



Guidance Note 13

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Key topics

1. Disposal of major asset by an entity
2. Determining what is a major asset
3. Pro-rata offers to securityholders
4. Securityholder approval to dispose without offer

Listing Rules

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2. Listing rule 7.11
3. Listing rule 7.17
4. Listing rule 11.4
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Cross-reference

1. Guidance Note 1 – Applying for Admission and Quotation
2. Guidance Note 12 – Changes to Activities

Guidance Note History

Last Issued: 1/7/2000

Disposal of a Major Asset Involving an Entity to be Listed: Listing Rule 11.4

Introduction

1. This Guidance Note is published to assist listed entities to understand how listing rule 11.4 of the Australian Stock Exchange Limited (ASX) Listing Rules operates.
2. In this Guidance Note, the term ‘acquiring entity’ is used to describe a company or other entity which is to acquire a major asset from a listed entity.

The listing rule

3. Listing rule 11.4 states:

An entity must not +dispose of a major asset if, at the time of the +disposal, it is +aware that the +person acquiring the asset intends to issue or offer +securities with a view to becoming listed. The entity must do each of the following if one of its +child entities holds the major asset.

- *It must not sell +securities in the +child entity with a view to the +child entity becoming listed.*
- *It must make sure that the +child entity does not issue +securities with a view to becoming listed.*

11.4.1 *This rule does not apply in either of the following cases.*

- (a) *The +securities, except those to be retained by the entity or +child entity, are offered pro rata to holders of +ordinary securities in the listed entity, or in another way that, in ASX's opinion, is fair in all the circumstances.*
- (b) *Holders of +ordinary securities in the listed entity approve of the +disposal without the offer referred to in rule 11.4.1(a) being made. The notice of meeting must include a +voting exclusion statement.*

4. 'Dispose' is defined in listing rule 19.12 which states:

to dispose or agree to dispose directly or through another +person by any means, including the following.

- *Granting or exercising an option.*
- *Using an asset as collateral.*

Purpose

- 5. The purpose of the listing rule is to give securityholders of a listed entity which has transferred a major asset the opportunity to participate in any premium that may arise on the listing of the acquiring entity. If securityholders are unable to participate in any premium, they may lose faith in the listed entity which originally held the asset and the market as a whole, to the detriment of all market participants.
- 6. Listing rule 11.4 seeks to balance the interests of investors with the commercial objectives of listed entities. Where a listed entity seeks to dispose of a major asset, holders of ordinary securities in the listed entity may expect to be given one of the following.
 - The opportunity to participate in any premium on the listing of the acquiring entity through an offer of securities in the acquiring entity, in a fair manner.
 - The opportunity to decide that they do not require an offer of securities in the acquiring entity to be made to them.
- 7. Where there is little potential for any premium on listing of the acquiring entity because securities in the acquiring entity will be offered through a bookbuild or similar method of pricing the securities, ASX will generally be prepared to grant a waiver from listing rule 11.4.

Major asset

8. In deciding whether an asset is a major asset, ASX will primarily have regard to the listed entity's equity interests, total assets and operating revenue stated in the listed entity's latest consolidated financial statements given to ASX under the Listing Rules. In some cases, these factors will not give a meaningful indication of the significance of the disposal to the listed entity, and the respective market capitalisation of the listed entity and the acquiring entity will be a more useful guide. The following guidelines indicate the circumstances where ASX is likely to regard an asset as a major asset.
 - The value of, or the value of the consideration for the asset represents 20% or more of consolidated equity interests. The term 'equity interests' is defined in listing rule 19.12 which states:

the sum of paid up capital, reserves, and accumulated profits or losses, disregarding redeemable preference share capital and outside equity interests, as shown in the consolidated financial statements.
 - The value of, or the value of the consideration for, the asset represents 15% or more of consolidated assets.
 - The revenue attributable to the asset represents 15% or more of consolidated operating revenue.
 - The market capitalisation of the acquiring entity is 20% or more of the market capitalisation of the entity.
9. An asset may be regarded by ASX as a major asset if one or more of the above guidelines apply. However, whether an asset is a major asset is not decided conclusively by reference to the guidelines. In the case of an asset whose value or attributable revenue is less than the level stated in the applicable guideline, there may be other relevant considerations which mean the asset should be regarded as a major asset. For example, in the case of technology, the potential for the asset to be a significant contributor to revenue may make it a major asset. Conversely, there may be cases where an asset which comes within the guidelines will not be regarded by ASX as a major asset. Accordingly, entities are encouraged to consult ASX as to whether an asset will be regarded by ASX to be a major asset.
10. Where the acquiring entity is a child entity of the listed entity, and the listed entity is disposing of less than 100% of the securities in the acquiring entity, the tests will be applied on the basis of the percentage interest that is being disposed of. A waiver will be granted from listing rule 11.4 on condition that the entity provides an undertaking to retain the balance of its interest for at least six months after the acquiring entity is listed.

View to becoming listed

11. The listing rule may apply to the listing of the acquiring entity on ASX or on any other stock exchange. However, where the listing is on an overseas stock exchange, this may be a factor which is relevant to consideration of whether an offer to security holders of the listed entity is fair.
12. For the listing rule to apply, there is no time limit within which the acquiring entity must be listed after it has acquired the major asset. However, a significant period of time between the disposal of the major asset and the listing of the acquiring entity, for example 12 months, may indicate that, at the time of disposal, the listed entity was not aware that the acquiring entity intended to issue or offer securities with a view to becoming listed, in which case the listing rule does not apply.

Pro rata offer to ordinary security holders

13. In essence, listing rule 11.4.1(a) provides that listing rule 11.4 does not apply if holders of ordinary securities in the listed entity are offered all securities in the acquiring entity, except those to be retained by the listed entity or the acquiring entity, on a pro rata basis or if the offer is made in another way that is fair in all the circumstances.
14. The requirements for a pro rata offer are set out in listing rule 7.11.
15. Listing rule 7.17 states:

If an entity offers its ⁺security holders an entitlement to ⁺securities in another entity, the offers must be pro rata, or made in another way that, in ASX's opinion, is fair in all the circumstances. There must be no restriction on the number of ⁺securities which a holder must hold before the entitlement accrues. This rule does not apply if the resulting holding would be less than a holding with a value of \$500 and no facility to round up is offered.

16. Listing rule 7.17 contemplates both an offer of securities in another listed entity, and an offer of securities in an entity to be listed. In the case of an entity to be listed, the spread requirement calls for holders of parcels of \$2,000 or more. Consequently, if an offer of securities in the acquiring entity is subject to a restriction that resulting holdings must have a value of at least \$2,000 and where no facility to round up is offered, ASX may regard it as being in substance a pro rata offer, and approve it as fair in the circumstances.

Offer in another way

17. Instead of a pro rata offer of all of the securities in the acquiring entity being made to holders of ordinary securities in the listed entity, the requirements of listing rule 11.4.1(a) may be met if the offer is made in another way that is fair in all the circumstances.

18. The matters which ASX may take into account in determining whether an offer is fair, include the following.
- Whether ordinary security holders in the listed entity are given the opportunity to make an investment in the acquiring entity to an extent that represents their existing 'share' of the asset.
 - Whether or not other persons are able to invest in the acquiring entity to the exclusion of ordinary security holders in the listed entity.
 - If it is proposed that holders of securities other than ordinary securities be offered an opportunity to invest in the acquiring entity, whether the rights attaching to their securities entitle them to participate on the terms proposed.
 - The need for the offer to be structured in such a way as to enable the acquiring entity to meet the spread requirement in listing rule 1.1 condition 7.
19. In some cases, the asset being disposed may not constitute all of the assets of the acquiring entity. Alternatively, the listed entity may only have a part interest in the asset at the time of disposal. In these circumstances, ASX may consider as fair an offer to the listed entity's ordinary security holders on a pro rata basis of a portion of securities in the acquiring entity, having regard to either of the following.
- The proportion that the asset's value (or the value of the listed entity's interest in the asset) bears to the value of the acquiring entity's total assets.
 - The proportion of the issued capital of the acquiring entity held by the listed entity.
20. Listing rule 1.1 condition 7 requires an entity to satisfy either paragraph (a) or (b), which state:
- (a) *There must be at least 500 holders each having a parcel of the +main class of +securities with a value of at least \$2,000, excluding +restricted securities and, if the entity has previously been removed from the +official list, excluding +securities not acquired by those holders under a recent prospectus. If +CDIs are issued over +securities in the +main class, holders of +CDIs will be included.*
- (b) *Both of the following are satisfied.*
- *There must be at least 400 holders each having a parcel of the +main class of +securities with a value of at least \$2,000, excluding +restricted securities and, if the entity has previously been removed from the +official list, excluding +securities not acquired under a recent prospectus. If +CDIs are issued over +securities in the +main class, holders of +CDIs will be included.*
 - *Persons who are not +related parties of the entity must hold that number of +securities in the +main class, excluding +restricted securities, which is not less than 25% of the total number of +securities in that +class.*

21. ASX recognises that the creation of many small holdings of securities in the acquiring entity is not in the acquiring entity's interests. Further, the opportunity to take up only a small parcel of securities is unlikely to deliver any meaningful benefit to security holders, particularly if the acquiring entity will be listed on an overseas stock exchange.
22. Given the acquiring entity's need to achieve spread, an offer that is not pro rata but which enables security holders to achieve a security holding in the acquiring entity with a minimum value that is reasonable in the circumstances may be considered by ASX to be a fair alternative to a pro rata offer of all the securities in the acquiring entity to the listed entity's ordinary security holders.
23. A pro rata offer of some only of the securities in the acquiring entity may also be considered to be fair if a pro rata offer of all securities would not achieve spread for the acquiring entity. The proportion of securities which need to be offered to the listed entity's security holders for the offer to be fair will depend on the circumstances. For example, if major shareholders have indicated that they will not participate, the proportion may be reduced.
24. As mentioned in paragraph 16, a pro rata offer with restrictions to prevent the creation of holdings of less than \$2,000 may be regarded as fair.

Security holder approval of no offer

25. Listing rule 11.4.1(b) enables a listed entity to dispose of a major asset to another entity which is seeking to become listed, without an offer being made to its ordinary security holders, if those security holders so approve in general meeting.
26. The approval of ordinary security holders should be obtained on an informed basis. In general, ASX would expect that the notice of meeting would include all material details about the following.
 - The nature of the asset being disposed.
 - The value of the asset, including its value as shown in the listed entity's latest financial statements, its current value and the asset's contribution to the entity's recent past and current earnings.
 - The consideration for the asset.
 - The issue price for securities in the acquiring entity.
 - All material agreements relevant to the disposal of the asset.
 - Why disposal of the asset is in the listed entity's best interests.
 - The listed entity's future activities and direction without the asset.

27. Listing rule 11.4.1(b) requires that the notice of meeting include a voting exclusion statement. Listing rule 14.11 sets out the content of this requirement. In essence, listing rule 14.11 provides that the following votes must be disregarded (with a limited exception for marked proxies).
- Those of a party to the transaction to acquire the asset.
 - Those of an associate of that person.
 - Those of a person which in ASX's opinion should be disregarded.
28. Before sending out the notice of meeting to security holders, a draft of the notice of meeting and any accompanying document must be given to ASX for examination, refer listing rule 15.1.7.
29. As security holder and market perceptions about the value of an asset may change over time, the meeting of security holders to approve the disposal should be held within a reasonable time before the disposal. In general, ASX is not likely to regard a disposal occurring more than six months after the meeting of security holders as having been approved in accordance with listing rule 11.4.1(b).