Rule 15.16 prescribes a maximum 5 year term for any management agreement entered into by an investment entity. That rule, however, does not apply to entities that are not classified as 'investment entities'. This would include most typical infrastructure, energy and property funds.

<sup>12</sup> "Replaceable rules" are those provisions of the Corporations Act that are listed under section 141 of the Corporations Act as "replaceable rules" and so capable of being replaced or modified by a company's constitution. Replaceable rules are only relevant to companies incorporated in Australia and registered under the Corporations Act.

<sup>13</sup> See "Minimum spread" below.

<sup>14</sup> This requirement applies even where the applicant intends to confine any offer of securities to wholesale investors who ordinarily would not be required to have a prospectus or PDS issued to them under the Corporations Act. An offer of securities in advance of, or in conjunction with, a listing will almost invariably attract section 707(3) or 1012C of the Corporations Act and therefore require the production of a prospectus or PDS in any event.

<sup>15</sup> Corporations Act section 710.

- a PDS for other financial products to include, amongst other things, all information that might reasonably be expected to have a material influence on the decision of a reasonable person, as a retail client, whether to acquire the product.<sup>16</sup>

The Corporations Act also imposes strict liability on the issuer of a prospectus or PDS, and its directors and promoters, if the prospectus or PDS is deficient.

A copy of the applicant's prospectus or PDS, as lodged with ASIC, must accompany the application for listing and will be released to the market via the ASX Market Announcements Platform in advance of the applicant's securities being quoted.

The policy behind the requirement for a prospectus or PDS to be released to the market is to ensure that the market receives an adequate level of pre-quotations disclosure for there to be an informed secondary market in the applicant's securities when quotation commences.

ASX does not stipulate what information must be included in a prospectus or PDS.<sup>17</sup> That decision must be made by the applicant and its professional advisers, having regard to their disclosure obligations and liabilities under the Corporations Act. Nor will ASX pre-vet or provide any comments to an applicant on the contents of a draft prospectus or PDS.

ASX will review the final version of the applicant's prospectus or PDS that accompanies the listing application and, if it has any concerns about the quality of the information in the prospectus or PDS, it will take those concerns into account in determining whether or not it will admit the applicant to the official list. It may also raise those concerns with ASIC, as the regulator responsible for administering the laws relating to prospectuses and PDSs.<sup>18</sup>

ASX may agree to accept an information memorandum in lieu of a prospectus or PDS. Generally, it will only do so in one of the following circumstances:

- where the entity applying for admission is the successor entity to an existing listed entity that is undergoing some form of reconstruction and has no need to undertake an offer of securities in conjunction with its listing either to raise capital or to meet ASX's minimum spread requirements;
- where the entity is undertaking a compliance listing and has no need to undertake an offer of securities in conjunction with its listing either to raise capital or to meet ASX's minimum spread requirements; or
- where the applicant is a government-owned body that is being privatised and is making an offer of securities which is not subject to the prospectus or PDS requirements in the Corporations Act.<sup>19</sup>

If ASX agrees to accept an information memorandum in lieu of a prospectus or PDS, the information memorandum must meet the content requirements set out in items 108-117 of Appendix 1A. These include:

- if the entity is a company, a statement that the information memorandum contains all the information that would be required under section 710 of the Corporations Act if the information memorandum were a prospectus offering for subscription the same number of securities for which quotation will be sought;<sup>20</sup>

<sup>16</sup> Corporations Act section 1013E.

<sup>17</sup> Entities should be aware that there may be relevant professional codes, such as the *Australasian Code for Reporting or Exploration Results, Mineral Resources and Ore Reserves* (the 'JORC Code') and the *Code and Guidelines for Assessment and Valuation of Mineral Assets and Mineral Securities for Independent Expert Reports* (the 'Valmin Code'), which contain requirements that could impact on the content of their prospectus or PDS.

<sup>18</sup> ASX has an obligation to refer any suspected significant contravention of the Corporations Act to ASIC under section 792B(2)(c) of that Act.

<sup>19</sup> Corporations Act section 5A.

<sup>20</sup> Appendix 1A, item 108.

- if the entity is a trust, a statement that the information memorandum contains all the information that would be required under section 1013C of the Corporations Act if the information memorandum were a PDS offering for subscription the same number of securities for which quotation will be sought;<sup>21</sup>
- a statement that the entity has not raised any capital for the 3 months before, and will not need to raise any capital for 3 months after, the date of issue of the information memorandum;<sup>22</sup> and
- a statement that the applicant will issue a supplementary information memorandum if it becomes aware of any of the following between the date of issue of the information memorandum and the date the entity's securities are quoted or reinstated:
  - a material statement in the information memorandum is misleading or deceptive;
  - there is a material omission from the information memorandum;
  - there has been a significant change affecting a matter included in the information memorandum; or
  - a significant new circumstance has arisen and it would have been required to be included in the information memorandum.<sup>23</sup>

Where an entity does undertake an offer of securities in conjunction with its listing, it is expected that the funds raised will be sufficient to meet the objectives stated in its prospectus or PDS. Further capital raisings conducted shortly after listing may attract the application of chapter 11 of the Listing Rules and could require the applicant to re-comply with chapters 1 and 2 of the Listing Rules. Further guidance on this topic can be found in Guidance Note 12 *Significant Changes to Activities*.

## Type of securities to be quoted

Listing Rule 1.1 condition 6<sup>24</sup> requires an entity seeking admission in the ASX Listing category to apply for and be granted permission for quotation of all of the securities in its main class of securities (except restricted securities and securities issued under an employee share plan that are subject to restrictions on transfer).

The main class of securities will usually be, for a company, its fully paid ordinary shares and, for a trust, its fully paid ordinary units.

Listing Rule 2.1 sets out the conditions that must be satisfied for quotation of the main class of securities of an entity seeking admission to the official list as an ASX Listing. In summary, they are:

- The terms of the securities must comply with chapter 6 of the Listing Rules.<sup>25</sup>
- The issue or sale price of the securities must be at least 20 cents in cash.<sup>26</sup>

<sup>21</sup> Appendix 1A, item 108.

<sup>22</sup> Appendix 1A, item 116. This requirement is intended to prevent an applicant for listing from circumventing the requirement for a prospectus or PDS at the time of listing by raising capital shortly before or after its listing. ASX will generally grant a waiver from this requirement to a government-owned body that is being privatised and is making an offer of securities which is not subject to the prospectus or PDS requirements in the Corporations Act.

<sup>23</sup> Appendix 1A, item 117.

<sup>24</sup> This Guidance Note does not address the requirements of conditions 4 or 5 of Listing Rule 1.1. Condition 4 is only relevant to foreign entities. Further guidance on that condition can be found in Guidance Note 4 *Admission and Quotation of Foreign Entities* and Guidance Note 5 *CHESS Depository Interests (CDIs)*. Condition 5 is only relevant to trusts. Further guidance on that condition can be found in Guidance Note 6 *Trusts*.

<sup>25</sup> Listing Rule 2.1 condition 1. Chapter 6 of the Listing Rules sets out the rights and obligations that must be attached to the securities (both quoted and unquoted) of a listed entity.

<sup>26</sup> Listing Rule 2.1 condition 2. This condition does not apply to "restricted securities" and securities issued under an employee incentive scheme, which may still be quoted (in the case of restricted securities, after the escrow period ends) even though they are issued or sold for a price that is less than 20 cents.

- The entity must have satisfied any requirements of an approved clearing and settlement facility (such as CHES<sup>27</sup>) so that trades in its securities can be cleared and settled,<sup>28</sup> unless it is established in a jurisdiction whose laws preclude its securities from being transferred through such a facility (in which case, it must have CHES Depository Interests (CDIs) issued over its quoted securities<sup>29</sup>).
- If the applicant is not a no liability company and its main class of securities are partly paid securities, there must be a defined call program setting out the date and amount of each proposed call. The call program may provide for one extension of up to 6 months of the date for payment of a call, on provision of at least 2 months' written notice to holders of the partly paid securities. However, the call program for a mining entity must require payment in full within 2 years after the date of issue and must not be extended past 2 years.<sup>30</sup>

An entity applying for admission to the official list as an ASX Listing may also seek quotation of other classes of securities in addition to its main class of securities. If it does so, those securities must meet the conditions in Listing Rule 2.5. In summary, they are:

- The terms of the securities again must comply with chapter 6 of the Listing Rules.<sup>31</sup>
- If there are any restricted securities, the applicant must have complied with chapter 9 of the Listing Rules.<sup>32</sup>
- If the securities are partly paid securities, there must be a defined call program setting out the date and amount of each proposed call. The call program may provide for one extension of up to 6 months of the date for payment of a call, on provision of at least 2 months' written notice to holders of the partly paid securities. However, the call program for a mining entity must require payment in full within 2 years after the date of issue and must not be extended past 2 years.<sup>33</sup>
- If the securities are debt securities or convertible debt securities, a copy of the documents setting out the terms of the securities must have been given to ASX.<sup>34</sup>
- If the securities are a class of equity securities, or other securities with rights of conversion to equity, that are not already quoted, there must be at least 100,000 securities and 50 holders with a marketable parcel (excluding restricted securities) unless one of the following requirements is met:
  - the securities would be in the same class as the fully paid ordinary securities of the entity (ignoring the fact that they do not rank equally for the next dividend or distribution and ignoring any right to participate in a concurrent offer) and there are at least 1 million securities; or
  - the securities are a class of partly paid securities, there are at least 1 million securities, they are paid to not less than 40% of their issue price and the uncalled amount is payable on a fixed date which is within 12 months after the date of issue.<sup>35</sup>

<sup>27</sup> CHES stands for 'Clearing House Electronic Subregister System'. CHES is a proprietary system operated by ASX Settlement that facilitates the clearing and settlement of trades in securities quoted on ASX and includes an electronic sub-register for the registration of holdings in securities issued by ASX listed companies.

<sup>28</sup> Listing Rule 2.1 condition 3.

<sup>29</sup> Listing Rule 2.16. For further guidance on CDIs, see Guidance Note 5 *CHES Depository Interests (CDIs)*.

<sup>30</sup> Listing Rule 2.1 condition 4. Conditions 5 and 6 of Listing Rule 2.1 only apply to ASX Debt Listings.

<sup>31</sup> Listing Rule 2.5 condition 1.

<sup>32</sup> Listing Rule 2.5 condition 2.

<sup>33</sup> Listing Rule 2.5 condition 4. Note that condition 3 has been deleted from Listing Rule 2.5.

<sup>34</sup> Listing Rule 2.5 condition 5.

<sup>35</sup> Listing Rule 2.5 condition 6.

- If any of the entity's quoted securities are approved under the operating rules of an approved clearing and settlement facility (such as CHESS), the new class must also be securities approved under the operating rules of the facility, unless the operator of the facility decides otherwise.<sup>36</sup>
- If the securities are options issued on the exercise of other options, the other options must have expired, or have all been exercised.<sup>37</sup>

One of the core requirements of chapter 6 of the Listing Rules is that the terms that apply to each class of equity securities of a listed entity (both quoted and unquoted) must, in ASX's opinion, be appropriate and equitable.<sup>38</sup> In assessing whether this requirement is met, ASX will have regard to the principles on which the Listing Rules are based, as set out in the introduction to the Listing Rules, and the fairness and proportionality of the various rights and obligations attaching to the different classes of securities in the listed entity.

ASX recommends that an applicant for listing that has issued, or proposes to issue, securities that will have non-standard terms attached consult with ASX at the earliest opportunity about the likelihood of those terms meeting the requirements of chapter 6.

## Number of securities to be quoted

As a practical matter, at the time an entity applies to ASX for admission to the official list, it may not know the precise number of securities in any particular class that are to be quoted. For example, some securities may not be quoted because ASX classifies them as restricted securities.<sup>39</sup> Or an entity offering securities by way of a prospectus or PDS may include a provision allowing it to accept over-subscriptions and may not know the level of over-subscriptions it will receive and accept.

To meet Listing Rule 1.1 condition 6 and to avoid the legal difficulties that might otherwise arise under section 723(3) or 1016D of the Corporations Act,<sup>40</sup> an entity should apply for quotation of, and pay the initial listing fee<sup>41</sup> for, the maximum number of securities that can be quoted. Hence, even where the entity anticipates that ASX will categorise some of its securities as restricted securities and therefore not quote them until the escrow restriction lapses, it should include all of those securities in the number of securities for which quotation is sought. Similarly, if the entity's prospectus or PDS allows acceptance of over-subscriptions, the number of securities for which quotation is sought in the application should include the maximum amount of over-subscriptions that can be accepted.

## Minimum spread

Listing Rule 1.1 condition 7 requires an entity seeking admission in the ASX Listing category to meet ASX's minimum spread requirements. This is to ensure that there is sufficient investor interest in the entity to justify its listing and to aid liquidity. To meet these requirements, the applicant must have at least:

- 500 holders each with a parcel of the main class of securities with a value of at least A\$2,000 (excluding restricted securities); or
- 400 holders with a parcel of the main class of securities with a value of at least A\$2,000 (excluding restricted securities), and persons who are not related parties must hold at least 25% of the securities in the main class.

<sup>36</sup> Listing Rule 2.5 condition 9. Note that conditions 7 and 8 have been deleted from Listing Rule 2.5.

<sup>37</sup> Listing Rule 2.5 condition 10.

<sup>38</sup> Listing Rule 6.1.

<sup>39</sup> Restricted securities are only quoted once the escrow restriction has been lifted: see "Restricted securities" below and Guidance Note 11 *Restricted Securities and Voluntary Escrow*.

<sup>40</sup> See "Timing requirements for lodgement" above.

<sup>41</sup> See "Payment of initial listing fee" below.

There is no requirement in the Listing Rules for a minimum number of Australian-resident security holders.<sup>42</sup> However, ASX does encourage entities in the ASX Listing category to have at the time of their admission to the official list a reasonable number of security holders resident in Australia with security holdings of at least A\$2,000 in value, to promote local interest and liquidity in its securities.

ASX will not accept security holdings obtained by artificial means in determining whether an entity has met its minimum spread requirement. ASX regards the following as “artificial” for these purposes:

- giving securities away;
- offering non-recourse loans to prospective purchasers to acquire securities; and
- splitting a beneficial holding of securities across multiple trustees, nominees or family members.

Unless satisfactory evidence is provided to the contrary, ASX will assume that any more than two holdings registered at the same address fall within this last category.

ASX may require evidence that an entity has achieved its minimum spread without using artificial means. This may include requiring the entity to provide copies of its share register, bank statements, application forms and cheques.

## Satisfying the profit or assets test

Listing Rule 1.1 condition 8 requires an entity seeking admission in the ASX Listing category to satisfy either the profit test in Listing Rule 1.2 or the assets test in Listing Rule 1.3.

An applicant applying under the assets test on the basis of commitments<sup>43</sup> will be required to demonstrate that it has commitments consistent with its business objectives to spend at least half of its cash and assets that are readily convertible to cash. ASX does not consider the following types of expenditure to be acceptable as a “commitment” for these purposes:

- amounts allocated to working capital, or which could otherwise be considered to be of a working capital nature, such as accounts payable, administration expenses, rent, salaries and wages; and
- where an applicant's main business is mineral exploration, amounts allocated to exploration or development activities on mining tenements that have not yet been granted or in relation to which the applicant does not have a present right to explore.

Where operations are to be conducted through a joint venture, ASX will not accept a capital contribution to the joint venture as a “commitment” for these purposes unless the joint venture is committed to expending the capital contribution.

## Restricted securities

Listing Rule 1.1 condition 9 requires an entity seeking admission in the ASX Listing category that has issued “restricted securities” before it is admitted to the official list, to comply with chapter 9 of the Listing Rules. That chapter requires the entity to execute a restriction agreement in the prescribed form with the holder and each controller of the securities.

In addition, Listing Rule 1.1 condition 10 requires an entity applying for admission in the ASX Listing category that has acquired a “classified asset”<sup>44</sup> from a related party of the entity or a promoter in the 2 years before the date of

<sup>42</sup> Although, in an appropriate case, ASX may exercise its discretion under Listing Rule 1.19 to require a minimum number of Australian resident security holders with a minimum size or value of security holding as a condition of admission.

<sup>43</sup> Listing Rule 1.3.2(b).

<sup>44</sup> A “classified asset” is defined in Listing Rule 19.12 as:

/cont.

the application, to have issued restricted securities as the consideration for the acquisition unless one of the following applies:

- the consideration was reimbursement of expenditure incurred in developing the classified asset; or
- under Listing Rule 9.1.3, the entity is not required to apply the restrictions in Appendix 9B.

Restricted securities are placed in escrow and not quoted on ASX for a specified period. This prevents the transfer of effective ownership or control of them during that period. Further guidance on restricted securities can be found in Guidance Note 11 *Restricted Securities*.

The prescribed form of the restriction agreement is set out in Appendix 9A of the Listing Rules. An editable version of the restriction agreement can be downloaded from <http://www.asxgroup.com.au/asx-compliance/downloads.htm>. It should be noted that these are standard form agreements and ASX will not agree to any changes. Hence, any edits to a restriction agreement should be confined to inserting the details of, and an appropriate execution clause for, the various parties, as well as details of the restricted securities and the date.

An entity which expects to have any of its securities classified as restricted securities should include with its application for listing an 'ASX Restricted Securities Table'. An editable version of the table can also be downloaded from <http://www.asxgroup.com.au/asx-compliance/downloads.htm>. The Restricted Securities Table should include the following details in respect of each class of securities on issue (eg ordinary shares, preference shares, performance shares, options, convertible notes etc):

- the full name of the holder;
- the holder's relationship with the applicant (e.g. director, promoter etc)
- the total number of securities held by the holder;
- the number of securities to be restricted as estimated by the applicant (if this is less than the total number of securities held by the holder, an explanation should be included in the table or in a cover letter as to why that is so);
- the date of issue of the restricted securities (if a holder was issued securities on more than one occasion, details of each issue should be listed separately in the table);
- the issue price of the security;
- the nature of the consideration given by the holder for issue of the restricted securities (eg cash, assets, services, etc. – this should state the amount of cash and describe the assets and services, as applicable); and
- the reason for restriction (including a reference to the applicable clause in Appendix 9B).

Where restricted securities have been transferred after issue, the information above should be provided in respect of the transferor (under paragraph 10 of Appendix 9B, the escrow period applicable to a transferee of restricted securities is the same as that which applied to the transferor, irrespective of the amount paid for the securities by the transferee).

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- (a) an interest in a mining exploration area or similar tenement or interest;
  - (b) an interest in intangible property that is substantially speculative or unproven, or has not been profitably exploited for at least 3 years, and which entitles the entity to develop, manufacture, market or distribute the property;
  - (c) an interest in an asset which, in ASX's opinion, cannot readily be valued; or
  - (d) an interest in an entity the substantial proportion of whose assets (held directly, or through a controlled entity) is property of the type referred to in paragraphs (a), (b) and (c) above.

It will assist ASX to process an application for listing if the Restricted Securities Table is subdivided into the different categories of restricted securities. In this regard, ASX suggests that applicants subdivide the table so that the security holders are grouped together using the classifications in Appendix 9B:

- related party or promoter seed capitalists (paragraph 1);
- related party or promoter vendors (paragraph 3);
- unrelated seed capitalists (paragraph 2);
- unrelated vendors (paragraph 4);
- promoters (consideration other than seed capital) (paragraph 7);
- professional service providers (paragraph 8);
- employee incentive plan participants (paragraph 9);
- transferees (paragraph 10); and
- miscellaneous (paragraph 11).

It is also helpful if the unrelated seed capitalists and unrelated vendors are listed in the order of the dates on which their securities were issued to them (for these categories of restricted securities, the 12 months escrow period begins on the day of issue).

Any changes to the information contained in the Restricted Securities Table (such as might occur if there is an off-market transfer following the lodgement of the application for admission) must be advised to ASX as soon as possible. It will assist ASX to process an application for listing if any such changes can be kept to a minimum.

## Options

If an entity seeking admission in the ASX Listing category has options on issue, Listing Rule 1.1 condition 11 requires that the exercise price for each underlying security must be at least 20 cents in cash. This requirement applies even where the options are not intended to be quoted.

## Person responsible for communications

Listing Rule 1.1 condition 12<sup>45</sup> requires an entity seeking admission in the ASX Listing category to appoint a person to be responsible<sup>46</sup> for communication with ASX in relation to Listing Rule matters.<sup>47</sup> The person appointed must be able to communicate in English.

From time to time, ASX may need to discuss with a listed entity pressing matters (particularly, but not only, concerning disclosure issues) under the Listing Rules. It is important that the person appointed to be responsible for communications with ASX is readily contactable by ASX by telephone<sup>48</sup> and available to discuss such matters during normal market hours and for at least one hour either side thereof – that is, from 9am to 5pm AEST – on all

<sup>45</sup> Listing Rule 12.6 also imposes an ongoing requirement on all listed entities to appoint a person to be responsible for communication with ASX in relation to Listing Rule matters and to notify ASX of the initial appointment and of any change in the appointment.

<sup>46</sup> The fact that the person so appointed is said to be “responsible” for communication with ASX in relation to Listing Rule matters does not in any way diminish the responsibility of the listed entity to communicate to ASX any information required under the Listing Rules.

<sup>47</sup> The name and address of the person or persons responsible for communication with ASX in relation to Listing Rule matters must be notified to ASX in item 4A of the Appendix 1A application for listing.

<sup>48</sup> In practice, this requires the person to provide ASX with a mobile phone number to contact them and that they keep their mobile phone switched on at all times from 9am to 5pm AEST.

days that ASX is trading.<sup>49</sup> This includes trading days that happen to fall on a public holiday where the person lives.

The person appointed therefore needs to make suitable arrangements to cover any absences due to illness or while he or she is on leave.

It is also important that the person has the organisational knowledge to have meaningful discussions on disclosure matters and has the authority to request a trading halt and to issue an announcement to the market, if that is what is required. This requires that the person has a high degree of familiarity with the listed entity's operations and, if they are not a member of senior management, that they have immediate access to senior management.

Typically, a company secretary would be an appropriate person to be responsible for communications with ASX.

An entity may wish to consider appointing more than one person to be responsible for communications with ASX, to cater for one of its contacts being absent or on leave.

## Corporate Governance Council recommendations

Listing Rule 1.1 condition 13 requires an entity seeking admission in the ASX Listing category to provide a statement disclosing the extent to which the entity will follow, as at the date of its admission to the official list, the recommendations set by the ASX Corporate Governance Council in its publication *Corporate Governance Principles and Recommendations*. If the entity does not intend to follow all the recommendations on its admission to the official list, it must identify the recommendations that will not be followed and give reasons for not following them. This disclosure should take the form of a corporate governance statement.

Listing Rule 1.1 condition 13 also requires an entity which will be included in the S & P All Ordinaries Index on admission to the official list to have an audit committee and, if the entity will be in the S & P / ASX 300 Index on admission to the official list, to also comply with the recommendations set by the ASX Corporate Governance Council in relation to the composition, operation and responsibility of the audit committee. Where this condition applies, the entity should confirm its intention to comply in its corporate governance statement or in the cover letter with its listing application.

If an entity is unsure whether or not it is likely to be included in the S & P All Ordinaries Index or the S & P / ASX 300 Index on admission to the official list, it should discuss that issue with the ASX Listings Unit or with Standard & Poors.

Further guidance on the ASX Corporate Governance Council recommendations and on the preparation of corporate governance statements can be found in Guidance Note 9 *Disclosure of Corporate Governance Practices: Listing Rule 4.10*.

## Electronic lodgement facilities

Listing Rule 1.1 condition 14 requires an entity seeking admission in the ASX Listing category to agree with ASX, in writing, that documents may be given to ASX and authenticated electronically and to establish the facilities required for the entity to give documents to ASX electronically.

In practice, this requirement is met by the entity executing an *Application and agreement for use of electronic lodgement facility and entity details facility* (ASX Online Agreement) in the form set out in the attachment to Guidance Note 20. An editable version of the ASX Online Agreement can be downloaded from <http://www.asxgroup.com.au/asx-compliance/downloads.htm>. Again, it should be noted that these are standard

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<sup>49</sup> Hence, for entities based in Western Australia, the person must be available to take calls from ASX from as early as 6am (local time) during summer time and, for entities based in New Zealand, until as late as 7pm (local time).

form agreements and ASX will not agree to any changes. Hence, any edits to the ASX Online Agreement should be confined to inserting the details of, and an appropriate execution clause for, the applicant and the date.

A signed copy of the ASX Online Agreement, duly executed by the applicant, should accompany its listing application.

Further guidance on the use of ASX's electronic lodgement facilities can be found in Guidance Note 20 *ASX Online*.

## Trading policy

Listing Rule 1.1 condition 15 requires an entity seeking admission in the ASX Listing category to have a trading policy that complies with Listing Rule 12.9. A copy of the trading policy must accompany the application.

Further guidance on this requirement can be found in Guidance Note 27 *Trading Policies*.

## Remuneration committee

Listing Rule 1.1 condition 16 requires an entity seeking admission in the ASX Listing category, which will be included in the S & P / ASX 300 Index on admission, to have a remuneration committee comprised solely of non-executive directors.

Where this condition applies, the entity should confirm its intention to comply either in its corporate governance statement or in the cover letter with its listing application.

If an applicant for listing is unsure whether it is likely to be included in the S & P / ASX 300 Index on admission to the official list, it should discuss that issue with the ASX Listings Unit or with Standard & Poors.

## Directors must be of good fame and character

Listing Rule 1.1 condition 17 requires an entity seeking admission in the ASX Listing category to satisfy ASX that each director or proposed director<sup>50</sup> of the entity<sup>51</sup> at the date of listing is of good fame and character. For these purposes, the applicant is required to include with their application:<sup>52</sup>

- an original or certified true copy of a national criminal history check obtained from the Australian Federal Police, a State or Territory police service or a broker accredited by CrimTrac for each director or proposed director which is not more than 12 months old or, if the director is not an Australian resident, either:
  - (a) an equivalent national criminal history check for each country in which the director has resided over the past 10 years (in English or together with a certified English translation); or
  - (b) if such a check is not available in any such country, a statutory declaration from the director confirming that fact and that he or she has not been convicted in that country or elsewhere of:
    - (i) any criminal offence involving fraud, dishonesty, misrepresentation, concealment of material facts or breach of director's duties; or (ii) any other criminal offence which at the time carried a maximum term of imprisonment of 5 years or more (regardless of the period, if any, for which he or she was sentenced);

<sup>50</sup> The reference in this rule to a "proposed director" includes any person named in a prospectus or PDS as a proposed director of the entity.

<sup>51</sup> For these purposes, if the entity is a trust, references to the directors or proposed directors of the entity, will be taken to mean the directors or proposed directors of the responsible entity of the trust.

<sup>52</sup> These documents are required to be lodged with an Appendix 1A application for listing under clauses 10A, 10B and 10C (in the case of a company), and clauses 22A, 22B and 22C (in the case of other entities), of that Appendix.

- an original or certified true copy of a search of the Insolvency Trustee Services Australia National Personal Insolvency Index for each director or proposed director which is not more than 12 months old or, if the director is not an Australian resident, either:
  - (a) an equivalent national bankruptcy check for each country in which the director has resided over the past 10 years (in English or together with a certified English translation); or
  - (b) if such a check is not available in any such country, a statutory declaration from the director confirming that fact and that he or she has not been declared a bankrupt or been an insolvent under administration in that or any other country;
- a statutory declaration from each director or proposed director confirming that:
  - (a) the director has not been the subject of any criminal or civil penalty proceedings or other enforcement action by any government agency in which he or she was found to have engaged in behaviour involving fraud, dishonesty, misrepresentation, concealment of material facts or breach of duty;
  - (b) the director has not been refused membership of, or had their membership suspended or cancelled by, any professional body on the ground that he or she has engaged in behaviour involving fraud, dishonesty, misrepresentation, concealment of material facts or breach of duty;
  - (c) the director has not been the subject of any disciplinary action (including any censure, monetary penalty or banning order) by a securities exchange or other authority responsible for regulating securities markets for failure to comply with his or her obligations as a director of a listed entity;
  - (d) no listed entity of which he or she was a director (or, in the case of a listed trust, in respect of which he or she was a director of the responsible entity) at the time of the relevant conduct has been the subject of any disciplinary action (including any censure, monetary penalty, suspension of trading or termination of listing) by a securities exchange or other authority responsible for regulating securities markets for failure to comply with its obligations under the listing rules applicable to that entity; and
  - (e) the director is not aware of any pending or threatened investigation or enquiry by a government agency, professional body, securities exchange or other authority responsible for regulating securities markets that could lead to proceedings or action of the type described in (a), (b), (c) or (d) above,

or, if the director is not able to give such confirmation, a statement to that effect and a detailed explanation of the circumstances involved.

An editable version of this latter statutory declaration can be downloaded from <http://www.asxgroup.com.au/asx-compliance/downloads.htm>.

In considering whether the applicant's directors or proposed directors meet the 'good fame and character' requirement, ASX will primarily have regard to the documents mentioned above. However, ASX may also have regard to any other information it has about the directors or proposed directors from any source and, in an appropriate case, may require an applicant for listing to provide additional information about its directors or proposed directors.

It can take some time to obtain criminal history and bankruptcy checks and applicants for listing are encouraged to apply for them at the earliest opportunity so that this does not delay their listing.

## Payment of initial listing fee

An entity applying for admission to the official list must pay the applicable initial listing fee in accordance with chapter 16 of the Listing Rules and the schedule of fees set out in Guidance Note 15A *ASX Schedule of Listing*

*Fees.* This payment must be made at the time its lodges its application for listing, preferably by cheque made payable to ASX Operations Pty Ltd. Further guidance about the calculation and payment of listing fees is set out in Guidance Note 15 *ASX Listing Fees*.

As mentioned above, an entity should apply for quotation of, and pay the initial listing fee for, the maximum number of securities that can be quoted. If the actual number of securities eventually quoted is less than the amount applied for, ASX will refund the excess initial listing fees paid. Further details of the refund arrangements are set out in Guidance Note 15 *ASX Listing Fees*.

## The listing decision

Decisions on whether or not to admit an entity to the official list, to quote its securities, and to grant any waiver requested or required in connection with its admission or the quotation of its securities, are made on behalf of ASX by its National Listing Committee (NLC). The NLC's decision on these matters will be reduced to writing and communicated to the applicant by the Listings Unit, usually via an emailed letter.

ASX has an absolute discretion in deciding whether or not to admit an entity to the official list and to quote its securities, and is not required to give any reasons for its decision in that regard.<sup>53</sup> ASX may also impose such conditions on admission and/or quotation as it considers appropriate.<sup>54</sup>

In practice, ASX's decision to admit an entity as an ASX Listing and quote its securities is usually expressed to be subject to a number of conditions precedent that must be satisfied before the decision becomes effective. Typically, these will include:

- the close of the offer under the applicant's prospectus or PDS and the completion of the allotment and issue of any required minimum subscription;
- confirmation in a form acceptable to ASX (usually a bank statement) that the applicant has received cleared funds for the full amount of the issue price under the prospectus or PDS;
- mailing of CHESS or issuer sponsored holding statements to the successful applicants;
- ASX being satisfied that the applicant meets its minimum spread requirements;
- a statement setting out the number of securities subject to escrow and the escrow period applied.
- where appropriate, provision of updated financial information (such as an updated statement of commitments or pro forma balance sheet) based on the actual amount of funds raised under the applicant's prospectus or PDS;
- if the applicant has lodged a supplementary or replacement prospectus or PDS with ASIC, provision to ASX of a copy of that document; and
- provision to ASX of any remaining documents referred to in the Appendix 1A that have not yet been lodged with ASX, including usually:
  - a statement setting out the names of the 20 largest holders of each class of securities to be quoted, and the number and percentage of each class of securities held by those holders, in accordance with paragraph 47 of Appendix 1A; and
  - a distribution schedule of the numbers of holders in each class of security to be quoted in accordance with paragraph 48 of Appendix 1A.

<sup>53</sup> Listing Rules 1.19 and 2.9.

<sup>54</sup> Listing Rules 1.19 and 2.9.

Subject to the entity satisfying any conditions precedent that have been imposed by ASX on its admission and the quotation of its securities, trading in the entity's securities will commence on a date notified by ASX to the applicant.

## Documents released to the market

An entity must provide ASX with an electronic version of its prospectus, PDS or information memorandum shortly after lodging its application for admission and this document will be released to the market through the ASX Market Announcements Platform at that time.

Once ASX has admitted an entity to the official list, and prior to the commencement of quotation, a number of documents will be released to the market through the ASX Market Announcements Platform as pre-quotation disclosure. These documents will typically include:

- the Appendix 1A application form;
- the entity's constitution;
- any financial statements given to ASX with the application;
- the entity's trading policy; and
- the distribution schedule of the numbers of holders in each class to be quoted and the statement setting out the names of the 20 largest holders in each class of securities to be quoted, and the number and percentage of each class of securities held by those holders.

For privacy and/or confidentiality reasons, the documents released on the ASX Market Announcements Platform with an admission application for an ASX Listing will not include the documents supplied to ASX about the directors or proposed directors, in the case of a company under clauses 10A, 10B and 10C, and in the case of other entities under clauses 22A, 22B and 22C, of Appendix 1A,<sup>55</sup> nor will they include restriction agreements, underwriting agreements or other material contracts provided with the listing application or any letter applying for a waiver or in-principle advice. ASX will, however, usually require the entity to disclose on the ASX Market Announcements Platform the fact that it has received a waiver of a Listing Rule and the terms of that waiver.

## Requirements for additional information

ASX may require an applicant for listing to disclose additional information over and above that required under Appendix 1A.<sup>56</sup> It may require this information to be submitted to the scrutiny of an expert selected by ASX. The applicant must pay for the expert.

ASX may also impose a condition on admission or quotation that the applicant disclose certain information to the market before quotation commences.<sup>57</sup>

Entities that conduct an initial public offering by way of a bookbuild should be aware that, as a matter of practice, ASX will require disclosure of certain information relating to the outcome of the bookbuild. This information is set out in the Annexure to this Guidance Note.

<sup>55</sup> These clauses require certain information to be given to ASX so that it can be satisfied that the directors or proposed directors of the entity are of good fame and character (see "Directors must be of good fame and character" above).

<sup>56</sup> Listing Rule 1.17.

<sup>57</sup> Listing Rules 1.19 and 2.9.

## Appeal process

An applicant who is denied admission to the official list or a waiver, or who has conditions imposed upon their admission or a waiver that they find unacceptable, is entitled to appeal that decision.<sup>58</sup> Written notice of the appeal must be lodged with the ASX Appeals Tribunal within 10 Business Days after the decision is sent to the applicant.<sup>59</sup>

Further information about the appeal process can be found in Guidance Note 21 *Appeals*.

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<sup>58</sup> Listing Rule 18.10.

<sup>59</sup> Rule 3.1.4 of the ASX Enforcement and Appeals Rulebook and the accompanying Procedure.

## Annexure Disclosure of Information about Bookbuilds

Where an entity has undertaken an offering by way of bookbuild in conjunction with its application for listing, ASX requires the information outlined in this annexure to be disclosed prior to the commencement of trading in the entity's securities.

The purpose of this requirement is to ensure that the market is informed of any material information arising from a bookbuild which may impact on the price or value of the entity's securities so that, when trading commences, it takes place on a reasonably informed basis.

An applicant which undertakes a bookbuild process is required to disclose the following information under Listing Rule 1.17:

- the number of securities issued under the bookbuild and the price at which they have been issued;
- any concessionary fee or other arrangements entered into which have had the result that the effective issue price paid by some allottees differs materially from the bookbuild price announced by the applicant;
- any arrangements entered into which have had the result that some allottees receive a material benefit for agreeing to participate in the bookbuild at the bookbuild price announced by the applicant and which is not received by other allottees; and
- any arrangements entered into with associates of the applicant or the bookrunner to avoid a shortfall, or the appearance of a shortfall, in the bookbuild.

This is not intended to require disclosure of normal sub-underwriting and cornerstone investor arrangements entered into in the ordinary course of business.

An entity must ensure it has a right to obtain appropriate information from the bookrunner in order to meet its disclosure requirements under this annexure.

Bookrunners could potentially enter into different types of arrangements which would fall within the disclosure requirements in this annexure. We have provided 3 examples below to illustrate ASX's expectations. However, these examples are intended as a guide only and are in no way exhaustive.

### Example 1

Company A intends to list on ASX. Company A's IPO includes an institutional bookbuild component to be conducted by Broker B. Company A awarded the tender for the bookbuild to Broker B because it undertook to place equal numbers of securities with Australian and offshore institutions.

Company A wants to place a total of 50 million shares at between \$2.30 - \$2.50 each with these institutions. During the course of the bookbuild, it becomes clear to Broker B that offshore interest is weaker than anticipated. There is insufficient demand to cover the book at \$2.30.

In order to ensure that the book is covered, an offshore subsidiary of Broker B agrees to take 10 million shares. Broker B enters into an arrangement with a second, unrelated offshore entity, whereby Broker B will pay a "special fee" of \$0.15 per share in return for which the offshore entity will bid for 15 million shares at \$2.30.

Company A must disclose details of the total number of shares allocated to the institutions, and the price at which they were placed. Company A must also disclose details of the actions taken to minimise or avoid a material shortfall i.e. the shares allocated to Broker B's offshore subsidiary, and the \$0.15 "special fee" paid to the second off-shore entity.

## Example 2

Company C intends to list on ASX and to obtain its minimum spread by undertaking a placement of shares to institutional investors and major private clients of Broker D. The placement will be via a bookbuild conducted by Broker D. Company C hopes to place a total of 20 million shares at around \$1.00 each.

Broker D has difficulty attracting investors to the placement. In order to successfully complete the placement, Broker D enters in a series of agreements with major private clients. The clients agree to purchase a total of 10 million shares at \$0.98 each, and Broker D agrees to buy back the shares in the next 30-60 days for \$1.03.

Company C must obtain and disclose details of the buy-back arrangement between Broker D and its clients.

## Example 3

Company E intends to list on ASX. It will offer 30% of its securities to retail investors, and 70% of its securities to institutional investors via a bookbuild.

Company E's prospectus indicates a bookbuild price range of between \$3.00 and \$3.50. Company E is concerned that the market for IPOs may be weakening, so it enters into a series of "offer agreements" with large institutional investors, agreeing to place 30% of its securities with those investors at \$3.00 per share. The bookbuild for the remaining 40% of securities is conducted. It is priced at \$3.50.

Company E must disclose a breakdown of the number of shares placed, and the price at which they were placed. Company E must also release details of the "offer agreements" between Company E and the institutional investors.