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Changes to the ASX Listing Rules finalised

October 2019

Late last year the Australian Securities Exchange (**ASX**) released its consultation paper “Simplifying, clarifying and enhancing the integrity and efficiency of the ASX Listing Rules”.

The consultation paper proposed changes to the Listing Rules and Guidance Notes in order to:

- improve market disclosures and other integrity measures;
- simplify the existing Listing Rules;
- make both listing on the ASX and the ongoing compliance more efficient; and
- enhance ASX’s powers to operate the market and enforce compliance with the Listing Rules.

ASX received extensive feedback in response to the consultation paper and has now finalised the rule changes, which (subject to a couple of exceptions) will come into effect on 1 December 2019.

Following is a summary of the key rule changes.

QUARTERLY REPORTS

Entities that lodge an Appendix 4C quarterly cash flow report under Listing Rule 4.7B must also lodge a quarterly activities report with ASX under the new Listing Rule 4.7C. The report must detail business activities for the quarter and compare actual expenditure to the estimates of expenditure in “use of funds” statements in offer documents or expenditure programs provided to ASX as part of the listing process. Related party expenditure must also be disclosed.

Similar changes apply to the activities reports of mining exploration entities and oil and gas exploration entities.

The new reporting requirements come into effect for the quarter ending 31 March 2020.

PLACEMENTS

Placement capacity exceptions in Listing Rule 7.2

Additional requirements have been included in the placement capacity exceptions in Listing Rule 7.2.

Key changes include:

- Exception 2 (issue under an agreement to an underwriter to underwrite the shortfall of a pro rata issue) – to rely upon this exception, the entity must now disclose in its Appendix 3B, the fees, commissions and other discounts

payable to underwriters, as well as a summary of significant events that could lead to the underwriting being terminated. Similar disclosure requirements also apply to Listing Rules 3.10.9, 3.11.3 and 10.12 exception 2.

- Exception 3 (issue to make up a shortfall on a pro rata issue) – to rely on this exception, the entity must state as part of the offer what their allocation policy will be in relation to the shortfall i.e. it is not sufficient to state that the entity reserves the right to allocate the shortfall at the directors’ discretion without also stating the factors the directors will take into account in exercising their discretion.
- Exception 16 (issue under an agreement to issue securities) – the issue of securities pursuant to an agreement entered into before an entity was listed will be taken to have been approved under Listing Rule 7.1 provided the entity discloses the details of the agreement in its listing prospectus, PDS or information memorandum.

Worksheets to calculate placement capacity

Where an entity lodges an Appendix 3B announcing a proposed issue of equity securities without security holder approval using its Listing Rule 7.1 or 7.1A.2 placement capacity, the entity will be prompted by the Appendix 3B to complete a work sheet to confirm that it has the available placement capacity under those rules and to send it to its ASX officer.

The work sheets provided to ASX are for the internal use of ASX and are not released to the market. ASX does not “pre-vet” the work sheets and an entity does not have to wait after lodging the work sheets for any confirmation from ASX before it proceeds with the proposed issue of equity securities.

Other

Listing Rule 7.1A placements may no longer be made for non-cash consideration. In addition, an entity must now state in its announcement of the placement or in its application for quotation that the issue is being, or has been, made under Listing Rule 7.1A, otherwise the issue will be taken to have been made under Listing Rule 7.1.

MEETINGS

Contents of notices of meetings

The information required to be included in notices of meeting has been revised in respect of resolutions to approve issuances of securities and transactions with persons of influence (Listing Rules 7.1, 7.1A, 7.4, 10.1, 10.11 and 10.14).

Key changes include:

- For the approval or ratification of an issuance of securities, ASX expects an entity to name those investors in the placement whose identity is likely to be material to a decision by security holders to approve the resolution. An investor is likely to be “material” for these purposes if they are a related party, a member of the key management personnel, a substantial holder or an adviser of the entity, or an associate of any of those persons, and they are receiving an allotment of more than 1% of the entity's current issued capital (Guidance Note 21 *The Restrictions on Issuing Equity Securities in Chapter 7 of the Listing Rules*).
- New Listing Rule 10.5 prescribes the minimum contents for a notice of meeting approving an acquisition or disposal of a substantial asset from/to a person in a position of influence.
- New Listing Rule 10.15.4 requires details (including the amount) of a director's current total remuneration package to be disclosed in a notice of meeting proposing a resolution under Listing Rule 10.14 to approve the issue of equity to a director or an associate under an employee incentive scheme.
- New Listing Rule 14.1A requires a notice of meeting which contains a resolution seeking the approval of security holders under the Listing Rules to summarise the relevant rule and what will happen if security holders give, or do not give, that approval.

Voting exclusion statements in notices of meeting

Various amendments have been made to the form of the voting exclusion statement in Listing Rule 14.11. One of the key changes is the insertion of a new limb which allows holders who hold shares in a nominee, trustee, custodial or other fiduciary capacity on behalf of a beneficiary to vote those shares (subject to conditions) on a Listing Rule resolution without the entity needing to apply for a waiver.

Voting by Employee Incentive Schemes

New Listing Rule 14.10 requires that securities held by employee share trusts must only be voted on a resolution under the Listing Rules, if and to the extent that they

are held for the benefit of a nominated participant in the scheme who is not excluded from voting, and the nominated participant has directed how the securities are to be voted.

New Guidance Note 35

Previous commentary and guidance on security holder resolutions has been consolidated into a single new Guidance Note 35 *Security Holder Resolutions* that applies across all Listing Rules requiring security holder approval.

ASX review

ASX has now added an “all reasonable endeavours” qualification to its turnaround time of 5 business days for reverting with either an objection or that it needs more time to review draft documents provided to it under Listing Rule 15.1, including notices of meeting.

Disclosing voting results

Listing Rule 3.13.2 has been updated to specify the details required to be disclosed in relation to voting results at security holder meetings. The amended rule requires an entity to disclose for each resolution:

- both the number and a short description of the resolution;
- whether the resolution was passed or not passed;
- whether the resolution was decided on a show of hands or a poll;
- if the resolution was decided on a poll, the number and percentage of securities that were voted for the resolution, the number and percentage of securities that were voted against the resolution and the number and percentage of securities that formally abstained from voting on the resolution; and
- regardless of how the resolution was decided, the aggregate number and percentage of securities for which valid proxies were received before the meeting.

APPROVAL REQUIRED FOR ISSUES OF SECURITIES TO CERTAIN CONNECTED PARTIES

Unless an exception applies, security holder approval is now required for an issue of securities to:

- a 30%+ substantial holder (Listing Rule 10.11.2);
- a 10%+ substantial holder who has nominated a director to the board of the entity pursuant to a “relevant

agreement” which gives them a right or expectation to do so (Listing Rule 10.11.3); and

- an associate of one of the above persons (Listing Rule 10.11.4),

in each case, with a six month “look back”. ASX had (at times) been applying Listing Rule 10.11 to the above persons through the application of its discretion in Listing Rule 10.11.2 (now Listing Rule 10.11.5) so these changes are effectively codifying that approach.

WAIVERS OF LISTING RULE 6.18

ASX will no longer grant waivers from Listing Rule 6.18 (which prohibits an entity from granting anyone an option that is exercisable over a percentage of its capital) to permit an entity to give an anti-dilution right to a strategic security holder (see Guidance Note 25 *Issues of Equity Securities to Persons in a Position of Influence*). ASX considers that the introduction of Listing Rule 10.11.3 (see above) cuts across the operation of these waivers.

In ASX’s view, a security holder in a strategic relationship with an entity and with board representation is likely to have considerable influence over the types of capital raisings the entity undertakes. If the entity undertakes a non-pro rata capital raising that may potentially dilute the strategic security holder, it always has the option to buy securities on-market to top up its holding and therefore it should not need a separate anti-dilution right.

CHESS DEPOSITARY INTERESTS

New Listing Rule 4.11 requires an entity that has a dual listing and CHESS Depositary Interests (**CDIs**) issued over its quoted securities to notify ASX of the number of CDIs on issue on a monthly basis via a new form called an Appendix 4A.

ASX has confirmed that this rule does not apply to foreign entities with a sole listing on ASX given such entities are required to have all of their securities quoted on ASX.

PERSONS RESPONSIBLE FOR COMMUNICATIONS WITH ASX

The person appointed by an entity to be responsible for communication with ASX on Listing Rule issues will be required to complete an approved education course and examination covering listing rule compliance matters (Listing Rule 1.1, Condition 13 and Listing Rule 12.6).

To allow more time to complete the development of ASX’s online education course and examination, the transition date for this particular rule change is 1 July 2020.

GOOD FAME AND CHARACTER TEST

The good fame and character test has been extended to non-director CEOs and CFOs (Listing Rule 1.1, Condition 20) in addition to the directors.

ASSETS TEST ADMISSION REQUIREMENTS

The working capital test for entities seeking admission under the ‘assets test’ has been simplified so that entities must confirm that they have at least \$1.5 million in working capital at the time of admission (Listing Rule 1.3.3(c)). Provisions permitting an entity to include budgeted revenue and budgeted administration costs in its working capital for the first full financial year following listing have been removed.

Furthermore, an entity’s listing prospectus, PDS or information memorandum must state the objectives the entity is seeking to achieve from its admission and any capital raising undertaken in connection with its admission (Listing Rule 1.3.3(a)).

Where half or more of the entity’s total tangible assets (after raising any funds) are cash or in a form readily convertible to cash, the entity must have commitments consistent with its stated objectives to spend at least half of its cash and assets in a form readily convertible to cash (Listing Rule 1.3.2(b)). The entity’s listing prospectus, PDS or information memorandum must include an expenditure program setting out these commitments.

ASX ESCROW

Substantial changes have been made to ASX’s escrow regime in Chapter 9, Appendices 9A and 9B of the Listing Rules and Guidance Note 11 *Restricted Securities and Voluntary Escrow* which are intended to reduce the administrative burden for applicants seeking to list on ASX.

When escrow is applied

ASX has provided guidance on what constitutes an acceptable “track record of profitability or revenue” for the purpose of applying its mandatory escrow. The following revenue tests must generally be met to be considered ‘acceptable’ and therefore avoid mandatory escrow:

- going concern for at least three financial years with the same main business activity;
- aggregate revenue over the last three financial years of at least \$20 million;
- consolidated revenue for the last 12 months of at least \$15 million;

- raising at least \$20 million under the IPO; and
- market capitalisation at listing of at least \$100 million.

How escrow is imposed

Escrow restrictions for certain security holders may now be imposed by a restriction notice (rather than by signing a restriction deed) at ASX's election (Listing Rule 9.1(c) and Appendix 9C). New requirements for an entity's constitution have been introduced to support this new escrow regime (Listing Rules 9.1(a) and 15.12), by having the constitution impose the appropriate escrow restrictions on the holder of restricted securities.

The general rule is that related parties, promoters and their associates, substantial (10%+) holders, and professional advisers (caught by item 6 of Appendix 9B) should in all cases still have escrow imposed upon them via a restriction deed rather than a restriction notice. The same applies to vendors of a classified asset where there are 10 or fewer of them. All other parties may have escrow imposed upon them via a restriction notice.

Additional requirements for CDIs

Any quoted escrowed securities (including CDIs) must be held on the issuer sponsored subregister and be subject to a holding lock. If, however, a holder holds the shares underlying CDIs, then the rules applying to unquoted securities will apply in relation to those shares i.e. the shares must be held on a certificated subregister and the certificates must be held in escrow by a bank or recognised trustee for the duration of the escrow period (Listing Rule 9.1(i)).

STANDARD WAIVERS

The list of standard waivers has been refreshed. A number of the usual standard waiver matters have been eliminated by rule amendments and a couple of additional waivers have been added to the list (Guidance Note 17 *Waivers and In-Principle Advice*).

Most notably, a "supersize waiver" is now a standard waiver. A "supersize waiver" permits the number of underwritten securities under an accelerated entitlement offer to be counted for the purposes of capacity calculations for a concurrent placement (subject to certain customary conditions being met).

TIME LIMITS AND TIMETABLES

Escrow

Entities must now provide ASX with 5 business days (rather than 10 business days) notice ahead of the end of escrow periods (Listing Rule 3.10A).

Closing date for the receipt of director nominations

Listing Rule 3.13.1 has been amended to make clear that entities must give 5 business days' notice to the market of the closing date for the receipt of director nominations.

Quotation of quoted securities issued on conversion of unquoted convertible notes and options

Entities must now apply for quotation of new securities issued upon the conversion of unquoted convertible securities (including the exercise of options) within 10 business days after the date of conversion (Listing Rule 2.8.3).

Dividends and distributions

Entities must now issue securities under a dividend or distribution plan and apply for quotation of the issued securities no later than 5 business days (rather than 10 business days) after the dividend or distribution payment date. This does not apply to a purchase and transfer of existing securities to satisfy an entitlement but ASX encourages entities that are purchasing securities to do so as quickly as they reasonably can (section 1 of Appendix 6A).

Security Purchase Plans

Results of a security purchase plan (**SPP**) must now be announced within 3 business days after the closing date of the SPP and the entity must issue the securities and apply for quotation before noon (Sydney time) no more than 7 business days after the SPP closing date (section 12 of Appendix 7A).

Other

The existing generic timetable for court approved reorganisations of capital has been replaced with a timetable specifically for mergers or takeovers effected via a court approved scheme of arrangement.

There are also new timetables for splits and consolidations of securities, cash returns of capital and returns of capital by in specie distribution of securities in another entity.

NEW APPENDIX 2A

The Appendix 3B will no longer be used to apply for the quotation of securities. ASX has introduced an Appendix 2A which will be used to apply for quotation.

Most issues of securities will now need to be notified to ASX under Listing Rule 3.10.3 via an Appendix 3B at the time the issue is proposed. The Appendix 3B will incorporate the information currently required to be disclosed under the bullet points to Listing Rule 3.10.3 for a non-pro rata issue of securities.

To facilitate transition to the new arrangements, ASX will continue accepting notifications of proposed issues of securities and applications for quotation on the current form of Appendix 3B up until 31 January 2020.

INCREASED POWERS

ASX has introduced a number of rule changes which enhance its powers, including:

- the ability to grant waivers to a specific class of entities or to all entities generally (Listing Rule 18.1);
- the power to impose conditions in connection with its decision not to take action against an entity who breaches the Listing Rules (Listing Rule 18.5);
- it can exercise (or decide not to exercise) any power under the Listing Rules in its absolute discretion (Listing Rule 18.5A);
- specific new powers to request information (including verified under oath) with respect to compliance with the Listing Rules or that ASX reasonably requires to perform its obligations as a market operator (Listing Rule 18.7); and
- the power to formally censure an entity that is in breach of the Listing Rules, and publish the reasons for it to the market (Listing Rule 18.8A).

REMOVAL FROM THE OFFICIAL LIST

The updated Guidance Note 33 *Removal of Entities from the ASX Official List* shortens the period for the automatic removal from the official list of an entity whose securities have been suspended from quotation for a continuous period of 2 years (from 3 years), and in circumstances where the entity's securities have been suspended due to the failure to lodge financial statements (as required by Listing Rule 17.5) the period will be 1 year.

WARRANTIES

The warranties in Appendices 1A, 1B, 1C, 2A and 3B have been expanded to include warranties that the securities to be quoted on ASX have been validly issued and all documents and information the entity has given, or will give, to ASX, are, or will be, accurate, complete and not misleading.

ASX has also given new guidance in Guidance Note 30 *Notifying an Issue of Securities and Applying for Their Quotation* that warranties in Appendices 2A and 3B relation to sections 707(3) and 1012C(6) of the Corporations Act (i.e. that the securities proposed to be quoted are freely tradeable) are particularly important.

If ASX is not satisfied that an entity can validly give the warranties in relation to sections 707(3) and 1012C(6) for particular securities that it is seeking to have quoted, ASX will generally refuse to quote them until that issue has been satisfactorily resolved. If ASX finds out after it has quoted securities that the entity may have breached those warranties (for example, by not issuing a cleansing notice or cleansing prospectus in relation to the securities when it should have done so), ASX will generally suspend trading in the securities until the entity has rectified that situation.

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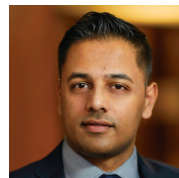
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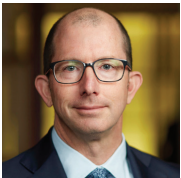
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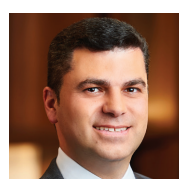
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