

## APPEALS

<p><b>The purpose of this Guidance Note</b></p>	<ul style="list-style-type: none"> <li>• To assist listed entities and entities applying to be admitted to the official list to understand which decisions under the ASX Listing Rules can be appealed to the ASX Appeal Tribunal and the process that applies to such appeals</li> </ul>
<p><b>The main points it covers</b></p>	<ul style="list-style-type: none"> <li>• The decisions which may be appealed</li> <li>• The process for lodging an appeal</li> <li>• How an Appeal Tribunal is constituted</li> <li>• How proceedings before an Appeal Tribunal are conducted</li> <li>• The decisions an Appeal Tribunal can make</li> <li>• Costs orders</li> </ul>
<p><b>Related materials you should read</b></p>	<ul style="list-style-type: none"> <li>• The ASX Enforcement and Appeals Rulebook</li> </ul>

**History:** Guidance Note 21 amended 31/10/12. Previous versions of this Guidance Note were published in 09/01 and 03/08.

**Important notice:** ASX has published this Guidance Note to assist listed entities to understand and comply with their obligations under the Listing Rules. Nothing in this Guidance Note necessarily binds ASX in the application of the Listing Rules in a particular case. In issuing this Guidance Note, ASX is not providing legal advice and listed entities should obtain their own advice from a qualified professional person in respect of their obligations. ASX may withdraw or replace this Guidance Note at any time without further notice to any person.

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## 1. Introduction

This Guidance Note is published to assist listed entities and entities applying to be admitted to the official list to understand which decisions of ASX Limited (ASX) under the ASX Listing Rules can be appealed to the ASX Appeal Tribunal and the process that applies to such appeals.

The Appeal Tribunal is an independent body vested with the responsibility of determining, through a process of peer review, appeals from certain decisions made by ASX. The Tribunal comprises a panel of industry professionals selected by ASX for their industry experience, knowledge and expertise.<sup>1</sup>

The Tribunal operates independently of ASX, but with legal and secretariat support from ASX.

## 2. The decisions which may be appealed

An entity which is dissatisfied with a decision by ASX under the ASX Listing Rules:

- to refuse to admit the entity to the official list or to impose conditions on its admission;
- to refuse to quote the securities of the entity or to impose conditions on their quotation;
- to refuse to grant a waiver to an entity or to impose conditions on granting of a waiver;
- to apply the Listing Rules to the entity (except in relation to a suspension); or
- to remove the entity from the official list,

can appeal the decision to the ASX Appeal Tribunal.<sup>2</sup>

## 3. The process for lodging an appeal

To appeal a decision of the type mentioned above, the entity must lodge a written notice of appeal with the Appeal Tribunal.<sup>3</sup> There is no prescribed form for the notice. A letter will suffice.

The notice of appeal may be delivered or sent by post, fax or email<sup>4</sup> and should be addressed to:

The Chairperson<sup>5</sup>

<sup>1</sup> The Appeal Tribunal has been established by ASX in accordance with Rule 3.5.1 and Procedure 3.5.1 of the ASX Enforcement and Appeals Rulebook.

<sup>2</sup> Rule 3.1.4 of the ASX Enforcement and Appeals Rulebook.

<sup>3</sup> Procedure 3.1.4 of the ASX Enforcement and Appeals Rulebook.

<sup>4</sup> Procedure 1.14.1 of the ASX Enforcement and Appeals Rulebook.

<sup>5</sup> The Chairperson of the Appeal Tribunals is appointed by ASX pursuant to Rule 3.5.3 and Procedure 3.5.3 of the ASX Enforcement and Appeals Rulebook.

c/o Legal Counsel to the Tribunal  
Exchange Centre  
20 Bridge Street  
SYDNEY NSW 2000  
E-mail: Tribunals@asx.com.au  
Fax: 02 9227 0917<sup>6</sup>

The notice of appeal must:

- identify the decision against which the appeal is made and set out the grounds of appeal;<sup>7</sup>
- be lodged with the Appeal Tribunal no later than 10 business days after the decision being appealed against was sent to the entity;<sup>8</sup> and
- be accompanied by a cheque for \$5,500 payable to ASX Operations Pty Limited for the appeal fee.<sup>9</sup>

#### 4. How an Appeal Tribunal is constituted

Where the chairperson of the Appeal Tribunal Panel receives a notice of appeal that complies with the requirements mentioned above, the chairperson will convene an Appeal Tribunal in accordance with the ASX Enforcement and Appeals Rulebook.

The Appeal Tribunal will comprise the chairperson or his/her nominated delegate, plus at least two other members selected by the chairperson from the Appeal Tribunal Panel.<sup>10</sup>

A person who participated in the making of the decision being appealed is not permitted to be a member of the Appeal Tribunal.<sup>11</sup>

The chairperson will appoint a date, time and place for the appeal proceedings and arrange for the parties to be notified of those details.<sup>12</sup>

#### 5. How proceedings before an Appeal Tribunal are conducted

An appeal is conducted as a review rather than a rehearing.<sup>13</sup> The Appeal Tribunal will review the decision of ASX to determine whether there was an error which results in the decision not being correct, based on the material before ASX and the law at the time the decision was made.<sup>14</sup>

An appeal hearing will generally be conducted on the written submissions of the parties unless the Appeal Tribunal decides of its own volition to conduct, or one of party requests, an oral hearing.<sup>15</sup> If a party wishes to have an oral hearing, it must request that by no later than the lodgement of its final written submissions.<sup>16</sup>

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<sup>6</sup> Procedure 1.14.1 of the ASX Enforcement and Appeals Rulebook.

<sup>7</sup> Procedure 3.1 of the ASX Enforcement and Appeals Rulebook.

<sup>8</sup> Procedure 3.1.4 of the ASX Enforcement and Appeals Rulebook.

<sup>9</sup> The prescribed appeal fee is \$5,000 plus GST of a further \$500: see Procedure 3.1.4 of the ASX Enforcement and Appeals Rulebook.

<sup>10</sup> Rule 3.5.4 and Procedure 3.5.4 of the ASX Enforcement and Appeals Rulebook.

<sup>11</sup> Rule 3.5.4 and Procedure 3.5.4 of the ASX Enforcement and Appeals Rulebook.

<sup>12</sup> Rule 3.5.5 and Procedure 3.5.5 of the ASX Enforcement and Appeals Rulebook. This date may be vacated for an alternative proceeding date in accordance with the Procedures to the ASX Enforcement and Appeals Rulebook.

<sup>13</sup> Rule 3.6.1 of the ASX Enforcement and Appeals Rulebook.

<sup>14</sup> In line with the note to Procedure 3.6.1 of the ASX Enforcement and Appeals Rulebook.

<sup>15</sup> Rule 3.6.2 of the ASX Enforcement and Appeals Rulebook.

<sup>16</sup> Rule 3.6.2 of the ASX Enforcement and Appeals Rulebook.

The Appeal Tribunal will generally issue a timetable for written submissions. The parties must comply with any directions given by the Appeal Tribunal in relation to written submissions.<sup>17</sup>

Any oral hearing before an Appeal Tribunal will take place in private. The parties may have up to two representatives present to make submissions and, with the permission of the Appeal Tribunal, may have additional representatives present. Representatives may be employees of the party represented, a legal practitioner or any other person approved by the Appeal Tribunal.<sup>18</sup>

Proceedings before the Appeal Tribunal are conducted with as little formality and technicality, and with as much expedition, as a proper consideration of the matters before the Appeal Tribunal permits.<sup>19</sup>

The Appeal Tribunal must determine each matter on its own merits and must conduct the proceedings without bias and observe the rules of procedural fairness.<sup>20</sup>

The Appeal Tribunal may record or make a transcript of its proceedings. A copy of any transcript or recording will be made available to the parties.<sup>21</sup>

## 6. The decisions an Appeal Tribunal can make

The Appeal Tribunal may affirm, vary or set aside the decision appealed against.<sup>22</sup>

The decision of the Appeal Tribunal is made a simple majority vote of the Appeal Tribunal members.<sup>23</sup>

The Appeal Tribunal is required to notify the parties of its decision and the reasons for it in writing within 90 days of making the decision (although this period can be extended by the chairperson if he/she considers it necessary).<sup>24</sup>

## 7. Costs orders

The usual rule that applies to appeals before the Appeal Tribunal is that each party must bear their own costs and expenses.

However, if the Appeal Tribunal considers that a party to the appeal has acted vexatiously, frivolously or unreasonably, it may order that party to pay the whole or part of the costs and expenses incurred by the other party in the appeal.<sup>25</sup>

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<sup>17</sup> Rule 3.6.3 of the ASX Enforcement and Appeals Rulebook.

<sup>18</sup> Procedure 3.6.2 of the ASX Enforcement and Appeals Rulebook.

<sup>19</sup> Rule 3.6.4 of the ASX Enforcement and Appeals Rulebook.

<sup>20</sup> Rule 3.6.5 of the ASX Enforcement and Appeals Rulebook.

<sup>21</sup> Rule 3.6.4 of the ASX Enforcement and Appeals Rulebook. The Appeal Tribunal generally will only record or make a transcript of proceedings that are the subject of an oral hearing.

<sup>22</sup> Rule 3.6.1 of the ASX Enforcement and Appeals Rulebook.

<sup>23</sup> Rule 3.6.6 of the ASX Enforcement and Appeals Rulebook.

<sup>24</sup> Rule 3.6.11 and Procedure 3.6.11 of the ASX Enforcement and Appeals Rulebook.

<sup>25</sup> Rule 3.6.9 of the ASX Enforcement and Appeals Rulebook.