



## Guidance Note 2

**Issued:** September 2001

### Key topics

1. Stapled securities
2. Compliance with listing rule requirements
3. Stapling provisions
4. Conditions of admission
  - pre quotation disclosure
  - continuing requirements
5. Continuous disclosure
6. Trading and settlement
7. Listing fees

### Listing Rules

1. Listing rule 1.1
2. Listing rule 2.1
3. Listing rule 3.1
4. Listing rule 6.10.5
5. Listing rule 8.10
6. Listing rule 10.1
7. Listing rule 12.6

### Cross-reference

1. Guidance Note 4 – Foreign Entities
2. Guidance Note 8 – Continuous Disclosure – Listing Rule 3.1
3. Guidance Note 15 – Schedule of Fees

### Guidance Note History

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## Stapled Securities

### Introduction

1. This Guidance Note is published to assist listed entities and entities considering listing to understand Australian Stock Exchange Limited (ASX) policy in relation to stapled securities. Stapling is an arrangement under which different securities are quoted jointly.
2. ASX provides joint quotation of stapled securities issued by different entities (for example, shares issued by a company and units issued by a trust) and of different classes of securities issued by the same entity (for example, shares and debentures). ASX also provides joint quotation of more complex combinations of stapled securities (for example, units issued by a trust stapled to shares and debentures issued by a company). Joint quotation has the effect that the stapled securities cannot be traded separately, as the stapled securities are treated as one unit.
3. Over recent years, ASX has accommodated a wide range of structures that involve stapled securities. The following paragraphs provide guidance on ASX's approach to some of the issues that have arisen to date. ASX expects that new structures will come forward, and will deal with these on a case by case basis, with a view to accommodating new structures that meet the substance of the listing requirements.

## **Stapled securities issued by different issuers**

4. ASX may admit more than one entity to the official list on the basis that the entities' securities will be stapled together and jointly quoted. Such structures might comprise a company and a trust, more than one company or more than one trust.

### **Types of stapled structures**

5. Most entities with stapled securities that have previously sought admission to the official list have adopted either a 'twin' structure or a 'parent/child' structure, but other structures will be considered. The 'twin' structure is the most common. Ordinary securities in one entity are stapled to ordinary securities in the other entity, and the two entities are not related. A 'parent/child' structure is one where securities in one entity are stapled to securities in a subsidiary of that entity. For example, ordinary securities of a company may be stapled to a special class of securities of a subsidiary.

## **Joint compliance with Listing Rule requirements**

### **Satisfaction of admission criteria**

6. Where two or more entities seek admission to the official list on the basis that their securities will be stapled, ASX will decide whether they meet admission criteria collectively, rather than individually. A waiver from listing rule 1.1 condition 8 (compliance with profit test or assets test) will be granted to one or more of the entities provided that they together comply with the profit test or assets test. Waivers from listing rule 1.1 condition 7 (in relation to the requirement for securities to have a value of \$2,000) and listing rule 2.1 condition 2 (issue price of at least 20 cents for main class) will also be granted to one or more of the entities, provided that the conditions are met jointly by the entities.

### **Related parties**

7. Listing rule 10.1 may apply to transactions between entities with stapled securities, for example where a company is stapled to a trust and a subsidiary of the company is the responsible entity of the trust. ASX is likely to grant a waiver from the listing rule to allow transfers of assets between entities with stapled securities, as the economic interests of holders of stapled securities will not be affected by the transaction.

### **Management and control**

8. ASX does not require that entities seeking admission to the official list on the basis that their securities will be stapled together have identical management and control. If entities do have identical management and control at the time of admission, ASX does not require that they have provisions to ensure that they continue to have identical management and control.

9. ASX does not require that entities with stapled securities enter into a formal co-operation agreement in relation to matters such as the joint issue of prospectuses or making joint disclosure to the market. However, ASX requirements in relation to the stapling provisions to be contained in constituent documents (refer paragraph 11) have the effect that the entities would not be able to issue securities or reorganise their capital or interests except in close co-operation with each other. ASX also requires that the entities provide the market with joint financial statements.
10. The entities must nominate a person as the point of contact for ASX in relation to listing rule matters (listing rules 1.1 condition 12 and 12.6), which also requires co-operation between the entities. Although more than one person may be nominated for the purpose of the rules, ASX would expect that the point of contact for both entities would be the same, refer paragraph 18.

#### **'Twin' structures - stapling provisions**

11. ASX requires that the stapling provisions in the constituent documents of the entities contain adequate mechanisms to ensure each of the following:
  - Voting rights of the securities must be in accordance with the Listing Rules (note comments below in relation to unstapled securities not enjoying voting rights).
  - All securities of the stapled classes must be stapled at the commencement of quotation.
  - In relation to securities of the stapled classes, securities of one entity cannot be transferred unless there is a matching transfer of securities of the other entity (this will require a waiver from listing rule 8.10 - refer paragraph 23 below).
  - In relation to securities of the stapled classes, securities of one entity cannot be issued unless there is a matching issue of securities of the other entity. Also there must be adequate mechanisms to ensure that if unstapled securities were to be issued by one entity at a time when stapling is in place, they are not entitled to any benefits (eg. voting and dividend or distribution rights) until either those securities are stapled to securities of the other entity or all securities are unstapled. This will require approval under listing rule 6.10.5. This requirement, that securities not have voting rights, does not apply to trusts. This is because the Corporations Act sets out the voting regime for members of a managed investment scheme (Division 6, Part 2G.4).
  - In relation to securities of the stapled classes, partly paid securities of both entities must be treated in the same way, eg. in relation to call programs.
  - Corporate actions (eg. reorganisations of capital) cannot occur in a way which would prejudice stapling.
  - In relation to securities of the stapled classes, there must be provision for joint certificates, joint holding statements for uncertificated securities, and joint registers.
  - Stapling provisions can only be amended or stop applying in specified circumstances that are satisfactory to ASX. This may include a trigger event such as if security holder approval is obtained and the terms on which the approval is obtained is satisfactory to ASX. It may also include the occurrence of a specified event - this must also be satisfactory to ASX.

**'Parent/child' structures - stapling provisions**

12. The requirements for the constitution to contain provisions which prevent corporate actions which prejudice stapling, require joint registers to be maintained, and prevent unstapled securities being issued (or, if issued, not to have voting and dividend or distribution rights) or transferred while stapling is in place are the same for 'parent/child' structures as for 'twin' structures.
13. However, in the case of a 'parent/child' structure it is acceptable for voting securities of the 'parent' to be stapled to non-voting securities of the 'child', and the voting securities of the 'child' to be held by the 'parent'. It is also acceptable for the stapled structure to be able to be dissolved so that the 'child' entity becomes a wholly-owned subsidiary of the 'parent' entity without security holder approval being obtained.

**Conditions of admission - pre-quotation disclosure**

14. It is a condition of admission to the official list for entities issuing stapled securities that there is pre-quotation disclosure in relation to complexities arising from the use of a stapled structure. The disclosures identified below must be provided to ASX before quotation of securities will commence. ASX may require additional disclosures.

**Foreign entities**

15. If one of the entities is a foreign entity, the standard disclosures required in the case of all foreign entities are required. Guidance Note 4 – Foreign Entities states that a foreign entity with an ASX Listing is required to make disclosures about each of the following matters:
  - The entity's place of incorporation or registration.
  - That the entity is not subject to Chapters 6, 6A, 6B and 6C of the Corporations Act dealing with the acquisition of securities (ie. substantial holdings and takeovers).
  - Any limitations on the acquisition of securities imposed by the jurisdiction in which the entity is incorporated or registered.
16. If the securities of a foreign entity are stapled to securities in an entity that is subject to Chapters 6, 6A, 6B and 6C of the Corporations Act (principally Australian companies and listed registered managed investment schemes), disclosure must also be made of the effect of the application of these Chapters of the Corporations Act to that entity on the acquisition of stapled securities. For example, if the regime applicable to the foreign entity does not provide for compulsory acquisition powers matching those available under Chapter 6A following a successful takeover, the disclosure should deal with what will happen if the successful offeror exercises its compulsory acquisition powers in relation to the other entity and is granted a modification of the Corporations Act by the Australian Securities and Investments Commission (ASIC).

**All entities**

17. ASX reserves the right (but without limiting its absolute discretion) to remove one or more entities with stapled securities from the official list if any of their securities cease to be ‘stapled’ together, or any equity securities are issued by one entity which are not stapled to equivalent securities in the other entity or entities. Disclosure of this reservation is also part of pre-quotation disclosure.

**Conditions of admission - continuing requirements**

**All entities**

18. It is a condition of continuing listing that entities with stapled securities maintain the stapled structure and make disclosures about the stapled structure. The requirements are:
- The entities must make the disclosures referred to in paragraphs 14 to 17 to every person who subscribes for stapled securities under a disclosure document or information memorandum, and set them out in every annual report. An undertaking to this effect must be provided before admission.
  - The entities must provide the market with a joint abridged profit statement and a joint abridged balance sheet for each half year and full year.
  - The entities must nominate a person as the ASX point of contact in relation to listing rule matters, eg. a company secretary, refer listing rule 1.1 condition 12 and listing rule 12.6. It is expected that the same person would be nominated for both entities.
  - The entities must maintain the stapled structure. ASX reserves the right to remove entities from the official list that do not do so, refer paragraph 17 above.

**Trusts**

19. ASX does not require trusts which are part of a stapled group to have the same responsible entity.

**Continuous disclosure**

20. Listing rule 3.1 requires each entity with stapled securities to disclose all information that it has about itself that is material to the price or value of the stapled securities. Any information that is material to the price or value of stapled securities is information that is material to the price or value of each of the stapled securities, refer Guidance Note 8 – Continuous Disclosure – Listing Rule 3.1.

### **Stapled securities issued by the same issuer**

21. ASX will provide joint quotation for more than one class of securities of the same issuer, and may treat the jointly quoted securities as the issuing entity's main class of securities.
22. Listing rules from which waivers may be needed include listing rule 1.1 condition 7 (in relation to the requirement for securities to have a value of \$2,000) and listing rule 2.1 condition 2 (issue price of 20 cents for main class). These are granted on the basis that the stapled securities together satisfy the requirements, ie. the stapled securities are treated as one security for the purposes of the Listing Rules.

### **Trading and settlement**

23. An on-market trade in stapled securities will be settled in CHESS in relation to each class of securities. If the securities are not CHESS approved, paper-based transfer will be required in relation to each class. In order to ensure that the stapled securities cannot be traded separately off-market, ASX requires the constitution of the issuing entity (or entities), and the terms of issue of the securities, to provide for the entity (or entities) to refuse to register a paper-based transfer of securities in one class of the stapled securities unless there is a matching paper-based transfer of securities of the other class or classes of the stapled securities. A waiver from listing rule 8.10 to the extent necessary to permit the issuing entity (or entities) to have such provisions will be granted.

### **Listing and quotation fees**

24. The Listings Schedule of Fees set out in Guidance Note 15 – Schedule of Fees provides that the fees payable by two entities with stapled securities are calculated by applying the tables in the Schedule to the combined value of the securities for which quotation is sought (ie. as if the entities with the stapled securities were a single entity issuing a single security). Listing fees for an entity with two (or more) classes of securities stapled together and quoted jointly are also payable on the basis of the combined value of the securities.
25. The securities will be treated as equity securities for listing fee purposes even if only one of the stapled securities is an equity security.