

REMOVAL OF ENTITIES FROM THE ASX OFFICIAL LIST

<p>The purpose of this Guidance Note</p>	<ul style="list-style-type: none"> To assist listed entities and their advisers to understand ASX's policies and processes regarding the removal of entities from the ASX official list
<p>The main points it covers</p>	<ul style="list-style-type: none"> The right of an entity to request removal from the ASX official list How to make a request for removal from the official list What an entity should announce to the market when it makes a request for removal from the official list How ASX can respond to a request for removal from the official list The conditions that ASX will typically require to be satisfied before it will act upon a request for removal from the official list Where ASX requires security holder approval to an entity being removed from the official list, what the notice of meeting should cover The circumstances in which ASX may remove an entity from the official list at its own instigation
<p>Related materials you should read</p>	<ul style="list-style-type: none"> Guidance Note 5 <i>Chess Depositary Interests</i> Guidance Note 8 <i>Continuous Disclosure: Listing Rules 3.1 – 3.1B</i> Guidance Note 14 <i>ASX Market Announcements Platform</i> Guidance Note 17 <i>Waivers and In-Principle Advice</i>

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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.

Table of contents

1. Introduction	2
2. Removal from the official list at the request of an entity	2
2.1. The right to request removal from the official list	2
2.2. Preliminary discussions with ASX	3
2.3. The formal request for removal	4
2.4. Market announcement expected upon lodgement of formal request for removal	4
2.5. The removal decision	5
2.6. Usual conditions where securities are readily able to be traded on another exchange	5
2.7. Usual conditions where ordinary securities not readily able to be traded on another exchange	6
2.8. Usual conditions where other classes of securities not readily able to be traded on another exchange	8
2.9. Usual conditions for trusts with redemption facilities	8
2.10. Usual conditions in certain takeover situations	9
2.11. Requirements for notices of meeting	9
3. Removal from the official list at the instigation of ASX	10
3.1. Automatic suspension and removal following compulsory acquisition	10
3.2. Automatic suspension and removal for failure to pay annual listing fee	11
3.3. Other circumstances in which ASX may terminate a listing	11
3.4. Automatic removal of long-term suspended entities	12
4. Ongoing continuous disclosure obligations	12

1. Introduction

This Guidance Note is published to assist listed entities and their advisers in understanding the policies and practices of ASX Limited (ASX) regarding the removal of entities from the ASX official list.

The circumstances in which a listed entity may be removed from the official list are set out in Listing Rules 17.11 – 17.16. These rules apply to all entities admitted to the official list, including those admitted as an ASX Debt Listing¹ or an ASX Foreign Exempt Listing.²

Once an entity has its admission to the official list terminated, it can no longer refer to itself as an ASX listed entity and it must cease using the “Listed on ASX” trademark. Its securities will also cease to be quoted and traded on the ASX market.³

Once an entity has been removed from the official list, if it subsequently wishes to have its securities quoted and traded on ASX again, it must complete a new admission application and satisfy the relevant admission requirements in Chapters 1 and 2 of the Listing Rules afresh.⁴

2. Removal from the official list at the request of an entity

2.1. The right to request removal from the official list

An entity may ask ASX to remove it from the ASX official list at any time.⁵

¹ Listing Rule 1.10.1.

² Listing Rule 1.15.1.

³ They will also cease to be quoted and traded on the Chi-X market, since that market is not a listing market and quotes and trades securities of listed entities that are quoted and traded on the ASX market.

⁴ Guidance on the admission process can be found in Guidance Note 1 *Applying for Admission – ASX Listings*, Guidance Note 4 *Foreign Entities Listing on ASX* and Guidance Note 29 *Applying for Admission – ASX Debt Listings*.

⁵ Listing Rule 17.11.

ASX may require the entity to establish the authority of the person making the request for removal and, if the entity has a common seal, may require the request to be under its common seal.⁶

ASX is not required to act on an entity's request for removal from the official list and may require conditions to be satisfied before it does so.⁷ If ASX's decision to remove an entity from the official list is conditional, the entity is removed after the conditions are met and on a date decided by ASX. If the decision is unconditional, the entity is removed on the date specified in the decision or, if no date is specified, on a date decided by ASX.⁸

In practice, ASX's decision to act upon a request from an entity for removal from the official list is usually subject to the satisfaction of certain conditions directed to ensuring that the interests of security holders are not unduly prejudiced by the removal and that trading in the entity's securities takes place in an orderly manner up to the date of its removal. In some cases, these conditions may include the approval of security holders to the removal.⁹

ASX's power not to act on an entity's request for removal from the official list exists to ensure that the removal is being sought for acceptable reasons. Some common and generally acceptable reasons why an entity might ask to be removed from the official list include:

- the entity is re-domiciling to another jurisdiction and intends to move its listing from ASX to an overseas securities exchange as part of that transaction;
- the entity has its primary listing on another exchange and no longer requires a secondary listing on ASX;
- as a result of a takeover, scheme of arrangement or other control transaction, the entity only has one or a small number of remaining security holders and so its continued listing can no longer be justified;¹⁰
- the directors of the entity consider that the prices at which its securities are trading on ASX are materially lower than the underlying value of its net assets and the entity is intending to provide security holders wishing to sell their holdings with an alternative mechanism (such as a redemption or buy-back facility) to liquidate their holdings at a price closer to their net asset value; or
- the directors of the entity have determined for some other proper reason that it is no longer in the interests of the entity and its security holders for the entity to remain listed on ASX.

Some unacceptable reasons why an entity might ask to be removed from the official list include if it is doing so solely or primarily:

- to avoid the application of Chapter 10 of the Listing Rules (transactions with persons in a position of influence) to a particular transaction that would otherwise require the approval of security holders; or
- to deny minority shareholders a market for their securities in order to coerce them into accepting an offer from a controlling shareholder to buy their securities.

2.2. Preliminary discussions with ASX

Before an entity submits a formal request for removal from the official list, ASX recommends that the entity first discuss the matter with ASX Listings Compliance at the earliest opportunity. Those discussions are generally best held with the entity's home branch. ASX Listings Compliance will be able to provide general advice on the removal process and a preliminary view on the chances of ASX agreeing to the request for removal, the likely timeframe for a decision on the request and the likely conditions that ASX will impose.

⁶ Listing Rule 17.11.

⁷ Listing Rule 17.11.

⁸ Listing Rule 17.16.

⁹ See sections 2.7, 2.8 and 2.9 below.

¹⁰ See section 2.10 below.

In most cases, ASX Compliance will recommend that an entity apply for in-principle advice¹¹ on whether ASX is likely to agree to a request for removal from the official list and the conditions that ASX is likely to require to be satisfied before it will act on the request. By doing this, the entity can have a high degree of certainty about ASX's position on these matters and can reflect that position in the announcement that ASX will expect it to make when it lodges its formal request for removal from the official list (see 2.4 below).

An application for in-principle advice must be in writing and submitted by the applicant or a professional adviser or representative acting on behalf of the applicant. It should be addressed to ASX Listings Compliance at the entity's home branch and clearly marked "Not for public release".¹²

The application should set out in detail:

- the entity's reasons for seeking to be removed from the official list;
- whether the entity is intending to seek the approval of security holders to the removal (for example, because it anticipates that ASX will require such approval or it is doing so of its own volition¹³); and
- what, if any, arrangements will be in place to enable security holders to sell or otherwise realise their securities in the lead up to, and/or after, its removal from the official list.

2.3. The formal request for removal

An entity wishing to be removed from the official list should apply in writing to ASX Listings Compliance at its home branch. The application should be on its letterhead and, if it has a common seal, executed under its common seal or signed by its chairman of directors or its chief executive officer. If it is signed by anyone else, ASX will require the entity to provide evidence that the person has the authority to request something as serious as the removal of the entity from the official list.

Unless this information has already been provided to ASX in an application for in-principle advice (in which case, the formal application can simply reference the application for in-principle advice), the formal request for removal should set out in detail:

- the entity's reasons for seeking to be removed from the official list;
- whether the entity is intending to seek the approval of security holders to the removal; and
- what, if any, arrangements will be in place to enable security holders to sell their securities in the lead up to, and/or after, its removal from the official list.

2.4. Market announcement expected upon lodgement of formal request for removal

ASX will expect an entity that submits a formal request for removal from the official list to make an immediate¹⁴ announcement to the market, via the ASX Market Announcements Platform, setting out the following information:¹⁵

- the fact that it has applied to ASX for removal from the official list;
- its reasons for seeking removal from the official list;
- the consequences for the entity and its security holders if it is removed from the official list;

¹¹ Guidance Note 17 *Waivers and In-Principle Advice* has further guidance on how to make an application for in-principle advice.

¹² Listing Rule 15.6.

¹³ A listed entity might seek security holder approval to its removal from the ASX official list of its own volition, for example, because it considers it both appropriate and a matter of good governance that security holders should be consulted on such a significant decision.

¹⁴ In this context, "immediate" has the same meaning as in Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B* (that is, promptly and without delay).

¹⁵ Such an announcement will generally be required under Listing Rule 3.1 since, in most cases, a reasonable person would expect information about the removal to have a material effect on the price or value of the entity's securities.

- what, if any, arrangements will be in place to enable security holders to sell their securities in the lead up to, and/or after, its removal from the official list;
- if the entity has received in-principle advice from ASX that it will agree to the request unconditionally, that fact and the proposed date for the entity's removal from the official list;
- if the entity has received in-principle advice from ASX that it will agree to the request on conditions:
 - details of those conditions; and
 - the proposed timetable for satisfying those conditions and, if they are met, the expected date for the entity's removal from the official list; and
- if the entity has not received in-principle advice from ASX that it will agree to the request, a statement to the effect that:
 - ASX is not required to act on the entity's request and may require conditions to be satisfied before it will act on the request; and
 - the entity will make a further announcement to the market once it is advised by ASX whether or not it will agree to the request and of any conditions that ASX requires to be satisfied before it will act on the request.

2.5. The removal decision

Decisions on whether or not to remove an entity from the official list of ASX and the conditions that must be satisfied before the removal takes effect are generally made on behalf of ASX by its National Listing Committee (NLC).¹⁶ The NLC's decision on these matters will be reduced to writing and communicated to the entity by ASX Listings Compliance, usually via an emailed letter.

As mentioned previously, in practice, ASX's decision to act upon a request from an entity for removal from the official list is usually subject to the satisfaction of certain conditions. Sections 2.6 – 2.10 below set out the conditions that ASX will usually apply in some common situations.

2.6. Usual conditions where securities are readily able to be traded on another exchange

This section applies where the entity requesting removal from the official list is:

- a standard ASX Listing that is, or will be,¹⁷ listed on another exchange;
- an ASX Debt Listing that is, or will be,¹⁸ listed on another exchange; or
- an ASX Foreign Exempt Listing with a primary listing on another exchange,¹⁹

where the class or classes of securities quoted on ASX are, or will be, readily able to be traded by security holders on that other exchange.²⁰

¹⁶ Some removal decisions, such as removal for non-payment of annual listing fees under Listing Rule 17.15, occur automatically without a decision by the NLC (see '3.2 Automatic suspension and removal for failure to pay annual listing fee' on page 11).

¹⁷ Where an entity is currently only listed on ASX but is intending to list on another exchange, ASX's decision to agree to its removal from the ASX official list will be subject to a condition that the entity is admitted to the official list of, and its relevant securities are quoted on, that other exchange.

¹⁸ See note 17.

¹⁹ An ASX Foreign Exempt Listing must be a foreign entity that has its overseas home exchange on a stock exchange or market which is a member of the World Federation of Exchanges (see Listing Rule 1.11 condition 1).

²⁰ In determining whether securities are "readily able" to be traded on another exchange, ASX will have regard to any practical difficulties that security holders may have in accessing that exchange and selling their securities at a fair price.

In such cases, ASX will not usually require the entity to obtain security holder approval to its removal from the official list (although it is always open to the entity to seek such approval of its own volition²¹). This is on the basis that security holders will still have the opportunity to sell their securities on another exchange even though they will cease to have that opportunity on ASX.

In such cases, ASX will usually require the following conditions to be satisfied before it will act on a request from the entity for removal from the official list:

- the entity send a written or electronic communication to all security holders,²² in form and substance satisfactory to ASX, setting out:
 - the nominated time and date²³ at which the entity will be removed from the ASX official list and that:
 - if they wish to sell their securities on ASX, they will need to do so before then; and
 - if they don't, thereafter they will only be able to sell their securities on-market on the other exchange or exchanges where the entity is listed;
 - generally what they will need to do if they wish to sell their securities on the other exchange or exchanges where the entity is listed; and
 - specifically, if its securities are traded on ASX in the form of CHESSE Depository Interests (CDIs):²⁴
 - the steps holders must take to convert their CDIs to the underlying securities before they are able to sell them on the other exchange or exchanges where the entity is listed; and
 - the steps that will be taken by the CHESSE Depository Nominee²⁵ if holders do not convert their CDIs to the underlying securities by a nominated date;²⁶ and
- the removal of the entity from the ASX official list not take place any earlier than one month after the above-mentioned communication has been sent to security holders, so that security holders have at least that period to sell their securities on ASX should they wish to do so.

In exercising its discretion to approve the entity's request for removal from the official list, ASX will look favourably upon the entity establishing an arrangement with a local Australian broker who for a period (say for 3 months after the entity has ceased to be listed on ASX) can facilitate sales on behalf of Australian security holders on the overseas exchange and, if requested by the security holder, convert and remit the net proceeds of sale in Australian dollars. Where it does establish such an arrangement, the entity should communicate information about the arrangement to all security holders, either in the communication mentioned above or in a follow-up communication.

2.7. Usual conditions where ordinary securities not readily able to be traded on another exchange

This section applies where the entity requesting removal from the official list is an ASX Listing whose ordinary securities are not, and will not be, readily able to be traded on another exchange.

Except in the situation mentioned in section 2.10 below, ASX will usually require the following conditions to be satisfied before it will act on a request from the entity for removal from the official list:

- the entity obtain the approval of its security holders to its removal from the official list; and

²¹ See note 13 above.

²² In the case of an ASX Listing or ASX Debt Listing, a copy of that communication should be given to ASX when it is sent to security holders under Listing Rule 3.17.1. In the case of an ASX Foreign Exempt Listing, ASX will generally impose a condition under Listing Rule 17.11 that the entity give a copy of the communication to ASX when it is sent to security holders.

²³ This time and date is to be ascertained by discussions between the entity and ASX Listing Compliance.

²⁴ For further guidance on CDIs, see Guidance Note 5 *Chess Depository Interests*.

²⁵ See ASX Settlement Operating Rules 13.5A.2 and 13.5A.3.

²⁶ This date is to be ascertained by discussions between the entity and ASX Settlement.

- except in the case of certain illiquid trusts mentioned in section 2.9 below, the removal of the entity from the ASX official list not take place any earlier than one month after security holder approval has been obtained.

The first condition above ensures that the interests of security holders, as a group, are addressed and that all security holders have an opportunity to express a view on whether or not the entity should be removed from the official list. The second condition is imposed so that security holders have at least one month after security holder approval has been obtained to sell their securities on ASX, should they wish to do so.

Security holder approval should take the form of an ordinary resolution at a general meeting of the holders of the entity's ordinary securities.²⁷ All holders of ordinary securities, including those with large or even controlling security holdings, will generally be permitted to vote on the resolution, except in the following two cases:

- where ASX is concerned that the removal may be intended, in part,²⁸ to avoid the application of the Listing Rules to a particular transaction or situation that would otherwise require the approval of security holders and that would otherwise attract a voting exclusion statement under Listing Rule 14.10 – in which case, ASX may impose an equivalent voting exclusion statement on the removal resolution;²⁹ or
- where the entity has been the subject of a takeover bid in the preceding 12 months³⁰ and, in ASX's opinion, the bidder and its associates have attained effective control of the entity without satisfying the conditions mentioned in section 2.10 below for ASX to agree to its removal without the approval of security holders – in which case, ASX will require the removal to be approved by the entity's security holders and will also impose a requirement for a voting exclusion statement in relation to any votes cast by the bidder and its associates on the resolution approving the removal.

This latter requirement is imposed to ensure that a successful bidder can only have the target removed from the official list without security holder approval within 12 months after the close of the takeover bid if it satisfies the safeguards mentioned in section 2.10 below. Otherwise, it must obtain the approval of the remaining security holders to the removal. This in turn helps prevent a bidder from unfairly using the threat of an imminent delisting to coerce security holders into accepting a takeover bid.

In such cases, ASX will also usually impose a condition that the entity include with the notice convening the meeting of security holders to approve its removal from the official list a statement, in form and substance satisfactory to ASX, setting out the consequences to security holders of giving that approval and stating:

- the time and date³¹ at which the entity will be removed from the ASX official list if that approval is given;
- that:
 - if holders wish to sell their securities on ASX, they will need to do so before the entity is removed from the ASX official list; and
 - if they don't, details of the processes that will exist after the entity is removed from the official list to allow a security holder to dispose of their holdings and how they can access those processes; and
- if its securities are traded on ASX in the form of CDIs:

²⁷ Listing Rule 14.9.

²⁸ As mentioned previously in section 2.1, if ASX considers that a request for removal from the official list is being made solely or primarily to avoid the application of Chapter 10 of the Listing Rules (transactions with persons in a position of influence) to a particular transaction that would otherwise require the approval of security holders, ASX may refuse to act on the request.

²⁹ Pursuant to its discretion in that regard under Listing Rule 14.11.1 (see the final row in the table set out in that rule).

³⁰ Where more than 12 months have elapsed since the close of the takeover bid, ASX will generally permit the bidder and its associates to vote on a resolution approving its removal from the official list. At this point, sufficient time has elapsed since the takeover bid to remove any inference that the removal is being sought to coerce security holders into accepting the bid.

³¹ This time and date is to be ascertained by discussions between the entity and ASX Listing Compliance.

- the steps holders must take to convert their CDIs to the underlying securities, if that is what they wish to do; and
- the steps that will be taken by the CHESS Depository Nominee³² if holders do not convert their CDIs to the underlying securities by a nominated date.³³

ASX will require the entity to announce the result of the meeting of security holders immediately after the meeting and, if security holders approve its removal from the official list, to reiterate in the announcement the information in the bullet points above.

In exercising its discretion to approve the entity's request for removal from the official list, ASX will look favourably upon the entity implementing a buy-back or other facility that allows the holders of its ordinary securities to sell or redeem them for a nominated period up to, and /or following, the removal of those securities from the official list and to receive the proceeds in Australian dollars. Where it does establish such a facility, the entity should communicate information about the facility to all security holders, either in the communication mentioned above or in a follow-up communication.

2.8. Usual conditions where other classes of securities not readily able to be traded on another exchange

This section applies where the entity requesting removal from the official list is:

- a standard ASX Listing;
- an ASX Debt Listing; or
- an ASX Foreign Exempt Listing,

which has a class or classes of securities, other than its ordinary securities, quoted on ASX that are not readily able to be traded on another exchange.

In such cases, the conditions that ASX will require to be satisfied before it will act on a request from the entity for removal from the official list will be considered on a case-by-case basis. In some cases, ASX may require the entity to obtain the approval of the relevant class or classes of security holders to its removal from the official list. In other cases, it may impose a condition that the entity puts in place a buy-back or other facility acceptable to ASX that allows the holders of the relevant class or classes of securities to sell or redeem them for a nominated period following the removal of those securities from the official list and to receive the proceeds in Australian dollars.

ASX will also generally impose conditions that the removal not take place for a minimum period, so that security holders have at least that period to sell their securities on ASX, should they wish to do so, and requiring equivalent information to that mentioned in section 2.7 above to be provided to security holders and to the market.

2.9. Usual conditions for trusts with redemption facilities

This section applies where the entity requesting removal from the official list is a trust with an ASX Listing that is not listed on another exchange but that will have in place redemption facilities that enable the holders of its ordinary securities to convert their securities to cash after it has been removed from the official list.

In such cases, ASX will still usually require the entity to obtain the approval of its security holders to its removal from the official list. This is on the basis that a redemption facility is qualitatively different to being able to sell on-market. However, instead of a condition that the removal of the entity from the ASX official list not take place any earlier than one month after security holder approval has been obtained, if the trust is not "liquid" (as defined in section 601KA of the Corporations Act), that period will be extended to 3 months, so that security holders have that longer period to sell their securities on ASX, should they wish to do so.

³² See ASX Settlement Operating Rules 13.5A.2 and 13.5A.3.

³³ This date is to be ascertained by discussions between the entity and ASX Settlement.

ASX will also generally impose a condition requiring equivalent information to that mentioned in section 2.7 above to be provided to security holders and to the market.

2.10. Usual conditions in certain takeover situations

This section applies where the entity requesting removal from the official list is an ASX Listing that has been the subject of a successful takeover bid for its ordinary securities where:

- the bidder and its related bodies corporate own or control at least 75% of the entity's ordinary securities but have not met the conditions to proceed to compulsory acquisition of the remaining securities under the Corporations Act;³⁴
- excluding the bidder and its related bodies corporate, the number of holders of ordinary securities having holdings with a value of at least \$500³⁵ is fewer than 150;
- the bidder foreshadowed in its bidder's statement that it intended, if it secured control of the entity, to cause the entity to apply for removal from the official list;
- the takeover bid remained open for at least two weeks following the bidder and its related bodies corporate having attained ownership or control of at least 75% of the entity's ordinary securities; and
- the entity has applied for removal from the official list no later than one month after the close of the takeover bid.

In such a case, ASX will not usually require the entity to obtain security holder approval to its removal from the official list. This is on the basis that security holders had a reasonable opportunity to sell their holdings by accepting the bid after the bidder secured control of the entity and the entity is now at or near the margin where ASX may consider removing the entity from the official list for failure to maintain a sufficient spread of security holdings.³⁶

In such a case, ASX will usually require the following conditions to be satisfied before it will act on a request for removal from the official list:

- the entity send a written or electronic communication to all security holders other than the bidder and its related bodies corporate, in form and substance satisfactory to ASX, advising them of the nominated time and date³⁷ at which the entity will be removed from the ASX official list and that:
 - if they wish to sell their securities on ASX they will need to do so before then; and
 - if they don't, thereafter they will only be able to sell their securities off-market; and
- the removal of the entity from the ASX official list not take place any earlier than 3 months after the above-mentioned communication has been sent to security holders, so that security holders have at least that period to sell their securities on ASX, should they wish to do so.

2.11. Requirements for notices of meeting

As a general proposition, a notice of meeting must include such material as will fully and fairly inform security holders of the matters to be considered at the meeting and enable them to make a properly informed judgment on those matters.³⁸

³⁴ See note 42 below.

³⁵ A holding of \$500 is the size of a "marketable parcel", is defined in Listing Rule 19.12 and as set out in the ASX Operating Rules Procedures.

³⁶ See Listing Rules 12.4 and 17.12.

³⁷ This time and date is to be ascertained by discussions between the entity and ASX Listing Compliance.

³⁸ See *Bullfin v Bebarfalds Ltd* (1938) 38 SR (NSW) 423 and *Chequepoint Securities Ltd v Claremont Petroleum NL* (1986) 11 ACLR 94.

Where ASX requires the approval of security holders to an entity's removal from the official list, ASX will expect the notice of meeting seeking that approval to include:

- the entity's reasons for seeking removal from the official list;
- the advantages and disadvantages of removal from the official list compared to the advantages and disadvantages of remaining listed on ASX;
- why security holder approval is being sought to the removal (that is, whether this is being done to meet a condition imposed by ASX or as a matter of good governance);
- details of any other conditions that ASX requires to be satisfied before it will act on the request for removal from the official list; and
- the other information referred to in sections 2.7, 2.8 and 2.9 above (as applicable).

This information may be given in the notice itself or in an accompanying explanatory memorandum to security holders.³⁹

Before a listed entity sends out a notice of meeting that includes a resolution by security holders approving its removal from the official list, it must give ASX a copy of the draft notice for review. It must not finalise the notice until ASX tells it that ASX does not object to it.⁴⁰

ASX may object to a draft notice of meeting if it appears to ASX that it does not meet the requirements of the Listing Rules or the required standard of disclosure mentioned above.

Immediately after the meeting has been held, the entity will also need to notify ASX of the outcome of the resolution.⁴¹

3. Removal from the official list at the instigation of ASX

3.1. Automatic suspension and removal following compulsory acquisition

Where a listed entity is the subject of a takeover bid and the bidder proceeds to compulsory acquisition of the entity's securities under the Corporations Act,⁴² ASX will automatically suspend quotation of the entity's securities 5 business days after it receives a copy of the compulsory acquisition notice sent to holders of securities in the bid class⁴³ that the bidder is entitled to acquire their securities.⁴⁴

Similarly, where a 90% holder proceeds with the compulsory acquisition of an entity's securities under Part 6A.2 of the Corporations Act,⁴⁵ ASX will automatically suspend quotation of those securities 5 business days after it receives written notice from the entity that:

³⁹ Listing Rule 14.1.

⁴⁰ Listing Rule 15.1.7.

⁴¹ In the case of an ASX Listing or ASX Debt Listing, the outcome of the resolution must be advised to ASX under Listing Rule 3.13.2. In the case of an ASX Foreign Exempt Listing, ASX will generally impose a condition under Listing Rule 17.11 that the entity notify ASX immediately of the outcome of the resolution.

⁴² Part 6A.1 Division 1 of the Corporations Act enables a bidder under a takeover bid to compulsorily acquire any remaining securities in the bid class if, by the end of the offer period, it and its associates have: (a) relevant interests in 90% (by number) of the securities in the bid class; and (b) acquired at least 75% (by number) of the securities that the bidder offered to acquire under the bid (whether or not the acquisitions occurred under the bid or otherwise). The bidder must give a notice of compulsory acquisition to all remaining holders of securities in the bid class during, or within one month after the end of, the offer period and lodge a copy of the notice with ASIC and ASX.

⁴³ Section 9 of the Corporations Act defines the bid class of securities for a takeover bid as the class of securities to which the securities being bid for belong.

⁴⁴ Listing Rule 17.4. ASX may decide not to suspend the quotation of securities in a class that was not the bid class (Listing Rule 17.4.1).

⁴⁵ Part 6A.2 of the Corporations Act enables a person who, either alone or with a related body corporate, has a full beneficial interest in at least 90% (by number) of any class of securities in a company to compulsorily acquire the outstanding securities in that class. It also enables a person who, either alone or with a related body corporate, has 90% voting power, and full beneficial interest in at least 90% (by value) of

- the objection period set out in the compulsory acquisition notice has ended and holders of at least 10% of the securities covered by the compulsory acquisition notice have not objected to the acquisition before the end of the objection period; or
- the court has approved the acquisition under section 664F of the Corporations Act.⁴⁶

In each case, if all the entity's quoted securities have been suspended, ASX will remove the entity from the official list at the close of trading on a date decided by ASX.⁴⁷ This will normally be the third business day following the date on which the entity's securities were suspended under these provisions.

3.2. Automatic suspension and removal for failure to pay annual listing fee

If an entity fails to pay its annual listing fee within 15 business days after the due date,⁴⁸ ASX will automatically suspend quotation of its securities.⁴⁹ The suspension will take effect at the commencement of trading on the next business day after the 15 business day grace period has expired.

If the entity fails to pay its annual listing fee within a further 5 business days (that is, within 20 business days after the due date), ASX will automatically remove it from the official list.⁵⁰ The removal will take effect at the close of trading on the 20th business day after the due date for payment of the fee.

An entity that is seeking voluntary removal from the official list should not seek to circumvent the approval process in Listing Rule 17.11 by simply failing to pay its annual listing fee and thereby having itself automatically removed from the official list under Listing Rule 17.15. Such conduct will not only breach the obligation of the entity to act in accordance with spirit, intention and purpose of the Listing Rules,⁵¹ it is likely to raise issues as to whether the directors of the entity are complying with their statutory and common law obligations to discharge their duties with a reasonable degree of care and diligence⁵² and to exercise their powers in good faith and for a proper purpose.⁵³ In some cases, it could also leave the entity open to an action for oppressive conduct⁵⁴ or "just and equitable" winding up.⁵⁵

ASX reserves the right to take legal action against any entity that fails to pay its annual listing fee to recover the amount in question and to reinstate the entity to the official list after that has occurred.

3.3. Other circumstances in which ASX may terminate a listing

ASX may remove an entity from the official list at any time if in ASX's opinion:

- the entity is unwilling or unable to comply with, or breaks, any Listing Rule;
- the entity has no quoted securities; or

all the securities in the company that are either shares or convertible into shares, to compulsorily acquire all remaining classes of shares and securities convertible into shares. In each case, the power must be exercised within 6 months of becoming a 90% holder. The 90% holder must give a notice of compulsory acquisition to all relevant holders of securities giving them a period of at least one month to object to the acquisition. If the holders of at least 10% of the securities covered by the compulsory acquisition notice object to the acquisition before the end of that period, the court must approve the acquisition under section 664F of the Corporations Act.

⁴⁶ Listing Rule 17.4A. ASX may decide not to suspend the quotation of securities in a class that was not the class to which the securities covered by the compulsory acquisition notice belong (Listing Rule 17.4A.1).

⁴⁷ Listing Rule 17.14.

⁴⁸ As required under Listing Rule 16.5.

⁴⁹ Listing Rule 17.6. ASX will not waive this rule.

⁵⁰ Listing Rule 17.15. ASX will not waive this rule.

⁵¹ Listing Rule 19.2.

⁵² See sections 180(1) (listed companies) and 601FD(1)(b) (listed trusts) of the Corporations Act.

⁵³ See section 181(1) of the Corporations Act. In the case of a listed trust, it may also involve a breach of their duty to act in the best interests of members under section 601FD(1)(c) of the Corporations Act.

⁵⁴ See sections 232 and 461(1)(f) and (g) of the Corporations Act.

⁵⁵ See sections 461(1)(k) (listed companies) and section 601ND(1)(a) (listed trusts) of the Corporations Act.

- it is appropriate for some other reason.⁵⁶

While ASX may remove an entity from the official list for any breach of the Listing Rules, most often this issue will arise in the context of Listing Rules 12.1, 12.2 and 12.4.⁵⁷ These rules require the level of an entity's operations to be sufficient, and its financial condition to be adequate, in ASX's opinion to warrant the continued quotation of its securities and its continued listing. They also require the entity to maintain a spread of security holdings in its main class which, in ASX's opinion, is sufficient to ensure that there is an orderly and liquid market in its securities.

ASX may remove an entity from the official list at any time if, in ASX's opinion, the entity fails to meet the requirements of Listing Rules 12.1, 12.2 or 12.4.

3.4. Automatic removal of long-term suspended entities

ASX's policy is to remove from the official list any entity whose securities have been suspended from trading for a continuous period of 3 years.⁵⁸ The removal will usually take effect from the open of trading on the first trading day after the expiration of that 3 year period.

ASX may agree to a short extension of the 3 year deadline for the automatic removal of a long-term suspended entity if the entity can demonstrate to ASX's satisfaction that it is in the final stages of implementing a transaction that will lead to the resumption of trading in its securities. For these purposes, "final stages" means:

- having announced the transaction to the market;
- having signed definitive legal agreements for the transaction (including for any financing required in respect of the transaction);
- if the transaction requires a prospectus or product disclosure statement to be lodged with ASIC, having lodged that document with ASIC and it not being the subject of a stop order or other regulatory action by ASIC;
- if the transaction requires approval by security holders or from a governmental agency or financier, the entity having obtained all such approvals; and
- ASX otherwise being satisfied that the transaction is reasonably capable of being consummated within the period of the extension.

The extension, if granted, will be for no more than 3 months (it may be shorter if ASX considers that the transaction ought to be reasonably capable of being consummated in a lesser period).

4. Ongoing continuous disclosure obligations

An entity that is removed from the official list of ASX should note that in certain circumstances it may continue to be an "unlisted disclosing entity" which is subject to the continuous disclosure obligations set out in section 675 of the Corporations Act.

ASIC Regulatory Guide 198 *Unlisted disclosing entities: Continuous disclosure obligations* provides guidance on what is an unlisted disclosing entity and how an unlisted disclosing entity should comply with its continuous disclosure obligations under the Corporations Act.

⁵⁶ Listing Rule 17.12.

⁵⁷ Occasionally the issue may also arise in the context of Listing Rule 12.5, which requires that an entity's structure and operations must be appropriate for a listed entity.

⁵⁸ ASX considers this to be "appropriate" for the purposes of Listing Rule 17.12 (see note 56 and accompanying text).